

Honorable James L. Robart

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

GABRIEL KORTLEVER, SY EUBANKS,
and ALL OTHERS SIMILARLY SITUATED,

Plaintiffs,

v.

WHATCOM COUNTY, WASHINGTON;
WHATCOM COUNTY SHERIFF'S OFFICE,

Defendants.

Case No. 2:18-cv-00823

~~PROPOSED~~ ORDER GRANTING
PLAINTIFFS' MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT AND DISMISSAL

WHEREAS, on May 23, 2019, this Court entered its Order Granting Plaintiffs' Motion for Preliminary Approval of Class Action Settlement and Directing Notice to Plaintiff Class (ECF 37) (the "Preliminary Approval Order"); and

WHEREAS, notice complying with Fed. R. Civ. P. 23 was posted in the living quarters and in the medical unit(s) of the Jail, as well as at local community health centers including Sea Mar Community Health Center, Catholic Community Services, Cascade Medical Advantage, Pioneer Human Services, and Lummi Healing Spirit Clinic; and

WHEREAS, a fairness hearing on final approval ("Final Approval Hearing") of the Settlement Agreement was held before the Court on July 9, 2019; and

WHEREAS, the Court, being advised, finds that good cause exists for entry of the below Order; now therefore,

ORDER GRANTING PLAINTIFFS' MOTION FOR FINAL APPROVAL OF
CLASS ACTION SETTLEMENT AND DISMISSAL - 1
Case No. 2:18-cv-00823

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1 IT IS HEREBY FOUND, ORDERED, ADJUDGED AND DECREED THAT:

2 1. Unless otherwise provided herein, all capitalized terms in this Order shall have
3 the same meaning as set forth in the Settlement Agreement attached as Exhibit 1 to the
4 Declaration of Lisa Nowlin in Support of Plaintiffs' Motion for Preliminary Approval of
5 Class Action Settlement (ECF 35-1) ("Nowlin Decl.").

6 2. The Court finds it has personal and subject matter jurisdiction over all claims
7 asserted in this litigation with respect to all members of the Settlement Class.

8 3. The Court finds that Notice to the Settlement Class has been completed in
9 conformity with the Preliminary Approval Order. The Court finds that this Notice was the
10 best Notice practicable under the circumstances, that it provided due and adequate notice of
11 the proceedings and of the matters set forth therein, and that it fully satisfied all applicable
12 requirements of law and due process.

13 4. For purposes of settlement only, this Court certifies this case as a class action
14 under Federal Rule of Civil Procedure 23(b)(2). For the reasons stated in Plaintiffs' Motion
15 for Preliminary Approval of Class Action Settlement, the Class satisfies the elements of Rule
16 23(a) and Rule 23(b)(2) and thus a class action, for purposes of settlement only, is
17 appropriate.

18 5. Pursuant to Fed. R. Civ. P. 23(b)(2), the Court certifies for settlement purposes
19 only the following Settlement Class: "All non-pregnant individuals with disabling opioid use
20 disorders ("OUD") who are incarcerated, or who will be incarcerated in the future, in the
21 Whatcom County Jail."

22 6. In connection with this certification, the Court makes the following findings:

- 23 a. The Settlement Class is sufficiently numerous to meet the requirement of
24 Rule 23(a)(1). The Class includes all non-pregnant individuals with
25 disabling OUD who are incarcerated, or who will be incarcerated in the
26 future, in the Whatcom County Jail and joinder of all such persons would

1 be impracticable. *See* Fed. R. Civ. P. 23(a)(1).

2 b. The commonality requirement is satisfied because there are many questions
3 of law and fact common to the Settlement Class that center on Defendants'
4 alleged systemic policy and practice of denying medication used to treat
5 opioid use disorders for non-pregnant individuals in violation of Title II of
6 the ADA. *See* Fed. R. Civ. P. 23(a)(2).

7 c. The typicality requirement is satisfied because Plaintiff's claims, which are
8 based on the alleged discriminatory denial of necessary medication services
9 needed to treat their opioid use disorders, resulting in withdrawal, an
10 increased risk of relapse, and a heightened likelihood of overdose death,
11 are "reasonably coextensive with those of the absent class members." *See*
12 Fed. R. Civ. P. 23(a)(3).

13 d. The adequacy of representation requirement is satisfied because Plaintiffs'
14 interests are coextensive with, and not antagonistic to, the interests of the
15 Settlement Class. *See* Fed. R. Civ. P. 23(a)(4). Further, Plaintiffs are
16 represented by qualified and competent counsel who have extensive
17 experience and expertise in prosecuting class actions.

18 7. The Court has appointed Plaintiffs Gabriel Kortlever and Sy Eubanks as Class
19 Representatives.

20 8. The Court has appointed Lisa Nowlin and John Midgley of the American Civil
21 Liberties Union of Washington Foundation, and Bart Freedman of K&L Gates LLP, as co-
22 lead counsel for the Settlement Class.

23 9. To the extent any timely-filed objections to the Settlement Agreement have
24 been submitted, the Court has considered those objections and found they do not counsel
25 against approval of the Settlement Agreement, and the objections are hereby overruled.

26 10. The terms set forth in the Settlement Agreement are approved as being fair,

1 adequate, and reasonable in light of the degree of recovery obtained in relation to the risks
2 faced by the Settlement Class in litigating the claims. The Settlement Class is properly
3 certified as part of the Settlement Agreement. The relief provided to the Settlement Class
4 under the Settlement Agreement is appropriate to the individual members of the Settlement
5 Class, and as a whole.

6 11. The Court approves the payment of \$1,000 each to the Class Representatives,
7 and \$25,000 to Class Counsel for attorneys' fees and expenses as fair and reasonable.

8 12. All Settlement Class Members are bound by the terms of the Settlement
9 Agreement with Defendants.

10 13. Class Representatives Kortlever and Eubanks shall conclusively be deemed to
11 have irrevocably released, relinquished, and forever discharged all claims against all released
12 entities and individuals as set forth in the Settlement Agreement. The Settlement Agreement
13 provides:

14 9.1 As of the Effective Date, Plaintiffs Gabriel Kortlever and Sy Eubanks
15 fully release and forever discharge the Defendants from all claims for declaratory
16 relief and injunctive relief that were brought or could have been brought in the
17 Action.

18 9.2 As of the Effective Date Plaintiffs Gabriel Kortlever and Sy Eubanks
19 fully release and forever discharge the Defendants from all claims arising out of, or
20 in any way relating, to the Action; including, but not limited to, any general, special,
21 exemplary, and punitive damages claims that were brought, or could have been
22 brought, in the Action.

23 14. Neither this Order nor any aspect of the Settlement Agreement is to be
24 construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the
25 part of the Defendants. Defendants specifically deny any liability. Each of the Parties to the
26 settlement entered into the Settlement Agreements with the intention to avoid further disputes
and litigation with the attendant inconvenience and expenses.


15. This Court hereby dismisses this action with prejudice as to all Settlement

1 Class members.

2 16. The Clerk shall enter a final judgment dismissing with prejudice all claims
3 against Defendants, without fees or costs except as provided for in the Settlement Agreement
4 and ordered by the Court. A judgment dismissing the case shall be entered immediately.

5 17. The dismissal of the claims against Defendant is without prejudice to the rights
6 of the Parties to enforce the terms of the Settlement Agreement and the rights of Class
7 Counsel to seek the payment of fees and costs as provided for in the Settlement Agreements.
8 Without affecting the finality of this Order, or the judgment to be entered pursuant hereto, in
9 any way, the Court retains jurisdiction over the claims against the Defendants for purposes of
10 resolving any disputes that may arise under the Settlement Agreement.

11 DATED this 9th day of July, 2019.

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13
14 Hon. James L. Robart
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16 Presented By

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CERTIFICATE OF ECF FILING AND SERVICE

I certify that on June 25, 2019, I arranged for electronic filing of the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all parties of record:

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