

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM RICHLAND COUNTY  
J. Michael Baxley, Circuit Court Judge  
Case No. 2005-CP-40-2925

Appellate Case No. 2014-001080

**RECEIVED**  
JUN 01 2016  
SC SUPREME COURT

T.R., P.R., K.W., and A.M. on behalf of themselves  
and others similarly situated; and Protection and  
Advocacy for People with Disabilities, Inc., ..... Respondents,

v.

South Carolina Department of Corrections; and William  
R. Byars, Jr., as Agency Director of the South Carolina  
Department of Corrections, ..... Appellants.

**JOINT MOTION AND  
MEMORANDUM IN SUPPORT OF APPROVAL OF  
SETTLEMENT AGREEMENT AND  
NOTICE TO CLASS MEMBERS**

Pursuant to Rule 261(b) of the South Carolina Rules of Appellate Procedure and Rule 23(c) of the South Carolina Rules of Civil Procedure, the parties to the above-captioned appeal hereby move for an order granting approval of the Settlement Agreement executed by the parties on May 31, 2016 and of the notice of the agreement to class members ("Notice") that would lead to dismissal of this action. The Settlement Agreement and Notice are attached as Exhibits A and B, respectively.

This appeal arises out of a class action filed on June 20, 2005 in the Richland County Court of Common Pleas. Plaintiffs are a class of seriously mentally ill inmates and Protection

and Advocacy for People with Disabilities, Inc. Defendants are the South Carolina Department of Corrections (“SCDC”) and its immediate-past Director, sued in his official capacity. Plaintiffs’ action did not seek monetary damages, fees, or costs, but only declaratory and injunctive relief. Plaintiffs alleged SCDC’s mental health program was systemically flawed, in violation of Article I, §15 of the South Carolina Constitution. Defendants denied Plaintiffs’ allegations. The case was designated complex and assigned to the Honorable J. Michael Baxley. Following a six-week trial held in 2012, Judge Baxley entered an order dated January 8, 2014 in favor of Plaintiffs (“Final Order”). Defendants filed a timely appeal.

As the trial court stated in the Final Order, the class consists of approximately 3,500 individuals who meet the following definition of being seriously mentally ill:

All SCDC inmates from the filing of the complaint who have been hospitalized for psychiatric services, referred to an Intermediate Mental Health Care Service Unit, or diagnosed by a psychiatrist with the following mental illness: Schizophrenia, Schizoaffective Disorder, Cognitive Disorder, Paranoia, Major Depression, Bipolar Disorder, Psychotic Disorder, or any other mental condition that results in significant functional impairment including inability to perform activities of daily living, extreme impairment of coping skills or other behaviors that are bizarre and/or dangerous to self or others.

Final Order at 1-2.

In an order dated September 8, 2008, the court appointed Joy C. Jay as guardian for the class.<sup>1</sup> Ms. Jay, the Executive Director of the South Carolina Chapter of Mental Health America, actively participated in the case during the litigation and testified as a witness at trial. Exhibit C to this Motion is an affidavit from Ms. Jay in which she represents that she has read the Settlement Agreement and Notice and recommends their approval.

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<sup>1</sup> The Court appointed two class guardians, Ms. Jay and Polly Bekaert. After Ms. Bekaert moved out of state, Ms. Jay continued to serve as sole class guardian.

On March 10, 2014, parties entered into formal mediation, retaining the Honorable William L. Howard as mediator (the “Mediator”). Over the past two years, the parties have participated in numerous mediation sessions. During this period, at the request of the parties, this Court has stayed the appeal process. On May 31, 2016, the mediation was successfully concluded with execution of the Settlement Agreement, pending approval of the Court and notice to class members.

I. **APPROVAL OF THE SETTLEMENT AGREEMENT**

Appellate Rule 261(b) provides, among other things, that settlement agreements relating to a matter pending before an appellate court must be presented to the court for approval if approval of a tribunal is required before the agreement can be effective. Rule 23(c) of the South Carolina Rule of Civil Procedure requires such approval, stating that “[a] class action shall not be dismissed or compromised without approval of the court....” The parties now seek approval of the proposed Settlement Agreement and approval of a method and form of notice to the class regarding the settlement.

A. **The Settlement Agreement Appropriately Redresses the Mental Health Claims of the Class.**

The critical factor in considering the fairness and adequacy of a proposed compromise of a claim of a certified class is the extent to which the settlement addresses the legal claims asserted by the class. As demonstrated below, the Settlement Agreement provides comprehensive relief to members of the class consistent with the claims pursued by Plaintiffs and the findings identified in the Final Order.

In their initial complaint filed in 2005, Plaintiffs alleged that since 1999 Defendants had violated the constitutional rights of the members of the class in a number of areas: (i) the SCDC failed to diagnose properly inmates with mental illness; (ii) the SCDC did not use

segregation and use of force properly with regard to members of the class; (iii) the number of mental health professionals was inadequate and below generally accepted staffing ratios for state correctional mental health programs; (iv) the SCDC had an inadequate medical records system; (v) the SCDC failed to properly administer the issuance of psychotropic medications; (vi) the SCDC failed to operate a program that effectively identified, treated, and supervised individuals at risk of suicide; and (vii) the SCDC's mental health policies and practices were not adequate. *See* Complaint filed June 20, 2005 at 7-21.

In the Final Order, the Court identified the following six remedial categories for the SCDC to improve with regard to its mental health treatment programs:

- The Development of a Systematic Program for Screening and Evaluating Inmates to More Accurately Identify Those in Need of Mental Health Care.
- The Development of a Comprehensive Mental Health Treatment Program that Prohibits Inappropriate Segregation of Inmates in Mental Health Crisis, Requires Improved Treatment of Mentally Ill Inmates, and Substantially Improves SCDC Mental Health Care Facilities.
- Employment of a Sufficient Number of Trained Mental Health Professionals.
- Maintenance of Accurate, Complete, and Confidential Mental Health Treatment Records.
- Administration of Psychotropic Medication.
- Inmate Suicide Prevention and Crisis Intervention Program.

The Settlement Agreement sets forth a comprehensive remedial plan that addresses the six remedial categories and the claims pursued by Plaintiffs ("Remedial Plan"). The Remedial Plan was developed over a period of two years by the parties and a team of experts through mediation. The Remedial Plan consists of the following subparts: (a) Hiring Plan, (b) Construction/Renovation Plan; (c) Electronic Medical eRecords Plan, and (d) SCDC Policies

and practices related to the components of the Remedial Plan. The parties further agreed upon a three-year budget to fund the implementation, subject to General Assembly approval.

The Settlement Agreement addresses the Plaintiffs' claims more specifically in the following respects:

1. The Development of a Systematic Program for Screening and Evaluating Inmates to More Accurately Identify Those in Need of Mental Health Care. The parties have agreed to revise the SCDC's policy related to mental health screening and evaluation and to increase the percentage of mentally ill inmates who receive Intermediate Care Services.
2. The Development of a Comprehensive Mental Health Treatment Program that Prohibits Inappropriate Segregation of Inmates in Mental Health Crisis, Requires Improved Treatment of Mentally Ill Inmates, and Substantially Improves SCDC Mental Health Care Facilities.
  - a. Increase Access to Higher Levels of Care. SCDC agrees to provide higher levels of care to patients needing more intense treatment, including services in specialized housing and hospital units for men and women with intermediate and acute mental illness.
  - b. Reduce Use of Segregation and Increase Out of Cell Time for Inmates in Segregation. The parties agree that SCDC has begun and will continue to implement policies and practices intended to decrease the segregation of inmates with mental illness and the length of stay of class members when they are confined in isolation. In addition, SCDC agrees to provide greater out of cell time for class members in segregation, including group and individual therapy, improved recreational opportunities, and improved conditions within cells used to isolate inmates.
  - c. Reduce the Use of Force Against Mentally Ill Inmates. The parties agree SCDC has developed and is implementing policies to eliminate the disproportionate use of force against inmates with mental illness, including chemical munitions and the restraint chair. The parties further agree that SCDC will prohibit use of force that does not conform to agreed-upon correctional standards, are not consistent with manufacturer's instructions, or are not employed in response to reasonably perceived immediate threats. SCDC agrees to develop a mandatory training plan for correctional officers concerning appropriate methods of managing inmates with mental illness.

3. Employment of a Sufficient Number of Trained Mental Health Professionals. The parties agree to a hiring plan to increase substantially the number of psychiatrists, doctorate level psychologists, master-level licensed social workers and counselors, and mental health technicians ("Hiring Plan"). The Hiring Plan, Exhibit E to the Settlement Agreement, will be implemented over a three-year period, subject to legislative authorization for the creation of the new positions. The South Carolina General Assembly has approved the new positions for the first of the three-year plan, which has been presented to the appropriate legislative committees. SCDC has retained a mental health professional recruiter to increase the number of new positions that can be filled. The parties agree that the performance of the clinical staff will be audited periodically and a remedial proposal will be developed to address under performance.
4. Maintenance of Accurate, Complete, and Confidential Mental Health Treatment Records. The parties agree that SCDC is establishing a new electronic medical record system to modernize SCDC's management information system and to enable it to store and retrieve on a timely basis a wide range of records necessary to diagnose and treat inmates. SCDC agrees to also maintain a quality management program for the mental health management information system.
5. Administration of Psychotropic Medication. SCDC is revising the pharmaceutical policies, will review the reasonableness of the schedule for administering medications, and will develop a formal quality management program to review the accuracy and completeness of medication administration records.
6. Inmate Suicide Prevention and Crisis Intervention Program. The parties agree that SCDC is in the process of developing a revised comprehensive Suicide Prevention and Crisis Intervention Policy. Under the new policy, crisis intervention cells will be located in a healthcare setting with immediate nurse access. Suicidal inmates will be under continuous observation, and will be provided clean, suicide resistant clothing, blankets, mattresses, and increased access to showers. The parties further agree the use of undesignated, alternative crisis intervention spaces will be prohibited, and the cells used for crisis stabilization will be cleaned and the temperature appropriately regulated.

In addition, the parties have revised formal SCDC policies related to the diagnosis, treatment, housing and management of inmates with mental illness, including the Mental Health Disciplinary Policy, Reception and Evaluation Policy, Restricted Housing Policy, Suicide Prevention and Crisis Intervention Policy, Health Records Policy, Pharmacy Policy,

and Mental Health Training Policy, among others. The revised policies are incorporated by reference in the Agreement and are attached to the Settlement Agreement as Exhibit G, except those policies SCDC has designated confidential due to security concerns. The Department has adopted and begun implementing a number of these policies.

The parties further agree that Plaintiffs and Defendants will bear the attorneys' fees and costs each has incurred during the course of this litigation, including mediation. Under the terms of the Settlement Agreement, the parties will continue to be responsible for their own attorneys' fees. The parties have agreed to a method for allocating the costs associated with implementation of the Settlement Agreement. Since the filing of this action in 2005, Plaintiffs' counsel have provided their services on a *pro bono* basis and have absorbed the Plaintiffs' costs of the litigation. They intend to continue to do so through the implementation of the Settlement Agreement. Consequently, the class members will incur no obligation, individually or collectively, for the attorneys' fees or costs of this litigation.

**B. The Settlement Agreement Establishes Effective and Efficient Mechanisms to Implement Reforms to the Mental Health Program.**

The parties have devoted substantial time to the development of effective mechanisms to produce the changes they both desire. The structure of the Settlement Agreement will enable the parties to end this litigation, over a decade old, as quickly as possible while achieving safeguards for class members.

The Settlement Agreement requires the SCDC to implement the Remedial Plan, with the objective of SCDC being in "Substantial Compliance," a defined term, with each component of the Remedial Plan on or before a target of four years from the Effective Date of the Settlement Agreement. The Mediator is responsible for monitoring and facilitating all aspects of the implementation.

The implementation of the Remedial Plan is designed to be a collaborative process between the parties and provide Plaintiffs with the opportunity to review SCDC's compliance with the Settlement Agreement. One of the most important elements of the process is the mutual designation by the parties of an Implementation Panel, consisting of nationally recognized professionals with decades of experience in correctional mental health programs and security operations.

The Implementation Panel shall, among other duties, request, receive and analyze information, conduct inspections and engage in such further activities as requested by the Mediator so as to render findings of fact regarding the implementation to the Mediator. The Implementation Panel is responsible for making findings and recommendations regarding the implementation and producing periodic reports setting forth its findings and recommendations to the Mediator. The Mediator is responsible for determining whether the SCDC is in Substantial Compliance with the Implementation Goal which shall be documented in periodic Mediator reports. All Mediator reports shall be made public.

The Mediator's determination is final. When the Mediator determines that SCDC has been in Substantial Compliance with the Implementation Plan, the Settlement Agreement will terminate. If at the conclusion of the four-year period, the SCDC is not in Substantial Compliance, and if the parties cannot otherwise agree, the parties may arbitrate any outstanding issues before the Mediator and shall be bound by his final determination. The parties further agree that such determination by the Mediator, acting in his capacity as arbitrator, would be enforceable in the Court of Common Pleas of the Fifth Judicial Circuit.

The proposed Settlement Agreement is designed to remedy the constitutional claims asserted by the class members and to do so as quickly and efficiently as possible, while

providing the parties and Mediator with expertise to assist with the evaluation of SCDC's compliance with the terms of the agreement. In consideration for the binding terms of this Settlement Agreement, Plaintiffs shall dismiss their action, with the Final Order being vacated. See Proposed Order of Dismissal, attached as Exhibit D. See Settlement Agreement (Ex. A) ¶8.

## II. NOTICE TO CLASS MEMBERS

Rule 23(c) of the South Carolina Rules of Civil Procedure provides that a class action shall not be settled without notice of the proposed settlement to class members "in such manner as the court directs." The parties attach to this motion a proposed notice to current class members in the custody of SCDC that explains the basic nature of the Settlement Agreement, how to obtain a copy of the agreement, how to contact Plaintiffs' counsel, and how to comment on the agreement. Proposed Notice to the Class, Exhibit B. The parties propose that SCDC will post this notice in each SCDC dormitory in all SCDC institutions in a location accessible to all inmates as well as other areas where inmates have access to notices. The parties further propose that individual copies of the notice be distributed, consistent with safety concerns, to inmates in segregated confinement who lack routine access to a location where institutional notice can be posted. Other inmates who also do not have access to the library will be provided with copies of the Settlement Agreement upon request.

For these reasons, the parties believe the proposed notice is sufficient and well-designed to provide actual notice to the class at minimum cost. The parties also request that the Court authorize SCDC to post this notice at the earliest possible time and permit class members to submit comments to the Court within 30 days of the commencement of the posting period.

## III. CONCLUSION

For the reasons presented above, the parties request that the Court grant preliminary approval to the Settlement Agreement and order that notice be provided to class members in the form and manner set forth herein.

For the Defendants-Appellants

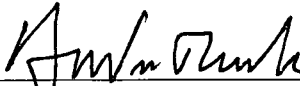
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June 1, 2016

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM RICHLAND COUNTY  
J. Michael Baxley, Circuit Court Judge

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Case No. 2005-CP-40-2925

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T.R., P.R., K.W., and A.M. on behalf of themselves  
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South Carolina Department of Corrections; and William  
R. Byars, Jr., as Agency Director of the South Carolina  
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**CERTIFICATE OF SERVICE**


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I certify that I have served *Joint Motion and Memorandum in Support of Approval of Settlement Agreement and Notice to Class Members* by depositing a copy of it in the United States mail, postage prepaid on June 1, 2016, addressed to attorneys of record:

Counsel Served:

Roy F. Laney, Esq.  
Riley Pope & Laney, LLC  
2838 Devine Street (29205  
Post Office Box 11412  
Columbia, SC 29211

Attorney for Appellants



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Myriam Brown  
Administrative Assistant

Columbia, South Carolina  
June 1, 2016

Exhibit A



Re-order from Bushnell Company  
(215) 842-9520  
[www.BushnellCo.com](http://www.BushnellCo.com)



**NOTICE: THIS AGREEMENT IS SUBJECT TO ARBITRATION**  
**THIS NOTICE IS MADE FOR COMPLIANCE WITH**  
**THE SOUTH CAROLINA UNIFORM ARBITRATION ACT.**

**SETTLEMENT AGREEMENT**

This Settlement Agreement is entered into by and between T.R. on behalf of himself and others similarly situated and Protection and Advocacy for People with Disabilities, Inc. (collectively the "Plaintiffs") and the South Carolina Department of Corrections (the "SCDC") to be effective as of May 31, 2016 (the "Effective Date").

WHEREAS, Plaintiffs and the SCDC are parties to the Litigation and have been engaged in the Mediation, each as defined below; and

WHEREAS, Plaintiffs and the SCDC have reached a settlement of the Litigation according to the terms of this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, the sufficiency of which is hereby acknowledged, Plaintiffs and the SCDC hereby agree as follows:

1. **Definitions.** The following terms shall be defined as set forth below, with such definitions being subject to use in singular or plural forms. Additional capitalized terms may be defined in this Agreement according to their context.

"**Agreement**" shall mean this Agreement, together with all exhibits and schedules attached hereto and such other mutually agreed upon amendments or modifications.

"**Budget**" shall mean the proposed SCDC budget for each of fiscal years 2015 to 2016, 2016 to 2017 and 2017 to 2018, attached hereto as **Exhibit A**, provided that the Parties acknowledge that all SCDC budgets are subject to the South Carolina General Assembly approval each fiscal year.

"**Constitutional Standards**" shall mean the standards applicable to Article I, Section 15 of the South Carolina Constitution, as set forth in two orders from the Litigation signed by the Hon. J. Michael Baxley: the Final Order and the Order Setting Forth Applicable Constitutional Standards, dated October 6, 2010.

"**Construction and Renovation Plan**" shall mean the plan for the SCDC's construction and renovation as described in **Exhibit C** attached hereto.

"**Court**" shall mean the Supreme Court of South Carolina, or other court as designated by the Supreme Court of South Carolina.

“**Electronic Medical Records Plan**” or “EMR” shall mean the plan for the Implementation of an SCDC electronic medical records system as described in **Exhibit D** attached hereto.

“**FOIA**” shall mean the South Carolina Freedom of Information Act.

“**Final Order**” shall mean the Order of the Honorable J. Michael Baxley, dated January 8, 2014, and attached as **Exhibit F** hereto.

“**Hiring Plan**” shall mean the plan to hire additional SCDC staff as described in **Exhibit E** attached hereto.

“**Implementation**” shall mean the process by which the SCDC implements the Remedial Plan.

“**Implementation Goal**” shall mean Substantial Compliance with each component of the Remedial Plan for eighteen (18) consecutive months, as determined by the Mediator, provided that any construction shall not be subject to the eighteen (18) month requirement and shall be evaluated for compliance upon completion of each applicable construction project. Similarly, EMR implementation shall not be subject to the eighteen (18) month requirement and shall be evaluated for compliance upon full implementation of the EMR system.

“**Implementation Panel**” shall mean Raymond F. Patterson, M.D., Emmitt Sparkman and such other person(s) as designated by mutual agreement of the Parties.

“**Implementation Panel Coordinator**” shall mean Tammie M. Pope or such other person designated by mutual agreement of the Parties.

“**Implementation Panel Report**” shall mean any report prepared by the Implementation Panel or Mediator pursuant to Section 4 in the form of **Exhibit B** regarding the progress of the Implementation.

“**Implementation Target Date**” shall mean four (4) years from the Effective Date or such other date as mutually agreed upon in writing by the Parties.

“**Litigation**” shall mean the case captioned T.R. on behalf of himself and others similarly situated; and Protection and Advocacy for People with Disabilities, Inc. v. South Carolina Department of Corrections; and William R. Byars, Jr., as Agency Director of the South Carolina Department of Corrections, to include all appeals.

“**Mediation**” shall mean the continuing mediation of the Litigation pursuant to the South Carolina Rules of Civil Procedure and this Agreement.

“**Mediator**” shall mean the Honorable William L. Howard or such other person(s) as the Parties may designate by mutual agreement.

“**Parties**” shall mean, collectively, the Plaintiffs and the SCDC.

“**Party**” shall mean either the Plaintiffs or the SCDC.

“**Policies**” shall mean those SCDC Policies approved by both Parties and attached as Exhibit G hereto.

“**Remedial Plan**” shall mean the plan identified in Section 3.

“**Representatives and Principals**” shall mean any Party’s employees, officers, members of board of directors, guardians, agents, contractors, attorneys or experts. For SCDC, this term includes the Governor of the State of South Carolina and the staff of the Governor.

“**Subject Matter Expert**” shall mean such experts as the Implementation Panel shall designate pursuant to the terms of this Agreement to serve as resources for the Implementation Panel in the performance of the Implementation Panel’s duties.

“**Substantial Compliance**” shall mean compliance with the essential requirements of the Implementation Goal, including the 48 components identified in the Implementation Panel Report, to a degree that satisfies the purposes and objectives of the goals, plans, and components incorporated in the Agreement, even if any particular formal requirement is not complied with in its entirety.

“**Term Sheet**” shall mean the Term Sheet entered into by and between the Plaintiffs and the SCDC on or about January 12, 2015.

2. Summary of Agreement. The purpose of this Agreement is to permanently resolve the Litigation by implementing the Remedial Plan. The Parties have been engaged in the Mediation with the mutual goal of resolving the Litigation. As a result of the Mediation, the Parties have agreed upon a Remedial Plan and Budget, the Implementation of which would result in the SCDC complying with Constitutional Standards. The Parties anticipate that the Implementation of the Remedial Plan will be a multi-year process with a phased in Implementation. Moreover, because of the complexity of the Implementation Plan and the need to address future unplanned events, the Parties anticipate the need for flexibility during the Implementation. This Agreement sets forth the structure for the Implementation and disposition of the Litigation.

3. Remedial Plan.

- a. During the term of this Agreement, the SCDC shall implement the Remedial Plan, which shall consist of the following: Hiring,

Construction/Renovation, and Electronic Medical eRecords (“EMR”) Plans, in addition to SCDC Policies and practices related to the components of the Remedial Plan, all for the purpose of achieving the Implementation Goal.

- b. The Parties have agreed on the terms of the following policies that are attached at **Exhibit G** and are incorporated herein by reference:

Inmate Suicide Prevention and Crisis Intervention, Policy HS-1903

Mental Health Services- General Provisions, Policy HS-19.04

Mental Health Services-Treatment Plans and Treatment Team Meetings, Policy HS-19.05

Mental Health Services- Disciplinary Detention for Inmates Classified as Mentally Ill, Policy HS – 19.06

Mental Health Services- Continuous Quality Management- Policy, HS – 19.07

Mental Health Restraint Policy, HS – 19.08

Gilliam Psychiatric Hospital, Policy HS- 1909

Reception and Evaluation: Mental Health Screening, Evaluation, Classification, Policy HS-1910

Intermediate Care Services, Policy-HS-19.11

Behavioral Management Unit, Policy HS-19.12

Inmate Records General Guidelines, Policy HS-18.07

Pharmacy Services, Policy HA-18.16

Mental Health Training Policy-Addendum

Use of Force Policy, OP.22.01

Restricted Housing Policy, OP.22.38

General Disciplinary Policy, OP.22.14

- c. Maintenance of Policies. For a period of at least two (2) years after the termination of this Agreement, SCDC shall retain the Policies without substantial modification unless required by a court of law. This provision shall survive the termination of this Agreement and Plaintiffs shall have no right to obtain any data or documents, conduct facilities inspections or otherwise monitor the SCDC pursuant to this Agreement during this two (2) year period. Any rights Plaintiffs may have under state or federal law to records or access to SCDC facilities not arising under this Agreement shall not be affected by this Agreement.

4. Implementation of the Remedial Plan.

- a. Overview. The Implementation of the Remedial Plan shall be a collaborative process between the Parties and provide Plaintiffs with the opportunity to review, comment on, and, if necessary, mediate or arbitrate pursuant to the terms of this Agreement SCDC's acts or omissions related to Implementation. All aspects of the Implementation, except as specifically excluded by this Agreement or by other agreement of the Parties, shall be conducted as part of the Mediation.

- b. Roles and Responsibilities. The following persons shall have the following roles and responsibilities with regard to the Implementation:

- (i) Mediator. The Mediator shall:

- (a) monitor and facilitate all aspects of the Mediation and the Implementation;
- (b) produce an Annual Implementation Report as described in Section 4(e);
- (c) schedule in person and telephone mediation sessions as the Mediator shall determine;
- (d) mediate and arbitrate any disputes among the Parties pursuant to the terms of Section 7; and
- (e) engage in such other actions as determined by the Mediator consistent with this Agreement.

- (ii) Implementation Panel. The Implementation Panel shall:

- (a) propose additional or modified recommendations to the Parties and review and assess SCDC's progress towards the Implementation Goal;
- (b) serve as a resource and provide advice to the Parties and the Mediator regarding the Implementation;
- (c) request, receive and analyze information, conduct inspections and engage in such further activities as requested by the Mediator so as to render findings of facts

regarding the status of the Implementation to be provided to the Mediator according to Section 4(d);

- (d) employ Subject Matter Experts pursuant to the terms of Section 6; and
- (e) meet from time to time by telephone to address its duties pursuant to this Agreement and the status of the Implementation. To the extent there is a difference of opinion regarding any matter under consideration by the Implementation Panel, then such difference of opinion shall be identified in the Implementation Panel's reports to the Mediator.

- (iii) Subject Matter Experts. Subject Matter Experts shall engage in such activities as directed by the Mediator and the Implementation Panel.

c. Document Production, Data Exchange and Facility Access.

- (i) Document Production. During the Implementation, the SCDC shall provide the Implementation Panel with such documents as are reasonably requested from time to time by the Implementation Panel.
- (ii) Data. During the Implementation, the SCDC shall provide the Implementation Panel with data as mutually agreed upon by the Parties, or in the absence of such agreement, as determined by the Mediator, no less than thirty (30) days before the facilities inspections described in paragraph 4.c(iii), reflecting information available to the SCDC for the immediately preceding four (4) month period, provided that for purposes of 2016 the initial data shall be provided on or before May 1, 2016.
- (iii) Facilities Inspections. During the Implementation, the Implementation Panel shall conduct inspections in accordance with the schedule below. Upon request of the Implementation Panel and with at least thirty (30) days' advance notice, the SCDC shall make SCDC facilities available three (3) times per year during the first three (3) twelve (12) month periods following the Effective Date and two (2) times per twelve (12) month period thereafter or, for good cause, more frequently, for inspections by the Implementation Panel and Subject Matter Experts on such dates as may be mutually agreed upon by the Parties or, in the absence of such agreements, as determined by the Mediator. Such inspections will take the form requested by the Implementation Panel, but would ordinarily consist, at a minimum, of inmate and staff interviews, record reviews, and tours. The May 2016 facilities

inspection shall be deemed to be the initial Implementation Panel inspection.

- d. Production of Implementation Panel Reports. The Implementation Panel Reports shall be the method by which the Implementation Panel sets forth its findings regarding the progress of the Implementation. Within thirty (30) days of the final day of the periodic facilities inspections discussed in paragraph 4.c (iii) the Implementation Panel shall deliver to the Mediator and all Parties a report setting forth its findings and recommendations regarding the Implementation and progress towards the Implementation Goal. As this Agreement represents a collaborative effort, the Implementation Panel and any Subject Matter Expert shall make recommendations regarding any non-compliance consistent with the Remedial Plan. The Parties shall be entitled to review and comment upon each of the Implementation Panel Reports within fifteen (15) days of the date the Implementation Panel submits its report to the Mediator.
- e. Mediator Implementation Reports. The Mediator, assisted by the Implementation Panel, shall produce within thirty (30) days following the issuance of each Implementation Panel Report a Mediator's Implementation Report which shall include an assessment of the progress toward Remedial Plan and the Implementation Goal. The Mediator's Implementation Report shall summarize the status of the Implementation and the progress towards achievement of the Implementation Goal for the then prior inspection period and for the period since the inception of the Agreement, except to the extent any components have previously been determined to be in Substantial Compliance. The content of the Mediator's Implementation Report solely shall be determined by the Mediator and the Mediator shall be entitled to accept or reject any findings of the Implementation Panel in his or her sole discretion. In the event the evaluation requires the determination of any legal issue the Mediator shall have sole authority to make such determination.
- f. Implementation Phase-In. The Parties acknowledge and agree that the Implementation of the Remedial Plan shall be phased in over time and all aspects of the Remedial Plan shall not become effective immediately.
- g. Release from Implementation Review. When a component of the Remedial Plan has been found in the periodic Implementation Reports as being in substantial compliance for eighteen (18) consecutive months, that component of the Remedial Plan will no longer be subject to review by the Implementation Panel and Mediator, provided that: (i) the SCDC through its Compliance Officer, or other similar position, shall provide the Implementation Panel and Parties status reports addressing content requested by the Panel or Mediator; and (ii) if a Party or the Implementation Panel shows good cause at any point prior to the

Implementation Target Date, the Mediator after hearing from the Parties in due course, may direct further review and monitoring upon such terms as, in his sole discretion, are just and proper and consistent with this Agreement. The components of the Remedial Plan shall consist of each subpart as identified in the Implementation Report.

- h. Determination of Substantial Compliance. In determining whether SCDC is in substantial compliance with the components of the Remedial Plan, the Mediator may take into consideration, among other appropriate factors, the following:
- (i) The foreseeability of matters that affect SCDC's performance;
  - (ii) The control and/or influence SCDC could reasonably have exercised over matters affecting SCDC's performance;
  - (iii) The timing and manner of SCDC's response to matters that interfered with SCDC's performance, including without limitation temporary, short-term interruptions in SCDC's progress toward achieving substantial compliance with components of the Remedial Plan.

The effective date of the beginning of a period of substantial compliance with any component of the Remedial Plan shall be the date the Mediator determines SCDC demonstrated it began to achieve substantial compliance with each such component.

5. Confidentiality.

The Plaintiff's and their counsel, members of the Implementation Panel and the Mediator shall keep the following information confidential, not disclose such information except as required by law and use such information solely for the sole purpose of performing this Agreement: (a) SCDC Policies OP 22.01 and OP 22.27 and such other policies as the SCDC may classify as restricted in the future; (b) any reports or information related to any inmate suicide that has not been disseminated by SCDC to unaffiliated third-parties; and (c) any personally identifiable health care information related to any person. Additionally, any person who obtains personally identifiable information or protected health information must execute a business associate agreement prior to obtaining such information.

6. Fees and Costs.

- a. The members of the Implementation Panel, Subject Matter Experts, the Implementation Panel Coordinator and the Mediator shall be paid according to such terms as mutually agreed upon by the Plaintiffs and the SCDC.
- b. The members of the Implementation Panel, Subject Matter Experts, the Implementation Panel Coordinator and the Mediator shall submit monthly invoices to each Party based upon the table below, identifying the duties and costs for each such individual applicable to the then prior month. The

Parties shall bear the fees and costs incurred by Implementation Panel and Subject Matter Experts retained by the Implementation Panel in the following manner:

	Incurring in First 12 Months	Incurring in Months 13-24	Incurring in Months 25-36	After Month 36
SCDC	75%	80%	85%	100%
Plaintiffs	25%	20%	15%	0%

The SCDC shall pay the reasonable charges of the Implementation Panel Coordinator at the rate of \$125.00 per hour, not to exceed \$10,000 per twelve (12) month period beginning on the Effective Date. In performing the duties pursuant to this Agreement, the Implementation Panel Coordinator shall maintain independence from any other positions which the Implementation Panel Coordinator may have.

Each party shall be responsible for paying fifty percent (50%) of the fees and costs of the Mediator.

- c. Subject Matter Experts: The Parties, in consultation with the Implementation Panel and the Mediator, may contract with Subject Matter Experts at rates agreed upon in an engagement letter.
- d. The members of the Implementation Panel, Subject Matter Experts and the Mediator further shall be entitled to a reasonable per diem and costs.
- e. All fees and costs shall not exceed a twelve (12) month amount of three hundred thousand dollars (\$300,000.00) for the Implementation Panel, the Implementation Panel Coordinator, and Subject Matter Experts, provided that after months 35-36 from the Effective Date the Annual Cap shall be reduced to two hundred thousand dollars (\$200,000.00) (the "Annual Cap"), provided the Parties agree that the reduced Annual Cap is sufficient to cover reasonable fees and costs described in this paragraph. In the absence of such an agreement, the Mediator shall determine an appropriate Annual Cap reduction, if any.
- f. If an Annual Cap, determined by agreement of the Parties or by the Mediator, is exceeded, the Parties shall allocate payment of the excess amounts with each Party being responsible for the payment of fifty percent (50%) of such excess amounts.
- g. Except as otherwise agreed, each Party shall be responsible for the payment of such Party's respective attorneys' fees, expert fees, and any other fees and costs and shall not seek payment of such from any other Party.

7. Term and Termination.

- a. This Agreement shall begin as of the Effective Date and continue until terminated.
- b. Within sixty (60) days after the Implementation Target Date, the Mediator shall issue a final Implementation Report (the "Final Report") which identifies whether the SCDC has been in substantial compliance with each component of the Remedial Plan then subject to review for a period of eighteen (18) consecutive months, and if not, the components of the Remedial Plan then subject to review for which the SCDC is not in substantial compliance. The Mediator may issue the Final Report earlier than the Implementation Target Date if the Mediator determines that the SCDC has been in substantial compliance with all the components of the Remedial Plan then subject to review for a period of eighteen (18) consecutive months.
- c. Either Party (the "Requesting Party") may once request that the Mediator reconsider his conclusions as set forth in the Final Report by providing notice to the other Party and the Mediator within ten (10) days of the date of the receipt of the Final Report. Such notice shall identify the specific findings in the Final Report to which the Requesting Party objects and the reasons for such objections. Within fifteen (15) days of receipt of such notice, the Mediator shall convene a meeting of the Parties in an attempt to resolve the objections asserted by the Requesting Party. If the attempt to mediate the objections is not successful, the Mediator, serving as the arbitrator, within thirty (30) days of the mediation date shall conduct an arbitration regarding the objections. There shall be no discovery prior to the arbitration and the maximum time for the entire arbitration shall not exceed two (2) days. The arbitration shall be limited only to those aspects of the Implementation addressed in the Final Report and shall not include any component of the Remedial Plan previously released from review pursuant to Section 4(g). Neither Party shall be entitled to present testimony from any expert witness other than a member of the Implementation Panel or Subject Matter Expert. Each Party shall bear its own attorney fees, including respective witness fees, and costs. The arbitration rights set forth in this subsection shall apply only once to the Final Report and shall not apply thereafter.
- d. If in the Final Report, the Mediator finds that the SCDC has been in in substantial compliance with the components of the Remedial Plan then subject to review for a period of eighteen (18) consecutive months and the Plaintiffs do not exercise their rights to arbitrate pursuant to Section 7 (c), then this Agreement shall terminate.

- e. If the SCDC exercises its right to arbitrate pursuant to Section 7 (c) and the Mediator finds pursuant to such arbitration that the SCDC has been in substantial compliance with the components of the Remedial Plan then subject to review for a period of eighteen (18) consecutive months, then this Agreement shall terminate.
- f. If: (i) in the Final Report, the Mediator determines that the SCDC is not in substantial compliance with the components of the Remedial Plan and the SCDC does not exercise its arbitration rights pursuant to Section 7(c); or (ii) if either the Plaintiffs or the SCDC exercises the right to arbitrate pursuant to Section 7(c), and the Mediator finds that the SCDC has not been in substantial compliance with the components of the Remedial Plan then subject to review for a period of eighteen (18) consecutive months; then this Agreement shall continue for additional periods of six (6) months each, unless the Parties otherwise agree or the Mediator otherwise finds, (each an "Extension Period"). Within thirty (30) days of the conclusion of each Extension Period, the Mediator shall issue a report identifying: (i) whether the SCDC has been in substantial compliance with the components of the Remedial Plan then subject to review for a period of eighteen (18) consecutive months, and (ii) if not, the components of the Remedial Plan then subject to review for which the SCDC has not been in substantial compliance for a period of eighteen (18) consecutive months. This Agreement shall terminate upon the finding in any Extension Report that the SCDC has been in substantial compliance with the components of the Remedial Plan then subject to review for a period of eighteen (18) consecutive months.
- g. This Agreement may be terminated at any time upon mutual agreement of the Parties.
- h. In the event either Party exercises its arbitration rights under Section 7.c, judgment may be entered upon any determination arising out of such arbitration in the Court of Common Pleas of the Fifth Judicial Circuit.
- i. Effect of Termination. Upon termination of this Agreement: (i) The Mediator, each member of the Implementation Panel, the Implementation Panel Coordinator, and all Subject Matter Experts shall be paid for all fees for work performed prior to the effective date of such termination as set forth above; and (ii) each Party shall return to the other Party all of such Party's Confidential Information and destroy all copies of such Confidential Information in such Party's possession.

8. Disposition of Litigation. The Parties agree that the disposition of the Litigation shall be as follows: Concurrently with final Court approval of this Settlement Agreement, the Plaintiffs shall dismiss the Litigation with prejudice, the Parties shall petition the Court to vacate the Order and the Plaintiffs shall release the SCDC and other affiliated parties from any and all claims, damages, liabilities and remedies in any way related to the Litigation pursuant to the terms of the Release attached as **Exhibit H** hereto. Pursuant to Appellate Court Rule 261, the parties stipulate that the Final Order should be vacated. The Final Order makes finding of facts and conclusions of law which SCDC disputes. By entering into the Settlement Agreement and dismissing its appeal, SCDC will forego appealing these issues. Further, the Final Order requires SCDC to submit a written plan to the court appointing a monitor to report periodically to the court. Through the Settlement Agreement, the parties have agreed upon an Implementation Plan for the operation of SCDC's mental health system and methods of verification of SCDC's compliance with the Implementation Plan. For these reasons, the parties agree that the Final Order should be vacated.

9. Remedies. To the extent this Agreement sets forth any remedies, such remedies shall be the sole and exclusive remedies with regard to a breach of this Agreement. Any breach of this Agreement shall not give rise to any claim by any Party for any monetary damages or injunctive relief, except only for a breach of any of the confidentiality obligations set forth in this Agreement for which injunctive relief may be sought. Notwithstanding the above, nothing in this Agreement shall preclude an individual member of the Plaintiff class from bringing any form of legal action against SCDC.

10. Notices. Any notice provided under this Agreement shall be provided in writing, and sent by hand delivery, overnight courier that provides confirmation of delivery, or certified mail, return receipt requested, to the applicable Party at its address set forth below or such other address as identified by a Party pursuant to this Section:

If to the Plaintiffs:

Daniel J. Westbrook, Esquire  
Nelson Mullins Riley & Scarborough LLP  
PO Box 11070  
Columbia, SC 29211

If to the South Carolina Department of Corrections:

Roy F. Laney, Esquire  
Riley Pope & Laney, LLC  
PO Box 11412  
Columbia, SC 29211

11. No Admission of Liability. This Agreement and all aspects of its performance, including the Implementation Plan, shall not constitute an admission of liability by the SCDC or any of its agents or employees nor be used by the Plaintiffs in any court proceeding as an admission of liability or otherwise.

12. Ex Parte Communication. The Parties acknowledge that the Mediator will be serving as a facilitator to help resolve issues and to monitor progress toward substantial compliance as described in this Settlement Agreement. In this role, the Parties contemplate that the Mediator will be called upon to engage in *ex parte* communications with the various participants and parties. However, the Parties further contemplate that the Mediator may ultimately be called upon to serve in the role as Arbitrator of any dispute regarding Substantial Compliance as set forth in the Agreement. Therefore, in order to allow the Mediator to serve in the role of Arbitrator as specified in the Agreement, the Parties do hereby waive any objection based upon the fact that the Mediator may have had *ex parte* communications regarding the arbitrated dispute and/or the subject matter of this Settlement Agreement, and any such objection shall not be a basis for direct or collateral attack of any final arbitration award.

13. Mediator Immunity. The Mediator, whether acting in his role as Mediator or Arbitrator, shall have immunity from liability to the same extent as judicial officers of this state.

14. Miscellaneous. This Agreement states the entire understanding of the Parties and supersedes any other agreements, terms or documents related to the subject matter of this Agreement. This Agreement supersedes and replaces the Term Sheet, which is hereby declared null and void. No Party may assign this Agreement or any right or obligation under this Agreement without the written consent of all Parties to this Agreement. This Agreement may not be modified or amended, except by a writing duly executed and delivered by the Parties. No waiver of any provision of this Agreement shall be effective against a Party unless in a writing duly executed and delivered by such Party. No waiver of any particular provision of this Agreement shall constitute a waiver of any other provision hereof. No waiver of any provision of this Agreement in respect to a particular event or circumstance shall constitute a waiver of the same provision in respect to any other event or circumstance. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, legal representatives, executors, administrators, successors and permitted assigns. The invalidity or unenforceability of any provision of this Agreement shall not render invalid or unenforceable any other provision hereof. This Agreement shall be governed by, and construed in accordance with the laws of the State of South Carolina. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Nothing in this Agreement shall create a relationship between the Parties other than that of independent contracting Parties. The Parties acknowledge and agree that neither Party is liable for any failure of performance owing to contingencies beyond such Party's reasonable control, to include emergencies and actual or potential security issues which may arise regarding the SCDC's operations during the Implementation.

*[Signature(s) Next Page(s)]*

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be executed as of the Effective Date. Each of the Parties and their respective Representatives and Principals who execute this Agreement represent and warrant that this Agreement constitutes a duly valid agreement and that the person executing this Agreement on behalf of such Party have all power and authority to do so.

**T.R. on behalf of himself and others similarly situated**

By: Joy C Jay  
Name: Joy C Jay  
Title: Guardian Ad Litem

**Protection and Advocacy for People with Disabilities, Inc.**

By: Gloria M Prevosi  
Name: GLORIA M PREVOSI  
Title: Executive Director

**The South Carolina Department of Corrections**

By: Bryan P. Stirling  
Name: Bryan P. Stirling  
Title: Director, SDCD

**ACKNOWLEDGED AND AGREED TO BY:**

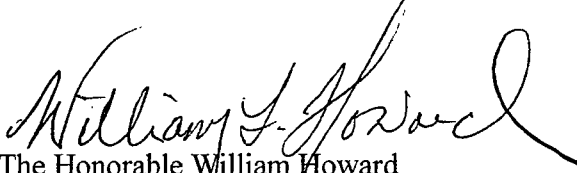
\_\_\_\_\_  
The Honorable William Howard

\_\_\_\_\_  
Raymond F. Patterson, M.D.

\_\_\_\_\_  
Emmitt Sparkman

Title:

**ACKNOWLEDGED AND AGREED TO BY:**

  
The Honorable William Howard

Raymond F. Patterson, M.D.

Emmitt Sparkman

NELSON MULLINS RILEY & SCARBOROUGH  
LLP, Attorneys for the Plaintiffs

By:

Name:

RILEY POPE & LANEY, LLC, Attorneys for the  
SCDC

By:

Name:

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**T.R. on behalf of himself and others similarly situated**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Protection and Advocacy for People with Disabilities, Inc.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**The South Carolina Department of Corrections**

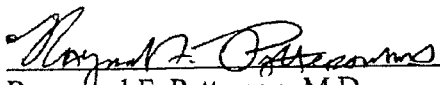
By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ACKNOWLEDGED AND AGREED TO BY:**

\_\_\_\_\_  
The Honorable William Howard

  
\_\_\_\_\_  
Raymond F. Patterson, M.D.

\_\_\_\_\_  
Emmitt Sparkman

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**T.R. on behalf of himself and others similarly situated**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Protection and Advocacy for People with Disabilities, Inc.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**The South Carolina Department of Corrections**

By: \_\_\_\_\_


Name: \_\_\_\_\_

Title: \_\_\_\_\_


**ACKNOWLEDGED AND AGREED TO BY:**

\_\_\_\_\_  
The Honorable William Howard

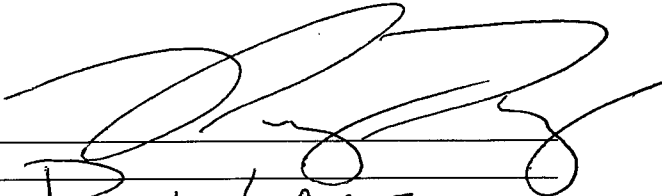
\_\_\_\_\_  
Raymond F. Patterson, M.D.

  
\_\_\_\_\_  
Emmitt Sparkman

NELSON MULLINS RILEY & SCARBOROUGH  
LLP, Attorneys for the Plaintiffs

By:   
Name: Dan Westbrook

RILEY POPE & LANEY, LLC, Attorneys for the  
SCDC

By:   
Name: ROY LANEY

**Exhibit A**  
**Proposed SCDC Budgets for each of fiscal years  
2015 to 2016, 2016 to 2017 and 2017 to 2018**



**MENTAL HEALTH REMEDIAL PLAN COST ANALYSIS**

Exhibit A

	Total Cost Year 1, 2, & 3	TIMELINE			FUNDING	
		Year 1	Year 2	Year 3	Recurring	Non Recurring
<b>Mental Health Staffing Plan (Attachment 1)</b>						
<b>Total Additional Staffing</b>	\$8,037,174	\$4,034,694	\$2,572,560	\$1,429,920	\$8,037,174	
<b>FY2014-15 Mental Health Allocation (10 pps)</b>	(\$1,000,000)	(\$1,000,000)			(\$1,000,000)	
<b>Equipment</b>						\$66,735
Equipment (PC, Tele, Copiers, Printers)	\$66,735	\$66,735			\$45,120	
Phone lines & lease copiers	\$45,120	\$45,120				
<b>3%/\$1000 Incentive</b>	\$105,000	\$105,000			\$105,000	
<b>Facilities (Attachment 2)</b>						
BMU (F-3 Dorm)	\$457,700					
Crisis Intervention Unit (F-1 Dorm)	\$163,300					
GPH	\$101,200					
Womens Center	\$52,900					
Crisis Intervention (17) locations	\$46,000					
SMU Recr. & Yard Access (9 Locations)	\$780,800					
<b>Total</b>	\$1,601,900	\$1,601,900				\$1,601,900
<b>Unallocated Mental Health Funds FY2014* (Carryforward)</b>	(\$168,976)	(\$168,976)				(\$168,976)
<b>TOTALS</b>	<b>\$8,686,953</b>	<b>\$4,684,473</b>	<b>\$2,572,560</b>	<b>\$1,429,920</b>	<b>\$7,187,294</b>	<b>\$1,499,659</b>
Non Recurring		\$1,499,659				\$1,499,659
Recurring		\$3,184,814	\$2,572,560	\$1,429,920	\$7,187,294	
Total per year		44%	36%	20%		

\*These funds accumulated because positions were filled and contracts were negotiated late in the fiscal year.

**Exhibit B**  
**Implementation Panel Report**

**EXHIBIT B**  
**IMPLEMENTATION ADVISORY PANEL REPORT OF COMPLIANCE WITH REMEDIAL GUIDELINES**

	Components as Identified in Order <sup>1</sup>	Relevant Policies, Plans and Standards	Status (Substantial Compliance; Partial Compliance; Not in Substantial Compliance)	Comments and Recommendations (may use separate sheet)
1.	<b><u>The development of a systematic program for screening and evaluating inmates to more accurately identify those in need of mental health care:</u></b>			
	a. Develop and implement screening parameters and modalities that will more accurately diagnose serious mental illness among incoming inmates at R&E with the stated goal of referring inmates to the appropriate treatment programs. Accurately determine and track the percentage of the SCDC population that is mentally ill.	HS 19.10		
		HS 19.07		
	b. The implementation of a formal quality management program under which mental health screening practices are reviewed and deficiencies identified and corrected in ongoing SCDC audits of R&E counselors;	HS 19.07		
	c. Enforcement of SCDC policies relating to the timeliness of assessment and treatment once an incoming inmate at R&E is determined to be mentally ill; and	HS 19.07 HS 19.10		
	d. Development of a program that regularly assesses inmates within the general population for evidence of developing mental illness and provides timely access to mental health care.	HS 19.07 HS 19.10		
2.	<b><u>The development of a comprehensive mental health treatment program that prohibits inappropriate segregation of inmates in mental health crisis, generally requires improved treatment of mentally ill inmates, and substantially improves/increases mental health care facilities within SCDC:</u></b>			
	a. Access to Higher Levels of Care:			

<sup>1</sup> The Order components are for reference only and are to be used as references to identify those aspects of the Policies which apply to the Implementation.

**EXHIBIT B**  
**IMPLEMENTATION ADVISORY PANEL REPORT OF COMPLIANCE WITH REMEDIAL GUIDELINES**

	Components as Identified in Order <sup>1</sup>	Relevant Policies, Plans and Standards	Status (Substantial Compliance; Partial Compliance; Not in Substantial Compliance)	Comments and Recommendations (may use separate sheet)
	i. Significantly increase the number of Area Mental Health inmates vis-a-vis outpatient mental health inmates and provide sufficient facilities therefor;	HS 19.04 HS 19.11		
	ii. Significantly increase the number of male and female inmates receiving intermediate care services and provide sufficient facilities therefore; <sup>2</sup>	HS 19.04, HS 19.07, HS 19.11		
	iii. Significantly increase the number of male and female inmates receiving inpatient psychiatric services, requiring the substantial renovation and upgrade of Gilliam Psychiatric Hospital, or its demolition for construction of a new facility;	HS 19.04, HS 19.07 HS 19.09 Gilliam Construction Plan		
	iv. Significantly increase clinical staffing at all levels to provide more mental health services at all levels of care; and	Hiring Plan attached as Exhibit E to the Settlement Agreement		
	v. The implementation of a formal quality management program under which denial of access to higher levels of mental health care is reviewed.	HS 19.07		
	<b>b. Segregation:</b>			
	i. Provide access for segregated inmates to group and individual therapy services;	OP RHU Policy 22.38 Section 3.23 H.S. 19.04		
	ii. Provide more out-of-cell time for segregated mentally ill inmates;	HS 19.12 OP RHU Policy 22.38 Section 3.14.4 & Section 3.25		
	iii. Document timeliness of sessions for segregated inmates with	HS 19.04 OP RHU Policy		

<sup>2</sup> The Parties agree that 10-15% of male inmates and 15-20% female inmates on the mental health case load should receive Intermediate Care Services.

**EXHIBIT B**

**IMPLEMENTATION ADVISORY PANEL REPORT OF COMPLIANCE WITH REMEDIAL GUIDELINES**

Components as Identified in Order <sup>1</sup>	Relevant Policies, Plans and Standards	Status (Substantial Compliance; Partial Compliance; Not in Substantial Compliance)	Comments and Recommendations (may use separate sheet)
	22.38 Section 3.15		
iv. Provide access for segregated inmates to higher levels of mental health services when needed;	HS 19.04 HS 19.06		
v. The collection of data and issuance of quarterly reports identifying the percentage of mentally ill and non-mentally ill inmates in segregation compared to the percentage of each group in the total prison population with the stated goal of substantially decreasing segregation of mentally ill inmates and substantially decreasing the average length of stay in segregation for mentally ill inmates;	HS 19.07 OP RHU Policy 22.38 Section 1 and Section 2		
vi. Undertake significant, documented improvement in the cleanliness and temperature of segregation cells; and	OP ____		
vii. The implementation of a formal quality management program under which segregation practices and conditions are reviewed.	HS 19.07		
<b>c. Use of Force:</b>			
i. Development and implementation of a master plan to eliminate the disproportionate use of force, including pepper spray and the restraint chair, against inmates with mental illness;	OP 22.01 HS 19.08		
ii. The plan will further require that all instruments of force, (e.g., chemical agents and restraint chairs) be employed in a manner fully consistent with manufacturer's instructions, and track such use in a way to enforce such compliance;	OP 22.01 HS 19.08		
iii. Prohibit the use of restraints in the crucifix or other positions that do not conform to generally accepted correctional standards and enforce compliance;	OP 22.01 HS 19.08		
iv. Prohibit use of restraints for pre-determined periods of time and for longer than necessary to gain control, and track such use to enforce compliance;	OP 22.01 HS 19.08		
v. The collection of data and issuance of quarterly reports identifying the length of time and mental health status of inmates placed in restraint chairs;	HS 19.07 OP Use of Force 22.01 Section 13		
vi. Prohibit the use of force in the absence of a reasonably perceived immediate threat;	OP 22.01 HS 19.08		
vii. Prohibit the use of crowd control canisters, such as MK-9, in individual cells in the absence of objectively identifiable	OP 22.01 HS 19.08		

**EXHIBIT B**  
**IMPLEMENTATION ADVISORY PANEL REPORT OF COMPLIANCE WITH REMEDIAL GUIDELINES**

Components as Identified in Order <sup>1</sup>	Relevant Policies, Plans and Standards	Status (Substantial Compliance: Partial Compliance: Not in Substantial Compliance)	Comments and Recommendations (may use separate sheet)
<p>circumstances set forth in writing and only then in volumes consistent with manufacturer's instructions;</p>			
<p>viii. Notification to clinical counselors prior to the planned use of force to request assistance in avoiding the necessity of such force and managing the conduct of inmates with mental illness;</p>	<p>OP 22.01 HS 19.08</p>		
<p>ix. Develop a mandatory training plan for correctional officers concerning appropriate methods of managing mentally ill inmates;</p>	<p>OP 22.01 ADM 17.01 Employee Training Standards, SCDC Annual Training Plan HS 19.08</p>		
<p>x. Collection of data and issuance of quarterly reports concerning the use-of-force incidents against mentally ill and non-mentally ill inmates; and</p>	<p>OP 22.01 HS 19.07</p>		
<p>xi. The development of a formal quality management program under which use-of-force incidents involving mentally ill inmates are reviewed.</p>	<p>OP 22.01 HS 19.07</p>		
<p><b>3. Employment of a sufficient number of trained mental health Professionals:</b></p>			
<p>a. Increase clinical staffing ratios at all levels to be more consistent with guidelines recommended by the American Psychiatric Association, the American Correctional Association, and/or the court-appointed monitor;</p>	<p>Hiring Plan attached as Exhibit E to the Settlement Agreement</p>		
<p>b. Increase the involvement of appropriate SCDC mental health clinicians in treatment planning and treatment teams;</p>	<p>HS 19.05</p>		
<p>c. Develop a training plan to give SCDC mental health clinicians a thorough understanding of all aspects of the SCDC mental health system, including but not limited to levels of care, mental health classifications, and conditions of confinement for caseload inmates;</p>	<p>Mental Health Training Policy Addendum</p>		
<p>d. Develop a plan to decrease vacancy rates of clinical staff positions which may include the hiring of a recruiter, increase in pay grades to more competitive rates, and decreased workloads;</p>	<p>Hiring Plan attached as Exhibit E to the Settlement Agreement</p>		
<p>e. Require appropriate credentialing of mental health counselors;</p>	<p>HS 19.04</p>		
<p>f. Develop a remedial program with provisions for dismissal of clinical staff who repetitively fail audits; and</p>	<p>HS 19.07</p>		
<p>g. Implement a formal quality management program under which clinical staff is reviewed.</p>	<p>HS 19.07</p>		

**EXHIBIT B**

**IMPLEMENTATION ADVISORY PANEL REPORT OF COMPLIANCE WITH REMEDIAL GUIDELINES**

	<b>Components as Identified in Order<sup>1</sup></b>	<b>Relevant Policies, Plans and Standards</b>	<b>Status (Substantial Compliance; Partial Compliance; Not in Substantial Compliance)</b>	<b>Comments and Recommendations (may use separate sheet)</b>
4.	<b>Maintenance of accurate, complete, and confidential mental health treatment records:</b>			
	a. Develop a program that dramatically improves SCDC's ability to store and retrieve, on a reasonably expedited basis:	HS 200.7		
	i. Names and numbers of FTE clinicians who provide mental health services;			
	ii. Inmates transferred for ICS and inpatient services;			
	iii. Segregation and crisis intervention logs;			
	iv. Records related to any mental health program or unit (including behavior management or self-injurious behavior programs);			
	v. Use of force documentation and videotapes;			
	vi. Quarterly reports reflecting total use-of-force incidents against mentally ill and non-mentally ill inmates by institution;			
	vii. Quarterly reports reflecting total and average lengths of stay in segregation and CI for mentally ill and non-mentally ill inmates by segregation status and by institution;			
	viii. Quarterly reports reflecting the total number of mentally ill and non-mentally ill inmates in segregation by segregation status and by institution;			
	ix. Quality management documents; and			
	x. Medical, medication administration, and disciplinary records.			
	b. The development of a formal quality management program under which the mental health management information system is annually reviewed and upgraded as needed.	HS 19.07		
5.	<b>Administration of psychotropic medication only with appropriate supervision and periodic evaluation:</b>			
	a. Improve the quality of MAR documentation;	HS 18.16		
	b. Require a higher degree of accountability for clinicians responsible for completing and monitoring MARs;	HS 18.16		
	c. Review the reasonableness of times scheduled for pill lines; and	HS 18.16		
	d. Develop a formal quality management program under which medication administration records are reviewed.	HS 18.16		

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS**  
**MENTAL HEALTH CONSTRUCTION AND RENOVATION PLAN**  
Updated as of May 13, 2016

---

**1) Broad River Correctional Institution – Lake Greenwood Housing Unit**

- a) A-Side (Wing) (right side facing the entrance to the housing unit) will be utilized as crisis safe and step down (BMU). B-Side (Wing) (left side facing the entrance to the housing unit) will be utilized as the Crisis Stabilization Cells (CSU) with the first floor 32 cells utilized for CSU inmates and second floor 32 cells utilized as inmate watchers.
- b) Recreations Yards:
- i) Construct an enclosed recreation area with partially covered individual recreation areas (min. of 15) to the left side of B-Side (Wing) and connected to both housing unit wing rear exits.
  - ii) Add cameras to view individual recreation areas and covered walkway.
  - iii) Existing central open recreation area in front of housing unit is adequate for both wings.
- c) Center Support Area:
- i) Renovate the conference room on the far rear left of corridor for a medical treatment room.
    - Install eye wash to the hand sink
    - Install a custom made storage cabinet
    - Replace sliding window unit with fire rated glazing
  - ii) Renovate the existing chemical storage room for a secure storage room to hold restraints.
- d) Housing Unit (Both A & B Wings)
- i) Add cameras in dayrooms.
  - ii) Install push button fixtures in all showers.
  - iii) Multi-purpose rooms used for group counseling need to have sound/noise reduction materials added. Install silent TV's in security cages.
  - iv) Renovate the barber space for a nurse's station:
    - Add hand sink with eye wash and a cabinet to include space for a mini-refrigerator.
    - Add security bar entrance to door.
    - Install a custom made secure storage cabinet in back "V" corner for medications and general medical storage.
- e) A-Side (Wing):
- i) 1<sup>st</sup> floor and 2<sup>nd</sup> floor Cells:
    - In five (5) cells for both the floors, remove beds, lockers, desk and fixtures in cells. Install the new crisis beds (one per cell).
    - Add ADA fixtures with ligature resistant ADA fixtures in the 1 ADA single bunk cell and 1 ADA double bunk cell.
    - All remaining cells, remove top bunk of the triple bunk arrangement to provide double bunks.
    - All cells doors install food flaps and larger security glazing view panels with voice communication.
  - ii) Renovate one shower for ADA with ligature resistant ADA fixtures.
  - iii) Install fence fabric to the 2<sup>nd</sup> floor handrail and staircases.
  - iv) Install TV's in security cages in dayroom.
- f) B-Side (Wing):
- i) 1<sup>st</sup> floor cells:
    - Install inmate watcher swingout seat to wall next to each cell door.
    - All cells doors install food flaps and larger security glazing view panels with voice communication.
    - Add cameras to cells.

- ii) 2nd floor cells:
  - o No changes to cells (to house inmate watchers).
- iii) Replace ADA fixtures with ligature resistant ADA fixtures in the existing 4 ADA cells and one ADA shower.
- iv) Install silent TV's on columns in dayroom.
- v) Remove benches in the dayroom area and install six (6) four man tables with restraint capability.
- g) All areas to be painted to accommodate a more therapeutic setting.
- h) Estimated Construction Costs/Budget at \$781,900.

## **2) Camille Graham Correctional Institution -- Blue Ridge Housing Unit**

- a) Recreation Area:
  - i) Add fence to the back of this building to connect to each wing for open recreation area. Fence in the area surrounding the HVAC Units (minimize access by inmates).
  - ii) Inside this fenced in area, install a roof structure and concrete pad to provide cover from direct sun
- b) Renovate the office space (located to the right side entrance) for therapeutic space.
- c) All showers in Housing Unit:
  - i) Remove shower curtain rods
  - ii) Install new push button valves
  - iii) Renovate one shower for ADA with ligature resistant ADA fixtures.
- d) All cells of "D Wing":
  - i) Remove beds, lockers, and desk. Install the new crisis beds.
  - ii) Provide mobile lockers that can be placed in the cells or removed based on the level of crisis.
  - iii) All cell doors of "D Wing":
    - o Install larger security glazing view panels with voice communication
    - o Install door sweeps.
- e) Cell #37 of "D Wing" will be renovated to accommodate a medical treatment room.
  - i) Remove beds, lockers, combo toilet/sink, mirror, shelves and desk.
  - ii) Add hand sink with eye wash.
- f) Room #B-416 will be renovated to accommodate a Therapeutic Space:
  - i) Remove beds, lockers, combo toilet/sink, mirror, shelves and desk.
  - ii) Furniture / chairs type has not been finalized at this time.
- g) D1 corridor side of "D Wing" (when facing onto the wing – this would be the right side):
  - i) Two (2) cells will be converted to an office and storage spaces.
    - o Remove all fixtures (beds, lockers, desk, combo toilet/sink, mirror, shelves, etc.)
    - o Add phone and IT connections.
  - ii) Renovate three (3) cells into two (2) ADA accessible cells with ligature resistant ADA fixtures.
  - iii) Install cameras in ten (10) cells
- h) D2 corridor side of "D Wing" (when facing onto the wing – this would be the left side):
  - i) Renovate three (3) cells into two (2) ADA accessible cells with ligature resistant ADA fixtures.
- i) All areas to be painted to accommodate a more therapeutic setting.
- j) Estimated Construction Costs/Budget at \$317,300.

## **3) Kirkland Correctional Institution -- Gilliam Psychiatric Hospital (GPH)**

- a) Administration Area:
  - i) Four (4) group counseling rooms:
    - o Renovate two (2) offices for group counseling rooms and two (2) conference rooms.
    - o Add cameras (2 ea. per room). Add cameras to view corridor.

- Add larger security glazing view panels in doors.
  - Furniture / chairs.
- b) Hospital Housing Unit:
- i) The cells and door view panels are adequate at this time.
  - ii) Provide an enclosed nurse's station to both wings to include hand sink ("no restroom facilities") will be added to both A & B wing. Preliminary plans are being reviewed with SCDHEC.
  - iii) Renovate showers on both wings to include push button valves and an ADA shower with ADA with ligature resistant ADA fixtures
  - iv) Install silent TV's on existing TV stands in dayroom of both wings.
- Note: We must be mindful not to violate the current 87 bed SCDHEC hospital license.*
- c) All areas to be painted to accommodate a more therapeutic setting.
- d) Modular Unit:
- i) Renovate open area for additional office spaces.
  - ii) Add enclosed fence walkway and controlled locking systems at gates to include cameras.
- e) Estimated Construction Costs/Budget at \$500,100.
- 4) Step Down Units**
- a) Locations:
- i) Lee Correctional Institution
  - ii) Lieber Correctional Institution
  - iii) McCormick Correctional Institution
  - iv) Ridgeland Correctional Institution
  - v) Tyger River Correctional Institution
- b) Allocating a construction budget of \$150,000.

The total construction budget is estimated at 1,749,300.

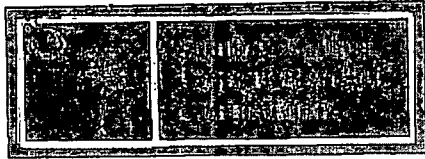
**Exhibit D**  
**Electronic Medical Records Plan**

NextGen

- **Application EPM-5.8 UD2 – Practice Management System (Scheduling/Front Desk/Billing etc.)**
- **KBM-8.3.10 - Knowledge Base Module (EHR Templates/Chart/Components)**
- **EDR- Dental-5 – Dental Practice Management System**

**Exhibit E  
Hiring Plan**

MENTAL HEALTH/MEDICAL REMEDIAL PLAN



Medical Staffing Plan (Attachment 1)

Total Additional Staffing

TOTALS

<b>Total Cost</b>
<b>Year 1, 2, &amp; 3</b>
<b>\$2,100,161</b>
<b>\$2,100,161</b>

TIMELINE		
Year 1	Year 2	Year 3
\$927,806	\$722,328	\$450,026
\$927,806	\$722,328	\$450,026
\$927,806	\$722,328	\$450,026
44%	34%	21%

Non Recurring  
Recurring

## New Request (Changes Highlighted)

HIRING AND SALARY 3-YEAR PROJECTION						
Staffing (FTE)	Baseline Salary	Benefits	Total Package	# of Positions		ADD'L. COST
				Current	Requested	
	200,000	88,000	288,000	7.5	8.5	\$2,448,000
Psychiatrist	45,000	19,800	64,800	92.5	20.0	\$1,296,000
Counselors (Licensed, Masters level)	37,000	16,280	53,280	0	30.0	\$1,598,400
Mental Health Technicians	33,000	14,520	47,520	0	3.0	\$142,560
Activity Therapist	60,000	26,400	86,400	0	1.0	\$86,400
Clinical Activity Supervisor	80,000	35,200	115,200	0	1.0	\$115,200
*Quality Assurance (QA) Director	48,000	21,120	69,120	1	4.0	\$276,480
*Quality Assurance Monitors	60,000	26,400	86,400	0	1.0	\$86,400
*Health Services Recruiter	24,500	10,780	35,280	7	2.0	\$70,560
Administrative Support Staff (ICS)	351,926	154,847	506,773	0	0	\$506,773
Salary Equity (Existing Psychiatry Staff Only)	95,000	41,800	136,800	1	3	\$410,400
Psychologist PhD						\$7,037,173
<b>STAFFING ANNUAL TOTAL</b>	956,926	421,048	1,377,974	125.5	66.5	

\* Positions are for use in all of Medical - not solely for MH.

The above represents SCDC's proposed counter proposal to plaintiffs. Plaintiffs requested an additional two psychiatrists and one additional activity therapist beyond the above request. SCDC believes this counterproposal is an appropriate response to their demand. Plaintiff's request would total an additional \$623,520.

# 1ST YEAR TOTALS

HIRING AND SALARY PROJECTION (YEAR 1)						
	Baseline Salary	Benefits	Total Package	Current	Requested	Total Cost
Staffing (FTE) August				7.5	3	\$864,000
Psychiatrist	\$200,000	\$88,000	\$288,000	109	8	\$518,400
Counselors (Licensed, Masters level)	\$45,000	\$19,800	\$64,800	0	11	\$586,080
Mental Health Technicians	\$37,000	\$16,280	\$53,280	0	1	\$47,520
Activity Therapist	\$33,000	\$14,520	\$47,520	0	1	\$115,200
Quality Assurance (QA) Director	\$80,000	\$35,200	\$115,200	0	1	\$138,240
Quality Assurance Monitors	\$48,000	\$21,120	\$69,120	1	2	\$86,400
Health Services Recruiter	\$60,000	\$26,400	\$86,400	0	1	\$35,280
Administrative Support Staff (ICS)	\$24,500	\$10,780	\$35,280	7	1	\$506,773
Salary Equity for existing psychiatry staff	\$351,926	\$154,847	\$506,773	0	0	\$1,000,000
	694,444	305,556	1,000,000	10	0	\$4,034,694
	694,444	305,556	1,000,000	124.5	28	
<b>1ST YEAR TOTALS</b>	<b>\$879,426</b>	<b>\$386,947</b>	<b>\$1,266,373</b>			

## 2nd Year Totals

HIRING AND SALARY PROJECTIONS (YEAR 2)						
	Base (inc. Salary)	Benefits	Total Package	Current	No. Positions Requested	Total Additional Cost
<b>Starting (FTE)</b>						
Psychiatrist	\$200,000	\$88,000	\$288,000	10.5	3.0	\$864,000
Counselors (Licensed, Masters level)	\$45,000	\$19,800	\$64,800	117.0	8.0	\$518,400
Mental Health Technicians	\$37,000	\$16,280	\$53,280	11.0	14.0	\$745,920
Activity Therapist	\$33,000	\$14,520	\$47,520	1.0	1.0	\$47,520
Clinical Activity Supervisor	\$60,000	26,400	86,400	0	1.0	\$86,400
Quality Assurance (QA) Director	\$80,000	\$35,200	\$115,200	1.0	0.0	\$0
Quality Assurance Monitors	\$48,000	\$21,120	\$69,120	3.0	2.0	\$138,240
Health Services Recruiter	\$60,000	\$26,400	\$86,400	1.0	0.0	\$0
Administrative Support Staff (ICS)	\$24,500	\$10,780	\$35,280	8.0	1.0	\$35,280
Salary Equity for existing psychiatry staff	\$351,926	\$154,847	\$506,773	0.0	0.0	\$0
Psychologist PhD	95,000	41,800	136,800	3	1	\$136,800
<b>2ND YEAR TOTALS</b>	<b>\$939,426</b>	<b>\$413,347</b>	<b>\$1,352,773</b>	<b>152.5</b>	<b>30</b>	<b>\$2,572,560</b>

### 3rd Year Totals

BIRNBAUM SALARY PROJECTION (YEARS)						
Staffing (FTE)	Baseline Salary	Benefits	Over Budget	Current	Requested	Cost
Psychiatrist	\$200,000	\$88,000	\$288,000	13.5	2.5	\$720,000
Counselors (Licensed, Masters level)	\$45,000	\$19,800	\$64,800	125	4	\$259,200
Mental Health Technicians	\$37,000	\$16,280	\$53,280	25	5	\$266,400
Activity Therapist	\$33,000	\$14,520	\$47,520	2	1	\$47,520
Quality Assurance (QA) Director	\$80,000	\$35,200	\$115,200	1	0	\$0
Quality Assurance Monitors	\$48,000	\$21,120	\$69,120	5	0	\$0
Health Services Recruiter	\$60,000	\$18,700	\$61,200	1	0	\$0
Administrative Support Staff (ICS)	\$24,500	\$10,780	\$35,280	9	0	\$0
Salary Equity for existing psychiatry staff	\$351,926	\$154,847	\$506,773	0	0	
	95,000	41,800	136,800	4	1	\$136,800
Psychologist PhD				181.5	12.5	\$1,429,920
<b>3rd YEAR TOTALS</b>	<b>\$879,426</b>	<b>\$379,247</b>	<b>\$1,241,173</b>			

# ATTACHMENT 1

HIRING AND SALARY 3 YEAR PROJECTION				# of Positions			Total Staff	ADDL COST	TOTAL COST
Staffing (FTE)	Baseline Salary	Benefits	Total Package	Current	Requested				
							2	\$230,400	\$460,800
	160,000	70,400	230,400	1	1.0		3	\$410,400	\$410,400
General Medical Physician	\$95,000	\$41,800	\$136,800	0	3.0		108	\$1,014,444	\$7,303,997
Nurse Practitioner/Physician Assistant	\$46,965	\$20,665	\$67,630	93	15.0		89	\$444,917	\$3,959,760
Registered Nurse (RN) - (5) Prospective Psychiatric Nurses	\$30,897	\$13,595	\$44,492	79	10.0		202	\$2,100,161	\$12,134,956
Licensed Practical Nurse (LPN) - (3) Prospective Psych. Nurses	\$32,862	\$146,459	\$479,321	173	29.0				
<b>STAFFING ANNUAL TOTAL</b>							<b>Totals</b>	<b>\$2,100,161</b>	<b>\$12,134,956</b>

\* Positions are for use in all of Medical - not solely for MH

## 1ST YEAR TOTALS

HIRING AND SALARY PROJECTION (YEAR 1)				# of Positions			Total Staff	ADDL COST	TOTAL COST
Staffing (FTE) Position	Baseline Salary	Benefits	Total Package	Current	Requested	Salary	Fringe		
								2	\$460,800
	\$160,000	\$70,400	\$230,400	1	1	\$160,000	\$70,400	1	\$136,800
General Medical Physician	\$95,000	\$41,800	\$136,800	0	1	\$95,000	\$41,800	98	\$338,148
Nurse Practitioner/Physician Assistant	\$46,965	\$20,665	\$67,630	93	5	\$234,825	\$103,323	84	\$222,458
Registered Nurse (RN)	\$30,897	\$13,595	\$44,492	75	5	\$154,485	\$67,973	185	\$927,806
Licensed Practical Nurse (LPN)	\$32,862	\$146,459	\$479,321	173	12	\$644,310	\$283,496		\$10,962,602
<b>1ST YEAR TOTALS</b>	<b>\$332,862</b>	<b>\$146,459</b>	<b>\$479,321</b>						

## 2nd Year Totals

HIRING AND SALARY PROJECTION (YEAR 2)				# of Positions			Total Staff	ADDL COST	TOTAL COST
Staffing (FTE)	Baseline Salary	Benefits	Total Package	Current	Requested	Salary	Fringe		
						\$0	\$0	2.0	\$0
	\$160,000	\$70,400	\$230,400	2.0	0.0	\$0	\$0	2.0	\$136,800
General Medical Physician	\$95,000	\$41,800	\$136,800	1.0	1.0	\$95,000	\$41,800	106.0	\$341,037
Nurse Practitioner/Physician Assistant	\$46,965	\$20,665	\$67,630	98.0	2.0	\$375,720	\$165,317	85.0	\$44,492
Registered Nurse (RN)	\$30,897	\$13,595	\$44,492	84.0	1.0	\$30,897	\$13,595	10	\$0
Licensed Practical Nurse (LPN)						\$501,617	\$220,711	205	\$722,328
<b>2ND YEAR TOTALS</b>	<b>\$332,862</b>	<b>\$146,459</b>	<b>\$479,321</b>	<b>185</b>	<b>10</b>	<b>\$501,617</b>	<b>\$220,711</b>		<b>\$11,684,930</b>

## 3rd Year Totals

HIRING AND SALARY PROJECTION (YEAR 3)				# of Positions			Total Staff	ADDL COST	TOTAL COST
Staffing (FTE)	Baseline Salary	Benefits	Total Package	Current	Requested	Salary	Fringe		
						\$0	\$0	2	\$0
	\$160,000	\$70,400	\$230,400	2	0	\$0	\$0	3	\$136,800
General Medical Physician	\$95,000	\$41,800	\$136,800	2	1	\$95,000	\$41,800	108	\$138,258
Nurse Practitioner/Physician Assistant	\$46,965	\$20,665	\$67,630	106	2	\$93,030	\$41,329	89	\$177,967
Registered Nurse (RN)	\$30,897	\$13,595	\$44,492	85	4	\$123,588	\$54,379	212	\$450,026
Licensed Practical Nurse (LPN)	\$32,862	\$146,459	\$479,321	195	7	\$312,516	\$137,608		\$0
<b>3rd YEAR TOTALS</b>	<b>\$332,862</b>	<b>\$146,459</b>	<b>\$479,321</b>	<b>195</b>	<b>7</b>	<b>\$312,516</b>	<b>\$137,608</b>		<b>\$12,134,956</b>

**Exhibit F**  
**Baxley Order**

STATE OF SOUTH CAROLINA )

COUNTY OF RICHLAND )

T.R., P.R., and K.W., on behalf of )  
themselves and others similarly situated; )  
and Protection and Advocacy for People )  
with Disabilities, Inc., )

Plaintiffs, )

v. )

South Carolina Department of Corrections )  
and William R. Byars, Jr., as Agency )  
Director of the South Carolina Department )  
of Corrections )

Defendants. )

IN THE COURT OF COMMON PLEAS  
FIFTH JUDICIAL CIRCUIT

C/A No.: 2005-CP-40-2925

**ORDER GRANTING JUDGMENT IN  
FAVOR OF PLAINTIFFS**


2014 JAN -8 PM 12:36  
C.C.P. & G.S.

It has been the privilege of this writer to serve the State of South Carolina as a general jurisdiction judge for fourteen years. At the time this case was heard, Court Administration reported there were more than 5,000 new case filings per year for each of our state's circuit court judges. Thus, over 70,000 cases of every imaginable sort have come to this Court over the years. This case, far above all others, is the most troubling.

This case is a class action brought on behalf of approximately 3,500 state inmates who meet the definition of being seriously mentally ill. For purposes of this suit, the term "serious mental illness" was specifically defined in the Class Certification order dated November 1, 2007, and may be succinctly stated as all SCDC inmates from the date of the filing of the complaint who have been hospitalized for psychiatric services, referred to an Intermediate Mental Health Care Services Unit, or diagnosed by a psychiatrist with the following mental illness: Schizophrenia, Schizoaffective Disorder, Cognitive Disorder, Paranoia, Major Depression, Bipolar Disorder, Psychotic Disorder, or any other mental condition that results in significant

functional impairment including inability to perform activities of daily living, extreme impairment of coping skills, or behaviors that are bizarre and/or dangerous to self or others. Plaintiffs claim that their treatment within SCDC, or lack of treatment, constitutes a violation of the state constitution.

The evidence in this case has proved that inmates have died in the South Carolina Department of Corrections for lack of basic mental health care, and hundreds more remain substantially at risk for serious physical injury, mental decompensation, and profound, permanent mental illness. As a society, and as citizen jurors and judges make decisions that send people to prison, we have the reasonable expectation that those in prison – even though it is prison – will have their basic health needs met by the state that imprisons them. And this includes mental health. The evidence in this case has shown that expectation to be misplaced in many instances.

 Economic downturn and financial pressures have brought great change to our country. One of these is that the various state departments of corrections are now more than ever the collection place of the seriously mentally ill among the citizenry. The incidence of serious mental illness within the general population is less than four (4%) percent<sup>1</sup>. In the typical Department of Corrections, it is between 15 and 20 percent. In South Carolina, the evidence in this case shows it to be approximately 17 percent, in spite of the Department's claim that it is 12.9 percent. If 17 percent of the prison population had advanced cancer and there was inadequate and in some cases nonexistent treatment for cancer in prison, the public would be outraged. Yet this is the case for serious mental illness.

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<sup>1</sup> Figures vary depending upon the source, demographics, and differences in various definitions of "serious mental illness." The Court takes judicial notice of the statistical findings of the National Institute of Mental Health, which places the general population figure at 3.9%. Further statistical information may be obtained from the NIH at [www.nimh.nih.gov/statistics/SMI\\_AASR.shtml](http://www.nimh.nih.gov/statistics/SMI_AASR.shtml).


This litigation does not occur in a vacuum. What happens at the Department of Corrections impacts all of us, whether it is from the discharge of untreated seriously mentally ill individuals from prison into the general population, or tremendously increased costs for treatment and care that might have been prevented, or the needless increase in human suffering when use of force replaces medical care. The decisions of our Courts reflect the values of our society. To that end, our state can no longer tolerate a mental health system at the South Carolina Department of Corrections that has broken down due to lack of finances and focus.

While the Court finds the inadequacy of the mental health system at SCDC has not occurred by design, but instead by default, the Court further finds this decision in favor of Plaintiffs should not come as a shock to SCDC. Previous internal and external reviews of the SCDC mental health system have found multiple inadequacies and failures. Despite its knowledge of the grave risks these deficiencies pose to mentally ill inmates, SCDC has failed through the years to take reasonable steps to abate those risks. The Court recognizes that the Department is underfunded and understaffed in many particulars, not just mental health services delivery. The operation of any state agency is a matter of competing priorities, and the General Assembly, as keeper of the public purse, is not in a position to excessively fund any entity. Thus, this decision will ultimately require an increase in priority for mental health services commensurate with the level of serious mental illness within the prison population.

#### DECISION

In its prior Order Setting Forth Applicable Constitutional Standards ("Standards Order"), the Court delineated the standard of liability and burden of proof applicable to Plaintiffs' constitutional claim under Article I, § 15 of the South Carolina Constitution, which prohibits "cruel and unusual punishment." To prevail on a claim under Article I, § 15, the Court stated

that Plaintiffs must prove that Defendants acted with “deliberate indifference to serious medical needs of prisoners.” Standards Order at 3 (quoting *Estelle v. Gamble*, 429 U.S. 97, 104 (1976)). This deliberate indifference standard contains both an objective and subjective component. See *Farmer v. Brennan*, 511 U.S. 825, 834-37 (1994). To satisfy the objective component, Plaintiffs must demonstrate that they are subjected to a substantial risk of harm that is sufficiently serious. *Id.* The objective component is not limited to past harm, but also protects inmates from an unreasonable risk of future harm. *Helling v. McKinney*, 509 U.S. 25, 35 (1993). Plaintiffs may satisfy the objective component by showing that systemic deficiencies in a prison mental health system expose inmates with serious mental illness to a substantial risk of serious future harm. Standards Order at 7-8, citing *Helling*; 509 U.S. at 35; *Wellman v. Faulkner*, 715 F.2d 269, 272 (7th Cir. 1983); *Flynn v. Doyle*, 2009 WL 4262746 at \*19 (E.D. Wis. 2009); *Madrid v. Gomez*, 889 F. Supp. 1146, 1256 (N.D. Cal. 1995); *Neiberger v. Hawkins*, 208 F.R.D. 301, 317 (D. Colo. 2002).


 The Court noted the need for guideposts in determining whether Plaintiffs satisfied the objective component of the deliberate indifference standard. Accordingly, within this legal framework, the Court identified and articulated six factors that would serve as benchmarks for determining whether SCDC’s mental health program exposed mentally ill inmates to a substantial risk of serious harm. Stated succinctly, the evidence at trial should establish whether the SCDC mental health services system contained the following adequately functional components:

1. A systematic program for screening and evaluating inmates to identify those in need of mental health care;
2. A treatment program that involves more than segregation and close supervision of mentally ill inmates;

3. Employment of a sufficient number of trained mental health professionals;
4. Maintenance of accurate, complete, and confidential mental health treatment records;
5. Administration of psychotropic medication only with appropriate supervision and periodic evaluation; and
6. A basic program to identify, treat, and supervise inmates at risk for suicide.

Standards Order at 8-10, *citing Ruiz v. Estelle*, 503 F. Supp. 1265, 1339 (S.C. Tex. 1980) *aff'd in part, rev'd in part*, 679 F.2d 1115 (5th Cir. 1982), *amended in part, vacated in part*, 688 F.2d 266 (5th Cir. 1982), *cert. denied*, 460 U.S. 1042 (1983).

Employing these factors in the context of the objective component of the deliberate indifference standard, the Court finds by a preponderance of the evidence that the Plaintiffs have met the burden of proof and makes the following threshold findings.

 First, the mental health program at SCDC is severely understaffed, particularly with respect to mental health professionals, to such a degree as to impede the proper administration of mental health services. This deficiency has a substantial impact on every aspect of the mental health program, beginning at Reception and Evaluation ("R&E"), where inmates are screened and evaluated for mental health needs, continuing into the treatment programs for seriously mentally ill inmates, and ending with deficient discharge planning for seriously mentally ill inmates being returned to the general public.

Second, seriously mentally ill inmates are exposed to a disproportionate use of force and segregation (solitary confinement) when compared with non-mentally ill inmates. Segregation and use of force are often used in lieu of treatment, with severe consequences for inmates with

serious mental illness. The inappropriate and extended reliance on segregation to manage inmates with serious mental illness, particularly those in crisis, exposes them to a substantial risk of serious harm by limiting their access to mental health counselors and psychiatrists, disturbing their eating and sleeping cycles, disrupting the administration of medications, and deepening their mental illnesses. These conditions have contributed to the deaths of multiple inmates in segregation, while placing other inmates and staff at risk. They have also led to the stigmatization of mental illness within SCDC that discourages inmates from seeking the limited mental health care the agency does provide.

Third, mental health services at SCDC lack a sufficiently systematic program that maintains accurate and complete treatment records to chart overall treatment, progress, or regression of inmates with serious mental illness.

Fourth, SCDC's screening and evaluation process is ineffective in identifying inmates with serious mental illness and in providing those it does identify with timely treatment.

Fifth, SCDC's administration of psychotropic medications is inadequately supervised and evaluated.

Sixth, SCDC's current policies and practices concerning suicide prevention and crisis intervention<sup>2</sup> are inadequate and have resulted in the unnecessary loss of life among seriously mentally ill inmates.

As a result of the above findings, the Court further finds that SCDC's mental health system exposes seriously mentally ill inmates to a substantial risk of serious harm and Plaintiffs have therefore satisfied the objective component of the deliberate indifference standard.

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<sup>2</sup> "Crisis intervention" refers to SCDC's response to an actively mentally ill inmate who poses an immediate danger and must be sequestered for his own protection or the protection of other inmates and correctional officers.

The subjective component is met by proof that a defendant “knows that inmates face a substantial risk of serious harm and disregards that risk by failing to take reasonable measures to abate it.” *Farmer*, 511 U.S. at 834-837. At trial, the Plaintiffs presented overwhelming evidence that SCDC has known for years that its policies and practices expose seriously mentally ill inmates to a substantial risk of serious harm but has failed to take reasonable measures to abate that risk. The Court finds, therefore, that the Plaintiffs have satisfied the subjective component of the deliberate indifference standard.

As a result of the above findings, the Court grants judgment in favor of the Plaintiffs.

Below, the Court has separated the remainder of this Final Order into two sections. The first section articulates the factual findings and conclusions underlying the Court’s decision with respect to the objective component by examining each of the six *Ruiz* factors listed above. The first section then articulates the factual findings and conclusions related to the subjective component. The findings made therein are by a preponderance of the evidence. Section Two then addresses the remedy the Court will grant in this case and the mechanism used to achieve it.

With regard to the factual findings and conclusions mentioned below in Section One, there are several references to individual circumstances involving specific inmates. The Department argued at trial that reference to an individual inmate and his/her particular situation was anecdotal and not indicative of the general administration of mental health services. Moreover, counsel for SCDC essentially argued that some of the specific inmate situations were “outliers” in that such was a constellation of unique events and circumstances that brought about an unfortunate result. The Court specifically rejects that argument. While no system involving thousands of inmates is expected to be perfect, the Court finds that the individual circumstances

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referred to below are the result of a system that is inherently flawed in many respects, understaffed, underfunded, and inadequate.

I. **FACTUAL FINDINGS/DISCUSSION**

A. **Objective Component**

1. **A systematic program for screening and evaluating inmates to identify those in need of medical care**

As of 2011, 12-13 percent of the SCDC inmate population had been diagnosed by SCDC with a mental illness and was on the Department's mental health caseload. From that data, with a total inmate population at the time of trial of 23,306, a 12.9 percent fraction yields an approximate figure of 3,006 inmates that have been diagnosed as mentally ill.<sup>3</sup> Based on universally accepted national statistics, evidence presented to the Court at trial strongly indicates this percentage should be much higher. Multiple studies conducted nationwide suggest that a more accurate percentage of inmates with a serious mental illness should be somewhere in the range of 15 to 20 percent. SCDC's expert, Dr. Scott Haas, testified that seriously mentally ill inmates ordinarily comprise 18 percent of a prison population. Plaintiffs' expert, Dr. Raymond F. Patterson, testified that after detailed analysis, 17 percent was a conservative estimate of SCDC's seriously mentally ill population, and the Court finds the basis of his analysis to be credible.

The Court further finds this low, acknowledged percentage of mentally ill inmates at SCDC troubling because it indicates a high likelihood that there are hundreds of inmates with a serious mental illness at SCDC who are not receiving any treatment due to deficiencies in the screening and evaluation process used to identify and classify those with a serious mental illness.

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<sup>3</sup> Exact numbers fluctuate due to the constant intake and release of inmates.

This low identification of mentally ill inmates has a synergistic impact on the mentally ill population, as it leads to a reduction in mental health professionals, the further disproportionate cutting of costs in difficult economic times within the mental health system because of a perceived lack of need for services, and a skewed analysis as to the efficacy of the existing mental health system. R&E serves as the intake facility for inmates entering into SCDC. If inmates with mental illnesses are not identified and appropriately classified at R&E, the Court finds that these inmates face a substantial risk of serious harm.

In addition to the concerns mentioned above, there was also evidence presented to the Court of regular violations of the SCDC mental health policy, two of which are particularly relevant to the Court as they relate to the screening and evaluation process at R&E. First, SCDC policy requires that a mental health counselor must meet with an inmate within 48 hours of the inmate being assigned to that counselor's caseload. At trial, there was evidence submitted to the Court of regular and persistent violations of this policy. Second, inmates are not being seen by a psychiatrist within thirty days of the counselor's initial assessment when a need for psychiatric treatment is indicated, also a violation of SCDC policy. Consequently, this results in inmates who are referred to a psychiatrist at R&E, but are then transferred into SCDC general population prior to assessment by that psychiatrist, creating a risk of harm for all inmates.

The Court finds, due to the concerns listed above, that the program used by SCDC for screening and evaluation fails to adequately identify and classify those inmates suffering from serious mental illness, thereby exposing them to a substantial risk of serious harm.

2. A treatment program that involves more than segregation and close supervision of mentally ill inmates
  - a. Segregation

The treatment program at SCDC places heavy reliance on segregation and use of physical force against seriously mentally ill inmates, as opposed to treatment.

Mentally ill inmates are substantially overrepresented in segregation units, known as Special Management Units ("SMU"), within SCDC. Inmates in segregation stay in solitary confinement in their cells 23-24 hours a day. Visitation, telephone, and other privileges are significantly restricted. As of September 2011, the percentage of mentally ill inmates in SMUs at the three SCDC institutions where the majority of men with serious mental illness are assigned ("Area Mental Health Institutions") demonstrates the disproportionate use of segregation to which members of the Plaintiff class are subjected. At Lee Correctional Institution ("Lee"), 16 percent of the total inmate population was mentally ill, yet 27 percent of its inmates in SMU were mentally ill.<sup>4</sup> The corresponding numbers at Perry Correctional Institution ("Perry") were 24 percent and 40 percent. At Lieber Correctional Institution ("Lieber"), the differential was even greater, where mentally ill inmates comprised 20 percent of all inmates, yet 42 percent of the inmates that were in segregation. During this same period, the percentage of mentally ill inmates in SMUs in all SCDC institutions was 23 percent, even though they represented less than 13 percent of the total inmate population.

Taking the entire population into consideration, a mentally ill inmate is twice as likely to be placed in segregation as a non-mentally ill inmate. As of September 2011, 16 percent of inmates on the mental health caseload were in SMUs in contrast with 8 percent of non-mentally ill inmates. For security detention, the most restrictive form of segregation, where inmates are placed in solitary confinement for indefinite periods, mentally ill inmates are more than three

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<sup>4</sup> These percentages are based on the SCDC mental health caseload.

times more likely to be assigned this status than other inmates, at a rate of 8.7 percent compared with 2.8 percent.<sup>5</sup>

Not only are mentally ill inmates overrepresented in SMUs, they also spend disproportionately longer periods of time in the SMUs. For many mentally ill inmates, this period of isolation in SMU has lasted for several years. For example, the average cumulative disciplinary detention sentence for inmates with mental illness as of January 13, 2012 was 647 days, compared to 383 days for non-mentally ill inmates. These averages include extremely long periods of segregation for inmates whose disciplinary detention sentences exceeded their projected release date from SCDC. Again, these extended sentences were meted out against mentally ill inmates at over twice the rate of other inmates. The lengths of these sentences in segregation were also far greater for members of the Plaintiff class, exceeding their projected release date on average by 1,968 days or 5.39 years, compared with 1,065 days or 2.92 years for other inmates. Of the ten longest periods of disciplinary detention sentences beyond projected release dates, nine of the inmates were mentally ill. Their cumulative sentences for solitary confinement ranged from 20-36 years.

The evidence showed that these extended periods of segregation too often reflect the accumulation of disciplinary detention sentences for non-assaultive behavior of mentally ill inmates. For example, one 51-year-old mentally ill inmate who had been hospitalized at SCDC's psychiatric facility accumulated 19 years of disciplinary detention sentences from 2005-2008. For one non-assaultive offense in which he threatened harm, he received 999 days of disciplinary detention and lost visitation for three years. In interviews with Plaintiffs' experts, he was

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<sup>5</sup> The two principal forms of punitive segregation are security detention and disciplinary detention. Disciplinary detention consists of sentences served in segregation for a specific period of time for violation of SCDC administrative rules. Security detention is a classification assigned to inmates determined to present a particular risk to other inmates or staff that often remains in effect for periods lasting several years.

distressed that he was being denied “400 million dollars in his bank” and was set to appear on the television program “The Rich and Famous.”

A 27-year-old female mentally ill inmate accumulated six and a half years of disciplinary detention segregation and lost access to the telephone and visitation for eight years for non-assaultive offenses, most of which were verbal or profane threats to staff or other inmates. One of the charges was prompted when she threatened two inmates who were making derogatory remarks about a medical condition that required her to wear diapers.

The evidence revealed that the great majority of the extreme periods in segregation are in fact served. For example, Leslie Cox, a member of the Plaintiff class, was confined in SMU for at least 2,565 consecutive days, from February 2001 - February 2008. James Wilson, another mentally ill inmate, was confined in SMU for at least 2,491 consecutive days.<sup>6</sup> SCDC records provide conflicting information about mentally ill inmate Rowland Dowling, who spent either 1,777 or 2,200 consecutive days in solitary. Other mentally ill inmates were confined in solitary for similarly lengthy periods.

SCDC's Guilty But Not Accountable (“GBNA”) policy should theoretically reduce the number of mentally ill inmates in segregation but, in fact, has had a negligible effect. SCDC counselors are responsible for recommending findings of GBNA but this Court finds that, as Dr. Patterson testified, many SCDC counselors are not qualified to analyze accountability. Only 2 percent of mentally ill inmates receiving segregation sentences are determined to meet GBNA criteria.<sup>7</sup> Moreover, of those found to be GBNA, the finding has had no effect on their

<sup>6</sup> SCDC records indicate that inmates Cox and Wilson were still in segregation as of February 25, 2008. It is unknown how much longer they remained in segregation after that date.

<sup>7</sup> Evidence introduced by Plaintiffs also showed that a small percentage of the disciplinary detention sentences for male mentally ill inmates at Area Mental Health Institutions were reduced or waived during a 21-month review period between 2010 and 2011.

sentences. Of all inmates in SCDC custody on September 1, 2011 who had been found GBNA, 25 were mentally ill. Despite being found "not accountable," all 25 had been sentenced to segregation.

The American Correctional Association ("ACA") defines disciplinary detention or punitive segregation as follows:

A form of separation from the general population in which inmates committing serious violations of conduct regulations are confined by the disciplinary committee or other authorized group for *short periods of time* to individual cells separated from the general population.

*ACA Standards for Adult Correctional Institutions Supplement*, p. 306 (2008) (emphasis added).

The ACA standards also recognize the potentially harmful effects of punitive segregation on the mental health of any inmate:

Inmates whose movements are restricted in segregation units may develop symptoms of acute anxiety or other mental health problems; regular psychological assessment is necessary to ensure the mental health of any inmate confined in such a unit beyond 30 days.

*ACA Standards for Adult Correctional Institutions*, 3<sup>rd</sup> Edition, Standard 3-4244 (2008).

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The evidence presented by Plaintiffs demonstrates that SCDC consistently showed little to no regard for the mental health of inmates in imposing periods of disciplinary or security detention, in the lengths of the segregation imposed, or in the effects on mentally ill inmates. The Department's practice consistently violates the ACA standards. Neither the disciplinary detention sentences nor classifications in security detention are for short periods of time. Once in segregation, the level of therapeutic care or intervention to address the needs of mentally ill inmates is grossly inadequate.

Dr. Janet Woolery, the principal psychiatrist at Lee, estimated that approximately 40-50 percent of the Lee SMU inmates she saw were demonstrating active psychotic symptoms.

Rather than placing mentally ill inmates into treatment programs, it appears that they are merely placed in SMUs. SMU patients receive no group therapy and sessions with both psychiatrists and mental health counselors are seldom held in a confidential setting. Sixty-three percent of the counselor audits produced by SCDC noted deficiencies for untimely psychiatric sessions and 77 percent noted deficiencies for untimely counselor assessments. Patient medical records provide further evidence that SMU patients often do not see psychiatrists or counselors on a timely basis. For example, SCDC policy requires that Edward Barton, diagnosed with schizophrenia and classified as an Area Mental Health patient, be seen by a mental health counselor at least once every 30 days, as well as by a psychiatrist at least once every 90 days. Yet, from July 2008 – November 2010, while confined in an SMU, Barton on six occasions went over 30 days without seeing a counselor; on four of those occasions he went over 60 days without seeing a counselor; and once he went 9 months without seeing a counselor. From September 2010 – August 2011, Barton twice went over 120 days without seeing a psychiatrist and once went over 6 months.

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SCDC's heavy reliance on segregation of mentally ill inmates raises serious concerns for the Court. As acknowledged by SCDC Mental Health Regional Coordinator Jacqueline Strong, risk factors for psychosis and suicide increase while an inmate is in SMU. It is not uncommon for an inmate in SMU to develop depression and experience a disturbance in eating and sleeping cycles.<sup>8</sup>

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<sup>8</sup> Defendants relied upon a Colorado Department of Corrections study to assert that long-term segregation has no significant detrimental effect on mental health. However, the Court finds that the Colorado study is distinguishable from the situation at SCDC for two reasons. First, the Colorado study was limited to inmates who had spent no more than twelve consecutive months in segregation. Many SCDC mentally ill inmates stay in segregation for much longer periods of time. Second, the Colorado study was expressly limited to SMUs with substantially similar conditions to the Colorado State Penitentiary. Plaintiffs' two psychiatric experts, Dr. Metzner and Dr. Patterson, each testified they were familiar with the Colorado State Penitentiary and that conditions in SCDC segregation units were much harsher. As Dr. Patterson testified, the difference was like "night and day."

Moreover, evidence in the case shows conditions in SMUs fall below what is acceptable for a 21st century correctional institution. SMU cells are both extremely cold and inordinately filthy, often with the blood and feces of previous occupants smeared on the floor and walls.

Within the SMU of Lee Correctional Institution is a special 8-cell unit known as "Lee Supermax." On February 7, 2008, inmate Jerome Laudman was transferred to a cell in Lee Supermax. Laudman was schizophrenic, intellectually disabled, and had a speech impediment. According to his mental health counselor, he was neither aggressive nor threatening. No one notified the counselor of Laudman's transfer to Lee Supermax. According to an internal SCDC investigative report, Laudman was sprayed with chemical munitions and physically abused by a correctional officer during the transfer to Lee Supermax. The move was videotaped pursuant to policy, but when viewed by the SCDC investigator, the tape was, inexplicably, mostly blank. Laudman was stripped naked and left in a completely empty Supermax cell.

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On February 11, a correctional officer observed that Laudman was sick and weak but did not report it. At some point after February 11, Laudman stopped eating and taking medication. On the morning of February 18, a correctional officer saw Laudman lying on the cell floor in feces and vomit. He lay there "all morning," according to the SCDC investigative report. At approximately 1:30 or 2:00 p.m., two nurses were called. They reported that, in addition to feces and vomit, 15-20 trays of rotting, molding food were in the cell. Both the nurses and the correctional officers refused to retrieve the body. After a further delay, two inmates came to retrieve Laudman, who was unconscious but alive. Later that afternoon, however, he died in a local hospital ER of a heart attack. The hospital report noted the presence of hypothermia. The SCDC investigator found evidence of an attempted cover-up by correctional officers who cleaned Laudman's cell before photographs could be taken. Even after the cleaning, the

photographs taken by the investigator show the cell in a deplorably dirty state. After Laudman's death, SCDC did no quality improvement reviews of Lee Supermax procedures and practices. In September 2008, seven months after Laudman's death, Dr. Metzner and Dr. Patterson inspected Lee Supermax and described it as "filthy."

**b. Use of force**

Mentally ill inmates also suffer from disproportionate, unnecessary, and excessive uses of force.

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i. Disproportionate Use of Force. Between January 2008 and September 2011, mentally ill inmates were subjected to uses of force at a rate two and half times greater than non-mentally ill inmates. During this period, 27 percent of the Plaintiff class was subjected to the use of force in contrast to only 11 percent of other inmates. At the Area Mental Health Institutions for men, the reliance on use of force was even greater. At Lee, Lieber, and Perry, 40 percent, 43 percent, and 44 percent of mentally ill inmates were subjected to force, respectively, while the corresponding numbers of non-mentally ill inmates subjected to force at these institutions were 23 percent, 21 percent, and 16 percent, respectively. Although force was applied far less frequently at Camille G. Graham Correctional Institution ("Graham"), the Area Mental Health Institution for women, the same pattern was present. During the relevant review period, only fourteen use-of-force incidents were reported; however, ten of these incidents were directed toward mentally ill women, even though members of the Plaintiff class constituted less than half of the total inmates at Graham.

The evidence was clear and compelling that SCDC resorts to use of force in the agency's attempt to manage the conduct of mentally ill inmates. Of the inmates who were subjected to use of force, each mentally ill inmate who had been the object of a reported use of force during this

period was subjected on average to 3.35 separate incidents, while the use-of-force rate for other inmates was almost half that, at 1.72 incidents per inmate.

Of the thirty inmates most frequently subjected to the use of force, twenty-six were on the mental health caseload. The mental health conditions were so serious for many of these individuals that fifteen of the twenty-six required hospitalization during the same period at Gilliam Psychiatric Hospital ("Gilliam" or "GPH"). Ten of these fifteen inmates were hospitalized on multiple occasions. James Howard was subjected to 81 separate use-of-force incidents. Mr. Howard was hospitalized for psychiatric treatment on five separate occasions during this same period between January 2008 and September 2011.

SCDC's overreliance on the use of force in attempting to manage mentally ill inmates is, in part, a direct effect of the lack of training correctional officers receive. SCDC training coordinator Yolanda Delgado testified in deposition only twelve days before trial that "less than a handful" of correctional officers attended training sessions intended to improve the staff's knowledge and skills in dealing with mentally ill inmates.

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ii. Unnecessary and Excessive Use of Force. Plaintiffs' corrections expert, Steve J. Martin, testified that while SCDC's use-of-force policy was consistent with national correctional standards, its use-of-force practices were not. Based on his review of over 1,000 incident reports at SCDC involving OC spray (pepper spray), Mr. Martin testified a pattern and practice existed that violated national standards and SCDC's own use-of-force policy. First, Mr. Martin testified in detail about eighteen case examples at SCDC of the unnecessary use of force where no threat of harm or other urgent circumstances were present and, in some cases, where OC spray was used simply as punishment. Mr. Martin testified, and the Court finds, that these cases were representative of the more than 1,000 incidents he

reviewed. Second, Mr. Martin found it common for SCDC correctional officers to use excessive force. For example, contrary to SCDC policy, SCDC officers routinely gas inmates with OC spray in amounts that exceed manufacturer instructions and at closer distances than the manufacturer directs. Mr. Martin identified nine case examples, documented in SCDC reports, where SCDC officers had used MK-9 crowd control fogger devices in large disbursements in individual closed cells, again contrary to manufacturer instructions and SCDC policy. In fact, Mr. Martin testified that having reviewed thousands of uses of OC spray in prisons and jails throughout the country, he had “never seen MK-9, a crowd control contaminant, so frequently used by a correctional force inappropriately.” The use of such force is without penological justification.

SCDC’s unnecessary and excessive use of OC spray on mentally ill inmates is consistent with its unnecessary and excessive use of physical restraints. Contrary to its policy and national correctional standards, SCDC places inmates in restraint chairs for predetermined blocks of time in set, four-hour increments.<sup>9</sup> For example, on December 12, 2007, inmate Steven Patterson was transferred to Perry from Gilliam but, by SCDC’s mistake, with only five days’ worth of psychotropic medications. On January 2, 2008, Patterson’s medical record noted that he had not received medication since December 17, 2007 “and he’s not doing well.” That same day, he cut himself with a plastic spoon and was placed naked in a restraint chair for twelve hours, even though the videotape of his time in the chair shows him calm and cooperative. On January 3, he was returned to Gilliam.

<sup>9</sup> SCDC witnesses testified this practice was changed shortly before the start of this trial so that inmates no longer will be placed in restraint chairs for predetermined blocks of time. The timing of this change concerns the Court, however, for “practices may be reinstated as swiftly as they were suspended.” *Thomas v. Bryant*, 614 F.3d 1288, 1320 (11<sup>th</sup> Cir. 2010).

Mr. Patterson's experience was only one example of how SCDC uses restraint chairs as a substitute for medical treatment. Plaintiffs entered into evidence two gruesome SCDC videotapes of inmates with self-inflicted wounds who were kept in the restraint chair for extended periods of time before receiving adequate medical treatment. Inmate Jerod Cook cut himself on his arm. Approximately 90 minutes after being discovered, he was placed in a restraint chair where he remained for four hours. The videotape shows a pool of blood on the floor of Mr. Cook's cell. He is hardly able to stand before being placed in the restraint chair. He continues to bleed while in the restraint chair and pleads with correctional officers for medical help. As Dr. Patterson testified, the decision by security staff – rather than by medical staff – to keep Mr. Cook in a restraint chair for four hours under those conditions was an "outrageous, horrific response."

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Inmate Baxter Vinson underwent a similar experience, cutting himself in the abdomen while in his cell. Approximately three hours and twenty minutes after his wound was discovered, security staff placed him in a restraint chair where he remained for approximately two hours before being transported to a hospital. The videotape shows that while in the restraint chair, Mr. Vinson is eviscerating, with his intestine coming out of the abdominal wall. The tape shows correctional officers tightening the restraints, thereby putting additional pressure on his abdomen. As Dr. Patterson testified, this was a medical emergency that required a sterile environment. The videotape gives further evidence of what Dr. Patterson characterized as "a broken system."

Inmates are often placed naked in restraint chairs. Bathroom breaks are infrequent, so that at times they are forced to urinate in the chair. A common practice at Perry when placing inmates in a restraint chair is to secure them in a painful, "crucifix" position, demonstrated to

Mr. Martin both by Perry correctional officers and inmates. Inmates Richard Patterson and Jonathan Roe both testified about spending hours in what they characterized as the "Jesus" position.

OC spray and restraint chairs are not the only methods of physical force employed by SCDC against mentally ill inmates. Shawn Wiles, a mentally ill inmate in SCDC's Maximum Security Unit, testified that correctional officers restrained his arms in a twisted position, soaked him with water, and left him outside for approximately an hour on a cold December night.

While SCDC contends these are isolated examples of inappropriate conduct by correctional officers, it offered little or no evidence of effective supervisory oversight of the use of force. Mr. Martin testified that one of the standard protections prison systems use to guard against excessive use of force is review of use-of-force incidents. The first element of an effective review process is an examination of the cases that are referred to senior management for review of questionable uses of force. The second element consists of an assessment of the findings concerning allegations of inappropriate force and corrective actions taken. Of the more than one thousand cases Mr. Martin reviewed, very few were referred to senior SCDC officials to assess an alleged inappropriate use of force. Mr. Martin found that of the few cases that were referred, SCDC officials made virtually no findings of excessive or unnecessary force.

In a prison system of more than 23,000 inmates, Mr. Martin testified that the almost complete absence of the identification by managers of inappropriate uses of force is a "huge red flag" that raises serious questions about the existence of an effective system to manage the use of force by correctional officers. Mr. Martin testified that the risk of harm to mentally ill inmates from the unnecessary and excessive use of force, if left unattended and not corrected, is ongoing

and substantial. The Court finds Mr. Martin's testimony, and the bases for his opinions, to be credible.

The Court is concerned by the absence of referrals for investigation of the cases presented by Mr. Martin, and the absence of findings by senior SCDC managers that those cases raise serious questions about the application of force against mentally ill inmates. The Court finds that such excessive uses of force have been largely unreported, uninvestigated, and unmanaged. The Court further finds that Plaintiffs have proven a pattern and practice of the use of unnecessary and excessive force.

c. Limited involvement of psychiatrists

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A substantial contributing factor to the lack of an effective treatment program is the limited involvement of psychiatrists in creating and administering treatment plans for mentally ill inmates. Psychiatrists at SCDC have no administrative or policy-making duties, and there is evidence that they do not attend meetings to create and develop treatment plans for inmates. The Court finds that psychiatrists, as the lead mental health professionals in the mental health program, must be more directly involved in creating and developing treatment plans. Furthermore, deposition testimony of some psychiatrists reveals an alarming lack of knowledge of policies and procedures at SCDC, the levels of care and criteria for referral to a particular level of care, and the role of the counselor in the mental illness treatment process. For example, SCDC psychiatrist Dr. Poiletman did not know what the terms SMU and CI stood for – meaning Special Management Unit and Crisis Intervention – terms inextricably tied to mentally ill inmates at SCDC. He did not know the difference between Area Mental Health patients and outpatients, did not know what mental health counselors do, and had “no idea” who drafted treatment plans. Likewise, Dr. Crawford, the principal psychiatrist at Graham, could not

describe the distinction between an Intermediate Care Services patient and an Area Mental Health Patient. She did not review treatment plans and did not start attending treatment team meetings until after her deposition. Dr. Woolery, the principal psychiatrist at Lee, was unfamiliar with treatment plans, did not know whether any of her patients were in Lee Supermax, and had never seen Lee Supermax herself. The Court finds these examples both illuminating and disturbing. For psychiatrists and other mental health staff at SCDC to provide effective services, they must have a more intimate knowledge of the processes and procedures vital to the mental health services system they are expected to direct.

d. Limited access to higher levels of care

Finally, SCDC's treatment program fails to provide mentally ill inmates with sufficient access to higher levels of care. All correctional mental health systems are organized by levels of care, and SCDC's system comprises four levels. From lowest to highest, these are outpatient, area, intermediate (ICS), and inpatient. The higher the level, the more services and staffing are required.

SCDC's Mental Health Director, Pamela Whitley, estimated that in 2008 the combined ICS and Area Mental Health caseload at SCDC was 515. In 2012, however, the combined ICS and area caseload was only 310, a 40 percent reduction. In February 2008, at Lee and Lieber combined there were 212 area and 211 outpatient mental health inmates, a 50/50 split. By September 2011, however, there were only 83 area inmates at Lee and Lieber (14.8 percent), while the outpatients numbered 478 (85.2 percent). From 2003 to 2011, male ICS inmates decreased from 315 to 135. The women's ICS program was discontinued, then revived, but at the time of trial consisted of only five inmates. In the 1990s Gilliam, the 88-bed inpatient psychiatric facility for male inmates, operated at full capacity, but at the time of trial only 47

beds were filled. It is undisputed that women inmates have a higher rate of mental illness than male inmates, but from 2007-2009 SCDC referred only 13 women to Geo Care (formerly "Just Care"), a private company with which SCDC contracts for inpatient psychiatric services for female inmates. SCDC offered no persuasive explanation for the decline in the number of inmates receiving higher levels of services during a period when the overall inmate population and mental health case load remained flat.

**e. Conclusion**

This Court finds that SCDC's use of force and segregation, as opposed to treatment, in a mental health system where psychiatrists have limited roles and where inmates face systemic obstacles in accessing higher levels of care, creates a substantial risk of serious harm for inmates with serious mental illness.

**3. Employment of a sufficient number of trained mental health professionals**

The Court finds that the mental health program at SCDC is substantially understaffed. This has a causal effect for many insufficient aspects of the mental health program and greatly inhibits SCDC's ability to provide effective services to its mentally ill inmate population.

From 2008-2011, psychiatric staff at SCDC (psychiatrists and psychiatric nurse practitioners) ranged from 4.5 to 5.5 full-time equivalents (FTEs). At the time of this trial, SCDC had 5.5 FTE psychiatric staff serving an estimated 2,409 inmates on psychotropic medication, for a ratio of 1:437. If 17 percent of SCDC's population is mentally ill, rather than the 12.9 percent diagnosed by SCDC, the estimated number of inmates on psychotropic medication should be 3,170 and the ratio then is 1:575. Based on the testimony of Dr. Metzner and Dr. Patterson, the Court finds an appropriate ratio would be one FTE psychiatrist/psychiatric

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nurse practitioner to every 150-200 inmates on psychotropic medication. At Gilliam, there are 1.2 FTE psychiatrists and psychiatric nurse practitioners for 62 patients, a 1:52 ratio. Based on the testimony of Plaintiffs' experts, the Court finds that an appropriate ratio for an inpatient setting would be 1:20. For the ICS program, there is currently .7 FTE psychiatric staff for 135 patients, a ratio of 1:193. Based on the testimony of Plaintiffs' experts, the Court finds that an appropriate ratio for intermediate care would be 1:150.

The Court also finds that SCDC is understaffed in clinical psychologists. In 2003, SCDC employed or retained four FTE clinical psychologists but needed, by its own admission, seven. From 2007-2011, however, SCDC averaged only .3 FTE psychologists.<sup>10</sup> To add some context, SCDC's expert, Dr. Haas, testified that the Kentucky Department of Corrections, his former employer, had 15-16 FTE psychologists to serve a total population of 12,000 – 13,000 inmates, a ratio of approximately 1:800. By contrast, SCDC's .3 FTE psychologists serve a total population of approximately 23,000 inmates, a ratio of 1:69,697.

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Likewise, the ratio for counselors at Area Mental Health Institutions as of January 2012 is also problematic: 1:72 at Lee; 1:84 at Perry, and 1:100 at Lieber. In response to this information, Dr. Patterson and Ms. Whitley, SCDC's Mental Health Director, agreed that a more appropriate ratio for counselors at the Area Mental Health Institutions is 1:40. Counselor staffing at outpatient prisons is also insufficient. Ms. Whitley testified she became "very concerned" when counselor-patient ratios at outpatient prisons exceeded 1:65, and Dr. Patterson agreed. SCDC data, however, shows that counselor ratios at most of its outpatient prisons exceed 1:65. At the time of trial, the counselor-patient ratio at McCormick Correctional Institution was 1:157 and at Turbeville Correctional Institution 1:183.

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<sup>10</sup> Shortly before trial, SCDC increased its psychologists to .7 FTE.

In total, Dr. Patterson recommended that SCDC employ at least an additional 20 FTE counselors, 14.5 FTE psychiatrists, and 17 FTE other types of mental health professionals. The Court accords great weight to Dr. Patterson's recommendations for staffing.

While it is clear that SCDC does not have enough counselors, it is equally clear that many of the counselors they do employ are unqualified. Hiring unqualified counselors can lead to the kind of deterioration in the delivery of mental health services that Perry experienced in 2009-2010. Within a period of a few months, all five of Perry's counselors were fired or resigned under investigation or following a serious reprimand. As Dr. Patterson testified, those counselor departures had a significant effect on mental health services provided at Perry, resulting in the cancellation of many psychiatric clinics and group therapy sessions. Disciplinary reprimands in counselor personnel files give further evidence of the overall poor quality of SCDC counselor services.

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In 2009, SCDC began conducting internal audits of its mental health counselors. As Dr. Patterson and Dr. Metzner testified, the audits document a wide range of serious counselor deficiencies. Scores were particularly poor for Lee, Lieber, and Perry, the male Area Mental Health Institutions, where 55 percent of the audits were either "unsatisfactory" or "satisfactory, but with major concerns." Some of the deficiencies listed are disturbing. They include numerous instances of mentally ill inmates going for many months without seeing a counselor or psychiatrist, in violation of SCDC policy; treatment plans that were out of date and incomplete; and inadequate documentation of medication administration and group therapy sessions. Some counselors repeatedly failed their audits.

The Court finds that inadequate mental health staffing at all levels within SCDC represents a substantial risk of serious harm to inmates with serious mental illness.

4. Maintenance of accurate, complete, and confidential mental health treatment records

A treatment plan is intended to be a dynamic and fluid process that continues on a regularly scheduled basis, supplemented by constant updates and revisions. In order to be effective, treatment plans must be accurate, complete, readily accessible to professional staff, and confidential. During trial, evidence was presented to the Court indicating that documentation and maintenance of these records is poor. The treatment plans and automated medical records ("AMR") do not clearly state problems, objectives, goals, or even identify plan-responsible staff.

The importance of maintaining accurate and complete treatment records is vital to any medical services delivery system. For mentally ill inmates in particular, treatment plans and AMRs are critical for assessing progress as well as the effect of medication and therapy.

In addition, Dr. Metzner offered several examples of basic information about its mental health program that SCDC's aged computer system is unable to provide. For example, SCDC's computer system cannot retrieve the names or numbers of all inmates referred to the ICS program; the number of women inmates referred to Geo Care for inpatient psychiatric services; the number of inmates who have made serious suicide attempts; or the number of inmates whose psychotropic medications have expired without being timely renewed.

In summary, the evidence in this case shows that the recordkeeping system for SCDC is outmoded, poorly maintained, and not readily accessible to all staff. The Court finds that SCDC's failure to maintain accurate and complete mental health treatment records represents a substantial risk of serious harm to mentally ill inmates.

5. Administration of psychotropic medication only with appropriate supervision and periodic evaluation

In evaluating this factor, some of the same concerns overlap with those of the previous factor – maintenance of accurate, complete, and confidential mental health treatment plans. The Court, however, will note three specific issues that raise further concerns. First, Medication Administration Records (“MAR”) of mentally ill inmates provide crucial information upon which psychiatrists rely. SCDC uses standard MAR forms where nurses are required to sign their initials to confirm that medication was provided and administered. At trial, various MARs were introduced indicating the absence of initials and absence of any record that medications were provided at all. This indicates either the medication was not provided or the nurses failed to maintain accurate records. For example, in October and November 2008, inmate Jonathan Mathis was prescribed one medication to be taken twice a day and two other medications to be taken once a day. From his MAR, however, it appears he received no medications either month, without explanation.

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Although counselors monitor MARs, the Court agrees with Dr. Patterson that SCDC counselors are not qualified to do so, as evidenced by counselor audits showing deficient MARs. Ms. Delgado acknowledged that a failure to adequately monitor MARs has no effect on a counselor’s audit score. For example, the only audit that one Lieber counselor has ever passed was an audit in which 14 of the 15 MARs reviewed for which she was responsible were found incomplete or outdated.

The second issue of concern involves the suicide of Robert Hamberg. SCDC records show that Mr. Hamberg’s morning medications had expired – specifically his anti-psychotic medicine Geodon – which he was supposed to receive twice a day. Nevertheless, his counselor

was still recording that he was compliant with his medication – that he was receiving it in the mornings and evenings. Thus, Mr. Hamberg was only receiving half of his prescribed dosage of anti-psychotic medication. Mr. Hamberg committed suicide on June 9, 2010 at Perry Correctional Institution.

The third issue of major concern in the area of medication administration involves pill lines. As Dr. Patterson testified, medication compliance is especially difficult for many mentally ill inmates, due to medication side effects and the nature of their illness. At many institutions, pill lines occur between 3:00 - 4:00 a.m., and mentally ill inmates are often left to their own devices to timely awake, stand in line, and then take their medication. The timing, press of business, and lack of individual attention at the pill line lends itself to inmates failing to take psychotropic medications.

This Court finds that the failure to appropriately supervise, evaluate, and dispense psychotropic medications creates a substantial risk of serious harm to inmates with serious mental illness.

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6. **A basic program to identify, treat, and supervise inmates at risk for suicide**
    - a. **The setting of Crisis Intervention (“CI”) cells**

At trial, Dr. Patterson identified seven mentally ill inmates at SCDC, in addition to Jerome Laudman, whose deaths from 2008-2011 were both foreseeable and preventable.<sup>11</sup> In his opinion, two common factors contributed to these deaths. First, crisis intervention cells are located in segregation units, not in a medical setting, and thus lack sufficient medical interaction

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<sup>11</sup> Six of these were suicides. The seventh, Stephen Jeter, was not ruled a suicide, but his death was related to a failed suicide attempt. Moreover, the Court is aware that two more SCDC inmate suicides occurred while this trial was actually in progress, one at Lee and one at Lieber, with both decedents either on or should have been on the mental health caseload.

and treatment. For example, CI inmates are not being assessed daily for mental health purposes. As of the date of trial, SCDC policy only required that inmates in CI be seen Monday through Friday, excluding holidays, and this policy is often violated. Inmates in CI cells spend the entire day in those cells, and are held for long periods of time – typically one to two weeks – but sometimes longer. CI cells, like other SMU cells, are cold and filthy, with trash, blood, and feces scattered or smeared about. Inmates are placed naked in CI cells. They often are not provided a blanket, and when one is provided it often is not clean. CI cells do not have mattresses. Inmates sleep directly on a cold steel or concrete slab. Inmate Richard Patterson testified how he tore up his Styrofoam food trays, then spread the pieces on his concrete slab to serve as a form of mattress. In addition, most inmates in CI do not see a psychiatrist and are not allowed group therapy. Interaction with counselors is brief, limited, and not confidential.

For at least a three-year period, from 2008-2010, correctional officers at Lieber, at times with the acquiescence of mental health staff and at other times without their knowledge, routinely placed CI inmates naked in shower stalls, “rec cages,” interview booths, and holding cells for hours and even days at a time. Most of these alternative CI spaces did not have toilets and none were suicide resistant. Details of these placements are contained in Dr. Metzner and Patterson’s inspection report, entered into evidence, as well as in their testimony and the testimony of various inmates. SCDC’s own logs document over 100 of these alternative placements during the 27 months for which logs were provided.<sup>12</sup> The Court finds that the vast majority, if not all, of these placements were for inmates on crisis intervention. SCDC logs show that 55 of these placements at Lieber were for twelve hours or longer and 29 exceeded 24 hours. Inmate Isaac Anderson was confined over 86 consecutive hours in a Lieber rec cage from April

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<sup>12</sup> SCDC could not locate Lieber SMU logs for several of the months requested.

2-6, 2009, with his first documented bathroom break coming after 42 hours in the cage. The interview booths and showers used for CI were often filthy and too small a space in which to lie down. Correctional officers brought CI inmates “finger food” meals to these spaces. Since inmates were not always provided bathroom breaks, some were forced to urinate and defecate in the same spaces where they were fed. Moreover, the Court finds that the use of such inappropriate spaces for CI has not been limited to Lieber. Plaintiffs presented inmate testimony and other evidence that SCDC has placed CI inmates in such spaces at other institutions prior to 2008 and after 2010. For the reasons discussed, the Court finds that SCDC’s normal CI placements expose inmates with serious mental illness to a substantial risk of serious harm. The dehumanizing conditions of SCDC’s alternative CI placements expose inmates to even greater risk.

**b. Lack of constant observation**

Second, SCDC’s policy does not require constant observation; rather, inmates in CI cells are checked on 15-minute intervals, documented in cell-check logs. The evidence before the Court contains proven instances of fabricated cell check logs. For example, the cell check log of inmate Edward Broxton noted that at 6:30 a.m. on February 2, 2010, he was eating breakfast, even though an hour earlier, at 5:30 a.m., Broxton had hanged himself in his CI cell at Lee. Many of the cell check logs for Jerome Laudman were initialed “GM,” although the only Lee Supermax correctional officer with those initials denied making the entries or authorizing anyone to use his signature. The SCDC Inspector General report on the drug overdose suicide at Perry of inmate James Bell documented evidence that his cell check logs had also been falsified. To make matters worse, on the Saturday before Bell’s suicide his aunt, in an upset state, phoned SCDC to warn them of a “goodbye letter,” suicidal in nature, she had received from her nephew.

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SCDC mental health staff did not check on Bell until two days later, on Monday afternoon, when a counselor found him dead in his cell.

SCDC's expert, Dr. Haas, agreed with Dr. Patterson and Dr. Metzner that inmates on suicide watch require continuous observation. In 2008, inmate Brian Schriefer committed suicide while on CI at Gilliam by stuffing either toilet paper or a paper gown down his throat. As a result of Schriefer's death, SCDC stopped distributing gowns to CI inmates, instead requiring them to remain naked while in CI. SCDC did not change its policy, however, on continuous observation of suicidal inmates. Continuous observation would have prevented Schriefer's death.

The Court finds that SCDC's suicide prevention and crisis intervention practices create a substantial risk of serious harm to seriously mentally ill inmates.

**7. Summary of objective component**

As detailed above, this Court finds that the evidence in this case has proved SCDC's mental health program is inherently flawed and systemically deficient in all major areas. The Court further finds that a major contributing factor to the deficiencies in the SCDC program is the lack of a formal, comprehensive quality management program.

Finally, having observed the testimony of the psychiatric and correctional experts for both Plaintiffs and Defendants, this Court finds Plaintiffs' experts more credible. In part, this finding is due to a comparison of their credentials and experience; in part, due to their relative persuasiveness on the witness stand; and in part, due to the wide disparity between Plaintiffs' and Defendants' experts in case preparation and particular knowledge of the SCDC system.

Based on the testimony of these experts and the other evidence presented at trial, the Court finds that SCDC's mental health program exposes inmates with serious mental illness to a

substantial risk of serious harm. Plaintiffs have therefore satisfied the objective component of the deliberate indifference standard.

**B. Subjective Component**

The subjective component of the deliberate indifference standard requires proof that SCDC knew that Plaintiffs were exposed to a substantial risk of serious harm, but failed to take reasonable measures to abate the risk. *Farmer*, 511 U.S. at 847. The subjective component should be determined in light of the prison authorities' "attitudes and conduct at the time suit is brought and persisting thereafter." *Id.* at 845-846.

The evidence is overwhelming that SCDC has known for over a decade that its system exposes seriously mentally ill inmates to a substantial risk of serious harm. In 1999, SCDC retained Dr. Patterson (Plaintiffs' expert), through a grant, to inspect its mental health program. His report, issued in 2000, characterized the program as being in a state of "profound crisis." In October 2000, a Joint Legislative Proviso Committee report concluded that "inmates with mental illness are not receiving adequate treatment . . . and oftentimes leave prisons worse off than when they entered." In April 2003, a South Carolina Task Force whose members included three former SCDC Directors issued a report that concluded Gilliam was "clearly inadequate." In May 2003, the South Carolina Department of Mental Health issued a report on SCDC's mental health program, noting "[t]he lack of psychiatric coverage has resulted in a critical situation, with extremes of poor care, inhumane treatment, and dangerousness . . . ." In September 2003, SCDC Director Jon Ozmint, in an application for technical assistance, stated that "[t]he current plight of persons with mental illness at SCDC is at a crisis level." In June 2005, the Plaintiffs filed their Complaint in this case, alleging constitutional deficiencies in SCDC's program. From 2006-2010 Plaintiffs' experts issued eight site inspection reports criticizing conditions in SCDC

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facilities. In October 2007, SCDC psychiatrist Dr. Michael Kirby wrote a letter to his supervisor noting several serious problems with SCDC's mental health system. In June 2008, SCDC investigator Lloyd Greer issued his report on the death at Lee Supermax of Jerome Laudman. From 2008-2010, Lieber SMU logs documented the use of shower stalls and other inappropriate spaces for CI placements. In 2009-2010, SCDC was aware that the counselor shortage at Perry created serious deficiencies in the delivery of mental health services. In January 2010, a United States Department of Justice report was highly critical of SCDC's medication management and administration practices. SCDC's own counselor audits from 2010-2011 revealed numerous unsatisfactory practices and major deficiencies. January 2012 internal data showed counselor-to-patient ratios at many SCDC facilities that were excessively high. Finally, through the discovery process in the litigation of this case from 2005-2012, SCDC was made aware of the serious allegations raised by Plaintiffs and their experts, many of which are supported by SCDC's own records.

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The Court finds from this evidence that SCDC knows and has known, since before this lawsuit was filed, and persisting thereafter until the time of trial and even to present date, that its mental health program is systemically deficient and exposes seriously mentally ill inmates to a substantial risk of serious harm.

That, however, does not end the analysis. The second element of the subjective component focuses on action: has SCDC taken reasonable measures to abate the risks of which it is aware? The evidence shows that from 1999 until the filing of this action in 2005, SCDC did virtually nothing to address, much less eliminate, the substantial risks of serious harm to which class members were exposed. What limited action SCDC has taken since the filing of this lawsuit has had little to no effect in abating the unconstitutional deficiencies this Court has

found. “[T]o rely on intervening events occurring after suit has been filed the defendants must satisfy the heavy burden of establishing that these such events ‘have completely and irrevocably eradicated the effects of the alleged violations.’” *Thomas v. Bryant*, 614 F.3d 1288, 1320-21 (11<sup>th</sup> Cir. 2010).

SCDC has failed to meet this “heavy burden.” At trial SCDC identified the measures it has taken since 2005 to improve its mental health program. These include the hiring of two administrators and some administrative support staff, an increase in psychiatric staff FTEs, a re-organization of group therapy, a new protocol for addressing self-injuring behavior (“SIB”), mental health dorms, increased use of tele-psychiatry, new training programs for clinical and security staff, and counselor audits.

The Court finds that these are small steps that have had little impact on the systemic deficiencies in SCDC’s mental health program. The mere hire of administrators to replace other administrators is not necessarily an improvement. Additional administrative support staff does not address the dire need for more clinical staff. Since 2008, SCDC’s psychiatric staff has remained relatively flat and currently consists of 5.5 FTEs, although this Court has found that at least 14.5 FTEs are needed. As discussed, counselor and psychologist FTEs are far too low. Reorganized or not, group therapy sessions are frequently cancelled and unavailable for most inmates in segregation and crisis intervention. SCDC introduced no persuasive evidence that its new, decentralized SIB protocol has improved SIB-related issues. SCDC’s concentration of some mentally ill inmates in designated dorms is no substitute for an adequately staffed mental health program. At the time of trial, SCDC had not implemented expanded tele-psychiatry services, but had merely requested a feasibility study. SCDC’s training programs are limited in scope and poorly attended. Counselors are the only mental health clinicians subject to formal

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audits, and those audits, though limited in scope, reveal alarming deficiencies. Despite a low bar for passing, many counselors fail their audits, some repeatedly.

Half-hearted measures will not foreclose a finding of deliberate indifference. “Patently ineffective gestures purportedly directed towards remedying objectively unconstitutional conditions do not prove a lack of deliberate indifference, they demonstrate it.” Standards Order at 13, (quoting *Coleman v. Wilson*, 912 F. Supp. 1282, 1319) (E.D. Cal. 1995)). See also *Thomas*, 614 F.3d at 1320 (11th Cir. 2010) (“practices may be reinstated as swiftly as they were suspended”). The steps SCDC has taken have been small ones, characterized by SCDC itself as “band aids,”<sup>13</sup> many of which were instituted shortly before and even during trial, that have failed to adequately address the known systemic deficiencies in its mental health program. The SCDC mental health program needs far more than band aids, and the Court finds that the measures taken by SCDC to correct its systemic deficiencies are neither reasonable, timely, nor effective. Plaintiffs have therefore satisfied the subjective component of the deliberate indifference standard.

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II. REMEDY TO ADDRESS CONSTITUTIONAL VIOLATIONS

A. Overview

In devising a remedy for the constitutional deficiencies at SCDC, the Court is required to balance two competing interests. First, it is not the role of this Court to micromanage the daily administration of the mental health program at SCDC. Moreover, this decision comes in a time of economic recession and heavy scrutiny of governmental expenses. However, “[c]ourts may not allow constitutional violations to continue simply because a remedy could involve intrusion into the realm of prison administration.” *Brown v. Plata*, 131 S.Ct. 1910, 1928-29 (2011).

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<sup>13</sup> SCDC’s June 8, 2009 Memorandum on Applicable Standards contended that SCDC had a “well-developed mental health system . . . in place for decades,” that needed nothing more than “band aids or other minor remedies.”

Additionally, the economic “cost of protecting a constitutional right cannot justify its total denial.” *Bounds v. Smith*, 430 U.S. 817, 825 (1977). “A plea of lack of funds is an insufficient justification for the failure of the executive department” to provide constitutionally mandated treatment programs. *Crain v. Bordenkircher*, 176 W.Va. 338, 364, 342 S.E.2d 422, 449 (1986), (quoting *Moore v Starcher*, 167 W.Va. 848 - 853, 280 S.E.2d 693, 696 (1981)).

Second, under the separation of powers doctrine, this Court may not usurp the authority of other branches of government. The separation of powers doctrine, however, “is not fixed and immutable.” *State v. Langford*, 400 S.C. 421, 434, 735 S.E.2d 471, 478 (2012). On the contrary, the doctrine contains “grey areas” and an “overlap of authority” among governmental branches. *Id.*

“Separation of powers does not require that the branches of government be hermetically sealed; the doctrine of separation requires a cooperative accommodation among the three branches of government; a rigid and inflexible classification of powers would render government unworkable.” At its core the doctrine therefore “is directed only to those powers which belong exclusively to a single branch of government.”

*Id.* (quoting 16A Am.Jur.2d, *Constitutional Law* § 244, 246).

*Id.* 36  
In *Blaney v. Cmmr. of Corrections*, 374 Mass. 337, 372 N.E.2d 770 (1978), following defendants’ submission of deficient plans to remedy prison conditions, the court entered a remedial order giving explicit directions for defendants to follow. The court rejected defendants’ argument that the order violated separation of powers, noting that courts have power to direct public officials to carry out their lawful obligations. 374 Mass at 339-42, 372 N.E.2d at 773-74. “As to judges’ authority to fashion detailed orders to correct established violations of constitutional rights . . . [s]uch functions are judicial, and in no way usurp the power of the executive.” 374 Mass. at 342-43, 372 N.E.2d at 774, citing *Swann v. Charlotte-Mecklenburg*

*County Bd. of Educ.*, 402 U.S. 1, 15 (1971); *U.S. v. Montgomery County Bd. of Educ.*, 395 U.S. 225, 234-36 (1969). See also *In re K.C.*, 325 Ill. App. 3d 771, 779-80, 759 N.E.2d 15, 23 (2001) (“When the legislature creates a statute that contemplates an interplay between the courts and the executive branch, court orders directing the actions of the executive agencies do not violate the doctrine of the separation of powers.”); *Crain*, 176 W.Va. at 364, 342 S.E.2d at 449 (where a court ordered the West Virginia Department of Corrections to implement an extensive remedial plan addressing constitutionally deficient prison conditions.); *Haley v Barbour Cnty.*, 885 So. 2d 783, 790 (Miss. 2004) (noting court regulation of the number of inmates a county may deliver to a prison does not violate separation of powers.); *Massameno v. Statewide Grievance Comm.*, 234 Conn. 539, 567, 663 A.2d 317, 333 (1995) (stating a court does not violate separation of powers doctrine by supervising and disciplining executive branch prosecutors.)

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Finally, this Court is bound to uphold the South Carolina Constitution and protect the rights of the mentally ill inmates at SCDC. Moreover, it is the action of a circuit court that triggers the placement of an inmate into the custody of SCDC, under Court authority, and thus this Court has the inherent power - and responsibility - to see that the imprisonment of that inmate complies with constitutional mandates. The Court is convinced that to view the evidence put forth in this case and then do nothing could be a great miscarriage of justice.

To address the constitutional deficiencies in the mental health system at SCDC, Plaintiffs have proposed a remedial plan comprised of three components. First, SCDC would be required to submit a written plan for remedying the systemic deficiencies identified by the Court. Second, SCDC must rely upon factors and guidelines identified by the Court in creating this plan, which the Court will then review and either approve or disapprove. Third, the Court will retain jurisdiction of this case and appoint expert monitors and/or a special master who will report

periodically to the Court. SCDC has raised objections to this plan, arguing that it constitutes an impermissible burden shift and is violative of the separation of powers doctrine.

The Court denies SCDC's objections. It would be highly impractical for Plaintiffs to identify and create a plan to implement changes to the mental health system at SCDC. Rather, once the Court has ruled, SCDC is in the best position to propose steps and changes to its existing system. See *Alexander S. v. Boyd*, 876 F. Supp. 773, 804-04 (D.S.C. 1995) (where a court ordered the South Carolina Department of Juvenile Justice to submit remedial plan within 120 days of order); *Crain*, 176 W.Va. at 341, 342 S.E.2d at 426 (where a court ordered the West Virginia Department of Corrections to submit remedial plan within 180 days of order). As a result, the Court adopts Plaintiffs' proposals and requires SCDC to submit a written plan to the Court within 180 days of the date of the Final Order in this case. In executing the remedial plan to be submitted by SCDC, the Court will retain jurisdiction but also intends to appoint a monitor who will report periodically to the Court. The Court will provide the parties, through motions, an opportunity to suggest the appropriate appointee(s) to oversee this process.

**B. Remedial Factors and Guidelines**

In formulating specific factors and guidelines for SCDC's remedial plan, the Court will again utilize the *Ruiz* factors above, along with additional sub-factors and components listed thereunder. In devising a plan to remedy the constitutional deficiencies identified by the Court, SCDC shall be directed in the Order to prepare a written plan that includes, at a minimum, the following:

1. The development of a systematic program for screening and evaluating inmates to more accurately identify those in need of mental health care

- i. Develop and implement screening parameters and modalities that will more accurately diagnose serious mental illness among incoming inmates at R&E with the stated goal of increasing the number of inmates recognized as mentally ill and being admitted to the mental health program by a minimum of two percentage points (14.9 percent of the inmate population);
- ii. The implementation of a formal quality management program under which mental health screening practices are reviewed and deficiencies identified and corrected in ongoing SCDC audits of R&E counselors;
- iii. Enforcement of SCDC policies relating to the timeliness of assessment and treatment once an incoming inmate at R&E is determined to be mentally ill; and
- iv. Development of a program that regularly assesses inmates within the general population for evidence of developing mental illness and provides timely access to mental health care.

2. The development of a comprehensive mental health treatment program that prohibits inappropriate segregation of inmates in mental health crisis, generally requires improved treatment of mentally ill inmates, and substantially improves/increases mental health care facilities within SCDC

a. Access to Higher Levels of Care

- i. Significantly increase the number of Area Mental Health inmates vis-a-vis outpatient mental health inmates and provide sufficient facilities therefor;
- ii. Significantly increase the number of male and female inmates receiving intermediate care services and provide sufficient facilities therefor;
- iii. Significantly increase the number of male and female inmates receiving inpatient psychiatric services, requiring the substantial renovation and upgrade of Gilliam

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Psychiatric Hospital, or its demolition for construction of a new facility;

- iv. Significantly increase clinical staffing at all levels to provide more mental health services at all levels of care; and
- v. The implementation of a formal quality management program under which denial of access to higher levels of mental health care is reviewed.

**b. Segregation**

- i. Provide access for segregated inmates to group and individual therapy services;
- ii. Provide more out-of-cell time for segregated mentally ill inmates;
- iii. Document timeliness of sessions for segregated inmates with psychiatrists, psychiatric nurse practitioners, and mental health counselors and timely review of such documentation;
- iv. Provide access for segregated inmates to higher levels of mental health services when needed;
- v. The collection of data and issuance of quarterly reports identifying the percentage of mentally ill and non-mentally ill inmates in segregation compared to the percentage of each group in the total prison population with the stated goal of substantially decreasing segregation of mentally ill inmates and substantially decreasing the average length of stay in segregation for mentally ill inmates;
- vi. Undertake significant, documented improvement in the cleanliness and temperature of segregation cells; and
- vii. The implementation of a formal quality management program under which segregation practices and conditions are reviewed.

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**c. Use of Force**

- i. Development and implementation of a master plan to eliminate the disproportionate use of force, including pepper spray and the restraint chair, against inmates with mental illness;
- ii. The plan will further require that all instruments of force, (e.g, chemical agents and restraint chairs) be employed in a manner fully consistent with manufacturer's instructions, and track such use in a way to enforce such compliance;
- iii. Prohibit the use of restraints in the crucifix or other positions that do not conform to generally accepted correctional standards and enforce compliance;
- iv. Prohibit use of restraints for pre-determined periods of time and for longer than necessary to gain control, and track such use to enforce compliance;
- v. The collection of data and issuance of quarterly reports identifying the length of time and mental health status of inmates placed in restraint chairs;
- vi. Prohibit the use of force in the absence of a reasonably perceived immediate threat;
- vii. Prohibit the use of crowd control canisters, such as MK-9, in individual cells in the absence of objectively identifiable circumstances set forth in writing and only then in volumes consistent with manufacturer's instructions;
- viii. Notification to clinical counselors prior to the planned use of force to request assistance in avoiding the necessity of such force and managing the conduct of inmates with mental illness;
- ix. Develop a mandatory training plan for correctional officers concerning appropriate methods of managing mentally ill inmates;
- x. Collection of data and issuance of quarterly reports concerning the use-of-force incidents against mentally ill and non-mentally ill inmates; and

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- xi. The development of a formal quality management program under which use-of-force incidents involving mentally ill inmates are reviewed.

3. Employment of a sufficient number of trained mental health professionals

- i. Increase clinical staffing ratios at all levels to be more consistent with guidelines recommended by the American Psychiatric Association, the American Correctional Association, and/or the court-appointed monitor;
- ii. Increase the involvement of appropriate SCDC mental health clinicians in treatment planning and treatment teams;
- iii. Develop a training plan to give SCDC mental health clinicians a thorough understanding of all aspects of the SCDC mental health system, including but not limited to levels of care, mental health classifications, and conditions of confinement for caseload inmates;
- iv. Develop a plan to decrease vacancy rates of clinical staff positions which may include the hiring of a recruiter, increase in pay grades to more competitive rates, and decreased workloads;
- v. Require appropriate credentialing of mental health counselors;
- vi. Develop a remedial program with provisions for dismissal of clinical staff who repetitively fail audits; and
- vii. Implement a formal quality management program under which clinical staff is reviewed.

4. Maintenance of accurate, complete, and confidential mental health treatment records

- i. Develop a program that dramatically improves SCDC's ability to store and retrieve, on a reasonably expedited basis:
  - Names and numbers of FTE clinicians who provide mental health services;

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- Inmates transferred for ICS and inpatient services;
  - Segregation and crisis intervention logs;
  - Records related to any mental health program or unit (including behavior management or self-injurious behavior programs);
  - Use of force documentation and videotapes;
  - Quarterly reports reflecting total use-of-force incidents against mentally ill and non-mentally ill inmates by institution;
  - Quarterly reports reflecting total and average lengths of stay in segregation and CI for mentally ill and non-mentally ill inmates by segregation status and by institution;
  - Quarterly reports reflecting the total number of mentally ill and non-mentally ill inmates in segregation by segregation status and by institution;
  - Quality management documents; and
  - Medical, medication administration, and disciplinary records.
- ii. The development of a formal quality management program under which the mental health management information system is annually reviewed and upgraded as needed.

5. Administration of psychotropic medication only with appropriate supervision and periodic evaluation

- i. Improve the quality of MAR documentation;
- ii. Require a higher degree of accountability for clinicians responsible for completing and monitoring MARs;
- iii. Review the reasonableness of times scheduled for pill lines; and
- iv. Develop a formal quality management program under which medication administration records are reviewed.

6. A basic program to identify, treat, and supervise inmates at risk for suicide

- i. Locate all CI cells in a healthcare setting;
- ii. Prohibit any use for CI purposes of alternative spaces such as shower stalls, rec cages, holding cells, and interview booths;
- iii. Implement the practice of continuous observation of suicidal inmates;
- iv. Provide clean, suicide-resistant clothing, blankets, and mattresses to inmates in CI;
- v. Increase access to showers for CI inmates;
- vi. Provide access to confidential meetings with mental health counselors, psychiatrists, and psychiatric nurse practitioners for CI inmates;
- vii. Undertake significant, documented improvement in the cleanliness and temperature of CI cells; and
- viii. Implement a formal quality management program under which crisis intervention practices are reviewed.

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CONCLUSION

Even the most brief and facile view of the evidence put forth by Plaintiffs in this case reveals obvious, significant, and longstanding problems with mental health services delivery at SCDC. Prior to trial, this Court tried its very best to bring the parties together for settlement purposes, even requiring the Director of SCDC and the guardian for the Plaintiffs, attorneys for both sides, and other interested parties to meet in an effort to resolve the case. The Court was not present for these discussions and thus cannot determine why they were unsuccessful.

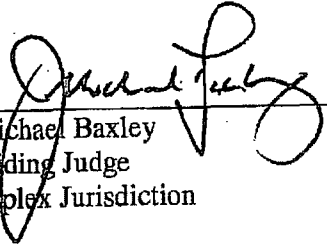
We are now eight years into this litigation. Rather than accept the obvious at some point and come forward in a meaningful way to try and improve its mental health system, Defendants

have fought this case tooth and nail—on the facts, on the law, on the constitutional issues, portraying itself as beleaguered by the burdensomeness of Plaintiffs' discovery, and generally harrumphed by the invasive nature of Plaintiffs' counsels' tactics and strategies. This Court has spent dozens of hours in hearings and conferences in an effort to resolve discovery disputes, most of which involved delay, missed deadlines, and recalcitrance on the part of the Defendants.

This Court can never criticize any party for a vigorous exercise of offense or defense in civil litigation, for such is the foundation of our adversarial system of justice. But justice in this case is not really about who wins or loses this lawsuit. The hundreds of thousands of tax dollars spent defending this lawsuit, at trial and most likely now on appeal, would be better expended to improve mental health services delivery at SCDC.

For the reasons set forth above, the Court grants judgment in favor of the Plaintiffs and orders SCDC to submit a proposed written remedial plan consistent with this Order.

**IT IS SO ORDERED.**

  
\_\_\_\_\_  
J. Michael Baxley  
Presiding Judge  
Complex Jurisdiction

Hartsville, South Carolina

January 8, 2014

**Exhibit G**  
**Policies**

*To be provided*

**Exhibit H**  
**Release**

FOR AND IN CONSIDERATION of the execution of the Settlement Agreement, the sufficiency and receipt of which is hereby acknowledged, T.R. on behalf of himself and others similarly situated and Protection and Advocacy for People with Disabilities, Inc., together with each of their respective heirs, devisees, executors, personal representatives, successors and assigns (collectively the "Plaintiffs") do hereby fully release and forever discharge the State of South Carolina, the Governor of South Carolina, the South Carolina Department of Corrections; William R. Byars, Jr., and Bryan Stirling and their past, present and future officers, directors, attorneys, agents, servants, contractors, representatives, heirs, devisees, executors, personal representatives, successors, assigns and insurers and all other persons, firms, corporations, state entities and political subdivisions (the "Released Parties"), from any and all past, present and future actions, suits, claims or demands for equitable or injunctive relief, together with all expenses, costs, attorneys' fees now existing or which may hereafter arise in any way related to any act or omission related to any care and/or treatment for any mental health disease, condition or disorder in violation of the South Carolina Constitution, any matter addressed in the Orders of the Honorable J. Michael Baxley, dated October 6, 2010 and January 8, 2014, or for any claim, cause of action, factual allegation or matter which was or could have been alleged in the case captioned T.R. on behalf of himself and others similarly situated; and Protection and Advocacy for People with Disabilities, Inc. v. South Carolina Department of Corrections; and William R. Byars, Jr., as Agency Director of the South Carolina Department of Corrections (the "Released Claims").

The Plaintiffs further agree:

1. That this settlement is the compromise of a disputed claim and is not to be construed as an admission of liability on the part of any of the Released Parties, by whom liability is expressly denied. Nothing in this Release or the Settlement Agreement (to include all Policies or any other aspect of the Implementation Plan, each as defined in the Settlement Agreement) shall be used as evidence in any suit or otherwise in any deposition or other proceeding, including, but not limited to, establishing any standard of care or constitutional standard;
2. No other person or entity has, or had, any interest in the Released Claims, demands, obligations, or causes of action referred to in this Release, that Plaintiffs have the sole right and exclusive authority to execute this Release; and that the Plaintiffs have not sold, assigned, transferred, conveyed or otherwise disposed of any of the Released Claims.

IN WITNESS WHEREOF, the undersigned has hereunto executed this Release as of this the 31<sup>st</sup> day of May, 2016.

**T.R. on behalf of himself and others similarly situated**

By: Joy C Jay  
Name: Joy C Jay  
Title: Guardia Admin

**Protection and Advocacy for People with Disabilities, Inc.**

By: Gloria M Prevost  
Name: Gloria M Prevost  
Title: Executive Director

**Nelson Mullins Riley & Scarborough LLP**  
Attorneys for the Plaintiffs

By: [Signature]  
Name: Jan Westbrook

Exhibit B



Re-order from Bushnell Company  
(215) 842-9520  
[www.BushnellCo.com](http://www.BushnellCo.com)



**NOTICE TO THE MEMBERS OF THE MENTAL HEALTH LITIGATION CLASS  
ABOUT PROPOSED SETTLEMENT**

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If you are in the custody of the South Carolina Department of Corrections (“SCDC”) and have a serious mental illness, you are a member of the Plaintiff class in the lawsuit *T.R. v. South Carolina Department of Corrections*. The case seeks improvements in mental health care and in the treatment of inmates with mental illness.

This case began in 2005. It was tried in 2012. The judge signed an order in 2014. The order ruled for the Plaintiff class and Protection and Advocacy for People with Disabilities, Inc. The Defendants appealed. Since the appeal, the lawyers for both sides have been trying to reach an agreement to improve mental health services.

Lawyers for both sides have now reached an agreement to settle the case. They have asked the court to approve the settlement. The settlement will set requirements for how SCDC will operate the mental health program. The settlement does not award money to members of the class. The Plaintiffs asked the court to require SCDC to improve mental health services, but did not ask for money.

If the settlement is approved by the court, mental health experts agreed to by the lawyers on both sides will inspect SCDC facilities. They will talk with inmates and staff. They will also look at papers to see what SCDC is doing to improve mental health services.

When SCDC has met a requirement for 18 months, the review of that requirement will end. The case will be dismissed when they have met all the requirements for 18 months.

You may read the full proposed settlement agreement by visiting the library in your institution or by requesting access from your Unit Manager or control room. If you are not eligible to go to the library, you may write to the Assistant Warden asking for these papers. State your name, number, and cell number. You can put your request in the outgoing mail. The papers will be delivered to you. You will have 72 hours to review them before you must give them back to staff. If necessary, SCDC will arrange for someone to read the settlement agreement and notice to you.

You have the right to let the court know in writing whether you think the settlement should be approved or not. All comments must be postmarked by ***[date to be determined – 30 days after notice is published, subject to court’s approval]***. Comments must be mailed to:

Clerk, South Carolina Supreme Court  
1231 Gervais Street, PO Box 11330  
Columbia, SC 29211

You must write “TR v. SCDC, No. 2014-001080” on the first page of your comment. For further information, you can contact the lawyers for the Plaintiff class at:

Mental Health Settlement  
Nelson Mullins Riley & Scarborough LLP  
PO Box 11070  
Columbia, SC 29211

# Exhibit C

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM RICHLAND COUNTY  
J. Michael Baxley, Circuit Court Judge  
Case No. 2005-CP-40-2925

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Appellate Case No. 2014-001080

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T.R., P.R., K.W., and A.M. on behalf of themselves  
and others similarly situated; and Protection and  
Advocacy for People with Disabilities, Inc., ..... Respondents,

v.

South Carolina Department of Corrections; and William  
R. Byars, Jr., as Agency Director of the South Carolina  
Department of Corrections, ..... Appellants.

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AFFIDAVIT OF JOY C. JAY

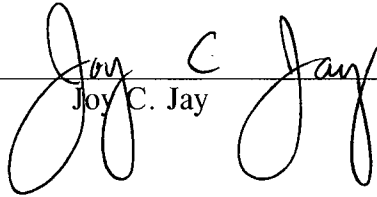
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Personally appeared before me Joy C. Jay, who upon being duly sworn, deposes and  
says:

1. I am Executive Director of the South Carolina Chapter of Mental Health America and was appointed by the Honorable Michael J. Baxley to serve as guardian *ad litem* for the Plaintiff Class in the above matter.
2. As guardian *ad litem*, I have been informed of, and had the opportunity to review, the proposed settlement agreement (“agreement”) and notice in the above matter.
3. It is my belief that the terms of the agreement set forth a viable plan to achieve the changes sought in order to improve the treatment provided to the members of the Plaintiff Class when this action was initiated.

4. I am satisfied that the interests of the Plaintiff Class are best served by entering into the agreement in order to accomplish the goals of the action filed on their behalf rather than continuing pursuit of the matter through the pending litigation, and the plan for providing notice to the Plaintiff Class is adequate to ensure they are apprised of the terms of the agreement and provided an opportunity to be heard if they have questions or concerns.

FURTHER THE AFFIANT SAYETH NOT.

  
Joy C. Jay

SWORN to and subscribed before me

this 29<sup>th</sup> day of May, 2016

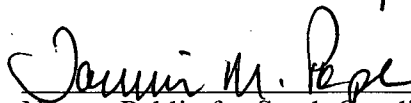
 (L.S.)  
Notary Public for South Carolina  
My Commission Expires: 6/8/2020

Exhibit D

EXHIBIT D

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM RICHLAND COUNTY  
J. Michael Baxley, Circuit Court Judge  
Case No. 2005-CP-40-2925

Appellate Case No. 2014-001080

T.R., P.R., K.W., and A.M. on behalf of themselves  
and others similarly situated; and Protection and  
Advocacy for People with Disabilities, Inc., ..... Respondents,

v.

South Carolina Department of Corrections; and William  
R. Byars, Jr., as Agency Director of the South Carolina  
Department of Corrections, ..... Appellants.

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ORDER OF DISMISSAL

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The parties have entered into a Settlement Agreement that fully resolves this action and that has been approved by this Court. Pursuant to the terms of the Settlement Agreement, this appeal and the underlying action are hereby dismissed with prejudice and the Final Order of the circuit court vacated, with each party bearing its own fees and costs.

AND IT IS SO ORDERED.

Columbia, South Carolina

\_\_\_\_\_, 2016