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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, : 13-CV-4165(NGG)  
 : 13-CV-4166(NGG)  
 Plaintiff, :  
 - against - :  
 STATE OF NEW YORK, : United States Courthouse  
 : Brooklyn, New York  
 Defendant. :  
 ----- X February 22, 2017  
 : 3:30 p.m.

RAYMOND O'TOOLE, et al., :  
 :  
 Plaintiffs, :  
 -against- :  
 ANDREW M. CUOMO, et al., :  
 :  
 Defendant. :  
 ----- X

TRANSCRIPT OF STATUS CONFERENCE  
BEFORE THE HONORABLE NICHOLAS G. GARAUFI  
UNITED STATES SENIOR DISTRICT JUDGE.

APPEARANCES:

CLARENCE J. SUNDRAM  
Independent Reviewer

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1 APPEARANCES: (Continued)

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5 Also Present: MICHELLE KRAUS  
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8 CAROL A. RODAT, Director  
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13 Proceedings recorded by mechanical stenography, transcript  
14 produced by computer-aided transcription.

15 \* \* \* \* \*

16  
17 THE CLERK: Civil cause for a status conference.  
18 Counsel, just state your appearances, please.

19 THE COURT: You may be seated in the back.

20 MR. GOLDBERGER: Good afternoon, Your Honor.

21 Michael Goldberger, Assistant United States Attorney for the  
22 United States.

23 MS. DERMODY: Eliza Dermody, Your Honor, for the  
24 Department of Justice.

25 MS. KRAUS: Michelle Kraus, New York Lawyers for The

1 Public Interest.

2 MS. ARTUNIAN: Alina Artunian, intern, United States  
3 Attorney's Office.

4 MR. SENTER: Jeff Senter from the Urban Justice  
5 Center.

6 MR. O'LOUGHLIN: Robert O'Loughlin from Paul Weiss  
7 for the plaintiff class.

8 MR. ZUCKER: Cliff Zucker for the plaintiff class.

9 MS. BORGMANN: Jota Borgmann for the plaintiff  
10 class.

11 THE COURT: Thank you.

12 For the defendant?

13 MR. LAWSON: Matthew Lawson from the New York State  
14 Office of the Attorney General.

15 MR. STAUFFER: Kent Stauffer from the New York State  
16 Office of the Attorney General.

17 MR. PEPPER: Joshua Pepper, counsel to OMH.

18 MR. BASS: Mike Bass, counsel for DOH.

19 MS. RODAT: Carol Rodat, director of the Office of  
20 office of Community Transitions.

21 MR. SUNDRAM: Clarence Sundram, the Independent  
22 Reviewer.

23 THE COURT: Thank you, everyone. Please be seated.

24 I think we ought to get started with a discussion  
25 about the letter I received dated February 10th from Geoffrey

1 Chepiga.

2 MR. ZUCKER: Yes. Mr. Chepiga is not here, but I  
3 can address it, Your Honor.

4 THE COURT: Please.

5 MR. ZUCKER: Your Honor, you may recall several  
6 months ago here at one of the status conferences, I informed  
7 the Court and the defendants that we had retained Elizabeth  
8 Jones to consult with us and to observe in-reach in order to  
9 advise us on how that process could be improved and we had  
10 previously notified the defendants at one of our periodic  
11 meetings of that intention.

12 On both occasions, we received no objection.  
13 Ms. Jones had a preliminary meeting with several of the  
14 housing contractor representatives, very productive, very  
15 cordial, and they agreed to have her come and observe but not  
16 interfere with the intake, rather, in-reach at the adult  
17 homes.

18 Subsequently, the State has objected to us employing  
19 Ms. Jones to observe in-reach and has interfered with her  
20 access by telling the housing contractors that they had not  
21 consented to her presence and as a result, the housing  
22 contractors have all expressed to Elizabeth Jones that they  
23 can't meet with her or, in one instance, just stopped  
24 communicating with her altogether.

25 Although the State asserts that it has some right to

1 tell us how we represent the class, we assert that it is our  
2 duty as class counsel to represent the class and to gather  
3 information to that end and that while we notified the State  
4 as a courtesy of our intent to have Ms. Jones do this, the  
5 State does not have the veto power concerning our efforts to  
6 represent the class and to gather information.

7           We are retained here for two purposes. One is that  
8 we -- as you know, there is a meet and confer process. The  
9 parties are discussing how the settlement agreement could be  
10 more effectively implemented and we would like her to advise  
11 us as to possible improvements in the process. Secondly, as I  
12 think you are aware, a TRO was issued so it is a very real  
13 possibility that there will be either compliance litigation or  
14 perhaps that the litigation *in toto* would be revived in which  
15 case, her assistance may be very essential to the class.

16           So, we ask you to direct the State to stop  
17 interfering with our expert and to notify the housing  
18 contractors with whom they've communicated that they have no  
19 objection to them permitting Ms. Jones to observe in-reach and  
20 I can assure you that she will do so in a matter that will not  
21 in any way interfere with in-reach.

22           THE COURT: I understand that you had a meeting this  
23 morning to discuss whether this could be resolved without the  
24 involvement of the Court.

25           Did you reach any kind of understanding at that time

1 that would permit the Court to forebear from making a  
2 decision?

3 MR. ZUCKER: We did discuss, have the discussions  
4 and some proposals, possible proposals were exchanged but we  
5 did not have a meeting of the minds. So, the short answer is  
6 I think that it will be necessary for the Court to resolve the  
7 issue.

8 THE COURT: Let me hear from Mr. Lawson.

9 MR. LAWSON: Thank you, Your Honor.

10 THE COURT: Let me hear from the State.

11 MR. LAWSON: Good afternoon.

12 THE COURT: Good afternoon.

13 MR. LAWSON: The State is willing to reach an  
14 agreement that would allow for Ms. Jones to participate in the  
15 manner that plaintiffs have anticipated and the State solely  
16 asks for what we believe are three very reasonable limitations  
17 so that we know the ground rules beforehand.

18 Number one, the State would like the first such  
19 planned visit by Ms. Jones to take place at least four weeks  
20 from today and not sooner than that.

21 Number two, the State would like to know in advance  
22 the times at which Ms. Jones plans to attend in-reach for an  
23 assessment and the reason for that is the State would like to  
24 be able to use its own expert at that same in-reach or  
25 assessment session in case there's a disagreement about the

1 facts or about what information was presented.

2 THE COURT: You mean at a later date?

3 MR. LAWSON: Correct. Correct.

4 THE COURT: If there is additional litigation, you  
5 would want to have your own expert in a position to provide  
6 information to the Court.

7 MR. LAWSON: Correct, in case there's a dispute  
8 about the facts or what went on.

9 THE COURT: All right.

10 MR. LAWSON: And the third and final limitation  
11 which we also think is reasonable is, and I think that this is  
12 actually consistent with what the plaintiffs planned to do,  
13 but we would like a commitment from the plaintiffs that  
14 Ms. Jones is not going to interrupt the process or interject  
15 her own opinions or advice into the process and that she is  
16 not really going to speak other than your basic introductory  
17 pleasantries and closing pleasantries and that as far as the  
18 process itself, that her role is to be a passive observer and  
19 nothing else.

20 Those are the three conditions we would like.

21 THE COURT: Yes.

22 MR. ZUCKER: As to the last point he makes, that is  
23 how we anticipate Ms. Jones would conduct herself.

24 I spoke to her, to Ms. Jones today and she is  
25 available by telephone should you wish to hear from her, but



1 she indicated that the proposal to have another expert present  
2 would make it impossible for her to do her work. What she  
3 wants to do is just unobtrusively observe in-reach, observe  
4 the methodology used by the in-reach people and give an  
5 opinion about how the process might be improved. It is her  
6 feeling that if this is turned into some sort of deposition  
7 with competing experts and a lot of people there, it is going  
8 to chill the entire process and she wants to make it -- she  
9 wants to be as unobtrusive as possible.

10           It's our position that if the State wishes to have  
11 an expert observe in-reach, they can do it. We don't need to  
12 be here. Our expert doesn't need to be there. In the event  
13 that -- I really hope we don't end up litigating these issues,  
14 but in the event that we do, you know, there may be a battle  
15 of the experts as to whether or not in-reach is being  
16 conducted in compliance with the Court's order.

17           You know, this is -- what we're proposing, it's  
18 consistent with what happened prior to the trial in the  
19 DI-1 case. She spoke to many residents. There was no  
20 opposing expert present. She visited the adult homes without  
21 opposing experts present. There was never any objection to  
22 that process and I think that her testimony was useful to the  
23 court and the same thing happened with their opposing experts  
24 and the court was able to evaluate their testimony.

25           What they propose will just chill the whole process

1 and make it -- it really would be unfair to the residents. It  
2 will turn their intake into something that, an in-reach into  
3 something that it should not be.

4 MR. LAWSON: If I could just comment on that, Your  
5 Honor.

6 THE COURT: Sure.

7 MR. LAWSON: To the extent there's a concern that  
8 two nonobtrusive witnesses would interfere with the process in  
9 this manner, I don't see how that would be materially  
10 different than one nonobtrusive witness. The plan would be to  
11 have both experts sit there as passive observers and if  
12 passive observers interfere with the process, then that  
13 problem would apply with almost equal force even if there was  
14 just one passive observer. So I don't think that that's a  
15 concern that merits a limitation for just one instead of two  
16 experts.

17 THE COURT: Well, I appreciate everyone's views and  
18 I will give it some thought and let you know.

19 MR. ZUCKER: Thank you, Your Honor.

20 MR. LAWSON: Thank you, Your Honor.

21 THE COURT: All right.

22 So, there is the other issue which was just  
23 mentioned which is this temporary restraining order as to  
24 those full regulations that are part of the settlement or that  
25 were folded into the settlement. They existed, I understand,

1 before. They were created in contemplation of resolving the  
2 case and they are mentioned in the settlement papers and a  
3 State supreme court justice in Albany has granted a temporary  
4 restraining order.

5 Can you elucidate the Court on the current status of  
6 that case?

7 MR. LAWSON: I can, Your Honor. While I am not  
8 counsel of record in that case, I have been briefed on it, so  
9 I will give you my understanding and with the Court's  
10 indulgence, if I leave something out or need to be  
11 supplemented, if agency counsel could also be permitted to  
12 elucidate.

13 THE COURT: Sure.

14 MR. LAWSON: The Doe case -- and this is the case in  
15 Albany in which this temporary restraining order was  
16 granted -- is a case involving a specific set of facts that  
17 the State is seeing for the first time. This, to my  
18 knowledge, is the first case with a named plaintiff who is a  
19 former adult home resident who was transitioned out of the  
20 adult home and now wants to move back in to the adult home and  
21 the allegation in the Article 78 petition is that he is  
22 precluded from doing so because of the regulations.

23 That is a situation that the State would like to  
24 have some time to think about to address and to see if there  
25 is some solution and some resolution that could address that

1 situation in the context of the regulations themselves and the  
2 process.

3 So, my understanding is that the State, first, the  
4 State consented to the entry of the TRO.

5 THE COURT: It consented?

6 MR. LAWSON: It consented to the entry of the TRO.

7 THE COURT: Why did it consent to do that in view of  
8 this case?

9 MR. LAWSON: The concern, Your Honor, was that the,  
10 the alleged showing of irreparable harm by this specific  
11 plaintiff, in other words, the plaintiff that wanted to get  
12 back into his adult home and was concerned that the  
13 regulations blocked him from doing so, that the concern was  
14 that this showing of irreparable harm illustrated some  
15 specific circumstances that the State hadn't had the  
16 opportunity to fully ponder. So, the State is hoping to  
17 arrive at some kind of resolution to this issue within the  
18 overall context of the other litigation as well. That's my  
19 understanding.

20 THE COURT: Well, I spent about twelve years  
21 litigating in the state courts both as an Assistant Attorney  
22 General and as a private attorney and in reviewing the CPLR,  
23 it seems clear to me that -- well, first of all, let me ask  
24 this.

25 Did the State advise the state judge that there was

1 a class settlement involving 4,000 people that had been  
2 heavily litigated in the federal court in Brooklyn and that in  
3 weighing the potential injury to thousands of people in that  
4 case, that the equities in granting ex parte relief basically  
5 weighed heavily against issuing a TRO in Albany involving one  
6 individual?

7 MR. LAWSON: To my knowledge, that argument was not  
8 made, Your Honor.

9 THE COURT: I bet it was not made.

10 MR. LAWSON: Although, again, I was not there.

11 THE COURT: Was any paperwork submitted by the State  
12 with regard to this TRO?

13 MR. LAWSON: I'm not aware of any such paperwork.

14 THE COURT: Well, then how do you represent that the  
15 state judge was aware that it was uncontested? How did the  
16 judge know this? I'm just curious.

17 MR. LAWSON: The counsel that appeared --

18 THE COURT: What counsel, the plaintiff's counsel?

19 MR. LAWSON: No, the defendant's counsel that  
20 appeared, I believe the appearances were by an Assistant  
21 Attorney General who was there merely to introduce counsel for  
22 DOH, that counsel for DOH was there and notified the judge of  
23 the non-opposition.

24 THE COURT: So, DOH has not objected to a five month  
25 TRO based on a claim of injury by one individual setting aside

1 four state regulations; is that what you are telling me?

2 MR. LAWSON: That's my understanding, Your Honor.

3 THE COURT: And this idea that this hearing would  
4 take place in five months from the TRO being put in effect, do  
5 you think that that is consistent with the requirements of the  
6 CPLR that there be a prompt hearing on the application for an  
7 injunction?

8 Is that in compliance with the CPLR, is that the  
9 Attorney General's position?

10 MR. LAWSON: I don't think that would constitute a  
11 prompt hearing, Your Honor.

12 THE COURT: Well, it is not a prompt hearing. You  
13 get 14 days in the federal system. I am overseeing a case  
14 involving 4,000 people whose rights are implicated potentially  
15 by the restraining order on these four regulations. These are  
16 not two different countries. This is one state with one  
17 Attorney General who is litigating in front of me, that is  
18 Mr. Schneiderman, and he is also up in Albany litigating that  
19 case and you are taking inconsistent positions, it would  
20 appear to me, between these two cases because the potential  
21 injury to the class in this settlement is implicated by the  
22 position that your client has taken in front of the supreme  
23 court judge in Albany.

24 That is a real problem for this court because it is  
25 a demonstration potentially of bad faith in this case, bad

1 faith, and that is something that your Attorney General is  
2 going to have to answer to me about because he is going to  
3 have to come into this courtroom and explain to me personally  
4 why it is that the State of New York is speaking out of both  
5 sides of its mouth. This is a real problem, a real problem.  
6 And to consent, in effect, to a five month hiatus on the  
7 vitality of four regulations that were specifically created so  
8 that we could have this settlement because one person, a John  
9 or Jane Doe, brings a case in Albany which could be  
10 resolved -- it is not a class action, it is one person -- that  
11 could have been resolved on the spot by your client and I end  
12 up with a five month stay of four regulations.

13           What kind of lawyering is being done by your office  
14 in Albany?

15           MR. LAWSON: If I --

16           THE COURT: I cannot imagine a circumstance where  
17 even if you went to the judge and said, We understand that  
18 this is an issue and we are going to try to resolve it but we  
19 will have a hearing in two weeks. I might understand that  
20 your client is in a difficult situation. I do not accept that  
21 but I could understand it, but to wait until July and not  
22 force the issue?

23           The Attorney General's Office had the client -- is  
24 this DOH? Who is the client who made that representation that  
25 it was okay to enter a five month stay on four regulations?

1 Was it DOH or the Office of Mental Health?

2 Who is the person who stood up and said it?

3 MR. LAWSON: That was DOH counsel, Your Honor.

4 THE COURT: Was that you, sir?

5 MR. BASS: I was present, Your Honor. OMH was also  
6 present.

7 THE COURT: And what was the question?

8 MR. BASS: I'm sorry.

9 THE COURT: What was the judge's question about  
10 whether you consented?

11 Did you see a judge?

12 MR. BASS: Yes.

13 THE COURT: All right. And what was the judge's  
14 question? How did it come about that you consented, is my  
15 question.

16 MR. BASS: The judge asked our position.

17 THE COURT: And your position was what?

18 MR. BASS: That we did not oppose it.

19 THE COURT: And why was that?

20 MR. BASS: For the reasons that Mr. Lawson laid out  
21 before you.

22 THE COURT: What have I been doing here for the last  
23 ten years? I mean, you just threw it away because one person,  
24 a John Doe, made a claim and what are we doing here for 4,000  
25 class members, that is not going too well, I might add, in



1 terms of getting the job done?

2 MR. BASS: Your Honor --

3 THE COURT: Who made that decision, the  
4 commissioner?

5 MR. BASS: Your Honor, I don't believe a decision  
6 was made to throw this away.

7 THE COURT: Well, what do you think is happening  
8 here?

9 I have a settlement agreement covering 4,000 people  
10 and it is not going all that well and now we are talking about  
11 rewriting the settlement and the four regulations which are an  
12 important part of it, unless you tell me they do not matter,  
13 has been stayed by a judge in Albany.

14 Was that judge told about the 4,000 people who are  
15 the class here in Brooklyn in federal court who might be  
16 affected by issuing a five month hiatus on the implementation  
17 of a set of regulations? You were there. Was this judge told  
18 about that?

19 MR. BASS: I don't believe so, Your Honor.

20 THE COURT: Oh, that is just terrific. Great job  
21 the Attorney General has done on this subject.

22 So, the judge didn't even know about it. It is not  
23 the judge's fault if you do not bring it to the judge's  
24 attention. There might have been a different outcome.

25 I have spent thousands of hours of court time and

1 your time in this case and you did not have the decency, the  
2 professional responsibility, sense of responsibility to advise  
3 the state judge in Albany that this could have an effect on  
4 this class action settlement in New York City with 4,000 class  
5 members?

6 MR. BASS: Your Honor, I can't speak for every  
7 attorney that was in the room, but I don't think it was  
8 contemplated by any of the attorneys in that room that this  
9 particular order on this very specific case was going to throw  
10 this out.

11 THE COURT: Don't you defend regulations regularly  
12 in state court? Don't tell me that. I spent four years doing  
13 that and we put every argument that we thought was reasonable  
14 before the judge because that helps the judge make a good  
15 decision. A good decision. It's not the judge's fault that  
16 the judge put this over for five months. If you had told the  
17 judge that you are trying to complete the process of placing  
18 people in supported housing in New York and that this case has  
19 been going on in various iterations for years and that this  
20 might have an effect by setting aside these regulations, it  
21 might have an adverse effect on that process.

22 That judge may have taken a different view and even  
23 if the judge had imposed the stay, the TRO, the judge might  
24 have said come back in two weeks or a week because the CPLR  
25 makes very clear that it should be for a finite period of

1 time, it should be brief. Five months is not brief.

2 MR. BASS: Your Honor, I don't want to get into all  
3 of the strategy and discussions.

4 THE COURT: There is no strategy.

5 MR. BASS: And we come back --

6 THE COURT: Unless you tell me the strategy is to  
7 scuttle this settlement.

8 MR. BASS: Your Honor, had we come back in two weeks  
9 and there had been a preliminary injunction granted, we would  
10 be in an even worse situation. There's a lot of things to  
11 consider.

12 THE COURT: Well, I would like to consider a lot of  
13 things like the fact that over an individual's claim, you did  
14 not just try to settle it immediately and put the individual  
15 into a residence and avoid setting aside four regulations.  
16 That would have been a solution. You could have settled it.

17 I am very disappointed in the State of New York.  
18 The appearance to this court is that you really do not want to  
19 resolve this case, that you want to set aside the settlement  
20 and that you want to start all over again. That is how it  
21 looks to this court.

22 So, if that is going to be the way it is going to  
23 be, we are going to do it all over again and we are going to  
24 do it all over again this year. I am not going to wait four  
25 years between these episodes, but I will tell you that what

1 you did in Albany was -- "you" meaning the State, the State  
2 Department of Health, the Office of Mental Health and the  
3 Attorney General's office -- in my opinion, was  
4 unprofessional, irresponsible and uncalled for, that you did  
5 not advise that judge about the status of this very  
6 extensively litigated and negotiated settlement and everything  
7 that came before it before the judge imposed what the judge  
8 imposed, with your consent, I might add. You did not oppose  
9 it. You did not even explain the consequences of what was  
10 being asked for by the nursing home industry.

11 There is no excuse for this.

12 You may sit down. Thank you.

13 Well, since we have not gotten very far in terms of  
14 placing people in supported housing and you are now going into  
15 a period of review, what is it, 90 days, 120 days?

16 MR. GOLDBERGER: One hundred twenty days, Your  
17 Honor.

18 THE COURT: When does that start?

19 MR. GOLDBERGER: It started on the 16th of February.

20 THE COURT: Oh, okay. Let's see. Since I do not  
21 have any regulations anymore and the State consented to the  
22 TRO for five months, it is just beyond words.

23 MR. LAWSON: If I could just add one technical  
24 point, Your Honor.

25 I noticed Your Honor referred to 120 days and I just

1 wanted to say that to the extent Your Honor was invoking  
2 Section 0 of the settlement agreement, that the State has not  
3 affirmatively invoked that section.

4 I understand --

5 THE COURT: Well, maybe you would like to do it in  
6 six months. I mean, what does it take?

7 How many people have been placed in supported  
8 housing as of today? You must have that number.

9 MS. RODAT: Four hundred seventy-two.

10 THE COURT: I can't hear you. Please stand up.

11 MS. RODAT: Four hundred seventy-two, Your Honor.

12 THE COURT: Four hundred seventy-two. Thank you  
13 very much.

14 MR. GOLDBERGER: Your Honor, if I may, there is no  
15 provision in Section 0 calling for the State to invoke it.  
16 The section automatically triggers if there is a TRO. So, it  
17 triggered as of the date of the TRO on February 16th.

18 THE COURT: I read it the same way, by the way, so  
19 you can have your reading but my reading is that it was  
20 triggered -- what date was that?

21 MR. GOLDBERGER: February 16th, Your Honor.

22 THE COURT: February 16th.

23 Is there a transcript of that hearing before the  
24 judge in Albany?

25 MR. BASS: I don't believe there was a reporter

1 there.

2 THE COURT: Oh, that's great. So now I have to take  
3 your word for it. That is terrific. I really like that.  
4 Whenever I speak, there is a record kept of it, but up in  
5 Albany when you are setting aside regulations with the consent  
6 of the State, there's nothing. It's pitiful.

7 You are willing to consent to have regulations set  
8 aside for five months without a hearing when the CPLR makes it  
9 very clear that temporary restraining orders are an  
10 extraordinary remedy and that you must move forward with  
11 dispatch under the CPLR to hold a hearing. That is what the  
12 CPLR tells us to do. So you basically threw that out the  
13 window. That doesn't count in this case involving these 4,000  
14 people. That is really tragic.

15 So let's see. If you have not resolved your  
16 meet-and-confer efforts successfully, then the plaintiffs get  
17 to refile, right?

18 MR. GOLDBERGER: It's not even a refiling.

19 THE COURT: What's that?

20 MR. GOLDBERGER: It's not a matter of refiling. The  
21 agreement is deemed null and void and we have a case before  
22 Your Honor.

23 THE COURT: Okay. So, this is what we will do.

24 In the event that you cannot resolve this, we will  
25 hold a trial. I am going to hold a trial in July and I am

1 going to use the record from the last trial as a foundation  
2 for it, but if you want to bring in witnesses and do it  
3 100 percent all over again, I am going to block out the entire  
4 summer to hold a trial on this complaint.

5 I will give you a date. July 10th. It is a Monday.  
6 We will start the trial. See the Magistrate Judge at the end  
7 of the 120 days for a pretrial order.

8 By the way, why didn't the State advise the Court  
9 about the TR0 being imposed?

10 Why wasn't I advised by the State since you  
11 consented to it? It would have been appropriate and courteous  
12 to learn about this from the State which was a party to that  
13 case and made an appearance in the case and consented to the  
14 TR0 being put in effect. Why wasn't I informed?

15 MR. LAWSON: Your Honor, the State apologizes for  
16 any oversight there. That was a matter that I understand the  
17 State had only one day notice of before the time they were  
18 called in to court.

19 THE COURT: Well, I don't mean before. I mean  
20 after. I am not worried about -- well, I am worried about  
21 what happened at the time of the hearing, but I am also  
22 concerned that I was not informed.

23 Isn't that a material change in the circumstances of  
24 this settlement that the Court should be advised of from  
25 someone who was present, a party that was present at the

1 Albany state supreme court?

2 I do not understand what is going on in the Attorney  
3 General's Office. I really don't. You consent to something  
4 that adversely affects this settlement. You do so without a  
5 record. You do not submit a letter. You do not give a reason  
6 except that there is this one person, this unnamed person up  
7 in Albany who claims that these four regulations are adversely  
8 affecting his or her ability to get back into an adult home.  
9 Then you consent to setting aside four regulations that are  
10 part of this case and then you do not even tell the judge on  
11 this case what has happened. It is not an oversight. I do  
12 not believe it is an oversight. It must be part of a plan  
13 because no self-respecting attorney would ever do that to a  
14 judge in a situation like this.

15 At the next meeting whenever we have it, I direct  
16 that the Attorney General be present to answer my questions.  
17 If I cannot get it out of his assistants, I am going to get it  
18 out of him. He is going to be present. It is so ordered. We  
19 will arrange it for a time when he is available in New York  
20 and you can explain to him what I am likely to ask him about.

21 MR. LAWSON: Understood, Your Honor.

22 THE COURT: As far as the plaintiffs are concerned,  
23 I am not going to consider any adjournments of the trial and  
24 the same is true with the defendants. Don't bother sending me  
25 a letter because I am going to trial. The only question is



1 what will we discuss and that will be the subject of the  
2 pretrial order. Work it out with the Magistrate Judge.

3 I want the pretrial order a month before the trial.  
4 That is so ordered too.

5 Do advise me as to whether the 120 day  
6 meet-and-confer process results in anything except more of the  
7 same.

8 Is there anything else from the plaintiffs?

9 MR. ZUCKER: No, Your Honor.

10 MR. GOLDBERGER: No, Your Honor.

11 THE COURT: Anything else from the defense?

12 MR. LAWSON: No, Your Honor.

13 MR. BASS: No, Your Honor.

14 THE COURT: Very well. Thank you.

15 All other dates remain in effect. We have a meeting  
16 in April and you can give me an update then.

17 Thank you.

18 (Matter concluded.)

19

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\* \* \* \* \*

21

22 I certify that the foregoing is a correct transcript from the  
23 record of proceedings in the above-entitled matter.

24 /s/ Charleane M. Heading

February 23, 2017

25 \_\_\_\_\_  
CHARLEANE M. HEADING

\_\_\_\_\_  
DATE