

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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GEORGE ENG, et. al.  
Plaintiffs,

- vs-

AMENDED  
RULE 41 VOLUNTARY  
STIPULATION OF DISMISSAL  
SUBJECT TO CONDITIONS

Civ 80-385S

GLENN GOORD, Commissioner of  
Corrections for the State of New York;  
JAMES L. STONE, Commissioner of  
Office of Mental Health for the State  
of New York, et. al.,  
Defendants.

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The parties hereto, by their attorneys, hereby stipulate and agree as follows:

WHEREAS this action challenging living conditions and practices in the Special Housing Unit at Attica Correctional Facility as violative of inmates confined therein under the First, Sixth, Eighth and Fourteenth Amendments of the United States constitution was filed by the plaintiffs on May 6, 1980; and

WHEREAS, on January 27, 1987, this court *per* Hon. Michael A. Telesca, D.J. ordered that the Commissioner of the New York State Office of Mental Health be named as a defendant, with regard to the plaintiffs' claims as they relate to mental health care; and

WHEREAS the Defendants have denied that they have violated Plaintiffs' constitutional rights; and

WHEREAS this court *per* Hon. Michael A. Telesca D.J. granted Plaintiffs' motion for preliminary injunction on January 29, 1988 and the Court of Appeals for the Second Circuit affirmed the court's order in an opinion dated June 13, 1988; and

WHEREAS the parties have conducted extensive discovery; and

WHEREAS counsel for the plaintiffs and defendants without conceding any infirmity in their claims or defenses, have subsequently engaged in negotiations to resolve the plaintiffs' claims as they relate to mental health care;

WHEREAS counsel for the plaintiffs and defendants have subsequently agreed to amend the Rule 41 Voluntary Stipulation of Dismissal Subject to Conditions;

IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the parties as follows:

#### **DEFINITIONS AND ABBREVIATIONS**

- A. "Attica" shall mean Attica Correctional Facility.
- B. "SHU" shall mean the disciplinary Special Housing Unit at Attica.
- C. "DOCS" shall mean the New York State Department of Correctional Services.
- D. "OMH" shall mean the New York State Office of Mental Health.
- E. "PLS" shall mean Prisoners' Legal Services.
- F. "CNYPC" shall mean the Central New York Psychiatric Center in Marcy, New York.
- G. "Outpatient Medical Record Manual" shall mean the CNYPC Outpatient Medical Record Manual, a copy of which is appended hereto as Exhibit 1.
- H. "Satellite Unit" shall mean CNYPC's outpatient unit at Attica and shall include the Residential Crisis Treatment Program and outpatient caseload.
- I. "Mental Health Professional" shall mean a medical or non-medical mental health professional employed by OMH.
- J. "Active patient" or "active OMH patient" shall mean an inmate who has been admitted to OMH caseload and is currently receiving OMH services.
- K. "Working day" shall mean any day other than Saturday, Sunday or a legal

- holiday.
- L. "STP" shall mean the Special Treatment Program for mentally ill SHU inmates in need of enhanced outpatient mental health interventions at Attica Correctional Facility.

I. **SUBSTANTIVE PROVISIONS**

M. No Seriously Mentally Ill Inmates in SHU

1. Subject to paragraph 2 herein, in no case shall an inmate known to be currently suffering from a severe mental disorder or severe depression and who is currently exhibiting symptomatology which requires immediate treatment/evaluation in a mental health setting or who is known to be at substantial risk of serious mental or emotional deterioration, be placed or maintained in SHU.
2. Where an inmate does not appear to require immediate hospitalization in CNYPC, but is clinically indicated to require observation or treatment or both in a location other than SHU, and such observation and/or treatment cannot be provided in the Satellite Unit due to lack of mental observation cell space on that unit, such inmate may be housed temporarily in SHU until appropriate space becomes available. For the purpose of this sub-section, such temporary placement in SHU may be maintained for no longer than two (2) working days. In all such cases, the fact of such temporary placement in SHU and the reasons therefore shall be noted in a progress not in the inmate's Satellite Unit record.

B. **Screening on Admission to SHU**

3. A mental health professional will conduct an assessment within one working day of any inmate's placement in SHU. Such an assessment shall include a review of OMH records to determine whether the inmate is on its active caseload, or has previously received mental health treatment while in the custody of DOCS.
4. If the mental health professional, upon conducting the assessment, determines that the inmate has a severe mental disorder or severe depression and is currently exhibiting symptomatology which requires immediate treatment/evaluation in a mental health setting or is at substantial risk of serious mental or emotional deterioration if sent to SHU, (s)he shall inform the officer in charge of SHU, and request that the inmate be moved.

The officer in charge of SHU shall immediately inform the watch commander of this determination. The inmate shall then be promptly moved from SHU to an observation cell in the Satellite Unit, to CNYPC or upon the request of OMH and only with the approval of DOCS, to another location and such inmate shall be provided with appropriate mental health services, subject to paragraph I (A)(2).

5. If the mental health professional clinically concludes that the inmate may be placed in SHU, and the inmate is an active OMH patient or is admitted to the OMH caseload, the assessment shall also include a recommended plan for mental health treatment during the time the inmate is confined in SHU, and the procedures in Part I (E) apply.
  6. If an inmate has previously developed a severe mental disorder, suffered an acute exacerbation of a preexisting mental disorder or otherwise substantially deteriorated mentally or emotionally while in a special housing unit at any facility, this fact shall be noted in the assessment. If the mental health professional clinically concludes that the inmate may be placed in SHU despite such a history, (s)he shall indicate in the assessment the basis of the conclusion and shall describe the steps that will be taken to monitor the inmate for a recurrence of such symptoms while he is in SHU. Such decision and documentation shall be subject to quality assurance review as described in paragraph I (G)(4).
  7. The mental health professional shall note the course of action followed and his/her findings and recommendations in an assessment report to be included in the inmate's OMH record. Such report shall be sufficiently detailed to enable a clinically competent independent evaluator to determine whether it was conducted appropriately.
- C. Periodic Monitoring of SHU Inmates
8. OMH shall maintain a clinical presence on SHU, in order to insure adequate monitoring of the mental health status and needs of the inmates confined therein.
  9. For the purpose of this Stipulation, "clinical presence" means that OMH staff shall be in SHU at least ten (10) hours per week except that, if the census in SHU falls below seventy-five percent (75%) of capacity during a given week, the number of hours per week may be reduced by a corresponding percent for that week.
  10. The mental health professional placed in SHU shall make daily rounds of all galleries. "Rounds" shall include (a) discussion with DOCS staff regarding any SHU inmates observed by such staff as having a potential mental health problem; (b) review of the daily entries in the SHU log books maintained on each floor and (c) providing a reasonable opportunity for each inmate to indicate that he would like to communicate with such staff by verbal statement or gesture, or

by a written referral by the inmate(s), DOCS staff or other OMH staff.

11. During rounds, the mental health professional will seek to identify any SHU inmate who (a) exhibits symptoms that suggest that his mental health may be deteriorating, or that he is at substantial risk of harming himself, (b) requests mental health services, (c) wishes to communicate with OMH staff, or (d) appears to be unaware of the presence of such staff or to be unresponsive to questions or statements by any OMH or DOCS staff.
12. Whenever the mental health professional making rounds has any significant communication with an SHU inmate, observes any symptoms or behavior that suggest the need for further OMH involvement, or is informed of such symptoms or behavior, such mental health professional shall record the relevant information in a screening or progress note in the inmate's OMH record.
13. Whenever a mental health professional determines that a SHU inmate has exhibited symptoms or behavior that indicate that his mental health is deteriorating, or that he is at substantial risk of harming himself, such staff shall promptly conduct or arrange for a further OMH mental health assessment shall be conducted within one working day.
14. If the mental health professional, upon conducting the assessment, determines that the inmate has developed a severe mental disorder or suffered an acute exacerbation of a preexisting mental disorder and is currently exhibiting symptomatology which requires immediate treatment/evaluation in a mental health setting or is at substantial risk of serious mental or emotional deterioration if maintained in SHU, (s)he shall inform the officer in charge of SHU, and request that the inmate be moved.

The officer in charge of SHU shall immediately inform the watch commander of this determination. The inmate shall be promptly moved from SHU to an observation cell in the Satellite Unit, to CNYPC, or, upon the request of OMH and only with the approval of DOCS, to another location and shall be provided with appropriate mental health services, subject to the provisions of paragraph I (A)(2). All requests by OMH to move an inmate and all DOCS decisions regarding such requests shall be recorded in the SHU log book.

15. When there is a determination to remove an inmate from SHU for treatment or evaluation and the mental health professional clinically concludes that the inmate may be returned to SHU, it shall be documented in a screening or progress note in the inmate's OMH record. Such documentation shall address any changes in the treatment plan that reflect those issues which contributed to an inability to function in the SHU environment, a consideration of possible warning signs that may indicate that his mental health is seriously deteriorating and a plan to

monitor for such signs. Such decision and documentation will then be subjected to quality assurance review pursuant to paragraph I(G)(4).

16. All entries in inmates' OMH records, including progress notes and evaluation reports shall be sufficiently detailed to enable a clinically competent evaluator to assess the adequacy of the interaction.

D. Private Interviews

17. Except as provided in paragraphs 2 and 3 herein, whenever OMH staff requests that a SHU inmate be escorted to a private room for a private mental health interview, or when, not to exceed once a week, a SHU inmate requests to speak to OMH staff in private and OMH staff clinically determine that an interview is required for the purposes of assessment or treatment, such interview shall be conducted in a private room.
18. If a mental health professional determines, in his or her clinical judgment, that a private interview is not indicated, based on considerations specific to the inmate and situation, such staff shall document in a screening or progress note in the inmate's OMH record such specific reasons(s). Convenience of staff shall not be considered an appropriate reason for declining an interview in a private room. Examples of reasons for a clinical assessment to conclude that a private interview is not necessary may include, but are not limited to, (a) a recent prior interview sufficient to cover the immediate issues(s), (b) the issues(s) appear unfounded based on a recent interview and/or a current assessment, (c) the private interview may have a negative impact upon symptomatology, or (d) there are not apparent clinical issues to warrant a private interview.
19. Access to a private interview may be denied by DOCS staff if (a) the SHU inmate has recently been assaultive, threatened violence or engaged in conduct that presented a threat to security or safety; (b) the inmate refused to be interviewed; or (c) the highest security officer on duty at Attica determines that as a result of the inmate's history of violence, a private interview cannot be accomplished without risk of injury to the inmate, DOCS or OMH staff. If the private interview is denied, DOCS security staff may require that the interview be conducted cell side.
20. In all cases in which OMH staff requests a private interview the decision of DOCS whether to permit such private interview will be documented in the SHU log book. When DOCS requires that the interview be conducted cell side, the fact and the specific reason which led to that decision shall be documented in a screening or progress note in the inmate's OMH record and in the SHU log.

21. In any event, each inmate who is continuously confined in SHU and who is an active patient of OMH or an individual subject to a screening note or who is determined to be at substantial risk by OMH shall, unless the inmate refuses, be privately interviewed by an OMH professional at least once every three (3) months. In all cases described in paragraph 3 herein, however, DOCS may require that the private interview be conducted in a divided room in which the inmate is separated from the OMH staff.
22. Nothing in this Stipulation shall preclude the appropriate application of 7 NYCRR & § 305.3 "Restraint Order" or 7 NYCRR § 305.4 "Use of Restraints."

E. Continuity of Treatment

23. Where an inmate transferred to SHU is on the active caseload of OMH, such inmate's then-current treatment plan shall continue in effect unless and until it is modified according to paragraph 3 herein. Where an inmate is admitted to the OMH caseload as a result of a mental health assessment upon transfer to SHU, or while housed in SHU, an initial treatment plan shall be created in accordance with the standards as set forth in the CNYPC Outpatient Record Manual as currently maintained by or as revised in accordance with the by-laws of the CNYPC Medical Staff Organization. CNYPC will inform plaintiffs' counsel of any such revisions that it concludes will substantially impact on any of the terms of this Stipulation.
24. When an inmate is placed in SHU following a stay at CNYPC, the recommendations in such inmate's Discharge Summary from CNYPC shall be implemented unless they are modified according to paragraph 3 herein, or are modified by an OMH mental health professional, based on a consideration of the treatment goals and the potential effect of the SHU environment on such inmate.
25. Whenever an active OMH patient is transferred to SHU, a treatment plan review will be performed within ten (10) days. The treatment plan review will result in a treatment plan which is consistent with DOCS security requirements, but which also meets the standards set forth in the CNYPC Outpatient Medical Record Manual as currently maintained by or as revised in accordance with the by-laws of the CNYPC Medical Staff Organization. CNYPC will inform plaintiffs' counsel of any such revisions.

F. Patient Records

OMH patient records for all SHU inmates shall be maintained in accordance with the requirements and standards as set forth in the CNYPC Outpatient Medical Record Manual as currently maintained by or as revised in accordance with in accordance with the by-laws of the CNYPC Medical Staff Organization. CNYPC will inform plaintiffs'

counsel of any such revision that it concludes will substantially impact on any of the terms of this Stipulation.

**G. Quality Assurance**

26. CNYPC will ensure that all mental health professionals responsible for conducting assessments described in this Stipulation shall be aware of the standard of review and steps required to conduct an adequate assessment and the steps that must be taken if SHU is contraindicated.
27. CNYPC will also ensure that all OMH staff responsible for monitoring or having other contacts with SHU inmates shall be aware of the standards and steps necessary to adequately determine whether an inmate is at substantial risk of serious mental or emotional deterioration, or is in need of immediate mental health intervention and the steps that must be taken when a SHU inmate is determined to be at substantial risk or in need of mental health intervention.
28. CNYPC shall periodically review SHU assessments by OMH mental health professionals, and OMH monitoring activity to ensure that these procedures are accomplished professionally and in accordance with this Stipulation. The fact of such review, name and position of the person(s) conducting the review, date, and all findings thereon shall be maintained at CNYPC. Any adverse finding as a result of such assessments shall be reviewed with the OMH staff and a plan of corrective action will be set forth, if indicated.
29. Whenever an inmate who previously had developed a severe mental disorder or suffered an acute exacerbation of preexisting mental disorder or otherwise substantially deteriorated mentally or emotionally while in a special housing unit is approved for transfer to SHU, CNYPC shall promptly review such determination and the documentation supporting the determination, to ensure that it is consistent with the terms of this Stipulation.
30. Certification of the Satellite Unit by the Joint Commission on Accreditation of Health Care Organizations ("JCAHO") shall be considered *prima facie* evidence that the defendants' quality assurance efforts are in compliance with this section, provided that : (a) such certification is not a substitute for the defendant's own quality assurance efforts, as set forth in this section and (b) the defendants shall notify plaintiffs' counsel of all reports concerning the Satellite Unit by JCAHO and of any scheduled review of the Satellite Unit by JCAHO.

**G. Notification and Training of Staff**

31. All DOCS staff regularly assigned to SHU, all OMH staff having contact with SHU inmates and all other DOCS and OMH staff having responsibilities pursuant to



this Stipulation shall be provided with a copy of this Stipulation, and shall be informed regarding requirements herein.

32. Subject to budgetary constraints, all DOCS staff who regularly have direct contact with SHU inmates shall be required to participate in training concerning the psychological needs of inmates confined to SHU, and the recognition of behaviors which should lead to a referral of an inmate to OMH.

## II. Deprivation of Items

33. Deprivation of items in a mental health setting for mental health reasons shall be maintained for only so long as it is determined by a mental health professional to be necessary for the inmate's mental health care. Deprivation of such items shall promptly be terminated upon a determination by a mental health professional that such is no longer appropriate or necessary.
34. When a mental health professional is on duty, no inmate shall be deprived of a blanket or mattress for mental health reasons for more than fifteen (15) minutes without a written recommendation from a mental health professional. When a mental health professional is on duty and an inmate has been deprived of his clothing for mental health reasons for more than fifteen (15) minutes, the inmate shall be provided with paper clothing, a blanket, and with toilet paper, unless otherwise specifically recommended and documented by a mental health professional. Nothing herein shall, however, prevent the substitution of a standard blanket or mattress with a suicide resistant quilted mat. Furthermore, nothing in this Stipulation shall preclude the appropriate application of 7 NYCRR § 305.2 "Deprivation Order."

## II. MONITORING AND COMPLIANCE

### H. Duration of this Stipulation; Monitoring Period; Frequency of Site Visits

35. The terms of this Stipulation are currently in effect and shall remain in effect for a period of two (2) years from the date that the Special Treatment Program (STP) for the Attica SHU is implemented. (The expected date for implementation of the STP is fall 2000.)
36. There shall be a monitoring period during the two (2) years following the date that the Special Treatment Program (STP) for the Attica SHU is implemented.
37. The effective period of the Stipulation or the monitoring period may be extended for additional one (1) year periods only and only upon demonstration to the court that defendants have failed to substantially comply with the terms of this Stipulation, as defined in Part II (D).

38. During the monitoring period, plaintiffs' counsel, together with an expert, to be designated by plaintiffs' counsel, shall be permitted a total of four (4) one day inspection tours. Such tours shall take place at intervals of no less than five (5) months.
39. After the two (2) year effective period of the Stipulation, or any extension granted by the court pursuant to paragraph II(A)(3) herein, the terms of this Stipulation shall automatically cease to bind the parties, as well as their successors, agents, employees, assigns and those acting in concert with them, all claims on behalf of the plaintiffs are discontinued and dismissed with prejudice and the jurisdiction of the court over mental health issues in this action shall automatically end.

I. Inspection Tours: Access to Clients and Records

40. Subject to the limitation of paragraph II(A)(4), upon ten (10) working days' notice, plaintiffs' counsel and expert(s) shall be entitled to an inspection tour during which they may enter and inspect the following areas at Attica: SHU; the Satellite Unit; the STP area and any cells or areas that are, or have been, used for mental health treatment or as mental health observation cells since the prior inspection visit, either in the Reception Building or in any Mental Health Units at Attica.
41. During the day of the inspection tour and, if plaintiff requests, during the following two days, plaintiffs expert(s) shall also be permitted to interview, in one of Attica's legal visiting rooms (as appropriate) any class members or former class members. Such interviews shall be subject to DOCS' and Attica's procedures for notification and approval of legal visits.
42. A class member may decline to be interviewed. However, plaintiffs' expert may then meet cell side with such individual for the limited purpose of determining whether he has the mental capacity, and has received adequate information to make an informed decision.
43. Plaintiffs' counsel and/or expert may also interview class members in private in one of Attica's SHU legal visiting rooms at times other than during the inspection tours, or the days following inspection tours. Such interviews shall be subject to DOCS' and Attica's procedures for notification and approval of legal visits. The provisions for cell side interviews in paragraph II(B)(3) herein shall not be applicable to the additional visits described in this paragraph.
44. Incident to the inspection tour, plaintiff's counsel and expert may, upon request, review records or documents described in Part II(C) herein. Requests for such records shall be made at least ten (10) days in advance, except that, if a longer period is defined in part II(C) herein, such longer period shall apply. Plaintiffs' counsel may request that designated records be provided prior to the date of the inspection tour, so long as the requirement for advance notice is met.

J. Access to Records

45. During the duration of this Stipulation, DOCS shall provide plaintiffs' counsel with a monthly list of all inmates confined to SHU and all inmates transferred to and from SHU.
  46. Up to four (4) times during the monitoring period, plaintiffs' counsel and experts may request in writing and within thirty (30) days of such request shall be provided with copies of:
    - a. Any directives, memos or other documents or records that describe or discuss OMH or DOCS practices and/or procedures as they may relate to the terms of this Stipulation;
    - b. Any OMH quality assurance documents generated pursuant to paragraph II(G); and/or
    - c. DOCS records of class members or former class members. Such a request, however, shall not be overly burdensome or jeopardize safety or security. A request for records made incident to any of the inspection tours, as described in paragraph II(B)(5) herein, shall count toward the four (4) permitted requests described in this paragraph.
  47. Up to six (6) times plaintiffs' counsel or its designated staff of Buffalo PLS shall be permitted to review SHU log books, upon two (2) working days' notice, and to request copies of any pages of such log books. Any such requested items shall be provided within two (2) weeks of the receipt of the request. Such review of SHU log books and requests for copies thereof, including requests made incident to an inspection tour as described in paragraph II(B)(5) herein, may take place no more than once in any four (4) month period.
  48. Plaintiffs' counsel or its designated staff shall be permitted to review Satellite Unit mental health records upon two (2) working days' notice and, upon request, to receive copies of any pages of such records within two (2) weeks.
5. Review of videotapes
- d. If plaintiffs' counsel or his/her designee requests that a copy of any videotape, or a portion thereof, recorded by the system of stationary videotape cameras maintained in SHU, be preserved, such videotape shall be preserved for seven (7) days or the remainder of the usual thirty (30) day preservation period, which ever is greater.

- e. Any request that a videotape be preserved shall reasonably describe such videotape including: (i) the date, approximate time and gallery or location recorded; and (ii) a brief description of the alleged event(s) or circumstances.
  - f. Where all the information described in paragraph II(C)(5)(b) is not available to the person making the request, (s)he shall provide as much of such information as is available; and a good faith effort will be made to locate the relevant videotape.
  - g. Videotapes requested pursuant to paragraph II(C)(5)(a) shall be made available for review by counsel for plaintiffs or his/her designee within two (2) working days notice. Videotapes may be reviewed between the hours of eight o'clock a.m. and four o'clock p.m. on any working day.
  - h. Counsel for plaintiffs may request, at the plaintiffs' expense, a duplicate copy of any such videotape or designated portion thereof. Such request must be made, in writing, prior to the expiration of the time period defined in paragraph II(C)(5)(a).
  - i. A request for a duplicate tape may be made following review of such videotape as described in paragraph II(C)(5)(d), or in lieu of such review.
49. OMH will provide to plaintiffs' counsel, upon request, a chronological list of current or former patients of OMH:
- j. transferred to SHU, and a list of inmates who received SHU admission evaluations as described in paragraph I(B) herein;
  - k. transferred from SHU to the Satellite unit or an observation cell or to CNYPC, and
  - l. transferred to SHU from the Satellite unit or an observation cell or from CNYPC.
  - m. admitted to the SHU Special Treatment Program ("STP").
  - n. SHU inmates who are subject of medication over objection court orders.
50. Counsel for the respective parties shall not divulge to any person the contents of, or the identity of any person(s) identified in, DOCS records or videotapes or OMH mental health records of the inmates or associated quality assurance documents obtained in accordance with this Stipulation, except that such contents, identities, record and documents may be disclosed to the court, support staff retained by

counsel directly involved in monitoring or enforcing this Stipulation, and expert witnesses and consultants retained by respective parties herein.

- 51. In the event that counsel for the respective parties desire to disclose to the individual patients their OMH mental health records or any information therein, the provisions of § 33.16 of the Mental Hygiene Law shall apply. Under no circumstances shall quality assurance documents obtained in accordance with this Stipulation be disclosed to the individual patients.
- 52. At the conclusion of this litigation, all documents and videotapes and copies thereof obtained in accordance with this Stipulation shall be returned to the defendants.
- 53. Prisoners' Legal Services of New York Inc. shall pay to DOCS or OMH (as appropriate) ten cents per page for any photocopies and the actual cost of videotapes produced in accordance with this Stipulation.

K. Enforcement

- 54. Obligations of the DOCS defendants and of the OMH defendants under the provisions of this Stipulation are identified as follows:

<u>OMH defendants only</u>	<u>DOCS defendants only</u>	<u>Mixed Obligations</u>
I (B) (1, 3-5)	I (D)(3)	I (A)(1-2)
I (C)(1-6, 8, 9)	II (A)(4)	I (B)(2)
I (D)(2)	II (B)(1-4)	I (C)(7)
I (E)(1-3)	II (C)(1, 2(c), 3, 5)	I (D)(1, 4, 5)
I (F)		I (H)
I (G)		I (I)
II (C) (2(b), 4, 6)		II (A)(1-3)
		II (B)(5)
		II (C)(2)(a)

- 55. Plaintiffs may not seek enforcement of this Stipulation unless and until the terms of paragraph II (D) have been followed, and then only in this court and against only those defendants identified in paragraph II(D)(1) as obligated to comply.
- 3. Defendants shall be considered to be in "substantial compliance" with this Stipulation unless plaintiffs make a clear and convincing showing that defendants' failures or omissions to meet the terms of the Stipulation were not minimal or isolated but were substantial and sufficiently frequent and widespread as to be systemic.

56. In the event that plaintiffs believe that defendants are not in substantial compliance, plaintiffs' counsel shall notify defendants' counsel of the facts supporting such belief. Defendants' counsel shall then notify plaintiffs' counsel within thirty days (30) that (a) the alleged problems have been remedied or (b) defendants disagree with plaintiffs' description of the problem. The facts supporting defendants' conclusion shall be included in such notice.
5. Upon receipt of the response described in paragraph II(D)(4), plaintiffs' counsel may apply to the court for an order enforcing this Stipulation, if plaintiffs believe that the defendants still have not substantially complied. Such an application may include a request to extend the duration of the Stipulation or active monitoring period for up to one (1) year.
57. If any individual member of the plaintiff class believes that the terms of this Stipulation have not been followed with regard to his own case, such individual shall file a grievance pursuant to DOCS Directive #4040, and send a copy of the grievance to plaintiffs' counsel. If the individual class member still believes that the terms of this Stipulation have not been followed upon conclusion of the grievance process, he may move the court for an order directing specific performance of a term or terms of this Stipulation as such relates to his own case. Any such motion, and any order issued by the court, must set forth (a) the specific term(s) of this Stipulation that the individual asserts has been violated regarding his case, (b) a concise statement of facts supporting such allegation and (c) a description of the specific relief sought. The terms of such order shall not include a finding of contempt or any contempt sanctions; however, the court shall have authority to enforce the performance of such order as it relates to the inmate's case.
58. This Stipulation is for injunctive relief only. Its terms are not intended to restrict, modify or enhance, in any way, any claims for damages that a class member may have by way of a separate lawsuit, any defense(s) to such claims that may be available to defendants, or the legal requirements, procedures or standards to be employed in determining any such claims or defenses.
59. This Stipulation does not constitute (a) an admission by any defendant of any violation of law or wrongdoing, (b) an admission by any defendant that any standard, policy, practice or procedure addressed in this action violated or failed to comply with either the language or the intent of any applicable law, rule or regulation, or (c) an admission by any defendant that its position in this litigation was not substantially justified. This Stipulation may not be used for any purpose other than one brought to enforce the provisions of this Stipulation and Order.

L. Notice to Class Members

60. All inmates in SHU have been provided with a copy of the Stipulation that was “so ordered” on March 6, 1998. From the date that this amended Stipulation is “so ordered” through the end of the monitoring period, each inmate already residing in or entering SHU shall receive a copy of this amended Stipulation, as well as a notice written in Spanish informing such inmate that a Spanish language version is available upon request.
61. Copies of this Stipulation, in English and Spanish, shall also be available, upon request in Attica’s law library.
62. A summary of the terms of the Stipulation, in English and Spanish, shall be posted in the Satellite Unit.
63. Plaintiffs’ counsel shall be responsible for obtaining a Spanish language translation of this Stipulation. Defendants’ counsel may review such translation for accuracy, prior to its dispersal.

Dated: June 12, 2000  
Buffalo, New York

Dated: June 9, 2000  
New York, New York

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