

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
PARIS DIVISION

LINDA FREW, et al.,	§	
Plaintiffs,	§	
	§	
v.	§	CIVIL ACTION NO. 3:93CV65
	§	SENIOR JUDGE WILLIAM
ALBERT HAWKINS, et al.,	§	WAYNE JUSTICE
Defendants.	§	

**JOINT MOTION FOR ENTRY OF AN AGREED CORRECTIVE ACTION ORDER**

Subject to and contingent upon legislative appropriation sufficient to fund the corrective action plans (CAPS) described below, the Parties have reached an agreement regarding the disposition of several of Plaintiffs' motions that relate to consent-decree violations previously found by this Court. The Parties seek the entry of an Agreed Corrective Action Order to effectuate and finalize their agreement.

**BACKGROUND**

In 1996 a consent decree was entered relating to Texas's Medicaid program for indigent youth, the Early and Periodic Screening, Diagnosis, and Training (EPSDT) Program. In 1998 Plaintiffs moved to enforce the decree, asserting that Defendants were not complying with several of the decree's provisions. In 2000 the Court rendered an order that found violations of the decree and ordered that CAPS be submitted. Defendants appealed that order and ultimately lost in the United States Supreme Court. After the case was remanded to this Court in 2004, Defendants moved to terminate or alternatively to modify the consent decree under Fed. R. Civ. P. 60(b). The Court denied Defendants' motion and their appeals were unsuccessful in the Fifth Circuit and in the Supreme Court.

The issue of CAPS and enforcement of the consent decree is now before the Court again, and there are currently pending three motions by Plaintiffs relating to enforcement of the consent decree:

- Plaintiffs' Amended Motion to Enforce Consent Decree [Dkt #607];
- Plaintiffs' Motion for Sanctions Against Defendants for Their Willful Violations of Decree ¶¶ 17, 35, 37, 171 and 223 [Dkt # 429]; and
- Plaintiffs' Motion to Extend the Term of Decree Paragraphs 284 and 295 [Dkt # 428].

These motions (collectively, the "Enforcement Motions") were set for a hearing to take place on April 9, 2007.

Prior to the April 9th hearing, at the urging of State leaders in the Texas Legislature, counsel for Defendants and counsel for Plaintiffs began negotiations to see whether a compromise might be reached to resolve the Enforcement Motions and the amended CAPS that Plaintiffs have proposed. The Legislature desired that a compromise be reached because any CAPS that the Court may have ordered concerning the EPSDT program were likely (1) to be very costly, (2) to have come near the end of or after the Regular Session of the 80th Legislature, and (3) to have complicated and disrupted the State budgetary process.

Ultimately, the Parties' negotiations proved to be successful. They have reached agreement as to the disposition of the Enforcement Motions and Plaintiffs' proposed amended CAPS. Specifically, the Parties agreed to the entry of an order that would require the Defendants to implement the eleven CAPS attached to and incorporated in this motion. The Parties further agreed (1) that Plaintiffs would not seek sanctions against Defendants for any alleged decree violations occurring up to the date of any Agreed Order on this motion, and (2) that the motion to

extend the term of ¶¶ 284 and 295 of the consent decree is now resolved through the agreed order.

At the April 9th hearing, the Parties advised the Court that they had reached an agreement regarding the Enforcement Motions and the CAPS, and the Court ordered the Parties to prepare documents to memorialize and finalize their agreement concerning the Enforcement Motions and the CAPS. This joint motion complies with that order.

### **ORDER REQUESTED**

In accordance with their agreement, the Parties desire the entry of an Agreed Order that disposes of the Enforcement Motions as follows:

1. the Court shall order the Defendants to implement and comply with the terms and conditions of each of the CAPS attached to this motion as Exhibits 1-11; and
2. the Court shall order that all of the matters raised in Plaintiffs' Enforcement Motions are fully resolved as a result of the Parties' agreement.

Before entry of this Agreed Corrective Action Order, however, appropriate notice to the Plaintiff class members shall be given, and the Court shall hold a hearing on July 9, 2007, to determine whether items 1 and 2 *supra* are fair, reasonable, and adequate to Plaintiff class members under Fed. R. Civ. P. 23(e)(1)(C).

### **PRAYER**

Based on the foregoing, the Parties respectfully request (1) that the Court hold a Rule 23 fairness hearing; and (2) that upon finding that Rule 23's requirements are met, an Agreed Corrective Action Order be entered: (a) that commands the Defendants to implement and comply with the terms and conditions of each of the CAPS attached to this motion as Exhibits 1-

11; and (b) that declares all of the matters raised in Plaintiffs' Enforcement Motions are fully resolved as a result of the Parties' agreement.

Respectfully submitted,

GREG ABBOTT  
Attorney General of Texas

KENT C. SULLIVAN  
First Assistant Attorney General

DAVID S. MORALES  
Deputy Attorney General for Litigation

ROBERT B. O'KEEFE  
Chief, General Litigation Division

/s/ Linda A. Halpern  
LINDA A. HALPERN  
State Bar No. 24030166  
JAMES "BEAU" ECCLES  
State Bar No. 00793668  
Office of the Attorney General  
Assistant Attorneys General  
General Litigation Division  
P.O. Box 12548, Capitol Station  
Austin, Texas 78711-2548  
(512) 463-2120  
(512) 320-0667 (fax)  
ATTORNEYS FOR DEFENDANTS

/s/ Susan F. Zinn  
SUSAN F. ZINN  
Plaintiffs' Attorney in Charge  
State Bar No. 07015500  
P.O. Box 15126  
San Antonio, Texas 78212  
(210) 734-0425  
(210) 734-3111 (fax)

JANE K. SWANSON  
State Bar No. 19554800  
P.O. Box 8302  
The Woodlands, Texas 77387-8302  
(281) 367-4483  
(281) 419-5170

JOHN HEARD  
Heard & Smith  
State Bar No. 09334500  
3737 Broadway  
San Antonio, Texas 78212  
(210) 828-3737  
(210) 820-2777 (fax)  
PLAINTIFFS' ATTORNEYS

