

COPY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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CAROLYN LANGLEY, ALBERTA SUCCAW,
SHIRLEY FURTICK, and CELESTE CLECKLEY,
individually and on behalf of all
persons similarly situated,

Plaintiffs,

and

MICHELLE BURRIS,

Plaintiff-Intervenor,

-against-

STIPULATION AND ORDER
84 Civ. 5431 (LBS)

THOMAS COUGHLIN III, Commissioner, New
York State Department of Correctional
Services, et al.,

Defendants.

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COREAN EVANS,

Plaintiff,

-against-

83 Civ. 7172 (LBS)

THOMAS COUGHLIN III, Commissioner, New
York State Department of Correctional
Services, et al.,

Defendants.

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WHEREAS, plaintiffs commenced this action on behalf of themselves and all others similarly situated on or about July 31, 1984, against the Commissioner of the New York State Department of Correctional Services, the Superintendent of the Bedford Hills Correctional Facility ("BHCF") and other officers and employees

of DOCS in their official and individual capacities (all of the said defendants hereinafter referred to collectively as the "DOCS defendants") and the Commissioner of the New York State Office of Mental Health, and other officers and employees of OMH in their official and individual capacities (said defendants hereinafter referred to as the "OMH defendants"), and Ronald Klug, former Unit Chief, in his official and individual capacity (hereinafter "defendant KLUG"), for declaratory and injunctive relief and damages concerning the provision of mental health services, conditions of confinement and fire safety procedures on the BHCF Special Housing Unit ("SHU"), based on allegations that defendants' acts, policies and procedures violated plaintiffs' rights under the Fifth, Eighth, and Fourteenth Amendments to the United States Constitution; and

WHEREAS, plaintiffs' claims for declaratory and injunctive relief concerning the provision of mental health services and the conditions of confinement on SHU were settled with all defendants by Stipulations so ordered and approved by the District Court as a Final Judgment by Consent, dated August 20, 1987; and

WHEREAS, plaintiffs' claims for declaratory and injunctive relief and for damages on the fire safety claims were withdrawn as against all defendants pursuant to a Stipulation of Settlement with DOCS defendants so ordered on October 21, 1987; and

WHEREAS, plaintiff class' claims for attorneys fees for services performed and costs incurred in this litigation through September 25, 1987 were awarded to the plaintiff class by Orders

of this Court dated November 16, 1987, November 18, 1988, January 31, 1989, February 23, 1989 and March 30, 1989, and said fees and costs have been paid in full; and

WHEREAS, the parties have previously stipulated to the withdrawal of plaintiffs' damage claims as against all defendants except for the defendants Thomas Coughlin, Elaine Lord, George Duncan, Frank Headley and Ronald Klug; and

WHEREAS, plaintiff-intervenor, Michelle Burris, who is represented in this action by Prisoners Legal Services, is not a party to this Stipulation and this Stipulation has no force or effect on any claim by plaintiff Burris; and

WHEREAS, by previous stipulation between counsel for the parties, the claims of plaintiff Corean Evans have been consolidated with those of the plaintiff class in all respects except that the period for which plaintiff Evans is entitled to seek damages commences in accordance with the statute of limitations on her individual action (hereinafter "plaintiff-class" shall include plaintiff Evans); and

WHEREAS, pursuant to Decision and Order of this Court dated June 8, 1989, the plaintiff-class has been recertified for purposes of damages as all prisoners confined to disciplinary segregation in the Special Housing Unit at the Bedford Hills Correctional Facility ("SHU") during the period from August 31, 1981 through August 20, 1987, and further, said class has been subdivided into the three (3) subclasses:

Subclass I are those class members who, while

incarcerated at Bedford Hills Correctional Facility, were (a) transferred to the facility Satellite Unit or to Central New York Psychiatric Center (Marcy), (b) prescribed anti-psychotic medication, (c) diagnosed as suffering from a psychotic mental illness, or, while housed in the Special Housing Unit, (d) were injurious to themselves or exhibited other symptoms of severe psychiatric illness as documented in either DOCS or OMH records;

Subclass II are those class members who are not members of Subclass I and who have requested, received, or been referred for mental health services while incarcerated at the Bedford facility; and

Subclass III are those class members who are not members of either Subclass I or II; and

WHEREAS, notice of the above stated class recertification is to be provided to class members with notice of this stipulation; and

WHEREAS, the defendants have denied that the provision of mental health services to inmates confined to SHU or the conditions of SHU violated plaintiffs' rights under United States Constitution; and

WHEREAS, nothing in this Stipulation shall be construed as evidence of an admission by defendants of a violation of any constitutional provision, law, regulation, rule or order; and

WHEREAS, the attorneys for the plaintiff-class and defendants, without conceding any infirmity in their claims or defenses, have come to an agreement that a final resolution

without further litigation of this action with respect to the damage claims of the plaintiff-class is appropriate; and

NOW, THEREFORE, IT IS STIPULATED AND AGREED, by and between the attorneys for plaintiff class, KOOB, MAGOOLAGHAN & SALZMAN, and the defendants Coughlin, Lord, Duncan and Headley, by their undersigned attorney, ROBERT ABRAMS, and defendant Klug by his undersigned attorneys, SINGLETON, KEEGAN & SPOLZINO, that all claims of plaintiff-class members for damages in this action are hereby settled on the following terms:

1. The defendants shall establish a settlement fund in the amount of \$350,000.00 (Three Hundred and Fifty Thousand Dollars) within seventy (70) days of the entry of this Stipulation as a Final Judgment on Consent by the deposit of the agreed upon amount into an escrow account under the supervision of the plaintiffs' attorneys, KOOB, MAGOOLAGHAN & SALZMAN.

2. The defendants shall pay interest, pursuant to 28 U.S.C. section 1961 on the sum specified in paragraph no.1 from the thirty-first (31st) day after entry of this Stipulation of Settlement as a Final Judgment on Consent by the District Court until the date the sums are paid.

3. Payment of the sum due under paragraph no.1 and for payment of any sum that may become due under paragraph no.2 as interest in said amount shall be made payable to KOOB, MAGOOLAGHAN & SALZMAN, as ESCROW AGENT for the Plaintiff-Class and Plaintiff Evans, and mailed to said law firm at 150 Nassau Street, New York, New York 10038, unless a change of address of

said firm is served on defendants prior to the date of payment.

4. Payment of the sums due under paragraph no.1 and any sums that may become due under paragraph no.2 is conditioned on ~~at least one~~^{all} defendants obtaining ~~the~~^{the} approvals required by Public Officers Law Section 17. This settlement shall be null and void unless all required Public Officers Law Section 17 approvals are obtained for ~~at least one~~^{all} of the defendants.*

5. Payment of the sums due under paragraph no.1 and any sums that may become due under paragraph no.2 satisfies all claims by the plaintiff class and plaintiff Evans against the State of New York and all defendants for damages in this action.

6. The settlement fund and/or any portion remaining thereof shall be held in an interest bearing escrow account by attorneys for the plaintiff class, Koob, Magoolaghan & Salzman as Escrow Agent. All interest earned on said account will be added to the settlement fund for distribution to class members. For as long as there remain any moneys in the fund Koob, Magoolaghan & Salzman, as Escrow Agent, shall provide opposing counsel and file with the Court a bi-annual accounting of the fund, including any interest earned thereon and any disbursements therefrom. The records of the escrow fund will be available at the offices of plaintiffs' counsel for inspection by any member of the plaintiff class or by defendants' counsel upon ten day's notice to plaintiffs' counsel.

7. The settlement fund will be distributed amongst the class based upon each member's subclass membership and number of

days of confinement to SHU during the subject period. Subclass I members will be paid a per diem rate of four (4) times greater the rate to be paid Subclass II members and six (6) times greater the rate to be paid Subclass III members. Subclass II members will be paid at a per diem rate of one and one half (1.5) times greater than the rate paid Subclass III members. This division is based upon the evaluation of the subject damage claims by plaintiffs' attorneys and their experts.

8. It is projected that if all class members are located, the awards given would amount to, approximately, for Subclass I members, \$36.00 per day of confinement; for Subclass II members, \$9.00 per day of confinement; and for Subclass III members, \$6.00 per day of confinement. These amounts are stated herein for purposes of illustration only. The actual per diem rates cannot be finally calculated until the subclass membership lists with number of days in SHU are finalized. In addition, a portion of the fund will be held in reserve at the time of the first distribution to allow for any award increases resulting from objections filed concerning subclass identification or days in SHU. A complete listing of class members, with subclass identification and number of days in SHU will be filed with the District Court upon the Court's approval of this Stipulation.

9. Upon approval of this Stipulation by the District Court and its adoption by the Court and entry as a Final Judgment on Consent, plaintiffs' attorneys will cause to be sent by regular mail to each class member at her last known address a notice of

her Subclass membership and the number of days she was confined to SHU during the relevant period. Plaintiffs' attorneys will use reasonable efforts to locate all members of the class. The notice will state the amount of the member's award based upon her Subclass membership and the number of days in SHU as calculated in accordance with the formula stated in the above paragraph.

This notice will include a Claim and Release Form, in a form satisfactory to the parties, which the class member must sign and return to plaintiffs' attorneys in order to collect the stated award. It will also provide a procedure and form for the filing of a written objection to the member's Subclass identification and/or number of days confined to SHU. The Claim and Release Form or Objection Form must be returned to plaintiffs' attorneys within thirty days of receipt or the class member will risk a determination that she has waived and abandoned her claim for damages in this action. The notice will provide the necessary information and instructions for completion of the Claim and Release Form and/or Objection Form, as well as a return envelope addressed to plaintiffs' attorneys.

Any objections received will be investigated by plaintiffs' attorneys and presented on behalf of the plaintiff, on notice to defendants' counsel, to United States Magistrate Michael H. Dolinger for final determination as to subclass membership and/or the number of days in SHU. Defendants agree to cooperate in said investigation by the provision of all relevant documentary evidence in their possession in a reasonably timely manner. The

parties agree to be bound by the Magistrate's findings and conclusions concerning Subclass membership and number of days of confinement.

10. In the event that certain class members cannot be located or fail to respond to their individual notice of an award, plaintiffs' attorneys will advise the Court no later than eighteen (18) months but not before one (1) year after entry of this Stipulation as a Final Judgment on Consent of their specific efforts to contact the plaintiffs who have not been located or who have not returned their Claim and Release or Objection Form. If all reasonable efforts are found by the Court to have been made to contact the plaintiffs, said plaintiffs will be deemed to have abandoned their awards and waived all rights to claim damages or an award in this action.

A second notice will then be sent to those plaintiffs who participated in the first distribution notifying them of their eligibility to receive a second award. It will include a second Claim and Release Form which must be signed and returned to plaintiffs' counsel within sixty (60) days of receipt. After sixty (60) days, all money remaining in the fund will be distributed in a second and final payment to those plaintiffs who have returned their second claim and release forms to plaintiffs' counsel. The second distribution will be made according to the same formula as the first payment: Subclass I members will be paid awards per day of confinement at a rate which is four (4) times the rate to be paid Subclass II members and six (6) times

the rate to be paid Subclass III members, and Subclass II members will be paid at a rate of one and one half (1.5) time the rate to be paid Subclass III members.

It is the obligation of each member of the plaintiff class to inform plaintiffs' attorneys of any change of address in order to participate in the second distribution.

11. The District Court shall retain jurisdiction over this action to resolve any issues which may arise concerning the administration and distribution of the fund. It is projected that the fund will be completely distributed within two years of entry of this Stipulation as a Final Judgment on Consent.

12. Any costs or fees reasonably incurred after the entry of this Stipulation as a Final Judgment on Consent in the administration or distribution of the fund, including notice to the class of the Final Judgment, shall be the responsibility of the defendants. It is agreed that paraprofessional time will be compensated at \$50.00 per hour and attorney time will be compensated at \$200.00 per hour. Plaintiffs counsel will submit to defendants' counsel a proposed Stipulation and Order with statements for such fees and costs on a bi-annual basis and defendants will inform plaintiffs' counsel of any objections thereto within ten (10) days of receipt. To the extent any objections are not resolved by counsel, plaintiffs' counsel may apply to the Court for appropriate relief.


13. The attorneys for the plaintiff-class and plaintiff Evans and the attorneys for defendants have executed a

Stipulation of Settlement of all claims of the attorneys for the plaintiff class and plaintiff Evans for attorneys fees and costs for this litigation through the date of entry of this Stipulation as a Final Judgment on Consent by the District Court. Said Stipulation of Settlement of fees and costs is conditioned upon the approval of this Stipulation by the District Court and its adoption by the Court and entry as a Final Judgment on Consent in full settlement and compromise of the damage claims of the plaintiff class and plaintiff Evans.

Dated: New York, New York
December 27, 1989


KOOB, MAGOOLAGHAN & SALZMAN
Attorneys for Plaintiff-Class
and Plaintiff Evans

By:


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SO ORDERED:

U.S.D.J.