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Distinguished by [Cox v. Massachusetts Dept. of Correction](#), D.Mass.,  
March 12, 2014

960 F.Supp.2d 271  
United States District Court,  
D. Massachusetts.

**DISABILITY LAW CENTER**, Plaintiff,  
v.  
MASSACHUSETTS **DEPARTMENT OF**  
**CORRECTION**, et al., Defendants.

C.A. No. 07-10463-MLW.  
|  
April 12, 2012.

### Synopsis

**Background:** Nonprofit organization, which represented mentally ill prisoners, brought action against state's **Department of Correction**, alleging that **Department** and its officials violated federal constitutional rights of prisoners by subjecting them to disciplinary and other forms of segregation for prolonged periods of time. After extensive negotiations, the parties jointly moved for approval of settlement agreement.

**Holdings:** The District Court, [Wolf, J.](#), held that:

<sup>[1]</sup> agreement was fair, reasonable and adequate, and thus, would be approved;

<sup>[2]</sup> it would retain jurisdiction over agreement;

<sup>[3]</sup> it had discretion to evaluate agreement; and

<sup>[4]</sup> agreement did not implicate Prison Litigation Reform Act (PLRA).

Motion granted.

West Headnotes (13)

<sup>[1]</sup> **Action**  
 **Stay of Proceedings**


A federal court has inherent authority to stay litigation in order to manage its docket.

[Cases that cite this headnote](#)

<sup>[2]</sup> **Federal Courts**  
 **Settlements**

A federal court can retain jurisdiction to enforce a private settlement agreement when it exercises its inherent authority to stay a case and remove it from the active docket.

[1 Cases that cite this headnote](#)

<sup>[3]</sup> **Compromise and Settlement**  
 **Particular applications**

Agreement settling claims alleging state **Department of Correction** and its officials violated federal constitutional rights of prisoners by subjecting them to disciplinary and other forms of segregation for prolonged periods of time was fair, reasonable and adequate, and thus, would be approved; agreement addressed fundamental issue of prison suicides by providing process for minimizing possibility inmates with serious mental illnesses would be confined in segregation and for reviewing their mental health while in segregation, and implementation of agreement's reforms had already succeeded in decreasing self-injurious behavior and enhancing safety of prison personnel.

[1 Cases that cite this headnote](#)

<sup>[4]</sup> **Federal Courts**  
 **Settlements**

If a court does not issue an order of dismissal that states it is retaining jurisdiction over private settlement agreement, even after dismissing litigation that settlement resolves, or incorporates the terms of the settlement agreement into the order of dismissal, enforcement of the settlement agreement is left for state courts, unless there is an independent basis for federal jurisdiction.

[1 Cases that cite this headnote](#)

[5] **Federal Courts**  
🔑 Settlements

It was permissible and appropriate, as requested by parties, for District Court to retain jurisdiction over settlement agreement between nonprofit organization which represented mentally ill prisoners and state's **Department of Correction** of claims alleging **Department** and its officials violated federal constitutional rights of prisoners by subjecting them to disciplinary and other forms of segregation for prolonged periods of time; permitting parties to perform under agreement and return to court as last resort would conserve judicial resources, particularly as cooperation that led to agreement provided realistic hope no future involvement of court would be necessary.

[Cases that cite this headnote](#)

[6] **Compromise and Settlement**  
🔑 Necessity for Approval

Federal courts generally have neither the authority nor the resources to review and approve the settlement of every case brought in the federal court system; settlement is solely in the hands of the parties in the case of ordinary litigation, that is, lawsuits brought by one private party against another private party that will not affect the rights of any other persons.

[Cases that cite this headnote](#)

[7] **Compromise and Settlement**  
🔑 Necessity for Approval

Court had discretion to evaluate settlement agreement between nonprofit organization which represented mentally ill prisoners and state's **Department of Correction** of claims alleging **Department** and its officials violated federal constitutional rights of prisoners by subjecting them to disciplinary and other forms

of segregation for prolonged periods of time; action was brought against state on behalf of mentally ill individuals by organization designated by federal **law** to protect their rights, which made it similar to class action or action litigated by receiver, neither of which, under Federal Rules of Civil Procedure, could be settled and dismissed without court approval. [Fed.Rules Civ.Proc.Rules 23\(e\)](#), [66](#), [28 U.S.C.A.](#)

[1 Cases that cite this headnote](#)

[8] **Compromise and Settlement**  
🔑 Fairness, adequacy, and reasonableness

When evaluating a settlement agreement, if the parties negotiated at arm's length and conducted sufficient discovery, the district court must generally presume the agreement is reasonable.

[Cases that cite this headnote](#)

[9] **Compromise and Settlement**  
🔑 Particular applications

Settlement agreement between nonprofit organization which represented mentally ill prisoners and state's **Department of Correction** of claims alleging **Department** and its officials violated federal constitutional rights of prisoners by subjecting them to disciplinary and other forms of segregation for prolonged periods of time did not order any "prospective relief," or in fact any "relief" at all, thereby precluding applicability of Prison Litigation Reform Act (PLRA) requirement that prospective relief not extend further than necessary to remedy violation of a federal right. [18 U.S.C.A. § 3626\(a\)\(1\)\(A\)](#).

[Cases that cite this headnote](#)

[10] **Federal Civil Procedure**  
🔑 Form and requisites; validity

Because they are entered as judicial orders,

generally consent decrees are evaluated by the court and approved only if they are fair and **lawful**; in addition, while a consent decree begins as a settlement, it is one that includes an injunction, or some other form of specific relief, which may ultimately be enforceable by contempt.

[Cases that cite this headnote](#)

[11] **Federal Civil Procedure**

🔑 On Consent

An order enforceable by contempt is a fundamental feature of a consent decree.

[Cases that cite this headnote](#)

[12] **Federal Civil Procedure**

🔑 On Consent

Consent decrees in Prison Litigation Reform Act (PLRA) cases are commonly defined as orders enforceable by contempt. 18 U.S.C.A. § 3626(a)(1)(A).

[Cases that cite this headnote](#)

[13] **Compromise and Settlement**

🔑 Enforcement

A private settlement agreement is generally not subject to judicial enforcement except in an action for breach of contract.

[1 Cases that cite this headnote](#)

**Attorneys and Law Firms**

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*MEMORANDUM AND ORDER*

WOLF, District Judge.

I. INTRODUCTION

This case was brought in March, 2007, following reports of a number of suicides by mentally ill prisoners in the custody of the Massachusetts **Department of Correction** (the “**Department**”), including many held in segregated confinement. Plaintiff **Disability Law Center** (the “DLC”) represents all Massachusetts prisoners with mental illnesses. It alleges that the **Department**, and certain individuals sued only in their official capacities, violated the federal constitutional rights of mentally ill inmates by subjecting those inmates to disciplinary and other forms of segregation for prolonged periods of time. The complaint seeks declaratory and injunctive relief.

In November, 2007, in the context of the **Department’s** independent initiatives to improve conditions for mentally ill inmates in **correctional** facilities, the parties began attempting to settle this case. In 2008, they asked the court to conduct a settlement conference. This court has long believed that the settlement of cases involving the constitutionality of the conduct of public officials is important in our democracy. As the court explained in 1990, judges:

should understand that in some cases the values to be protected by the Bill of Rights may best be served when other officials are required to recognize and wrestle with their responsibilities for constitutional interpretation. As a corollary of this, judges should realize that they may often best serve constitutional interests by encouraging the responsible public officials and their constituents to settle constitutional controversies

on proper terms, rather than by deciding the questions such controversies present.

*Spacco v. Bridgewater School Department*, 739 F.Supp.3d 30, 35 (D.Mass.1990).<sup>1</sup> With these principles in mind, the court agreed to the parties' request that it mediate their settlement discussions.

However, the court informed the parties of its view that judges should become involved in the administration of prisons only as a last resort and then only to the most limited extent necessary.<sup>2</sup> It urged \*274 the parties to develop a settlement that would be consistent with these principles or risk having any proposed resolution requiring judicial approval rejected by the court.

The parties' initial two-year effort to negotiate a settlement was frustrated by a fiscal crisis that constrained the **Department's** ability to agree to certain reforms. However, they eventually resumed settlement discussions. In December, 2011, the parties informed the court that they had agreed to a comprehensive Settlement Agreement (the "Agreement"). The Agreement, however, does not become effective unless the court approves it and agrees to retain jurisdiction over the case. Essentially, the court is asked to review the Agreement to ensure that it is fair, reasonable, and adequate, and if it is, stay the case while the parties perform under the Agreement.

The court continues to believe that a reasonable settlement of this case would be in the public interest. However, the Agreement raises a series of questions which the parties briefed and argued at hearings in February and March, 2012.

[1] [2] First, the court has considered its authority to approve the Agreement and stay the litigation. As discussed in this Memorandum, a federal court has inherent authority to stay litigation in order to manage its docket. The Supreme Court has recognized that a district court can retain jurisdiction to enforce a private settlement agreement when it dismisses a case. See *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375, 381–82, 114 S.Ct. 1673, 128 L.Ed.2d 391 (1994). It follows that a federal court can also retain jurisdiction to enforce a private settlement agreement when it exercises its inherent authority to stay a case and remove it from the active docket.

It is permissible and appropriate for the court to evaluate the parties' Agreement before deciding whether to stay this case. While the court does not have the authority to review and approve private settlement agreements in

ordinary litigation, it has the discretion, if not the duty, to do so here because the settlement is entered into by DLC acting in a representative capacity, and the rights of individuals who are not parties will be affected. Since the individuals whose interests are at stake are alleged to have serious mental illness, it is particularly appropriate that the court evaluate the fairness of the Agreement in deciding whether to stay litigation that was brought to protect their constitutional rights. Therefore, the court has evaluated the fairness of the settlement.

The court has also considered whether approving the Agreement and staying the litigation would comport with the requirements of the PLRA. The PLRA prohibits the court from granting or approving "prospective relief" unless it finds such relief "extends no further than necessary to **correct** the violation of a Federal right." 18 U.S.C. § 3626(a)(1)(A). In this case, as in most prison litigation resolved by agreement, the **Department** denies that it is violating the federal rights of any inmate and the stay of litigation for which the Agreement provides precludes the court from deciding whether such a violation has been proven. Therefore, if the judicial action required by the Agreement is "prospective relief," the findings required by § 3626(a)(1)(A) could not be made and the required approval of the Agreement could not be granted.

However, as explained in this Memorandum, § 3626(a)(1)(A) is not now implicated in this case because the court is not now ordering any "prospective relief" or, indeed, any "relief" at all. The requirements \*275 of § 3626(a)(1)(A) must be satisfied in a case resolved by a "consent decree," but not in a case resolved by a "private settlement agreement." While the review and approval of a settlement agreement and retention of jurisdiction to enforce it are not typical of a private settlement agreement, they are also not incompatible with a private settlement agreement generally or as defined in the PLRA. The order requested in this case is not enforceable by contempt, which is an essential characteristic of a consent decree. The order requested is not enforceable by contempt because the court is not ordering the parties to comply with their Agreement or to do anything at all. Instead, the court is merely staying the litigation and providing the parties with an opportunity to perform under their Agreement.<sup>3</sup> As explained in this Memorandum, the parties' Agreement is, therefore, far more similar to a "private settlement agreement" than to a "consent decree," as these terms are used in the PLRA. As the court is not now being asked to enter an order that constitutes a consent decree and provides "prospective relief," the requirements of § 3626(a)(1)(A) do not now apply.

<sup>3]</sup> Because the PLRA's limitations on "prospective relief" are not now implicated, the court has evaluated the Agreement solely to determine whether it is fair, reasonable, and adequate. The court finds that the Agreement should be approved.

Where, as here, a settlement has been negotiated at arm's length after discovery that is sufficient for a plaintiff to make informed decisions, the settlement is presumed reasonable. This presumption of reasonableness is confirmed by the terms of the Agreement. The Agreement addresses the fundamental issue in this case—prison suicides—by providing a process for minimizing the possibility that inmates with serious mental illnesses will be confined in segregation and for reviewing the mental health of inmates in segregation. Its reliance on Secure Treatment Units as a therapeutic alternative to confinement in segregation represents the best current practices concerning mentally ill inmates. Moreover, the implementation of many of the reforms required by the Agreement has already succeeded in decreasing self-injurious behavior and enhancing the safety of prison personnel.

In assessing the reasonableness of the settlement, the court has also considered the limited judicial role that the Agreement provides. The Agreement requires that the parties attempt to resolve any future disputes before requesting a lifting of the stay to litigate any issues that are truly intractable. The court is asked to retain jurisdiction generally for only three years and, in any event, for no more than five years if the **Department** breaches the Agreement. The limited role provided for the court contributes to the conclusion that the Agreement should be approved.

This is a case in which DLC has zealously represented the interests of mentally ill inmates. The **Department** has vigorously represented the interests of the Commonwealth of Massachusetts, which include deciding itself how to discharge the constitutional duty to provide adequate medical care for mentally ill inmates and to protect their safety. The **Department** has resisted any temptation to abdicate its responsibility to meet the challenges these inmates present and thus compel the courts to make the legally required, difficult decisions.

In these circumstances, it is particularly appropriate that the court approve the fair \*276 settlement that the parties have agreed upon and stay the litigation as they perform under their Agreement. In view of the constructive cooperation that has led to the settlement, the court hopes and trusts that its active involvement in this case is now

concluded.

## II. PROCEDURAL HISTORY

This case was filed by DLC on March 8, 2007, on behalf of all Massachusetts prisoners with mental illnesses. As the Massachusetts agency designated pursuant to the Protection and Advocacy for Individuals with Mental Illness Act, 42 U.S.C. § 10801 *et seq.*, DLC is authorized to pursue legal and other remedies to ensure that individuals with mental illness are protected from abuse and neglect.

The complaint alleges that the isolation experienced in disciplinary and other forms of segregation within **correctional** facilities exacerbates existing mental illnesses suffered by some inmates and generates new mental illness in others who were previously healthy. In its complaint, DLC describes the alleged experiences of numerous inmates in **Department** facilities who it contends engaged in **self-destructive behavior** or committed suicide while being held in segregated confinement, including inmates who were held in segregation for years at a time despite recommendations from clinicians that they be removed from segregation. DLC further alleges that **Department** officials were aware of the serious risk of harm that segregation posed for mentally ill inmates and did not provide adequate mental health screening and services, or adequate alternatives to segregation for mentally ill inmates. It is alleged that these inmates were, therefore, subjected to cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments, and that the defendants also violated Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and the Americans with **Disabilities** Act, 42 U.S.C. § 12101 *et seq.*

In its Answer, the **Department** denied the allegations in the Complaint. However, at the same time, it described the reforms it had initiated before the suit was filed to address the plight of mentally ill inmates. These reforms were based on recommendations made by the **Department's** expert consultant on prison suicide prevention, Dr. Lindsay M. Hayes.

The parties began attempting to settle this case in November, 2007. In 2008, they asked the court to try to mediate a settlement. Expressing its previously described confidence that such constitutional cases are best resolved by the agreement of the parties themselves, the court accepted the parties' invitation to mediate their settlement discussions.<sup>4</sup> However, as also discussed earlier, the court urged the parties to reach an agreement that would not unnecessarily involve the court in prison administration and would only require judicial action as a last resort.



While discovery and litigation were generally stayed, the court allowed discovery important to the settlement discussions, including visits by DLC and its experts to **Department** facilities. The court met periodically with the parties. In addition, the **Department** continued to implement certain reforms relating to mentally ill inmates.

However, after almost two years of settlement discussions, the parties could not progress further because a fiscal crisis imposed new constraints on the **Department's** ability to agree to additional reforms. \*277 Therefore, in February, 2010, the stay of litigation was lifted.

Subsequently, the parties engaged in extensive discovery. This involved, among other things, visits by DLC and its experts to several **Department** facilities, and interviews with more than 100 inmates.

The parties eventually privately resumed their settlement discussions. On December 12, 2011, after years of discovery, litigation, and negotiations, the parties reported that they had reached a settlement and requested the court's approval of their Agreement.

Except in certain circumstances, the Agreement prohibits the placement of inmates with serious mental illness in **Departmental** Disciplinary Units, a form of segregation, and limits the use of other forms of segregation of inmates with serious mental illness. In the Agreement, the **Department** undertakes to screen inmates both before and during confinement in segregation. The **Department** has also agreed to maintain a number of Secured Treatment Units to provide an alternative to segregation for inmates with serious mental illness, and to integrate mental health professionals into the disciplinary process. Pursuant to the Agreement, the **Department** will seek to place inmates who have serious mental illness or who are at risk of substantial deterioration of their mental health in alternatives to segregation. The Agreement provides that when inmates with serious mental illness are held in segregation, they will receive additional mental health services, and their status will be regularly reviewed by facility administrators and at least one mental health professional to determine whether alternatives to segregation exist. The parties assert that these measures achieve the plaintiff's main goals in bringing this case, while institutionalizing initiatives the **Department** has begun to implement and which have already caused a significant reduction in self-injurious behavior by inmates and harm to prison staff.

Pursuant to the Agreement, the **Department** will

periodically provide DLC with data and documents concerning whether the **Department** is complying with its contractual obligations. In addition, the **Department** will give limited access to its facilities, personnel, and inmates to an expert retained and paid by DLC to monitor and assess the **Department's** compliance with the Agreement.

The Agreement establishes a process for DLC to notify the **Department** of any concerns about compliance and for the parties to attempt to resolve any disputes privately. If the parties are not successful in privately resolving a dispute regarding compliance with the Agreement, they may seek relief from this court, which is the sole forum for its enforcement.

The Agreement also provides that the court will retain jurisdiction over the case for three years with respect to any provision for which there is no outstanding determination that the **Department** is not in substantial compliance. If during the three year period the court decides that the **Department** is not in substantial compliance with a provision of the Agreement, the court may extend its jurisdiction with regard to that provision for up to two years from the date of the finding of substantial noncompliance. Therefore, it is possible that the court will retain jurisdiction for up to five years.

The Agreement provides that if the court finds that the **Department** is not in substantial compliance with any provision of the Agreement, it may issue an order designed to achieve compliance, but not initially an order of contempt. Pursuant to § X.B.3 of the Agreement, any such remedial order must comply with the requirements of the PLRA. As the parties agree, this means that to obtain an order \*278 providing relief that is enforceable by contempt, plaintiff must prove not only that a provision of the Agreement has been violated but also that there has been a violation of a federal right, and that the relief ordered is limited only to what is necessary to remedy that violation as required by the PLRA, 18 U.S.C. § 3626(a)(1)(A). See March 9, 2012 Tr. at 11–12.

Finally, pursuant to the Agreement, without stipulating that the plaintiff is the prevailing party, the **Department** will pay \$1,250,000 to DLC as attorney's fees and costs. This amount settles any claim by DLC for fees and costs incurred prior to the date of approval of the Agreement. It does not cover possible future fees and costs incurred during any proceeding to enforce the Agreement, for which DLC may seek an award if it is the prevailing party. The Agreement requires that the plaintiff pay all fees and costs incurred by the expert designated to monitor the **Department's** compliance with the

Agreement.

On January 6, 2012, the court ordered the parties to submit additional briefing on a number of issues, including the proper standard for the court's consideration of the request for approval of the settlement and proposed attorney's fees, the impact of the Agreement on the claims of inmates, and the role of the court in enforcing the settlement. After a hearing on February 2, 2012, the court ordered additional briefing on the implications of the PLRA for the court's authority to approve the Agreement and retain jurisdiction over the case as the parties request. A further hearing was held on March 9, 2012.

Although memoranda generally discussing the Agreement have been part of the public record, as requested by the parties the Agreement itself has been under seal because it has been uncertain whether the court would approve it. The parties agree, however, that the Agreement should be unsealed if and when it is approved by the court.

### III. ANALYSIS

#### *A. It is Appropriate for the Court to Stay Further Proceedings and Retain Jurisdiction*

<sup>[4]</sup> The Supreme Court recognized in *Kokkonen* that a United States district court may retain jurisdiction to enforce the provisions of a private settlement agreement even as it dismisses the litigation that the settlement resolves. 511 U.S. at 381–82, 114 S.Ct. 1673. If the court does not issue an order of dismissal that states it is retaining jurisdiction or incorporate the terms of the settlement agreement into the order of dismissal, enforcement of the settlement agreement is left for state courts, unless there is an independent basis for federal jurisdiction. *Id.* However, the Supreme Court explained that:

If the parties *wish* to provide for the court's enforcement of a dismissal-producing settlement agreement, they can seek to do so. When the dismissal is pursuant to [Federal Rule of Civil Procedure 41\(a\)\(2\)](#), which specifies that the action "shall not be dismissed at the plaintiff's instance save upon order of the court and upon such terms and conditions as the court deems proper," the parties' compliance with the terms of the settlement contract (or the court's "retention of jurisdiction" over the settlement contract) may, in the court's discretion, be one of the terms set forth in the order. Even when, as occurred here, the dismissal is pursuant to [Rule 41\(a\)\(1\)\(ii\)](#) (which does not by its terms empower a district court to attach conditions to the parties' stipulation of dismissal) we think the court is authorized to embody the settlement contract in its

dismissal order (or, what has the same \*279 effect, retain jurisdiction over the settlement contract) if the parties agree.

*Id.*

As described earlier, in this case the court has been asked to approve the settlement, stay the case while the parties perform the Agreement, and retain jurisdiction for at least three years and up to five years in certain circumstances. As *Kokkonen* instructs that it is permissible for a federal court to retain jurisdiction to enforce a settlement agreement after a case has been dismissed, it follows that a court may also take the lesser step of staying the case while retaining jurisdiction over possible disputes concerning compliance with a settlement agreement. The court may do so because "federal district courts possess the inherent power to stay pending litigation when the efficacious management of court dockets reasonably requires such intervention." *Marquis v. FDIC*, 965 F.2d 1148, 1154 (1st Cir.1992). This "power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." *Landis v. North American Co.*, 299 U.S. 248, 254, 57 S.Ct. 163, 81 L.Ed. 153 (1936). The First Circuit has endorsed the "familiar" use of administrative closings in order to remove litigation from a court's active files "in circumstances in which a case, though not dead, is likely to remain moribund for an appreciable period of time." *Lehman v. Revolution Portfolio L.L.C.*, 166 F.3d 389, 392 & n. 3 (1st Cir.1999).

<sup>[5]</sup> In the circumstances of this matter, the court finds that it is permissible and appropriate to stay further proceedings and retain jurisdiction as requested by the parties if the Agreement is fair. Permitting the parties to perform under their Agreement and return to this court as a last resort will conserve judicial resources, particularly where, as here, the cooperation that led to the Agreement provides the realistic hope that no future involvement of the court will be necessary.

#### *B. The Court has the Discretion, if not the Duty, to Evaluate the Settlement*

<sup>[6]</sup> As explained previously, the Agreement provides that it becomes effective only if the court approves it. This requirement has prompted the court to consider whether it has the authority to approve the settlement and, if so, whether it should exercise it. This inquiry is necessary because federal courts generally "have neither the authority nor the resources to review and approve the settlement of every case brought in the federal court

system.” *Caplan v. Fellheimer Eichen Braverman & Kaskey*, 68 F.3d 828, 835 (3d Cir.1995). Settlement “is solely in the hands of the parties” in the case of “ordinary litigation, that is, lawsuits brought by one private party against another private party that will not affect the rights of any other persons.” *Ibarra v. Texas Employment Comm’n*, 823 F.2d 873, 878 (5th Cir.1987) (internal quotations omitted); see also *Gardiner v. A.H. Robins Co.*, 747 F.2d 1180, 1189 (8th Cir.1984).

[7] The instant case, however, is not “ordinary litigation” brought by one private party against another. Rather, it is a suit against the state brought on behalf of mentally ill individuals by an organization that is designated pursuant to federal law to protect their rights. The fact that the case was filed on behalf of people who are not litigating it makes it similar to a class action or to an action litigated by a receiver, neither of which may, under the Federal Rules of Civil Procedure, be settled and dismissed without court approval. See Fed.R.Civ.P. 23(e), 66. The relevant Federal Rules of Civil Procedure are codifications of the common law, which “may call \*280 for review and approval in a variety of contexts where the settlement requires court action, particularly if it affects the rights of nonparties or nonsettling parties, or where the settlement is executed by a party acting in a representative capacity.” *Manual for Complex Litigation (Fourth)* § 13.14 (2004) at 172 (footnotes omitted). As the individuals whose interests are at stake in this case are alleged to be mentally ill, it is particularly important that the court determine whether the settlement was reached without collusion and is fair to them. In essence, the nature of this case provides the court the discretion, if not the duty, to exercise its previously discussed inherent authority to grant the requested stay of the claims DLC has made on behalf of mentally ill inmates only if the Agreement is found to be fair to them. See *Bragg v. Robertson*, 54 F.Supp.2d 653, 662–63 (S.D.W.Va.1999) (court had authority to review settlement agreement before dismissing claims, where litigation was “citizen suit” brought by plaintiffs acting as surrogate attorneys general rather than typical private litigant, and parties had emphasized that the litigation affected rights of people who were not parties to the suit and involved matters of public interest); *Gaxiola v. Schmidt*, 508 F.Supp. 401, 402–03 (E.D.Tenn.1980) (approving settlement involving minor plaintiffs after holding evidentiary hearing to determine whether the settlement was in their best interest).

The conclusion that the court may, and in this case should, condition the requested stay on a finding that the Agreement is fair is reinforced by the fact that the parties have made approval a prerequisite to the Agreement

taking effect. In the absence of an independent duty to approve a settlement, the parties do not have the power to compel the court to do so. However, the Agreement involves matters that may affect whether mentally ill inmates will live or die. Therefore, regardless of whether the court has a duty to decide whether to approve the Agreement or only the discretion to do so, it is important that the court not unnecessarily frustrate the implementation of the Agreement by declining to evaluate its merits.

### C. The Settlement is Fair, Reasonable, and Adequate

Therefore, the court has examined the Agreement to determine whether it is fair, reasonable, and adequate. This limited inquiry is comparable to that which is made in analogous contexts. See *Voss v. Rolland*, 592 F.3d 242, 251 (1st Cir.2010) (district court approving class action settlement must decide whether it is “fair, reasonable, and adequate”); *City Of Bangor v. Citizens Communications Co.*, 532 F.3d 70, 93 n. 10 (1st Cir.2008) (private settlements in cases involving Comprehensive Environmental Response Compensation and Liability Act evaluated to ensure fairness, adequacy, and reasonableness); see also *Robidoux v. Rosengren*, 638 F.3d 1177, 1179 (9th Cir.2011) (district court considering settlement agreement involving federal claims of minors must consider whether settlement’s provisions as to each minor plaintiff are fair and reasonable); *Bragg*, 54 F.Supp.2d at 670 (approving and retaining jurisdiction to enforce private settlement after finding settlement to be “fair, adequate, reasonable, and faithful to the environmental statutes under which the litigation was brought”).

[8] Generally, “[i]f the parties negotiated at arm’s length and conducted sufficient discovery, the district court must presume the settlement is reasonable.” *In re Pharm. Indus. Average Wholesale Price Litig.*, 588 F.3d 24, 32–33 (1st Cir.2009) (class action settlement). This presumption applies here. The Agreement was reached after the plaintiff received substantial formal and informal discovery, and \*281 was the result of years of arduous, arm’s length negotiations by energetic and experienced counsel. The plaintiff also had the benefit of the informed advice of a prison psychiatrist, Dr. Kathryn Burns, who has significant experience as an expert witness and as a monitor in prison mental health litigation. In addition, the Agreement follows a previous, unsuccessful attempt between 2007 and 2009 to reach a settlement, during which the court observed the integrity of the negotiations, including the absence of collusion. In these circumstances, the proposed settlement is presumed to be reasonable.



This presumption is confirmed by the terms of the settlement. In Dr. Burns' opinion, the Agreement "reflects best **correctional** practices in working with seriously mentally ill [ ] prisoners." Jan. 25, 2012 Aff. of Kathryn Burns, Exh. O to Joint Supplemental Submission in Support of Motion to Approve Settlement Agreement, at ¶ 14. The Agreement, among other things, provides a reasonable process for minimizing the confinement of inmates with serious mental illness in segregation and for reviewing the mental health of inmates in segregation. It also provides Secure Treatment Units as a reasonable therapeutic alternative to segregation. The **Department** has already begun to implement the provisions of the Agreement, and the evidence indicates its efficacy in improving the mental health of inmates and enhancing the safety of prison personnel.

In addition, the Agreement involves an approach to protecting mentally ill prisoners that is similar to that employed in recent settlements and court orders in other jurisdictions. See *Mast v. Donahue*, No. 2:05-cv-00037 LJM/WGH, at ¶¶ 11–16 (S.D.Ind. Jan. 23, 2007) (settlement agreement excluding seriously mentally ill prisoners from Secured Housing Unit); *Austin v. Wilkinson*, Civ. No. 4:01-CV-071, at ¶ 17 (N.D. Ohio. Jan. 8, 2002) (stipulation for injunctive relief excluding inmates with serious mental illness from particular facility); *Jones'el v. Berge*, No. 00-C-421-C, at § 4.6 (W.D. Wis. June 24, 2002) (settlement specifying that no seriously mentally ill prisoners will be sent to, or remain in, supermax prison); *Disability Advocates, Inc. v. New York State Office of Mental Health*, 02-Civ-4002 (GEL), at §§ 1–5 (S.D.N.Y. Apr. 27, 2007) (settlement increasing therapeutic programming for inmates with serious mental illness who are subject to confinement sanction, and establishing new housing units with increased mental health services); *Office of Prot. and Advocacy for Persons with Disability v. Choinsky*, Civ. No. 3:03-1352(RNC), at §§ B.3–4 (D.Conn. Mar. 8, 2004) (settlement removing seriously mentally ill inmates from Connecticut's Northern **Correctional** Institution and excluding them from segregation, with limited exceptions); see also Erica Goode, *Prisons Rethink Isolation, Saving Money, Lives and Sanity*, N.Y. Times, March 10, 2012 (reporting many states taking steps to reduce number of inmates in long-term isolation). The fact that the Agreement provides a manner of dealing with mentally ill inmates that is comparable to recent initiatives to address similar issues in other jurisdictions is added evidence that the Agreement is reasonable.

The Agreement provides for the payment to DLC of attorney's fees and costs of \$1,250,000, although the **Department** does not agree, and the court does not now

find, that DLC is a "prevailing party" with a statutory right to fees pursuant to 42 U.S.C. § 1988 or any other federal fee shifting law. This payment does not cause the Agreement to be unfair. Rather, it is itself reasonable.

The amount of the payment is not the result of collusion between the **Department** \*282 and DLC, or its outside counsel from other nonprofit entities and private law firms. Rather, the payment was negotiated separately from the other terms of the Agreement. See Jan. 26, 2012 Aff. of Alison Silveira, Exh. P to Joint Supplemental Submission, at ¶ 12. The amount to be paid is less than a conservative calculation of the lodestar and costs counsel incurred before the other terms of the settlement were agreed upon. See 42 U.S.C. § 1988; *Hutchinson ex rel. Julien v. Patrick*, 636 F.3d 1, 13 (1st Cir.2011). In addition, the amount to be paid does not include compensation for the substantial work performed by plaintiff's counsel to conclude the settlement negotiations and seek judicial approval of the Agreement, and the Agreement precludes the plaintiff from seeking an award of additional fees and costs for work performed prior to the approval of the Agreement. The plaintiff does not waive its statutory right to seek reasonable attorney's fees and costs if it prevails in any future litigation to enforce its terms. However, the Agreement makes no provision for such fees.

Moreover, the Agreement obligates the plaintiff to pay the expense of the monitoring required by the Agreement. In addition, three of the entities that will be receiving counsel fees—DLC, Prisoners' Legal Services, and the **Center** for Public Representation—are public interest organizations that will use the payments that they receive in service of their missions. Therefore, the attorney's fees and costs now being approved as part of the settlement will be substantially used to serve public purposes. In view of the foregoing, the provision for costs and fees is reasonable.

Finally, in assessing the reasonableness of the Agreement, the court has considered the role the Agreement provides for it. As described earlier, in agreeing to attempt to mediate a settlement in 2008, this court told the parties that it believed that judges should become involved in prison administration only as a last resort and then only to the most limited extent necessary. This view is consistent with the manifest purpose of the PLRA, particularly 18 U.S.C. § 3626(a)(1)(A). The parties have agreed to a settlement that is compatible with these principles. As explained below, the Agreement does not require the issuance of a consent decree, or any order that provides prospective relief or is enforceable by contempt. The Agreement merely provides for a stay of this litigation

while the parties work cooperatively to address the needs of inmates with serious mental illness. It also provides a process for only bringing truly intractable disputes on serious issues to the court for future litigation. The court is retaining jurisdiction over the case for only a limited time. As indicated earlier, in view of the parties' successful efforts to settle this case, the court hopes and trusts that its approval of the Agreement will be the end of its involvement in this matter. In any event, the limited role provided for the court contributes to the conclusion that the Agreement is reasonable, as well as fair and adequate.

#### D. *The Implications of the PLRA*

<sup>[9]</sup> As this case involves prison conditions, the court must assure that its approval of the Agreement comports with the PLRA. In particular, it is necessary to determine whether the requirement of 18 U.S.C. § 3626(a)(1)(A) that any prospective relief not extend further than necessary to remedy the violation of a federal right is implicated by the request for approval of the Agreement and, if so, whether that requirement has been satisfied. As indicated earlier and explained below, § 3626(a)(1)(A) does not apply and prohibit the judicial action now being taken—approving the Agreement and staying the \*283 case—because the court is not now ordering any “prospective relief” or any “relief” at all. Indeed, the court is not now ordering any party to do anything.

The PLRA was enacted in 1996 “partially in an effort to curb the involvement of the federal judiciary in day-to-day prison management.” *Morales Feliciano v. Rullan*, 378 F.3d 42, 50 (1st Cir.2004). It prohibits a court from granting or approving “prospective relief” unless such relief meets the requirements of § 3626(a)(1)(A), which states:

Prospective relief in any civil action with respect to prison conditions shall extend no further than necessary to **correct** the violation of the Federal right of a particular plaintiff or plaintiffs. The court shall not grant or approve any prospective relief unless the court finds that such relief is narrowly drawn, extends no further than necessary to **correct** the violation of the Federal right, and is the least intrusive means necessary to **correct** the violation of the Federal right.

In essence, § 3626(a)(1)(A) requires that a court find a violation of a federal right before ordering any prospective relief and then narrowly tailor the remedy ordered to assure that it does no more than **correct** that violation.

The PLRA defines “prospective relief” as “all relief other than compensatory money damages.” § 3626(g)(7). “Relief” is defined circularly as “all relief in any form that may be granted or approved by the court.” § 3626(g)(9). As has been **correctly** observed:

The statutory definition sheds no light on the disputed term’s meaning since “relief” is in essence defined as all relief. Thus, while the definition teaches that it encompasses all instances of the term, it does not tell us what demarks and distinguishes those instances from others.

*Coleman v. Wilson*, 933 F.Supp. 954, 956 (E.D.Cal.1996).

The PLRA generally contemplates that prison litigation may be resolved by agreement in one of two ways: by a “consent decree” or by a “private settlement agreement.” See § 3626(c). By definition, a consent decree is a form of “relief” subject to the constraints of § 3626(a)(1)(A). See § 3626(c)(1), (g)(9). The PLRA defines a “consent decree” as “any relief entered by the court that is based in whole or in part upon the consent or acquiescence of the parties but does not include private settlements.” § 3626(g)(1). A “private settlement agreement” is defined as “an agreement entered into among the parties that is not subject to judicial enforcement other than the reinstatement of the civil proceeding that the agreement settled.” § 3626(g)(6).<sup>5</sup> Section § 3626(a)(1)(A) does not have to be satisfied where the litigation is resolved by a “private settlement agreement,” because a “private settlement agreement” is not “relief” subject to the requirements of that provision. See § 3626(c)(2), (g)(9); see also *Austin v. Hopper*, 15 F.Supp.2d 1210, 1218 (M.D.Ala.1998).

<sup>[10]</sup> <sup>[11]</sup> <sup>[12]</sup> Outside the context of the PLRA, because they are entered as judicial orders, generally consent decrees are evaluated by the court and approved only if they are fair and **lawful**. See *Aronov v. Napolitano*, 562 F.3d 84, 91 (1st Cir.2009). In addition, “[w]hile a consent decree begins as a settlement, it is one that ‘includes an injunction, or some other form of specific relief,’ which may ultimately be enforceable by contempt.” *Id.* (quoting Charles A. Wright & Mary Kay Kane, \*284 **Law** of

*Federal Courts* § 98, at 702 n. 2 (6th ed. 2002)); *see also* *Rufo v. Inmates of the Suffolk County Jail*, 502 U.S. 367, 378, 112 S.Ct. 748, 116 L.Ed.2d 867 (1992) (“A consent decree ... is an agreement that the parties desire and expect will be reflected in, and be enforceable as, a judicial decree that is subject to the rules generally applicable to other judgments and decrees.”); *Local No. 93, Int’l Ass’n of Firefighters, AFL–CIO C.L.C. v. City of Cleveland*, 478 U.S. 501, 518–19, 106 S.Ct. 3063, 92 L.Ed.2d 405 (1986). Therefore, an order enforceable by contempt is a fundamental feature of a consent decree. *See* *Local No. 93*, 478 U.S. at 518, 106 S.Ct. 3063; *Aronov*, 562 F.3d at 91–92. Consistent with this, consent decrees in PLRA cases are commonly defined as orders enforceable by contempt. *See, e.g.,* *Rowe v. Jones*, 483 F.3d 791, 796–97 (11th Cir.2007) (per curiam); *Hazen ex rel. LeGear v. Reagen*, 208 F.3d 697, 699 (8th Cir.2000); *Benjamin v. Jacobson*, 172 F.3d 144, 157 (2d Cir.1999).

<sup>[13]</sup> “By contrast, a private settlement does not, *ordinarily*, receive court approval.” *Aronov*, 562 F.3d at 91 (emphasis added). In addition, a private settlement agreement is generally not subject to judicial enforcement except in an action for breach of contract. *See* *Kokkonen*, 511 U.S. 375, 114 S.Ct. 1673; *see also* *United States v. City of Miami*, 664 F.2d 435, 439 (former 5th Cir.1981) (opinion of Rubin, J.) (“If the parties agree to compose their differences by a settlement agreement, however, the only penalty for failure to abide by the agreement is another suit.”). This understanding is reflected in the PLRA’s provision for the enforcement of private settlement agreements through “reinstatement of the civil proceeding that the agreement settled” or through an action in state court by a party claiming that the agreement has been breached. *See* 18 U.S.C. § 3626(c)(2), (g)(6); *see also* *Hazen*, 208 F.3d at 699 (distinguishing consent decrees from private settlement agreements, which are “enforceable only through a new action for breach of contract”).

In the instant case, the fact that the court is required to approve the Agreement before it becomes effective and to retain jurisdiction to enforce the Agreement may suggest that it constitutes a consent decree which is subject to § 3626(a)(1)(A). *See* *Ingles v. Toro*, 438 F.Supp.2d 203, 214–15 (S.D.N.Y.2006); *Gaddis v. Campbell*, 301 F.Supp.2d 1310, 1313–14 (M.D.Ala.2004). However, the fact that “a private settlement does not, *ordinarily*, receive court approval,” *Aronov*, 562 F.3d at 91, does not mean that a private settlement agreement may never involve approval by the court. As explained earlier, in this case the court is not evaluating and approving the settlement to determine whether any agreed-upon relief should be ordered. Rather, the court is approving the settlement as

an exercise of its inherent authority to decide how to manage its docket, and to condition the requested stay—and, therefore, the retention of jurisdiction—on a finding that a settlement which affects the rights of individuals not before the court is fair.

In these circumstances, the court is not now ordering any “relief” or “prospective relief.” In cases involving the court appointment of monitors or special masters, courts have relied on the common legal usage of the term “relief” and found that no “relief” or “prospective relief” is issued by an order that pertains to the “means of obtaining the relief” rather than to the “ultimate form of the remedy.” *Carruthers v. Jenne*, 209 F.Supp.2d 1294, 1300–01 (S.D.Fla.2002) (quoting *Benjamin v. Fraser*, 156 F.Supp.2d 333, 342–43 & n. 11 (S.D.N.Y.2001)); *Madrid v. Gomez*, 940 F.Supp. 247, 250 (N.D.Cal.1996); *Coleman*, 933 F.Supp. at 957. Similarly, in the instant case, the court is only approving an \*285 Agreement that provides a means of obtaining relief for any future violation of federal law and not now ordering any form of remedy.

The court recognizes that in *Benjamin* the Second Circuit noted in dicta that because of the monitoring body’s “substantial responsibilities,” the distinction between “relief itself and the monitoring of relief” might be difficult to make. *Benjamin v. Fraser*, 343 F.3d 35, 49 (2d Cir.2003). However, in contrast to *Benjamin* and the other foregoing cases in which the court ordered monitoring or the use of special masters, this court is not now ordering the parties to comply with the Agreement, including its monitoring provision, or to do anything else. It is only deciding to stay the case because the Agreement is fair and reasonable. If in the next three years DLC perceives a material breach of the Agreement and the parties are unable to resolve any dispute themselves, either party may request a lifting of the stay. Removing the stay would be comparable to the reinstatement of the case, which is a feature of a “private settlement agreement” as defined in the PLRA. *See* § 3626(g)(6). As explained earlier, any proven violation of the Agreement will not be a basis for finding that the Department is in civil or criminal contempt. This too is generally a characteristic of a private settlement agreement, rather than a consent decree. *See* *Aronov*, 562 F.3d at 91. Once again, under the Agreement, to obtain a future order that is enforceable by contempt, the plaintiff would have to prove both a breach of the Agreement and a violation of federal law. Any such order, whether entered by consent or as a result of a decision on a disputed issue, would be an order subject to the narrow tailoring requirements of § 3626(a)(1)(A). This approach is consistent with the purposes of the PLRA because the court is not now, in the absence of a

demonstrated violation of a federal right, becoming involved in prison administration, *see Morales Feliciano*, 378 F.3d at 50, and may do so in the future only as a last resort, if the plaintiff demonstrates both a violation of the Agreement and a violation of a federal right.

In view of the foregoing, the Agreement is substantially similar to a private settlement agreement and materially different than a consent decree, both generally and as defined in the PLRA.<sup>6</sup> The findings \*286 required by § 3626(a)(1)(A) could not now be made because a violation of a federal right by the Department has not been admitted or proven. However, such findings are not required because the court is not now ordering any “relief” or “prospective relief” and, therefore, § 3626(a)(1)(A) is not implicated.

#### IV. ORDER

In view of the foregoing, the court finds that: it has the inherent authority to stay this case, and to condition the requested stay of this case upon a finding that the Agreement is fair, reasonable, and adequate; that such a finding is justified; and that because the court is not now

ordering any prospective relief, the requirements of § 3626(a)(1)(A) are not now implicated. Accordingly, it is hereby ORDERED that:

1. The Joint Motion to Approve the Settlement Agreement (Docket No. 248) is ALLOWED.
2. This case is STAYED and the court, therefore, retains jurisdiction.
3. Unless otherwise ordered, this case will be dismissed three years after the date of this Order.
4. The Settlement Agreement (Docket No. 252) is UNSEALED.

#### All Citations

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#### Footnotes

- 1 This is also the express intention of Congress, which has enacted a statute concerning state **correctional** and other institutions that states: “It is the intent of Congress that deplorable conditions ... amounting to deprivations of rights protected by the Constitution or **laws** of the United States be **corrected**, not only by litigation ..., but also by the voluntary good faith efforts of agencies of Federal, State, and local governments.” 42 U.S.C. § 1997g; *see also* 42 U.S.C. § 1997.
- 2 As explained in this Memorandum, the court’s view regarding its proper role in prison litigation is consistent with the principles codified in the Prison Litigation Reform Act (the “PLRA”), 18 U.S.C. § 3626.
- 3 If the stay is lifted, DLC would be required to prove a violation of a federal right as well as a breach of the Agreement to obtain prospective relief that will be subject to the narrow tailoring requirements of § 3626(a)(1)(A).
- 4 The parties agreed that they would not request the court’s recusal based on its participation in their settlement discussions.
- 5 However, “[n]othing in this section shall preclude any party claiming that a private settlement agreement has been breached from seeking in State court any remedy available under State **law**.” 18 U.S.C. § 3626(c)(2)(B).
- 6 The court recognizes that the distinction between consent decrees and private settlement agreements has been addressed somewhat differently in cases involving the question whether a plaintiff is a “prevailing party” entitled to a statutory award of attorney’s fees pursuant to 42 U.S.C. § 1988 and other federal fee shifting statutes. *See, e.g., Buckhannon Bd. & Care Home, Inc. v. West Virginia Dept. of Health & Human Res.*, 532 U.S. 598, 604 & n. 7, 121 S.Ct. 1835, 149 L.Ed.2d 855 (2001); *Hutchinson*, 636 F.3d at 9–11. Generally, these cases have recognized a distinction, similar to that made in the PLRA and the cases implementing it, between consent decrees enforceable by contempt and private settlements enforceable through new litigation. *See, e.g., Aronov*, 562 F.3d at 91; *Smyth v. Rivero*, 282 F.3d 268, 281 (4th Cir.2002); *Christina A. ex rel. Jennifer A. v. Bloomberg*, 315 F.3d 990, 993 (8th Cir.2003). Courts in these cases, however, have analyzed this distinction in a different context, in order to determine whether there is a sufficient “judicial imprimatur” to qualify the plaintiff as a “prevailing party” in the litigation. *See Buckhannon*, 532 U.S. at 604, 121 S.Ct. 1835; *Hutchinson*, 636 F.3d at 11; *Roberson v. Giuliani*, 346 F.3d 75, 81–83 (2d Cir.2003). In so doing, several courts, including the First Circuit, have concluded that retaining jurisdiction to enforce a settlement agreement is not materially different from entering a consent decree, and found that the plaintiffs

in such cases are “prevailing parties” entitled to attorney’s fees. See *Hutchinson*, 636 F.3d at 10–11; see also *Roberson*, 346 F.3d at 82–83 (finding district court’s inability to use contempt power without the “extra step” of first ordering specific performance is not “significant enough to deprive plaintiffs of prevailing party status,” where retention of jurisdiction did not “simply preserve a federal forum” but, rather, “effectuated the obligations of the parties under the Agreement”); but see *Christina A.*, 315 F.3d at 993–94 (holding that settlement agreement does not make a plaintiff a “prevailing party” because violation of court order dismissing the case would not be punishable by contempt).

The foregoing cases, including the First Circuit’s decision in *Hutchinson*, do not qualify this court’s conclusion that § 3626(a)(1)(A) is not implicated in this case. None of these decisions, except *Christina A.*, involve the PLRA generally. *Christina A.* only addressed the fee shifting provisions of the PLRA, 42 U.S.C. § 1997e(d). See 315 F.3d at 994–95. Therefore, the foregoing decisions only construe the term “prevailing party” for the purpose of 42 U.S.C. § 1988 and comparable fee shifting statutes. They do not address the meaning of the terms “relief” and “prospective relief,” which is the issue involved in determining whether § 3626(a)(1)(A) is implicated in the instant case.