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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ANTHONY MEDINA, KELVIN CURRAN, JAMES
COLANTUONO, WARREN DAVIS, KEVIN
JONES, PETER LOPEZ, CHRISTOPHER
MORRISHAW AND MICHAEL SMITH,
*individually and on behalf of others similarly
situated,*

Plaintiffs,

-against-

THE NEW YORK STATE DEPARTMENT OF
CORRECTIONS AND COMMUNITY SERVICES;
BRIAN FISCHER, COMMISSIONER OF THE NEW
YORK STATE DEPARTMENT OF CORRECTIONS
AND COMMUNITY SERVICES; LUCY BUTHER,
ADA COORDINATOR OF THE NEW YORK
STATE DEPARTMENT OF CORRECTIONS AND
COMMUNITY SERVICES; PATRICK J. GRIFFIN,
SUPERINTENDENT OF SULLIVAN
CORRECTIONAL FACILITY; DARROW
CUNNINGHAM, DEPUTY SUPERINTENDENT OF
PROGRAMS FOR SULLIVAN CORRECTIONAL
FACILITY; CHRISTOPHER KARSON,
ASSISTANT DEPUTY SUPERINTENDENT OF
PROGRAMS FOR SULLIVAN CORRECTIONAL
FACILITY; DALE ARTUS, SUPERINTENDENT OF
WENDE CORRECTIONAL FACILITY; AND
KAREN CROWLEY, DEPUTY
SUPERINTENDENT OF PROGRAMS FOR
WENDE CORRECTIONAL FACILITY,

Defendants.

11 Civ. 176 (LAP) (JLC)

ECF Case

**ORDER CERTIFYING SETTLEMENT CLASS,
APPOINTING CLASS REPRESENTATIVES AND CLASS COUNSEL,
PRELIMINARILY APPROVING THE PARTIES' PRIVATE SETTLEMENT
AGREEMENT, AND PROVIDING FOR NOTICE TO CLASS MEMBERS**

WHEREAS, on January 4, 2011, Anthony Medina, Kelvin Curran, Warren Davis,
Kevin Jones, Peter Lopez and Michael Smith ("Named Plaintiffs"), along with James

Colantuono, Paul Ford, Christopher Morrishaw, Ling Loet, Ben Rawls and Darrius Reid (“Dismissed Plaintiffs”), commenced an action against the New York State Department of Corrections and Community Supervision (“DOCCS”), DOCCS Commissioner Brian Fischer, DOCCS ADA Coordinator Lucy Buther, Sullivan Correctional Facility (“Sullivan”) Superintendent Patrick J. Griffin, Sullivan Deputy Superintendent of Programs Darrow Cunningham, Sullivan Assistant Deputy Superintendent of Programs Christopher Karson, Acting Superintendent of Wende Correctional Facility (“Wende”) Dale Artus, and Wende Deputy Superintendent of Programs Karen Crowley, in their official capacities (collectively, “Defendants”), captioned *Medina et al. v. Fischer et al.*, 11 Civ. 176 (S.D.N.Y.) (the “Action”);

WHEREAS, Acting Commissioner Anthony Annucci has been automatically substituted as a defendant for former Commissioner Fischer and Acting Superintendent Thomas Sticht has been substituted as a defendant for former Superintendent Dale Artus, pursuant to Fed. R. Civ. P. 25(d);

WHEREAS, Named Plaintiffs, along with James Colantuono, Paul Ford, Christopher Morrishaw and Darrius Reid filed an Amended Complaint on March 10, 2011;

WHEREAS, Named Plaintiffs, along with James Colantuono and Christopher Morrishaw, filed a Second Amended Complaint on April 30, 2012 (the “Complaint”);

WHEREAS, Dismissed Plaintiffs have all voluntarily dismissed their claims against the Defendants or their claims are moot;

WHEREAS, on behalf of themselves and putatively on behalf of a class of others similarly situated, Named Plaintiffs allege violations of the Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12132, and Section 504 of the Rehabilitation Act, 29 U.S.C.

§ 794, relating to their visual impairments and arising out of the conditions of their confinement at Sullivan and Wende;

WHEREAS, at the direction and with the assistance of the Court, the Parties have engaged in settlement discussions;

WHEREAS, the Parties now desire to settle the Action on the terms set forth in their proposed settlement agreement (the "Private Settlement Agreement");

WHEREAS, Named Plaintiffs, Defendants, and their respective counsel have determined that the proposed Private Settlement Agreement is fair, reasonable, and adequate; in the best interests of the Named Plaintiffs and the members of the Class; and that it confers substantial benefits upon the members of the Class;

WHEREAS, the Defendants deny any wrongdoing and any liability to the Plaintiffs, deny the material allegations asserted in the Action, assert certain defenses, and state that they are entering into this Agreement solely to eliminate the uncertainties, burden and expense of further litigation;

WHEREAS, the Parties having made a joint application, pursuant to Rule 23 of the Federal Rules of Civil Procedure, for an Order Certifying Settlement Class, Appointing Class Representatives and Class Counsel, Preliminarily Approving the Parties' Private Settlement Agreement and Providing for Notice to Class Members as more fully described herein;

WHEREAS, the Court having read and considered the Parties' motion for preliminary approval of the proposed Private Settlement Agreement and the papers filed and arguments made in connection therewith, consisting of: (i) the Joint Motion for Class Certification in Connection with Settlement, Appointment of Class Representatives and Class Counsel, Preliminary Approval of the Parties' Private Settlement Agreement, and

Approval of Notice to Class Members; (ii) the Private Settlement Agreement (attached as Exhibit 1 to this Order); (iii) the proposed Final Judgment and Proposed Order of Dismissal with Prejudice (attached as Exhibit 2 to this Order); and (iv) the Notice of Settlement of Class Action (attached as Exhibit 3 to this Order);

WHEREAS, unless otherwise defined herein, all capitalized words contained herein shall have the same meanings as they have in the Private Settlement Agreement; and

WHEREAS, the parties have consented, under Rule 73(b) of the Federal Rules of Civil Procedure and 28 U.S.C. § 636(c), to proceed before the undersigned for all purposes relating to the parties' Private Settlement Agreement, their Joint Motion for Class Certification, the Fairness Hearing, and all related settlement and class-certification proceedings, including entering a Final Judgment and Order of Dismissal with Prejudice;

NOW THEREFORE, IT IS HEREBY ORDERED:

1. **Class Action**: The Court hereby certifies the Action as a class action pursuant to Rules 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure, for the purposes of the settlement set forth in the proposed Private Settlement Agreement and for no other purpose.

2. **Class Certification**: The Court hereby certifies the Class consisting of all Legally Blind and Severely Visually Impaired prisoners who are incarcerated at Sullivan or Wende or who become incarcerated at Sullivan or Wende during the duration of the Private Settlement Agreement. The foregoing Class is certified for the purposes of the settlement set forth in the proposed Private Settlement Agreement and for no other purpose.

3. **Appointing Plaintiffs' Counsel:** The Court appoints Plaintiffs' Counsel as counsel for the Class pursuant to Rule 23(g) of the Federal Rules of Civil Procedure.

4. **Preliminary Approval of the Private Settlement Agreement:** The Court hereby preliminarily approves the settlement, set forth in the proposed Private Settlement Agreement as fair, reasonable, adequate and in the best interests of Named Plaintiffs and members of the Class, subject to further consideration at the Fairness Hearing.

5. **Fairness Hearing:** The Court will hold a Fairness Hearing on April 21, 2014 at 10:00 a.m. at the United States District Court for the Southern District of New York, 500 Pearl Street, New York, New York, in Courtroom 21-D. At the Fairness Hearing, the Court will determine whether the settlement as set out in the proposed Private Settlement Agreement is fair, reasonable, and adequate. The Court will further determine at the Fairness Hearing whether a Final Judgment and Order of Dismissal with Prejudice should be entered, the entry of which is a condition of the Private Settlement Agreement.

6. **Form of Notice:** The Court hereby approves the Notice of Settlement of Class Action in the form attached hereto as Exhibit 3.

7. **Method for Giving Notice:** Notice of the proposed settlement and of the Fairness Hearing shall be given as follows:

- (i) Not later than five (5) calendar days after the entry of this Order, Plaintiffs' counsel shall provide Defendants' counsel with one hundred copies of the Notice of Settlement of Class Action, including the proposed Private Settlement Agreement, substantially in the forms attached hereto as Exhibits 1 and 3

except in 18 point font (“Large Print”), to be posted in the Housing Block or Resource Room in each of Sullivan and Wende and disseminated to members of the Class as contemplated in 6(ii)-(iii) herein;

- (ii) Not later than fifteen (15) calendar days after the entry of this Order, DOCCS shall post in the Housing Block or Resource Room copies of the Notice of Settlement of Class Action, including the proposed Private Settlement Agreement, as provided by Plaintiffs’ counsel pursuant to 6(i) above;
- (iii) Not later than fifteen (15) calendar days after the entry of this Order, DOCCS shall provide all members of the Class with the Notice of Settlement of Class Action, including the proposed Private Settlement Agreement, as provided by Plaintiffs’ counsel pursuant to 6(i) above;
- (iv) Each member of the Class who requests assistance in order to be able to read the content of the Notice of Settlement of Class Action and the proposed Private Settlement Agreement will be provided with appropriate Reasonable Accommodations, such as assistance from an Inmate Mobility Aid or law clerk, within ten (10) days of such a request;
- (v) Not later than twenty (20) calendar days after the entry of this Order, Defendants’ counsel will provide Plaintiffs’ counsel with the number of Class members at each facility and confirmation that each member of the Class has received the Notice of Settlement of

Class Action, including the Private Settlement Agreement, in Large Print as provided by Plaintiffs' counsel pursuant to 6(i) above.

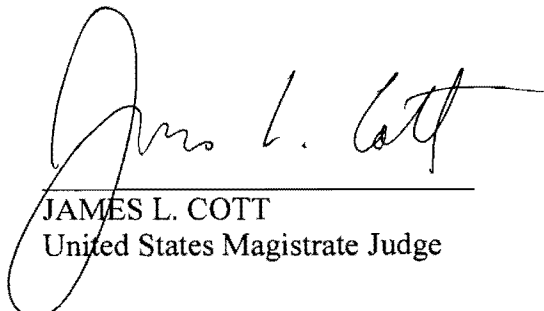
8. **Period of written objections:** Any member of the Class may submit to the Court written objections to the Private Settlement Agreement. In determining whether the settlement is fair, reasonable, and adequate, the Court will consider any objections sent before **April 8, 2014**. The parties will have until **April 15, 2014** to submit any additional papers in support of final approval of the Private Settlement Agreement, and/or in response to any objections that may be submitted to the Court. The Court will place on the Court's docket copies of any objections that it receives in order to make them available to the parties.

9. **Enjoining prosecution:** The Court hereby enjoins prosecution of any action or claims that are subject to the release and dismissal as Released Claims contemplated in the Private Settlement Agreement, subject to modification, amendment, or termination of this injunction after the Fairness Hearing or on further application and good cause shown.

In light of this Order, the Clerk is directed to close the Joint Motion (Dkt. No. 175).

SO ORDERED.

Dated: New York, New York
March 4, 2014



JAMES L. COTT
United States Magistrate Judge

Exhibit 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ANTHONY MEDINA, KELVIN CURRAN, JAMES
COLANTUONO, WARREN DAVIS, KEVIN
JONES, PETER LOPEZ, CHRISTOPHER
MORRISHAW AND MICHAEL SMITH,
*individually and on behalf of others similarly
situated,*

Plaintiffs,

-against-

THE NEW YORK STATE DEPARTMENT OF
CORRECTIONS AND COMMUNITY SERVICES;
BRIAN FISCHER, COMMISSIONER OF THE NEW
YORK STATE DEPARTMENT OF CORRECTIONS
AND COMMUNITY SERVICES; LUCY BUTHER,
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CUNNINGHAM, DEPUTY SUPERINTENDENT OF
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ASSISTANT DEPUTY SUPERINTENDENT OF
PROGRAMS FOR SULLIVAN CORRECTIONAL
FACILITY; DALE ARTUS, SUPERINTENDENT OF
WENDE CORRECTIONAL FACILITY; AND
KAREN CROWLEY, DEPUTY
SUPERINTENDENT OF PROGRAMS FOR
WENDE CORRECTIONAL FACILITY,

Defendants.

11 Civ. 176 (LAP) (JLC)

ECF Case

PRIVATE SETTLEMENT AGREEMENT

This Private Settlement Agreement (the "Agreement") is made this 28th day of
February, 2014, by, between and among Anthony Medina, Kelvin Curran, Warren Davis,

Kevin Jones, Peter Lopez and Michael Smith (“Named Plaintiffs”) and the New York State Department of Corrections and Community Supervision (“DOCCS”), Acting DOCCS Commissioner Anthony J. Annucci, DOCCS ADA Coordinator Lucy Buther, Sullivan Correctional Facility (“Sullivan”) Superintendent Patrick J. Griffin, Sullivan Deputy Superintendent of Programs Darrow Cunningham, Sullivan Assistant Deputy Superintendent of Programs Christopher Karson, Acting Superintendent of Wende Correctional Facility (“Wende”) Thomas Sticht, and Wende Deputy Superintendent of Programs Karen Crowley, in their official capacities (collectively, “Defendants”).¹ Named Plaintiffs and Defendants are referred to collectively as “the Parties”, and each Plaintiff and each Defendant as “a Party”.

WHEREAS, Named Plaintiffs, along with James Colantuono, Paul Ford, Christopher Morrishaw, Ling Loet, Ben Rawls and Darrius Reid, commenced an action against Defendants on January 4, 2011, captioned *Medina et al. v. Fischer et al.*, 11 Civ. 176 (S.D.N.Y.) (“the Action”);

WHEREAS, Named Plaintiffs, along with James Colantuono, Paul Ford, Christopher Morrishaw and Darrius Reid filed an Amended Complaint on March 10, 2011;

WHEREAS, Named Plaintiffs, along with James Colantuono and Christopher Morrishaw, filed a Second Amended Complaint on April 30, 2012 (“the Complaint”);

¹ Acting Commissioner Annucci was automatically substituted for former Commissioner Fischer and Acting Superintendent Thomas Sticht for former Superintendent Dale Artus, pursuant to Fed. R. Civ. P. 25(d).

WHEREAS, James Colantuono, Paul Ford, Christopher Morrishaw, Ling Loet, Ben Rawls and Darrius Reid have voluntarily dismissed their claims against the Defendants or their claims are moot;

WHEREAS, on behalf of themselves and putatively on behalf of a class of others similarly situated, Named Plaintiffs allege violations of the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12132, and Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, arising out of the conditions of their confinement by DOCCS relating to their visual impairments;

WHEREAS, Defendants adopted Directive 2612, 'Inmates with Sensorial Disabilities', prior to the commencement of this Action, and assert that they have provided Legally Blind/Severely Visually Impaired prisoners with accommodations similar to many of those described below;

WHEREAS, nothing in this Agreement shall be read to imply that DOCCS was or was not already providing any of the accommodations set forth herein;

WHEREAS, at the direction and with the assistance of the Court, the Parties have engaged in settlement discussions;

WHEREAS, Named Plaintiffs and Plaintiffs' Counsel have determined that, in their judgment, the settlement set forth in this Agreement is fair, reasonable and adequate and in the best interests of the Named Plaintiffs and the members of the Class, and that it confers substantial benefits upon the Named Plaintiffs and the members of the Class;

WHEREAS, Named Plaintiffs and Plaintiffs' Counsel further recognize and acknowledge the length of continued proceedings necessary to prosecute the claims asserted in the Complaint against the Defendants through trial, and have considered the

uncertain outcome and the risk of any litigation, as well as the difficulties and delays inherent in any such litigation, and believe it is desirable that the Released Claims be fully and finally compromised, settled and resolved with prejudice as set forth herein;

WHEREAS, Defendants have denied that they have committed any act or omission giving rise to any liability or violation of law; and

WHEREAS, the Parties now desire to settle the Action on the terms set forth herein, with no admission of liability by any Party;

NOW THEREFORE, in consideration of their mutual promises and obligations set forth herein, the sufficiency of said consideration being hereby acknowledged, IT IS HEREBY AGREED AS FOLLOWS:

I. Definitions

As used herein, the following terms shall have the following meanings:

- A. 20/20 pen – a felt tip marker that allows LB/SVI prisoners to write in large, dark characters;
- B. The Class – all LB/SVI prisoners who are incarcerated at Sullivan or Wende or who become incarcerated at Sullivan or Wende during the duration of this Agreement (*see infra* Section III);
- C. Court – the United States District Court for the Southern District of New York, which has jurisdiction over the Action;
- D. DOCCS – the New York State Department of Corrections and Community Supervision;
- E. DOCCS Medical Professional – a person with a medical license or certification, such as a physician, physician's assistant, nurse practitioner, ophthalmologist or low vision specialist, who is employed by DOCCS;
- F. Effective Date – the date of the last to occur of (a) final approval by the Court of Certification of the Class; (b) final approval by the Court of this Agreement; and (c) entry of a Final Judgment and Order of Dismissal With Prejudice, substantially in the form attached hereto as Exhibit C, dismissing the Action;

- G.** Full Complement of Assistive Programs – computer programs that enlarge or magnify text and provide text-to-speech or screen-reading abilities for use by LB/SVI prisoners. The text-to-speech or screen-reading programs should include, at least: voice read-back (audio reading of printed text), labels on the applications’ graphics to ease identification of features, light bar tracking to improve access to graphics/menus/buttons/icons, audible signals to alert the user to capitalization and format changes when proof reading, and a read-to-end feature for reading non-stop from the beginning to the end of a document. The screen magnification program should include at least: screen magnification for all features on a screen and customizable enhancements to on-screen colors, pointers and cursors. To the extent that technology changes significantly during the duration of this Agreement such that the foregoing features are no longer useful or necessary to further the purpose of this provision and Agreement generally, the Parties will negotiate in good faith to replace this definition with a definition that will, to the greatest extent possible, serve the original purpose of this provision and Agreement. Nothing in this provision shall require DOCCS to update technology if existing programs are functional and have the enumerated features in this provision;
- H.** General Population – housing area at Sullivan or Wende where prisoners, including LB/SVI prisoners, are normally housed when they are not in Protective Custody, SHU, a medical or mental health housing unit, or the Special Needs Unit;
- I.** Housing Block – General Population area(s) in Sullivan or Wende where LB/SVI prisoners are housed;
- J.** Instructor for the Blind – the person who is primarily responsible for running the Resource Room and assisting LB/SVI prisoners. This position is also referred to as “Teacher”, “Teacher for the Blind” or “Instructor/Teacher for the Blind”;
- K.** Large Print – print equal to or larger than 18 point font;
- L.** LB/SVI – meeting the criteria of Legally Blind and/or Severely Visually Impaired;
- M.** Legally Blind (“LB”) – (a) having visual acuity of 20/200 or less in the better eye, measured with best correction, or (b) having a visual field of no greater than 20 in the better eye;
- N.** Plaintiffs’ Counsel – counsel representing Named Plaintiffs, consisting of: The Legal Aid Society, specifically John Boston, Milton Zelermeyer and Veronica Vela, and Paul, Weiss, Rifkind, Wharton & Garrison LLP,

specifically Daniel J. Kramer and Eric Alan Stone and those Paul, Weiss attorneys working at their direction;

- O.** Operational – any concern that affects the day-to-day management and administration of a correctional facility other than security or cost concerns, including, but not limited to, staff scheduling or other labor-related issues, supplies, or the logistics of prisoner movement or programs.
- P.** Outside Medical Specialist – a person with a medical license or certification, such as a physician, physician’s assistant, nurse practitioner, ophthalmologist, or low vision specialist, who is not employed by DOCCS;
- Q.** Pit Area – the location within Sullivan’s SDP Housing Block designated for watching television;
- R.** Prisoner – a person in the custody of DOCCS. Where used without a capital “p,” the term shall have the same meaning as it does when capitalized;
- S.** Protective Custody – shall have the meaning as defined under DOCCS Directive 4948;
- T.** Reasonable Accommodation(s) – this term shall have the meaning ascribed to it in the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.*, any regulations thereunder and any applicable case law;
- U.** Released Claims – claims released *infra* in Section VII;
- V.** Resource Room – the room in Sullivan or Wende where staff assists LB/SVI prisoners and where computer equipment and assistive devices are located;
- W.** SDP – Sensorially Disabled Program;
- X.** SDP/SDU-designated facility – those facilities referred to under Directive 2612 III(C) as able to accommodate LB/SVI prisoners;
- Y.** SDU – Sensorially Disabled Unit;
- Z.** Severely Visually Impaired (“SVI”) – (a) having visual acuity of 20/70 or less in the better eye, measured with best correction, or (b) having a visual field of no greater than 40 in the better eye;
- AA.** Special Housing Unit (“SHU”) – the housing block where prisoners are temporarily housed, apart from the General Population, after a serious

disciplinary violation at Sullivan or Wende, currently known as the Special Housing Unit;

- BB.** Sullivan – the Sullivan Correctional Facility;
- CC.** Teacher for the Blind – *see* Instructor for the Blind;
- DD.** Triggering Events – (1) a diagnosis as LB/SVI or a significant change in an LB/SVI prisoner's visual function as determined by either a DOCCS Medical Professional or an Outside Medical Specialist; (2) arrival at a new DOCCS SDP/SDU-designated facility following transfer; (3) a change in the prisoner's activities, such as a placement in a new vocational, educational or recreational activity, that might require additional accommodation; and (4) any other change in a prisoner's circumstance that DOCCS determines in good faith would make reassessment of Reasonable Accommodations appropriate; and
- EE.** Wende – the Wende Correctional Facility.

II. Substantive Terms of the Parties' Private Settlement Agreement

A. Assessment of LB/SVI Prisoners

1. Upon intake, an initial assessment will be made of each LB/SVI prisoner's academic, program, vocational and other accommodation needs.
2. Upon the occurrence of a Triggering Event, DOCCS shall reassess each LB/SVI prisoner's Reasonable Accommodations. These assessments shall include a review of the prisoner's medical records, including any records from Outside Medical Specialists, and a conversation with the prisoner regarding his vision impairment and the adequacy of any accommodations he is then receiving.
3. At a minimum, DOCCS shall assess each LB/SVI prisoner's accommodations every two years.

B. Corrective Lenses and Glasses

1. Replacement of Corrective Lenses and Glasses
 - (a) DOCCS shall replace corrective lenses or glasses for LB/SVI prisoners whenever damaged or lost.
 - (b) The replacement corrective lenses or glasses shall be provided to the LB/SVI prisoner at no cost unless DOCCS

can demonstrate that the prisoner negligently or intentionally broke or lost the lenses or glasses, in which case the LB/SVI prisoner will have to pay for the replacement lenses or glasses. Such demonstration may include repeated breaking or losing of such glasses or lenses.

2. Effectiveness of Correction

DOCCS shall not deny an LB/SVI prisoner Reasonable Accommodations appropriate to his uncorrected vision if a DOCCS Medical Professional determines in good faith that he is not able to effectively use the corrective lenses or glasses that DOCCS has provided.

3. Downgrading of Visual Disability Classification

- (a) DOCCS shall not change an LB/SVI prisoner's visual disability classification from LB to SVI or from LB/SVI to not visually impaired until the prisoner has been physically offered appropriate corrective lenses or glasses and he has either accepted or rejected those lenses.
- (b) If a formerly LB/SVI prisoner, whose visual disability classification has been downgraded to a classification of not visually impaired but who needs corrective lenses or glasses to see properly, loses, breaks, or is otherwise not in possession of his corrective lenses or glasses for more than seven (7) days, DOCCS shall grant a request for Reasonable Accommodations for his vision impairment despite the fact that he has been re-classified as not visually impaired, unless DOCCS can demonstrate that the prisoner negligently or intentionally broke the lenses or glasses. Such demonstration may include repeated breaking or losing of such glasses or lenses.

C. Individual Reasonable Accommodations

1. Requests for Reasonable Accommodations

When considering an individual request for Reasonable Accommodation, DOCCS will consider similar requests that have been made by other prisoners at the facility within the past six (6) months.

2. Provision of Reasonable Accommodations

- (a) DOCCS shall provide each LB/SVI prisoner with any Reasonable Accommodations recommended for that prisoner by either a DOCCS Medical Professional or an Outside Medical Specialist unless DOCCS can provide a security, substantial Operational or substantial cost reason for not providing that prisoner with that accommodation, in which case DOCCS shall explain its reason in writing to the prisoner. If the Reasonable Accommodation is denied for a security reason, no further explanation beyond this statement need be given.
- (b) DOCCS shall provide an LB/SVI prisoner with only those Reasonable Accommodations: (i) that the LB/SVI prisoner has requested and for which he has been approved; (ii) to which the LB/SVI prisoner has agreed; or (iii) despite the prisoner's not having requested or agreed, that have been deemed necessary by DOCCS for that prison. This provision shall not be construed so as to entitle a prisoner to a different accommodation that serves the same accommodation purpose as the accommodation offered and rejected.
- (c) LB/SVI prisoners housed at Wende may request individual permission to wear an identification vest instead of using a guidance cane. Upon such a request, DOCCS shall consult with Wende Medical Staff and if the prisoner does not need a guidance cane, the prisoner will instead be permitted to wear an identification vest.
- (d) For LB/SVI prisoners who require sunglasses to protect their vision, DOCCS shall provide LB/SVI prisoners with one pair of sunglasses, free of cost. DOCCS shall consider the LB/SVI prisoner's specific condition/disability and consult medical staff before providing the LB/SVI prisoner with a particular pair of sunglasses. Where appropriate, DOCCS shall provide sunglasses that do not impede the prisoner's peripheral vision.
- (e) In the event that DOCCS limits the amount of blank writing paper that a prisoner may keep in his cell at any given time in SHU or Protective Custody, DOCCS shall permit LB/SVI prisoners to keep twice the amount of paper that non-visually impaired prisoners are permitted to keep, subject to security or fire safety concerns. Nothing

precludes LB/SVI prisoners from requesting more bold-lined paper than the amount to which they are entitled under this term. If such a request is made, DOCCS will consult with the Instructor for the Blind or other person appropriately trained in assisting LB/SVI prisoners to determine if additional paper is an appropriate Reasonable Accommodation for that LB/SVI prisoner's individual need.

- (f) In the event that DOCCS limits the amount of blank writing paper that a prisoner may keep in his cell, if an LB/SVI prisoner needs additional sheets of paper to do legal work, DOCCS shall evaluate such request under Directive 4483, which allows prisoners' requests for an unusual quantity of paper to be granted if the prisoner can verify the scope of his current legal research or writing need. DOCCS shall take into consideration an LB/SVI prisoner's need for additional sheets of paper beyond those normally utilized by a non-visually impaired prisoner in granting a request under Directive 4483 for additional blank paper for legal work.
- (g) Upon request, DOCCS shall provide LB/SVI prisoners with bold-lined paper in lieu of blank writing paper wherever a person who is not visually impaired would be entitled to free blank writing paper. DOCCS shall not subject bold-lined paper to any additional restrictions beyond those placed on blank writing paper for non-visually impaired prisoners.
- (h) DOCCS shall provide LB/SVI prisoners in SHU or Protective Custody with at least two 20/20 pens for in-cell use and shall replace them as needed. LB/SVI prisoners housed in other locations may obtain, by request or purchase, 20/20 pens for in-cell use.
- (i) LB/SVI prisoners who are determined to be photosensitive by a DOCCS Medical Professional or Outside Medical Specialist may request to have the ceiling/overhead lights turned off in their cells or to use a low wattage lamp provided by DOCCS in lieu of the overhead lights in their cell, except during the count, meals and cell removal. Such requests will be evaluated on a case-by-case basis.
- (j) The person in charge of providing Reasonable Accommodations at each facility, or if unavailable, another

staff person, shall make rounds at least one time per week to see LB/SVI prisoners who are not housed in General Population, including those in SHU, Protective Custody, and MHU, and provide those prisoners with Reasonable Accommodations as appropriate.

3. Removal of Reasonable Accommodations

- (a) When an LB/SVI prisoner receives a correction for his vision impairment that results in a change of his classification from LB to SVI or from LB/SVI to not visually impaired, DOCCS shall not discontinue that prisoner's access to a previously approved accommodation without first consulting with a medical professional.
- (b) If DOCCS determines that a removal of a previously approved accommodation is justified, as provided for above, DOCCS will provide the reasons for that decision, in writing, to the prisoner. If the Reasonable Accommodation is removed for a security reason, no further explanation beyond this statement need be given.
- (c) Nothing in this Agreement shall be construed to prevent DOCCS from removing an accommodation if staff determines that allowing the prisoner to possess the accommodation presents a security risk to himself or others.

D. Technology

1. Instruction

- (a) DOCCS shall provide, upon request, instruction on the proper use of all available assistive devices in the Resource Room for LB/SVI prisoners, including the various uses of assistive software and other computer technology.
- (b) DOCCS shall inform prisoners about the instruction available to them on the proper use of the available devices. A copy of Attachment D to Directive 2612, which lists standard available accommodations, shall be posted in Large Print on the Housing Block with the words "Instruction Available on Use of All Accommodations" printed on the page.

2. Resource Room

- (a) DOCCS shall provide, upon request, removable glare screens for use by LB/SVI prisoners on computers.
- (b) DOCCS shall maintain at least three computers at each facility Resource Room with the Full Complement of Assistive Programs, subject to the provisions on Repairing/Updating Technology (*infra* II.D.9).
- (c) DOCCS shall allow prisoners to use headphones with the SARA scanner, or the equivalent device, and provide headphones for that purpose.

3. General Library

- (a) DOCCS shall provide, upon request, removable glare screens for use by LB/SVI prisoners on computers.
- (b) In each of Sullivan and Wende, DOCCS shall add at least one computer to the general library with the Full Complement of Assistive Programs, subject to the provisions on Repairing/Updating Technology (*infra* II.D.9).
- (c) In each of Sullivan and Wende, DOCCS shall maintain at least one computer in the general library with the Full Complement of Assistive Programs, subject to the provisions on Repairing/Updating Technology (*infra* II.D.9).
- (d) LB/SVI prisoners shall have priority access to the computer with the Full Complement of Assistive Programs in the General Library.

4. Educational Classrooms

- (a) If computers are available in the educational classrooms, DOCCS shall provide, upon request, removable glare screens for use by LB/SVI prisoners on computers.
- (b) DOCCS will provide enlarged text materials to LB/SVI prisoners who are approved for Large Print as a Reasonable Accommodation. DOCCS will not unreasonably deny requests by an LB/SVI prisoner participating in an academic program administered by DOCCS for Reasonable Accommodations to use in that academic program,

including, but not limited to, SARA scanners and electronic magnifiers (*e.g.*, CCTVs or portable CCTVs).

5. Housing Block

- (a) DOCCS shall make available on the Housing Block an electronic magnification device, upon request.
- (b) DOCCS shall provide on the Housing Blocks, one or more typewriters, which LB/SVI prisoners will be permitted to “check out” for use in their cells, on loan. DOCCS shall maintain a sufficient supply of typewriters so that LB/SVI prisoners at each facility can access the typewriters as needed.
- (c) DOCCS shall provide “Daisy Grande 10 pitch” or equivalent wheels compatible with the typewriters available on loan that allow LB/SVI prisoners to type characters large enough to qualify for Free Matter for the Blind with the U.S. Postal Service, as that term is defined by the U.S. Postal Service on the Effective Date of this Agreement.
- (d) LB/SVI prisoners shall be permitted to buy from an outside vendor a typewriter capable of typing 14 point font or larger, if such typewriters are available and DOCCS determines they are not a security risk.

6. Law Library

- (a) DOCCS shall provide, upon request, removable glare screens for use by LB/SVI prisoners on computers.
- (b) At Sullivan, DOCCS shall increase to two the number of computers in the law library, which will be accessible during regular law library hours (including on weekends), with the Full Complement of Assistive Programs.
- (c) LB/SVI prisoners shall have priority access to the computer with the Full Complement of Assistive Programs in the law library.

7. Protective Custody

- (a) LB/SVI prisoners shall have access to bold-lined paper, a magnifier and 20/20 pens, while in Protective Custody.

- (b) LB/SVI prisoners in Protective Custody shall have access to other Reasonable Accommodations that they would have in General Population, subject to security, cost or Operational concerns.

8. SHU

- (a) LB/SVI prisoners shall have access to bold-lined paper, a magnifier and 20/20 pens while in SHU.
- (b) LB/SVI prisoners in SHU shall have access to other Reasonable Accommodations that they would have in General Population, subject to security, cost, or Operational concerns.
- (c) DOCCS shall maintain at least one electronic magnification device at each of Sullivan and Wende, and shall permit LB/SVI prisoners housed in SHU to use the device as needed, on loan, to read written documents where other accommodations will not suffice.

9. Repairing/Updating Technology

- (a) If a computer with assistive technology or any other accommodating assistive device requires repair, DOCCS shall repair the device in-house within seven (7) consecutive days or send the device out for repair within twenty-one (21) consecutive days from the date DOCCS discovers, or is notified of, the need for repair.
- (b) If a computer in the Resource Room or General Library or law library with the Full Complement of Assistive Programs is out-of-service for more than two months, DOCCS will replace it.

E. Resource Room

1. Hours

- (a) DOCCS shall use its best efforts to ensure availability of the Resource Room during the two scheduled modules on each weekday.
- (b) DOCCS shall use best efforts to make the Resource Room available during the evening module two evenings per week or will use best efforts to provide access in other locations in the facility during the evening module two

evenings per week to a computer with the Full Complement of Assistive Programs, a CCTV and a SARA scanner.

- (c) During its regular hours, the Resource Room shall be made available on a priority basis for accommodating sensorially-disabled prisoners.
- (d) DOCCS shall ensure that the Resource Room remains open 12 months per year, subject to the provisions on extended closings *infra* II.E.3. If the person normally in charge of opening and staffing the Resource Room is not available, DOCCS shall use best efforts to make available an officer or other staff person to open the Resource Room during the scheduled weekday modules. Prisoners may request that a trained SDP staff person assists with the devices. DOCCS cannot guarantee that such request will be accommodated immediately.

2. Trained Staff

- (a) DOCCS shall have on staff two DOCCS employees who are trained to operate the LB/SVI assistive devices in the Resource Room.
- (b) DOCCS will make best efforts to have available an employee trained in the operation of the LB/SVI equipment in the Resource Room during regularly scheduled weekday hours.

3. Extended Closings

Subject to emergencies, DOCCS shall use best efforts never to close the Resource Room for more than six consecutive days, but if the Resource Room is unavailable for more than ten consecutive days, DOCCS will make available during regular Resource Room hours a SARA scanner, a computer with the Full Complement of Assistive Programs and a CCTV.

F. Legal Research

1. Clerks

DOCCS shall make law clerks available to assist LB/SVI prisoners with legal research in the law library during all regular law library hours.

2. Recorded Legal Materials

- (a) DOCCS shall permit LB/SVI prisoners in SHU to request that legal materials be recorded onto tape cassettes or other appropriate medium compatible with audio players in the prisoners' possession, if there is no other way to provide that prisoner with the materials. It will be presumed that an LB/SVI prisoner who was unable to read with a magnification device or a CCTV in General Population will be given such recorded legal materials in SHU upon request.
- (b) DOCCS shall permit LB/SVI prisoners in General Population, Protective Custody and SHU to check out legal materials that have been recorded onto cassette tapes or other medium compatible with the audio players in prisoners' possession.

G. Large Print

1. Forms

- (a) DOCCS shall make forms used by LB/SVI prisoners available in Large Print, including at a minimum:
 - i. Reasonable Accommodation Request forms (Attachment B to Directive 2612);
 - ii. Disbursement or Refund Request forms;
 - iii. State Shop forms;
 - iv. Call-Out Slips, including for Sick Call, dentist, library and Resource Room requests;
 - v. Grievance forms; and
 - vi. Commissary sheets.
- (b) DOCCS shall provide Large Print or enlarged copies of the following materials for LB/SVI prisoners:
 - i. Dispositions of disciplinary actions; and
 - ii. Grievance responses, including Superintendent, Inmate Grievance Resolution Committee and Central Office Review Committee responses/decisions.

2. Notices

- (a) DOCCS shall make the following posted notices in the Housing Block or Resource Room available in Large Print:
 - i. Call-Out Notices;
 - ii. Sign-up forms for courses and programs;
 - iii. Notification of changes in prison policies, to the extent such notification would otherwise be posted; and
 - iv. Notice of Rights under the Americans with Disabilities Act (Attachment A to Directive 2612).
 - v. A list in Large Print of all trainings and courses available to LB/SVI prisoners. This list must be posted in the Housing Block.
- (b) DOCCS shall post in the Housing Block or Resource Room enlarged copies of class action notices if the original notice does not exceed 30 pages.

H. Recreation

1. Games

DOCCS shall provide or maintain a minimum of six (6) different types of games designed for use by the visually impaired, including talking chess sets and playing cards, as a standard accommodation for both Resource Room and in-cell use, on loan, free of charge. DOCCS shall provide multiple copies of some of the games available in the facility to ensure sufficient access to games for LB/SVI prisoners, subject to cost and Operational limitations.

2. Audio Books

- (a) DOCCS shall provide audio books on cassette tape and compatible cassette tape players as a standard accommodation for both Resource Room and in-cell use, on loan, free of charge.
- (b) DOCCS shall allow digital audio books and compatible players to be used by LB/SVI prisoners under supervision in the Resource Room and such other areas as DOCCS

allows. DOCCS shall permit any LB/SVI prisoner to request a digital audio player from the Library of Congress according to the guidelines and procedure of the Library of Congress. DOCCS shall keep the digital audio players in the Resource Room, or any such other area as DOCCS allows, and shall permit the LB/SVI prisoner who requested the player from the Library of Congress to use the player under supervision. DOCCS shall assist LB/SVI prisoners in obtaining the audio players as necessary, and will use best efforts to keep on site any necessary materials for requesting a digital audio player or audio books from the Library of Congress.

- (c) Nothing in II.H.2 precludes an LB/SVI prisoner from requesting individual permission to use a digital audio player in his cell. Such requests will be evaluated on a case-by-case basis.
- (d) During the duration of this Agreement, DOCCS shall use best efforts to obtain or develop an appropriate digital player for audio books which does not implicate DOCCS' security concerns regarding unsupervised in-cell use, in a manner consistent with the current provision of cassette tapes and tape players.
- (e) DOCCS shall use best efforts to maintain the existing supply of books on tape and cassette players. DOCCS shall increase the number of books in Large Print available at the General Library at each of Sullivan and Wende until a digital audio player is approved for in-cell use.

3. Televisions

- (a) DOCCS shall provide or maintain a television of 40 inches or larger for use in the Pit Area at Sullivan, with LB/SVI prisoners given priority seating.
- (b) DOCCS shall continue to make available for purchase by LB/SVI prisoners 10- and 13-inch televisions for in-cell use at Wende. LB/SVI prisoners may request TV magnifiers for use at Wende.

4. Exercise/Gym

(a) Weights

DOCCS shall provide an indoor space to use free weights from October to April.

(b) Sheltered Recreation

At Sullivan, DOCCS shall provide recreation time for LB/SVI prisoners, separate from the non-visually impaired prisoners, one time per week. Sheltered recreation time may occur during regularly scheduled Resource Room hours and, if staff is not available for Resource Room supervision, may require the Resource Room to close during that regularly scheduled module. If sheltered recreation is held during a regularly scheduled Resource Room module, closing the Resource Room during that module shall not constitute a violation of II.E.1.

I. In-Cell Property

1. DOCCS shall permit LB/SVI prisoners to keep an additional draft-property-bag's worth of legal materials in their cell above the number of bags that non-visually impaired prisoners are permitted to keep.
2. DOCCS shall permit LB/SVI prisoners to request permission to keep an additional draft-property-bag's worth of legal materials (above the number mentioned in II.I.1). This request shall be granted if the LB/SVI prisoner can demonstrate that the legal materials relate to an ongoing legal proceeding, subject to space and fire safety concerns.

J. Prisoner Programming/Training

1. Generally

DOCCS shall permit LB/SVI prisoners to participate in all programs that are made available to non-visually impaired prisoners, provided: (i) the Deputy Superintendent of Programs deems the LB/SVI prisoner physically capable of participating in the program, taking into consideration the opinion of the prisoner's Outside Medical Specialist or a DOCCS Medical Professional; (ii) the LB/SVI prisoner's participation in the program does not create a risk to the safety, health, and well-being of that prisoner,

other prisoner participants, and/or DOCCS staff; and (iii) the prisoner is otherwise qualified to participate in the program.

2. Educational Programs

- (a) DOCCS shall provide Braille instruction to any LB/SVI prisoner upon request, providing that instruction either through an SDP/SDU staff member qualified to teach Braille or through the correspondence course with The Hadley School for the Blind or other similar course.
- (b) DOCCS shall provide LB/SVI prisoners with assistance in applying for extended time on state-sponsored educational exams, for example by obtaining necessary application forms and providing copies of medical records or other supporting documents necessary to the prisoner's application, upon request.

3. Vocational Programs

DOCCS shall use best efforts to provide access to at least one vocational program for LB/SVI prisoners if they can safely and effectively participate in it.

K. Staff Education

DOCCS shall educate all SDP staff, including correction officers assigned to the SDP, about issues necessary to allow staff to be of assistance to LB/SVI prisoners, such as education on the different types of vision impairments, best practices for assisting LB/SVI prisoners and the basic information on how to operate any assistive devices available on the Housing Block.

L. Transfers/Trips Outside of Facility

1. Transfer of Property

- (a) Upon transfer to another SDP/SDU-designated facility, an LB/SVI prisoner will be permitted to bring with him one additional draft property bag of legal materials above the number of draft property bags that non-visually-impaired prisoners are permitted.
- (b) Upon request, upon transfer to another facility, an LB/SVI prisoner will be permitted to bring with him an additional draft property bag of legal materials (above the number mentioned in II.L.1(a)), if he can demonstrate that the legal

materials relate to an ongoing legal proceeding, subject to space limitations in the transferring vehicle and the receiving facility, and fire safety concerns in the receiving facility.

- (c) DOCCS shall check with Resource Room personnel to ascertain whether the LB/SVI transferee has any portable computer discs from the Resource Room containing his data or other legal materials belonging to the prisoner that are housed in the Resource Room and shall arrange for such materials to be transferred with the prisoner.

2. Mode/Manner of Transportation

- (a) DOCCS shall use best efforts to transfer an LB/SVI prisoner directly from the transferring SDP/SDU-designated facility to the receiving SDP/SDU-designated facility, except as provided in II.L.2(b).
- (b) In-Transit Facilities
 - i. LB/SVI prisoners shall not be held overnight at an in-transit facility during transfer unless necessary.
 - ii. DOCCS shall use its best efforts to ensure that any stay at an in-transit facility is not longer than two calendar days.
 - iii. DOCCS shall use best efforts to not place LB/SVI prisoners in a cell with another prisoner at in-transit facilities.
- (c) Staff at Sullivan and Wende shall not shackle LB/SVI prisoners to each other or to other prisoners during transfer.

3. Accommodations Upon Arrival at Receiving Facility

- (a) DOCCS shall notify the SDP/SDU staff at the receiving facility of the LB/SVI prisoner's upcoming arrival and LB/SVI classification prior to the transfer.
- (b) Upon arrival at the receiving facility, DOCCS shall place LB/SVI prisoners in their own cells.
- (c) After an LB/SVI prisoner's arrival at any receiving SDP/SDU-designated facility, the facility's Instructor/Teacher for the Blind, or the person in charge of

providing accommodations for vision impairments, shall meet with the LB/SVI prisoner as quickly as practicable, but in any event not more than four (4) days after the prisoner's arrival at the receiving facility.

(d) DOCCS shall provide an LB/SVI prisoner with previously-approved or similar Reasonable Accommodations as those that the LB/SVI prisoner was afforded at the sending facility within seven (7) days of arrival at the receiving facility.

i. In providing a similar Reasonable Accommodation, consideration shall be given to the fact that one accommodation for a particular activity may not be sufficient or appropriate in all circumstances for an individual. For example, a magnifying glass may be appropriate for an individual for spot reading, but that individual may require an electronic magnifying device or SARA scanner for reading longer passages. Previous accommodations shall not be replaced with an inappropriate or insufficient substitute.

M. Disciplinary Hearings

1. Prior to disciplinary hearings, DOCCS shall provide sufficient Reasonable Accommodations to allow LB/SVI prisoners to read any written document that they would otherwise be entitled to review prior to the hearing. Similarly, during disciplinary hearings, DOCCS shall provide sufficient Reasonable Accommodations to allow LB/SVI prisoners to read any written documents that they would otherwise be entitled or required to read during the hearing. Accommodation in this respect includes, where appropriate, providing Large Print copies of typed documents, enlarged copies of handwritten documents or documents otherwise incapable of being reproduced in Large Print, and access to electronic magnification devices. If an LB/SVI prisoner is unable to read written print even with assistive technology and the hearing officer or other person present in the disciplinary hearing will instead read a relevant document aloud, the LB/SVI prisoner shall be entitled, upon request, to have such document read aloud at least two times.
2. DOCCS shall provide the Reasonable Accommodations in II.M.1 for all disciplinary hearings related to Tier II and III tickets, including any appeals relating to those tickets.

N. Physical/Emotional Health and Safety

1. Support Group

DOCCS shall allow a voluntary support/discussion group for LB/SVI prisoners, subject to all generally-applicable DOCCS rules, regulations and directives regarding such prisoner groups.

2. Medication Markers

Upon request, DOCCS shall provide identifying markers to help LB/SVI prisoners identify and distinguish between self-administered medications.

3. Extractions

DOCCS shall check with medical staff before using Oleoresin Capsicum ("O.C.") spray or other gas for extractions ("gassing out") or for any other reason in cells occupied by LB/SVI prisoners to determine if it could be harmful to their vision due to the use of hard contact lenses or other reason.

4. Housing

In order to facilitate accommodations for LB/SVI prisoners, DOCCS shall use best efforts to house all LB/SVI prisoners in the same housing unit at the respective facilities, unless they are placed in other housing for protective, disciplinary or other institutional reasons, for example physical or mental health or prisoner programs.

5. Showers

Upon request, DOCCS shall permit LB/SVI prisoners an additional five (5) minutes in the shower in addition to the regular allotment of minutes provided to non-disabled prisoners.

O. Registration with the New York State Commission

DOCCS shall assist each LB/SVI prisoner with the application to New York State Commission for the Blind and Visually Handicapped prior to that prisoner's release from DOCCS custody.

III. Duration of the Parties' Private Settlement Agreement

A. Commencement as of the Effective Date

The terms of this Agreement set forth in Section II will become effective only upon the Effective Date.

B. Termination

1. This Agreement shall terminate two years after the Effective Date of this Agreement. This term is subject to a potential two-year extension pursuant to paragraph V.C.2.

2. DOCCS shall implement the following terms in the facility policies of both Sullivan and Wende:

II.B. (Corrective Lenses and Glasses)

II.C.2. (e), (f), (g) (Provision of Reasonable Accommodations)

II.C.3 (Removal of Reasonable Accommodations)

II.D.1, 3, 4, 5, 7, 8, 9 (Technology – Instruction, General Library, Educational Classrooms, Housing Block, Law Library, Protective Custody, SHU, Repairing/Updating Technology)

II.G. (Large Print)

II.M. (Disciplinary Hearings)

3. In a subsequent action to enforce substantive terms of this agreement in which III.B.2 is not directly at issue, no negative inference shall be drawn from the absence of any term of this agreement in the list of terms in III.B.2.

IV. Class Certification

- A. Solely for the purposes of the settlement set forth in this Agreement and for no other purpose, the Defendants stipulate and agree to (a) certification of the Action as a class pursuant to Rules 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure on behalf of the Class; (b) appointment of Named Plaintiffs, other than Anthony Medina, as class representatives; and (c) appointment of Plaintiffs' Counsel as counsel for the Class pursuant to Rule 23(g) of the Federal Rules of Civil Procedure.

- B. The Parties have agreed upon the following documents to be submitted to the Court for its consideration: Preliminary Approval Order (Exhibit A); Notice of Settlement of Class Action (Exhibit B); and Final Judgment and Order of Dismissal With Prejudice (Exhibit C).

C. Named Plaintiffs and Defendants will jointly move for entry of the Preliminary Approval Order, which will certify this Action to proceed as a class action solely for the purposes of the settlement set forth in this Agreement and for no other purpose. Specifically, promptly upon execution of this Agreement, Named Plaintiffs and Defendants shall apply to the Court for entry of the Preliminary Approval Order, substantially in the form attached hereto as Exhibit A:

1. certifying the Action as a class action on behalf of members of the Class pursuant to Rules 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure solely for the purposes of the settlement set forth in this Agreement and for no other purpose;
2. appointing Plaintiffs' Counsel as counsel for the Class pursuant to Rule 23(g) of the Federal Rules of Civil Procedure;
3. preliminarily approving the settlement set forth in this Agreement;
4. setting a hearing, upon notice to the members of the Class, to consider whether the settlement set forth in this Agreement should be approved as fair, reasonable and adequate to the members of the Class;
5. setting the method of giving notice of the settlement set forth in this Agreement to the members of the Class;
6. approving the form of notice substantially in the form attached hereto as Exhibit B;
7. setting a period of time during which members of the Class may serve written objections to the settlement set forth in this Agreement; and
8. enjoining prosecution of any action or claims that are subject to the release and dismissal as Released Claims contemplated by this Agreement.

D. At the fairness hearing, the Parties shall jointly request entry of a Stipulation and Order of Dismissal with Prejudice, substantially in the form attached hereto as Exhibit C, the entry of which is a condition of this Agreement:

1. approving finally the settlement set forth in this Agreement as fair, reasonable and adequate, within the meaning of Rule 23 of the Federal Rules of Civil Procedure, and directing its consummation pursuant to its terms;

2. confirming certification of the Class and appointment of representatives of the Class and Plaintiffs' Counsel, and finding that each element for certification of the Class is met;
3. directing that the Action be dismissed on the merits and with prejudice, without costs except as provided in this Agreement, and releasing the Released Claims; and
4. containing such other and further provisions consistent with the terms of this Agreement to which the Parties hereto expressly consent in writing.

E. The Parties agree that if the Court determines that this Agreement is not fair, reasonable and adequate, or otherwise does not meet any of the requirements of Rule 23 of the Federal Rules of Civil Procedure, this Agreement shall be null and void, and the Parties will confer in good faith to decide whether mutually agreeable modifications can be made to this Agreement to cure the Court's concern(s).

V. Enforcement of the Parties' Private Settlement Agreement

A. Private Settlement Agreement

This is a "Private Settlement Agreement" within the meaning of 18 U.S.C. § 3626, and shall not be deemed to grant "prospective relief" within the meaning of Section 3626. Nor shall this Private Settlement Agreement be deemed to constitute a consent decree or an adjudication on the merits. Neither this Private Settlement Agreement, nor any policies or procedures established thereunder, shall define any state or federal constitutional right, be deemed an admission, or a waiver of sovereign immunity or Eleventh Amendment protections. Nothing in this Private Settlement Agreement shall be deemed to require or permit the Defendants to violate the laws of the State of New York or the United States. The Defendants are not aware of any conflict between any of the provisions of this Private Settlement Agreement and any such law.

B. Compliance and Monitoring

1. Documents

- (a) Defendants shall provide Plaintiffs' Counsel with all grievances, requests for accommodation and related documents filed by Wende or Sullivan LB/SVI prisoners and all responses to said grievances and requests for accommodation, including, but not limited to, responses and determinations made by the Office of DOCCS ADA Coordinator.

- (b) All documents mentioned in Paragraph V.B.1(a) shall be produced twice a year during the duration of this Agreement, which will commence on the Effective Date. The documents shall be produced to Plaintiffs' Counsel within 45 days of June 30 and December 31 of each calendar year of the Agreement. Nothing precludes Plaintiffs' Counsel from asking for documents more frequently.

2. Tours

- (a) Plaintiffs' Counsel shall be permitted to tour each of Sullivan and Wende two times during the term of this Agreement. Plaintiffs' Counsel will be permitted to tour the following locations on such tours:
 - i. All SDU/SDP housing areas used by LB/SVI prisoners, including all common areas (dayrooms, the Pit Area, etc.);
 - ii. The Resource Room;
 - iii. The law library and any other areas used for legal research;
 - iv. All recreation areas, both indoor and outdoor, used by LB/SVI prisoners;
 - v. Classrooms and other rooms used by education classes, such as the computer lab;
 - vi. Areas where LB/SVI prisoners exit the facilities for trips or transfers and any paths/hallways leading to these exits;
 - vii. SHU;
 - viii. Protective Custody housing areas, where different from SHU;
 - ix. All rooms or locations where disciplinary hearings are held;
 - x. All visit rooms; and
 - xi. Other areas where LB/SVI prisoners attend programs, services or activities, to be selected by

Plaintiffs' Counsel based on their observations at the facility.

- (b) Each tour will take place at a time that is mutually agreeable to the Parties and shall be subject to any reasonable time limitations and security restrictions imposed by the correctional facilities.
 - (c) During any such tours, Plaintiffs' Counsel may be accompanied by a visual-disability expert of their choosing. In addition, Plaintiffs' Counsel may be accompanied by Defendants' counsel, DOCCS' counsel, and other DOCCS staff as DOCCS deems appropriate. Plaintiffs' Counsel will not be permitted to interview any members of the Class or any other prisoners during any tours, but may arrange to visit them in the counsel visiting area through DOCCS' usual procedures.
3. Within 45 days of June 30 and December 31 of each calendar year following the Effective Date, for the duration of this Agreement, Defendants, via counsel, shall provide Plaintiffs' Counsel with a summary of: (i) the number of working computers with assistive programs and the assistive devices available in each location in each facility, (ii) the specific devices and numbers of devices available to LB/SVI prisoners for in-cell use, (iii) the hours the Resource Room, law library, and General Library are open, and (iv) any changes to assistive device technology, including improvements on, replacement of or removal of devices from the facilities.

C. Dispute Resolution

1. In the event of any reported non-compliance by Defendants with a material provision of this Private Settlement Agreement, counsel for the Parties shall meet and confer in an effort to resolve the reported non-compliance within 30 days of receipt by DOCCS and its counsel indicated below of formal written notice of such claimed non-compliance. This notice shall be mailed Certified Mail, Return Receipt to:

Nancy Heywood
Deputy Counsel
NYS Department of Corrections and Community
Supervision
1220 Washington Ave., Bldg. #2
Albany, NY 12226-2050

-- and --

Frederick Wen
Assistant Attorney General
120 Broadway, 24th Floor
New York, NY 10271

2. In the event of a claimed pattern of pervasive non-compliance with a material provision of this Private Settlement Agreement and a failure to achieve resolution of the issue within 60 days of the meet and confer, either side may seek mediation by United States Magistrate Judge James L. Cott. If such mediation fails to achieve resolution, plaintiffs may ask the Judge to recommend a two-year extension of the duration of this Private Settlement Agreement. Should the Court recommend that this Agreement be extended for two additional years, the Parties agree to be bound by that recommendation; provided that there may be no more than a single two-year extension during the term of this Private Settlement Agreement, as so extended.
3. Members of the Class may also elect to proceed in State court and seek specific performance of the terms of this Agreement, provided, however, that such members of the Class shall have first sought to resolve any compliance issue through the meet and confer provisions set forth in this section, and such meet and confer shall have failed to achieve resolution. Members of the Class are not required to participate in mediation before proceeding in State court.

D. Scope of Enforcement

This Private Settlement Agreement is binding upon the members of the Class, each Class member's successors and agents, and upon the Defendants, and the Defendants' successors in office and agents. Only the members of the Class and the Defendants shall have standing to seek enforcement of any of the provisions of this Private Settlement Agreement, which does not confer, and is not intended to confer, any rights upon any other party.

VI. Stipulation Order of Dismissal

The Parties agree that after the Court so orders and enters the Stipulation and Order of Dismissal with Prejudice called for by Section IV, the Court shall have

only the jurisdiction and authority specified in paragraph V.C.2 of this Private Settlement Agreement.

VII. Release of Claims

Named Plaintiffs release and discharge each of the Defendants and any and all current or former employees or agents of New York State, or the New York State Department of Corrections and Community Supervision, in their individual and official capacities, and their heirs, executors, administrators and assigns, and the State of New York and its agencies, including, without limitation, the New York State Department of Corrections and Community Supervision, from any and all claims, liabilities and causes of action asserted in this Action, or that relate to or arise out of this Action or any of the incidents alleged in the Complaint.

All members of the Class release and discharge each of the Defendants and any and all current or former employees or agents of New York State, or the New York State Department of Corrections and Community Supervision, in their individual and official capacities, and their heirs, executors, administrators and assigns, and the State of New York and its agencies, including, without limitation, the New York State Department of Corrections and Community Supervision, from any and all claims for injunctive relief related to the accommodation of their visual impairment and/or legal blindness at Sullivan and Wende for all dates up to and including the Effective Date of this Agreement.

VIII. Attorneys' Fees

- A. Defendants shall pay to Plaintiffs' Counsel the sum of \$290,000, in full satisfaction of any and all claims in this lawsuit for attorneys' fees, costs and disbursements, which costs and disbursements have been substantiated by back-up documentation satisfactory to Defendants' counsel. In the event that payment of the amounts referred to in this Section VIII is not made within one hundred and twenty (120) days after the receipt by Defendants' counsel of a copy of this fully executed Agreement, approved by the Court (as provided in Section IV(C)-(D)), interest shall accrue on the outstanding balance at the rate set forth in 28 U.S.C. § 1961, beginning on the one hundred and twenty-first (121st) day after receipt by Defendants' counsel of a copy of this fully executed and so approved Agreement. It is understood and agreed by the Parties that any taxes, or interest or penalties on taxes, on the payments specified in this paragraph shall be the sole and complete responsibility of Plaintiffs' Counsel, and that Named Plaintiffs and Plaintiffs' Counsel shall have no claim, right or cause of action against the State of New York, DOCCS, or any of their subdivisions, units or related entities on account of such taxes, interest or penalties.

- B. Named Plaintiffs agree to waive all rights or claims to attorneys' fees, court costs or disbursements, provided, however, that nothing in this Agreement shall preclude Named Plaintiffs from seeking attorneys' fees and costs incurred in connection with an action or proceeding to address non-compliance with or to enforce the terms of this Agreement.
- C. Plaintiffs' Counsel agree to waive all rights or claims to attorneys' fees, court costs or disbursements other than as set forth in Paragraph VIII.A above, provided, however, that nothing in this Agreement shall preclude Plaintiffs' Counsel from seeking attorneys' fees and costs incurred in connection with an action or proceeding to address non-compliance with or to enforce the terms of this Agreement.
- D. Payment of each of the amounts referred to in this Section VIII is subject to the approval of all appropriate New York State officials in accordance with the provisions of Section 17 of the New York State Public Officers Law ("Section 17"). The Parties agree that if the amounts referred to in Section VIII are not approved in accordance with Section 17, this Agreement shall be null and void, and the Parties will confer in good faith to decide whether mutually agreeable modifications can be made to this Agreement to obtain approval under Section 17.
- E. While Named Plaintiffs and Plaintiffs' Counsel reserve their right to seek fees and costs incurred in connection with an action or proceeding to address non-compliance with or to enforce the terms of this Agreement, nothing in this Agreement shall be read to imply that Named Plaintiffs or Plaintiffs' Counsel are contractually or otherwise entitled to recover costs or fees in such an action or proceeding.

IX. Miscellaneous

A. Correctional Facilities Governed by the Agreement

Unless otherwise stated, the terms of this Agreement set forth in Section II apply to both Sullivan and Wende and only Sullivan and Wende.

B. Entire Agreement

This Agreement and appended Exhibits embody the entire agreement of the Parties in this matter and no oral agreement entered into at any time nor any written agreement entered into prior to the execution of this Agreement regarding the subject matter of the instant proceedings shall bind the Parties hereto or vary the terms and conditions contained herein.

C. Interaction of the Agreement with Directive 2612

Except as expressly stated otherwise in the Agreement, compliance with DOCCS Directive 2612 does not in itself constitute compliance with the terms of this Agreement.

D. Precedential Effect

This Agreement and any Order entered thereon shall have no precedential value or effect whatsoever and shall not be admissible in any other action or proceeding as evidence or for any other purpose, except in an action or proceeding to enforce this Agreement.

E. Partial Invalidity

1. If any provision of this Agreement is declared invalid, illegal or unenforceable in any respect, the remaining provisions shall remain in full force and effect, unaffected and unimpaired.
2. The Parties shall replace any invalid, illegal or unenforceable part with provision(s) that are valid, legal and enforceable to achieve, to the greatest extent possible, the intended effect of the invalid, illegal or unenforceable provision(s).

F. Governing law

All terms of this Agreement shall be governed by and interpreted according to the substantive laws of the State of New York without regard to the choice of law or conflict of laws principles in any jurisdiction.

G. Consent to Jurisdiction

1. The Parties hereby irrevocably submit to the exclusive jurisdiction of the Supreme Court of the State of New York for any suit, action, proceeding or dispute arising out of or relating to this Agreement or the applicability of this Agreement, except as set forth in Section V(C)(2), which allows mediation to be performed by U.S. Magistrate Judge James L. Cott.
2. Each Party agrees not to challenge, on jurisdiction grounds or *forum non conveniens* grounds, an assertion of jurisdiction by another Party in the Supreme Court of the State of New York, and agrees not to seek transfer of any action filed by any Party in such Court, with respect to any suit, action, proceeding or dispute arising out of or relating to this Agreement or the applicability of this Agreement.

Dated: New York, New York
February 28, 2014

PAUL, WEISS, RIFKIND, WHARTON &
GARRISON

By: 

Daniel J. Kramer
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Attorneys for Plaintiffs

-and-

Dated: New York, New York
February 28, 2014

By: 

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Dated: New York, New York
February 28, 2014

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Annucci, Lucy Buther, Patrick J.
Griffin, Darrow Cunningham,
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Karen Crowley*

-and-

Dated: Fallsburg, New York
February 12, 2014

By: Kelvin Curran
Kelvin Curran, DIN 93-B-2003

Subscribed and sworn to or affirmed before
me this 12th day of February
in the year 20 14

Milton Zelman

Notary Public (affix stamp or seal)

Milton Zelman
Notary Public, State Of New York
No. 02ZE6009175
Commission Expires ~~August 5, 2014~~
August 5, 2014

-and-

Dated: Falksburg, New York
2-11-14, 2014

By: Warren Davis
Warren Davis, DIN 08-A-4535

Subscribed and sworn to or affirmed before
me this 4th day of February
in the year 20 14

Milton Zelermeyer

Notary Public (affix stamp or seal)

Milton Zelermeyer
Notary Public, State Of New York
No. 02ZE6009175
Commission Expires ~~June 22~~, _____
August 5, 2014

-and-

Dated: Alden, New York
2/25, 2014

By: Kevin Jones
Kevin Jones, DIN 06-A-2567

Subscribed and sworn to or affirmed before
me this 25th day of February
in the year 20 14

Milton Zelermeyer

Notary Public (affix stamp or seal)

Milton Zelermeyer
Notary Public, State Of New York
No. 02ZE6009175
Commission Expires ~~June 22~~, _____
August 5, 2014

-and-

Dated: Fallsburg, New York
2-4-14, 2014

By: Michael Smith
Michael Smith, DIN 00-A-4365

Subscribed and sworn to or affirmed before
me this 4th day of February
in the year 20 14

Milton Zeldermyer
Notary Public (affix stamp or seal)

Milton Zeldermyer
Notary Public, State Of New York
No. 02ZE6009175
Commission Expires ~~June 22,~~

August 5, 2014

Exhibit 2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ANTHONY MEDINA, KELVIN CURRAN,
WARREN DAVIS, JAMES COLANTUONO,
KEVIN JONES, PETER LOPEZ, CHRISTOPHER
MORRISHAW AND MICHAEL SMITH,
*individually and on behalf of others similarly
situated,*

Plaintiffs,

-against-

THE NEW YORK STATE DEPARTMENT OF
CORRECTIONS AND COMMUNITY SERVICES;
BRIAN FISCHER, COMMISSIONER OF THE NEW
YORK STATE DEPARTMENT OF CORRECTIONS
AND COMMUNITY SERVICES; LUCY BUTHER,
ADA COORDINATOR OF THE NEW YORK
STATE DEPARTMENT OF CORRECTIONS AND
COMMUNITY SERVICES; PATRICK J. GRIFFIN,
SUPERINTENDENT OF SULLIVAN
CORRECTIONAL FACILITY; DARROW
CUNNINGHAM, DEPUTY SUPERINTENDENT OF
PROGRAMS FOR SULLIVAN CORRECTIONAL
FACILITY; CHRISTOPHER KARSON,
ASSISTANT DEPUTY SUPERINTENDENT OF
PROGRAMS FOR SULLIVAN CORRECTIONAL
FACILITY; DALE ARTUS, SUPERINTENDENT OF
WENDE CORRECTIONAL FACILITY; AND
KAREN CROWLEY, DEPUTY
SUPERINTENDENT OF PROGRAMS FOR
WENDE CORRECTIONAL FACILITY,

Defendants.

11 Civ. 176 (LAP) (JLC)

ECF Case

FINAL JUDGMENT AND [PROPOSED] ORDER OF DISMISSAL WITH PREJUDICE

This matter came before the Court for a Fairness Hearing on April 21, 2014, for approval of the settlement set forth in the Private Settlement Agreement dated February 28, 2014. Due and adequate notice having been given to the Class as required by Federal Rule of Civil

Procedure 23(e)(1) and the Proposed Order Certifying Settlement Class, Appointing Class Representatives and Class Counsel, Preliminarily Approving the Parties' Private Settlement Agreement, and Providing for Notice to Class Members, filed February 28, 2014, and the Court having considered all papers filed, and good cause having been shown, IT IS HEREBY ORDERED:

1. **Defined Terms:** For purposes of this Final Judgment and Order of Dismissal with Prejudice, the Court holds that any capitalized terms used herein and not defined should be construed consistently with the definitions set forth in the Private Settlement Agreement.

2. **Approval of Settlement:** Pursuant to Federal Rule of Civil Procedure 23, the Court approves the settlement set forth in the Private Settlement Agreement and finds that the Private Settlement Agreement is, in all respects, fair, reasonable and adequate.

3. **Class Certification and Appointment of Class Representatives and Counsel:** The Court confirms its prior preliminary certification and certifies the Class of all Legally Blind and Severely Visually Impaired prisoners who are incarcerated at Sullivan or Wende or who become incarcerated at Sullivan or Wende during the duration of the Private Settlement Agreement. The Court confirms its prior preliminary appointment of and appoints Kelvin Curran, Warren Davis, Kevin Jones, Peter Lopez and Michael Smith as class representatives and Paul, Weiss, Rifkind, Wharton & Garrison LLP and The Legal Aid Society, Prisoners' Rights Project, as counsel for the Class. The Court hereby finds that each element for final certification of the Class is met.

4. **Dismissal with Prejudice:** The above-captioned Action is dismissed with prejudice. The Parties are to bear their own costs, except as otherwise provided in the Private Settlement Agreement.

5. **Release of Claims:** Upon the Effective Date of the Private Settlement Agreement, Named Plaintiffs and each of the members of the Class shall be deemed to have released all Released Claims as defined and described in the Private Settlement Agreement.

SO ORDERED.

Dated

Hon. James L. Cott
United States Magistrate Judge

Exhibit 3

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ANTHONY MEDINA, KELVIN CURRAN, JAMES COLANTUONO, WARREN DAVIS, KEVIN JONES, PETER LOPEZ, CHRISTOPHER MORRISHAW AND MICHAEL SMITH,
individually and on behalf of others similarly situated,

Plaintiffs,

-against-

THE NEW YORK STATE DEPARTMENT OF CORRECTIONS AND COMMUNITY SERVICES; BRIAN FISCHER, COMMISSIONER OF THE NEW YORK STATE DEPARTMENT OF CORRECTIONS AND COMMUNITY SERVICES; LUCY BUTHER, ADA COORDINATOR OF THE NEW YORK STATE DEPARTMENT OF CORRECTIONS AND COMMUNITY SERVICES; PATRICK J. GRIFFIN, SUPERINTENDENT OF SULLIVAN CORRECTIONAL FACILITY; DARROW CUNNINGHAM, DEPUTY SUPERINTENDENT OF PROGRAMS FOR SULLIVAN CORRECTIONAL FACILITY; CHRISTOPHER KARSON, ASSISTANT DEPUTY SUPERINTENDENT OF PROGRAMS FOR SULLIVAN CORRECTIONAL FACILITY; DALE ARTUS, SUPERINTENDENT OF WENDE CORRECTIONAL FACILITY; AND KAREN CROWLEY, DEPUTY SUPERINTENDENT OF PROGRAMS FOR WENDE CORRECTIONAL FACILITY,

Defendants.

11 Civ. 176 (LAP) (JLC)

ECF Case

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

**To: All Legally Blind and Severely Visually Impaired prisoners incarcerated at
Sullivan Correctional Facility or Wende Correctional Facility**

Notice of Settlement: Please be advised that the Anthony Medina, Kelvin Curran, Warren Davis, Kevin Jones, Peter Lopez and Michael Smith ("Named Plaintiffs"), on behalf of themselves and the Class (as defined below), have reached a proposed settlement with the Defendants in the above-captioned action (the "Action").

The proposed settlement aims to confer substantial benefits upon the members of the Class. If approved, the settlement will resolve all claims in the Action.

PLEASE READ THIS NOTICE CAREFULLY. THIS NOTICE EXPLAINS IMPORTANT RIGHTS YOU MAY HAVE AS A LEGALLY BLIND OR VISUALLY IMPAIRED PRISONER RELATING TO THE PROPOSED SETTLEMENT OF THE *MEDINA* ACTION, INCLUDING INFORMATION ON HOW TO RAISE OBJECTIONS OR QUESTIONS THAT YOU MAY HAVE ABOUT THE PROPOSED SETTLEMENT.

THIS NOTICE CONTAINS A SUMMARY OF THE PRIVATE SETTLEMENT AGREEMENT. THIS NOTICE DOES NOT LIST OR EVEN SUMMARIZE EVERYTHING THAT IS IN THE FULL PRIVATE SETTLEMENT AGREEMENT AND YOU CANNOT DEPEND ON THIS NOTICE ALONE TO TELL YOU WHAT IS IN THE FULL PRIVATE SETTLEMENT AGREEMENT. THIS NOTICE IS NOT A CONTRACT BETWEEN THE CLASS AND DOCCS. YOU MUST LOOK TO THE PRIVATE SETTLEMENT AGREEMENT ATTACHED TO THIS NOTICE FOR THE FULL DETAILS OF THE PROPOSED PRIVATE SETTLEMENT AGREEMENT BETWEEN DOCCS AND THE CLASS.

1. Description of the Class and Action:

On January 4, 2011, a group of Legally Blind (“LB”) and Severely Visually Impaired (“SVI”) prisoners started the Action *Medina et al. v. Fischer et al.* in the United States District Court for the Southern District of New York. Named Plaintiffs brought the case on behalf of themselves and all LB/SVI prisoners who are incarcerated at Sullivan Correctional Facility (“Sullivan”) or Wende Correctional Facility (“Wende”) or who later became or will become incarcerated at Sullivan or Wende during the time that the proposed Private Settlement Agreement is in effect. As a group, these LB/SVI prisoners constitute “the Class.” In the Action, the Named Plaintiffs allege that Defendants, including the Department of Correction and Community Supervision (“DOCCS”), did not reasonably accommodate visual disabilities and that, as a result, LB/SVI prisoners did not have full access to the programs, services, and activities offered at Sullivan and Wende for which they were otherwise qualified. Named Plaintiffs and Defendants agreed to settle the Action subject to the Court’s determination that the settlement is fair, reasonable and adequate and in the best interests of the members of the Class. In settling the Action, the Defendants do not admit any liability or wrongdoing, or that Defendants are not already providing to LB/SVI prisoners the services required by the terms of the proposed settlement.

2. Proposed Settlement:

Attached to this Notice is a copy of the proposed settlement agreement (the “Private Settlement Agreement”). The Private Settlement Agreement contains all of the actions that DOCCS has agreed to take if the settlement is approved by the Court. The terms are intended to improve the Class members’ access to programs, services and activities, through the reasonable accommodation of their visual disabilities. Unless otherwise stated, the terms apply to both Wende and Sullivan. A selection of the most

significant terms are summarized below. The summarized terms may be subject to certain conditions or exceptions because of, among other things, DOCCS' security and operational concerns, which are described in more detail in the Private Settlement Agreement. In addition, some terms may require that an LB/SVI prisoner has to request a specific accommodation and in some instances DOCCS has the right to deny an accommodation even after a request, but only after an individual determination has been made. The complete set of terms including these and other conditions is contained in the Private Settlement Agreement that is attached to this Notice. The following list is a SUMMARY of everything that is in the Private Settlement Agreement. It does not list or even summarize everything that is in the full Private Settlement Agreement and you cannot depend on this summary alone to tell you what is in the full Private Settlement Agreement. This summary is not a contract between the Class and DOCCS. You must look to the Private Settlement Agreement attached to this Notice for the full details of the proposed Private Settlement Agreement between DOCCS and the Class.

Some of the more significant parts of the Private Settlement Agreement are:

- **Assessment.** The Private Settlement Agreement specifies circumstances in which DOCCS must assess or reassess each LB/SVI prisoner's reasonable accommodations for his visual disability, including any time the LB/SVI prisoner is transferred, and requires DOCCS to make these assessments at least every two years. Every time there is an assessment, there must be conversation with and input from the prisoner about whether he is finding his accommodations to be adequate and appropriate.
- **Request for and Provision of Reasonable Accommodations.** With certain exceptions, DOCCS shall provide LB/SVI prisoners with the accommodations that a medical professional has recommended for him. DOCCS will consider whether other prisoners have made similar requests within the last six months before approving or denying a request for accommodation; in other words DOCCS will consider whether a request is a request that will accommodate a group instead of only considering whether it is a reasonable accommodation for one individual alone.
- **Corrective Lenses and Glasses.** DOCCS shall replace corrective lenses or glasses whenever damaged or lost, at no charge to the prisoner unless the lenses or glasses are negligently or intentionally broken or lost.
- **Sunglasses.** DOCCS shall provide LB/SVI prisoners who require sunglasses with one free pair of sunglasses and will consult medical staff before providing a particular pair to make sure that the sunglasses provided are appropriate for the prisoner. For example, sunglasses that block someone's peripheral vision will not be provided to someone who depends primarily on his peripheral vision.
- **Writing Paper.** If an LB/SVI prisoner needs bold-lined paper, DOCCS shall provide LB/SVI prisoners with bold-lined paper instead of blank writing paper

wherever a person who is not visually impaired would be able to get free blank writing paper. LB/SVI prisoners are entitled to twice the amount of bold-lined paper as other prisoners are entitled to blank paper in SHU/protective custody, subject to certain exceptions. DOCCS shall evaluate requests for additional bold-lined paper above this amount to do legal work, under Directive 4483.

- **Weekly Rounds.** A person who can provide reasonable accommodations shall make rounds at least one time per week to see LB/SVI prisoners who are not housed in general population.
- **Instruction on Technology.** DOCCS shall inform prisoners of and provide instruction on the proper use of all available assistive devices (such as the SARA scanner, CCTV device, computers, etc.).
- **Removable Glare Screens.** DOCCS shall provide removable glare screens for LB/SVI prisoners to use on computers in the resource room, general and law libraries and educational classrooms.
- **Typewriters.** DOCCS shall provide typewriters that LB/SVI prisoners can use in their cells. These typewriters will be provided on loan, and free of charge. DOCCS shall provide typewriter wheels that type characters large enough to qualify for Free Matter for the Blind with the U.S. Postal Service.
- **Resource Room.**
 - Technology. DOCCS shall maintain at least three computers in the resource room, all of which will have assistive programs.
 - Hours. DOCCS shall ensure that the resource room remains open 12 months per year. DOCCS shall use its best efforts to (i) ensure that the resource room is open and available during the two scheduled modules for each weekday, and (ii) in addition to the daytime modules, will make the resource room or the assistive devices from the resource room available during an evening module two evenings per week.
 - Staff. Two employees shall be trained to operate all LB/SVI assistive devices. DOCCS will use best efforts to have one trained employee in the resource room during regularly scheduled daytime weekday hours.
 - Extended Closings. DOCCS will use best efforts never to close the resource room for more than 6 consecutive days. If the resource room is unavailable for more than 10 days, for instance if there is an emergency or other unusual circumstance that makes the room unavailable, DOCCS will make the assistive devices from the

resource room available for LB/SVI prisoners to use in another location.

- **General Library.** DOCCS shall add at least one computer with assistive programs to the general library. LB/SVI prisoners shall have priority access to the computer with assistive programs in the general library.
- **Educational Classrooms.** For LB/SVI prisoners enrolled in educational programs, DOCCS will provide enlarged text materials where available and reasonable accommodations that the LBI/SVI prisoner needs to read documents in the classroom, including, but not limited to, SARA scanners and CCTVs.
- **Housing Block.** DOCCS shall make an electronic magnification device available for use on the housing block.
- **Law Library.** At Sullivan, DOCCS shall increase to two the number of computers with assistive programs in the law library. These computers will be accessible during regular law library hours (including on weekends). LB/SVI prisoners shall have priority access to the computers with assistive programs. And all computers and devices, including the existing ones, will be subject to new rules about keeping them in good working order.
- **Repairing/Updating Technology.** If an accommodating assistive device requires repair, DOCCS shall repair the device in-house within 7 days or send it out for repair within 21 days. If a computer in the resource room or general library or law library with assistive programs is out-of-service for more than two months, DOCCS must replace it.
- **SHU and Protective Custody.** LB/SVI prisoners shall have access to bold-lined paper, a magnifier, 20/20 pens and other reasonable accommodations that they would have had in general population, subject to certain restrictions. DOCCS shall maintain at least one portable electronic magnification device for LB/SVI prisoners housed in SHU to use as needed, subject to certain restrictions.
- **Legal Research.** Law clerks will be available to assist LB/SVI prisoners with legal research in the law library. An LB/SVI prisoner in SHU may request that court cases or other legal materials be recorded onto an audiotape if the LB/SVI prisoner is unable to use other accommodations to read legal materials in SHU.
- **Large/Enlarged Print.**
 - **Forms.** The following forms will be available in 18 point font: Reasonable Accommodation Request forms, Disbursement or Refund Request forms, State Shop forms, Call-Out Slips,

Grievance Forms and Commissary Sheets. The following forms will be provided in 18 point font or will be enlarged: Dispositions (all decisions/determinations) of disciplinary actions and grievance responses, including all Superintendent, IGRC and CORC responses/decisions.

- Notices. The following posted notices will be available in 18 point font in the housing block or resource room: Call-out Notices, Sign-up forms for courses and programs, notification of changes in prison policies (if that notification would otherwise be posted in regular print), the notice of rights under the Americans with Disabilities Act, and a list of all trainings and courses available to LB/SVI prisoners. DOCCS shall also post enlarged copies of certain class action notices (including this Notice) in the LB/SVI housing block or resource room.
- **Games.** A minimum of 6 different types of games designed for use by the visually impaired (such as large playing cards) and multiple copies of some of those games will be available for use by LB/SVI prisoners on loan, free of charge, for use in both the resource room and in cells.
- **Audio Books.**
 - DOCCS shall provide audio books on cassette tape and compatible cassette tape players as a standard accommodation for both resource room and in-cell use, on loan, and free of charge.
 - DOCCS shall allow digital audio books and compatible players to be used under supervision in the resource room and certain other areas. Any LB/SVI prisoner may request a digital audio player and DOCCS will assist LB/SVI prisoners in obtaining the player.
 - DOCCS will use best efforts to obtain or develop a digital player for audio books that prisoners will be allowed to check out and use in their cell.
 - DOCCS shall increase the number of large print books (in 18 point font or larger) available in the general library.
- **Television.** The pit area at Sullivan will have a 40 inch or larger television, with LB/SVI prisoners given priority seating. At Wende, prisoners will be allowed to purchase 10- and 13-inch televisions to use in their cell. LB/SVI prisoners can request TV magnifiers to use with their personal televisions.
- **Exercise/Gym.** DOCCS shall provide an indoor space to use free weights from October to April. At Sullivan, DOCCS shall provide recreation time for

LB/SVI prisoners, separate from the non-visually impaired prisoners, one time per week.

- **Property.** DOCCS shall permit LB/SVI prisoners to keep in their cell and take on transfer one to two more draft-property-bags worth of legal materials than the number of bags that non-visually impaired prisoners are permitted to keep, subject to certain exceptions.
- **Prisoner Programming/Training.** DOCCS shall provide Braille instruction to any LB/SVI prisoner who requests it. DOCCS shall provide LB/SVI prisoners with help applying for extra time on state-coordinated exams, like the GED/TASC exam. DOCCS shall use best efforts to provide access to at least one vocational program for LB/SVI prisoners.
- **Staff Education.** DOCCS shall educate all SDP staff, including the correction officers working in the housing block, about visual disabilities and related issues necessary to allow staff to be of assistance to LB/SVI prisoners.
- **Transfers/Trips Outside of Facility.**
 - Mode/Manner of Transportation. DOCCS will try to limit overnight stays during transfers for LB/SVI prisoners. Where unavoidable, DOCCS will use best efforts to limit these overnight stays to two consecutive days and will put LB/SVI prisoners in their own cell (not double-bunked) at in-transit facilities. Staff at Sullivan and Wende will not shackle LB/SVI prisoners to other prisoners during transfer.
 - Accommodations Upon Arrival at Receiving Facility. Upon arrival, LB/SVI prisoners shall be placed in their own cells. The person in charge of providing accommodations for vision impairments at the new facility shall meet LB/SVI prisoners within 4 days of their arrival. Within 7 days, DOCCS shall provide the LB/SVI prisoner with all previously-approved or similar reasonable accommodations as those that he had at his previous facility.
- **Disciplinary Hearings.** Prior to and during disciplinary hearings related to Tier II and III tickets, including any appeals relating to those tickets, DOCCS shall provide sufficient reasonable accommodations to allow LB/SVI prisoners to read certain documents. If a prisoner is still unable to read a document and the document will instead be read aloud, the prisoner is entitled to have such document read aloud at least two times.
- **Support Group.** DOCCS shall allow a voluntary support/discussion group for LB/SVI prisoners.

- **Medication Markers.** DOCCS shall provide identifying markers to help prisoners identify and distinguish between their self-administered medications.
- **Extractions.** DOCCS shall check with medical staff before using Oleoresin Capsicum spray (also known as “OC spray”) or other gas when performing extractions in LB/SVI prisoners’ cells (also known as “gassing out” a prisoner).
- **Housing.** At each facility, DOCCS shall use best efforts to house all LB/SVI prisoners together in the same housing unit.
- **Shower.** DOCCS shall allow LB/SVI prisoners an extra 5 minutes in the shower, in addition to the time that non-disabled prisoners receive to shower.
- **Registration with the New York State Commission.** DOCCS shall assist LB/SVI prisoners with the application to New York State Commission for the Blind and Visually Handicapped prior to that prisoner’s release from DOCCS custody.
- **Duration of the Private Settlement Agreement.** The Private Settlement Agreement is in effect for at least two years. The duration of the Private Settlement Agreement may get extended for two more years (for a total of four years) if it is determined that Defendants are not adequately complying with the Private Settlement Agreement. In addition, DOCCS will incorporate several terms of the Private Settlement Agreement into the official facility policies of Sullivan and Wende.
- **Compliance and Monitoring.**
 - Documents. DOCCS shall provide Plaintiffs’ counsel with copies of all grievances, requests for accommodations and related documents filed by Wende or Sullivan LB/SVI prisoners and copies of all the responses to these grievances and requests (for example, Superintendent, IRC, or CORC responses). These documents shall be provided twice a year while the Private Settlement Agreement is in effect. In certain circumstances, Plaintiffs’ counsel can ask for documents more often than twice a year.
 - Tours. Plaintiffs’ counsel will tour each of Sullivan and Wende twice while the Private Settlement Agreement is in effect.
 - Additional information. Twice a year for each year that the Private Settlement Agreement is in effect, DOCCS shall provide Plaintiffs’ counsel with information about (i) the number of working computers and other assistive devices in each facility, (ii) the

devices available to LB/SVI prisoners for in-cell use in each facility, (iii) the hours during which the resource room, law library and general library are open in each facility, and (iv) any changes to assistive device technology that have taken place in each facility since the last report.

- **Attorneys' Fees.** Defendants shall pay Plaintiffs' counsel \$290,000 in consideration of their work as counsel in this case. There will be no other recovery of fees, by Plaintiffs' counsel or any Named Plaintiff or LB/SVI prisoner, in connection with this settlement.
- **Release of Claims.** If the Court approves the Private Settlement Agreement, the Private Settlement Agreement will be binding on the members of the Class (LB/SVI prisoners at Sullivan and Wende). This means that all members of the Class will release and discharge each of the Defendants, and certain other current and future DOCCS employees, from any and all claims for injunctive relief related to the accommodation of their visual impairment and/or legal blindness at Sullivan and Wende for all dates up to and including the date the Private Settlement Agreement goes into force. This means that if you intend to bring a lawsuit under the Americans with Disabilities Act or the Rehabilitation Act about DOCCS denying you reasonable accommodations for your visual problem at Sullivan or Wende at any time in the past, up until this Private Settlement Agreement becomes effective (likely late April or early May of 2014), you will likely not be able to bring that lawsuit. Additionally, if you filed any lawsuits like the one described in the previous sentence that are ongoing, this Private Settlement Agreement will likely have the effect of dismissing your claim.

3. Reasons for Settlement:

Named Plaintiffs and Plaintiffs' counsel's principal reason for agreeing to the proposed settlement is that they believe that the settlement will bring significant relief to the Class and help increase the Class members' access to programs, services and activities at Wende and Sullivan. In determining that the proposed settlement is in the best interests of the Class, Named Plaintiffs and Plaintiffs' counsel have taken into account the risk of an unfavorable outcome in litigation (such as losing at trial or having the case dismissed before trial) and the considerable time - many months or even years - a trial and possible appeals would take. Even if the Named Plaintiffs were to win their case at trial, it would only be after the long delay that comes with scheduling and preparing for a trial, and might result in less relief to the Named Plaintiffs and the Class than is provided by the Private Settlement Agreement. Entering into a settlement agreement now will bring the substantial benefits for the Class contained in the proposed settlement without these risks or delays.

4. Opportunity for Objections or Comments:

The Private Settlement Agreement is not final yet. The Private Settlement Agreement does not become final until after a time period during which the members of the Class can express their views on the proposed settlement and tell the Court about

objections that they might have to the proposed settlement. The Private Settlement Agreement will likely become effective in late April or early May of 2014, if the Court approves the Private Settlement Agreement after the Fairness Hearing (described below) and there are no other delays.

If you are a member of the Class, you have the right to object to the proposed settlement or specific parts of it and to submit any documents that support your objection. If you have no objections to the proposed settlement, you do not have to do anything. Whether or not you object or comment, you will be notified, as a potential member of the Class, if and when the Private Settlement Agreement is finalized. Any objections you want to bring to the Court's attention have to be submitted to the Court in writing. If you are unable to write or have great difficulties writing, you may request inmate legal assistance. All objections have to be *postmarked* by the United States Postal Service by April 8, 2014. Any objections received after that date will not be considered. To make sure that your objection(s) will be considered, please make sure that anything you send to the Court has the following information:

1. The following case name and number: Medina et al. v. Fischer et al., 11 Civ. 176 (S.D.N.Y.) (LAP) (JLC).
2. Your full name and DIN number.
3. Your objection(s) with the reason(s) for each of your objections.
4. Your signature.

You should mail your written objection(s) to:

The Honorable James L. Cott
United States District Court
Southern District of New York
500 Pearl Street
New York, New York 10007-1312

5. Fairness Hearing:

After the period of time during which members of the Class can make their objections, the Court has to make a decision whether to approve the Private Settlement Agreement. As part of making this decision, the Judge assigned to this case will hold a "Fairness Hearing" during which he will decide whether the settlement is fair, reasonable and adequate. He will take into consideration any objections that were postmarked on or before April 8, 2014. The Honorable Judge James L. Cott will hold this hearing on April 21, 2014 at 10 a.m. at the United States District Court for the Southern District of New York.

If the Court approves the settlement, the Court will enter an order dismissing the Action and the Private Settlement Agreement will go into force. This means that after the Court approves the Private Settlement Agreement, the members of the Class will officially be part of the class action settlement, and have a right to all of the terms as set

out in the Private Settlement Agreement. The Defendants will be bound by the Private Settlement Agreement and must provide the things that the Private Settlement Agreement says they shall provide. In addition, as discussed earlier in this document, from the time the Private Settlement Agreement is approved and in effect, all members of the Class will have released all of the Defendants and other persons described in the Private Settlement Agreement from liability from all claims for injunctive relief related to the accommodation of their visual impairment and/or legal blindness at Sullivan and Wende for all dates up to and including the date the Private Settlement Agreement goes into force.

6. Questions:

If you are a member of the Class and have any questions about the proposed settlement or issues related to that, please contact one of the Plaintiffs' counsel:

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP

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New York, New York 10019-6064

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THE LEGAL AID SOCIETY
PRISONER'S RIGHTS PROJECT

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