

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE NATHANAEL M. COUSINS

BABU, et al.,)	
)	
)	
Plaintiff,)	
)	
vs.)	No. 18-cv-07677
)	
AHERN, et al.,)	San Jose, California
)	Wednesday
Defendant.)	September 22, 2021
)	11:04 a.m.

**TRANSCRIPT OF HEARING RE: PLAINTIFFS' MOTION FOR PRELIMINARY
APPROVAL OF CONSENT DECREE [266]**

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1 Wednesday - September 22, 2021

11:04 a.m.

2 P R O C E E D I N G S

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4 **THE COURT:** Calling Civil 18-7677, Ashok Babu, et
5 al. v. Gregory Ahern, et al. Counsel, please state your
6 appearances beginning with plaintiff's counsel.

7 **MS. JANSSEN:** This is Kara Janssen appearing for
8 plaintiffs.

9 **MR. BORNSTEIN:** And good morning, Your Honor. Jeff
10 Bornstein from Rosen, Bien, Galvan & Grunfeld, also on behalf
11 of plaintiffs.

12 **MR. THOMAS:** Morning, Your Honor --

13 **MS. WOLFF:** Morning -- Sam, go ahead. Sorry,
14 Ms. Wolff, go ahead.

15 **MS. WOLFF:** Sorry, Your Honor. Good morning, Your
16 Honor. Samantha Wolff from Hanson Bridgett on behalf of
17 defendants.

18 **MR. MELLO:** Morning, Your Honor. Paul Mello for
19 defendants.

20 **MR. THOMAS:** Morning, Your Honor. Greg Thomas,
21 Burke Williams & Sorenson, for defendants.

22 FA: Morning, Your Honor, Ben Rice for Wellpath.

23 **THE COURT:** Good morning. Good to see all of you.
24 We've had so many appearances by telephone, this is an
25 adjustment to our usual ways. You may hear the train rumbling

1 by in the background here in San Jose. And hopefully, our
2 court bandwidth will hold out with the competing Elizabeth
3 Holmes trial happening down the hall. If we get knocked out,
4 we'll blame Judge Davila and crew for that. But hopefully,
5 we'll be able to keep going here. It's good to see all of
6 you, and we are here for the preliminary approval hearing on
7 the class settlement.

8 And you did express an interest in not having a hearing
9 and just having me approve it, and I didn't vacate the
10 hearing, not because of displeasure with the settlement, but
11 for a few purposes. One was just notice. We did get a number
12 of requests from individual residents at the jail, expressing
13 an interest in more notice and in continuing the hearing, and
14 I did not grant that, but I did put it on the record so that
15 you all could see their request. But in part, because of that
16 and because of the importance to the public and to the
17 residents at the jail, I wanted to make sure there was an
18 opportunity for the public to see and hear what we're doing
19 and want to directly be available to the class members of the
20 jail but for there to be an opportunity for them to hear about
21 what went on in this public placement.

22 And secondly, was just to thank a couple of people and
23 groups. One, Judge Beeler had many, many, many settings for
24 settlement that led up to the settlement of the claims and
25 defenses and the attorneys' fees in the case, and I wanted to

1 thank her publicly for her work with you, facilitating this
2 important settlement. And of course, that addresses one of
3 the aspects of settlement approval, which is to make sure it's
4 not a collusive settlement, that it's been an arm's length
5 process. And I've not been present or a participant in the
6 settlement negotiations, but knowing that you've been meeting
7 with her gives me great confidence that it's been a fair
8 process to reach the settlement that you've worked on. So I
9 wanted to thank her right off the top.

10 And secondly is to thank counsel on both sides for your
11 collaboration and cooperation and advocacy at the same time to
12 reach this result. This type of settlement is very
13 complicated. There's many aspects to it, and you have worked
14 through all of them, and you've done so while representing
15 your clients and advocating for your clients' interest. But
16 it takes a lot of communication and working together to come
17 to a an outcome that is good for all parties, and I very much
18 think that this type of settlement is good for all parties.
19 It's much better to have an agreement about what the plan is
20 and to have a plan and to work through the plan together. It
21 makes it more likely to be implementable and enforceable and
22 successful, rather than a situation which we could have and
23 the alternative of fighting about it and the Court could order
24 something. And even if I ordered something, it just leads to
25 the likelihood that you'd be back, arguing about the court

1 orders and whether -- what was ordered and how it should be
2 implemented and when it will be implemented and is there
3 resources to do it. Having an agreement, I think, is just a
4 much better approach to the very complicated regulatory
5 environment of a county jail. There's lots of interests at a
6 jail, many different participants. We're just some of them.
7 There's people who are -- have an interest in the jail who
8 are not here today and may wish to have their voices heard,
9 but getting you to agree to it with your expertise is, I
10 think, an important step in getting an enforceable and
11 survivable plan going forward. So thank you for your hard
12 work in getting this accomplished.

13 And third, Mike Brady has served as an expert to assist
14 the parties over the course of the proceedings, and I wanted
15 to thank him for his helping you and helping the Court.
16 There's other experts, as well, but I wanted to single him out
17 for his timely and helpful assistance.

18 And along the way, we have Mr. Rice representing a party
19 who's not a party to the case. I wanted to thank you,
20 Mr. Rice, and your colleagues for voluntarily participating in
21 the proceedings along the way to assist us going forward.
22 because that's been very helpful at facilitating, you know,
23 things in a crisis. We -- as of last March, we entered a very
24 different zone of jail and community management, and
25 everybody's been working together to respond to this crisis,

1 and that's been an evolving process. But I wanted to note
2 that CFMG Wellpath has voluntarily participated in the
3 proceedings, and I appreciate that. With things such as the
4 defendants jointly putting up a publicly available internet
5 page with information about policies and procedures of the
6 jail and current statistics at the jail, as far as testing and
7 COVID information, I think that's been very helpful for the
8 Court and also the public to follow along with what's going
9 on. And I know that plaintiffs' counsel has been engaged in
10 that process too, pushing to get things publicly available,
11 and our criminal defense attorneys have been interested in
12 that and pushing for that. And I think that's all been
13 helpful along the way. Not necessarily part of the
14 settlement, so I'm going outside the scope of the motion
15 before the Court, but I just wanted to review and say there's
16 been some great work done together to get to where you are
17 today.

18 All right. Now, working kind of back to our motion
19 before the Court, Ms. Janssen, yesterday, plaintiffs' counsel
20 filed -- you filed an update on some of the notice aspects,
21 and I wanted to kind of start with that. I am tentatively
22 inclined to grant the preliminary approval. So there's just
23 some details which I need to make sure we have agreement on
24 the plan going forward. And I think that the defense was part
25 of the plan that you filed yesterday with a new date for final

1 approval, but if it wasn't, I wanted to kind of see if we've
2 got an agreement on the date of when things will go happen
3 after today. So I'll start with you, Ms. Janssen.

4 **MS. JANSSEN:** Thank you, Your Honor. Yes, we agree
5 that we believe this settlement agreement provides
6 comprehensive relief to all our class and subclass members,
7 requires defendants to make significant changes in virtually
8 all areas of the jail, including better coordination with
9 community providers. And so we do stand by this settlement
10 and believe it is a fair and reasonable settlement. However,
11 we also, of course, want our class members to have the
12 opportunity to fully review the settlement. And we would like
13 to, of course, be able to answer any questions they have. So
14 in light of those objections that were filed, as well as the
15 ongoing issues in accessing our class numbers posed by
16 COVID-19, which we're hoping for assistance with defendants --
17 from defendants to help us access them, we thought extending
18 the timeline for objections, the notice period, by one month
19 would be reasonable and allow some additional time and would
20 not otherwise delay implementation significantly since that
21 would just put our final approval at mid January, after the
22 holidays. And so that's why we filed that yesterday and
23 request that from the Court.

24 **THE COURT:** And is that with the defense agreement?

25 **MS. WOLFF:** Yes, Your Honor. We -- defendants do

1 not oppose plaintiffs' counsels request and the proposed order
2 extending the deadlines for the objections.

3
4 **THE COURT:** All right, thank you. And it doesn't
5 change the settlement agreement itself. It just -- I don't
6 believe. It just changes the proposed dates for when the
7 final approval process would be.

8 Sorry, go ahead, Ms. Janssen.

9 **MS. JANSSEN:** Yes, Your Honor. That is correct.
10 The -- although we did submit a revised proposed order, which
11 is, of course, revised from the old proposed order, the only
12 changes in that are as to the dates.

13 **THE COURT:** Thank you. Thank you for confirming
14 that. All right. And for the public's benefit, why don't you
15 tell everyone what your new date dates are for the objections
16 and the final approval hearing?

17 **MS. JANSSEN:** So the new dates are the deadline for
18 the objections by class members would be December 31st, 2021.
19 That extends it out about a month from its prior deadline.
20 And that will put our deadline for filing our motion for final
21 approval, which will respond to any class number objections,
22 at January 12th. And then, the hearing on final approval on
23 January 19th, 2022.

24 **THE COURT:** All right. And I would -- thank you
25 very much.

1 I would contemplate our final approval hearing would be
2 by Zoom webinar, just like this one is being conducted, as
3 long as we're able to successfully navigate this to the end.
4 And it's possible the court may be having some in person
5 hearings by that point in time, I guess, optimistically. But
6 I do think doing it by Zoom does allow for more public
7 participation and observation of what we're doing, and that's
8 in the public's interest. What it may be a challenge, though,
9 is for individual class members to participate in the
10 proceedings, whether that's in person in the courthouse or by
11 Zoom. So I'm open to -- and we do have access to the jail for
12 proceedings on a daily basis. I have a calendar today at one
13 o'clock to the jail with video connection, which has been a
14 great improvement at our access to justice, but it does not
15 allow for large communication. It's a one person at a time or
16 small groups at a time communication. There are, again,
17 improvements with iPads at the jail, being able to access and
18 communicate with counsel and family members and in the court
19 from time to time. But again, that's a person-by-person
20 basis. So a long winded way of saying if there are ways to
21 allow class members to observe the final approval hearing
22 through the Zoom platform, I'm open to doing what we can to
23 make it available to them. And that could be just an open
24 invitation to you to think about what ways that could be
25 accomplished.

1 **MS. JANSSEN:** Your Honor, if I may on that piece, we
2 are more than happy to meet and confer with defendants about
3 this and share that interest. You know, one option might be
4 to perhaps broadcast on the webinar version of the hearing
5 that could possibly be broadcast someplace in the jail. I
6 don't know what the TV configurations are there. And I know
7 that there are the tablets that do have access to certain
8 things. Again, not sure how that will work, but we will
9 certainly discuss that with defendants.

10 And if I may, for a moment, because I know there are
11 people listening in here, discuss a little bit about what the
12 notice will look like and where it will be posted. Thank you,
13 Your Honor.

14 **THE COURT:** Yeah.

15 **MS. JANSSEN:** So the notice, once it goes out, will
16 be posted per the notice plan in all intake and housing units.
17 It will also be on our website, of course, which is accessible
18 to the public, and on the tablets used by the class members
19 and on the TV system in the jail. So that's the shorter
20 notice that describes, in broad terms, the settlement, as well
21 as how to object. The parties have agreed that the consent
22 decree itself will be available in a hard copy in a binder in
23 the unit and will also be available on the tablet. Copies can
24 also be obtained by contacting us, as counsel. And we intend
25 to be able to provide copies of that in Spanish, as well as

1 we'll look at additional languages, you know, upon request.
2 And I understand the notice has been translated into the
3 various languages that are required by the jail. In addition
4 to that, of course, we, as counsel, will be visiting with
5 class members to explain any provisions that they have
6 questions about and to help them understand how to file
7 objections, should they wish to do so.

8 **THE COURT:** Thank you, Ms. Janssen.

9 And I think as far as the piece of the class members
10 participating, we'll set it and we'll indicate it will be by
11 Zoom webinar. And we'll leave it to your further kind of
12 planning and coordination to see if there's some way to make
13 that available to class members. And if we, on the court's
14 end can do something to facilitate that, we're happy to engage
15 in that and to modify our platform to make it more possible.

16 **MS. WOLFF:** Your Honor, if I may be heard on that
17 briefly.

18 **THE COURT:** Yes, go ahead.

19 **MS. WOLFF:** Thank you. We will, of course, meet and
20 confer with plaintiffs' counsel on this request. And we
21 understand it's within the Court's discretion to permit
22 objectors to appear, and we believe that any of the objections
23 though by class members are more appropriately handled in
24 writing, particularly in the midst of this pandemic. We also
25 don't believe it's appropriate for class members to appear at

1 the hearing and verbalize their objections without having
2 previously filed written objections. So I just want to make
3 that clear.

4 **THE COURT:** Thank you for raising that. And I did
5 not mean to overstep and say that we're going to have a live
6 "raise your hand and anybody who has something to complain
7 about, please say so." We'll -- there is an objection
8 process, a written objection process, contemplated in the
9 settlement agreement, and I'm not suggesting to change to
10 change that. I was more contemplating being able to access
11 the proceedings and to listen and see what's going on.
12 Theoretically, if somebody does object and raises the
13 objection and wants to speak, well, then we can assess how we
14 might hear from that person or persons in the court. I have
15 considered the many writings that were submitted before this
16 preliminary hearing, and I considered whether we should
17 postpone the hearing, but I did not. And the reason why is
18 that this is the preliminary approval hearing only. There has
19 not been notice to all the class members yet and details about
20 it. And I think it's perhaps encouraging that people at least
21 heard about it and knew to object and to raise their concerns
22 with the Court. That's encouraging. But we need to get them
23 more information about what the settlement terms actually are,
24 and that will come through the notice process and then a
25 further hearing. So this is just a step along the way, an

1 important step, about the settlement process. And the primary
2 objective is to make sure there is a robust notice process for
3 the class members, so that if there are objections, that they
4 have a way to go about and know how to properly raise those
5 objections. And we have a timeline for when things will
6 occur.

7 So that's why I didn't postpone this hearing, because
8 we're setting one in January, and the additional period for
9 notice and objection will allow those class members and any
10 other class members who have an objection or want to write in
11 in support of the settlement can do that within the time
12 period allowed.

13 All right. Any other just timing aspects? We'll make
14 this modification as reflected in the proposed order. I will
15 set the hearing when you have suggested. Any other timing
16 things to discuss between now and then?

17 **MS. JANSSEN:** Nothing further from us in terms of
18 timing.

19 **THE COURT:** All right. And --

20 **MS. WOLFF:** Nothing further for defendants.

21 **THE COURT:** I'm sorry, go ahead, Ms. Wolff.

22 **MS. WOLFF:** Apologize. Nothing further from
23 defendants either.

24 **THE COURT:** All right. And the proposed order,
25 Ms. Janssen, that you've given us, that's the current version.

1 There's no further modifications needed from plaintiff side?

2 **MS. JANSSEN:** Yes, that should be the current
3 version. I believe it was emailed to your chambers yesterday
4 afternoon.

5 **THE COURT:** Very good. Thank you.

6 All right. Well, then let's kind of back out and,
7 Ms. Janssen, give me your overview as to what makes this a
8 fair settlement that I should preliminarily approve, and I'll
9 give the defense a chance to weigh in, too.

10 **MS. JANSSEN:** So as I mentioned, this settlement
11 agreement provides comprehensive relief to all class and
12 subclass members. This requires defendants to make
13 significant changes in the areas of mental health care, in
14 suicide prevention. It sets out-of-cell time standards, which
15 we -- which are higher than any that we have seen set in these
16 consent decrees and which we believe provide class members
17 with the time out of sell that they are constitutionally
18 required to access and the amount of time out of cell that
19 will help prevent people, as much as possible, from further
20 decompensating in jails due to their mental health
21 disabilities.

22 The settlement also addresses and revamps the entire
23 classification system, the use of restrictive housing,
24 discharge planning, and includes ongoing measures to address
25 COVID-19. It requires better coordination with community

1 providers and mental health care, in terms of intake and with
2 respect to discharge protocols and procedures. While there
3 are significant details that will be worked out in the
4 implementation phase, the consent decree provides structure on
5 how that will be done and envisions an implementation plan
6 with various benchmarks to ensure that the relief that's in
7 the consent decree actually occurs and the benefits seen by
8 class members.

9 It also includes extensive monitoring and reporting
10 provisions, both including class counsel monitoring the
11 agreement to ensure it is properly implemented, a panel of
12 joint experts also preparing their own reports, monitoring the
13 agreement for implementation, and allows for access by the
14 Department of Justice in regards to their ongoing
15 investigation into the jail. We believe that this provides
16 this is a fair, adequate, and reasonable settlement and
17 provides class and subclass members with relief that may even
18 exceed what we could have done at trial without expending the
19 additional resources that, of course, would have had to be
20 expended to fully litigate this case to trial.

21 **THE COURT:** Ms. Janssen, is this settlement limited
22 only to Santa Rita Jail? The County previously had a facility
23 it used at the beginning of this case in Downtown Oakland, and
24 it's not using it presently. But if the County decided to
25 reopen that facility or open another jail six months from now,

1 will this settlement apply to that facility or is it limited
2 just to Santa Rita?

3 **MS. JANSSEN:** Our positions at this settlement
4 applies to Alameda County's jail, or jails currently. Our
5 case was filed as to both jails. Of course, Glenn Dyer was
6 closed after the filing of our case. But our position is that
7 this consent decree would apply should Alameda County reopen
8 Glenn Dyer or somehow close Santa Rita and open an entirely
9 new facility. The requirements in the settlement are about
10 the treatment of people who are incarcerated in Alameda County
11 as adults in adult facilities, and so would apply to any adult
12 correctional facility that houses those individuals in the
13 county.

14 **THE COURT:** Thank you. And is it fair to say that
15 this settlement applies to all of the inmates at Santa Rita
16 Jail, whether they're housed there as federal detainees or
17 county detainees or prisoners, or is there some distinction
18 made in the settlement between those different populations?

19 **MS. JANSSEN:** It applies to all populations. There
20 are no distinctions made in terms of whether you're federal or
21 a county prisoner in the settlement. All provisions apply to
22 everyone, including detainees and people who have been
23 sentenced. There are certain provisions that, of course,
24 apply more specifically to the subclass of individuals with
25 psychiatric disabilities. So, of course, if you're a person

1 incarcerated in the jail without a psychiatric disability,
2 many provisions still apply to you, for instance, the
3 classification provisions, use of restrictive housing. The
4 screening for mental health care would, of course, still apply
5 to anyone to be screened, but, of course, those individuals
6 without psychiatric disabilities do not have access to the
7 protections in the consent decree that are specific to those
8 disability issues.

9
10 **THE COURT:** All right. Thank you for answering my
11 questions.

12 Ms. Wolff, would you like to address the fairness of the
13 settlement from the defense perspective?

14 **MS. WOLFF:** Yes, thank you, Your Honor.

15 We also believe that the consent decree is a fair and
16 equitable settlement and that it was negotiated extensively
17 with the assistance of Judge Beeler during arm's length
18 negotiations. And we stand by its terms, which we strongly
19 believe will improve the delivery of mental healthcare to
20 incarcerated people within Santa Rita and improve their access
21 to programs.

22 Attorneys at the Department of Justice, like Ms. Janssen
23 said, also participated in various meet and confer discussions
24 with counsel for both sides regarding the terms of the consent
25 decree. They indicated that they have no objections to the

1 motion for approval of the consent decree. That letter was
2 attached to my declaration. We believe that preliminary
3 approval is appropriate at this stage, and we will immediately
4 begin the process of posting notice once this Court determines
5 that it's appropriate to do so.

6 **THE COURT:** All right, thank you.

7 Let's talk about the future of the agreement, kind of the
8 timeline, not just the approval process, but what's going to
9 happen after -- you know, assuming for purposes of discussion,
10 there's final approval in January, you've got an
11 implementation phase and then a number of things to occur
12 after that.

13 Just for the public's benefit, Ms. Janssen, walk the
14 public through what to expect and the timeline of
15 implementation of the settlement.

16 **MS. JANSSEN:** Of course. So assuming that the
17 settlement is fully approved in January, we envision that the
18 first year, and likely the first two years, will be very
19 resource intensive in terms of implementing the provisions in
20 the settlement agreement, or in the consent decree. The
21 consent decree specifically requires the parties to meet and
22 confer after -- I believe it's right after three months, in
23 the fourth month, to develop an implementation plan to set
24 specific benchmarks. We are also required to meet confer to
25 address all the policy revisions that will need to go along,

1 of course, with the settlement agreement, which will, of
2 course, flesh out a lot of the specific details about how this
3 will all function in the jail.

4 Once the policy development work is completed and the
5 implementation plan is completed, then the parties will, of
6 course, need to train. And when I say "parties," the
7 defendants will, of course, be primarily training, but class
8 counsel has a ability to provide input on the training to
9 observe, as do the joint experts. So there will then be
10 training on everything that has been redeveloped so that
11 people know how to properly, you know, work in the jail at
12 this point with all the provisions.

13 And while all of this is going on, there will also be
14 some reconstruction of the outdoor exercise areas to maximize
15 the ability of people to get out of cell, as well as to get
16 outdoors, as well as some reconstruction within existing
17 units. The consent decree does not envision the creation of
18 any additional beds at the jail. The jail is below capacity,
19 and it does have ample space. They'll also be some
20 reconstruction of those therapeutic housing units and some
21 other units, again to maximize spaces for people to be out of
22 cell.

23 So this process will happen in the first year. There
24 will also be monitoring reports happening during this period.
25 While the reports themselves, the details including

1 identifying information of class members and protected health
2 information, will be confidential, the parties have agreed on
3 a process to develop fulsome, complete summaries of any issues
4 identified by the experts, both positive and negative, and to
5 make those publicly available, so that people can see how
6 things are proceeding in the county.

7 Once the training is done, policies are done, every
8 construction is done, and things are in place, after hopefully
9 the first two years, then it will transition into more of a
10 traditional monitoring process where, at that point,
11 hopefully, the County will be essentially compliant with many
12 of the broad strokes of the agreement, and it will be ongoing
13 reports by the experts, ongoing access to class members. We
14 are allowed to request information regards to specific class
15 members through individual advocacy. And the DOJ will also be
16 touring and have access, as well, for those last four years of
17 the of the term. And the term is set to expire at six years
18 unless either party extends or terminates it early, pursuant
19 to the provisions of the consent decree or applicable law.

20 **THE COURT:** Thank you. And not to interrupt,
21 there's particular provisions in the settlement for early
22 termination. So that's an agreed-upon term, that the
23 procedures would follow that process. And I've reviewed
24 those, so I'm familiar with them.

25 On the topic of visits, I have appreciated, in the past,

1 an opportunity to see the jail on escorted visits with counsel
2 on both sides. I'd hope to do that again over the course of
3 the agreement and consent decree with notice and opportunity
4 to join in on one of the expert or DOJ visits. I think that's
5 a very important opportunity to get to put eyes on all the
6 things you've been working on there to see the improvements
7 that are occurring or work with you further on that.

8 All right. Very good. And Ms. Wolff, as to the defense
9 side, any additional thoughts on the timeline of things to
10 come?

11 **MR. THOMAS:** I have nothing further to add, Your
12 Honor.

13 **THE COURT:** All right. Thank you.

14 Well, then I think I'll conclude here by saying, again,
15 thank you for your hard work on this. I am inclined to
16 approve the settlement. I will work off your document,
17 proposed order with the dates that you've recommended, and
18 we'll get that set. I expect later this week, we'll get that
19 issued, so you can go on to the next phase of providing notice
20 to the class numbers and make sure my deputy is not going to
21 tell me I did something wrong. One moment.

22 Lili, anything I need to do?

23 **THE COURTROOM DEPUTY:** No, Your Honor.

24 **THE COURT:** Oh, good. Phew.

25 All right. Then, that concludes this matter. Thank you

1 again very much. If I generate any additional questions
2 during the phase between now and January, of course, I'll put
3 it out to you in writing. If there are any modifications that
4 come up during the notice process, please collaborate and get
5 it to presented to me promptly so that we can make any changes
6 to the schedule that needs to be done.

7 And, of course, the motion for attorneys' fees. That's
8 not being resolved today. That's part of the final approval
9 process yet to come, so that's why I haven't addressed that
10 topic today. And it's part of the settlement agreement, and
11 we'll address that in finality at the January hearing.

12 All right, thanks very much. Have a great day.

13 **MS. JANSSEN:** Thank you, Your Honor.

14 **UNIDENTIFIED:** Thank you, Your Honor.

15 **MS. WOLFF:** Thank you, Your Honor.

16 (Proceedings adjourned.)
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C E R T I F I C A T I O N

I, Ilene Watson, court-approved transcriber, hereby certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.



Ilene M. Watson, AAERT No. 447

Friday, November 5, 2021