

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

DWAYNE DIGGS, ET AL., Plaintiffs, v. CAROL MICI, ET AL., Defendants.	22-cv-40003-MRG
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**DECLARATION OF DAVID MILTON
IN SUPPORT OF JOINT MOTION FOR PRELIMINARY APPROVAL OF
CLASS SETTLEMENT AND APPROVAL OF NOTICE OF SETTLEMENT**

I, David Milton, declare under penalty of perjury that the following is true and correct:

1. I am an attorney in good standing in the Commonwealth of Massachusetts and in this District. I am a Senior Staff Attorney at Prisoners' Legal Services of Massachusetts (PLS), which along with Hogan Lovells US LLP served as counsel to Plaintiffs and the class. I am fully familiar with the facts in this class in this case. I submit this declaration in support of the parties' Joint Motion for Preliminary Approval of Class Action Settlement and Approval of Notice of Settlement ("Joint Motion").

2. I am a Senior Staff Attorney at Prisoners' Legal Services of Massachusetts. I have been practicing civil rights litigation for over 20 years and have represented prisoners and other plaintiffs in numerous class actions, including *Baggett v. Ashe*, 41 F. Supp. 3d 113 (D. Mass 2014), *Garvey v. MacDonald*, 665 F. Supp. 2d 47 (D. Mass. 2009), and *Tyler v. Suffolk County*, 253 F.R.D. 8 (D. Mass. 2008).

3. PLS has represented prisoners in litigation for more than 50 years and has successfully litigated many prisoners' rights class actions. Recent cases include *Briggs v. Massachusetts Dep't of Correction*, No. 15-CV-40162-RGS, 2024 WL 178156 (D. Mass. Jan. 17, 2024); *Cantell v. Comm'r of Correction*, 475 Mass. 745 (2016); *Battle, et al. v. Hodgson, et al.*, No. 1873CV00020 (Mass. Super. Apr. 24, 2019); *Doe v. Mici*, No. 2019-828 (Mass. Super. July 2, 2019); and *Minich v. Spencer*, No. SUCV201500278, 2016 WL 3479000, at *1 (Mass. Super. May 17, 2016). Hogan Lovells US LLP has extensive experience in complex federal litigation.
4. The proposed Settlement Agreement ("Agreement") reached by the parties is attached as Exhibit 1 to the Joint Motion. The Agreement includes an exhibit (Exhibit A), which is included in Exhibit 1, that identifies actions and policy changes required of the Department of Corrections (DOC).
5. The Agreement was reached after extensive discovery over the course of nearly three years. Plaintiffs' Counsel took 17 depositions of multiple Defendants, other current and former DOC employees, and an employee of DOC's former medical provider. Plaintiffs' Counsel reviewed and analyzed a massive amount of document discovery, which consisted of more than 99,000 pages of documents as well as more than 450 GB of video data containing hundreds of hours of video footage. Plaintiffs also obtained answers to detailed interrogatories sent to all 18 Defendants. Plaintiffs' claims arise out of approximately 150 uses of force over a monthlong period. Each incident typically involved numerous officers and witnesses, and generated a large evidentiary record including incident reports, video, photographs of injuries, grievances, internal investigations, and medical records.

6. Before filing suit, Plaintiffs' Counsel engaged in a comprehensive investigation of the facts underlying the case, including interviewing more than 100 class members and other witnesses. Counsel has consulted regularly with an expert in prison administration and uses of force.
7. The Agreement is a result of extensive, good-faith negotiations. The parties first engaged in settlement discussions in 2022 but were unable to reach an agreement. In November 2024, the parties reinitiated settlement discussions and engaged in vigorous arm's length negotiations for more than six months until reaching the Agreement. The parties continued to litigate the case during this time, with Plaintiffs' second motion to compel being filed and fully briefed in February.
8. Based on plaintiffs' counsel's experience, and knowledge of the facts and claims in this case, we believe the Agreement to be fair, reasonable, and adequate, and indeed, to be an exceptionally good outcome to the litigation. The Agreement provides substantial monetary relief to participating Class Members and requires DOC to take numerous measures to reduce excessive force and racial discrimination by corrections officers.
9. Among these measures, the Agreement requires DOC to request and confirm all individuals' self-reported racial identification at booking. DOC records produced in discovery misidentify the race or ethnicity of many Class Members; PLS sees this regularly in connection with its representation of prisoners in other matters. In particular, DOC institutional records often misidentify Latinx prisoners as "white/non-Hispanic" when in fact the person identifies as non-white and/or as Hispanic. Among other negative impacts, the misidentification of prisoners' racial identity leads to data that obscure the extent to

which policies or practices discriminate against people of color, including data on the use of force.

10. The monetary relief of \$5,750,000 provides substantial compensation to Class Members, especially weighed against the costs, risks, and delays of further litigation. Class Members who submit claims will receive at least \$10,000, with most expected to receive a minimum of nearly \$30,000. This \$30,000 estimate assumes a 100 percent participation rate in which all 157 identified Class Members submit valid Claim Forms; this would be extremely unusual in Plaintiffs' Counsel's experience. A 50 percent participation rate would result in most Class Members receiving an estimated minimum payment of \$60,000. Were litigation to continue, establishing class-wide liability for excessive force and disparate treatment of Black and Latinx subclass members would present surmountable but formidable challenges. Even if liability were established for these claims, any damages award could be lower than what Class Members will receive under the Agreement. Indeed, juries sometimes award prisoners only nominal damages despite finding unconstitutional force was used. Finally, even the best outcome through continued litigation would take years to achieve and consume great resources. Fact discovery is still ongoing, and expert discovery has not begun. After any dispositive motions, a lengthy trial, and likely appeal, a final judgment would likely not occur for several years.

11. Plaintiffs' Counsel will ask the Court to award PLS attorneys' fees and litigation costs in the combined amount of \$1,000,000. PLS has devoted thousands of hours to investigating and litigating this case since 2020. PLS's final costs are estimated to be under \$15,000; the requested attorneys' fees will therefore be approximately \$985,000. Hogan Lovells is not

seeking any attorneys' fees or reimbursement of litigation costs. Hogan incurred approximately \$93,500 in litigation costs and spent approximately 4,000 hours on the case.

12. The proposed incentive payments of \$25,000 are in line with awards approved in other prisoner class actions in this District and elsewhere. The nine Class Representatives have devoted extensive time and effort to the development and prosecution of this case since the time of the events themselves in early 2020. Each Class Representative regularly met with counsel over the past five years, providing invaluable information that informed the Complaint, discovery, and settlement. Being named Plaintiffs has meant a loss of privacy, vulnerability to retaliation by DOC officers who managed their everyday life in custody, and exposure to adverse attention from being the public face of high-profile litigation against the DOC. The proposed amount of the incentive award to each Class Representative, \$25,000, is in line with other awards in prisoner class actions in this District. In three prisoners class actions in this District which I was plaintiffs' counsel, the court awarded \$20,000 to each of the class representatives: *Baggett v. Ashe*, C.A. No. 11–30223–MAP (D. Mass, settled 2015); *Garvey v. MacDonald*, C.A. No. 07–30049–KPN (D. Mass., settled 2010); and *Tyler v. Suffolk County*, C.A. No. 06–11354–NMG (D. Mass., settled 2010).
13. The proposed Claims Administrator in this case, Analytics, LLC, has successfully provided similar claims administration services in many other class action cases, including several prisoner class actions brought in Massachusetts. PLS has used Analytics in other cases and found it to be diligent, reliable, and ethical.

Dated: May 21, 2025

/s/David Milton
David Milton

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing.

/s/ David Milton
David Milton (BBO # 668908)