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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Deshawn Briggs, et al.,
Plaintiffs,
v.
William Montgomery, et al.,
Defendants.

No. CV-18-02684-PHX-EJM

ORDER

Currently pending before the Court is Plaintiffs’ Unopposed Motion for Preliminary Approval of Class Action Settlement With Incorporated Memorandum of Law (Doc. 416). Having fully considered the motion (Doc. 416), the Parties’ arguments and submissions concerning the Motion, and the applicable facts and law, **IT IS HEREBY ORDERED** that Plaintiffs’ Unopposed Motion for Preliminary Approval of Class Action Settlement With Incorporated Memorandum of Law (Doc. 416) is **GRANTED**.

IT IS FURTHER ORDERED as follows:

1. The Court preliminarily approves the Settlement Agreement subject to the Fairness Hearing, the purpose of which will be to decide whether to grant final approval to the settlement reached by Named Plaintiffs Deshawn Briggs, Lucia Soria, and Antonio Pascale (on behalf of the Estate of Mark Pascale) and Defendant Treatment Assessment and Screening Center, Inc. (“TASC”) (the “Settlement”). The Court finds that the Settlement Agreement, the Settlement set forth therein, and all exhibits attached to the Settlement Agreement or to the Unopposed Motion for Preliminary Approval of Class Action Settlement are fair, reasonable, and adequate, entered into in good faith, free of

1 collusion to the detriment of the Settlement Class and within the range of possible judicial
2 approval to warrant sending notice of the Litigation and the proposed Settlement to the
3 Settlement Class and to hold a full Fairness Hearing on the proposed Settlement.

4 2. For settlement purposes only, conditioned upon final certification of the
5 proposed class and upon Final Judgment, the Court preliminarily certifies the following
6 class:

7 All individuals who, at any time between August 23, 2016, and August 15,
8 2020, (1) were enrolled in the marijuana diversion program (POM) operated
9 by Defendants TASC and the Maricopa County Attorney’s Office (MCAO);
10 and (2) at some point in time during their enrollment, satisfied all program
11 requirements for successful completion other than payment of program fees;
12 and (3) after that point in time, were required to remain on the program solely
because they had not paid the required fees, without any determination that
their nonpayment was willful.

13 3. For settlement purposes only, the Court preliminarily appoints Deshawn
14 Briggs, Lucia Soria, and Antonio Pascale (as the duly appointed representative of the Estate
15 of Mark Pascale) as representatives of the Settlement Class.

16 4. For settlement purposes only, the Court preliminarily appoints the following
17 attorneys to act as Class Counsel for the Settlement Class:

18 Ryan Downer
19 Sumayya Saleh
20 Bina Ahmad
21 CIVIL RIGHTS CORPS
22 1601 Connecticut Ave. NW, Suite 800
Washington, D.C. 20009

23 Stanley Young
24 COVINGTON & BURLING LLP
25 3000 El Camino Real, 5 Palo Alto Square, 10th Floor
Palo Alto, California 94306

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1 Timothy Eckstein, 018321
2 OSBORN MALEDON, P.A.
3 2929 N. Central Ave., Suite 2100
4 Phoenix, Arizona 85012-2793

5 5. The Court appoints the Settlement Administrator designated by the Parties,
6 Atticus Administration, LLC, in accordance with the Settlement Agreement. The
7 Settlement Administrator shall be an agent of the Court and subject to the Court's
8 supervision and direction as circumstances may require.

9 6. The form and content of the Class Notice are fair, reasonable, and adequate.
10 Notice shall be disseminated to the Settlement Class in accordance with the Settlement
11 Class Notice Program and the Settlement Agreement and as due process and Rule 23 of
12 the Federal Rules of Civil Procedure require. The Settlement Administrator is ordered to
13 disseminate Class Notice in accordance with the Settlement Class Notice Program.

14 7. The Court finds that the Settlement Class Notice Program is the best
15 practicable notice, and it is reasonably calculated, under the circumstances, to apprise the
16 Settlement Class: (a) of the pendency of the Litigation and the essential terms of the
17 Settlement; (b) of the procedures for allocating the Settlement Fund; (c) of any requested
18 amounts for Attorneys' Fee Awards and/or Service Payments; (d) of the right of members
19 of the Settlement Class to exclude themselves from the Settlement Class and the proposed
20 Settlement; (e) that any judgment, whether favorable or not, will bind all members of the
21 Settlement Class who do not request exclusion; (f) that any member of the Settlement Class
22 who does not request exclusion may object to the Settlement, the request for Attorneys'
23 Fee Awards and/or Service Payments and, if he or she desires, enter an appearance
24 personally or through counsel; (g) of the time and place of the Final Fairness Hearing; and
25 (h) of the name and address of Class Counsel and the Settlement Administrator as well as
26 the procedure for making inquiries. The Court finds that the Settlement Class Notice
27 Program is reasonable and constitutes due, adequate, and sufficient notice to all members
28 of the Settlement Class and meets all requirements of applicable law. The Court further

1 finds that the notices are written in plain English and are readily understandable by
2 members of the Settlement Class.

3 8. The Settlement Administrator shall file proof of compliance with the
4 Settlement Class Notice Program at or before the Fairness Hearing.

5 9. The Court approves the creation of the Settlement Website in accordance
6 with the Settlement Agreement.

7 10. The Court approves the Name and/or Address Update Form provided by the
8 parties. Any member of the Settlement Class who wishes to change their name, address, or
9 form of payment (from check to electronic payment form) must submit the form no later
10 than 90 days after the Notice Date.¹ The form can be submitted electronically on the
11 Settlement Website, or a PDF version can be downloaded from the Settlement Website and
12 mailed to the address contained in the approved notice.

13 11. The “Opt-Out and Objection Deadline,” that is, the final date by which any
14 member of the Settlement Class must file any request for exclusion or objection to this
15 Settlement, shall be 90 days after the Notice Date.

16 12. Any member of the Settlement Class who wishes to opt out or be excluded
17 from the Settlement Class must submit an appropriate, timely request for exclusion. This
18 request for exclusion must be sent to the Settlement Administrator at the address on the
19 Notice and must be postmarked no later than 90 days after the Notice Date. The opt-out
20 request must be personally signed by the member of the Settlement Class requesting
21 exclusion and contain a statement that indicates his or her desire to be excluded from the
22 Settlement Class. A member of the Settlement Class may opt out on an individual basis
23 only. So-called “mass” or “class” opt-outs, whether filed by third parties on behalf of a
24 “mass” or “class” of class members or multiple class members where no personal statement
25 has been signed by each and every individual class member, shall not be allowed. A person

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27 ¹ The “Notice Date” means the first day on which the Settlement Administrator and/or
28 other parties begin disseminating the Class Notice, and shall be no later than thirty (30)
days after the Preliminary Approval Date.

1 who files a timely and valid request to opt out of the Settlement Class shall not: (i) be bound
2 by any orders or judgments entered in this Litigation or relating to the Settlement; (ii) be
3 entitled to relief under, or be affected by, the Settlement Agreement; (iii) gain any rights
4 by virtue of the Settlement Agreement; or (iv) be entitled to object to any aspect of the
5 Settlement.

6 13. Any member of the Settlement Class who does not submit a timely and valid
7 written request for exclusion from the Settlement Class shall be bound by all subsequent
8 proceedings, orders, and judgments in this Litigation, even if he or she has previously
9 initiated or subsequently initiates individual litigation or other proceedings encompassed
10 by the Release.

11 14. Any Settlement Class Member who does not properly and timely submit an
12 opt-out request to the Settlement Administrator and who wishes to object to the fairness,
13 reasonableness, or adequacy of the Settlement Agreement or the proposed Settlement or
14 who wishes to object to any Attorneys' Fee Awards or Plaintiffs' Service Payments must
15 file with the Court and serve on Class Counsel and TASC's Counsel, postmarked no later
16 than 90 days after the Notice Date, a written statement of the objection signed by the
17 Settlement Class Member containing all of the following information:

- 18 a. the name, address, and telephone number of the person objecting or
19 seeking to be heard at the Fairness Hearing;
- 20 b. a statement regarding whether the individual intends to appear at the
21 Fairness Hearing, either in person or through counsel, and, if through
22 counsel, a statement identifying that counsel;
- 23 c. a statement of the specific legal and factual basis for each objection, if
24 there are any, or what the individual wishes to be heard about; and
- 25 d. a description of all evidence the individual may offer at the Fairness
26 Hearing.

27 15. The Parties may also report to the Court regarding their joint or respective
28 recommendation for resolution of each of the Objections.

1 16. Any attorney hired by a Settlement Class Member for the purpose of
2 objecting to the Settlement, the Attorneys' Fee Awards, and/or the Service Payments, and
3 who intends to make an appearance at the Fairness Hearing, shall provide to the Settlement
4 Administrator (who shall forward it to Class Counsel and TASC's Counsel) and file with
5 the Clerk of the Court a notice of intention to appear no later than the Opt-Out and
6 Objection Deadline, or as the Court may otherwise direct.

7 17. Any Settlement Class Member who files and serves a written objection and
8 who intends to make an appearance at the Fairness Hearing shall so state in their objection
9 papers or as the Court may otherwise direct.

10 18. No person shall be heard and no paper or brief submitted by any objector
11 shall be received or considered by the Court unless such person has filed with the Clerk of
12 the Court and timely mailed to Class Counsel and TASC's Counsel as provided above, the
13 written statement of objections as described above, together with copies of any supporting
14 materials, papers or briefs.

15 19. Any Settlement Class Member who does not file a timely written objection
16 to the Settlement or who fails to otherwise comply with the requirements of Section IX of
17 the Settlement Agreement shall be foreclosed from seeking any adjudication or review of
18 the Settlement by appeal or otherwise.

19 20. The Settlement Administrator shall establish a post office box in the name of
20 the Settlement Administrator to be used for receiving requests for exclusion and any other
21 communications relating to this Settlement. Only the Settlement Administrator shall have
22 access to this post office box, except as otherwise provided in the Settlement Agreement.

23 21. The Settlement Administrator shall provide the Opt-Out List to Class
24 Counsel and Defendant TASC's Counsel on a weekly basis. The Settlement Administrator
25 shall also provide a final list to Class Counsel and Defendant TASC's Counsel no later
26 than three days after the Opt-Out and Objection Deadline, and then shall file with the Court
27 the Opt-Out List with an affidavit attesting to the completeness and accuracy thereof no
28 later than five days thereafter or on such other date as the Court may direct.

1 22. The Court preliminarily enjoins all members of the Settlement Class unless
2 and until they have timely excluded themselves from the Settlement Class from: (i) filing,
3 commencing, prosecuting, intervening in or participating as plaintiff, claimant, or class
4 member in any other lawsuit or administrative, regulatory, arbitration, or other proceeding
5 in any jurisdiction based on, relating to, or arising out of the claims and causes of action or
6 the facts and circumstances giving rise to the Litigation and/or the Released Claims; (ii)
7 filing, commencing, participating in, or prosecuting a lawsuit or administrative, regulatory,
8 arbitration, or other proceeding as a class action on behalf of any member of the Settlement
9 Class who has not timely excluded himself or herself (including by seeking to amend a
10 pending complaint to include class allegations or seeking class certification in a pending
11 action), based on, relating to, or arising out of the claims and causes of action or the facts
12 and circumstances giving rise to the Litigation and/or the Released Claims; and (iii)
13 attempting to effect Opt-Outs of a class of individuals in any lawsuit or administrative,
14 regulatory, arbitration, or other proceeding based on, relating to, or arising out of the claims
15 and causes of action or the facts and circumstances giving rise to the Litigation and/or the
16 Released Claims. Any person who knowingly violates such injunction shall pay the
17 attorneys' fees and costs incurred by counsel for the Parties as a result of the violation. This
18 Order is not intended to prevent members of the Settlement Class from participating in any
19 action or investigation initiated by a local, state, or federal agency.

20 23. A hearing to determine (a) whether the Settlement Class should be finally
21 certified pursuant to Rule 23 of the Federal Rules of Civil Procedure, and (b) whether the
22 proposed Settlement is fair, reasonable, and adequate (the "Fairness Hearing") shall be
23 conducted in the Evo A. DeConcini United States Courthouse, United States District Court
24 for the District of Arizona, located at 405 West Congress Street, Courtroom 3A, Tucson,
25 AZ, commencing on **January 16, 2024 at 10:00 a.m.**, which is not less than thirty (30)
26 days after the deadline to file the Motion for Final Approval.

27 24. The Court may reschedule the Fairness Hearing without further written
28 notice. If the Fairness Hearing is rescheduled from the currently scheduled date,

1 information regarding a rescheduled Fairness Hearing will be posted on the Court’s docket.

2 25. Plaintiffs’ Motion for Final Approval shall be filed on **December 11, 2023**,
3 which is within 240 days of this Order. Responses to objections, shall be filed with the
4 Court no later than **January 9, 2024**, which is seven (7) days before the Fairness Hearing.

5 26. All discovery and other pretrial proceedings in this Litigation are stayed and
6 suspended pending the Fairness Hearing, except such actions as may be necessary to
7 implement the Settlement Agreement and this Order.

8 27. This Order shall become null and void, and shall be without prejudice to the
9 rights of the Parties, all of whom shall be restored to their respective positions existing
10 immediately before this Court entered this Order, if (a) the proposed Settlement is not
11 finally approved by the Court, or does not become Final, pursuant to the terms of the
12 Settlement Agreement, or (b) the proposed Settlement is terminated in accordance with the
13 Settlement Agreement or does not become effective as required by the terms of the
14 Settlement Agreement for any other reason. In any such event, the proposed Settlement
15 and Settlement Agreement shall become null and void and be of no further force and effect,
16 and neither the Agreement nor the Court’s orders, including this Order, shall be used or
17 referred to for any purpose whatsoever.

18 **IT IS FURTHER ORDERED** that the Clerk of Court shall set a **Fairness Hearing**
19 for **Tuesday, January 16, 2024 at 10:00 a.m.** before the undersigned, Courtroom 3A, Evo
20 A. DeConcini U.S. Courthouse, 405 West Congress Street, Tucson, Arizona.

21 Dated this 28th day of July, 2023.

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23 _____
24 Eric J. Markovich
25 United States Magistrate Judge
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