

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION**

DISABILITY RIGHTS FLORIDA, INC.,  
On behalf of its Clients and Constituents,

Plaintiff,

vs.

Case No. 3:18-cv-00179-HLA-JRK

JULIE JONES, Secretary, Florida Department  
Of Corrections in her Official Capacity and  
FLORIDA DEPARTMENT OF CORRECTIONS,  
an Agency of the State of Florida,

Defendants.

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**JOINT MOTION FOR COURT ADOPTION  
OF SETTLEMENT AGREEMENT**

The Plaintiff, Disability Rights Florida, and Defendants, Florida Department of Corrections and Secretary Julie Jones, jointly move this Honorable Court to adopt the attached Settlement Agreement (“Agreement”) (Exhibit #1) as an order of the Court to resolve the above-styled case and state as follows:

1. In late 2016, Plaintiff completed an investigation into conditions and the provision of mental health treatment and services in the Defendants’ inpatient mental health units. Plaintiff drafted a federal court Complaint against the Florida Department of Corrections and its Secretary, Julie Jones, alleging violations of the Eighth Amendment to the United States Constitution, the Americans with Disabilities Act, 42 U.S.C. §12132, and the Federal Rehabilitation Act, 29 U.S.C. §794.

2. In December 2016, Plaintiff provided a copy of the draft Complaint to Secretary Jones and notified Defendants of its intention to file federal litigation regarding alleged

constitutional and statutory violations in the provision of mental health services and treatment at the Florida Department of Corrections' inpatient mental health units around the state.

3. The Defendants, through counsel, responded and the Parties agreed to pre-litigation mediation.

4. In January 2017, Plaintiff consulted with the Jacksonville Division of the Middle District Federal Court regarding its availability to preside over pre-litigation mediation sessions. The Honorable Harvey E. Schlesinger, U.S. District Court Judge, agreed to preside over mediation with the consultation and approval of the other Division Judges. The Defendants agreed to participate in pre-litigation mediation with Judge Schlesinger. The first mediation session occurred that same month.

5. At the first mediation session, the Parties agreed that the Plaintiff would send a team of mental health experts to conduct site visits at two of the largest inpatient mental health units to assess the treatment and services provided to the patients on the units. Defendants would send their own team of clinicians to the assessments.

6. In February 2017, the Parties' teams conducted site visits to assess the treatment and services provided to the patients on the inpatient mental health units. Plaintiff's expert team consisted of two psychiatrists and one psychologist, all of whom had extensive experience providing mental health treatment and services in institutional settings. Defendants' team consisted of its own regional and state-level clinical staff and ombudsmen. The site visits included interviews with security staff, interviews with clinical staff, interviews with patients, review of patient records, review of policies, observation of treatment activities and observation of unstructured out of cell activities.

7. In March 2017, the Plaintiff's team submitted expert reports to Defendants and Defendants provided their own institutional evaluations for review and consideration by the Plaintiff. Based on the observations and conclusions of both teams, the Parties began negotiating a resolution to this matter with Judge Schlesinger's assistance.

8. The Parties engaged in an extensive series of mediations and calls over the course of a twelve-month period. During this time, the Parties exchanged multiple settlement proposals and worked diligently toward finding a mutually agreeable resolution that addressed Plaintiff's concerns. The expert reports and institutional evaluations were discussed among the Parties and with Judge Schlesinger during mediation. The findings from the Parties' reports and evaluations became the basis for the relief the Parties ultimately negotiated with the assistance of Judge Schlesinger.

9. At their final mediation session on December 5, 2017, the Parties reached an agreement in principle. On December 22, 2017, the Parties executed the Agreement.

10. The Agreement is designed to remedy the constitutional deficiencies alleged by the Plaintiff in its Complaint as to the provision of treatment and services in the Defendants' inpatient mental health units. The Agreement provides for independent monitoring of implementation and of compliance with the Agreement.

11. Additionally, the Parties agreed the Agreement would be adopted as an order of the Court. The Agreement provides that the jurisdiction of the Court over the Agreement shall commence upon the date of the Court's adoption of the Agreement as an order and shall extend from the date of adoption until December 31, 2020 or 60 days after receipt of the final monitoring report, whichever is sooner.

12. The Parties agreed that, when filed, the case should be presided over by Judge Schlesinger because of his intimate involvement in assisting with the negotiated resolution of this matter.

13. For the purposes of this lawsuit only and in order to settle this matter, Defendants stipulate that the conditions in the Defendants' inpatient mental health units necessitate the remedial measures contained in the Agreement, including providing individualized treatment services, providing adequate number of hours for structured out of cell treatment and unstructured out of cell activities, providing specialized treatment for patients engaging in self-injurious behavior, providing appropriate psychotropic medication practices, providing adequate discharge planning, eliminating the excessive use of isolation and restraint on the inpatient mental health units, providing increased protections for patients on the inpatient mental health units charged with disciplinary violations, providing greater coordination of care between medical and mental health staff for patients on the inpatient mental health units and providing adequate training of clinical and security staff assigned to the inpatient mental health units.

14. The Parties stipulate that the Agreement complies in all respects with the Prison Litigation Reform Act, 18 U.S.C. §3626. The Parties further stipulate that the prospective relief in the Agreement is narrowly drawn, extends no further than necessary to correct the violations of federal rights alleged in the Complaint, is the least intrusive means necessary to correct these violations, and will not have an adverse impact on public safety or the operation of a criminal justice system.

15. As discussed in more detail below, this Court should adopt the Agreement as an order of the Court because the settlement is "fair, adequate, reasonable, and not the product of collusion," *Day v. Persels & Assoc., LLC*, 729 F.3d 1309, 1326 (11th Cir. 2013), and because it

complies with the Prison Litigation Reform Act in that the relief is “narrowly drawn, extends no further than necessary to correct the violation of the federal rights, and is the least intrusive means necessary to correct the violations of the federal rights.” 18 U.S.C. §3626.

## MEMORANDUM OF LAW

### I. Procedural History

#### a. Plaintiff's Complaint

Plaintiff's Complaint against the Florida Department of Corrections and its Secretary, Julie Jones, alleged violations of the Eighth Amendment to the United States Constitution, the Americans with Disabilities Act, 42 U.S.C. §12132, and the Federal Rehabilitation Act, 29 U.S.C. §794, as a result of the constitutionally and statutorily inadequate mental health treatment and services being provided to patients in the Defendants' inpatient mental health units.

The Complaint specifically alleged constitutional and statutory violations including a lack of individualized treatment planning, a lack of individualized treatment services, an inadequate number of hours for structured out of cell treatment and unstructured out of cell activities, limited or no treatment for patients engaging in self-injurious behavior, inappropriate psychotropic medication practices and inadequate discharge planning. The Complaint also alleged excessive use of isolation and restraint on the inpatient mental health units, an inadequate and punitive disciplinary process for patients on the inpatient mental health units, limited or no coordination of the medical and mental health teams on the inpatient mental health units and inadequate training of clinical and security staff assigned to the inpatient mental health units.

#### b. The Mediation Process

In December 2016, Plaintiff notified Defendants of its intention to file federal litigation regarding the allegedly unconstitutional and statutorily inadequate provision of mental health

treatment and services in the Defendants' inpatient mental health units. (Ex. #1 at 2). Plaintiff provided its draft federal court Complaint along with a letter suggesting the Parties engage in pre-suit mediation to immediately address Plaintiff's concerns due to the alleged ongoing harm to patients. Beginning in January 2017, the Parties engaged in pre-litigation mediation sessions with The Honorable Harvey E. Schlesinger, U.S. District Court Judge, to negotiate a resolution to the dispute. *Id.*

The mediation process included the Parties sending teams of experts and mental health clinicians to the Defendants' inpatient mental health units to observe and evaluate the mental health treatment and services provided to patients to provide a foundation for determining the state of the services at the institutions. *Id.* These reports and evaluations were based on many interviews with staff and patients, review of thousands of pages of patient records and policies, and observation of treatment services and activities on the inpatient mental health units. These reports and evaluations became the basis for negotiating appropriate relief. *Id.*

After twelve months of mediation, in December 2017, a final Agreement was reached and executed by the Parties. *Id.* at 22. The Agreement includes an implementation timeline, a comprehensive approach to addressing the constitutional violations alleged in the Complaint, a requirement for an independent monitoring team and compliance assessment and attorneys' fees and costs. *See id.*

c. The Agreement

The Agreement thoughtfully addresses Plaintiff's allegations that Defendants violated the Eighth Amendment to the United States Constitution, the Americans with Disabilities Act, 42 U.S.C. §12132, and the Federal Rehabilitation Act, 29 U.S.C. §794, as a result of the allegedly unconstitutional and statutorily inadequate mental health treatment and services being provided

to patients in the Defendants' inpatient mental health units. The Agreement specifically includes substantive relief addressing the creation and revision of individualized treatment plans, the minimum number of hours required for structured out of cell treatment and unstructured out of cell activities, the creation of a systematized program for patients engaging in self-injurious behavior, appropriate psychotropic medication practices and discharge planning. (Ex. #1 at 5-14). The Agreement also addresses excessive use of isolation and restraint on the inpatient mental health units, the disciplinary process utilized on the inpatient mental health units, coordination of the medical and mental health teams on the inpatient mental health units and training of clinical and security staff assigned to the inpatient mental health units. *Id.*

Additionally, the Agreement provides for an independent monitoring team, contracted by the Correctional Medical Authority ("CMA"), to conduct a series of compliance assessments over a two-year period of time. *Id.* at 14-17. The CMA was created in 1986 and its mission is to monitor and promote delivery of cost-effective health care that meets accepted community standards to inmates in the Florida Department of Corrections. The CMA is already involved in regularly monitoring health care provided in the Florida Department of Corrections. Under the Agreement, the CMA team will evaluate each inpatient mental health unit's compliance with the Agreement twice over the life of the current Agreement. *Id.* The monitoring team will provide compliance assessment reports for each institution to the Parties. *Id.*

In the event there is a dispute over an alleged lack of substantial compliance, the Plaintiff must provide the Defendants, in writing, the specific reasons it believes the Defendants are not in substantial compliance and reference specific provisions of the Agreement. *Id.* at 18-19. Defendants will have 30 days to respond to Plaintiff with a description of the steps they took to investigate the issues addressed in the notice, the results of the investigation and any corrective

action steps to address the issues. *Id.* Plaintiff must advise Defendants whether it accepts or rejects FDC's response within ten days of receipt. *Id.* If Plaintiff rejects Defendants' response, the Parties must meet to attempt to resolve remaining disputes within 20 days of Plaintiff's rejection. *Id.* The monitoring team will participate in those meetings and the Parties may engage a mediator to assist with resolution of the dispute. If the meeting is not successful, only then may the Plaintiff seek relief from the Court. *Id.*

The Agreement becomes effective upon the date of the Court's adoption of the Agreement as an order of the Court. *Id.* at 21. The Parties agreed the Court's jurisdiction should extend until December 31, 2020 or 60 days after the receipt of the final monitoring report, whichever is sooner, unless the Plaintiff files a motion to extend jurisdiction based on the argument that prospective relief remains necessary to correct a current and ongoing violation of Federal rights. *Id.* The Parties agreed that the case should be presided over by Judge Schlesinger because of his intimate involvement in year-long mediation and the ultimate settlement of this case.

## II. Legal Standard

There is a "strong judicial policy favoring settlement as well as the realization that compromise is the essence of the settlement." *Bennet v. Behring Corp.*, 737 F.2d 982, 986 (11th Cir. 1984). When adopting a settlement as an order of the Court, the Court should ensure the settlement is "fair, adequate, reasonable, and not the product of collusion," *Day*, 729 F.3d at 1326 (11th Cir. 2013). Additionally, because this Agreement constitutes prospective relief regarding prison conditions, the Court must find the Agreement complies with the Prison Litigation Reform Act (PLRA), 18 U.S.C. §3626. The PLRA requires the Court to find the relief in the Agreement is "narrowly drawn, extends no further than necessary to correct the violation



of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right.” 18 U.S.C. §3626(a) & (c).

a. The Agreement Meets the Standard for Adoption of Settlements, Generally

The law requires the agreement to resolve a genuine dispute between the parties; provide fair, adequate and reasonable relief; and not be the result of collusion. *Day*, 729 F.3d at 1326 (11th Cir. 2013). The Agreement requested to be adopted by the Court in this instant case meets each of these requirements.

First, the Agreement resolves a genuine dispute among the Parties. Plaintiff sent Defendants a demand letter and draft Complaint prior to filing litigation. The negotiation process to resolve the matter took twelve months and required the assistance of a Federal District Court Judge. The final negotiated Agreement resolves all disputes outlined in the Complaint filed with the Court.

Second, the Agreement provides fair, adequate and reasonable relief. The Agreement is a comprehensive document outlining the relief that addresses the particular constitutional violations that Plaintiff alleged in its Complaint. The Parties validly and willingly consented to the Agreement. The Agreement does not violate the Constitution, statutes or public policy. In fact, the Agreement secures the constitutional and statutory rights of the patients in the Defendants’ inpatient mental health units. The Agreement does not extend any further than necessary to address the Plaintiff’s allegations and provides for an end date to the Court’s jurisdiction.

Finally, the Agreement is not the result of collusion. The Agreement is the result of twelve months of arms-length negotiations with the assistance of a Federal District Court Judge. The Parties were represented by teams of “experienced litigators” who engaged in “a process of

compromise in which ‘in exchange for the savings of cost and elimination of risk, the parties each give up something they might have won had the proceeded with litigation.’” *U.S. v. City of Jackson, Miss.*, 519 F.2d 1147, 1152 (5th Cir. 1975). Each Party provides this Court with the assurance that the Agreement is not the product of collusion.

b. The Agreement Complies with the Prison Litigation Reform Act

The Defendants have stipulated for the purposes of this lawsuit that the conditions in the inpatient mental health units necessitate the remedial measures contained in the Agreement.

The mediation negotiations ensured that the relief in the Agreement is narrowly tailored to correct the particular constitutional violations alleged in the Complaint. The Parties stipulated that this Agreement is narrowly drawn, extends no further than necessary to correct the violations of Federal rights as alleged by the Plaintiff in the Complaint, is the least intrusive means necessary to correct these violations, and will not have an adverse impact on public safety or the operation of a criminal justice system. Throughout negotiations, the Parties ensured the Agreement was specifically targeted at achieving and maintaining constitutional requirements without extending further than necessary to correct the alleged violations. The Parties stipulated the conditions in the units necessitate the remedies outlined in the Agreement. The Defendants specifically agreed that “the services and treatment required by this Agreement are necessary to satisfy patient needs.” (Ex. #1 at 2).

Additionally, the Agreement calls for independent monitoring by contractors for the Correctional Medical Authority (“CMA”). As explained *supra*, the CMA is already involved in regularly monitoring health care provided in the Florida Department of Corrections. Under the Agreement, the CMA team will evaluate each inpatient mental health unit’s compliance with the Agreement twice over the life of the current Agreement. Utilizing a state agency that already

monitors the Defendants medical and mental health system is the least intrusive means of monitoring this Agreement.

Finally, the dispute resolution process includes a non-judicial component prior to exercising the Court's jurisdiction. As described *supra*, the Agreement provides for an extensive non-judicial dispute resolution process prior to seeking relief from the Court. If the Parties are not successful in their attempts to resolve the dispute, then Plaintiff may seek relief from the Court to effect compliance. The dispute resolution process is far less intrusive than the Parties seeking relief from the Court immediately upon an allegation the Defendants are not in substantial compliance.

Courts have found that if the scope and substance of the remedial measures is agreeable to a state agency defendant, then it is almost by definition less intrusive than a remedy imposed non-consensually and must be taken to mean it is precisely tailored to the needs of the conditions presented in the litigation. *See Morales Feliciano v. Calderon Serra*, 300 F. Supp. 2d 321, 334 (D.P.R. 2004)(stating "the very fact that the defendant [state agency] chose to join the plaintiffs in selecting this remedy would seem to mean – and must be taken to mean – that they understood it to be precisely tailored to the needs of the occasion, that it is narrowly drawn and least intrusive – in fact not intrusive at all."); *Little v. Shelby Cnty., Tenn.*, 2003 WL 23849734, \*2 (W.D. Tenn. 2003)(stating the proposed remedy in a jail reform case was clearly the least intrusive means because it was "advocated by the parties themselves and determined by the parties...").

For the reasons stated above, the Agreement is narrowly drawn, extends no further than necessary to correct the violations of Federal rights as alleged by the Plaintiff in the Complaint,

is the least intrusive means necessary to correct these violations, and will not have an adverse impact on public safety or the operation of a criminal justice system.

### III. Conclusion

The Parties share the goal of ensuring the constitutional provision of mental health treatment and services to patients in the Defendants' inpatient mental health units. The Parties agree that the Agreement resolves all claims alleged in the Complaint and, when properly implemented, will ensure constitutional provision of mental health treatment and services in the inpatient mental health units. The Parties also agree that the Agreement meets the requirements of the PLRA.

This Agreement, negotiated with the assistance of the Honorable Judge Schlesinger, will resolve the Parties' disputes in the most effective manner. Voluntary compliance through a negotiated Agreement adopted by the Court is more likely to accomplish the constitutional goals, minimize litigation expenses and respect judicial economy than will an order imposed at the end of expensive and protracted litigation. *See U.S. v. City of Miami*, 664 F.2d 435, 441 (5th Cir. 1981).

WHEREFORE, the Parties jointly request that this Court enter an order adopting the Settlement Agreement in its entirety as to the Complaint and entering it as an order of the Court.

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of this pleading was served upon all Parties by electronic mail on January 31, 2018.

/s/ Peter P. Sleasman  
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