

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

<b>UNITED STATES OF AMERICA,</b>	)	<b>NO. 4:16-cv-000180-CDP</b>
	)	
<b>Plaintiff,</b>	)	<b>JUDGE CATHERINE D. PERRY</b>
	)	
v.	)	
	)	
<b>THE CITY OF FERGUSON,</b>	)	
	)	
<b>Defendant.</b>	)	
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	)	
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**MEMORANDUM IN SUPPORT OF  
JOINT MOTION FOR ENTRY OF CONSENT DECREE**

Plaintiff, the United States of America, and Defendant, the City of Ferguson (“City” or “Ferguson”) (collectively, “the Parties”), submit this Memorandum in support of their joint motion for approval and entry of the Consent Decree (“Decree”), which is attached as Exhibit A, as an Order of this Court. The Parties seek entry of the Decree to resolve the Complaint filed by the United States on February 10, 2016, pursuant to the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141 (“Section 14141”), and Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d (“Title VI”). The Parties further seek entry of this Decree to ensure that the agreed-upon comprehensive measures to reform Ferguson’s police and municipal court practices are implemented fully and faithfully. As set forth in Paragraph 458 of the Decree, the Parties respectfully request that the Court retain jurisdiction over the Decree for the purpose of enforcing its terms until Defendant has achieved full and effective compliance with the Decree and maintained such compliance for no less than two consecutive years.

In its Complaint, the United States alleges that the City of Ferguson, through its law enforcement officials, violates the First, Fourth, and Fourteenth Amendments to the United States Constitution and other federal law. Complaint at 1 [ECF No. 1]. The City denies the existence of any current or past pattern or practice of unconstitutional conduct as alleged in the United States' complaint. The United States and the City agree that it is in the Parties' best interests, and the United States believes that it is in the public interest, to fully and finally resolve this matter on mutually agreeable terms without resort to protracted litigation. The Parties hereby agree and stipulate to the Court's entry of all aspects of this Consent Decree in resolution of the United States' Complaint against the City.

#### **I. BACKGROUND**

In September 2014, the United States, through the Department of Justice's Civil Rights Division, opened a civil pattern-or-practice investigation of the Ferguson Police Department ("FPD"). Following a thorough investigation, the United States issued a report detailing its investigative findings on March 4, 2015. The United States determined that the City's police department and municipal court violate Section 14141 by engaging in a pattern or practice of conduct by law enforcement officers that deprives persons of rights protected by the First, Fourth, and Fourteenth Amendments to the United States Constitution, and by federal statutory law. As detailed in Paragraph three of the Decree, the City does not agree with every finding or opinion referenced in the report.

In April 2015, the Parties initiated discussions to address the United States' findings and to ensure that the causes of these alleged violations were remedied and did not recur. Discussions involved City and FPD officials, police practices consultants, and multiple attorneys for the Parties. Over the course of these discussions, the Parties collectively spent hundreds of

hours in a series of in-person and telephone conferences. Discussions culminated in the United States sending the City a final, negotiated Consent Decree on January 26, 2016, which the City released to the public on January 27, 2016. On February 2, 6, and 9, 2016, the Ferguson City Council held public comment sessions to hear feedback from members of the public about the negotiated Decree. At the conclusion of the session on February 9, 2016, the Ferguson City Council did not approve the Decree as negotiated by the Parties. On February 10, 2016, the United States filed a Complaint alleging violations of Section 14141 and Title VI and seeking equitable and declaratory relief against Defendant.

On March 15, 2016, the City Council voted again on whether to enter the Consent Decree as it was negotiated by the Parties, this time voting to enter the Decree. The United States and the City of Ferguson agree that the Decree is a fair and equitable resolution of this matter that will benefit the people of Ferguson, both by avoiding protracted litigation and helping to ensure that Ferguson's police department and municipal court respect the constitutional and federal statutory rights of all those who live, work, or travel through Ferguson.

**II. THE CONSENT DECREE IS FAIR, REASONABLE AND ADEQUATE AND SHOULD BE ENTERED AS AN ORDER OF THE COURT**

Entry of the Consent Decree is appropriate because the Consent Decree is fair, adequate and reasonable. The Consent Decree is tailored to address the United States' allegations; is consistent with the public interest, including the purposes of Section 14141 and Title VI; is the result of arm's-length negotiations; and avoids the unnecessary costs and delay of litigation. Entry and implementation of the Decree is the most effective and efficient means of resolving the United States' claims and ensuring constitutional and effective law enforcement in Ferguson.

**A. Legal Standard**

“A settlement agreement is ‘presumptively valid.’” *In re Uponor, Inc. F1807 Plumbing Fittings Prods. Liab. Litig.*, 716 F.3d 1057, 1063 (8th Cir. 2013) (quoting *Little Rock Sch. Dist. v. Pulaski Cnty. Special Sch. Dist. No. 1*, 921 F.2d 1371, 1391 (8th Cir. 1990)). The policy encouraging settlements has “particular force” where, as here, a government actor “committed to the protection of the public interest” has played a significant role in constructing the proposed settlement. *United States v. Vertac Chem. Corp.*, 756 F. Supp. 1215, 1218 (E.D. Ark. 1991) (quoting *United States v. Cannons Eng’g Corp.*, 899 F.2d 79, 84 (1st Cir. 1990)).

In deciding whether to accept a proposed consent decree, “the trial court is to review the settlement for fairness, reasonableness and adequacy.” *EEOC v. Product Fabricators, Inc.*, 666 F.3d 1170, 1172 (8th Cir. 2012) (quoting *United States v. Metropolitan St. Louis Sewer Dist.*, 952 F.2d 1040, 1044 (8th Cir. 1992)). In determining whether a proposed consent decree is fair, adequate and reasonable, courts balance several factors, including but not limited to the existence of fraud or collusion underlying the settlement, and the complexity, expense, and likely duration of the litigation. *See EEOC v. McDonnell Douglas Corp.*, 894 F. Supp. 1329, 1333 (E.D. Mo. 1995). The Eighth Circuit has noted further that consent decrees sought by federal actors must be formulated to protect federal interests, and should “spring from—and serve to resolve—a dispute within the court’s subject-matter jurisdiction; come within the general scope of the case from the pleadings; and, further the objectives of the law on which the complaint was based.” *Product Fabricators*, 666 F.3d at 1172.

As discussed below, the Consent Decree here meets each of these criteria, and accordingly should be entered by this Court.

**B. The Consent Decree is Tailored to Address the Pattern or Practice of Unlawful Conduct Alleged by the United States**

As noted above, in reviewing whether a consent decree sought by a federal actor is fair, adequate, and reasonable, a court must determine whether the decree is formulated to protect federal interests; stems from and resolves a dispute within the court's subject-matter jurisdiction; comes within the general scope of the case from the pleadings; and furthers the objectives of the law on which the complaint was based. *Id.*

The Consent Decree here meets each of these criteria. The Consent Decree is tailored to effectively address the United States' allegations that the City of Ferguson engages in a pattern or practice of conduct that deprives persons of rights protected by the Constitution and laws of the United States. Specifically, the United States' Complaint alleges that the City, through its police department, municipal court, and prosecuting attorney: (1) engages in a pattern or practice of unconstitutional stops, searches, and arrests lacking adequate legal justification in violation of the Fourth Amendment; (2) engages in a pattern or practice of use of unreasonable force in violation of the Fourth Amendment; (3) engages in a pattern or practice of interfering with the right to free expression in violation of the First Amendment; (4) engages in a pattern or practice of prosecuting and resolving municipal charges in a manner that violates due process and equal protection in violation of the Fourteenth Amendment; and (5) engages in a pattern or practice of law enforcement conduct that disproportionately impacts African Americans and is based in part on intentional discrimination in violation of the Fourteenth Amendment and Title VI. *See generally* Complaint. Of central importance to understanding the breadth of the Consent Decree, the Complaint also alleges that this conduct stems from the City's failure to implement systemic practices that would decrease or eliminate that unlawful conduct, including appropriate

training and supervision to guide officer conduct; community policing principles; and systems to reliably prevent, detect, and hold officers accountable for misconduct. *Id.* at ¶¶ 140-180.

The provisions of the proposed Decree, agreed upon by the Parties after significant negotiations, are meant to resolve the present dispute and eliminate the pattern or practice of misconduct that the United States has alleged. The proposed Decree contains specific requirements regarding the conduct at issue, including provisions regarding: stops, searches, and arrests; officer use of force; interference with activity protected by the First Amendment; ensuring due process and equal protection in the prosecution and resolution of municipal charges; and ensuring bias-free law enforcement conduct. Through the proposed Decree, the City also has committed to implementing the measures necessary to correct the systemic deficiencies that have caused the alleged violations of the Constitution and federal law. The Decree requires specific and meaningful measures ensuring: the adoption and implementation of a community policing model; reform of the Ferguson Municipal Code; appropriate policies and training; the appropriate response to individuals in crisis; reforms to Ferguson's school resource officer program; the proper implementation of body-worn and in-car cameras; close and effective supervision; assistance and support for FPD officers; the recruitment of highly qualified officers, as well as systems for appropriately evaluating and promoting officers; that complaints of officer misconduct are fully and fairly investigated and that officers who commit misconduct are held accountable; civilian oversight to promote transparency and accountability; and the collection and analysis of accurate and reliable data necessary for ensuring compliance with the law.

The Decree also provides for independent oversight in the form of a monitor, selected by the Parties and approved by the Court, to assess the City's efforts at implementing the Decree and provide technical assistance to the City to help ensure that those efforts are carried out

efficiently and successfully. The monitor will save the time and resources of both the Parties and the Court; provide the public with an objective and independent assessment of the status of the Consent Decree's implementation; and determine whether this implementation is achieving the underlying objective of constitutional policing and municipal court practices in Ferguson.

The fairness, reasonableness, and adequacy of the Decree are further underscored by the fact that its provisions are informed by an extensive investigation conducted by the United States with the full cooperation of the City of Ferguson, including FPD officials. This intensive six-month investigation, which is summarized in the United States' March 4, 2015 Findings Report, was conducted by a team of lawyers and other staff from the Civil Rights Division of the United States Department of Justice, who worked closely with retained law enforcement professionals with relevant expertise. During this investigation, the United States gathered information through interviews and meetings with Ferguson officials, including FPD officers, as well as members of the public, community groups, and other community stakeholders. The investigation included on- and off-site review and analysis of tens of thousands of pages of documents, including policies and procedures; training materials; FPD's stop reports, use-of-force reports, and other incident reports; FPD's investigative files, including files regarding internal investigations of officer misconduct; emails sent by City officials; and other information obtained from databases maintained by FPD, including the municipal court. The investigation also included on-site tours in which the United States' representatives and subject matter experts in the field accompanied FPD officers during their shifts and observed a wide range of law enforcement activities. Thus, although this settlement comes early in the litigation process, it is the culmination of an extensive investigatory process that created a factual record supporting the fairness, reasonableness and adequacy of the Decree and informed its specific provisions. *See*

*Citizens for a Better Env't v. Gorsuch*, 718 F.2d 1117, 1126 (D.C. Cir. 1983) (in accepting a consent decree a court's function is not to "inquire into the precise legal rights of the parties nor reach and resolve the merits of the claims or controversy," but "only [to] determine that the settlement is fair, adequate, reasonable and appropriate under the particular facts and that there has been valid consent by the concerned parties.") (internal quotation marks and citations omitted).

C. **The Consent Decree Furthers the Public Interest in Enforcing the Constitution and Anti-Discrimination Statutory Law**

The policy encouraging settlements has particular force where a government actor committed to the protection of the public interest has played a significant role in constructing the proposed settlement. *Vertac Chem. Corp.*, 756 F. Supp. at 1218. Consistent with Section 14141 and Title VI, the United States has placed protection of the public's interest in constitutional and non-discriminatory policing at the center of its efforts to reach a negotiated settlement in this case.

Section 14141 prohibits law enforcement officers from engaging in a pattern or practice of conduct "that deprives persons of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States." 42 U.S.C. § 14141(a). Where the United States has reasonable cause to believe that a pattern or practice of unlawful conduct is occurring, Congress has authorized the United States to initiate a civil action to obtain appropriate equitable and declaratory relief sufficient to "eliminate the pattern or practice." 42 U.S.C. § 14141(b); *see also* H.R. REP. NO. 102-242, pt. 1, at 137 (1991). Title VI, together with relevant implementing regulations, prohibits discrimination on the basis of race, color, or national origin by agencies receiving federal funds or federal financial assistance. 42 U.S.C. § 2000d.



As set forth in detail above, the Consent Decree's substantive provisions are designed to address the unlawful conduct that the United States has alleged, as well as its underlying causes. The nexus between these reforms and the alleged pattern or practice of unlawful conduct provides strong evidence that the Decree furthers the purposes of Section 14141 and Title VI.

**D. The Consent Decree is the Result of Thorough, Informed, Arm's-Length Negotiations**

The process that led to the Parties' agreement upon the Consent Decree demonstrates that it is not the product of fraud, collusion, or overreaching, and further establishes the fairness and reasonableness of the Decree. *McDonnell Douglas Corp.*, 894 F. Supp. at 1333 (in determining whether a proposed consent decree is fair, adequate and reasonable, courts should consider whether the decree is the result of fraud or collusion). The Parties entered the Decree following extensive negotiations to reach agreement on measures capable of ensuring lasting and meaningful reform. Negotiations over the Consent Decree began shortly after the United States issued its Findings Report on March 4, 2015, and included over seven months of intensive meetings to establish the Decree's provisions.

The Parties were represented by counsel throughout the negotiations that resulted in the proposed Decree. In addition, the Parties are intimately familiar with the City's policing and court practices. Moreover, during the negotiation process, both the United States and the City consulted with subject matter experts to ensure that each remedial measure in the Consent Decree is appropriately tailored and may be reasonably implemented. This adversarial posture during negotiations, combined with the respective duties of these government entities towards those they represent, as well as the degree to which the discussions were informed by the

expertise of the Parties and their consultants, provides further assurance that the Consent Decree is fair, reasonable, and adequate.

**E. Voluntary Compliance is a Preferred Means to Remedy Allegations of Unlawful Patterns or Practices of Law Enforcement Conduct**

In reviewing whether the Consent Decree is fair, adequate and reasonable, the Court should consider the benefit of achieving voluntary compliance at the outset of litigation, as opposed to a declaratory or injunctive order imposed at the end of protracted litigation. Settlement at the outset of litigation conserves the resources of courts and litigants. *See* Fed. R. Civ. P. 16(b) advisory committee’s note to 1983 amendment (“Since it obviously eases crowded court dockets and results in savings to the litigants and the judicial system, settlement should be facilitated at as early a stage of the litigation as possible.”); *McDonnell Douglas Corp.*, 894 F. Supp. at 1333 (in determining whether a proposed consent decree is fair, adequate and reasonable, courts should consider the complexity, expense, and likely duration of litigation). Further, settlement is particularly beneficial where, as here, the defendant is a public actor and the harm sought to be remedied is governmental discrimination. *See Wygant v. Jackson Bd. of Educ.*, 476 U.S. 267, 290 (1986) (O’Connor, J., concurring) (noting that “the value of voluntary compliance is doubly important when it is a public employer that acts, both because of the example its voluntary assumption of responsibility sets and because the remediation of governmental discrimination is of unique importance”); *see also Williams v. Vukovich*, 720 F.2d 909, 923 (6th Cir. 1983) (“Voluntary compliance will frequently contribute to the ultimate achievement of the public objectives. Consent decrees minimize the delay, expense, psychological bitterness, and adverse publicity which frequently accompanies adjudicated

guilt.”) (citing *Metro. Housing Dev. Corp. v. Village of Arlington Heights*, 616 F.2d 1006, 1014 (7th Cir. 1980)).

The Decree provides an opportunity for the Parties to continue, and ensure the success of, their mutual efforts in furtherance of lawful and constitutional policing and municipal court practices in Ferguson. The Parties agree that the measures agreed upon within the Decree will enhance the City’s efforts and ability to ensure compliance with the law, promote transparency and accountability, and increase public trust in the police force and the municipal court. Settling this dispute without protracted litigation allows the Parties to devote their resources to these shared goals, and enables the Parties to implement reforms to achieve these goals without unnecessary delay.

**III. THE PARTIES REQUEST THAT THE COURT HOLD A PUBLIC HEARING TO SOLICIT ADDITIONAL COMMUNITY FEEDBACK REGARDING THE DECREE**

In drafting this proposed Consent Decree, the Parties solicited and received input from members of the broader Ferguson community—including community advocates, FPD officers, those who have had experiences with law enforcement officials in Ferguson, and other stakeholders. The United States conducted meetings with stakeholders for the purpose of obtaining their input during the development of the Decree and throughout the negotiation process. The City of Ferguson similarly solicited feedback regarding police and court reform throughout the negotiation process, and conducted three separate, well-attended public meetings to solicit feedback about the negotiated Decree before the City Council approved it. The significant input received from many individuals representing a diverse range of views has guided the Parties during negotiations and helped the Parties reach agreement on a Decree that is fair, reasonable, and adequate.

Nonetheless, given the important public interests involved in this matter, the Parties believe that allowing community stakeholders to provide their views regarding the Decree may be of assistance to the Court. Accordingly, the Parties request that the Court hold a public hearing for the Parties to the Decree and interested third parties to be heard in the course of the Court considering whether to enter the Decree. The Parties make this request recognizing that such a hearing is not *required* here, as it would be if this were a settlement resolving a class action. *Compare* Fed. R. Civ. P. 23(e)(2) (“If the proposal would bind class members, the court may approve it only after a hearing and on finding that it is fair, reasonable, and adequate.”), *with Gen. Tel. Co. of the Northwest, Inc. v. EEOC*, 446 U.S. 318, 323 (1980) (holding Rule 23 not applicable to enforcement actions brought by the EEOC in its own name and pursuant to its authority to prevent unlawful employment practices).

Should the Court agree to such a public hearing, the Parties request the opportunity to provide their views to the Court on the format of such a hearing at the Court’s earliest convenience. The Parties will meet and confer in an effort to agree upon and jointly submit to the Court a proposed format for such a hearing.

#### IV. CONCLUSION

For the foregoing reasons, the Parties respectfully move this Court to enter the Consent Decree in its entirety as an Order of the Court.

Respectfully submitted this 17th day of March, 2016.

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