

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

KENNY A., by his next friend,	)	
Linda Winn; et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	CIVIL ACTION
	)	No. 1:02-CV-1686-MHS
SONNY PERDUE, in his official	)	
capacity as Governor of the	)	
State of Georgia; et al.,	)	
	)	
Defendants.	)	

**STATE DEFENDANTS' BRIEF IN SUPPORT OF  
JOINT MOTION FOR FINAL APPROVAL OF CONSENT DECREE**

The Plaintiff class and the State Defendants, through their respective counsel, have jointly moved the Court to grant final approval of the Settlement Agreement (embodied in the terms of the proposed Consent Decree attached to the Joint Motion as Exhibit 1).

State Defendants have reviewed the Memorandum of Class Counsel in Support of the Joint Motion for Final Approval, and that Memorandum correctly states the applicable legal standards to be considered by the Court in evaluating the proposed settlement. State Defendants also agree that the settlement, as embodied in the proposed Consent Decree, complies with the requirements of Rule 23 of the

Federal Rules of Civil Procedure and meets the standards imposed for a fairness evaluation as prescribed by the Eleventh Circuit. State Defendants are constricted to note that they do not subscribe to, adopt, or acquiesce to what they consider to be argumentative and inaccurate language contained in Plaintiffs' Summary of the Litigation as well as some of the other factual recitations of the case as presented in Plaintiffs' Memorandum. That language is plainly irrelevant to the Court's task in evaluating the settlement agreement.

State Defendants do firmly believe that, for the reasons cited by Plaintiffs, the proposed Consent Decree is fair, reasonable, and adequate. All affected parties have had ample basis to evaluate the settlement. State Defendants have reviewed the comments submitted in reference to the proposed Consent Decree, and note that none question the reasonableness, fairness, or adequacy of the settlement as a whole. Most of the persons and entities submitting comments support the Consent Decree either in whole<sup>1</sup> or in substantial part.<sup>2</sup>

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<sup>1</sup> See comments submitted by Beth Locker (Judicial Council of Georgia), Mary Mentaberry (National Council of Juvenile & Family Court Judges), and Elizabeth Price (Atlanta Bar Association).

<sup>2</sup> None of those individuals or entities making comments concerning specific provisions of the proposed Consent Decree asserts that the Decree as a whole is not fair or reasonable. Some of the comments made do not even address the proposed Consent Decree itself but instead raise individual matters or philosophical topics. See Comments of Glen & Marge Roberson (foster parents), Lige & Lillian Wallace (foster parents), and Linda Stacy (DeKalb CASA).

Those individuals or groups that express concern with or objection to selected portions of the proposed Consent Decree, in State Defendants' opinion, have not raised any issues that justify or mandate the denial of approval of the Consent Decree as proposed. See, e.g., Garst v. Franklin Life Ins. Co., No. 97-C-0074-S, 1999 U.S. Dist. LEXIS 22666, at \*72 (N.D. Ala. June 25, 1999) (none of 34 objections which criticize only certain aspects of settlement had merit). Those comments raised by individuals or entities affiliated with emergency shelters,<sup>3</sup> group homes and institutions,<sup>4</sup> and a University-based advocacy group,<sup>5</sup> while expressing individual concerns or desires for individualized changes, do not either

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<sup>3</sup> This group includes comments submitted by: Nancy Friauf (Gwinnett County Children's Shelter), Philip Kouns (Georgia Emergency Shelter Network), Frances Davis (Gwinnett County Public Schools), James H. Maughton (Hayes, James & Associates), and Melissa Reid (The Alcove and two named children). Some of the group homes and institutions referred to in note 4, below, also raise similar concerns about certain restrictions put on placement in emergency shelters.

<sup>4</sup> This group includes comments submitted by: Pam Ross and Robert Crutchfield (Christian City Home for Children), Mario Bolivar (Devereaux), John Blend (Goshen Valley Boys Ranch), Inner Harbour (Ron Scroggy), Kenneth Dobbs (Georgia Baptist Children's Homes), Abe Wilkinson (Elks Aidmore), Truett Cathey (WinShape Homes), Steve Rumford (Methodist Home for Children), Normer Adams (Georgia Association of Homes & Services for Children), Patricia Showell (Families First), Douglas Mead (Georgia AGAPE), Jack Bice (Lighthouse Care Center), Barry Kerr (Morningside Treatment Services, and Mike Watson (Georgia Christian Council).

<sup>5</sup> See comments of the Barton Child Law & Policy Clinic of Emory University School of Law (suggesting either changes to or additions of certain outcome measures in the proposed Consent Decree).

separately or as a whole overcome the fairness, adequacy, and reasonableness of the proposed Consent Decree.

The number of objections raised by actual class members or their representatives is exceedingly small compared to the number of persons in the class and individuals receiving notice. See In re Domestic Air Transp. Antitrust Litig., 148 F.R.D. 297, 326 (N.D. Ga. 1993).

Although the Court must review and address such objections, “this is not to say that the trial judge is required to open to question and debate every provision of the proposed compromise.” The central question at issue is not whether any particular provision could have been negotiated in a slightly different or marginally more favorable way. Rather, the Court must determine the fundamental fairness, adequacy, and reasonableness of the settlement, taken as a whole. While the Court may interpret provisions subject to dispute, it may not unilaterally rewrite the terms of the bargain struck by the parties.

Ingram v. The Coca-Cola Co., 200 F.R.D. 685, 691-92 (N.D. Ga. 2001) (citing Cotton v. Hinton, 559 F.2d 1326, 1331 (5th Cir. 1977))<sup>6</sup> (other citations omitted).

Even when the Court becomes aware of one or more objecting parties, the Court is not “required to open to question and debate every provision of the proposed compromise. The growing rule is that the trial courts may limit its proceeding to whatever is necessary to aid it in reaching an informed, just and reasoned

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<sup>6</sup> In Bonner v. City of Prichard, 661 F.2d 1206, 1207 (11th Cir. 1981) (en banc), the Eleventh Circuit adopted as binding precedent all decisions of the former Fifth Circuit handed down prior to September 30, 1981.

decision.” Cotton v. Hinton, 559 F.2d at 1331. A small number of objectors from a plaintiff class of thousands is strong evidence of a settlement’s fairness and reasonableness. Id.; see also Bennett v. Behring Corp., 96 F.R.D. 343, 352-53 (S.D. Fla. 1982), aff’d, 737 F.2d 982 (11th Cir. 1984). Indeed, “a review of this record affirmatively shows great patience and diligence by counsel and the court in resolving a massive and difficult case. It is a tribute to all concerned that such a just settlement was consummated.” Bennett v. Behring Corp., 737 F.3d 982, 988 (11th Cir. 1984).

“[I]n class action suits, there is an overriding public interest in favor of settlement.” Cotton v. Hinton, 559 F.2d at 1331. The settlement before the Court has been achieved in good faith through arms-length negotiations. The relief afforded is a fair compromise, given the costs and uncertainty of future litigation of this matter.

Consequently, for the reasons stated above and those stated in Plaintiffs’ Memorandum, State Defendants respectfully urge this Court to give final approval to the proposed Consent Decree negotiated by Class Counsel and State Defendants in this matter.

Respectfully submitted, this 19th day of September, 2005.

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that **STATE DEFENDANTS' BRIEF IN SUPPORT OF JOINT MOTION FOR FINAL APPROVAL OF CONSENT DECREE** was electronically filed with the Clerk of Court using the CM/ECF system, which serves notification of such filing to all counsel of record.

This 19<sup>th</sup> day of September, 2005.

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