

FILED

UNITED STATES DISTRICT COURT  
ALBUQUERQUE, NEW MEXICO

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

JUN 19 1991

*R. Stummach*  
CLERK

ENTERED ON DOCKET

6-19-91

Civil No. 77-0721-JB

DWIGHT DURAN, et al.,

Plaintiffs,

v.

BRUCE KING, et al.,

Defendants.

Duran v. Apodaca



PC-NM-001-025

**ORDER**

ON June 10, 1991, the parties filed a Settlement Agreement in this cause. The Agreement establishes certain restrictions on overcrowding of inmates throughout the correctional institutions that are the subject of this litigation, modifies various substantive provisions of existing injunctive decrees, and establishes a timetable for monitoring and reporting by the Special Master. The Settlement Agreement also provides for dismissal of all pending motions of either party. Upon findings of substantial compliance and a period of self-monitoring and self-reporting by Defendants, the Agreement provides for the ultimate vacation of all injunctive decrees except for certain portions of the Settlement Agreement itself which will be in effect permanently.

The Court's order of August 8, 1990, required the parties to attempt to resolve the outstanding contempt motion filed by Plaintiffs and to attempt to reach agreement on any modifications to extant remedial orders Defendants might wish to seek. The order of August 8, 1990, also required the parties to develop and present to the Court a comprehensive plan for termination of the mastership and of the Court's active supervision of its remedial orders.

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The Court has reviewed the proposed Settlement Agreement and is pleased to note that it accomplishes all of the objectives set forth in the order of August 8, 1990. The terms of the Settlement Agreement, and the exhibits incorporated therein, are fair and reasonable and its implementation will benefit the members of the Plaintiff Class. Since the Settlement Agreement constitutes a compromise of this class action, however, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, members of the Plaintiff Class are entitled to notice and an opportunity to object prior to any final approval of the Agreement. Therefore, the Court will provisionally approve the Settlement Agreement at this time, subject to notice to the members of the Plaintiff Class in accordance with this order.<sup>1</sup>

No later than June 28, 1991, the parties shall file a proposed joint form of notice, summarizing the salient features of the Settlement Agreement and the exhibits incorporated therein. Once approved by the Court, the notice shall be distributed to members of the class in accordance with the terms of an order that will be entered at that time, and a date for a hearing to consider any objections will be scheduled.

All reasonable steps shall be taken by Plaintiffs' counsel to assist inmates to understand the provisions of the Settlement Agreement. Although the joint form of notice is expected to be sufficient to apprise many inmates of the essential terms of the compromise, some confusion and misunderstandings may result. After the distribution of the approved joint form of notice, therefore, the parties shall submit to the Court a statement setting out the procedures to be taken

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<sup>1</sup> In this connection, the Court notes that references are made throughout the Settlement Agreement to the "Effective Date" of the Agreement. In order to avoid misunderstanding, the Court announces that the date of the instant order, provisionally approving the Agreement, should not be regarded as the effective date of the parties' agreement; that the effective date is dependent upon the Court's final approval of the Agreement. Nonetheless, in view of the Court's provisional approval of the Settlement Agreement, the Special Master is to commence monitoring and reporting, pursuant to the terms of that Agreement, as of the date of this order.

by Plaintiffs' counsel to inform members of the class of the terms of the Settlement Agreement, to the end that members of the class be educated as thoroughly as possible about the content and the ramifications of the Settlement Agreement.

Understanding that the security of any institution may not be compromised, the Court expects Defendants to permit all reasonable actions necessary to educate members of the class during the period allowed for submission of objections. Simultaneously with the proposed joint form of notice, the parties shall submit a joint statement setting forth the manner in which Plaintiffs' counsel and their inmate committee representatives will be granted access to members of the class for the purposes outlined in this order.

Wherefore,

**IT IS SO ORDERED** at Albuquerque this 18th day of June, 1991.

  
JUAN G. BURCIAGA  
Chief Judge