ROSS V. INSLEE, No. CV-14-00130-TOR

SETTLEMENT AGREEMENT AND PROPOSED ORDER

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I. PURPOSE AND OBJECTIVES OF THIS AGREEMENT

1. This Agreement has been reached between the Department of Social and Health Services (DSHS) ("Defendants") and Disability Rights Washington (DRW) and Paukert & Troppmann ("Plaintiffs' Counsel") on behalf of Ketema Ross, Daniel Gautier, Jesus Martinez, B.T., J.G., and B.Y. ("Plaintiffs")(collectively the "Parties.").

2. The purpose of this Agreement is to improve upon the manner in which DSHS administers its treatment services to persons committed to their care and custody following a verdict of "not guilty by reason of insanity" (NGRI) in a criminal proceeding. This Agreement is intended to improve the services DSHS provides to Plaintiffs and other NGRI patients ("patients") at the state hospitals by ensuring that the conditional and final release process required by chapter 10.77 RCW is pursued when clinically indicated and by improving hospital policies to promote clinically-based decision-making by DSHS professional staff.

3. This Agreement includes three components: (1) goals, (2) commitments, and (3) exit criteria. (1) The goals are intended only to aid in interpreting the meaning and purpose of the commitments and exit criteria; they are not commitments or exit criteria and shall not be measured as such. (2) The commitments are the actions that Defendants will do to implement the Agreement and achieve its objective and intended result. Defendants will substantially comply with all of the commitments as set forth herein. (3) The exit criteria are the sole objective measures that, when accomplished at the conclusion of this case, determine whether Defendants are in substantial compliance with the terms of this Settlement Agreement such that the case shall be dismissed.

II. BACKGROUND

4. Plaintiffs filed this lawsuit entitled *Ketema Ross, et al. vs. Jay Inslee, et al.,* in the United States District Court for the Eastern District of Washington on May 7, 2014. The lawsuit sought to (1) invalidate RCW 10.77.145 and RCW 10.77.270, (2) enjoin Defendants from preventing or delaying patients' participation in clinically appropriate treatment, (3) enjoin Defendants from confining patients deemed by clinicians to no longer be both mentally ill and dangerous, (4) enjoin Defendants from placing patients in personal restraint devices without individualized cause, and (5) to enjoin Defendants from denying or restricting patient property without individualized cause. The lawsuit was subsequently assigned to Judge Thomas O. Rice as case number 2:14-CV-0130-TOR.

5. On October 24, 2014, the Court denied Plaintiffs' motion for preliminary injunction and motion for declaratory judgment that RCW 10.77.145 is unconstitutional, that RCW 10.77.270 is unconstitutional as applied to patients who have been determined by clinicians to not be mentally ill, and that all patients must receive a full discharge when they are no longer dangerous or no longer have a treatable mental illness.

6. Plaintiffs filed their First Amended Complaint on December 19, 2014, adding four additional Plaintiffs and withdrawing one Plaintiff. The First Amended Complaint is the operative pleading in this action (Dkt. #45).

7. In November of 2014, the parties began to discuss the possibility of settling this case. Thereafter, the parties held more than 15 settlement negotiation sessions from December 2014 through December 2015. These sessions regularly involved the participation of multiple attorneys for each party, several DSHS program representatives, and named Plaintiff Ketema Ross.

8. At the request of the parties, an order staying the case was entered by the court on April 1, 2015, staying the case until December 31, 2015. A subsequent stay was entered by the court at the request of the parties on January 12, 2016, extending the stay until March 31, 2016.

9. The parties agree that the best interests of the Plaintiffs and those similarly situated will be substantially advanced by the settlement of this case based on the commitments reflected in this Agreement.

III. JURISDICTION AND AUTHORITY OF THE COURT

10. The United States District Court has jurisdiction over the claims against all Defendants pursuant to 28 U.S.C. §§ 1331, 1343(a). Venue is proper in the Eastern District of Washington pursuant to 28 U.S.C. § 1391(b).

11. This Agreement settles all claims brought in this lawsuit.

12. The terms of this Agreement shall not take effect until the Court issues its order approving this Agreement.

IV. GOALS

13. These goals are intended to (a) provide guidance to Defendants during the planning and implementation of the terms of this Agreement, and (b) aid in interpreting the meaning and purpose of the commitments and exit criteria. The goals are not commitments or exit criteria, and shall not be measured as such.

14. Treatment for patients will be recovery-oriented, transparent, and have the mission of assisting clients with their recovery and rehabilitation as they reclaim their lives and progress towards the community.

15. The grounds privileges, PCR, CR and FD process at the two state psychiatric hospitals should be improved and streamlined in a manner that respects current law, accreditation

standards, patient rights, and public safety concerns. While Department operating resources are a factor, the constitutional right to adequate care and treatment shall not be mitigated.

16. Clinical judgment should be empowered in all NGRI patient treatment decisions.

17. Treatment of patients should occur in the least-restrictive setting clinically indicated for the patient and consistent with public safety.

18. The Department has the ultimate authority in making patient treatment and care decisions and is not bound by the Public Safety Review Panel's ("PSRP") recommendations. Department staff are to base their recommendations on independent clinical judgment, which may be informed by any relevant considerations including any identified by the PSRP.

19. Patients should be adequately informed of the release process and their rights under chapter 10.77 RCW.

20. CR with community supervision should be prioritized over extended hospitalization for clinically-ready patients. Patients who are no longer dangerous or who no longer require inpatient psychiatric treatment will be prioritized in the discharge process. This prioritization would contribute to patients receiving care in the "least restrictive" clinically appropriate treatment setting. It would also promote efficient use of finite resources to fund programs such as staff training, patient treatment, and release planning upon a patient's admission.

21. In regard to patient personal property, allowing patient access to appropriate personal items (whether it be for them to retain in their possession or to be available on check out system) affords patients dignity, respect, and personal expression. Access to personal possessions is a component of the recovery process, a means to decrease stigma, and an aid to assisting in the reintegration process. Creating a safe environment comes from a combination of removing and/or limiting access to potentially dangerous items balanced with respect for patient's rights and

human dignity. The potential hazards of an overly restricted or overly permissive environment (both in the physical sense and sense of mental wellbeing) must not be ignored; as it is a real and significant concern. The overall aim is to create a safe and therapeutic environment.

V. COMMITMENTS

22. Defendants agree to fulfill the commitments contained within this Section during the pendency of this case as guided by the goals in this Agreement.

23. Substantial compliance with all of the Commitments and timelines approved by the Court are enforceable during the pendency of this case.

A. Evaluation and Treatment Of Patients

24. Hospitals shall offer treatment to assist persons acquitted as NGRI in preparing for PCR, CR, and FD beginning upon admission that accounts for the safety and security of both the patient and the public.

25. Readiness for grounds privileges, PCR, CR, and FD shall be assessed within thirty (30) days following admission to an NGRI ward and at least every three (3) months afterward during quarterly treatment meetings. This readiness assessment may occur at any time.

26. Consistent with current practice, whenever a person is committed to the Secretary as NGRI, the treatment facility to which the person is assigned shall, within fifteen days of admission to the facility, evaluate and diagnose the committed person for the purpose of devising an individualized treatment program. Every person committed to the Secretary as NGRI shall have an individualized treatment plan formulated by the treatment facility. This plan shall be developed by appropriate treatment team members and implemented as soon as possible but no later than fifteen days after the person's admission to the treatment facility.

27. Defendants shall not withhold support for a patient's PCR, CR, or FD unless there are articulable concerns about the patient's dangerousness in the community and those concerns are documented in patient's treatment records.

28. Defendants will facilitate the petitioning process for FD as described in Commitments, Part C of this Agreement and notify the patient of this action if the patient is deemed by the patient's treatment team to not be mentally ill and a danger to others. "To not be mentally ill" is defined for the purposes of this paragraph to mean a treatment team determination that an NGRI patient either no longer has a clinical mental health diagnosis as defined by the most current version of the DSM or that such diagnosis no longer requires inpatient psychiatric treatment. Personality disorders and intellectual disability disorders are not considered "clinical mental health diagnosis" for purposes of this Agreement.

29. Defendants will allow Patients to participate in their own discharge planning, including preparation of Risk Review Board ("RRB") and PSRP materials and will be made aware of the discharge criteria they must meet. Patients seeking to address the PSRP will be given a chance to advocate in writing for their release and respond to any objection to their release. If a patient is unable to advocate in writing, Defendants will provide reasonable accommodation including the assistance of the patient advocate who may transcribe their oral statements into writing.

30. Defendants will create a more uniform NGRI level/privilege system for Western State Hospital and Eastern State Hospital that describes the steps necessary to meet treatment benchmarks, including eligibility for PCR, CR, and FD. Any timeframes referenced in this system will be for general guidance only, and cannot be used to impede a clinical determination of readiness. NGRI patients whose intellectual or physical disability prevents them from

progressing through the level system shall still be reviewed for readiness for PCR, CR, and FD consistent with clinical judgment.

31. Patients will be given opportunity for input during the development of post-discharge conditions, such as appropriate housing and inpatient or outpatient substance abuse or mental health treatment.

32. Patients will be able to obtain copies of their treatment plans and medical records upon request as provided for by policy and be given the opportunity to participate in a review of their treatment plans every 90 days.

B. Grounds Privileges and Supervised Community Outings

33. At quarterly treatment team meetings, patients will be considered for supervised access to the grounds of the hospital and for participation in supervised therapeutic community outings to appropriate and safe destinations outside the grounds of the hospital as clinically indicated. Consideration of community destinations will include locations that (1) are permitted by existing resources and (2) facilitate reintegration into the community and shall be determined by clinical staff.

34. If clinical staff determine that a patient is appropriate for staff-accompanied access to the grounds of the hospital, the PSRP will be given an opportunity to review and comment on the determination prior to implementation as required by RCW 10.77.270(1)(d). If the PSRP does not respond to a request for advice within 30 days of submission, Department staff may implement staff-accompanied grounds privileges if clinically indicated. Department staff are to base their determinations on independent clinical judgment, which may be informed by any relevant considerations including any identified by the PSRP.

35. If clinical staff determine that the patient is appropriate to access the grounds of the hospital without being accompanied by staff, the PCR/CR process specified in Commitments, Part C of this Agreement will be followed.

36. If clinical staff determines that a patient is appropriate for community outings outside the grounds of the hospital, the PCR/CR process specified in Commitments, Part C of this Agreement will be followed. The requested PCR or CR will seek entry of an order that gives DSHS the standing authority to allow the patient to leave the hospital on supervised or unsupervised outings when clinicians deem this to be safe and clinically appropriate. The filing of a petition for PCR or CR shall not be delayed due to the PSRP's failure to provide timely advice to the Secretary. A new order will be sought in circumstances where clinical staff determine that the patient is appropriate for supervised community outings that go beyond the scope of the court's order (e.g., when clinical staff determine that the patient is ready for unsupervised community outings).

37. Clinical staff shall review a patient's appropriateness for grounds privileges beginning thirty (30) days after admission and every three months during the quarterly treatment meetings. If clinical staff conclude during the quarterly meeting that a patient is not ready for grounds privileges or community outings, the determination and rationale therefore will be documented, including identification of health, safety, or escape concerns and a description of the steps required for the patient to be reconsidered for grounds privileges or community outings.

C. Partial Conditional Release, Conditional Release, and Final Discharge Process

38. It is the nature of a patient's conduct, mental condition, history, clinically assessed public safety risk, and other relevant clinical factors, rather than a simple categorization of offenses that will determine the patient's fitness for PCR, CR, or FD.

39. If a patient expresses disagreement to the clinical staff regarding a determination that the patient is not ready for PCR, CR, or FD, the patient shall be informed of how to contact the Patient Advocate to voice his or her concerns. The patient shall also be provided with or reminded of the forensic patient rights document referenced in paragraph 61 of this Agreement. Further, patients will be provided with or reminded of the contact information for his or her counsel of record. Finally, when the treatment team finds that a patient is not ready for PCR, CR, or FD, the determination and rationale therefore will be documented and the patient will be given a description of the steps required to be reconsidered for PCR, CR, or FD.

40. The patient will be referred to the level system criteria for general guidance regarding how to progress in treatment. The level system criteria may be limited in its ability to determine readiness for PCR, CR, or FD if a patient's intellectual or physical disability prevents the patient from progressing through the level system.

41. When a patient makes an application to the Department for PCR, CR or FD pursuant to RCW 10.77.150(1) or RCW 10.77.200(1) without the support of Department clinical staff, the RRB shall review the application as soon as agenda space is available. As specified in paragraph 29, patients may advocate on their own behalf to the RRB in writing.

42. If the RRB recommends against granting the patient's petition, the RRB will forward the patient's petition and its recommendation to the appropriate court for consideration.

43. If the RRB supports the patient's petition, the process specified below in paragraphs (45) – (50) regarding Hospital-supported petitions shall be followed.

44. Regardless of RRB support, patients shall be examined once every six months as required by RCW 10.77.140. This examination shall contain findings regarding whether the

patient meets criteria for PCR, CR, or FD. The report produced by this section shall be provided to the patient upon request and preserved as part of the patient record.

45. When a patient applies for PCR, CR, or FD with the support of clinical staff, a forensic risk assessment ("FRA") shall be conducted for the patient that focuses on the patient's potential risk factors if a FRA for the patient does not exist or an existing FRA is deemed by clinical staff to be inadequate.

46. When the RRB determines that a patient is clinically ready for PCR, CR or FD, the hospital shall proceed as specified in this Agreement unless the patient objects. A FRA shall be completed and a RRB determination shall be reached as soon as possible after a referral by clinical staff who opine that a patient is ready, or is approaching readiness, for PCR, CR or FD. The clinical goal is that implementation of a PCR, CR, or FD is accomplished as promptly as possible after it is deemed clinically appropriate.

47. If a patient objects to petitioning the court for a PCR, CR or FD despite being recommended for same by clinical staff, the Department may nevertheless petition for PCR, CR or FD in accordance with RCW 10.77.150(2), RCW 10.77.200(2), and RCW 10.77.270.

48. Prior to submitting a recommendation for PCR, CR, or FD to the court, the Secretary or designee ("Secretary") shall forward the initial recommendation, along with the patient's application and risk assessment, to the PSRP for its independent assessment as required by RCW 10.77.270(3) within 10 business days of the RRB completing its review.

49. A copy of the PSRP's response will be provided to the patient by the Department upon request and shall remain a part of the patient record.

50. Within 10 business days following the statutorily-allotted timeframe for the PSRP to respond, the Secretary shall send his or her completed recommendation for PCR, CR, or FD,

along with the patient's application, to the court, defense counsel, and the prosecuting attorney regardless of the PSRP's response (if any) so long as the Secretary continues to recommend PCR, CR, or FD. If the Secretary is petitioning for the release under paragraph 47 because the patient has not applied, notice of the petition will be provided to the patient, counsel of record for the patient, and the prosecuting attorney. These documents shall be preserved as part of the patient's record and made available to the patient for review upon request.

51. As existing resources permit, the Department will be responsible for training clinicians on best practices related to forensic risk assessments and treatment services.

E. Appropriate Use of Personal Restraint Devices

52. Physical restraints shall not be used on patients by DSHS staff within or outside of state hospitals unless it is clinically determined that the patient presents an escape risk or an imminent risk of harm to self or others. Transport of patients will adhere to BHA Management Bulletin H15-04-0001, which is included as Attachment 1 to this Agreement.

F. Restrictions on Personal Property

53. Patients have a right to individualized care and treatment. However, patients live in a group environment and the hospital must take the safety of all patients into consideration when approving access to personal property. Taking into account these concerns, any restrictions on property will be consistent with clinical judgement and hospital accreditation standards. Both hospitals shall have policies for allowing patients access to their personal belongings that take into account the therapeutic, safety, and security needs of the facility.

54. Removal of or limitations to personal belongings will be consistent with the patient's level and the corresponding medical or therapeutic judgment, as well as hospital policies. This

determination must be documented in the individual patients' treatment plan when the property at issue is not already prohibited by policy.

G. Strip Search Policies

55. Patients will not be strip searched unless there is clear clinical documentation that the patient has expressed or implied suicidal or homicidal ideation, or there is a reasonable suspicion that the patient has potentially harmful items on his or her person. Possession of contraband may trigger a strip search only if the requirements of this paragraph are satisfied.

56. All strip searches of patients will trigger an administrative report of incident (AROI) and will be reviewed by the forensic clinical director.

57. Reports which present credible allegations of suspected abuse and neglect of a patient will be investigated pursuant to state hospital policy.

58. All WSH and ESH employees and security personnel will be informed or be reminded of their obligations to report suspected abuse and neglect and informed of the appropriate reporting procedure and will be informed or be reminded that failure to report is grounds for disciplinary action and will be reported to the appropriate agencies. All new employees will receive this information at the time of orientation and sign an acknowledgment of receipt of this information. All current employees will be asked to review the reporting policy and sign an acknowledgment of receipt of this information.

H. Prohibition of Staff Retaliation

59. Defendants will maintain policies regarding staff retaliation against patients. Such polices will incorporate the following:

a. Any level drops or ward holds shall be made consistent with clinical judgment and shall be documented in the patient chart including clinical basis.

b. Any patients expressing disagreement regarding a level drop shall be informed of how to contact the Patient Advocate to voice his or her concerns. The Patient Advocate will have discretion to elevate concerns to a clinician not affiliated with the patient's treatment team for independent review.

c. Staff found to have engaged in retaliation against patients will be subject to appropriate discipline.

60. Inadvertent and minor violations of hospital policies, including policies that may be ambiguous or misinterpreted, are not automatic grounds for reducing a patient's level, placing a patient on ward hold, or revoking a PCR or CR. Consideration shall be given to the individual patient and the specific circumstances involved as well as whether a warning regarding future violations is warranted.

I. Patient Rights Documentation

61. Defendants will memorialize the procedures identified in Commitments, Part C of this Agreement in a patient rights document, which will be provided to existing patients, given to future patients upon admission, and posted on ward information boards. Patients will also be provided with the contact information for his or her counsel of record along with the patient rights document. Plaintiffs' counsel will be given an opportunity to review and comment on this document at least 30 days prior to its circulation to patients.

VI. IMPLEMENTATION PROCESS

62. By August 31, 2016, Defendants will create an Implementation Committee to oversee the implementation of these settlement provisions. The Implementation Committee shall consist of the Director of the Office of Forensic Mental Health Services, the WSH Forensic Services

Administrator, the ESH Forensic Services Administrator, and other members as deemed appropriate by the Department.

63. The Implementation Committee shall be responsible for implementation of the commitments contained in this Agreement and for satisfying the exit criteria provided in this Agreement. Plaintiffs' counsel may raise any concerns to the committee regarding implementation of this Agreement at any time. Plaintiffs' counsel will be given an opportunity to review and comment on all policy modifications proposed by the Department pursuant to this Agreement at least 30 days prior to the policy becoming effective, unless the policy change is required to comply with CMS regulations or changes in state law. In those circumstances, Plaintiffs' counsel will be notified of the changes as soon as possible.

64. Implementation Committee members will promptly inform Plaintiffs' counsel of any instances of noncompliance with this Agreement that become known to any of the committee members.

65. Plaintiffs' Counsel and Defendants shall coordinate to provide information to patients as well as the courts, prosecutors, and defense counsel regarding the scope and purpose of this Agreement to facilitate system-wide improvements to the treatment and release of patients adjudicated NGRI.

VII. EXIT PROCEDURE AND CRITERIA

A. EXIT PROCEDURE

66. The Parties anticipate Defendants will complete implementation of this Agreement on or before November 30, 2017. The Parties' obligations herein will terminate, if at that time Defendants demonstrate they have substantially complied with the following exit criteria. At that time, the exit criteria set forth in this section will be the sole objective measures that, when

accomplished, will indicate the State of Washington is in substantial compliance with the terms of this Agreement such that the lawsuit herein will be dismissed.

67. On July 31, 2017, or four months prior to the date implementation is anticipated to be completed, whichever is sooner, the parties will meet to determine whether there is any dispute as to whether the Defendants are on track to meet the exit criteria.

B. EXIT CRITERIA

68. Defendants have implemented the following updated or new policies and documents:

a) A more uniform NGRI patient level system policy at each state hospital consistent with the terms of this Agreement.

b) Policies at each state hospital regarding the timely provision of grounds privileges and the PCR/CR/FD process consistent with the terms of this Agreement.

c) Policies at each state hospital regarding the use of personal property by NGRI patients consistent with the terms of this Agreement.

d) Policies at each state hospital regarding patient access to information and records consistent with the terms of this Agreement.

e) Policies at each state hospital regarding the use of personal restraint devices consistent with the terms of this Agreement.

f) Policies at each state hospital regarding the use of strip searches consistent with the terms of this Agreement.

g) Policies at each state hospital regarding staff retaliation consistent with the terms of this Agreement.

h) A patient rights document consistent with the terms of this Agreement. Defendants will also have provided the document to patients in a manner consistent with this Agreement.

69. Defendants will have maintained the updated or new policies and documents referenced in paragraph 68 for a period of at least six (6) months prior to dismissal of this lawsuit in order to allow Plaintiffs' counsel an opportunity to evaluate implementation.

70. **Incident Reporting for Substantial Compliance Review:** As referenced above, see paragraph 68, Defendants have existing policies regarding incident reports, documentation for restraint, and patient grievances. Defendants will be in substantial compliance with sections V.E-I of this agreement regarding patient rights. To demonstrate substantial compliance with these sections, six months after entry of this Agreement, and every ninety days until July 31, 2017, Defendants shall provide copies of the incident reports, orders, and grievances regarding the following to DRW for review:[1]

a. Patients stripped searched;

b. Patients being denied access to personal possessions otherwise approved by hospital policy;

c. Patients ordered and/or placed in personal restraint devices during outings; and

d. Patients claiming retaliation.

[1] DRW's federal mandates and RCW 10.77.210(1) provide the legal authority for Defendants to share incident reports to DRW, which is the designated protection and advocacy agency for Washington State pursuant to RCW 71A.10.080. Courts have found that protection and advocacy ("P&A") agencies', like DRW, must have broad access to individuals with disabilities and their records, and other documents needed to conduct a full investigation of allegations of or probable cause beliefs that a person or persons with disabilities have been abused or neglected. *See Alabama Dis. Adv. v. J.S. Tarwater Dev. Ctr.*, 894 F. Supp. 424 (M.D. Ala. 1995), *aff'd* 97 F.2d 492, 497 (11th Cir. 1996).

71. **Reviewing Random Sample of Patient Records for Substantial Compliance:** Defendants will be in substantial compliance with sections V.A-E of this Agreement regarding creating a more uniform and streamlined treatment and release process that is consistent with patient's individualized needs. Substantial compliance with these exit criteria will be demonstrated by reviews of patients' records.[2] Six months after entry of this Agreement, and every ninety days thereafter until July 31, 2017, Defendants shall provide DRW with the list of all current NGRI patients, and legal guardian(s) when applicable, so that DRW can request the patient's or their legal guardian's consent to DRW's review of their records for compliance with the following:

a. Patients are assessed for grounds privileges, PCR, CR, and FD within thirty (30) days following admission to an NGRI ward and at least every three (3) months afterward during quarterly treatment meetings;

b. Quarterly treatment meetings notes include reference to readiness for grounds privileges as well as PCR, CR, and FD if requested by the patient or deemed clinically indicated. The rationale for a treatment team decision to deny support

[2] DRW's federal mandates and RCW 10.77.210(1) also provide the legal authority for Defendants to share the names of individual patients. Courts have found that requests for information such as names, address and phone numbers of individuals for whom the P&A has probable cause to believe have been or may be abused or neglected, is well within the access authority of P & As, as such information is necessary in order for the P & A to effectively and fully carry out its mandate for such investigations. *See State of Connecticut Office of Protection and Advocacy for Persons with Disabilities v. Hartford Board of Education*, 464 F.3d 229, 244-24 (2d Cir. 2006); *see also In re Petition by Georgia Advocacy Office*, CA No. CV 2000-603, slip op. at 3 (Superior Court, GA August 7, 2001) (where Georgia P & A had probable cause to believe that drug trial participants had been abused and neglected, trial court ordered that the Georgia P & A be provided with a "listing of the names and addresses of all drug study participants and/or their guardians or their next friend…"; *see also Cramer v. Chiles*, Case No. 98-43-Misc.-T-26A, slip op. at 2 (Dist. Ct. Fl. Sept. 12, 1998) (ordering a non-party to provide names of individuals who reside at certain specified facilities along with the names, addresses and telephone numbers of their guardians pursuant to 42 U.S.C. § 6042 (now § 15041) and 45 C.F.R. § 1386.22(I)).

for a patient's request for grounds privileges, PCR, CR, or FD, is documented along with a description of the steps required to be reconsidered for PCR, CR, or FD;

c. Patients are provided timely access to grounds privileges or community outings permitted by existing resources when determined clinically appropriate;

d. When determined necessary consistent with this Agreement, a forensic assessment is provided as soon as possible;

e. Hospital RRBs review hospital supported petitions for PCR, CR, or FD as soon as possible;

f. Hospital RRBs timely review petitions for PCR, CR, or FD that lack hospital support consistent with this Agreement;

g. The Secretary forwards the initial recommendation to the PSRP within ten (10) business days;

h. The Secretary sends his or her completed recommendation for PCR, CR, or FD to the court, defense counsel, and the prosecuting attorney, within 10 business days following the statutorily-allotted timeframe for the PSRP to respond; and

i. Patients who have been deemed to no longer require inpatient hospitalization have been recommended for CR or FD, whichever is clinically indicated.

72. Where DRW determines a patient is not competent to provide consent regarding the records referenced in paragraph 71 and does not have a legally appointed guardian to provide consent on this or her behalf, DRW may invoke its authority to access the patient's records under the PAIMI Act. 42. U.S.C. 10805 (a)(4)(B).

VII. DISPUTE RESOLUTION

73. Any claim, dispute, or other matter in controversy ("dispute") arising out of or related to this Agreement, or the breach, implementation or performance thereof, shall be resolved according to the procedure set forth below.

74. The parties agree to convene, at a mutually agreeable time and place, and use their good-faith, best efforts to discuss and resolve the dispute. This initial meeting will be a direct negotiation between the parties without the assistance of a mediator or other non-party. Any Agreement reached in this forum will be formalized as an addendum to the parties' Settlement Agreement and submitted to the Court for approval.

75. If the parties are unable to resolve the dispute within 30 days, or such other time frame upon which the parties mutually agree, they will engage the mediation services of a mutually agreeable mediator for the purpose of mediating a resolution to the dispute. That meeting will be at a mutually agreeable time and place, and, with the assistance of the mediator, the parties will use their good-faith, best efforts to discuss and resolve the dispute. Any agreement reached in this forum will be formalized as an addendum to the parties' Settlement Agreement and submitted to the Court for approval.

76. The parties agree to use their best efforts to secure third-party funding to support the mediation and consultation role of the mediator, described above. If such funds are not secured at the time of the mediator's invoice for payment, Defendants agree to pay the reasonable costs of the mediator's services.

77. If, after participating in good faith at the mediation, no resolution is reached either party may file an appropriate motion with the United States District Court in this matter. The

moving parties' counsel shall provide the appropriate notice to the opposing party's counsel of such action.

78. In the event that Plaintiffs' counsel reasonably believes that there is a risk of imminent harm to patients as a result of Defendants' substantial noncompliance with their obligations under this Agreement, Plaintiffs will make a good faith effort to consult with Defendants' counsel to discuss the potential harm resulting from an alleged failure to meet their obligations. If the issue or issues are not resolved within a reasonable amount of time given the severity and imminence of harm, parties may engage in an expedited mediation process, using an agreed upon mediator as detailed in the dispute resolution provisions set forth herein. If an appropriately expedited dispute resolution process cannot be scheduled, or the matter is not resolved through the mediator, Plaintiffs may proceed directly to the Court or may take any other necessary legal action. Plaintiffs will provide at least one business day's written notice to Defendants' counsel via facsimile or email and first class mail prior to initiating court action. "Imminent" is defined as "about to occur at any moment; impending" (Webster's II New College Dictionary, 1995).

VIII. SCOPE OF RELEASES AND WAIVERS

79. Defendants admit that Plaintiffs' First Amended Complaint is properly pleaded; the Court has both personal and subject matter jurisdiction of the matter; and venue is proper in the U.S. District Court, Eastern District of Washington.

80. Beyond the admissions in the previous paragraph, this Agreement is not to be construed as an admission of liability or wrongdoing by Defendants. Defendants assert that they have meritorious defenses in response to the Plaintiffs' allegations. Defendants have entered into this Agreement solely for the purpose of settling and compromising Plaintiffs' claims, to avoid

the expense and diversion of resources caused by protracted litigation, and to further terminate the claims asserted against Defendants once this Agreement is implemented.

81. In consideration of the covenants and undertakings set forth herein and intending to be legally bound thereby, it is stipulated and agreed by Plaintiffs and the Defendants, represented by their authorized signatories, that all of Plaintiffs' claims for relief against the Defendants which were asserted in the Complaint filed on May 9, 2014, or First Amended Complaint filed on December 19, 2014, shall be resolved on the terms as set forth in this Agreement.

82. Nothing in this Agreement shall be deemed to limit the Court's powers of contempt or any other power possessed by the Court.

83. Nothing in this Agreement shall be deemed to limit the ability of DRW to fulfill its federal mandates pursuant to the Protection and Advocacy for Individuals with Mental Illness (PAIMI) Act, 42 U.S.C. § 10801, et seq., and the regulations promulgated thereto, 42 C.F.R. § 51 et seq., the Developmental Disabilities Assistance and Bill of Rights (DD) Act, 42 U.S.C. §15041, et seq., and the regulations promulgated thereto, 45 C.F.R. § 1386 et seq., and the Protection and Advocacy of Individual Rights (PAIR) Act, 29 U.S.C. § 794e.

IX. ATTORNEYS' FEES AND COSTS

84. The parties will make good faith efforts to negotiate the amount of attorneys' fees, costs, and litigation expenses to be awarded to Plaintiffs' counsel, after July 31, 2016. Additional fees and costs incurred by Plaintiffs' counsel during the monitoring and implementation of this Agreement will be submitted to Defendants on or after November 30, 2017, or upon determination of substantial compliance with this Settlement Agreement. In the event that the parties cannot reach agreement with respect to attorneys' fees, costs, and expenses, they will

submit the matter for mediation to a mutually agreeable mediator. If attempts to mediate are not successful, plaintiffs may file the appropriate motion with the District Court.

X. OTHER PROVISIONS

85. This Agreement contains all the terms and conditions agreed upon by the Parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.

86. The parties have participated and had an equal opportunity to participate in the drafting and approval of drafting of this Agreement. No ambiguity shall be construed against any party based upon a claim that the party drafted the ambiguous language.

87. Signors of this Agreement represent and warrant they have full power and authority to enter into this Agreement and to carry out all actions required of them to the extent allowed by law. Each of the signors warrants that he/she has fully read and agrees to all the terms and conditions contained herein.

88. Modifications

a. This Agreement may be amended by mutual agreement of the parties and approval of the Court. In order to be binding, such amendments must be in writing, signed by persons authorized to bind each of the parties, and approved by the Court. The parties further agree to work in good faith to obtain Court approval of necessary amendments or modifications.

89. Frustration of purpose/force majeure. If the Defendants are unable to accomplish any of their obligations or meet timeframes under this Agreement due to events beyond their reasonable control (such as natural disaster, labor disputes, war, acts of God or governmental action beyond state control), Defendants shall notify Plaintiffs' counsel with ten (10) business

days of the date upon which Defendants become aware of the event and describe the event and its effect on performance. If performance is expected to be delayed or the event frustrates the purpose of the Agreement, the parties shall negotiate in good faith to amend the Agreement and seek approval of the Court for such amendment.

90. Severability. The provisions of this Agreement are severable. If any court holds any provision of this Agreement, including any provision of any document incorporated by reference, invalid, that invalidity shall not affect the other provisions of this Agreement.

91. This Agreement shall inure to the benefit of and be binding upon the legal representatives and any successor(s) of Plaintiffs and Defendants.

92. If, for any reason, the Court does not approve this Agreement and the Stipulated Judgment as a fair, reasonable, and adequate settlement of this litigation as between the Plaintiffs and Defendants, this Agreement shall be null and void.

93. This Agreement may be executed in counterparts, each of which will be deemed to be an original and all of which taken together shall constitute a single instrument. This Agreement may be executed by signature via facsimile transmission or electronic mail which shall be deemed the same as an original signature.

COUNSEL FOR PLAINTIFFS

By: _____ Date: 7/28/2016
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WSBA NO. 35767

By: _____ Date: 7/28/2016
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By: _____ Dated: 7/26/16
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FOR THE STATE OF WASHINGTON

By: _____ Dated: 7/25/16
DEFENDANT
PATRICIA LASHWAY
Acting Secretary
Washington State Department of Social
and Health Services

COUNSEL FOR DEFENDANTS:

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