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United States District Court,  
N.D. California.

Carlos PEREZ, et al., Plaintiffs,  
v.  
James TILTON, et al., Defendants.

No. C 05-05241 JSW. | Aug. 21, 2006.

**Attorneys and Law Firms**

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**Opinion**

**ORDER GRANTING MOTION FOR FINAL  
APPROVAL OF SETTLEMENT**

JEFFREY S. WHITE, District Judge.

**INTRODUCTION**

\*1 This matter comes before the Court upon consideration of the parties’ motion to approve the Amended Stipulation settling this matter. Having considered the parties’ memoranda in support of the motion, responses from class members, relevant legal authority, and the record in this case, the Court finds good cause to GRANT the motion and finally approve the settlement agreement.

**BACKGROUND**

On December 19, 2005, Plaintiff Carlos Perez (“Perez”) filed this civil rights action seeking injunctive relief on behalf of himself and a putative class of prisoners who are now, or will be in the future, in the custody of the California Department of Corrections and Rehabilitation

(“CDCR”). The instant litigation stems from *Plata v. Schwarzenegger*, C-01-1351 TEH, which is a class action brought on behalf California state prisoners challenging the medical care provided by the CDCR. (Declaration of Donald Specter in Support of Plaintiffs’ Reply to Class Members Responses (“Specter Decl.”), ¶ 8.)

The Plaintiff class in this case is represented by Donald Specter and Alison Hardy of the Prison Law Office. By their complaint, Plaintiffs seek to correct what they contend are unconstitutional conditions with respect to dental care provided by the CDCR. According to the record in this case, the parties began attempting to resolve this matter in August 2004. (Specter Decl., ¶ 11.) Eventually, the parties reached a proposed settlement and when Plaintiffs filed the instant complaint, the parties also filed a proposed stipulation settling the matter. (Docket No. 4.)

On April 7, 2006, the Court held a preliminary approval hearing. Following that hearing, the parties submitted an Amended Stipulation regarding the settlement.<sup>1</sup> (Docket No. 25.) On May 1, 2006, the Court issued an Order granting the motion to certify the class for purposes of settlement and for the remedial phase of this litigation. (Docket No. 32.) On that same date, the Court issued an Order granting the motion for preliminary approval of the proposed settlement (“Preliminary Approval Order”). (Docket No. 33.) The terms of the Preliminary Approval Order required that the parties provide notice to the class by May 9, 2006, and required that class members submit any proposed objections, comments or requests to be excluded from the class by July 14, 2006.

On August 4, 2006, the parties submitted their briefs in support of final approval, which address comments received from class members. Defendants have submitted copies of most of those comments with their brief. (Docket No. 61.) However, the Court’s independent review of the responses received showed that Defendants’ compilation of the responses was not complete. In addition, the Court has continued to receive comments from class members. Accordingly, the Court provided both parties with the opportunity to review responses that were not included with their submissions and responses received after they filed their memoranda in support of final approval. The parties addressed these comments before the hearing, and advised the Court that the responses did not alter their opinions that the settlement is fair, reasonable and adequate.

\*2 The Court held the fairness hearing on August 18, 2006, with respect to the parties’ motions to finally approve the agreement. Although not set forth on the record, no class members appeared at the hearing either in support of or in opposition to the proposed settlement, and

the Court did not receive any requests from class members to permit them to be present. Although Defendants objected to the Court considering untimely responses, because those responses would not affect the Court's decision, Defendants' objection is overruled, and the Court has considered all responses to the settlement received in advance of the fairness hearing.

## ANALYSIS

### A. Legal Standards.

Federal Rule of Civil Procedure 23(e) provides:

A class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given in all members of the class in a manner as the court directs.

This rule also requires a court "to determine whether a proposed settlement is fundamentally fair, adequate, and reasonable," and a court must consider the settlement in its entirety rather than considering only its component parts. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir.1998) (citing *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir.1992) and *Officers for Justice v. Civil Serv. Comm'n of San Francisco*, 688 F.2d 615, 628 (9th Cir.1982)). Thus, "[t]he settlement must stand or fall in its entirety." *Id.* (citing *Officers for Justice*, 688 F.2d at 630).

In order to determine whether a proposed settlement is fair, adequate, and reasonable, a court must balance various factors, including:

the strength of the plaintiffs' case; the risk expense, complexity, and likely duration of further litigation; the risk of maintaining class action status throughout the trial; the amount offered in settlement; the extent of discovery completed and the stage of the proceedings; the experience and views of counsel; the presence of a governmental participant; and the reaction of the class members to the proposed settlement.

*Id.* (citing *Torrise v. Tuscon Elec. Power Co.*, 8 F.2d 1370, 1375 (9th Cir.1993), in turn quoting *Officers for Justice*, 688 F.2d at 625).

Where, as here, the parties reach a settlement before a class is certified, "a more probing inquiry" into whether a proposed settlement is fair, adequate, and reasonable is required. *Id.* Ultimately, "the decision to approve or reject a settlement is committed to the sound discretion of the trial judge." *Id.*

### B. The Parties Have Met Their Burden to Establish that the Settlement is Fair, Reasonable and Adequate.

The Court finds as a preliminary matter that the plaintiff class received adequate notice of the proposed Amended Stipulation. The class received notice from May 9, 2006 to July 14, 2006. Notice was posted in the housing units, and copies were distributed to inmates on lock down, in security housing units, in orientation units, and in infirmaries. Notice was also furnished for inmates with disabilities. The notice contained a summary of the proposed dental improvements to assist inmates. Copies of the proposed Amended Stipulation and the policies and procedures were available to inmates in the law libraries.

\*3 Further, class counsel, Mr. Specter and Ms. Hardy, have devoted the majority of their legal careers to the representation of state prisoners, including representing prisoners in class actions similar to this one. (See Specter Decl., ¶¶ 2-6; Declaration of Alison Hardy ("Hardy Decl."), ¶¶ 2-8.) Both Mr. Specter and Ms. Hardy attest that, based on their experience and based on the consultation with their experts during the negotiations leading up to the settlement, the settlement proposed in this action is fair, reasonable, and adequate. (Specter Decl., ¶¶ 8-20; Hardy Decl., ¶¶ 10-11.)

In addition, the Court independently reviewed the Amended Stipulation and the policies and procedures developed as a result of the parties' arms-length negotiations. The Court also has independently reviewed and considered the comments received from class members, as well as Plaintiffs' and Defendants' reply to the comments submitted by those class members.<sup>2</sup> Most class members' comments concerned specific aspects of the dental policies, which the parties adequately responded to by: (1) referencing certain policies and procedures that address particular concerns raised by the comments; (2) explaining that the stipulation provides for modification of those policies if necessary to provide for constitutionally adequate care; and (3) showing that the policies and procedures as written provide for a dental care delivery system designed to minimize the risk of harm to inmates. The Court further notes that many of the responses from class members express skepticism with Defendants' willingness to comply with the settlement. The Court intends to require the parties to submit regular joint status reports regarding compliance with the deadlines required under the agreement and will conduct regular status hearings in the matter. Further, the Court

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will not hesitate to intervene in the event it appears either that Defendants are not complying with the terms of the settlement or that class counsel is not being diligent in bringing violations of the settlement to the Court's attention in a timely fashion.

Other comments from class members objected to the phase-in or roll-out period provided for in the Amended Stipulation, claiming the changes should be made immediately. However, the Court must consider the settlement in its entirety, and the Court concludes that the roll-out provision is not unfair because: (1) certain improvements must be made at all prisons starting immediately; (2) Court-ordered relief of the kind required by the Amended Stipulation would not have been possible until after a trial and decision, a process that likely would have been resolved for several years and would have required Plaintiffs to risk an adverse decision at trial or on appeal; and (3) the size and scope of the improvements do not make simultaneous implementation feasible.

After considering the evidence and the settlement as a whole, and considering that evidence in conjunction with the factors outlined in *Hanlon*, 150 F.3d at 1126, and keeping in mind the heightened scrutiny that is required, the Court concludes the settlement is fair, reasonable, and adequate. The Amended Stipulation requires systemic

improvements in the delivery of dental care, and provides for monitoring by the CDCR, Plaintiffs and independent court experts. Further, the Court retains jurisdiction to enforce the settlement terms, and, the Court will take all steps necessary to do so.

\*4 The Court further finds that the Amended Stipulation meets the requirements of 18 U.S.C. § 3626(a)(1) because the relief narrowly drawn, extends no further than necessary to correct the violation of a Federal right, and is the least intrusive means necessary to correct the violation of the Federal right. Accordingly, the Court hereby adopts the Amended Stipulation as the Order of this Court.

The parties are directed to meet and confer regarding: (1) the contents of a notice to the Plaintiff class regarding approval of the settlement, and the timing and manner by which such notice will be provided; and (2) the content and filing of a proposed order providing for the establishment of an escrow account to be administered by the Court for the purpose of paying the independent Court experts.

**IT IS SO ORDERED.**

Footnotes

- 1 The original Stipulation was amended largely to correct typographical errors noted by the Court.
- 2 A large number of the class members submitted comments recounting their own experiences with dental care provided by the CDCR. These comments serve to reinforce the Court's conclusion that the settlement is fair, reasonable and adequate.