

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

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

Plaintiffs,

v.

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

Defendants.

Case No. 08-4439
(DMC-MF)

**ORDER DIRECTING
NOTICE OF
SETTLEMENT
BETWEEN
PLAINTIFFS AND
DEFENDANT GARY
M. LANIGAN**

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

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

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

WHEREAS, the claims against the Passaic County Defendants have been resolved through a separate, federally enforceable Settlement Agreement, which was entered into by Plaintiffs and the Passaic County Defendants on December 30, 2011 and about which this Court granted an Order Directing Notice of Settlement on January 13, 2012; and

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

WHEREAS, the litigants have engaged in informal discovery; and

WHEREAS, Plaintiffs and Defendant Gary M. Lanigan acknowledge that, to the extent possible, it is in their best interests to resolve the issues raised in the Settlement Agreement attached hereto as Exhibit A ("DOC Settlement Agreement"); and


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

THIS MATTER having come before the Court on the parties' Joint Motion, and the Court having considered the papers and for good cause shown; IT IS ON THIS 23rd day of FEB., 2012, ORDERED:

1. Within 3 days of the date of this Order, one (1) copy of the following documents shall be provided to each inmate in the Passaic County Jail: a plain language summary of the DOC Settlement Agreement and comment sheet in both English and Spanish (hereinafter, "summaries"), a copy of which (in English) is attached to hereto as Exhibit B.

2. Within 3 days of the date of this Order, the following documents shall be posted in all day rooms, common areas, and the law library and shall be electronically available on the law library computers until the Court's Final Approval of the DOC Settlement Agreement:
 - (a) The attached DOC Settlement Agreement; and
 - (b) The summaries.
3. Upon request by an inmate, a Passaic County Jail ombudsman shall provide a copy of the DOC Settlement Agreement to the requestor no later than four (4) days from the date of the request.
4. Class member comments/objections to the proposed DOC Settlement Agreement that are provided to a Passaic County Jail ombudsman shall be sent by the Jail to Jennifer B. Condon, Seton Hall University School of Law, Center for Social Justice, 833 McCarter Highway, Newark, NJ 07102 by no later than 2 APRIL, 2012. Upon request, the Jail ombudsman will provide envelopes to inmates in which to place any comments/objections. Class counsel shall provide copies of all written comments to the Court and counsel for the Defendants no later than 16 APRIL, 2012. These comments/objections will be reviewed by the Court prior to the Fairness Hearing.

5. The Court will conduct a Fairness Hearing on the entry of the proposed DOC Settlement on 23 APRIL 9:30 AM, 2012¹ before the Honorable Dennis M. Cavanaugh,¹ COURTROOM 4 USPO 1 COURTHOUSE at which time counsel shall appear and the Court will evaluate the merits of the DOC Settlement for the purpose of final approval of this Class Action Settlement, and the resolution of the litigation pursuant to Federal Rules of Civil Procedure 23(e), in light of any written comments received from class members and any statements of counsel pertaining to the DOC Settlement. *


Honorable Dennis M. Cavanaugh, U.S.D.J.

Dated: 23 FEB. 2012

* FURTHER ORDERED THE HEARING SCHEDULED FOR 27 MARCH 2012 AS TO THE PASSAIC COUNTY DEFENDANTS IS ADJOURNED UNTIL 23 APRIL 2012 @ 9:30, AND FURTHER ORDERED THAT THE DATES IN ORDER (95) ARE CONTINUED TO THE DATES AS SET IN P 4 OF THIS ORDER.

EXHIBIT A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
VICINAGE OF NEWARK

ANGEL COLON, et al.,	:	HON. DENNIS M. CAVANAUGH, U.S.D.J.
	:	
Plaintiffs,	:	
	:	Civil Action No. 08-4439-DMC-MF
v.	:	
	:	
GARY M. LANIGAN, et al.,	:	SETTLEMENT AGREEMENT
	:	BETWEEN PLAINTIFFS AND
Defendants,	:	DEFENDANT GARY M. LANIGAN
	:	
_____	:	

WHEREAS, Plaintiffs Angel Colon, Roy Schmitt, Jubra'eel Lebron, Winifred Gates, Mark Harkins, Matthew Carley, Cecilio Toledano and Andrew Crawford ("Plaintiffs") on September 3, 2008, initiated this action against the Defendants, including Defendant George Hayman, in his official capacity as Commissioner of the New Jersey Department of Corrections ("DOC"), seeking wide-ranging declaratory and injunctive relief on behalf of a class of inmates at the Passaic County Jail as well as the recovery of attorney's fees and costs; and

WHEREAS, the Complaint was brought pursuant to 42 U.S.C. § 1983, seeking redress for alleged violations of the First, Fifth,

Eighth and Fourteenth Amendments of the United States Constitution; and

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

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

WHEREAS, Plaintiffs are entering into a separate, federally enforceable Settlement Agreement against Passaic County, the Sherriff of Passaic County, the Passaic County Board of Chosen Freeholders and the Warden of the Passaic County Jail (henceforth, the "Passaic County Settlement"); and

WHEREAS, none of the claims made herein by any party are admitted or conceded; and

WHEREAS, the caption has been amended by consent order to substitute Gary M. Lanigan, in his official capacity as Commissioner of the Department of Correction, for Defendant Hayman; and

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

NOW, THEREFORE, Plaintiffs and Defendant Lanigan agree to settle their disputes as follows:

1. Defendant Lanigan will agree to the following terms for the period beginning as of the date of judicial approval of this Settlement Agreement through the earlier of the date that the Passaic County Settlement terminates or five years from the date of judicial approval of this Settlement Agreement:

- (A) Unless otherwise ordered by a court, the DOC will remove all State inmates from the Passaic County Jail ("PCJ") within twenty (20) days of receipt of the Judgment of Conviction. The DOC reserves the right to seek modification of this term in the event of an emergency;
- (B) Unless otherwise ordered by a court, the DOC will remove all State inmates from the PCJ within twenty (20) days that the parole revocation order becomes final. The DOC reserves the right to seek modification of this term in the event of an emergency; and
- (C) The DOC shall conduct a physical inspection and/or programmatic evaluation of the Passaic County Jail at least annually (every twelve (12) months), pursuant to

N.J.A.C. 10A:31-2.2.

2. Defendant Lanigan shall pay Plaintiffs' counsel \$25,000 as reimbursement for expert fees incurred by Plaintiffs.

3. Plaintiffs shall not seek the payment of attorneys' fees and costs from Defendant Lanigan.

4. Plaintiffs agree that, in consideration of the provisions hereof, including this release, they are releasing Defendant Lanigan and his insurers, agents, employees, heirs, executors, personal representatives and assigns from all claims for injunctive relief and payment of counsel fees and costs.

5. Nothing herein shall constitute an admission or concession of liability by any party.

6. Plaintiffs and Defendant Lanigan agree that this is a mutually binding Settlement Agreement. This Settlement Agreement is a contract enforceable under the law of contracts of the State of New Jersey.

7. Defendant Lanigan has agreed to enter into this Settlement Agreement in consideration for Plaintiffs' agreement to accede to the dismissal of this litigation against him with prejudice.

8. Neither Defendant Lanigan nor Plaintiffs shall challenge the validity of this Settlement Agreement on the

grounds that the signatories hereto lack the authority or capacity to contract or the ground that the Settlement Agreement is not supported by adequate consideration.

9. The terms and conditions reflected in this Settlement Agreement shall not be amended, changed or altered orally. Such terms and conditions may be amended, changed or altered only by written agreement between the parties through their respective counsel.

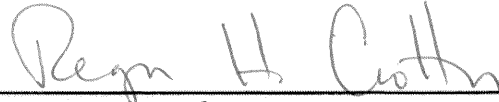
10. Plaintiffs and Defendant agree that if any provision or provisions of this Settlement Agreement are found to be contrary to law, the remaining provisions will not be affected and shall remain in full force and effect.

11. Upon judicial approval of this Settlement Agreement, Plaintiffs shall forward to the Court the Final Judgment Order for execution and filing. Within thirty (30) days of the entry of the Final Judgment Order, Defendant Lanigan shall pay Plaintiffs and their counsel \$25,000 in reimbursement for expert fees incurred by the Plaintiffs in connection with this matter.

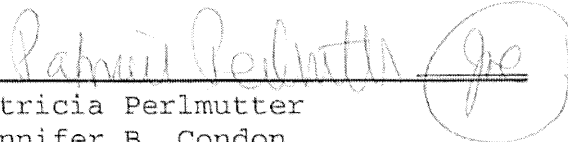
12. Any action to enforce the Settlement Agreement shall be brought in the Superior Court of New Jersey, Chancery Division, with venue in Passaic County.

13. This Settlement Agreement is not a contract for personal services and, in the event of a breach, is capable of judicial enforcement by specific performance.

For the Plaintiffs:



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(609) 955-3200



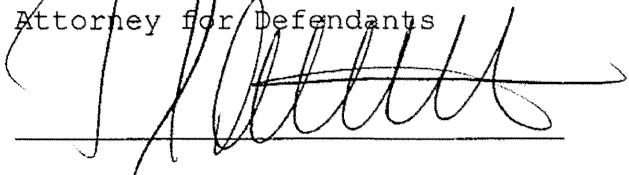
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Jennifer B. Condon
**SETON HALL UNIVERSITY SCHOOL OF
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833 McCarter Highway
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(973) 642-8700



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

DATED: 2/15/12

For the Defendant:
JEFFREY CHIESA
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Defendants



By: Dianne M. Moratti
Deputy Attorney General

DATED: 2/13/12

EXHIBIT B

SUMMARY OF SETTLEMENT AGREEMENT WITH DEFENDANT GARY LANIGAN

The following is a summary of the proposed settlement agreed to by the Plaintiffs and Defendant Gary lanigan, in his official capacity as Commissioner of the New Jersey Department of Corrections in *Colon, et al. v. Passaic County, et al.*, a class action suit brought on behalf of all inmates at the Passaic County Jail ("Jail") to improve conditions within the Jail. The Plaintiffs in this lawsuit are all current and future inmates of the Jail. The suit did not seek money damages.

The purpose of this summary is to give you a better understanding of the basic elements of the Settlement Agreement with the Department of Corrections ("the DOC Settlement"). If you were at the Jail on January 27, 2012, you have already received the summary of the Settlement Agreement with the Passaic County Defendants. The description below is not intended to alter in any manner either the DOC Settlement or the Settlement with Passaic County. Please review a full copy of the DOC Settlement, available from the ombudsman, the law library and posted in the day rooms and common areas, to learn its details. A federal judge will need to approve the fairness of the DOC Settlement before it can be implemented. The Court has scheduled a Fairness Hearing for _____, 2012, and has requested that all inmates who would like to comment on the settlement mail their comments either on this form or any other piece of paper to Plaintiffs' counsel (Jennifer B. Condon, Seton Hall University School of Law, Center for Social Justice, 833 McCarter Highway, Newark, NJ 07102) by _____ or return them to the Jail Ombudsman who will collect them and return them to your attorneys. Comments mailed after ___ will not be considered by the Court in determining the fairness of the Settlement. **Please note that your comments will not be protected by the attorney-client privilege. Your attorneys must forward copies of all comments to attorneys for the Jail and to the Court.**

The terms of the agreement require the New Jersey Department of Corrections to remove state-sentenced inmates and inmates who have received a final parole revocation hearing from the Passaic County Jail on a timely basis. The Department of Corrections will conduct an annual inspection of the Passaic County Jail to insure that the Jail is meeting minimum State standards and to pay for some of Plaintiffs' expert expenses.

