IN THE DISTRICT COURT OF THE UNITED STATES FOR THE

MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION

EDWARD BRAGGS, et al.,	)	
	)	
Plaintiffs,	)	
	)	CIVIL ACTION NO.
v.	)	2:14cv601-MHT
	)	(WO)
JEFFERSON S. DUNN, in his official capacity as Commissioner of the Alabama Department of Corrections, et al.,	)	
	)	
Defendants.	)	

ORDER

This court has under submission the parties' joint oral motion to modify the Phase 1 consent decree. *See* Order (doc. no. 2637) at 1. Based on the entire record before the court, including the parties' joint notice (doc. no. 2605), joint statement (doc. no. 2629), and joint brief (doc. no. 2641), as well as the on-the-record hearings on September 6 and October 21, 2019, it is ORDERED that the oral motion for proposed modification (doc. no. 2637) is preliminarily granted,

with final approval subject to a hearing, to be set later, and review by the court of any objections to or comments about its terms submitted by class members, as further described below.

***

The court grants preliminarily approval of the proposed modification now for two reasons.

First, the court grants preliminary approval of the proposed modification so that ADOC can immediately begin to bring its prisons into compliance with the ADA and the Rehabilitation Act. This is especially urgent because the original deadline for completion has already expired and is now set to be extended for more than eight years. *See* Joint Brief (doc. no. 2641) at 9. The court notes that ADOC agreed to "begin completion" of the first phase of the ADA alterations "[o]n or before October 1, 2019." Joint Notice (doc. no. 2605) at 2 ¶ 1. The court is under the impression that the first phase has already begun, and grants

preliminary approval of the modification as written, but the parties can correct the court if necessary.

Further, the court grants preliminary approval of the proposed modification to provide an opportunity for class comment. While the court agrees with the parties that notice should be provided to the class, *see* Joint Statement (doc. no. 2629) at 12 ¶ N, and agrees that such notice should be posted in the law library and all housing units, *see* Joint Brief (doc. no. 2641) at 1 n.1, the court disagrees that the form submitted to the court, *see* Notice (doc. no. 2641-1), is sufficient, and disagrees that a fairness hearing is not required, *see* Joint Statement (doc. no. 2629) at 12 ¶ N. Given the significance of the proposed changes to the consent decree, an opportunity to be heard is required by due process. *Cf.* Phase 1 Preliminary Settlement Approval Order (doc. no. 532) at 3 (explaining that notice and an opportunity to be heard are required by due process). The court will take up the content of the notice and comment form, and the process for

distributing and collecting these forms, in a subsequent order.

DONE, this the 2nd day of December, 2019.

/s/ Myron H. Thompson
UNITED STATES DISTRICT JUDGE