

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

BRIAN A., et al.)	
)	
Plaintiffs,)	Civ. Act. No. 3:00-0445
)	Judge Waverly D. Crenshaw, Jr.
v.)	Magistrate Judge Joe B. Brown
)	
BILL HASLAM, et al.)	
)	
Defendants.)	

**DEFENDANTS’ NOTICE OF COMPLIANCE WITH MODIFIED
SETTLEMENT AGREEMENT AND EXIT PLAN, AND ATTACHED PROPOSED
ORDER PARTIALLY TERMINATING JURISDICTION**

On April 11, 2016, this Court approved and entered the April 2016 Modified Settlement Agreement and Exit Plan (the “2016 Exit Plan”). [ECF No. 555]. As has been true with each modified exit plan entered after 2010 (the “Exit Plans”), the 2016 Exit Plan superseded and replaced the prior year’s modified exit plan. [See 2016 Exit Plan, Preamble, Paragraph A]. Section XVIII of the Exit Plans govern their Enforcement, Termination and Exit, including what is to happen once Defendants fulfill their obligations. In particular, Section XVIII.D.2 states, in pertinent part, that “[o]nce Defendants have achieved and simultaneously sustained MAINTENANCE status on all provisions in Sections II-XIII and XVI,¹ Defendants may request that the court issue an order terminating jurisdiction over all provisions of this agreement, except for Section XIX, by filing a Notice of Compliance and Proposed Order Terminating Jurisdiction with the court.” [ECF No. 555, p. 37]. Further, when the monitors’ reports show the required maintenance status, Plaintiffs may only oppose the proposed order under narrow circumstances.

¹ For purposes of this filing, Sections II-XIII and XVI shall be referred to as the “Required Provisions.”

Id. As set forth more fully below, Plaintiffs do not oppose, and in fact support, the entry of the requested order.

With regard to Defendants' performance and the MAINTENANCE status of the Required Provision as of December 31, 2015, and through December 31, 2016 (a full twelve-month period), there is no dispute that Defendants have fulfilled the obligations set forth in the Required Provisions and those provisions have been in MAINTENANCE for at least twelve consecutive months. The MAINTENANCE status of the Required Provisions for this twelve-month period is supported by the relevant filings, including at least the following: the Technical Assistance Committee's² reports filed in 2016 (ecf no. 552-1, filed on February 8, 2016; and, ecf no. 554-1, filed on April 4, 2016); the Joint Stipulation Seeking Court Approval of Proposed April 2016 Modified Settlement Agreement and Exit Plan (the "Parties' 2016 Joint Stipulation") (ecf no. 554); the 2016 Exit Plan; the TAC's reports filed in 2017 (ecf no. 576-1, filed on April 4, 2017; and, ecf no. 578-1, filed on May 16, 2017); the Joint Stipulation Seeking Court Approval of the April 2017 Modified Settlement Agreement and Exit Plan (ecf no. 579 (the "Parties' 2017 Joint Stipulation")); and, the proposed April 2017 Modified Settlement Agreement and Exit Plan for entry by this Court (ecf no. 579-1 (the "2017 Exit Plan")).

The 2016 Exit Plan was entered at the request of both Plaintiffs and Defendants,³ and established that Defendants had achieved MAINTENANCE with all Required Provisions. Further, the Parties' 2016 Joint Stipulation makes it clear that the Required Provisions came into

² The Exit Plans establish the TAC as the independent monitor of Defendants' performance and delegates to it the responsibility for determining the MAINTENANCE status of the Required Provisions. [2016 Exit Plan, §§ XV and XVIII].

³ See the Parties 2016 Joint Stipulation. [ECF No. 554].

MAINTENANCE as of December 31, 2015.⁴ [ECF No. 554, p. 5, numbered paragraph 8]. Having achieved MAINTENANCE with all Required Provisions by December 31, 2015, Section XVIII.D.2 of the Exit Plans establishes that Defendants “may request that the court issue an order terminating jurisdiction” over this litigation, with the exception of Section XIX of the Exit Plans, if it thereafter was able to sustain MAINTENANCE with all Required Provisions for twelve (12) consecutive months. [ECF No. 555, §XVIII.D.2].

On May 16, 2017, Plaintiffs and Defendants filed the Parties’ 2017 Joint Stipulation. [ECF No. 579]. Attached to the Parties’ 2017 Joint Stipulation as Exhibit A was the 2017 Exit Plan. Plaintiffs and Defendants have asked this Court to approve and enter the 2017 Exit Plan. The 2017 Exit Plan establishes that all Required Provisions continue to be and are in MAINTENANCE. Moreover, the Parties’ 2017 Joint Stipulation makes it clear that the Required Provisions were in MAINTENANCE “no later than December 31, 2015, and Defendants sustained MAINTENANCE status on all [Required] provisions ... throughout the full calendar year of 2016.”⁵ [ECF No. 579, numbered paragraph 1].

Pursuant to the requirement of Section XVIII.D.2., attached to this Notice of Compliance as Exhibit 1 is the [proposed] Order Partially Terminating Jurisdiction and Partially Dismissing Case with Prejudice (the “Attached Order”). Given that Defendants have demonstrated sustained maintenance with all Required Provisions for at least twelve (12) consecutive months, as evidenced by the relevant TAC reports, Defendants respectfully move this Court to enter the Attached Order at its earliest convenience.

⁴ As previously indicated, the parties’ agreement that Defendants had achieved MAINTENANCE with all Required Provisions was based on the findings of the exhaustive reports of the TAC, which were filed on February 8, 2016 (ecf no. 552-1) and April 4, 2016 (ecf no. 554-1).

⁵ Similar to footnote 4, the parties’ agreement that Defendants sustained MAINTENANCE with all Required Provisions from December 31, 2015 through December 31, 2016, was based on the findings of the reports of the TAC, which were filed on April 4, 2017 (ecf no. 576-1) and May 16, 2017 (ecf no. 578-1).

Finally, it is important to note that Plaintiffs' counsel has reviewed both this Notice of Compliance and the Attached Order. Plaintiffs' counsel has agreed that Defendants' counsel could represent in this filing that Plaintiffs have no objection to the entry of the Attached Order.

DATED: June 6, 2017
Nashville, TN

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of June, 2017, a true and exact copy of the foregoing has been forwarded by the Court's Electronic Filing System to:

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**[proposed] ORDER PARTIALLY TERMINATING JURISDICTION
AND PARTIALLY DISMISSING CASE WITH PREJUDICE**

Plaintiffs filed this federal civil rights class action on May 10, 2000 on behalf of a class “consisting of all foster children who are or will be in the custody” of the Tennessee Department of Children’s Services (“DCS”). The complaint alleged federal constitutional and statutory claims against various state defendants. [ECF No. 1]. Defendants moved to dismiss on August 1, 2000 (ecf no. 19), which motion was granted in part and denied in part by the Court (ecf no. 45).

On July 27, 2001, pursuant to mediation ordered by the Court (ecf nos. 52, 56, 57, 59), the parties entered into a Settlement Agreement approved by the Court (ecf nos. 109-112). The Settlement Agreement set standards to improve resources, oversight processes and outcomes. The Court appointed monitors, the Technical Assistance Committee (the “TAC”), to assess progress and issue periodic reports.

Plaintiffs filed a motion for contempt of the decree on November 20, 2003 (ecf no. 169), which was resolved by the parties’ negotiations a month later, leading to a stipulation calling for increased compliance with the Settlement Agreement (ecf no. 190). This was followed by a period of improved agency performance sufficient to lead to the parties’ negotiation of a

Modified Settlement Agreement that extended the period of court monitoring and implemented other modifications to the 2001 Settlement Agreement, which the Court approved on October 1, 2008. [ECF No. 282].

On November 10, 2010, the parties to this litigation jointly stipulated and agreed to, and requested the Court to approve, the 2010 Modified Settlement Agreement and Exit Plan. [ECF No. 410, the “2010 Joint Stipulation”]. The 2010 Modified Settlement Agreement and Exit Plan (the “2010 Exit Plan”) was attached to the 2010 Joint Stipulation as Exhibit A. On that same day, the Court ordered the 2010 Joint Stipulation (ecf no. 410), and approved and entered the 2010 Exit Plan (ecf no. 411). The 2010 Exit Plan superseded and replaced the parties’ prior settlement agreement, identified Defendants’ ongoing obligations, and set forth what Defendants had to achieve for the Court to terminate its jurisdiction over this matter and dismiss the captioned litigation.

In particular, the 2010 Exit Plan required Defendants to achieve MAINTENANCE with regard to all provisions in Sections II-XIII and XVI of the 2010 Exit Plan (the “Required Provisions”). *See* 2010 Exit Plan, §XVIII.D.2. Further, that exit plan provided that once Defendants achieved MAINTENANCE with 100 percent of the Required Provisions and sustained MAINTENANCE for twelve (12) consecutive months, the Court would terminate its jurisdiction over all provisions of the exit plan except for Section XIX.¹ *Id.*

The express terms of the 2010 Exit Plan contemplate that it was to be replaced and superseded annually by an updated exit plan that noted the Required Provisions that were in

¹ Section XIX of the exit plan requires Defendants to develop an external accountability reporting center to report publicly on Defendants’ maintenance of program, policy, and practice improvements once Defendants successfully exit jurisdiction under Section XVIII.D. This external reporting center is required to be funded by Defendants and to issue reports over eighteen (18) months following the entry of the instant Order. After the eighteen-month period concludes, Section XIX.D provides that “Defendants shall file an unopposed Notice of Compliance with this Section XIX and a Proposed Order terminating jurisdiction over ... Section [XIX].”

MAINTENANCE. [See 2010 Exit Plan, Section XVIII.C.3]. Thus, from 2011 through 2015, modified exit plans were approved by the Court in which the maintenance status of the Required Provisions was set forth. [The relevant exit plans were approved and can be found at ECF No. 434, entered on July 12, 2011; ECF No. 444-1 (approved at ECF No. 445), entered on October 9, 2012; ECF No. 500, entered on September 19, 2013; and ECF No. 541, entered on April 13, 2015]. A review of the amended exit plans entered from 2011 through 2015 reveals that while progress was made with regard to MAINTENANCE of the Required Provisions, 100 percent of those provisions were not in maintenance. As described in the following paragraph, however, Defendants achieved MAINTENANCE with all Required Provisions on or before December 31, 2015.

On April 11, 2016, this Court approved and entered the April 2016 Modified Settlement Agreement and Exit Plan (the “2016 Exit Plan”). [ECF No. 555]. As was true of each modified exit plan entered after 2010, the 2016 Exit Plan superseded and replaced the prior year’s modified exit plan. [See 2016 Exit Plan, Preamble, Paragraph A]. The 2016 Exit Plan, which was entered at the request of both Plaintiffs and Defendants,² established that all Required Provisions were in MAINTENANCE. Moreover, the Parties’ 2016 Joint Stipulation makes it clear that the Required Provisions came into MAINTENANCE as of December 31, 2015.³ [ECF No. 554, p. 5, numbered paragraph 8]. Pursuant to the 2016 Exit Plan, and each of the exit plans entered since 2010, if Defendants sustained MAINTENANCE with all Required Provisions for twelve months, through December 31, 2016, Defendants would fulfill their obligations under

² See Joint Stipulation Seeking Court Approval of Proposed April 2016 Modified Settlement Agreement and Exit Plan (the “Parties 2016 Joint Stipulation”). [ECF No. 554].

³ It is important to note that the conclusion that Defendants had achieved MAINTENANCE with all Required Provisions, as set forth in the 2016 Exit Plan and the Parties’ 2016 Joint Stipulation, was based on the findings of the exhaustive reports of the TAC, which were filed on February 8, 2016 (ecf no. 552-1) and April 4, 2016 (ecf no. 554-1).

the Exit Plans and then, pursuant to Section XVIII.D.2, Defendants could request that “the court issue an order terminating jurisdiction” over this litigation (except for Section XIX). In fact, as described in the next paragraph, Defendants sustained MAINTENANCE with all Required Provisions throughout the next twelve months, through December 31, 2016.

On May 16, 2017, Plaintiffs and Defendants filed a Joint Stipulation Seeking Court Approval of the April 2017 Modified Settlement Agreement and Exit Plan. [ECF No. 579 (the “Parties’ 2017 Joint Stipulation”)]. Attached to the Parties’ 2017 Joint Stipulation as Exhibit A was the proposed April 2017 Modified Settlement Agreement and Exit Plan for entry by this Court. [ECF No. 579-1 (the “2017 Exit Plan”)]. This Court approved and entered the 2017 Exit Plan on *date to be inserted by the Court.* [ECF No. *to be inserted by the Court.*]. The 2017 Exit Plan, which was entered at the request of both Plaintiffs and Defendants, established that all Required Provisions continue to be and are in MAINTENANCE. Moreover, the Parties’ 2017 Joint Stipulation makes it clear that the Required Provisions were in MAINTENANCE “no later than December 31, 2015, and Defendants sustained MAINTENANCE status on all [Required] provisions ... throughout the full calendar year of 2016.”⁴ [ECF No. 579, numbered paragraph 1].

Based on these findings and the entire record in this case, IT IS ORDERED, ADJUDGED AND DECREED that:

1. Defendants achieved MAINTENANCE with all provisions in Sections II through XIII and XVI of the pertinent exit plan no later than December 31, 2015;

⁴ Similar to footnote 3, the conclusion that Defendants sustained MAINTENANCE with all Required Provisions from December 31, 2015 through December 31, 2016, as set forth in the 2017 Exit Plan and the Parties’ 2017 Joint Stipulation, was based on the findings of the reports of the TAC, which were filed on April 4, 2017 (ecf no. 576-1) and May 16, 2017 (ecf no. 578-1).

2. Defendants sustained MAINTENANCE with all provisions in Sections II through XIII and XVI of the pertinent exit plan throughout the full calendar year of 2016, that is, continuously from December 31, 2015, through December 31, 2016;

3. Defendants have met their obligations as described in the pertinent exit plan, specifically as contemplated in Section XVIII.D.2, and therefore this Court will terminate its jurisdiction in this litigation with regard to all matters except those obligations set forth in Section XIX of the exit plan;

4. This Court's jurisdiction over this case is hereby **TERMINATED** and this case is **DISMISSED WITH PREJUDICE** in all respects except as to the obligations set forth in Section XIX of the exit plan.

5. This Court will continue to exercise limited jurisdiction of this matter solely with regard to Section XIX of the exit plan and for no other purpose. The Court's jurisdiction over Section XIX of the Settlement Agreement shall continue for eighteen (18) months following the entry of this Order and no longer. At the conclusion of this eighteen (18) month period, Defendants "shall file an unopposed Notice of Compliance with . . . Section XIX and a Proposed Order" terminating this Court's jurisdiction over Section XIX of the exit plan and dismissing this litigation.

The Court further finds that, as dismissal is based on the merits, this is not a settlement, voluntary dismissal or compromise, and, therefore, separate notice to the class is not required.

SO ORDERED, this ____ day of June, 2017, in Nashville, Tennessee.

HON. WAVERLY D. CRENSHAW, JR.
United States District Court