

**IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

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| UNITED STATES OF AMERICA, |) | |
| |) | |
| Plaintiff, |) | |
| |) | CIVIL NO. 86/265 |
| v. |) | |
| |) | |
| TERRITORY OF THE VIRGIN ISLANDS et al., |) | |
| |) | |
| Defendants. |) | |
| |) | |

JOINT MOTION TO ENTER CONSENT JUDGMENT

Plaintiff, the United States of America, and Defendants, Territory of the Virgin Islands, et al., jointly move this honorable Court to enter the attached Settlement Agreement as an order of the Court to resolve the above-styled case. After engaging in extensive settlement negotiations, and to avoid the burdens of contested litigation, the Parties have agreed to jointly move the Court to enter the attached Settlement Agreement as an order of the Court.

I. SCOPE OF PROPOSED SETTLEMENT

The parties have reached the agreement through negotiation and consent. The parties intend through this Settlement Agreement to settle and compromise the claims and issues disputed between them. The Settlement Agreement is submitted to the Court for its approval as a fair, adequate, and reasonable agreement that obviates the need for the parties to litigate their claims and defenses. By consenting to the Court’s approval of the Settlement Agreement, the Defendants do not intend thereby to waive their right to contest or to preclude in litigation with any other person any of the claims and issues that were or could have been raised in this case.

If the Court approves the Settlement Agreement, the parties jointly request that the Court:

- Deny the remainder of the relief that the Defendants requested in their Motion to Terminate Prospective Relief [ECF No. 565].
- Order that all remaining, pending motions be deemed withdrawn without prejudice at the request of the movant.

II. LEGAL STANDARD

“There is a strong judicial policy in favor of parties voluntarily settling lawsuits.” *Pennwalt Corp. v. Plough, Inc.*, 676 F.2d 77, 80 (3d Cir. 1982). This presumption in favor of settlements “is especially strong in ‘class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation.’” *Ehrheart v. Verizon Wireless*, 609 F.3d 590, 595 (3d Cir. 2010) (quoting *In re Gen. Motors Corp.*, 55 F.3d 768, 784 (3d Cir. 1995)).

When presented with a consent decree, a court should ascertain that the decree is fair, adequate, and reasonable. *See Binker v. Commonwealth of Pa.*, 977 F.2d 738, 747-48 (3d Cir. 1992) (noting that even non-class action settlement agreements “are agreed to be subject to a ‘universal’ standard, that of fairness, adequacy and reasonableness”); *Stoetzner v. U.S. Steel Corp.*, 897 F.2d 115, 118 (3d Cir. 1990) (identifying relevant inquiry as whether agreement is “fair, reasonable, and adequate”). Additionally, a settlement will be invalidated when it is the product of fraud or collusion between the negotiating parties. *Officers for Justice v. Civil Serv. Comm’n of City and Cnty. of San Francisco*, 688 F.2d 615, 625 (3d Cir. 1982).

Because the Settlement Agreement constitutes prospective relief regarding prison conditions, the Court must also find that the Agreement complies with the Prison Litigation Reform Act (“PLRA”), 18 U.S.C. § 3626. The PLRA requires that the Court find the Settlement Agreement’s “relief is narrowly drawn, extends no further than necessary to correct the violation

of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right.” 18 U.S.C. § 3626(a) & (c). Pursuant to the Court’s instruction that the parties propose a method that may enable the Court to make its required findings, the parties jointly recommend that the parties submit to the Court, within 45 days, memoranda of law in support of the joint motion and proposed findings of fact and conclusions of law. These submissions could be supported by sworn declarations of expert witnesses, deposition testimony, documents produced by the defendants, stipulations of fact that the parties may submit, and other evidence to support the PLRA findings as the Court deems necessary. These submissions will articulate why the parties believe this Settlement Agreement is uniquely tailored to effectively address the constitutional concerns remaining at Golden Grove and how the Agreement will bring this 25 year litigation to conclusion.

III. DISCUSSION

This Court should approve the Settlement Agreement because the settlement is the result of months of arms-length negotiations by the Parties, and provides for relief that is fair, reasonable, and adequate, not the product of collusion, and narrowly tailored to remedy the ongoing Constitutional violations occurring at the Golden Grove Adult Correctional and Detention Facility (“Golden Grove”). The Agreement consists of eleven sections with comprehensive provisions on safety and supervision, medical and mental health care, fire and life safety, environmental health and safety, and training of Golden Grove staff and administrators. These comprehensive provisions establish benchmarks with regard to the safety and care of Golden Grove prisoners that directly coincide with the particular ongoing constitutional violations at Golden Grove. The Parties agree that the implementation of the Settlement Agreement will begin immediately upon the effective date and shall terminate when

the Defendants have achieved substantial compliance with each provision of the Settlement Agreement and have sustained substantial compliance for a period of one year. The Settlement Agreement provides that, until such termination or termination under the PLRA, this Court shall retain jurisdiction over the implementation of the Agreement.

A. The Settlement Agreement is Fair, Reasonable, and Adequate and Not the Product of Fraud or Collusion

1. The Agreement is Fair, Reasonable, and Adequate

The Settlement Agreement is fair, reasonable and adequate to address the extensive, ongoing, and critical deficiencies at Golden Grove. In December 1986, the Court entered as an Order of the Court a Consent Decree executed by the United States and the Territory and other named Defendants, to address unconstitutional conditions at Golden Grove. [ECF No. 3]. In February 2012, the Court ruled that Consent Decree is unenforceable under the PLRA. Since that time, the parties negotiated at length to reach an agreed settlement that would, if approved by the Court, obviate the need for the Court to conduct a hearing and to make the findings required by 18 U.S.C. §3626(b)(3). With the proposed Settlement Agreement, the parties are taking a new approach. The parties agree that necessary reform must be grounded in the development of constitutionally adequate policies, training and implementation of those policies, and accountability for breach. The proposed agreement contains mechanisms to put in place this foundation.

This Agreement establishes benchmarks with regard to the safety and care of Golden Grove prisoners, but gives Defendants discretion in establishing the details of facility-specific policies designed to address constitutional infirmities. The United States and the jointly selected Independent Monitor then review, provide technical assistance, and then approve the policies designed by the Defendants. This process is designed to ensure that Defendants are invested in

the success of the development and implementation of constitutionally adequate policies and procedures, formulated in cooperation with experts in the relevant fields. Finally, the Independent Monitor will report on compliance with the Settlement Agreement. The Monitor will report to the parties and the Court three times each year.

The substantive provisions of the Agreement are also fair, reasonable, and adequate to address unconstitutional conditions at Golden Grove. In order to protect prisoners from harm, including violence by other prisoners, Defendants have agreed to formulate and implement a multitude of policies to address and prevent harm from prisoner-on-prisoner assaults, excessive use of force by staff, inadequate medical care, inadequate mental health care and suicide prevention, and inadequate fire and life safety.

For each of the substantive sections of the Agreement, the parties wish to provide the Court proposed findings of fact and conclusions of law that identify current and ongoing unconstitutional conditions that necessitate such provisions in the Agreement. As noted above, the written submissions could be supported by sworn declarations of expert witnesses, deposition testimony, documents produced by the defendants, stipulations of fact that the parties may submit, and other evidence as the Court deems necessary.

2. The Agreement is Not the Product of Fraud or Collusion

The Settlement Agreement is not the product of fraud or collusion. Both parties are intimately familiar with the conditions and practices at Golden Grove and spent long hours negotiating the Settlement Agreement during multiple in-person and telephonic negotiation sessions between September 2011 and August 2012. The Settlement Agreement's specific provisions reflect the parties' knowledge of the case from the past 26 years since the Court first ordered prospective relief to address unconstitutional conditions at Golden Grove, as well as

recent facts gathered during the extensive discovery conducted by the parties since Defendants filed their Motion for Termination of Relief, including depositions, site visits, and the collection and review of thousands of pages of documents. This adversarial posture provides this Court with assurance that the Settlement Agreement is not a product of fraud or collusion.

B. The Agreement Provides for Prospective Relief that Complies With the Requirements of the PLRA

The adversarial nature of the extensive settlement negotiations has yielded a Settlement Agreement that provides for prospective relief that is narrowly tailored to correct the particular, ongoing constitutional violations at Golden Grove. Thus, the Parties stipulate that this Settlement Agreement complies in all respects with the provisions of the PLRA, 18 U.S.C. § 3626. The Parties further stipulate that the prospective relief in this Settlement Agreement is narrowly drawn, extends no further than necessary to correct the violations of federal rights occurring at Golden Grove, is the least intrusive means necessary to correct these violations, and will not have an adverse impact on public safety or the operation of the criminal justice system. Accordingly, the Parties agree and represent that this Settlement Agreement complies in all respects with the provisions of 18 U.S.C. § 3626(a) & (c).

The Parties understand that the PLRA requires this Court to independently make findings that the prospective relief contained in this Settlement Agreement is “narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right.” 18 U.S.C. § 3626.

In an effort to address this concern, and to ensure that the Agreement is narrowly drawn, extends no further than necessary, and is the least intrusive means necessary to correct the constitutional violations at Golden Grove, this Agreement gives Defendants discretion in establishing the details of facility-specific policies designed to address constitutional infirmities.

During negotiations, Defendants were careful to tie each requirement in the Agreement to specifically identified current and ongoing constitutional infirmities. That the requirements of the Agreement comply with the PLRA will also be made evident through the subsequent proposed submission to this Court described above.

C. The Appointment of a Monitor Constitutes a Public Exigency

The Settlement Agreement contemplates that the Court will appoint a monitor to oversee the Defendants' remedial efforts at Golden Grove. The parties agree that conditions at Golden Grove warrant the appointment of a monitor without delay. Therefore, the parties request that the Court find that the appointment of a monitor in this case is a public exigency within the meaning of 31 V.I.C. § 239(a)(2).

IV. CONCLUSION

For the reasons above, this Court should find that the Settlement Agreement is fair, adequate, and reasonable, and is not the product of collusion. Additionally, subsequent submissions will enable this Court to find that the Settlement Agreement is narrowly tailored to correct the particular constitutional violations ongoing at Golden Grove, and that the Agreement complies in all respects with the PLRA. The Parties respectfully jointly request that this Court approve the Settlement Agreement in its entirety, and enter it as an order of the Court.

Respectfully submitted,

THE UNITED STATES OF AMERICA

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CERTIFICATE OF SERVICE

I certify that on August 31, 2012, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification to the following:

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