

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

D.D. and all other similarly situated, et al.,	:	Case No. 2:10-cv-1097
	:	
Plaintiffs,	:	Judge Edmund A. Sargus
	:	
v.	:	Magistrate Judge Kemp
	:	
WASHINGTON COUNTY, OHIO, et al.,	:	<u>JOINT MOTION TO APPROVE</u>
	:	<u>CLASS ACTION SETTLEMENT</u>
	:	
Defendants.	:	

Pursuant to Fed. R. Civ. Proc. 23(e), the plaintiff class and the defendants (“the parties”), hereby request that this Court preliminarily approve the attached consent decree (attachment A) between the plaintiff class and the Defendants. A prompt ruling on this request for preliminary approval will allow immediate notice to the class and a fairness hearing to be set which will expedite relief to the youth in the class. A fairness hearing is requested on or about November 21, 2011. The grounds for this motion are set forth in the accompanying memorandum.

MEMORANDUM

A. Introduction

In this case the parties have cooperated very closely to address problems raised by the plaintiffs and resolve those problems to the satisfaction of all concerned. Fact finding was done in a collaborative manner and then the parties resolved their differences through a series of structured negotiations expertly supervised by Magistrate Judge Terrance P. Kemp. Plaintiffs allege constitutional violations based primarily on the conditions of confinement in the four cells that have been used for youth in detention at the Washington County Juvenile Center (“Center”).

On March 3, 2011, the court entered an Order certifying this case as a class action and naming Alphonse A. Gerhardstein and Jennifer Branch as class counsel. The class is defined as:

All persons under twenty years of age as of December 6, 2010 (and others for whom the statute of limitations is legally tolled) who have been, are now, or will in the future, be held in custody at the Washington County, Ohio, Juvenile Center

Doc. 22.

On January 11, 2011, the Court, upon request of both parties, set a process in place to assist the parties in reaching an early resolution of the matter by encouraging an exchange of facts and expert opinions. Doc. 16. The resulting exchange of class member files, policies, site visit observations, and expert opinions served as the basis for the extensive, informal negotiations that followed. These negotiations have been undertaken in good faith and at arm's length, allowing the parties to reach agreement on the procedures and substantive criteria the parties will follow for improving services to the youth in the Center. The parties freely and voluntarily, and with the advice of counsel, enter into this consent decree for that purpose.

A class action settlement must be approved by the Court. As this agreement is fair, adequate and reasonable it should be approved. Moreover, the notice to the class should also be approved and a fairness hearing set at the earliest practicable setting. The parties request that a fairness hearing be set on or about November 21, 2011.

B. Standard for Approval of Class Action Settlement

Pursuant to Fed. R. Civ. Proc. 23(e), court approval is required in order to settle a class action:

A class action shall not be dismissed or compromised without the approval of the

court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such a manner as the court directs.

The law generally favors and encourages the settlement of class actions. *In re SOCF*, 173 F.R.D. 205 (S.D. Oh. 1997); *Enterprise Energy Corp. v. Columbia Gas Transmission Corp.*, 137 F.R.D. 240, 246 (S.D. Ohio 1991); *Thompson v. Midwest Foundation Independent Physicians Ass'n.*, 124 F.R.D. 154, 157 (S.D. Ohio 1988). The prevailing, two-pronged analysis to be followed by a court in reviewing a proposed settlement of a class action is to determine whether there has been any fraud or collusion in arriving at the proposed settlement and whether the terms of the settlement agreement are fair, reasonable, and adequate. *Clark Equipment Co. v. International Union, Allied Industrial Workers of America, AFL-CIO*, 803 F.2d 878, 880 (6th Cir. 1986), cert denied, 480 U.S. 934 (1987); *In re Dunn & Bradstreet Credit Services Customer Litigation*, 130 F.R.D. 366, 370 (S.D. Ohio 1990). The burden of proving the fairness of the settlement is on the proponents of the settlement. *In re General Motors Corp Engine Interchange Litigation*, 594 F.2d 1106 (7th Cir), cert denied, 444 US 870 (1979).

In determining whether the proposed class action settlement is fair, reasonable, and adequate, the Court should consider the following factors:

- (1) the plaintiffs' likelihood of ultimate success on the merits balanced against the amount and form of relief offered in the settlement;
- (2) the complexity, expense and likely duration of the litigation;
- (3) the stage of the proceedings and the amount of discovery completed;
- (4) the judgment of experienced trial counsel;
- (5) the nature of the negotiations;
- (6) the objection raised by class members; and
- (7) the public interest.

Enterprise Energy Corp., 137 F.R.D. at 245, citing *Williams v. Vukovich*, 720 F.2d 909, 920 (6th Cir. 1983); *Thompson*, 124 F.R.D. at 157. In determining the fairness, adequacy, and reasonableness of the proposed settlement, this Court need not reach the ultimate

conclusions of fact regarding the merits of the case or decide the underlining issues of law. *Williams*, 720 F.2d at 921. In addition, the Court should rely upon the judgment of experienced counsel and “should be hesitant to substitute its own judgment for that of counsel.” *Cotton v. Hinton*, 559 F.2d 1326, 1330 (5th Cir. 1977). Upon consideration of these factors in this case, this Court should conclude that this settlement is fair, reasonable, and adequate.

C. The Class Action Consent Decree Should be Preliminarily Approved

The parties have been in dialogue regarding this conditions litigation for approximately one year. After pre-litigation discussions, the lawsuit was filed on December 6, 2010. Since that time the parties have worked hard with the assistance of Magistrate Judge Terence P. Kemp to arrive at the consent decree that remedies the problems identified by the plaintiffs. If these problems are timely remedied, it will help the youth currently in custody and those who will be in custody in the future. Moreover, since this decree includes a process for awarding damages the prompt implementation of the decree will result in compensation to those who have suffered injuries in the past. The proposed schedule takes into account the need for a prompt remedy while providing adequate time for class members to review and object if necessary.

All of the factors this court must consider weigh toward preliminary approval of this proposed consent decree. The parties respectfully request that the court preliminarily approve the settlement, set the matter for hearing on the fairness of the settlement, and direct that the attached notice of settlement be issued to the members of the class (attachment C). A draft order is attached (attachment B).

Respectfully submitted,

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