

**IN THE UNITED STATES DISTRICT COURT FOR  
THE NORTHERN DISTRICT OF OKLAHOMA**

LESLIE BRIGGS, as next friend of )  
T.W. and B.S., )  
EVAN WATSON, as next friend of C.R., )  
and )  
HENRY A. MEYER, III, as next friend )  
of A.M., for themselves and for others )  
similarly situated, )

Plaintiffs, )

vs. )

Case No. 23-cv-00081-GKF-JFJ

ALLIE FRIESEN, in her official capacity )  
as Commissioner of the )  
Oklahoma Department of Mental Health )  
and Substance Abuse Services, and )  
DEBBIE MORAN, in her official capacity )  
as Interim Executive Director of the )  
Oklahoma Forensic Center, )

Defendants. )

**ORDER**

This matter comes before the court on the Joint Motion for Preliminary Approval of Amended Consent Decree [Doc. 86] of plaintiffs Leslie Briggs, as next friend of T.W. and B.S.; Evan Watson, as next friend of C.R.; and Henry A. Meyer, III, as next friend of A.M., for themselves and for others similarly situated, and defendants Allie Friesen, in her official capacity as Commissioner of the Oklahoma Department of Mental Health and Substance Abuse Services and Debbie Moran, in her official capacity as Interim Executive Director of the Oklahoma Forensic Center. For the reasons set forth below, the motion is granted.

**Background/Procedural History**

This case relates to Oklahoma's competency restoration system. On March 1, 2023, plaintiffs filed a Class Action Complaint alleging that, due to a lack of forensic beds, persons who

are declared incompetent in Oklahoma state court criminal proceedings are forced to wait prolonged periods of time to receive court-ordered competency restoration treatment and, during the waiting period, the persons receive little to no mental health treatment. Plaintiffs asserted a claim for violation of Due Process rights secured by the Fourteenth Amendment to the U.S. Constitution, among others, and brought the case as a class action pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(2).

Defendants originally approached this matter “from a traditional defense posture,” and filed a motion to dismiss. [Doc. 51, p. 49]. However, after “extensive due diligence,” both independently and jointly with plaintiffs, the focus shifted to settlement. [*Id.* at pp. 49-50].

On June 17, 2024, the parties filed a Joint Motion for Preliminary Approval of Consent Decree, Class Certification, and Plan of Notice to Class. [Doc. 46]. The proposed settlement consisted of a five-year Consent Decree that provided for the development and implementation of a plan “designed to reform and improve the Defendants’ delivery of competency evaluations and Restoration Treatment to Class Members, including to reduce significantly the durations of time during which Class Members wait to receive Restoration Treatment.” [Doc. 46-1, pp. 7, 12]. The Plan was comprised of a variety of program components, including the development and implementation of a Community-Based Restoration Treatment Pilot Program and an In-Jail Competency Restoration Pilot Program.

On August 15, 2024, the court held a hearing on the motion for preliminary approval. [Doc. 50]. During the hearing, the court questioned whether the Oklahoma statutory competency scheme—specifically, Okla. Stat. tit. 22, § 1175.6a—permitted outpatient restoration treatment services.

In an Opinion and Order of August 30, 2024, the court concluded that Okla. Stat. tit. 22, § 1175.6a requires that the Department assume physical custody of the person requiring competency restoration services and therefore does not permit outpatient restoration treatment. Accordingly, the court permitted the parties to submit a modified proposed Consent Decree to address the court's concern with respect to the Community-Based Restoration Treatment Pilot Program provisions. [Doc. 53].

On September 9, 2024, the parties filed the Third Joint Supplement to Joint Motion for Preliminary Approval wherein the parties agreed to modify paragraphs 21 and 68-73 of the proposed Consent Decree to make the development and implementation of the Community-Based Restoration Treatment Pilot Program contingent upon a future change in Oklahoma law permitting the Department to provide outpatient community-based restoration services. [Doc. 55].

In an Order dated September 19, 2024, the court granted the Joint Motion for Preliminary Approval of Consent Decree, Class Certification, and Plan of Notice to Class, as modified by the Third Joint Supplement to Joint Motion for Preliminary Approval. [Doc. 56]. In the Order, the court preliminarily certified the following Class pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(2):

All persons who are now, or will be in the future, charged with a crime in Oklahoma State court and are: (i) declared incompetent to stand trial by the state court; (ii) court-ordered to receive competency restoration services by the Department or its designees; (iii) incarcerated in a county jail or similar detention facility while their criminal cases are stayed; and (iv) awaiting court-ordered competency restoration services to be provided by the Department or its designees, whether or not placed on a competency waitlist maintained by the Department or its designees.

[*Id.* at p. 25]. The court appointed Paul DeMuro and Frederic Dorwart of Frederic Dorwart, Lawyers PLLC, and Nick Southerland and Brian Wilkerson of the Oklahoma Disability Law Center, Inc. as Class Counsel, and directed that notice of the proposed settlement be provided in

the manner and method set forth in the Joint Motion for Preliminary Approval of Consent Decree, Class Certification, and Plan of Notice to Class [Doc. 46, pp. 13-14], as well as emailed to members of the Oklahoma Bar Association's criminal law section. [Doc. 56, pp. 25-26]. The Final Approval and Fairness Hearing was set for January 15, 2025 at 9:30 a.m. [*Id.* at p. 26].

However, pursuant to Okla. Stat. tit. 51, § 200,

[n]o agency, board or commission, public officer, official or employee of the State of Oklahoma shall, without the approval of the Oklahoma State Legislature when it is in regular session, or by the Contingency Review Board, when the Legislature is not in regular session, enter into any default or agreed judgment, consent decree or other settlement of any litigation or claim against this state which would require a settlement expenditure in excess of Two Hundred Fifty Thousand Dollars (\$250,000.00) or the creation, modification or implementation of a court-ordered or legislatively authorized plan or program which would necessitate an appropriation by the Legislature in excess of Two Hundred Fifty Thousand Dollars (\$250,000.00). . . . Any default or agreed judgment, consent decree or other settlement entered into in violation of this section shall be void.

On October 8, 2024, the Contingency Review Board disapproved of the proposed Consent Decree. [Doc. 57].

The court subsequently held a Status Conference, during which the parties agreed to participate in a settlement conference before Adjunct Settlement Judge T. Lane Wilson on November 13, 2024. [Doc. 78].

During the November 13, 2024 settlement conference, the parties reached an agreement as to an amended proposed Consent Decree ("Amended Consent Decree").<sup>1</sup> Thus, the parties represented that this matter was settled, subject to court approval and approval by the Oklahoma Contingency Review Board or, if the Contingency Review Board does not timely approve, then approval by the Oklahoma Legislature. [Doc. 82].

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<sup>1</sup> Modifications to the original proposed Consent Decree include a revised definition of "Best Efforts," changes to the provisions related to cessation of the existing In-Jail Competency Restoration Program, and inclusion of an "off-ramp" provision as to the Decree's five-year term. See [Doc. 86].

On November 18, 2024, the court held another Status Conference, during which the court directed that the Amended Consent Decree be submitted for preliminary approval and that additional notice be provided to the Class regarding the amendments to the Consent Decree. [Doc. 85].

On November 19, 2024, the parties filed the Joint Motion for Preliminary Approval of Amended Consent Decree, which attaches the Amended Consent Decree and Amended Notice of Proposed Class Action Settlement. [Doc. 86].

### **Standard**

As previously recognized by this court, at the preliminary approval stage, “the court preliminarily certifies a settlement class, preliminarily approves the settlement agreement, and authorizes that notice be given to the class so that interested class members may object to the fairness of the settlement or opt out of the settlement.” *Ross v. Convergent Outsourcing, Inc.*, 323 F.R.D. 656, 659 (D. Colo. 2018); *see also* 4 William B. Rubenstein, Newberg on Class Actions § 13:10 (6th ed. 2024) (“First, the parties present a proposed settlement to the court for so-called ‘preliminary approval’” and “[i]f a class has not yet been certified, typically the parties will simultaneously ask the court to ‘conditionally’ certify a settlement class.”).

The court incorporates by reference its September 19, 2024 Order granting the Joint Motion for Preliminary Approval of Consent Decree, Class Certification, and Plan of Notice to Class, as modified by the Third Joint Supplement to Joint Motion for Preliminary Approval. [Doc. 56].

### **Certification of Class for Purposes of Judgment**

Nothing in the Amended Consent Decree alters this court’s prior analysis of whether the Class should be preliminarily certified pursuant to Rule 23(a) and Rule 23(b)(2). Accordingly, for

the reasons set forth in the September 19, 2024 Order, the following Class remains preliminarily certified pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(2):

All persons who are now, or will be in the future, charged with a crime in Oklahoma State court and are: (i) declared incompetent to stand trial by the state court; (ii) court-ordered to receive competency restoration services by the Department or its designees; (iii) incarcerated in a county jail or similar detention facility while their criminal cases are stayed; and (iv) awaiting court-ordered competency restoration services to be provided by the Department or its designees, whether or not placed on a competency waitlist maintained by the Department or its designees.

*See* [Doc. 56, pp. 8-12].

### **Appointment of Class Counsel**

Turning to appointment of Class Counsel, in the Amended Consent Decree, the parties seek to include David Leimbach of Frederic Dorwart, Lawyers PLLC as Class Counsel.

“Unless a statute provides otherwise, a court that certifies a class must appoint class counsel.” Fed. R. Civ. P. 23(g)(1). “In appointing class counsel the court must consider: [1] the work counsel has done in identifying or investigating potential claims in the action; [2] counsel’s experience in handling class actions, other complex litigation, and the types of claims asserted in the action; [3] counsel’s knowledge of the applicable law; and [4] the resources that counsel will commit to representing the class.” Fed. R. Civ. P. 23(g)(1)(A) (formatting altered from original).

The parties previously stipulated that Mr. Leimbach satisfies the requirements for, and should be appointed as, Class Counsel under Rule 23(g). [Doc. 46, p. 6; Doc. 86, pp. 1-2 (incorporating prior brief by reference)]. Further, looking to the Rule 23 factors, the parties previously submitted evidence that, during the period from October 2022 to July 15, 2024, Frederic Dorwart, Lawyers PLLC expended 971.20 hours identifying, investigating, and litigating the claims in this matter, with Mr. Leimbach, in combination with Mr. Dorwart and Mr. DeMuro, contributing 953.9 hours—approximately 98% of the accrued time. [Doc. 49-1]. Further, counsel

was actively involved in negotiating the proposed settlement, and is knowledgeable of the applicable law. *See* [Doc. 49-5]. As to the fourth factor, counsel has committed, and will continue to commit, significant resources to this matter.

Based on the foregoing, the court concludes that Mr. Leimbach, with previously appointed Class Counsel, will fairly and adequately represent the class. Accordingly, the court appoints David Leimbach of Frederic Dorwart, Lawyers PLLC as additional Class Counsel.

### **Preliminary Approval of the Amended Consent Decree**

As previously recognized by this court, to determine whether the court will likely be able to approve the proposed settlement, the Rule 23 factors “serve as a ‘useful guide at the preliminary approval stage.’” *CO Craft, LLC v. Grubhub Inc.*, No. 20-CV-01327-NYW-NRN, 2023 WL 3763525, at \*4 (D. Colo. June 1, 2023). Additionally, the court considers the four factors articulated by the Tenth Circuit. *In re Samsung Top-Load Washing Mach. Mktg., Sales Pracs. & Prods. Liab. Litig.*, 997 F.3d 1077, 1087 (10th Cir. 2021). The first three factors articulated by the Tenth Circuit generally overlap with the Rule 23 factors. *See CO Craft, LLC*, 2023 WL 3763525, at \*4. “Accordingly, this Court ‘considers the Rule 23(e)(2) factors as the main tool in evaluating the propriety of the settlement but still addresses the Tenth Circuit’s factors.’” *Id.*

#### *A. Adequate Representation of the Class by the Class Representatives and Counsel*

For the reasons discussed in the court’s September 19, 2024 Order, this factor weighs in favor of preliminary approval. [Doc. 56, pp. 10-11, 14].

#### *B. Arm’s Length Negotiations*

The court previously provisionally concluded that proposed Consent Decree was the result of fair, honest, and arm’s length negotiations. [Doc. 56, pp. 15-16]. Further, negotiation of the Amended Consent Decree preceded before Adjunct Settlement Judge T. Lane Wilson. [Doc. 82].

“There is a presumption in favor of a finding that negotiations were fair when they were conducted before a third-party mediator.” *Cisneros v. EP Wrap-It Insulation, LLC*, No. 19-500-GBW-GJF, 2022 WL 2304146, at \*5 (D.N.M. June 27, 2022). Thus, the court is satisfied that the Amended Consent Decree was the result of fair, honest, and arm’s length negotiations and this factor weighs in favor of preliminary approval.

### *C. Adequacy of Relief*

The court must next consider whether the relief provided to the class is adequate, taking into account: (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorney’s fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3). Fed. R. Civ. P. 23(e)(2)(C). Having reviewed the Amended Consent Decree, nothing therein alters the court’s prior analysis with respect to the Rule 23(e)(2)(C) factors. Accordingly for the reasons discussed in the court’s September 19, 2024 Order, the Rule 23(e)(2)(C) factors weigh in favor of preliminary approval. [Doc. 56, pp. 16-19].

In addition to the articulated subfactors, however, Rule 23(e)(2)(C) generally directs the court to consider whether the relief is adequate. 4 William B. Rubenstein, Newberg on Class Actions § 13:51 (6th ed. 2024). Because the proposed relief is a consent decree, the court must consider three factors. *Jackson v. Los Lunas Cmty. Program*, 880 F.3d 1176, 1192 (10th Cir. 2018). “First, a federal consent decree must ‘be remedial in nature’ and thus ‘designed as nearly as possible to restore the victims of [illegal] conduct to the position they would have occupied in the absence of such conduct.’” *Jackson*, 880 F.3d at 1192 (quoting *Milliken v. Bradley*, 433 U.S. 267, 280 (1977)). “Second, the nature and scope of the remedy provided . . . must directly address



and relate to the [federal-law] violation itself.” *Jackson*, 880 F.3d at 1192. That is, “it must be ‘tailored to cure the condition that offends’ federal law.” *Id.* (quoting *Milliken*, 433 U.S. at 282). “Third, federal courts ‘must take into account the interests of state and local authorities in managing their own affairs,’ consistent with the demands of federal law.” *Jackson*, 880 F.3d at 1192 (quoting *Milliken*, 433 U.S. at 280-81). Having reviewed the Amended Consent Decree in light of these factors, at this stage and based on the evidence submitted, the court is persuaded that the foregoing factors are satisfied.

Additionally, the consent decree must be consistent with governing law. *See Local No. 93, Int’l Ass’n of Firefighters, AFL-CIO C.L.C. v. City of Cleveland*, 478 U.S. 501, 525-26 (1986); *McClendon v. City of Albuquerque*, 79 F.3d 1014, 1021 (10th Cir. 1996). The court provisionally concluded that the original proposed Consent Decree, as modified by the Third Joint Supplement to Joint Motion for Preliminary Approval, was remedial in nature, sufficiently narrowly tailored, and consistent with Oklahoma law. [Doc. 56, pp. 19-21]. The court incorporates its prior analysis. Further, having reviewed the modifications to the Consent Decree as a result of the November 13, 2024 mediation, the court concludes that the modifications are remedial in nature, sufficiently narrowly tailored, and consistent with Oklahoma law. Thus, the court is provisionally satisfied that the Amended Consent Decree is adequate and this factor weighs in favor of preliminary approval.

#### *D. Equitable Treatment of Class Members Relative to Each Other*

For the reasons discussed in its September 19, 2024 Order, this factor weighs in favor of preliminary approval as all Class Members will timely receive restorative treatment and all program components will reduce the overall restoration wait times. [Doc. 56, p. 21].

*E. Judgment of the Parties That the Settlement is Fair and Reasonable*

In the Joint Motion for Preliminary Approval, the parties stipulated that the original Consent Decree was fair and reasonable and the parties have incorporated that stipulation by reference. [Doc. 46, p. 15; Doc. 86, pp. 1-2]. Further, during the November 18 Status Conference, attorney John Richer stated that Commissioner Friesen and Interim Executive Director Moran, in their official capacity, are in agreement with the Amended Consent Decree.<sup>2</sup> [Doc. 85]. Thus, based on the information currently before the court, this Tenth Circuit factor weighs in favor of preliminary approval. *See In re Motor Fuel Temperature Sales Pracs. Litig.*, 258 F.R.D. 671, 681 (D. Kan. 2009).

*F. Conclusion*

Based on foregoing, the court will likely be able to approve the Amended Consent Decree under Rule 23(e)(2).

**Notice to Settlement Class**

Rule 23(e) provides that “[t]he court must direct notice *in a reasonable manner* to all class members who would be bound by the proposal.” Fed. R. Civ. P. 23(e)(1)(B) (emphasis added). Likewise, for classes certified under Rule 23(b)(2), the court should “direct appropriate notice to the class.” Fed. R. Civ. P. 23(c)(2)(A). In all cases, the notice must satisfy due process. *Tennille v. W. Union Co.*, 785 F.3d 422, 436 (10th Cir. 2015).

The court previously concluded that, with the addition of the amount of attorney’s fees sought by Class Counsel, the Notice of Proposed Class Action Settlement was fair, reasonable, and “apprise[d] interested parties of the pendency of the action and afford[ed] them an opportunity to

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<sup>2</sup> The court acknowledges that a dispute exists as to whether the agreement of Commissioner Friesen and Interim Executive Director Moran, in their official capacity, is required or whether the Attorney General possesses the authority to resolve this matter. However, at this time, the court need not resolve the issue based on Mr. Richer’s statement.

present their objections.” *Tennille*, 785 F.3d at 436. Further, the court concluded that the proposed method of notice was reasonably calculated to ensure the best practicable notice under the circumstances and consistent with due process. Accordingly, the court directed that notice be made. *See* [Doc. 56, pp. 22-25].

As previously stated, the parties have since materially modified the terms of the proposed settlement. In order to ensure that all Class Members are provided an opportunity to bring objections to the Amended Consent Decree, the court directed that additional notice be made.

Having considered the factors set forth in Newberg on Class Actions and the Manual for Complex Litigation [Doc. 56, pp. 22-23], the courts is satisfied that the Amended Notice of Proposed Class Action Settlement is fair, reasonable, and “apprise[s] interested parties of the pendency of the action and afford[s] them an opportunity to present their objections.” *Tennille*, 785 F.3d at 436. With respect to method of notice, the parties agree that Amended Notice will be given in the same manner as the court previously ordered for the original Notice. The court concludes that the proposed method of amended notice is reasonably calculated to ensure the best practicable notice under the circumstances and consistent with due process. Thus, the court directs that amended notice be made as proposed by the parties.

### **Conclusion**

WHEREFORE, the Joint Motion for Preliminary Approval of Amended Consent Decree [Doc. 86] of plaintiffs Leslie Briggs, as next friend of T.W. and B.S.; Evan Watson, as next friend of C.R.; and Henry A. Meyer, III, as next friend of A.M., for themselves and for others similarly situated, and defendants Allie Friesen, in her official capacity as Commissioner of the Oklahoma Department of Mental Health and Substance Abuse Services and Debbie Moran, in her official capacity as Interim Executive Director of the Oklahoma Forensic Center is granted.

IT IS FURTHER ORDERED that the Class remains preliminary certified, as set forth in the court's September 19, 2024 Order [Doc. 56].

IT IS FURTHER ORDERED that Paul DeMuro, Frederic Dorwart, and David Leimbach of Frederic Dorwart, Lawyers PLLC, and Nick Southerland and Brian Wilkerson of the Oklahoma Disability Law Center, Inc. are appointed as Class Counsel.

IT IS FURTHER ORDERED that the Amended Notice of Proposed Class Action Settlement is approved.

IT IS FURTHER ORDERED that the manner and method of Amended Notice to the Class as set forth in the Joint Motion for Preliminary Approval of Amended Consent Decree is approved.

IT IS FURTHER ORDERED that, as set forth during the November 18, 2024 Status Conference, the court imposes the following deadlines:

Activity	Deadline
Deadline for Notices to be mailed via U.S. mail as set forth in the Joint Motion or emailed	December 4, 2024
Deadline for Class Members to postmark or submit written objections or comments	December 30, 2024
Deadline for submission of written objections and comments to the court	January 8, 2025
Deadline for the filing of the Motion for Final Approval	January 9, 2025
Final Approval and Fairness Hearing	Wednesday, January 15, 2025 at 9:30 a.m.

IT IS FURTHER ORDERED that, at the Final Approval and Fairness Hearing, the parties shall certify to the court that the Notice and Amended Notice to the Class, and other Notices to interested stakeholders, have been given as directed as set forth in the court's September 19, 2024 Order [Doc. 56] and as required herein.

IT IS SO ORDERED this 20th day of November, 2024.

  
 GREGORY K. FRIZZELL  
 UNITED STATES DISTRICT JUDGE