IN THE UNITED STATES DISTRICT COURT FOR THE

DISTRICT OF UTAH, CENTRAL DIVISION

SANDRA HENRY, on behalf of herself and others similarly situated; Plaintiff, v. **GARY W. DELAND**, Director, Utah Department of Corrections; **O. LANE McCOTTER**, Director of Institutional Operations, Department of Corrections; **LYNN JORGENSON**, Warden, Utah State Prison; **DANIEL LEATHAM**, Bureau Chief of Support Services, Utah State Prison; **RUSSELL STEVENSON**, Director of Medical Facilities, Utah State Prison; **BLEN FREESTONE**, Assistant Director of Medical Facilities, Utah State Prison; **GERALD O'BRIEN**, Assistant Director of Medical Facilities, Utah State Prison; Defendants.	Civil No. 89-C-1124 J **STIPULATION OF SETTLEMENT OF MENTAL HEALTH CLAIMS**

Subject to its approval, the Court may enter an Order embodying the following provisions:

WHEREAS, this action was commenced on December 18, 1989, by Plaintiff on her own behalf and on behalf of all inmates who are confined, and who may be confined at the Utah State Penitentiary at Draper, Utah [USP, hereafter], and who are seeking injunctive and declaratory relief regarding claimed constitutional inadequacies in medical and mental health care; and

WHEREAS, Defendants filed their answer on February 21, 1990; and

WHEREAS, class certification was granted by this Court on April 24, 1990; and

WHEREAS, the parties agree that the Court has jurisdiction over this action and the parties and that the Court has the authority to order the relief set forth in this Stipulation; and

WHEREAS, the parties have exchanged relevant documents and have engaged in substantial discovery; and

WHEREAS, the parties, without conceding any infirmity in their claims or defenses, have agreed that the terms of this Stipulation are appropriate; and

WHEREAS, this Stipulation deals only with the mental health care aspects of the complaint; and

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

WHEREAS, nothing in this Stipulation shall be construed as evidence of an admission by Defendants that Defendants maintained a policy or practice that was intended to result or, in fact, resulted in the deprivation of any rights, privileges or immunities of any member of the Plaintiff class;

IT IS HEREBY STIPULATED:

MENTALLY ILL

1. The Plaintiffs and Defendants estimate that some fifteen (15) percent of the inmate population of USP suffer from mental illness as defined in Para. 4. This epidemiological statement is derived from a consensus of the existing literature on point and estimates by staff and experts.

MISSION STATEMENT

2. The USP hereby adopts the following mission statement with regard to its legal obligation to provide adequate mental health services to the population as estimated above:

a. To reduce the disabling effects of mental illness in order to maximize each inmate's voluntary participation in such treatment programs as exist within the prison;

b. To reduce the unnecessary extremes of human pain and suffering caused by mental illness; and

c. To help keep the prison safer for staff, inmates, volunteers, visitors and the surrounding communities.

GENERAL APPROACH TO MISSION OF MENTAL HEALTH SERVICES

3. USP officials agree that adequate numbers of mental health professionals, as agreed in this Stipulation, and other appropriate staff must be employed so that:

a. all inmates entering the USP system are adequately screened for signs of mental illness;

b. when such signs or symptoms are observed, a more thorough evaluation shall be performed by a mental health professional, as defined below;

c. where so indicated, an individual treatment plan will be developed for the inmate with complete and regular charting to take place thereafter; and

d. that a variety of services and levels of care shall be available thereafter to such inmate.

Mental health professional is defined as a person who is qualified by training and experience to provide diagnostic, rehabilitative, or therapeutic services to persons with mental illness. Generally, this will require at least a Masters or Doctoral degree in a mental health profession; such as psychiatry, psychology, social work or psychiatric nursing.

MENTAL ILLNESS DEFINED

4. In order to more precisely identify inmates suffering from a mental illness, the following definition is adopted by the USP:

> Mental illness means a psychiatric disorder which substantially impairs an inmate's mental, emotional, behavioral, or related functioning. Mental illness does not mean a personality or character disorder or abnormality manifested only by repeated criminal conduct.

TREATMENT MODALITIES

5. Recognizing that there are a variety of professionally acceptable modalities for treating all mental illnesses, the USP shall incorporate the professional judgment of the USP's mental

health professionals in the continuance of existing programs and in the creation of new programs and physical facilities. A multidisciplinary approach is hereby adopted so that persons trained in the various mental health professions, as defined in Para. 3, work together to maximize the appropriate treatment for the seriously mentally ill inmate.

It is imperative that security, medical and mental health staff be available to inmates on a twenty-four (24) hour basis and have opportunity for input to the treatment team at all stages of the treatment process. Such input will include not only security issues but specific behavioral observations which are necessary to help prescribe and assess the effects of treatment.

RECEPTION AND ORIENTATION

6. Screening.

Within twenty-four (24) hours of arrival, each inmate will be screened for mental illness, psychiatric crisis, withdrawal from alcohol or drugs, or suicide risk. The screening process will have the following elements:

a. Training: Adequately trained staff, either correction, medical, or mental health, will complete the screening.

b. Standardization: A standard protocol will be utilized to avoid an idiosyncratic process where the identification of mental illness depends upon which screener is on duty.

c. Low threshold: The screening must have a low threshold for referral to follow-up evaluation. That is, any indication of either history or current evidence of mental illness or psychiatric crisis must result in referral for further evaluation.

d. Results: The results of the screening must be clearly and legibly documented and available to those responsible for medical and psychiatric care, housing assignments, liaison to outside agencies and similar decisions. Appropriate care will be taken to protect the confidentiality of such information.

7. Follow-up Evaluations.

When an inmate is identified through the screening process or by referral as likely to need further evaluation or treatment, such inmate will be seen as soon as necessary but in all cases within seventy-two (72) hours by a mental health professional, as defined in Para. 3. The evaluation need not include a full battery of psychological tests, but must be adequate to answer the questions posed.

When an inmate is identified at this stage as requiring mental health services, then the appropriate service shall be made

available as promptly as the condition or diagnosis dictates based on the judgment of the appropriate mental health professionals.

8. Mental Health Services Orientation.

As a basic part of the inmate's initial reception and orientation to the USP, each inmate shall receive written material, prepared in simple language, which explains what mental health services are available at any unit or site within the USP. Such written material will be supplemented by a verbal session conducted by a trained staff member at which time the written material is further explained and questions answered.

Every reasonable effort will be devoted to resolving problems associated with language barriers to assure that every inmate understands the written and oral material. The objective here is to be certain that every inmate is notified of what mental health services exist and how to gain access to such services.

TRAINING

9. Staff will receive special pre-service, followed by regular in-service, training in the following:

a. Recognition of signs and symptoms of mental illness in the inmate population;

b. Recognition of signs and symptoms of chemical dependence and withdrawal therefrom;

c. Recognition of signs and symptoms of adverse reactions to psychotropic medication;

d. Recognition of signs and symptoms of mental health emergencies and specific instructions on contacting the appropriate professional care provider and taking other appropriate action;

e. Suicide potential and prevention;

f. Instructions on procedures for mental health referrals;

g. Safe and appropriate use of restraint and seclusion; and

h. Identification and use of least restrictive and intrusive means of problem resolution.

All such training shall be made a matter of record and such records shall indicate the individual's attendance and the course content.

REFERRAL SYSTEM

10. Referral is the process by which an inmate, having been initially identified or self-identified as possibly in need of mental health services, is provided with the opportunity for appropriate mental health evaluation or, in a crisis, the most

expeditious means for gaining access to appropriate mental health services.

On entry into the USP system, inmates who may require mental health services will be identified and provided access to services, in accordance with Paras. 6, 7, and 8.

Inmates who thereafter may seek or require mental health services may be self-referred or may be referred to evaluative or mental health services by any staff member. This referral shall be made to the inmate's social service worker. The inmate's social service worker shall complete a mental health referral form and forward the form to the relevant services administrator.

Inmates shall be evaluated and services provided as efficiently as the particular condition, including the need for crisis responses, calls for in the judgment of appropriate USP mental health professional staff.

NEEDS ASSESSMENT

11. USP staff shall employ procedures to identify inmates currently in the USP who may not have had the full benefit of the enhanced screening, evaluation, and access to the appropriate mental health services and provide them with access to such services as are appropriate for their current mental health needs.

The USP staff shall employ procedures to identify inmates who may be seriously mentally ill and in need of appropriate services; USP staff also shall disseminate to those identified inmates, by way of written and oral notice, the details of the mental health programs created herein and explain how to gain access to such programs.

MENTAL HEALTH SERVICES IN GENERAL

12. The treatment needs of seriously mentally ill inmates will vary with their diagnosis, behavior, and prognosis; and will vary with the individual inmate over time.

To meet these varied diagnostic and treatment needs, the USP will provide adequate mental health services designed for:

a. Follow-up evaluations, according to Para. 7;

b. Crisis intervention;

c. Inpatient services -

(i) Acute beds,

(ii) Intermediate/Longer-term residential care beds; and

d. Clinical services for general population inmates.

Each of these services, along with required staffing, will be further described in the succeeding paragraphs.

PROFESSIONAL STAFFING

13. Separation of Functions.

Mental health professionals who participate in administrative decision-making processes related to inmates, such as, but not limited to, classification, parole and furlough, will be other than those mental health professionals directly involved in the treatment or counseling of inmates as a part of an inmate's treatment program.

14. Staffing.

a. Defendants agree to staff the USP mental health services, as outlined in Para's. 17 through 20 of this Stipulation, with the following full time equivalents:

1 - Unit Chief (any Master's degree or mental health professional as defined in Para. 3).

3 - Medical Doctors [M.D.] (with extensive training and/or experience in psychiatric diagnosis and treatment, and at least two who will be Psychiatrists).

5 - Ph.D. level Psychologists (at least two who will be Licensed Psychologists).

4 - Social Workers [MSW].

1 - Psychiatric Nurse Supervisor [MSN].

6 - Registered Nurses [RN], 2 day, 2 night, 2 evening (includes relief).

2 - Clerical staff (at least one with medical records training).

The staffing described above does not include substance abuse counseling, sex offender services, nor the normal prison counseling/case management function.

b. Evening, Night and Weekend Coverage.

Evening and weekend coverage will be provided on-call on a rotating basis by a psychiatrist or physician familiar with the use of psychotropic medication and psychological and/or social work staff.

Night coverage will be provided via telephone on an on-call basis and on-site consultation when necessary by all mental health professional staff.

15. Staffing Levels.

The mental health resources agreed to herein, and especially the staffing of mental health programs and the provision of the variety of mental health services, is based on a USP population of three thousand (3,000) inmates.

The Defendants hereby agree that significant increases or decreases in said population shall either require a commensurate

increase, or allow a commensurate decrease, in the agreed upon mental health program staff and the requisite mental health services.

Should the average monthly resident inmate population increase by twenty (20) percent then the Defendants agree to notify Plaintiffs' counsel, who shall also then be notified of the details of a plan designed to meet the expected increased demand for mental health services.

Any proposed decrease in staffing or services may be instituted in the same fashion and subject to the same process as increases.

Any dispute concerning the implementation of this paragraph shall be resolved in accordance with Para. 40.

16. Licensure.

Except as permitted under Utah Code Ann. S 58-25A-10, unlicensed staff may not be utilized to provide mental health services. Procedures to assure the timeliness of license renewal shall be adopted and promulgated.

CRISIS INTERVENTION

17. Inmates shall have prompt access to crisis services. Crisis services may be initiated by any institutional staff

member and may include the following treatment modalities as deemed clinically appropriate by USP mental health professionals:

a. Psychotropic medications;

b. Special management precautions -- these precautions, based on professional judgment, may involve one to one measures, special housing options, constant observations, or other appropriate observation procedures;

c. Verbal counseling, which may range from psychotherapy approaches to simply providing information or support;

d. USP mental health professionals will assist other institutional staff concerning the handling of inmates who experience crisis; and

e. Resolution of any crisis will include some attention to prevention of a reoccurrence.

ACUTE BEDS

18. The USP agrees to provide twenty-eight (28) acute beds, which will include the following features:

a. Trained staff to deal with inmates who may be acutely suicidal, dangerous to others, or otherwise experiencing a severe mental health crisis;

b. A physically safe environment with adequate visibility into individual cells where several suicidal patients can be observed by one (1) staff member; and

c. Structured out-of-cell daily activity except where documented as clinically or custodially contraindicated.

INTERMEDIATE/LONGER-TERM RESIDENTIAL BEDS:[1/]

19. For inmates who are unable to function in the general population due to serious mental illness, the USP will provide fifty (50) intermediate/longer term residential beds.

a. The intermediate/longer term residential setting will serve 3 different populations:

i. "Halfway in" - inmates for whom transfer to this less stressful therapeutic setting will prevent an inpatient hospitalization;

ii. "Halfway out" -- inmates returning from inpatient hospitalizations who require a "decompression chamber" prior to returning to the general population; and

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1/ Note: The staffing for this unit is essentially included in the staffing list outlined in Para. 14. Of those staff, the following will be specifically assigned to the intermediate/longer term residential unit:

1 - Ph.D. psychologist who directs the unit;
1 - social worker;
1 - psychiatric nurse; and

* * * *

1 - case manager/social service worker, separately budgeted.

iii. Inmates who are never able to adapt to the general population and who will likely remain in this setting for the duration of their prison sentence.

b. The intermediate/longer term residential setting will have the following features:

i. An environment in which inmates are protected from general population predatory inmates;

ii. Ongoing therapeutic programming, to include psychoeducational, behavioral and psychiatric rehabilitative components;

iii. Orientation, within the limits of the inmates' comprehension, about their mental illness and the medications they are being prescribed; and

iv. Group meetings along a "therapeutic community" model.

CLINICAL SERVICES FOR GENERAL POPULATION INMATES

20. Mental health services for inmates in the general population will include options of psychotropic medication, various types of individual and group psychotherapy, and case management (i.e., support, advocacy, information, advice). Maintenance of inmates in the setting appropriate for their security status shall be considered a very important aspect of this entire mental health program.

HIGH SECURITY INMATES

21. Inmates in high-security areas may require services from mental health staff in order to achieve early identification

of acute exacerbations of mental illness or psychiatric crisis. The USP will provide at least two (2) hours per work day of on-site mental health professional staff, as defined in Para. 3, in such units.

While treatment needs may require the temporary movement of such inmates into mental health treatment settings, the classification of all inmates remains the responsibility of the classification officer, who is not a mental health professional, as is presently done.

PSYCHIATRIC MEDICATION: PRESCRIPTION AND MONITORING

22. In all instances, psychotropic medication must be prescribed only by a psychiatrist or physician familiar with the use of psychotropic medication in accordance with generally accepted pharmacological principles and contemporary national standards. Psychotropic medication shall be dispensed only when clinically indicated.

Any patient placed on psychotropic medication must have appropriate medical monitoring where indicated and evaluation of efficacy in all cases. Every inmate receiving psychotropic medication will be seen and evaluated by the treating physician at least once a week until stabilized and thereafter at least every two weeks or at a community acceptable level of monitoring.

Female inmates shall be cautioned of the potential risks of taking psychotropic medication while pregnant.

The medical and psychiatric records of all inmates receiving psychotropic medication shall be reviewed by USP mental health staff in order to assure documentation of professionally acceptable follow-up procedures and especially the frequency of medical monitoring and blood tests for Lithium, and for other medications requiring medical monitoring and blood testing, and to address other psychiatrically sound concerns.

TRACKING SYSTEM

23. The USP shall create and maintain an efficient record-keeping system for the seriously mentally ill, using the technology it deems appropriate, so that any mental health professional is able to maintain continuity of care by having timely access to any such records as are required.

An interdisciplinary team of USP mental health professionals shall undertake a systematic and periodic quality assurance review of the records of seriously mentally ill inmates receiving mental health services. Such review is designed to assure that all inmates receive continuity of care consistent with the exercise of professional judgment. Appropriate care will be taken to protect the confidentiality of such information.

INPATIENT BEDS

24. Even with a system of mental health care within the prison, such as described herein, it is possible that at any given time there will be a small number of inmates whose illness is so severe as to require transfer to an inpatient psychiatric setting outside of the USP. Such transfers will be made on an as needed basis in the opinion of USP mental health professionals.

USP also agrees to develop procedures for transferring an inmate to an inpatient psychiatric unit outside of the USP when it is advised by its mental health professionals that the transfer is needed.

POLICIES AND PROCEDURES: COMMITMENT TO ADOPT

25. The Defendants believe that the adoption and regular review of Policies and Procedures relating to prison administration, including mental health services, is an administratively sound practice. It is agreed, however, that Policies and Procedures per se are not constitutionally mandated and that this agreement to adopt some such measures does not constitute a basis for subsequent review by the Court except for failure to adopt such Policies and Procedures as are agreed upon herein:

Where Policies and Procedures on point currently do not exist or are in the process of revision, the Defendants hereby

undertake to adopt, or complete the revision, of adequate Policies and Procedures encompassing the following areas:

a. Use of psychotropic medication, including issues of consent and forced medication;

b. Criteria and procedures to be used when a seriously mentally ill inmate is to be hospitalized, in accordance with Para. 19;

c. Use of restraints and seclusion;

d. Confidentiality in the clinician/patient relationship and in the maintenance of mental health services treatment records;

e. The maintenance of professionally sound psychiatric and psychological records;

f. Discharge planning for inmates receiving, or having received, mental health services;

g. The adoption of a quality assurance program;

h. Transfer of seriously mentally ill inmates between housing units;

i. Education and training of correctional and mental health services staff; and

j. The articulation of the relationship between mental health services staff and medical services staff.

Written suggestions for the content of any of the above areas for Policy and Procedure coverage may be provided by the Plaintiffs' lead counsel to the attorney for the Defendants and such suggestions will be duly studied and considered for inclusion.

TWO YEAR COMPLIANCE

26. Defendants have two (2) years from the Court's approval of this Stipulation [the "Order"] to come into compliance with the provisions of this Stipulation.

a. Defendants' compliance with this Stipulation will be assessed by an Impartial Expert ["Impartial Expert"].

b. The Impartial Expert will be selected jointly by Plaintiffs' mental health expert and Defendants' mental health expert, to carry out the responsibilities set forth in this Stipulation.

c. If the Impartial Expert is unable to fulfill his or her responsibilities under this Stipulation, Plaintiffs' mental health expert and Defendants' mental health expert will jointly select another Impartial Expert to do so.

27. Defendants agree to provide the Impartial Expert and Plaintiffs' counsel with written progress reports ["Progress Reports"] in six month intervals during the first two (2) years following the Court's approval of this Stipulation, plus a final

Progress Report at the end of the third year following the Court's approval of this Stipulation. Such Progress Reports will describe the Defendants' progress toward compliance with this Stipulation.

28. The Impartial Expert and Plaintiffs' designee, shall be permitted to conduct a total of three (3) on-site visits to the USP during the first two (2) years following the Court's approval of this Stipulation. Such on-site visits shall occur at intervals to be determined by the Impartial Expert, but in no case more frequently than every six (6) months, or less frequently than every one (1) year. In addition, the Impartial Expert and Plaintiffs' designee shall be permitted a final on-site visit at the end of the third year following the court's approval of this Stipulation.

29. On-site visits will be up to two (2) days in duration. All expenses and costs associated with the work of the Impartial Expert shall be paid by Defendants. All parties shall cooperate to ensure that the Impartial Expert may complete the on-site visits within the two (2) day period allotted for such visits.

a. Costs of the four (4) on-site visits shall not exceed thirty thousand ($30,000).

b. If the completion of the on-site visit is delayed due to natural events, events relating to the operation of the prison, or conduct of defendants or their personnel, any of which would have a material effect on the Impartial Expert's ability to conduct the on-site visit, the length of the on-site visit shall be extended accordingly, at Defendant's additional expense.

c. Otherwise, if Plaintiffs believe the two (2) day on-site visit is not satisfactory, it shall be the financial obligation of the Plaintiffs shall be responsible for any additional expenses and costs of the Impartial Expert, not to exceed one (1) additional day.

30. The Defendants may select a designee to accompany the Impartial Expert and Plaintiffs' designee during the on-site visit. Neither Plaintiffs' designee nor Defendants' designee need be the same person for each on-site visit.

a. During such on-site visits, the Impartial Expert may review all matters referred to in this Stipulation, and that are not otherwise legally privileged.

b. The Impartial Expert, accompanied by Plaintiffs' designee and Defendants' designee, may speak with any Defendant or staff member of the USP.

c. The Impartial Expert may engage in private conversations with any class member.

d. The Impartial Expert shall abide by all Court orders regarding confidentiality of individual inmate prison files and medical/mental health files.

31. The Impartial Expert will prepare a written report of his or her findings, within thirty (30) days of each on-site visit and send a copy to Plaintiffs' and Defendants' counsel.

32. The role of the Impartial Expert shall be advisory on matters of compliance. Should the Impartial Expert have the opinion at any time that the Defendants are not in substantial compliance with any matter herein, then the Impartial Expert shall notify Plaintiffs' and Defendants' counsel in writing of such opinion.

CONTINUING JURISDICTION

33. The Court shall retain jurisdiction over this action for a period of three (3) years for the purpose of enforcing the provisions of this Stipulation. In the event of any motion for relief based upon Defendants' alleged non-compliance, Defendants shall be considered to be in compliance with the provisions of this Stipulation unless Plaintiffs make a showing by a preponderance of the evidence that Defendants' failures or omissions to

meet the terms of this Stipulation are not minimal or isolated, but are substantial and widespread.

34. Should the Plaintiffs establish that the Defendants are not in compliance, as set forth above, the Court may:

a. alter the frequency or extend the period of Defendants' "Progress Reports" and the on-site visits by the Impartial Expert for the sites or functions found to be out of compliance;

b. extend the compliance period, but only for the sites or functions found to be out of compliance and by no more than one (1) year increments; and

c. extend its jurisdiction over this action, but by no more than one (1) year beyond the date that Defendants are in compliance with this Stipulation.

Defendants shall bear the costs of any additional on-site visits required by Defendants' non-compliance with this Stipulation. However, such additional costs shall be subject to a cost limitation proportionate to that set forth in Para. 29, as adjusted for inflation. For example, if two additional visits are required by Defendants' noncompliance, the cost of such visits shall not exceed $15,000, plus additional amounts, if any, for inflation.

EARLY COMPLIANCE

35. In the event Defendants' believe they are in full compliance prior to the expiration of the two (2) years following the Court's approval of this Stipulation, Defendants shall notify the Impartial Expert and Plaintiff's counsel in writing of such belief.

36. Within ninety (90) days thereafter, the Impartial Expert will conduct an on-site visit of up to two (2) days in duration. This on-site visit shall not be counted as one of the four on-site visits under Paras. 28 and 29 above. Costs for this on-site visit will be paid by Defendants and will not exceed $5,000.

a. If the completion of the on-site visit is delayed due to natural events, events relating to the operation of the prison, or conduct of defendants or their personnel, any of which would have a material effect on the Impartial Expert's ability to conduct the on-site visit, the length of the on-site visit shall be extended accordingly, at Defendant's additional expense.

b. Otherwise, if Plaintiffs believe the two (2) day on-site visit is not satisfactory, Plaintiffs shall be responsible for any additional expenses and costs of the Impartial Expert, not to exceed one (1) additional day.

37. The Impartial Expert's on-site visit will be conducted according to Para. 30.

38. The Impartial Expert will prepare a written report within forty-five (45) days of the on-site visit either affirming or rejecting Defendants' assertion of full compliance, and will send a copy to Plaintiffs' and Defendants' counsel.

39. In the event the Impartial Expert finds the Defendants have achieved early full compliance, the Impartial Expert and Plaintiffs' designee shall make one (1) final on-site visit at the end of one (1) year following the Impartial Expert's finding of early full compliance. The Impartial Expert's final on-site visit will be conducted according to Paras. 30 and 36. The Impartial Expert will prepare and send a written report according to Para. 38.

40. If, after the final on-site visit, the Impartial Expert finds the Defendants are still in full compliance, Defendants' counsel may submit the Impartial Expert's determination to the Court and request an early dismissal of the action.

41. If the Impartial Expert finds, during either of the on-site visits, the Defendants have not achieved early full compliance, the provisions regarding two year compliance and

continuing jurisdiction (i.e., Paras. 26 through 34) will be fully reinstated.

DISPUTE RESOLUTION

42. In the event a dispute arises as to whether Defendants have failed to comply with the terms of this Stipulation, counsel for the parties shall proceed as follows:

a. Counsel for the parties shall make a good faith effort to resolve any difference which may arise between them over matters of compliance. Prior to the institution of any proceeding before the Court to enforce the provisions of this Stipulation, Plaintiffs' counsel shall notify Defendants' counsel in writing of any claim that Defendants are in violation of any provision of this Stipulation.

b. Within ten (10) business days of the receipt of this notice, counsel for Plaintiffs and Defendants shall meet in an attempt to arrive at an amicable resolution of the claim. If after ten (10) business days following such meeting, the matter has not been resolved, Defendants' counsel shall be so informed by Plaintiffs' counsel, in writing, and Plaintiffs may then have due recourse to the Court.

43. This Stipulation is binding on all members of the Plaintiffs' class and will settle and compromise all injunctive and declaratory mental health claims raised in any complaints that may have been filed in this action, as well as all similar systemic claims for injunctive and declaratory relief which could have been made, known or unknown, prior to the date the Order is signed by the Court.

MODIFICATION OF THE TERMS OF THE STIPULATION

44. Should either party, during the life of this agreement, desire to modify any substantive provision of this Stipulation, they must, in writing, give notice to opposing counsel as to the proposed modification and is rationale.

45. Within five (5) business days, opposing counsel must respond to the proposed modification in writing by indicating their consent or their intent to oppose the proposed modification. If opposing counsel refuses to consent to the proposed modification, the petitioning party may move, pursuant to Rule 60(b)(6) of the Federal Rules of Civil procedure, for an order modifying the relevant terms of this Stipulation.

46. Unless the party petitioning for modification makes a clear and convincing showing that the circumstances justify such modification, this Stipulation shall not be altered.

47. The parties agree to an Order implementing this Stipulation in the form attached hereto.

DATED this 8th day of September 1992.

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