

EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA

JOSHUA DUNN, ET AL.,)	
)	
Plaintiffs,)	
)	Civil Action Number:
v.)	
)	2:14-cv-00601-MHT-TFM
JEFFERSON DUNN, ET AL.,)	
)	
Defendants.)	

**SETTLEMENT AGREEMENT CONCERNING CLAIMS
ARISING UNDER THE AMERICANS WITH DISABILITIES ACT AND
§504 OF THE REHABILITATION ACT OF 1973, AND RESOLVING THE
PHASE I TRIAL OF THESE PROCEEDINGS**

I. INTRODUCTION

1. On June 17, 2014, the individually named plaintiffs and the Alabama Disabilities Advocacy Program (“ADAP”) filed the instant lawsuit (the “lawsuit”) challenging, among other things, the compliance of the Alabama Department of Corrections (“ADOC”) with the requirements of the Americans with Disabilities Act and §504 of the Rehabilitation Act of 1973 (referenced collectively herein as “ADA”).

2. The U.S. District Court for the Middle District of Alabama has bifurcated the issues raised in the lawsuit into two trial Phases: Phase I, which includes the trial of claims and issues brought under the ADA, other than claims relating to mental health status; and Phase II, which includes all other claims in the litigation.

3. The Parties to this Settlement Agreement (“Agreement”) believe that, in order to avoid additional protracted, costly and uncertain litigation, it is in their respective best interests to resolve the issues to be tried in Phase I of this litigation.

4. Accordingly, the Parties to this Agreement, by and through their respective counsel, jointly stipulate and agree to the following provisions to resolve Phase I of the litigation.

II. STATEMENT OF PARTIES, PURPOSE, AND INTENT

1. Defendant ADOC is the agency of the State of Alabama in charge of the state-owned and operated prisons in Alabama that currently or may in the future have physical custody of the individually named plaintiffs.

2. The individually named plaintiffs in this lawsuit are currently, or may in the future be, in the physical custody of ADOC.

3. Plaintiff Alabama Disabilities Advocacy Program (“ADAP”) is the duly authorized protection and advocacy agency in the State of Alabama.

4. The individually named plaintiffs and ADAP seek class certification of their claims asserted in this lawsuit under the ADA. As part of this agreed resolution of the claims to be tried in Phase I of this litigation, ADOC consents to the certification, under Federal Rule of Civil Procedure 23, of a class whose members (the “Class”) are defined as “any current or future inmate in the physical custody of ADOC who has a disability as defined in 42 U.S.C. § 12102 and 29 U.S.C. § 705(9)(B), excluding those inmates whose disabilities relate solely to or arise solely from mental disease, illness, or defect.”

5. The individually named plaintiffs, the Class, and ADAP are collectively referred to herein as “Plaintiffs.”

6. The Plaintiffs and ADOC are collectively referred to as the “Parties.”

7. The Parties stipulate that there are no individual or class claims, including putative class claims, under the ADA asserted against Defendant Jefferson Dunn, named in his official capacity as Commissioner of the Alabama Department of Corrections and Defendant

Ruth Naglich, named in her official capacity as Associate Commissioner of Health Services for the Alabama Department of Corrections.

8. The purpose of this Agreement is to settle and resolve all issues which were to be presented in the trial of Phase I of this matter. The Parties agree and stipulate that by this Agreement they hereby resolve all pending claims in this action for alleged violations of the ADA, except for claims under the ADA that relate solely to or arise solely from mental disease, illness or defect. Claims brought by Plaintiffs under the ADA that relate solely to or arise solely from mental disease, illness or defect are not waived and are reserved for resolution during the Phase II trial.¹

9. Except for ADOC's consent to class certification as described in paragraph 4 of this section, the Parties agree that ADOC has not consented to class certification of claims that arise under the ADA and that relate solely to or arise solely from mental health disabilities, or claims that arise under the Eighth Amendment. Class certification and the merits of such claims will be resolved in Phase II of this litigation.

10. The Parties may not use this Agreement for any purpose in Phase II of the litigation except as evidence of what has or has not been resolved by this Agreement.

11. Nothing in this Agreement will be construed as an admission by ADOC of any violation of law. To the contrary, ADOC denies every material allegation of the Complaint, as amended, in this case and denies any liability to the Plaintiffs. This Agreement does not

¹ The Parties agree that the question of whether ADOC should be required to add the following categories of inmates to the mental health caseload is expressly reserved for resolution during Phase II of this litigation: (i) inmates placed in suicide watch or safe cells; (ii) any inmate who has been placed in segregation more than two times in a 365-day period (except that placement into segregation for protective custody or similar reasons); and (iii) any inmate who spends more than 50% of his or her time housed in segregation.

constitute, and will not be construed as, an admission of or evidence of any act of deliberate indifference to the constitutional rights of any Inmate, or of any violation of the ADA.

12. The Parties stipulate that nothing in this Agreement will be used for any purpose outside of the above-captioned matter or against any named Defendant in any other litigation that has been or may be filed against any named Defendant. Nothing in this Agreement will be construed to require ADOC to do more than what is required by the ADA, court decisions applying or interpreting the ADA, or Rules and Regulations interpreting the ADA.

13. The Parties believe that this Agreement is fair, reasonable, and adequate to protect the interests of all Parties concerning the issues contained herein. The Parties will jointly file this Agreement with the Court and ask that the Court issue an order directing notice to the Class, setting an objection period, and setting a fairness hearing for preliminary approval, and that the Court then approve the Class and the settlement as final after the Parties have reached an agreement on specific remedial actions to be taken by ADOC to implement the provisions of this Agreement.

III. PRELIMINARY AND FINAL APPROVAL OF CLASS ACTION SETTLEMENT

1. Preliminary Approval – No later than seven (7) days after all necessary signatories have executed this Agreement, the Parties will jointly submit this Agreement to the Court for preliminary approval, along with a proposed order for preliminary approval, a schedule for notice, proposed notices of preliminary approval, a schedule for an objection period, and a request for a fairness hearing under Rule 23 (e) of the Federal Rules of Civil Procedure.

2. Final Approval – Within twenty (20) days of the Parties reaching agreement, the Parties will file with the Court any additional agreement or agreements, which will include

notice provisions, a proposed Final Approval Order, and comply with all provisions of Rule 23(e) of the Federal Rules of Civil Procedure.

IV. DEFINITIONS

1. “Substantial Compliance” will mean adherence in all material respects to the terms of this Agreement and to any plan or plans implemented by ADOC so as to comply with the terms of this Agreement, recognizing that one hundred percent (100%) compliance is not required. Isolated, acute, non-substantive or immaterial deviations from the terms of this Agreement or from any plan implemented by ADOC so as to comply with the terms of this Agreement will not prevent a finding of Substantial Compliance, provided that ADOC can demonstrate that it has:

(a) implemented a system or systems (i) for assuring compliance, and (ii) for taking corrective measures in response to instances of non-compliance; and

(b) instituted policies, practices, and resources that are capable of durable and sustained compliance.

2. “Disability” and “Disabilities” will have the same meaning they have under the ADA and its implementing regulations.

3. “Inmate” will be defined as any individual detained by, housed in, held at, or otherwise in the custody of ADOC. This term does not include any individual who has been released on parole and/or probation and who is not physically housed in an ADOC facility. ADOC’s facilities include ADOC major institutions, ADOC community work centers and ADOC work release centers. The facilities covered in this Agreement are:

Bibb Correctional Facility

Bullock Correctional Facility

Donaldson Correctional Facility

Draper Correctional Facility

Easterling Correctional Facility

Elmore Correctional Facility

Fountain Correctional Facility

Hamilton Aged and Infirm

Holman Correctional Facility

Kilby Correctional Facility

Limestone Correctional Facility

St. Clair Correctional Facility

Staton Correctional Facility

Tutwiler Prison for Women

Ventress Correctional Facility

Alex City Community Based Facility/Community Work Center

Atmore Community Work Center

Birmingham Community Based Facility/Community Work Center

Camden Community Based Facility/Community Work Center

Childersburg Community Based Facility/Community Work Center

Decatur Community Based Facility/Community Work Center

Elba Community Based Facility/Community Work Center

Frank Lee Community Based Facility/Community Work Center

Hamilton Community Based Facility/Community Work Center

Loxley Community Based Facility/Community Work Center

Mobile Community Based Facility/Community Work Center

Montgomery Women's Facility

Red Eagle Community Work Center

V. SUBSTANTIVE PROVISIONS

1. Plan - The Parties will develop a plan in the general subject areas listed in Section V of this Agreement to provide for care, services, accommodations, programs, and activities for Inmates consistent with the terms of this Agreement and the provisions of the ADA. The Plan is intended to ensure that Inmates are not exposed to substantial harm and that Inmates are not subject to discrimination on the basis of disability.

2. Housing - ADOC will house every Inmate with a disability in a housing unit that is fully accessible under and compliant with the ADA according to the Inmate's particular disability or disabilities. ADOC will provide an adequate number of facilities that are ADA accessible to allow housing of Inmates with disabilities. Housing areas designated to hold Inmates with disabilities will factor in the higher anticipated concentration of Inmates with disabilities such that any Inmates so housed will have the same access to the facilities, housing areas and programs as Inmates who are not disabled.

3. Clustering- ADOC will be permitted to cluster Inmates with disabilities to allow better access to treatment, education, vocational training, and accessible facilities. "Clustering" is defined as placing a concentration of Inmates with disabilities in a specific ADOC facility or within a specific ADOC facility. Any clustering of Inmates will be permissible only to the extent that there are specific educational, treatment, training, or specialized housing reasons for such clustering. However, clustering cannot result in Inmates with disabilities being more geographically isolated from family and community than other Inmates unless there are specific

educational, treatment, training, or specialized housing reasons for such clustering. This provision will not be construed to allow ADOC to systematically segregate Inmates with disabilities absent specific educational, treatment, training, or specialized housing reasons for such clustering.

4. Security Level - All Inmates with disabilities will be housed in a location consistent with their security level. Security levels will be determined without regard to disability, except to the extent that a disability provides the justification for lowering an Inmate's security level.

5. Emergencies - ADOC agrees to implement an emergency-preparedness plan to accommodate all Inmates with disabilities in all facilities in which such Inmates are housed or receive any programs, benefits, or services. ADOC agrees to make appropriate modifications to ensure prompt warning and egress for Inmates with disabilities. The modifications may include but are not limited to flashing lights and audible sirens in housing and common areas, administrative and architectural modifications as necessary, a specific point of rescue in such locations, and assigning and training a correctional officer in each relevant area with the specific responsibility to ensure that any disabled Inmate is properly assisted in the event of an emergency. ADOC agrees to inform Inmates with disabilities of the ADA emergency-preparedness modifications.

6. Identification and Screening for Disabilities - ADOC will screen Inmates for disabilities at the time of intake. ADOC may recognize an Inmate's disability either as the result of appropriate screening or self-identification.

(a) Screening: ADOC will conduct an appropriate screening at intake so as to identify Inmates with disabilities and to determine what disabilities Inmates may have. The

screening will include written and oral questioning of an Inmate concerning disabilities, medical treatment or conditions, and mental health treatment or conditions. As part of this Agreement, ADAP will provide a list of questions to assist in this screening. ADOC will document the results of this screening. ADOC will identify Inmates with intellectual disabilities through the use of appropriate tests. If there is a group-administered test that will appropriately measure intellectual disabilities, then the Parties will give preference to that test. The percentage of Inmates identified as having intellectual disabilities should be generally consistent with the percentage of the general population with intellectual disabilities as defined by the DSM V or its most recent update. The identification of Inmates with mental illness will be made by a psychiatrist or psychologist, although mental health professionals and psychological associates may participate in the process

(b) Self-Identification: In the event an Inmate self-identifies as a person with a disability: (i) ADOC can accept the Inmate's claim of disability; or (ii) if ADOC does not accept the Inmate's claim of disability, it will obtain medical records concerning the Inmate's prior medical or mental health treatment or will conduct sufficient and appropriate additional medical or mental health screening to determine whether the Inmate has a disability as defined by the ADA.

7. Tracking - ADOC will implement a system to track Inmates with disabilities to ensure that such Inmates will receive proper accommodations and appropriate treatment for their disabilities. ADOC's tracking will include the following: (i) the name and AIS# of the Inmate; (ii) the nature of the Inmate's disability or disabilities; (iii) all accommodations for an Inmate's disability or disabilities, including (but not limited to) restrictions on housing or bed placement;

and (iv) any security restrictions that are the result of the disability. ADOC will periodically review the Inmate tracking system and update it as appropriate.

8. Change in Status – As part of, or in addition to, tracking Inmates with disabilities as discussed in paragraph 7 of this section, “Tracking,” ADOC will implement a system to identify chronic and acute changes in disability status. The system will include medical and mental health examinations as part of the yearly physical exams each Inmate receives to determine whether any Inmate has developed a disability while in ADOC custody.

9. Transfer - ADOC will implement a working procedure to move Inmates with newly emergent or newly identified disabilities into an appropriate housing placement. If ADOC learns of the need for an ADA accommodation which would be better provided at another facility, or a different housing location within the same facility, ADOC will promptly take appropriate steps to transfer the Inmate to the other facility or housing location. If the Inmate is to be transferred, ADOC will move the Inmate as soon as reasonably practicable, considering appropriate security issues.

10. ADA Coordinators - ADOC will designate an ADA Coordinator at every facility and will designate a statewide ADA Coordinator.

(a) ADOC will designate an ADA Coordinator at each facility. All facility ADA Coordinators will hold equivalent rank and will be trained and assigned responsibility to ensure the facility complies with the ADA. The facility ADA Coordinator may have duties in addition to those as an ADA Coordinator. At each institutional/staff meeting, the topic of ADA compliance at the particular facility will be discussed by and with the facility ADA Coordinator. This person will be familiar with the provisions of the ADA and will be knowledgeable concerning ADOC’s ADA Grievance Procedures.

(b) ADOC will designate one or more persons who will be assigned responsibility to ensure that ADOC complies with the provisions of the ADA with respect to Inmates as a full-time statewide ADOC ADA Coordinator. This person will be properly trained and familiar with the provisions of the ADA and will be knowledgeable concerning ADOC's ADA Grievance Procedures.

11. ADA Grievance Procedures - ADOC will create working ADA accommodation, grievance, and appeal procedures. These procedures will be freestanding and distinct from the medical/mental health request or grievance procedures. The new ADA-specific procedures will include the following:

(a) The ADA grievance will be addressed in writing to the Inmate by the ADA Coordinator at each facility. There will be a specific timeframe in which to respond.

(b) An Inmate may appeal a facility ADA Coordinator's decision to the statewide ADA Coordinator. Any response to an appeal will be provided in writing to the Inmate. There will be a specific timeframe within which to respond to appeals.

(c) ADOC may use one form for the request for accommodation, grievance, and appeal procedures, provided that such form will clearly indicate to Inmates the different uses of the form. Such form or forms will be made readily available at all ADOC facilities. ADA grievances written on other documents that are clearly identifiable as ADA grievances will be addressed in the same manner as ADA grievances written on the ADA grievance form and will not be found to be deficient because they are written on a different document.

(d) In the event a grievance on the new ADA form is related to the provision of medical or mental health care or concerns medical or mental health treatment decisions, the

Inmate will be informed that the grievance should be directed to ADOC's contracted medical or mental health care provider.

12. Training - ADOC will provide both initial and periodic training on the provisions and requirements of the ADA to all its personnel who are required to attend the Correctional Officer Training Academy as a condition of their employment with ADOC. The initial training may be part of the new officer's training program, and will include not less than four (4) hours of ADA training. The four (4) hours do not have to be consecutive and may be included in other blocks of training. Periodic training concerning the provisions of the ADA at least two (2) hours in duration will be provided to such officers at least annually.

13. Program Access - ADOC will implement a system by which Inmates with disabilities are provided access to programs offered by ADOC consistent with the Inmate's security classification and status. ADOC may not discriminate in the provision of such programs against an Inmate with a disability based upon the existence of the disability. Accordingly, all types of programs appropriate for an Inmate's given security level will be made available and accessible to that Inmate irrespective of disability provided that reasonable accommodations for that disability may be made. Likewise, ADOC will not deny an Inmate's access to programs based on a mental health or security code if that code is based solely upon disability. However, ADOC will not be required to provide access to programs to an Inmate with a disability when: (1) such programs are not available to Inmates at the facility where the Inmate with the disability is assigned; and (2) when there are security or disciplinary reasons unrelated to the Inmate's disability that prevent the Inmate from accessing the programs. ADOC is obligated to provide only reasonable accommodations to programs for Inmates with disabilities and is not required to take extraordinary steps to provide an Inmate access to a program. "Programs" are defined as

educational, vocational, rehabilitative, work release, treatment, and religious training or instruction. The Parties acknowledge that there are currently discussions concerning the construction of four (4) new ADOC-operated prison facilities. If ADOC does not build four (4) new prisons, all educational, rehabilitative, and vocational programs offered by ADOC will be made available to eligible Inmates regardless of disability, subject to the reasonable accommodation provisions of the ADA. If ADOC does build four (4) new prisons, then, during the building period, ADOC will provide educational and rehabilitative programs to eligible Inmates, regardless of disability. Any programs at the new facilities, whether educational, vocational, or rehabilitative, will be fully ADA accessible. During the building process, ADOC will not be required to architecturally modify vocational programs currently in existence, nor is it required to add vocational programs presently unavailable at particular facilities. During the building process, if an otherwise eligible Inmate with a disability can access a program with a reasonable accommodation that does not require architectural modifications, then the program will be made available to that Inmate to the same extent it is available to other Inmates. Inmates may grieve any decision regarding admission or denial of admission into programs under the ADA Grievance process.

14. Facility Access- Subject to the reasonable accommodation provisions of the ADA, Inmates with disabilities will be able to access all areas within a facility that they are authorized to access to the same extent Inmates without disabilities can access those areas. These areas include but are not limited to: housing units, recreational areas, libraries, canteen, cafeteria, visitation, chapel, hobby craft, and areas for medical and mental health treatment.

15. RTUs/SUs - ADOC will provide access to all programs other than vocational programs to Inmates in the Tutwiler, Bullock, and/or Donaldson RTU/SU, unless, after an individualized assessment, such access is counter-indicated. Denial of access will require an individualized reason why such programs are counter-indicated, and the Inmate will be notified of the reasoning in writing within three (3) business days. A denial is subject to the ADA grievance procedure. ADOC will not be required to provide access to vocational programs at the Tutwiler, Bullock and/or Donaldson RTU/SU.

16. Materials - ADOC will provide the Inmate Handbook in alternative formats to include Braille, large print and audio. In the event an Inmate with a disability needs to access other written types of materials in an alternative format, ADOC will provide reasonable accommodations for such access consistent with the provisions of the ADA.

17. Auxiliary Services/Aids - ADOC will provide access to specialized services, such as sign language interpretation, in all situations in which such services are mandated, as well as any other similar circumstances. ADOC's current Administrative Regulation 705, if implemented in practice, is sufficient. Interpreters need not be American Sign Language ("ASL") certified, provided that they have sufficient skill to ensure effective communication. In instances that do not implicate privacy or security, it may be appropriate for other Inmates to serve as interpreters, provided that the Inmate providing the service and the Inmate receiving the service are agreeable to such an arrangement. Any Inmate who serves as an interpreter will be required to sign a document that indicates the Inmate's agreement to abide by all privacy laws, to include HIPAA. TTY telephone access will be on the same scheduled availability as "regular" phone access available to Inmates in a particular housing area.

18. Health Codes - The existence of a disability cannot result in an increase in the health code of an Inmate beyond that minimally necessary to ensure appropriate medical care. Any such increases cannot form the basis for a denial of access to a program if the Inmate is otherwise eligible for the program.

19. Notice – ADOC will post the provisions of this agreement in the law library, or if there is no law library, the area where other inmate information is made available of each institution and will amend the Inmate handbook to include the provisions of this agreement. The substance of what will be posted in the libraries and in the Inmate handbooks will be drafted by ADOC and Plaintiffs jointly. All such documents will be available in alternative formats to include large print and braille.

20. Infirmaries and Specialized Cells - All infirmaries will be fully ADA accessible. An appropriate number of each of the following special purpose cells: safe cells; segregation cells; and death row cells, and accompanying showers, will be modified to make them fully ADA accessible. At least one (1) fully ADA accessible safe cell will be provided at each facility. The accessible specialized cells will be spread throughout ADOC's facilities in such a manner that they are available, regardless of sex, to Inmates at appropriate security levels.

21. Transition Plan - ADOC will create a §504 transition plan.

22. Unresolved Claims – As indicated in Section II above, Plaintiffs bring claims in this lawsuit that are not resolved by this Agreement and that are subject to be tried in Phase II of this litigation. ADOC will not contend in the Phase II Trial that Plaintiffs were required to resolve these claims in this Agreement. Plaintiffs are not waiving and reserve the right to pursue additional architectural changes that are not ADA-based for medical or mental health purposes. Nothing in this paragraph will be construed as an admission on the part of the

Defendants that there are architectural changes needed, necessary, or required or that, to the extent such architectural changes are needed, necessary, or required, a cause of action exists to mandate that such changes be made.

23. Quality Assurance - ADOC will create a Quality Assurance Program (“QAP”) to assess compliance with the terms of this Agreement and any procedures utilized by ADOC to ensure that the terms of this Agreement are met. The QAP will include access to necessary information at the facility and state level; regular review and analysis of disability-based accommodation requests and ADA grievances and appeals; and additional training recommendations for ADOC staff, if needed. ADOC will continue such QAP beyond the termination of this Court’s jurisdiction in a format reasonably formulated to ensure that ADOC is meeting its requirements under the ADA.

24. Meet and Confer - No later than April 15, 2016, the Parties will have completed meeting and conferring concerning plans to effectuate the terms of this Agreement. At that time, if there are any issues concerning this Agreement that the Parties have been unable to resolve, the Parties agree to submit the unresolved issues to an agreed upon mediator, or in the event the Parties cannot agree to a mediator, one designated by the U.S. District Judge assigned to this case. The Parties will meet and confer with the mediator to attempt to resolve any outstanding issues. If the Parties are unable to agree, any aggrieved Party may seek redress with the Court.

VI. MONITORING

1. The Parties agree that monitoring of this Agreement is necessary and that ADAP will serve as the monitor. ADOC will allow ADAP reasonable access to facilities, documents, staff, procedures, logs, records, Inmates, and other similar informational sources. ADAP will be

entitled to conduct interviews with Inmates and staff to assess compliance with the terms of this Agreement and any plan to effectuate its terms.

2. ADAP agrees to be bound by any Protective or Court Orders entered in this case to protect the confidentiality of Inmate records and sensitive security information.

3. ADAP will prepare a written report on ADOC's efforts to meet the requirements of this Agreement and any plan to effectuate the terms of this Agreement at least quarterly. Each report will indicate all areas in which the ADOC is, or is not, in Substantial Compliance. Such report will be provided to ADOC and all counsel of record. If ADAP believes that ADOC is not in Substantial Compliance with the terms and provisions of this Agreement and any plan to effectuate its terms, ADAP will provide written recommendations of actions that it believes necessary to achieve Substantial Compliance with the terms of the provision or provisions. ADOC will then have twenty (20) days to provide written comments, objections, or remedial action plans in response. The Parties will meet and confer to attempt to address deficiencies identified by ADAP.

4. Monitoring will continue for a period not exceeding six (6) years from the execution of this Agreement, regardless of whether ADOC does or does not build new prisons. In the event that ADOC has undertaken to build new prisons, but they have not been completed as of January 1, 2020, monitoring will continue until two (2) years after the completion of the prisons.

5. If ADAP finds evidence of any violation of law which does not involve the subject matter of this Agreement, then ADAP will inform ADOC of the evidence supporting such a belief in writing. This information may include the name(s) of Inmates who have allegedly suffered such harm, provided that such Inmates consent to ADAP identifying them by

name. ADOC will review and investigate such claims and provide a report of such an investigation. If ADAP remains convinced that a violation of law existed, despite any report from ADOC to the contrary, the Parties will meet and confer about any appropriate resolution, to include meeting with a court appointed mediator before taking any legal action or filing any administrative complaints.

VII. RESERVATION OF JURISDICTION AND ENFORCEMENT

1. The Parties consent to the reservation and exercise of jurisdiction by the U.S. District Court (the "Court") for the Middle District of Alabama over all disputes between the Parties and among the Parties arising out of this Agreement and the implementation.

2. For purposes of jurisdiction and enforcement of this Agreement only, the Parties jointly request the Court to find that this Agreement satisfies the requirements of 18 U.S.C. § 3626(a)(1)(A) in that it is narrowly drawn, extends no further than necessary to correct the violation of a federal right, and is the least intrusive means necessary to correct the violation of the federal rights of the Plaintiffs.

3. The Court will retain jurisdiction to enforce the terms of this Agreement, once approved, and any plan necessary to effectuate its terms for the duration of the monitoring period expressed in Section VI, paragraph 4, above.

4. The Court will be the sole forum for enforcement of this Agreement. Any order to achieve Substantial Compliance with the provisions of this Agreement will be subject to the provisions of the Prison Litigation Reform Act, 18 U.S.C. § 3626.

5. If Plaintiffs' counsel believe that the ADOC is not complying with this Agreement or any plan to effectuate its terms, they will notify ADOC, in writing, of facts supporting their belief. ADOC will investigate the allegations and respond in writing through its

counsel within thirty (30) days. If Plaintiffs' counsel is not satisfied with ADOC's response, the Parties will conduct negotiations to resolve the issue(s). If the Parties are unable to resolve the issue(s) timely and satisfactorily, the Parties agree to present the issue(s) to an agreed upon mediator. If the Parties cannot agree upon the selection of a mediator, the Parties will jointly request that the Court appoint a mediator. If the Parties remain unable to resolve the issue(s) following direct discussions or mediation, either party may move the Court for any relief allowed by law or equity. Nothing herein will prevent any Party, in matters of particularly urgency over issues that are central to the purposes of this Agreement, from bypassing the mediator and seeking relief from the Court. Provided, however, that in such an event the moving party will have first brought the matter to the opposing party's attention and provided the opposing party a reasonable opportunity to investigate and, if necessary, address the matter. In the event that the Court finds that ADOC has failed to comply with this Agreement, it will require ADOC to submit a plan for approval by the Court to remedy the deficiencies identified by the Court. In the event that such a plan does not remedy the deficiencies, the Court retains power to enforce this Agreement through all remedies provided by law.

6. This Agreement may be enforced only by the Parties hereto. Nothing contained in this Agreement is intended, or will be construed, to evidence an intention to confer any right or remedy upon any person other than the Parties hereto.

VIII. TERMINATION

1. ADOC may request a finding that it is in Substantial Compliance with this Agreement, and has maintained Substantial Compliance for at least twelve (12) consecutive months. However, ADOC may not seek an early termination of jurisdiction until the latter of the following dates: Two (2) years after completion of new prison facility construction totaling

approximately 12,000 bed design capacity for males and 1,200 bed design capacity for females, or, if no new prisons are built, forty-two (42) months after the Court has approved this Agreement. If new prisons are built, and if no additional prisons are under construction or in design, then ADOC may not seek early termination of Court jurisdiction until at least 1 year after the last such prison becomes fully operational.

2. If upon request for termination, the Court concludes that the ADOC is in Substantial Compliance with all terms and conditions of this Agreement, then the Court may terminate jurisdiction of the portion or portions of this case subject to this Agreement.

3. The Parties will work in good faith to achieve Substantial Compliance with all terms and conditions of this Agreement within the time parameters of this Agreement. If Plaintiffs believe that ADOC is not in or progressing toward Substantial Compliance with the terms and conditions of this Agreement, Plaintiffs may move for an order extending jurisdiction over this matter beyond maximum time period contemplated herein. To extend jurisdiction, Plaintiffs will establish by substantial evidence and the Court will so find that ADOC is not in Substantial Compliance with this Agreement or any subsequent Order entered by the Court.

IX. AMENDMENTS

1. By mutual agreement, the Parties may change terms of this Agreement (except for the six-year termination provision of XI.4.(a) below), including but not limited to the timetables for taking specific actions, provided that such modifications are memorialized in writing, signed by the Parties or through their counsel, and approved by the Court.

2. ADOC may not make any substantial changes to any policy, procedure, regulation, or rule that conflicts with the terms of this Agreement. ADOC will supply or make

available to Plaintiffs' counsel any policies, procedures, regulations, or rules implementing the provisions of this Agreement for their review and comment.

3. ADOC may not approve any changes in policy, procedure, regulation, or rule by its Medical and/or Mental Health provider that conflicts with the terms of this Agreement.

X. FUNDING

1. The Parties acknowledge that implementation of the terms of this Agreement and any plan necessary to effectuate its terms are subject to the availability and receipt of appropriated funds.

2. The Parties further acknowledge that the lack of funding does not preclude the Court from entering an Order to achieve compliance with this Agreement that comports with the applicable provisions of the Prison Litigation Reform Act, 18 U.S.C. § 3626, and with other applicable law, provided that ADOC reserves the right to assert that the lack of funding should be taken into account in any remedial order.

3. ADOC agrees to make all possible good faith efforts to seek all necessary funding to implement the terms of this Agreement. In the event that the Parties are unable to agree as to whether there is sufficient funding to implement this Agreement, the Parties will meet and confer, and if necessary, consult with the Court. In the event that the Parties remain unable to agree, either party may seek assistance of the Court.

XI. ATTORNEYS' FEES AND EXPENSES

1. ADOC agrees to pay attorneys' fees and associated costs to counsel for the Plaintiffs in the total amount of \$1,030,000.00. Plaintiffs agree that ADOC may pay this sum in installments as follows: \$500,000 within thirty (30) days of the Court's preliminary approval of this Agreement; \$200,000 on or before October 1, 2016; and the balance on or before March 1,

2017. Interest on such sums is waived. ADOC acknowledges that counsel for Plaintiffs have been involved in the prosecution of other claims in this case beyond those resolved by this Agreement. ADOC acknowledges that payment of the above sum is for work and associated costs on the claims resolved herein and that Plaintiffs' counsel reserve the right to seek additional attorneys' fees and costs for claims not addressed by this Agreement.

2. The Parties further agree that the award of attorneys' fees and costs cover all fees and expenses accrued on the claims addressed herein through the date of the execution of this Agreement, and do not cover additional attorneys' fees and expenses incurred either during the negotiation and execution of the any additional plans necessary to effectuate the terms of this Agreement or monitoring.

3. Plaintiffs agree that they will not seek nor petition the Court for a fee award of greater than \$35,000.00 for time and expenses incurred concerning any plan necessary to effectuate the terms of this Agreement.² Plaintiffs' counsel will be entitled for reasonable attorneys' fees for such services. Plaintiffs' counsel will provide itemized hours expended negotiating and executing such plan or plans. ADOC agrees to pay an hourly rate of \$195.00 for services described in this paragraph. The Parties will meet and confer and attempt to agree upon payment of fees relating to drafting and finalizing plans to effectuate the terms of this Agreement. In the event that the Parties are unable to agree upon the reasonable number of hours expended, either party may seek assistance of the Court appointed mediator, or the Court if the Parties remain unable to agree.

4. Plaintiffs' counsel agrees that they will not seek nor petition the Court for an award of fees and expenses for monitoring services greater than the following amounts. For

² The \$195.00/hr rate identified herein is not to be construed as in any way applicable or preclusive to hourly rates set forth by Plaintiffs' counsel in any future fee application in this case.

purposes of describing the periods hereinafter, the time commences upon execution and final approval of this settlement by the Court. ADOC has indicated that if a decision is made to build new prison facilities, that it will take until approximately 2020 for the new prisons to become operational. The amounts listed hereafter are based upon an estimation that all new ADOC prisons will become operational at the beginning of year five (5). If such prisons become operational either before December 31, 2019 or after January 1, 2021, the Parties agree to negotiate in good faith an appropriate modification of the periods and fee caps described herein.

(a) If ADOC builds one or more new prisons, then the fee amounts for monitoring services will be capped at, and not exceed, the following amounts:

Year One: \$70,000.00

Year Two: \$60,000.00

Year Three: \$50,000.00

Year Four: \$40,000.00

Year Five: \$60,000.00

Year Six: \$50,000.00

(b) If ADOC chooses not to build any new prisons, monitoring costs will be capped at, and not exceed, the following amounts:

Year One: \$70,000.00

Year Two: \$60,000.00

Year Three: \$50,000.00

5. Plaintiffs' counsel will provide itemized hours expended on a quarterly basis. ADOC agrees to pay an hourly rate of \$195.00 for services rendered in the monitoring process. The Parties will meet and confer and attempt to agree upon payment for monitoring

services rendered. In the event that the Parties are unable to agree upon the reasonable number of hours expended, either party may seek assistance of the Court appointed mediator, or the Court if the Parties remain unable to agree.

6. The annual caps and hourly rates described herein do not apply to: (a) Plaintiffs' motions to enforce the terms of this Agreement; and (b) Plaintiffs' opposition to any motions filed by ADOC arising out of this Agreement. No fees and expenses will be awarded to Plaintiffs' counsel for such motions or oppositions unless the Court finds: (a) that the motion or opposition was necessary to enforce substantial rights under the ADA; and (b) that Plaintiffs attempted to resolve the matter and or narrow the issues as much as possible by meeting and conferring with ADOC, taking full opportunity of recourse to the mediation process before presenting the issues to the Court. Plaintiffs' counsel agree that they may not seek attorneys' fees and costs of more than \$200,000 per year on motions to enforce the terms of this Agreement.

XII. ADDITIONAL PROVISIONS

1. This Agreement constitutes the entire agreement among the Parties as to all claims contained herein. This Agreement supersedes all prior agreements, whether written, oral, or implied. Each party represents that it has full legal authority to enter into and execute this Agreement.

2. This Agreement may not be altered or amended, except in writing signed by all Parties or their representatives.

3. This Agreement will be binding on all successors, assigns, employees, agents, and all other working on behalf of Plaintiffs and ADOC.

4. This Agreement may be executed in counterparts and such counterparts will be provided to all Parties immediately upon execution.



Date: 3-10-16

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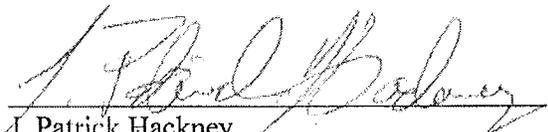
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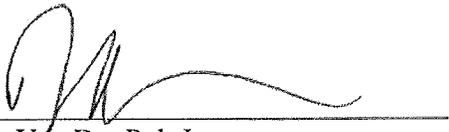
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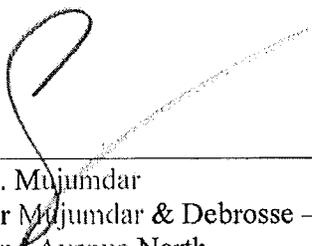
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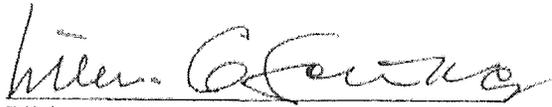
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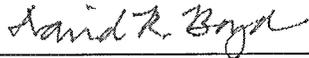
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Date: March 9, 2016

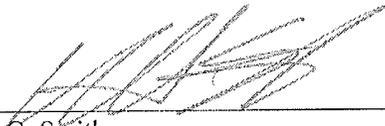
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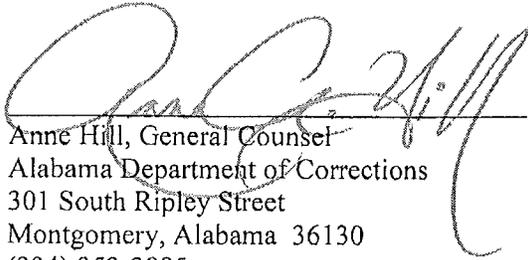
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Jefferson Dunn
In His Official Capacity as Commissioner
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Date: 10 March 2016