

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO

CARLOS MORALES FELICIANO, et al.  
Plaintiffs,

v.

LUIS FORTUÑO BURSET, et al.  
Defendants.

CIVIL NO. 79-4 (PJB-LM)

**SETTLEMENT ACCORD**

**Introduction**

1. This Settlement Accord, which the Court may consider as a form of consent decree, resolves all outstanding issues and claims for equitable relief regarding the conditions of confinement at any and all of the penal and/or correctional institutions within the Department of Corrections and Rehabilitation of the Commonwealth of Puerto Rico (hereinafter referred to as “DCR”) which are the subject of this whole litigation. Notwithstanding, this Settlement Accord does not address or resolve any of the following: (a) Individual class members’ claims for damages; (b) the existence of a class for the purpose of the damages claims; (c) if the Defendants in their official capacity as further defined herein are required to deposit with this Court the uncollected fines that have been assessed and imposed by the Court; and (d) the way and manner the said Defendants are required to pay the assessed but uncollected fines. Based on the terms contained herein, the parties request that the Court issue a Partial Final Judgment of the Injunctive Phase of this case disposing of all equitable relief claims.

2. This litigation, which has been ongoing since 1979, has generated over 1,300 Orders, some of which have become unnecessary because they pertain to

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institutions and/or practices that no longer exist; others have become moot because the Defendants have complied with them; others are no longer necessary inasmuch as the Defendants have incorporated them into their rules, regulations, and policies, and others could be unenforceable because they impose obligations beyond the minimum constitutional standards.

3. This Settlement Accord will be directly enforceable by the Court for two (2) years from the date of entry of the Partial Final Judgment of the Injunctive Relief Phase. Upon completion of said time period, the relief stipulated by the parties shall be terminated, unless otherwise provided by the Court pursuant to the Prison Litigation Reform Act, 18 U.S.C. §3626, et seq. (hereinafter referred to as PLRA).

4. This Settlement Accord contains all of the obligations that the Defendants must comply with in regards to all the areas of the case which are: access to courts; laundry services; classification; medical services; food services; admission cells; recreation; staffing and security; environmental conditions; crowding; visitation; and parole. The obligations set forth in this document are the product and result of a comprehensive and arms-length negotiation process between the parties and constitute the final agreement with regards to the equitable relief sought in this case.

### **Definitions**

5. EFFECTIVE DATE: The date the Court enters Partial Final Judgment of the Injunctive Phase pursuant to the terms of this Settlement Accord.

6. PRISONER: Any adult or young adult incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, civil

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contempt, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program.

7. DEPARTMENT OF CORRECTIONS AND REHABILITATION: The agency responsible for the daily operations of Correctional Institutions and Community Programs for the Commonwealth of Puerto Rico.

8. INSTITUTION: Every structure that is maintained for the purpose of housing and supervising a prisoner whose care and custody are the responsibilities of the DCR. The institution must be operated and managed by the DCR or a private management company that has been contracted by the DCR or that is authorized through a contract with DCR.

9. POLICY: Administrative rules and guidelines of the agency that indicate how to conduct the specific procedures to comply with the daily work activities.

10. DEFENDANTS: All of the current successors of all of the named defendants in the Fifth Amended Complaint filed on December 31, 1993, Docket No. 4840, who were sued in their official capacities.

11. PLAINTIFF CLASS: All current or future prisoners under the custody of the DCR.

### **Categories**

12. After arduous months of negotiations and discussions the parties concluded a final agreement which incorporated all past accords as to the following categories, to wit: (1) access to courts (2) laundry services, (3) classification, (4) medical services, (5) food services, (6) admission cells, and (7) recreation (8) staffing and security, (9) environmental conditions and subcategories contained therein.

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**Category 1: Access to Courts**

13. All members of the Plaintiff Class shall be granted adequate, effective and meaningful access to courts.

14. All DCR libraries will be open from Monday to Friday, at least, for six hours a day, at hours that meet the needs of the inmates at each institution. The operating hours of the library shall be posted outside the library and in all inmate housing units.

15. All libraries shall provide inmates with paper, pencils, pens and envelopes, as well as provide access to typewriters and/or computers, and all other materials necessary to write correspondence and draft legal documents. Photocopies and postage stamps will be made available for sale to all inmates, but will be provided to indigent inmates at no cost to them.

16. With regards to inmates in protective custody, disciplinary segregation and/or hospitalization, a procedure shall be maintained whereby inmates shall be provided with legal books and materials as required. All other inmates shall be guaranteed reasonable access to the library during operating hours. A procedure shall be maintained whereby an inmate who needs to use the library shall be guaranteed access to it.

17. All legal materials, including but not limited to Federal and Commonwealth of Puerto Rico laws and judicial decisions, shall be updated regularly. All current DCR and Parole Board regulations, and any other regulations concerning the institutional life of an inmate, will be kept in all libraries and be available upon request.

18. Each DCR library will have a librarian or librarian assistant in charge, which will be available to aid inmates in the use of the library facilities and its legal

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materials. DCR librarians and librarian assistants will receive periodic training in the usage and handling of legal materials.

19. The DCR will employ two (2) paralegals, fluent in Spanish and English, which will provide service to all DCR libraries. A procedure shall be maintained whereby the paralegals will regularly visit all DCR institutions, but will also be available for personal appointments upon request.

20. The DCR will grant inmates with physical access to their attorneys, where privacy shall be guaranteed, as well as the ability to send and receive confidential written communications regarding legal matters.

21. The DCR will maintain an Administrative Recourse Division with the staff needed to tend to all inmate grievances in a timely fashion. Each DCR facility will assign civilian personnel to process inmate grievances. The appointed civilian personnel shall adequately inform inmates on the policies and procedures surrounding the filing of inmate grievance forms.

22. Inmate grievance forms shall be readily available at all DCR institutions. The filled grievance forms will be placed by the inmates in sealed envelopes in the drop box provided for those purposes in all DCR institutions. The envelopes will be provided by the DCR. The filled grievance forms will be collected by civilian personnel or by the correctional officer in charge of mail. In the instances in which the correctional officer in charge of the mail collects the filled grievance forms the forms shall be placed in a sealed envelope, the collected forms will be delivered to the grievance office on the same date. The responses to the grievance will be delivered by the civilian personnel of

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the grievances office of the DCR institution. The responses will be distributed periodically by the civilian personnel only.

23. Procedures shall be maintained to aid inmates who cannot read or write, or are otherwise unable to fill out and submit an inmate grievance form.

**Category 2: Laundry Services**

24. Within 24 hours of admission, every inmate must be provided with the following items of clothing:

- underwear (including brassieres for female inmates)
- shirts
- pants
- short pants
- socks
- footwear

25. All clothing shall be properly fitted, climatically suitable and in good condition (i.e. clean, no holes, etc.).

26. Clothing issued to inmates shall be in sufficient quantities to permit inmates to change underwear and socks daily and other clothing (including brassieres) every three days. The laundry schedule shall be sufficient to achieve this objective. All clothing distributed and exchanged shall be documented and signed by the institutional officer involved.

27. Special medical needs that require a deviation from the general clothing standards must be particularly addressed in order to secure the medical and mental health of inmates. Also, inmates' religious beliefs that require a deviation from the

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general clothing standards must be respected and particularly addressed to allow proper religious practice.

28. Items that have come into contact with agents capable of causing infection or contamination must be specially processed to prevent a spread of contamination or infection.

29. Clean and suitable bedding and linen must be provided for each inmate, including:

- one sanitary and serviceable mattress
- one sanitary and serviceable pillow
- two sheets
- one pillow cover
- one towel

30. Washable items, such as sheets, pillow covers and towels shall be exchanged each week for a clean set, and such procedure must be documented and signed.

31. All mattresses and pillows shall be made of non-absorbent, flame retardant, non-toxic and easily cleanable material. At least twice a year, mattresses and pillows must be cleaned and sanitized. Mattresses and pillows of released inmates must be cleaned and sanitized prior to re-issuance for another inmate. These procedures must be documented and signed.

32. Defendants will become fully self-sufficient in the production of inmate uniforms, inmate underwear (male and female), bed linens, mattresses and pillows by specified March 31, 2013. These products will be manufactured by inmates themselves

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in workshops located in DCR institutions. Defendants will maintain sufficient quantities of cloth, mattress foam, and other necessary materials in DCR warehouses at all times.

33. The laundry area must be clean and well organized as follows:

- A detailed cleaning schedule must be available for review by all personnel.
- There must be washing, drying, folding, pressing and storage areas.
- Spills must be immediately clean and the floors must be free of water.
- Trash containers must be available and regularly emptied.
- All areas and equipment must be clean.

34. Chemicals and soaps must be maintained and handled according to Material Safety Data Sheets. Correct soaps and proper wash formulas must be used. Personal Protective Equipment must be available.

35. Preventive maintenance for laundry equipment must be performed once a week. The need for repair of laundry equipment must be reported immediately to maintenance staff, and shall be repaired or replaced within thirty (30) days of its breakdown. These procedures must be documented and signed.

### **Category 3: Classification**

36. Defendants will ensure that inmates are housed in appropriate facilities to provide for their programming and health needs.

37. Defendants will implement the new Classification Manual and will train all classification personnel in the correct use and application of the manual.

38. The implementation of the Manual and the re-training of employees will commence two (2) months after the Manual is registered at the Department of State.



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39. The implementation of the Manual will be validated by Dr. James Austin.

40. Defendants recognize that the Manual creates an objective classification system. Hence, discretionary overrides will be kept at a minimum.

**Category 4: Medical Services**

41. The MEDICAL AND MENTAL HEALTH CARE PLAN ("MMHCP"), as approved by the Court's April 28, 2011 Order (Docket No. 9907), is hereby expressly adopted as part of this Settlement Accord. Defendants shall comply with each and every obligation arising under the MMHCP.

42. Defendants will comply, and ensure compliance on the part of the private service provider, with all obligations set forth in the contract entered into between the Defendants and "Correctional Health Services Corporation" for the provision of medical services to the Plaintiff Class.

43. The DCR will dispense all prescriptions written to members of the Plaintiff Class by external medical professionals. Notwithstanding, the DCR may provide acceptable alternate medication in compliance with its protocols and medication formulary. Likewise, any medical order issued by an external treating physician will be incorporated into the inmate's medical treatment plan.

44. The process of substituting medications must be completed within a period of time so as to not delay treatment. If it becomes evident that this process will result in a delay of treatment, Defendants will comply with the prescription as issued by the external treating physician, unless said action creates a hazard or risk to the inmate's health. The use of bio-equivalents or acceptable alternate medication following the protocols and/or medication formulary will not be considered a substitution.

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45. The inmate's medical file must include all external orders and/or prescriptions, and all shall reflect the substitution of medications or the modification of a medical order.

46. In the event an external medical provider writes a prescription for Ultram and/or Neurontin (referred hereinafter jointly as "the Medication"), the DCR agrees to the following procedure:

- a. The DCR, through its medical provider, will evaluate each prescription for the Medication and will determine if the same is contraindicated for the particular patient. If there is any such contraindication, the prescription shall not be filled and shall be substituted by an acceptable alternate medication as defined by community and/or correctional medical standards. The inmate shall be informed of this substitution.
- b. In the event the external medical provider prescribes the medication and the same is not contraindicated, a substitution for other reasons shall follow the clinical protocols for the Medication. In the event of a substitution, the DCR, through its medical provider, shall inform the inmate of the reasons for the substitution prior to administering the same.
- c. In the event of a post-operative inmate, the DCR, through its medical provider, shall follow the protocol for the prescription of the Medication, which includes providing the Medication as provided therein.

47. The DCR agrees that, through its medical provider, it shall provide every six (6) months information and/or training to all inmates concerning the usage of bioequivalent medication so as to make them aware of their effectiveness and usage.

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All bioequivalent medications dispensed to inmates shall be marked as such. If an inmate requests additional information regarding the bioequivalent medication he/she is receiving, the DCR shall, offer the inmate such information regarding the bioequivalent medication being dispensed.

48. A procedure will be maintained for the timely renewal of necessary medications so as to prevent the interruption of treatment between prescriptions.

49. It is Defendants' obligation to transport all inmates to their external medical appointments. In the event that Defendants do not comply with this obligation, the DCR shall within four (4) working days, seek a new appointment, recognizing that the DCR does not control the available appointments by external providers.

#### **Category 5: Food Services**

50. The DCR will comply, and ensure compliance on the part of the private service provider, with all obligations set forth in the Food Services Manual and the contract entered into between the Defendants and "Compass Group USA, Inc" and "Trinity Services I, LLC" for the provision of food services to the Plaintiff Class. The Manual and the contract are hereby expressly adopted as part of this Settlement Accord. Any violation of the contract shall be deemed a direct violation of this Settlement Accord.

51. The DCR will observe strict compliance with the 2009 Federal Food Code, including any supplements or future versions of the document.

52. The DCR will observe strict compliance with all of its present and future regulations (i.e. DCR Meal Plan) regarding the provision of food services to the Plaintiff Class.

**Category 6: Admission Cells**

53. Admissions area cells, detention cells and holding pens shall be used only for temporary detention and transfer purposes. Inmates may be held in any such cell, pen or area for a maximum period of 24 hours. Inmates in admission cells, detention cells or holding pens must be under constant supervision to ensure that their safety and hygienic needs are met.

54. The established capacities of all admission, detention and holding cells shall be prominently displayed at the entrance of each cell. Except in the event of an emergency, Defendants will not exceed the maximum established capacity of any such cell. In the event of an emergency, Defendants may house more inmates than the established capacity in such cells, but for a period no longer than 8 hours.

**Category 7: Recreation**

55. Recreation is any organized activity to be carried out in spare time, managed by the DCR in its Correctional Institutions. Defendants will establish a Recreational Program which will impact all members of the Plaintiff Class.

56. All DCR institutions shall have dedicated recreational leaders, designated recreational areas and sufficient equipment and/or materials.

57. The recreation program must provide for indoor and outdoor recreational activities and must insure that all prisoners are afforded two (2) hours of physical recreation in open air at least five (5) days per week, weather conditions permitting. Physical recreation can be provided in designated areas inside the institutions, but

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outside the housing units. The opportunity to participate in passive recreational activities should be provided to inmates as much as possible.

58. The remaining two days of the week, in which physical recreation is not mandatory, prisoners must be afforded two hours of physical movement in open air, weather permitting. Overall, inmates should be afforded the maximum amount of time possible in open air, outside housing units and outside the cells.

#### **Category 8: Staffing and Security**

59. The parties recognize that adequate levels of staffing in DCR institutions, of custodial and civilian personnel, are essential to provide security, safety, access to medical services, access to courts, recreation and other essential services.

60. With regards to custodial officers, the parties have identified a current deficiency of 635 officers system-wide. The parties have also identified a yearly attrition rate of 250 officers. In order to reach adequate levels of staffing of custodial officers, Defendants will undertake and maintain a recruitment plan. Defendants will recruit, train and employ 400 new custodial officers yearly until the deficiency is satisfied. This will be achieved by holding two academies of 200 cadets each year.

61. Newly recruited custodial officers will be distributed throughout DCR institutions as needed. As an exception, any institution without a custodial officer assigned to distribute correspondence and inmate grievance forms will fill this vacancy as soon as possible.

62. Once the adequate level of correctional officers is reached, Defendants will continue yearly recruiting of officers in an amount, at least, comparable to the

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established attrition rate, so that adequate levels of staffing are maintained. This attrition rate will be reviewed yearly.

63. With regards to socio-penal technicians, the parties agree that the maximum allowable caseloads will be 50, for pre-trial detainees, and 60, for sentenced inmates. Defendants shall ensure that socio-penal technician caseloads remain within the established amounts in the future, recruiting new technicians if necessary.

64. With regards to recreational leaders, Defendants will recruit, train and employ fifteen (15) new recreational leaders, to be distributed throughout the DCR system as needed. The new recreational leaders will be employed by October 31, 2012.

65. Defendants will recruit, train and employ twenty (20) new evaluators for the DCR's inmate grievance program at the central office. The new evaluators will be employed by October 31, 2012.

66. Defendants will immediately deploy custodial officers inside all individual housing unit posts at DCR facilities.

67. Superintendents, commanders of the guard and shift supervisors will make regular visits to all housing units in their facilities. Shift supervisors will visit all housing units at least once each shift, commanders of the guard will visit all housing units at least three times a week and superintendents will visit all housing units at least twice a week. Defendants will develop forms that the above mentioned personnel will use to record their visits to housing units.

68. To ensure that all custodial officers employed by the DCR are up to date on their responsibilities under approved security and security-related policies and procedures, a continuous training curriculum shall be established and implemented for

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in-service officers. The curriculum shall address areas such as, but not limited to: use of force; security inspections; medical emergencies; suicide precaution; first aid and CPR; escort procedures; post orders; key, tool and weapons control; fire safety; emergency plans; etc. All custodial officers must receive retraining at least every two (2) years.

69. All custodial officers assigned to work in an Intake Center will be provided with at least forty (40) hours of initial training and at least forty (40) hours of annual retraining specific to intake Center operations. The initial and annual retraining shall cover the following topics, at a minimum: intake procedures; security procedures; supervision of detainees; signs of suicide risk; suicide precaution; use of force; detainees' rights and responsibilities; family, social and attorney visits; fire and emergency procedures; safety procedures; classification procedures; housing unit supervision and duties; key control procedures; interpersonal relations; first aid and CPR; sanitation requirements; and detainee programs and services. More specifically, security staff who work in the admissions process of newly assigned detainees will be trained on: detainees' rights to receive proper meals that are handled properly and are palatable; sanitation requirements and inspections of admission cells; intake record-keeping; detainee rights to telephone access, showering, toilet use and drinking water access; time limitation in admission holding cells and cell capacities; supervision of detainees while in admission holding cells (constant supervision); specific detainee issuance of toothpaste, soap, toothbrush, deodorant, razors, toilet paper, clothing and towels; detainee medical, dental and mental health access procedures; and all DCR policy, procedures, post orders, and directives governing the administration and management of the admission process.

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70. Defendants will develop a comprehensive training program for superintendents, high-ranking correctional officers, administrative staff at DCR facilities and mid-level management staff at the central office. The program will include supervisory training in order to monitor compliance with DCR policies and procedures. This program will be in place by October 31, 2012.

71. Each DCR facility will maintain a Master Roster and a Daily Roster. The Chief Custody Officer will be responsible for designing, administering and maintaining the Master Roster. The Chief Custody Officer will also have overall responsibility for designing the Daily Roster and ensuring that it is properly administered and maintained, but each Shift Supervisor will be specifically responsible for the proper administration and completion of the Daily Roster for his/her shift. The information included in these rosters shall be designated by shift, rank and category. Both rosters shall designate fixed and pull posts within each institution and list them in order of priority.

72. Defendants will develop the capability, either in-house or through contracts with private companies, to provide preventive, corrective and emergency maintenance of all electronic mechanisms in DCR institutions, including but not limited to, locking systems, fence alarms, metal detectors, closed circuit television systems, two-way radios, sally ports, and gates. Defendants will be prepared to maintain and repair all existing security equipment as well as security equipment that will be added to DCR institutions.

73. Each DCR institution shall designate at least one person as a key control officer, whose duty shall be implementing the key Control plan. The Key control officer will be in Charge of maintaining an accurate log of all key movements. Defendants will



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implement a key issue system based on chits at all DCR institutions. Staff will replace each key they issue with a Chit to identify who has that key. No one will remove institutional keys from any DCR institution.

74. Defendants will store all institutional keys, except spare keys and extra key copies, on labeled hooks in the master key cabinets and will eliminate any other key control areas. The emergency response plan for each institution will specify secure and controlled locations for all emergency keys.

75. Each DCR institution shall designate at least one person as a tool control officer, whose duty shall be implementing the tool control plan. Staff will maintain an inventory of all tools and record the issue and return of these tools. Defendants will implement a tool issue system based on chits at all DCR institutions. Staff will replace each tool they issue with a chit to identify who has that tool. Defendants will utilize tool shadow boards in all tool control areas, armories, control centers, kitchens, and vocational training areas at all institutions.

#### **Category 9: Environmental Conditions**

76. The parties recognize that the Environmental Health and Maintenance Plan recommended by the Eightieth Report of the Court Monitor, Docket No.1786, as adopted by the Court through the March 30, 1990 Opinion and Order, Docket No. 2137, as subsequently amended, provides the roadmap for environmentally safe correctional facilities. Accordingly Defendants agree to comply with all of the provisions of the Environmental Health and Maintenance Plan that remain in full force and effect.

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77. Defendants further agree that they will secure all of the fiscal and budgetary resources necessary to put into effect the provisions of the Environmental Health and Maintenance Plan.

78. To ensure compliance with the Environmental Health and Maintenance Plan, within the next sixty (60) days after this Court's approval of this Settlement Accord, the parties will conduct joint site inspections of all of the correctional facilities that are under the aegis of the DOC in order to identify any and all environmental conditions that must be eliminated, corrected and/or repaired.

79. At the conclusion of each such site inspection, the parties will prepare a joint report and/or punch list identifying all of the environmental conditions in need of repair. Once a particular condition is identified and included in the joint report/punch list, Defendants will have one hundred eighty (180) days to effect the necessary repairs to correct the situation. The parties will meet regularly to review the deadline herein establish to make the necessary repairs to correct the situation, based on the progress in the repairs.

80. In the event the Department of Corrections does not meet the established deadline of one hundred eighty (180) days to make the proper repairs, the parties shall meet in good faith to discuss the allegations and will reach and agree to a remedial plan, including a set of reasonable deadlines considering the specific repairs that need to be done. This process must be concluded within thirty (30) days after the one hundred eighty (180) days deadline.

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81. If the parties are not able to resolve the allegations within those thirty (30) days, and/or Plaintiffs find that the remedial plan has not been complied with, the parties will enter into a binding mediation process before an Independent Expert.

82. The Independent Expert shall be a reputable person possessing expert knowledge and experience for the determination of the matter in question and shall be independent of the parties. The party seeking arbitration shall send a list of three (3) proposed Independent Experts with their Curriculum Vitae. The non-moving party will have twenty (20) days to select an arbitrator from the list submitted to or to reject them. The twenty (20) days term will commence from the receipt of the list of proposed Independent Experts. If the non-moving party rejects the list of proposed Independent Experts, said party will submit a list of three (3) proposed Independent Experts to the moving party, who will evaluate the list and will decide whether to choose one of them, or to reject them. If the list of proposed Independent Experts is not satisfactory to the parties, the issue will then be submitted to the District Court, so that the Court will select the Independent Expert as a post-judgment remedy. The Independent Expert shall determine the matter in question as soon as practicable in light of the circumstances. The Independent Expert may make specific determinations, as an expert aside from his role as arbitrator, for remedial action that may be required. Such determination shall be binding on the parties. The costs of the Independent Expert shall be borne by the Department of Corrections.

83. After the initial joint site inspections are conducted, the Defendants will continue to perform the daily, weekly and/or monthly inspections required by the Environmental Health and Maintenance Plan. Defendants shall execute the repairs and

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undertake the necessary measures to correct/repair any and all future environmental conditions detected during those inspections. Such corrective measures shall be undertaken within the timeframes allotted by the Environmental Health and Maintenance Plan.

84. All Post Judgment actions and/or petitions to the Court for remedies shall be limited to two (2) years after the entry of Final Partial Judgment of the Injunctive Phase of this case.

### **OTHER CATEGORIES ACCORDED**

#### **Crowding**

85. Defendants will eliminate the practice of double bunking maximum custody inmates. This will be in furtherance of the rehabilitation process of the inmates in maximum custody. Furthermore, Defendants will not institute the practice of double bunking in any future construction of maximum security institutions and /or maximum security prison cells.

#### **Visitation**

86. Defendants shall eliminate the practice of cancellation of visits as a collective disciplinary sanction.

#### **Parole**

87. Pursuant to Docket No. 10002, the following was submitted to the Court for its consideration and approval, and is resubmitted herein as part of this Settlement Accord:

88. Whenever a person is sentenced for having committed any crime by the courts of the Commonwealth of Puerto Rico, a copy of the sentence shall accompany

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said person on his or her admission into the custody of the Department of Corrections and Rehabilitation as a sentenced prisoner, whether or not such prisoner is to be confined in a public or private institution, provided that the named inmate has been processed through the Department of Corrections and Rehabilitation. If, for whatever reason, the judgment of sentence is not received by the Department of Corrections and Rehabilitation whenever the sentenced prisoner is entrusted into its custody, the Secretary or his or her designated representative shall notify such prisoner, after the expiration of ten (10) working days from the date the DCR is aware of the absence of the sentence, and the Secretary shall simultaneously send a copy of said notice to the sentencing court.

89. Within five (5) working days of the receipt of the sentence the institution wherein the prisoner is incarcerated, the Department of Corrections shall make a computation or liquidation of the prisoner's minimum and maximum sentences, and a copy thereof shall be given, in writing, to the prisoner at such time.

90. After the first computation or liquidation of sentence, each prisoner confined under a sentence shall have his sentence periodically recomputed for applicable statutory and/or regulatory credits which could reduce a maximum sentence. All violations or infractions which add to the prisoners sentence shall be reviewed periodically as provided in the applicable regulation. Each prisoner shall be notified, in writing, of each re-computation of his or her minimum and/or maximum sentence.

91. In all cases of transfer of prisoners, whether by personal request of the confine or at the instance of the Department of Corrections, it shall be obligatory for the Department of Corrections to re-compute the credits and deductions for work or good

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time and re-liquidation of sentence, and post them in the prisoner's records prior to transfer. No prisoner may be transferred from one institution to another within the penal system of Puerto Rico, unless his record files accompany him. In any emergency where prisoners are transferred for their safety or for the safety of the community, their file shall be transmitted with all the re-computations made, no more than five (5) working days from the date of transfer.

92. At least ninety (90) days prior to: (a) the completion of a felon's minimum sentence; (b) the completion of twenty-five (25) years total time by a prisoner convicted of murder in the first degree under the Penal Code of 1974; (c) the completion of twenty-five (25) years total time by a prisoner convicted of a first degree felony or sentenced as a habitual delinquent under the Penal Code of 2004; or (d) the completion of ten (10) years total time by a minor tried and sentenced as an adult, the socio-penal worker in charge of the felon's case shall transmit his or her recommendations, and the President of the Treatment Committee shall transmit its recommendations to the Parole Board. In any case where more than ten (10) days and less than ninety (90) days remain between the date of the sentence and the date of the completion of the minimum sentence, starting when the prisoner first comes in contact with a socio-penal worker, these recommendations shall be sent to the Parole Board as soon as possible and prior to the expiration of the prisoner's minimum sentence. The files of any prisoner sentenced for a felony who has completed his or her minimum at the time he or she is sentenced, or who has ten (10) days or less days until said completion, shall be sent to the Parole Board forthwith, and the Parole Board shall hear such case within the time limits proscribed in Paragraph 96 of this Settlement Accord.

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93. The Program for Parole of the Department of Corrections and Rehabilitation will also submit its report on each felon to the Parole Board in the period within ninety (90) days prior to: (a) the completion of a felon's minimum sentence; (b) the completion of twenty-five (25) years total time by a prisoner convicted of murder in the first degree under the Penal Code of 1974; (c) the completion of twenty-five (25) years total time by a prisoner convicted of a first degree felony or sentenced as a habitual delinquent under the Penal Code of 2004; or (d) the completion of ten (10) years total time by a minor tried and sentenced as an adult. Felons who, at the time of their sentence, have more than thirty (30) days and less than ninety (90) days to serve until the completion of their minimum sentence, shall have their reports of the Program for Parole sent to the Parole Board as soon as possible and prior to the expiration of the minimum sentence. Any prisoner sentenced for a felony who has completed his or minimum sentence at the time of sentencing or who has thirty (30) days or less until the completion of such minimum at the time of sentence, shall have his or her file sent to the Parole Board forthwith and the Parole Board shall hear such prisoner's case within the time limits proscribed in Paragraph 96 of this Settlement Accord.

94. Each penal institution shall send the Parole Board, each month, a list of all prisoners whose minimum sentences will expire within the subsequent ninety (90) days.

95. The Parole Board shall hear and consider each felon's case as closely as possible to the date of the expiration of said felon's minimum sentence, but always within forty five (45) days from the date of the expiration of said felon's minimum sentence. These provisions shall apply to all felons whether incarcerated in an institution operated by the Department of Corrections and Rehabilitation, or whether in

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custody or under supervision of any other public or private institution. No less than fifteen (15) working days prior to the date on which the Parole Board will hear a felon's case concerning possible release on parole, the felon shall be notified, in writing, of the place, time and date of the hearing, the criteria that will be used for determining whether parole may be granted and the rights that will be available at the hearing.

96. Unless the Parole Board shall postpone the decision of release on parole for just cause, in which case the affected prisoner shall be notified of such action and the reasons therefore, and such decision may not, under any circumstance, be postponed for more than one hundred eighty (180) days from the date a decision would have been due, had there been no postponement, the Parole Board must decide to grant or deny parole within thirty (30) days from the date of the hearing. No later than twenty (20) calendar days from the date of the decision, each felon shall be notified of the decision and, in the case of denial of parole, the reasons for such denial and the date when he or she shall next be reconsidered by the Parole board for parole purposes.

97. Any prisoner who is otherwise eligible for parole shall not be denied parole solely because there may be an outstanding order of detention against said prisoner by some other governmental system (state, foreign or federal), provided said prisoner is otherwise qualified for parole.

98. Prisoners convicted of misdemeanors shall be entitled to a hearing before the Parole Board, except that when a misdemeanant is sentenced to a jail term, which, after liquidation, will terminate in forty five (45) days or less from the date on which the Parole Board receives the pertinent documents from the Department of Corrections and



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Rehabilitation, the Parole Board may, in its discretion, decline to accept such case. In any case where the misdemeanor has not been jailed prior to sentence, the Department of Corrections and Rehabilitation shall send the appropriate reports to the Parole Board as soon as possible, but in every case prior to the expiration of one-third (1/3) of the total time fixed by the sentencing court. In any case where the misdemeanor has been in preventive custody awaiting trial or sentence, the Department of Corrections and Rehabilitation shall send the appropriate reports to the Parole Board within twenty (20) days of receipt of the certified copy of the sentence by said Department. The Parole Board shall hear such cases of misdemeanants within thirty (30) days of receipt of the reports from the Department of Corrections and Rehabilitation and the Parole Board shall give notice to the misdemeanor as provided in Paragraph 95 of this Settlement Accord, at least fifteen (15) days prior to the hearing.

99. The decision in cases of persons convicted of misdemeanors may not be postponed. The decision granting or denying parole to a person convicted of a misdemeanor shall be made within ten (10) days of the date of the hearing, and within twenty (20) days of the date of the hearing the prisoner shall be notified of the result, and if parole is denied, of the reasons for said denial.

100. The Department of Corrections and Rehabilitation and the Parole Board will perform all necessary and convenient actions, in accordance with the requirements of all pertinent laws, regulations, and administrative orders, to clear up the backlog of cases for which a decision either granting or denying parole is past due as of the signing of this Settlement Accord.

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101. Defendants will implement all necessary and convenient monitoring mechanisms to prevent future backlogs and to achieve sustained compliance with this Settlement Accord.

102. As part of the aforementioned monitoring mechanisms, the Parole Board will generate statistics that will assist in monitoring its compliance with this Settlement Accord. The statistics shall allow the Board to ascertain compliance percentages for each provision.

103. As part of the negotiations leading to the October 30, 2009 Stipulation, Docket No. 9678, Defendants adopted, and continue to adopt, policies through regulations and/or administrative orders which specify the circumstances in which the “Living Without Violence” Program, or any other available equivalent violence prevention program provided by a qualified entity, can be required. Only the inmates that meet the criteria to be specified can be required to undergo the program as a condition for the inmates’ case to be processed by the Parole Board, the Classification Committees and any community placement program.

104. Defendants will publish monthly edicts to notify victims of crimes about the pending applications for parole of inmates in which notification is required by Law 90, only cases that are required by law to be published by edict will be published.

105. As part of the October 30, 2009 Stipulation, Docket No. 9678, Defendants have already amended the parole referral form FE-I-1 to confidentially include the identity and contact information of the victims of crimes, where required by Law 90. Moreover, Defendants have also coordinated with the Department of Justice of Puerto Rico, so that during sentencing hearings, state prosecutors recommend to the Courts to

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advise victims of crimes of the need to notify any changes of their address to the Puerto Rico Parole Board. The parties may continue to explore other options to facilitate the process of identifying and contacting the victims when necessary.

106. The parties agree that the Department of Corrections and Rehabilitation and the Parole Board need to hire additional personnel for the enforcement of this Settlement Accord. The Department of Corrections and Rehabilitation and the Parole Board will recruit personnel to fill the following positions:

- An Administrative Assistant for the Clerk's Office of the Parole Board.
- Four (4) Hearing Officers for the Parole Board.
- An Office Clerk for the Office of the Hearing Officers of the Parole Board.
- Two (2) Office Systems Technicians for the Clerk's Office of the Parole Board. One will be located in the area of notification to crime victims.
- Twenty (20) Records Technicians in the Department of Corrections and Rehabilitation.
- Thirty (30) Socio-Penal Technicians for the Department of Corrections and Rehabilitation.

107. The recruitment of said personnel shall begin within a week after the effective date of the Order approving this Accord that may be entered by this Court.

108. The Department of Corrections and Rehabilitation will prepare a report stating the training plan of the new personnel, including a time table for its completion.

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Also, the Department of Corrections and Rehabilitation will prepare a report explaining the assignment of personnel to particular institutions and the reasons justifying it.

### **Grievance and Dispute Resolution**

109. Any and all claims which allege that the Defendants have failed to comply with any of the obligations set forth in this Settlement Accord must be submitted through the DCR inmate grievance process and will be subject to the exhaustion requirements set forth in the PLRA, 42 U.S.C. § 1997e(a), except for those identified in the next paragraph.

110. There will be two categories of claims that will be exempted from the grievance and exhaustion requirements, to wit: those that contend that Defendants have violated specific provisions of this Settlement Accord, but that do not directly affect the constitutional rights of any individual class member, and those that contend that Defendants are incurring in systemic violations. These two categories of claims will hereinafter be referred to as "the exempted claims".

111. The exempted claims will only be asserted by counsel for the Plaintiff Class pursuant to the following dispute resolution procedure.

112. Counsel for the Plaintiff Class shall serve written notice to the Defendants setting forth the basis of any exempted claim.

113. The Defendants will respond to the Plaintiff Class within twenty (20) days of the receipt of the written notice made by counsel for the Plaintiff Class.

114. The parties will meet within twenty (20) days after Defendants' response and discuss the allegations of noncompliance in order to reach an agreement, if

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possible, as to the necessary remedial actions to be taken to resolve the alleged non-compliance.

115. If, after the meeting is held, the parties are unable to reach an agreement, counsel for the Plaintiff Class may then submit the exempted claim for the Court's resolution.

116. The parties further acknowledge and agree that preceding dispute resolution proceedings are settlement negotiations within the confines of Fed.R.Evid. 408.

117. Any claim, whether exempted from the exhaustion requirement or not, that is initiated while the Settlement Accord is in effect, shall continue its regular course until resolved, regardless of whether the Settlement Accord is terminated before the final resolution of such claim.

118. Any situation in which an irreparable damage to the Plaintiff Class is imminent due to systemic violations shall not be subject to the exhaustion requirement or the dispute resolution process and the party may move directly to seek the Court's intervention. Likewise, if an individual member of the Plaintiff Class demonstrates that compliance with the exhaustion requirement would result in an irreparable harm, the party may move directly to seek the Court's intervention.

### **General Provisions**

119. The provisions of this Settlement Accord shall, upon entry of this Court's Order, apply to and be binding upon the Defendants and all employees under their supervision as well as their agents, contractors, successors, and assigns.

120. The purpose of this Settlement Accord is to supersede all of the Orders

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previously entered by the Court that constitute prospective relief within the meaning of the Prison Litigation Reform Act, 18 U.S.C. §3626, except those that are incorporated as part of this Settlement Accord, and to set forth all of the actions that the Defendants must take to ensure that the minimum constitutional standards are met in each of the areas that are specified herein.

121. The parties concede and agree that this Settlement Accord is narrowly drawn, extends no further than necessary to correct any and all outstanding violations of Federal Constitutional Rights, and is the least intrusive means necessary to correct all of those outstanding violations.

122. The Defendants shall provide information to all current and future relevant DCR employees about the terms of this Settlement Accord and this Court's Order, to the extent necessary for them to carry out their duties, obligations, and responsibilities in accordance to the terms of this Settlement Accord.

123. The Defendants shall maintain sufficient records to document their compliance with all of the requirements of this Settlement Accord.

124. In order to monitor compliance with the obligations set forth in this Settlement Accord, counsel for the Plaintiff Class shall be allowed full access to any correctional institution owned and/or operated by Defendants, in accordance with this Court's January 31, 1998 Order Regarding Access to Administration of Correction Facilities by Representatives of the Plaintiff Class, Docket No. 6758, which will remain in full effect.

125. Failure by either party to enforce this entire Settlement Accord or any provision thereof, with respect to any deadline or any other provision herein shall not be

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construed as a waiver of its right to enforce other deadlines or provisions of this Settlement Accord and/or this Court's approval Order.

126. Nothing in this Settlement Accord shall be construed as an admission of liability on the part of the Defendants.

127. Nothing in this Settlement Accord constitutes a waiver of rights as to the parties' respective positions regarding the damages claims and/or the assessed but uncollected fines imposed upon the Defendants.

128. Nothing in this Settlement Accord shall be deemed as an admission that Defendants have incurred in practices that constitute or may constitute a violation of constitutional rights to the plaintiff class or to any individual member of said class.

129. All subheadings in this Settlement Accord are written for convenience of locating individual provisions. If questions arise as to the meanings of individual provisions, the parties shall follow the text of each provision.

130. Upon approval of this Settlement Accord the parties pray that a Partial Final Judgment of the injunctive relief phase be entered.

RESPECTFULLY SUBMITTED at San Juan, Puerto Rico, on this 28th day of June 2012.

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