

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND

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HELEN GEMMELL; and MEA MARTINEZ,	)	)
individually and on behalf	)	)
of all others similarly situated,	)	)
	)	)
Plaintiffs,	)	)
	)	)
v.	)	C.A. No. 16-650 WES
	)	)
ERIC BEANE, in his official	)	)
Capacity as Acting Director of	)	)
the Rhode Island Department of	)	)
Human Services,	)	)
	)	)
Defendant.	)	)
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**ORDER APPOINTING SPECIAL MASTER**

WHEREAS, Plaintiffs allege that Defendant has failed and continues to fail to timely process applications for Supplemental Nutrition Assistance Program ("SNAP" or "food stamps") benefits, as required by federal law;

WHEREAS, on February 28, 2017, this Court approved the parties' Stipulation and Order of Settlement ("Order") obligating Defendant to comply with the timely processing requirements for food stamps, as federal law required, and to accurately report this processing to Plaintiffs;

WHEREAS, Plaintiffs requested, by letter dated September 29, 2017, a conference with the parties and the Court to discuss scheduling of Plaintiffs' planned motion for enforcement of the Order, asserting that Defendant has failed to meet any of the food

stamp processing performance benchmarks set forth in the Order, and has additionally advised Plaintiffs of an inability to provide the accurate reporting required by the Order as of September 15, 2017, due to alleged system errors;

WHEREAS, Defendant does not dispute Plaintiffs' assertions of failure to meet any of the food stamp processing performance benchmarks set forth in the Order, nor does Defendant dispute the failure to provide the performance reporting required by the Order as of September 15, 2017, due to purported system errors;

WHEREAS, Defendant has not provided assurances of the ability to timely process food stamp applications under the terms of the Order, by a date certain;

WHEREAS, this Court requires prompt compliance with the law and the Order;

WHEREAS, the Court has the inherent authority and discretion pursuant to Rule 53 of the Federal Rules of Civil Procedure to appoint a Special Master to address post-trial matters that cannot be effectively and timely addressed by an available District Judge or Magistrate Judge at this time;

WHEREAS, the issues and processes involved in formulating and implementing an effective and sustainable plan to bring Defendant into compliance with the Order are complex and specialized, precluding a Magistrate Judge's ability to resolve the matter expeditiously; and

This Court has determined that the appointment of a Special Master is necessary to enforce the terms and obligations set forth in the Order, by bringing Defendant into compliance with it and ensuring the timely processing of SNAP applications.

IT IS HEREBY ORDERED THAT:

**I. Appointment and No Grounds for Disqualification**

The Court has selected Deming Sherman, Esq. to serve as Special Master in this matter.<sup>1</sup>

This Order effectuates the Special Master's appointment. Having found that there are no disqualification grounds pursuant to Rule 53(b)(2), and that Mr. Sherman's affidavit was filed in compliance therewith, the Special Master shall proceed with all reasonable diligence to complete the duties assigned by this Order in the most expeditious and cost-efficient manner possible.

During the term of the Special Master's appointment, the Special Master and the parties shall notify this Court immediately if they become aware of any potential disqualifying grounds.

Pursuant to Rule 53(a)(3), the Court is to consider the fairness of imposing the likely expense of the Special Master on

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<sup>1</sup> On October 27, 2017, Defendant filed a letter (ECF No. 22-2) commenting on the potential selection of Mr. Sherman as Special Master. In it, Defendant suggests that there may be grounds to question Mr. Sherman's appearance of impartiality. Upon reviewing Defendant's letter, Mr. Sherman's Rule 53(a) affidavit (ECF No. 22-1), Plaintiffs' October 30, 2017 letter in response (ECF No. 22-3), and after hearing from the parties in open court, the Court finds no basis to disqualify Mr. Sherman.

Defendant and protect against unreasonable expense or delay. To this end, the Special Master shall provide the Court and the parties a proposed hourly compensation rate consistent with Rhode Island rates, and within twenty (20) days of appointment, an estimated budget including, projected time required, out-of-pocket expenses, anticipated resources, etc. The Special Master should not charge for travel time. Within five (5) days of submission of the estimated budget, the parties may object or comment. The Court will consider the hourly rate, proposed budget, and any objections; thereafter, the Court shall issue an order approving the proposed compensation and budget, subject to any required modification necessary to protect against unreasonable expense or delay as Rule 53(a)(3) requires.

## **II. Accountability to the Court**

The Special Master will be accountable only to the Court and will not be supervised by Plaintiffs or Defendant. The Special Master will be independent from Plaintiffs and Defendant. In the course of his work, the Special Master may consult with Plaintiffs, the Secretary of the Executive Office of Health and Human Services, Director of the Department of Human Services, their employees, and any consultant hired by Defendant. Counsel is permitted, but is not required, to be present for such meetings.

### **III. Scope**

The Special Master's primary objective is to develop and recommend a corrective action plan to ensure that Defendant: (1) timely processes SNAP applications in accordance with the percentages set forth in the Order and (2) provides accurate and complete monthly reports as set forth in the Order.

### **IV. Authority, Duties and Term**

#### **A. Authority and Duties**

Pursuant to Rule 53(c), the Special Master may:

1. Order/subpoena document production from the parties.

The parties reserve the right to object to the production of documents and/or electronically stored information ("ESI") on privilege or other grounds articulated under Rules 26 and 34 of the Federal Rules of Civil Procedure; such objections shall be considered by the District Court Judge or Magistrate Judge. Any order shall be appealable in accordance with the Federal Rules of Civil Procedure. Any documents produced shall be produced only to the Special Master. The Special Master shall keep all documents produced pursuant to this Order confidential unless otherwise ordered by the Court, except that the Defendant's monthly reports as set forth in the Order or reports of the Special Master shall be public. The parties do not waive any privilege or

confidentiality asserted in this or other litigation by producing documents to the Special Master.

2. Issue subpoenas to nonparties to compel the production of documents or ESI and/or their appearance to give sworn testimony at a deposition or hearing. Rule 45 of the Federal Rules of Civil Procedure shall govern subpoenas issued to nonparties.
3. Communicate *ex parte* with the Court or any party in accordance with this Order and Rule 53(b)(2)(B).
4. Issue orders, reports, and/or recommendations concerning why Defendant has failed to comply with the Order, and what steps Defendant must take to ensure compliance. Such orders, reports, and/or recommendations shall be docketed pursuant to Rule 53(d)-(e).

(a) The parties shall have five (5) days to submit to the Court any comments or objections to any report and/or recommendation of the Special Master that includes an order granting or denying relief. Responses to comments or objections may be filed within three (3) days and replies may be filed within two (2) days. The record before the Special Master in connection with reports and recommendations including orders granting or denying relief shall be included in the record of the Court.

(b) Pursuant to Rule 53(f)(1), in acting on an order, report, or recommendation of the Special Master, the Court shall afford the parties an opportunity to present their positions and may adopt or affirm; modify; wholly or partly reject; resubmit to the Special Master with instructions; or make any further orders it deems appropriate.

5. Retain the services of clerical staff, consultants, and experts to assist the Special Master in his work.

(a) The Special Master shall inform the parties of his intention to obtain such services, specifying:

(1) The identity of the person who will provide such services;

(2) The nature of the services; and

(3) The anticipated costs, including but not limited to the hourly rate, budget, and expected scope of work.

(b) The parties shall have five (5) days to object to the retention of any such services. If neither side objects, the Special Master may retain the services in question.

(c) If either side objects but the Special Master cannot resolve the objection, the objecting party may present its objection to the Court no later than five

- (5) days after the Special Master's final decision on the retention of services.
6. Conduct meetings with counsel and parties jointly or *ex parte*. Generally, the Special Master will notify the other party regarding expected *ex parte* communications.
  7. Arrange with the Court for use of facilities, space, document storage facilities, and other items necessary to perform the duties of Special Master.
  8. Within thirty (30) days following his appointment, issue a report to the Court with copies to the parties identifying the status of his work.
  9. Maintain orderly files consisting of all documents submitted to him by the parties and of any of his written orders, findings, and/or recommendations. The files of the Special Master will be confidential in this and any other proceeding. The Special Master may negotiate and enter protective orders as needed to preserve privileged and confidential information.
  10. Perform such additional duties with respect to this case as the Court may direct.

B. Term

The Special Master's term of service will end when the Court is satisfied that Defendant has fully complied with

all Court orders and that the Special Master's services are no longer needed.

**V. Compensation**

Subject to this Court's finding of fairness pursuant to Rule 53(a)(3), Defendant shall bear any costs associated with or services retained by the Special Master.

A. The Special Master shall provide monthly invoices to Defendant, with copies to Plaintiffs, which must be paid in full within thirty (30) days unless there is an objection.

B. Objections to monthly statements must be made within five (5) business days of their issuance and shall be resolved by the Court.

**VI. Amendments**

Pursuant to Rule 53(b)(4), this Order may be amended at any time after notice to the parties and an opportunity to be heard.

**VII. Rights**

Nothing in this Order of Reference shall be construed as abrogating either of the parties' appellate rights.

IT IS SO ORDERED.



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William E. Smith  
Chief Judge  
Date: November 2, 2017