

UNITED STATES DISTRICT COURT FOR THE VIRGIN ISLANDS
DIVISION OF ST CROIX

UNITED STATES OF AMERICA,

Plaintiff,

v.

TERRITORY OF THE VIRGIN ISLANDS

et al.,

Defendants.

1986-CV-0265

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ORDER GRANTING UNITED STATES' MOTION TO FIND DEFENDANTS IN
CONTEMPT AND FOR APPOINTMENT OF A SPECIAL MASTER

THIS MATTER is before the Court upon Plaintiff United States of America's ("United States") Motion for an Order to Show Cause Why Defendants Should Not Be Held in Contempt (Dkt. 154) (the "Contempt Motion"). A hearing upon the Court's Order to Show Cause was held February 8, 9, 10, and 13. Upon completion of said hearing, the Court ordered the parties to submit proposed Findings of Fact and Conclusions of Law.

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The Court has reviewed each party's proposed Findings of Fact and Conclusions of Law and hereby adopts and incorporates herein the Findings of Fact and Conclusions of Law filed by Plaintiff United States.

Based upon the said Findings of Fact and Conclusions of Law, the Court concludes that there are continuing and ongoing constitutional violations of the rights of individuals held at the Golden Grove Adult Correctional Facility and Detention Center ("Golden Grove"), and Defendants¹ are in contempt of the Court's Orders: the 1986 Consent Decree (Dkt. 3) ("Consent Decree"), the 1990 Plan of Compliance (Dkt. 57) ("Plan of Compliance"), and the 2003 Stipulated Agreement (Dkt. 146) ("Stipulated Agreement").

In addition, based upon the foregoing Findings of Fact and Conclusions of Law, the Court concludes that this case and the Court's Orders are sufficiently complex and, thus, that the appropriate remedy for Defendants' contempt and established record of resistance to the Court's Orders is the appointment of a Special Master to serve as an agent and officer of this Court to examine in detail and to assist the Court in evaluating Defendants' compliance with the orders of this Court, including the issues on which the Court found

¹Defendants are the Territory of the Virgin Islands, the Governor of the Virgin Islands, the Director of the Virgin Islands Bureau of Corrections, and the Warden of the Golden Grove Adult Correctional Facility and Detention Center ("Golden Grove"), in St. Croix, Virgin Islands (collectively the "Defendants" or "USVI").

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Defendants in contempt in the Court's Findings of Fact and Conclusions of Law. The Court further concludes that the relief in this Order is narrowly drawn, extends no further than necessary to correct the violations of federal rights of individuals held at Golden Grove and the Court's Orders, is the least intrusive means necessary to remedy Defendants' contempt, and will not have an adverse impact on public safety or the operation of a criminal justice system.

The Special Master shall be chosen in accordance with this Order as set forth below and shall have the responsibilities, duties, and powers set forth in this Order.

A. Selection of Special Master

1. Within twenty (20) days of the issuance of this Order, the parties shall confer to jointly agree upon a proposed Special Master and shall jointly or, if unable to agree, severally, submit their recommendation(s) for appointment of a Special Master according to the procedures set forth in this Section.

2. If the parties are unable to agree upon a proposed Special Master, pursuant to the Prison Litigation Reform Act ("PLRA"), 18 U.S.C. § 3626(f)(2), Defendants and the United States each shall file and serve a recommendation submission that lists not more than five (5) candidates to serve as Special Master.

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3. Whether jointly or severally submitted, such recommendation submission(s) shall include the parties' reasons for each recommendation (including the proposed candidate's curriculum vitae and information regarding the candidate's previous experience as a Special Master or other form of compliance monitor and previous qualification(s) as an expert in territorial, state, or federal courts) and shall comply with Fed. R. Civ. P. 53(b)(3).

4. In determining whether to select a candidate as the Special Master, the Court shall consider whether a candidate for Special Master generally has experience and education or training relevant to the operations and management of correctional and detention facilities with the approximate inmate and detainee capacity of Golden Grove (currently approximately 570 inmates and detainees). The Court also shall consider whether the candidate has experience and education or training in the fields of penology, correctional facility management, correctional medical and mental health care, fire safety and environmental health and sanitation, and systems of accountability such as quality assurance, auditing, or internal review and investigations. Candidates also shall be able to prepare detailed written reports to the Court, retain and manage a team of experts, consultants, and staff assisting the Special Master pursuant to this Order, and provide, in

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addition to and in conjunction with retained experts, consultants, and staff, technical assistance to Defendants pursuant to this Order.

5. Where the parties are unable to agree upon a proposed Special Master and file and serve separate recommendation submissions, within ten (10) days of filing, each party shall have the opportunity to remove up to three (3) persons from the opposing party's list.

6. The Court shall make the final determination and selection of the Special Master based upon either the parties' joint recommendation submission or from the list of remaining persons after the operation of Section A(5), above.

B. Appointment and Mandate

1. The person selected by the Court as the Special Master is appointed effective the date of the Court's Order selecting the Special Master. The Special Master's appointment shall terminate only by order of the Court after notice and opportunity for the parties to be heard.

2. The Special Master and any experts, consultants, or staff retained by the Special Master pursuant to this Order shall act in a professional capacity as an agent and officer of this Court and shall serve the Court and the interests of justice. In the interest of selecting and retaining the Special Master, and any experts, consultants, or staff retained

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by the Special Master on an expedited basis, these individuals shall be appointed and retained by the Court pursuant to the procedures set forth in this Order and the orders of the Court. Neither the Special Master, nor any experts, consultants, or staff retained by the Special Master, shall be considered territorial or local employees and shall be exempt from territorial or local budgetary, budget allocation, or procurement requirements.

3. Except as limited by this Order, the Special Master shall exercise all the power and authority granted under the PLRA and Federal Rule of Civil Procedure 53, and s/he shall take all appropriate actions to fulfill the orders of the Court to monitor, review, and report on compliance with the Consent Decree, the Plan of Compliance, and the Stipulated Agreement, and any future orders of this Court (hereinafter collectively "orders of the Court") regarding the conditions of confinement at Golden Grove.

4. The Special Master's authority shall not include the authority to conduct evidentiary hearings pursuant to Fed. R. Civ. P. 53(d) and 18 U.S.C. § 3626(f)(1)(A) & (6)(A) or to issue final orders pursuant to Fed. R. Civ. P. 53(e). The Court shall at all times retain the authority, upon notice to the parties and opportunity to be heard, to reject or adopt, in whole or in part, the Special Master's reports and proposed orders.

5. This appointment is made pursuant to the inherent powers of the Court, the PLRA, Rule 53 of the Federal Rules of Civil Procedure, and the orders of the Court.

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6. Pursuant to Rule 53 of the Federal Rules of Civil Procedure, the Special Master shall proceed with all reasonable diligence.

7. Pursuant to the PLRA, 18 U.S.C. § 3626(f)(6), and Rule 53 of the Federal Rules of Civil Procedure, with the exception of ministerial non-substantive matters related to, for example, scheduling joint meetings or telephone calls, obtaining contact information, or providing for scheduling changes, the parties shall not contact the Special Master on an ex parte basis, and the Special Master shall not contact the parties on an ex parte basis.

8. With respect to any joint meeting conducted by the Special Master with the parties, a party may waive its right to appear or may appear telephonically rather than in person. In the event a party refuses or fails to appear upon reasonable notice to the party, the Special Master and any parties that do appear shall make note of the parties who did not appear.

9. Pursuant to Rule 53(g) of the Federal Rules of Civil Procedure, the Special Master's recommendations and proposed orders shall be reviewed by the Court based on a clearly erroneous standard and shall be determined by a showing of clear and convincing evidence.

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10. Pursuant to the PLRA, 18 U.S.C. §3626(f)(5), every six months, the Court shall conduct a review of the appointment of the Special Master to determine whether his/her services continue to be required.

11. The Special Master may be removed on a basis unrelated to 18 U.S.C. § 3626(f)(5) & (6)(D) only for good cause unrelated to the Special Master's findings or recommendations. Unless the Special Master is terminated pursuant to 18 U.S.C. § 3626(f)(5) & (6)(D) or pursuant to Defendants' achievement of sustained substantial compliance with each provision of the orders of the Court, termination of the Special Master shall result in re-initiation of the appointment process described in this Order.

12. As used in this Order, substantial compliance means Defendants, pursuant to this Order and the orders of the Court, have consistently complied with this Order and the orders of the Court and properly operated and will continue to operate Golden Grove pursuant to this Order, the orders of the Court, and constitutional and federal statutory requirements such that the Court does not reasonably foresee that termination of oversight will result in the dismantlement of the changes at Golden Grove, any action by Defendants to undermine improvements made at Golden Grove, or a hindrance to Defendants' future substantial compliance with this Order and the orders of the Court. Noncompliance with mere technicalities or temporary failure to comply during a period of otherwise sustained

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substantial compliance will not constitute failure to maintain substantial compliance. At the same time, temporary compliance during a period of noncompliance shall not constitute substantial compliance. Defendants' unilateral implementation of best practices will not modify the meaning of substantial compliance.

13. Failure by the Court, the Special Master, experts, consultants, and staff retained by the Special Master, or the United States to act upon or enforce any part of this Order or the orders of the Court or any provision thereof with respect to any deadline or any provision herein shall not be construed as a waiver of the right to enforce or right to recommend that the Court enforce deadlines and provisions in this Order or orders of the Court.

C. Duties

In addition to the duties described above, the Special Master shall:

1. Within sixty (60) days of the appointment of a Special Master, promptly conduct a thorough initial review and assessment of all aspects of Defendants' compliance with the orders of the Court. This initial review shall include a tour and inspection of Golden Grove with experts in correctional management/penology, correctional medical care, forensic psychiatry, and fire safety and environmental sanitation. This tour shall include a review and assessment of security, correctional, penological, medical and mental

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health care, and fire safety and environmental sanitation conditions at Golden Grove. The Special Master shall be present at, take part in, and give reasonable notice to the parties of this initial tour and inspection.

2. Conduct future tours and inspections of Golden Grove with experts in correctional management/penology, correctional medical care, forensic psychiatry, and fire safety and environmental sanitation, not less than six (6) months from the conclusion of the initial review and assessment described in Section C(1), and every six (6) months thereafter. The Special Master shall be present at, take part in, and give reasonable notice to the parties of each tour and inspection.

3. Within ninety (90) days of the completion of each tour and inspection conducted pursuant to Sections C(1) and (2) of this Section, the Special Master him/herself shall conduct a tour and inspection of Golden Grove to review and assess the conditions at Golden Grove and determine if Defendants are in compliance with any of the provisions of the orders of the Court. Prior to each tour and inspection pursuant to this subsection, the Special Master shall (after giving the parties a reasonable opportunity to meet and consult with the Special Master) determine which of the experts described in Sections C(1) and (2) of this Section shall accompany the Special Master on each tour and inspection conducted pursuant to this subsection. In addition to the opportunity to meet and consult

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as described in this subsection, the Special Master shall give reasonable notice to the parties of each tour and inspection.

4. In order to assess compliance, the review of a sufficient number of documents and materials to assess accurately current conditions shall include the following (by way of example and without limitation on the Court, the Special Master and experts, consultants, and staff retained by the Special Master, or the parties): documents; memoranda; logbooks; reports; inmate and staff files; incident reports; investigation reports; shakedown/contraband reports and logbooks; staffing schedules, rosters, and records; training records and curricula; medical reports; medical and/or mental health care charts, records, and files; intake and assessment forms; chronic care documentation and logbooks; medical referral and transport forms, logbooks, reports, and records; mental health care screening, assessment, and referral forms, logbooks, reports, and records; inmate death, suicide, suicide attempt, and suicide monitoring and watch policies, procedures, logbooks, files, records, and reports; maintenance, repair and replacement records, forms, and documentation for fire, alarm, safety, security, plumbing, electrical, and structural systems; major repair and improvement plans, documents, and records; policies, procedures, documents, and forms related to development and implementation of policies

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and procedures; compliance, quality assurance, investigatory, audit documents, and any other documents or materials relevant to the operation of Golden Grove.

5. Based upon each review and assessment in conjunction with the experts retained by the Special Master, recommend to the Court, in the form of a report as described in this Order, findings of non-compliance, partial compliance, and/or sustained substantial compliance, as the recommendation(s) may be, with all or part of the orders of the Court.

6. Recommend to the Court, in the form of reports as described in this Order, the specific remedial measures that the Court must order Defendants to implement to ensure sustained substantial compliance with the orders of the Court.

7. Provide technical assistance (in conjunction with retained experts) to Defendants and their agencies, officials, and employees responsible for implementation and compliance with the orders of the Court. Provision of technical assistance shall not preclude the Special Master's or a Special Master's expert, consultant, or staff person's determination that additional remedial measures are necessary to comply with the orders of the Court or that Defendants have demonstrated sustained substantial compliance with the orders of the Court. When the Special Master or the experts retained by the Special

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Master provide technical assistance, such technical assistance shall be described in the Special Master's or experts' reports as further described in this Order

8. Conduct a monthly meeting of the parties to discuss the status of proceedings, outstanding matters, and upcoming events. The Special Master and the parties may conduct the monthly meetings in-person at a mutually agreeable location or telephonically and the Special Master or a party may appear telephonically rather than in person.

9. Prepare such reports as directed in this Order and other orders of the Court.

D. Powers of the Special Master

All actions of the Special Master and the Special Master's consultants, experts, and assistants will be under the direct control and supervision of this Court pursuant to the orders of the Court. Specifically, and not by way of limitation, the Special Master and the Special Master's consultants, experts, and assistants shall, without further orders of the Court, have:

1. Complete and unrestricted access: (a) to visit, tour, and inspect the facilities at Golden Grove; (b) to management, staff, and personnel (whether party or non-party, employee, contractor, or affiliated person or agency) of Defendants and Golden Grove; (c) to any inmate, detainee, or other individual held at Golden Grove; and (d) all documents,

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records, files, reports, memoranda, correspondence, plans, notices, budgets, compliance, quality assurance, investigatory reviews, and documents and materials described in Section C(5) of this Order and any other documents relevant to the operation of Golden Grove and the Special Master's duties.

2. Authority to attend meetings or proceedings regarding subject matters relevant to Defendants' compliance conducted by, at the direction of, or attended by management, staff, and personnel (whether party or non-party, employee, contractor, or affiliated person or agency) of Defendants.

3. At any time prior to, during, or after conducting a review and assessment, authority to receive and review Defendants' and Golden Grove facility documents from counsel for management, staff, and personnel (whether party or non-party, employee, contractor, or affiliated person or agency) of Defendants or Golden Grove. Whenever such documents or other materials are produced or delivered to the Special Master and the experts, consultants, and staff retained by the Special Master (and the parties as set forth in Section I(8) of this Order), the Defendants and their compliance coordinator (as described in Section I(3) of this Order) shall produce documents or materials as they are kept in the ordinary course of business and shall identify each document (by sequential numerical stamping) to ensure the Court, the Special Master, the experts, consultants, and

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staff retained by the Special Master, and the parties are able to readily identify each document without regard to the information contained therein.

4. According to the procedures set forth in this Order and the orders of the Court, the Special Master shall retain, at Defendants' expense, consultants, experts, and staff to assist the Special Master to carry out the powers, duties, and responsibilities of this Order and other orders of the Court.

E. Consultants, Experts and Staff

1. The Special Master shall retain consultants, experts, or staff after jointly conferring with the parties regarding the proposed consultant, expert, or staffperson.

2. While jointly conferring, the parties and the Special Master shall include in their discussions the approximate total fees and expenses to be paid by Defendants. The parties and the Special Master also shall consider information regarding the candidate's previous experience working with a court, other governmental agencies, and a Special Master, or other form of compliance monitor. The Special Master and the parties also shall consider previous qualification(s) as an expert in territorial, state, or federal courts.

3. A proposed expert generally shall have experience and education or training relevant to their field of expertise with particular emphasis on correctional and/or detention facilities with the approximate inmate and detainee capacity of Golden Grove and also shall

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be able to prepare detailed written reports to the Special Master, work with a team of experts, consultants, and staff, and provide, in addition to and in conjunction with the Special Master and other retained experts, consultants, and staff, technical assistance to Defendants pursuant to this Order.

4. Within 10 days of the Special Master's request that the parties jointly confer, the parties and the Special Master shall jointly, or if unable to agree, severally, submit their recommendation(s) to the Court for a proposed consultant, expert, or staffperson in the form of a proposed order directing, at a minimum, the Special Master to retain such consultant, expert, or staffperson at Defendants' expense and the fees, costs, and expenses to be paid pursuant to Section H of this Order.

5. An expert, consultant, or staffperson may be terminated if the Special Master and the parties agree and upon good cause shown. Good cause shall include any violation of federal, territorial, or local law, this Order or the orders of the Court, that reasonably calls into question the expert's, consultant's, or staffperson's fitness to continue to serve the Special Master. In the event the parties do not agree upon the need for termination, a party may move for termination.

6. If an expert, consultant, or staffperson is terminated pursuant to Section E(5) of this Order or becomes unavailable, the Special Master and the parties shall determine

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jointly whether a replacement is needed, and if so, jointly select a replacement within fifteen (15) days of the expert's, consultant's, or staffperson's unavailability. In the event that the parties do not agree upon the need for or identity of a replacement, the parties agree to utilize the selection process for experts, consultants, and staff as detailed in this Order.

7. If an expert, consultant, or staffperson is terminated pursuant to Section E(5) of this Order or becomes unavailable, the applicable provisions of this Order shall be tolled for any period of time greater than the fifteen (15) days that it takes for the Special Master and the parties jointly to select a replacement to begin performance of the expert's, consultant's, or staffperson's obligations pursuant to this Order. Any time tolled pursuant to this subsection shall not reduce the number of tours and inspections required under and conducted pursuant to Section C of this Order.

F. Reporting and Recommendations

1. Following each review and assessment conducted pursuant to Section C(1)-(3), the Special Master and the Special Master's experts, consultants, and staff shall prepare a comprehensive written report for the parties and the Court.

2. Within sixty (60) days of the conclusion of any tour and inspection conducted pursuant to Section C(1)-(3) of this Order, the Special Master shall file his report (including

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the expert reports described herein) with the Court and serve copies of his report and the expert reports upon the parties. The experts, consultants, and staff retained pursuant to this Order are directed to prepare their expert reports to ensure the Special Master's compliance with this subsection and Sections F(7) and F(8) of this Order. In the event the Special Master or the Special Master's experts, consultants, or staff, request the duplication and production of documents during a tour and inspection and Defendants fail to deliver such documents within fifteen (15) days of said tour and inspection, the Special Master, and the relevant requesting expert, consultant, or staffperson, shall note in their report(s) the Defendants' delay and may determine, based on the failure to timely deliver such documents, that Defendants are not in sustained substantial compliance with the orders of the Court.

3. Where it is the recommendation of the Special Master that the Court issue certain order(s), the report shall include a proposed order.

4. Consultants, experts, and staff also shall prepare written reports ("expert reports") to the Special Master to assist the Special Master to carry out the powers, duties, and responsibilities of this Order and other orders of the Court and to assist the Special Master in preparing the Special Master's report. The Special Master shall include the

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expert reports as part of his report and the expert reports shall be considered incorporated by reference into the Special Master's report.

5. Each of the Special Master's reports and expert reports shall describe in detail:

- (a) the work performed; (b) tours and inspections conducted; (c) meetings attended; (d) persons interviewed and those persons met with pursuant to Section C(4) of this Order; (e) documents requested, received, and reviewed (including a description of the number, types, identifying information, and date ranges of documents such as: [number] of incident reports from [date] to [date] reviewed, patient charts of [patients A.B., C.D., E.F., etc.], [number] of inmate files out of a population of [total population of facility], maintenance records from [date] to [date] for [machine/area/system], policies and procedures for [area of operation], training records of officers [U.V., W.X., Y.Z., etc.], [subject area/office/officer's] logbook); (f) the steps taken pursuant to Sections C(4)-(5) of this Order in order to assess compliance; (g) the subjective and objective criteria used to make recommendations and findings; propose remedial measures and orders; and assess and determine substantial compliance, non-compliance, or partial compliance; (h) the steps taken to analyze conditions and assess compliance and the factual basis for each finding; (i) any other additional assessment criteria used in the expert's, consultant's, and staffperson's area of expertise where, pursuant to Section C(4) of this Order, an expert.

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consultant, or staffperson retained by the Special Master used such additional assessment criteria; (j) any technical assistance provided to Defendants; (k) steps taken by Defendants to implement the orders of the Court and comply with any remedial measures ordered by the Court; (l) specific reference to the provisions of this Order and the orders of the Court implemented or not implemented by Defendants; (m) the Special Master's or expert's evaluation of the extent to which Defendants have complied with each substantive remedial measure or provision of the orders of the Court.

6. If the Special Master or an expert, consultant, or staffperson retained by the Special Master determines that Defendants are in sustained substantial compliance with any provisions of this Order or the orders of the Court, the Special Master, expert, consultant, or staffperson shall so state in his written report and provide the factual basis for the findings, including, as appropriate, identification of the details generally described in Section F(5) of this Order and any other information, details, documents, or evidence which supports the Special Master's determination that the Defendants are in sustained substantial compliance. Upon notice to the parties, opportunity to be heard, and order of the Court, review and assessment of that provision of the orders of the Court shall be suspended pending either the motion of a party for reinstatement of review and assessment or the abrogation of this Order.

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7. Prior to the Special Master's filing of the proposed report, expert reports, and any proposed order(s) with the Court, the Special Master shall provide copies of the proposed report, expert reports, and any proposed order(s) to the parties for review and comment. The Special Master shall allow no more than ten (10) days for review and comment prior to filing with the Court.

8. Within ten (10) days of filing of the Special Master's proposed report and any proposed order(s), the parties shall submit to the Court any agreement with or objections to the Special Master's report and/or proposed orders. Upon review and consideration of any submissions by the parties, the Court shall determine whether to adopt the Special Master's report, in whole or in part, and whether to issue any proposed order(s). The failure of a party to file any objection(s) to the Special Master's report shall constitute agreement with the report and, if the Special Master has submitted a proposed order(s), consent to issuance of the proposed order(s) as an order(s) of the Court.

9. Prior to determining whether to adopt the Special Master's report, in whole or in part, and whether to issue any proposed order(s), the Court may, upon request or when deemed appropriate, hold a hearing at the earliest convenient time after notice to all parties. Such hearing shall be conducted as the Court deems appropriate.

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10. The Special Master's report and any expert reports shall, as needed, be written with due regard for the privacy interests of individual inmates and staff. All non-public information obtained by the Special Master and the Special Master's experts, consultants, and staff shall be maintained in a confidential manner.

11. Once issued as orders of the Court, the Special Master's report (together with any expert reports) shall be entered into the Court's docket.

G. CONFLICTS AND DISCLOSURE

1. Nothing herein shall prevent either Defendants or the United States from retaining consultants, experts, and staff to assist in their defense or prosecution of this case or in their efforts to achieve Defendants' compliance with the orders of the Court and evaluate such compliance.

2. Except as permitted pursuant to Section G(4) of this Order, no party, nor any employee or agent of any party, shall have any supervisory authority over the Special Master or the Special Master's experts, consultants, or staff's activities, reports, findings, or recommendations and in no event shall any party, nor any employee or agent of any party, have any supervisory authority over the Special Master or the Special Master's experts, consultants, or staff's activities, reports, findings, or recommendations regarding

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the subject matter of this lawsuit or review and assessment of the conditions at Golden Grove.

3. Unless such conflict is waived by the parties and ordered by the Court, the Special Master and the Special Master's experts, consultants, and staff shall not accept employment or provide services for any matter relating to the subject matter of this lawsuit or the conditions at Golden Grove, including being retained (on a paid or unpaid basis) by any current or future litigant or claimant, or such litigant's or claimant's attorney, in connection with a claim or suit against Defendants or the Virgin Islands or its departments, officers, agents, or employees regarding the subject matter of this lawsuit or review and assessment of the conditions at Golden Grove.

4. Neither the Special Master, nor the Special Master's experts, consultants or staff, are barred from accepting employment or providing expert or consulting services for matters that are not related to the subject matter of this lawsuit or review and assessment of the conditions at Golden Grove.

5. Except as required or authorized by the orders of the Court, the Special Master and the Special Master's experts, consultants, and staff shall not, with the exception of filings with the Court and statements in open Court, make any public statements or statements to the press regarding this matter, the work performed pursuant to the orders

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of the Court regarding this matter, or any observations, statements, conclusions, recommendations, or findings in connection with this matter or disclose any information to anyone other than the Court, the parties, or other experts, consultants, and staff working with the Special Master pursuant to the orders of the Court.

6. Other than this lawsuit and only as between the United States and Defendants, the Special Master and the Special Master's experts, consultants, and staff shall not testify regarding any matter or subject that he or she may have learned as a result of his or her performance pursuant to the orders of the Court. In this lawsuit and only as between the United States and the Defendants, either party may call the Special Master or the Special Master's experts, consultants, and staff as a witness. In connection with the lawsuit, neither party will call the Special Master or the Special Master's experts, consultants, and staff as their own expert or designate such person as their own expert pursuant to the Federal Rules of Civil Procedure. The scope and purpose of the Special Master or the Special Master's experts, consultants, and staff testimony shall be left to the discretion of the Court.

7. Other than in this lawsuit and only as between the United States and Defendants, reports issued by the Special Master, including expert reports, shall not be admissible against Defendants in any proceeding for any reason. In this lawsuit as between

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the United States and Defendants, the admissibility into evidence of the Special Master's reports, including expert reports, or portions thereof, shall be governed by the Federal Rules of Evidence, and the parties reserve all rights either to seek admissibility or object to admissibility of those reports.

8. The Special Master and the Special Master's experts, consultants, and staff are appointed pursuant to the orders of the Court and are not a federal, territorial, state, or local agency or an agent thereof, and accordingly, with the exception of filings with the Court and records introduced in open Court, the records maintained by the Special Master and the Special Master's experts, consultants, and staff shall not be deemed public records subject to public inspection.

H. Costs & Expenses

1. Pursuant to the PLRA, 18 U.S.C. § 3626(f)(4), and as described in more detail below, the Court shall pay the Special Master's fees, plus reasonably incurred costs and expenses, as described in more detail below.

2. Defendants shall pay each of the Special Master's retained consultants, experts, or staff a daily fee, plus reasonably incurred costs and expenses, as described in more detail below.

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3. In addition to the abovementioned fees, Defendants also shall pay reasonable transportation, travel, lodging, meals, and incidental expenses for the Special Master's consultants, experts, or staff as well as reasonable mailing, facsimile, and photocopying expenses. In determining reasonable expenses, the Court will consider prevailing commercially available costs for travel to, lodging in, and work in the Virgin Islands, as well as United States Government and Virgin Islands Government current per diem, meal, and incidental expense rates.

4. On a quarterly basis, the Special Master, consultants, experts, and staff shall submit separately a statement to the Court for approval of each person's fees and expenses with copies to counsel for all parties. The statement shall contain a signature line for the Court accompanied by the statement "Approved for Disbursement." Objections to the statement shall be filed within ten (10) days of filing of the statement. Hearings thereon shall be at the sole discretion of the Court. Any sum approved by the Court shall be paid within fifteen (15) days unless ordered or agreed upon.

5. Within twenty (20) days of the date of this Order, Defendants shall deposit with the Clerk of Court, United States District Court for the District of the Virgin Islands, Division of St. Croix, to the Clerk's Registry Account, a sum in the amount of \$100,000.00 (one hundred-thousand dollars), and Defendants shall, as ordered by the Court, deposit

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such additional monies as required for payment of the statements of the Special Master, consultants, experts, and staff.

6. Money deposited in the Clerk's Registry Account shall not be subject to any Court surcharges.

7. Money deposited in the Clerk's Registry Account shall be paid according to this Order and the orders of the Court and shall be subject only to the budgetary, allocation, spending, and payment decisions made by this Court, pursuant to the orders of the Court.

8. With the exception of the costs and expenses described herein, each party is to bear its own costs.

I. Defendants' Status Reports, Record Keeping, and Other Duties and Parties' Cooperation and Access

In addition to the responsibilities and duties of the parties detailed in this Order and the orders of the Court, the Court Orders the following:

1. All parties shall cooperate fully with the Special Master. Defendants shall direct all current and future management, staff, and personnel (whether party or non-party, employee, contractor, or affiliated person or agency) of Defendants and Golden

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Grove to cooperate fully with the Special Master and the Special Master's experts, consultants, and staff.

2. The Defendants shall ensure that all current and future management, staff, and personnel (whether party or non-party, employee, contractor, or affiliated person or agency) of Defendants and Golden Grove understand and follow the terms of this Order and the orders of the Court (to the extent necessary) to carry out their job duties and responsibilities and to implement the terms of this Order and the orders of the Court.

3. Within ten (10) days of the appointment of a Special Master, Defendants shall designate, in writing, to the Court, the Special Master, and the United States, an individual as a compliance coordinator for the Special Master who shall: (a) accept document requests from the Special Master on behalf of all Defendants; (b) on behalf of all Defendants, be responsible for delivery of documents to the Special Master (as the Special Master directs either to the Special Master and/or the Special Master's experts, consultants, or staff) and to the United States; (c) distribute documents and meeting and tour and inspection schedules issued by the Special Master to each Defendant; and (d) ensure Defendants comply with the Sections F(2) and I(6) of this Order and the orders of the Court.

4. Defendants shall maintain sufficient records to document compliance with all of the requirements of this Order and the orders of the Court and to demonstrate

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sustained substantial compliance with the orders of the Court. Defendants also shall maintain (as long as the orders of the Court remain in effect) any and all records: (a) to document compliance with all of the requirements of this Order and the orders of the Court and to demonstrate sustained substantial compliance with the orders of the Court; and (b) required by the Special Master and the Special Master's experts, consultants, or staff or produced to the Special Master and the Special Master's experts, consultants, or staff. The Court hereby finds that given the approximately twenty (20) year history of this litigation and the requirement that Defendants demonstrate sustained substantial compliance, the records described in this subsection shall not be subject to Virgin Islands' territorial, local, or other record and document retention laws, regulations, requirements, and/or procedures.

5. Within thirty days (30) days of the appointment of a Special Master, Defendants shall file with the Court and serve on the Special Master and the United States a status report, including any supporting documentation, such as policies, procedures, protocols, and training materials, delineating all steps taken or planned in the current reporting period to comply with each substantive provision of the Consent Decree, Plan of Compliance, Stipulated Agreement, and the orders of the Court. Thereafter, Defendants

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will file with the Court and serve on the Special Master and the United States a status report and supporting documentation every thirty (30) days.

6. While on-site in the United States Virgin Islands, Defendants shall provide the Special Master and his consultants, experts, and staff with such office space, equipment (e.g., computer, internet access, copier, local and long distance telephone and facsimile access), and support services that the Special Master and his consultants, experts, and staff may reasonably require.

7. Whenever the Special Master conducts a tour or inspection of Golden Grove pursuant to the orders of the Court, the United States and Defendants shall have the opportunity to participate in such tour or inspection with the same level of access as the Special Master. A party's decision to waive its right to take part in all or part of a tour or inspection shall not preclude future participation in any tour or inspection and shall not be used against any party during future proceedings.

8. Whenever the Special Master or the Special Master's experts, consultants, or staff receives or reviews documents or other materials pursuant to this Order or the orders of the Court (including, without limitation, documents received or reviewed during the course of any tour and investigation pursuant to Section C of this Order), the United States

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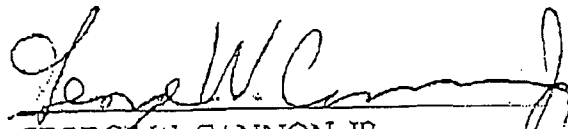
and Defendants shall receive such documents or other materials contemporaneously with delivery to the Special Master.

9. If any unforeseen circumstance occurs which causes a failure to carry out any provision of this Order or the orders of the Court in a timely fashion, Defendants shall notify the Court, the Special Master, the Special Master's experts, consultants, and staff, and the United States in writing within a reasonable time after Defendants become aware of the unforeseen circumstance and its impact on Defendants' ability to comply with this Order and the orders of the Court. The notice shall describe the cause of the failure to perform and the measures taken to prevent or minimize the failure. Defendants shall implement all reasonable measures to avoid or minimize any such failure.

WHEREFORE, it is hereby ORDERED that the United States' Contempt Motion (Dkt. 154) is hereby GRANTED, and Defendants are hereby held in CONTEMPT; the Court hereby ORDERS the appointment of a Special Master with the responsibilities, duties, and powers set forth in this Order and hereby ORDERS the further relief described in this Order.

ENTER:

Dated: March 23, 2006


GEORGE W. CANNON, JR.
U.S. MAGISTRATE JUDGE

MAR-23-2006 THU 04:43 PM Judge Cannon

FAX NO. 3407735416

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ATTEST:

WILFREDO F. MORALES

Clerk of Court

By: _____

Deputy Clerk