

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

CONSUMER ADVISORY BOARD, et al.,)	
)	
Plaintiffs,)	
)	
v.)	Docket no. 91-CV-321-P-S
)	
BRENDA HARVEY, et al.,)	
)	
)	
Defendants.)	

ORDER ON MOTION FOR ORAL ARGUMENT

Before the Court is Plaintiffs’ Motion for Oral Argument on Defendant’s Motion for Relief from Judgment (Docket # 380). The Court hereby GRANTS the Motion and sets this matter for oral argument on March 2, 2010 at 9:00 AM. The Court has reserved three hours for this oral argument.

The Court has already issued orders accepting the Final Report of the Special Master and addressing all outstanding “substantial compliance” issues. In light of those orders, the Court expects to address the following questions at oral argument:

1. Are Defendants entitled to relief from judgment pursuant to Rule 60(b)(5) because they have “satisfied” the judgment? In the Court’s current view, Defendants have satisfied the 1994 Consent Decree if they meet the three criteria for termination listed in Section IV.7. Thus, the Court asks the parties to come prepared to discuss the following questions with respect to those criteria:
 - (a) Substantial Compliance: Can the Court find substantial compliance in a numerical sense with the terms of the Decree even if Defendants have not substantially complied with the ISC recordkeeping requirements in subsections 6(g) and 6(h) of Sections IX of the Decree? What is the potential impact if Defendants are unable to certify that each class member who is under guardianship has an implemented informed consent policy in place?
 - (b) Mechanisms to Assure Future Compliance: The Special Master and this Court have found that there are systems in place that could serve as mechanisms of future

compliance. What other systems (if any) are needed? What standard should the Court use in assessing that the mechanisms currently in place will in fact remain as functional systems going forward? How is the Court to address Plaintiffs' concerns that there will be backsliding in light of the fiscal pressures facing the State? How will the systems in place protect the class members from backsliding?

(c) Demonstrable Commitment to Achieving Compliance: The Court has no specific questions with respect to this criteria. Both the Court and the Special Master concluded that Defendants have met this benchmark.

2. Are Defendants entitled to relief from judgment pursuant to Rule 60(b)(5) and Horne v. Flores, 129 S. Ct. 2579 (2009) because there are significant changes either in factual conditions or in law that render continued enforcement of the 1994 Consent Decree detrimental to the public interest? Does the status of this Consent Decree as a settlement entered into without any finding of a violation of federal law make this case distinguishable from Horne? How is the continued enforcement of the Consent Decree detrimental to the public interest?
3. If the Court cannot grant Defendants relief from judgment as requested, what steps should the Court take next in light of the completion of the certification process and the Court's own findings? What is the next level of disengagement? See Consumer Advisory Board v. Glover, 989 F.2d 65, 67 (1st Cir. 1993) (recognizing that a consent decree can "pass through levels of disengagement"). Absent releasing the State from all obligations under the 1994 Consent Decree, how can the Court ensure the class of the benefits of the legislation adopted by the State in 2007 including the formation of the Maine Developmental Services Oversight and Advisory Board to be established pursuant to 34-B M.R.S.A. § 1223?

SO ORDERED.

/s/ George Z. Singal
United States District Judge

Dated this 2nd day of February, 2010.

Plaintiff

CONSUMER ADVISORY BOARD

represented by **JAMES R. CROTTEAU**
STOCKING & CROTTEAU, LLC
46 BERRY COVE RD
LAMOINE, ME 04605
207/667-8294
Email: jcrotteau@adelphia.net
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

BRUCE A. MCGLAUF LIN
PETRUCCELLI, MARTIN &
HADDOW
50 MONUMENT SQUARE
PORTLAND, ME 04112
207-775-0200
Email: bmcglauflin@pmhlegal.com
ATTORNEY TO BE NOTICED

GERALD F. PETRUCCELLI
PETRUCCELLI, MARTIN &
HADDOW
50 MONUMENT SQUARE
PORTLAND, ME 04112
775-0200
Email: gpetruccelli@pmhlegal.com
ATTORNEY TO BE NOTICED

Plaintiff

AMELIA DOE

represented by **JAMES R. CROTTEAU**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

MARY B DOE

represented by **JAMES R. CROTTEAU**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

FAYE DOE

represented by **JAMES R. CROTTEAU**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

JOHN DOE

represented by **JAMES R. CROTTEAU**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

CAROL WYMAN

as guardian of APRIL WYMAN

represented by **JAMES R. CROTTEAU**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

ROBERTA GOSSNER

as guardian of PAMELA PERRO

represented by **JAMES R. CROTTEAU**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

JOHN PERRO

as guardian of PAMELA PERRO

represented by **JAMES R. CROTTEAU**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

ROBERT CLAVETTE

represented by **JAMES R. CROTTEAU**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

BONNIE HANSON

represented by **JAMES R. CROTTEAU**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

MARION TOOTHAKER
as guardian of WILLIAM
TOOTHAKER

represented by **JAMES R. CROTTEAU**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

ALL PLAINTIFFS

represented by **GERALD F. PETRUCCELLI**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

JAMES R. CROTTEAU
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

BRUCE A. MCGLAULIN
(See above for address)
ATTORNEY TO BE NOTICED

V.

Defendant

DESHAIES, ROGER
In his capacity as Director of the
Bureau of Mental Retardation, Maine
Department of Mental Health &
Mental Retardation

represented by **CHRISTOPHER LEIGHTON**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

HARTLEY, DONALD
In his capacity as Superintendent of
the Pineland Center

represented by **CHRISTOPHER LEIGHTON**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

**MAINE DEPARTMENT OF
HEALTH AND HUMAN
SERVICES COMMISSIONER**

represented by **CHRISTOPHER LEIGHTON**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

JANET T. MILLS
MAINE ATTORNEY GENERAL'S
OFFICE
SIX STATE HOUSE STATION
AUGUSTA, ME 04333-0006
207-626-8599
Email: janet.t.mills@maine.gov
ATTORNEY TO BE NOTICED

V.

Notice Only Party

CLARENCE J SUNDRAM
AUDITOR

represented by **CLARENCE J SUNDRAM**
28 TIERNEY DRIVE
DELMAR, NY 12054
518-527-1918
Fax: 518-439-9740
Email:
cjsundram@alumni.ksg.harvard.edu
PRO SE