UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

DWAYNE DIGGS, ET AL., Plaintiffs, v. CAROL MICI, ET AL., Defendants.	22-cv-40003-MRG

PLAINTIFFS' MEMORANDUM IN SUPPORT OF JOINT MOTION FOR PRELIMINARY APPROVAL OF CLASS SETTLEMENT AND APPROVAL OF NOTICE OF SETTLEMENT

I. INTRODUCTION

After years of hard-fought litigation and six months of settlement negotiations, the named Plaintiffs, individually and on behalf of the class (collectively, "Plaintiffs"),[1] and Defendants[2] have entered into a proposed Settlement Agreement ("Agreement") which they submit to the Court for preliminary approval. The Agreement requires the Department of Correction ("DOC") to make numerous policy changes and take other steps to address Plaintiffs' claims in this lawsuit concerning the use of excessive force and racial discrimination by DOC corrections officers. The Agreement provides that the Commonwealth of

[1] The named Plaintiffs are Danavian Daniel, Dwayne Diggs, Demetrius Goshen, James Jacks, David Jackson, Raphael Rebollo, Luis Saldana, Davongie Stone, and Xavier Valentin-Soto.

[2] Defendants are 18 present and former DOC officials and officers: Carol Mici, Paul Henderson, Charles Primack, Steven P. Kenneway, Dean Gray, Ronald Gardner, Patrick DePalo, Donald Denomme, David Brien, Paul Birri, Keith Houle, Robert Deschene, James Allain, Robert D'Amadio, Joseph Bellini, John Madden, and Evan Laranjo.

Massachusetts, on behalf of Defendants, will pay $6,750,000, of which $5,750,000 will be distributed to participating Class Members according to the formula described below, and $1,000,000 represents attorneys' fees and costs.

Plaintiffs submit this memorandum in support of the parties' Joint Motion for Preliminary Approval and Approval of Notice of Settlement ("Joint Motion"). As discussed below, the Agreement satisfies the criteria under Rule 23(e)(1) for preliminary approval and issuance of notice of proposed settlement. The Agreement is the product of arm's length negotiations, and it is substantively fair, reasonable, and adequate. Class Members who submit claims will receive at least $10,000; most are expected to receive a minimum of approximately $30,000. The policy changes required under the Agreement reduce the likelihood that the unconstitutional brutality and racial violence alleged in the Complaint will recur. The Court should therefore allow the Joint Motion and (1) grant preliminary approval to the settlement, (2) approve the class notice and notice plan, (3) approve the claims administration plan, and (4) set a date for a final fairness hearing and for filing motions to approve the settlement and for attorneys' fees and costs.[3]

II. CASE BACKGROUND

On January 10, 2022, the nine named Plaintiffs filed the Complaint in this action on behalf of themselves and all others similarly situated, seeking damages and injunctive relief under 42 U.S.C. § 1983 for alleged violations of the Eighth and Fourteenth Amendments to the Constitution. The Complaint alleges that, following an assault on several corrections

[3] A proposed Order is attached to the Joint Motion. The parties request that the Court schedule a hearing on the motion at its earliest convenience.

officers in the N-1 Unit at Souza-Baranowski Correctional Center ("SBCC") on January 10, 2020, Defendants and other DOC employees engaged in a monthlong campaign of unconstitutional retaliatory violence during which approximately 150 prisoners were subject to excessive force amounting to cruel and unusual punishment under the Eighth Amendment. Complaint. ¶¶ 1-9. This brutality included beating and kicking prisoners; gouging eyes; grabbing testicles; smashing faces into the ground or wall; deploying Taser guns, pepper ball guns, and other chemical agents; and ordering K9s to menace and bite prisoners. Id. ¶ 3. The Complaint alleges that Black and Latinx prisoners were targeted for especially brutal and degrading treatment in violation of the Equal Protection Clause. Id. ¶¶ 4, 162-69, 207-10. The Complaint alleges that this "Retaliatory Force Campaign" was authorized by the highest levels of the DOC, including Defendants Carol Mici and Paul Henderson, who were then Commissioner and Deputy Commissioner, respectively. Id. ¶ 6.

Defendants answered the complaint on March 3, 2022, after which the parties engaged in extensive discovery for nearly three years. Declaration of David Milton ("Milton Decl. ¶ 5.) By order dated September 30, 2024, the Court certified a damages class under Rule 23(b)(3) consisting of "all individuals incarcerated at Souza Baranowski Correctional Center who were subjected to uses of force from January 10, 2020, to February 6, 2020." Dkt. #83 at 2. The Court certified an injunctive class under Rule 23(b)(2) with the same definition. Id. at 3. The Court also certified a damages subclass, consisting of "all Black and Latinx individuals incarcerated at Souza Baranowski Correctional Center who were subjected to uses of force from January 10, 2020, to February 6, 2020." Id. at 2.

The parties first engaged in settlement discussions in 2022 but were unable to reach an agreement. In November 2024, the parties reinitiated negotiations and engaged in vigorous arm's length negotiations for six months until reaching the Agreement. Milton Decl. ¶ 7.

III. SUMMARY OF THE SETTLEMENT

The Agreement both provides substantial monetary relief to participating Class Members and requires DOC to take measures to reduce excessive force and racial discrimination by corrections officers.

A. Policy changes

The following is a summary of the actions and policy changes required of DOC; these appear in Exhibit A to the Agreement. Joint Motion, Ex. 1 (Agreement and Ex. A thereto).

1. K-9 policy

DOC will strengthen its policy on the use of patrol K-9s (dogs used to control and apprehend people, as opposed to detecting contraband). The changes include the addition of mandatory language limiting the circumstances when patrol K-9 Units may be deployed, specifying when the deployment must cease, and requiring patrol K-9s to remain muzzled unless and until their handler determines imminent intervention is necessary.

2. Kneeling

The Complaint alleges that immediately after the altercation in N-1 January 10, 2020, numerous Class Members were forced to kneel in a painful "stress position" for extended periods of time (sometimes two or more hours): they were made to kneel with their hands shackled behind their backs and ankles shackled, without being allowed to rest their bottoms

on their heels. Compl. ¶ 66. After the Class Period, DOC prohibited this practice. The Agreement requires DOC to maintain this policy change.

3. Selection for force teams

DOC will add a provision to its Special Operations Response Units (SORU) policy requiring that any corrections officer found to have used excessive force be immediately removed from the unit and prohibited from reapplying for three years. DOC will also add a provision that requires it to review any verdict or finding in a civil proceeding against DOC staff to determine whether internal action against such staff member is warranted. The Agreement also requires DOC to commit to six other policy changes made since the Class Period, including additional training on disorder management, forced moves, and other tactics, and requiring that a video team be automatically activated whenever a special operations unit is activated.

4. Body-worn cameras

DOC commits to imposing progressive discipline on officers who fail to use the body worn cameras as required by policy.

5. Implicit bias training

DOC agrees to implement a diversity and implicit bias training into the training academy and required annual staff training.

6. Racial self-identification

DOC records often misidentify the race or ethnicity of prisoners. Milton Decl. ¶ 9. The Agreement requires DOC to request and confirm all individuals' self-reported racial identification at booking.

7. Name tags for Special Operations officers

The Agreement requires DOC to add language to its uniforms policy requiring SORU members to wear name tags on the front and back of their vests.

8. Anonymous staff-misconduct hotline for DOC employees

The Agreement requires DOC to implement an anonymous tipline for employees to report misconduct or other concerns.

9. Prohibition and discipline for staff use of racial slurs

The Agreement requires DOC to add language to its Inmate Management policy explicitly prohibiting DOC employees from discriminating "against any individual because of race, gender, creed, national origin, religious affiliation, age, disability, gender identity, or any other type of prohibited discrimination." The DOC will also add language stating that employees shall not "use profane or abusive language toward any inmate" or make "disparaging reference to inmates regarding their color, creed, race or crimes they have committed."

10. Photos of injuries

The Agreement requires DOC to add language to its Standard Operating Procedures expanding when and what photographs must be taken of prisoners after a use of force.

11. PLS participation in Vera Institute project

The DOC has an ongoing project with the Vera Institute meant to improve the culture at DOC facilities. The Agreement requires DOC to facilitate communication between Prisoners' Legal Services and Vera so that PLS may offer information and its perspective on the factors contributing to culture problems within the DOC and in particular at SBCC.

B. Payments

On behalf of Defendants, the Commonwealth of Massachusetts will pay $6,750,000 to settle Plaintiffs' claims. Of this amount, $5,750,000 will be paid to Class Members; PLS will seek Court approval of $1,000,000 in combined attorneys' fees and costs.

1. Distribution Formula for payments to Class Members

Each Class Member who submits a valid and timely Claim Form will receive a payment from the Class Fund (i.e., $5,750,000), according to the Distribution Formula. Agreement ¶¶ 2(g), 13, 17.

The Distribution Formula is as follows:

a. Each Class Representative who submits a valid and timely Claim Form shall receive $25,000 ("Incentive Payment") in addition to any other payments to which he is entitled under the Distribution Formula.

b. Each Equal Protection Subclass Member who submits a valid and timely Claim Form will receive $10,000 (the "Equal Protection Payment") in addition to any other payments (under sections (a), (c), and (d)) to which he is entitled under the Distribution Formula.

c. Each Kneeling-Only Cohort Member who submits a valid and timely Claim Form will receive $10,000 (the "Kneeling-Only Payment").[4] Kneeling-Only Cohort Members who are also members of the Equal Protection Subclass will also receive

[4] As used in the Distribution Formula, a "Kneeling-Only Cohort Member" refers to any Class Members who was both (1) made to kneel in the main corridor on the second floor of SBCC following the altercation in Unit N1 on January 10, 2020, and (2) not subjected to any other alleged use of force during the class period. Id. ¶ 2(v).

the Equal Protection Payment. Kneeling-Only Cohort Members will not receive a General Payment, described below (under section (d)). Class Members who are not Kneeling-Only Cohort Members will not receive a Kneeling-Only Payment.

d. Each Class Member who is not a Kneeling-Only Cohort Member will receive a General Payment in addition to any other payments (under sections (a) and (b)) to which he may be entitled under the Distribution Formula. General Payments are allocated from the portion of the Class Fund remaining after deducting all payments made under sections (a), (b), and (c); this remaining portion is the General-Payment Pool. As a calculation, the General-Payment Pool is equal to the Class Fund minus all Incentive Payments, Equal Protection Payments, and Kneeling-Only Payments. The General Payment is calculated by dividing the General-Payment Pool by the number of Class Members entitled to receive a General Payment. The dollar amount of each General Payment therefore depends on the number of Class Members who submit valid claims. Each Class Member entitled to a General Payment shall receive only one General Payment regardless of the number or types of uses of force to which he was subjected. Class Members who receive a General Payment shall not receive a Kneeling-Only Payment regardless of whether they were among the group of people required to kneel in the corridor on January 10, 2020.

The entire Class Fund will be distributed to Class Members under the above Distribution Formula. Agreement ¶ 15. There will be no residual funds. Id.

2. Attorney's Fees and Costs

Prisoners' Legal Services will petition the Court for payment of attorneys' fees and costs of $1,000,000, to be paid from the total settlement amount of $6,750,000. Id. ¶ 17.

IV. DISCUSSION

A. The proposed settlement warrants preliminary approval.

1. Standard for preliminary approval

The law favors settlement of class action suits. *See In re Pharm. Indus. Average Wholesale Price Litig.,* 588 F.3d 24, 36 (1st Cir. 2009); *Durett v. Hous. Auth. of City of Providence,* 896 F.2d 600, 604 (1st Cir. 1990).

Federal Rule of Civil Procedure 23(e) provides that a proposed settlement in a class action must be approved by the court. Fed. R. Civ. P. 23(e); *see Meaden v. HarborOne Bank*, 23-CV-10467-AK, 2023 WL 3529762, at *1 (D. Mass. May 18, 2023). Court approval of a class action settlement is a "two-step process, which first requires the court to make a preliminary determination regarding the fairness, reasonableness, and adequacy of the settlement terms." *Meaden*, 2023 WL 3529762, at *1; *see* Fed. R. Civ. P. 23(e)(1). "The second step in the settlement approval process requires a fairness hearing, after which the court may give final approval of the proposed settlement agreement." *Meaden,* 2023 WL 3529762, at *1; *see* Fed. R. Civ. P. 23(e)(2).

"The request for preliminary approval only requires an 'initial evaluation' of the fairness of the proposed settlement." *New England Biolabs, Inc. v. Miller*, No. 1:20-CV-11234-RGS, 2022 WL 20583575, at *2 (D. Mass. Oct. 26, 2022) (citing *Manual for Complex Litigation* § 21.632 (4th ed. 2004)). "The purpose of preliminary approval is to determine whether to direct notice of

the proposed settlement to the class, invite the class's reaction, and schedule a fairness hearing." *Id.* (citation and internal quotation marks omitted). "In this preliminary evaluation of a proposed settlement, the Court determines only whether the settlement has obvious deficiencies or whether it is in the range of fair, reasonable, and adequate." *In Re Solodyn (Minocycline Hydrochloride) Antitrust Litig.*, No. 14-MD-2503-DJC, 2018 WL 11293802, at *1 (D. Mass. Mar. 12, 2018) (citations and internal quotation marks omitted).

"If the Court finds that the parties reached the settlement as a result of good-faith negotiations and after sufficient discovery, then a presumption of fairness attaches to the settlement." *Id.* (citing *In re Pharm.* 588 F.3d at 32-33). This presumption applies to the Agreement here, which was reached after lengthy arm's-length negotiations and vast discovery.

2. The proposed settlement is fair, reasonable, and adequate.

Preliminary approval is warranted because the Court "will likely be able to: (i) approve the proposal under Rule 23(e)(2)." Fed. R. Civ. P. 23(e)(1)(B)(i).[5] Rule 23(e)(2), in turn, requires the Court to find the settlement "fair, reasonable, and inadequate" after consideration of four factors. Fed. R. Civ. P. 23(e)(2). The Court must consider whether:

> (A) the class representatives and class counsel have adequately represented the class;
> (B) the proposal was negotiated at arm's length;
> (C) the relief provided for the class is adequate…; and
> (D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2). Each of these factors weighs in favor of approval.

[5] The Court has already certified the class, satisfying Fed. R. Civ. P. 23(e)(1)(B)(ii).

a. Class representatives and class counsel have adequately represented the class, satisfying Rule 23(e)(2)(A).

The "adequate representation inquiry serves to uncover conflicts of interest between named parties and the class they seek to represent." *Preston v. World Travel Holdings, Inc.*, No. 1:23-CV-12389-JEK, 2024 WL 3408705, at *3 (D. Mass. July 15, 2024) (citation omitted). The Class Representatives share the same legal claims as Class Members and have the same interest in the lawsuit's success. The Class Representatives have devoted extensive time and effort to the case in the five years since the events at issue; their contributions are discussed below.

Plaintiffs' counsel "competently and vigorously and without conflicts of interest" represented the class. *Preston,* 2024 WL 3408705, at *3 (citing *In re Pharm.,* 588 F.3d at 36 n.12). Counsel conducted extensive discovery for nearly three years. Discovery included 17 depositions of multiple Defendants, other current and former DOC employees, and an employee of DOC's former medical provider. Milton Decl. ¶ 5. Counsel painstakingly reviewed and analyzed the more than 99,000 pages of documents and hundreds of hours of video footage from the Class Period. Id. Counsel obtained answers to detailed interrogatories from all 18 Defendants. Id. Counsel consulted regularly with an expert in prison administration and uses of force. Id. Before filing suit, counsel engaged in a comprehensive investigation of the facts underlying the case, including interviewing more than 100 class members and other witnesses. Id. Given "the nature and amount of discovery" conducted, counsel has "an adequate information base" to justify settling. *Preston*, 2024 WL 3408705, at *3 (citing Fed. R. Civ. P. 23(e)(2)(A)-(B) 2018 Comm. Notes); *see Hochstadt v. Boston Sci. Corp.,* 708 F. Supp. 2d 95, 107 (D. Mass. 2010) (explaining that "the applicable standard […] does not require that

discovery be completed, but rather that sufficient discovery be conducted to make an intelligent judgment about settlement.").

PLS has represented incarcerated people in class actions and other civil rights litigation for over 50 years. Milton Decl. ¶ 3. Hogan Lovells US LLP has extensive experience in complex federal litigation. Id. Based on this knowledge and experience, Plaintiffs' counsel state without reservation that the Agreement merits approval. Id. ¶ 8. Where, as here, "the parties' attorneys are experienced and knowledgeable about the facts and claims, their representations to the court that the settlement provides class relief which is fair, reasonable and adequate should be given significant weight." *Meaden* at *4 (internal citation omitted).

b. The settlement was negotiated at arm's length, satisfying Rule 23(e)(2)(B).

This settlement is a result of arm's length negotiations. Beginning in November 2024, the parties actively negotiated for nearly six months before reaching the Agreement. Milton Decl. ¶ 7. The parties continued to litigate the case during this time, with Plaintiffs' second motion to compel being filed and fully briefed in February. These dealings demonstrate the absence of any collusion and that the negotiations "were conducted in a manner that would protect and further the class interests." *Preston,* 2024 WL 3408705, at *4 (citing 2018 Comm. Notes to Fed. R. Civ. P. 23(e)(2)(A)-(B)).

c. The relief provided for the class is adequate, satisfying Rule 23(e)(2)(C).

The relief provided to the class is more than adequate; it is exceptional. Milton Decl. ¶ 8. As described above, the Agreement provides substantial monetary and non-monetary relief to the class. Each Class Member who submits a valid claim will receive a five-figure

compensatory award,[6] and all Class Members will benefit from far-reaching policy reforms that hold officers who use excessive force to account and reduce the likelihood that Class Members will be subject to unlawful force. Additional policy measures are similarly designed to lessen discrimination against Black and Latinx Class Members.

Rule 23(e)(2)(C) requires examination of whether relief for 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, if required; (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). These considerations all support approval.

Cost, risks, and delays. The benefits of the Agreement are all the more advantageous to Class Members when compared to the "costs, risks, and delays" of continuing the litigation. *See* Fed. R. Civ. P. 23(e)(2)(C)(i). "Most class actions are inherently complex and settlement avoids the costs, delays, and multitude of other problems associated with them." *Wright v. Premier Courier, Inc.*, No. 2:16-CV-420, 2018 WL 3966253, at *3 (S.D. Ohio Aug. 17, 2018). This case is no exception. Establishing liability on a class-wide basis for excessive force under the Eighth Amendment, and disparate treatment of Black and Latinx subclass members under the Equal Protection Clause, presented formidable challenges. Plaintiffs' claims arise out of approximately 150 uses of force over a monthlong period. Each incident typically involved

[6] 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 identified Class Members submit valid Claim Forms; this would be extremely unusual. If 50 percent of the class submits claims, most Class Members would be receive an estimated minimum of nearly $60,000. Milton Decl. ¶ 10.

numerous officers and witnesses, and generated a large evidentiary record including incident reports, video, photographs of injuries, grievances, internal investigations, and medical records. Milton Decl. ¶ 5. Plaintiffs alleged that these incidents were part of a coordinated operation authorized by high-ranking officials, adding an additional layer of factual and legal complexity to Plaintiffs' claims. *Cf. Guadalupe-Baez v. Pesquera*, 819 F.3d 509, 515 (1st Cir. 2016) (noting that supervisory liability is a "difficult standard to meet"). Plaintiffs' claim for injunctive relief—which requires a showing that the constitutional violations during the Class Period were part of an ongoing set of practices that continues to place Class Members at risk of harm—posed additional burdens. Plaintiffs' Counsel believe Plaintiffs' claims are strong but recognize that obtaining a favorable verdict or injunction is no sure thing.

Moreover, a finding of liability would not necessarily mean a better outcome for Class Members than settlement. Any damages award might well be lower than what Class Members will receive under the Agreement. Milton Decl. ¶ 10. Indeed, juries sometimes award prisoners only nominal damages despite finding unconstitutional force was used. Id.; *see also, e.g., Gage v. Jenkins*, No. CV 13-638-SDD-EWD, 2017 WL 4694152, at *2 (M.D. La. Oct. 19, 2017). A jury would not be able to award any prospective relief.

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, the entry of a final judgment would likely not occur for several years. Milton Decl. ¶ 10.

Proposed method of distributing relief to the class. The settlement provides reasonable and effective methods of distributing relief to the class, including the method of

processing class-member claims. *See* Fed. R. Civ. P. 23(e)(2)(C)(ii). The process for filing claims is simple and straightforward. Class Members need only complete, sign, and return the Claim Form, which will be processed by a professional claims administrator that has handled many class actions, including prisoners' rights class actions. Agreement ¶ 20. The Claims Administrator will calculate the amounts owed to each Class Member and distribute checks to Class Members once funds are received from the Commonwealth.[7] Id. ¶ 21.

Proposed award of attorneys' fees. The Agreement's attorneys' fees provisions, including timing of payment, are reasonable. *See* Fed. R. Civ. P. 23(e)(2)(C)(iii). Plaintiffs' Counsel will ask the Court to award PLS attorneys' fees and litigation costs in the combined amount of $1,000,000. PLS's final costs are estimated to be under $15,000; the roughly $985,000 in attorneys' fees requested represents a lower percentage of the total settlement amount than is typically awarded, as discussed below. Hogan Lovells is not seeking *any* attorneys' fees or litigation costs. Hogan incurred approximately $93,500 in litigation costs and spent approximately 4,000 hours on the case, all pro bono. Milton Decl. ¶ 11.

"Within the First Circuit, courts generally award fees in the range of 20–30%, with 25% as the benchmark." *Bezdek v. Vibram USA Inc.*, 79 F. Supp. 3d 324, 349–50 (D. Mass. 2015) (internal citation omitted); *see also Arkansas Tchr. Ret. Sys. v. State St. Bank & Tr. Co.*, 512 F.

[7] Although the parties have thoroughly investigated events during the class period, there may be some individuals subjected to a use of force who have not yet been identified. Individuals not previously identified as Class Members may submit a claim form with a sworn declaration describing the use of force to which they were subjected. See Joint Mot. Ex. 5 (Generic Claim Form). Plaintiffs' Counsel will investigate these claims by reviewing the declarations and supporting documentation provided by the individual, and any records or information in the possession of Plaintiffs' Counsel and DOC. If the information reasonably establishes that the claimant was subjected to a use of force at SBCC during the Class Period and is therefore a Class Member, the claim will be approved. The Claims Administrator will send notice of the decision to the claimant. Agreement ¶¶ 36-39.

Supp. 3d 196, 217 (D. Mass. 2020) ("An award of 20% of the common fund is at the low end of the 20-30% range generally presumed to be reasonable."). PLS seeks just under 15% in order to maximize the compensation for Class Members. Payment of attorneys' fees will be made at the same time that distribution payments are made to Class Members.

Agreements required to be identified. Rule 23(e)(2)(C)(iv) requires consideration of any agreement required to be identified under Rule 23(e)(3)—that is, "any agreement made in connection with the proposal." Fed. R. Civ. P. 23(e)(3). There are no such "side agreements."

d. The proposal treats class members equitably relative to each other, satisfying Rule 23(e)(2)(D).

The Distribution Formula equitably compensates Class Members according to the respective harms they suffered. "A plan of allocation is fair and reasonable as long as it has a reasonable, rational basis." *New England Biolabs,* 2022 WL 20583575, at *4 (citation and internal quotation marks omitted); *see also Follansbee v. Discover Fin. Servs., Inc.*, No. 99 C 3827, 2000 WL 804690, at *5 (N.D. Ill. June 21, 2000) ("[D]istinctions in the damages awarded to different subclasses are not uncommon and will not defeat a class settlement so long as the distinctions are supported by a rational basis."). "[T]he text of [Rule 23(e)(2)(D)] requires equity, not equality, and treating class members equitably does not necessarily mean treating them all equally." *In re Blue Cross Blue Shield Antitrust Litig. MDL 2406*, 85 F.4th 1070, 1093 (11th Cir. 2023); *see also* Fed. R. Civ. P. 23 (e)(2)(D), 2018 Comm. Notes (noting that paragraph D addresses whether "apportionment of relief among class members takes appropriate account of differences among their claims"). "In determining whether a plan of allocation is fair and reasonable, courts give great weight to the opinion of experienced counsel." *New England Biolabs,* 2022 WL 20583575, at *4.

The different categories of payments under the Agreement—for the relatively small group of Class Members subjected to forced kneeling but no other use of force; for the majority of Class Members, who were subjected to more direct uses of force at the hands of corrections officers; and for Equal Protection Subclass Members, who were subjected to additional harm by virtue of their race or ethnicity—are commensurate with their respective injuries and claims. The incentive payments appropriately compensate class representatives for five years of service and commitment to the case, without which the excellent results for the class would not have occurred.

The great majority of Class Members—87%, the portion of Class Members not in the Kneeling-Only Cohort—will receive an equal share of the General-Payment Pool. As discussed, this is expected to be approximately $30,000 or more. Members of the Kneeling-Only Cohort, who make up 13% of the class, will receive $10,000. The different amounts reflect the difference in the nature of the force and resulting harm inflicted on the two groups. As mentioned, the uses of force applied to the larger group included beating and kicking; gouging eyes; grabbing testicles; smashing faces into the ground or wall; deploying Taser guns, pepper ball guns, other chemical agents, and K-9s. It is fair to award greater damages for these severe and direct applications of force than for forced kneeling, however excruciating.

The additional payment to members of the Equal Protection Subclass is justified by the harsher treatment this group received, such as officers shouting racist comments and yanking dreadlocks from people's heads. Compl. ¶¶ 162-69. The $10,000 Equal Protection Amount reflects the additional constitutional injury and personal harm that these racially motivated actions caused.

The incentive payments to the Class Representatives are also fair. "Incentive awards serve to promote class action settlements by encouraging named plaintiffs to participate actively in the litigation in exchange for reimbursement for their pursuits on behalf of the class overall." *Physicians Healthsource, Inc. v. Vertex Pharms. Inc.*, No. 1:15-cv-11517-JCB, 2019 WL 13178515, at *4 (D. Mass. Mar. 21, 2019). The payments compensate Class Representatives for the extensive time and effort they have devoted to the development and prosecution of this case since the time of the events themselves in early 2020, as well as for their 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. Milton Decl. ¶ 12. *See, e.g., Parker v. City of New York,* No. 15 CV 6733 (CLP), 2018 WL 6338775, at *7 (E.D.N.Y. Dec. 4, 2018) (noting "risks of retaliation exist when incarcerated persons bring suit against their jailers") (citations omitted); *Delandro v. Cnty. of Allegheny*, No. CIV.A. 06-927, 2011 WL 2039099, at *16 (W.D. Pa. May 24, 2011) (finding "sacrifice of anonymity" justified incentive award to prisoner class representative). Each Class Representative regularly met with counsel over the past five years, providing invaluable information that informed the Complaint, discovery, and settlement. Milton Decl. ¶ 12. As a result of Class Representatives' service, Class Members will receive substantial monetary compensation and, if they are still incarcerated, meaningful injunctive relief. The amount of the incentive payment, $25,000, is in line with awards approved in other prisoner class actions in this District and elsewhere. Id.[8]

[8] Courts in this District approved $20,000 incentive awards to the class representatives in each of these prisoner class actions: *Baggett v. Ashe,* C.A. No. 11–30223–MAP (D. Mass, settled 2015); *Garvey*

B. The notice and notice plan comply with due process and Rule 23.

The proposed form and manner of notice satisfy due process and Rule 23. Under Rule 23(e)(1)(B), "[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). "Notice is intended to inform class members of their rights to exclude themselves from the settlement and not to be bound by any judgment that subsequently issues from final approval." *Meaden*, 2023 WL 3529762, at *4 (citing *Eisen v. Carlisle & Jacquelin,* 417 U.S. 156, 173 (1974)). For a Rule 23(b)(3) class, "the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B).

The Notice Plan in the Agreement meets these requirements. It provides for notice by first class mail to each Class Members whose address is known or can be ascertained with reasonable efforts (including online skip-tracing). Agreement ¶ 24. Plaintiffs' counsel will also attempt to provide individual notice to Class Members via email and social media. Id. These efforts constitute sufficient individual notice. *See Meaden,* 2023 WL 3529762, at *4. To provide notice to Class Members who do not receive actual individual notice, the Agreement outlines a plan to publicize the settlement to news organizations and to publish the Notice, Claim Form, and other information about the lawsuit on a website. Id. ¶ 31.

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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). Milton Decl. ¶ 12. Courts in other jurisdictions have awarded comparable amounts in prisoner cases. *See, e.g., Grottano v. City of New York*, No. 15-CV-9242 (RMB), 2021 WL 5563990, at *8 (S.D.N.Y. Nov. 29, 2021) (approving awards of $20,000 and $30,000) *Delandro v. Cnty. of Allegheny*, No. CIV.A. 06-927, 2011 WL 2039099, at *16 (W.D. Pa. May 24, 2011) (approving award of $18,000); *McBean v. City of New York*, 233 F.R.D. 377, 391-92 (S.D.N.Y. 2006) (approving awards ranging from $25,000 to $35,000 and finding these "solidly win the middle of the range" in other cases).

Finally, the Notice and Claim Form clearly and concisely state "(i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members under Rule 23(c)(3)." Fed. R. Civ. P. 23(c)(2)(B).[9] Joint Motion Exs. 2, 3.

VI. The Court should approve Analytics, LLC as Claims Administrator.

Plaintiffs' Counsel request that the Court approve Analytics, LLC as Claims Administrator. Defendants do not object. Analytics has successfully provided similar claims administration services in many other class action cases, including several prisoner class actions brought in Massachusetts. Milton Decl. ¶ 13. Among other services described in the Agreement, the Claims Administrator will mail notice to Class Members; receive and record all Claim Forms, objections, and requests for exclusion; review all Claim Forms and send a notice of denial to any claimant whose Claim Form is invalid, including to any claimant not previously identified as a Class Member who submits a Generic Claim Form that is not approved; and calculate the payment to Class Members in accordance with the Distribution Formula. Upon receipt of the Fund from the Commonwealth, the Claims Administrator issue payments to class members. Agreement ¶¶ 52, 54. PLS has used Analytics in other cases and found it to be diligent, reliable, and ethical. Milton Decl. ¶ 13.

[9] The Generic Notice and Claim Form contain the same information, with additional instructions and requirements for filing a claim. Joint Motion, Exs. 4, 5.

VII. CONCLUSION

For the foregoing reasons, Plaintiffs request that the Court (1) grant preliminary approval to the settlement, (2) approve the class notice and notice plan, (3) appoint Analytics LLC as claims administrator and approve the administration plan, and (4) set a date for a final fairness hearing and a date for filing motions to approve the settlement and for attorney's fees. A proposed Order is attached to the Joint Motion. Plaintiffs further request that the Court schedule a hearing on the instant motion at its earliest convenience.

Date: May 21, 2025

RESPECTFULLY SUBMITTED,

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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 and that paper copies will be sent to those indicated as non-registered participants on the above date.

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