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FILED

SEP 17 1995

AT 8:00

Harry Pack, et als.,

Plaintiffs,

vs.

Howard Beyer et als.,

Defendants.

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

SETTLEMENT AGREEMENT

Civ. No. 91-3709(AET)(GEB)
(Consolidated Cases)

The parties to this matter, having determined to reach an amicable settlement of the consolidated matter without further litigation, hereby set forth the terms of their agreement, which is intended to be incorporated by reference into the Order of Dismissal to be entered by the Court. The settlement of this matter is not intended to assess blame or resolve the factual issues that gave rise to this litigation, and shall not constitute an admission of wrongdoing.

A. Class Action

1. The plaintiff class defined as all African American inmates who have been confined to or recommended for confinement to the Management Control Unit ("MCU") of New Jersey State Prison ("NJSP") at any time since August 29, 1990, shall be certified by consent pursuant to Federal Rule of Civil Procedure 23(b)(2).

B. Procedure for MCU Placement

2. The New Jersey Department of Corrections ("DOC") covenants and agrees to publish, within 180 days of the entry of the Order dismissing this action, proposed

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regulations incorporating the terms set out in Part B of this Settlement Agreement. It is the intent of the parties that following the publication and comment period, the DOC shall submit the proposed rules for publication taking into consideration the comments obtained through the comment period. Substantial modification of these terms in finally adopted regulations shall be grounds for reopening this matter.

3. No plaintiff shall be assigned to the MCU unless he has been afforded the procedures described in N.J.A.C. 10A:5-2.1 et seq., incorporated herein by reference, as may be amended.

4. The notice provided to the plaintiffs at least 24 hours prior to appearing before the Management Control Unit Review Committee ("MCURC") shall delineate the criteria which will be utilized in determining the plaintiff's suitability for the MCU and shall provide an outline of the major factors in the particular plaintiff's case history. This notice is referred to herein as a "Criteria Record Sheet."

5. With the exception of the information set forth in ¶ 6 below, the Criteria Record Sheet shall contain a concise statement of the factual basis on which the recommendation of MCU placement is based, and not merely conclusions.

6. If full disclosure of the factual basis would reveal confidential information, the plaintiff shall be provided with a concise summary of the confidential information in language that is factual and not conclusory. Confidential information is defined as information which:

- (i) is contained in the reports of health care professionals which are evaluative, diagnostic or prognostic in nature and which are furnished with a legitimate expectation of confidentiality and which, if revealed to the plaintiff or others could be detrimental to the plaintiff or could jeopardize the safety of individuals who signed the

reports or were parties to the decisions, conclusions or statements contained therein; or

- (ii) which the DOC reasonably believes:
 - (a) would impede ongoing criminal or disciplinary investigations;
 - (b) would create a risk of reprisal;
 - (c) would reveal the identity of confidential informants;
 - (d) would reveal the identity of the target of ongoing investigations (unless that target has been so advised);
 - (e) would reveal the technique of investigations or the manner in which the fruits of the investigations are compiled so long as they interfere with the security of the correctional facility; or
 - (f) would interfere with the security of a correctional facility.

7. If the proposed placement is based in part on information from a confidential informant, the plaintiff shall be provided with a concise summary of the facts based upon which the DOC proposes to establish that the informant is credible or his or her information reliable, and the informant's statement (either in writing or as reported) in language that is factual rather than a conclusion, and based on the informant's personal knowledge of the matters contained in such statement.

8. A record shall be maintained of the proceeding of the MCURC, including substance of the evidence presented, a summary of the statements of participants in the hearing, a log of the evidence considered, and the decision of the MCURC. The recorder of the hearing proceedings shall certify that the record is a true and accurate representation of the proceedings.

9. Prior to rendering a decision to place or maintain a plaintiff in the MCU, the MCURC shall consider alternatives to MCU placement as a means of addressing the institutional concerns related to the plaintiff. These alternatives shall include, but not be limited to: transfer to another institution, reduction in privileges, and transfer to another

housing unit in general population. The MCURC shall include in the record of the hearing a written indication of the alternatives considered.

10. The MCURC's decision to place a plaintiff in the MCU shall be based on the information contained in the record. In a case in which the record contains information received from a confidential informant, the MCURC shall provide a summary of the facts on the basis of which it concluded that the informant was credible or his or her information reliable and the informant's statement (either in writing or as reported) in language that is factual rather than a conclusion, and based on the informant's personal knowledge of the matters contained in such statement.

11. A plaintiff assigned to the MCU may request in writing an out-of-state transfer. The DOC shall respond to the request after making a good faith evaluation of the request. If the response is denial, the DOC shall provide an explanation for the denial, without revealing confidential information, if any, which resulted in the denial.

12. For plaintiffs placed in the MCU pursuant to the procedures described herein, the DOC shall conduct a hearing at least annually to review the status of the plaintiff. In determining whether a plaintiff's release from MCU is appropriate, the plaintiff has the initial burden of demonstrating that (a) he has participated in the required programs, jobs and educational and recreational programs afforded to him pursuant to N.J.A.C. 10A:5-2.20, 2.23 and 2.24; (b) he has complied with the criteria detailed by the MCURC; (c) he has remained free from major (asterisk) charges for the program year; and (d) he has agreed to reaffirm his obligation to adhere to the rules and regulations for inmate behavior, as described in the inmate handbook. If the plaintiff demonstrates the above criteria, he will be considered for release from the MCU and will be released unless the DOC can demonstrate through substantial evidence including behavior and attitude adjustment and disciplinary history that the plaintiff continues to pose an identifiable threat to the safety of others, of damage to or destruction of property or of interrupting the operation of a State correctional facility.

C. Special Master Review

13. As soon as is practical after the entry of the Order of Dismissal, the Court will, pursuant to Federal Rule of Civil Procedure 53, appoint a Special Master who is acceptable to plaintiffs and defendants to hear appeals from class members' initial placement decisions of the MCURC. The parties agree that the total compensation for the Special Master shall be \$20,000, with plaintiffs and defendants each contributing one half of the amount.

14. All class members shall have the opportunity to be represented in the process by counsel provided through Crummy, Del Deo, Dolan, Griffinger & Vecchione.

15. Either party may submit a written request for oral argument setting forth the issues requested to be argued to the Special Master. The opposing party may oppose such request. Neither the request for oral argument, nor the opposition to such request may exceed five (5) pages. The Special Master may, within his or her discretion, permit oral argument if he or she determines that it would assist in completing the review.

16. The Special Master shall adopt or reject the MCURC decision within a reasonable period of time following the expiration of time for the last submission as set forth in ¶¶ 21 and 25, or the date of oral argument, if any, whichever is later. The Special Master's decision shall be based on substantial evidence in the record, and shall describe the basis for the decision with specificity. The Special Master shall make a decision on the basis of the record without further investigation. The decision of the Special Master is final and the parties agree to be bound by his or her factual findings and determinations.

I. Timing of submissions in connection with plaintiffs who were confined to or recommended for confinement to the MCU prior to the date of the execution of this Agreement.

17. Within 270 days of the entry of the Order of Dismissal, the DOC shall provide to each class member who has been confined to or recommended for confinement to the MCU prior to the date of execution of this Agreement, or his attorney, if he chooses to be represented, the MCURC's initial placement decision and all material in the record before the MCURC at the time of the initial placement decision except for that information described in ¶ 6 above. In place of any such materials described in ¶ 6, the DOC shall provide a concise summary of the facts and the informant's statement in the manner described in ¶ 10 above. Disputes regarding the completeness or accuracy of summaries of confidential information may be addressed to the Special Master for resolution. The Special Master is empowered to resolve such disputes by ordering revised or supplemental summaries, and, in the event that DOC fails to comply with such order, to disregard the underlying confidential information. Pursuant to ¶¶ 20 and 21 below, class members may supplement the record with factual information. The DOC may not add facts to the record unless it provides a new hearing to the class member pursuant to ¶¶ 4-11 above.

18. If any of these class members want to submit a request for review of the MCURC's initial placement decision to the Special Master and the DOC, they must do so within 30 days of the receipt of the materials described in ¶ 17.

19. Within 30 days of receipt of the request for review, the DOC shall submit to the Special Master the MCURC's initial placement decision and all material in the record before the MCURC including all confidential information described in ¶ 6.

20. Within 30 days of the submission of the request for review, the class member shall deliver to the Special Master and the DOC any written submission,

including factual information or legal argument challenging the MCURC's initial placement decision.

21. Within 30 days of receipt of the class member's papers as set forth above, the DOC shall deliver to the Special Master and the class member, if proceeding pro se, or his attorney, any written submission containing legal argument supporting the MCURC's initial placement decision.

II. Timing of submissions in connection with plaintiffs who are confined to or recommended for confinement to the MCU subsequent to the date of the execution of this Agreement

22. Class members who are confined to or recommended for confinement to the MCU subsequent to the date of the execution of this Agreement may appeal from an initial placement decision of the MCURC by submitting a request for review to the Special Master and the DOC. If any of these class members want to submit a request for review of the MCURC's initial placement decision to the Special Master and the DOC, they must do so within 20 days of the receipt of the placement decision.

23. Within 60 days of receipt of the request for review, the DOC shall forward to the Special Master the MCURC's decision and all material in the record before the MCURC including all confidential information described in ¶ 6. The DOC shall also send a true copy to the attorney, or, if the class member chooses to proceed pro se, to the plaintiff, of all materials described in ¶ 17.

24. Within 30 days of receipt of the documents described in ¶ 17, the class member shall deliver to the Special Master and the DOC, any written submission, including factual information or legal argument challenging the MCURC decision.

25. The DOC shall deliver to the Special Master and the class member, if proceeding pro se, or his attorney, within 30 days of receipt of the class member's papers described in ¶ 24, any written submission containing or legal argument supporting the MCURC decision.

D. Compliance and Termination

26. The defendants agree that they shall not impose any negative consequences on a class member as a result of his availing himself of the review process described herein. It is the contemplation of the Parties that any class member whose MCU placement is reversed by the Special Master shall be appropriately housed pursuant to the standards set forth in N.J.A.C. 10A:9-3.3

27. Any plaintiff may seek enforcement of this agreement either by himself, if he is proceeding pro se, or through his attorney by first notifying the attorney for the defendants of the alleged violation of the Settlement Agreement within 30 days of the alleged violation; and within 30 days of said notification the defendants shall either (a) resolve the violation or (b) inform either the plaintiff, if he is proceeding pro se, or the plaintiff's attorney why the alleged violation cannot be resolved. If the defendants cannot resolve the alleged violation, than either the plaintiff, if he is proceeding pro se, or the plaintiff's attorney may file a motion with the court pursuant to the Federal Rules of Civil Procedure for enforcement of this Settlement Agreement.

28. It is agreed between the parties that the Settlement Agreement shall remain in full force for a period of two and one-half years from the date of filing of the Settlement Agreement.

F. Compensatory Payments

29. Defendants agree to make compensatory payments to all class members who are released from the MCU following a review pursuant to Part C above. Payment following such a review shall be \$17.50 per day for each day the class member was housed in the MCU.

G. Attorneys' Fees

30. Defendants agree to pay plaintiffs' attorneys' fees pursuant to 42 U.S.C. §1988 in an amount of \$150,000, \$10,000 of which is to be attributable to compensation of the Special Master as set forth in ¶ 13. Defendants agree to pay the sum approved by the Court to plaintiffs' counsel in full settlement pursuant to 42 U.S.C. §1988 for all reasonable fees and costs incurred up to the date of the entry of this Order. Plaintiffs reserve the right to apply for attorneys fees and costs for legal representation after that date necessary for enforcement of this Order before the Courts of the United States. Plaintiffs further reserve the right to apply for attorneys fees and costs for legal representation in connection with any claim not settled pursuant to this Agreement. Plaintiffs waive any rights to attorneys fees and costs incurred in connection with representation before the Special Master pursuant to ¶¶17-25 above.

FOR PLAINTIFFS:

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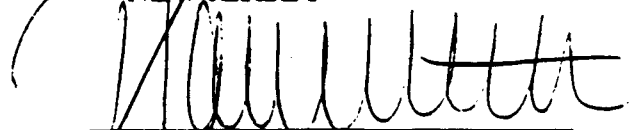


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DATED: 9/14/95

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DATED: 9/14/95