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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

**JOSE POOT, ET AL,**  
  
**PLAINTIFFS,**  
  
**v.**  
  
**CITY AND COUNTY OF SAN FRANCISCO, ET**  
**AL.,**  
  
**DEFENDANTS**

Case No.: 4:19-CV-2722-YGR  
  
**ORDER DENYING MOTION FOR  
RECONSIDERATION; STRIKING CLASS  
CLAIMS; AUTHORIZING JUDGMENT**  
  
**DKT. 93**

**TO ALL PARTIES AND COUNSEL OF ACTION:**

The Court does not regurgitate here the extensive procedural history of this action nor the hearings and discussions with counsel on the record. Rather, the Court recaps that on September 13, 2022, it denied the motion to dismiss for failure to prosecute and denied the motion to consolidate. (Dkt. 80.) Thereafter, on November 18, 2022, it found that the parties had entered into a valid settlement agreement and denied plaintiffs’ motion to rescind. (“Underlying Order”; Dkt. 90.) The settlement agreement concerned both changes at the jail and protocols for future changes. Further, it required that the parties file a joint motion for approval of the settlement and certification of the settlement class. Given the nature of the settlement agreement, the Court ordered plaintiffs’ counsel “to take all reasonable steps to ensure that the agreement is approved by the Court and becomes effective as to the class.” (*Id.*)

1           Rather than comply with this Court’s Underlying Order, on December 30, 2022, plaintiffs’  
2 counsel filed an Application for Leave to File Motion for Reconsideration of the Underlying Order on  
3 the grounds that plaintiffs refused to serve as class representatives and were not supportive of the  
4 terms of the agreement, effectively due to events which occurred *after* execution. Plaintiffs’ counsel  
5 also argued that the “issue of conflicts of interest and the requirements of Rule 23(a) were not briefed  
6 on the motion for rescission.” (Dkt. 93.)

7           Plaintiffs proceed pursuant to Local Rule 7-9(b)(1) and (3) which requires:

8           (1) That at the time of the motion for leave, a material difference in fact or law exists from that  
9 which was presented to the Court before entry of the interlocutory order for which  
10 reconsideration is sought. The party must also show that in the exercise of reasonable  
11 diligence the party applying for reconsideration did not know such fact or law at the time of  
the underlying order; or . . .

12           (3) A manifest failure by the Court to consider material facts or dispositive legal arguments  
13 which were presented to the Court before such interlocutory order.

14           As a threshold issue, plaintiffs fail to address how post-settlement conduct bears any relevance to the  
15 validity of the agreement in the first instance other than what had been previously briefed and  
16 decided. Next, even if relevant and “material,” plaintiffs fail to address why those arguments were  
17 not raised previously. Plaintiffs’ have not shown a “material difference in fact or law,” much less  
18 “reasonable diligence.” Finally, plaintiffs do not identify how the Court’s order manifestly failed to  
19 consider arguments before it. Accordingly, plaintiffs fail to meet the requirements for  
20 reconsideration and the motion is **DENIED**.

21           While the motion is denied, the Court considers the filing for the purpose of explaining  
22 plaintiffs’ failure to comply with this Court’s Underlying Order. The issues are familiar and merely  
23 repeat plaintiffs’ post-settlement complaints and include counsel’s new articulation of perceived or  
24 actual conflicts. Plaintiffs’ claim that the Court prejudged the Rule 23 motion is without basis.  
25 Procedurally, there was no Rule 23 motion for the Court to consider. The Court was solely focused  
26 on the validity of the agreement itself, not the merits of the agreement. Given plaintiffs’ failure to  
27 provide a Rule 23 motion, the issue was not properly before the Court.

28           The Court identified in the Underlying Order what would occur should plaintiffs fail to  
comply with their obligations. Remarkably, plaintiffs’ filing does nothing to address the Court’s

1 warning with respect to a failure to comply. At this juncture, the Court finds that the remedy set forth  
2 in the Underlying Order is the only available recourse, especially given that the parties entered into  
3 the Settlement Agreement over twenty-eight months ago on September 18, 2020.

4 Accordingly, the Court **HEREBY STRIKES** the class claims from the operative complaint and  
5 Judgment shall be entered in accordance with the terms of the Settlement Agreement between  
6 plaintiffs Jose Poot, Kishwan Norbert, Kenyon Norbert, Marshall Higginbotham, Antoine DeWhitt,  
7 Cory Butler, Montrail Brackens, Delon Barker, and Javonn Allen and defendants City and County of  
8 San Francisco, former San Francisco Sheriff Vicki Hennessy, former chief deputy and now Sheriff  
9 Paul Miyamoto, Captain Jason Jackson, and Captain McConnell.

10 Defendants shall provide the Court with a proposed form of judgment, approved as to form by  
11 plaintiffs, within five business days of this order.

12 This terminates Docket No. 93.

13 **IT IS SO ORDERED.**

14 Dated: January 25, 2023

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16 YVONNE GONZALEZ ROGERS  
17 UNITED STATES DISTRICT COURT JUDGE  
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