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EASTERN DISTRICT OF CALIFORNIA
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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CHARISSE SHUMATE, et al.,
Plaintiffs,

NO. CIV. S-95-0619 WBS JFM

v.

ORDER

PETE WILSON, et al.,
Defendants.

----oo0oo----

Defendants move to unconditionally dismiss this action upon the ground that they have substantially complied with the terms of the settlement agreement. Plaintiffs oppose the motion, pointing out that the settlement agreement allows for such a motion only if "a Report of the Assessor finds that defendants are in substantial compliance with regard to the undertakings in each and every subsection [in Sections III and IV of the Agreement]." (Agreement, paragraph 18).

Plaintiffs point out that the settlement agreement provides for only two Assessment Reports, and that the Final Assessment Report, while finding that defendants were in substantial compliance with 55 of the 56 terms of the settlement

1 agreement, found that defendants had failed to comply with a term
2 in one sub-class provision of the agreement because defendants
3 had not changed medical form No. 128-C-1, an inmate medical
4 clearance form. Specifically, that term prevented form 128-C-1
5 from containing specific diagnoses, for example HIV positive.¹

6 Since neither of the assessor's reports found
7 defendants in substantial compliance with regard to the
8 undertakings in every applicable subsection, under the terms of
9 the agreement defendants are forever precluded from moving for
10 unconditional dismissal. Plaintiffs, on the other hand, are
11 permitted, but not required, by the terms of the agreement to
12 petition the court at any time to restore the case to its active
13 docket and to reopen the time for discovery and the filing of
14 dispositive motions.

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16 ¹After the final assessment, the Assessor sent a draft of
17 the Report to both parties. Defendants accordingly revised the
18 form. He noted this revision in his finding related to this
subdivision:

19 **Finding:** The defendants did not meet the requirements
20 of this provision of the settlement agreement. After
21 receipt of a copy of the draft of this assessment
22 report, the defendants reconsidered their position on
23 the form and committed themselves to a revision
24 designed to meet the survey team's criticism. The
25 revised form, a copy of which is attached to this
report, eliminates entirely the "Chronic Infectious
Disease" designation and its subordinate categories.
While the change is welcome and appears to meet fully
the criticism contained in the assessment reports, it
was not introduced until December 2, 1999, well after
the period covered by the assessment process.

26 (Report at 56). In the summary at the end of the report, the
27 Assessor reiterated, "[o]nly after reviewing the draft of this
28 assessment report, did the defendants decide in early December to
revise the 128C form in use in CIW and CCWF to comply with the
provisions of the settlement agreement. Their tardy compliance
is welcome, but it remains tardy." (Report at 64).

1 The settlement agreement is conspicuously silent as to
2 what happens if neither of the two Assessor's Reports finds
3 defendants in substantial compliance and the plaintiffs do not
4 elect to petition the court. Presumably, under those
5 circumstances, the case can remain open in perpetuity. This is
6 not just a theoretical possibility. Under the circumstances
7 presented in this case, where plaintiffs have now obtained
8 everything they sought by way of the settlement, that is
9 precisely what is likely to occur.

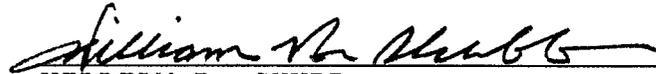
10 The settlement agreement as written is ill-conceived
11 and, as it turns out, unworkable. The court cannot simply
12 dismiss this suit without a hearing on the merits when the
13 parties have not agreed to such a dismissal. On the other hand,
14 cases cannot linger forever without the court having some power
15 to bring them either to trial or otherwise to final conclusion.
16 In managing its docket, the court cannot be held hostage to the
17 whim of plaintiffs' counsel as to when, if ever, she might decide
18 to ask to restore the case to the trial calendar. At argument,
19 plaintiffs' counsel suggested she might be ready to make a
20 decision within the next six months. That is more than enough
21 time.

22 Accordingly, the court will wait until July 31, 2000.
23 If plaintiffs have not petitioned to restore the case to the
24 active trial calendar by then, the court will on its own motion
25 vacate and set aside the settlement agreement and reset this
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1 matter for trial on the merits.² Alternatively, of course, the
2 parties are free to present to the court a stipulation for
3 dismissal pursuant to F.R.Civ.P. 41(a)(1)(ii).

4 IT IS SO ORDERED.

5 DATED: February 1, 2000

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7 WILLIAM B. SHUBB
8 UNITED STATES DISTRICT JUDGE
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23 ²Presumably the case would be returned to its status just
24 before the settlement agreement was entered. At that time,
25 discovery was closed and the matter was ready for trial, so the
26 court would not look favorably upon any request to reopen
27 discovery. Additionally, pursuant to the settlement agreement,
28 defendants have now, among other things, paid plaintiffs'
attorneys \$1,200,000 in attorneys fees and costs. If the
agreement is set aside and the matter forced to trial, it would
appear that defendants will have gotten nothing in exchange for
their money. The court would therefore entertain a request to
order return of all such sums received at that time.

United States District Court
for the
Eastern District of California
February 3, 2000

* * CERTIFICATE OF SERVICE * *

2:95-cv-00619

Shumate

v.

Wilson

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Eastern District of California.

That on February 3, 2000, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office, or, pursuant to prior authorization by counsel, via facsimile.

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