IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA

UNITED STATES OF AMERICA,

PLAINTIFF,

v.

STATE OF ALABAMA AND
ALABAMA DEPARTMENT OF CORRECTIONS,

DEFENDANTS.

Civil No. _____

JOINT MOTION TO ENTER SETTLEMENT AGREEMENT

The United States of America, Plaintiff, and the State of Alabama and the Alabama Department of Corrections, Defendants, having entered into a Settlement Agreement concerning conditions of confinement at the Julia Tutwiler Prison for Women in Wetumpka, Alabama, jointly and respectfully move this Court for entry of the attached Agreement as an Order of the Court to resolve the above-captioned case. The Parties further respectfully request that this Court conditionally dismiss the United States' Complaint without prejudice, pursuant to Fed. R. Civ. P. 41(a)(2), and retain jurisdiction over the Agreement for enforcement purposes.

The Court should approve and enter this Agreement as an Order because negotiated settlements are favored over costly and lengthy contested litigation. In addition, the Agreement satisfies all the factors courts look to in determining whether approval is warranted. The Agreement is fair and reasonable, having been negotiated over many months in good faith by the Parties. Furthermore, it is not unconstitutional or unlawful, and in fact will have the effect of protecting the constitutional rights of Tutwiler prisoners. Nor is the Agreement a product of

collusion. Finally, as the Parties have stipulated, it complies with the Prison Litigation Reform Act, in that it is narrowly tailored to remedy the violations alleged in the Complaint.

The Agreement, if entered as an Order by this Court, will resolve all claims that the United States raised in its contemporaneously filed Complaint.

I. BACKGROUND

On February 26, 2013, the Civil Rights Division of the United States Department of Justice notified Tutwiler officials of its intent to open an investigation pursuant to the Civil Rights of Institutionalized Persons Act, 42 U.S.C. § 1997 ("CRIPA"), as to whether prisoners confined at Tutwiler were subject to sexual abuse and sexual harassment by staff. On January 17, 2014, the United States issued a findings letter pursuant to 42 U.S.C. § 1997 that concluded that the State of Alabama violated the Eighth Amendment of the United States Constitution by failing to protect women prisoners at Tutwiler from harm due to sexual abuse and sexual harassment from correctional staff, and listed the minimum remedial measures necessary to rectify such conditions.

Following the issuance of the findings letter, the Parties conducted numerous negotiation sessions over many months and ultimately reached resolution on the disputed issues in this matter. The Parties have embodied that resolution in this Agreement, and seek this Court's approval of the Agreement and entry of the Agreement as an Order of this Court.

II. DISCUSSION

Negotiated settlements are encouraged as a way of avoiding contested litigation. Indeed, there is a "strong judicial policy favoring settlement as well as . . . the realization that compromise is the essence of [the] settlement." *Bennett v. Behring Corp.*, 737 F.2d 982, 986

(11th Cir. 1984); *see also Murchison v. Grand Cypress Hotel Corp.*, 13 F.3d 1483, 1486 (11th Cir. 1994) ("We favor and encourage settlements in order to conserve judicial resources").

Before approving a settlement agreement, a court should ensure that the agreement satisfies several factors. First, the court should ascertain that the settlement is fair, adequate and reasonable as between the parties. *See In re Smith*, 926 F.2d 1027, 1028-29 (11th Cir. 1991). The court should also ensure that the agreement is not "unconstitutional, unlawful, unreasonable, or contrary to public policy." *Stovall v. City of Cocoa*, 117 F.3d 1238, 1240 (11th Cir. 1997) (citation omitted); *see also Howard v. McLucas*, 871 F.2d 1000, 1008 (11th Cir. 1989) (holding that a court should determine whether a consent decree "represent[s] a reasonable factual and legal determination based on the record, and ensure that it [does] not violate federal law"). In addition, the court should ensure that the agreement is a not a product of collusion. *See Smith*, 926 F.2d at 1028-29.

Finally, because the Agreement here constitutes prospective relief regarding prison conditions, this 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 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)(1)(A) & (c)(1).

As explained below, the Agreement here satisfies all the conditions for approval, and thus this Court should approve and enter the Agreement.

a. The Agreement is Fair, Adequate, and Reasonable

A comprehensive investigation followed by numerous rounds of negotiations resulted in an agreement that is fair, adequate, and reasonable. The United States' CRIPA investigation and

the details included in its findings letter clearly establish an adequate factual record supporting the legitimacy of the Agreement. The United States is intimately familiar with the conditions and practices at Tutwiler and spent months negotiating an agreement that will address the deficiencies identified in the findings letter and the Complaint.

The Settlement Agreement contains comprehensive provisions designed to prevent, detect, and respond to sexual abuse and sexual harassment at Tutwiler. These comprehensive provisions directly coincide with the particular constitutional violations identified in the findings letter and alleged in the Complaint. Along with substantive provisions, the Agreement also contains requirements regarding the implementation of a quality assurance program. Defendants will track and analyze data in order to identify and address deficiencies in Defendants' prevention, detection, and response to sexual misconduct at Tutwiler, and to assess and ensure compliance with the terms of the Agreement. Defendants will provide semi-annual self-assessment compliance reports to the United States and to a jointly-selected independent monitor. The monitor will be retained by Defendants to monitor implementation of the Agreement. The monitor will have full and complete access to Tutwiler and its records, and all staff of Tutwiler will be directed to cooperate fully with the monitor. The monitor will provide compliance reports to the Court every six months.

Defendants have agreed to implement all policies and procedures required by the Agreement within nine months of the effective date of the Agreement. The Agreement will terminate when Defendants have achieved substantial compliance with each provision of the Agreement, and have maintained substantial compliance for three consecutive Court-filed compliance reports.

The Agreement thus is fair, adequate, and reasonable. All Parties have validly consented to the Agreement, which does not unreasonably affect third parties. The Parties agree that the Agreement is a fair, reasonable, and adequate resolution of all the issues related to the United States' investigation of Tutwiler pursuant to CRIPA.

b. The Agreement is not Unconstitutional, Unlawful, or Contrary to Public Policy

The Agreement does not violate the Constitution, any statutes or public policy. On the contrary, the Agreement serves to protect the constitutional rights of prisoners at Tutwiler. Protecting constitutional rights is manifestly an important public policy interest.

c. The Agreement is not a Product of Collusion

The Agreement is the result of months of arms-length negotiations by the Parties, and therefore "is not the product of collusion between the parties." *Bennett*, 737 F.2d 982, 986. After the United States issued its findings on January 17, 2014, the United States began settlement discussions with Defendants in March 2014, and the Parties subsequently conducted many months of face-to-face negotiations.

The Parties in the instant case are represented by experienced litigators who engaged in "a process of compromise in which, 'in exchange for the saving[s] of cost and elimination of risk, the parties each give up something they might have won had they proceeded with the litigation.'" *U.S. v. City of Jackson, Miss.*, 519 F.2d 1147,1152 (5th Cir. 1975), quoting *United States v. Armour & Co.*, 402 U.S. 673, 681 (1971). The respective duties of each government agency towards those they represent provides this Court with assurance that the Settlement Agreement is not the product of collusion.

d. The Agreement is Narrowly Tailored to Remedy Ongoing Violations

As referenced above, because the Agreement here constitutes prospective relief regarding prison conditions, this Court must find that it complies with the PLRA. 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)(1)(A) & (c)(1).

Here, the relief agreed upon is narrowly tailored to remedy the United States' allegations that Defendants violated the Eighth Amendment of the United States Constitution by failing to protect women prisoners at Tutwiler from harm due to sexual abuse and harassment from correctional staff. Each provision of the Agreement addresses an allegation outlined in the January 17, 2014 findings letter of the United States, which formed the factual basis of its Complaint filed in conjunction with this Agreement. The remedies contained in the Agreement were developed from the findings letter of the United States in which, as required under CRIPA, the United States listed only "the minimum measures which the Attorney General believes may remedy the alleged conditions and the alleged pattern or practice of resistance." 42 U.S.C. § 1997b(a)(1)(C). Thus, from the outset of negotiations, the Parties have focused on agreeing only to those "minimum corrective measures necessary to insure the full enjoyment of such rights, privileges, or immunities . . . secured or protected by the Constitution [or laws] of the United States." 42 U.S.C. § 1997a(a)

Although "[t]he PLRA generally requires that the court 'engage in a specific, provision-by-provision examination of [a] consent decree[ ], measuring each requirement against the statutory criteria' . . . '[t]he parties are free to make any concessions or enter into any stipulations they deem appropriate,' and the district court does not need to 'conduct an evidentiary hearing

about or enter particularized findings concerning any facts or factors about which there is not dispute.'" *Henderson v. Thomas*, No. 2:11cv224, 2013 WL 5493197, at *8 (M.D. Ala. Sept. 30, 2013) (quoting *Cason v. Seckinger*, 231 F.3d 777, 785 & n.8 (11th Cir. 2000)); *see also Laube v. Campbell*, 333 F. Supp. 2d 1234, 1239 (M.D. Ala. 2004) (relying on *Cason*, the Court finds that "the remedial provisions to which the parties have agreed . . . represent the parties' considered judgment as to what is necessary, narrow, and least intrusive with respect to the specific problems presented in this case, with which the parties are intimately familiar") (internal quotation omitted).

Accordingly, the Parties stipulated in Part XII of the Agreement that the relief required therein complies in all respects with the provisions of 18 U.S.C. § 3626(a). The Parties further stipulated that the prospective relief in this Agreement is narrowly drawn, extends no further than necessary to remedy Plaintiff's allegations that Defendants violated the Eighth Amendment of the United States Constitution by failing to protect women prisoners at Tutwiler from harm due to sexual abuse and harassment from correctional staff, is the least intrusive means necessary to correct these alleged violations, and will not have an adverse impact on public safety or the operation of a criminal justice system.

III. CONCLUSION

For the reasons above, this Court should find that the Agreement is fair, adequate, and reasonable; is not unconstitutional, unlawful, or contrary to public policy; is not a product of collusion; and complies in all respects with the PLRA.

Wherefore, the Parties respectfully and jointly request that this Court approve the Agreement in its entirety, enter it as an Order of the Court, conditionally dismiss the United States' Complaint without prejudice, and retain jurisdiction for enforcement purposes.

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Respectfully submitted,

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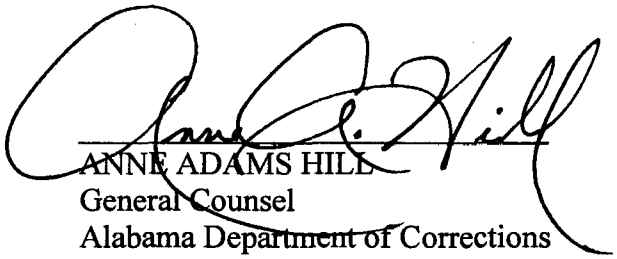

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