

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 76-6068-CIV-MIDDLEBROOKS

OLLIE CARRUTHERS, et al.,

Plaintiffs,

v.

SCOTT ISRAEL, et al.,

Defendants.

JOINT MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT AGREEMENT

I. INTRODUCTION

Ollie Carruthers, et al., (the “Plaintiffs”) and Scott Israel, the Sheriff of Broward County, Florida (the “Defendant”) jointly move the Court pursuant to Rule 23(e) of the Federal Rules of Civil Procedure for an Order: i) granting preliminary approval of the Settlement Agreement (appended as Exhibit D) entered into by the Plaintiffs and the Defendant (collectively the “Settling Parties”); and ii) approving the manner and form of giving settlement notice to the class members.

This motion is made on the grounds that i) the settlement is in the best interests of class members and the terms of the settlement fall within the range of reasonableness and possible approval; and ii) the proposed manner and form of providing notice of settlement to class members would fairly apprise class members of the settlement terms.

II. PROCEDURAL HISTORY

Broward County (the “County”) and the Settling Parties to this conditions of confinement class action entered into the Stipulation for Entry of Consent Decree on July 27, 1994 (the “Consent Decree”), which was then ratified and confirmed by Judge William Hoeveler on January 31, 1995. On June 7, 1995, Judge Hoeveler issued an amended Order incorporating the settlement agreement of the Settling Parties.

The Consent Decree acknowledges that conditions of confinement had been determined to be unconstitutional and provides that all Broward County correctional facilities are operated and maintained, at a minimum, by applying the most stringent provisions of applicable federal and Florida law and the standards set forth in Chapter 33-8 of the Florida Administrative Code, and applicable professional standards. Consent Decree at pg. 2, ¶ 4; pg. 4, at ¶ 10. The Consent Decree establishes a jail population cap and compliance monitoring and also specifically provides, *inter alia*, that use of force must be used only as a last resort, that mentally ill inmates who present a threat to others or themselves shall be supervised by documented sight checks by staff at intervals not to exceed fifteen minutes, and that any inmate identified as a suicide risk shall not be housed in a single occupancy cell unless observed continuously. *Id.* at pg. 6, ¶¶ 3 – 4.

In September 1996, the Sheriff and the County moved to terminate the Consent Decree. The Court, pursuant to Stipulation of the parties and Federal Rule of Evidence 706, on November 20, 2001, appointed Steven J. Martin as an expert witness to conduct inquiry into the conditions at the Broward County jail facilities. Pursuant to that Order, Mr. Martin, with the

retained assistance of Steven S. Spencer, M.D., and Jeffrey L. Metzner, M.D., conducted three rounds of inspections through 2004 and issued reports of their findings.

In 2004 the Settling Parties and the County entered into two stipulations for settlement (the “Stipulations”). *See* De. 886-1, 2 Exhibits A and B to Defendants’ Joint Response to Court Order Requiring Response (the “Response”) (DE 886). The Stipulations significantly narrowed the scope of the case, dismissing the medical claims altogether, and narrowing the scope of continuing monitoring, inspection, and judicial oversight of jail operations and conditions to those relating to mental health services, inmate rules and discipline, inmate safety and security, facility capacity, and inmate access to religious publications and services and access to legal materials. The Stipulations also stopped class counsel from engaging in formal discovery. *See, e.g.*, Second Stipulation for Settlement (DE 886-2) at 7. Under the Stipulations, Mr. Martin and Dr. Metzner produced additional reports on conditions and operations at the Broward County Jail (“the Jail”) through mid-2006.

In 2010, the Jail experienced a significant increase in the prisoner population that resulted in substantial overcrowding affecting all Jail facilities. In October 2010, the Court, pursuant to Federal Rule of Evidence 706, appointed James Austin, Ph.D., as the Court’s population management expert. (DE 875). Dr. Austin was charged with producing a publicly filed report that:

- (1) identifies and analyzes the County’s criminal justice processes and policies that affect the population level at the Jail,
- (2) develops strategies and remedies to address those processes and policies so that the population level at the Jail can be reduced without significantly affecting public safety,
- (3) includes a baseline ten-year jail population forecast that would advise the County on the impact of current criminal justice trends, and

(4) identifies realistic options that have been successfully implemented in other jurisdictions that will reduce the needs for current and future beds—especially for the pretrial felon population.

Oct. 4, 2010 Order (DE 875) at 1-2.

Dr. Austin last updated his report in October 2015. (DE 906-1 at 3-31).

In November 2014, Greg Jones and Renand Fleuridor, detainees in the Jail, separately filed *pro se* motions in this case asserting violations of the Consent Decree (the “Motions”) (DEs 879, 880, 882, 883, 884). By Order dated December 16, 2014, the Court required the Sheriff and the County to respond to the Motions. On January 20, 2015, the Sheriff and the County filed their Response. On May 4, 2015, a Joint Status Report responding to Fleuridor and Jones’ complaints was filed by all parties in response to an April 17, 2015 Order (DE 892) requiring an update on efforts to resolve the claims of noncompliance raised by the Motions.

On August 5, 2015, the Court issued an Order *sua sponte*, requiring the parties to show cause as to why the Consent Decree should not be dissolved or modified. On March 31, 2016, after receiving responses to the Order from the parties, the Court held a hearing on whether to dissolve the Consent Decree. Subsequent to the hearing, the Court issued an Order scheduling an evidentiary hearing for October 10, 2016. The Court also issued an Order requiring the parties to file Joint Status Reports by June 22, 2016, and September 26, 2016. On June 22, 2016, the Settling Parties filed a Joint Status Report. On July 2, 2016 the County filed its Corrected Status Report.

The parties subsequently reached another settlement in 2016 that was approved and entered by the Court on December 1, 2016. (DE 982). Under that settlement, Kathryn Burns,

M.D., MPH, and Michael A. Berg were appointed as joint experts in the fields of mental health, and jail conditions, respectively. Each expert has produced an initial report documenting their findings as to current and ongoing violations of federal law in their respective subject areas. As a result of further negotiations, the conditions claims other than mental health care were dismissed from this case by stipulation. (DE 997). Following the receipt of Dr. Burns' draft report, the parties entered into negotiations, and have resolved the mental health claims by the terms of this Settlement, for which the Settling Parties ask the Court for preliminary approval. Pursuant to the Court's June 25, 2018 Order (DE 1042), the parties have filed Dr. Burns' report with this Motion. *See* Ex. A-C, filed herewith.

III. SUMMARY OF SETTLEMENT TERMS

This Settlement Agreement resolves the final area of dispute between the Settling Parties in this case such that an evidentiary hearing will be unnecessary. *Cason v. Seckinger*, 231 F.3d 777, 785 n.8 (11th Cir. 2000) (explaining that to satisfy the PLRA, district courts need not "conduct an evidentiary hearing about or enter particularized findings concerning any facts or factors about which there is not dispute."). The Settlement addresses Plaintiffs' contention of inadequate mental health care and facilities and provides a process for the evaluation of the jail conditions at issue by a highly qualified expert jointly designated by the parties.

The Agreement details changes to and/or maintenance of the Jail's policies and procedures to provide prisoners with quality and accessible mental health care. It includes provisions to ensure that intake screening and assessments are timely and effective at identifying mental health conditions. The Settlement also requires that prisoners placed on the mental health

caseload be given individualized treatment plans, and it establishes procedures for diverting prisoners to a hospital or psychiatric facility when more specific treatment is needed. *See* Ex. D.

A number of provisions in the Settlement Agreement relate to ensuring that all prisoners have timely access to clinically indicated mental health care. For example, the Jail will implement an electronic medical record in order to better track and provide for prisoners in need of mental health care. The Jail will also create systems so that all prisoners whose mental health needs require assessment or treatment are referred to providers and timely seen according to clinical need. *See id.*

With regard to mental health assessments, the Jail will ensure that these assessments occur outside of prisoners' cells in order to ensure privacy. If a prisoner cannot be seen outside of his or her cell, the Jail and current mental health vendor must each document a legitimate safety, security, or treatment rationale. The Agreement makes clear that being housed in a segregation unit or in the closed units of the Mental Health Unit is insufficient grounds to deny a face-to-face assessment outside of the prisoner's cell. The Agreement sets out criteria to ensure that the Jail provides prisoners with timely and appropriate psychotropic medications consistent with their clinical needs and all necessary monitoring to determine efficacy and adverse side effects. The Agreement explains when and how often prisoners reporting psychotropic medication use ought to be monitored and treated. *See id.*

The Settlement Agreement addresses the Jail's policies related to discipline, segregation, and the use of force. It ensures that mentally ill prisoners are not punished for behavior that is a product of their illness. The Agreement requires the Jail to revise policies related to placement in segregation and requires that any prisoner admitted to a segregation unit be assessed within 24

hours of placement. When involuntary treatment (use of restraints, use of seclusion, and forced medication) must be administered, this Agreement stipulates that such treatment will only be provided to prisoners who pose a danger to themselves or others. Such involuntary treatment will only be given after all reasonable alternatives have failed, and it will be under conditions that ensure the prisoners' health and safety. *See id.*

This Agreement contains provisions to ensure that the Jail maintains a sufficient number of custodial and Mental Health Staff to meet the mental health needs of prisoners. For example, within 180 days, the Jail will conduct a staffing analysis to identify the minimum number of Mental Health Staff needed to provide services to prisoners consistent with this Agreement. The Jail will maintain a Quality Improvement (QI) system, which will be expanded to identify and correct deficiencies in mental health services; there will also be periodic QI studies to assess compliance with all policies related to mental health services at the Jail. *See id.*

Under the Settlement Agreement, Dr. Burns will continue to serve as the joint expert to assess compliance with the substantive terms of the Agreement. The expert will issue reports at six month intervals determining whether the Jail has reached substantial compliance with each of the provisions. The Settlement Agreement provides that the Agreement will be fully implemented within 180 days from approval and entry by the Court. With the Court's approval, this Settlement will result in termination of the Consent Decree and a dismissal of this case when the Jail has maintained substantial compliance with each of the substantive provisions of the Agreement for one year. *See id.*

The Settling Parties believe that this Settlement is fair, reasonable, and adequate to merit the Court's preliminary approval. The parties further stipulate that this Agreement complies in all

respects with the Prison Litigation Reform Act, 18 U.S.C. § 3626(a), that the relief set forth is narrowly drawn, extends no further than necessary to correct violations of federal rights addressed herein, is the least intrusive means necessary to correct these violations, and will not have an adverse impact on public safety or the operation of a criminal justice system.

IV. THE SETTLEMENT MERITS THE COURT'S PRELIMINARY APPROVAL

Judicial policy encourages voluntary settlement, particularly in complex class action litigation. *Lipuma v. Am. Express Co.*, 406 F. Supp. 2d 1298, 1324 (S.D. Fla. 2005). Litigating a class action through trial is a time-consuming, expensive process. *Morgan v. Pub. Storage*, 301 F. Supp. 3d 1237, 1248 (S.D. Fla. 2016) (finding that the complexity, likely duration, and expense of a class action trial weighed in favor of settlement approval). Voluntary settlement conserves judicial resources, reduces the financial burdens borne by taxpayers and the parties, and lessens the risk that claimants might recover nothing. *Lipuma*, 406 F. Supp. 2d 1298 at 1323-24; *see also Behrens v. Wometco Enterprises, Inc.*, 118 F.R.D. 534, 538 (S.D. Fla. 1988) (noting that “[s]ettlements of complex cases contribute greatly to the efficient utilization of scarce judicial resources.”). Determining the fairness of a settlement is within the sole discretion of the Court, which should be guided by “the strong judicial policy favoring settlement as well as by the realization that compromise is the essence of settlement.” *Perez v. Asurion Corp.*, 501 F. Supp. 2d 1360, 1379 (S.D. Fla. 2007) (quoting *Bennett v. Behring Corp.*, 737 F.2d 982, 986 (11th Cir.1984)). The Settlement proposed herein presents a fair resolution of the matter and is worthy of the Court’s preliminary approval.

A. The Settlement Satisfies the Standard for Preliminary Approval of Settlement Agreements.

In assessing whether a settlement qualifies for preliminary approval, the Court must find that the settlement agreement falls “‘within the ‘range of reasonableness.’” *In re Checking Account Overdraft Litig.*, 275 F.R.D. 654, 661 (S.D. Fla. 2011) (quoting NEWBERG ON CLASS ACTIONS § 11.26 (4th ed.)). At the preliminary approval stage, the Court also must determine whether the proposed settlement actually “falls within the range of possible approval” and whether it is reasonable to issue notice to the class members of the settlement’s terms. *Figueroa v. Sharper Image Corp.*, 517 F. Supp. 2d 1292, 1298 (S.D. Fla. 2007).

A settlement that results from good-faith, arms-length negotiations between informed counsel should be deemed fair, reasonable, and worthy of preliminary approval. *In re Checking Account Overdraft Litig.*, 275 F.R.D. 654 at 661-62. A settlement that is the result of such negotiations is presumed to fall “within the range of reasonableness and possible judicial approval” for the purposes of preliminary approval. *Id.* at 662.

Here, the Settlement easily passes this standard. It resolves Plaintiffs’ mental health claims by requiring Defendants to implement substantive remedies that address the entire continuum of mental health services at the Jail. Filed along with this Settlement is Dr. Burns’ initial report on mental health services at the Jail. *See* Ex. A-C, filed herewith. The Settlement addresses each area where Dr. Burns has found deficiencies, and it installs a robust monitoring and enforcement mechanism that can ensure compliance.

B. The Proposed Settlement Resulted from Arms-Length Negotiations and Is Not the Product of Collusion.

The proposed settlement was the product of arms-length negotiations between informed and experienced counsel on both sides. The parties also had the benefit of Dr. Burns' draft report. The Plaintiffs engaged in substantial discovery, including both site visits and extensive record reviews. Both Settling Parties communicated regularly in a good-faith effort to resolve the issues in contention, while striving to produce an outcome that was reasonable and fair to their respective clients. The Settlement went through a number of revisions to reflect the agreements that the Settling Parties reached as they negotiated. The Agreement to narrow the claims in contention also reflects the good-faith attempts on the part of both Settling Parties to reach a settlement.

The Settling Parties participated in several settlement teleconferences and exchanged multiple revisions to the settlement agreement, which culminated in the proposed settlement agreement executed on August 9, 2018.

C. The Proposed Settlement Falls Within the Range of Possible Approval.

The primary duty of the Court in deciding whether to approve a settlement in a class action case is to protect the rights of absent class members. *See United States v. City of Miami*, 614 F.2d 1322, 1331 (11th Cir. 1980) ("the court's role as a fiduciary serving as guardian for the unrepresented class members has been held to stem directly from the language of [Rule 23].")

The proposed settlement represents a significant achievement for the Plaintiff class, as it enables an expert with impeccable credentials to assess conditions and practices at the Jail and to issue reports at six month intervals determining whether the Jail has reached substantial compliance with each of the substantive provisions of the Agreement. The expert is highly experienced in

devising fair and appropriate remedies as a court appointed and neutral monitor. The settlement ensures the protection of the Plaintiff class's federal rights while providing a clear process and timetable for the termination of the Consent Decree.

If the Settling Parties did not reach settlement, they would need to continue the discovery process (including additional discovery-related motions) and prepare for trial. Proceeding through discovery and pretrial motions, trial, and appeal would impose risks and costs. More importantly, it would substantially delay the implementation of mutually agreed remedies. Given the relief achieved and the risks involved in further litigation, the negotiated settlement represents a fundamentally "fair, reasonable, and adequate" resolution of the disputed issues and should be preliminarily approved. *See* Fed. R. Civ. Pro. 23(e)(2).

V. THE PROPOSED NOTICE TO THE CLASS MEMBERS IS ADEQUATE

Under Federal Rule of Civil Procedure 23(e)(1), class members must receive notice of any proposed settlement before the Court approves a final settlement. The proposed written notices (in English and Spanish) of settlement are attached as Exhibit E. The Settling Parties have agreed upon the contents of the notice to the class, the manner of distribution, and the timeline for objections, if any.

The terms of the notice satisfy Rule 23(e)(1)'s requirements for notice of class settlements by apprising class members of the pendency of the action, describing the settlement agreement in a manner that allows class members to make their own determination regarding whether the settlement serves their interests, and affording the class members the opportunity to present objections. *See Twigg v. Sears, Roebuck & Co.*, 153 F.3d 1222, 1227 (11th Cir. 1988); *see also Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) (requiring that –

for the purposes of due process – notice be “reasonably calculated, under all the circumstances, to apprise interested Settling Parties of the pendency of the action and afford them an opportunity to present their objections.”).

The notice of the proposed settlement, in both English and Spanish, will be posted prominently on bulletin boards in each unit of the facilities within the Jail, including the Main Jail, the Joseph V. Conte Facility, the North Broward Bureau, the Paul Rein Detention Facility, and the Central Intake Bureau, and will be given to prisoners who are on segregation/lockdown status. Class members will be given thirty days to object to the proposed settlement by voice mail to Plaintiffs’ counsel, whose name and telephone number have been posted throughout the Jail for more than twenty years, or by written notice to Plaintiff’s counsel or the Court. Posting copies of the notice in prison or jail facilities is a routine manner of satisfying notice distribution requirements where the class comprises present and future prison or jail inmates. *See, e.g., Laube v. Campbell*, 333 F. Supp. 2d 1234, 1240-41 (M.D. Ala. 2004) (approving notice posted in prison facilities subject to the settlement agreement as adequate under Rule 23(e)(1)); *Gaddis v. Campbell*, 301 F. Supp. 2d 1310, 1314 (M.D. Ala. 2004) (approving notice “conspicuously posted on community bulletin boards in every dormitory in every Corrections Department prison, as well as in the law libraries and dining areas of each facility...[and] served individually on each inmate in segregation); *Raines v. Florida*, 987 F. Supp. 1416, 1422 (N.D. Fla. 1997) (ordering notice to be posted “in English and Spanish in conspicuous locations easily accessible by inmates at each facility operated by the Florida Department of Corrections or by any private contractor” and to be distributed to “[i]nmates in any confinement status, including but not limited to close management, administrative confinement, and disciplinary confinement...”).

Such notice constitutes valid, due, and sufficient notice to the class, constitutes the best notice practicable under the circumstances, and complies fully with the requirements of Rule 23 of the Federal Rules of Civil Procedure. The proposed forms of notice apprise class members in a fair and neutral way of the existence of the settlement with the Defendant and of their rights with respect to the settlement. The Settling Parties respectfully submit that these forms of notice satisfy the required standards for notices of class settlements.

VI. CONCLUSION

For the foregoing reasons, the Settling Parties respectfully request that their motion be granted and that this Court issue an Order: i) granting preliminary approval of the Settlement Agreement entered into by the Settling Parties; and ii) approving the manner and forms of giving notice of the settlement to the class members.

Dated: August 9, 2018

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing, along with their appended exhibits, and proposed Order, were served by CM/ECF on August 9, 2018 on all counsel or parties of record on the Service List below.

/s/ Nancy Abudu

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EXHIBIT D

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 76-6068-CIV-MIDDLEBROOKS

OLLIE CARRUTHERS, *et al.*,

Plaintiffs,

v.

SCOTT ISRAEL, *et al.*,

Defendants.

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into between the Class and Sheriff of Broward County, Florida:

I. INTRODUCTION

1. The parties to this conditions of confinement class action entered into the Stipulation for Entry of Consent Decree on July 27, 1994 (the "Consent Decree"), which was then ratified and confirmed by Judge Hoeveler on January 31, 1995. On June 7, 1995, Judge Hoeveler issued an amended Order incorporating the settlement agreement of the parties.

2. Defendants' Joint Motion to Termination/Dismiss Consent Decree was filed on September 12, 1996, predicated upon the Prison Litigation Reform Act (PLRA), 18 U.S.C. §3626, et. seq.

3. The Court, pursuant to the parties' stipulation and Fed. R. Evid. 706, on November 20, 2001 appointed Steven Martin as an expert witness to conduct inquiry into whether the Broward County jail facilities are being operated in a manner consistent with the requirements of the United States Constitution and federal law. Pursuant to that Order, Mr. Martin, with the

retained assistance of Steven S. Spencer, M.D. and Jeffrey L. Metzner, M.D., (herein collectively "the Court's experts") conducted on-site inspections of the various jail facilities operated by Broward through 2006.

4. As a result of the Court's experts' work, the parties substantially narrowed the scope of this case, culminating in two stipulations for settlement (the "Stipulations"). *See* Exhibits A and B to Defendants Joint Response to Court Order Requiring Response (the "Response") (DE 886).

5. The parties subsequently reached another settlement in 2016 that was approved and entered by the Court on December 1, 2016. (DE 982). Under the settlement, Kathryn Burns, M.D., MPH, and Michael A. Berg were appointed as joint experts in the fields of mental health, and jail conditions, respectively. Each expert has produced an initial report documented their findings as to current and ongoing violations of federal law in their respective subject areas. As a result of further negotiations, the conditions claims other than mental health care were dismissed from this case by stipulation. (DE 997). Following the receipt of Dr. Burns' draft report, the parties entered into negotiations, and have resolved the mental health claims by the terms of this Settlement.

6. The Class and Sheriff stipulate that this agreement is fair, reasonable, and adequate to protect their interests. The parties further stipulate that this Agreement complies in all respects with the Prison Litigation Reform Act, 18 U.S.C. § 3626(a), that the relief set forth herein is narrowly drawn, extends no further than necessary correct violations of federal rights addressed herein, is the least intrusive means necessary to correct these violations, and will not have an adverse impact on public safety or the operation of a criminal justice system. Defendant is entering into this Settlement Agreement to avoid the cost, expenses, and uncertainties of litigation. Neither this Agreement, nor any action taken by Defendant pursuant to it, shall in any way be construed

as an endorsement or acceptance of any of statements or findings in the expert's reports, nor shall it be construed as an admission by Defendant of any liability, wrongdoing, or violation of law, regulation, contract or policy in any other claim, action, or lawsuit against the Defendant.

II. PRELIMINARY AND FINAL APPROVAL OF SETTLEMENT

7. The settling parties shall jointly submit this Settlement Agreement to the Court for Preliminary Approval and with a proposed order for Preliminary Approval providing a schedule for notice, proposed notices (in English and Spanish) of Preliminary Approval, objection period, and fairness hearing, and proposed notice of the final remedy for posting upon Final Approval under Rule 23(e) of the Federal Rules of Civil Procedure.

III. DEFINITIONS

8. "Class" and "prisoners" shall mean all persons who have been, are being, or will be confined in the Broward County corrections and rehabilitation facilities, including any facilities that may in the future confine Broward County prisoners.

9. "Sheriff" shall mean the Office of the Broward County Sheriff, Scott Israel, individually, and as Sheriff of Broward County, Florida, and any and all of his predecessors or successors in office, and any and all of his deputies, appointees, employees, or contracted entities or staff, who work at the Broward County corrections and rehabilitation facilities, or otherwise provide services to the Class.

10. "Settling parties" shall mean the Class and Sheriff.

11. "Jail" shall mean the Broward County corrections and rehabilitation facilities, including any facilities that may in the future confine Broward County prisoners.

12. "Mental Health Provider" or "Provider" shall mean an American Board of Psychiatry and Neurology certified psychiatrist or psychiatric nurse practitioner currently licensed

by the state of Florida and qualified to provide the services he or she has undertaken to provide.

13. "Mental Health Staff" shall refer to individuals with mental health training who are currently licensed by the state of Florida and qualified to provide the services he or she has undertaken to provide

14. To "implement" means: a policy has been drafted and disseminated to all staff responsible for following or applying the policy; all relevant staff have been trained on the policy; compliance with the policy is monitored and tracked through audit tools; the policy is consistently applied; and, there are corrective action measures to address lapses in application of the policy.

15. "Substantial compliance" shall mean prolonged and continuous adherence to the requirements of the provisions of this Settlement Agreement in all material respects, recognizing that 100% compliance is not required. Sporadic and isolated deviations from the requirements of this Settlement Agreement shall not prevent a finding of substantial compliance, provided that the Sheriff demonstrates that the Jail has (a) implemented a reliable system for tracking compliance and for taking appropriate corrective measures in response to instances of non-compliance, and (b) that the Sheriff has instituted policies, procedures, practices, and resources that are capable of durable and sustained compliance beyond the termination of this Agreement. Compliance with the substantive terms of this Agreement shall be determined by Dr. Burns, as set forth below.

IV. COVENANTS OF THE SETTLING PARTIES

16. The settling parties agree that Kathryn Burns, M.D., MPH, ("expert" or "Dr. Burns") shall serve as their joint expert in the field of mental health care to assess substantial compliance with the substantive terms of this Settlement Agreement, as set forth in Section V,

below. Defendant and Plaintiffs shall be jointly responsible for the costs of the expert.

17. With reasonable advance notice, the expert will have full and complete reasonable access to the Jail, facility records and documents, prisoners' health care and custodial records, staff members, and prisoners reasonably necessary to enable the expert to perform her expert function. The intent of the settling parties is that the expert and the Sheriff's employees and contractors will work together cooperatively and efficiently with the minimum of disruption or inconvenience to the Jail.

18. The expert shall assess compliance with the substantive terms under Section V, below and shall issue reports at six month intervals determining whether the Jail has reached substantial compliance with each of the provisions in Section V of the Agreement. The expert shall submit draft reports to the parties for comment identifying those terms of Section V of the Agreement where Defendant has achieved substantial compliance, and those terms where substantial compliance has not been met and recommendations for remedial actions necessary for Defendant to achieve substantial compliance. The parties shall thereafter have 21 days to provide comments to the expert. The expert will then consider such comments and within 21 days, in her sole discretion, revise their respective reports. The expert's final reports shall be filed with the Court.

19. Defendant shall maintain sufficient records to document that the requirements of Section V of this Agreement are being properly implemented and shall make such records available to the expert and to Plaintiffs.

20. Absent agreement by both parties, the expert may not initiate nor receive *ex parte* communications with the Court. Any documents, records, letters, emails, reports, correspondence,

photographs, or other items sent by the expert to a party or sent by any party to an expert shall be copied or sent to the other party. The experts may initiate *ex parte* communications with either party.

21. Plaintiffs are entitled to conduct reasonable monitoring of the Jail's compliance with this Agreement including the right to inspect the jail, accompany the expert on tours, interview staff and inmates, request documents and information while off-site, review and receive copies of relevant records, and observe practices related to compliance with the provisions of this Agreement. However, upon the entry of a Court order approving this Agreement, the system of free phone calls by inmates to Plaintiff's counsel shall terminate.

22. Failure by either party to enforce this Agreement, if entered, or any provision thereof with respect to any deadline or any other provision herein shall not be construed as a waiver of its right to enforce these or other deadlines or provisions of the Agreement.

23. If any circumstance occurs that causes a failure to timely carry out any requirements of the Agreement, the Sheriff shall notify Plaintiffs' Counsel in writing within 20 calendar days after the Sheriff becomes aware of the circumstance and its impact on the Sheriff's ability to perform under the Agreement. The notice shall describe the cause of the failure to perform and the measures taken to prevent or minimize the failure. The Sheriff shall implement all reasonable measures to avoid or minimize any such failure.

24. The Agreement shall be applicable to, and binding upon, all settling parties, and their respective officers, agents, employees, contractors, assigns, and their successors in office.

25. In the event that any provision of this Agreement is declared invalid for any reason by a court of competent jurisdiction, that finding shall not affect the remaining provisions of this

Agreement.

26. Should a dispute arise over Defendant's compliance with any terms of this Agreement, the parties shall first confer in an effort to resolve their dispute before seeking relief from the Court. If the parties are unable to resolve their dispute, then either may seek relief from the Court by proper motion. Should a party file a motion for enforcement, termination, or modification, then the Court shall set the matter for an evidentiary hearing, entering an appropriate scheduling order setting discovery deadlines for the hearing, unless otherwise agreed to by the parties.

27. The Court shall terminate the Consent Decree and dismiss this case when the Jail has maintained substantial compliance with each of the substantive terms in Section V of the Agreement for one (1) year.

28. The Court shall retain jurisdiction to enforce the terms of this Settlement Agreement until entry of a Final Order of Dismissal under the terms of Paragraph 27 above.

29. Following termination of the Consent Decree and entry of a Final Order of Dismissal, the Court shall retain jurisdiction for the limited purpose of determining an award Plaintiffs' attorneys' fees and litigation costs, to the extent not previously determined or compromised, upon proper application therefor as provided in the Second Stipulation for Settlement (DE 913-9), which remains in effect as to attorney's fees.

V. SUBSTANTIVE TERMS

A. Intake Screening & Assessment

1. Defendants shall maintain, and/or revise where necessary, the following policies and procedures:

a. Prisoners are timely assessed for mental health conditions and needs at intake and that clinically indicated mental health care is initiated and/or continued.

b. Initial psychiatric assessments are performed timely and adequately by appropriate Mental Health Staff to ensure that adequate treatment (including individual and group therapy) and appropriate housing (including transfer to the Mental Health Unit (MHU at the North Broward Bureau), is initiated.

c. Defendant shall, within 24 hours of admission, use its documented best efforts to secure all treatment records from known outside treatment providers and facilities for prisoners who report during the screening process that within the past six months have been or they are currently being treated for a mental illness, or for whom the provider knows are being treated for mental illness. If reports from outside providers are not received within 48 hours of admission, the provider will make no less than three documented additional attempts to obtain those records within 7 days of admission, unless the inmate is released from custody within that time period. The policies shall provide that treatment records received from outside providers are reviewed within two business days of receipt, that such review is documented, and that pertinent information from outside treatment records is incorporated into the assessment and treatment process for prisoners.

d. The medical intake and screening process shall be reattempted within 24 hours after admission for all newly-admitted prisoners who do not initially complete the screening process at intake because they are deemed too psychiatrically ill, uncooperative or unsafe. The completion of the screening shall be documented on the intake screening form, or other appropriate document within the medical record. If during the reattempt to

complete the screening process the inmate cannot or will not cooperate with the medical screening process, the screening process will be completed without input from the inmate, and the reasons for such non-cooperation shall be documented on the intake screening form, or by other appropriate means of documentation within the prisoner's medical record. For all patients who continue to refuse the screening process, Defendant will ensure that its contracted medical provider assesses whether the patient needs to have a guardian appointed, and/or be transferred to a higher level of care, including transfer to an outside hospital or psychiatric facility; and follow the hospitalization provisions of Section K, below for the transfer of patients for whom it is clinically indicated

e. Defendant shall divert prisoners undergoing complicated drug withdrawal to a hospital if clinically indicated;

f. Defendant shall follow the hospitalization provisions of Section K, below, to divert prisoners identified at intake as needing acute psychiatric stabilization or inpatient mental health treatment to an appropriate hospital or psychiatric facility within 24 hours after the booking process is completed.

B. Access to Care

1. Defendant shall maintain, and/or revise where necessary, the following policies and procedures:

a. All prisoners have timely access to clinically indicated mental health care.

b. Medical records include complete, organized, legible, accurate documentation of all aspects of a prisoner's mental health care in order to allow a reviewer to readily follow a prisoner's clinical course of treatment, and:

- (1) all clinical encounters are fully and accurately documented in the medical record, using the SOAPE format.
 - (2) all forms are fully completed.
- c. Prisoners with mental illness are timely assessed by Mental Health Staff according to their clinical need.
 - d. Prisoners are assigned to a level of mental health care dictated by their clinical condition.
 - e. The frequency of assessments of prisoners with mental illness by each level of Mental Health Staff (mental health staff, counselors/psychologists, providers (ARNPs, psychiatrists, PAs)), are driven by the clinical need of the patient including treatment interventions (including group and individual therapy) being provided.
 - f. Develop and maintain a master mental health caseload that is tied to the electronic medical record (see below) which shall, at a minimum, list by name all mentally ill prisoners housed at the Jail, and their location, diagnosis, and their current medications. Should Defendant be unable to implement an EMR within the time specified in this section, they shall otherwise develop a mental health caseload and other documents that are readily retrievable and consistent with this provision, though all of this information need not be part of a single document, and may constitute more than one document.
 - g. For those prisoners on the mental health caseload, create individualized treatment plans that are relevant, meaningful, and accurately reflect the prisoner's condition and the services he will receive. The treatment plan for those inmates on the closed MHU will be developed by a treatment team which includes custodial and Mental

Health Staff. For mental health caseload prisoners not on the closed MHU, Mental Health Staff shall consult with custodial staff when clinically appropriate to develop the treatment plan. The plans shall include all clinically appropriate assessments and tests necessary for determining the prisoner's mental health treatment needs, shall be implemented fully, and have measurable goals that target behaviors and symptoms resulting from their illness. The plan shall list all services the patient shall receive (including individual and group therapy), the duration and frequency of all services, and the position/discipline responsible for providing such services. Treatment plans shall be updated at regular intervals including changes in level of care or whenever there is a significant change in the patient's condition to accurately reflect the clinical condition and treatment needs of the patient, interventions, and progress towards goal attainment.

2. Defendant will implement an electronic medical record within 180 days. Should Defendants fail to meet this 180 day deadline, they will consult with Plaintiffs and agree upon another deadline that will be no longer than an additional 180 days.

C. Referrals

1. Defendant shall maintain, and/or revise where necessary, the following policies and procedures:

- a. Prisoners have timely access to mental health care according to their clinical needs.
- b. Mental Health Staff timely refer to a mental health provider all prisoners whose mental health needs require an assessment or treatment by a provider, and ensure that the provider timely sees the patient according to clinical need.

D. Assessments

1. With the exception of rounds, Mental Health Staff and Providers shall perform all clinical contacts on prisoners in an area outside of their cells that affords sound privacy, unless Defendant and the current mental health vendor each document a legitimate safety, security or treatment rationale why the prisoner cannot be seen outside his or her cell. It shall be the exception rather than the rule that Mental Health Staff and Providers see prisoners cell side for assessments.

a. The fact that a prisoner is currently housed in a segregation unit or in the closed units of the Mental Health Unit, standing alone, is insufficient grounds to deny a face-to-face assessment outside of the prisoner's cell.

b. Prisoners whom Defendant and the current mental health vendor agree cannot be safely assessed in an area outside their cells shall be assessed to determine if they require additional treatment, or should be transferred to an appropriate psychiatric facility for more assertive treatment. Should the prisoner need to be hospitalized, Defendant shall follow the procedures for hospitalization set forth in Section K, below. Defendant shall maintain a list of (or be able to otherwise readily identify) all prisoners who cannot be safely assessed in an area outside their cells.

E. Medications

1. Defendant shall maintain, and/or revise where necessary, the following policies and procedures:

a. Prisoners timely receive appropriate psychotropic medications consistent with their clinical need, and all necessary monitoring to determine efficacy and

adverse/side effects.

b. Attempts are made to verify whether newly admitted prisoners are currently taking psychotropic medications.

c. Mental Health Staff triage prisoners reporting either a current or a history of psychotropic medications into one of the following categories, which is documented in the prisoner's medical record:

(1) emergent: Prisoners in this category are seen by a provider as soon as possible, but in no more than 24 hours after the mental health assessment;

(2) urgent: Prisoners in this category are seen by a provider within 72 hours of the mental health assessment;

(3) routine: Prisoners in this category are seen by a provider within 7-10 days;

d. Monitoring guidelines for prisoners on psychotropic medications include regular laboratory monitoring of metabolic functioning and serum medication levels in addition to other recommended monitoring consistent with professional guidelines, and that Providers document their review of these tests and monitoring measures, discuss them with the prisoner, and make medication adjustments when appropriate based on the test results;

e. Providers see all prisoners prescribed psychotropic medications at appropriate intervals given their clinical need;

f. Providers see prisoners timely if there is a change in their clinical condition, if they are suffering from side- or adverse effects, or if the medication is ineffective after

reaching a therapeutic level;

g. Prisoners who refuse their psychotropic medications for three (3) consecutive days, or who refuse at least 50% of their medications over a one week period, are seen by their prescribing Provider within seven (7) days, or sooner if clinically indicated;

h. Psychotropic medication refusals are addressed clinically by the Mental Health Staff and/or Provider (depending on the clinical need), and do not result in the discontinuation of psychotropic medications unless the discontinuation is clinically indicated.

i. The current medical vendor shall document all attempts to verify whether newly admitted prisoners are currently taking psychotropic medications. When psychotropic medications for a newly admitted prisoner have been verified and determined to be clinically appropriate, that the prescription for those medications is continued without interruption until such time as the prisoner can be assessed by a provider.

j. When a prisoner is admitted with psychotropic medication orders that have expired, Mental Health Staff will, if clinically appropriate, secure from a Provider a bridging order for that medication for 7 days, and that prisoner shall be seen and assessed by a Provider within those seven days.

k. Prisoners returned from a state psychiatric hospital or other outside psychiatric facility shall be maintained without interruption on all psychotropic medications ordered by those providers, or on generic or equivalent versions of these medications if the generic or equivalent version is as efficacious. Prisoners shall also be

maintained on psychotropic medications prescribed by providers at the jail.

(1) Notwithstanding provision k. above, Providers may change or discontinue previously prescribed psychotropic medications if they are ineffective or less efficacious than other medications, or for other clinically appropriate reasons. Providers must document an appropriate clinical rationale for any changes in psychotropic medications that a prisoner was currently prescribed before his admission, or is prescribed at the Jail;

l. Except as provided in provisions 2.i. and j., above, Providers shall not prescribe change, or renew a prisoner's psychotropic medications absent documented unusual circumstances without a face-to-face assessment in an area that affords sound privacy.

m. Except in documented exigent circumstances, Providers shall not discontinue or change a prisoner's psychotropic medication without a face-to-face assessment in an area that affords sound privacy conducted within a timeframe as clinically indicated.

n. Initial psychotropic medication orders shall not exceed 30 days, and renewal orders shall not exceed 90 days;

o. Defendant shall devise and implement a reliable system to timely provide medications on an involuntary basis to prisoners that is consistent with prevailing due process protections for patients as set forth in *Washington v. Harper*, 494 U.S. 210 (1990).

F. Discipline, Segregation & Use of Force

1. Defendant shall maintain, and/or revise where necessary, the following policies and

procedures:

- a. Mentally ill prisoners are not punished for behavior that is determined to be the product of their illness.
- b. Any disciplinary sanction a mentally ill prisoner receives is not clinically contraindicated.
- c. Mentally ill prisoners are excluded from segregation if clinically contraindicated.
- d. Correctional staff assigned to segregation units have CIT training or otherwise are adequately trained to recognize the signs of psychological decompensation and the special needs of prisoners in segregation, and that they timely refer to mental health staff all prisoners exhibiting signs of decompensation.
- e. All planned use of force incidents are videotaped.
- f. Mental health staff shall be notified and involved when possible in any planned use of force incident involving prisoners on the mental health caseload. Mental health staff, or trained Crisis Intervention Team (CIT) security staff if mental health staff are not on-site, shall attempt to speak with the prisoner in an effort to de-escalate the situation so no force needs to be used. Mental health staff's involvement shall be documented in the prisoner's medical record, on video, and in the incident report. CIT staff's involvement shall be documented in the incident report and on video.
- g. Before discipline is imposed on prisoners who are on the mental health caseload, Jail staff shall consult with Mental Health Staff to obtain input as to whether a mental health condition played a significant role in the prisoner's actions that are the

subject of discipline. Mental Health Staff will also provide input into whether the proposed discipline would negatively impact mental health and/or treatment, and whether alternative sanctions may be appropriate. The mental health staff person who is consulted shall not be part of the involved prisoner's treatment team, absent documented extraordinary circumstances that will not permit compliance with this requirement within the timelines set forth in the Jail's disciplinary policy. Mental Health Staff involvement in the disciplinary process is in an advisory capacity only, and in no circumstances will Mental Health Staff either advocate or endorse discipline of a prisoner.

h. Prisoners who are admitted to a segregation unit shall be assessed by medical staff within 24 hours of segregation placement. Medical staff shall refer to mental health staff any inmates in segregation exhibiting symptoms of mental illness, and refer those who request a mental health assessment. Nursing staff and Jail staff shall perform daily rounds in the segregation units and refer on to mental health staff any prisoner exhibiting signs of decompensation, those who complain of mental health symptoms, and those who request an assessment by mental health. Any prisoner requiring emergent care shall be assessed on an acute basis by mental health staff within 24 hours, or sooner if clinically indicated, and shall be transferred to the MHU or infirmary. Notwithstanding section F.1.c., above, all other referrals shall be seen by mental health staff within 72 hours.

i. Mental health staff shall assess all prisoners on the mental health caseload placed on segregation within 24 hours. All mental health caseload prisoners in administrative segregation shall be assessed by mental health staff weekly thereafter; and those on disciplinary segregation shall be assessed by mental health staff at intervals that

ensure mental health staff timely identifies those at risk of deterioration or self-harm..

j. If a prisoner in segregation develops symptoms of serious mental illness that were previously unidentified, or decompensates, engages in self-harm, or develops a risk of suicide, that prisoner shall immediately be referred for appropriate and timely assessment by mental health staff and removed from segregation. Mental health staff shall timely assess all prisoners in segregation at intervals that ensure timely identification of those in need of more assertive mental health treatment or for whom segregation is clinically contraindicated.

k. If Mental Health Staff determine at any time that segregation for any prisoner is contraindicated due to the prisoner's current mental health condition, the prisoner shall be removed from segregation, but may remain subject to any remaining disciplinary sanctions imposed if such segregation was for disciplinary reasons.

l. Defendant shall maintain data (or have such data readily available) identifying all prisoners on the mental health caseload who have sustained charges for disciplinary offenses, or who have been placed in segregation, and the segregation placement input by Mental Health Staff (if applicable).

m. Within 180 days, and every 180 days thereafter during the life of this Agreement, the parties and Dr. Burns shall confer about the need for an alternative secured treatment unit that provides a level of services (including structured and unstructured out of cell time) to house mentally ill prisoners who are clinically contraindicated for segregation placement, but who otherwise cannot conform their conduct to institutional rules.

G. Mental Health Unit

1. Defendants shall maintain, and/or revise where necessary, the following policies and procedures:

a. Mentally ill prisoners who cannot receive adequate treatment in the general population housing units (GPHU) are timely transferred to the Mental Health Unit (MHU) at the North Broward Bureau, where they shall receive appropriate care.

b. Clinically indicated treatment is continued for prisoners who are discharged from the MHU to the GPHU.

c. Prisoners housed in the closed mental health units have active treatment planning, at least monthly, documented in their medical record, to include all therapeutic interventions consistent with the prisoners' acuity and illness and appropriate care.

d. Treatment plans for prisoners housed in the open mental health units shall be changed as clinically indicated, and shall be updated every 90 days.

e. For all patients in the MHU, one goal shall be to move to less restrictive housing units.

f. Prisoners are discharged from the MHU to GPHU only when they are clinically stable and meet the discharge criteria for the MHU

g. Prisoners discharged from the MHU to the GPHU are seen within 7 days of their discharge unless clinically indicated otherwise.

h. Develop admission and discharge criteria for the MHU, and designate the level of care for each of the mental health units. For each level of care in the MHU (including but not limited to. Open Mental Health, Closed Mental Health, and Infirmary),

Defendant shall specify clinically appropriate:

- (1) admission and discharge criteria;
- (2) type of watch/restraint that may be conducted at that level;
- (3) minimum frequency of intervention/documentation by position:
provider, nursing, mental health professional (MHP), mental health
assistant (MHA), counselor, etc.;
- (4) out of cell time: structured, therapeutic, unstructured, and outdoor
recreation time;
- (5) group and individual therapy and interventions;
- (6) property restrictions;
- (7) commissary, hygiene, and property access;

i. Develop a system for tracking the average length of stay data for prisoners in each MHU housing unit level in the MHU. The system shall be able to produce every ninety days the average length of stay for all prisoners in each housing unit level of the MHU on that day, based upon a random sample of 20% of all inmates within each housing unit level. Defendants shall produce individual prisoner's length-of-stay data upon request.

j. Weekly treatment team meetings shall be held involving multidisciplinary teams including custodial staff, medical staff, Providers, and Mental Health Staff, to discuss prisoners housed in the MHU, including those prisoners who are being considered for MHU discharge, change in treatment level, or hospitalization. During these meetings, members will discuss (a) all prisoners coming to the attention of any team member who has exhibited significant behavioral or psychiatric symptoms within the prior week, (b) all

prisoners who are in the closed mental health units, and (c) all prisoners who have been placed under an order for close observation or two-man moves while out of cell, or for the use of a spit mask, or are in disciplinary segregation,.

k. Within 90 days, Defendants shall conduct a review of the available space in the MHU and NBB to determine whether existing space requires modification to ensure adequate treatment space, safety, security, and sound confidentiality, and if necessary, shall develop a plan for retrofitting existing space to provide appropriate and confidential mental health treatment consistent with this Agreement.

H. Staffing

1. Defendant shall maintain a sufficient number of custodial and Mental Health Staff to meet the mental health needs of the Plaintiff class as set forth in this Agreement.

2. Within 180 days, Defendant shall conduct a staffing analysis to identify the minimum number of Mental Health Staff that are needed to provide mental health services to Plaintiffs consistent with this Plan. The staffing analysis will consider the prisoner population, prevalence of mental illness, levels of mental health care to be provided, interventions and services to be provided for each level of care, the provision of individual and group therapy in addition to psychotropic medication management at all facilities. The staffing plan shall also account for the particular staffing needs for residential treatment in the MHU at NBB, including but not limited to, the need for activity technicians and psych attendants/therapeutic program workers for programming and escort.

a. Within 90 days thereafter, Defendant shall conduct a staffing analysis to determine the number of correctional staff necessary to provide mental health services to

Plaintiffs consistent with the mental health staffing plan, this Agreement, and adequate safety and security to prisoners and staff in doing so.

3. Within 90 days of completion of the staffing analyses, if such analyses determines a need for additional staffing, Defendant shall develop and implement a plan to recruit and hire qualified custodial staff and/or contract with the current health care vendor for additional Mental Health Staff to satisfy the requirement of the staffing plans. Defendants shall submit the staffing analysis and plan to retain additional custodial and Mental Health Staff to Dr. Burns and Plaintiffs for comment before implementation. If necessary, Defendant shall timely seek additional funding from Broward County in order to recruit and hire additional custodial staff and contract for additional Mental Health Staff. If at any time during the life of the Agreement either Dr. Burns or Plaintiffs determine that additional staff is needed, then the parties shall attempt to resolve this matter by agreement, or shall resolve their dispute under the dispute resolution mechanism set forth in the Agreement.

4. At six month intervals during the life of the Agreement, the parties and Dr. Burns shall assess the adequacy of the staffing plan, the efforts made by Defendant to obtain any necessary funding for additional staffing, and develop remedial measures to address identified shortcomings with staffing.

5. Defendant shall retain a sufficient number of Providers and Mental Health Staff so as to minimize occasions in which prisoners are seen by different Providers and Mental Health Staff appointment-to-appointment.

I. Involuntary Treatment

1. Defendants shall maintain, and/or revise where necessary, the following policies

and procedures:

a. Involuntary treatment (use of restraints, use of seclusion, and forced medication) is provided only to prisoners who pose a danger to themselves and others, when all reasonable treatment alternatives have been tried and have failed, and under conditions that ensure the prisoners' health and safety.

b. Written criteria are maintained for when to initiate, maintain, and discontinue each form of involuntary treatment: the use of restraints, use of seclusion, and forced medications;

c. Prisoners are only subject to involuntary treatment while housed in the Mental Health Unit (MHU) or the infirmary, absent documented exigent circumstances where emergency involuntary treatment is necessary and clinically indicated;

d. A Provider performs a face-to-face assessment within 24 hours of all prisoners who are administered forced medications.

e. Forced medications shall be administered per procedures that are consistent with *Washington v. Harper*, 494 U.S. 210 (1990). Forced medications are not administered on any prisoner more than three (3) times in a seven (7)-day period without following the hospitalization procedures set forth in Section K, below.

J. Hospitalization

1. Defendant shall use its best efforts to transfer prisoners to a psychiatric facility when they require inpatient psychiatric care, or otherwise cannot be adequately treated for mental illness at the Jail, and shall ensure that there is continuity of care for prisoners returning to the Jail after psychiatric hospitalization. The best efforts for hospitalization shall consist, at a minimum,

of the following:

- a. seeking hospitalization via the Baker Act, and documenting those efforts.
 - (1). Defendants shall seek to provide adequate security at the Baker Act receiving facility, in order to minimize refusals to provide inpatient treatment by the Baker Act facilities.
 - (2). If a receiving facility refuses to accept a prisoner for evaluation and treatment under the Baker Act or further refuses to provide treatment in the jail, Defendant shall pursue all legal means to compel the receiving facility to accept the patient or provide treatment in the jail.
- b. seeking to enter into a memorandum of understanding with the Florida Department of Children and Families and/or an appropriately state licensed and professionally accredited psychiatric facility to provide inpatient psychiatric treatment to accept prisoners who require inpatient hospitalization;
- c. seeking to open an appropriately licensed and accredited Baker Act receiving facility at an appropriate location within the jail if all other efforts have failed;
- d. facilitating access to prisoners by mental health professionals as necessary for psychiatric evaluations for incompetency proceedings;
- e. Cooperating with Dr. James Austin to assess and make recommendations to the court system to expedite the processing of criminal cases and of Baker Act petitions for seriously mentally ill prisoners. As part of his work, Dr. Austin shall update his most recent criminal justice assessment and recommendations. The parties will split the costs of Dr. Austin's work. Dr. Austin shall complete his report within 24 months of approval of the

Agreement. Should Dr. Austin's report not be completed by the time that Defendant obtains substantial compliance with all other conditions of this Agreement, this section shall not be a condition of the settlement between the parties that must be satisfied by Defendant in order to obtain dismissal/termination of this Agreement.

2. Defendant shall continue to make efforts to hospitalize prisoners who cannot adequately be treated at the Jail, even if previous efforts have failed. Defendant shall document all efforts they have made and plan to make in monthly treatment team meetings, and shall document their ongoing and planned efforts in an appropriate location within the prisoners' medical record.

3. Within 180 days of the approval of this Agreement, and within every 180 days thereafter during the life of this Agreement, the parties and Dr. Burns shall meet to discuss the efforts Defendant has made to seek the psychiatric hospitalization of prisoners who cannot be adequately treated at the Jail, they shall devise a remedial plan to address any remaining issues that prevent or delay the timely hospitalization of prisoners who cannot be adequately treated at the Jail. Should the parties be unable to devise a remedial plan, then Dr. Burns shall devise a remedial plan. Any dispute over implementation of Dr. Burns' proposed remedial plan shall be addressed under the dispute resolution provisions of this Agreement. The Court shall resolve the parties' disputes (if any) as set forth in the Agreement.

K. Coordination of Care

1. Defendants shall maintain, and/or revise where necessary, the following policies and procedures:

a. There is coordination of care between the medical and mental health care

staffs, and between the Jail and outside psychiatric facilities/hospitals, so that prisoners receive appropriate care according to their clinical need, and continuity of care.

b. Medical staff timely refer to mental health staff all prisoners who display symptoms of mental illness, or who make complaints regarding mental health care, and those prisoners are timely seen and adequately treated following the referral. The referrals are documented by separate medical order;

c. Mental health staff timely refer to medical staff all prisoners who display symptoms requiring medical care, or who make complaints regarding medical care, and those prisoners are timely seen and adequately treated following the referral. The referrals are documented by separate medical order;

d. Medical and Mental Health Staff timely consult with one another, and hold multidisciplinary treatment team meetings regarding patients they share to develop integrated treatment plans that address their clinical needs, and contraindicated treatment is not ordered. The consultations are documented in the medical record.

L. Suicide Prevention

1. Defendants shall maintain, and/or revise where necessary, the following policies and procedures:

a. Standardized suicide risk assessment instruments are utilized for the purpose of determining whether an Inmate should be placed in a suicide observation status. Whenever an inmate is placed on close observation suicide watch a safety plan shall be developed that includes treatment interventions that are individualized and appropriately aimed at reducing suicide risk. The standardized risk assessment shall be administered as

part of the intake process, including upon return to the Jail from a hospital, or following a recent psychiatric hospitalization.

b. Prisoners are not placed on suicide watch in areas without their clothing where they can be readily seen nude or semi-nude by fellow prisoners or staff (This does not prohibit the use of suicide smocks or blankets, and does not include those inmates who intentionally expose themselves). Prisoners are offered slippers or foot coverings, unless there is a determination made that such items pose a security or safety risk.

c. Prisoners on suicide watch are permitted to shower regularly, unless there are valid and documented safety and security reasons for not doing so.

d. Prisoners on suicide watch are offered finger foods or utensils (of a type appropriate for their suicide observation status) unless there is a documented safety or security reason for not doing so. In those instances, prisoners are offered food they can consume with their hands.

e. Defendant's suicide prevention policy is consistent with the suicide prevention policy of the current inmate healthcare vendor.

f. Individualized transition plans are developed for all prisoners discharged from close observation suicide watch, and shall set the interval for follow-up care after discharge via the prisoner's treatment plan.

g. All suicides and deaths of prisoners on the mental health caseload are subject to a thorough post-mortality review. The review shall be carried out by a multi-disciplinary team consisting of custody, medical, and mental health care staff. The multi-disciplinary team shall meet to correlate and integrate the custodial, medical, and mental

health factors that may have contributed to or are pertinent to the suicide/death. When deficiencies or policy violations are identified, plans of correction are developed and implemented.

2. With the exception of those changes described in this Section, no additional changes in conditions under which prisoners are placed under suicide precautions will be made by Defendant without consulting with Dr. Burns and Plaintiffs.

M. Quality Improvement

1. Defendants shall maintain, and/or revise where necessary, the following policies and procedures:

a. Maintain a Quality Improvement (QI) system, which shall be expanded to identify and correct deficiencies in mental health services.

b. Conduct periodic QI studies to assess Defendant's compliance with all policies related to mental health services at the Jail, including, but not limited to, all policies addressing services addressed by this Agreement. Reasonable compliance thresholds are established for each QI study performed, and remedial action plans are developed and implemented when they fail to meet the thresholds;

c. Clinical performance reviews of all Mental Health Staff are conducted annually by the appropriate supervisor that includes a review of clinical mental health care as documented via health care records. All clinical performance reviews which identify performance deficiencies in mental health care shall be forwarded to the Inmate Health Care Manager for Defendant. Appropriate correction/improvement plans are developed and implemented jointly by Defendant and the vendor based on this review as necessary.

d. Peer-to-peer reviews of all Providers are conducted annually by fellow Providers that assess clinical mental health care as documented via health records. Appropriate correction/improvement plans are developed and implemented by Defendant's current mental health care vendor and reviewed and approved by Defendant based on this review as necessary.

e. Substantive performance standards for mental health care are included in Defendant's contract with the current health care vendor, or any future vendor providing mental health care services while this Agreement is in effect, that are consistent with the terms of this Agreement. Defendant shall thereafter ensure that the current or any future vendor providing mental health care services subject to the terms of this Plan meets those performance standards while this Agreement is in effect.

N. Implementation

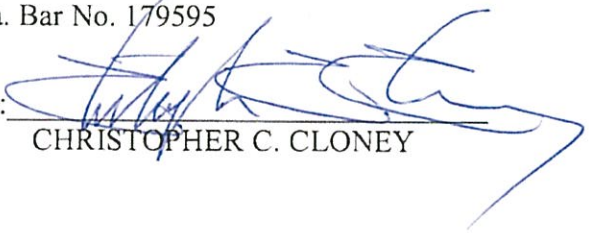
1. Unless otherwise provided, all provisions of this Agreement shall be fully implemented within 180 days of approval and entry by the Court.

DATED this 9th day of August, 2018.

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