



PC-HI-0001-0009

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**CLERK, U. S. DISTRICT COURT
DISTRICT OF HAWAII**

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

| | | |
|-----------------------------|---|----------------------------|
| AGNES SPEAR, et al., |) | CIVIL NO. 84-1104 SPK |
| |) | |
| Plaintiffs, |) | (In re: Spear Litigation - |
| |) | All Cases) |
| vs. |) | |
| |) | |
| BENJAMIN J. CAYETANO, |) | |
| Governor of Hawaii, et al., |) | |
| |) | STIPULATION OF SUBSTANTIAL |
| Defendants. |) | COMPLIANCE AND DISMISSAL; |
| |) | EXHIBIT B; ORDER |

STIPULATION OF SUBSTANTIAL COMPLIANCE AND DISMISSAL

This proceeding was initiated as a class action under 42 U.S.C. section 1983 directed at conditions of confinement at the facilities now known as OCCC and WCCC. On June 12, 1985, the parties entered into a consent decree, approved by the court, wherein plans were developed and implemented to modify conditions in the areas of medical, dental and mental health services; environmental health and safety conditions and practices; and population management, classification, security and other correctional policies. On January 21, 1987, a supplemental agreement was entered into. The Final Settlement Agreement of the parties, approved by this court on November 19, 1993, provided for court-appointed monitors to identify specific tasks to improve conditions of confinement in these areas, and to observe and report upon the status of defendants' compliance with the specific tasks and items.

The parties agree that the defendants have generally fulfilled the remedial provisions of the June 12, 1985 consent decree, as amended, and all subsequent orders of this Court, governing medical, dental, and mental health services; environmental health and safety conditions and practices; and correctional issues, and have achieved compliance with most of the tasks and items ordered by the court and subject to monitoring, such items being specified in the parties' joint

Motion For Determination of Compliance and Dismissal filed contemporaneously herewith (hereinafter "Motion").

The parties continue to seek the common goals underlying their agreements over the years: it is agreed that safe, healthful conditions of confinement and appropriate health, environmental and correctional policies are a valuable objective, and the State of Hawaii, recognizing the importance of maintaining appropriate standards through self-monitoring, desires to maintain lawful conditions of confinement under the authority of state officials rather than under judicial oversight. To that end, as to the remaining items not addressed in the aforementioned Motion, the parties, through undersigned counsel, now stipulate and agree to the final disposition of these items and the termination of this litigation.

With respect to all outstanding items not listed in Exhibit A to the aforementioned Motion (which outstanding items are addressed in Exhibit B to this stipulation), the parties and the monitor have agreed that defendants may achieve substantial compliance therewith based on defendants' submission, and plaintiffs' approval, of detailed plans, sources of funding, and specific timetables for the accomplishment of these items. Exhibit B is the schedule of capital and non-capital items which defendants have submitted to plaintiffs, and based on these plans, sources of funding, and timetables, plaintiffs agree that defendants are presently in substantial compliance (as defined

herein) with the consent decree, as amended.

The parties acknowledge that defendants are not presently in compliance with the population capacity limits at the Womens' Community Correctional Center. The parties have, however, agreed that this will not prevent a finding of substantial compliance (as defined herein), based on the defendants' submission of a plan for the construction and operation of an 84 bed facility at WCCC (Exhibit B-2), in addition to the Olomana Cottage renovation referred to in paragraph 4, below.

In light of the foregoing, the parties hereby stipulate and agree to the following:

1. The defendants are in substantial compliance (as defined herein) with the items enumerated at Exhibit B, which are all of the outstanding compliance items in this litigation (as dismissal of all other items was jointly requested in the Motion).
2. Class notice for approval of this stipulation shall be initiated forthwith.
3. This lawsuit and all outstanding decrees shall be conditionally dismissed upon the approval of this stipulation.
4. A final judgment of dismissal of this lawsuit in its entirety shall enter upon the filing of a declaration by the parties certifying that the Olomana Cottage of WCCC has been completed, is occupied, and has been inspected and found satisfactory by the monitor and plaintiffs, which approval shall

not be unreasonably withheld.

5. Defendants' obligation to pay plaintiffs' attorneys' fees and costs shall continue until the final dismissal of this litigation.

6. Defendants shall maintain the maximum population capacity limits for OCCC and WCCC in effect on the date of this stipulation, as they may be modified by newly-constructed additions, until June 30, 1999. Recognizing that overcrowding has a negative impact on environmental health and safety and the provision of basic necessities to inmates, defendants aspire to thereafter continue to maintain population levels appropriate to the relevant facilities.

7. Until June 30, 1999, defendants shall report to plaintiffs quarterly on the status of compliance with the population capacity limits and any outstanding Exhibit B items, and will provide reasonable access, documentation and cooperation if verification of these reports is requested.

8. Subsequent to the final dismissal of this action, until June 30, 1999, defendant's agreement to maintain agreed-upon population capacity limits and to perform the obligations agreed to at Exhibit B shall be enforceable as a contract in the courts of the State of Hawaii, under the laws of the State of Hawaii, in the event of defendants' failure to perform. Defendants shall exert all reasonable efforts to obtain and maintain appropriations necessary for the effectuation of Exhibit B items;

provided that the Legislature shall not be bound by this agreement, and defendants shall not be considered in breach of this agreement should the Legislature fail to appropriate such funds.

DATED: December 9th, 1996.

DATED: December 5th, 1996.



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STIPULATION OF SUBSTANTIAL COMPLIANCE
APPROVED AND SO ORDERED:

THE HON. SAMUEL P. KING
United States District Judge

AGNES SPEAR, ET AL., PLAINTIFFS, v.
BENJAMIN J. CAYETANO, ET AL., DEFENDANTS
D.C. CIVIL NO. 84-1104
(In re: Spear Litigation - All Cases)
STIPULATION OF SUBSTANTIAL COMPLIANCE
AND DISMISSAL; EXHIBIT B; ORDER

Corrections Plan
Items # 6 and 11

Classification Plan Development and
Inmate Population Plan Development

Project: Defendants agree to develop information so that the present capital improvements plan, reflected in the FY 1997-99 biennium budget, and the PSD Corrections Comprehensive Plan of September 1996, will be compatible with data obtained from an analysis of the current classification system as well as any subsequent revisions thereto.

Should a review of available data, based on the above analyses, show that inmate housing needs differ significantly from those provided in the FY 97-99 biennium budget proposal, modifications to the present plan to reflect those needs will be developed.

Funding: Not applicable.

Timetable: This will be an ongoing process.

Corrections Plan
Item #13 -- WCCC Capacity

Project: Attain and maintain population capacity by constructing and operating an additional housing unit for 84 women at WCCC, meeting ACA physical plant standards, with appropriate staffing and programming comparable to that currently available to the general population at WCCC. During the interim period prior to completion of this structure, women will continue to be housed at OCCC in a module or, upon availability, at the Interim Facility.

Funding: \$ 3,198,395

Source of Funding: FY 1997-99 Biennium Budget
(subject to legislative approval)

Timetable for completion:

| | | |
|-------------------------|---|-----------------|
| Funds available | - | July 1, 1997 |
| Design | - | September, 1997 |
| Construction | - | May, 1998 |
| Furniture and Equipment | - | June, 1998 |
| Occupancy | - | July 1, 1998 |

Environmental Plan

Item #11 -- Sanitary fixtures (WCCC)

Project: Hot water system retrofit (Maunawili and Kaala cottages). DAGS Job No. 12-27-5504

Funding: \$100,313.00

Source of funding:

Appropriated FY 1995/96 Supplemental Budget (\$70,000)

Approved - Governor's Project Adjustment Fund (\$32,000)

Timetable for completion:

| | | |
|----------------------------|---|---------------|
| Procurement process begins | - | October 1996 |
| Award | - | January 1997 |
| Construction begins | - | February 1997 |
| Completed | - | May 1997 |

Environmental Plan
Item #23 -- Ventilation (OCCC)

Project: Replace air handling units for modules 1, 2, 7, 8, 11, 13, Holding Unit and Medical Unit. (This will complete the retrofit of the ventilation system, as the main chillers, pumps, and module air handling units for modules 3, 8, 9, 4, 18, 19 and Holding Unit have all been replaced since 1991.)

Funding: \$ 80,000

Source of Funding: FY 1997-99 Biennium Budget
(subject to legislative approval)

Timetable for completion:

| | | |
|----------------------------|---|----------------|
| Funds available | - | July 1, 1997 |
| Procurement process begins | - | July 1997 |
| Award | - | August 1997 |
| Replacements begin | - | September 1997 |
| Completed | - | March 1998 |

Environmental Plan
Items #29-30
Compliance with NFPA 101 (OCCC and WCCC)

Project: Capital improvements recommended and approved for OCCC by Fire and Life Safety consultant S.S. Dannaway (includes sprinkler system for Interim Facility).

Funding: \$895,150

Source of Funding:
Appropriated FY 1995/96 Supplemental Budget

Timetable for completion:

| | | |
|--|---|----------------|
| Selection of project design consultant | - | September 1996 |
| Design completed | - | April 1997 |
| Construction begins | - | August 1997 |
| Completed | - | February 1998 |

(Inspection by Dannaway to follow).

Project: Capital improvements recommended and approved for WCCC by Fire and Life Safety consultant S.S. Dannaway (incorporated in DAGS Job No. 12-27-5502, Phase III, Increment 1 Olomana Cottage Renovation Project)

Funding: \$87,000

Source of Funding:
Appropriated FY 1995/96 Supp. Budget (\$86,000)
Operational funds for noncapital fire safety items (\$2,200)

Timetable for completion:

| | | |
|--------------------|---|--------------------|
| Construction began | - | September 16, 1996 |
| Completed | - | May 8, 1997 |

(Inspection by Dannaway to follow).