

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
VICINAGE OF TRENTON

C.F., et al., individually
and on behalf of all others
similarly situated

Plaintiffs,

v.

JACK TERHUNE, et al.,

Defendants.

) HONORABLE ANNE E. THOMPSON

)

) Civil Action No. 96-1840 (AET)

)

)

)

SETTLEMENT AGREEMENT

D.M. v. Terhune



PC-NJ-001-003

TABLE OF CONTENTS

	<u>PAGE</u>
I. ENHANCED MENTAL HEALTH SERVICES.....	10
A. Funding.....	10
B. Timing.....	13
II. AMENDMENTS TO THE DISCIPLINARY REGULATIONS.....	14
III. POLICIES AND PROCEDURES.....	14
IV. MONITORING.....	16
A. Identity of Monitor.....	16
B. Cost of Monitoring.....	18
C. Length and Frequency of Inspections.....	19
D. Access to Inmates and Their Medical and Classification Records.....	20
E. Representatives at Inspections, and Access to Custody and Medical Staff.....	21
F. Contact with the Monitor.....	23
G. Substance of the Monitor's Report.....	23
H. Definition of Compliance.....	25
I. Emergent Circumstances.....	27
J. Curing Non-Compliance.....	27
K. Enforcement of the Settlement Agreement.....	32
L. Confidentiality of Monitor's Report.....	33
M. Confidentiality of Medical Records Reviewed by and Produced to the Monitor.....	36
N. Confidentiality of Classified Records Reviewed by and Produced to the Monitor.....	39

O.	Limitation on Use of Monitor's Report and Documents Reviewed by and Information Produced to the Monitor.....	41
P.	Disclosure of Identities of Presumptive Class Members.....	42
Q.	Reporting Requirements.....	43
V.	INDIVIDUAL COMPLAINTS.....	49
VI.	NEW CONTRACTORS.....	50
VII.	TERM OF THE AGREEMENT.....	50
VIII.	RETURN OF CONFIDENTIAL DOCUMENTS.....	51
IX.	ALTERATIONS.....	52
X.	DISCLAIMER OF LIABILITY.....	52
XI.	DISSOLUTION AND SEVERABILITY.....	53
XII.	DISSEMINATION.....	53
XIII.	ENFORCEMENT.....	54
XIV.	SURVIVAL OF CONFIDENTIALITY PROVISIONS.....	56
XV.	PLAINTIFFS' ATTORNEYS FEES.....	56

TABLE OF EXHIBITS

Amended Complaint filed on July 16, 1997.....	Exhibit A
Plan for Enhanced Mental Health Services.....	Exhibit B
Proposed Amendments to the Disciplinary Regulations...	Exhibit C
Amended Confidentiality and Protective Order entered by the Court on April 8, 1998.....	Exhibit D
Authorization For Disclosure/Release of Health Information Including Alcohol And/Or Drug Use, HIV/AIDS and Psychiatric Records.....	Exhibit E
Acknowledgment of Terms of Settlement Agreement.....	Exhibit F
Proposed Form of Order of Dismissal.....	Exhibit G

THIS SETTLEMENT AGREEMENT dated May 1999 entered into by and among C.F., D.M., L.K., A.O. and J.W. individually and on behalf of all others similarly situated (the "Plaintiffs" or the "Class Members") and Commissioner of the New Jersey Department of Corrections Jack Terhune, Chief of Staff Mary Ellen Bolton, Assistant Commissioner Howard L. Beyer, Chief Disciplinary Hearing Officer Eugene F. O'Neill, Health Services Unit Supervisor Thomas Farrell and Director of Psychological Services Dr. Richard Cevalasco, having been sued in their official capacity ("the Defendants"),

WITNESSETH THAT;

WHEREAS, Plaintiffs filed this class action suit on April 11, 1996 against the Defendants seeking wide-ranging injunctive relief on behalf of a class of mentally ill inmates; and

WHEREAS, an Amended Complaint was filed on July 16, 1997 (the "Amended Class Action Suit"), a copy of which is attached hereto as Exhibit A; and

WHEREAS, the Amended Class Action Suit was brought pursuant to 42 U.S.C. §1983 seeking redress for alleged violations of the Eighth and Fourteenth Amendments of the United States Constitution, 29 U.S.C. §504 (the Rehabilitation Act), 42 U.S.C. §12132 (the Americans with Disabilities Act of 1990), and breach of contract; and

WHEREAS, the Amended Class Action Suit seeks declaratory and injunctive relief as well as the recovery of attorneys fees and costs; and

WHEREAS, Correctional Medical Services, Inc. ("CMS") commenced provision of medical services to inmates within DOC facilities on April 27, 1996; and

WHEREAS, Correctional Behavioral Solutions of New Jersey, Inc. ("CBS") commenced provision of mental health services to inmates within DOC facilities on August 17, 1996 pursuant to a subcontract with CMS; and

WHEREAS, the matter was certified as a class action on November 20, 1996 and the class was defined as:

all persons who suffer DSM IV, Axis I and/or Axis II disorders such that they are unable to meet the functional requirements of prison life without mental health treatment, who now or in the future will be confined within the facilities of the New Jersey Department of Corrections; and

WHEREAS, CMS and CBS were added as party defendants to the Amended Class Action Suit on July 16, 1997;

WHEREAS, Defendants, CMS and CBS have filed Answers in which they deny Plaintiffs' allegations; and

WHEREAS, the litigants have exchanged discovery including expert reports, and taken deposition testimony; and

WHEREAS, Plaintiffs have agreed to execute a Stipulation of Dismissal with prejudice as to CMS and CBS; and

WHEREAS, Plaintiffs and Defendants acknowledge that, to the extent possible, it is in their best interests to resolve the issues raised in this action by means other than litigation and, to this end, have on this day agreed to enter into this Settlement Agreement; and

WHEREAS, the "Settlement Agreement" incorporates this document, Exhibit A (the Amended Complaint), Exhibit B (the plan for enhanced mental health services, hereinafter referred to as the "Plan") and Exhibit C (the proposed amendments to the disciplinary regulations, hereinafter referred to as the "Regulations"); and

WHEREAS, the "Presumptive Class Membership" incorporates all inmates who are or in the future will be housed on the Stabilization Units ("SUs"), the Residential Treatment Units ("RTUs") and the Transitional Care Units ("TCUs") and all inmates who now or in the future will be listed on the special needs rosters and the mental health contact rosters; and

WHEREAS, the "special needs rosters" shall refer to a list of inmates who are receiving psychotropic medication or have refused psychotropic medication and shall include, but is not limited to, their diagnoses and medications. For all special needs rosters produced prior to the implementation of the DOC's Management Information System ("MIS"), housing locations will be provided when available and in accordance with the current practice. Special needs rosters produced after the implementation of the DOC's MIS will include housing locations; and

WHEREAS, the "mental health contact rosters" shall refer to a list of inmates who are not on the special needs rosters, are receiving mental health treatment and meet the class membership definition. Mental health contact rosters shall include diagnoses. Mental health contact rosters produced between July 1, 1999 and the implementation of the DOC's MIS will contain housing locations when

available. Mental health contact rosters produced after the implementation of the DOC's MIS will contain housing locations.

WHEREAS, "DOC" shall refer to the New Jersey Department of Corrections; and

WHEREAS, "medical and mental health services provider(s) under contract with the DOC" shall mean any medical and mental health services provider providing medical or mental health services under contract with the DOC, including CMS and CBS as long as they continue to provide medical and mental health services under contract with the DOC; and

WHEREAS, "medical record" shall include both medical and mental health records. Medical records shall also include any list of inmates receiving medical and/or mental health services; and

WHEREAS, "10A Information" shall mean any and all information, material or documentation, other than medical records, Internal Affairs records or voting records of classification committee members, that are produced to Plaintiffs and/or the monitor during the monitoring period and which contains information described in N.J.A.C. 10A:22-2.2. Prior to production of 10A Information, Defendants shall redact the names of any confidential informants, the targets of ongoing investigations, the manner in which the fruits of Internal Affairs investigations are compiled and filed and Internal Affairs investigatory techniques; and

WHEREAS, "confidential medical and mental health services provider(s) information" shall mean Continuous Quality Improvement "CQI" report form and verification provided in accordance with

Section IV(Q) (6) (p), monthly reports provided in accordance with Section IV(Q) (6) (n), the names of mental health staff personnel on the mental health staff charts provided in accordance with Section IV(Q) (6) (a) and invoices from the mental health services provider(s) reflecting the professional position, the contract FTEs and the hours per pay period (information related to payment for services shall be redacted) in accordance with Section IV(Q) (6) (b); and

WHEREAS, "monitoring period" shall mean the period commencing the date the Settlement Agreement is signed and ending on the date that this Settlement Agreement terminates in accordance with Section VII(2).

WHEREAS, "monitor's report" shall include the monitor's report and/or any appendices attached thereto; and

WHEREAS, "Classified Records" shall collectively refer to Internal Affairs records, voting records of classification committee members, 10A Information and confidential medical and mental health services provider(s) information; and

WHEREAS, "identifying information" shall include, but is not limited to, housing location, date of birth, social security number and physical description of the inmate; and

WHEREAS, the terms of the Amended Confidentiality and Protective Order entered by the Court on April 8, 1998, as amended by Order of the Federal Court in May 1999 (the "Confidentiality Order"), attached hereto as Exhibit D, remain in full force and effect as to any documents or information disclosed during the

course of the litigation through December 31, 1998, including, but not limited to documents Bates stamped DOC 1 - 815, DOC 6000 - 80707, FPH 1 - 1575, PR 1 - 136, CMS 1 - 39193, CMS PR 1 - 136, CBS PR 1-105 and TR 2102 - 4107; and

WHEREAS, the use, release and dissemination of documents and information produced to Plaintiffs and/or the monitor during the monitoring period shall be governed by the terms of this Settlement Agreement;

NOW, THEREFORE, Plaintiffs and Defendants do hereby set forth the understanding reached between them:

I. ENHANCED MENTAL HEALTH SERVICES

A. Funding:

In order to fully fund the Plan, Defendants hereby agree to the following:

1. Funds currently appropriated in the Fiscal Year 1999 budget for the implementation of the Plan, which are approximately \$2.1 million, will be utilized to fund the Plan;

2. Any in-kind services or cash equivalents, if any, obtained from the medical services provider(s) for the implementation of the Plan will be utilized to fund the Plan; and

3. The Governor of the State of New Jersey has recommended to the legislature that \$16,000,000 be appropriated to fund additional mental health treatment services.

4. Within thirty (30) days of the date the Settlement Agreement is signed, Defendants will provide a certification from

Commissioner Terhune stating that (a) to the best of his knowledge, after reasonable investigation, the \$16,000,000 recommended appropriation set forth in Section I(A)(3) is sufficient to implement the Plan, and (b) Commissioner Terhune will use his best efforts to obtain full funding for the Plan.

5. Defendants will notify Plaintiffs of the dates of any public hearings related to the funding of the Plan and will provide Plaintiffs with all public documents related to the funding of the Plan as soon as possible when they become available.

6. Defendants will provide Plaintiffs with any public documents related to the extension of any contract for the provision of medical and mental health services, if any, as soon possible when they become available.

7. Defendants shall inform Plaintiffs by affidavit as to the outcome of DOC's appropriation request within seven (7) calendar days from the date upon which Defendants learn the level of funding it has obtained, and whether or not such funding is adequate to fully implement the Plan. Defendants shall supply Plaintiffs with all public documents related to the DOC's funding request and the results thereof. Defendants will provide Plaintiffs with this information no later than July 9, 1999.

8. Plaintiffs and Defendants agree that the United States District Court for the District of New Jersey ("Federal Court") shall retain jurisdiction of this case until such time as Defendants certify that the DOC has obtained adequate funding or in-kind services necessary to fully implement the Plan for Fiscal

Year 2000, pursuant to Section I(A)(9) or Plaintiffs are deemed to have accepted a Modified Plan in accordance with Section I(A)(10).

9. In the event Defendants certify that the DOC has obtained \$16,000,000 as set forth in Section I(A)(3), the Plaintiffs and Defendants will jointly move before the Federal Court for a dismissal of this action with prejudice and shall propose the attached form of order (Exhibit G). DOC will thenceforth be bound to implement the Plan including the terms of the Plan set forth in Section 3 of this Settlement Agreement.

10. In the event that Defendants certify that DOC has not received \$16,000,000 as set forth in Section I(A)(3) and the budget has been approved and presented to the DOC by July 1, 1999, Defendants will inform Plaintiffs by July 26, 1999 as to the extent to which they will be able to implement the Plan in light of the funding they have received for fiscal year 2000. Plaintiffs may elect to accept this modified Plan by August 9, 1999, and in any event shall be deemed to have accepted the modified Plan if written notice of Plaintiffs' rejection of the modified Plan is not received by Defendants by August 9, 1999. In the event Plaintiffs agree to accept the modified Plan or are deemed to agree to accept the modified Plan, DOC will be bound to implement the Plan as modified, and to abide by the remaining terms of the Settlement Agreement after notification to the class and the Federal Court, after the class has been afforded an opportunity to comment on the modified plan and after the Federal Court has approved the modified Settlement Agreement. The parties will then move before the

Federal Court for dismissal with prejudice in the manner set forth in Section I(A) (9) .

11. In the event that the DOC fails to obtain funding sufficient to implement the Plan for fiscal year 2000, and Plaintiffs elect to continue with this litigation, Defendants and Plaintiffs will jointly request that the Federal Court Clerk's Office place the pending summary judgment motion on the calendar for the next available motion date, and shall request a conference with the Federal Court to set expedited dates for final inspections and submission of the pre-trial order, and shall jointly request an expedited trial date.

12. No attorneys fees shall be paid to Plaintiffs' counsel until after the Order of Dismissal with prejudice has been entered by the Federal Court.

B. Timing:

Absent any delays in the implementation of the terms of the Plan caused by an unanticipated public hearing, Defendants agree to implement the Plan according to the following schedule:

1. Defendants agree that the training component of the Plan will be commenced by April 30, 1999. All corrections officers who will be assigned to work in the SUs, RTUs and TCUs will be trained by July 1, 1999.

2. Defendants agree that the construction component of the Plan will be commenced by April 30, 1999 and the SUs, RTUs and TCUs will be safe and operational by July 1, 1999.

3. Upon receipt of appropriate funding as set forth in Section I(A), the remaining components of the Plan will begin operation on July 1, 1999.

II. AMENDMENTS TO THE DISCIPLINARY REGULATIONS:

Absent any delays caused by an unanticipated public hearing, Defendants agree that the proposed amendments to the disciplinary regulations attached hereto as Exhibit B (the "Regulations") will be adopted by June 1, 1999 and implemented effective July 1, 1999.

III. POLICIES AND PROCEDURES

Defendants agree that the following policies and procedures will be created, if currently not existing, or reviewed, if currently existing, by June 1, 1999 and will be provided to the monitor. Plaintiffs' counsel may submit non-binding proposals regarding Defendants' policies and procedures to the Defendants without any cost to the Defendants. Defendants will implement the following policies and procedures to ensure continued compliance.

1. Policies and procedures consistent with the goals of the Plan and the amendments to the disciplinary regulations;

2. Involuntary medication policies and procedures, including those delineating between emergency and non-emergency involuntary medications;

3. Policies and procedures for use of force situations involving Class Members which provide for input and/or involvement from mental health staff;

4. Medication policies and procedures regarding medication administration, medication prescription, management of medication, inmate non-compliance and formulary lists.

5. Discharge planning for Class Members in anticipation of their release from DOC facilities planning will be required and, at a minimum, will include the following:

(a) Defendants will use their best efforts to schedule an appointment with a community mental health provider for a date within two (2) weeks after the Class Member has been released from a DOC facility;

(b) Defendants will provide the Presumptive Class Members with a two week supply of medication upon release;

(c) Defendants will modify the treatment plans of Presumptive Class Members to reflect mental health issues related to their discharge;

(d) Defendants will provide treatment in accordance with the Presumptive Class Members' revised treatment plans, with the understanding that the Defendants' obligation to provide treatment ends when each inmate leaves the care and custody of the New Jersey

Department of Corrections except as currently provided by the New Jersey Parole Board;

(e) Defendants will facilitate Class Members in obtaining benefits upon release from a DOC facility by providing each inmate with the name of the social services individual in the county in which he will be living after release who could assist in obtaining social service benefits and by providing copies of necessary applications; and

(f) Defendants will use their best efforts to develop contacts with community mental health providers and social service agencies within the county in which the facility is located to assist in discharge planning. Upon request of the community mental health service provider(s) on behalf of and with the consent of the Class Member, a discharge summary for the Class Member will be prepared and sent to the receiving community mental health provider(s).

6. Record Keeping policies and procedures to provide for a single multi-disciplinary medical record, including mental health records, for each inmate which shall be maintained in a secure location. Policies shall also include provisions for the creation of a management information system to track Class Members' mental health. Barring any unforeseen difficulties, implementation of the management information system will be completed by November 1, 1999.

IV. MONITORING

A. Identity of Monitor

1. Plaintiffs and Defendants stipulate to the appointment of a monitor, who shall be independent of the Plaintiffs and Defendants, to facilitate the implementation of the Settlement Agreement and to monitor compliance. Plaintiffs and Defendants agree that Dr. Raymond Patterson shall serve as the monitor during the life of the Settlement Agreement.

2. If Dr. Raymond Patterson is unable to serve as the monitor during the life of the Settlement Agreement, a person who is mutually agreeable to Dr. Dennis Koson and Dr. Joel Dvoskin, or their successors as experts to Plaintiffs and Defendants respectively, will be appointed to serve as a monitor. If the above experts are unable to agree on the identity of a monitor, each expert shall submit the name of one representative expert and the representative experts shall select the monitor. Except with the consent of counsel for Plaintiffs and Defendants, no person who has been associated with or served as an expert in any capacity in the underlying litigation or who has a business relationship with the medical or mental health services provider(s) under contract with the DOC may be appointed as a monitor.

3. Any monitor may be replaced in the event of death or unforeseen permanent unavailability, by written agreement of Plaintiffs and Defendants or on motion noticed by any of their counsel for good cause shown. For purposes of this subsection, "good cause shown" means a showing by clear and convincing evidence

of corruption or nonfeasance by a monitor which is so severe as to preclude effective implementation of the terms of this Settlement Agreement. The court shall replace the monitor with a person who is mutually agreeable to Dr. Dennis Koson and Dr. Joel Dvoskin, or their successors as experts to Plaintiffs and Defendants respectively. If the aforementioned experts are unable to agree on the identity of a monitor, each expert shall submit the name of one representative expert and the representative experts shall select the monitor.

4. Plaintiffs and Defendants agree that Dr. Raymond Patterson, or his successor, qualifies as a forensic psychiatric expert under New Jersey and federal law.

B. Cost of Monitoring

1. Defendants shall pay the monitor's reasonable fees and costs.

2. Plaintiffs and Defendants agree that, pursuant to this Settlement Agreement, Plaintiffs have the right to apply for attorneys' fees and costs for legal representation generated after the date of the Settlement Agreement which are necessary for the enforcement of the Settlement Agreement before the courts if

(a) they are successful; or

(b) Defendants' failure to present factual information to the monitor under the terms set forth in Section IV(K)(4) caused Plaintiffs to file the action for enforcement of the Settlement Agreement; or

(c) Plaintiffs and Defendants settle the dispute which forms the basis of the action to enforce the Settlement Agreement prior to judgment.

3. Any application for attorneys' fees and costs for legal representation generated after the date of the Settlement Agreement which are necessary for the enforcement of the Settlement Agreement shall be based on Mercer County attorney rates.

C. Length and Frequency of Inspections

1. The monitor may inspect the DOC's facilities four times per year, the first of which will occur after the date the Settlement Agreement is approved by the Federal Court. Each inspection shall presumptively last no longer than five business days. The inspections shall presumptively be conducted between the hours of 9:00 a.m. and 5:00 p.m. with the understanding that the inspections shall be conducted at the convenience of the Commissioner of the DOC and the monitor.

2. Entry to any facility or any portion thereof shall not be denied except for reasons of security including, but not limited to items such as riot, lockdown or unforeseen events requiring enhanced security measures. If the monitor is denied access to a facility or any portion thereof for reasons of security, the monitor shall be permitted access as soon as the circumstances which have caused the security concern have been abated. If time is lost due to an unforeseen interruption, the monitor will be able to make up the

lost time at a time mutually convenient to both the monitor and the Commissioner of the DOC.

3. If a monitor is denied access to a facility or any portion thereof for reasons of security, and the monitor is permitted access as soon as the circumstances which have caused the security concern have been abated, the fact that access has been denied will not, by itself, negatively affect the monitor's compliance finding. A general explanation for the denial of access due to security shall be forwarded to the monitor and Plaintiffs as soon as the Commissioner of the DOC determines that this disclosure would not negatively impact the security of the prison system.

D. Access to Inmates and their Medical and Classification Records

1. The monitor shall have access to and may review the medical and classification records of Presumptive Class Members for on-site review. The monitor may also review medical and classification files of inmates who have committed suicide and former Presumptive Class Members when the monitor has good reason to believe that the medical and classification file contains information relevant to the performance of the monitor's duties. Defendants shall redact the names of any confidential informants, targets of ongoing investigations, the manner in which the fruits of Internal Affairs techniques are compiled and filed and Internal Affairs investigatory techniques prior to the release of documents containing such information.

2. The monitor may review medical and classification records of inmates other than Presumptive Class Members if the monitor obtains an Authorization For Disclosure/Release of Health Information Including Alcohol And/Or Drug Use, HIV/AIDS and Psychiatric Records in the form attached hereto as Exhibit E.

3. If the monitor seeks to review medical and classification records of inmates other than Presumptive Class Members or inmates who have provided the monitor with a release, the DOC Health Services Unit representative accompanying the monitor shall make a determination, after a review of the inmate's records, whether the inmate falls within the class definition. The monitor shall be permitted to review his/her medical and classification records if the inmate falls within the class definition.

4. The monitor may conduct interviews with inmates in a manner mutually convenient to the monitor and the Administrator/Superintendent of the facility where the inmate is housed.

5. The monitor shall keep a record of all documentation reviewed and interviews conducted pursuant to the Settlement Agreement.

E. Representatives at Inspections, and Access to Custody, Medical and Mental Health Staff

1. Counsel will not accompany the monitor during on-site inspections.

2. Two attorneys for the Plaintiffs shall be permitted one opportunity to jointly tour each of the new SUs, RTUs and TCUs upon their opening and occupancy at a time convenient to the Superintendent of the DOC facility and the Commissioner of the DOC. Plaintiffs shall not charge Defendants for costs incurred as a result of the inspection, including legal fees.

3. A pre-inspection conference call shall be conducted with the monitor, Plaintiffs, Defendants, and the medical and mental health service provider(s) under contract with the DOC not less than one week prior to the beginning of the inspections. A post-inspection conference call with the monitor, Plaintiffs, Defendants and the medical and mental health service provider(s) under contract with the DOC shall be conducted at the discretion of the monitor. In any event, the monitor has the discretion to initiate a telephone conference call with Plaintiffs, Defendants and the medical and mental health service provider(s) under contract with the DOC at any other time the monitor deems necessary.

4. During the inspection, the monitor will be accompanied by a DOC custody escort and a representative from the DOC Health Services Unit.

5. During the inspection, the monitor may interview the following individuals:

(a) DOC Custody staff: the monitor may first seek to interview any DOC custody supervisor on any unit the monitor is touring. If, after attempting to interview the custody supervisor, the monitor has additional questions, the monitor may then seek to

interview other corrections officers who are assigned to the units the monitor is touring.

(b) DOC Social Workers: any DOC social worker assigned to the DOC facility where the monitor is inspecting.

(c) Administrative staff: any DOC Administrative staff member of the DOC facility where the monitor is inspecting.

(d) DOC Central Office staff: any DOC Central Office staff member provided that the monitor provides notice of the request to interview the staff member one week prior to the interview, unless the parties otherwise agree.

(e) Medical Services Provider(s) -- any employee.

(f) Mental Health Services Provider(s) -- any employee.

F. Contact with the Monitor

Absent a mutual agreement between Plaintiffs and Defendants to the contrary or where otherwise provided in the Settlement Agreement, there shall be no oral or written communications between the monitor, Plaintiffs and Defendants aside from pre-inspection and post-inspection telephone conferences during which Plaintiffs, Defendants and the medical and mental health service provider(s) are participating.

G. Substance of the Monitor's Report

1. The purpose of the monitoring is to facilitate and ensure compliance with the terms of the Settlement Agreement. In addition to monitoring the creation and implementation of the policies and

procedures as set forth in Section III, the monitor shall create written objective criteria, based upon the Plan and the Regulations, on which Defendants' compliance with the Settlement Agreement shall be judged. The written objective criteria shall be organized according to the following categories:

- (a) Discipline
- (b) Reception Evaluations
- (c) SUs
- (d) RTUs and TCUs
- (e) Outpatient Care
- (f) Inpatient Care (with the understanding that the DOC will participate in the commitment process, but cannot guarantee that TPH will take the inmate upon the conclusion of the commitment process)
- (g) Construction
- (h) Training
- (i) Creation of Policies
- (j) Staffing

2. The monitor shall memorialize his or her findings by way of a written report following each set of inspections. Reports shall be organized according to the categories set forth in Section (G) (1) and shall contain the following:

(i) Steps taken by Defendants to implement the terms of the Settlement Agreement since the monitor's prior report and a systematic review of the progress regarding each of the written objective criteria formulated by the monitor since the monitor's prior report;

(ii) Changes in circumstances affecting Defendants' ability to provide the medical, mental health or custodial care provided for by the Settlement Agreement since the monitor's prior report;

(iii) Recommendations which may facilitate implementation of the terms of the Settlement Agreement, including a summary of any conversations between the monitor and representatives of the DOC or medical or mental health service providers under contract with the DOC concerning such recommendations that were conducted outside the presence of Plaintiffs' counsel;

(iv) A finding with respect to whether the Defendants are in Substantial Compliance or Non-Compliance as to each category set forth in Section IV(G) (1).

3. Unless otherwise agreed to by the Plaintiffs and Defendants, the monitor shall provide a copy of his report simultaneously to Plaintiffs and Defendants within 30 days of the conclusion of the on-site inspections which form the basis of the report.

H. Definition of Compliance

1. Substantial Compliance shall be determined on a category by category basis. The categories to be evaluated are those identified in Section IV(G) (1). Substantial Compliance for a specific category shall mean that Defendants have and may reasonably be expected to continue to substantially satisfy the written objective criteria set forth by the monitor for that category. To achieve Substantial Compliance the Defendants need

not be in perfect, 100%, compliance with each of the written objective criteria set forth by the monitor for that category. The monitor shall have the discretion to measure Substantial Compliance in each category by weighting the various written objective criteria.

2. Non-Compliance means efforts which do not meet the definition of Substantial Compliance for a particular category. Non-Compliance shall include Defendants' failure to permit the monitor to undertake inspections according to the terms set forth herein. A finding of Non-Compliance shall not be based on isolated, non-continuing instances of failure to substantially satisfy the objective criteria in the categories identified in Section IV(G)(1), nor shall a finding of Non-Compliance be based on omissions of a technical or unimportant nature.

3. An independent decision of any individual DOC employee or employee of any medical or mental health services provider(s) under contract with the DOC not to speak with the monitor shall not result in a finding of non-compliance so long as the monitor is able to obtain the information he/she is seeking from another source in a timely manner. The employees of the medical and mental health services provider(s) under contract with the DOC are required to communicate with the monitor except in the limited circumstance that a psychiatrist, psychologist, licenced social worker, licenced clinical social worker or psychiatric nurse (hereafter collectively referred to as "mental health clinicians") has a good faith belief that disclosure of information would be

detrimental to an inmate's mental health. In the event that a mental health clinician has such a belief, the mental health clinician shall provide the monitor with an explanation which forms the basis of their refusal to communicate with the monitor without revealing the nature of the confidential information.

I. Emergent Circumstances

If during the course of an inspection the monitor finds a circumstance which poses an imminent and significant health or safety risk to Class Member(s), the monitor shall immediately contact the DOC Health Services representative accompanying the monitor on the inspection and any other appropriate person to alleviate the perceived risk. If the monitor's concerns about any individual and/or any systemic problem are not satisfactorily addressed, the monitor shall initiate a telephone conference with Plaintiffs, Defendants, and the medical and mental health services provider(s) under contract with the DOC. Defendants shall have 24 hours from the conference call to address and/or remedy the circumstance which the monitor finds to pose an imminent and significant health or safety risk to Class Member(s). If the imminent and significant health or safety risk to Class Member(s) is not adequately addressed and/or remedied within 24 hours, Plaintiffs may file an application to remedy the emergent circumstance with the court.

J. Curing Non-Compliance

1. If the monitor finds Substantial Compliance in any category identified in Section IV(J) (5), Plaintiffs shall have 15 calendar days from receipt of the report to serve objections to the monitors' report on the monitor and the Defendants. Upon consideration of the Plaintiffs' objection, the monitor may revise his or her findings. If the monitor, upon consideration of the objections, revises his/her finding to one of Non-Compliance, the procedures set forth in Sections IV(J) (2), (3) and (6) below shall apply.

2. If the monitor finds Non-Compliance in any category identified in Section IV(J) (5), Defendants shall have:

(a) 20 calendar days from receipt of the report to serve objections to the monitors' report on the monitor and Plaintiffs. Plaintiffs shall have 7 calendar days from receipt of the objections to serve a response upon the monitor and Defendants. Upon consideration of any Defendants' objections and Plaintiffs' responses, the monitor may revise his or her findings. If the monitor, upon consideration of the objections and responses, revises his/her finding to one of Substantial Compliance, this finding shall relate back to the date of the last regular inspection and shall not negatively affect the period of continuous Substantial Compliance and shall not be counted as a "cure" for the purposes of Section IV(J) (5); and

(b) 30 calendar days from receipt of the report to cure any deficiencies noted in the report. For the purpose of counting the

30 calendar days, the time the monitor spends considering objections provided under Section IV(J)(2)(a), shall not be counted.

3. Plaintiffs and Defendants agree that Defendants shall be entitled to a prescribed number of opportunities within each compliance category to cure a finding of Non-Compliance without adversely affecting the period of continuous Substantial Compliance (hereinafter referred to as a "cure"). Thus, Defendants shall be deemed to remain in continuous Substantial Compliance notwithstanding the monitor's initial finding of Non-Compliance if Defendants remedy in a timely manner the deficiencies found by the monitor using one or more of their prescribed cures set forth in Section IV(J)(5).

4. If Defendants cure the deficiency which caused a finding of Non-Compliance by using one of the allotted "cures" set forth in Section IV(J)(5), the following shall apply:

(a) if the monitor can determine from written documentation provided by Defendants and copied to Plaintiffs that the deficiency has been cured to his or her satisfaction, then the monitor shall issue a revised finding of Substantial Compliance. The effective date of the revised finding of Substantial Compliance shall be the date of the inspection which gave rise to the initial finding of Non-Compliance; or

(b) if the monitor cannot determine from written documentation that the deficiency has been cured, such that an on-site inspection of the DOC facility is necessary, Defendants shall

have the option of paying for additional on-site inspection(s) at the facility/facilities where the deficiency occurred. If, after such additional on-site inspection(s), the monitor finds Substantial Compliance, the monitor shall issue a revised report that includes a revised finding of Substantial Compliance and the effective date shall be the date of the inspection which gave rise to the finding of Non-Compliance.

5. The number of cures which Defendants may use are set forth in the following table. In the event that the monitor determines that the deficiency has been cured, Plaintiffs and Defendants will accordingly adjust the table of cures to reflect the number of remaining cures available to Defendants in each compliance category.

Category	Number of Cures
Discipline	2
Reception Evaluations	2
SUs	2
RTUs and TCUs	2
Outpatient Care	3
In-Patient Care (that the DOC will participate in the commitment process, with no guarantee that TPH will take the inmate upon the conclusion of the commitment process)	2
Construction	2

Training	2
Creation of Policies	1
Staffing	1 (which may only used at the discretion of the monitor and when the overall staffing does not fall below 85%)

6. In the event that Defendants have exhausted all of the allotted cures for a category pursuant to Section IV(J)(5), Defendants may remedy a deficiency which caused a finding of Non-Compliance in such category and the following shall apply:

(a) if the monitor can determine from written documentation provided by Defendants and copied to Plaintiffs that the deficiency has been remedied to his or her satisfaction, then the monitor shall issue a finding of Substantial Compliance. The effective date of the finding of Substantial Compliance shall be the date of the remedy as identified on the documentation provided by Defendants and a new 12 month period of continuous Substantial Compliance shall begin for that category; or

(b) if the monitor cannot determine from written documentation that the deficiency has been remedied, such that an on-site inspection of the DOC facility is necessary, Defendants shall have the option of paying for additional on-site inspection(s) at the facility/facilities where the deficiency occurred. If, after such additional on-site inspection(s), the

monitor finds Substantial Compliance, the monitor shall issue a report that includes a finding of Substantial Compliance, of which the effective date shall be the date of the additional on-site inspection and a new 12 month period of continuous Substantial Compliance shall begin for that category.

K. Enforcement of the Settlement Agreement

1. Prior to bringing an action to enforce the Settlement Agreement, Plaintiffs and Defendants must wait until the last date to cure or remedy a deficiency has passed pursuant to Sections IV(I) or (J). Whoever objects to the monitor's finding shall bear the burden of proof in any action to enforce the Settlement Agreement.

2. The monitor's report and any documents reviewed or information obtained during the monitoring period may be used in any action to enforce the Settlement Agreement. Any discovery produced during the course of the Amended Class Action Suit may also be used in any action to enforce the Settlement Agreement subject to the terms of the Confidentiality Order.

3. Any redacted portions of documents or categories of evidence that Defendants have refused to give the monitor may not be offered by Defendants as evidence in opposition to an action to enforce the Settlement Agreement.

4. Any factual information not presented to the monitor in the course of the proceedings described herein will not be admitted as evidence unless the party offering the factual information can

demonstrate (a) the factual information had been overlooked in good faith or (b) the original document has been lost or destroyed.

L. Confidentiality of Monitor's Report

1. Until Plaintiffs file a report of the monitor with the court in connection with an action to enforce the Settlement Agreement, all reports of the monitor shall be designated confidential and shall be disclosed only to the following persons:

(a) Any medical and mental health services provider(s) under contract with the DOC;

(b) Any of the named Defendants, including their directors, officers, employees, agents and personnel or any administrative personnel of the DOC who is determined by Defendants to be necessary to assist in the implementing the Settlement Agreement;

(c) Counsel for the Plaintiffs, Defendants and medical and mental health services provider(s) under contract with the DOC including partners, associates, law clerks, law students, secretaries, paralegal assistants and employees of such counsel to the extent reasonably necessary to render professional services with respect to the Settlement Agreement; and

(d) Former employee witnesses, outside non-party consultants or experts retained for the purpose of assisting counsel regarding the Settlement Agreement.

2. Unless otherwise agreed to by Plaintiffs and Defendants or as set forth below, or ordered by the court, any monitor's

report, filed with the court is presumptively a public document with the following limitations:

(a) All references to Classified Records shall be redacted from the monitor's report before Plaintiffs publicly file the report with the court. Plaintiffs shall simultaneously file an unredacted copy of the Monitor's Report with the court under seal.

(b) Prior to filing the monitor's report with the court, the names, numbers and other identifying information of all inmates referred to in the monitor's report or in any medical records attached thereto shall be redacted. Plaintiffs and Defendants agree to use a key that permits the identification of the inmates by pseudonym. The names, numbers and other identifying information of all inmates referred to in the monitor's report or in any medical records attached thereto shall be filed with the court under seal.

3. All documents identified in this Settlement Agreement and produced to and reviewed by the monitor, with the exception of medical records and Classified Records, are deemed public documents.

4. If Plaintiffs decide to file a report of the monitor with the court in connection with an action to enforce the Settlement Agreement, Plaintiffs shall notify Defendants and the medical and mental health service provider(s) under contract with the DOC. Upon receipt of such notice: (i) the Defendants shall have three (3) business days to seek redaction of portions of the report which threaten security, contain the name, number and other identifying

information of the inmate who is the subject of the record (with the understanding that the sole purpose for redacting identifying information is to protect an inmate's privacy), or contain information set forth in Classified Records and (ii) the medical and mental health service provider(s) under contract with the DOC shall have three (3) business days to seek redaction of portions of the report which contain confidential medical and mental health services provider(s) information.

5. If Plaintiffs and/or Defendants and/or the medical services provider(s) and/or the mental health service provider(s) under contract with the DOC are able to mutually agree to the redactions, then those portions of the documents which are the subject of the redactions shall be filed with the court under seal.

6. If Plaintiffs and/or Defendants and/or the medical services provider(s) and/or the mental health service providers are unable to mutually agree to the redaction, then the party seeking the disputed redaction shall apply to the court for a Protective Order regarding the redacted portion(s) of the report within 10 business days of the date of the filing of the action to enforce the Settlement Agreement. Pending resolution of a party's motion for a Protective Order, any monitor's report filed with the court by Plaintiffs shall bear all requested redactions.

7. Any monitor's report, or portion thereof, which is not used during an action to enforce the Settlement Agreement shall remain confidential.

8. Until Plaintiffs file a report of the monitor with the court in connection with an action to enforce the Settlement Agreement, any person receiving the monitor's report shall be provided a copy of this Settlement Agreement and shall execute an acknowledgment in the form attached hereto as Exhibit F in which such person shall agree to be bound by the confidentiality provisions contained herein.

M. Confidentiality of Medical Records Reviewed by and Produced to the Monitor

1. Until Plaintiffs file either a report of the monitor containing medical records or medical records with the Court in connection with an action to enforce the Settlement Agreement, all medical records shall be designated confidential and shall be disclosed only to the following persons:

(a) Any medical and mental health services provider(s) under contract with the DOC;

(b) Any of the named Defendants, including their directors, officers, employees, agents and personnel or any administrative personnel of the DOC who is determined by Defendants to be necessary to assist in implementing the Settlement Agreement;

(c) Counsel for the Plaintiffs, Defendants or any medical or mental health services provider(s) under contract with the DOC, including partners; associates, law clerks, law students, secretaries, paralegal assistants and employees of such counsel to the extent reasonably necessary to render professional services with respect to the Settlement Agreement;

(d) Former employee witnesses, outside non-party consultants or experts retained for the purpose of assisting counsel regarding the Settlement Agreement; and

(e) The monitor selected in accordance with the terms of this Settlement Agreement.

2. If any medical records are filed with the court, including medical records in the monitor's report, they shall be redacted by the offering party to eliminate the name, number and other identifying information of the inmate who is the subject of the record. During any court proceeding, Plaintiffs and Defendants agree to use a key that permits the identification of the inmates by pseudonym.

3. If Plaintiffs decide to file medical records, including those contained in the monitor's report, with the court in connection with an action to enforce the Settlement Agreement, Plaintiffs shall notify Defendants and the medical and mental health service provider(s) under contract with the DOC. Upon receipt of such notice, Defendants shall have three (3) business days to seek redaction of portions of the report which threaten security, or contain the name, number and other identifying information of the inmate who is the subject of the record, with the understanding that the sole purpose for redacting identifying information is to protect the inmate's privacy.

4. If Plaintiffs and Defendants are able to mutually agree to the redactions, then those portions of the documents which are

the subject of the redactions shall be filed with the court under seal.

5. If Plaintiffs and Defendants are unable to mutually agree to the redaction, then such party seeking the disputed redaction shall apply to the court for a Protective Order regarding the redacted portion(s) of the report within 10 business days of the date of filing of the action to enforce the Settlement Agreement. Pending resolution of Defendants' motion for a Protective Order, any monitor's report filed with the court by Plaintiffs shall bear all requested redactions.

6. Persons obtaining access to medical records may show the inmate who is the subject of the record the contents of the record with the exception of diagnostic and evaluative information. However, factual information contained in the diagnostic and evaluative portion of any records may be verified by the specific inmate who is the subject of such medical record. In any event, no inmate shall be shown the content of any other inmate's medical records.

7. Except as provided for in Section IV(M)(6), any medical records, or portions thereof, including those contained in any monitor's report, which are not used during an action to enforce the Settlement Agreement shall remain confidential.

8. Any person receiving medical records, including those contained in a monitor's report, shall be provided a copy of this Settlement Agreement and shall execute an acknowledgment in the

form attached hereto as Exhibit F in which such person shall agree to be bound by the confidentiality provisions contained herein.

N. Confidentiality of Classified Records Reviewed by
and Produced to the Monitor

1. All Classified Records, including those contained in any monitor's report, which are to be used in connection with an action to enforce the Settlement Agreement, shall be filed with the court under seal.

2. Classified Records shall be disclosed only to the following persons:

(a) Any medical and mental health services provider(s) under contract with the DOC;

(b) Any of the named Defendants, including their directors, officers, employees, agents and personnel or any administrative personnel of the DOC who is determined by Defendants to be necessary to assist in implementing the Settlement Agreement;

(c) Counsel for Plaintiffs, Defendants or any medical or mental health services provider(s) under contract with the DOC, including partners, associates, law clerks, law students, secretaries, paralegal assistants and employees of such counsel to the extent reasonably necessary to render professional services with respect to the Settlement Agreement;

(d) Court officials involved in an action to enforce the Settlement Agreement;

(e) Court reporting personnel involved in taking or transcribing testimony in an action to enforce the Settlement Agreement;

(f) Any person that the court designates in the interest of justice, upon terms that the court deems proper;

(g) Former employee witnesses, outside non-party consultants or experts retained for the purpose of assisting counsel regarding the Settlement Agreement; and

(h) The monitor selected in accordance with the terms of this Settlement Agreement.

3. Persons obtaining access to Classified Records, including those contained in any monitor's report, shall not disclose information in the Classified Records to any named Plaintiff, any Presumptive Class Member or any other inmate; however, factual information contained in such records may be verified by the specific inmate who is the subject of such Classified Record.

4. Any Classified Records, or portions thereof, including those contained in any monitor's report, which are not used during an action to enforce the Settlement Agreement shall remain confidential.

5. Any person receiving Classified Records, including those contained in any monitor's report, shall be provided a copy of this Settlement Agreement and shall execute an acknowledgment in the form attached hereto as Exhibit F in which such person shall agree to be bound by the confidentiality provisions contained herein.

O. Limitation on Use of Monitor's Report, and Documents Reviewed by and Information Produced to the Monitor

1. The monitor's report may not be introduced as evidence in any other proceedings or form the basis of any other proceeding other than an action to enforce the Settlement Agreement pursuant to Section XIII(6) and (7).

2. Documents reviewed by and information produced to the monitor may not be used in any proceeding other than an action to enforce the Settlement Agreement pursuant to Section XIII (6) and (7).

3. If Plaintiffs, Defendants or the medical and mental health services provider(s) under contract with the DOC, receive a subpoena or other discovery request, except as provided in Section XIII(7), commanding production of the monitor's report or any documents reviewed by or information obtained during the course of the monitoring period, the entity or person receiving the subpoena or request shall immediately notify the Plaintiffs, Defendants and the medical and mental health services provider(s) under contract with the DOC of the service of the subpoena or request, so that they have the opportunity to object to the production of the information or documents and seek to quash the subpoena or have an appropriate protective order entered.

4. Neither Plaintiffs, Defendants nor the medical or mental health services provider(s) under contract with the DOC shall be permitted to oppose a motion to quash a subpoena for the above

referenced documents and information or a motion for a protective order relative to such documents in another proceeding.

P. Disclosure of Identities of Presumptive Class Members

1. Neither the DOC, the medical or mental health services provider(s) under contract with the DOC, nor their counsel shall reveal the name of any Presumptive Class Member or discuss the Presumptive Class Member's role in this case with any custody personnel or health care provider other than in connection with the delivery of health care services to such inmate or for the preparation of its defense in an action to enforce the Settlement Agreement. The DOC, the medical and mental health services provider(s) under contract with the DOC and their counsel shall inform any custody personnel or health care provider, to whom such disclosure is necessary for the preparation of their defense in an action to enforce the Settlement Agreement, that the identities and roles of all Presumptive Class Members must remain confidential.

2. Should any Presumptive Class Member voluntarily disclose his or her identity, Defendants may initiate a conference call with the court to determine whether and to what extent the confidentiality provisions of this Settlement Agreement shall continue to be applicable to this particular Presumptive Class Member.

Q. Reporting Requirements

(1) By May 19, 1999, Defendants shall provide the monitor and Plaintiffs with a report demonstrating that the training and construction contemplated by the Plan have been commenced in accordance with Section I(B).

(2) On a date convenient to Plaintiffs, Defendants and the monitor in or about May 1999, a conference call shall be held with the monitor, Plaintiffs and Defendants wherein Defendants shall provide a oral report on the status of the remaining aspects of the Plan.

(3) By June 1, 1999, Defendants shall provide the monitor and Plaintiffs with copies of the policies and procedures in accordance with Section I(B) and Section III.

(4) By July 1, 1999, Defendants shall provide the monitor and Plaintiffs with a report demonstrating that the remaining components of the Plan have begun operation in accordance with Section I(B).

(5) On May 19, 1999 and July 10, 1999, Defendants shall provide the monitor and Plaintiffs with the following reports with the understanding that these reports are being provided for informational purposes only:

(a) critical incident reports and Internal Affairs reports of suicides from January 1, 1999 through May 1, 1999 and May 2, 1999 through June 30, 1999;

(b) critical incident reports and Internal Affairs reports related to deaths of Class Members from January 1, 1999 through May 1, 1999 and from May 2, 1999 through June 30, 1999;

(c) critical incident reports of self-mutilation of Class Members which results in outside hospital care from January 1, 1999 through May 1, 1999 and from May 2, 1999 through June 30, 1999. When a self-mutilation of an inmate occurs, the DOC shall first cross reference the name of the inmate against the special needs rosters. If the name of the inmate appears on the special needs rosters, the critical incident report shall be provided. If the name of the inmate does not appear on the special needs rosters, the DOC shall review the inmate's medical and mental health file to determine whether the inmate falls within the class definition and, if so, the critical incident report shall be provided;

(d) the names of all inmates committed to Trenton Forensic Hospital from January 1, 1999 through May 1, 1999 and from May 2, 1999 through June 30, 1999; and

(e) all discharge summaries for inmates returning from Trenton Forensic Hospital from January 1, 1999 through May 1, 1999 and from May 2, 1999 through June 30, 1999.

(6) From July 1, 1999 until the end of the monitoring period or the time in which the monitor states that no further reporting is necessary pursuant to Section IV(Q)(9), whichever comes first, Defendants shall provide the following quarterly reports to the monitor and Plaintiffs in advance of the on-site inspections at a

time mutually agreeable to the monitor and the Plaintiffs and Defendants:

(a) monthly mental health staff charts which shall reflect staff assigned to each of the DOC's facilities, including the SUs, RTUs and TCUs;

(b) invoices from the mental health services provider(s) reflecting the professional position, the contract FTEs and the hours per pay period (information related to payment for services shall be redacted);

(c) monthly special needs rosters and monthly mental health contact rosters;

(d) monthly rosters of the inmates housed on the SUs, RTUs and the TCUs;

(e) monthly census rates for the SUs, RTUs and TCUs;

(f) statistical or narrative summary of training efforts undertaken since the last reporting period;

(g) critical incident reports related to Class Members who are housed on the SUs, RTUs and TCUs since the last reporting period;

(h) critical incident reports and Internal Affairs reports of suicides since the last reporting period;

(i) critical incident reports and Internal Affairs reports related to deaths of Class Members since the last reporting period;

(j) critical incident reports of self-mutilation of Class Members which results in outside hospital care since the last reporting period. When a self-mutilation of an inmate occurs, the

DOC shall first cross reference the name of the inmate against the names of the Presumptive Class Members. If the name of the inmate appears on one of the Presumptive Class Member lists, the critical incident report shall be provided. If the name of the inmate does not appear on one of the Presumptive Class Member list, the DOC shall review the inmate's medical and mental health file to determine whether the inmate falls within the class definition and, if so, the critical incident report shall be provided;

(k) documents related to the implementation of the involuntary medication policies and procedures since the last reporting period, including critical incident reports;

(l) the names of all inmates committed to Trenton Forensic Hospital since the last reporting period;

(m) all discharge summaries for inmates returning from Trenton Forensic Hospital since the last reporting period;

(n) any monthly statistical reports (including any narrative summaries) in accordance with current practice that describe programs and services available to Class Members and the utilization of such services;

(o) critical incident reports reflecting incidents arising from the use of restraints;

(p) the schedule of the CQI reports from the mental health services provider(s), the issues to be audited, the format of the CQI, and an affidavit that the CQI was completed;

(q) Quality Assurance reports of the defendants related to the implementation of the Plan, including, but not limited to the

administration of medication, with the understanding that (i) all conclusions and opinions shall be redacted, (ii) the facts set forth in the Quality Assurance reports cannot be referenced within the monitor's report and (iii) the facts set forth in the Quality Assurance reports cannot form the basis of the monitor's opinion; and

(r) Internal Affairs reports involving inmates housed on the SUs, the RTUs and the TCUs. Prior to the release of these reports, Defendants shall redact the name of any confidential informant, the targets of ongoing investigations, the manner in which the fruits of Internal Affairs investigations are compiled and filed and Internal Affairs investigatory techniques.

(7) From July 1, 1999 until the end of the monitoring period or the time in which the monitor states that no further reporting is necessary pursuant to Section IV(Q)(9), whichever comes first, Defendants shall, on a quarterly basis, provide the monitor and Plaintiffs, in advance of the on-site inspections at a time mutually agreeable to the monitor and the Plaintiffs and Defendants, disciplinary records of Class Members housed in administrative segregation as follows:

(a) On a date to be agreed upon by the Plaintiffs and Defendants prior to the next inspection, the DOC shall cross-reference the names of all inmates housed in administrative segregation units against the names of the Presumptive Class Members. A list of all Presumptive Class Members housed in administrative segregation units will be forwarded to the monitor

and an asterisk placed next to the name of any inmate placed in administrative segregation prior to the implementation of the Regulations.

(b) The monitor shall then select the names of inmates whose disciplinary records are requested. The monitor shall select no more than 40 names in the first reporting period. For subsequent reporting periods, the monitor shall select either 25 names or 15% of the class membership housed in administrative segregation, whichever is higher, but in no event more than 40 names.

(c) For each name selected by the monitor, Defendants shall provide (i) the disciplinary records which form the basis of the inmate's placement in administrative segregation, after having redacted the name of any confidential informant, the targets of ongoing investigations, the manner in which the fruits of Internal Affairs investigations are compiled and filed and Internal Affairs investigatory techniques; and (ii) any records related to the Special Administrative Segregation Review Committee ("SASRC") review of the inmate's continued confinement in administrative segregation.

8. From July 1, 1999 until the end of the monitoring period or the time in which the monitor states that no further reporting is necessary pursuant to Section IV(Q)(9), whichever comes first, Defendants shall, on a quarterly basis, provide the monitor with a list of the inmates on the SUs, RTUs and TCUs who have committed disciplinary infractions since the last reporting period. The monitor may then select names from this list for whom Defendants

shall provide the monitor with: (a) the records of that inmate's disciplinary action, after having redacted the name of any confidential informant, the targets of ongoing investigations, the manner in which the fruits of Internal Affairs investigations are compiled and filed and Internal Affairs investigatory techniques, and (b) any records related to the Special Administrative Segregation Review Committee ("SASRC") review of the inmate's confinement in administrative segregation.

(9) After each category has sunset, a conference call shall be held with the monitor, Plaintiffs and Defendants to discuss the reporting provisions set forth in Section IV(Q). During this conference call, the monitor shall advise Plaintiffs and Defendants which of the above referenced reporting documents are still relevant to the monitoring and should continue to be produced.

(10) The monitor can request, and Plaintiffs and Defendants shall negotiate, any other documents or reports which would assist the monitor in performing his/her duties under the terms of the Settlement Agreement.

(11) In the event that Defendants decide to produce a previously redacted document or previously withheld document, then this category of document will be produced thenceforth in the same manner.

V. INDIVIDUAL COMPLAINTS

The DOC Health Services Unit Supervisor shall have primary responsibility for responding to inmate complaints concerning mental health care and to whom Plaintiffs may forward inmates' concerns for action and for a response to counsel. All documents relating to complaints referred to and/or handled by the designees shall be forwarded by the DOC to the monitor, Plaintiffs, and the medical and mental health services provider(s) under contract with the DOC.

VI. NEW CONTRACTORS

The DOC shall incorporate the relevant terms of the Settlement Agreement related to programmatic requirements, policies and procedures and staffing in any subsequent Request for Proposal for medical or mental health care.

VII. TERM OF THE AGREEMENT

1. In his or her report, the monitor shall make a finding of Substantial Compliance or Non-Compliance for each category identified in Section IV(G)(1). As each category reaches 12 consecutive months of Substantial Compliance, it shall sunset and no longer be the subject of further monitoring.

2. Once each of the categories identified in Section IV(G)(1) have sunset, the Settlement Agreement will automatically terminate, without a need for a motion by any party.

3. In the event that Defendants remedy a finding of Non-Compliance in a category pursuant to Section (IV)(J)(6), the 12 month period of continuous Substantial Compliance will begin again for that category pursuant to the terms of Section (IV)(J)(6).

VIII. RETURN OF CONFIDENTIAL DOCUMENTS

1. Documents which have been marked "Confidential" during the course of this litigation, have been designated Confidential under the terms of the Confidentiality Order (hereinafter collectively referred to as the "pre-settlement documents") or have been reviewed by or produced to the monitor (the "monitor documents") shall be returned to the DOC within thirty (30) days of the termination of the Settlement Agreement.

2. Upon request of CMS or CBS, pre-settlement documents and monitor documents which have been produced by CMS or CBS shall be returned to CMS or CBS the earliest of (i) the date they are no longer the medical or mental health service provider under contract with the DOC (but in no event earlier than the date of the order of dismissal) or (2) the end of the monitoring period.

3. Until the pre-settlement and monitor documents have been returned to Defendants, CMS or CBS as provided in Sections VIII(1) and VIII(2), Sandra Cobden, Esquire, shall be responsible for maintaining the pre-settlement documents in a secure location. Plaintiffs' counsel shall maintain the monitor documents in a secure location.

4. Plaintiffs shall not charge Defendants, CMS or CBS any administrative costs related to the return of the pre-settlement or monitor documents. Defendants, CMS and CBS shall be responsible for any shipping costs associated with the return of their pre-settlement and monitor documents.

IX. ALTERATIONS

1. The terms and conditions reflected in this Settlement Agreement shall not be amended, changed or altered orally. Such terms and conditions may be amended, changed or altered only by written agreement between the parties through their respective counsel.

2. Should any party desire a modification of the confidentiality provisions at any time during the monitoring period, said party may apply to the court for a modification of these terms.

X. DISCLAIMER OF LIABILITY

Plaintiffs and Defendants expressly acknowledge and agree that this Settlement Agreement applies to the Amended Class Action Suit and does not constitute an admission of liability by Defendants or the DOC. This Settlement Agreement only affects Plaintiffs' claims raised in the Amended Class Action Suit in Exhibit A. Defendants have denied liability and expressly continue to deny liability despite their willingness to enter into this Settlement Agreement.

Except as otherwise provided herein, Plaintiffs and Defendants acknowledge and agree that this Settlement Agreement can be used for no purpose other than to set forth the understanding of the Plaintiffs and Defendants and may not be introduced as evidence in any other proceedings, nor form the basis of any other proceeding.

XI. DISSOLUTION AND SEVERABILITY

Plaintiffs and Defendants agree that if any provision or provisions of this Settlement Agreement are found to be contrary to law, the remaining provisions will not be affected and shall remain in full force and effect.

XII. DISSEMINATION

Defendants shall provide a copy of the Settlement Agreement, the Order Directing Notice of Proposed Settlement, the plain language summary in English and Spanish and the comment sheet with return envelope provided by Plaintiffs in a sealed envelope to each Presumptive Class Member listed on the special needs rosters on April 30, 1999. Dissemination to each of these Presumptive Class Members shall be made within thirty (30) days of the execution of this Settlement Agreement. A copy of the Settlement Agreement, the Order Directing Notice of Proposed Settlement, the plain language summary in both English and Spanish, the comment sheet and return envelope provided by Plaintiffs shall also be given to each of the inmate paralegals in all DOC facilities and posted in the

administrative segregation units and law libraries within thirty (30) days of the execution of this Settlement Agreement. Dissemination of the Settlement Agreement, the Order Directing Notice of Proposed Settlement, the plain language summary in both English and Spanish and the comment sheet with return envelope will be made by DOC Social Workers who may be supplemented by DOC custody supervisors when necessary.

XIII. ENFORCEMENT

1. Plaintiffs and Defendants agree that this is a mutually binding Settlement Agreement.

2. The Settlement Agreement is a contract permitted under 18 U.S.C. Sec. 362(c)(2)(B), enforceable under the law of contracts of the State of New Jersey.

3. Defendants have agreed to enter into this Settlement Agreement in consideration for Plaintiffs' agreement to accede to the dismissal of this litigation with prejudice.

4. Neither Defendants nor Plaintiffs shall challenge the validity of this Settlement Agreement on the ground that the signatories hereto lack the authority or capacity to contract or the ground that the Settlement Agreement is not supported by adequate consideration.

5. Plaintiffs' filing of a monitor's report that contains allegations of Defendants' breach of the Settlement Agreement with the court in connection with an action to enforce the Settlement

Agreement shall be deemed notice under the provisions of the New Jersey Contractual Liability Act, N.J.S.A. 59:13-5, and Defendants shall not, under these circumstances, oppose an action to enforce the Settlement Agreement for failure to satisfy statutory notice requirements, including the 90 day waiting period.

6. Actions to enforce the Settlement Agreement shall be brought in the Superior Court of New Jersey, Chancery Division unless otherwise prohibited by law. Venue shall be in Mercer County unless prohibited by R. 4:3-2(a)(2) of the Rules Governing Civil Practice.

7. These provisions do not preclude the Plaintiff class from bringing a new action in federal court in the event that the monitor finds Defendants in Non-Compliance. In such an action, the Plaintiff class will be permitted to use the portion of the monitor's report which specifically refers to the finding of Non-Compliance, along with any documents supporting this specific finding. In addition, Plaintiffs may rely upon their knowledge of the monitor's report(s), the monitoring document(s), and the discovery produced pursuant to the Amended Class Action suit to formulate discovery requests. Use of any portion of the monitor's report or supporting documentation shall be governed by the remaining confidentiality provisions of the Settlement Agreement, including, but not limited to, the provisions governing when and how documents shall be filed with the court under seal.

8. The parties agree that the Settlement Agreement is not a contract for personal services and that, in the event of a breach,

the Settlement Agreement is capable of judicial enforcement by way of specific performance unless otherwise prohibited by law.

XIV. SURVIVAL OF CONFIDENTIALITY PROVISIONS

The confidentiality provisions and obligations of this Settlement Agreement shall survive the conclusion of this action.

XV. PLAINTIFFS' ATTORNEYS FEES

Defendants shall pay Plaintiffs' attorneys' fees and costs in the amount of \$1,220,000. Except as otherwise provided herein, Plaintiffs shall not make any further application for attorneys' fees and costs.

Debevoise & Plimpton

Seton Hall University
School of Law
Center for Social Justice

By: Sandra L. Cobden
Sandra Cobden, Esquire
Attorney for Plaintiffs

By: Patricia Perlmutter
Patricia Perlmutter, Esq.
Attorney for Plaintiffs

DATED: 5/12/99

DATED: 5/12/99

PETER VERNIERO
ATTORNEY GENERAL OF NEW JERSEY

By: Dianne M. Moratti
Dianne M. Moratti
Deputy Attorney General
Attorney for Defendants

DATED: 5/13/99