

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

RICHARD WEST and JOSEPH BRUYETTE,
individual and on behalf of a class of similarly
situated persons;

Plaintiffs,

v.

MICHAEL SMITH, in his official capacity
only, as Vermont Secretary of Human
Services; JANE DOE, Vermont Deputy
Secretary of Human Services; JAMES
BAKER, Vermont Department of Corrections
Interim Commissioner; JOHN DOE, Vermont
Department of Corrections Health Services
Director, in their official capacities; and
VITALCORE HEALTH STRATEGIES, LLC,

Defendants.

Case No. 2:19-cv-00081

**ORDER GRANTING JOINT
MOTION FOR PRELIMINARY
APPROVAL OF SETTLEMENT
AGREEMENT AND APPROVAL OF
CLASS NOTICE**

Upon consideration of the parties' joint motion pursuant to Federal Rule of Civil Procedure 23(e) for preliminary approval of settlement of this action (Joint Motion for Preliminary Approval, ECF No. 114) and in accordance with the parties' settlement agreement (Agreement, ECF No. 114-3) the Court ORDERS:

1. Based on the record before it, the Court preliminarily finds, pursuant to Federal Rule of Civil Procedure 23(e), that the Agreement attached as Exhibit 1 (Agreement, ECF No. 114-3) to the Declaration of Kevin Costello, (Costello Decl., ECF No. 114-2) is likely to be fair, reasonable, and adequate. The Court finds that:
 - a. The Agreement resulted from extensive arm's-length negotiations;

- b. There is no evidence at this stage of the proceedings of fraud, collusion, or overreaching, or that the rights of absent Class Members were disregarded; and
- c. Counsel has sufficient experience in similar litigation to propose the Agreement.

The Agreement codifies, among other things, the January 1, 2021 VitalCore Hepatitis C Virus Treatment Program policy for a period of two years from January 1, 2021. The Agreement provides substantial relief to the class members: i.e., sentenced class members will be entitled to receive direct-acting antivirals to treat Hepatitis C without regard to their disease severity, subject only to narrow and medically reasonable exceptions; “especially compromised” inmates with Hepatitis C will be referred immediately to a medical provider for assessment and care, regardless of the exceptions; Defendants will be report screening and treatment data until January 1, 2023; and court jurisdiction will be maintained through February 1, 2023 for enforcement purposes. The Court’s preliminary approval is subject to change pending the outcome of the final settlement approval hearing (Fairness Hearing) established herein.

- 2. The Court finds that the proposed class notice, attached as Exhibit 3 (Class Notice, ECF No. 114-5) to the Declaration of Kevin Costello (Costello Decl., ECF No. 114-2), meets the requirements of Federal Rule of Civil Procedure 23, due process, and applicable law. The proposed notice fairly and adequately describes the terms of the Agreement so that it can be understood by the average class member, gives notice of the time and place of the Fairness Hearing, and describe how a class member may comment on, object to, or support the Agreement. The Court ORDERS that the blanks in the

- proposed notices shall be filled in prior to mailing to reflect the dates and deadlines set forth in this Order.
3. The Court finds that the methods of notice described in § 1.3 of Exhibit 1 (Agreement, ECF No. 114-3) to the Declaration of Kevin Costello, (Costello Decl., ECF No. 114-2) will provide notice in a reasonable manner to all class members who would be bound by the proposed settlement agreement. The Court ORDERS that the parties undertake the steps as described in § 1.3 of Exhibit 1 (Agreement, ECF No. 114-3) to the Declaration of Kevin Costello, (Costello Decl., ECF No. 114-2) to provide notice of the proposed settlement agreement to class members.
 4. A Fairness Hearing to consider whether the proposed Agreement is fair, reasonable, and adequate and should be finally approved is scheduled for October 25, 2021 at 1:30 p.m. at the United States District Court, 11 Elmwood Avenue, Burlington, VT 05401.
 5. A class member who wishes to comment on or object to the Agreement must submit written comments and/or objections to the Court, with copies to counsel, no later than September 10, 2021.
 6. A class member who wishes to appear at the Fairness Hearing must submit written notice to the Court, with copies to counsel, of the intention to appear in person or through counsel. Written notice of intent to appear must be submitted to the Court no later than September 10, 2021.

DATED this 15th day of July, 2021.

/s/ William K. Sessions III
William K. Sessions III
UNITED STATES DISTRICT JUDGE