

Attachment H-1 Duvall vs. O'Malley Consent Decree

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

JEROME DUVALL, et al.,

Plaintiffs,

v.

MARTIN O'MALLEY, et al.,

Defendants.

Civil Action No. JFM-94-2541

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PARTIAL SETTLEMENT AGREEMENT

I. PROCEDURAL BACKGROUND

1. This is a consolidated class action filed under 42 U.S.C. § 1983 challenging conditions of confinement at the Baltimore City Detention Center ("BCDC"). The Court has jurisdiction over the subject matter of this litigation pursuant to 42 U.S.C. § 1343(3).
2. This case, originally entitled *Duvall v. Lee*, Civil No. K-76-1255, was filed in 1976. On April 24, 1981, this case was consolidated with *Collins v. Schoonfield*, Civil No. 71-500-K, which was originally filed in 1971.
3. On July 9, 1993, the Court approved a Revised Consolidated Decree, entered by consent of the parties, that provides injunctive relief on a number of issues, including medical care, mental health care, and physical plant conditions. The relief granted by the Revised Consolidated Decree was stayed on October 31, 1997 and the case was placed on the inactive docket on January 7, 1999.

4. On December 18, 2003, Plaintiffs filed a motion to restore the case to the active docket. Thereafter, on April 23, 2004, Defendants filed a renewed motion to terminate the Revised Consolidated Decree. The Court granted the motion to restore the case to the active docket on August 31, 2004. Since that time the parties have been conducting discovery and preparing for a hearing with regard to Defendants' renewed motion to terminate the Revised Consolidated Decree. During the period of discovery, the parties acknowledge that certain improvements, such as the air-conditioning of the Women's Detention Center, have occurred, and that the parties desire and expect further improvements.

5. The parties have engaged in settlement negotiations and have reached agreement as to all the areas in dispute with the exception of the method of protecting from heat injury detainees with high security or high-medium security classifications. The parties agree that the issue of protecting from heat injury detainees with high or high-medium security classifications will be resolved by the Court. The terms of this Partial Settlement Agreement are set forth in Sections II through VI below.

## **II. PROCEDURAL MATTERS**

6. This Partial Settlement Agreement is not a consent decree and the parties do not intend it to be construed as such. It does not operate as an adjudication of the merits of the litigation.

7. The Court's approval of this Partial Settlement Agreement is sought only to comply with the provisions of Fed. R. Civ. P. 23(e) and not to convert this Partial Settlement Agreement into a consent decree.

8. Nothing in this Partial Settlement Agreement is intended to create, nor shall it be construed as, an admission of liability of or by any party.

9. If the Partial Settlement Agreement is accepted by the Court, all issues in this case, with the exception of the issue of the method for protection from heat injury for detainees with high or high-medium security classifications, shall be conditionally dismissed without prejudice on the terms and conditions set forth below.

### **III. MEDICAL PROVISIONS**

#### **A. Scope of Obligations Regarding the Medical Provisions**

10. Nothing in the provisions of this Partial Settlement Agreement is to be construed as a delegation of Defendants' duties to provide medical care consistent with constitutional requirements. Defendants retain discretion as to the methods necessary to maintain or produce compliance with this Partial Settlement Agreement. Defendants intend to use, within the exercise of their discretion, the contractual tools at their disposal to maintain or effectuate implementation of these provisions. Except where otherwise indicated, the provisions in this Section III apply to the BCDC and to the Central Booking and Intake Center ("Central Booking").

#### **B. Medication**

11. For those circumstances in which the practitioner makes a clinical judgment not to continue a medication reported by a detainee until the detainee's reported existing prescription can be confirmed, Defendants shall implement a system that, within 48 hours of a detainee's<sup>1</sup> arrival in

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<sup>1</sup>The term "detainee" in this Partial Settlement Agreement refers to all members of the

Central Booking, reliably makes reasonable attempts to contact the community medical providers identified by the detainee to attempt to confirm such prescription, unless a shorter time for confirmation is required to protect the detainee from a significant risk of adverse effect on the detainee's health. If the detainee arrives at Central Booking on a weekend or holiday, and as a result attempts to contact the provider cannot occur within 48 hours, the provider shall make a decision as to whether delay in confirming the prescription for 72 hours would have an adverse effect on the detainee's health, and if so take appropriate clinical measures to minimize or eliminate that adverse effect. In no event shall the reasonable attempts to contact the community medical providers be delayed more than 72 hours. Detainees with HIV who can describe their anti-retroviral medications will receive their medications within 24 hours. In other cases in which detainees with HIV state that they were receiving anti-retrovirals but cannot provide necessary information for a prescription, staff will aggressively attempt to contact outside providers to determine the information necessary to continue the detainees' medications.

12. In all other cases in which a detainee entering Central Booking reports that he or she is currently taking prescribed medications that, if interrupted, would pose a risk of adversely affecting health, the detainee shall be provided with such medications or equivalent medications within 24 hours of arrival, unless a physical examination discloses that treatment is not required or continuation is not consistent with standard medical practice.

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Plaintiff class, regardless of whether the class member is awaiting disposition of a criminal charge or serving a sentence following conviction.

13. Defendants shall continue their existing program for methadone maintenance available to all detainees who enter the jail while participating in a methadone maintenance program pursuant to a valid prescription.

14. Defendants shall develop and implement written policies and procedures reflecting the actions described in ¶¶ 11-13 above.

15. Defendants shall develop and implement a system for reliably renewing chronic medications, or making a determination not to renew such medications, that is not dependent upon the detainee's use of the sick call sign-up system. This system shall be reflected in an appropriate protocol.

16. Defendants shall develop and implement a protocol or clinical pathway that provides that detainees will be provided with appropriate pain medication based on standard medical practice.

17. Medication Administration Records ("MARS") shall be routinely completed by staff in an appropriate manner for all prescribed, dispensed, and undispensed medications.

18. Practitioners who prescribe particular medications shall be provided with continuing medical education regarding current preferred pharmaceutical practices with regard to HIV, Hepatitis C, diabetes, and major mental illnesses. Defendants shall implement a quality assurance mechanism to assure that practitioners are prescribing medications for these diseases in a manner consistent with current medical practice standards. Defendants shall review the formulary provisions for psychotropic medications and adjust the formulary if appropriate.

C. Chronic Care and Follow-up Care

19. Defendants shall develop and implement a policy providing that the plan of care developed at the time of the intake history and physical shall guide care for chronic and acute disorders known at that time. The plan of care shall in appropriate cases include medication and other orders and referrals for specialty care.

20. Defendants shall develop and implement a system that assures that the plan of care, as updated by further medical findings, is appropriately executed.

21. Orders for laboratory testing shall be reliably executed. Where a test results in an abnormal finding, such finding shall be given follow-up care consistent with standard medical practice and institutional protocols.

22. Abnormal findings that require follow-up after a detainee has been released from Defendants' custody shall be disclosed to the detainee by the time of release. Where time permits, a copy of the abnormal findings or a written medical summary shall be provided to the detainee.

23. Defendants shall develop and implement appropriate standard protocols for treatment of asthma, cardiac disease, diabetes, hypertension, HIV infection, Hepatitis C infection, tuberculosis, MRSA, seizure disorder, and pregnancy.

24. Where appropriate monitoring and treatment of chronic disease requires the use of specialist care, such specialist care shall be provided. Defendants shall have appropriate mechanisms to assure that necessary back-up is available in the event of a disruption in contractual specialist services.

25. X-ray services and other tests shall be provided within a time frame consistent with the urgency of the complaint.

26. Defendants shall develop and implement policies that provide guidelines for the maximum amount of time that can safely elapse before emergent, urgent, or routine specialist referral or laboratory or other testing is provided. The policies shall include guidelines specifying that non-urgent and non-emergent orders for laboratory or other testing shall be completed within 48 hours. A reliable tracking system to assist in assuring that such services are provided in a safe time frame shall be implemented.

27. Necessary accommodations for detainees with disabilities shall be provided, including housing, services and supplies. Housing accommodations shall address the needs of detainees with disabilities for access to showers or baths, beds, toileting facilities, and mobility. In particular, detainees who require wheelchairs shall be provided with accessible toilets, sinks, showers (including shower chairs or handheld units), and grab bars for use in getting in and out of bed. Appropriate fixtures such as flushing mechanisms and sink controls shall be available in cells for persons with disabilities. The cells themselves shall be accessible for persons using wheelchairs. Detainees with disabilities will also be provided with appropriate services and supplies, including dressing changes for wounds and access to the law library.

28. Detainees who require medical supplies, including dressing changes for wounds, will be provided with such appropriate services and supplies in a timely manner.

29. Defendants shall develop and implement an appropriate protocol for the prevention and treatment of pressure sores.

D. Medical Records

30. Defendants shall develop and implement policies that provide that medical entries shall be promptly filed in the correct section of the detainee's medical record. Such entries include without limitation intake forms, laboratory test results, EKGs, x-ray reports, specialty consultation requests and reports, progress notes, orders, outside medical records, completed sick call slips, and MARS.

31. Provider written notes shall be legible. Entries shall be legibly signed or initialed as appropriate.

32. When a detainee provides a history, or other medical information is available that, if verified, would require medical treatment, providers shall make appropriate efforts to obtain outside medical records and records of previous medical treatment within BCDC and Central Booking. Any such efforts, or decisions not to obtain outside records, shall be documented, consistent with standard medical practice, in the detainee's medical record.

33. Policy shall be developed and implemented providing for the following provisions of this paragraph: Practitioners shall document in the conventional (paper) medical record or electronic personal health record ("EHR") that they have reviewed all abnormal laboratory tests and other test results and what action if any was indicated. All paper laboratory reports and other reports that indicate an abnormal result shall not be filed in the medical record until they have been initialed or signed, as well as dated, by the provider. All abnormal laboratory reports and other test reports shall be posted in a conventional medical record or EHR within 24 hours of receipt. Where testing such as blood pressure levels or blood sugar levels is ordered, the results of such

testing shall be recorded in the EPHR. If such testing was not completed, the reason shall be documented in the EPHR. Nurses shall document on the MARs and other orders they execute. If the nurse uses a conventional medical record for documentation, encounters shall be documented, signed and dated and shall include the nurse's level of licensure.

34. Policy shall be developed and implemented providing that conventional medical records or EPHRs shall be available to the practitioner during sick call and other diagnostic and treatment encounters.

E. Access to Health Care

35. Sufficient medically trained intake staff shall be provided to assure that detainees are medically screened within four hours of entry into Central Booking, unless a detainee displays obvious symptoms that make it apparent that more rapid screening is required.

36. An appropriate medical practitioner shall document in the detainee's medical record the diagnosis and treatment plan, within a reasonable time not to exceed seven (7) days, for all detainees who are referred for further medical attention in the screening process.

37. Sick call requests shall be triaged immediately upon receipt according to policies that require that requests for sick call indicating conditions that require an appointment with a registered nurse shall be seen within 48 hours on weekdays and within 72 hours on weekends and holidays. Detainees with urgent or emergent conditions will be seen more quickly as medically necessary.

38. LPNs and unlicensed staff shall not be used to triage sick call requests. Unlicensed staff shall take not vital signs or perform other similar tasks that contribute to evaluation of a patient. LPNs may take vital signs and perform other similar tasks that contribute to evaluation of a

patient but shall not undertake the independent evaluation of a patient in a manner that violates Department of Health and Mental Hygiene Standards of Practice for Licensed Practical Nurses, COMAR § 10.27.02.E.

39. The disease-specific nursing protocols shall assure that RNs do not attempt to diagnose or treat beyond their professional scope of practice.

40. When a sick call encounter with a provider results in a referral to another internal health care practitioner, that referral shall result in an appointment within a reasonable period of time in light of the medical need. All such appointments for conditions that are neither urgent nor emergent shall take place within five days.

41. A scheduling system shall be implemented that assures timely rescheduling when scheduled appointments are missed for any reason. Additionally, any refusals of treatment or missed treatments shall be fully documented.

42. Sufficient custody staff shall be available to ensure appropriate transportation to sick call.

43. An appropriate staffing plan shall be developed and implemented that requires that sufficient medical staff be available to complete triage of sick call requests as required in ¶ 37 above and to see immediately all detainees who need immediate review.

44. Policy shall be developed and implemented that requires that health care staff shall make daily rounds in segregation areas by going cell to cell and speaking to detainees.

45. Staffing shall be sufficient to permit medical staff to respond to health needs.

46. Defendants shall develop and implement appropriate protocols and policies for correctional and medical staff's timely and appropriate response to detainees' emergent health needs.

47. Sufficient custody staff shall be available to ensure the appropriate transportation to medical providers of a detainee with emergent health needs.

F. Particular Diseases and Health Care Needs

48. Sufficient psychiatric staff shall be provided to assure that persons in need of a psychiatric evaluation receive a timely and otherwise appropriate evaluation, including evaluations to determine whether psychotropic medications should be prescribed and whether the detainee requires special suicide precautions.

49. Where bridge orders are used for psychiatric medications, such use shall be consistent with standard medical practice and shall not result in lapses of medication inconsistent with the provisions of § III.B. above.

50. Where medical standards require an in-person evaluation of a detainee's medical status, that evaluation shall be provided by an appropriate level of staff in an appropriate time frame.

51. A psychiatrist shall supervise the mental health treatment program.

52. A psychiatrist shall be on-site five days a week and available on-call within one hour at all times.

53. Appropriate protocols shall be developed and implemented to assure that qualified mental health practitioners provide timely, adequate and appropriate evaluation and treatment to detainees.

54. Pregnant detainees shall be provided with pre-natal, peri-natal, and post-natal care, including monitoring and treatment by a medical provider certified in the management of obstetrical patients, an obstetrician, certified nurse practitioner, or midwife, in a manner that comports with

the current edition of the American College of Obstetricians and Gynecologists standards. High risk obstetrical patients shall be cared for in a manner that comports with the current edition of American College of Obstetricians and Gynecologist standards. Pregnant detainees shall not be restrained during active labor or delivery, and restraints used at other times shall not pose a medical risk to the detainee's health or to the safe continuation of her pregnancy.

55. Detainees who were currently receiving Hepatitis C antiviral treatment in the community shall routinely have that treatment continued in custody, unless there is an appropriate medical reason, such as the development of significant side-effects, for discontinuing such treatment.

56. In the absence of a specific indication for specialist review, such as an opportunistic infection or side-effects from current medications, detainees with HIV who report that they were receiving highly-active anti-retroviral therapy (HAART) in the community whose prescriptions cannot be confirmed by staff shall be evaluated by an infectious disease specialist within 14 days of admission to the facility. The infectious disease specialist shall decide on any medication changes consistent with sound medical judgment. Prior to such evaluation, detainees with HIV who report prescriptions for anti-retrovirals shall be treated in accord with ¶¶ 11-12, *supra*.

57. Detainees who require insulin shall not have their form of insulin changed absent sound medical justification.

58. Defendants shall develop an appropriate protocol to provide for the testing of detainees with possible HIV or Hepatitis C.

59. Detainees withdrawing from alcohol and other drugs shall be provided with monitoring and medical treatment pursuant to an appropriate protocol that meets current medical standards.

G. Suicide Prevention

60. Objects including shower heads in the mental health area, the suicide watch cells, and the holding cells in Central Booking that could be used for hanging shall be removed or otherwise addressed (such as by recessing the shower heads).

H. Medical Housekeeping

61. Defendants shall develop and implement policy providing an appropriate housekeeping program in the medical areas.

I. Staff Performance

62. Staff, including without limitation the nurses in the clinic areas and on-call physicians, shall respond to pages within a reasonable time in light of the circumstances.

63. Defendants shall institute appropriate action, or ensure that the contractor takes such action, when medical staff deliberately fail to perform their medical duties appropriately, or such staff are found sleeping while on duty.

64. Disciplinary proceedings shall be instituted against correctional staff who absent good cause fail to respond to emergency requests for assistance or who otherwise inappropriately interfere with the provision of medical care. The range of potential discipline for such offenses shall include termination.

J. Quality Improvement

65. Defendants will develop and implement appropriate protocols for internal monitoring and quality improvement to ensure compliance with standard medical practice. This system will

include monitoring of adverse outcomes and quality indicators, root cause analyses, and peer review.

K. Other

66. Defendants shall develop all protocols, policies, and critical pathways required in Section III of the Settlement Agreement within 90 days of the Court's approval of this Settlement Agreement. Defendants shall share drafts of the proposed protocols with Plaintiffs' counsel, and provide Plaintiffs' counsel with a minimum of a two-week period to comment on the drafts before the protocols become final. In the event that Defendants choose to submit an existing policy, critical pathway, or protocol in satisfaction of this provision, Plaintiffs shall also be provided with a minimum of two weeks to provide comments on the protocol that Defendants will consider.

**IV. PHYSICAL PLANT PROVISIONS**

A. Air Quality, Temperature and Humidity Control

67. Defendants shall repair or replace as necessary the 30 roof-top ventilation fans and the power source for the fans at the Men's Detention Center ("MDC"). Defendants shall thereafter maintain all of the 52 current roof-top ventilation fans in a manner that provides air movement equal to the fans' design capacity, as well as the 60 window fans located in the housing units. Absent unexpected developments, Defendants expect to complete these improvements by June 2007.

68. The existing air exhaust system shall be cleaned on a regular schedule and as necessary.

69. Defendants shall ensure that the ventilation system is maintained in proper working condition.

70. For detainees with low or low-medium security classifications, Defendants shall implement their current Heat Management Plan regarding heat risk assessment and identification. Medical staff shall be able to identify a detainee with a medical classification of H-1 and a security classification of low or low-medium security, as determined by custody staff, to be placed only in air-conditioned housing. 200 beds in the JI (Jail Industries) Building shall be reserved for housing such detainees designated for air-conditioned housing only, as well as other detainees with low or low-medium security classifications and H-1 heat risk classifications. Other detainees with low and low-medium security classifications shall be protected from heat injury in the manner provided in the Heat Management Plan.

71. Temperature gauges shall be installed in all MDC housing units. Defendants shall develop and implement policy that provides that, when the temperature reaches 88° in a housing unit, a program to prevent heat injury shall be instituted. This program shall include distribution of water and ice and medical monitoring of affected housing areas. Persons at high risk of heat injury shall be evaluated by medical staff and as necessary treated and moved to safer housing.

72. Fans shall be provided in the housing units of MDC to assist in ventilation, consistent with security needs.

B. Plumbing, Water Supply and Waste Disposal

73. Defendants shall maintain the plumbing improvements designed to prevent flooding in the basement dormitories in WDC.

74. Absent emergency or other extraordinary circumstances, Defendants shall repair all broken dormitory toilets that can be repaired with on-site supplies within 72 hours of discovery of the need for repair. Absent emergency or other extraordinary circumstances, Defendants shall repair

all broken dormitory sinks that can be repaired with on-site supplies within 72 hours of discovery of the need for repair. Absent emergency or other extraordinary circumstances, Defendants shall repair all broken dormitory showers that can be repaired with on-site supplies within 72 hours of discovery of the need for repair.

75. Defendants shall give special attention to repairing non-functional plumbing where such plumbing causes or exacerbates an inability to meet correctional norms for plumbing ratios.

76. Defendants shall eliminate toilet waste lines that result in waste from one toilet migrating to another toilet.

77. The reverse osmosis water treatment system for dialysis shall be provided with a backflow prevention device.

78. Defendants shall keep the floor of the electrical room in the South Basement dry.

79. Water temperatures in the showers shall be tested on a regular basis and any scalding hazards found in such testing shall be promptly addressed.

80. Shower walls and floors shall be maintained in safe and sanitary condition.

81. Sanitary napkin waste shall be disposed of in a safe manner.

C. Laundry

82. Defendants shall develop and implement a policy to enhance the laundry program to assure sufficient capacity and reliability for personal laundry. The goal of the laundry program shall *be to* routinely return cleaned personal laundry to its owner within three days or less. Defendants shall take concrete steps toward implementation of this goal. By August 1, 2007, Defendants shall develop an initial plan to improve laundry services and shall begin implementation of that plan consistent with this goal. Defendants shall thereafter continue to make all good faith efforts

to reach this goal. Defendants shall also establish an efficient and effective system for resolving disputes regarding lost personal laundry.

83. Institutional linens shall be laundered no less than weekly and the linens returned from the laundry shall be safe and sanitary.

D. Overcrowding

84. Defendants shall develop and implement policy to assure that basic needs are met when detainees must be confined in temporary overflow housing because of excessive population. These specific needs include appropriate staffing; access to medical care; access to sanitary and well-maintained toilets, sinks and showers; access to grievance forms; access to regular exercise for detainees housed for more than five days in such areas; and provision of bedding, linens and personal hygiene supplies.

E. Lighting

85. Defendants shall replace broken lights within 72 hours of discovery of the need for replacement. Individual cells lacking cell lighting shall not be occupied while that lighting is non-functional. Light covers shall be cleaned on a regular basis.

86. After the light covers have been cleaned, Defendants shall evaluate whether increased lighting is required in any housing areas.

F. Maintenance

87. Defendants shall provide sufficient staffing and other resources to develop and implement an appropriate preventive maintenance program. Defendants shall utilize persons with appropriate expertise to develop the preventive maintenance program.

88. The preventive maintenance program shall include an electronic tracking or inventory system.

89. The preventive maintenance program shall address as priorities the plumbing, heating, ventilation, and electric systems, as well as the elevators.

90. Absent a general emergency, no detainee shall be left in a cell with a non-functional toilet for more than eight hours.

91. Missing and broken metal nosing strips shall be promptly repaired on stairwells.

92. Defendants shall employ sufficient staffing and other resources to make possible emergency, routine, and preventive maintenance.

G. Housekeeping and Sanitation

93. Defendants shall develop and implement an appropriate policy for housekeeping and sanitation. Persons with appropriate expertise shall be utilized in the development of this policy. The policy shall include provision for adequate supplies of appropriate cleaning supplies. The policy shall include a designation of required cleaning supplies and the specifications for disinfectants (including concentration) to be used in the housing areas and in other areas of BCDC. The policy shall also specify the system for distribution of cleaning supplies. The policy shall give appropriate attention to cleaning the toilets.

94. Defendants shall develop and implement an appropriate policy providing that staff supervisors are responsible for enforcing necessary sanitation standards. The policy shall provide that any detainees involved in diluting disinfectants are properly trained and supervised so that such detainees follow all applicable manufacturers' directions, including any directions

regarding the use of protective equipment. The policy shall also provide that appropriate training will be given to all persons who perform housekeeping duties, including detainee workers, and it shall provide for appropriate protective garb for detainees who clean toilets and showers. The policy shall contain appropriate sanctions regarding improper performance of housekeeping tasks, and those sanctions shall be reliably imposed in appropriate circumstances. The policy shall also provide for an appropriate system of self-monitoring of housekeeping tasks.

95. Appropriate vermin control (rodents and insects) shall be provided in the housing units.

96. In addition to appropriate actions to remove mold from showers and other areas with mold growth, immediate and effective steps shall be taken to remove mold from the Wyatt Building, followed by appropriate steps to prevent regrowth.

97. Defendants shall develop and implement a policy that provides for an effective system for distribution of necessary personal hygiene products, including toilet paper and sanitary napkins.

98. Utility closets shall be maintained in a clean and sanitary condition, and shall be maintained with adequate lighting. Defendants shall provide utility closets on the upper tiers of the cellblocks where feasible. On other cellblocks, Defendants shall add water spigots by December 31, 2008. Defendants shall develop and implement appropriate policy for use on those tiers without a utility closet.

99. The use of common bar soap shall be eliminated in non-housing areas and replaced with appropriate cleaning agents that do not pose a risk of spreading disease. Detainees in dormitory housing shall be supplied with individual bar soap.

100. Defendants shall continue to track Staphylococcus aureus infections among detainees and to take reasonable steps to eliminate person-to-person transmission of such infections.

101. Defendants will implement an effective program of replacing mattresses that can no longer be cleaned. This program may include the use of mattress covers. All mattresses or mattress covers given to detainees shall be cleaned and sanitized prior to distribution to a different user. Blankets that are no longer serviceable shall be replaced. Policy shall be developed and implemented that requires replacement of mattresses when they are no longer cleanable or serviceable, even with a clean cover.

H. Medical Areas

102. Adequate storage space shall be provided for the medical clinics. All supplies shall be stored in an orderly and sanitary manner. A separate area, not accessible to detainees, for the storage of all medical supplies shall be provided. Adequate lighting shall be provided in all such storage areas.

I. Attorney Visiting Areas

103. The areas shall be reconfigured to provide a minimum of 19 inches for egress by detainees.

104. The attorney visiting areas shall be modified to adjust sound attenuation in order to protect privacy, create openings that would allow for normal speech between attorney and client, and provide air conditioning or some other form of mechanical ventilation.

J. Food Service and Commissary

105. Hot water shall be added to the food service hand washing sinks and shall be maintained.

106. Defendants shall develop and implement appropriate policies to prevent cross-contamination on the food line.

107. All persons working in the kitchen and food distribution system shall wear hair coverings and clean protective outer garments.

108. Carboys used to provide drinking water in the dormitories shall be properly cleaned between uses.

109. Defendants shall not use naphthalene as a method of pest control.

110. Adequate space shall be provided for food storage off the floor on adequate dunnage.

111. The plumbing pipes in the Commissary storage area shall be checked and, if appropriate, replaced.

112. Appropriate steps shall be taken to remove the feral cats from the loading dock area.

K. Barber Shop

113. A licensed barber shall review and approve Defendants' barbering policy, and provide periodic review of the barbering program.

114. Proper disinfectant shall be used for barbering tools.

L. Other

115. Defendants shall develop all policies required in **Section IV** of this Partial Settlement Agreement within 60 days of the Court's approval of this Partial Settlement Agreement. Defendants shall share drafts of the proposed policies with Plaintiffs' counsel, and provide Plaintiffs' counsel with a minimum of a two-week period to comment on the drafts before the policies become final.

#### V. MONITORING AND FINAL RESOLUTION

116. Plaintiffs' counsel may monitor Defendants' compliance for a period of two years from the date that the Court approves this Partial Settlement Agreement.

117. During this monitoring period, Plaintiffs' counsel shall have the right to receive medical records of all detainees or former detainees upon presentation of an appropriate release of information form signed by that person. Such records shall be provided without charge.

118. Defendants shall inform Plaintiffs' counsel of all deaths of detainees who died in BCDC or Central Booking, or who died following medical transport from BCDC or Central Booking and shall, without any requirement of a release, provide Plaintiffs' counsel with the medical records of such detainee within a reasonable period of time.

119. Defendants shall provide Plaintiffs' counsel with periodic reports, at quarterly intervals, regarding Defendants' compliance with these provisions during the two-year period that this Settlement Agreement will be in effect. The parties shall agree on the format of the report.

120. Plaintiffs' counsel shall have the right, at times mutually agreed upon by the parties, but at approximately six month intervals during the two years that this Partial Settlement Agreement is in effect, to inspect Central Booking and BCDC with regard to compliance with provisions of this Partial Settlement Agreement.

121. Plaintiffs' counsel shall have the right to attend inmate council meetings and to otherwise meet with detainees. While the parties recognize that Defendants may on occasion be required for valid security reasons to cancel Inmate Council meetings, such meetings shall be rescheduled within a reasonable period of time.

122. Plaintiffs and Defendants will develop a mechanism for bringing individual unmet needs to Defendants' attention in order to resolve any such problems effectively and efficiently. Defendants will make Plaintiffs' counsel's contact information available to all detainees and Defendants will revise the Inmate Handbook and distribute it to all detainees admitted to BCDC.

123. In the event that Plaintiffs believe that Defendants have failed to comply in some significant respect with this Partial Settlement Agreement, Plaintiffs shall provide Defendants with written notice at least one month prior to the expiration of the two-year life of this Partial Settlement Agreement. The parties shall then have sixty days to attempt to resolve any disputes about Plaintiffs' claim.

124. If Plaintiffs' claim is not resolved at the end of the sixty-day period, Plaintiffs may file an appropriate motion to reopen this case. Defendants may oppose this motion on the ground that Defendants have in fact complied with the contested provisions of the Partial Settlement Agreement. The Court will defer acting on any such motion prior to expiration of the Partial Settlement Agreement.

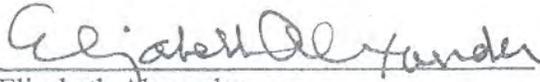
125. Notwithstanding the above provision, Plaintiffs may request that the Court reopen this case in the event that Plaintiffs assert that conditions at the BCDC pose an imminent threat of significant harm to some or all detainees. In that event, Plaintiffs may file a motion for temporary relief with the Court, along with a motion to reopen the case to the extent necessary to deal with the motion for temporary relief. In all cases, Plaintiffs shall give Defendants notice of their concerns no later than the time that Plaintiffs' counsel makes the determination to file a motion for temporary relief.

126. In the event that Plaintiffs have not filed a motion to reopen this case within two years of the date that this Court approves this Partial Settlement Agreement, the Court shall dismiss this case without prejudice. Notwithstanding the previous sentence, resolution of the issue of the method for protection from heat injury of detainees with high and high-medium security classifications who also have H-1 medical heat risk classifications shall not be governed by this Partial Settlement Agreement, but by such orders as the Court may hereafter enter.

**VI. CLASS APPROVAL AND FEES AND COSTS**

127. Notice of this proposed Settlement Agreement shall be provided to members of the Plaintiff class through posting in the housing units at BCDC and any other manner required by the Court. The Court will thereafter hold whatever hearing it deems appropriate regarding approval of the Settlement Agreement.

128. The parties will attempt to settle the issue of attorneys' fees and costs. If the parties are unsuccessful, they shall submit the issue to the Court for determination.



Elizabeth Alexander  
National Prison Project of the ACLU  
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Washington, DC 20005

Counsel for Plaintiff Class

Date: Aug. 11, 2009



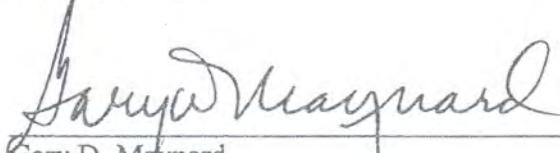
Wendy Hess  
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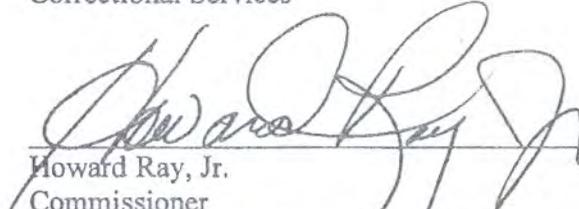
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For Defendants:

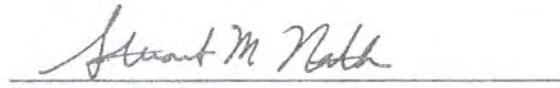
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Department of Public Safety and  
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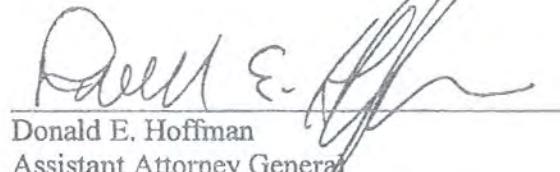
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Howard Ray, Jr.  
Commissioner  
Division of Pretrial Detention and Services  
Department of Public Safety and  
Correctional Services

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Stuart M. Nathan  
Principal Counsel  
Office of the Attorney General  
Department of Public Safety and  
Correctional Services

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Date

  
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