UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

ETHEL WILLIAMS, *et al.*,	)	
	)	
Plaintiffs,	)	Case No. 05 C 4673
	)	
vs.	)	Judge William T. Hart
	)	Magistrate Judge Morton Denlow
PATRICK QUINN, *et al.*,	)	
	)	
Defendants.	)	

COMMENTS BY THE UNITED STATES OF AMERICA

The United States submits this Comment in support of final approval of the Proposed Joint Consent Decree (the "Consent Decree") in accordance with this Court's Order of May 27, 2010, requesting comments on the proposed Consent Decree. This proposed Consent Decree implicates the proper interpretation and application of the integration mandate of title II of the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 12101-12213. *See Olmstead v. L.C.*, 527 U.S. 581 (1999). The Department of Justice has enforcement authority for and issues regulations implementing the ADA and thus has a strong interest in the resolution of this matter.[1] The United States supports the proposed Consent Decree because it advances the important public interest in community integration.

The Consent Decree meets the legal standard for approval because it fairly, reasonably, and adequately affords relief to Class Members.[2] The objections in opposition to the Consent Decree do not merit rejection of the settlement. Moreover, the Consent Decree is consistent with approved class action settlement agreements reached in other community integration cases

[1]The United States' commitment to realizing the goals of community integration as set forth in *Olmstead* has led the United States to file briefs in a number of *Olmstead* enforcement cases.
[2] Terms that are specifically defined in the Consent Decree are capitalized.

alleging similar discrimination. Accordingly, this Court should grant final approval of the Consent Decree.

SUMMARY OF FACTS

Plaintiffs are Illinois residents who have mental health disabilities and are institutionalized in privately-owned Institutions for Mental Diseases ("IMDs"), but with appropriate supports and services may be able to live in the community. (Class Cert. Order, Nov. 13, 2006, at 12-13.) Plaintiffs allege that Defendants have failed to provide them with an integrated, community setting and have instead, unnecessarily placed Plaintiffs in institutions in violation of the ADA and the Rehabilitation Act of 1973. (Sd. Am. Compl. ¶¶ 97-123.)

After over five years of vigorous litigation, the parties have reached a settlement agreement. The parties submitted a Joint Motion for Approval of the Consent Decree and the Court preliminarily approved the Consent Decree and Notice Plan on May 27, 2010. The Court has scheduled a fairness hearing for September 7, 2010.

The Consent Decree accomplishes Plaintiffs' overarching goal of having a *choice* to live in integrated, community settings rather than institutions. Under the Consent Decree, Defendants will conduct an Evaluation of each Class Member to determine whether they are appropriate for transition to a Community-Based Setting. (Consent Decree ¶ 6.) The Defendants must then develop an individualized Service Plan for each Class Member who is assessed as appropriate for a Community-Based Setting. (*Id*. at ¶ 7.) Defendants will provide appropriate Community-Based Services to Class Members in order to transition to and live in a Community-Based Setting. (*Id*. at ¶¶ 7(b), 7(f), 9(b), 5.) "Community-Based Setting" is specifically defined in the Consent Decree as the most integrated setting appropriate and may include permanent supportive housing and independent living. (*Id*. at ¶ 4(iii).) The Consent Decree includes

timelines for the Evaluations, development of the Service Plans, and transition of Class Members to Community-Based Settings. (*Id*. at ¶ 8.) The Consent Decree also provides for a court-appointed Monitor. (*Id*. at ¶ 16.)

1. <u>The Consent Decree Advances the Community Integration Mandate of the ADA.</u>

The Court's approval of the Consent Decree would significantly advance the goals underlying the ADA: "full participation, independent living, and economic self-sufficiency" for people with disabilities. 42 U.S.C. § 12101(a)(7). The title II regulations, 28 C.F.R. § 35.130(d), require public entities to "administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities."

Eleven years ago, the Supreme Court applied these authorities and held that title II prohibits the unjustified segregation of individuals with disabilities. *Olmstead*, 527 U.S. at 596. *Olmstead* mandates public entities to provide community-based services for persons with disabilities who would otherwise be entitled to institutional services when a) treatment professionals reasonably determine it is appropriate; b) the affected persons do not oppose such treatment; and c) the placement can be reasonably accommodated, taking into account the resources available to the entity and the needs of others who are receiving disability services from the entity. *Olmstead*, 527 U.S. at 607.

The State of Illinois currently violates the ADA's integration mandate by relying on segregated institutions to provide services to people with mental health disabilities and by failing to develop a comprehensive, effectively working plan for transitioning them to less restrictive settings. *See Olmstead*, 527 U.S. at 605-606. The Court's final approval of the Consent Decree and its subsequent implementation would correct these problems and significantly further the goal of community integration.

2. The Consent Decree Meets the Legal Standard for Final Approval.

Federal courts favor the settlement of class action litigation. *See EEOC v. Hiram Walker & Sons*, 768 F.2d 884, 888-89 (7th Cir. 1985). In evaluating a class action settlement for final approval, a court's inquiry is limited to whether the proposed settlement is fair, reasonable, and adequate. *Id*. at 889. At this stage, a court should "refrain from resolving the merits of the controversy or making a precise determination of the parties' respective legal rights." *Id*; *see also Dawson v. Pastrick*, 600 F.2d 70, 75 (7th Cir. 1979).

The Seventh Circuit has identified six factors to determine whether a class action consent decree is fair, reasonable, and adequate: (1) the strength of the plaintiffs' case on the merits measured against the terms of the settlement; (2) the complexity, length, and expense of continued litigation; (3) the amount of opposition to the settlement; (4) the presence of collusion in gaining a settlement; (5) the opinion of competent counsel regarding the reasonableness of the settlement; and (6) the stage of the proceedings and the amount of discovery completed. *Donovan v. Estate of Fitzsimmons*, 778 F.2d 298, 308 (7th Cir. 1985). Under this six-part analysis, the Consent Decree is fair, reasonable, and adequate and therefore merits the Court's final approval.

a. The Consent Decree Reflects the Strength of Plaintiffs' Case Balanced Against the Benefits of Settlement.

The strength of the Plaintiffs' claims is appropriately reflected in the Consent Decree. The strength of the plaintiffs' case on the merits balanced against the benefits of the settlement is the most important factor in considering whether to approve a settlement agreement. *Synfuel Technologies v. DHL Express*, 463 F.3d 646, 653 (7th Cir. 2006) (citations omitted). In conducting this analysis, the court should "[quantify] the net expected value of continued litigation to the class." *Id*.

Plaintiffs' claims of deprivation of Class Members' civil rights are strong given the State of Illinois' longstanding segregation of Class Members in institutions in direct violation of the ADA's integration mandate. *Olmstead*, 527 U.S. at 596. There are several thousand Class Members who currently reside in IMDs who are appropriate for and want community placements, but nevertheless remain in institutions. As a remedy, Plaintiffs seek to compel Defendants to educate Class Members about their rights to live in the community, to promptly determine eligibility for community services and to provide appropriate services that allow Plaintiffs to live in the most integrated setting appropriate to their needs. (Sd. Am. Compl. ¶ 29.) In light of the costs and uncertainty associated with additional litigation along with the inevitable delay of placing Class Members in the community if the case proceeded to trial, the Consent Decree reflects an appropriate balance between the strength of Plaintiffs' claims and the benefits of settlement.

The Consent Decree achieves the Plaintiffs' goals in this litigation. First, the Consent Decree obligates the Defendants to engage in outreach to ensure that Class Members "receive complete and accurate information regarding their rights to live in community based settings" and requires Defendants to complete, within two years, an "independent, professionally appropriate and person-centered Evaluation of [the class member's] strengths and needs in order to determine the Community-Based Services required for [the class member]…" for every Class Member. (Consent Decree ¶¶ 6, 11.) Based on the Evaluations, Defendants must then develop, in consultation with Class Members, individualized Service Plans for Class Members who are assessed as appropriate for a Community-Based Setting that delineates the services each Class Member requires for successful community placement. (*Id*. at ¶ 7.) The use of Qualifying

Professionals and the participation of Class Members throughout the process minimizes the risk of arbitrary decision making. (*Id*. at ¶¶ 6(b), 7(c), 7(d).)

Once the appropriate Class Members have individual Service Plans for transition to Community-Based Settings, the Consent Decree obligates the Defendants to transition the Class Members in accordance with clear timeframes. (*Id*. at ¶ 8.) The Consent Decree requires that within 5 years, all Class Members who are appropriate for transition to a Community-Based Setting will be offered that opportunity. (*Id*. at ¶ 8(a).) The Consent Decree sets yearly benchmarks to ensure the 5-year requirement is met, which includes transitioning 640 Class Members to the community by the end of the second year. (*Id*. at ¶ 8.) Defendants must also "ensure the availability of all services, supports and other resources of sufficient quality, scope and variety" to meet their obligations under the Consent Decree. (*Id*. at ¶ 5.) The Consent Decree also guarantees that Class Members "who move to a Community-Based Setting will have access to all appropriate Community-Based Services …" (*Id*. at ¶ 9(b).)

Because the Consent Decree includes some provision for all the Plaintiffs' goals in the litigation by creating a system to fairly and efficiently evaluate class members for community placement to which the *Olmstead* decision and the ADA entitle them, it appropriately reflects the strength of Plaintiffs' case balanced against the benefits of settlement.

b. Continued Litigation Would Be Complex, Lengthy, and Expensive.

A trial in this case would be complex, lengthy, and expensive. This litigation was initially filed over five years ago and since that time has occupied a significant amount of resources. A case alleging similar violations of the ADA and Section 504 of the Rehabilitation Act, *Disability Advocates, Inc. v. Paterson*, 653 F. Supp. 2d 184 (E.D.N.Y. 2009) ("*DAI*"), resulted in six years of litigation, a five-week bench trial, with 29 witnesses, more than 300

exhibits, excerpts from 23 depositions and a 3,500 page trial transcript. *Id*. at 189. Following the entry of the Court's remedial order in March 2010, the institutionalized individuals in *DAI* are still waiting for community placements. *Disability Advocates, Inc. v. Paterson,* Remedial Order, No. 1:03-cv-03209 (E.D.N.Y March 1, 2010). Meanwhile, the case is also on appeal. *Disability Advocates, Inc. v. Paterson,* No. 10-767 (2d Cir. March 3, 2010). A trial in this case would similarly require a large number of witnesses and a multiple week trial. Importantly, a trial would further delay the ability of Class Members, many of whom have been unnecessarily institutionalized for decades, to take advantage of the proposed remedy. The Consent Decree is appropriate because it avoids the complexity, length, and expense of continued litigation and avoids the uncertainty and delay of further litigation for Class Members.

c. The Objections to the Consent Decree Do Not Merit Rejection of the Settlement.

The objections to the Consent Decree reflect a fundamental misunderstanding of its provisions and therefore do not merit its rejection. The United States has reviewed the objections submitted to the Plaintiffs by Class Members and their legal guardians, family, and friends as of July 28, 2010. The issues raised by the objections are essentially the same as those raised by objectors at the preliminary approval stage. The Consent Decree adequately addresses the objectors' concerns and is fair, reasonable, and adequate.

First, a large number of the written objections are from non-class members[3] and should thus not be dispositive. These objections include those submitted by individuals who are not Class Members or legal representatives or guardians of the Class Members and thus have no standing to object to a proposed class settlement. *See Agretti v. ANR Freight System, Inc.*, 982 F.2d 242, 246 (7th Cir. 1992) (absent plain legal prejudice, non-party to settlement agreement

[3] The class is defined as Illinois residents who: (a) have a mental illness; (b) are institutionalized in a privately owned Institution for Mental Disease; and (c) with appropriate supports and services may be able to live in an integrated community setting. (Mem. Op. & Order, Nov. 13, 2006, at 12-13).

has no standing to object to class action settlement); *Assoc. for Disabled Americans, Inc. v. Amoco Oil Co.*, 211 F.R.D. 457, 473 (S.D. Fla. 2002) ("Under Fed. R. Civ. P. 23(e), non class members are not permitted to assert objections to a class action settlement.")

A significant number of written objections were submitted by Class Members; however, the Court should afford minimal weight to these objections because the vast majority were based upon misleading information distributed by objectors' counsel and the IMD facilities themselves, who have a significant financial interest in the continued existence of institutional care. (*See* Order, July 27, 2010, at *7) (criticizing the IMD Notices for "expressly exhort[ing] residents and their families to object to the Settlement"). It is clear that misinformation has tainted the written objections. Indeed, most of the objections were submitted using a standardized form developed by the IMDs and its counsel and were merely signed by the IMD resident. Narrative comments submitted in the objections often restate the false information distributed at meetings held by objectors' counsel. This Court previously noted the host of inaccurate information the IMD operators and objectors' counsel provided to IMD residents. For example, this Court found that the material distributed by the IMDs overstates the possibility of IMD closure and that residents will be on the street without basic necessities (*Id.* at 8); the notices incorrectly state the class definition as anyone who lives in an IMD (*Id.*); the notices falsely state that appearing at the hearing is the only way to state objections (*Id.* at 8-9.); the notices wrongfully suggest that there is a guarantee that Illinois will fund IMD services (*Id.* at 9); the notices incorrectly state that there is only one lawyer for the Plaintiff class of approximately 4,300 individuals (*Id.*); the notices incorrectly suggest that medical professionals will not be involved in decisions regarding resident transitions (*Id.*); and the notices incorrectly state that Plaintiffs' counsel brought this case *pro bono.* (*Id.*) Because a large majority of the objections reveal that they were prompted

by misleading information, they should not influence the Court's final approval of the Consent Decree. Further, "[t]he presence of objecting class members is a relevant factor, although not dispositive even when many class members object." *Armstrong v. Bd. of School Directors of Milwaukee*, 616 F.2d 305, 326 (7th Cir. 1980).

1. Notwithstanding Some Statements to the Contrary, Class Members Will Choose Where to Reside and Will Not be Forced into Transitioning to the Community.

Many of the objections submitted to the Court throughout these proceedings express a general preference for living in IMDs over Community-Based Settings. The Consent Decree, consistent with *Olmstead*, anticipates this concern and does not restrict a Class Member's ability to choose *not* to move to a community setting. Under the Consent Decree, Class Members will still be afforded the opportunity to choose between institutional care or community-based services. (Consent Decree ¶¶6(b), 8(b).) Specifically, a Class Member has the right to decline to take part in an Evaluation. (Consent Decree ¶6(b).) The Defendants will only develop service plans that include transitions to a Community-Based Setting for Class Members who do not oppose this transition. (*Id*.) A Class Member may decline the opportunity to move to a Community-Based Setting. (*Id*. at ¶ 8(b).) The Consent Decree does not mandate Community-Based Settings for all IMD residents.

Courts have regularly approved class action settlements in the *Olmstead* context, often over the objections of class members or their family members who wished to remain in institutional placements. *See, e.g., Chambers v. San Francisco*, No. 3:06-cv-06346, Order Granting Final Approval of Settlement Agreement, ECF No. 93, (N.D. Cal. September 18, 2008); *Rolland v. Patrick*, 562 F. Supp. 2d 176 (D. Mass. 2008); *Brown v. Bush*, No. 98-673-CIV, Order Approving Settlement Agreement, ECF No. 34 (S.D.F.L. Aug. 12, 2005). In

Rolland, a group of parents of individuals with developmental disabilities challenged a class settlement, objecting that it did not adequately protect class members who wished to remain in nursing homes. *Rolland*, 562 F. Supp. 2d at 183. The District Court rejected this challenge, and the First Circuit affirmed the District Court's finding that the settlement was fair, reasonable and adequate. *Voss v. Rolland*, 592 F.3d 242, 255 (1st Cir. 2010). The First Circuit recognized that the settlement agreement reflected a preliminary determination that the class would be appropriate for community placement, but that individualized determinations would be made during the transition planning process that would result in community placement only where appropriate and would take into consideration the wishes of the class members' families. (*Id*. at 253.) Similarly, the Consent Decree in this case permits a Class Member to reject placement in a Community-Based Setting, mandates individualized Evaluations and requires the Defendants to develop Service Plans that "focus on the Class Member's personal vision, preferences, strengths, and needs" and would require consultation with "other appropriate people of the Class Member's choosing." (Consent Decree ¶¶ 7c, 7d.)

Moreover, to the extent that Class Members wish to preserve their ability to choose the setting where they will receive their care, nothing in the Consent Decree impairs their choice of where to live. In fact, the Consent Decree promotes choice by increasing the options available to Class Members by allowing those who desire to live in the community to select that option. In a similar *Olmstead* case in Florida, *Brown v. Bush*, the court responded to objectors' related concerns by saying that "[n]othing in the Agreement obligates an individual or guardian or other legally authorized representative to choose a home and community-based waiver placement if the individual in fact wants an institutional placement." *Brown v. Bush*, No. 98-673-CIV, Order Approving Settlement Agreement, ECF No. 34, at *20 (S.D.F.L. Aug. 12, 2005).

Further, that some IMD residents may not want to transition to Community-Based Settings is not a legitimate basis to disapprove the Consent Decree and prevent other Class Members from obtaining relief. Courts in this District have noted that the desire of a particular individual to not have his or her civil rights vindicated cannot serve as a bar to the resolution of such rights. *Imasuen v. Moyer*, No. 91-C-5425, 1992 WL 26705, *2 (N.D. Ill. Feb. 7, 1992) (Holderman, J.) ("[T]he fact that some class members may be satisfied with an unconstitutional system and would prefer to leave violations of their rights unremedied is not dispositive[.]"); *Wyatt v. Poundstone*, 169 F.R.D. 155, 161 (M.D. Ala. 1995) (refusing to decertify class where some institutional residents opposed community placement because doing so "would, in effect, preclude the use of the class action device in many of the very cases where it could be the most advantageous"); *Lanner v. Wimmer*, 662 F.2d 1349, 1357 (10th Cir. 1981); *Waters v. Berry*, 711 F. Supp. 1125, 1131-32 (D.D.C. 1989); *Wilder v. Bernstein*, 499 F.Supp. 980, 993 (S.D.N.Y. 1980); Newberg on Class Actions § 16:17 (4th ed. 2009).

2. Only Individuals Appropriate for a Community-Based Setting Will be Transitioned into the Community.

Several objectors submitted concerns that community care would be inadequate given their particular mental illness. This fear is unfounded. As an initial matter, the class is limited to those individuals who "with appropriate supports and services may be able to live in an integrated community setting." (Mem. Op. & Order, Nov. 13, 2006, at 12-13.) Under the Consent Decree, individuals whose needs require an institutional setting will not be moved to the community because they are not members of the class. Further, the Consent Decree ensures that Qualified Professionals, defined as "persons who are appropriately licensed, credentialed, trained and employed by a PASRR Agency" will individually assess all Class Members to determine whether community care is an appropriate option. (Consent Decree ¶¶ 4(xix), 6); *see also*

(Consent Decree ¶ 4(viii)) ("Each evaluation shall include . . . consultation with the Class Member's psychiatrist and/or other professional staff where appropriate.")

Similar objections were raised in *Brown v. Bush*, yet the court approved a class action settlement between the State of Florida and individuals with developmental disabilities who had been unnecessarily institutionalized. *Brown v. Bush*, No. 98-673-CIV, Order Approving Settlement Agreement, ECF No. 34 (S.D.F.L. Aug. 12, 2005). The settlement agreement called for the closure of two state-run institutions for individuals with disabilities. A group of families of class members objected to the settlement agreement voicing concerns that residents would be moved when they were not appropriate for community care and would be forced to leave the institution. After considering objectors' letters opposing the settlement and their testimony at the fairness hearing, the court determined that the objectors' concerns were "unfounded" and were "adequately addressed" in the agreement. *Id.* at *19. The court stated:

> Residents at the institutions that are closing are not going to be forced out on the streets or into the homes of their elderly parents . . . The Court also finds a number of safeguards have been put into place to ensure that an informed decision is made as to whether a person is placed in a community-based placement and that adults that choose to move to a community-based placement have a smooth transition . . . Furthermore, . . . monthly monitoring of licensed residential facilities . . . determines whether the people are safe, the environment is safe, there are appropriate medication administration records[.]

Id. at *19-21.

The Consent Decree contains similar safeguards which include fully educating Class Members of their options, evaluations and transition planning by qualified professionals with input from IMD residents, and oversight by a court-appointed monitor to ensure that only individuals who are appropriate for a Community-Based Setting are transferred and that their needs are met in the community.

3. The Consent Decree is Sufficiently Detailed.

The Consent Decree contains sufficient detail for the Court to determine whether it is fair, reasonable, and adequate contrary to several allegations that the Consent Decree is too vague. Indeed, the Consent Decree contains more details than other courts have ordered. *See, e.g., Disability Advocates, Inc. v. Paterson*, Remedial Order, No. 1:03-cv-03209 (E.D.N.Y March 1, 2010). In *DAI*, the court required the State of New York to develop a minimum of 1,500 supported housing beds during each of the first three years and to continue developing them at a rate of 1,500 beds per year until such time as there was sufficient housing beds for all of DAI's constituents who desire community placement. *Id*. at 5. The specific details regarding the transition to community placement, identification of the specific providers, and which services each DAI constituent would receive were left up to the State of New York to develop and implement with oversight by a court-appointed monitor and input from plaintiff. *Id*. at 6-7. The Consent Decree in this case contains a similar structure, but contains more detail than the *DAI* remedial order in that it delineates the Evaluation process, development of the Service Plans and mandates the involvement of Qualified Professionals throughout the process.

The Consent Decree also provides that Defendants, working together with Plaintiffs and a court-appointed Monitor, will develop an implementation plan with "specific tasks, timetables, goals, programs, plans, strategies and protocols" to ensure compliance with the settlement. (*Id*. at ¶ 11(a).) This is appropriate because many of the details regarding implementation of the Consent Decree will depend on how many Class Members choose a Community-Based Setting once they are made available. Given the nature of the remedy involved, it is not practicable or necessary for the parties to include every detail of implementation in the Consent Decree.

d. The Consent Decree Did Not Result From Collusion.

The Consent Decree was negotiated in good faith and did not result from collusion between the parties. Collusion is defined as "an agreement between two or more persons to defraud another or to obtain something forbidden by law." Black's Law Dictionary (West 1996). In evaluating the presence of collusion, the district judge functions as a "fiduciary of the class, who is subject therefore to the high duty of care that the law requires of fiduciaries." *Reynolds v. Beneficial Nat'l Bank*, 288 F.3d 277, 280 (7th Cir. 2002). Courts evaluate facts such as the history of the litigation, any accusations of collusion, and statements by counsel about the negotiation process. *Armstrong*, 616 F.2d at 305; *see also Amchem Product v. Windsor*, 521 U.S. 591, 620 (1999)("And, of overriding importance, courts must be mindful that [Rule 23(b)] as now composed sets the requirements they are bound to enforce.")

Settlement discussions in the case began after the parties had a full and fair opportunity to clearly identify the legal issues, analyze liability, and conduct extensive written and deposition discovery. *Cf. Amchem Product, 521 U.S.* at 600 (agreement in one day). Moreover, the parties spent months negotiating the terms of the Consent Decree and participated in numerous settlement discussions. There is no history or evidence of collusion in the record nor has any party suggested that counsel had any improper purposes for reaching a settlement agreement. Because the Consent Decree resulted from negotiations between experienced, capable counsel after meaningful discovery, it is not the result of collusion.

e. Competent Counsel Regard the Consent Decree as Reasonable.

The Court is "entitled to rely heavily on the opinion of class counsel" in determining whether a settlement is reasonable. *Armstrong*, 616 F.2d at 325. Class counsel are experienced and competent attorneys who have effectively advocated for the interests of their clients

throughout this litigation. Class counsel consist of attorneys from four non-profit organizations dedicated to the rights of individuals with disabilities, including the ACLU, Equip for Equality, Access Living, and Bazelon Center for Mental Health Law, and the firm of Kirkland & Ellis, LLP. Collectively, they have extensive experience with class action lawsuits and *Olmstead* cases in particular. Following a careful evaluation of the strength of Plaintiffs' claims and benefits of settlement, counsel for Plaintiffs and Defendants favor the Consent Decree. Moreover, the United States, after observing this case since it was filed in 2005 and interacting with counsel on numerous occasions, highly regards the attorneys involved. Accordingly, this factor weighs strongly in favor of approval of the Consent Decree.

f. The Consent Decree Was Reached After Extensive Discovery.

The parties reached this Consent Decree after five years of litigation which included extensive discovery. This discovery included comprehensive reports from two individual experts and a team of experts from Yale University, quantitative studies, and over 30 depositions. (Joint Status Report, Feb. 18, 2010 [Docket No. 236]). As a result, the parties have clearly identified and evaluated the merits of the legal issues in this case and have independently determined that a settlement best serves the interests of their clients.

Thus, analyzing the Consent Decree under this six-part analysis confirms that the settlement is fair, reasonable, and accurate.

CONCLUSION

For the above stated reasons, the Court should grant final approval to the Proposed Joint Consent Decree. Counsel for the United States requests to speak at the fairness hearing scheduled for September 7, 2010.

Dated: August 10, 2010

Respectfully submitted,

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CERTIFICATE OF SERVICE

Undersigned counsel hereby certifies that on August 10, 2010, she electronically filed the foregoing Comments by the United States of America with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the counsel enrolled in the CM/ECF system.

/s/ Regan Rush