

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

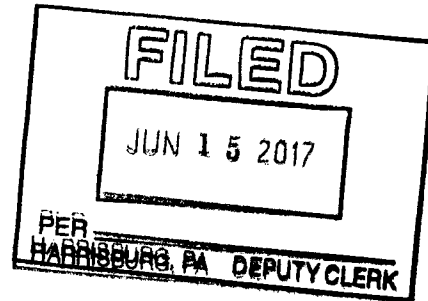
**J.H., by and through his next friend,  
Flo Messier; L.C., by and through her  
next friend, Flo Messier; R.J.A., by and  
through his next friend, J.A.; Jane Doe,  
by and through her next friend Julia  
Dekovich; S.S., by and through his next  
friend, Marion Damick; G.C., by and  
through his next 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**

**Judge Sylvia H. Rambo**

**SECOND INTERIM SETTLEMENT AGREEMENT**

WHEREAS Plaintiffs, individuals who 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 extended lengths of time and in some cases for over a year, filed this civil rights class-action lawsuit on October 22, 2015 (*see* ECF No. 1), 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. § 794;

WHEREAS the parties resolved Plaintiffs’ Motion for Preliminary Injunction (ECF No. 4) by entering into an interim Settlement Agreement on January 27, 2016, to undertake actions designed to reduce the length of the wait lists and wait times of persons declared incompetent and awaiting treatment, i.e., Class A members (ECF No. 35);

WHEREAS DHS stipulated in the interim Settlement Agreement that there is sufficient evidence to establish that wait times of at least 60 days fail to comply with Fourteenth Amendment due process guarantees (ECF No. 35 at ¶ 1), and some federal courts have held that even wait times less than 30 days are unconstitutional;

WHEREAS since February 2016, the Defendants have invested resources to create 120 new slots for treatment in the community; 377 patients have been discharged from NSH and TSH; and 348 individuals have removed from the wait lists before admission to the hospitals, but the wait lists nonetheless have grown from 216 people awaiting treatment at the time of the interim Settlement Agreement on January 29, 2016, to 256 awaiting treatment on May 26, 2017;

WHEREAS, by way of example, of the 41 patients admitted from jails into NSH on the waiting lists dated from January 6 through May 26, 2017, 25 patients waited more than 300 days, and of those 25 patients, 17 waited at least 400 days, 5 waited over 500 days, 2 waited more than 600 days, and one waited over 788 days in jail before being admitted to NSH. As of May 26, 2017, 36 individuals awaiting admission to NSH have been waiting over 300 days, of whom 6 have been waiting more than 400 days;

WHEREAS, by way of example, of the 74 patients admitted from jails into TSH on the waiting lists dated from January 6 through May 26, 2017, 64 waited 30 days

or more, 51 of whom waited 90 days or more. As of May 26, 2017, 17 individuals awaiting admission to TSH have been waiting more than 60 days, 4 of whom have been waiting more than 100 days;

WHEREAS Plaintiffs have discussed with Defendants the reasons for the lack of progress under the interim Settlement Agreement in reducing the number of patients on the wait lists and the wait times since September 2016;

WHEREAS on May 11, 2017, Plaintiffs renewed and amended their original motion for preliminary injunction, initially filed on October 22, 2015 (*compare* ECF Nos. 4 and 9 with ECF Nos. 40 and 45);

WHEREAS the parties recognize that the protracted wait times serve neither the interests of justice nor the clinical needs of Class A members and that a comprehensive evaluation of the competency-restoration system and additional actions are currently needed to make progress toward permanently reducing wait lists and wait times to a constitutionally acceptable level;

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

1. Defendants will hire the independent consultant identified by Plaintiffs in the agreement letter attached hereto as Exhibit "A." The consultants will, as more fully set forth in Exhibit A:
  - a. conduct a thorough assessment of DHS's competency-restoration systems and processes, which will include a review of the individuals awaiting competency restoration treatment, the forensic population currently in treatment, competency restorations completed in 2016, the resources and processes in use and available to DHS, and the role of other stakeholders in the forensic criminal justice system; and
  - b. produce a report that will identify a strategy and recommend tangible actions to reduce wait times for competency restoration treatment to constitutionally acceptable limits;
2. Defendants will make available the following resources, above those originally specified in the interim Settlement Agreement, to competency-restoration patients awaiting treatment within the time frames specified:

- a. Within six months, a new “minimum security” unit consisting of 50 new forensic beds at NSH, which will be comprised of a combination of 28 brand new beds and 22 beds in existing civil units that will be converted for forensic use;
  - b. Within six months, DHS expects that an additional 29 DHS-funded treatment slots will become available in the community, comprised of 7 in Allegheny County (targeted for completion by September 2017), an additional 12 thereafter in Allegheny County, and 10 in Philadelphia; and
  - c. Within 9 months, at least 30 civil beds at NSH (in addition to those identified in subparagraph 2a, *supra*), which are currently occupied by civilly committed patients who will move to the community as specified in their Community Service Plans, will be converted into forensic beds, provided, however, that no patient who is currently in a civil bed will move to the community only to comply with this subparagraph if the community services have not yet been developed for that patient.
3. Defendants will implement the strategy identified in the independent consultant’s final report to reduce wait times to a constitutionally acceptable level, unless, within 14 days of receiving the consultant’s final report, Defendants submit to Plaintiffs a detailed, written description of why one or more action items recommended in the report are not achievable or warranted, and will propose alternative actions or explain why the action is unnecessary. If the parties are unable to agree within 30 days, Plaintiffs may at any time thereafter file a motion asking the Court to issue a preliminary or final injunction to enjoin DHS to take such steps as the Court determines necessary and appropriate to reduce wait times to a constitutionally acceptable level. DHS may assert all available defenses to Plaintiffs’ motion.
4. Upon receipt of the final report, the parties will attempt to reach agreement on a maximum allowable wait time, an outstanding legal issue the parties reserved in the interim Settlement Agreement and which the parties reserve once again. If the parties are unable to agree upon a maximum allowable wait time after the consultant issues the final report, Plaintiffs retain their right from the interim Settlement Agreement to 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 times to that level as a remedy for the constitutional violations alleged in the Complaint.

5. This Second Interim Settlement Agreement resolves all issues outstanding in Plaintiffs' Motion to Renew and Amend Motion for Preliminary Injunction (ECF No. 40), except for the issues reserved in paragraph 4, *supra*.
6. This Second Interim Settlement Agreement does not negate or nullify any provision of, or obligation imposed on DHS contained by, the interim Settlement Agreement, which remains fully enforceable by this Court as specified in that Agreement.
7. Defendants agree to pay Plaintiffs' reasonable attorneys' fees, adjusted to Middle District of Pennsylvania rates, and costs incurred in the prosecution of Plaintiffs' Motion to Renew and Amend Motion for Preliminary Injunction (ECF 40) since May 5, 2016. If the parties are unable to agree to a negotiated amount of attorneys' fees and costs, Plaintiffs may submit a petition for decision by the presiding judge, who may in the first instance refer the matter for mediation.
8. In addition to Defendants' obligations under ¶ 11 of the interim Settlement Agreement, Defendants also agree to pay (a) reasonable costs and consulting fees for time incurred by Dr. Joel Dvoskin, up to \$15,000 total, from the date of this agreement in consulting with the parties and independent consultant hired under paragraph 1 to facilitate the assessment and development of the consultant's final report or the requirements of this Second Interim Settlement Agreement, or both; 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 of \$100,000 during any twelve-month period, for monitoring the Second Interim Settlement Agreement. Subparagraph (b) does not apply if Plaintiffs move to enforce either the first or second interim Settlement Agreement or move for a declaratory judgment or preliminary or final injunction, at which point the usual Middle District Court rates will apply and fees will be resolved in accordance with paragraph 7.
9. The provisions of this Settlement Agreement will be subject to enforcement through specific performance after Plaintiffs provide Defendants with thirty-days written notice and an opportunity to cure. Plaintiffs do not waive any

available rights or remedies in the event Defendants fail to comply with an order for specific performance, and Defendants do not waive any defenses.

10. The parties will ask the Court to dismiss Plaintiffs' pending motion for preliminary injunction (ECF 40) as moot. This Court will retain jurisdiction, including the power and authority to enforce this Settlement Agreement and subsequent Settlement Agreements adopted by the parties, for 3 years from the date the Court approves the Agreement. Either party may petition the Court to shorten or lengthen the time for good cause.

**For Defendants**

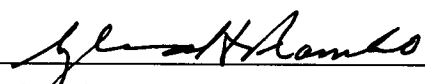
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Approved by the Court on this 15<sup>th</sup> day of June, 2017:

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