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Deu
JUN 22 2000

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

LUTHER D. THOMAS, Clerk
By: *[Signature]* Deputy Clerk

L.C., by JONATHAN ZIMRING
as guardian ad litem
and next friend,

Plaintiff,

E.W., by JONATHAN ZIMRING
as guardian ad litem
and next friend,

Plaintiff-Intervenor,

v.

TOMMY OLMSTEAD, Commissioner
of the Department of Human Resources;
RONALD C. HOGAN, Superintendent
of Georgia Regional Hospital at Atlanta;
and EARNESTINE PITTMAN, Executive
Director of the Fulton County Regional
Board, all in their official capacities,

Defendants.

Civil Action No.
1:95-1210-MHS

JOINT MOTION FOR INCORPORATION OF SETTLEMENT AGREEMENT
INTO ORDER UPON REMAND

Come now the parties to the above-styled action, and seek an order incorporating the Settlement Agreement and Release, attached as Exhibit A. A proposed Order is included with this Motion.

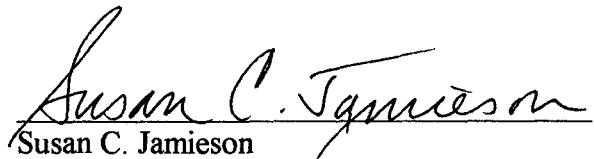
The parties have reached agreement concerning all matters as to the relief Plaintiffs had sought, making unnecessary any further litigation of the issues remanded by the United States Supreme Court and the Court of Appeals for the Eleventh Circuit. The agreement addresses, *inter alia*, provision of current and ongoing services, including community placement, to

Plaintiffs. The agreement encompasses the treatment planning process, independent service monitoring, facility treatment when needed followed by return to community services and placement within a reasonable time, future dispute resolution and statutory attorneys' fees. Under the agreement, this Court retains enforcement jurisdiction for three years, after which time any enforcement action must be filed in an appropriate superior court of the State of Georgia.

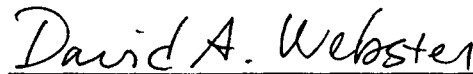
Also attached is the guardian ad litem's certification of his approval of the settlement agreement, an agreement which he considers to be in the best interest of Plaintiffs. (Certificate of Guardian ad litem, attached as Exhibit B).

Wherefore, the parties request an order incorporating the terms of their agreed resolution of this case.

This 22 day of June, 2000.



Susan C. Jamieson
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Attorneys for Plaintiffs

Patricia Downing

Patricia Downing (by SCRTA permission)

Georgia Bar No. 228350

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Jefferson Davis

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(404) 373-2531

Attorneys for Defendants

SETTLEMENT AGREEMENT AND RELEASE

1. Release.

For and in consideration of

(a) the community-based services and placements more fully described below, and

(b) the sum of six hundred and seventy-two^{thousand} and no/100ths dollars (\$672,000) for attorneys' fees and costs,

SUT
PD w/ permission

LOIS CURTIS and ELAINE WILSON (hereinafter "Releasors" or "Plaintiffs") do hereby release, acquit, and forever discharge AUDREY HORNE, COMMISSIONER OF THE DEPARTMENT OF HUMAN RESOURCES; TOMMY OLMSTEAD, FORMER COMMISSIONER OF THE DEPARTMENT OF HUMAN RESOURCES; RON HOGAN, SUPERINTENDENT OF GEORGIA REGIONAL HOSPITAL AT ATLANTA; RICHARD FIELDS, FORMER SUPERINTENDENT OF GEORGIA REGIONAL HOSPITAL AT ATLANTA; AND ERNESTINE PITTMAN, EXECUTIVE DIRECTOR OF THE FULTON COUNTY REGIONAL BOARD, ALL IN THEIR OFFICIAL CAPACITIES; THE GEORGIA DEPARTMENT OF HUMAN RESOURCES; THE GEORGIA DEPARTMENT OF LAW; THE STATE OF GEORGIA; and all present and former employees of said persons, offices, departments, and State, and any and all agents, servants, employees, attorneys, representatives, heirs, executors, administrators, successors, predecessors, assigns, joint tortfeasors, joint obligors, or other affiliates of said individuals and entities (hereinafter "Releasees"), from any and all claims, damages, demands, actions, or causes of actions of any kind whatsoever, known or unknown, that Releasors may have or claim to have, up through and including the last date of signature of this document, against the persons and/or legal entities mentioned above, arising out of any acts occurring up through and including the last date of signature of this document, known or unknown, foreseen or unforeseen, including or related to, certain activities which are subject of the case of LOIS CURTIS AND ELAINE WILSON versus AUDREY HORNE (BY AUTOMATIC SUBSTITUTION) AS COMMISSIONER OF THE DEPARTMENT OF HUMAN RESOURCES; RON HOGAN (BY AUTOMATIC SUBSTITUTION) AS SUPERINTENDENT OF GEORGIA REGIONAL HOSPITAL AT ATLANTA; AND ERNESTINE PITTMAN, EXECUTIVE DIRECTOR OF THE FULTON COUNTY REGIONAL BOARD, ALL IN THEIR OFFICIAL CAPACITIES, United States District Court, Northern District of Georgia, Atlanta Division, Civil Action No. 1:95-CV-1210-MHS, a lawsuit filed by Releasors against certain of the persons and/or legal entities mentioned above, for which the Releasors have claimed that certain of the above-mentioned persons and/or legal entities are legally liable, which legal liability is expressly disputed and denied by all said persons and/or legal entities.

The Releasors, having acknowledged and received the above-stated sum and promises, as full compensation for and on account of any and all damages,

demands, actions and claims, known or unknown, including all costs, expenses, attorneys' fees and paralegal fees, which the undersigned have or claim to have sustained, hereby satisfy and settle the aforesaid claim, and hereby satisfy, acquit, release, and discharge the Releasees from any and all claims, demands, damages, actions, causes of action, attorneys' fees, charges, costs, and suits of whatever kind or nature, known or unknown, from any and all claims which were made or which might have been made in the above-stated litigation.

2.a. Community Services and Placements To Be Provided.

Introduction: It is hereby agreed by the undersigned Defendant(s) that the Plaintiffs will be maintained in their current community-based residential placements or other setting appropriate to their needs and shall continue to receive from the Defendants their current community-based services or other adequate community-based services, so long as

- (a) the settings remain appropriate to their needs, Plaintiffs need the services and meet the financial requirements for participation in public disability services (the need of the Plaintiffs for and the adequacy of the services to be determined in the first instance by the Defendants' designated professionals in compliance with Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. Section 12131 et seq., and its attendant regulations, subject to the dispute resolution process set forth in sections 13.a., b., and c. of this agreement); and
- (b) appropriations are specifically made available by the General Assembly of the State of Georgia in a General Appropriations Act or Supplementary Appropriations Act for institutional or community placements and services for any mentally disabled person.

2.b. Individualized Service/Program Plan Will Be Provided For Each Plaintiff.

The Defendants agree that the Plaintiffs will each have an Individualized Service Plan. The professional team involved in the development of the ISP will include person(s) with training and experience in the planning and assessment of individuals with mental illness and mental retardation. The Plaintiff will have the opportunity to be an active participants in the development of the plan.

(1) ISP Defined: An "Individualized Service/Program Plan" (hereinafter "ISP") is an organized statement of the proposed treatment/habilitation process prepared to guide the service provider and client throughout the placement. Each plan shall clearly include but is not limited to: (1) A statement of the goals or desired outcomes, based upon and related to a proper evaluation of the nature of the specific problem and the specific needs of the Plaintiff, which can be reasonably expected to be achieved; the ISP development process should include the opportunity for the participation of the individual Plaintiff in determining the goals, based on the strengths, needs, abilities and preferences of the individual Plaintiff and should be appropriately responsive to the reasonable goals of the

individual Plaintiff; (2) the kinds of services to be provided to obtain these goals, the target date, and the frequency of the services; (3) identification of professional personnel who planned and the service agency(ies) that will implement these services, including appropriate medical or other professional involvement by a physician; (4) documentation of Plaintiff's involvement and, if applicable, the Plaintiff's accordance with the ISP; (5) compliance with the Program's written Quality Improvement Plan; and (6) an evaluation of the individual's progress toward achieving previously established goals and desired outcomes.

(2) ISP Review: Each ISP shall be reviewed by the professional team at regular intervals and more often as necessary to determine the Plaintiff's progress toward the stated goals and to determine whether the plan should be modified because of the Plaintiff's present condition, growth, and emerging needs. These reviews should be based upon relevant progress notes in the Plaintiff's record and upon other related information. The Plaintiff shall have an opportunity to participate in the ISP review, and her designee(s) may also have input to the team on the Plaintiff's request.

(3) ISP Issues: (a) The ISP will address at a minimum the following issues as necessary for the person to live in the community and to be provided adequate treatment and habilitation: clinical and other assessments (to be done by qualified professionals promptly with a goal of not delaying the planning and implementation of the ISP) ; residence; daily living skills, work, education, medical/health, behavior supports, psychiatric supports, crisis services, support network/social/family, leisure; service coordination or case management; and other services. (b) The crisis services should be designed and implemented so that the individual Plaintiff will not have to re-enter an institutional or hospital facility, unless no reasonable alternative approach is available.

(4) Case Manager/Service Coordinator: Plaintiffs will each have a case manager or service coordinator to manage or coordinate the planning, implementation, and revision of the plan as needed.

(5) Service Monitor: (a) Plaintiffs will have a service monitor to monitor and assure the provision of services that are prescribed in the ISP. (b) The service monitor will submit written report(s) regularly and as necessary to the Regional Board regarding the implementation of the ISP. In monitoring the implementation of the ISP, the service monitor shall monitor the training needs of the individuals responsible for providing residential services, personal support, behavioral management, and day habilitation and/or day treatment services to Plaintiffs, and shall include an assessment of training needs, if any, in the written reports to the Regional Board. (c) The service monitor shall not be an employee or subcontractor of an agency or entity providing direct services to the consumer or of any agency or entity which contracts with another agency which provides direct services to the consumer; "agency," or "entity," does not include, however, the Regional Board, DMHM RSA, or DHR.

(6) Plaintiff's Professional: (a) Each individual Plaintiff may at any time be evaluated by her own physician or other professional. (b) The State's professional will confer with Plaintiff's professional in person or on the phone, within ten days after a request from Plaintiff or her attorney, and attempt in good faith and as promptly as possible to reach an agreement that is satisfactory to both parties.

2.c. Access to Records; Notice of ISP Meetings.

(1) The individual Plaintiff, her attorney and others designated in the Release form will have access to all clinical records, including all clinical assessments created as part of the ISP process and the ISP itself, and all service monitoring reports relevant to the Plaintiff prepared under 2.b. 5 within a reasonable time after signing a copy of the attached Release form and presenting it to the custodian of such records. Plaintiff's case manager/service coordinator will provide her with the necessary information to determine the name and address of the custodians of these records, assessments, and reports or assist her in securing this information.

(2) Plaintiff and her attorney shall also provide a copy of all such requests to the appropriate Legal Services Officer at the DMHMRSA, DHR.

(3) The individual Plaintiff and, if requested by the Plaintiff, her attorney, will be provided with notices of all ISP meetings including ISP reviews prior to the meetings.

3.a. No Preclusion of Necessary Facility Treatment.

Nothing in this agreement shall preclude the **Plaintiffs** from being provided residential placement and services in a state psychiatric or mental retardation institution ("facility" under O.C.G.A. 37-3-1(7) or 37-4-2(6)), general hospital, nursing facility, or residential crisis facility) if the disability services provided in these more restrictive or institutional settings could not be provided in a less restrictive or non-institutional setting, for so long as the Plaintiffs need such placement and services and remain qualified for them, in the opinion of the State of Georgia's designated treatment professionals in compliance with Title II and its regulations. Any such placement shall also be consistent with all required procedures, rights, and protections available under state law as to the provision of such placement. Any such procedures, rights, and protections, however, are enforceable under state law and not under the dispute resolution or enforcement mechanisms in this agreement.

3.b. Return to Community Services and Placement Within a Reasonable Time.

For each Plaintiff, upon any placement which is restrictive or institutional in nature, (such as a hospital, crisis residential facility, nursing home, or state institution) the following shall occur:

(1) Discharge Planning: comprehensive and effective discharge planning will begin as soon as the individual is placed in such a setting.

(2) Assessments: any determination whether she no longer needs restrictive, hospital, or institutional care shall include assessment(s) by person(s) with knowledge of the existing community service system.

(3) Discharge in 3 Days: the individual will be discharged and returned to an adequate community-based residential placement within 3 days of the determination that she no longer needs restrictive or institutional care.

(4) Notice and Negotiation; 30 day extension: if an adequate community residential placement is not available at the end of this three-day period, counsel for both parties will be notified in order to negotiate to secure the availability of a placement with necessary supports and the individual's discharge within thirty (30) days; notice to counsel for Plaintiff will include the specific reason why community residential services are not available and the time required to secure such services. This 30-day period may be extended by mutual consent of the parties.

4. Method of Payment.

It is agreed that the method of payment of the sum stated above at §1.b. ("Release") is by a check for that amount made payable to LOIS CURTIS, ELAINE WILSON, JONATHAN ZIMRING AS GUARDIAN AD LITEM FOR LOIS CURTIS AND ELAINE WILSON, AND ATLANTA LEGAL AID. The Releasors, their guardian ad litem and their attorney agree to this method of payment and agree that should any dispute arise concerning the distribution of the payment, they shall have no cause of action or recourse against the Releasees.

5. No Admission of Liability.

(a) It is further understood and agreed that the payment of the above-stated amount and the provision of services and placements to the Releasors are not to be construed as an admission of liability on the part of the Releasees, all liability being expressly denied by those persons and entities. (b) Further, nothing in this agreement shall be construed to be in any way an admission of liability on the part of said persons or entities. (c) Further, nothing in this agreement shall be construed as an admission as to the validity or the proper construction of the Americans with Disabilities Act of 1990 and its attendant regulations; rather, the parties are entering into this agreement to avoid litigating this matter further; nothing in this agreement shall be construed to apply to the benefit of anyone other than the named Plaintiffs. (d) The Releasors specifically acknowledge that the above-stated consideration is in full satisfaction and compromise of disputed claims and is a full settlement and a complete accord and satisfaction of all claims, known or unknown, including attorney's fees and legal fees. (e) All agreements and understandings between the parties to this Settlement Agreement and Release are embodied and expressed herein, and the terms of this release are contractual and not merely recitals.

6. Federal Court Jurisdiction; Dismissal With Prejudice.

The parties agree that upon signing this agreement, they will jointly request the District Court upon remand to incorporate this agreement into an order and enter it. The District Court shall retain continuing jurisdiction for a period of three years from the date of the order's entry to enforce the provisions of this agreement, except as to any matter which has by that date already resulted in a written complaint to DHR under paragraph 13.a. of this agreement and which is still then pending in the dispute resolution mechanism. In the event that such pending matter is not resolved by agreement, non-binding mediation or non-binding arbitration, then the District Court shall retain jurisdiction to hear the matter which is the subject of the written complaint. On or before the last day of the three-year period, the Plaintiffs' attorney of record shall file in the District Court a stipulation dismissing this action with prejudice and, except for any complaint pending in the dispute resolution process, without any reservation of jurisdiction in the District Court. The parties shall not exercise any right that they may have, under Rule 60 of the Federal Rules of Civil Procedure, to reopen the dismissed action by reason of breach of this agreement.

7. Acknowledgment Of Sufficiency Of Information.

The undersigned parties further agree and acknowledge that the documents and information available to them and their attorneys concerning any claims, demands, causes of actions, etc., known or unknown as aforesaid have been entirely sufficient for them to be fully aware of the circumstances concerning all of their claims, demands, causes of actions, etc., as aforesaid, and they fully waive any beneficial effect of further documents or information which may be in the possession of said persons or entities hereby released and their attorneys.

8. Indemnification.

For the consideration of the aforesaid, the Releasors further hereby stipulate and agree to indemnify, save, and forever hold harmless the Releasees against any claim or claims, action or actions, causes of action, damages, demand or demands, including reasonable attorney's fees, which may hereafter be brought or instituted against the Releasees by any person or persons seeking reimbursement or compensation for any expenses of litigation arising out of this action, including attorneys' fees.

9. Final Disposition.

The Releasors agree and understand that this is a final disposition of all their claims of any type, legal or equitable, whether known or unknown against the aforesaid persons and entities, both as to legal liability and as to the nature and extent of any damages, injuries, diseases or illnesses which they may have sustained whether known or unknown, and that they understand that liability for same is denied by aforesaid persons and entities.

10. Acknowledgment of Knowledge and Understanding of Terms.

The undersigned parties expressly acknowledge that they have read this Settlement Agreement and Release and understand all of its terms, after consultation with their attorney. The undersigned further expressly acknowledge that they have executed this Settlement Agreement and Release voluntarily with full knowledge of its significance.

11. Governing Law.

This Settlement Agreement shall be construed and interpreted in accordance with the laws of the State of Georgia.

12. Severability.

The Releasors understand and agree that the terms of this Release are severable. If any provision is declared or determined to be unconstitutional, illegal, or unenforceable, it shall not affect the enforceability, legality and constitutionality of the remaining provisions of this Release.

13.a. Written Complaints to DHR.

(1) Complaints under Sections 2.a., 2.b., or 2.c.

In addition to the input to the ISP, Plaintiffs shall mail any complaints as to issues arising under section 2.a, 2.b, or 2.c of this agreement (“Community Services and Placements To Be Provided;” “Individualized Service/Program Plan Will Be Provided For Each Plaintiff;” and “Access to Records; Notice of ISP Meetings”) in writing to the Director of the Regional Board. If Plaintiffs are not satisfied by a response mailed within 10 business days after service of the complaint, they shall mail their complaint to the Director of the DMHMRSA. If Plaintiffs are not satisfied by a response mailed within 10 business days after service of the complaint, they may request that non-binding mediation be initiated as provided in section 13.b. of this agreement.

(2) Complaints under Section 3.a. or 3.b.

Plaintiffs shall mail any complaints as to issues arising under section 3.a or 3.b of this agreement (“No Preclusion of Necessary Facility Treatment” and “Return to Community Services and Placement Within a Reasonable Time”) in writing to the Director of the DMHMRSA. If Plaintiffs are not satisfied by a response mailed within 5 business days after service of the complaint, they may request that non-binding mediation be initiated as provided in section 13.b. of this agreement or proceed directly to enforcement in court as provided in section 13.c. of this agreement.

13.b. Non-Binding Mediation and Non-Binding Arbitration

(1) Introduction

(a) If a Plaintiff is dissatisfied with a final decision of the Director of the DMHM RSA, or if the response is not timely, she may invoke the non-binding dispute resolution mechanism set out below. This dispute mechanism shall have two tiers : a non-binding mediation component and from there to a non-binding time-limited arbitration. The parties agree that mediation and arbitration will be conducted by the Justice Center of Atlanta, Inc. under a reduced fee arrangement, the provisions of which are set forth in a letter of understanding between the Justice Center of Atlanta (JCA) and the parties , attached as Attachment A to this agreement.

(b) In the event that neither procedure resolves the dispute, either party may bring their complaint to either federal district court or to state court, whichever is applicable based upon whether jurisdiction in federal district court has been dismissed under this agreement prior to the initiation of any dispute resolution mechanism. The arbitration decision may be introduced into evidence by either party. However, any motion in federal court or action in state court shall be de novo and shall not be solely a review of the non-binding decision nor afford it any deference.

(c) Because the letter of understanding covers a period of five years from the date that this agreement becomes final, the parties shall meet at least six months prior to the expiration of this five- year period and determine whether to continue the dispute resolution process as set forth in this agreement or modify it in any way that is satisfactory to both parties.

(d) If at the expiration of the five (5) year period no agreement is reached regarding the continuation of a dispute resolution mechanism, Plaintiff may file an action in the Superior Court of the County of residence of the Plaintiff to enforce any provision of this agreement without regard to the provisions of 13.a. (Written Complaints to DHR), 13.b. (Non-Binding Mediation and Non-Binding Arbitration), or 13.c. (2) (Enforcement of Agreement).

(2) Mediation

(a) Plaintiff or her attorney will mail a written request for non-binding mediation pursuant to this agreement to the Justice Center of Atlanta, Inc. with notice to the Georgia Attorney General's Office within 10 days after service of the final decision of the Director of the DMRM HSA. The mediator shall be selected within 10 days of the request for mediation. The Plaintiff will then

promptly commence the mediation within 10 days of the date of the selection of the mediator, unless the parties agree otherwise.

(b) Prior to mediation, each party shall attempt to provide the other party with a copy of all relevant documents and shall also provide the other with a proposal to resolve the dispute. Mediation shall be confidential and non-binding. Each side shall attend, with counsel if they elect, and either accompanied by or with access to such person or person(s) who have authority to resolve the disagreement within the scope of the demand of the other party.

(c) The parties may enter into a mediation agreement resolving all disputes and which has, inter alia, authority to amend or modify this agreement, the ISP, or to provide for any agreed upon procedure or services or placement.

(3) Arbitration

In the event the dispute is not resolved at mediation, either party may elect within 10 business days of the conclusion of the mediation to seek non-binding arbitration by submitting a written request for non-binding arbitration pursuant to this agreement to the Justice Center of Atlanta, Inc. with notice to the Georgia Attorney General's Office and to the opposing party. The following arbitration process will be followed:

(i) The arbitrator will be chosen within 10 days from the date that the written request for arbitration is submitted to the Justice Center, unless the parties agree to extend this period. The Justice Center of Atlanta will propose a list of at least 7 potential arbitrators, with names, addresses and telephone numbers. The Plaintiff will choose 3 or more arbitrators who are acceptable.

(ii) The Director of the DMRMHSA will choose an arbitrator from Plaintiff's list, or else submit three or more additional names from the list

(iii) Plaintiff may choose an arbitrator from the Director's list if one is acceptable.

(iv) If none are acceptable, Plaintiff will notify the Director that none are acceptable and will choose one name from Plaintiff's previously submitted selection.

(v) The Director will choose one name from his/her previously submitted selection.

(vi) The two selected arbitrators will jointly select and agree on a third arbitrator, who will be the sole arbitrator of the dispute.

(vii) A record of the arbitration shall not be made though the arbitrator shall issue a written determination within ten (10) days of the conclusion of the hearing and serve this on each party or their representative. The arbitration shall be time limited, unless otherwise agreed by the parties,

with each party allowed up to but not in excess of three and one half (3 1/2) hours, including argument. The following procedures shall be used: (a) There shall be no formal discovery; (b) Pre-arbitration motions shall not be made, except either party shall have the right to receive a list of witnesses and documents from the other two (2) business days prior to arbitration; (3) Each party may use copies of treatment plans, evaluations and records without further authentication as long as such documents are of the type commonly used by treatment teams and/or evaluators in developing ISP or other treatment recommendations; (4) Each party may present and cross-examine witnesses, except that affidavit testimony may be used with consent; and (5) The arbitrator shall resolve any dispute concerning evidence or procedures, and in exercising such discretion, may consult but is not bound to utilize the rules applicable to hearings before the Office of State Administrative Appeals under the Georgia Administrative Procedure Act, allowing for the relaxation of such rules and procedures where such a ruling shall facilitate the prompt resolution of the matter, without prejudice to either party.

(4) All costs and fees relating to the mediation and arbitration shall be shared equally by the parties, except that each party shall bear their own costs and attorney fees. In the event the claim proceeds into court and either party has a statutory claim for attorney fees and costs, they may seek such an award, including the time spent in this dispute resolution procedure.

(5) During the initial five -year period that the Justice Center of Atlanta conducts the dispute resolution procedures in this agreement, the rules and procedures governing both mediation and arbitration shall be the rules generally employed by the Justice Center. Where any such rules or procedures are inconsistent with the provisions of this agreement, the provisions of this agreement shall apply.

(6)The parties may at any time agree on an alternative to the dispute resolution process described in this subparagraph.

13.c. Enforcement of Agreement.

(1) District Court

Prior to dismissal of the federal court action by the Plaintiffs, Plaintiff may file a motion in the District Court to enforce this agreement. If, however, the issue arises under section 2.a.,2.b, or 2.b. ("Community Services and Placements To Be Provided," "Individualized Service/Program Plan Will Be Provided For Each Releasor," and "Access to Records, Notice of ISP Meetings) , Plaintiff must

first proceed through the dispute resolution mechanisms set forth in Sections 13.a. and b. of this agreement. If the issue arises under section 3.a or 3.b ("No Preclusion of Necessary Facility Treatment" and "Return to community Services and Placement Within a Reasonable Time"), Plaintiff may proceed directly to District Court after written complaints as provided in section 13.a. (2).

(2) Superior Court

Subsequent to dismissal of the federal court action by the Plaintiffs, Plaintiffs may file an action in the Superior court of the county of residence of the Plaintiff to enforce this agreement. If, however, the issue arises under section 2.a., 2.b, or 2.c. ("Community Services and Placements To Be Provided," "Individualized Service/Program Plan Will Be Provided For Each Releasor," and "Access to Records, Notice of ISP Meetings), Plaintiff must first proceed through the dispute resolution mechanisms set forth in Sections 13.a. and b. of this agreement. If the issue arises under section 3.a or 3.b ("No Preclusion of Necessary Facility Treatment" and "Return to community Services and Placement Within a Reasonable Time"), Plaintiff may proceed directly to Superior court after written complaints as provided in section 13.a. (2).

14. The parties intend this Settlement Agreement and Release to settle and resolve all claims between the parties, up and through the date of this agreement, as set forth in Paragraph 1, above. This agreement does not limit or impair any subsequently arising claims of the Plaintiffs nor limit their access to any procedures and remedies otherwise available under Georgia law, except as to claims under Sections 2.a., b. and c. of this agreement ("Community Services and Placements To Be Provided," "Individualized Service/Program Plan Will Be Provided For Each Releasor," and "Access to Records, Notice of ISP Meetings).

15. The computation of time for procedures in this agreement will follow Rule 6, FRCP, in its current form or as amended in the future.

IN WITNESS WHEREOF I hereby execute this Release.

Lois Curtis 6-16-2000
LOIS CURTIS, Plaintiff date

Elaine Wilson 6/16/2000
ELAINE WILSON, Plaintiff/Intervenor date

Jonathan A Zimry 6/16/2000
1
1

JONATHAN ZIMRING

date

Guardian Ad Litem for Lois Curtis and Elaine Wilson

By signing this Settlement Agreement and Release I, Jonathan Zimring, attest that I have read it in its entirety; that I have explained it to Lois Curtis and Elaine Wilson; that notwithstanding the disabilities of Lois Curtis and Elaine Wilson, they are capable of and do understand its terms and significance; and that in my opinion the settlement agreement and release is fair, protects the interests, and is in the best interests of Lois Curtis and Elaine Wilson.

Susan C. Jamieson 6-16-2000
SUSAN C. JAMIESON date
Attorney for Plaintiff & Plaintiff/Intervenor

By signing this Settlement Agreement and Release I, Susan C. Jamieson, attest that I have read it in its entirety; that I have explained it to Lois Curtis and Elaine Wilson; that notwithstanding the disabilities of Lois Curtis and Elaine Wilson, they are capable of and do understand its significance; and that in my opinion the settlement agreement and release is fair, protects the interests, and is in the best interests of Lois Curtis and Elaine Wilson.

Sworn to and subscribed
before me this 16th day 2000
of June, ~~1999~~.

Reilie V. Presto
NOTARY PUBLIC

My commission expires:

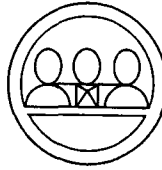
Notary Public, Clayton County, Georgia
My Commission Expires March 6, 2001

Audrey K. Horne 6-21-2000
AUDREY HORNE date
Commissioner, Georgia Department of Human Resources

Patricia Downing
PATRICIA DOWNING
Attorney for Defendants

6-21-00
date

DAVID G. CROCKETT, Esq.
Chairman
PAULA LAWTON BEVINGTON, Esq.
President
SUSAN WELTNER YOW, Esq.
Secretary
GERAN F. DODSON
Treasurer
EMILY J. ADKINS
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RICHARD S. HALPERN, Ph.D.
DEBORAH K. LISS
BARBARA LONG, M.D., Ph.D.
TERESA WYNN ROSEBOROUGH, Esq.
V. LEE THOMPSON, Esq.
CATHERINE C. VANDENBERG, Esq.
WOODY WELLS



Justice Center of Atlanta, Inc

RANDALL F. DOBBS, Ed.D.
Executive Director
EDITH B. PRIMM, Esq.
Director of Research and Development
JUDY W. HARVEY
Director of Training
FRED H. COTTRELL
Director of Operations
MARTIN L. ELLIN, Esq.
Director of Legal Services
JIM P. CARPENTER, JR.
CHRISTINE V. COLCORD
KAREN E. DOBKIN, C.P.A.
KEVIN M. MALONE
JAMES. E. PACE
THOMAS G. PRINCE, Th.D.
RICHARD J. VOYLES, Ph.D.
JOAN S. WALTERS
DERYA A. WRIGHT

June 19, 2000

Patricia Downing, Esq.
David Webster, Esq.
Sue Jamieson, Esq.
c/o Atlanta Legal Aid Society
246 Sycamore street
Decatur, Georgia 30030

Re: Settlement Agreement in L.C. And E.W v. Olmstead

Dear Ms. Downing, Mr. Webster and Ms. Jamieson,

By this letter, I confirm that the Justice Center of Atlanta, Inc. (JCA) has agreed to provide mediation and arbitration to the parties following settlement of the civil matter now pending in the United States District Court, Northern District of Georgia known as Olmstead v. L.C., civil action file number 1-95-1210-MHS.

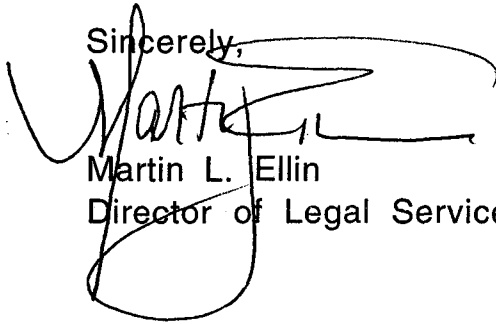
In the event that either party to the agreement which resolves that case (Settlement Agreement) believes that there has been a breach of the Settlement Agreement, the JCA agrees to mediate that claim for the cost of Two Hundred Fifty Dollars (\$250), the cost to be split by the parties unless the parties agree otherwise. The JCA will choose the mediator without input from the parties on that choice, and the mediation will be conducted pursuant to the rules for mediation generally employed by The JCA.

In the event that mediation fails to generate an agreement of all issues, remaining issues will be addressed through non-binding arbitration conducted by The JCA. The cost of the arbitration will be an additional Two Hundred Fifty Dollars (\$250), again split by the parties unless the

parties agree otherwise. The arbitrator will be chosen by the parties by the procedure articulated by the Rules for Arbitration by the JCA, which Rules will also govern the conduct of the arbitration.

The JCA agrees to maintain this pricing structure for five (5) years from the date of this agreement. We welcome the opportunity to work with each of you, and thank you for your confidence in the JCA.

Sincerely,

A handwritten signature in black ink, appearing to read "Martin L. Ellin", with a large, stylized flourish extending from the bottom of the signature.

Martin L. Ellin
Director of Legal Services

ORIGINAL

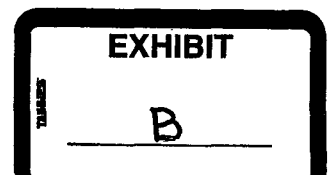
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

L.C. and E.W. by	:	
JONATHAN A. ZIMRING	:	
as guardian ad litem and next	:	
friend, et al.,	:	
	:	Civil Action File No.
Plaintiffs,	:	
	:	1:95-cv-1210-MHS
v.	:	
	:	
TOMMY OLMSTEAD,	:	
Commissioner of the Dept.	:	
of Human Resources, et al.,	:	
	:	
Defendants.	:	

**CERTIFICATE OF GUARDIAN *AD LITEM* IN SUPPORT
OF MOTION FOR ADOPTION OF CONSENT ORDER AND FOR
ACCEPTANCE OF THE SETTLEMENT AGREEMENT**

NOW COMES Jonathan A. Zimring, Esquire, Guardian *Ad Litem* in the above referenced matter and hereby files with the Court his Certificate in Support of the Joint Motion in regard to the adoption of the Settlement Agreement and Consent Order presented to the Court as a full and final resolution of this case. In furtherance of that Motion the undersigned shows the Court that:

- (1) He is Court Appointed Guardian *Ad Litem*.
- (2) The parties have presented the Court with a motion to adopt a Consent Order and Settlement Agreement.



- (3) The Settlement Agreement is the result of an arms length negotiated mediation between the parties, commencing in August of 1999 and reaching resolution on the 6th day of June, 2000.
- (4) The Settlement Agreement provides for the dismissal of all appeals.
- (5) The Settlement Agreement maintains this Court's jurisdiction for three years to enforce the provisions of the Settlement Agreement, with described procedures and exceptions, and results in an ultimate dismissal of all claims.
- (6) The Settlement Agreement addresses the continued provision of community based services for Plaintiff L.C. and for Plaintiff E.W. In addition, it provides a mechanism for evaluation and development of appropriate placement and treatment plans, review of records, input from State and independent professionals as to necessary services, a dispute resolution mechanism including mediation, non-binding arbitration and appeal either to this Court, or after three (3) years to Georgia Superior Court. The dispute resolution mechanism utilizes the Justice Center of Atlanta, at least for the initial years.
- (7) The Settlement Agreement also settles Plaintiffs' claims for attorneys fees and costs.

In the opinion of the Guardian *Ad Litem* the Settlement Agreement reasonably and appropriately addresses the claims of each of the Plaintiffs, and accomplishes the objective of having a mechanism for the provision of necessary services. It also provides a mechanism to resolve disagreements between each Plaintiff and the State or State service providers. I

believe it is in the Plaintiffs' interest to accept this Settlement Agreement. The Settlement Agreement and Consent Order are endorsed by Plaintiffs' counsel, including Susan Jamieson, Esq., attorney for each of the Plaintiffs throughout the course of this matter.

I am not aware of any known objections to the Settlement Agreement or any conflicts arising from the terms of the proposed settlement.

I therefore, ask the Court to approve the Order, adopting the Settlement Agreement.

This 16th day of June, 2000.

Respectfully submitted,


JONATHAN A. ZIMRING, ESQ.
Georgia Bar No. 785250

GUARDIAN AD LITEM FOR PLAINTIFFS

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JUN 22 2000

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISIONLUTHER D. THOMAS, Clerk
Deputy ClerkL.C., by JONATHAN ZIMRING
as guardian ad litem
and next friend,

Plaintiff,

E.W., by JONATHAN ZIMRING
as guardian ad litem
and next friend,

Plaintiff-Intervenor,

v.

TOMMY OLMSTEAD, Commissioner
of the Department of Human Resources;
RONALD C. HOGAN, Superintendent
of Georgia Regional Hospital at Atlanta;
and EARNESTINE PITTMAN, Executive
Director of the Fulton County Regional
Board, all in their official capacities,

Defendants.

Civil Action No.
1:95-1210-MHSBRIEF OF THE PARTIES IN SUPPORT OF JOINT MOTION FOR INCORPORATION
OF SETTLEMENT AGREEMENT INTO ORDER UPON REMAND

The parties to the above-styled action have moved for an order incorporating the Settlement Agreement and Release (attached to Motion as Exhibit A) into a final order of this Court. In support of this Motion they assert that the agreement is the result of an extended negotiation process. Court approval is needed for two reasons: first, the continuing jurisdiction of this Court for a period of three years is an essential element of the agreement and, second, the Court has a duty to protect the interests of these Plaintiffs in light of their cognitive disabilities.

Hoffert v. GMC 656 F2d 161 (5th Cir. 1981); *Steyck v. Bell Helicopter Textron, Inc.*, 53 F Supp.

2d 794 (E.D. Pa. 1999).

Procedurally, the part of the case that is before this Court is on remand from the United States Supreme Court, which found as follows:

We affirm the Court of Appeals' decision in substantial part. Unjustified isolation, we hold, is properly regarded as discrimination based on a disability. But we recognize, as well, the States' need to maintain a range of facilities for the care and treatment of persons with diverse mental disabilities, and the States' obligation to administer services with an even hand. Accordingly, we further hold that the Court of Appeals' remand instruction was unduly restrictive.

Olmstead v. L.C., 572 U.S. 581, 597, 119 S.Ct. 2176, 2185, 144 L.Ed. 2d 540 (1999). The Court thus affirmed in part, vacated in part, and remanded, with instructions as to the ADA's "fundamental alteration" defense. *Id.* However, since the relief sought by the two Plaintiffs has been achieved to a degree satisfactory to the parties through a comprehensive settlement agreement, further litigation of the fundamental alteration issue in this case is unnecessary.

The agreement provides for ongoing treatment and community services. It does not preclude necessary facility treatment, followed by a return to community services and placement within a reasonable time. It includes prompt resolution without litigation of disagreements in the implementation of the agreement's terms. This Court retains jurisdiction to enforce the agreement for three years, including any disputes pending at the end of the three-year period. After three years, the agreement may be enforced in the proper superior court in Georgia. Finally, the parties have resolved all issues with regard to attorneys' fees.

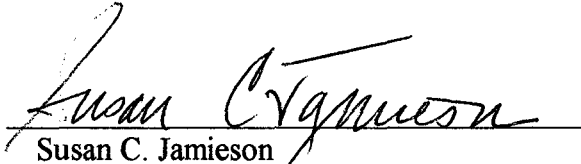
The individual appointed by this Court as guardian *ad litem* for both Plaintiffs believes that the agreement "reasonably and appropriately addresses the claims of each of the Plaintiffs...." See Certificate of Guardian Ad Litem," attached to Motion as Exhibit B.

The parties therefore ask this Court to incorporate the settlement agreement providing,

inter alia, for ongoing community-based services to L.C. (Lois Curtis) and E.W. (Elaine Wilson)

in to its final order.

This 22 day of June, 2000.



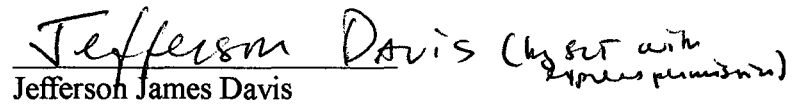
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