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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

JAY LEE GATES, et al.

Plaintiffs,

v.

GEORGE DEUKMEJIAN, et al.,

Defendants.

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., Plaintiffs, v. GEORGE DEUKMEJIAN, et al. Defendants.	No. CIV S-87-1636 LKK-JFM CONSENT DECREE

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

> All inmates who are or will be confined at the California Medical Facility - Main (CMF-Main) and the Northern Reception Center (NRC). Inmates at CMF-Main 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.

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

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

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

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

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

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

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

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

12. Governor George Deukmejian is dismissed as a defendant.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

II. DEFINITIONS

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

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

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

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

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

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

III. MEDICAL CARE ISSUES

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

a. Asthma

b. Seizure disorders

c. Obstructive lung disease

d. Tuberculosis

e. HIV disease, including dental care

f. Renal disease

g. Liver disease

h. Diabetes mellitus

i. Cardiovascular disease, including hypertension.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

IV. MEDICAL DISABILITY ISSUES

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

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

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

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

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

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

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

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

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

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

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

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

12. Defendants will ensure that inmates with complete spinal cord lesions above the T6 level and who are referred for housing in an air-conditioned unit by a staff physician order are housed in such a unit unless the patient refuses placement there,

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and the refusal is documented appropriately in the inmate's medical record.

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

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

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

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

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

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

V. MENTAL HEALTH ISSUES

A. SUICIDE

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

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

a. Training of medical, custodial and psychiatric staff;

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

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

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

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

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

f. Appropriate housing for suicide risk prisoners.

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

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

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

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

B. PSYCHIATRIC OFFICER OF THE DAY

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

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

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

C. HIRING AND RETENTION OF PROFESSIONAL STAFF

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

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

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

D. TASERS, RESTRAINTS AND INVOLUNTARY MEDICATION

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

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

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

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

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

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

E. INPATIENT CARE

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

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

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

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

c. The operation of the CAT teams.

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

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

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

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

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

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

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

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

c. Appropriate monitoring of medications;

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

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

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

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

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

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

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

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

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

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

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

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

i. Isolation and seclusion in their cells of prioners in need of psychiatric care will be minimized.

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

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

G. CLASSIFICATION, HOUSING, MANAGEMENT

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

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

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

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

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

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

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

The program shall set forth the factors to be considered by the clinician in assessing the appropriateness of housing the inmate in Willis Unit and the narrow circumstances

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justifying an emergency placement without the prior approval of a clinician.

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

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

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

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

VI. AIDS

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

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

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

b. No documented recent history of assaultive behavior;

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

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

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

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

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

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

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

a. The relative success of the pilot program;

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

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

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

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

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

VII. GENERAL CONDITIONS ISSUES

A. LAW LIBRARY

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

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

B. HOUSING ASSIGNMENTS

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

C. DOUBLE CELLING

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

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

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

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

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

D. INMATE CLERKS

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

E. DISCIPLINARY AND DETENTION CELLS

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

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

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

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

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

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

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

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

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

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

F. TOILETS, SHOWERS, AND SINKS

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

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G. EXERCISE

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

H. EMERGENCY PROCEDURES

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

I. STAFFING

Defendants shall review the staffing levels of each unit at CMF to determine whether there are adequate custody staff to properly supervise and to provide escorts and other services to inmates in those units. Defendants shall submit a report of

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their conclusions and any recommendations to the Mediator and plaintiffs' counsel.

J. CONVERTING SPACE FOR HOUSING

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

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

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

VIII. CONSTRUCTION AND IMPLEMENTATION

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

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

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

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

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

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

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

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

6. No person who has notice of this Consent Decree shall fail to comply with the letter and spirit hereof nor shall

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any person subvert the letter or spirit hereof by any sham, indirection, or other artifice.

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

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

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

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

IX. MEDIATION AND COMPLIANCE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

X. TERMINATION OF THE DECREE

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

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

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

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

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

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

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XI. COSTS AND FEES

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

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

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adoption of a compensation rate and procedure.

CONSENTED TO BY THE UNDERSIGNED:

FOR THE DEFENDANTS

BY:

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Director
Department of Corrections

EDDIE YLST
Warden
California Medical Facility

DR. NADIM KHOURY
Assistant Deputy Director
Health Services
Department of Corrections

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DANIEL E. THOR, M.D.
Chief Physician and Surgeon
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PAUL MORENTZ, M.D.
Chief Psychiatrist
Outpatient Psychiatric Program
California Medical Facility

BRUCE BAKER, M.D.
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FOR THE HIV SUBCLASS

BY:

SANFORD JAY ROSEN
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MATTHEW A. COLES
ACLU Foundation
of Northern California

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

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

UNITED STATES DISTRICT COURT