

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(Northern Division)

L.J., et al.,	*	
Plaintiffs,	*	
v.	*	Civil Action No. JFM-84-4409
THEODORE DALLAS, et al.,	*	
Defendants.	*	

* * * * *

**JOINT MEMORANDUM IN SUPPORT OF
JOINT MOTION TO AMEND MODIFIED CONSENT DECREE**

Plaintiffs L.J., et al., and Defendants Theodore Dallas, et al., by their undersigned counsel, submit the following joint memorandum in support of the parties' Joint Motion to Amend the Modified Consent Decree ("Jt. Mot.").

The Modified Consent Decree ("MCD") entered by the Court on October 9, 2009 names Mark Testa as the parties' "Independent Verification Agent" ("IVA"). Defendants have asked Plaintiffs to agree to ask the Court to amend the MCD to replace Mark Testa with Rhonda Lipkin, who presently serves as co-counsel for Plaintiffs. Plaintiffs have agreed.

The Attorney General has raised concerns that Defendants lack protection against potential partiality by Ms. Lipkin should she become the IVA and also has raised concerns about actual or potential conflicts of interest arising out of Ms. Lipkin's former role as counsel for Plaintiffs. Plaintiffs disagree with the Attorney General's positions. Nevertheless, the parties have agreed to amend the MCD to address those concerns, and they ask the Court to amend the MCD accordingly. In addition, because the Plaintiffs' counsel lack authority to bind the class to

any waiver of potential conflicts absent Court approval, Plaintiffs' counsel ask the Court to waive any actual or potential conflicts or other concerns affecting the class that could arise from Ms. Lipkin's change of status.

Therefore, in addition to substituting Ms. Lipkin for Dr. Testa, the parties propose the following amendments.

First, Part II, Section A of the MCD would be amended to provide that Ms. Lipkin will serve as IVA for an initial term of eighteen months. (Jt. Mot. ¶ 1). The parties will not be able to contest her status during this term. Thereafter, if the parties mutually agree, Ms. Lipkin will continue as IVA. Id. If, after consultation, the parties do not mutually agree to her reappointment, Ms. Lipkin's non-reappointment will be final and will not be subject to judicial review. Id.

Second, the dispute resolution provisions of the MCD (Part II, Section K, and Part IV, Sections A through D) would be amended to give the Defendants the right to ask the Forum Facilitators to review adverse certification decisions by the IVA and to allow for judicial review thereafter. (Jt. Mot. ¶¶ 2-3).

Third, the parties have agreed that, during the time that she serves as IVA, Ms. Lipkin would not testify in person on behalf of Plaintiffs as to pre-IVA-appointment matters but could instead submit an affidavit concerning her knowledge or opinions of events up to the effective date of the Court's Order if requested to do so by Plaintiffs. (Jt. Mot. ¶ 4).

Through the Joint Motion, Defendants have waived any conflict or other ethical concern arising from the appointment of co-counsel for Plaintiffs as the IVA. In this regard, however, because of the potential ethical issues that the Attorney General asserts could arise as a result of

Ms. Lipkin's appointment as IVA, the Defendants' consent to the appointment is conditioned on the Court's acceptance of each of the proposed modifications.

Finally, Plaintiffs' counsel cannot bind the Plaintiff class for any waiver of any conflict or ethical concerns that could arise (should it be required) and therefore ask the Court to waive any such concerns on behalf of the class.

CONCLUSION

The Court should grant the Joint Motion and enter the proposed Order.

Respectfully submitted,

_____/s/
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