IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

KEVIN P. ROOKS, et al.,

Plaintiffs,

UNITED STATES OF AMERICA,

Plaintiff-Intervenor,

vs.

TOMMY HERRING, et al.,

Defendants.

Civil Action 92-0316-M

ORDER

On January 18, 1995, the Court heard from counsel for the parties on the proposed settlement of this action as set out in the Consent Order which was preliminarily approved on September 27, 1995 (Doc. 140) and on the objections which had been filed to the proposed settlement. After consideration of the Consent Order submitted by all parties, all objections to the Consent Order (Red File Folder; Doc. 154), the parties' responses to those objections (Docs. 151-153, 155, 158), all other relevant pleadings, and oral arguments presented at the hearing, it is hereby ORDERED that the Consent Order is approved.

This action was brought by inmates at the Conecuh County Jail ("Jail") in Evergreen, Alabama, alleging that the conditions at the Jail were unconstitutional. It was certified by the Court as a class action (Doc. 82) and, subsequently, the United States intervened pursuant to the Civil Rights of Institutionalized Persons Act, 42 U.S.C. §§ 1997, et seq. (Docs. 109, 110, 134).

The inmate Plaintiffs sought damages and all Plaintiffs, on behalf of the class members, sought injunctive relief against Conecuh County officials to redress the allegedly unconstitutional conditions.

After extensive discovery and several settlement conferences conducted by the undersigned Judge, the parties reported to the Court that a settlement agreement had been consented to by all parties (Doc. 131). At the request and with the consent of the parties, this action was referred to the undersigned Judge for all further proceedings and entry of judgment pursuant to 28 U.S.C § 636(c) (Doc. 139) and, on September 27, 1994, the proposed Consent Order setting forth the settlement agreement was preliminarily approved (Doc. 140). By agreement of the parties and with the approval of the Court, the class was expanded to include all inmates who have been, are currently, or will be incarcerated in the Conecuh County Jail.

A procedure for providing notice to all necessary persons and for giving those persons the opportunity to comment on or object to the proposed settlement agreement was approved and ordered implemented (Docs. 144-147), and objections and/or comments to the Consent Order were received from the following persons: Tommy Chapman, Conecuh County District Attorney; Rance English, Repton city councilman; John Perdue, Jr., an inmate currently confined in the Jail on his own behalf and on behalf of five other inmates; and Levon McCreary (Red File Folder; Doc. 154).

The Consent Order settles the two different complaints filed in this action, namely, a class action complaint also containing individual claims, and a complaint by the United States. Somewhat different standards govern approval of class action and non-class action settlements. To approve a non-class action settlement the court must conclude that the parties have validly consented; that the settlement is fair, adequate and reasonable; that the settlement agreement will not violate the Constitution, any statute or public policy; that it is consistent with Congressional objectives; and that it will not be unreasonable or legally impermissible to third parties. United States v. City of Miami, 614 F.2d 1322 (5th Cir. 1980), rehearing granted, aff'd in part and rev. in part, 664 F.2d 435 (5th Cir. 1981) (affirming settlement of civil rights employment discrimination suit). See also In Re Smith, 926 F.2d 1027 (11th Cir. 1991) (mandamus writ granted directing district court to enter settlement agreement under Education of the Handicapped Act, since settlement was fair, adequate and reasonable, and was not product of collusion between parties); Durrett v. Housing Authority of Providence, 896 F.2d 600, 604 (1st Cir. 1990) (reversing district court refusal to approve consent decree settling civil rights fair housing action, court found parties validly consented to agreement, reasonable notice was given to possible objectors, agreement was fair, adequate and reasonable, and not illegal or unconstitutional).

Court approval of class action settlement agreements is conditioned on a finding that the agreement is fair, adequate and reasonable, and not a product of fraud or collusion between the parties. Piambino v. Bailey, 757 F.2d 1112, 1139 (11th Cir. 1985), cert. denied, 476 U.S. 1169 (1986); Bennett v. Behring Corp., 737 F.2d 982, 986 (11th Cir. 1984).

The Court finds that the settlement agreement set out in the Consent Order satisfies all of the requisite standards. All parties have validly consented to the agreement. Notice of the terms of the agreement was published appropriately, and did generate several comments upon or objections to the agreement, which for the reasons set forth below are overruled. The agreement does not violate the Constitution, any statutes, or public policy. In fact, the agreement is drafted to secure the Constitutional rights of inmates of the Jail. The agreement is consistent with Congressional objectives as expressed in the Civil Rights of Institutionalized Persons Act, 42 U.S.C. §§ 1997, et seq., which incorporates a Congressional preference for settlement of actions such as this. The agreement does not unreasonably or illegally affect any third persons. The agreement is not the product of fraud or collusion; it is a resolution forged by experienced and qualified counsel after vigorous and seriously contested litigation.

The Court finds that the settlement agreement is fair, adequate and reasonable. The agreement addresses conditions of confinement relating to all substantial constitutional concerns,

including conditions in the following areas: physical structure, population and classification, staffing, staff training, policies and procedures, fire safety, living environment, food, exercise, medical care, security and control, suicide and intoxication management, access to the courts, grievance and discipline procedures, and mail and visitation rights. The Court has reviewed the settlement agreement and is satisfied that it is fair, adequate and reasonable.

The Court overrules the objections to the settlement agreement for the following reasons. The objections of John Perdue Jr., for himself and five other Jail inmates, relate to conditions of confinement which are addressed by the proposed settlement agreement. The Consent Order will provide a sufficient mechanism for redressing these inmates' concerns. Mr. Levon McCreary filed a comment upon, but not an objection to, the agreement. Mr. Tommy Chapman, Conecuh County District Attorney, lacks standing to object to the agreement because he has no legally cognizable interest in the litigation or in conditions of confinement in the Jail. See Newman v. Graddick, 740 F.2d 1513 (11th Cir. 1984) (consent decree approved over objection of Alabama Attorney General); Harris v. Reeves, 946 F.2d 214 (3d Cir. 1991), cert. denied, 112 S.Ct. 1516 (1992) (consent decree approved over objection of Philadelphia District Attorney); Harris v. Pernsely, 820 F.2d 592 (3d Cir. 1987), cert. denied, 484 U.S. 947 (1987) (denying District Attorney's motion to intervene in jail litigation). Moreover, for the reasons

stated by the parties in response to the District Attorney's objections, those objections are legally and factually unpersuasive. Mr. Rance English, a Repton city councilman, lacks standing to object to the agreement, for the same reasons Mr. Chapman lacks standing. Moreover, his objections lack sufficient specificity to be entertained by the Court.

As stated by the Court at the hearing on January 18, 1995, and in its earlier ruling of October 6, 1994 (Doc. 143), the Consent Order became effective when it was preliminarily approved and signed by the Court on September 27, 1994. Therefore, Defendants' obligations under the settlement agreement, except those concerning the required status reports as more fully set out below, run from that date.

Finally, as required by paragraph 151 of the Consent Order, Defendants must submit to the Court and to all parties four monthly status reports and quarterly reports thereafter. The four monthly reports shall be due on February 15, 1995, and on the 15th day of the next three months, and the first quarterly report shall be due on August 15, 1995. The report shall contain sufficient information to allow the Court and the parties to understand and evaluate Defendants' progress in implementing all aspects of the Consent Order.

An oral status report was given by Ms. Alford at the hearing indicating that the installation of the new roof was almost complete and that a rough draft of the required written procedures was complete and would be submitted to Mr. Masling for

review and comment. Ms. Alford will also contact Mr. Stevens, Conecuh County Attorney, about filing a formal appearance in this action so that he can coordinate and submit the required status reports for the Defendants.

DONE this 24th day of January, 1995.

Bert W. Milling Jr.
BERT W. MILLING, JR.
UNITED STATES MAGISTRATE JUDGE

U.S. DISTRICT COURT
SOU. DIST. ALA.
FILED THIS THE
24th DAY OF Jan
1995. JUDGEMENT ENTERED
NO. 3916-A
DEBORAH S. HUNT, CLERK
BY
DEPUTY CLERK