

DOCKET # **526**
U.S. DISTRICT COURT
WEST DIST. OF WISCONSIN

6/02

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN**

MAY - 3 2007

FILED
THERESA M. OWENS, CLERK
CASE #

**DENNIS JONES'EL, et al., on behalf of
themselves and all others similarly
situated,**

Plaintiffs,

Case No. 00-C-421-C

v.

MATT FRANK, et al.,

Defendants.

ORDER APPROVING THE MODIFIED SETTLEMENT AGREEMENT

The Court has considered the parties' Joint Motion for Approval of the Modified Settlement Agreement, the comments of class members regarding the proposed Modified Settlement Agreement, the responses of the parties to those comments, and all other appropriate materials.

The Court finds that the resolution of this class action embodied in the proposed Modified Settlement Agreement, attached hereto as Exhibit A and incorporated herein by reference in its entirety, is fair, reasonable, and adequate. Therefore, the Modified Settlement Agreement is APPROVED and is adopted as an Order of this Court.

The parties have stipulated, and the Court on the entire record finds, that the relief granted by the Modified Settlement Agreement is narrowly drawn, extends no further than necessary to correct the alleged violation of plaintiffs' federal rights, and is the least intrusive means necessary to correct the alleged violation of plaintiffs' federal rights.

Copy of this document has been
provided to Counsel
this 22 day of May, 2007
by S. Vogel
S. Vogel, Secretary to
Judge Barbara B. Crabb

The Court shall retain jurisdiction to enforce the terms of the Modified Settlement Agreement.

Entered this 1st day of May, 2007.

BY THE COURT:

Barbara B. Crabb
Honorable Barbara B. Crabb
Chief Judge

**UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WISCONSIN**

**DENNIS JONES'EL, et al., on behalf of
themselves and all others similarly
situated,**

Plaintiffs,

Case No. 00-C-421-C

v.

MATT FRANK, et al.,

Defendants.

MODIFIED SETTLEMENT AGREEMENT

ARTICLE I: DEFINITIONS

1.1 "the Court" means the United States District Court to which this case is assigned.

1.2 "Defendants" means WDOC Secretary Jon Litscher, SMCI Warden Gerald Berge, their successors in office, subordinates, agents, contractors, and attorneys.

1.3 "SMCI" means the prison currently known as the Supermax Correctional Institution, located in Boscobel, Wisconsin.

1.4 "Serious Mental Illness" and "Seriously Mentally Ill" are used herein as defined by the Court in Exhibit B to the June 24, 2002 Judgment in the above-captioned matter, Docket No. 269, attached hereto and incorporated by reference.

1.5 "DOC" means the Wisconsin Department of Corrections, its subdivisions, agents, employees, contractors, and attorneys.

1.6 "Warden" means the Warden of SMCI or his/her designee.

1.7 "SMCI" means the same as Wisconsin Secure Program Facility ("WSPF") and the terms may be used interchangeably.

ARTICLE II

2.1 Plaintiffs shall retain the lawyer-client relationship as set forth in Judge Crabb's order and will retain the right to meet with inmates and review their files.

2.2 Counsel for Plaintiffs shall have a continuing responsibility regarding the implementation of this Agreement. Reasonable attorney fees, expert fees, including but not limited to consulting fees for Dr. Kenneth Robbins, and costs at market rates shall be provided for such purpose. If the parties are unable to resolve any dispute concerning such fees and costs, the dispute shall be referred to the Court for a decision. Counsel shall have access to the prison, records, inmates and staff during the term of this Agreement.

ARTICLE III

3.1 No seriously mentally ill prisoners will be sent to SMCI nor will seriously mentally ill prisoners at the facility be permitted to remain there.

ARTICLE IV

4.1 Inmates shall receive not less than 5 hours out of cell exercise per week. Law library time permitted by WSPF shall not be counted against the minimal out-of-cell time for any inmate.

ARTICLE V

5.1 Counsel for Plaintiffs and their expert witnesses shall be paid reasonable attorneys and expert fees and costs at market rates for time and expenses in connection with this suit including work leading up to the settlement agreement and securing its final approval from the Court under Rule 23(e).

5.2 It is understood that Judge Crabb shall retain jurisdiction for the duration of the Modified Settlement Agreement.

ARTICLE VI: PLRA COMPLIANCE AND COURT JURISDICTION

6.1 It is understood and agreed by the parties that the Court shall retain jurisdiction to enforce the terms of this Modified Settlement Agreement for the duration thereof.

6.2 The parties stipulate, based on the entire record, that the relief granted by this Modified Settlement Agreement is narrowly drawn, extends no further than necessary to correct the alleged violations of plaintiffs' federal rights, and is the least intrusive means necessary to correct the alleged violations of plaintiffs' federal rights.

6.3 The settlement of this matter does not constitute, and should not be construed as an admission or indication of liability on the part of the defendants and shall not be relied upon as precedent in any future claims. Similarly, individual members of the plaintiff class do not waive any right to seek injunctive relief or damages by asserting a constitutional violation related to any of the provisions that have been deleted above from the Settlement Agreement.

6.4 The Parties agree that the relief granted by this Modified Settlement Agreement is consistent with all requirements of PLRA.

ARTICLE VII: MENTAL HEALTH SCREENING PROCESS

7.1 Except as otherwise provided in this paragraph, every prisoner transferred to WSPF, regardless of status, shall prior to his physical transfer receive a face to face evaluation by a qualified mental health clinician to determine whether the prisoner suffers from Serious Mental Illness. Prisoners transferred to WSPF because of a disturbance or to prevent a disturbance as defined under Wis. Admin. Code § DOC 306.02(7) or transferred because of an emergency as defined under § DOC 306.02(9), shall receive a face to face evaluation by a qualified mental health clinician for Serious Mental Illness within 10 working days of physical transfer to WSPF.

7.2 By this Agreement, the Parties request the Court to appoint Joseph Layde, M.D., as the psychiatric monitor. The role of the psychiatric monitor shall extend no further than necessary to enforce the terms of the Modified Settlement Agreement. The term of the psychiatric monitor shall terminate when the Modified Settlement Agreement terminates. In discharging his duties, the psychiatric monitor shall consult with plaintiffs' psychiatric expert, Kenneth Robbins, M.D., and with defendants' Director of Mental Health Services, Kevin Kallas, M.D. Defendants shall compensate the psychiatric monitor at his customary hourly rate and shall reimburse his reasonable expenses.

7.3 The Department of Corrections may in its discretion send non-Seriously Mentally Ill general population prisoners to WSPF after February 9, 2007.

7.4 This Modified Settlement Agreement shall terminate automatically one year from the date of the Court's order approving the modifications. Such approval shall occur after the plaintiffs' class has had notice and an opportunity to comment on the modification, as provided under Fed. R. Civ. P. 23(e).

7.5 There shall be no evidentiary hearing prior to the termination of the Modified Settlement Agreement.

Dated: February 14, 2007.

Dated: February 14, 2007.

Attorneys for Defendants

Attorneys for Plaintiffs

s/ Corey F. Finkelmeyer

s/ Edward R. Garvey

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