

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

ANGEL COLON, ROY SCHMITT, JUBRA'EEL
LEBRON, WINIFRED GATES, MARK HARKINS,
MATTHEW CARLEY, CECILIO TOLEDANO, and
ANDREW CRAWFORD, on behalf of themselves and all
others similarly situated,

Plaintiffs,

v.

PASSAIC COUNTY, PASSAIC COUNTY BOARD OF
CHOSEN FREEHOLDERS, THE SHERIFF OF PASSAIC
COUNTY in his official capacity, THE WARDEN OF
THE PASSAIC COUNTY JAIL, in his official capacity
and GEORGE W. HAYMAN, in his official capacity as
Commissioner of the New Jersey Department of
Corrections,

Defendants.

SETTLEMENT
AGREEMENT AND
ORDER
Case No. 08-4439
(DMC-MF)

THIS SETTLEMENT AGREEMENT ("Settlement Agreement") dated December 30 2011, entered into on behalf of the class members in the above-captioned action (the "Plaintiffs", or the "Class Members") and Passaic County, Passaic County Board of Chosen Freeholders, the Sheriff of Passaic County in his official capacity, and the Warden of the Passaic County Jail in his official capacity ("the Defendants"),

WITNESSETH THAT:

WHEREAS individual plaintiffs filed this class action suit on September 3, 2008, against the Defendants seeking wide-ranging declaratory and injunctive relief on behalf of a class of inmates at the Passaic County Jail as well as the recovery of attorney's fees and costs; and

WHEREAS, the Complaint was brought pursuant to 42 U.S.C. § 1983, seeking redress for alleged violations of the First, Fifth, Eighth and Fourteenth Amendments of the United States Constitution; and

WHEREAS, the matter was certified as a class action on May 27, 2009, and the class was defined as “all persons who are now or will become incarcerated at PCJ during the pendency of the lawsuit”; and

WHEREAS, Defendants have filed Answers in which they deny Plaintiffs’ allegations; and

WHEREAS, the litigants have engaged in informal discovery; and

WHEREAS, Plaintiffs and Defendants acknowledge that, to the extent possible, it is in their best interests to resolve the issues raised in this Settlement Agreement by means other than litigation and, to this end, have on this day agreed to enter into this federally enforceable Settlement Agreement, consistent with the requirements of the Prison Litigation Reform Act, 18 USC § 3626; and

WHEREAS, the Settlement Agreement incorporates the following documents: the Memorandum of Understanding Concerning Fire Safety Issues at the Passaic County Jail (Exhibit A); the Memorandum of Understanding Concerning Environmental Health Issues at the Passaic County Jail (Exhibit B); the Memorandum of Understanding Concerning Correctional Issues at the Passaic County Jail (Exhibit C); the Memorandum of Understanding Concerning Medical Issues at the Passaic County Jail (Exhibit D); and the Memorandum of Understanding Concerning Mental Health Services at the Passaic County Jail (Exhibit E).

WHEREAS, the terms of the Confidentiality and Protective Order entered by the Court on February 25, 2010 (“Confidentiality Order”), a copy of which is attached hereto as Exhibit F, remains in full force and effect as to any documents or information disclosed during the course of the litigation;

WHEREAS, the claims against George W. Hayman, in his official capacity as Commissioner of the New Jersey Department of Corrections, are not part of this Settlement Agreement;

WHEREAS, this Settlement Agreement shall be applicable to, and binding upon, all parties, their officers, agents, employees, assigns and their successors in office.

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

I. DEFINITIONS

- A. Computation of time: the periods of time referenced in any document related to the Settlement Agreement shall be computed pursuant to Federal Rule of Procedure 6.

- B. "Correctional staff" are employees of the Passaic County Sheriff's Office who are not civilians.
- C. "Facility staff" or "staff" are correctional staff, administration, civilian employees, medical and mental health staff, and volunteers.
- D. The subject of this Settlement Agreement is the Passaic County Jail facility located at 11 Sheriff's Plaza, Paterson, New Jersey, and all references to "jail," "PCJ," or "facility" refer to that location.
- E. The date of the Settlement Agreement is the date of final judicial approval of the Settlement Agreement.

II. SUBSTANTIVE RELIEF

- A. Defendants will comply with the terms set forth in the Memorandum of Understanding Concerning Fire Safety Issues at the Passaic County Jail, a copy of which is attached to this Settlement Agreement, and is incorporated herein, as Exhibit A.
- B. Defendants will comply with the terms set forth in the Memorandum of Understanding Concerning Environmental Health Issues at the Passaic County Jail, a copy of which is attached to this Settlement Agreement, and is incorporated herein, as Exhibit B.
- C. Defendants will comply with the terms set forth in the Memorandum of Understanding Concerning Correctional Issues at the Passaic County Jail, a copy of which is attached to this Settlement Agreement, and is incorporated herein, as Exhibit C.
- D. Defendants will comply with the terms set forth in the Memorandum of Understanding Concerning Medical Issues at the Passaic County Jail, a copy of which is attached to this Settlement Agreement, and is incorporated herein, as Exhibit D.
- E. Defendants will comply with the terms set forth in the Memorandum of Understanding Concerning Mental Health Services at the Passaic County Jail, a copy of which is attached to this Settlement Agreement, and is incorporated herein, as Exhibit E.

III. CONTRACTS WITH PROVIDERS OF SERVICES

- A. Defendants shall promptly produce any publicly available documents relating to the contracting of services required by this Settlement Agreement.

IV. MONITORING

- A. Compliance Categories: The Settlement Agreement entered into between the parties incorporates five (5) substantive Memoranda of Understanding (“MOU”s) relating to fire safety, environmental health, correctional management, medical care, and mental health care, as set forth in § II. These areas will be referred to in this Settlement Agreement as “Compliance Categories.”
- B. Identity of Monitor: Plaintiffs and Defendants stipulate to the appointment of an independent Monitor to monitor compliance with the terms set forth in the Settlement Agreement. Plaintiffs and Defendants agree that Susan McCampbell shall serve as the Monitor during the monitoring period provided for in the Settlement Agreement.
- C. Replacement of Monitor: The Monitor may be replaced in the event of death, unforeseen permanent unavailability, or for good cause or by consent of both parties. For purposes of this subsection, “good cause” refers to corruption or nonfeasance by a monitor that is so severe as to preclude effective implementation of the terms of the Settlement Agreement. If Susan McCampbell is unable to serve as a Monitor during the monitoring period provided for in the Settlement Agreement, a person who is mutually agreeable to Plaintiffs and Defendants will be selected to serve as Monitor. In the event that Plaintiffs and Defendants cannot agree on a replacement Monitor, each party will present to the Court the name of one (1) individual to serve as the replacement Monitor and the Court will select the Monitor from the two (2) names submitted. The replacement Monitor must have prior experience acting as a monitor with respect to correctional facilities in addition to prior correctional expertise.
- D. Consultants to the Monitor: Where the Monitor determines that he or she requires assistance monitoring compliance with the Settlement Agreement because elements of the Settlement Agreement are not within his or her expertise, he or she may retain the services of an individual or individuals to serve as Consultants to the Monitor (“Consultants”). The Monitor shall obtain consent from Plaintiffs and Defendants to retain specific individuals to serve as Consultants to the Monitor; however, neither Plaintiffs nor Defendants shall unreasonably withhold consent. The Consultants shall report directly to the Monitor.
- E. Avoidance of Conflicts: Unless such conflict is disclosed and waived by the parties, the Monitor and Consultants shall not accept employment or provide consulting services that would present a direct conflict of interest with the Monitor’s and Consultants’ responsibilities under this Agreement, including being retained (on a paid or unpaid basis) by any current or future litigant or claimant, or such litigant or claimant’s attorney, in

connection with a claim or suit against the Defendants, their departments, officers, agents or employees.

- F. No public officers/agents: It is expressly agreed that the Monitor and Consultants are not public entities, officers or agents of the State of New Jersey or any political sub-division thereof.
- G. Monitor's and Consultants' Duties: The Monitor and Consultants shall:
1. Conduct their duties in a reasonable manner and in accordance with the terms of the Settlement Agreement;
 2. Have access to all facilities, inmates, staff, documents, electronic files, videos, and any other materials needed to perform their duties;
 3. Conduct confidential interviews with facility staff and inmates, outside the presence of counsel or supervisory staff, as needed to measure compliance with the Compliance Categories;
 4. Have *ex parte* communications with counsel for the parties as needed;
 5. Refrain from having *ex parte* communications with the Court;
 6. Refrain from making public statements about the inspections or litigation without written approval of counsel for the parties;
 7. Have access to the medical, mental health and classification records of any class member, subject to the terms of the Confidentiality Order, which the Monitor and Consultants shall sign, and to the terms set forth in §§ V and VI, *infra*;;
 8. When discussing a particular incident involving an individual inmate or staff member in any document, use unique identifiers or take other reasonable steps to protect the identity of the inmate or staff member; and shall provide counsel with a confidential record disclosing the identities of the inmates and staff involved;
 9. Provide technical assistance to the Defendants to facilitate their compliance when needed; and
 10. Assist the parties in resolving disagreements, when feasible.
- H. Monitoring Records: Defendants will create and maintain records including, but not limited to, the documents and/or records requested by the Monitor in order to evaluate Defendants' progress towards

implementation of the Settlement Agreement and/or compliance with the Settlement Agreement.

1. Defendants will provide copies to Plaintiffs' counsel (either electronically or via hard copy) of any records produced to the Monitor and/or Consultants.
 2. The Monitor and/or Consultants may access medical and/or mental health records on-site during site inspections subject to the terms of the Confidentiality Order and to the terms set forth in §§ V and VI, *infra*.
 3. The Monitor and/or Consultants shall maintain a list of any relevant records reviewed on-site, and the document list shall be produced to counsel for both parties following each inspection.
- I. Revision of Policies: Where the Settlement Agreement identifies written policies, practices and/or protocols that will be created or revised, Defendants will produce such drafts to the Monitor, Consultants, and Plaintiffs' counsel within ninety (90) days of the date of final judicial approval of the Settlement Agreement. Plaintiffs' counsel shall provide Defendants, the Monitor, and Consultants with comments on the draft policies, practices and/or protocols within thirty (30) days. The Monitor, in consultation with the Consultants, shall within thirty (30) days either approve the proposed policies or recommend modifications. If modifications are recommended, the Monitor and/or Consultants will consult with Defendants to reach agreement with regard to proposed policies. Defendants shall revise the policies consistent with the Monitor's recommendation and implement same unless Defendants challenge the Monitor's recommendations in Court within ten (10) days of any failure to reach agreement with regard to same. Upon adoption of the policies, Defendants shall implement them and provide training as necessary to staff regarding their terms.
- J. Initial Review of PCJ: The Monitor will conduct an initial review of the facility within ninety (90) days of the date of the Court's final approval of the Settlement Agreement in order to review jail operations and establish guidelines for ongoing monitoring. As part of the initial review, the Monitor will tour the PCJ facility:
1. Consultants may participate in the initial review as deemed necessary by the Monitor.
 2. The Monitor shall determine the length of the initial review, which shall not exceed five (5) days, and shall develop an agenda for the initial review that will be distributed to the parties no later than one week in advance of the review.

3. Two attorneys for Plaintiffs and two attorneys for Defendants may accompany the Monitor for up to eight hours of the review, but shall not accompany the Monitor during interviews of staff and inmates unless specifically requested by the Monitor.
4. The Monitor will consult with staff and with counsel for the parties to create compliance indicators and auditing tools.
5. Defendants will create and maintain any documents, audits and/or records requested by the Monitor.
6. The Monitor will neither assess Defendants' compliance nor prepare a compliance report based on his or her initial review.

K. Monitor Visits to Facility:

1. Site Inspections: The Monitor will conduct two (2) site inspections of the facility every year to assess compliance.
 - (a) Consultants may participate in site inspections as deemed necessary by the Monitor.
 - (b) Except as provided in § IV.L, *infra*, the Monitor shall provide the parties with a minimum of forty-five (45) days notice in advance of each scheduled inspection and advise the parties which consultants, if any, will attend.
 - (c) The length of each inspection shall be left to the discretion of the Monitor but in no event shall it exceed four (4) days . The length of each inspection will be reduced to no more than three (3) days upon the sun-setting of two (2) Compliance Categories.
 - (d) Unless specifically requested by the Monitor, counsel for the parties may not attend the site inspections made by the Monitor, or any interviews with staff or inmates.
 - (e) Fourteen (14) days prior to each site inspection, Defendants will provide the Monitor and Plaintiffs' counsel with a report detailing the actions that Defendants have taken during the reporting period to implement the Settlement Agreement. Should the Monitor conduct an unscheduled inspection, Defendants need not provide this report.
 - (f) The Monitor will prepare a written inspection report for each site inspection, the terms of which are detailed in § IV.N, *infra*.

2. Site Visits: In addition to the site inspections and the initial review, the parties agree that the Monitor may conduct interim “site visits” to the facility, if deemed necessary by the Monitor, under the following terms:
 - (a) Consultants may participate in site visits as deemed necessary by the Monitor.
 - (b) Site visits shall not exceed a total of five (5) days annually.
 - (c) The Monitor will not produce a written compliance report following a site visit, but shall conduct a teleconference with counsel for the parties to discuss any impressions and action plan.
 - (d) The Monitor shall provide the Warden or his designee with three (3) days prior notice of any site visit and advise if any Consultants will participate.

L. Access to Facility: With respect to the visits set forth in § IV.K, *supra*, Defendants shall allow the Monitor and Consultants entry to the facility or any portion thereof at any time, except for reasons of security, including, but not limited to, riot, lockdown, or other unforeseen events requiring enhanced security measures.

1. At the discretion of the Monitor, the Monitor may annually conduct one (1) of the two (2) annual site inspections under § IV.K, *supra*, on an unscheduled basis. Consultants may participate in the unscheduled site visit as deemed necessary by the Monitor. For unscheduled inspections, the Monitor and/or Consultants must arrive for the inspection between the hours of 8 a.m. and 5 p.m. In the event of an unscheduled inspection, if the Monitor and/or Consultants want to meet with facility administrative or supervisory staff, they must give Defendants forty-eight (48) hours notice before they arrive for the inspection.
2. If the Monitor and/or Consultants are denied access to the facility or any portion thereof for reasons of security, the Monitor and/or Consultants shall be permitted access as soon as the circumstances that caused the security concern have abated. The Monitor and/or Consultants will be able to make up the lost time at a time convenient to the Defendants, Monitor, and Consultants, and the Monitor and Consultants will be paid at their usual rates for any additional time required as a result.

M. Conference Calls or Meetings with the Monitor and Consultants to the Monitor:

1. For all scheduled site inspections, a conference call shall be conducted between counsel for the parties and the Monitor, and, as needed, Consultants, not less than one (1) week prior to each site inspection of the facility, except in the event that the Monitor conducts an unscheduled inspection. For all site inspections, a post-inspection conference call between the Monitor and counsel for the parties shall be conducted within two (2) weeks following each inspection. In lieu of the pre- or post-inspection telephone calls, the Monitor may instead call an in-person meeting with the Monitor and counsel for the parties at the facility at the beginning or close of the site inspection.
 2. The Monitor and counsel for the parties shall conduct monthly conference calls as may be scheduled by the Monitor.
- N. Written Reports: Within thirty (30) days of each inspection of the facility (subsequent to the initial assessment), the Monitor will provide counsel a draft written report, incorporating the findings of the Consultants, if any.
1. The Monitor shall organize the draft written report according to the five Compliance Categories set forth in this Settlement Agreement: fire safety; environmental safety; correctional management; medical care; and mental health care. The draft written report shall list the relevant records reviewed and, in addition, shall:
 - (a) Assess the current state of compliance with each Compliance Category, based upon the applicable provisions of the Settlement Agreement (according to the standards set forth in § IV.O) and the Monitor's compliance indicators pursuant to § IV.J.(4), *supra*;
 - (b) Identify the steps taken by Defendants to implement the provisions of the Settlement Agreement since the prior Report;
 - (c) Describe Defendants' progress in implementing each provision of the Settlement Agreement, and indicate where they are compliant, non-compliant or partially compliant;
 - (d) Determine whether any impediments to compliance with the provisions of the Settlement Agreement exist;
 - (e) Identify any urgent circumstances relating to the health and safety of the inmates which require immediate remediation;
 - (f) Provide proposals for improving future compliance;

- (g) Be written with due regard for the privacy interests of individual inmates and staff members, and for the interest of Defendants in protecting against disclosures of non-public information.
- 2. Within fourteen (14) days of receiving the draft written report, counsel for the parties may submit written objections to the Monitor regarding the report, providing a copy of such to the opposing party. The Monitor may, but is under no obligation to, accept or deny any objections by the parties within fourteen (14) days of receipt of any objections. If the Monitor makes changes to the draft report, the revised report shall be considered the final report.
- 3. If counsel for the parties do not submit objections to the draft report, the draft report will be considered the final report.

O. Evaluation of Compliance:

- 1. In his or her written reports, the Monitor will evaluate Defendants' compliance with the Settlement Agreement since the last site inspection with respect to each of the five (5) Compliance Categories. In so doing, the Monitor shall determine whether there is "Substantial Compliance" or "Non-Compliance" for each Compliance Category.
 - (a) For purposes of this section, "Substantial Compliance" for a Compliance Category shall mean that Defendants have and may reasonably be expected to continue to substantially satisfy the relevant Compliance Category. To achieve Substantial Compliance, Defendants need not be in 100% compliance, and the Monitor shall have the discretion to measure Substantial Compliance in each category by weighing the various Settlement Agreement provisions.
 - (b) For purposes of this section, "Non-Compliance" shall mean that Defendants have not substantially satisfied the relevant Compliance Category. In addition, an unexcused failure to produce required documentation on a timely basis or to permit access to the facility and staff as outlined in this Settlement Agreement may result in a finding of Non-Compliance. A finding of Non-Compliance shall not be based on isolated and non-continuing instances of failure to substantially satisfy the Compliance Category, nor shall a finding of Non-Compliance be based on omissions of a technical or trivial nature.

2. Beginning with the Monitor's fifth site visit, if the Monitor determines in a final Report that Defendants are in Non-Compliance with any portion of the Settlement Agreement, Defendants shall, within fourteen (14) days of receiving the Monitor's finding of non-compliance in the final Report, provide the Monitor and Plaintiffs' counsel with a proposed remediation plan reflecting the specific steps that Defendants intend to take to remedy each item of non-compliance. Notwithstanding the foregoing, Defendants shall provide a remediation plan for an earlier site visit or visits at the request of the Monitor.

P. Dispute Resolution:

1. Prior to Plaintiffs' seeking judicial enforcement of the Settlement Agreement, the parties, with the assistance of the Monitor, shall confer within thirty (30) days of receipt of the proposed remediation plan. Should the parties reach a resolution, they shall memorialize that resolution in a joint remediation agreement that specifies the actions that Defendants agree to take to achieve Substantial Compliance and a timetable for those actions. If such negotiations are unsuccessful, Plaintiffs may initiate enforcement proceedings, without further notice to Defendants, after the conclusion of the fourteen (14) day consultation period.
2. Either party may contest any action or inaction taken or proposed by the Monitor and/or Consultants as being beyond the scope of their authority under the Settlement Agreement or failing to effectuate the terms of the Settlement Agreement. Such challenges shall be raised by the contesting party promptly after such action or inaction is taken or proposed, and the parties shall confer in good faith to resolve such disputes. Failing to achieve such resolution, the contesting party may apply to the Court for an appropriate remedy.

- Q. Notification of Serious Incident: In the event of a death, system-wide lockdown, multi-day lockdown of one or more units, riot, fire, or unscheduled evacuation, Defendants shall notify the Monitor and counsel for Plaintiffs of such event on the next business day following the event/incident, and shall provide the Monitor and counsel for Plaintiffs with any documentation or reports related to the event no more than seven (7) days after the document is prepared. For documents related to the event that Defendants receive from another agency, they will provide such to the Monitor and counsel for Plaintiffs no more than seven (7) days after such documents are available to PCJ staff.

- R. Immediate Judicial Relief: Notwithstanding the dispute resolution described in § IV.P, *supra*, in the event of an emergency threatening to cause immediate or irreparable harm to the class or any portion thereof, counsel for Plaintiffs may seek immediate judicial relief.
- S. Notice of Exigent Circumstances: Should exigent circumstances exist that require Defendants to take any action that makes them non-compliant with the Settlement Agreement and create a safety risk to inmates, Defendants shall, immediately upon taking such action, notify the Monitor and counsel for Plaintiffs of the exigent circumstances, the corresponding action taken, the expected duration of such circumstances, and the steps taken to limit the duration of such circumstances. Receipt by Plaintiffs' counsel of such notification does not preclude Plaintiffs' counsel from seeking judicial relief.
- T. Access to Individual Client Records by Plaintiffs' Counsel:
1. In addition to the Monitoring Records, as described in § IV.H, *supra*, Plaintiffs' counsel shall have the right to request and receive records including but not limited to classification, medical and mental health records, of individual class members, in accordance with the terms of the Protective Order and the terms set forth §§ V and VI *infra*, and without prejudice to defense counsel's right to object to the production if the documents concern matters outside the scope of the Settlement Agreement, are based upon privilege or work product, are not complete and/or are not in the custody or control of Defendants.
 2. Defendants shall produce records within thirty (30) days, except that when Plaintiffs identify their request as emergent because of a serious health or safety risk to inmates, Defendants shall produce those records within fourteen (14) days.
 3. Once the Monitor finds the grievance process in substantial compliance, Defendants shall produce individual records within thirty (30) days relating to a particular inmate, provided that the inmate has submitted a grievance, and seven (7) business days have elapsed since the submission of the grievance. Notwithstanding the availability of the grievance process, Plaintiffs' counsel may request individual records on an emergent basis pursuant to § IV.T(2), *supra*, and nothing in this section shall impair the right of Plaintiffs' counsel to access Monitoring Records regardless of whether inmates have filed any grievance.
 4. For investigative reports that are incomplete or records not in the custody and control of Defendants (such as records from the

medical examiner), Defendants will produce such within seven (7) days of completion or of receipt.

- U. Monitoring Fees/Costs: Defendants will pay the fees and costs of the Monitor and Consultants, subject to prior approval by Defendants of the Monitor and Consultants' billing rates and/or estimates. Such prior approval will occur at the time that Defendants enter in to an engagement agreement with the Monitor and Consultants. On an annual basis, the Monitor and Consultants will provide counsel to the parties with a "not to exceed" annual budget of fees.
- V. Confidentiality: If a draft Report by the Monitor includes information that was designated "Confidential," either party may, within fourteen (14) days, object and request that the Monitor redact confidential information from any publicly available version of the final Report. Unless there is an objection by a party to a proposed redaction, the Monitor and Consultants shall accept the proposed redactions. If there is an objection to a redaction, the parties will make every effort to resolve the objection. If the parties cannot resolve the issue amongst themselves, they shall request the Monitor's opinion on the redaction. If either party objects to resolving the redaction dispute in accordance with the Monitor's opinion, that party bears the burden of applying to the Court within ten (10) days of the receipt of the Monitor's opinion for a judicial resolution of the dispute. If the objecting party does not seek judicial relief within the designated time period, the information will be included or redacted in the final Report in accordance with the Monitor's opinion.
- W. Use of Documents and Reports:
 - 1. Draft and/or final Reports by the Monitor shall not be introduced as evidence in any other proceeding or form the basis of any other proceeding, other than an action to enforce the Settlement Agreement unless otherwise ordered by a court. Neither Plaintiffs nor Defendants shall take the position in other proceedings that the reports are admissible in such proceedings.
 - 2. If Plaintiffs or Defendants receive a subpoena or other discovery request commanding production of any of the Monitor's reports or any documents reviewed by the Monitor or Consultants or any information obtained during the course of this action or the monitoring period, the entity or person receiving the subpoena or request shall immediately notify opposing counsel so that opposing counsel has the opportunity to object and/or move to quash the subpoena or have an appropriate protective order entered. Neither Plaintiffs nor Defendants shall be permitted to oppose any such motion to quash or for a protective order.

3. 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.
 4. Any redacted portion of documents or evidence that Defendants have refused to make available to the Monitor and/or Consultants may not be offered by Defendants as evidence in opposition to an action to enforce the Settlement Agreement.
- X. Testifying: The Monitor and/or Consultants shall not voluntarily testify in any other litigation or proceeding with regard to any act or omission of Defendants or their agents, representatives, or employees related to the Settlement Agreement, the conditions at Passaic County Jail, or any matter or subject that he or she may have learned as a result of the services provided during the course of this litigation or the monitoring period, unless required to by court order. If the Monitor and/or Consultants receive a subpoena to testify, the Monitor and/or Consultants shall notify counsel so that counsel have the opportunity to object and/or move to quash the subpoena or to have an appropriate protective order entered. Neither Plaintiffs nor Defendants shall be permitted to oppose any such motion to quash or for a protective order.
- Y. No Retaliation: Defendants and their employees, agents, etc. will not retaliate against any person who lodges a complaint, provides information or assistance to the Monitor, Consultants, and/or counsel to Plaintiffs, testifies in any proceedings related to this action and/or participates in any manner in any investigation or proceeding related to the Settlement Agreement.
- Z. Coordinator: Defendants will appoint a coordinator who will serve as a point of contact for the monitor and oversee the implementation of the Settlement Agreement.
- V. DESIGNATION OF CONFIDENTIAL MATERIALS PRODUCED DURING THE MONITORING OF THE SETTLEMENT AGREEMENT
- A. The Confidentiality Order is hereby extended to the production of documents, information, video tape, records, logs, correspondence and reports (henceforth "confidential materials") required to be kept by PCJ and/or provided to the Monitor, Consultants, or Plaintiffs' counsel under the MOUs (annexed hereto as Exhibits A through E) during the monitoring of the Settlement Agreement.
 - B. The parties agree that, by virtue of the court-ordered Settlement Agreement, any information disclosed in compliance with any of the requirements of the Settlement Agreement is pursuant to "Court Order" for purposes of paragraphs 3 and 4 of the Confidentiality Order.

- C. The parties' confidentiality designations of inmate records, personnel records, security records and internal affairs records apply to the production of confidential materials during the monitoring of the Settlement Agreement. In addition, either party may mark non-public documents confidential that do not fall within the criteria of the Confidentiality Order as long as the party marking the document explains in writing to opposing counsel the rationale for the confidentiality designation and that all subsequent monitoring documents within the category receive the same confidentiality designation.
- D. All draft Reports by the Monitor shall be designated "Confidential" pursuant to the terms of the Confidentiality Order and this Settlement Agreement.
- E. If a party challenges the designation of any document as "Confidential," it shall inform the producing party in writing within thirty (30) days of its receipt of such document. The parties will then make every effort to resolve the objection. If the parties cannot resolve the issue amongst themselves, they shall request the Monitor's opinion on the designation of the document as confidential. If a party objects to resolving the confidentiality dispute in accordance with the Monitor's opinion, it bears the burden of applying to the Court for a judicial resolution within ten (10) days of the receipt of the Monitor's opinion. If it does not do so, the "Confidential" status of the document will be determined in accordance with the Monitor's opinion.
- F. The parties agree that the production of confidential materials to the Monitor, Consultants, or class counsel shall not affect whether the underlying information is subject to production under the Open Public Records Act, N.J.S.A. 47:1A-1.

VI. NOTICE TO CLASS MEMBERS OF POTENTIAL DISCLOSURE OF MEDICAL AND MENTAL HEALTH RECORDS TO THE MONITOR AND CONSULTANTS AND LIMITED WAIVER OF PRIVACY CLAIMS

- A. The Monitor, consultants to the Monitor and counsel may have access to medical and mental health records of some class members in order to monitor Defendants' compliance with the Settlement Agreement, pursuant to the terms of the Confidentiality Order and § V, *supra*. While prior individual consent to disclosure is not required under Paragraph 3(a) of the Confidentiality Order, class members may refuse disclosure of their records pursuant to the following procedures.
- B. When class members receive their reception medical screening, medical staff shall provide each individual with a notice in English and Spanish, prepared by class counsel, advising any inmate who objects to the potential disclosure of medical or mental health records (hereinafter "the

objector”) to contact class counsel and notify them of their objection via mail or collect telephone, a copy of which is attached hereto as Exhibit G. The notice shall be printed in the inmate handbook.

- C. Class counsel will provide the Monitor, consultants to the Monitor, and Defendants’ counsel the names of objectors within five (5) days of receiving the objection. As of the date of receiving the name of an objector, Defendants shall not disclose the medical or mental health records of the objector to the Monitor, consultants to the Monitor, and counsel unless the objector subsequently executes an authorization for the release of such records.
- D. No records shall be released until ten (10) days after an inmate has been admitted to PCJ unless the inmate executes an authorization for the release of such records while the Monitor or consultants to the Monitor are on site. If an inmate either dies within ten (10) days of receipt of the notice or is discharged to a hospital, class counsel may apply to the Court for an order directing the release of records if Defendants do not consent to the production of the inmate’s records.
- E. To the extent applicable, class counsel hereby waives claims and causes of action, if any, that could be asserted by class members who did not object to the production of their records against Defendants (including their agents and employees), and any medical or mental health service providers at PCJ for disclosing or providing medical or mental health information or records to the Monitor, Consultants, or counsel in connection with the settlement of this lawsuit or the post-settlement monitoring of PCJ as permitted under the terms of the Settlement Agreement and the Confidentiality Order .
- F. Nothing in this Agreement shall foreclose the National Commission on Correctional Health Care (“NCCCHC”) from directing PCJ to comply with its confidentiality procedures and requirements in order to secure NCCCHC accreditation

VII. TERM OF AGREEMENT:

- A. Term: The Monitor shall continue to perform the services and duties as outlined in the Settlement Agreement for a period of five (5) years from the date of the final judicial order approving the Settlement Agreement, and all services of the Monitor shall terminate as of that date.
- B. Sunset Provision: Notwithstanding the provisions in Paragraph (a) of this section, in the event that the Monitor determines that there has been Substantial Compliance in any Compliance Category for three (3) successive site inspections, the monitoring of that Compliance Category shall cease, provided that the Warden is able to certify that PCJ has remained in compliance with that Compliance Category. In lieu of

monitoring for that Compliance Category, for each inspection cycle, the Warden shall certify continued Substantial Compliance with the Compliance Category until the Settlement Agreement has sunsetted under § VII., A or D. If the Warden is unable to certify continued Substantial Compliance for two (2) consecutive inspection periods, then the monitoring of that Compliance Category will resume until Defendants attain Substantial Compliance for three (3) successive inspections or until the end of the Term under § VII. A or D.

- C. Intermittent Compliance: Should the Monitor find Substantial Compliance in one inspection period, but on a subsequent inspection determine that Defendants are Noncompliant for that Compliance Category, the compliance period will reset and begin again when the Monitor finds the Compliance Category in Substantial Compliance. Only after three (3) successive inspection findings of Substantial Compliance for a Compliance Category will the Compliance Category no longer be subject to monitoring.
- D. Termination of the Settlement Agreement: Once Defendants achieve Substantial Compliance for each of the five (5) Compliance Categories for three (3) successive inspections, or five (5) years from the date of the Settlement Agreement, whichever comes first, the Settlement Agreement will terminate. At such time, Plaintiffs will have no further right to enforce the terms of the Settlement Agreement and the Court shall no longer retain jurisdiction, if any, over the enforcement of such Agreement.
- E. Closing of Facility: If PCJ no longer houses inmates at the facility and the facility is permanently closed, the Settlement Agreement will terminate upon the removal of the final inmate from the facility.

VIII. STIPULATION PURSUANT TO 18 USC § 3626

- A. For the purposes of this lawsuit only and in order to settle this matter, Defendants consent to the entry of a finding that the conditions at PCJ necessitate the remedial measures contained in this Settlement Agreement and Order and represent that this Settlement Agreement complies in all respects with the provisions of the Prison Litigation Reform Act, 18 U.S.C. § 3626(a). The terms and requirements of this Settlement Agreement and Order will be interpreted to be consistent with the measures necessary to protect the constitutional rights of inmates and are not meant to expand or contract the constitutional rights of inmates at PCJ. The parties stipulate that the remedial measures will not have an adverse impact on public safety or the operation of a criminal justice system.
- B. The terms agreed upon within this Settlement Agreement and Order are being entered by the Court in an enforceable order, based upon the consent and acquiescence of the parties. 18 U.S.C. § 3626(g)(1).

- C. This Settlement Agreement is subject to judicial enforcement, 18 U.S.C. § 3626(g)(6), and the parties agree that the United States District Court for the District of New Jersey shall retain jurisdiction over this action until the agreement ends according to the terms of § VII *supra*.

IX. ENTIRE AGREEMENT

This Settlement Agreement shall constitute the entire integrated agreement of the parties. No prior or contemporaneous communications, oral or written, will be relevant or admissible for purposes of determining the meaning of any provisions herein in this litigation or in any other proceeding.

X. JOINTLY DRAFTED

This Settlement Agreement, together with any Exhibits, shall be deemed to have been mutually prepared by the parties and shall not be construed against any of them by reason of authorship.

XI. ALTERATIONS

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 or by order of the Court upon motion.

XII. DISCLAIMER OF LIABILITY AND RESERVATION OF CLAIMS

- A. Plaintiffs and Defendants expressly acknowledge and agree that this Settlement Agreement does not constitute, and shall not be construed as or deemed to be evidence of, an admission or concession with regard to any fault, wrongdoing, or liability by Defendants whatsoever.
- B. The issue of liability has not been litigated.
- C. This Settlement Agreement is not intended to have any preclusive effect except between the parties and except as to matters expressly resolved in this Settlement Agreement. Plaintiffs and Defendants expressly acknowledge and agree, unless otherwise ordered by a court, that this Settlement Agreement may not be introduced as evidence in any other proceedings, nor form the basis of any other proceeding. Neither Plaintiffs nor Defendants shall take the position that the Settlement Agreement is admissible in any other court proceedings.
- D. The confidentiality provisions and limitations on the use of information reflected in this Settlement Agreement and the Confidentiality Order shall survive and be fully enforceable by the parties, notwithstanding the sunseting or termination of Monitoring as provided in § VII *supra*.

- E. Plaintiffs expressly reserve the right to raise in subsequent litigation constitutional challenges to jail overcrowding should the Defendants fail to adhere to the terms of the Correctional Management MOU (Exhibit C).

XIII. 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.

XIV. DISSEMINATION

- A. Defendants shall provide a plain language summary of this Settlement Agreement, prepared by Plaintiffs' counsel, in both English and Spanish as directed by the Court (hereinafter "summaries"); a comment sheet; and a return envelope in a sealed envelope to each inmate in the Passaic County Jail.
- B. In addition, one copy of this Settlement Agreement and the plain language summaries referred to in subsection (A) shall be posted in all day rooms, common areas, and the law library and shall be electronically available on the law library computers until the Court's Final Approval of the Settlement Agreement. Upon request by an inmate, a PCJ ombudsman shall provide a copy of the Settlement Agreement to the requestor no later than four days from the date of the request.
- C. Upon the Court's Final Approval of this Settlement Agreement and for the duration of the Settlement Agreement:
 - 1. Two laminated copies of the Settlement Agreement and summaries shall be posted in the law library and shall be electronically available on the law library computers. Defendants shall be responsible for replenishing any missing copies on a monthly basis;
 - 2. The summaries shall be printed as a subsection of the Inmate Handbook.
- D. The Parties agree that they will issue a joint statement for release to the press and any other third party upon the entry of the Settlement Agreement.

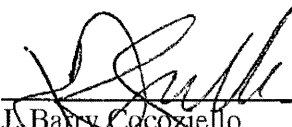
XV. PLAINTIFFS' ATTORNEY'S FEES

- A. Plaintiffs agree to accept and Defendants agree to pay to Plaintiffs' attorneys the sum of \$325,000.00 in full and find satisfaction of any and all claims for attorneys' fees and costs as to the Passaic County Defendants in connection with this action inclusive up to the date of the

entry of the Order approving the Settlement Agreement. Plaintiffs agree that future applications for attorney's fees and costs will be limited to those made as a prevailing party on any motions to the District Court to compel compliance with the Settlement Agreement or to hold Defendants in contempt for failure to comply with the Settlement Agreement.

- B. Defendants agree to make payment to Plaintiffs' counsel within sixty (60) days of the date of final approval of the Settlement Agreement.

For the Defendants:

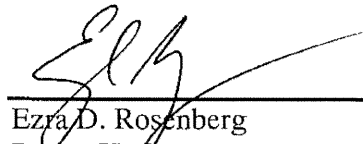


J. Barry Cocozziello
Marianne C. Tolomeo

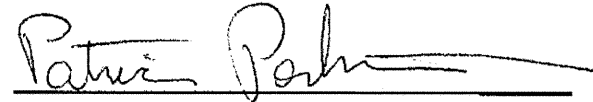
**PODVEY, MEANOR, CATENACCI,
HILDNER, COCOZIELLO AND
CHATTMAN**

One Riverfront Plaza, Suite 800
Newark, New Jersey 07102
(973) 623-1000

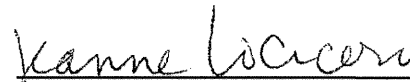
For the Plaintiffs:



Ezra D. Rosenberg
Regan H. Crotty
Dechert LLP
DECHERT LLP
Suite 500
902 Carnegie Center
Princeton, NJ 08540-6531
(609) 955-3200



Patricia Perlmutter
Jennifer B. Condon
**SETON HALL UNIVERSITY SCHOOL
OF LAW, CENTER FOR SOCIAL
JUSTICE**
833 McCarter Highway
Newark, New Jersey 07102
(973) 642-8700

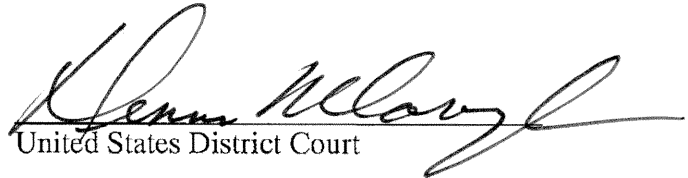


Edward L. Barocas
Jeanne LoCicero
**AMERICAN CIVIL LIBERTIES UNION
OF NEW JERSEY FOUNDATION**
PO Box 32159
Newark, New Jersey 07102
(973) 642-2086

Having reviewed the terms and conditions set forth above, any comments from class members, the arguments of counsel and the records on file in this case, the Court hereby finds, as set forth in section VII above, that the terms of this federally enforceable Settlement Agreement comply in all respects with the provisions of the Prison Litigation Reform Act, 18 U.S.C. § 3626(a), are fair and reasonable, and that defendants' plan, once fully implemented, shall provide effective relief to the plaintiff class. Accordingly, the Court will retain jurisdiction over this case to enter any order necessary to ensure compliance with and implementation of the terms and conditions set forth above.

IT IS SO ORDERED.

Dated: 4/24/12



United States District Court

Dennis M. Cavanaugh
U.S. District Judge