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1 McCUTCHEN, DOYLE, BROWN & ENERSEN
 2 WARREN E. GEORGE (State Bar # 053588)
 3 Three Embarcadero Center
 San Francisco, CA 94111
 Telephone: (415) 393-2000

4 PRISON LAW OFFICE
 DONALD SPECTER (# 83925)
 5 MILLARD MURPHY (# 124451)
 Freedom Mall, Main Street
 6 San Quentin, CA 94964
 Telephone: (415) 457-9144

7 BROBECK, PHLEGER & HARRISON
 8 MICHAEL W. BIEN (# 096891)
 Spear Street Tower
 9 One Market Plaza
 San Francisco, CA 94105
 10 Telephone: (415) 442-0900

11 Attorneys for Plaintiff Class

12 JOHN K. VAN DE KAMP, Attorney General
 of the State of California
 13 RICHARD B. IGLEHART, Chief Assistant
 Attorney General
 14 JAMES E. FLYNN (# 61139)
 Deputy Attorney General
 15 JAMES B. CUNEO (# 37423)
 Deputy Attorney General
 16 1515 K Street, P. O. Box 944255
 Sacramento, CA 94244-2550
 17 Telephone: (916) 323-1976

18 Attorneys for Defendants

19 UNITED STATES DISTRICT COURT
 20 EASTERN DISTRICT OF CALIFORNIA

21 JAY LEE GATES, et al.

22 Plaintiffs,

23 v.

24 GEORGE DEUKMEJIAN, et al.,

25 Defendants.

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ROSEN & PHILLIPS
 SANFORD JAY ROSEN (# 062566)
 PAUL A. Di DONATO (# 124962)
 SAMUEL R. MILLER (# 138942)
 155 Montgomery Street, 8th Floor
 San Francisco, CA 94104
 Telephone: (415) 433-6830

ACLU FOUNDATION OF NORTHERN
 CALIFORNIA, INC.
 MATTHEW A. COLES (# 076090)
 1663 Mission Street
 San Francisco, CA 94103
 Telephone: (415) 621-2493

Attorneys for Plaintiff Subclass

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No. CIV S-87-1636 LKK-JFM

CONSENT DECREE

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JAY LEE GATES, et al.,	)	No. CIV S-87-1636 LKK-JFM
Plaintiffs,	)	
v.	)	<u>CONSENT DECREE</u>
GEORGE DEUKMEJIAN, et al.	)	
Defendants.	)	

I. INTRODUCTION

1. The Amended Complaint - Class Action was filed on January 6, 1988 pursuant to 42 U.S.C. section 1983 on behalf of eight inmates representing all inmates confined at the California Medical Facility - Main and the Northern Reception Center (hereafter CMF).

2. The Amended Complaint alleged that defendants had violated the Eighth and Fourteenth Amendments to the United States Constitution by subjecting plaintiffs and class members to deficient conditions of confinement, by denying them access to medical and mental health care, by depriving them of access to attorneys, and by segregating those class members who were infected with the human immunodeficiency virus (HIV).

3. Defendants filed a timely answer which denied these allegations on January 27, 1988.

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1 4. This action was certified as a class action on
2 May 13, 1988, defining the class as follows:

3 All inmates who are or will be confined at the
4 California Medical Facility - Main (CMF-Main) and the
5 Northern Reception Center (NRC). Inmates at CMF-Main
6 include those confined to the "AIDS Wing," or "Special
Housing Unit" ("SpHU"). Inmates at the California
Medical Facility - South are specifically excluded from
the class.

7 5. A Second Amended Complaint was filed on March 10,
8 1989.

9 6. The Second Amended Complaint alleged the same
10 causes of action as the Amended Complaint, but added claims on
11 behalf of handicapped inmates representing a class of inmates who
12 plaintiffs alleged had been discriminated against on the basis of
13 their handicaps in violation of section 504 of the Rehabilitation
14 Act of 1973, 29 U.S.C. section 794 (hereafter section 504).

15 7. The Court created a subclass of HIV-infected
16 inmates housed in the Special Housing Unit (SPU) at CMF on March
17 10, 1989.

18 8. Defendants filed a timely answer which denied
19 these allegations on March 20, 1989.

20 9. The action was recertified as a class action on
21 May 17, 1989 to include the section 504 claims of mobility-
22 impaired inmates confined to wheelchairs, mentally ill inmates,
23 and HIV-infected inmates.

24 10. The Court has jurisdiction over the parties and
25 subject matter of this action.

26 11. The defendants named in the Second Amended
27 Complaint are George Deukmejian, Governor of the State of

1 California, Joseph G. Sandoval, Secretary of the Youth and Adult
2 Correctional Agency, James Rowland, Director of the Department of
3 Corrections, Nadim Khoury, M.D., Assistant Deputy Director -
4 Health Services, Eddie Ylst, Warden - CMF, Kenneth Shepard, M.D.,
5 Chief Deputy Warden for Clinical Services - CMF, Nicholas Poulos,
6 M.D., Chief Physician and Surgeon - CMF, V. Meenakshi, M.D.,
7 Chief Psychiatrist - CMF, H. Benton, M.D., Chief Psychiatrist -
8 NRC, Douglas G. Arnold, Deputy Director of the Department of
9 Mental Health, D. Michael O'Connor, M.D., Director, Department of
10 Mental Health, and Sylvia Blount, R.N., Executive Director - DMH
11 Vacaville Psychiatric Program, all sued in their official
12 capacities.

13 12. Governor George Deukmejian is dismissed as a
14 defendant.

15 13. Joseph G. Sandoval is dismissed as a defendant.

16 14. Nicholas Poulos, M.D. is no longer employed as
17 Chief Physician and Surgeon - CMF. Daniel E. Thor, M.D. his
18 successor in office, is substituted for purposes of compliance
19 with the provisions of this Consent Decree.

20 15. V. Meenakshi, M.D. is no longer employed as the
21 Chief Psychiatrist for the Outpatient Psychiatric Program - CMF.
22 Paul Morentz, M.D., her successor in office, is substituted for
23 purposes of compliance with the provisions of this Consent
24 Decree.

25 16. H. Benton, M.D. is no longer employed as Chief
26 Psychiatrist - NRC. Bruce Baker, M.D., is acting in that
27 capacity pending appointment of a successor in office who will be

1 substituted for purposes of compliance with the provisions of
2 this Consent Decree.

3 17. D. Michael O'Connor, M.D. is no longer employed as
4 the Director of the Department of Mental Health. Defendant
5 Douglas G. Arnold is acting in that capacity pending appointment
6 of a successor in office who will be substituted for purposes of
7 compliance with the provisions of this Consent Decree.

8 18. Douglas G. Arnold is no longer employed as Deputy
9 Director for State Hospitals - DMH. Clyde Murrey, his successor
10 in office, is substituted for purposes of compliance with the
11 provisions of this Consent Decree.

12 19. Defendants agree that this Consent Decree is
13 binding on them and their agents, employees, successors, and
14 assigns.

15 20. The parties agree that actions alleged in the
16 Second Amended Complaint implicate rights secured and protected
17 by the United States Constitution and by section 504 of the
18 Rehabilitation Act of 1973, as amended. Recognizing these
19 constitutional and statutory interests and for the purpose of
20 avoiding the continuation of expensive, protracted and
21 adversarial litigation, the parties agree to the provisions set
22 forth in this Consent Decree.

23 21. The parties agree that in entering into this
24 Consent Decree they waive specific findings of fact and
25 conclusions of law and any determination whether the remedies
26 provided are legally required.

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1 22. By entering into this Consent Decree, defendants
2 do not admit any violation of law.

3 23. The provisions of this Consent Decree may not be
4 used as evidence of any violation of law in any other proceeding,
5 except enforcement proceedings in this case.

6 24. The provisions of this Consent Decree are a fair
7 and equitable resolution of the claims of plaintiffs and the
8 class members in this action.

9 25. The parties agree that it is not the intent of
10 this Consent Decree to prescribe the minimum standards required
11 by the United States Constitution. The provisions of this decree
12 do not, in whole or in part, themselves create any liberty
13 interest in plaintiffs that is enforceable under the Fourteenth
14 Amendment.

15 II. DEFINITIONS

16 As used in this Consent Decree, the following terms
17 will have the meanings set forth herein, unless specifically
18 stated otherwise:

19 1. "California Medical Facility" (CMF) means the
20 California Medical Facility - Main (CMF-Main) and the Northern
21 Reception Center (NRC), but excluding the California Medical
22 Facility - South (CMF-South).

23 2. "Physical therapy aides" presently means Medical
24 Technical Assistants (MTA's) or inmates who are providing
25 physical therapy services under supervision and pursuant to an
26 approved vocational training program.

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1 3. "Psychiatric classifications" presently means
2 inmates in Categories I, J, K, U, T, Psychiatric Attention, and
3 Psychiatric Evaluation.

4 4. "Clinician or clinical staff", for purposes of
5 Part V (Mental Health Care) of this Consent Decree, means a
6 psychiatrist, psychologist, or licensed social worker trained in
7 psychological evaluation and diagnosis.

8 NOW THEREFORE IT IS HEREBY ORDERED, ADJUDGED AND
9 DECREED THAT:

10 III. MEDICAL CARE ISSUES

11 1. Defendants will develop written treatment
12 guidelines which are approved by the Medical Executive Committee
13 at CMF for the following medical conditions:

- 14 a. Asthma
- 15 b. Seizure disorders
- 16 c. Obstructive lung disease
- 17 d. Tuberculosis
- 18 e. HIV disease, including dental care
- 19 f. Renal disease
- 20 g. Liver disease
- 21 h. Diabetes mellitus
- 22 i. Cardiovascular disease, including
23 hypertension.

24 Plaintiffs may provide defendants with recommendations regarding
25 the treatment guidelines to be developed. The parties agree that
26 the treatment guidelines are advisory and that they are not

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1 intended to control the exercise of professional judgment by a
2 physician in his or her treatment of a particular patient.

3 2. The written treatment guidelines referred to in
4 Part III, paragraph 1, above, will include and emphasize criteria
5 that will assist the attending physician in determining when a
6 patient should be transferred for further treatment to a hospital
7 accredited by the Joint Commission on the Accreditation of
8 Healthcare Organizations (JCAHO) which is appropriately staffed
9 and equipped to care for patient with one or more of the medical
10 conditions set forth in Part III, paragraph 1, above.

11 3. The treatment guidelines referred to in paragraph 1
12 above, will be placed in a Guideline Manual. A copy of the
13 Guideline Manual will be maintained at appropriate outpatient
14 clinic locations, such as B-1 and NRC, and in the hospital.

15 4. Defendants will develop a plan to provide
16 continuing education programs which focus upon the medical
17 conditions set forth in Part III, paragraph 1, above, and upon
18 recognition and use of the transfer criteria referred to in Part
19 III, paragraph 2, above.

20 5. Defendants will develop (a) problem lists and (b)
21 flow sheets for each of the medical conditions referred to in
22 Part III, paragraph 1, above, which are approved by the Medical
23 Executive Committee at CMF. These problem lists and flow sheets
24 will be maintained in the medical records of each inmate who
25 suffers from one or more of the medical conditions set forth in
26 Part III, paragraph 1, above.

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1 6. CMF has a Quality Assurance Committee (QA
2 Committee) and program. For purposes of this Consent Decree, the
3 parties agree that the QA program will interface with an
4 appropriate peer review program and that it will include a system
5 of quality assurance for each medical department at CMF which is
6 part of an overall institutional medical plan for quality
7 assurance. The QA program will include the following:

8 a. A written program for quality assurance in
9 each medical department at CMF which provides for monitoring and
10 evaluation of clinical services, including quality, timeliness,
11 appropriateness, and resolution of problems;

12 b. Monitoring and evaluation of the quality,
13 timeliness, and appropriateness of clinical services through the
14 routine collection of information about important aspects of
15 care, periodic assessment of such information to identify
16 problems, and use of identified criteria, as set forth in the
17 applicable institution and departmental QA plans;

18 c. Documentation of actions taken to resolve and
19 correct identified problems and an evaluation of the
20 effectiveness of corrective actions;

21 d. Annual reappraisal of the QA program to
22 determine effectiveness; however the parties agree that during
23 the life of this Consent Decree, the QA program shall be
24 appraised quarterly during the first year of its operation to
25 determine its effectiveness, semi-annually during the second
26 year, and annually thereafter.

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1 7. Defendants will appoint a QA Coordinator who is
2 qualified to administer the QA program at CMF.

3 8. Defendants will retain Quality Healthcare
4 Resources, Inc., or an organization with similar background and
5 expertise, to assist in further development and assessment of a
6 QA program at CMF which covers inpatient care, hospital-sponsored
7 ambulatory care, physical medicine and rehabilitation care,
8 dental care, and psychiatric care at CMF and NRC. Within ninety
9 (90) days of being retained, the consultant will provide a
10 written report on his initial assessment of the existing QA
11 program, make recommendations for modifications, if necessary,
12 and provide QA education to medical staff. After the initial
13 assessment report, the independent consultant will provide
14 periodic reports which assess the effectiveness of the quality
15 assurance program at CMF on the schedule described in Part III,
16 paragraph 6(d). The consultant will use standards of the JCAHO
17 in assessing and developing the QA program at CMF. The quarterly
18 reports will assess the effectiveness of the QA program with
19 respect to medical, dental, and mental health care of inmates at
20 CMF. The parties agree that assessments of the QA program will
21 include implementation and operation of the treatment guidelines
22 and transfer criteria set forth in Part III, paragraphs 1 and 2,
23 above.

24 9. CMF has the ability to do arterial blood gases
25 (ABG's) and has purchased and trained staff in the use of peak
26 flow meters. Defendants will review the location and use of this
27 equipment to determine whether it is located and used in the

1 manner most effective for the diagnosis and treatment of inmates
2 with pulmonary function disorders.

3 10. CMF has a computer based Drug Interaction Profile
4 (DIP) which is available to medical staff to obtain information
5 about possible drug interactions. Defendants will review
6 existing policies and procedures regarding use of the DIP to
7 ensure that it is being used, where medically appropriate, by
8 staff, particularly for patients with one or more of those
9 medical conditions set forth in paragraph 1, above.

10 11. Defendants will review the existing Medical
11 Officers of the Day (MOD) system at CMF to determine whether
12 additional hours of physician coverage are needed on nights,
13 weekends, or holidays and report on the results.

14 IV. MEDICAL DISABILITY ISSUES

15 1. Defendants will develop and implement a plan for
16 organizing existing medical staff and resources into a section of
17 Physical Medicine and Rehabilitation under the Department of
18 Medicine at CMF. The section will include physical medicine,
19 physical therapy, occupational therapy, and psychology. The
20 section of Physical Medicine and Rehabilitation will develop and
21 implement continuing education programs for members of the
22 section.

23 2. The parties agree that the Physical Medicine and
24 Rehabilitation section of the Department of Medicine at CMF will
25 be covered by the QA program at CMF.

26 3. Defendants will develop and implement a plan for
27 identifying disabled inmates and the cause of their disability.

1 For purposes of this Consent Decree, "disabled inmate" is defined
2 as an inmate who is mobility-impaired through confinement to a
3 wheelchair or who uses a prosthetic device.

4 4. Defendants will ensure that a treatment plan for
5 each disabled inmate is developed and that it is reviewed
6 periodically. The treatment plan will document among other
7 things whether an inmate has need of training in Activities of
8 Daily Living (ADL). The adequacy of treatment plans, including
9 but not limited to, provision for periodic evaluations of
10 wheelchairs, prostheses, and orthoses and training in their use
11 and the timely provision of such equipment from the date of a
12 physician's order, will be subject to review through the QA
13 program.

14 5. Defendants will develop and implement a plan for
15 providing ADL training for inmates who require it and for
16 providing assistance to inmates who cannot perform ADL
17 independently.

18 6. Defendants will review and prepare a report on the
19 availability of hours of care provided by physiatrists at CMF to
20 determine whether additional hours of care are needed to meet the
21 current medical needs of inmates who require such services. If
22 defendants determine that additional hours of care are needed,
23 defendants will develop and implement a plan to ensure that
24 sufficient hours of physiatry care are provided to meet the
25 medical needs of inmates who require such care.

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1 7. Defendants will ensure that physical therapy aides
2 provide patient care which is within the scope of applicable
3 professional standards.

4 8. Defendants will review and prepare a report on the
5 availability of hours of care provided by the physical therapist
6 at CMF to determine whether additional hours of care are needed
7 to meet the current needs of inmates who require such services.
8 If defendants determine that additional hours of care are needed,
9 defendants will develop and implement a plan to ensure that
10 sufficient hours of a physical therapist's time is available to
11 meet the medical needs of inmates who require such services.

12 9. Defendants will ensure that physical therapy
13 services are available through appropriately trained, certified
14 backup providers whenever CMF is without a full-time physical
15 therapist for a period of time longer than one month.

16 10. Defendants will ensure that the water temperature
17 of whirlpool and sitz baths is individualized, where a patient's
18 condition requires, and will provide whirlpools and sitz baths
19 with working thermostats.

20 11. Defendants will provide special mattresses,
21 referred to as egg-crate mattresses, if ordered by a staff
22 physician, to those disabled patients who require them.

23 12. Defendants will ensure that inmates with complete
24 spinal cord lesions above the T6 level and who are referred for
25 housing in an air-conditioned unit by a staff physician order are
26 housed in such a unit unless the patient refuses placement there,
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1 and the refusal is documented appropriately in the inmate's
2 medical record:-

3 13. Defendants will ensure that disabled inmates with
4 mobility impairments at CMF are housed in a wheelchair-accessible
5 environment, unless the patient refuses the offer of placement in
6 such an environment, and the refusal is documented in the
7 inmate's medical record.

8 14. Defendants will perform an access survey of the
9 housing and program areas at CMF with the assistance of an
10 independent consultant who has appropriate background and
11 expertise in order to evaluate the accessibility of those areas
12 to disabled inmates. The consultant will provide a written
13 report and make written recommendations. Copies of the report
14 and recommendations will be provided to the Mediator and
15 plaintiffs' counsel. Upon evaluation of the results of the
16 access survey, defendants will develop a plan within ninety (90)
17 days to ensure that disabled inmates have meaningful access to
18 housing and program areas, including beds, toilet facilities,
19 showers, lavatories, mirrors, water fountains, exercise yards,
20 and the gymnasium. Such access will be periodically evaluated
21 and reported on to the Mediator.

22 15. Defendants will develop a plan to ensure that
23 reasonable accommodations are made so that disabled inmates have
24 equivalent access to package pickup, canteen, and laundry
25 services.

26 16. Defendants will ensure that disabled inmates who
27 are otherwise qualified will have the opportunity to participate

1 in work, exercise, educational, and vocational programs available
2 at CMF, consistent with the requirements of section 504. A
3 disabled inmate will not be deemed unqualified to participate
4 because he is physically unable to participate for a full work
5 day or because access to the program area requires that the
6 inmate be searched.

7 17. Defendants shall review the existing prerelease
8 program for disabled inmates to determine whether it provides
9 them with appropriate information and assistance to meet the
10 special needs of those inmates following release and report on
11 the results.

12 V. MENTAL HEALTH ISSUES

13 A. SUICIDE

14 1. Defendants agree to provide appropriate suicide
15 prevention programs at CMF.

16 2. Defendants shall develop a plan by March 31, 1990
17 regarding suicide prevention programs at CMF. The plan will
18 address the following issues:

19 a. Training of medical, custodial and
20 psychiatric staff;

21 b. Inclusion in orientation programs of
22 materials concerning suicide prevention;

23 c. Review of current policies and practices
24 concerning the use of 5-point restraints, isolation and strip
25 cells;

26 d. Programs for identification, counseling,
27 treatment and hospitalization of prisoners at risk for suicide,

1 including those prisoners believed by a psychiatrist or
2 psychologist to be serious suicide risks who are not admitted to
3 the DMH Unit;

4 e. Reporting of suicide attempts, suicidal
5 expressions and suicidal gestures to prison officials and
6 psychiatric staff;

7 f. Appropriate housing for suicide risk
8 prisoners.

9 3. Defendants shall prepare a report to the Mediator
10 which sets forth defendants' plan to address any identified
11 deficiencies in the suicide prevention program including dates
12 for implementation of any new programs (no later than July 31,
13 1990).

14 4. Defendants will report to the Mediator
15 periodically the following information:

16 a. For each prisoner that commits suicide, the
17 following information: name, CDC number, housing unit,
18 classification, and copies of incident reports concerning death,
19 autopsy and coroner's report, death certificate, central,
20 psychiatric and medical file for last three months;

21 b. Monthly statistics showing the number of
22 suicide attempts; the name, housing unit and classification of
23 each prisoner attempting suicide; incident reports on attempted
24 suicides.

25 B. PSYCHIATRIC OFFICER OF THE DAY

26 1. There shall be a psychiatrist present at CMF at
27 all times.

1 2. Defendants shall evaluate by March 31, 1990
2 whether Psychiatric Officer of the Day (POD) coverage by one
3 psychiatrist provides adequate and appropriate psychiatric care
4 for the existing prisoner population. The evaluation will
5 address the adequacy of the psychiatric care provided to
6 prisoners at CMF and NRC during POD hours.

7 3. The results of defendants' evaluation shall be set
8 forth in a written report, to be submitted to the Mediator. The
9 report will contain defendants' plan to address any identified
10 deficiencies in the POD program, including dates for
11 implementation of any new program (no later than July 31, 1990).

12 C. HIRING AND RETENTION OF PROFESSIONAL STAFF

13 1. Defendants shall evaluate and report to the
14 Mediator, by not later than March 31, 1990, regarding all issues
15 affecting the hiring and retention of professional staff
16 necessary to provide psychiatric care. The report will contain
17 defendants' plans, if any, to address the problems of hiring and
18 retaining the professional staff necessary to provide psychiatric
19 care and dates for implementation of the plans.

20 2. Defendants will report to the Mediator
21 periodically information sufficient to show their level of mental
22 health staffing on a monthly basis including information
23 concerning contract staff.

24 3. Beginning March 31, 1990, at least seventy-five
25 percent (75%) of all budgeted mental health positions must be
26 filled, on average, within 6 months after establishment of the
27 positions over any six month period.

1 D. TASERS, RESTRAINTS AND INVOLUNTARY MEDICATION

2 1. Tasers will not be used to restrain a prisoner to
3 administer involuntary medication.

4 2. Defendants shall revise by March 31, 1990 their
5 written policies to limit, to the greatest extent possible, the
6 use of Tasers on prisoners with psychiatric classifications or
7 any other prisoner taking antipsychotic medications. Defendants
8 shall report their revisions to the Mediator. Defendants'
9 policies must provide for the following:

10 a. Custodial staff must confer with a
11 psychiatrist regarding the use of the Taser and such consultation
12 shall be appropriately documented except in an emergency;

13 b. The use of a Taser is a last resort.
14 Alternative means of addressing the situation must be considered
15 and the reasons for their rejection stated in writing;

16 3. Defendants shall provide to the Mediator
17 periodically incident reports, including the record of the
18 psychiatric consultation, concerning each use of the Taser on
19 prisoners with psychiatric classifications.

20 4. Defendants shall evaluate and report to the
21 Mediator regarding their procedures and practices for the
22 administration of involuntary psychotropic medication in the
23 outpatient units.

24 E. INPATIENT CARE

25 1. Defendants will provide appropriate access to
26 inpatient psychiatric care for all prisoners at CMF.

27 ///

1 2. Defendants will evaluate by March 31, 1990 the
2 following issues concerning inpatient psychiatric care:

3 a. The utilization of existing inpatient beds at
4 CMF and Atascadero State Hospital (ASH);

5 b. The appropriateness and operation of the
6 stated admission criteria and exclusionary criteria for the DMH
7 Unit at CMF and ASH including inpatient care for prisoners who
8 refuse medication, for prisoners who are violent, for prisoners
9 with a history of disciplinary problems, for prisoners with
10 chronic mental illness, for prisoners with suicidal tendencies,
11 for prisoners with HIV seropositivity, ARC or AIDS;

12 c. The operation of the CAT teams.

13 3. The results of defendants' evaluation will be set
14 forth in a written report, to be submitted to the Mediator. The
15 report will also contain defendants' plans to address any
16 identified problems and dates for implementation of any plan (no
17 later than May 31, 1990).

18 4. Defendants will work through the organized medical
19 staff to develop a program for providing privileges to
20 appropriate CMF medical staff to admit patients to the DMH Unit.
21 The program will be implemented by March 1, 1990.

22 5. Defendants' periodic reports will contain
23 information concerning the monthly utilization of inpatient beds
24 at CMF and ASH, as well as referrals and rejections by those
25 programs and copies of the CAT team referral/rejection reports.

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1 F. THE PROVISION OF APPROPRIATE PSYCHIATRIC CARE
2 TO ALL PRISONERS AT CMF.

3 1. Defendants will provide appropriate psychiatric
4 screening for each incoming inmate at CMF and will provide
5 appropriate psychiatric evaluation and treatment for all inmates
6 at CMF as medically indicated.

7 2. Defendants will prepare and implement a program,
8 to be operational by June 30, 1990, to provide appropriate
9 psychiatric care for prisoners discharged from the inpatient
10 psychiatric programs at CMF and ASH. The outpatient program as
11 implemented will address the following elements:

12 a. Reducing regression as much as possible by
13 providing appropriate programming and therapies;

14 b. Providing therapeutic programs designed to
15 facilitate increased functioning, participation in prison
16 programming and return to the general population;

17 c. Appropriate monitoring of medications;

18 d. Communication and consultation between
19 inpatient and outpatient psychiatric staff.

20 3. Defendants will improve outpatient psychiatric
21 services. The program will be implemented in phases. An interim
22 program will be in effect by June 30, 1990. Defendants will
23 provide periodic reports to the Mediator concerning the program
24 and its implementation. The program will be staffed and fully

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1 operational by October 31, 1990. The outpatient program will
2 address the following issues:

3 a. Staffing levels for psychiatrists,
4 psychologists, social workers, recreational and occupational
5 therapists, nursing staff and custodial staff will be sufficient
6 to provide appropriate access to psychiatric evaluation and
7 treatment programs for all prisoners at CMF requiring such
8 programs;

9 b. The need for additional staff will be
10 periodically assessed based on the needs of the population of
11 CMF, and defendants will request such funding for additional
12 staffing pursuant to the budgetary processes;

13 c. Treatment plans will be developed for all
14 prisoners at CMF receiving psychiatric care. Such plans shall be
15 reviewed and revised at appropriate intervals commensurate with
16 the level of psychiatric care required by the patient;

17 d. Each prisoner referred to CMF from another
18 institution (or from another unit within CMF) for psychiatric
19 evaluation or treatment shall be examined and evaluated by a
20 member of the clinical staff within 24 hours of his arrival at
21 CMF and provided with appropriate treatment. A treatment plan
22 for each such prisoner will be prepared by the treatment team
23 within ten days of assignment to a treatment level;

24 e. Appropriate space and facilities for
25 treatment programs will be provided;

26 f. Appropriate access to psychiatrists and other
27 mental health professionals will be provided to all prisoners

1 based on their needs. The special psychiatric needs of prisoners
2 diagnosed with HIV shall be addressed. All prisoners receiving
3 psychotropic medications will be seen by a psychiatrist at
4 appropriate intervals;

5 g. Medications will be appropriately monitored
6 and appropriate medical records and charts will be maintained;

7 h. Each prisoner request to see a psychiatrist
8 or psychologist will be documented in writing and responded to
9 appropriately.

10 i. Isolation and seclusion in their cells of
11 prisoners in need of psychiatric care will be minimized.

12 4. In an effort to comply with paragraphs 2 and 3
13 above, defendants will implement their Outpatient Program Guide.

14 5. Defendants will evaluate their program for
15 providing psychiatric evaluation and treatment in October of 1990
16 and report to the Mediator by December 15, 1990. The Mediator,
17 if necessary, will independently investigate the program, in the
18 determination of the adequacy of defendants' program for
19 providing appropriate psychiatric services.

20 G. CLASSIFICATION, HOUSING, MANAGEMENT

21 1. No prisoner shall be "declassified" from any
22 psychiatric classification without a statement in writing from a
23 psychiatrist, made after a psychiatric evaluation including an
24 interview, recommending the declassification. If a psychiatrist
25 recommends that an inmate be declassified, the prisoner's case
26 manager or treatment team shall describe the need for further
27 treatment, if any. The declassification recommendation will then

1 be forwarded to the Classification Committee for its
2 recommendation for appropriate placement of the prisoner.

3 Defendants shall develop written standards and
4 procedures for declassification of prisoners and submit a report
5 by March 31, 1990. Defendants shall provide to the Mediator
6 periodically a copy of the decisions of the Classification
7 Committee and any supporting documents in 25% of the cases in
8 which a prisoner is declassified from Categories J or K. The
9 reporting rate may be adjusted by the Mediator. Defendants shall
10 report periodically the total number of prisoners declassified
11 from Categories J and K.

12 2. All classification procedures, housing decisions
13 and disciplinary actions concerning prisoners with psychiatric
14 classifications must consider the existing psychiatric treatment
15 plan for the prisoner. Defendants shall develop and implement
16 appropriate written rules and procedures by March 31, 1990.

17 3. Defendants will evaluate whether and under what
18 circumstances it is appropriate to house prisoners with
19 psychiatric classifications in Willis Unit. Defendants will
20 prepare and implement a pilot program by June 30, 1990 regarding
21 the housing of inmates with psychiatric classifications in Willis
22 Unit. Defendants will evaluate and report on the program and the
23 housing of prisoners in psychiatric classifications in Willis
24 Unit by December 15, 1990. The Mediator, if necessary, will

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1 conduct an independent investigation. The program will, at a
2 minimum, address the following issues:

3 a. Prisoners with psychiatric classifications
4 may not be placed in Willis Unit without prior approval of a
5 clinician absent an emergency. If the clinician approving the
6 referral is not a member of the prisoner's existing treatment
7 team, he or she must consult after placement with a member of
8 that team. In an emergency a prisoner with a psychiatric
9 classification may be placed in Willis Unit without the prior
10 approval of a clinician provided that the prisoner is examined
11 and approved for such placement by a clinician within 24 hours
12 after the placement. If the clinician does not approve the
13 emergency placement, custody staff may request that the case be
14 reviewed jointly by the Chief Psychiatrist and Associate Warden.
15 The case must normally be reviewed within 24 hours. If the case
16 is not resolved by the Chief Psychiatrist and Associate Warden,
17 it may be referred to the Chief Deputy Warden for Clinical
18 Services and the Chief Deputy Warden for Operations. The case
19 must normally be reviewed and a written decision made within 24
20 hours. Any written decision of the chief deputy wardens
21 concerning the review of a decision to place a particular
22 prisoner in Willis Unit will be produced periodically to the
23 Mediator.

24 The program shall set forth the factors to be
25 considered by the clinician in assessing the appropriateness of
26 housing the inmate in Willis Unit and the narrow circumstances
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1 justifying an emergency placement without the prior approval of a
2 clinician.

3 b. Prisoners in psychiatric treatment categories
4 who are housed in Willis Unit shall receive adequate psychiatric
5 care. The program shall set forth the types and levels of
6 staffing and the psychiatric programs which will be available to
7 prisoners in psychiatric treatment categories in Willis Unit.

8 c. To the maximum extent possible prisoners in
9 psychiatric treatment categories who are housed in Willis Unit
10 shall be housed separately from other prisoners in that unit.

11 d. All prisoners with psychiatric
12 classifications housed in Willis Unit as of the date the Consent
13 Decree is filed will be examined individually by a clinician
14 within thirty (30) days concerning the appropriateness of their
15 continued housing in Willis Unit. Such evaluation shall consider
16 the availability of psychiatric treatment in Willis Unit at the
17 time of the examination. Defendants shall report to the Mediator
18 the decision reached as to each such prisoner, including a copy
19 of the results of the psychiatric examination. If the clinician
20 does not approve the continued placement, custody staff may
21 request that the case be reviewed jointly by the Chief
22 Psychiatrist and Associate Warden. The case must normally be
23 reviewed within 24 hours. If the case is not resolved by the
24 Chief Psychiatrist and Associate Warden, it may be referred to
25 the Chief Deputy Warden for Clinical Services and the Chief
26 Deputy Warden for Operations. The case must normally be reviewed
27 and a written decision made within 24 hours. Any written

1 decision of the chief deputy wardens concerning the review of a
2 decision to continue the placement a particular prisoner in
3 Willis Unit will be produced periodically to the Mediator.

4 VI. AIDS

5 1. Within 120 days of the effective date of this
6 agreement, defendants will in good faith develop and begin
7 implementation of a pilot program to determine the feasibility of
8 placing HIV seropositive inmates in a general population program
9 at CMF. It is the goal of the pilot program to demonstrate that
10 such placement is possible consistent with medical, behavioral,
11 and security considerations.

12 2. Screening of HIV seropositive inmates for
13 placement in a general population program at CMF during the pilot
14 program will be done on a case-by-case basis through the pilot
15 program's selection criteria. These selection criteria shall not
16 be binding on any future program. The pilot program's selection
17 criteria will include the following:

18 a. Classification score generally not to exceed
19 that of indicated placement in Level III facilities;

20 b. No documented recent history of assaultive
21 behavior;

22 c. No documented recent history of sexual
23 behavior of a kind that poses a risk of transmission of the HIV
24 virus;

25 d. No documented recent intravenous drug use or
26 possession of intravenous drug paraphernalia;

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1 e. No documented recent history of propensity to
2 prey or be preyed upon;

3 f. Medical condition as determined by medical
4 and/or psychiatric staff must be commensurate with placement.

5 g. An inmate's preference for being housed in
6 SPU or in a general population program will be considered.

7 3. During the pilot program, selected HIV
8 seropositive inmates will be placed in a general population
9 program of defendants' design at CMF. These inmates will be
10 drawn from inmates presently housed in the SPU and newly-
11 discovered HIV seropositive inmates coming into or identified
12 within CMF. Inmates placed in the general population program
13 during the pilot program at CMF will be assigned to a single open
14 housing unit. It is anticipated that between 20 and 30 inmates
15 will be placed in a general population program during the first
16 three months of the program's operation. Additional numbers of
17 inmates may be added to the pilot program by defendants.

18 4. The pilot program will be evaluated by defendants
19 after nine (9) months of the effective date of this agreement.
20 Defendants will prepare a report for submission to the Mediator
21 within eleven (11) months of the effective date of this
22 agreement. The report will address, among other things:

23 a. The relative success of the pilot program;

24 b. Participation of HIV seropositive inmates in
25 jobs, programs, and activities at CMF during the pilot program;

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1 c. Plans for future placement of HIV
2 seropositive inmates at CMF, including disbursement in general
3 population;

4 d. Plans for future availability of programming
5 for HIV seropositive inmates at CMF;

6 5. Defendants will continue to make AIDS education
7 classes available to inmates at CMF on a regular basis as long as
8 there is continuing interest among the inmate population. At a
9 minimum, defendants will offer such classes at least once every 6
10 months regardless of inmate interest or attendance. Defendants
11 will submit a report to the Mediator describing and evaluating
12 the AIDS education program at CMF. This report will be submitted
13 at approximately the same time as the report described in
14 paragraph 4.

15 6. Defendants will maintain the confidentiality of
16 inmates' HIV seropositive status as provided for by law.

17 VII. GENERAL CONDITIONS ISSUES

18 A. LAW LIBRARY

19 Within ninety (90) days of the filing of an order
20 approving this Consent Decree, defendants will develop and
21 implement an adequate plan to provide reasonable physical access
22 to the law library to all inmates in closed units, including
23 Administrative Segregation, the Psychiatric Management Unit, and
24 the Special Program Unit, or those who are confined to their
25 cells for more than ten (10) days. The plan shall include
26 physical access to the law library for all inmates who are not
27 otherwise able to get physical access to the library for more

1 than ten (10) days because they are on Cell Feed and Lock-Up, are
2 confined-to-quarters or are in the Disciplinary and Detention
3 Cells.

4 B. HOUSING ASSIGNMENTS

5 Defendants shall maintain housing assignment policies
6 and practices at CMF that are designed to minimize violence and
7 that take into account inmate safety and the needs of an inmate
8 with respect to any disabilities and medical or mental health
9 care. Defendants shall conduct a review of the existing housing
10 assignment policies and practices at CMF and submit a report to
11 the Mediator and plaintiffs regarding the adequacy of those
12 policies and practices to satisfy the considerations set forth
13 above. At plaintiffs' request, the Mediator, in evaluating the
14 report, may investigate, among other things, defendants' mixing
15 of security and custody levels and the use of overrides in making
16 housing assignments.

17 C. DOUBLE CELLING

18 1. Defendants shall not double cell any inmate whose
19 medical or psychiatric condition or physical disability requires
20 a single cell.

21 2. Defendants shall not involuntarily double cell
22 reception center inmates in any pocket cell unless all of the
23 following conditions are satisfied:

24 a. Defendants shall make every reasonable effort
25 to maximize out-of-cell time, but in no event shall inmates be
26 locked in their cells more than twelve (12) hours per day;

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1 b. Inmates are not housed in a pocket cell for
2 more than sixty (60) calendar days;

3 c. After orientation, inmates are provided with
4 the opportunity to engage in adequate indoor and outdoor
5 recreational activities at least five (5) hours per day, five (5)
6 days per week.

7 D. INMATE CLERKS

8 Defendants shall review the policies and practices by
9 which inmate clerks are permitted access to information
10 concerning other inmates. Defendants shall submit a report to
11 the Mediator and recommend any changes in policies and practices
12 as necessary to prohibit access to information which may
13 reasonably be expected to threaten the safety or security of any
14 other inmate or staff member.

15 E. DISCIPLINARY AND DETENTION CELLS

16 Defendants shall review all policies and procedures and
17 practices for placement and retention of any inmates in the
18 Disciplinary and Detention Cells of the administrative
19 segregation unit and the conditions of confinement and treatment
20 of inmates in such cells. Defendants shall ensure that their
21 written policies contain specific criteria for placing an inmate
22 in such cells. Inmates with serious mental illness or a recent
23 history of attempted suicide, as determined by a psychiatrist,
24 psychologist, or physician, shall not be housed in these cells.
25 Defendants shall not house inmates in these cells for longer than
26 ten (10) full consecutive calendar days.

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1 Defendants shall not place any inmate in the
2 Disciplinary and Detention cells unless:

3 1. There is good cause for such placement and such
4 cause is adequately documented;

5 2. Within twenty-four (24) hours of confinement, a
6 psychiatrist, psychologist, or physician examines the inmate and
7 determines that this housing will not jeopardize the inmate's
8 mental well-being;

9 3. A psychiatrist, psychologist, or physician
10 examines the inmate once every 72 hours and determines that this
11 housing is not jeopardizing the inmate's mental well-being;

12 4. The flaps are not closed in the absence of good
13 cause and that cause shall be documented. Good cause shall
14 include, but not be limited to, throwing any material at a staff
15 member or inmate. No officer below the rank of lieutenant shall
16 determine whether there is good cause. The flaps may not be
17 closed for more than the time necessary to deter the inmate from
18 committing similar misbehavior, and the need for such deterrent
19 action shall be assessed and documented at least every
20 twenty-four (24) hours.

21 5. Within sixty (60) days, defendants shall take all
22 reasonable steps to modify the plumbing to provide that inmates
23 shall be able to flush their toilets at will, except when an
24 inmate floods his cell or otherwise abuses the toilet facilities.
25 When control of the toilets is taken away from an inmate the
26 reasons therefor shall be documented and the toilet shall be
27 flushed at least once every hour.

1 6. The cells shall be kept in a clean and sanitary
2 condition. Defendants shall ensure that upon entering these
3 cells each inmate has or is furnished with supplies sufficient to
4 maintain personal hygiene.

5 7. Each cell shall be equipped with an adequate means
6 of artificial illumination. Within sixty (60) days, defendants
7 shall take all reasonable steps to modify electrical switches to
8 provide that lights inside the cell shall be connected to a
9 functioning on-off switch that is under the control of the
10 occupant.

11 8. Each inmate shall be provided with a paper garbage
12 bag each day.

13 F. TOILETS, SHOWERS, AND SINKS

14 Defendants shall evaluate the facilities at CMF
15 regarding the adequacy of existing toilets, showers and sinks for
16 each unit, and sub-unit, including individual dormitories and
17 submit a report to the Mediator for providing additional
18 facilities on a unit by unit basis. The Mediator shall review
19 this report and determine whether the facility or proposed
20 facilities for each unit are adequate. When reviewing the
21 adequacy of the facilities, the Mediator may consider published
22 standards, including but not limited to those of the American
23 Correctional Association and the American Public Health
24 Association. The parties recognize that such standards do not by
25 themselves establish constitutional standards under the Eighth
26 Amendment.

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1 G. EXERCISE

2 Defendants shall review all policies, procedures and
3 practices for providing outdoor exercise to all inmates in closed
4 units, including, but not limited to, Willis Unit and the
5 Psychiatric Management Unit. Defendants shall submit a report
6 and proposal to the Mediator for providing every inmate with a
7 minimum of ten (10) hours of outdoor exercise per week.
8 Defendants may suspend exercise for an inmate for no more than
9 ten (10) days if the suspension is based upon genuine reasons of
10 discipline or the safety and security of the prison. The
11 opportunity for outdoor exercise may be curtailed for any period
12 medically indicated upon the order of a physician which shall be
13 appropriately documented.

14 H. EMERGENCY PROCEDURES

15 Defendants shall review their existing policies and
16 practices for removing an inmate in a Willis Unit cell during the
17 first watch. Defendants shall submit a report to the Mediator
18 and recommend any revision in their policies, procedures and
19 practices which are necessary to assure that an inmate may be
20 removed from his cell promptly upon discovery that an emergency
21 exists and consistent with safety and security.

22 I. STAFFING

23 Defendants shall review the staffing levels of each
24 unit at CMF to determine whether there are adequate custody staff
25 to properly supervise and to provide escorts and other services
26 to inmates in those units. Defendants shall submit a report of
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1 their conclusions and any recommendations to the Mediator and
2 plaintiffs' counsel.

3 J. CONVERTING SPACE FOR HOUSING

4 Defendants shall not convert any space at CMF that
5 did not house inmates as of November 1, 1989 to a housing unit,
6 unless all of the following conditions are satisfied:

7 1. Except in cases of emergency, defendants
8 shall provide notice to the Mediator and plaintiffs of their
9 intention to convert space for housing as soon as reasonably
10 possible, but not less than thirty (30) days before inmates are
11 housed in the space to be converted; and

12 2. At the request of plaintiffs, the Mediator
13 may immediately determine the impact of the conversion. The
14 Mediator may not recommend to the Court that the conversion be
15 prohibited, unless he or she finds that the conversion will
16 itself violate the Eighth Amendment standards. He or she,
17 however, may determine that the conversion will make defendants
18 unable to meet their obligations under the Consent Decree and may
19 recommend appropriate remedies to the Court.

20 VIII. CONSTRUCTION AND IMPLEMENTATION

21 In construing and implementing the terms of this Consent
22 Decree, the parties agree to the following:

23 1. If defendants seek to modify any plans or programs
24 required by this Consent Decree, they shall serve a copy of the
25 proposed modification on plaintiffs and the Mediator. The
26 plaintiffs shall have thirty (30) days from receipt of the
27 proposed modification in which to file with the Mediator a

1 response to the proposed modification. If plaintiffs object to
2 the modification sought, the parties shall meet or otherwise
3 confer in a good faith effort to resolve their differences
4 concerning the proposed modification. If the parties are unable
5 to resolve their differences through the meet-and-confer process,
6 the proposed modification will be referred to the Mediator for
7 findings and recommendations. Defendants shall have the burden
8 of persuasion that the proposed modification should be approved.
9 Any proposed modification to which plaintiffs do not object
10 within thirty (30) days of receipt shall be deemed approved.
11 These provisions for modifications do not govern the provisions
12 for emergency suspensions or modifications described in Part
13 VIII, paragraph 2, below.

14 2. It is not the intent of this Consent Decree to
15 prohibit nor does it prohibit the Director or Warden from
16 temporarily suspending compliance with all or any part of this
17 Consent Decree during a state of riot or turmoil or other genuine
18 emergency. The determination by the Director or Warden that a
19 state of genuine emergency exists shall be set forth in writing
20 as soon as reasonably possible, shall detail briefly with
21 reasonable specificity the reasons for the determination, shall
22 promptly be provided to the Mediator and plaintiffs' counsel and
23 shall be subject to the mediation and enforcement process
24 provided for herein.

25 3. Defendants promptly shall provide a copy of the
26 Consent Decree to each of their employees and agents who works
27 now or in the future at the institution or who now or in the

1 future has any management responsibility for operations, policies
2 and procedures for or at the institution. Notice to the class of
3 the provisions of the Consent Decree will issue pursuant to
4 notice provisions approved by the Court. If the parties to the
5 Consent Decree cannot agree on the provisions for notice to the
6 class, each party shall promptly submit their proposals to the
7 Court for its determination.

8 4. Except as expressly stated in this Consent Decree,
9 plaintiffs' counsel shall timely be provided by defendants with
10 copies of all reports, plans, proposals, policies and procedures,
11 and other materials that the defendants are obligated to produce
12 or provide under the Consent Decree. On reasonable notice and
13 for good cause, the Mediator may provide that plaintiffs' counsel
14 shall have reasonable access to other documents, and to
15 defendants' employees and agents and to areas of the institution
16 relevant to this Consent Decree.

17 5. If additional funding is necessary for timely
18 implementation of any of defendants' obligations, the defendants
19 shall employ every lawful means at their disposal to secure such
20 funding. Any failure, however, timely to secure such funding
21 shall not relieve the defendants of their obligations under the
22 Consent Decree, and the Court may employ whatever means is
23 lawfully available to it to compel timely implementation,
24 consistent with the other terms of the Consent Decree.

25 6. No person who has notice of this Consent Decree
26 shall fail to comply with the letter and spirit hereof nor shall
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1 any person subvert the letter or spirit hereof by any sham,
2 indirection, or other artifice.

3 7. Unless otherwise provided for by this Consent
4 Decree any dispute between the parties arising under this Consent
5 Decree shall be resolved through the mediation and compliance
6 procedures set forth in Part IX of this Consent Decree.

7 8. Unless otherwise specifically set forth in this
8 Consent Decree, defendants will provide plaintiffs and the
9 Mediator with copies of any reports provided for by this Consent
10 Decree within 120 days from the date the order approving the
11 decree is filed, or at such later time as is agreed on by the
12 parties or ordered by the Court. Any plans required by this
13 Consent Decree shall specify a date on which implementation of
14 the plan shall commence.

15 9. All medical staff committee minutes, which are
16 confidential and privileged from disclosure under applicable law,
17 will be made available to the independent consultant on QA
18 programs described in this Consent Decree in order to carry out
19 his or her duties under the decree. The independent QA
20 consultant shall also be permitted to attend medical staff
21 committee meetings. At the request of plaintiffs, the Mediator
22 may designate a physician selected by him or her who shall be
23 permitted to review the medical staff committee minutes and
24 attend meetings. Access to medical staff committee meetings or
25 minutes by the QA consultant or a physician designated by the
26 Mediator shall be pursuant to the bylaws of the CMF Medical Staff
27 regarding courtesy privileges for nonstaff physicians. If such

1 courtesy privileges are denied, the denial shall be subject to
2 the mediation process. For good cause shown, plaintiffs' counsel
3 may request copies of the medical staff committee minutes from
4 the Mediator. Such a request will be subject to the mediation
5 process. Disclosure pursuant to the terms of this Consent Decree
6 shall not operate as a waiver of any claim of privilege in this
7 or any other action.

8 IX. MEDIATION AND COMPLIANCE

9 1. A person who is mutually agreeable to the parties
10 will be appointed by the Court to serve as Mediator. The parties
11 shall promptly meet and confer and seek to agree on a qualified
12 candidate. If within thirty (30) days after this Consent Decree
13 is entered by order of the Court, the parties have not agreed on
14 the person who shall be Mediator, each side shall nominate no
15 more than three candidates for appointment. Within ten (10) days
16 of submission, each side may veto one candidate on the other
17 side's list. The remaining candidates shall be submitted to the
18 Court with their resumes and brief descriptions of their
19 qualifications. Among the criteria the Court will consider
20 relevant in making its designation are the candidates' expertise
21 in the fields of correctional administration, health care and
22 mediation. Within twenty (20) days of these submissions to the
23 Court, the Court shall select and appoint as Mediator one of the
24 candidates submitted by the parties, or such other person as the
25 Court shall find has sufficient expertise in mediation,
26 correctional administration and correctional health care. If the
27 Court selects as the Mediator a person who is not proposed by a

1 party, the Court shall allow the parties fifteen (15) days in
2 which to make written objections to the Court's selection.
3 Promptly thereafter, the Court will appoint that person or submit
4 to the parties a new candidate for their comment.

5 2. The Mediator shall have the following powers and
6 duties:

7 a. Work with the parties to develop plans of
8 implementation or reports required by the provisions of this
9 Consent Decree;

10 b. Work with the parties to resolve
11 disagreements over the adequacy of plans of implementation or
12 reports that defendants are required to prepare under this
13 Consent Decree;

14 c. Make written findings and recommendations to
15 the Court regarding disputes over the adequacy of plans of
16 implementation or reports that were not resolved through
17 mediation;

18 d. Receive periodic compliance reports from
19 defendants that set forth information regarding and progress
20 toward implementation of the terms of this Consent Decree. The
21 format of these compliance reports is within the discretion of
22 defendants. The Mediator may require that additional information
23 be included in these reports, and that changes be made in format;

24 e. Provide the Court and the parties with a
25 written report at least every ninety (90) days during the first
26 year of this Consent Decree concerning the status of
27 implementation of the provisions of the decree, and then at least

1 every 180 days thereafter during the life of the Consent Decree;
2 All such reviews and reports shall address whether any changes in
3 circumstances have affected the defendants' ability to provide
4 the medical, psychiatric or custodial care provided for by this
5 Consent Decree;

6 f. Provide for appropriate notices to the class
7 members and appropriate employees and agents of the defendants;

8 g. Perform such other duties as the parties may
9 agree to assign.

10 3. Except as specifically provided herein, the
11 Mediator shall have access to all parts of the institution with
12 or without notice, all relevant documents, persons, and
13 institutional meetings and proceedings to the extent that all
14 such access is needed to fulfill his or her obligations under the
15 Consent Decree and may retain experts for his or her consultation
16 in those subject areas covered by the provisions of this Consent
17 Decree.

18 4. When plaintiffs have reason to believe that the
19 provisions of this Consent Decree are not being properly
20 implemented, plaintiffs' counsel shall notify defendants by
21 telephone and in writing of the perceived violations, as well as
22 their basis in law and fact. A copy of the written notice will
23 be sent to the Mediator. Defendants shall respond in writing to
24 plaintiffs and the Mediator within 10 working days of receipt of
25 the written notification. If the parties are unable promptly to
26 resolve their differences, the Mediator shall be notified by
27 plaintiffs' counsel in writing.

1 5. Upon his or her appointment the Mediator shall
2 promptly establish a general schedule and procedure for the
3 dispute resolution process provided for herein. Such processes
4 are to be concluded with issuance by the Mediator of his or her
5 final report, if such become necessary, no later than 45 days
6 from receipt of the written notice described in Part IX,
7 paragraph 4, above, unless the time is extended by the Mediator
8 for good cause.

9 6. The reports and recommendations of the Mediator
10 shall be filed with the Court and served on the parties and shall
11 be based on provisions of this Consent Decree and/or applicable
12 law. The Mediator's report shall be final and binding on the
13 parties as if entered in fact by the Court unless, within 15
14 working days of filing, a party files objections with the Court
15 in the form of a noticed motion. If objections to the Mediator's
16 report and recommendations are filed, the Court shall consider
17 the matter de novo and issue an appropriate order regarding
18 compliance. Any evidence not previously presented to the
19 Mediator in the course of the proceedings described in Part IX,
20 paragraphs 4 and 5 will be admitted at a hearing before the Court
21 only upon a showing that the party offering it lacked a
22 reasonable opportunity to present the evidence to the Mediator.
23 The burden of persuasion is on the party who has objected to the
24 Mediator's findings and recommendations.

25 7. Following a finding of noncompliance with the
26 Consent Decree by the Court, defendants shall have thirty (30)
27 calendar days to comply with the provisions of the order of

1 compliance. This 30-day period may be extended by the Court
2 where defendants show to the Court that compliance is not
3 reasonably possible within this 30-day period. If the 30-day
4 period is extended, the Court shall fix a date by which
5 compliance shall be required. Defendants shall notify the Court,
6 the Mediator and plaintiffs in writing when compliance is
7 accomplished.

8 8. After first informing the Mediator and defendants
9 in writing and only in extraordinary circumstances, plaintiffs
10 may apply directly to the Court for emergency relief on the
11 grounds that compliance with the mediation process would lead to
12 immediate irreparable harm to class members.

13 9. In the event the Mediator becomes permanently
14 unavailable due to death or other unforeseen circumstances, a new
15 Mediator shall be selected in the same manner as provided for the
16 selection of his or her predecessor.

17 X. TERMINATION OF THE DECREE

18 1. The Court shall retain jurisdiction of this action
19 for all purposes under this Consent Decree until defendants shall
20 have fully and faithfully implemented its provisions and until
21 the judgment is discharged.

22 2. It is the goal of the parties that the provisions
23 of this Consent Decree shall be fully and faithfully implemented
24 in their entirety within twenty-four (24) months from the date an
25 order approving the Consent Decree is filed.

26 3. On or after a date on which defendants have fully
27 and faithfully implemented any provision of this Consent Decree,

1 the defendants may request that the Mediator may certify
2 compliance with that provision and may make appropriate
3 modifications in defendants' reporting obligations under this
4 Consent Decree.

5 4. On or after the date on which the Mediator
6 certifies that defendants have fully and faithfully implemented
7 the provisions of this Consent Decree in their entirety and have
8 been in substantial compliance with the Consent Decree for no
9 less than one year, defendants may move that the injunction
10 entered herein be dissolved, the judgment discharged,
11 jurisdiction terminated, and the case closed and dismissed with
12 prejudice on the grounds that defendants have fully and
13 faithfully implemented and maintained the provisions of the
14 Consent Decree; provided that no such motion may be filed prior
15 to 36 months from the date an order approving this Consent Decree
16 is filed.

17 5. Dismissal shall be granted unless, within thirty
18 (30) days after receipt of defendants' motion, plaintiffs file
19 opposition. If such opposition is filed, the Court shall hold a
20 hearing on the motion, and the burden will be on plaintiffs to
21 demonstrate that the defendants have not fully and faithfully
22 implemented all provisions of this Consent Decree. If plaintiffs
23 fail to meet this burden, the injunction shall be dissolved, the
24 judgment shall be discharged, jurisdiction shall be terminated,
25 and the case shall be closed and dismissed with prejudice.

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1 XI. COSTS AND FEES

2 1. Plaintiffs may seek to recover reasonable costs
3 and attorneys' fees and other expenses that may be sought
4 pursuant to 42 U.S.C. section 1988 and 29 U.S.C. Section 794(b)
5 for work performed in this matter prior to entry of this Consent
6 Decree and reasonably performed during the pendency of this
7 Consent Decree. Reasonable costs and expenses shall be awarded
8 in amounts agreed to by the parties or, absent agreement, as
9 determined by the Court upon plaintiffs' noticed motions.

10 2. Defendants shall pay the Mediator his reasonable
11 fees and expenses, including the reasonable fees and expenses of
12 any experts or consultants he or she hires pursuant to Part IX,
13 paragraph 3. The rate and procedure for compensation shall be
14 determined by the Mediator and defendants. In the event they are
15 unable to agree, the matter shall be presented to the Court for

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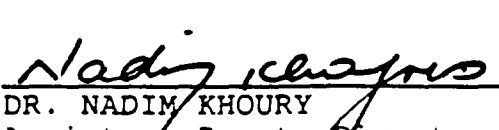
1 adoption of a compensation rate and procedure.

2 CONSENTED TO BY THE UNDERSIGNED:

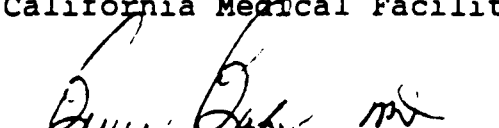
3 FOR THE DEFENDANTS

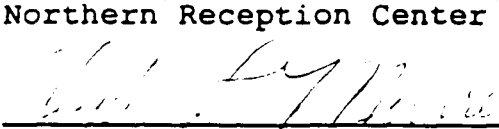
4 BY:

5 
6 JAMES ROWLAND
7 Director
8 Department of Corrections

9 
10 DR. NADIM KHOURY
11 Assistant Deputy Director
12 Health Services
13 Department of Corrections

14 
15 DANIEL E. THOR, M.D.
16 Chief Physician and Surgeon
17 California Medical Facility

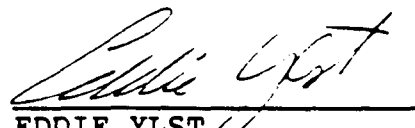
18 
19 BRUCE BAKER, M.D.
20 Chief Psychiatrist (Acting)
21 Northern Reception Center

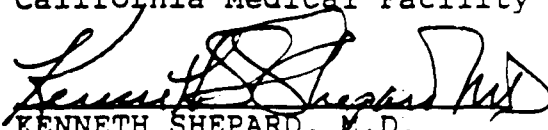
22 
23 CLYDE MURRAY Murrey
24 Deputy Director
25 for State Hospitals
26 Department of Mental Health

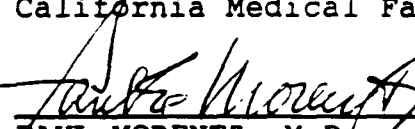
27 JOHN K. VAN DE KAMP
Attorney General
of the State of California

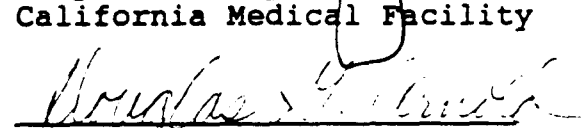
24 By:

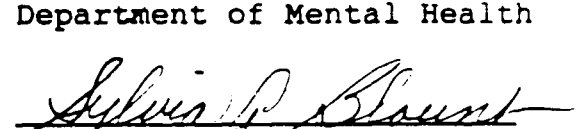
25 
26 JAMES B. CUNEO
27 Deputy Attorney General
Attorney for Defendants

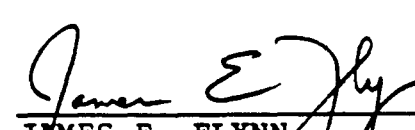

EDDIE YLST
Warden
California Medical Facility


KENNETH SHEPARD, M.D.
Chief Deputy Director
Clinical Services
California Medical Facility


PAUL MORENTZ, M.D.
Chief Psychiatrist
Outpatient Psychiatric Program
California Medical Facility


DOUGLAS G. ARNOLD
Director (Acting)
Department of Mental Health


SYLVIA BLOUNT
Executive Director
DMH - Vacaville Psychiatric
Program
Department of Mental Health


JAMES E. FLYNN
Deputy Attorney General
Attorney for Defendants

1 FOR THE PLAINTIFFS

2 BY:

3 Warren E. George

4 WARREN E. GEORGE
5 McCutchen, Doyle, Brown
6 & Enersen

7 Cynthia Greco Herr

8 CYNTHIA GRECO HERR
9 McCutchen, Doyle, Brown
10 & Enersen

11 Michael W. Bien

12 MICHAEL W. BIEN
13 Brobeck, Phleger & Harrison

14 Donald Specter

15 DONALD SPECTER
16 Prison Law Office

FOR THE HIV SUBCLASS

BY:

Sanford Jay Rosen

SANFORD JAY ROSEN
Rosen & Phillips

Matthew A. Coles

MATTHEW A. COLES
ACLU Foundation
of Northern California

17 WHEREFORE, the parties to this action having agreed to
18 the provisions of the Consent Decree set forth above, and the
19 Court being advised in the premises, this Consent Decree is
20 hereby entered as the JUDGMENT of this Court.

21 IT IS SO ORDERED, this _____ day of _____, 1989 at
22 Sacramento, California.

23
24
25 UNITED STATES DISTRICT COURT
26
27