

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

ALEX WITMER, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	No. 1:09-cv-00815-JMS-DML
)	
COMMISSIONER, INDIANA)	
DEPARTMENT OF CORRECTION,)	
<i>et al.</i> ,)	
)	
Defendants.)	

**ORDER FINDING PRIVATE SETTLEMENT AGREEMENT TO BE FAIR,
REASONABLE AND ADEQUATE PURSUANT TO RULE 23(e) OF THE FEDERAL
RULES OF CIVIL PROCEDURE**

This matter comes before the Court after the filing of the Stipulation to Enter Into Private Settlement Agreement After Plaintiffs’ Counsel Gives Notice to the Class and After Fairness Hearing. (Dkt. 300.) On July 27, 2016, this Court held a fairness hearing pursuant to Rule 23(e) of the Federal Rules of Civil Procedure to determine whether the proposed settlement is a fair, reasonable, and adequate resolution of this matter. The parties appeared by counsel at the hearing. The court reporter was Jean Knepley.

Having considered the proposed Private Settlement Agreement and the report of class counsel (Dkt. 302), as well as the arguments of counsel at the fairness hearing and the record in this matter,

IT IS HEREBY FOUND AND ORDERED that:

1. On December 8, 2010, the Court entered its Final Judgment and Injunction that requires the Commissioner of the Indiana Department of Correction (“DOC”) to provide a kosher meal option to prisoners who, for sincerely held religious reasons, request it in writing. (Dkt. 114).

2. This case is a class action, with the class defined as:

All prisoners confined within the Indiana Department of Correction, including the New Castle Correctional Facility, who have identified, or who will identify, themselves to the Indiana Department of Correction as requiring a kosher diet in order to properly exercise their religious beliefs and who have requested such a diet, or would request it if such a diet was available.

(Dkt. 47.)

3. On January 22, 2015, Alex Witmer and Zofo Benjamin were allowed to intervene in this action and were substituted as class representatives for the original class representative. (Dkt. 269.)

4. On May 14, 2015, the intervening plaintiffs filed their Amended Verified Petition for Contempt, arguing that the DOC is in contempt for failing to comply with this Court's Judgment. (Dkt. 272.)

5. This Court has jurisdiction over the subject matter of this action and over all the parties, including the members of the certified class.

6. The parties have now entered into a proposed Private Settlement Agreement to fully resolve the pending contempt matter. The proposed Private Settlement Agreement does not modify in any way this Court's Judgment in this case. However, in light of the fact that the proposed Private Settlement Agreement will result in changes to how the DOC assesses religious diet applications and compliance with restrictions on those approved to receive a kosher diet, the parties agreed that it is appropriate for notice of the proposed settlement to be given to the class and for the class to have an opportunity to comment on the proposed settlement.

7. The class has been given proper and adequate notice of the proposed resolution of this contempt matter through the proposed Private Settlement Agreement. This notice was given as required by this Court's Order of June 10, 2016. (Dkt. 301.)

8. The notice invited class members to notify class counsel as to any objections to, or

comments on, the proposed Private Settlement Agreement. The notice provides valid, due, and sufficient notification of these proceedings and the proposed settlement and includes information regarding the procedures for making comments on the proposed Private Settlement Agreement.

9. The notice to the class fully satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure and the requirements of due process.

10. The Court has reviewed the report of the comments made.

11. Following the standards established by *Synfuel Technologies, Inv. v. DHL Express, Inc.*, 463 F.3d 646, 653 (7th Cir. 2006), the Court finds that the proposed Private Settlement Agreement is a fair, reasonable, and adequate resolution of the pending contempt matter for the following reasons.

a. The purpose of the pending contempt motion was to force the DOC to comply with this Court's Judgment concerning the provision of kosher diets. The proposed Private Settlement Agreement puts into place substantive requirements designed to remedy alleged problems that had arisen concerning the approval of kosher diets and monitoring of compliance with the kosher diet restrictions by those approved to receive kosher diets. The Court believes that the proposed Private Settlement Agreement largely accomplishes the litigation goals of the plaintiffs in filing for contempt as it will circumscribe the discretion of the DOC to deny or revoke approvals for religious diets. Given the current status of the case, the Court finds that the comparison of the strength of this case with the settlement presented favors recognizing that the proposed settlement is fair, reasonable, and adequate.

b. The complexity, length, and expense of continued litigation weigh in favor of finding that the proposed Private Settlement Agreement is fair, reasonable, and adequate. Even if the DOC was found to be in contempt the likely remedy imposed by this Court

would be to order the DOC to come up with a plan for correction. It appears to the Court that the proposed Private Settlement Agreement is such a plan, albeit without a contempt finding. Therefore, in the Court's estimation, nothing would be gained by continuing the litigation, and further litigation would require further discovery at this point as well as an evidentiary hearing.

c. As indicated, the Court has reviewed the reports filed by plaintiffs' counsel concerning the comments of prisoners who have responded to the notice of the proposed settlement and has reviewed the comments that have been filed. The Court has no opinion concerning the factual or legal merit of the comments. However, the Court notes that few prisoners actually object to the proposed settlement itself. Instead, most of the comments that are relevant concern past difficulty with obtaining kosher diets. Plaintiffs' counsel anticipates that some of these past denials will now be approved pursuant to the policy established by the proposed Private Settlement Agreement. The Court is confident that plaintiffs' counsel will continue to monitor this and will continue to bring to the DOC's counsel's attention the cases of prisoners who are – in plaintiffs' counsel's estimation – improperly denied kosher diets or who have previous approvals improperly revoked.

d. There is no evidence of any collusion between the parties entering into the proposed Private Settlement Agreement. The Court is satisfied that the Private Settlement Agreement is the result of arms-length negotiations. The Court acknowledges that the parties have, by separate agreement, reached an agreement to compensation to the named plaintiffs for what they claim are out-of-pocket expenditures to purchase food from commissary to attempt to eat a kosher diet.

e. The class is represented by counsel who are experienced in class action litigation

of this type.

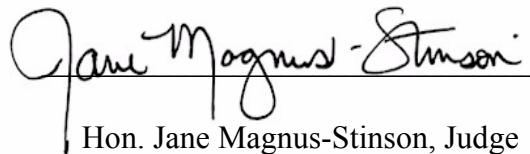
f. The stage of the proceedings and amount of discovery weigh in favor of finding that the proposed Private Settlement Agreement is fair, reasonable, and adequate. The proposed settlement was arrived at only after lengthy discovery, briefing and lengthy negotiations.

For the foregoing reasons, the Court finds that the proposed Private Settlement Agreement is a fair, reasonable, and adequate resolution of this matter.

IT IS THEREFORE ORDERED that the Private Settlement Agreement will remain in effect for three years from this date. At that time, absent written agreement as noted in paragraph 28 of the Private Settlement Agreement, the Agreement will automatically be dismissed without prejudice.

IT IS FURTHER ORDERED that the pending contempt matter [dkt 272] is DISMISSED WITHOUT PREJUDICE.

IT IS SO FOUND AND ORDERED on this 27th day of July, 2016.

A handwritten signature in black ink that reads "Jane Magnus-Stinson". The signature is written in a cursive style and is positioned above a horizontal line.

Hon. Jane Magnus-Stinson, Judge
United States District Court
Southern District of Indiana

To: All ECF-registered counsel of record