

- 20 -

51. The Monitor shall provide the parties with reports describing the steps taken by the State to implement this Settlement Agreement and evaluate the extent to which the State has complied with each substantive provision of the Settlement Agreement. The Monitor shall issue reports every four (4) months, unless the parties agree otherwise. The Monitor shall provide reports to the parties in draft form for comment at least two (2) weeks prior to their issuance. These reports shall be written with due regard for the privacy interests of detainees and staff and the interest of the State in protecting against disclosure of non-public information. The Monitor's reports, which shall not be filed with the Court, may be made public by the State or United States. The Monitor may keep confidential any personally-identifiable information, or any information in the interest of privacy or public safety.

52. The Monitor shall provide the State with necessary technical assistance toward compliance with the Settlement Agreement as requested by the State.

53. The DOJ and its expert consultants and agents may tour OCCC to assess compliance with this Settlement Agreement. The DOJ will conduct a tour of OCCC approximately six (6) months after the effective date of the Settlement Agreement to determine the status of the State's compliance with the terms of this Settlement Agreement.

- 21 -

54. Prior to any tour, the DOJ shall provide reasonable notice to the State. Within a reasonable time in advance of the tour, the DOJ shall identify any expert consultants it plans to use on the tour.

55. Regarding topics addressed in this Settlement Agreement, the DOJ and its attorneys, expert consultants, and agents shall have full and complete access to the facility, facility records, detainee records, staff records, State records relating to this Settlement Agreement, detainees, and employees of the State and OCCC upon reasonable notice to the State for the purpose of ascertaining compliance with this Settlement Agreement. The DOJ shall have the right to conduct confidential interviews with detainees. Such access shall continue until this Settlement Agreement is terminated. State attorneys may be present at interviews of staff and tours of facilities.

56. The State shall respond to any written questions from the DOJ concerning the State's compliance with this Settlement Agreement, within thirty (30) days of receipt of such written questions. The State shall provide the DOJ with access to any requested documents regarding the State's compliance with the requirements of this Settlement Agreement.

57. The State shall maintain sufficient records to document its compliance with all of the requirements of this Settlement Agreement, for the duration of the Settlement Agreement.

- 22 -

58. This Agreement shall not be deemed to waive the attorney/client, attorney work product, deliberative process, victim/counselor, or executive privileges. The State shall not assert physician/patient or psychotherapist/patient privileges with respect to the monitoring of this Settlement Agreement.

59. The State shall designate a single point of contact (a Compliance Coordinator), for the duration of the Settlement Agreement, to coordinate and oversee this Settlement Agreement.

60. The parties agree to defend the provisions of this Settlement Agreement. The parties shall notify each other of any court challenge to this Settlement Agreement. In the event any provision of this Settlement Agreement is challenged in any local or state court, removal to a federal court shall be sought.

61. This Settlement Agreement shall be binding on all successors, assignees, employees, agents, and all those working for or on behalf of the State.

62. In the event any provision of this Settlement Agreement is declared invalid for any reason by a court of competent jurisdiction, said finding shall not affect the remaining provisions of this Settlement Agreement.

63. Throughout the duration of the Settlement Agreement, the DOJ and its expert consultants and agents shall maintain the confidentiality of all information provided pursuant to this Settlement Agreement consistent with state and federal law and consistent with the law enforcement responsibilities of the DOJ.

- 23 -

In addition, throughout the duration of this Settlement Agreement, letters between counsel for the DOJ and counsel for the State shall be confidential.

64. Within a reasonable period of time after the conclusion of any tour, the DOJ shall make available to OCCC any post-tour reports prepared by its expert consultants.

V. TERMINATION

65. The purpose of this Settlement Agreement is that the State will be able to achieve desired outcomes for and provide the necessary mental health services to OCCC detainees.

66. This Settlement Agreement shall terminate and the Court will dismiss the Complaint with prejudice forty-two (42) months after the effective date of the Settlement Agreement. The Settlement Agreement may terminate prior to the forty-two (42)-month-date if the parties agree that the State is in substantial compliance with each of the provisions of this Settlement Agreement and that the State has maintained substantial compliance for twelve (12) months. If the parties agree that the State has maintained such compliance, the parties shall file a joint stipulation for dismissal with prejudice in the Lawsuit. The burden will be on the State to demonstrate substantial compliance.

- 24 -

VI. ENFORCEMENT OF THE SETTLEMENT AGREEMENT

67. This Settlement Agreement is enforceable only by the parties and is binding upon the parties, by and through their officials, agents, employees, assigns, and successors.

68. Upon execution of this Settlement Agreement, the DOJ shall file a Complaint in the United States District Court for the District of Hawaii, and file contemporaneously a Joint Motion for Stipulated Conditional Dismissal of the Complaint pursuant to Federal Rule of Civil Procedure 41(a)(1). A copy of this Settlement Agreement shall be attached to the Joint Motion for Stipulated Conditional Dismissal and that motion shall:

(1) request that the Court conditionally dismiss the Complaint in accordance with the terms of this Settlement Agreement;

(2) request that the Court place the case on its inactive docket;

and (3) request that the Court retain jurisdiction over the case until final dismissal with prejudice in accordance with the terms of this Settlement Agreement.

69. At fifteen (15) months from the effective date of the Settlement Agreement, if the Monitor makes a specific written determination that the State has not made material progress toward substantial compliance with Section III of the Settlement Agreement, the DOJ may, but is not required to, seek reinstatement of the Complaint. However, before the DOJ may seek to reinstate the Complaint, the DOJ shall give notice to the

- 25 -

State of its intent to seek reinstatement of the Complaint, and the parties shall engage in good-faith discussions to resolve the dispute. The parties shall attempt in good faith to mediate the dispute with the Monitor for a minimum of thirty (30) days prior to the DOJ seeking the reinstatement of the Complaint. The terms of this Settlement Agreement are not subject to state or federal court enforcement other than the reinstatement of the Complaint. The DOJ shall have no action or remedy available for the State's breach of this Settlement Agreement other than the reinstatement of the Complaint. The DOJ commits to work in good faith with the State to avoid enforcement actions. In case of an emergency posing an immediate threat to the health or safety of a detainee, however, the DOJ may omit the notice and cure requirements herein before seeking reinstatement of the Complaint.

70. After thirty (30) months from the effective date of this Settlement Agreement, if the DOJ believes that the State has failed to substantially comply with any obligation under this Settlement Agreement, the DOJ will give the State written notice of the State's failure prior to reinstating the Complaint in the Lawsuit. The parties shall engage in good-faith discussions to resolve the dispute. The parties shall attempt in good faith to mediate the dispute with the Monitor for a minimum of thirty (30) days prior to the DOJ seeking the reinstatement of the Complaint. The terms of this Settlement Agreement are not subject to state

- 26 -

or federal court enforcement other than the reinstatement of the Complaint. The DOJ shall have no action or remedy available for the State's alleged breach of this Settlement Agreement other than the reinstatement of the Complaint. The DOJ commits to work in good faith with the State to avoid enforcement actions. In case of an emergency posing an immediate threat to the health or safety of a detainee, however, the DOJ may omit the notice and cure requirements herein before seeking reinstatement of the Complaint.

71. Failure by any party to enforce this entire Settlement Agreement or any provision thereof with respect to any deadline or any other provision herein shall not be construed as a waiver of its right to enforce other deadlines and provisions of this Settlement Agreement.

VII. MODIFICATION OF THE SETTLEMENT AGREEMENT

72. If, at any time, any party to this Settlement Agreement desires to modify the Settlement Agreement for any reason, that party will notify the other party in writing of the proposed modification and the reasons therefore. No modification will occur unless there is written agreement by the parties.

- 27 -

AGREED TO:

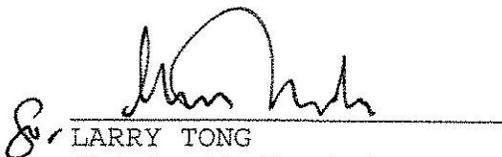
FOR THE UNITED STATES:



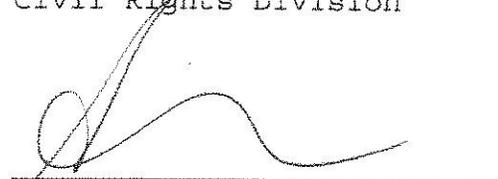
EDWARD H. KUBO, JR.
United States Attorney
for the District of Hawaii



GRACE CHUNG BECKER
Acting Assistant Attorney General
Civil Rights Division



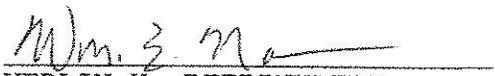
LARRY TONG
Chief, Civil Division
U.S. Attorney's Office
District of Hawaii
P.O. Box 50183
Room 6100
PJJK Federal Building
300 Ala Moana Blvd.
Honolulu, HI 96850



SHANETTA Y. CUTLAR
Chief
Special Litigation Section



TAMMIE M. GREGG
Deputy Chief
Special Litigation Section



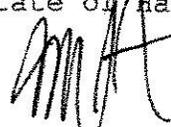
VERLIN H. DEERINWATER
WILLIAM E. NOLAN
Attorneys
Special Litigation Section
601 D Street, NW - Room 5928
Washington, DC 20004
(202) 514-6260

- 28 -

FOR THE STATE OF HAWAII:



LINDA LINGLE
Governor
State of Hawai'i



MARK J. BENNETT
Attorney General
State of Hawai'i



CLAYTON FRANK
Director
Department of Public Safety
State of Hawai'i