

RECEIVED IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

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JOHNNY REYNOLDS, et al.,)

Plaintiffs,)

CECIL PARKER, et al.,)

Plaintiffs-Intervenors,)

v.)

ALABAMA HIGHWAY DEPARTMENT,
et al.,)

Defendants.)

CLERK
U. S. DISTRICT COURT
MIDDLE DIST. OF ALA.

CIVIL ACTION NO.

85-T-665-N

AGREEMENT ON REMEDIES FOR CONTEMPT

Plaintiffs, defendants, and Adams Intervenors (hereinafter the "parties") submit the following agreement in partial resolution of plaintiffs' motions for contempt and further relief (Doc. Nos. 1542 and 1543), and the Adams Intervenors' motion for contempt enforcement through race neutral means (Doc. No. 4167). The parties agree that, as set forth herein, defendants should be held in contempt of Court for non-compliance with Consent Decree I and the Court's orders and injunctions related to its enforcement until such time as they have affirmatively demonstrated that they have achieved full compliance with such Decree, orders and injunctions. This agreement resolves the issue of defendants' non-compliance and the coercive remedies and sanctions for such non-compliance, but

does not resolve any other remedial issues regarding the defendants' contempt or the foregoing motions (including, but not limited to, compensatory relief).

Pursuant to this agreement, defendants must, by the dates set forth below, demonstrate full compliance with each Article of Consent Decree I. The coercive sanctions set forth in Section II below are to begin automatically on the date provided in the absence of a stipulation or order of the Court establishing defendants' full compliance. Nothing in this agreement extends, or shall be construed to extend, the time for complying with Consent Decree I or any orders or injunctions relating to such Decree, and nothing in this agreement shall be construed to modify, alter, or amend the terms of Consent Decree I or any other order or injunction previously entered by the Court. Nor shall this agreement excuse, or be construed to excuse, full compliance with Consent Decree I or any other order or injunction. The specific allegations of contempt asserted by both plaintiffs and the Adams Intervenors are resolved by this agreement except as expressly set forth below.

This agreement addresses defendants' contempt of Consent Decree I and orders and injunctions enforcing Consent Decree I entered pursuant to plaintiffs' claims under Title VII of the Civil Rights Act of 1964, as amended, the Civil Rights Act of 1866 and

1871, as amended (42 U.S.C. § 1981 and 1983 respectively). As such, the district court is authorized under 28 U.S.C. § 1331, 42 U.S.C. § 1343, and 42 U.S.C. § 2000e et. seq. to enter such relief as necessary to coerce compliance and compensate for injuries caused by noncompliance with the race-neutral provisions of Consent Decree I or related orders or injunctions. The provisions of Consent Decree I were entered on March 16, 1994, on consent of the plaintiffs, defendants, and intervenors that Consent Decree I contained race-neutral provisions of a decree proposed by plaintiffs and defendants. Venue is proper in the U.S. District Court for the Middle District of Alabama.

Plaintiffs and defendants consent to the Court's entry of an order finding the defendants in contempt of Consent Decree I on the basis of the stipulations set forth herein, the Stipulations of Fact filed August 13, 1999 (Doc. no. 4147), the Court's prior orders, findings and declaratory judgments regarding compliance, or lack thereof, with Consent Decree I, the evidence presented at trials and hearings in this case since the effective date of Consent Decree I, and the record of the case as a whole at any time since the effective date of Consent Decree I. The Adams Intervenors do not join in plaintiffs' and defendants' agreement concerning this evidentiary basis.

All the parties hereto stipulate that the defendants have not yet fully complied with Consent Decree I, entered March 16, 1994 (Doc. No. 553). In addition to plaintiffs' and defendants' agreement in the immediately preceding paragraph, all the parties hereby consent to the Court's entry of an order finding the defendants in contempt of Consent Decree I on the basis of the stipulations set forth herein; defendants' admissions as set forth in Stipulations 1-6, 19-23, 30-36, 39-40, 75-78, 90-94, 96-97, 179-181 of the Stipulations of Fact filed August 13, 1999 (Doc. no. 4147);¹ and evidence presented at proceedings on these issues.

SECTION I: EXTENSION OF CONSENT DECREE I

Plaintiffs and defendants agree that the term of Consent Decree I, in its entirety, be extended until December 31, 2004. Plaintiffs and defendants further agree that the provisions of Consent Decree I affecting the recruitment and selection requirements of the Decree – specifically Articles I, III (§§ 2, 3, and 12), VI through XI (§§11 and 21), XIII (§§ 1(a) and (c), 2, 3(d), and 11), Article XIV, Article XIX, (§§ 1-5, 6(a-d), and 7) – be extended until December 31, 2006. The special affirmative action training of Article XVI, § 1 shall be repeated in 2002 and

¹The intervenors do not join in the plaintiffs' and defendants' stipulations and do not waive their contention that remedies not set forth herein affecting the employment interests of the intervenor class can only be entered upon consent or following full evidentiary proceedings.

2004. Prior to expiration of the term provided, the parties may seek further extension of any provision for which defendants are not in full compliance. Notwithstanding the foregoing provision, plaintiffs also retain the right to seek extension of the duration of all or part of the Consent Decree I pursuant to the provisions of Article 19, ¶ 10 of Consent Decree I. Plaintiffs reserve the right to seek to restore the full amount of time that each provision of Consent Decree I was intended to operate after the initial compliance as a remedy for defendants' contempt. Defendants reserve the right to oppose any such further extension.

The Adams Intervenors object and do not consent to the foregoing extensions of Consent Decree I. The intervenors do not object to an extension of the stated term of Consent Decree I, as provided in Article 19, ¶ 10, until December 31, 2002.

SECTION II: COERCIVE SANCTIONS FOR CONTEMPT

Defendants shall affirmatively demonstrate their full compliance with each provision of Consent Decree I by the deadlines for each such provision listed in Section V below. If such affirmative demonstration, as confirmed by either a stipulation of the parties or order of the Court, has not occurred prior to the deadlines for automatic sanctions set forth below, then the following sanctions shall commence on each such deadline and continue until such time as the district court determines that the

defendants have achieved full compliance with the subject Article of Consent Decree I and related orders and injunctions. As to each Article for which one of the deadlines in Section V has not been met:

1. On the first day following the expiration of the deadline date, and on each subsequent day until full compliance is stipulated by the parties or found to have been achieved by the district court, defendants shall pay the sum of \$500.

2. Should defendants' non-compliance continue for more than thirty days following the deadline date, beginning on the thirty-first day, and on each subsequent day until full compliance is stipulated by the parties or found to have been achieved by the district court, defendants shall pay the sum of \$1,000.

3. Should defendants' non-compliance continue for more than sixty days following the deadline date, beginning on the sixty-first day, and on each subsequent day until full compliance is stipulated by the parties or found to have been achieved by the district court, defendants shall pay the sum of \$1,500.

4. Should defendants' non-compliance continue for more than ninety days following the deadline date, the plaintiffs shall notify the Court, and the Court will set an emergency hearing to determine appropriate additional sanctions and remedies for continued non-compliance on an expedited basis.

5. The sanctions set forth above shall apply, separately and severally, to each Article of Consent Decree I.

6. If the plaintiffs or intervenors believe at any time during the period prior to any deadline for fines to commence that the defendants are not making sufficient progress towards achieving full compliance with any provision of Consent Decree I, they may petition the Court to enter such sanctions as are necessary to coerce such progress or compliance, including, but not limited to, commencing payment of the agreed-upon fines set forth above prior to the deadlines established below, and the district court will treat such petition as an emergency motion by causing its hearing and determination to be expedited.

7. The foregoing sums shall be paid into the registry of the District Court on a weekly basis.

8. Defendants are required to comply with the deadlines set forth in Section V, and must affirmatively demonstrate such compliance in order to avoid payment of the sanctions set forth above.

SECTION III: MEDIATION

Prior to the arrival of any deadline, if defendants believe they have complied with the required actions, defendants shall timely solicit agreement from plaintiffs and intervenors that defendants are in compliance, in sufficient time prior to such

deadline to allow plaintiffs and intervenors a reasonable opportunity to review defendants' report and determine whether the proposed stipulation should be entered. The solicitation of a stipulation shall include a detailed report demonstrating full compliance with appropriate documentation.

If the other parties agree that defendants have achieved compliance, the parties shall so stipulate and the stipulation shall be filed with the Court on or before the deadline date.

If the parties dispute whether defendants have achieved compliance, the matter in dispute shall be submitted to the monitor for mediation on an expedited basis in sufficient time before the deadline for the sanctions to commence by the deadline date. Prior to exercising their right to seek early imposition of sanctions pursuant to paragraph 6, plaintiffs or intervenors will notify defendants of the alleged deficiency and submit the matter in dispute to the monitor for mediation.

If defendants are unable to obtain a stipulation of compliance from the other parties by the deadline date, defendants shall begin automatic payment of daily monetary sanctions, as described above, until relieved therefrom by an order of the district court that they have in fact fully complied with the subject provision of Consent Decree I. If the defendants file a motion before the commencement of any such fine contending that they were in full

compliance by the deadline date, and the Court determines that defendants were in compliance on the date such fines commenced as alleged in the motion, the court shall enter an order refunding to defendants any fines paid since the deadline date.

Plaintiffs and intervenors shall not unreasonably withhold stipulation of compliance and will promptly provide defendants with a written statement specifically identifying in what respects the plaintiffs and/or intervenors contend defendants have not complied with the subject provision of Consent Decree I within fifteen business days after being served with defendants' report of compliance.

If defendants acknowledge that they are not in compliance with any provisions of Consent Decree I by the appropriate specified deadlines they shall notify all parties and file a Notice of Non-Compliance with the court not later than the specified deadline for daily monetary sanctions to begin.

SECTION IV: NON-COERCIVE REMEDIES AND SANCTIONS

This agreement does not resolve issues concerning what non-coercive remedies or compensation, if any, should be awarded to redress or undo the effects of defendants' non-compliance and contempt. Such remedies must be determined by further agreement of the parties or order of the Court after hearings thereon. The

parties agree to submit briefs on the issues necessary to resolve the remedies under this Section by February 11, 2000.

Plaintiffs contend that the Court should expedite such further remedial proceedings for defendants' contempt of Consent Decree I and related orders, but that any such proceedings requiring individualized determinations should not be conducted before the resolution of all claims and proceedings required by Article 20 of Consent Decree I except insofar as the Court conducts any such individualized remedial proceedings for the defendants' contempt and determines the relief thereon for plaintiffs and the members of the plaintiff class at the same time as it hears and/or determines their remedies under Article 20 of Consent Decree I. The Adams Intervenors contend that remedies for all persons injured by defendants' non-compliance should be resolved promptly. Defendants reserve the right to contend that no further relief, beyond that granted pursuant to this agreement, is necessary or appropriate and that the Court should exercise its discretion to deny any such additional remedies.

The plaintiffs do not consent to the Adams Intervenors' claim that they should be awarded compensation or any other remedy for defendants' contempt, and, by entering this agreement and consenting to any order entered pursuant hereto, plaintiffs do not waive their contention that such relief should not be awarded, that

the intervenors lack standing, and that this Court lacks jurisdiction over the intervenors' contempt motion and request for relief. The Adams Intervenors reserve their responsive contentions and further contend that the plaintiffs lack standing to oppose intervenors' contempt motion and request for relief.

This agreement does not in any way resolve or foreclose any employee's individual rights and remedies, if any, under federal or state law or under consent decree I or related orders and injunctions entered in this case, nor does it foreclose any employee's right to pursue such rights and remedies independently of the contempt motions.

SECTION V: DEADLINES FOR COMMENCEMENT OF SANCTIONS

The dates that the coercive sanctions in Section II commence in the absence of a stipulation or court order determining that full compliance has been achieved are the following:

CONSENT DECREE PROVISION DEADLINE FOR COMMENCEMENT OF SANCTIONS

Article I: May 31, 2000, except that the deadline for full implementation of licensing preparation program in ¶ 1(f) shall be August 15, 2001 and the deadline for a written plan for full compliance shall be April 1, 2000.

Article II: December 31, 2000 for SPD Project Classifications and October 1, 2001 for non-SPD Project Classifications.

Article III: August 30, 2000, except that the deadline for having the registers approved and

ready for issuance of certificates of eligibles shall be December 31, 2000 for all non-entry level SPD Project Classifications, and October 1, 2001 for all non-SPD Project Classifications; and the deadline for full compliance with the provisions of Article III, ¶ 2 (a) shall be June 1, 2000.

Article VI: March 31, 2000 for permanent selection procedures.

Article VII: February 1, 2000 for permanent selection procedures, and for interim selection procedures only to the extent set forth in the parties' agreement on interim selection procedures dated February 16, 1999.²

Article VIII: May 15, 2000 for permanent selection procedures, and for interim selection procedures only to the extent set forth in the parties' agreement on interim selection procedures dated February 16, 1999, except that structured interviews for non-SPD Project Classifications are to be approved by the Court and ready for use by December 31, 2000 and the deadline for the OCB interviews to be approved and used for SPD Project Classifications shall be April 15, 2000.

Article IX: May 31, 2000 for permanent selection procedures, and for interim selection procedures only to the extent set forth in the parties' agreement on interim selection procedures dated February 16, 1999 (Doc. No. 3639), except the deadline for the monitoring procedures shall be February 15, 2000.

² The intervenors do not consent to use of the current tie breaking procedure challenged in their motion to modify, filed June 29, 1998 (Doc. No. 2902). That motion remains pending before the Court.

Article X: April 1, 2000, except the deadline for ¶ 3 (a) shall be May 15, 2000.

Article XI: April 15, 2000, including documentation in writing of all affirmative steps undertaken pursuant to ¶ 11 by that date.

Article XIII: June 30, 2000, except that notification to recruitment sources of discontinuance of EIT shall be repeated by June 1, 2000.

Article XIV: April 30, 2000, except that the deadline for full compliance with Article XIV, ¶ 2 shall be February 29, 2000, and the deadline for a complete schedule for implementation of the rotation and training programs under ¶ 3(c) (but not the proportionality provision) for all applicable classifications shall be June 30, 2000. Once the schedule for compliance with the rotation and training programs under ¶ 3(c) has been completed, deadlines for coercive sanctions pursuant to Section IV of this agreement shall be set by agreement of the parties or order of the Court.

Article XV: February 29, 2000, except that the deadline for completing multigrade studies for all remaining non-SPD Project classifications, including those covered in Doc. No. 4015 shall be August 30, 2001. For future multigrade job studies, ¶3(d) shall be implemented, where applicable, within 60 days after the approval of the collapsed classification by the State Personnel Board.

Article XVI: May 15, 2000.

Article XVII: April 30, 2000.

Article XVIII: April 30, 2000.

Article XIX: March 1, 2000, except that the deadline for any revisions to the affirmative action plan shall be April 1, 2000.

SECTION VI: IMPLEMENTATION OF ARTICLE FIFTEEN, ¶ 3(d)

Solely for the purpose of fixing the minimum steps necessary to avoid the triggering of coercive sanctions by the deadline date of February 29, 2000, and not for the purpose of determining what constitutes full compliance with Article XV, ¶3(d) of Consent Decree I, the parties agree that defendants will be relieved of paying such coercive fines for contempt of Article XV, ¶3(d) by fully implementing the following steps by February 29, 2000:

1. As to each employee in a consolidated classification (those currently in a consolidated classification and those who have been in a consolidated classification at any time since February 1998), defendants will determine what each employee's pay level would have been as of April 1996 had the new consolidated classification structure historically been in place instead of the former classification structure.

2. Defendants will then project each employee's pay level as if each employee had been in the new consolidated pay range from April 1996 to present.³

³ In the event an employee has not been in the consolidated classification since April 1996, defendants will apply this procedure from the date the employee entered the consolidated classification.

3. Defendants will then place each employee in the resulting pay step within the new consolidated pay range, if the employee's projected pay step is higher than the employee's current pay step. No employee's pay step shall be reduced as a result of the implementation of this provision.

4. Defendants will produce to plaintiffs' and intervenors' counsel the calculations and determinations required above for each employee in a consolidated classification.

These steps are adopted as a compromise in resolution of a disputed issue. By entering into this agreement, the parties do not waive their respective contentions concerning the proper interpretation of Article Fifteen, ¶ 3(d). Plaintiffs and Adams Intervenors reserve the right to contend that, if it is later determined that an employee should have been promoted at an earlier date, that employee's pay step must be recalculated hereunder. Nothing in this agreement shall be construed as an admission that the foregoing method of implementation of Article Fifteen, ¶ 3(d) is correct. The years of service issue remains pending in the district court.

SECTION VIII: FILLING OF VACANCIES

Pursuant to the provisions of Article Seven, §§ 1 and 2, ALDOT will take all reasonable steps necessary to ensure that, whenever a vacancy occurs, either (a) a request to fill the position is made

within thirty days of the event causing the vacancy, or (b) SPD is notified within thirty days that ALDOT does not intend to fill the position, and the reason the position is not to be filled. Positions that are not to be filled will be abolished. Such notices will be produced to the parties, through counsel, as part of the monthly compliance report.

Use of out of classification assignments is to be eliminated by March 30, 2000. Thereafter, duties or positions may be assigned on an out of classification basis only when necessary on a temporary or emergency basis. A vacant position may be assigned out of classification only (a) when the position is to be filled and a request has been made to fill the position, and (b) for the period of time required to fill the position with a properly classified employee. Requests to assign a vacant position on an out of classification basis must be made by the bureau or division in writing, and are subject to the approval of ALDOT's Director. Such requests will be produced to the parties on a monthly basis as part of defendants' monthly compliance report.

Nothing in this Section controls the manner in which positions are to be filled. The parties reserve their respective contentions concerning the method of filling vacant positions.

SECTION IX: USE OF CONSULTANTS

Section IX reflects the agreement of only the plaintiffs and defendants regarding consultant issues. The Adams Intervenors do not join in Section IX, and expressly reserve any contention or objection that they may have with regard to the use of consultants.

Plaintiffs and defendants agree as follows:

1. ALDOT currently uses consultant employees to perform construction engineering and inspection (CE&I) work. Consultants are contracted to perform such work pursuant to both project specific and "on-call" contracts.

2. Plaintiffs and defendants wish to adopt a plan for ALDOT to cease using CE&I consultants on a regular basis. ALDOT's use of consultant employees to perform construction engineering and inspection work will be phased out over a period of 15 months. The 15 month period shall commence on the day that certificates of eligibles are issued by the State Personnel Department to fill currently existing Engineering Assistant vacancies, or Engineering Assistants to fill such vacancies are otherwise appointed, but not later than June 1, 2000. Beginning in January, 2000, ALDOT shall provide to the parties, on a monthly basis, a report of the CE&I consultant employees who are then currently performing services for ALDOT. The report shall include the nature of work being performed, the location of the work, and the identity and race of

the consultant employee. ALDOT will use its best efforts to reduce the number of consultants as soon as it can practically do so.

3. ALDOT may continue to enter into contracts when necessary to ensure the availability of CE&I consultants when the need for such consultants arises. Upon the completion of the 15 month phase out period as set forth above, and for the remaining term of this agreement as set forth in paragraph 5, below, ALDOT will use CE&I consultant employees pursuant to such contracts only when the use of consultants is consistent with business necessity. For purposes of this agreement, "business necessity" means the absence of available merit system employees or the impracticability of employing such merit system employees to timely and adequately perform the work to be performed by consultant employees.

4. Whenever the Director deems it necessary to use CE&I consultant employees, he shall issue a notice, through counsel, to the parties. The notice shall set forth the identity of the consultant to be used, the nature of the work to be performed, the location of the work to be performed, and the expected duration of the use of such consultant employees. In addition, the notice shall set forth the reason that the Director deems it necessary to use CE&I consultants instead of merit system employees to perform the work. Upon determination of the identity of the consultant

employees to be used, plaintiffs shall receive a notice concerning the identity and race of the consultant employees.

5. This agreement will expire on June 1, 2003.

6. The terms of this agreement apply only to the use of consultant employees to perform construction engineering and inspection duties. The use of consultants to perform other types of services, including without limitation, design, right of way, environmental and materials testing, and road and bridge construction services, is not restricted by this agreement.

7. Plaintiffs reserve the right to bring a new motion to prohibit the use of consultants, for further relief under Consent Decree I, and/or to hold defendants in contempt, if ALDOT fails to begin the agreed upon phase out, does not use its best efforts to reduce the number of consultants, fails to act consistently with this agreement, or if plaintiffs conclude that the use of other types of consultant services warrant such action. Defendants enter into this agreement solely as a compromise in order to resolve plaintiffs' claims of contempt. Defendants do not in any way agree that ALDOT's use of consultants is improper or violative of any law, regulation, order, or injunction, including, without limitation, the terms of Consent Decree I, and reserve the right to oppose any motion or request for relief filed by plaintiffs.

SECTION X: GENERAL

The parties expressly stipulate that time is of the essence and that there shall be no extensions of the deadlines for compliance, and no excuses or justifications recognized for any failure to meet such deadlines, unless otherwise agreed by the parties hereto or ordered by the Court.

The parties expressly agree that this agreement, and any orders entered pursuant thereto, do not enlarge or diminish, or otherwise have any effect upon, the standing of any party or the district court's jurisdiction. Plaintiffs hereby expressly reserve any and all rights and contentions in opposition to the Adams Intervenors' participation in, and right to benefit from, this agreement, Consent Decree I, defendants' contempt of such decree, and any other aspect of this case.

This agreement resolves the issues of defendants' contempt to the extent set forth herein, subject to the provisions of Section IV above. This agreement, and the initial order entering the agreed upon finding of contempt and adopting the remedies set forth herein, do not resolve or preclude the Court from resolving any issues or claims other than the following two issues: (1) whether the defendants have been and are in contempt of Consent Decree I and the court's orders and injunctions related to its enforcement, and (2) what coercive remedies should be entered for such contempt.

This agreement does not affect, alter, or diminish the district court's authority or jurisdiction to hear, rule upon or address any other issues or matters in this case, or preclude the parties from seeking any such resolution or remedies from the Court. This agreement does not foreclose any party's right to file further motions raising other aspects of defendants' noncompliance. The parties agree that they will not contend that this agreement has any preclusive effect upon the status of any other issues or matters. This agreement also does not alter or affect any other agreement between the parties including, but not limited to, the parties' agreement concerning interim appointment procedures (Doc. No. 3639) and the parties' agreements concerning attorneys' fees.

The parties waive any right to appeal or further contest this agreement, and the initial order entering the agreed upon finding of contempt and adopting the remedies set forth herein. This appeal waiver is limited to the foregoing and does not apply to any subsequent order.

Defendants and plaintiffs agree, without the consent of the Adams Intervenors, that defendants shall pay the fees and expenses of the plaintiffs' attorneys, Gordon, Silberman, Wiggins and Childs, for all work related to the contempt proceedings, monitoring and enforcing defendants' compliance with Consent Decree I and the remedies for contempt provided for herein, and whatever

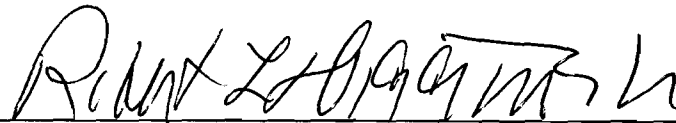
proceedings or work is necessary to obtain or effectuate such Decree and remedies for contempt. Such fees and expenses shall be paid according to the terms of plaintiffs' and defendants' agreement dated February 26, 1999; provided, however, that the defendants' obligation to pay the fees and expenses required by this agreement shall not terminate or be affected by the expiration, termination, or other ending of the agreement dated February 26, 1999, unless otherwise expressly agreed by plaintiffs and defendants.

Defendants and the Adams Intervenors agree, without the consent of plaintiffs, that defendants shall pay the fees and expenses of the Adams Intervenors' attorneys, Fitzpatrick, Cooper & Clark, for all work related to the contempt proceedings, monitoring and enforcing defendants' compliance with Consent Decree I and the remedies for contempt provided for herein, and whatever proceedings or work is necessary to obtain or effectuate such Decree and remedies for contempt. Such fees and expenses shall be paid according to the terms of defendants' and Adams Intervenors' agreement dated February 20, 1996.

In the event that any provision or term of this agreement, or the initial order finding defendants in contempt and implementing the remedies set forth herein, should be determined to be or is otherwise rendered unenforceable, all other provisions and terms of

this agreement shall remain unaffected to the extent permitted by law. If the extensions agreed upon by plaintiffs and defendants in Section I are not approved, plaintiffs reserve the right to seek further relief pursuant to Article XIX, ¶ 6 of Consent Decree I.

The parties agree that the district court shall retain jurisdiction over this agreement and any order implementing this agreement until the issues regarding defendants' contempt (including issues of compensatory relief) are resolved and the defendants have achieved full compliance with the consent decree provisions that are the subject of this agreement.

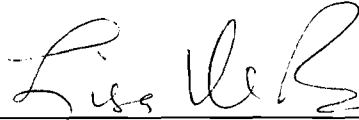
A handwritten signature in black ink, appearing to read "Robert L. Wiggins, Jr.", written over a horizontal line.

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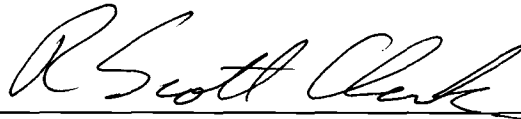
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