

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

DWIGHT DURAN, et al.,

Plaintiffs,

v.

Civil Action No. 77-721-JB

TONEY ANAYA, et al.,

Defendants.

AGREEMENT

COME NOW the parties and stipulate and agree as follows:

1. There is a need for an objective, impartial mechanism for monitoring defendants' compliance with the orders previously entered by the Court in this action, and for assisting the defendants toward the goal of achieving substantial compliance with these orders as soon as possible.

2. The parties agree that the appointment of a special master is one of the principal forms of relief sought in plaintiffs' various motions for contempt and other relief and is a mechanism which may significantly increase the likelihood of substantial compliance with the Court's orders.

3. Toward that end the parties agree that the appointment of a special master pursuant to Rule 53 of the Federal Rules of Civil Procedure is the necessary and appropriate course of action at this time to aid the court in monitoring and supervising the defendants' progress toward achieving substantial compliance with the court's orders. The parties therefore have agreed upon the attached Order of Reference which is incorporated herein by reference.

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4. As consideration for this Agreement, plaintiffs within ten (10) days from the entry of the attached Order of Reference, will withdraw their motion for contempt and other relief, without prejudice to renewal. As consideration for this Agreement, defendants within ten (10) days from the entry of the attached Order of Reference, shall withdraw their motions for modification of the orders and other relief, without prejudice to renewal.

5. Plaintiffs' attorneys' claims for reasonable costs and expenses including expert witness fees, and reasonable attorneys' fees, will be reserved for future settlement by the parties or submission to the Court.

6. The court shall retain jurisdiction to enforce this Agreement and the Order of Reference, when entered.

7. Neither party will appeal the Order of Reference, when entered.

8. This agreement and the attached Order of Reference were voluntarily and mutually agreed upon by the Defendants and the Plaintiffs as a compromised settlement of disputes between the parties. This Agreement and the attached Order of Reference do not constitute an admission that any previous or existing condition, policy, procedure or act or omission of the Defendants or any official, employee, or agent was, or is in any way improper, negligent, unconstitutional, or in violation of any rights of the Plaintiff class; nor do the plaintiffs acknowledge that the court's orders should be modified.

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Dated: June _____, 1983