

NORTHERN DIVISION

WESTERN DIST. OF ALA.

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ELLIOT, OGIE JEFF  
CHARLES OBLEN  
WARREN LEA  
KERVIN G

RICHARD  
HERY WOOD, and  
ODWIN

ntiffs,

CIVIL ACTION NO. 64-637-N

HOPPER, Commissioner  
the Alabama Department  
ctions,  
endant.

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of Cor

MEMORANDUM OPINION

this class-action lawsuit, the plaintiffs, w

This lawsuit is now before the court on the recommendation of the United States Magistrate Judge.<sup>1</sup> In it, she recommends the following: (1) the approval of the parties' settlement of the plaintiffs' challenge to the use of the hitching post as to this claim; (2) the approval of the parties' settlement of the plaintiffs' claim that the hitching post and work release are not provided adequate notice of the plaintiffs' claim.

The court finds that the hitching post is generally used. The court finds that the hitching post and work release are not provided adequate notice of the plaintiffs' claim.

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of five; they were separated with eight feet chain between them. The inmates, who were required to wear white uniforms with "CHAIN GANG" printed in black, were then taken to public highways or work sites on SOG property where they performed manual labor in ten-hour shifts. The work was supervised by officers supervised by to 40 inmates. The inmates remained shackled to each other throughout the day, including during mealtime. The type of work the inmates performed included

long, sordid history is

are African-Americans. See Lynn M. Burley, History Repeats Itself in the



worried about the Che... Gang, th... don't violate parole, commit crimes, or come to... son in ALABAMA."5 However, no uniform pol...

...utions used the ch...

number one factor is attitude and behavior, the number two factor is work

discipline and following the institution's rules

to share, respect, and argue with a staff member

programs. If you don't behave, you can stay here indefinitely.

The prisoners' chief claim in their original complaint was that Alabama's use of chain gangs violated

the eighth amendments of the United States Constitution. The claim encompassed

if an automob

quiet facilities for  
chain-gang inmates' while on work sites.

9. Complaint filed May 15, 2019, no. 19-00000

tion for

summary judgment, at 18-19.

11. Proposed second amended complaint, 4/30/20





in order to implement the settlement agreement.<sup>14</sup> One not-

ject of the settlement

to perform manual labor in individual chains.

Rule 23(e) of the Federal Rules of Civil Procedure provides, in part, that "[a] class action

the court approves of the settlement agreement

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not subject to court enforcement other than the reinstatement  
of the civil proceeding. § 3625(c)(2)(A). A "private  
settlement agreement" defined in the PLRA as "an agreement

agreement claiming that the agreement has

to the extent that the agreement has

to the extent that the agreement has

to the extent that the agreement has  
the A's prospective relief li  
itations.

B. Court Approval of the Settlement Agreement

Judicial policy favors voluntary settlement as the means of resolving mass-action cases. Cotton v. Hint

1328, 1331 (9th Cir. 1977). However, "the settlement process is more susceptible than the adversarial process to types of abuse and, as a result, a court has a heavy, independent duty to ensure that the settlement is fair.

Paradise v. Ala, 686 F. Supp. 1442, 1444 (M.D. Ala. 1988) (Thompson, J.) (quoting East Iron Pipe Co., 576 F.2d 1157, 1214 (9th Cir. 1978)). This abuse can occur with respect to the interests of the plaintiff and the defendant.



The fact that the court may examine in deciding whether a settlement is fair, adequate, and reasonable are:

- (1) the views of the class members;
- (2) the views of the parties;
- (3) the substance and amount of opposition to the settlement;
- (4) the possible existence of collusion behind the settlement;
- (5) the expense of the proceedings;
- (6) the interests of justice.

and like

on the basis that they were still being chained individually  
and the lawsuit should have covered that circumstance;

wanted a declara

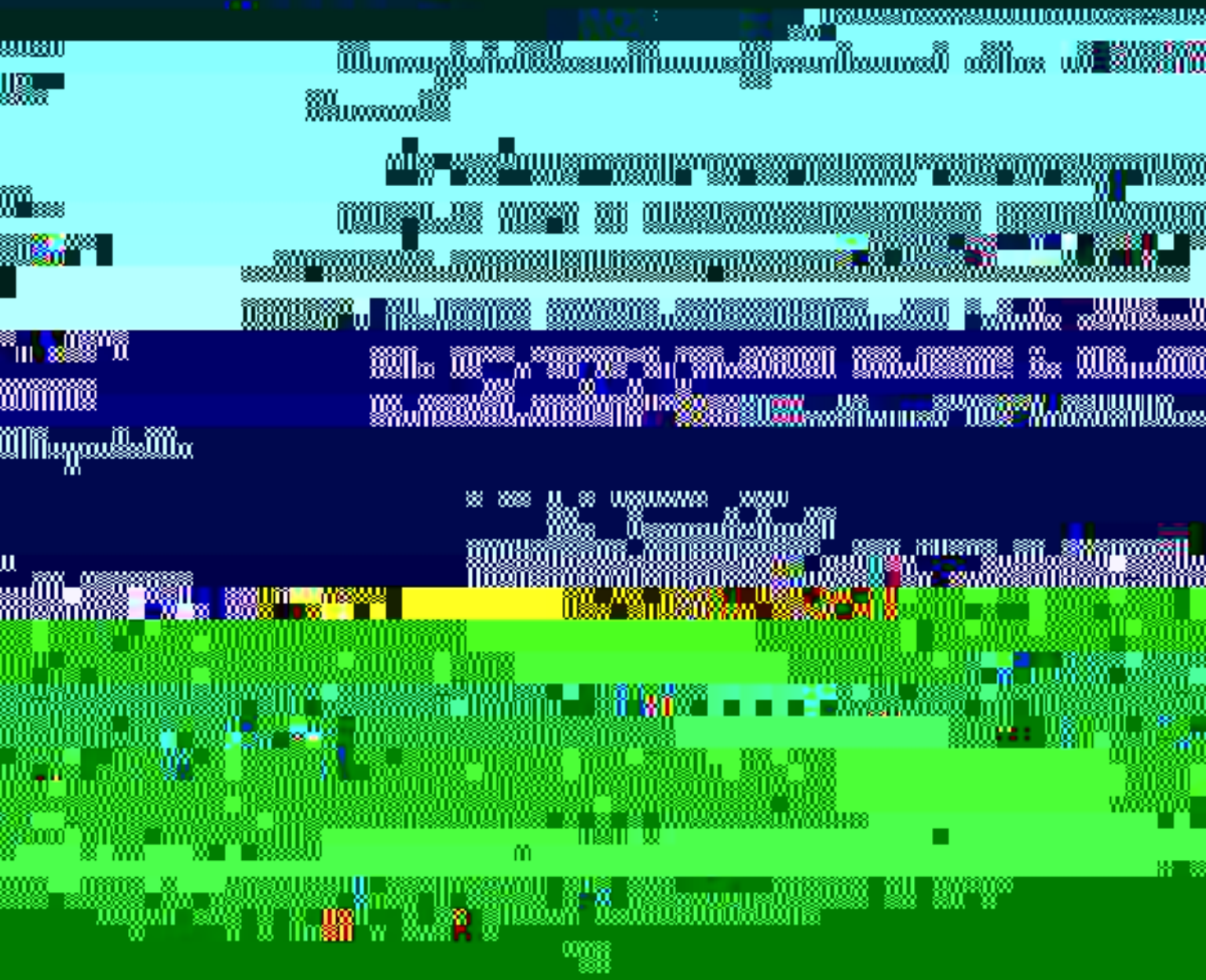
is that the chain gangs were

unconst

further relief not included in t

e complaint and beyond the

role, etc.); 17 in





testified that they

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inmate ... did so

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purposes, the terms of the settlement agreement as a

somewhat of a disappointment. However,

er, as both Hayes and Austin

objection as a "misunderstanding" of the terms of the settlement agreement and of the underlying claim of the lawsuit.

allows more productive and security." stipulation, file  
with increased safety and  
June 19, 1996 (Doc. #40)

challenge to the use of chain gangs. Prior to reaching a settlement with the DOC Commissioner, the plaintiffs submitted to this court dozens of affidavits of inmates

My... long... extreme mental anguish... chains was humiliating. The experience also reminded me of the slavery at my ancestors had to endure... though, I have been out of chains for months, I cannot stop their image from running through my mind. I dream about... in wake up... two or three times... and in a cold sweat...

These statements,...

shacking inmates, leaves the

DOC with pl...

The second objection, <sup>ii.</sup> involving a misinterpretation of the court's

order, is also

objection. Crouch stated that he wanted a

clarification brief re monetary and punitive damages, and wanted

to know why the putative class of plaintiffs had not received

these damages in the lawsuit. However, after the plaintiffs'

attorney and the Magistrate Judge explained to Crouch that

the court's order is clear, this basis of objection is not

substantial because the plaintiffs will

benefit from the settlement agreement, as well as with the fact

that the 14 plaintiffs, including Crouch and the other 13 objectors are

permitted to file or maintain their claims for monetary

damages stemming from

tlement. 26 One of the trade-offs the plaintiffs

have made in settling their chain-gang claim is to forgo the

counsel have agreed to waive attorneys' fees with regard to the

main-gang claim, [REDACTED] could be

sensitive to potential conflict between class and [REDACTED] attorneys, particularly where large attorneys' fees may also be at stake). Class counsel have argued that the proposed settlement is fair, adequate and reasonable, and have thoroughly explained the benefits the settlement agreement provides, specifically in terms of [REDACTED] longevity of the agreement, and the [REDACTED] court gives consid[REDACTED]

[REDACTED]

to certify two classes for purposes of the litigation, the

approximately

2,000 inmates had completed sentence



groups within the class, then the decision to approve the settlement 'may be described as an intrinsically "class" decision in which majority sentiments should be given great weight.'" Paradise v. Wells, 686 F. Supp. at 1445 (quoting Boyd).

On to

materials to enable them to file an objections. <sup>11</sup> Johnson v. Avery, 399 U.S. 481, 487, 89 S. Ct. 747, 750 (1969):

"Jails and penitentiaries include among their inmates a high percentage of persons who are <sup>12</sup> physically or functionally

illiterate. ~~These persons are often unable to read or write, and are therefore unable to file objections to their convictions.~~

~~It is not surprising, therefore, that these persons are often unable to file objections to their convictions.~~

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complexity, expense, and likely duration of the lawsuit; and  
the range of possible recover

practice the plaintiffs contested in the  
A major drawback to the agreement, as recognized by the court  
and the objecting inmates, is that the DOC will be able

amended complaints. Further, the court is satisfied that should an inmate challenge the DOC's practice with regard to the use of individual chains at work sites, the settlement agreement does not preclude such an

and the gamble being the risk that comes with going to trial." Paradise, 686 F. Supp. at 1446. Here, the settlement agreement gives the plaintiffs more relief than they could have obtained by pursuing their claims in court.

putative class to enforce this agreement, the court will approve the settlement. The court's modification of the chain-gang claim be dismissed without prejudice.

The court will dismiss the case with prejudice. The court will find any cause to contest the agreement's legality.

The court also finds that the agreement is good public policy. The putative class of plaintiffs articulated legitimate safety concerns relating to the DOC's practice of chaining inmates together, and the agreement, if enforced, will

the court's conclusion.

future, if necessary, through future challenges.

It therefore approves the settlement agreement between the parties.

### 3. Class Certification

In settling this main-gang claim, the Defendant has agreed to withdraw his opposition to the plaintiffs' motion for class certification only as it pertains to the charge cards.

The settlement also