IN THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION

LINDA LAUBE, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	**CIVIL ACTION NO. 2:02cv957-T**
	)	
DONAL CAMPBELL, et al.,	)	
	)	
Defendants.	)	

OPINION

In this class-action lawsuit, the plaintiffs (on behalf of themselves and all other women incarcerated by the Alabama Department of Corrections) claim that the defendants (who are various state officials) are deliberately indifferent to the denial of female prisoners' basic human needs, to the denial of their serious medical needs, and to their substantial risk of serious physical violence; the plaintiffs charge the defendants with violations of the Eighth Amendment to the United States Constitution, as made applicable to the States by the Fourteenth Amendment and enforced through

42 U.S.C.A. § 1983. Jurisdiction is proper under 28 U.S.C.A. §§ 1331 and 1343.

This case is now before the court on the parties' joint motion to approve two four-year settlement agreements that will resolve all the claims in the case: the Conditions Settlement Agreement and the Medical Settlement Agreement. Based on a careful consideration of the parties' motion, the proposed settlement agreements and the objections to them, and the representations by counsel, and after a first-hand review of the current conditions of one of the state facilities that house the plaintiffs, the court will approve the proposed settlement agreements and enter a judgment, with the agreements attached.

I. BACKGROUND

The plaintiffs originally filed this lawsuit in August 2002. Broadly speaking, the court would characterize their allegations as follows: that because of conditions at the three state prison facilities that

house all female inmates (Julia Tutwiler Prison for Women, the Edwina Mitchell Work Release Center (now known as the Tutwiler Annex), and the Birmingham Work Release Center), female inmates are being denied their basic human needs of adequate living space, ventilation, and personal safety and security; that because of the defendants' failure to provide adequate medical and mental health care, female inmates are at a real and substantial risk of injury, prolonged illness, and premature death; and that the defendants have acted with deliberate indifference to the existence of these conditions. The procedural history of this litigation and a vivid description of the conditions at Tutwiler, the Tutwiler Annex, and the Birmingham facility at the time this case was filed can be found in this court's earlier reported decisions. Laube v. Campbell, 255 F. Supp. 2d 1301 (M.D. Ala. 2003) (Thompson, J.); Laube v. Haley, 242 F. Supp. 2d 1150 (M.D. Ala. 2003) (Thompson, J.); Laube v. Haley, 234 F. Supp. 2d 1227 (M.D. Ala. 2002) (Thompson, J.).

In early 2004, counsel for all parties met informally to discuss settlement, and, in April 2004, formal mediation under the guidance of Chief Magistrate Judge Charles S. Coody began. In June 2004, counsel reached final agreement on all provisions of the proposed agreements, and, on June 25, filed a joint motion asking the court to adopt the agreements, both of which are signed by the following: plaintiffs' counsel; defendants' counsel; and defendants Donal Campbell (Commissioner of the Alabama Department of Corrections), Troy King (Attorney General of Alabama), and Bob Riley (Governor of Alabama). The agreements are intended to settle all the claims contained in the plaintiffs' second amended complaint; they expire in four years.

On July 1, 2004, the court provisionally approved the two settlement agreements and, with the approval of all parties and because of the urgent need for relief, also provisionally enjoined the defendants from failing immediately to carry out their provisions, that is, pending their final court approval. The court further

ordered that, "[i]f the settlements are not ultimately approved by the court, then this order shall be vacated," and that "[t]he settlements shall expire, in accordance with their terms, four years from July 1, 2004, the date the agreements were provisionally enforced.

The court further approved the parties' plan for notifying class members of the proposed settlements and for soliciting and receiving class members' feedback. Based on the parties' representations contained in the two agreements, the court also granted the plaintiffs' motion for class certification.

On July 21, 2004, the court held a fairness hearing at Tutwiler Prison on the proposed settlements, during which the court heard testimony from seven class members and Tutwiler Warden Gladys Deese. After the hearing, the court toured the facility as it had done at the outset of this litigation almost two years ago.

II. DISCUSSION

Judicial policy favors voluntary settlement of class-action cases. Cotton v. Hinton, 559 F.2d 1326, 1331 (5th Cir. 1977).[1] However, "the settlement process is more susceptible than the adversarial process to certain types of abuse and, as a result, a court has a heavy, independent duty to ensure that the settlement is 'fair, adequate, and reasonable.'" Paradise v. Wells, 686 F. Supp. 1442, 1444 (M.D. Ala. 1988) (Thompson, J.); accord Fed. R. Civ. P. 23(e)(1)(C) ("The court may approve a settlement, voluntary dismissal, or compromise that would bind class members only after a hearing and on finding that the settlement is fair, reasonable, and adequate."). Court review is "essential to assure adequate representation of class members who have not participated in shaping the settlement." Fed. R. Civ. P. 23(e)

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1. In Bonner v. City of Prichard, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc), the Eleventh Circuit Court of Appeals adopted as binding precedent all of the decisions of the former Fifth Circuit handed down prior to the close of business on September 30, 1981.

advisory committee's note. In addition to analyzing the fairness of the proposed settlement, the court must assure that it is not illegal or against public policy. Piambino v. Bailey, 757 F.2d 1112, 1119 (11th Cir. 1985); Paradise, 686 F. Supp. at 1448. The court must also determine whether notice to the class was adequate, Fed. R. Civ. P. 23(e), and must examine the class members' comments and objections, Paradise, 686 F. Supp. at 1444, and the judgment of counsel, id. at 1446. Because this case involves a challenge to prison conditions, the court must also determine whether the settlement is subject to the requirements of the Prison Litigation Reform Act (PLRA), 18 U.S.C.A. § 3626, and, if so, whether those requirements have been met.

A. PLRA

"The PLRA strictly limits the prospective relief a federal court may order in cases concerning prison conditions." Gaddis v. Campbell, 301 F. Supp. 2d 1310, 1313 (M.D. Ala. 2004) (Thompson, J.). Although "private

settlement agreements" are not subject to the statute's limitations, see, e.g., id. at 1313-14, the agreements in this case are subject to judicial enforcement and are thus within the scope of the statute, 18 U.S.C.A. § 3626(c)(2) & (g)(6).

The PLRA provides that a "court shall not grant or approve any prospective relief unless the court finds that such relief [(1)] is narrowly drawn, [(2)] extends no further than necessary to correct the violation of the Federal right, and [(3)] is the least intrusive means necessary to correct the violation of the Federal right." 18 U.S.C.A. § 3626(a)(1)(A). The court must also "give substantial weight to any adverse impact on public safety or the operation of a criminal justice system caused by the relief." 18 U.S.C.A. § 3626(a)(1)(B).

In most cases, the court must "engage in a specific, provision-by-provision examination of [a] consent decree[], measuring each requirement against the statutory criteria." Cason v. Steckinger, 231 F.3d 777 (11th Cir. 2000). However, it is not the case that "the

district court must conduct an evidentiary hearing about or enter particularized findings concerning any facts or factors about which there is not dispute." Id. at 785 n.8. "The parties are free to make any concessions or enter into stipulations they deem appropriate." Id.

Here, all parties concur that the PLRA's requirements are met. The parties agree that the proposed settlement agreements satisfy the statute's three-part 'need-narrowness-intrusiveness' requirements. The court finds that the two proposed agreements, in particular the remedial provisions to which the parties have agreed, are based on an informed assessment of the facts and the law and represent the parties' considered judgment as to what is necessary, narrow, and least intrusive with respect to the specific problems presented in this case, with which the parties are intimately familiar. The parties also agree that the two agreements "will not have an adverse impact on public safety or the operation of the criminal justice system." 18 U.S.C.A. § 3626(a)(1)(B).

At the fairness hearing, the court expressed some concern that the provision of the Medical Settlement Agreement creating the healthcare monitor position could implicate the PLRA's requirements with respect to special masters. See 18 U.S.C.A. § 3626(f).[2] As described below,

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2. Section 3626 provides in part:

> **"(f) Special Master.--**
>
> **(1) In general.--**
>
> **...**
>
> **(B) The court shall appoint a special master under this subsection during the remedial phase of the action only upon a finding that the remedial phase will be sufficiently complex to warrant the appointment.**
>
> **...**
>
> **(5) Regular review of appointment.--In any civil action with respect to prison conditions in which a special master is appointed under this subsection, the court shall review the appointment of the special master every 6 months to determine whether the services of the special master continue to be required under paragraph (1). In no event shall the appointment of a special master extend beyond the termination of the relief.**

an independent healthcare monitor is charged with conducting regular audits to monitor implementation. The healthcare monitor will have access to prisoners and

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> (6) Limitations on powers and duties.--A special master appointed under this subsection--
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> (A) may be authorized by a court to conduct hearings and prepare proposed findings of fact, which shall be made on the record;
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> (B) shall not make any findings or communications ex parte;
>
> (C) may be authorized by a court to assist in the development of remedial plans; and
>
> (D) may be removed at any time, but shall be relieved of the appointment upon the termination of relief.
>
> "(g) Definitions.--As used in this section--
>
> ...
>
> (8) the term "special master" means any person appointed by a Federal court pursuant to Rule 53 of the Federal Rules of Civil Procedure or pursuant to any inherent power of the court to exercise the powers of a master, regardless of the title or description given by the court ...."

their medical records, to members of the medical and security staff, and to any other source of information he deems necessary to determine compliance with the agreement. The healthcare monitor will also prepare reports following regular on-site inspections, and the institution's quality-improvement committee will address any areas requiring improvement. The monitor must provide copies of his or her reports to counsel for the plaintiffs and the defendants as well as file copies with the court. The court is satisfied, for the reasons articulated by the United States Court of Appeals for the Second Circuit in Benjamin v. Fraser, 343 F.3d 35, 44-46 (2d Cir. 2003), that the healthcare monitor is not a special master for purposes of the statute.

In Benjamin, the Second Circuit held that the Office of Compliance Consultants (OCC), which had been appointed to monitor compliance with the consent decrees in a prison-conditions case, was not subject to the PLRA's provisions governing special masters. The court explained that:

"The term 'special master' is defined by the PLRA as 'any person appointed by a Federal court pursuant to Rule 53 of the Federal Rules of Civil Procedure or pursuant to any inherent power of the court to exercise the powers of a master, regardless of the title or description given by the court.' 18 U.S.C. § 3626(g)(8). ...

"The powers of special masters, who are quasi-judicial officers, are set forth generally in Federal Rule of Civil Procedure 53. They include the ability to convene and to regulate hearings, to rule on the admissibility of evidence, to subpoena and swear witnesses, and to hold non-cooperating witnesses in contempt. Fed.R.Civ.P. 53(c)-(d). The master's responsibilities typically culminate in a report. If the report includes findings of fact, they are binding in non-jury actions unless clearly erroneous. Fed.R.Civ.P. 53(e)(2).

"The OCC's functions are quite different from those of a Rule 53 special master. The OCC was not appointed to hold hearings, subpoena witnesses, take testimony, or rule upon evidence. It does not prepare reports to assist in the court's determination of discrete issues of law or fact, and its factual findings are not legally entitled to deference. The OCC's reports, which are neither formally filed in the court's docket nor adopted, modified, or rejected by the court, serve a different

> function from the typical report of a special master. Besides informing the court of ongoing compliance efforts, these reports facilitate the City's awareness of its compliance with remedial directives. In other words, the OCC serves a monitoring function; it does not exercise quasi-judicial power."

Benjamin, 343 F.3d at 45-46 (citations omitted). In addition, the Second Circuit explained that, "Nothing in the text of § 3626(f) expressly reveals Congress's intent either to treat all court-appointed agents as special masters or to prohibit a court from appointing agents to perform functions that differ from the quasi-judicial activities of special masters." Id.

For the same reasons that the Second Circuit found that the OCC was not a special master under the PLRA, the healthcare monitor here is not a special master for purposes of that statute. The healthcare monitor "serves a monitoring function; it does not exercise quasi-judicial power." Id.

Finally, the PLRA provides that "[n]o action shall be brought with respect to prison conditions ... until such

administrative remedies as are available are exhausted." 42 U.S.C.A. § 1997e(a). The Eleventh Circuit recently suggested that the district courts must independently determine whether the plaintiffs have complied with § 1997e. Chandler v. Levy, ___ F.3d ___, ___, 2004 WL 1764123, at *3 (11th Cir. 2004). Section 1997e's exhaustion requirement is inapplicable in this case because, as all parties agree, no administrative remedies were available to the plaintiffs.

In sum, the court is satisfied that it is in full compliance with the PLRA in approving the settlement agreements.

B. Notice

The court must ensure that all class members are informed of the agreements and have the opportunity to voice their objections. Fed. R. Civ. P. 23(e); Austin v. Hopper, 28 F. Supp. 2d 1231, 1219 (M.D. Ala. 1998) (Thompson, J.). In this case, class members were provided ample information regarding the terms of the

settlement agreements and plenty of opportunities to comment on the agreements. In June 2004, plaintiffs' counsel visited the three facilities, including death row and each individual segregation cell, and talked to class members directly about specific provisions of the agreements and the relative merits of settlement versus trial. Plaintiffs' counsel encouraged class members to take advantage of the opportunity to file objections or concerns.

Starting in July 2004, at each of the three facilities, the defendants posted a court-approved notice of the agreements, provided at least one hundred copies of a court-approved comment form, and provided drop boxes for the comment forms. Prison officials made additional comment forms available after it became clear that the forms were missing from the drop box location at Tutwiler for a few days during the week of July 12. To further ensure that class members were not discouraged from submitting comments by the lack of forms, plaintiffs' counsel visited both the Tutwiler and Birmingham

facilities and spoke to 25 women, strongly encouraging them to submit comments and to inform others that anyone with a comment or objection should submit a written response.

Prison officials also made an announcement over the intercom system in the main building at Tutwiler on the morning of July 16, reminding the women that comment forms were due at noon that day.

Class members submitted a total of 81 responses to the agreements. Based on the extensive communication by plaintiffs' counsel with class members regarding the agreements, the substantial number of written responses filed, and the fact that the court received comments from every dormitory and the segregation unit, it is apparent that class members were well aware of--and, indeed, took advantage of--the opportunity to voice their concerns about the proposed agreements. The court concludes that these measures were sufficient to satisfy the notice requirement of Rule 23(e) of the Federal Rules of Civil Procedure.

C. Objections and Comments

To determine whether a proposed settlement is fair, adequate, and reasonable, the "first place a court should look is to the views of the class itself." Paradise, 686 F. Supp. at 1444. Even though only 81 of the approximately 1,250 class members filed a written comment regarding the settlement, the court does not assume that silence from the remaining class members indicates support for the settlement agreements. Particularly in prison litigation, where members of the class may have lower literacy levels or may not feel entirely free to submit objections, "the court must look beyond the numbers to the total reality of the circumstances presented and from those circumstances attempt to extrapolate some picture of the true support for the [settlement]." Reynolds v. King, 790 F. Supp. 1101, 1109 (M.D. Ala. 1990) (Thompson, J.).

Seven of the 81 comments include an explicit statement opposing, or objecting to, the settlement

agreements. Two class members object to the agreements because they believe the Alabama Department of Corrections will fail to comply with them. Two women at Tutwiler object to the agreements because of the continuing problem of housing mental-health inmates in segregation and on death row. A resident of Dorm 9 at Tutwiler objects because nothing in the agreements redresses the hot exhaust pushed into that dorm by an adjacent staff office's air-conditioning unit. A resident of Dorm 3 at Tutwiler objects because no provision addresses abuse or harassment by correctional officers. One woman submitted a detailed list of the portions of the settlement agreements to which she objects, with reasons for each of her objections.

Twenty-one of the 81 submissions include explicit statements in support of the settlement. Many within this group express their support for the agreements but also voice concerns similar to the comments of those who wrote in opposition. For example, two women who wrote in support of the agreements include the caveat that they

are in support so long as the Corrections Department will actually implement the agreements and the court will enforce them. The majority of those women who explicitly support the agreements have either witnessed some change or are hopeful they will see improvements once the settlement agreements are finally approved.

The remaining comments neither explicitly object to nor explicitly support the agreements. Rather, most of these comments can be characterized as concerns about the conditions of confinement. Nearly all the women who submitted a response wrote about more than one area of concern. Within the 81 comment forms and letters received, class members made approximately 350 discrete comments. These comments can be grouped into eight categories: (1) heat and ventilation; (2) living space; (3) safety and security; (4) medical care; (5) mental health; (6) implementation, monitoring, and enforcement; (7) conditions in segregation; and (8) other concerns.

1. Heat and Ventilation

Thirty-seven women wrote a total of 117 comments related to the heat and ventilation at Tutwiler. While some class members wrote generally that the prison is too hot, most pointed to specific areas where, they allege, the defendants have failed to comply with the court's order provisionally enforcing the settlement agreements. Some class members wrote that there are not enough fans in their dorms or that the fans just blow hot air around the room. Others are concerned about whether and how often officers will take the temperature in the dorms. Testimony at the fairness hearing echoed these written complaints.

In general, class members' concerns regarding the heat and lack of ventilation at Tutwiler are addressed by sections five (heat), six (shade), ten (physical plant), eleven (facility maintenance), 15 (ventilation), 16 (recreational opportunities), and 18 (programming) of the Conditions Settlement Agreement. So long as these sections are all implemented consistently, the agreement

will provide some relief to class members. It may be that other steps could provide more relief or that these provisions would not be sufficient under other circumstances. Nonetheless, the particular remedial provisions to which the parties agreed represent what is necessary, narrow, and least intrusive with respect to the specific heat and ventilation problems presented in this case.

The court was very encouraged to see that, on the day of the fairness hearing, some of the complaints registered by women during the notice period had already been addressed. For example, the windows that had been barred shut earlier in the summer were open, and prison officials had secured sufficient ice to make it freely available, as agreed to in the settlements. Officials were also in the process of implementing the Conditions Settlement Agreement's provisions regarding permission to wear shorts after 3:30 p.m., permission to take additional showers, installation of exhaust fans in the

dormitories, and the addition of shade structures for most of the dormitories.

In sum, the court is satisfied that, so long as all ameliorative measures agreed upon by parties are consistently and fully implemented, the agreements fairly and adequately address the concerns raised by class members regarding heat and ventilation.

2. Living Space

Twenty women submitted a total of 24 comments related to living space or overcrowding. Several wrote generally that the prison is overcrowded. Others wrote that the lack of space means that women are sleeping, washing, and using the restroom with no more than a few inches separating them. Twelve women have particular concerns about problems with classification that, if remedied, could help reduce the population.

The parties have agreed upon a set of measures that, taken together, are narrowly tailored to ameliorate the problems associated with the limited living space

available to class members. Sections seven (outdoor exercise), nine (visitation), 16 (recreational opportunities), 17 (drug treatment), and 18 (programming) of the Conditions Settlement Agreement, in concert and fully implemented, will reduce the total amount of time each inmate must spend within the limited available living space. Sections 12 (toilets and showers), 13 (environmental safety), and 14 (laundry) will ensure that what space is available is livable. Finally, section four (population flow) specifies that the Alabama Department of Corrections will work cooperatively with plaintiffs' counsel to minimize unnecessary delays in the review and reduction of inmate classification levels. Taken together, these provisions of the settlements adequately address class members' concerns.

3. Safety and Security

Twenty women submitted a total of 25 comments related to safety and security. These included concerns that Corrections Department facilities are not safe due to

idleness, lack of access to recreation, and officer misconduct and verbal intimidation. Some of the women simply note that the lack of out-of-dorm activities increases tension or that high stress levels lead to violence. Others include suggestions about increasing constructive activities and work opportunities. Some women note that many officers are working overtime shifts that make them tired and short-tempered. Ten women wrote comments about officer misconduct, favoritism, prejudice, verbal abuse, and intimidation.

Rather than simply increase the total number of officers, for example, or replace open dorms with single cells, the parties have agreed upon a combination of measures that will, so long as all measures are fully implemented, remedy the safety problems in a manner that is necessary, narrowly tailored, and the least intrusive. These measures are contained in sections 19-24, as well as seven, nine, and 16-18 of the Conditions Settlement Agreement. The court is satisfied that these provisions,

taken together, fairly and adequately address the safety and security concerns raised by class members.

4. Medical Care

Two class members at the fairness hearing expressed concerns about medical care at Tutwiler, and 27 others submitted written comments about various aspects of medical care. The comments include concerns about the training of nurses, officers making medical decisions, access to timely specialty care, medication delays, lapses in medication, having to pay for follow-up care, sick-call procedures, lack of response by medical staff to serious medical needs, and lack of information about illnesses and medications. Many wrote about a general concern that the defendants would simply fail to carry out the terms of the agreements, or would comply with certain parts and ignore others. The Medical Settlement Agreement provides for extensive and detailed improvements in medical access and care and adequately

addresses the concerns articulated during the notice process.

5. Mental Health

Ten women wrote comments about mental-health issues. Three women expressed concern that women with serious mental illnesses are housed in segregation or on death row because of a lack of space elsewhere. Others offered more general comments about the lack of specialized housing for women with serious mental disabilities. Still others submitted concerns about the teasing and intimidation of mentally ill women who are co-mingled with the general population.

Sections V.Q-V.X of the Medical Settlement Agreement addresses these concerns. Specifically, the objection to housing severely mentally ill women in segregation or on death row is addressed by the defendants' agreement to create a mental-health residential treatment unit for the most seriously mentally ill women at Tutwiler.

6. Implementation, Monitoring, and Enforcement

Eleven women submitted comments expressing concerns about implementation, monitoring, and enforcement, and witnesses at the fairness hearing testified to similar concerns. Some women are specifically concerned about officers' attitudes towards the settlement agreements, as reflected in comments and actions indicating a reluctance to implement the required changes. Other women are more generally concerned about the defendants' willingness or ability to implement the changes contained in the agreements.

The agreements are designed to ensure full implementation of their provisions. Transparency is the keystone to monitoring the agreements, and the agreements provide a number of provisions to this end. Plaintiffs' counsel will have reasonable access to prison records and prison facilities, including regular walk-through visits, and will maintain intensive client contact.

As stated above, the Medical Settlement Agreement provides for an independent healthcare monitor charged with conducting regular audits to monitor implementation. The healthcare monitor will have access to prisoners and their medical records, to members of the medical and security staff, and to any other source of information he deems necessary to determine compliance with the agreement; the healthcare monitor will also prepare reports following regular on-site inspections, and the institution's quality-improvement committee will address any areas requiring improvement.

As required under section 27 of the Conditions Settlement Agreement, and as testified to by Warden Deese at the fairness hearing, the defendants are responsible for ensuring that agents, representatives, and employees of the Corrections Department--including line officers--understand the scope and importance of the settlement agreements. Finally, anticipating disputes and lapses in implementation, section XI.B of the Medical Settlement Agreement and section 28 of the Conditions Settlement

Agreement specify processes for resolving deficiencies. Taken together, these provisions sufficiently address class members' concern that the settlement agreements be implemented.

7. Conditions in Segregation

Seven women wrote about conditions in the segregation unit, including heat and lack of ventilation, restriction to two meals a day, lack of access to medical care, exposure to bugs and spiders, and the use of shackles during exercise. This number is notable, representing nearly a third of the total number of women in segregation. In addition, a class member held in the segregation unit testified at the fairness hearing that the conditions in segregation are substantially different from--and worse than--the conditions in the rest of the prison.

The court is satisfied that these concerns are adequately met by the settlement agreements. Section 15 of the Conditions Settlement Agreement mandates

additional fans in the segregation unit, and other sections of the agreement governing pest control and heat and ventilation apply equally to the segregation unit. The defendants indicated at the fairness hearing that the exterminator will be directed to make additional efforts in the segregation unit and take necessary steps to address the problem.

An objection was raised about the use of shackles on women while they are in the small exercise pen; the concern was that this practice might defeat the provision in the agreements that prisoners in the segregation unit will be provided an opportunity for outdoor recreation for at least 45 minutes every day. Since the fairness hearing, the parties have advised the court that this issue has been resolved. The Corrections Department's standard operating procedures will be amended to provide that women in segregation will not be handcuffed as a matter of course but will only be handcuffed if security needs so dictate. Further, the Corrections Department will document its reasons for the use of restraints. The

court is satisfied that this resolution adequately addresses the objection.

8. Other Concerns

Thirty-seven women wrote 45 comments about other issues, including maintenance, unfair disciplinary procedures and excessive punishment, a lack of privacy, poor food and improper nutrition, visitation, mail, and a lack of personal hygiene products.

Some of these concerns are addressed, at least partially, by the Conditions Settlement Agreement. In section eleven, the defendants have agreed to develop a preventive-maintenance schedule and policy for upkeep of critical facility functions. The agreement also specifies how the most critical machines--heating and air-conditioning units and ice machines--will be fixed. Under section 13, the defendants will provide prisoners access to cleaning supplies, thoroughly and safely disinfect and clean each living area at least once a month, and provide monthly pest control services.

Section five of the Conditions Settlement Agreement specifies that fans are not to be turned off for punitive purposes, and the Corrections Department Commissioner has pledged to insure that line officers at the prisons understand that this is part of the agreement.

Other areas of concern raised by class members, such as interference with mail and problems with disciplinary procedures, were not part of this litigation. As such, the proposed settlement agreements cannot be inadequate for remaining silent on these issues.

After reviewing the written objections and testimony of class members and after a close examination of the proposed settlement agreements, the court finds the overwhelming majority of class objections will be resolved through full implementation of the agreements. The remaining objections must be balanced against the substantial benefits the plaintiffs will derive with certainty from the settlement agreements, and, in striking that balance, the proposed settlements are fair, adequate, and reasonable. See Paradise, 686 F.Supp. at

1446 ("[a] settlement is in large measure a reasoned choice of a certainty over a gamble, the certainty being the settlement and the gamble being the risk that comes with going to trial").

D. View of Class Counsel

In addition to considering the views of class members, the court should also consider the judgment of class counsel. Pettway v. American Cast Iron Pipe Co., 576 F.2d 1157, 1215 (5th Cir. 1978); Gaddis v. Campbell, 301 F. Supp. 2d 1310, 1315 (M.D. Ala. 2004) (Thompson, J.). After two years of litigation, extensive discovery, and a focused period of negotiation with defendants' counsel, plaintiffs' counsel believe the settlement agreements are, on balance, in the best interest of the women incarcerated by the State of Alabama.

There is a sound basis for this belief. Plaintiffs' counsel started investigating the conditions of confinement at the women's prisons in Alabama in the summer of 2001. Since that time, they have conducted

over 1,000 interviews with women at the Tutwiler facility, the Tutwiler Annex, and the Birmingham facility. Plaintiffs' counsel solicited and incorporated the preferences of class members into the settlement process. Class counsel has also continually relied on correctional experts regarding medical care, security, classification, and heat and ventilation, and now rely on the opinions of these experts in concluding that the settlements are fair, adequate, and reasonable so long as they are implemented in their entirety.

The settlement negotiations between the parties were at arms' length, and there is no suggestion of any collusion between the parties. In addition to being intimately familiar with the facts of this case, plaintiffs' attorneys are experienced in prison litigation and the limitations imposed by the PLRA. The court takes seriously the view of plaintiffs' attorneys that the settlements are fair, adequate and reasonable.

E. Court's Assessment of the Settlement Agreements

"Finally, with the above considerations in mind, the court should itself assess whether the settlement ... is fair, adequate, and reasonable." Gaddis, 301 F. Supp. 2d at 1316 (quoting Paradise, 686 F. Supp. at 1446). Relevant factors include the stage in the proceedings; the plaintiffs' likelihood of success at trial; the complexity, expense, and likely duration of the lawsuit; and the range of possible recovery. Austin v. Hopper, 28 F. Supp. 2d 1231, 1238 (M.D. Ala. 1998) (Thompson, J.).

These factors line up in favor of approving the settlement. The issues involved in this case are complex, and it would have taken an extensive and prolonged--not to mention contentious--trial to resolve them. A full trial of the issues would also have as much as doubled the costs already incurred in this litigation, and prolonging the litigation would have postponed, if not outright denied, some of the relief offered to class members by the settlement agreements. The court is also

satisfied that the settlement complies with state and federal law, and does not violate public policy. Piambino v. Bailey, 757 F.2d 1112, 1119 (11th Cir. 1985).

The court has independently and carefully reviewed the proposed settlement agreements and is satisfied that they are a fair, adequate, and reasonable resolution to this litigation. The settlements will not make the Alabama Department of Corrections' womens's facilities comfortable or pleasant places, but it will afford class members the basic necessities mandated by the United States Constitution.

III. CONCLUSION

In conclusion, the court wishes to offer three acknowledgments. First, to the class members who actively participated in this litigation: As one of plaintiffs' lawyers commented at the fairness hearing, it would have been very easy for the named plaintiffs to sit by, let others do the work, and then reap the reward if the lawsuit succeeded. Those class members who got

involved, and, in particular, those whose names appeared on court filings and who testified at hearings, put themselves out to improve conditions not just for themselves but for all their fellow inmates.

Second, to Chief United States Magistrate Judge Charles S. Coody, who worked long days over several months to help the parties come to a fair negotiated settlement: As counsel for the plaintiffs and the defendants jointly acknowledged at the fairness hearing, these settlement agreements and the improvement in conditions for Alabama's women prisoners that will result from them would not have been possible without Judge Coody's masterful work. Moreover, the court cannot overlook the millions in tax dollars that will be saved by avoiding litigation--money that can, of course, now be spent directly on redressing state prison conditions to the extent needed. Thus, not only the named parties and the plaintiff class members but all citizens of the State of Alabama owe Judge Coody a deep debt of gratitude.

Finally, to Warden Gladys Deese, who, working with extraordinarily limited resources, has already made substantial improvements in the conditions at Tutwiler: In December 2002, this court wrote that the conditions at Tutwiler were "essentially a time bomb ready to explode facility-wide at any unexpected moment." Laube v. Haley, 234 F. Supp. 2d 1227, 1252 (M.D. Ala. 2002) (Thompson, J.). In July 2004, at the time of the fairness hearing, the court observed substantial improvements in the conditions at Tutwiler. These improvements are testimony to the work of Warden Deese, and the court has full confidence that, in accordance with the provisions of the settlement agreements, she will build on her notable success.

An appropriate judgment will be entered.

DONE, this the 23rd day of August, 2004.

/s/ Myron H. Thompson
UNITED STATES DISTRICT JUDGE