

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

No. 2:16-cv-12146

Plaintiff,

HON. PAUL D. BORMAN

v

MAG. MONA K. MAJZOUB

STATE OF MICHIGAN and
MICHIGAN DEPARTMENT OF
CORRECTIONS,

**DEFENDANTS'
RESPONSE TO
INTERVENING
PLAINTIFFS' MOTION**

Defendants.

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**DEFENDANTS' RESPONSE TO INTERVENING PLAINTIFFS'
KENESHA THOMAS, AMY MORTON, CRYSTAL SOCIER AND
MONIQUE JOYCE'S MOTION TO INTERVENE**

As this court is aware, the parties placed a proposed settlement on the record in open Court on August 17, 2018. The general terms of the settlement were as follows:

- **BFOQ Review:** MDOC will develop, through an interactive process with the United States, a Title VII-compliant system for review of bona-fide occupational qualification (“BFOQ”) job assignments for non-housing positions at WHV before they are submitted to the Michigan Civil Service Commission. All non-housing positions at WHV that are currently designated as BFOQ will be reviewed through this system after it is finalized.
- **Staffing Plan:** MDOC will develop and implement, through an interactive process with the United States, a staffing plan for WHV that complies with Title VII and results in the removal of BFOQ designation from the positions at issue in this case that do not require a female-only job function.
- **Limiting Transfer Freeze:** Upon WHV reaching sufficient staffing levels, MDOC will lift the transfer freeze and allow

eligible female Corrections Officers (“COs”) to transfer out of WHV in accordance with the provisions of MDOC’s Employee Handbook and the terms of the applicable Collective Bargaining Agreement with the Michigan Corrections Organization. MDOC could re-instate a non-discriminatory transfer freeze upon the occurrence of a “triggering event,” such as a vacancy rate that jeopardizes WHV’s safety and security. Factors used to implement a transfer freeze at other MDOC facilities will generally be the same factors used at WHV.

- **Recruitment and Retention:** MDOC will develop recruitment and retention efforts, through an interactive process with the United States, with the goal of avoiding the triggering event that would require reinstatement of the transfer freeze. In order to encourage qualified females to apply for CO positions at WHV, MDOC will engage in recruitment efforts.
- **Priority Transfers:** MDOC agrees to provide fifteen (15) priority transfers over three (3) years for eligible female COs at WHV who wanted to transfer to other MDOC facilities from 2009 to the present when the transfer freeze was in place. The Parties shall discuss and come to agreement regarding how these fifteen priority transfers will take place. For example, these could be evenly spaced as five per year, or could be arranged as four priority transfers the first year, then five the year after, and six the final year, if it would be helpful to phase them in more slowly. Nothing precludes MDOC from providing these priority transfers over a time period that is less than three years.
- **Compensatory Damages:** MDOC agrees to provide a total of \$750,000 into a settlement fund that will be distributed as compensatory damages to eligible female COs who worked at WHV between 2009 and the present who submit Interest-in-Relief Forms, who are found by the United States to be eligible for monetary relief, and who sign acceptance of relief and release of claim forms.
- **Dispute Resolution:** The parties will attempt to resolve informally any disputes that may occur under the settlement

agreement. Upon request of any party, the parties, through their counsel, will make themselves available for a telephone conference to discuss any dispute within ten (10) days of such a request. If the United States and MDOC are unable to reach agreement after informally seeking to resolve a dispute, the issue may be submitted by any party to the Court for resolution upon at least thirty (30) days written notice to the other parties.

Individuals Kenesha Thomas, Amy Morton, Crystal Socier and Monique Joyce have now sought to intervene in this matter 2 years after the Complaint was filed and after the proposed settlement was placed on the record. Their reason for requesting intervention is that they have individual damage claims that have not been addressed. However, the settlement placed on the record as described above does contain an individual damage component. Additionally, the settlement provides a structure for any individual to place any individual objections they may have to the individual relief awards.

Under the procedures agreed to by the parties, once the settlement agreement is entered by the parties, Interest in Relief forms will be emailed to all eligible claimants. Those individuals will be notified of the proposed individual award allocated to each interested party. Thereafter, a Fairness Hearing will be held where the parties can submit any objections to the proposed individual relief awards. The

Court will then consider all objections that the parties could not resolve on their own.

Given the above procedure, Defendants request that motion to intervene be held in abeyance until after the interested individuals are notified of their proposed individual damage awards and they are given an opportunity to object under the procedures agreed to by the parties. If intervention is allowed at this point in time, the intervention should be allowed for the limited purpose of advocating for the individuals during the Fairness Hearing.

Respectfully submitted,

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Attorney General

/s/Jeanmarie Miller
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Dated: December 17, 2018

CERTIFICATE OF SERVICE

I hereby certify that on December 17, 2018, I electronically filed the above document(s) with the Clerk of the Court using the ECF System, which will provide electronic copies to counsel of record.

/s/ Jeanmarie Miller

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