

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

**J.H., by and through his next friend,
Flo Messier; L.C., by and through her
next friend, Flo Messier; R.J.A., by and
through his next friend, J.A.; Jane Doe,
by and through her next friend, Julia
Dekovich; A.B., by and through his next
friend, J.B.; S.S., by and through his
next friend, Marion Damick; G.C., by
and through his next friend, Luna
Pattela; R.M., by and through his next
friend, Flo Messier; P.S., by and
through his next friend, M.A.S.; T.S.,
by and through his next friend, Emily
McNally; M.S., by and through his next
friend, Emily McNally; and all others
similarly situated,**

Plaintiffs

v.

**Theodore Dallas in his official capacity
as Secretary of the Pennsylvania
Department of Human Services; Edna I.
McCutcheon in her official capacity as
the Chief Executive Officer of
Norrstown State Hospital; Robert
Snyder in his official capacity as the
Chief Executive Officer of Torrance
State Hospital,**

Defendants

Civil Action No. 1:15-cv-02057-SHR

CLASS ACTION

(Judge Rambo)

Settlement Agreement

WHEREAS Plaintiffs and class members they seek to represent (Class A), who are individuals that have been declared incompetent by the courts to stand trial on

criminal charges and who have been ordered committed to Norristown State Hospital (“NSH”) or Torrance State Hospital (“TSH”) for treatment to help them attain competence, but who instead have remained in jail for more than a week and in some cases for over a year, filed this civil rights class-action lawsuit on October 22, 2015, against officials of the Pennsylvania Department of Human Services (“DHS”), alleging that the delays in transferring them to one of the DHS hospitals for competency-restoration treatment violate the Due Process Clause of the Fourteenth Amendment to the United States Constitution; Title II of the Americans with Disabilities Act (“ADA”), 42 U.S.C. §§ 12131-12134; and Section 504 of the Rehabilitation Act (“RA”), 29 U.S.C. § 794¹;

WHEREAS Plaintiffs also filed a motion for preliminary injunction seeking an expedited hearing to ask that the court (a) declare that delays exceeding seven days in transferring Plaintiffs and Class A members to the state hospitals for treatment violate the laws identified in the preceding paragraph, and (b) enter a preliminary injunction directing DHS to provide sufficient resources to allow transfer of Class A members to hospitals within seven days;

WHEREAS the court has scheduled a hearing on Plaintiffs’ preliminary injunction motion to begin January 27, 2016;

WHEREAS the parties have exchanged discovery and had an opportunity to examine the merits of each of the parties’ respective claims and defenses;

WHEREAS both Plaintiffs and Defendants desire to reduce the delays in transferring incompetent patients to suitable treatment facilities, which both

¹ Plaintiffs also raised claims with respect to a second putative class of incompetent Plaintiffs (Class B) who are committed to NSH or TSH for treatment, whom Defendants have found to be unlikely to become competent or to no longer be making progress toward competency, and who continue to be detained in a forensic unit by Defendants for more than thirty (30) days after the determination that the person is unlikely to become competent. Although the Class B claims are not the subject of the pending preliminary injunction motion, the parties endeavor, through the steps outlined in this Settlement Agreement, to create solutions that will facilitate the timely movement of *both* Class A and Class B members to appropriate settings. Notwithstanding the foregoing, nothing in this Settlement Agreement is intended to waive or otherwise release Defendants from the claims asserted by Class B members and the named Plaintiffs that seek to represent them. Likewise, Defendants do not, through this Settlement Agreement, concede liability with respect to Class B. The parties agree, however, that the claims of Class B members and named Plaintiffs will not be litigated for at least ninety (90) days.

Plaintiffs and Defendants acknowledge is a problem that began years ago, has increased recently, and cannot be justified clinically or legally;

WHEREAS the parties have engaged in good faith negotiations in an effort to address the claims raised by this lawsuit; and

WHEREAS the parties believe that a settlement of this litigation now is in the best interests of the Plaintiffs and residents of the Commonwealth, and will enable the parties to work cooperatively, and with other relevant non-Commonwealth government agencies, to reduce the delays in transferring incompetent patients to appropriate placements for treatment to a constitutionally allowable level;

THEREFORE, intending to be bound, the parties hereby agree as follows:

1. Defendants stipulate that there is sufficient evidence to establish that current average wait times of at least sixty (60) days for admission to both NSH and TSH fail to comply with Fourteenth Amendment due process guarantees;
2. Defendants will not oppose Plaintiffs' motion to certify Class A, as redefined consistent with the maximum allowable wait time, as determined under the process described in paragraph 7.
3. Defendants agree to allocate necessary resources to create new placement options, in addition to and not instead of current placement opportunities, at clinically and legally suitable locations in hospitals or community-based settings, and make those resources available to remove currently incarcerated Class A members from jail and to prevent future Class A members from being detained in jail beyond constitutionally allowable time periods, as follows:
 - a. Within one hundred and twenty (120) days of this agreement, to create at least sixty (60) new placement options in the Commonwealth;
 - b. Within ninety (90) days of this agreement, to make available at least \$1 million to create supportive housing opportunities in the City of Philadelphia;

- c. Within one-hundred-eighty (180) days of this agreement, to create at least sixty (60) more new placement options, in addition to those required under subparagraph (a), *supra*, in the Commonwealth.
4. No so-called “jail-based competency restoration treatment” or “mobile restoration treatment” provided in jails shall count toward the new placement options required by the preceding paragraph. In-jail *assessments* (i.e., competency evaluations) likewise do not count against DHS’s placement requirements. Defendants shall consider a statewide effort to improve and manage the quality of competency evaluations.
5. Within sixty (60) days, DHS will assess (a) every person currently on a waiting list for admission to NSH or TSH for restoration treatment, and (b) every person currently at NSH and TSH in the forensic unit or a civil unit and under the jurisdiction of a criminal court, to determine which persons would be eligible legally and clinically for less restrictive placement and, if so, what barriers exist to such a change in placement. If the person is not legally eligible presently for less restrictive placement, the assessment shall include an explanation for why the person is not eligible and what it would take to make the person eligible.
6. Defendants agree that over the next sixty (60) days they will work with Plaintiffs’ expert, Dr. Joel Dvoskin, Plaintiffs’ attorneys, and stakeholders identified as necessary or helpful by Defendants to develop a strategic plan for reducing the wait times for admission of Class A members to clinically appropriate competency-restoration-treatment placement options within a constitutionally allowable time period. To facilitate that cooperative effort, Defendants will provide the weekly NSH and TSH wait lists, and other relevant data regarding patient wait times, to Plaintiffs’ counsel. Development of the strategic plan shall include a meeting of Defendants, and any stakeholders Defendants deem necessary, with Plaintiffs’ counsel and Dr. Dvoskin on Monday, February 1, 2015, to discuss (a) needed research and analysis beyond that identified in the preceding paragraph, and (b) necessary elements of the strategic plan. Defendants shall consider, in addition to the funding of new placements identified in paragraph 3, opportunities to divert Class A members from the criminal justice system and to improve efficiencies in existing operations.

7. Plaintiffs propose that the parties agree to a maximum allowable wait time between the date of court-ordered restoration treatment and transfer to a clinically and legally appropriate treatment placement or release from jail (“maximum allowable wait time”). To date, Defendants have not been willing to negotiate this issue. During the next ninety (90) days, the parties will attempt to negotiate a maximum allowable wait time, which may be incorporated into this Settlement Agreement. If the parties are unable during the ninety (90) days to agree on the maximum allowable wait time, Plaintiffs may at any time thereafter file a motion asking the Court to issue a declaratory judgment, preliminary injunction or final injunction setting the maximum allowable wait time and a deadline for Defendants to reduce wait-list times to that level as a remedy for the constitutional violations alleged in the Complaint.
8. The parties agree, with the concurrence of the presiding judge, to postpone the impending preliminary injunction hearing for at least ninety (90) days, during which time the parties will cooperate to develop the strategic plan identified in paragraph 6, and the terms of the Settlement Agreement described in the preceding paragraph. Counsel for the parties will notify the presiding judge at least one week before the rescheduled hearing date whether a hearing will be needed.
9. The provisions of this Settlement Agreement will be subject to enforcement through specific performance after Plaintiffs provide Defendants with thirty-day written notice and an opportunity to cure. Plaintiffs do not waive any rights or remedies, and Defendants do not waive any defenses unless expressly stated herein.
10. Defendants agree to pay Plaintiffs’ reasonable costs and reasonable attorneys’ fees, adjusted to Middle District of Pennsylvania rates, incurred to date. The parties will attempt to negotiate reasonable costs and fees, but if they cannot agree to a negotiated figure, Plaintiffs may submit a petition for decision by the presiding judge, who may in the first instance refer the matter for mediation.
11. Defendants also agree to pay (a) reasonable costs and consulting fees for time incurred by Dr. Joel Dvoskin from the date of this agreement in

consulting with the parties on development and execution of the strategic plan or the requirements of this Settlement Agreement; and (b) Plaintiffs' reasonable attorneys' fees from the date of this agreement, to be billed at no higher than a \$350 hourly rate, not to exceed a total amount of \$100,000 during any twelve-month period, for monitoring the Settlement Agreement. Subparagraph (b) does not apply if Plaintiffs move to enforce the Settlement Agreement or for a declaratory judgment or a preliminary or final injunction, or specific performance, at which point the usual Middle District Court rates will apply and fees will be resolved in accordance with paragraph 10.

12. The court shall retain jurisdiction over this matter, including the power and authority to enforce this Settlement Agreement and subsequent Settlement Agreements adopted by the parties, for three (3) years from this date. Either party may petition the Court to shorten or lengthen the time for good cause.

For Defendants

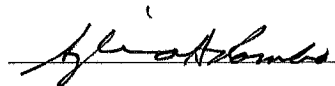
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Approved by the Court on this 27 day of January, 2016:

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Hon. Sylvia H. Rambo, Senior U.S.D.J.