

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

_____)	
UNITED STATES OF AMERICA,)	
)	
<i>Plaintiff,</i>)	
v.)	No. 88 Civ. 4486 (LAP)
)	
INTERNATIONAL BROTHERHOOD OF)	
TEAMSTERS, <i>et al.,</i>)	
)	
<i>Defendants.</i>)	
_____)	

**JOINT MEMORANDUM IN SUPPORT OF APPROVAL OF THE
FINAL AGREEMENT AND ORDER AND STIPULATION FOR DISMISSAL**

BANCROFT PLLC

VIET D. DINH
PAUL D. CLEMENT
CANDICE C. WONG
1919 M Street, N.W., Suite 470
Washington, D.C. 20036
(202) 234-0090

INTERNATIONAL BROTHERHOOD OF TEAMSTERS

BRADLEY T. RAYMOND
GARY S. WITLEN
25 Louisiana Avenue, N.W.
Washington, D.C. 20001
(202) 624-6800

*Attorneys for the International Brotherhood
of Teamsters*

PREET BHARARA

United States Attorney for the
Southern District of New York
Attorney for the United States

TARA M. La MORTE
NEIL CORWIN
Assistant United States Attorneys
86 Chambers Street
New York, New York 10007
Tel: (212) 637-2746/2707
Fax: (212) 637-2702

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The United States of America (the “Government”) and the International Brotherhood of Teamsters (“IBT” or “Union”) (collectively, the “Parties”) respectfully submit this memorandum in support of their joint application for approval of the proposed Final Agreement and Order (hereinafter “Settlement Agreement” attached as Ex. 1 to the Notice of Motion) and Stipulation for Dismissal. After careful consideration, the Government and the IBT agree that the Settlement Agreement is fair, reasonable, and consistent with the public interest. Accordingly, the Parties respectfully urge the Court to enter the proposed Orders.

BACKGROUND

The Consent Decree

On June 28, 1988, the Government commenced this action seeking relief against the IBT, IBT’s General Executive Board, various IBT officers, the “Commission” of La Cosa Nostra, and various asserted members and associates of La Cosa Nostra. The Government brought charges seeking civil remedies under the Racketeer Influenced and Corrupt Organizations (“RICO”) Act, 18 U.S.C. § 1964. Among other things, the Government’s complaint alleged that the La Cosa Nostra defendants, aided by IBT defendants, had seized “an interest in and control of” the Union to implement an extensive “pattern of racketeering activity” that included mail fraud, embezzlement, bribery, and murder. Compl. ¶ 55. The claimed pattern of racketeering encompassed the “use of force, violence and fear to intimidate union members,” Compl. ¶¶ 72-73, and the systematic racketeering activities by which corrupt union officers engaged in “fraudulent deprivation of union members’ money and property rights,” Compl. ¶¶ 74-80.

On March 14, 1989, this Court approved a Consent Decree that resolved the Government’s claims against the IBT defendants.¹ The Consent Decree enjoined certain activity

¹ Specifically, the Consent Decree resolved the United States’ claims against the IBT and its General Executive Board, William J. McCarthy, Weldon Mathis, Joseph Trerotola, Joseph W. Morgan, Edward M. Lawson, Arnold

and instituted institutional reforms of the IBT's disciplinary and electoral processes. Among other features, the Decree:

- Permanently enjoined all IBT members, officers, employees, and agents from committing acts of racketeering activity and knowingly associating with various organized crime groups or persons otherwise enjoined from participating in union affairs;
- Provided for "one-member, one-vote" direct elections of IBT International Officers, subject to independent oversight, whereby IBT locals' rank-and-file members would elect delegates to a nominating convention, convention delegates would nominate candidates, and IBT rank-and-file members would then vote in a general election on all nominees who received 5% or more of the delegates' votes;
- Established the Court-appointed, three-member Independent Review Board ("IRB") as a permanent part of the Union's constitution to investigate and prosecute wrongdoing and oversee the IBT's implementation of disciplinary or trusteeship charges.

The Decree has been subsequently clarified and modified by agreement of the Parties and by Court order.

Progress Since Entry of the Consent Decree

The Parties agree that the circumstances have vastly changed since 1988 and, under the Consent Decree, significant progress has been made in fighting organized crime over the past quarter-century. While threats persist, the organized crime influence the Government found to have reached the highest echelons of IBT leadership in 1988 has long been expunged. The number and gravity of disciplinary offenses within the Union have substantially diminished over time. In that regard, the IRB has served as an effective disciplinary infrastructure with a

Weinmeister, Donald Peters, Walter J. Shea, Harold Friedman, Jack D. Cox, Don L. West, Michael J. Riley, Theodore Cozza and Daniel Ligurotis. (*See* Settlement Agreement, Ex. A).

demonstrable public record of punishing infractions. The electoral system that once impeded members from holding to account leaders who may have been corrupted by organized crime, under which International Officers were elected by local union delegates, has been overhauled and replaced with a system of one-member, one-vote democratic governance. Indeed, all IBT International Officers have been directly elected by rank-and-file members for the past five successive elections. As a result of the Consent Decree, there has been significant and positive change in the culture and processes of the IBT.

The Parties agree that circumstances now warrant diminishing and ultimately eliminating the Government's role in the IBT's internal disciplinary and electoral functions (except as otherwise provided in the Settlement Agreement), while ensuring that positive gains and reforms undertaken pursuant to the Consent Decree are maintained.

THE PROPOSED SETTLEMENT AGREEMENT

After extensive settlement negotiations taking place over a number of years, the Government and the IBT reached the proposed global Settlement Agreement. The Settlement Agreement is carefully calibrated to safeguard gains and reforms the IBT has made over the past 25 years while providing for the Government's relinquishment of its role in the affairs of the IBT, except as otherwise expressly provided in the Settlement Agreement. Key features of the Settlement Agreement include:

- *Dismissal.* The Parties agree that the above-captioned action shall be dismissed with prejudice, and the March 14, 1989 Consent Decree replaced and superseded, upon entry of the Settlement Agreement, subject to the terms of the Settlement Agreement. (*See* Settlement Agreement ¶ 56 & Proposed Order). The Parties also agree that the Court will

retain continuing jurisdiction to enforce the terms of the Settlement Agreement. (*See* Settlement Agreement ¶ 6 & Proposed Order).

- *Permanent Injunctions.* The Settlement Agreement retains all permanent injunctions set forth in the Consent Decree, including, but not limited to, permanently enjoining all IBT members, officers, employees, and agents from committing acts of racketeering activity and knowingly associating with various organized crime groups or persons otherwise enjoined from participating in union affairs, and interfering with the work of persons appointed to effectuate the Settlement Agreement. (*See* Settlement Agreement ¶¶ 1-5).
- *Transition Period.* Except as otherwise expressly provided in the Settlement Agreement, the Parties agree that the Government will relinquish its role in the affairs of the IBT after a transition period ending five years after entry of the Settlement Agreement by the Court (the “Transition Period”). The Government will relinquish its right under the Consent Decree to elect Department of Labor Supervision of IBT elections and its right to require the maintenance of the IRB, pursuant to the IBT’s commitment to establish and maintain effective and independent supervision of IBT elections and an effective and independent disciplinary mechanism. (*See id.* ¶ 8).
- *Union Discipline.* The IRB will continue to operate for one year following entry of the Settlement Agreement by the Court. (*See id.* ¶ 24). During that time, the IBT will establish an effective and independent disciplinary enforcement mechanism, comprised of one Independent Investigations Officer and one Independent Review Officer (collectively, the “Independent Disciplinary Officers”), with ultimate authority to discipline IBT members and require compliance with the IBT Constitution and rules. (*Id.* ¶¶ 25-26; *see also id.* ¶¶ 31-36). Generally, the Settlement Agreement authorizes the IBT Disciplinary Officers to exercise

such investigative and disciplinary authority as previously exercised by the IRB, as well as the authority that the General President, General Secretary-Treasurer, and General Executive Board are authorized and empowered to exercise pursuant to the IBT Constitution, as well as any and all applicable provisions of law. (*Id.* ¶ 30). The IBT's independent disciplinary enforcement mechanism will take effect one year following entry of the Settlement Agreement by the Court. (*Id.* ¶ 27). During the Transition Period, the Independent Disciplinary Officers shall be selected jointly by the Government and the IBT. (*Id.* ¶ 28). After the Transition Period, the Independent Disciplinary Officers shall be appointed by the IBT, on notice to the Government, in accordance with the qualifications set forth in the IBT Constitution and Settlement Agreement. (*Id.*).

- *Disciplinary Rules.* The Settlement Agreement sets forth the investigative and disciplinary authorities of the Independent Disciplinary Officers and incorporates a set of Disciplinary Rules, which further details those authorities and sets forth rules governing the conduct of hearings occurring before the Independent Review Officer. (*See id.* ¶¶ 30, 35, 39 & Ex. D). During the Transition Period, the IBT will require written consent of the Government to make material changes to the Disciplinary Rules. (*Id.* ¶ 40). After the Transition Period, upon advance written notice to the Government, the IBT may make material changes to the Disciplinary Rules without written consent of the Government, subject to the Government's right to apply to the Court to disapprove a change if it shows, by a preponderance of the evidence, that the change is inconsistent with the terms and objectives of the Settlement Agreement or otherwise threatens to undermine the independence or effectiveness of the independent disciplinary enforcement mechanism. (*Id.*).

- *Reporting of Disciplinary Matters.* Throughout the Independent Disciplinary Officers' first five-year terms of office, the IBT must provide the Government with copies of all written reports issued by the Independent Investigations Officer and all decisions issued by the Independent Review Officer, as well as notice of any lawsuit by any person or entity that challenges or seeks review of union discipline imposed, recommended or approved by the IBT Disciplinary Officers (as well as lawsuits challenging any IRB actions taken during the first year following entry of the Settlement Agreement by the Court). (*See id.* ¶ 37). In addition, the Settlement Agreement requires the Independent Review Officer to provide Union members with annual reports of the work of the IBT Disciplinary Officers, detailing, among other things, the disciplinary, trusteeship, compliance, and other actions taken by the IBT Disciplinary Officers during the preceding year. The IBT is obligated to provide copies of all such reports to the Government. (*See id.* ¶¶ 41-42).
- *International Elections.* The IBT will permanently retain the "one-member, one-vote" direct elections of IBT International Officers which were adopted by the IBT at the 2001 IBT Convention, as well as certain other structural electoral reforms implemented by the Consent Decree and enshrined in the 2011 IBT Constitution. (*Id.* ¶ 10). All elections shall be supervised by an Independent Election Supervisor appointed by the IBT, with the IBT bearing the costs of independent supervision. (*Id.* ¶¶ 12-14).
- *Election Rules.* All elections shall be conducted pursuant to Election Rules designed to ensure fair, free, and democratic elections. (*See id.* ¶ 16). During the Transition Period, no material changes to the 2011 Election Rules may be made unless proposed by the Independent Election Supervisor with the written consent of the Government and the IBT. (*Id.* ¶ 19). After the Transition Period, material changes may be made by the IBT, on notice

to the Government and with the approval of the Independent Election Supervisor, if consistent with federal law, the IBT Constitution, and the Settlement Agreement. (*Id.* ¶ 20).

The authority to interpret and enforce the Election Rules lies at all times with the Independent Election Supervisor. (*Id.* ¶ 18).

- *Nomination Threshold.* For the 2016 and 2021 IBT International Officer elections, the IBT will maintain a maximum nomination threshold of 5%, whereby nominees with 5% of delegate votes qualify as general election candidates. (*Id.* ¶ 11). After the 2021 election, the IBT's democratically elected delegates or membership may change the nomination threshold, subject to the Government's right to apply to the Court to nullify any such change if it shows, by a preponderance of the evidence, that the proposed change to the nominating threshold will prevent the election system from continuing to function or will cause it to function ineffectively or without adequate independence; or that the amendment(s) will deprive members of their reasonable opportunity to nominate candidates, hold office, vote for and otherwise support candidates of their choice. (*Id.*).
- *Campaign Materials.* The IBT will provide, through conforming Election Rules, for the distribution of one pre-election, direct mailing of candidate materials to IBT members not less than one week prior to the date scheduled for the mailing of ballots, in addition to four pre-election *Teamsters* Magazines distributing candidate materials. The IBT shall bear the costs of the mailing. (*Id.* ¶ 19).
- *Electronic Media.* The IBT will enhance the availability of electronic media resources for use by candidates to communicate with IBT members, by taking measures to enhance a database of member email addresses and promote awareness of candidate materials through new media properties. (*See id.* & Ex. C).

- *Reporting of Election Matters.* Following certification of the results of each IBT election conducted after the entry of the Settlement Agreement by the Court, the IBT must provide to the Union membership a report by the Independent Election Supervisor, which shall report in detail on the results of the election (including the statistics reflecting voter turnout and the number of contested delegate elections), assess the successes and shortcomings of the election process, determine any positive and negative trends in comparison to prior election cycles, and recommend changes to the election rules to address any negative trends and enhance the democratic process. (*See id.* ¶ 22). The IBT is also obligated to provide copies of all such reports to the Government. (*Id.*). In addition, at all times, the Independent Election Supervisor has the right to communicate with the membership concerning the IBT international election, including, for example, posting the election rules, any decisions on disputed matters, election results and logistical information. (*Id.*).

ARGUMENT

The Settlement Agreement Should Be Approved

There is a “strong judicial policy in favor of settlements.” *McReynolds v. Richards-Cantave*, 588 F.3d 790, 803 (2d Cir. 2009) (internal quotation marks omitted); *United States v. Hooker Chemical & Plastics Corp.*, 776 F.2d 410, 411 (2d Cir. 1985); *Patterson v. Newspaper and Mail Deliverers’ Union of N.Y. and Vicinity*, 514 F.2d 767, 771 (2d Cir. 1975). One reason for that policy is to avoid needless and costly litigation, thus promoting both “financial and judicial economy.” *Bano v. Union Carbide Corp.*, 273 F.3d 120, 129-30 (2d Cir. 2001) (internal quotation marks omitted); *Janneh v. GAF Corp.*, 887 F.2d 432, 434-35 (2d Cir. 1989) (under “strong judicial and public policies favoring out-of-court settlement . . . costs of litigation are reduced and crowded dockets are relieved”), *abrogated on other grounds*, 511 U.S. 863 (1994).

The Settlement Agreement here achieves that, avoiding substantial litigation over the ongoing viability of the Consent Decree.

The presumption in favor of settlement extends to settlements like this one, which plainly implicates a public interest. The public interest here in strong anti-corruption, anti-racketeering measures is undeniable and of paramount importance. *United States v. Int'l Bhd. of Teamsters* (“*Senese & Talerico*”), 941 F.2d 1292, 1297 (2d Cir. 1991). Indeed, the presumption in favor of settlement is particularly strong where, as here, “a government agency committed to the protection of the public interest’ has participated and endorsed the agreement.” *City of New York v. Exxon Corp.*, 697 F. Supp. 677, 692 (S.D.N.Y. 1988) (quoting *Wellman v. Dickinson*, 497 F. Supp. 824, 830 (S.D.N.Y. 1980), *aff’d*, 647 F.2d 163 (2d Cir. 1981)).

The Second Circuit recently clarified the standard for approval of settlements containing ongoing injunctive provisions, such as the one at issue here, in *U.S. S.E.C. v. Citigroup Global Markets, Inc.*, 752 F.3d 285 (2d Cir. 2014). The *Citigroup* test establishes a highly deferential approach to reviewing the Government’s substantive settlement decisions, stating that the district court should determine whether the settlement is “fair and reasonable, with the additional requirement that the ‘public interest would not be disserved,’” in the event the settlement includes injunctive relief. *Id.* at 294 (quoting *eBay, Inc. v. MercExchange*, 547 U.S. 388, 391 (2006)). Indeed, “[a]bsent a substantial basis in the record” for concluding that these elements are not satisfied, “the district court is *required* to enter the order.” *Id.* (emphasis added).

In that regard, the Circuit has emphasized four core factors that are relevant to the Court’s assessment of whether the Settlement Agreement is fair and reasonable, including (1) its “basic legality”; (2) whether its terms, “including its enforcement mechanism, are clear”; (3) whether it reflects a resolution of the actual claims in the complaint; and (4) whether it “is tainted by

improper collusion or corruption of some kind.” *Id.* at 294-295 (citations omitted). Importantly, however, the “primary focus” of the Court’s inquiry “should be on ensuring the consent decree is procedurally proper . . . taking care not to infringe on the [Government’s] discretionary authority to settle on a particular set of terms.” *Id.* at 295.

These factors are readily satisfied. First, the Court has the authority to enter the Settlement Agreement pursuant to any or all of the following: its inherent power; Federal Rule of Civil Procedure 60(b); and 18 U.S.C. § 1964. *Citigroup*, 752 F.3d at 294. Indeed, it is well established that courts possess broad equitable powers to modify consent decrees. *See Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367, 381 n.6 (1992) (“[T]he power of a court of equity to modify a decree of injunctive relief is long-established, broad, and flexible.”) (*quoting New York State Assn. for Retarded Children, Inc. v. Carey*, 706 F.2d 956, 967 (2d Cir. 1983)); *see also Brown v. Plata*, 131 S. Ct. 1910, 1946 (2011) (court “retains the authority, and the responsibility, to make further amendments to [an] existing order or any modified decree it may enter as warranted by the exercise of its sound discretion”). Second, the terms of the Parties’ agreement and its enforcement mechanism are clear. *Citigroup*, 752 F.3d at 295; *see also United States v. IBM Corp.*, 14 Civ. 936 (KMK), 2014 WL 3057960, at *3 (S.D.N.Y. July 7, 2014) (“By ‘clear,’ the Second Circuit appears to mean that decree ‘properly defines’ its key provisions.” (brackets omitted)), *order clarified*, 2014 WL 4626010 (Aug. 7, 2014). The Settlement Agreement sets forth in detail the permanent injunctions that survive dismissal of the action; the Court’s continuing authority to enforce the agreement; the terms that will permanently govern the Union’s electoral and disciplinary mechanisms; the standards by which the Government may seek further equitable relief from the Court; and the continued viability of Consent Decree precedent, among other things. Third, the Settlement Agreement reflects a resolution of the

claims in this lawsuit. *Citigroup*, 752 F.3d at 295. Indeed, by entering into the Settlement Agreement, the Parties expressly re-commit themselves to the original objectives of the Consent Decree, as well as to preserving the gains achieved by the Consent Decree and continuing to fight against criminal elements, organized crime, and corruption that prompted the Government's lawsuit and continues to threaten the Union today, all as reflected in the Settlement Agreement's permanent injunctions and provisions addressing permanent structural features of the Union's electoral and disciplinary mechanisms. Finally, the Settlement Agreement is undoubtedly the result of arms-length negotiations. Indeed, it is the product of extensive negotiations that have occurred over the course of many years, facilitated by the Court's involvement.

The Parties agree that the Settlement Agreement is comprehensive and advances their shared interest in safeguarding significant successes and reforms the IBT has undergone in the past 25 years while scaling down and ultimately eliminating the Government's role in the IBT's internal disciplinary and electoral functions, except as otherwise expressly provided in the Settlement Agreement. The terms of the proposed Settlement Agreement are fair, reasonable, and as described above, fully consistent with the public interest.

CONCLUSION

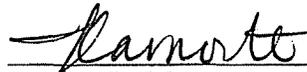
For the foregoing reasons, the Government and the IBT respectfully request that the Court approve and enter the Settlement Agreement and dismiss the above-captioned action subject to the provisions therein.

Respectfully submitted,

FOR PLAINTIFF UNITED STATES OF AMERICA

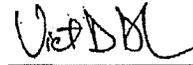
PREET BHARARA
United States Attorney for the
Southern District of New York

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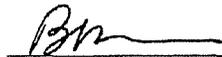


Tara M. La Morte
Neil Corwin
Assistant United States Attorneys
Tel: (212) 637-2746/2707
Fax: (212) 637-2702

FOR DEFENDANT INTERNATIONAL BROTHERHOOD OF TEAMSTERS.



Viet D. Dinh
Paul D. Clement
Candice C. Wong
BANCROFT PLLC
1919 M Street, N.W., Suite 470
Washington, D.C. 20036
(202) 234-0090



Bradley T. Raymond
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INTERNATIONAL BROTHERHOOD OF TEAMSTERS
25 Louisiana Avenue, N.W.
Washington, D.C. 20001
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