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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
UNITED STATES COURTHOUSE
NEW YORK, NY 10007

FOOD
✓ ORDER 94/017
CTCR

CHAMBERS OF
JUDGE MORRIS E. LASKER

September 8, 1994

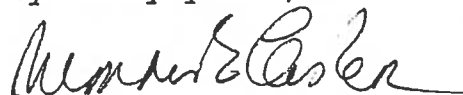
TO: Leonard Koerner, Esq.
John Boston, Esq.
Ms. Bethany Gertzog

RE: Benjamin, et al. v. Malcolm, et al.
73 Civ. 3073 (MEL)

On the basis of Mr. Koerner's letter of September 7th indicating that the City has no objection to the entry of the order proposed by the Legal Aid Society in its letter of August 12th, I have today signed and filed that proposed order.

I will discuss with the parties at the meeting scheduled for Friday, September 16th, at 2:00 P.M., how to proceed with reference to the material contained in the August 12th letter of Legal Aid, to which Mr. Koerner, in his letter of September 7th, objects.

Very truly yours,



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
JAMES BENJAMIN, et al.,

Plaintiffs,

75 Civ. 3073
(MEL)

- against -

BENJAMIN J. MALCOLM, et al.,

Defendants.

-----X
ERNESTO MALDONADO, et al.,

Plaintiffs,

76 Civ. 2854
(MEL)

- against -

WILLIAM CIUROS, JR., et al.,

Defendants.

-----X
DETAINEES OF THE BROOKLYN HOUSE OF
DETENTION FOR MEN, et al.,

Plaintiffs,

ORDER RE: MOTION FOR
MODIFICATION AND CROSS
MOTION FOR SANCTIONS AND
CONTEMPT

79 Civ. 4913
(MEL)

- against -

BENJAMIN J. MALCOLM, et al.,

Defendants.

-----X
DETAINEES OF THE QUEENS HOUSE OF
DETENTION FOR MEN, et al.,

Plaintiffs,

79 Civ. 4914
(MEL)

- against -

BENJAMIN J. MALCOLM, et al.,

Defendants.

-----X

-----X

IOLA FORTS, et al.,

Plaintiffs,

76 Civ. 101
(MEL)

- against -

BENJAMIN J. MALCOLM, et al.,

Defendants.

-----X

GUY ZEPH AMBROSE, et al.,

Plaintiffs,

76 Civ. 190 (MEL)

- against -

BENJAMIN J. MALCOLM, et al.,

Defendants.

-----X

In 1979 this Court and other courts entered consent decrees in the above entitled cases settling plaintiffs' claims that conditions of confinement for pre-trial detainees in the New York City jails were unconstitutional. By consent, these cases were then consolidated before this Court for enforcement purposes.

In response to continuing problems in the area of food service, in 1991 defendants decided to develop a "cook/chill" method of food preparation as a long-term solution to persistent non-compliance with the food service provisions of the consent decrees. The Court directed the Office of Compliance Consultants ("OCC") to prepare a work plan identifying tasks necessary to

bring the defendants into compliance with the relevant provisions and setting schedules for the accomplishment of each task.

In June 1991, the Court adopted the first Food Service Work Plan and entered it as an Order. After the defendants failed to carry out the terms of this Work Plan, a Revised Food Service Work Plan was agreed to by the parties and entered by the Court on July 10, 1992. At the same time, frustrated by the pattern of continued noncompliance, the Court entered its Order: Re Compliance with Work Plan Deadlines (the "1992 Compliance Order"), providing for a schedule of coercive fines in the event of non-compliance with work plan mandated tasks.

The 1992 Food Service order required the defendants to make a decision by November 1, 1993 as to the means by which they would provide cook/chill food. On that date, the City notified OCC of its decision to provide food to inmates by purchasing cook/chill food from a facility owned by the State Office of Mental Health in Rockland County ("Rockland County").

On March 31, 1994, the City formally informed the Court of its unilateral decision to abandon the Rockland County plan in favor of securing cook/chill food within New York City. The Court instructed the City to submit a motion to modify its obligation to use the Rockland County production center. The plaintiffs cross-moved for sanctions under the 1992 Compliance Order and to hold the City in contempt for violation of the Revised Food Service Work Plan.

For the reasons set forth in the Court's decision of July 22, 1994, it is ORDERED, ADJUDGED, AND DECREED:

1. The City's motion to modify the Revised Food Service Work Plan is denied.

2. Pursuant to the 1992 Compliance Order, the City is fined for the period between its decision to use the Rockland County on November 1, 1993, and the breaking of that commitment on March 31, 1994. The penalty as calculated by OCC according to the provisions of ¶5 of the 1992 Compliance Order shall be a fine in the amount of \$123,400. The defendants shall forthwith pay that amount into the registry of the Court.

3. If the City is able to provide cook/chill services to inmates by December 31, 1994, it may apply for recoupment of the penalty described in the preceding paragraph. If the City is able to provide cook/chill services within five months thereafter, it may apply for a proportionate recoupment of the penalty. However, if the actual delay exceeds five months from December 31, 1994, plaintiffs may apply for additional penalties.

4. The City has not diligently attempted to comply with its obligation to pursue the Rockland County plan and is found to have committed civil contempt of the Revised Food Service Work Plan.

5. The defendants shall submit to OCC no later than six weeks from today a plan and timetable for completion of a cook/chill production center in New York City, with the expectation that after appropriate discussion with the parties, OCC will recommend a supplemental order to the Court.

6. This order is without prejudice to future applications by plaintiffs for sanctions for noncompliance with Revised Food

Service Work Plan deadlines that have not yet passed, or for further relief based on circumstances not now before the Court.

Dated : New York, New York

August __, 1994

U.S.D.J.