

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

CHARLESTON DEPRIEST, as Father
and Next Friend of C.B., a minor, et al.

PLAINTIFFS

VS.

CAUSE NO. 3:10-cv-00663-CWR-FKB

CHRISTOPHER EPPS, in his official capacity as
Commissioner of the MDOC, and TOM BURNHAM,
in his official capacity as Superintendent of the
Mississippi State Department of Education

DEFENDANTS

ORDER APPROVING SETTLEMENT

Before this Court is the Joint Motion of the parties to approve a settlement proposal that would bind class members and resolve the issues set forth in the Complaint [Docket No.1].

Having considered the pleadings, submissions and arguments of counsel and the testimony of certain class members, the Court finds that the settlement is fair, reasonable and adequate, and therefore is APPROVED.

FINDINGS

1. The Plaintiffs instituted this action on November 16, 2010, alleging barbaric, unconstitutional conditions in the Walnut Grove Youth Correctional Facility (“WGYCF”), on behalf of a putative class of all individuals who now or in the future will be confined at WGYCF. WGYCF is a Mississippi Department of Corrections (“MDOC”) prison for young men who are ages 13-22 and have been convicted as adults in criminal court. Miss. Code Ann. § 47-5-943 (West 2007). According to the Complaint, “[s]ixty-seven percent of the young men at WGYCF are incarcerated for committing non-violent offenses.” [Docket No. 1], at ¶ 1. The Plaintiffs seek declaratory relief, preliminary and permanent injunctive relief that will remedy the unlawful

conditions, practices and policies of WGYCF, and an order from this Court that WGYCF provide the class members with required care, education and living conditions that conform to the dictates of the United States Constitution. They also seek reasonable attorneys' fees and costs for having to file this action.

2. WGYCF is owned by the Walnut Grove Development Authority ("WGDA"). The WGDA contracts with a private, for-profit company, the GEO Group, Inc. ("GEO"), to operate the WGYCF. GEO assumed operations of WGYCF in August 2010, after acquiring and merging with Cornell Companies, Inc. ("Cornell"), which had operated the Facility since 2003. Following GEO and Cornell's merger, key personnel, policies and training at WGYCF did not change substantially. The mental health and medical staffs at WGYCF are employed by Health Assurances as contract staff; they are not employees of GEO or the State. MDOC, through its commissioner, has the ultimate responsibility for ensuring that all prisons under its jurisdiction operate in compliance with state and federal law. Although the Complaint named several defendants, all but the Commissioner of Corrections and the Superintendent of the Mississippi Department of Education have been released since "[t]he State Defendants have the authority to provide complete relief on Plaintiffs' claims." [Docket No. 59] at ¶2.

3. Counsel for Plaintiffs began investigating allegations of unconstitutional actions by prison officials in 2006. Those allegations, however, far exceeded mere breaches of the United States Constitution; the investigation uncovered pervasive violations of state and federal civil and criminal law and a wholesale lack of accountability by prison officials. For example, staff of the WGYCF and those responsible for overseeing and supervising the youth engaged in sexual relationships with the youth; they exploited them by selling drugs in the facility; and the

youth, “handcuffed and defenseless[,] have been kicked, punched, and beaten all over their bodies.” Complaint, at ¶ 2. They are frequently subjected to chemical restraints for the most insignificant of infractions and are denied necessary medical care. And although many of the offenders have been ordered to finish their education, “the facility prevents most youth from accessing even the most basic education services.” *Id.*

4. The investigation culminated with the filing of the instant action. Even prior to filing the lawsuit, however, the parties began settlement negotiations, each having retained nationally recognized experts in the areas of protection from harm, mental health and medical care. These experts conducted a comprehensive examination of WGYCF, which included a review of files, policies and procedures, conducting interviews of facility staff and imprisoned individuals, and tours of the facility. Many of the allegations of the Complaint were substantiated, and other documented actions that would not meet constitutional standards also were discovered. Based on information obtained by the experts and through extensive negotiations, the parties developed one Memorandum of Agreement and one Consent Decree concerning conditions for individuals in MDOC custody who are age 17 and under (“under 18 Agreements”) and one Memorandum of Agreement and one Consent Decree governing conditions in WGYCF (“WGYCF Agreements”). The parties submitted the proposed agreements to the Court on February 3, 2012, for its consideration and approval [Docket No. 68].

5. Pursuant to an order of this Court, *see* [Docket No. 69], the parties provided notice to class members of the proposed settlement and set a hearing and a deadline by which the persons could file objections. *Id.* Having received no objections, the Court conducted the fairness hearing on March 22, 2012, and allowed the parties to provide testimony and to submit

evidence and argument in support of their request for entry of the proposed consent decrees.

6. During the hearing, the Court received the arguments of counsel for the parties, testimony of certain class members, and statements from two parents of children who served sentences at WGYCF. Additionally, the Court reviewed all pleadings filed in this action, including a Report of Investigation of the Walnut Grove Youth Correctional Facility Walnut Grove, Mississippi, conducted by the United States Department of Justice, Civil Rights Division under the authority of the Civil Rights of Institutionalized Persons Act, 42 U.S.C. § 1997 (“CRIPA”), and the Violent Crime Control and Law Enforcement Act of 1992, 42 U.S.C. 14141 [Docket No. 74-1]. The Report was issued only two days before the hearing, and on that date Thomas E. Perez, Assistant Attorney General, delivered a letter to Governor Phil Bryant with a copy of the report.

7. The Report confirmed many of the allegations that brought counsel for Plaintiffs to pursue this action. The Report also documented many of the issues and findings that were uncovered while the parties were engaged in the negotiations to resolve the claims. More pointedly, the Report concluded that the **“State of Mississippi is deliberately indifferent to the constitutional rights of young men confined at WGYCF. Evidence discovered at WGYCF reveals systemic, egregious and dangerous practices exacerbated by a lack of accountability and controls.”** [Docket No. 74-1] (emphasis added). The DOJ’s findings, together with the testimony of the witnesses and the arguments of counsel, leave this Court with the firm and unshakeable conviction that the Consent Decrees must be entered WITHOUT DELAY. Those youth, some of whom are mere children, are at risk every minute, every hour, every day. Without Court intervention, they will continue to suffer unconstitutional harms, some of which

are due to aberrant and criminal behavior. Nothing has curtailed actions of the staff and indifference of management officials to the constant violations, even though the parties and their experts have been monitoring, investigating and conducting on-site visits constantly since before the lawsuit was filed and during the pendency of this action. Moreover, the fact that the DOJ dared to begin its investigation in October 2010 has not caused the defendants to transform the facility into one that complies with the United States Constitution. But even more astounding is the fact that the notice of the fairness hearing itself did not cause the defendants to change course. The testimony established that only two days before the hearing, the facility remained so understaffed that a teenage offender was brutally attacked by several other offenders while only one staffer was on site. As of the date of the hearing, according to testimony, management has done nothing to address staffing issues. WGYCF has allowed a cesspool of unconstitutional and inhuman acts and conditions to germinate, the sum of which places the offenders at substantial ongoing risk.

8. The Court understands completely why the DOJ would conclude that the sexual misconduct occurring at WGYCF, including “brazen” staff sexual misconduct and brutal youth-on-youth rapes, was “among the worst that we have seen in *any facility anywhere* in the nation.” *Id.* (emphasis added).

9. All evidence establishes that the youth are routinely subjected to excessive force by the prison officials and that the staff fails consistently to report and investigate these claims, even though staff members have witnessed many of the acts and the offenders, despite facing threats of retaliation, have reported incidents. Given that the facility employs correctional staffers affiliated with gangs, no more can be expected. Moreover, there is virtually no evidence

that these claims or any of the infractions, which clearly violate state and federal law, are forwarded to law enforcement for investigation. In fact, there is no evidence that the allegations of abuse and misconduct even have been forwarded to the Mississippi Department of Human Services, which has the responsibility to investigate allegations of abuse against children.

10. The misconduct is widespread and frequent, and WGYCF is deliberately indifferent to the serious and substantial risk of harm to which these youth are subjected. And to add one final insult to these injuries, State officials repeatedly failed to monitor the contracts with GEO and simply rewarded the company by either extending or offering new contracts, or by not revoking the existing contract despite “systemic, egregious, and dangerous practices exacerbated by a lack of accountability and controls.” [Docket 74-1]. State officials are “aware of and disregard an excessive risk to youth health and safety.” *Id. See, e.g.,* Complaint at ¶ 30 (“[The Commissioner receive[d] reports regarding operations at WGYCF, and has knowledge of all the conditions described in the complaint.”). They have been derelict in their duties and remain deliberately indifferent to the serious medical and mental health needs of the offenders. The sum of these actions and inactions by WGYCF, WGDA, the State, the Department of Corrections, GEO and Health Assurance, L.L.C., paints a picture of such horror as should be unrealized anywhere in the civilized world. Court intervention, as proposed by the parties, is undoubtedly necessary.

11. The settlement agreement “secures an adequate advantage for the class in return for the surrender of litigation rights against the defendants.” See *In re Katrina Canal Breaches Litigation*, 628 F.3d 185, 196 (5th Cir. 2010) (quoting 4 Alba Conte & Herbert Newberg, *Newberg on Class Actions* § 11:46); *Reed v. Gen. Motors Corp.*, 703 F.2d 170, 172 (5th Cir.

1983). Equally important to the Court is the fact that this agreement does not “bar[] a member of the Plaintiff class from bringing an individualized suit seeking damages or prospective relief under state and/or federal law.” Nor does the agreement in any way inhibit state and federal authorities from pursuing breaches of state and federal statutes, including criminal law. Certainly, where there is evidence of such violations, law enforcement has the authority, duty and obligation to seek justice. But law enforcement cannot respond unless and until they are notified. Moreover, nothing within these Consent Decrees obviates the duty of the authorities to make such referrals to the appropriate state and federal agencies and investigative units. And finally, nothing about the agreement alters the requirements of the Prison Litigation Reform Act.

12. Approving the Consent Agreement brings this matter to conclusion and gives the youthful offenders and victims immediate relief from further unconstitutional actions. The State’s cooperation in crafting the agreement assures that the State limits its exposure and the significant expenses that would be incurred with prolonged litigation.

13. The Court appreciates the fact that the terms of the settlement agreement and consent decrees were reached after months of exhaustive investigation and non-collusive negotiation, both of which began even before the lawsuit was filed. The results reached fall within the range of possible relief, and there are no obvious deficiencies in the terms that have been proposed. In fact, the Consent Decrees address and seek to rectify the issues raised in the Complaint, the matters uncovered during discovery, the testimony received at the fairness hearing and the matters addressed by counsel in their arguments requesting approval.

The Consent Decrees, which have been proposed and attached hereto, are hereby APPROVED AND ENTERED by the Court.

SO ORDERED, ADJUDGED, AND DECREED this Twenty-Sixth day of March 2012.

/s/ *Carlton W. Reeves*
Hon. Carlton W. Reeves
U.S. DISTRICT COURT JUDGE

THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

C.B., by and through his next friend,
Charleston DePriest, et al.

Plaintiffs,

v.

WALNUT GROVE CORRECTIONAL
AUTHORITY, et al.

Defendants.

CLASS ACTION

Civil Action No. 3:10cv663

CONSENT DECREE

On or about November 16, 2010, Plaintiffs filed the above-captioned suit asserting constitutional, statutory, and state law challenges to conditions in the Walnut Grove Youth Correctional Facility. Plaintiffs and the Mississippi Department of Corrections stipulate and agree to the following provisions in partial resolution of the litigation. This Consent Decree contains provisions related to a settlement subclass comprised of all male youth who are age 17 and under and who are in the custody of the Mississippi Department of Corrections, and as specifically further defined herein.

I. Introduction.

(1) In order to resolve the allegations in the Complaint related to protection from harm and violence, excessive use of force, punitive isolation, and inadequate medical care with regard to individuals ages 17 and younger who are in the custody of the Mississippi Department of

Corrections and housed at the Walnut Grove Youth Correctional Facility ("WGYCF"), the parties have entered into this Consent Decree.

(2) The parties agree to a settlement subclass comprised of 1) all male youth who are ages 17 and under and who are now or in the future will be housed in a Mississippi Department of Corrections prison, and 2) all male youth who are ages 18 and 19 and who will be housed in the Youthful Offender Unit described in this Consent Decree. The terms of this Consent Decree apply only to this subclass. A youth who has attained the age of 18 and who is not housed in the Youthful Offender Unit is not in the settlement subclass.

(3) The Defendant in this lawsuit is Commissioner Christopher Epps, in his official capacity as Commissioner of the Mississippi Department of Corrections ("MDOC"). This Consent Decree refers to actions and inactions that will be undertaken by Commissioner Epps, his staff and contractors under his direction. For ease of reference only, this Consent Decree refers to "MDOC" through this Agreement. The Parties intend for this Agreement to bind Commissioner Epps and his assigns.

(4) The term "Walnut Grove Youth Correctional Facility" or "WGYCF" hereinafter refers to the correctional facility located in Leake County, Mississippi as provided for in Miss. Code Ann. § 47-5-943 (Rev. 2007).

(5) The parties stipulate that nothing in this Consent Decree constitutes either an admission of liability, or any evidence of liability, with respect to suits for damages or any claims asserted against the named Defendants with respect to inmates who are housed, were housed, or may be housed in the future, at the Walnut Grove Youth Correctional Facility.

(6) Nothing in this Consent Decree will prevent the State of Mississippi and/or MDOC from modifying the mission of, or closing WGYCF, or developing alternative community placements for the persons currently in the facility as set forth herein.

(7) This Consent Decree is not intended to have any preclusive effect except between the parties. The parties acknowledge that the remedies contained in this agreement are not necessarily appropriate for facilities other than the Youthful Offender Unit described in this Consent Decree.

(8) Individuals who are not class members are not third-party beneficiaries of this agreement and may not assert any rights under this Consent Decree.

II. Care Required by the Constitution and Federal Statutes.

The purpose of this Consent Decree is to protect certain constitutional and federal statutory rights of youth who are housed at the Youth Offender Unit as described in this Consent Decree. The terms and requirements of this Consent Decree will be interpreted to be consistent with the remedial measures necessary to protect these rights of the youth, and consistent with applicable federal law.

III. Establishment of Youthful Offender Unit.

The Mississippi Department of Corrections will establish a Youthful Offender Unit ("YOU") at the Central Mississippi Correctional Facility ("CMCF"). WGYCF will no longer house youth who are ages 17 and under. This transition will happen as soon as is practicable but will occur no later than December 1, 2012. At two month intervals following court approval of this Consent Decree, counsel for MDOC will update counsel for Plaintiffs on the progress of MDOC's establishment of the YOU facility.

Subject to the exceptions set forth in this agreement, all youth who are ages 17 and under and who are assigned to a MDOC prison will be housed in the YOU, except that nothing in this agreement will prohibit MDOC from housing a youth who is 17 or under in a community work center or other environment that is less restrictive than a MDOC prison. For the duration of this agreement, MDOC will provide Plaintiffs' counsel with a list of youth who are ages 17 and under and in MDOC custody. The list will indicate where each youth is housed, MDOC will generate this list twice a month (every two weeks). The terms of this Consent Decree, unless otherwise expressly stated herein, apply only to the YOU and do not follow a Plaintiff who is transferred, discharged, or otherwise leaves the YOU.

IV. Substantive Remedial Measures.

The Youthful Offender Unit provided for in Section III above will be operated and maintained by MDOC in accordance with the following conditions applicable to its establishment and operation:

A. Classification and Housing System.

- (1) MDOC will develop and implement policies and procedures that establish a classification system that ensures youth are appropriately and safely housed within the YOU.
- (2) Youth ages 17 and under should be housed in the YOU, separate from other inmates at CMCF. No individual who is over the age of 19 will be housed in the YOU. The MDOC Commissioner will have discretion to house in the YOU 18 and 19 year olds who have been classified as vulnerable.
- (3) A youth who, while housed at the YOU, has been found following a due-process hearing as specified in Section IV C(6) of this agreement to have committed: murder, attempted murder, rape,

attempted rape, escape, hostage-taking, or the act of urging and actually causing a group of five or more people to commit widespread, significant damage to MDOC property, or (if a youth is over the age of 16) aggravated assault may be moved from the YOU to a single cell unit located at CMCF. These youth will also receive at least four hours a day of out-of-cell programming. Out-of-cell programming will include educational services and at least one hour of large-muscle exercise daily. These youth will also be permitted to make weekly phone calls and to visit with immediate family at least twice a month. Every 45 days, the classification committee will reconsider whether any youth who is under the age of 16 and who has been found to have committed escape, hostage-taking, or the act of urging and actually causing a group of five or more people to commit widespread, significant damage to MDOC property should be reclassified and returned to the YOU. All other youth ages 17 and under who are removed from the YOU will be considered for reclassification and possible return to the YOU every 90 days. The units housing youth who are removed from the YOU will not be required to operate in compliance with the terms of this agreement except as specified above.

B. Protection from Harm.

- (1) At all times, youth will be provided with reasonably safe living conditions and will be protected from violence and other physical or sexual abuse by staff and other youth or inmates.
- (2) MDOC will ensure that there are sufficient numbers of adequately trained direct care and supervisory staff, and sufficient numbers of professional staff. Within 90 days of establishment of the YOU, MDOC will develop and implement a staffing plan for direct care, supervisory, and professional staff (i.e., social workers) to ensure that youth are adequately supervised and

protected from harm and that youth have adequate access to medical services and adequate time out of their cells.

(3) Mechanical, physical or chemical restraints such as O.C. spray, pepper spray and mace will not be used to punish youth. If any restraint is necessary, the force must be the minimum amount required to safely contain the youth, and the restraints must be removed as soon as they are no longer necessary. Except in emergency circumstances, no youth should be subject to restraints until staff have first attempted verbal de-escalation techniques.

(4) Physical force will not be used to punish youth. If physical force is necessary, the force must be the minimum amount required to safely contain the youth. Except in emergency circumstances, no youth will be subject to physical force until staff have first attempted verbal de-escalation techniques.

(5) MDOC will provide sufficient audio-visual recording equipment throughout the YOU to ensure the capacity to create one or more audio-visual recordings of uses of force. MDOC will develop protocols and procedures to ensure that all planned uses of force, and all unplanned uses of force except when impossible, are captured by an audio-visual recording. Audio-visual recording of use of force incidents at the YOU, of adequate quality to allow review of the incidents, will be the norm, and only in the most exigent circumstances will it be impossible to make such recordings. If less than 95% of the uses of force are recorded in a manner that allows review of the incident, MDOC will be deemed out of compliance with this provision and must revise its procedures so that the 95% threshold is met. MDOC will implement procedures for generating monthly reports on use of force. The monthly reports will include the documentation described in

Section IV B(7) below as well as copies of the audio-visual video, and will be shared with Plaintiffs' counsel.

(6) Except in exigent circumstances where no delay is possible because of the risk of bodily injury or serious damage to property creating a threat to security, or except when totally impracticable, the Shift Commander or Warden will be notified and his or her consent obtained before force is used. Except in emergency circumstances, the Shift Commander or Warden will visit the youth before consenting to the use of force, to determine if force is necessary. A log will be maintained recording the efforts made to obtain the presence of the Shift Commander or Warden and a mental health professional prior to the use of force. These logs will become part of the monthly reports referred to in Section IV B(7) below.

(7) All physical interventions, including use of force and mechanical and chemical restraints, must be documented in writing. The written documentation will include a detailed description of the physical intervention and the verbal de-escalation attempt(s) that occurred prior to the intervention. MDOC will use this documentation to review each physical intervention and to analyze patterns of use of force and restraint in an effort to reduce such incidents.

(8) MDOC will develop a protocol for an Incident Review Committee ("IRC") that is responsible for conducting the review and analysis described in Section IV B(7) above. The IRC will be a standing committee comprised of YOU staff and the Warden. The IRC is charged with reviewing all uses of force, uses of restraints, and incident reports, and developing strategies for reducing these incidents throughout the YOU.

(9) MDOC will develop protocols and procedures to ensure the involvement, where possible, of a mental health professional prior to use of force on youth with severe mental illness.

(10) MDOC will develop policies and procedures that will limit the use chemical restraints. Chemical restraints will not be used as a punishment or to gain compliance. Chemical restraints may only be used to prevent serious bodily injury or serious damage to property creating a threat to security. Only shift supervisors who have been trained on the appropriate use of chemical restraints on juveniles may regularly carry chemical restraints on the living units.

(11) Issuance of restraint equipment will be documented in a bound Restraint Equipment Log Book. Staff members who are issued restraint equipment will initial in the appropriate section of the Log Book when checking equipment out of storage. The inventory number, name of the equipment, time in, and time out should be noted in the Log Book. Containers of chemical restraints that have been signed out for a shift will be weighed at the beginning and conclusion of that shift by the YOU Unit Manager or his designee. The inventory numbers and weight of the containers will be documented in the Log Book.

(12) All youth who have been exposed to chemical restraints will be immediately removed from the contaminated area, will promptly be permitted to shower, and will be examined by medical staff to see if transport to the clinic is needed. Any contaminated living area will be decontaminated before a youth is returned to it. If emergency circumstances create an imminent threat to security and prevent staff from immediately removing youth from contaminated areas, MDOC will promptly provide the youth who have been exposed to the chemical agents with an adequate supply of appropriate decontaminating agents.

(13) All youth will be informed of their rights and responsibilities, including the consequences for rule violations and the privileges that can be earned when youth comply with the rules. Youth will not be relied on to enforce unit rules or to impose discipline or physical punishment on other youth.

(14) MDOC will take reasonable steps to protect all inmates of the YOU from verbal abuse and harassment. MDOC will develop policies, procedures, and practices that protect gay, bi-sexual, transgendered, and gender non-conforming youth from abuse, harassment, and punishment on the basis of their sexuality.

(15) MDOC will prohibit staff from forcing inmates of the YOU to engage in physical exertion that inflicts pain or discomfort, for example the practice of forcing youth to "alligator walk" and to "duck walk."

(16) MDOC will not employ pain aversion behavior management techniques and will develop behavior management techniques that do not rely on the use of pain.

C. Solitary Confinement, Lockdown, and Seclusion.

(1) MDOC will ensure that youth are never subjected to solitary confinement. Solitary confinement means confinement in a cell for more than twenty hours a day.

(2) When not expected to be asleep, youth may be subject to cell confinement for two general purposes: 1) If a youth presents an immediate, serious threat to the safety of others, he may be placed on cell confinement for a time period not to exceed 24 hours (known as "Emergency Cell Confinement"); 2) If a youth violates a major rule he may be placed on cell confinement for a time period not to exceed 72 hours (known as "Disciplinary Cell Confinement"). A youth may only be placed in Disciplinary Cell Confinement after he receives due process as specified further below.

(3) No youth may be placed on cell confinement for a time period that exceeds 72 consecutive hours, except as set forth in Section IV C(6) of this agreement. Youth on cell confinement must not be denied basic educational programming; the opportunity for daily out-of-cell and outdoor exercise (weather permitting); or opportunity for weekly contact with family through visit, phone

calls, and letters. Youth on cell confinement must be provided the opportunity for at least one hour daily of large muscle exercise and must be provided the same meals, clothing, access to drinking water, medical treatment, educational services, exercise, correspondence privileges, contact with parents and legal guardians, and legal assistance as is provided to other inmates.

(4) Youth may be subjected to Emergency Cell Confinement if their behavior presents an immediate threat to the safety of others. Placement in Emergency Cell Confinement will only last until the youth has regained self-control and can be returned to the general population, and under no circumstance may Emergency Cell Confinement last longer than 24 hours.

(5) When youth are placed in cell confinement for longer than 15 minutes, an incident report will be completed. When youth are placed in cell confinement for longer than 2 hours, the shift supervisor must receive permission from the Warden or the designated acting warden in the Warden's absence, and document in writing the reason for the isolation and the justification for extending the youth's time in cell confinement.

(6) No youth will be subject to Disciplinary Cell Confinement without due process protections that will include, at a minimum: 1) the youth receives notice of the alleged offense; 2) the youth is provided with a hearing during which he has the opportunity to present his version of events and call witness; and 3) the hearing is presided over by a staff member who is uninvolved in the incident, and who functions as an independent hearing officer who issues written findings that include the reasons for subjecting a youth to Disciplinary Cell Confinement. The purpose of the hearing is to determine whether cause exists for cell confinement for the purposes of punishment and gaining compliance with institutional rules. Under no circumstances may a youth be subject to Disciplinary Cell Confinement for longer than 72 hours unless an extension is approved by the

Deputy Commissioner or the designated individual acting in his capacity. Extensions will only be granted in extraordinary circumstances when a youth presents a continuous direct threat to the safety of others. The Deputy Commissioner or the designated individual acting in his capacity will review extensions every 72 hours to determine whether the youth continues to present a continuous direct threat to the safety of others.

(7) Every effort will be made to avoid the placement of youth on cell confinement for any reason. Whenever possible, prior to placing a youth on cell confinement, staff will first use less restrictive techniques including verbal de-escalation.

(8) During the time a youth is on cell confinement, staff will conduct visual checks at least 4 times an hour and not longer than 15 minutes apart. During the time a youth is awake the staff are required to speak to the youth during the visual checks. After each visual check, the staff will record the status of the youth on the cell detention log sheet. For the duration of cell confinement, the youth will be interviewed by medical and mental health staff at least every 24 hours.

D. Programming and Behavior Management.

(1) During the hours of the day that youth are not expected to be sleeping, MDOC will provide youth with the opportunity for the appropriate mix of interactive, structured rehabilitative and/or educational programming, recreational, and leisure activities outside of their cells on a daily basis, including weekends and holidays. A policy and procedure, including a schedule of activities and programming under this section, will be developed by MDOC and Mississippi Department of Education. The programming developed will, to the degree possible, be tailored to the developmental needs of adolescents. Under no circumstances will the MDOC develop youth programming that could be considered "paramilitary" or that contains elements of a "boot camp"

program. (2) MDOC will develop a behavior management policy that incorporates positive behavior intervention and supports for youth. This policy should include guidelines for imposing graduated sanctions for rule violations, and positive incentives for good behavior.

E. Disciplinary Due Process and Grievances.

(1) MDOC will revise, if needed, its disciplinary procedures to ensure that youth receive adequate due process before the imposition of disciplinary sanctions (including rule violation reports) that would affect a youth's ability to earn the following: Earned Time Allowance, pursuant to Miss. Code Ann. § 47-5-138(1); Trusty Earned Time, pursuant to Miss. Code Ann. 47-5-138.1; Meritorious Earned Time, pursuant to Miss. Code § 47-5-142(2); Intensive Supervision Program, pursuant to Miss. Code Ann § 47-5-1003; Community Work Center / Pre-release Centers, as described in Miss. Code Ann § 47-5-181; or placement in the Regimented Inmate Discipline Program.

(2) The YOU will utilize an adequate grievance procedure that is accessible to youth of varying English proficiency levels.

F. Suicide Prevention.

(1) MDOC will develop a suicide prevention policy that includes the following:

- a. a prohibition on placing youth on suicide watch as punishment or without medical justification;
- b. a prohibition on holding youth on suicide watch in isolation. To the extent clinically feasible, youth on suicide watch should engage in normal programming;
- c. instructions for thoroughly documenting the suicide precautions that are administered to each youth who is placed on suicide watch;

- d. a process for conducting a review of any and all instances of attempted suicide or suicide.

The review process will include a committee of staff (including mental health staff) who will review every attempted suicide or suicide in order to refine policies and procedures to decrease the number of these incidents;

- e. all youth placed on suicide watch will be assessed by a mental health professional as soon as possible, but no later than 18 hours from being placed on suicide watch; any youth placed on suicide watch will be re-assessed by a mental health professional at least every 18 hours; and if the initial assessment indicates that the youth is at high risk for suicide and/or self-harm for longer than five days, that youth will be transferred to a facility that can provide intensive mental health services. If the assessment indicates that the youth needs less-intensive, but ongoing, supervision in order to prevent suicide and/or self-harm, a qualified mental health professional will develop an individual suicide prevention/treatment plan, and the youth will be housed in his regular unit. This plan will be updated daily until the youth is no longer judged to be on an active suicide "watch" status.

(2) If a youth has been deprived of his regular clothing (other than shoelaces and belts), a qualified mental health professional will determine if a medical or mental health justification exists for the continued deprivation. The deprivation may continue only if medical and mental health justifications exist for the continued deprivation and the mental health clinician makes specific written findings explaining these justifications. Each 24-hour clinical reassessment must include written findings explaining any medical/mental health justifications for any continuing deprivation.

(3) If a youth has been subject to cell confinement or deprived of access to regular programming and activities, a qualified mental health professional will determine if a medical or mental health justification exists for the continued cell confinement and/or deprivation. The cell confinement and/or deprivation may continue only if medical and mental health justifications exist for the continued cell confinement and/or deprivation and the qualified mental health professional makes specific written findings explaining these justifications. Each 24-hour clinical reassessment must include written findings explaining the medical and mental health justifications for any continuing cell confinement and/or deprivation.

G. Medical Care.

(1) Youth will be provided adequate, appropriate, and timely medical and dental care to meet their individualized needs, including the treatment of acute and chronic conditions. Those youth housed at the YOU who are determined by a qualified medical health professional to require necessary treatment may be assigned to a designated medical health unit.

(2) MDOC will comply with, and will ensure that the medical services provided at the YOU and those provided to inmates assigned to the designated medical unit comply with, the National Commission on Correctional Healthcare Standards for health care in Youth Detention and Confinement Facilities.

H. Family Support and Interaction.

(1) Visitation will not be restricted or withheld from youth unless the Warden determines that a visit will seriously compromise the security of the facility. If the Warden makes this determination, s/he must document the reason for this determination in writing. Visitation will not be restricted as a form of punishment.

(2) MDOC will provide accommodations that allow youth to have contact visits with their immediate families. Youth may also have contact visits with other individuals upon the approval of the Warden or the Commissioner.

(3) Immediate family visitation will be regularly scheduled at least three times per week. Each visitation time period will last for at least two hours. At least two of those three times, visitation will be scheduled in the evening or during the weekend in order to encourage family visitation. MDOC will permit the minor siblings of confined youth to participate in visitation, as long as the minors' parent or guardian is present during the visit, and will permit a confined youth's own child(ren) to participate in visitation. MDOC will make special provisions to schedule visitations outside of the regularly scheduled time for families who are traveling long distances or have an employment-related conflict with the regularly scheduled visitation times, and in instances when the confined youth is ill and requires placement in the infirmary or in an off-site medical/mental health facility.

(4) MDOC will allow all youth to make at least one free, five minute phone call a week to their parent(s) and/or guardian(s). This phone call will not be restricted as a form of punishment. In addition, MDOC will allow youth who are free from any serious Rule Violation Reports to earn at least one additional free, five minute phone call a week.

V. Enforcement and Monitoring.

(1) The parties agree to the appointment of James Austin and Paul DeMuro as monitors responsible for tracking compliance with the terms of this Consent Decree. The monitors may, if asked by MDOC, provide technical assistance to MDOC to promote compliance with the terms of this Consent Decree. The monitors will be responsible for submitting reports to counsel every

four months following the establishment of the YOU as specified in Section III of this Consent Decree. The monitors will provide their reports in draft form to the parties for comments at least two weeks before issuance. Should either of the monitor positions become vacant and the parties are unable to agree on a replacement, the parties will recommend candidates to the magistrate judge and the parties agree to accept the candidate chosen by the magistrate judge. The reasonable cost for the experts' fees and expenses related to monitoring will be borne by MDOC.

(2) The monitors and Plaintiffs' counsel, with advance notice, will have full and complete access to the YOU, to all facility records (including medical and mental health records), and to staff (who will be directed to cooperate with the experts and Plaintiffs' counsel), as well as to all subclass members. State attorneys may be present at interviews of staff and tours of facilities. The experts and Plaintiffs' counsel will comply with all applicable federal and state laws with regard to confidentiality of such records and information.

(3) Within 90 days of the Court's approval of this Consent Decree, MDOC expert James Austin and Plaintiffs' expert Paul DeMuro will collaborate in a non-binding manner with MDOC to promulgate the policies, procedures, classification, and staffing plans necessary to effectuate this Consent Decree. Plaintiffs' counsel will compensate Paul DeMuro only for expenses related to drafting these policies, procedures and plans and that expense will not be the responsibility of MDOC. MDOC retains the final authority over the content, drafting, and wording of the policies and staffing plans, as long as the policies and plans are consistent with the terms of this Consent Decree. Once drafted, MDOC will submit the draft policies and plans to Plaintiffs' counsel. Plaintiffs' counsel will promptly notify MDOC of any objections, with an explanation as to how the draft is inconsistent with the terms of this Consent Decree, and will suggest revisions. MDOC

will revise policies, procedures, plans, and other written documents as necessary to conform with the terms of this Consent Decree. If either party is unsatisfied with the resolution, then either party may invoke the assistance of the magistrate judge for mediation. If mediation fails to resolve the dispute, the Plaintiffs may file a motion to enforce this Consent Decree.

(4) The parties agree that the terms of prospective relief afforded by the terms of this Consent Decree are narrowly drawn, pertain exclusively to the subclass defined herein, extend no further than necessary to correct the violations of federal rights at issue, are the least intrusive means necessary to correct the violations of federal rights at issue, and all terms and conditions of this Consent Decree will be construed in accord with federal law, including the Prison Litigation Reform Act.

(5) The parties agree that the terms of this Consent Decree will be submitted to the Court for approval, and the Court will retain jurisdiction to enforce the terms thereof.

(6) Nothing in this Decree alters the requirements of the Prison Litigation Reform Act, including the exhaustion requirement, with respect to any class member who seeks to assert an individualized dispute against MDOC, including a damages action, which is unrelated to the terms of this Consent Decree. Nothing in this Consent Decree bars a member of the Plaintiff class from bringing an individualized suit seeking damages or prospective relief under state and/or federal law. Only class counsel may seek to enforce the terms of this Consent Decree.

(7) If Plaintiffs believe that MDOC has substantially failed to comply with any obligation under this Consent Decree, Plaintiffs' counsel will give written notice of that failure to MDOC. The parties will conduct good faith discussions to resolve the dispute. If the parties are unable to reach agreement within 7 days of Plaintiffs' written notice, the parties will submit the dispute to

mediation before the magistrate judge who is assigned to this case. The parties will attempt in good faith to mediate the dispute. If the parties are unable to resolve the dispute within 21 days from the date of Plaintiffs' written notice, Plaintiffs may seek enforcement of this Consent Decree from the Court. In the case of an emergency posing an immediate threat to the health or safety of the youth housed at the YOU, Plaintiffs' counsel may omit the notice and cure requirements herein (including the provision regarding mediation) before seeking enforcement from the Court.

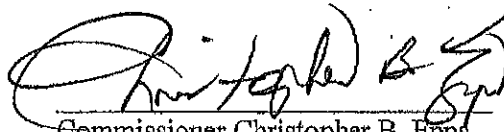
(8) This Consent Decree will terminate five years from the date that the YOU houses at least half of all youth who are, at that point in time, eligible for the YOU. The Consent Decree may also terminate earlier than this date if the Court determines that MDOC has substantially complied with each of the provisions of the Consent Decree and has continuously maintained substantial compliance for at least two years. Noncompliance with mere technicalities, or a brief lapse in compliance during a period of otherwise sustained compliance, will not constitute failure to maintain substantial compliance. The Court may extend this Consent Decree and/or any of its provisions twice, and each extension may be no longer than one year upon a finding that MDOC has failed to substantially comply.

Agreed:



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Margaret Winter (*pro hac vice*)
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For the Defendant

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767 North Congress Street
Jackson, Mississippi 39202
For the Plaintiffs

IT IS SO ORDERED

Dated and entered this 26th day of March 2012

Carlton W. Reeves
United States District Judge Carlton W. Reeves

Memorandum of Agreement
Mental Health—Youthful Offender Unit

I. INTRODUCTION

- (A) This Memorandum of Agreement (“MOA”) between the certified class of Plaintiffs described in subsection (G) below and the Christopher Epps, in his official capacity as Commissioner of the Mississippi Department of Corrections (“MDOC”) resolves litigation concerning the mental health claims in C.B., et al. v. Walnut Grove Correctional Authority, et al., case number 3:10cv663 (S.D. Miss.). A separate settlement agreement between the parties, that the parties will seek to have the Court enter as a Consent Decree, addresses other topics agreed to between the parties. This litigation concerns conditions of confinement at the Walnut Grove Youth Correctional Facility (“WGYCF”) (*as described in* Miss. Code Ann. § 47-5-943 (Rev. 2007)). This MOA refers to actions and inactions that will be undertaken by Commissioner Epps, his staff and contractors under his direction. For ease of reference only, this MOA refers to “MDOC” through this Agreement. The Parties intend for this Agreement to bind Commissioner Epps and his assigns.

The terms of this MOA apply only to the Youth Offender Unit (“YOU”) to be established at the Central Mississippi Correctional Facility. Except for any youth who is age 17 and under and who is removed from the YOU pursuant to Section IV(A)(3) in the accompanying Consent Decree, the terms of this MOA do not follow a Plaintiff who is transferred, discharged, or otherwise leaves the YOU.

- (B) In order to resolve the mental health claims in this litigation, the parties have entered into this MOA.
- (C) This MOA does not constitute an admission of liability by MDOC.
- (D) This MOA is not intended to have any preclusive effect except between the parties.
- (E) Nothing in this MOA will prevent the State of Mississippi and/or MDOC from modifying the mission of or closing WGYCF, or developing alternative community placements for the persons currently in the facility as set forth herein.
- (F) Individuals who are not class members are not third party beneficiaries of this agreement.
- (G) The parties will jointly request that the Court enter an order certifying a sub-class comprised of 1) all male youth who are ages 17 and under and who are now or in the future will be housed in a Mississippi Department of Corrections prison and who live with a serious mental illness, and 2) all male youth who are ages 18 and 19 and who will be housed in the YOU who live with a serious mental illness, referred to in this MOA as “Plaintiffs,” “prisoners,” or “youth.” The terms of this MOA apply only to this subclass.

II. CARE REQUIRED BY THE CONSTITUTION

The purpose of this MOA is to protect the rights of Plaintiffs to constitutionally adequate mental health care. The terms and requirements of this MOA will be interpreted to be consistent with the remedial measures necessary to protect these rights, and consistent with applicable federal law.

III. MENTAL HEALTH CARE

- 1) MDOC will provide youth with adequate, appropriate, and timely mental health care to meet their individualized needs, including the treatment of acute and chronic conditions. Those youth housed at the YOU who are determined by a psychiatrist to require an in-patient level of mental health care may be assigned to a medical unit where they will be able to receive such treatment.
- 2) MDOC will comply with and will ensure that any relevant contractors comply with the National Commission on Correctional Healthcare Standards for Youth Detention and Confinement Facilities and Mental Health Services in Correctional Facilities, and will ensure that their policies and procedures are fully consistent with these standards.
- 3) MDOC will develop and implement policies and procedures to ensure that adequate mental health services are provided by qualified mental health professionals using evidence-based, generally accepted treatment approaches.
- 4) MDOC will ensure that every youth imprisoned at the YOU who 1) has attempted suicide or engaged in self-harming behavior within the last year, 2) has stated that he was previously diagnosed with a mental illness, and / or 3) has a history of institutionalization in mental health facilities will receive a comprehensive mental health evaluation. Youth who are diagnosed with chronic mental health issues will receive individualized mental health treatment plans. The plans will comport with generally accepted treatment approaches. The care provided will include individualized multidisciplinary treatment plans based on assessments of the patients' needs, and statements of short- and long-term goals and the methods by which these goals will be pursued. When clinically indicated, and in light of consultation between mental health and security staff, the treatment plans will give patients access to the range of treatment, supportive, and rehabilitative services (such as individual and group counseling, psychiatric rehabilitation programs, and self-help groups) that mental health specialists deem appropriate.
- 5) Each youth placed in a single cell unit located at Central Mississippi Correctional Facility pursuant to Section IV(A)(3) of the Consent Decree, and youth placed in cell confinement pursuant to Section IV(C) of the Consent Decree, will receive an individualized treatment plan that will include any treatment, supportive, and rehabilitative services (such as individual and group counseling, psychiatric rehabilitation programs, and self-help groups) that mental health specialists deem appropriate.

- 6) Within 90 days of the execution of this agreement, MDOC will develop and implement policies and procedures, and will develop and implement a staffing plan, to ensure that adequate mental health services are provided by adequate numbers of qualified mental health professionals using evidence based, generally accepted treatment approaches.

IV. IMPLEMENTATION AND MONITORING

- 7) Within 90 days of the Court's approval of this MOA, MDOC expert James Austin and Plaintiffs' expert Paul DeMuro will collaborate in a non-binding manner with MDOC to promulgate the policies, procedures, and staffing plans necessary to effectuate this MOA. Plaintiffs' counsel will compensate Paul DeMuro for expenses related to drafting the policies, procedures and plans only and that expense will not be the responsibility of MDOC. MDOC retains the final authority over the content, drafting, and wording of the policies and staffing plans, as long as the policies and plans are consistent with the terms of this MOA. Once drafted, MDOC will submit the draft policies and plans to Plaintiffs' counsel. Plaintiffs' counsel will promptly notify MDOC of any objections, with an explanation as to how the draft is inconsistent with the terms of this MOA, and will suggest revisions. MDOC will revise policies, procedures, plans, and other written documents as necessary to conform with the terms of this MOA. If either party is unsatisfied with the resolution, either party may invoke the assistance of the magistrate judge for mediation. If mediation fails, Plaintiffs may re-instate the Complaint.
- 8) The parties agree to the appointment of James Austin and Paul DeMuro as monitors responsible for tracking compliance with the terms of this MOA. The monitors may, if asked by MDOC, provide technical assistance to MDOC to promote compliance with the terms of this MOA. The monitors will be responsible for submitting reports to counsel every four months following the establishment of the YOU as specified in Section III of the Consent Decree. The monitors will provide their reports in draft form to the parties for comments at least two weeks before issuance. Should both of the monitor positions become vacant and the parties are unable to agree on a replacement, the parties will recommend candidates to the magistrate judge and the parties agree to accept the candidate chosen by the magistrate judge. The reasonable cost for the experts' fees and expenses related to monitoring will be borne by MDOC.

V. ACCESS

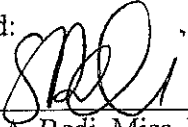
- 9) The monitors and Plaintiffs' counsel, with advance notice, will have full and complete access to the YOU, to all facility records, and to staff (who will be directed to cooperate with the experts and Plaintiffs' counsel), as well as to all subclass members. State attorneys may be present at interviews of staff and tours of facilities. The experts and Plaintiffs' counsel will comply with all applicable federal and state laws with regard to confidentiality of such records and information.

VI. ENFORCEMENT AND TERMINATION

- 10) If Plaintiffs believe that MDOC has substantially failed to comply with any obligation under this MOA, Plaintiffs' counsel will give written notice of that failure to MDOC. The parties will conduct good faith discussions to resolve the dispute. If the parties are unable to reach agreement within 7 days of Plaintiffs' written notice, the parties will submit the dispute to mediation before the magistrate judge who is assigned to this case. The parties will attempt in good faith to mediate the dispute for a period of 21 days with the magistrate judge. The terms of this MOA are not subject to state or federal court enforcement other than the reinstatement of those paragraphs of the Complaint that this MOA settled. If MDOC has substantially failed to comply with any obligation under this agreement, Plaintiffs may reinstate the mental health provisions of the Complaint. In the case of an emergency posing an immediate threat to the health or safety of the individuals housed at YOU, Plaintiffs' counsel may omit the notice and cure requirements herein (including the provision regarding mediation) before reinstating the Complaint. All Plaintiffs are bound by this MOA, and a Plaintiff or Plaintiffs may not initiate a legal action asserting claims contained within the Complaint filed in cause number 3:10cv663 (S.D. Miss.) as long as this MOA is in effect. Nothing in this MOA bars a member of the Plaintiff class from bringing an individualized suit seeking damages or prospective relief under state and/or federal law. Only class counsel may seek to enforce the terms of this MOA.
- 11) In the event that Plaintiffs reinstate the Complaint, the parties agree that this case will proceed expeditiously. To that end, the parties agree to the following procedures for reinstatement:
 - a. Plaintiffs will file a Notice of Re-instatement and an Amended Complaint.
 - b. Within 20 days of Plaintiffs' filing, Defendants will file a responsive pleading.
 - c. The case management conference, unless stayed by court order, will occur within 35 days of Plaintiffs' filing or at the earliest date that is convenient for the court.
- 12) This MOA will terminate five years from the date it is executed, unless the Complaint is reinstated as referenced above. When the MOA is terminated, all claims pertaining to mental health in case number 3:10cv663 (S.D. Miss.) will be dismissed without prejudice. The MOA may also terminate earlier than five years from the date it is executed if the magistrate judge determines that MDOC has substantially complied with each of the provisions of this MOA and has continuously maintained substantial compliance for at least two years. Noncompliance with mere technicalities, or a brief lapse in compliance during a period of otherwise sustained compliance, will not constitute failure to maintain substantial compliance.

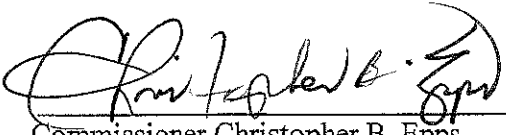
Executed the 1st day of February, 2012

Agreed:


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Margaret Winter (*pro hac vice*)
The National Prison Project of
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For the Plaintiffs


Commissioner Christopher B. Epps
Mississippi Department of Corrections
723 North President Street
Jackson, MS 39202
For the Defendant

THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

C.B., by and through his next friend,
Charleston DePriest, et al.

Plaintiffs,

v.

WALNUT GROVE CORRECTIONAL
AUTHORITY, et al.

Defendants.

CLASS ACTION
Civil Action No. 3:10cv663

CONSENT DECREE

On or about November 16, 2010, Plaintiffs filed the above-captioned suit asserting constitutional and statutory challenges to conditions in the Walnut Grove Youth Correctional Facility. Plaintiffs and the Mississippi Department of Corrections stipulate and agree to the following provisions in partial resolution of the litigation. This Consent Decree contains provisions related to a settlement subclass comprised of all individuals who are now or in the future will be imprisoned in the Walnut Grove Youth Correctional Facility.

I. Introduction.

(1) In order to resolve the allegations in the Complaint related to protection from harm and violence, excessive use of force, punitive isolation, and inadequate medical care with regard to

individuals who are now or in the future will be imprisoned in the Walnut Grove Youth Correctional Facility ("WGYCF"), the parties have entered into this Consent Decree.

(2) The parties agree to a settlement subclass comprised of all individuals who are now or who in the future will be imprisoned in the WGYCF. The terms of this Consent Decree apply only to this subclass and only to the WGYCF, and do not follow a Plaintiff who is transferred, discharged, or otherwise leaves WGYCF.

(3) The Defendant in this lawsuit is Commissioner Christopher Epps, in his official capacity as Commissioner of the Mississippi Department of Corrections ("MDOC"). This Consent Decree refers to actions and inactions that will be undertaken by Commissioner Epps, his staff and contractors under his direction. For ease of reference only, this Consent Decree refers to "MDOC" through this Agreement. The Parties intend for this Agreement to bind Commissioner Epps and his assigns.

(4) The term "Walnut Grove Youth Correctional Facility" or "WGYCF" hereinafter refers to the correctional facility located in Leake County, Mississippi as provided for in Miss. Code Ann. § 47-5-943 (Rev. 2007) and located at 1650 Highway 492, Walnut Grove, Mississippi 39189. The terms of this Consent Decree apply to the facility located at this address, regardless of whether MDOC and/or the Mississippi Legislature change the name of the facility.

(5) The parties stipulate that nothing in this Consent Decree constitutes either an admission of liability, or any evidence of liability, with respect to suits for damages or any claims asserted against the named Defendants with respect to inmates who are housed, were housed, or may be housed in the future, at the Walnut Grove Youth Correctional Facility.

(6) Nothing in this Consent Decree will prevent the State of Mississippi and/or MDOC from modifying the mission of, or closing WGYCF, or developing alternative community placements for the persons currently in the facility as set forth herein.

(7) This Consent Decree is not intended to have any preclusive effect except between the parties. The parties acknowledge that the remedies contained in this agreement are not necessarily appropriate for facilities other than the WGYCF as described in this Consent Decree.

(8) Individuals who are not class members are not third-party beneficiaries of this agreement and may not assert any rights under this Consent Decree.

II. Care Required by the Constitution and Federal Statutes.

The purpose of this Consent Decree is to protect certain constitutional and federal statutory rights of individuals who are now or in the future will be imprisoned at WGYCF. The terms and requirements of this Consent Decree will be interpreted to be consistent with the remedial measures necessary to protect these rights of the prisoners, and consistent with applicable federal law. The terms of this Consent Decree are applicable only to WGYCF.

III. Substantive Remedial Measures.

WGYCF will be operated and maintained by MDOC, or by a contractor retained by MDOC, in accordance with the following conditions:

A. Classification and Housing System.

(1) MDOC will utilize a classification system that ensures prisoners are appropriately and safely housed within WGYCF.

B. Protection from Harm.

(1) At all times, prisoners will be provided with reasonably safe living conditions and will be protected from violence and other physical or sexual abuse by staff and other prisoners.

(2) MDOC will ensure that there are sufficient numbers of adequately trained direct care and supervisory staff, and sufficient numbers of professional staff. Within 90 days of the Court's approval of this Consent Decree, MDOC will develop and implement a staffing plan for direct care, supervisory, and professional staff to ensure that prisoners are adequately supervised and protected from harm and that prisoners have adequate access to medical services and adequate time out of their cells.

(3) Mechanical, physical or chemical restraints such as O.C. spray, pepper spray and mace will not be used to punish prisoners. If any restraint is necessary, the force must be the minimum amount required to safely contain the prisoners, and the restraints must be removed as soon as they are no longer necessary. Except in emergency circumstances, no prisoner should be subject to restraints until staff have first attempted verbal de-escalation techniques.

(4) Physical force and pain aversion behavior management techniques will not be used to punish prisoners. If physical force or pain aversion behavior management techniques are necessary, the force must be the minimum amount required to safely contain the prisoner. Except in emergency circumstances, no prisoner will be subject to physical force until staff have first attempted verbal de-escalation techniques.

(5) Except in exigent circumstances where no delay is possible because of the risk of bodily injury or serious damage to property creating a threat to security or except when totally impracticable, use of force will be captured on an audio-visual recording. MDOC will provide sufficient

audio-visual recording equipment at WGYCF to ensure that use of force as specified above will be recorded. The summary use of force reports will be provided to Plaintiffs' counsel on a monthly basis, and copies of videotapes will be available for inspection by Plaintiffs' counsel. If the use of force was not recorded, the use of force report must document why a recording was not made.

(6) Except in exigent circumstances where no delay is possible because of the risk of bodily injury or serious damage to property creating a threat to security, or except when totally impracticable, the Shift Commander or Warden will be notified and his or her consent obtained before force is used. Except in emergency circumstances, the Shift Commander or Warden will visit the prisoner before consenting to the use of force, to determine if force is necessary. A log will be maintained recording the efforts made to obtain the presence of the Shift Commander or Warden and a mental health professional prior to the use of force. These logs will become part of the monthly reports referred to in Section III B(7) below.

(7) All physical interventions, including use of force and mechanical and chemical restraints, must be documented in writing. The written documentation will include a detailed description of the physical intervention and the verbal de-escalation attempt(s) that occurred prior to the intervention. MDOC will use this documentation to review each physical intervention and to analyze patterns of use of force and restraint in an effort to reduce such incidents.

(8) Each use of force will be reviewed pursuant to MDOC's use of force policy and standard operating procedures.

(9) MDOC will develop protocols and procedures to ensure the involvement, where possible, of a mental health professional prior to use of force on prisoners with Serious Mental Illness, as defined in this Consent Decree.

(10) MDOC will develop policies and procedures that will limit the use chemical restraints. Chemical restraints will not be used as a punishment or to gain compliance. Chemical restraints may only be used to prevent seriously bodily injury or serious damage to property creating a threat to security. Only staff who have been trained on the appropriate use of chemical restraints may regularly carry chemical restraints on the living units.

(11) Issuance of restraint equipment will be documented in a bound Restraint Equipment Log Book. Staff members who are issued restraint equipment will initial in the appropriate section of the Log Book when checking equipment out of storage. The inventory number, name of the equipment, time in, and time out should be noted in the Log Book. Containers of chemical restraints that have been signed out for a shift will be weighed at the beginning and conclusion of that shift by the Shift Supervisor or his designee. The inventory numbers and weight of the containers will be documented in the Log Book.

(12) All prisoners who have been exposed to chemical restraints will be immediately removed from the contaminated area, will promptly be permitted to shower, and will be examined by medical staff to see if transport to the clinic is needed. Any contaminated living area will be decontaminated before a prisoner is returned to it. If emergency circumstances create an imminent threat to security and prevent staff from immediately removing prisoners from contaminated areas, MDOC will promptly provide prisoners who have been exposed to the chemical agents with an adequate supply of appropriate decontaminating agents.

(13) MDOC will not utilize, direct, or allow prisoners to enforce rules or impose discipline on other prisoners.

(14) MDOC will take reasonable steps to protect prisoners at WGYCF from verbal abuse and

harassment. MDOC will develop policies, procedures, and practices that protect prisoners from abuse, harassment, and punishment on the basis of their actual or perceived sexual orientation, gender identity, and gender non-conformity.

(15) MDOC will prohibit staff from forcing prisoners at WGYCF to engage in physical exertion that inflicts pain or discomfort, for example the practice of forcing prisoners to "alligator walk" and to "duck walk."

C. Long-Term Cell Confinement.

(1) MDOC will not subject prisoners to long-term cell confinement except in conformity with this Consent Decree. For purposes of this agreement, "cell confinement" means confinement to a cell for more than twenty-one hours a day. "Long term" with respect to cell confinement means confinement for more than sixty days.

(2) Prisoners may be held in long-term cell confinement only if:

- a. they have inflicted serious physical injury on another while incarcerated;
- b. they are actively involved in disruptive gang activity;
- c. they have escaped or attempted to escape from within a security perimeter or while under direct supervision;
- d. they have committed a felony while on escape from a community correctional facility; or
- e. the Commissioner or his designee determines, based on specific objective criteria set forth in writing, that there is a significant risk that the prisoner will cause physical injury to prison staff, other prisoners, or members of the public if he is housed in general population, even at the highest security level.

(3) Prisoners will not be held in long-term cell confinement for the following reasons:

- a. solely on their classification scores or for refusing to work or participate in programs;
- b. solely because they escaped from a youth facility or community correctional facility;
- c. solely because they are subject to a felony detainer, even if for a serious crime, from another jurisdiction;
- d. solely because they have tested positive for marijuana; or
- e. solely because they need protective custody. Prisoners needing protection will be housed and accorded access to visits, canteen, and other privileges consistent with their custody levels.

(4) Every 90 days, the classification committee will reconsider whether any prisoner who has been placed on long term cell confinement should be reclassified and returned to the general population.

(5) For the duration of this Consent Decree, MDOC will maintain and provide to Plaintiffs' counsel a current list of all WGYCF prisoners placed in long-term cell confinement with the date of and reason for placement, and the date of last review.

D. Programming and Behavior Management.

(1) MDOC will revise the Regimented Inmate Discipline Program to remove the paramilitary elements of the program.

(2) MDOC will develop a behavior management policy that incorporates graduated sanctions for rule violations, and positive incentives for good behavior.

(3) Except as limited by acceptable disciplinary procedures and punishment or a specific threat to safety, the norm will be that prisoners will be allowed out of their cells most of the hours of the day, including access to at least one hour a day of outside recreation, weather permitting.

E. Disciplinary Due Process and Grievances.

(1) MDOC will revise, if needed, its disciplinary procedures to ensure that prisoners receive adequate due process before the imposition of disciplinary sanctions (including rule violation reports) that would affect a prisoner's ability to earn the following: Earned Time Allowance, pursuant to Miss. Code Ann. § 47-5-138(1); Trusty Earned Time, pursuant to Miss. Code Ann. 47-5-138.1; Meritorious Earned Time, pursuant to Miss. Code § 47-5-142(2); Intensive Supervision Program, pursuant to Miss. Code Ann § 47-5-1003; Community Work Center / Pre-release Centers, as described in Miss. Code Ann § 47-5-181; or placement in the Regimented Inmate Discipline Program.

(2) MDOC will develop an adequate grievance procedure that is accessible to prisoners of varying English proficiency levels.

(3) MDOC will notify all prisoners of the rules of the institution, and will clearly describe the conduct that will be considered a rule violation and that may subject a prisoner to discipline.

F. Suicide Prevention.

(1) Within 90 days of the execution of this agreement, prisoners placed on suicide watch will be housed in a unit determined by a mental health professional to be appropriate. A mental health professional will direct the amount and location of out-of-cell activity for the prisoner with the goal of providing the fewest restrictions appropriate for the prisoner.

(2) MDOC will develop a suicide prevention policy that includes the following:

- a. a prohibition on placing prisoners on suicide watch as punishment or without medical justification;
- b. instructions for thoroughly documenting the suicide precautions that are administered to

each prisoner who is placed on suicide watch;

- c. a process for conducting a review of any and all instances of attempted suicide or suicide.

The review process will include a committee of staff (including mental health staff) who will review every attempted suicide or suicide in order to refine policies and procedures to decrease the number of these incidents;

- d. all prisoners placed on suicide watch will be assessed by mental health professional as soon as possible but no later than 18 hours from being placed on suicide watch; any prisoner placed on suicide watch will be re-assessed by a mental health professional at least every 18 hours; and
- e. if the initial assessment indicates that the prisoner is at a high risk for suicide and/or self-harm for longer than five days, that prisoner will be transferred to a facility that can provide intensive mental health services. If the assessment indicates that the prisoner needs less-intensive, but ongoing, supervision in order to prevent suicide and/or self-harm, a qualified mental health professional will develop an individual suicide prevention/treatment plan and will direct the appropriate unit to house the prisoner. This plan will be updated daily until the prisoner is no longer judged to be on an active suicide "watch" status.

(3) If an inmate has been deprived of his regular clothing (other than shoelaces and belts), a qualified mental health professional will determine if a medical or mental health justification exists for the continued deprivation. The deprivation may continue only if medical and mental health justifications exist for the continued deprivation and the mental health clinician makes specific written findings explaining these justifications. Each 24-hour clinical reassessment must

include written findings explaining any medical/mental health justifications for any continuing deprivation.

(4) If an inmate has been subject to cell confinement or deprived of access to regular programming and activities, a qualified mental health professional will determine if a medical or mental health justification exists for the continued cell confinement and/or deprivation. The cell confinement and/or deprivation may continue only if medical and mental health justifications exist for the continued cell confinement and/or deprivation and the qualified mental health professional makes specific written findings explaining these justifications. Each 24-hour clinical reassessment must include written findings explaining the medical and mental health justifications for any continuing cell confinement and/or deprivation.

G. Medical Care.

(1) Prisoners will be provided adequate, appropriate, and timely medical and dental care to meet their individualized needs, including the treatment of acute and chronic conditions. Care will be provided at WGYCF, or the Prisoners will be transferred to a facility that complies with the National Commission on Correctional Health Standards for Health Care in Adult Confinement Facilities.

(2) WGYCF will not be used for long-term housing of prisoners with Serious Mental Illness. Prisoners with Serious Mental Illness must be transferred to a facility where they will receive appropriate mental health treatment. For purposes of this Consent Decree, "long-term" means more than 14 days. "Prisoners with Serious Mental Illness" means those with an Axis I diagnosis of a major mental illness (for example Schizophrenia or other psychotic disorder), Bipolar Disorder, Depressive Disorder or other serious Mood Disorder; prisoners who are significantly

disabled by mental retardation or an organic brain disorder; and prisoners who are significantly disabled by any other mental disorder (for example, Generalized Anxiety Disorder, Post-traumatic Stress Disorder, or any disorder characterized by repetitive self-harm).

(3) A medical professional will direct the amount and location of out-of-cell activity for the prisoners who are in need of medical care with the goal of providing the fewest restrictions appropriate for the prisoner.

H. Contract Monitoring and Revisions.

(1) MDOC will develop comprehensive contract monitoring policies and procedures, and will monitor the contracts with the operator of WGYCF and the health care provider at WGYCF in compliance with these policies and procedures.

(2) MDOC will revise the contracts currently in place with the operator of WGYCF and the health care provider at WGYCF to incorporate the terms of this Consent Decree.

IV. Enforcement and Monitoring.

(1) The parties agree to the appointment of James Austin and Steven Martin as monitors responsible for tracking compliance with the terms of this Consent Decree. The monitors may, if asked by MDOC, provide technical assistance to MDOC to promote compliance with the terms of this Consent Decree. The monitors will be responsible for submitting reports to counsel every four months following the Court's approval of this Consent Decree. The monitors will provide their reports in draft form to the parties for comments at least two weeks before issuance. Should either of the monitor positions become vacant and the parties are unable to agree on a replacement, the parties will recommend candidates to the magistrate judge and the parties agree to accept the

candidate chosen by the magistrate judge. The reasonable cost for the experts' fees and expenses related to monitoring will be borne by MDOC.

(2) The monitors and Plaintiffs' counsel, with advance notice, will have full and complete access to WGYCF, to all facility records (including medical and mental health records), and to staff (who will be directed to cooperate with the experts and Plaintiffs' counsel), as well as to all subclass members. State attorneys may be present at interviews of staff and tours of facilities. The experts and Plaintiffs' counsel will comply with all applicable federal and state laws with regard to confidentiality of such records and information.

(3) Within 90 days of the Court's approval of this Consent Decree, MDOC expert James Austin and Plaintiffs' expert Steve Martin will collaborate in a non-binding manner with MDOC to promulgate the policies, procedures, classification, and staffing plans necessary to effectuate this Consent Decree. Plaintiffs' counsel will compensate Steve Martin only for expenses related to drafting these policies, procedures and plans and that expense will not be the responsibility of MDOC. MDOC retains the final authority over the drafting and wording of the policies and staffing plans, as long as the policies and plans are consistent with the terms of this Consent Decree. Once drafted, MDOC will submit the draft policies and plans to Plaintiffs' counsel. Plaintiffs' counsel will promptly notify MDOC of any objections, with an explanation as to how the draft is inconsistent with the terms of this Consent Decree, and will suggest revisions. MDOC will revise policies, procedures, plans, and other written documents as necessary to conform with the terms of this Consent Decree. If either party is unsatisfied with the resolution, then either party may invoke the assistance of the magistrate judge for mediation. If mediation fails to resolve the dispute, the Plaintiffs may file a motion to enforce this Consent Decree.

(4) The parties agree that the terms of prospective relief afforded by the terms of this Consent Decree are narrowly drawn, pertain exclusively to the subclass defined herein, extend no further than necessary to correct the violations of federal rights at issue, are the least intrusive means necessary to correct the violations of federal rights at issue, and all terms and conditions of this Consent Decree will be construed in accord with federal law, including the Prison Litigation Reform Act.

(5) The parties agree that the terms of this Consent Decree will be submitted to the Court for approval, and the Court will retain jurisdiction to enforce the terms thereof.


(6) Nothing in this Decree alters the requirements of the Prison Litigation Reform Act, including the exhaustion requirement, with respect to any class member who seeks to assert an individualized dispute against MDOC, including a damages action, which is unrelated to the terms of this Consent Decree. Nothing in this Consent Decree bars a member of the Plaintiff class from bringing an individualized suit seeking damages or prospective relief under state and/or federal law. Only class counsel may seek to enforce the terms of this Consent Decree.

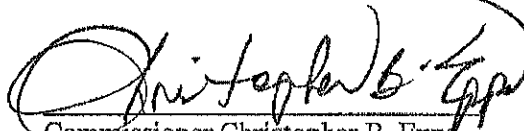
(7) If Plaintiffs believe that MDOC has substantially failed to comply with any obligation under this Consent Decree, Plaintiffs' counsel will give written notice of that failure to MDOC. The parties will conduct good faith discussions to resolve the dispute. If the parties are unable to reach agreement within 7 days of Plaintiffs' written notice, the parties will submit the dispute to mediation before the magistrate judge who is assigned to this case. The parties will attempt in good faith to mediate the dispute. If the parties are unable to resolve the dispute within 21 days from the date of Plaintiffs' written notice, Plaintiffs may seek enforcement of this Consent Decree from the Court. In the case of an emergency posing an immediate threat to the health or safety of the

individuals housed at WGYCF, Plaintiffs' counsel may omit the notice and cure requirements herein (including the provision regarding mediation) before seeking enforcement from the Court.

(8) This Consent Decree will terminate five years from the date it is filed with the Court. The Consent Decree may also terminate earlier than five years from the date it is filed with the Court if the Court determines that MDOC substantially complied with each of the provisions of the Consent Decree and has continuously maintained substantial compliance for at least two years. Noncompliance with mere technicalities, or a brief lapse in compliance during a period of otherwise sustained compliance, will not constitute failure to maintain substantial compliance. The Court may extend this Consent Decree and/or any of its provisions twice, and each extension may be no longer than one year upon a finding that MDOC failed to substantially comply.

Agreed:


 Sheila A. Bedi, Miss. Bar No. 101652
 Southern Poverty Law Center
 4431 Canal Street
 New Orleans, LA 70119

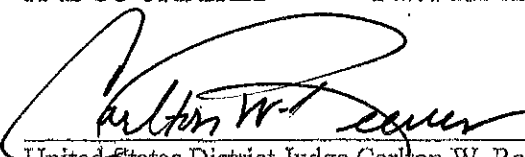

 Commissioner Christopher B. Epps
 Mississippi Department of Corrections
 723 North President Street
 Jackson, MS 39202
For the Defendant

Margaret Winter (*pro hac vice*)
 The National Prison Project of
 the ACLU Foundation, Inc.
 915 15th Street, N.W., Seventh Floor
 Washington, D.C. 20005

Robert B. McDuff, Miss. Bar. No. 2532
 767 North Congress Street
 Jackson, Mississippi 39202
For the Plaintiffs

IT IS SO ORDERED

Dated and entered this March day of 26th 2012


 United States District Judge Carlton W. Reeves

**Memorandum of Agreement
Mental Health -WGYCF**

I. INTRODUCTION

- (A) This Memorandum of Agreement ("MOA") between the certified class of Plaintiffs described in subsection (G) below and Christopher Epps, in his official capacity as Commissioner of the Mississippi Department of Corrections ("MDOC") resolves litigation concerning the mental health claims in C.B., et al. v. Walnut Grove Correctional Authority, et al., case number 3:10cv663 (S.D. Miss.). A separate settlement agreement between the parties, that the parties will seek to have the Court enter as a Consent Decree, addresses other topics agreed to between the parties. This litigation concerns conditions of confinement at the Walnut Grove Youth Correctional Facility ("WGYCF") (*as described in* Miss. Code Ann. § 47-5-943 (Rev. 2007)), located at 1650 Highway 492, Walnut Grove, Mississippi 39189.)

This MOA refers to actions and inactions that will be undertaken by Commissioner Epps, his staff and contractors under his direction. For ease of reference only, this MOA refers to "MDOC" through this Agreement. The Parties intend for this Agreement to bind Commissioner Epps and his assigns.

The terms of this MOA apply to the facility located at this address, regardless of whether MDOC and/or the Mississippi Legislature change the name of the facility. The terms of this MOA do not follow a Plaintiff who is transferred, discharged, or otherwise leaves WGYCF.

- (B) In order to resolve the mental health claims in this litigation, the parties have entered into this MOA.
- (C) This MOA does not constitute an admission of liability by MDOC.
- (D) This MOA is not intended to have any preclusive effect except between the parties.
- (E) Nothing in this MOA will prevent the State of Mississippi and/or MDOC from modifying the mission of or closing WGYCF, or developing alternative community placements for the persons currently in the facility as set forth herein.
- (F) Individuals who are not class members are not third party beneficiaries of this agreement and may not assert any rights under this agreement.
- (G) The parties will jointly request that the Court enter an order certifying a sub-class comprised of all individuals who are now or who in the future will be housed WGYCF and who live with a serious mental illness, referred to in this MOA as "Plaintiffs" or "prisoners."

II. CARE REQUIRED BY THE CONSTITUTION

The purpose of this MOA is to protect the rights of Plaintiffs to constitutionally adequate mental health care. The terms and requirements of this MOA will be interpreted to be consistent

with the remedial measures necessary to protect these rights, and consistent with applicable federal law.

III. MENTAL HEALTH CARE

- 1) MDOC will provide prisoners with adequate, appropriate, and timely mental health care to meet their individual needs, including the treatment of acute and chronic conditions. If the MDOC Office of Medical Compliance determines that appropriate mental health care cannot be provided at WGYCF, MDOC may transfer prisoners to other MDOC or Non-MDOC facilities, on a permanent or temporary basis, in order to receive mental health treatment.
- 2) Within 90 days of the execution of this agreement, MDOC will develop and implement policies and procedures, and will develop and implement a staffing plan, to ensure that adequate mental health services are provided by adequate numbers of qualified mental health professionals using evidence-based, generally accepted treatment approaches.
- 3) Within 120 days of the execution of this agreement, Defendants will ensure that every prisoner at WGYCF who has not previously received a mental health evaluation or who is not currently being treated by a mental health professional will receive a mental health examination if that prisoner has physically attempted suicide or serious self-harm within the past year, or if that prisoner has a history of institutionalization in mental health facilities. Prisoners who are diagnosed with chronic mental health issues will receive individualized mental health treatment plans. The plans will comport with generally accepted treatment approaches.

IV. IMPLEMENTATION AND MONITORING

- 4) Within 90 days of the Court's approval of this MOA, MDOC expert James Austin and Plaintiffs' expert Steve Martin will collaborate in a non-binding manner with MDOC to promulgate the policies, procedures, and staffing plans necessary to effectuate this MOA. Plaintiffs' counsel will compensate Steve Martin only for expenses related to drafting these policies, procedures and plans and that expense will not be the responsibility of MDOC. MDOC retains the final authority over the content, drafting, and wording of the policies and staffing plans, as long as the policies and plans are consistent with the terms of this MOA. Once drafted, MDOC will submit the draft policies and plans to Plaintiffs' counsel. Plaintiffs' counsel will promptly notify MDOC of any objections, with an explanation as to how the draft is inconsistent with the terms of this MOA, and will suggest revisions. MDOC will revise policies, procedures, plans, and other written documents as necessary to conform with the terms of this MOA. If either party is unsatisfied with the resolution, either party may invoke the assistance of the magistrate judge for mediation. If mediation fails, Plaintiffs may re-instate the Complaint.

- 5) The parties agree to the appointment of James Austin and Steve Martin as monitors responsible for tracking compliance with the terms of this MOA. The monitors may, if asked by MDOC, provide technical assistance to MDOC to promote compliance with the terms of this MOA. The monitors will be responsible for submitting reports to counsel every four months following the Court's approval of this MOA. The monitors will provide their reports in draft form to the parties for comments at least two weeks before issuance. Should both of the monitor positions become vacant and the parties are unable to agree on a replacement, the parties will recommend candidates to the magistrate judge and the parties agree to accept the candidate chosen by the magistrate judge. The reasonable cost for the experts' fees and expenses related to monitoring will be borne by MDOC.

V. ACCESS

- 6) The monitors and Plaintiffs' counsel, with advance notice, will have full and complete access to WGYCF, to all facility records, and to staff (who will be directed to cooperate with the experts and Plaintiffs' counsel), as well as to all subclass members. State attorneys may be present at interviews of staff and tours of facilities. The experts and Plaintiffs' counsel will comply with all applicable federal and state laws with regard to confidentiality of such records and information.

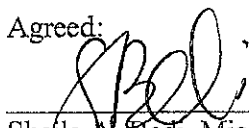
VI. ENFORCEMENT AND TERMINATION

- 7) If Plaintiffs believe that MDOC has substantially failed to comply with any obligation under this MOA, Plaintiffs' counsel will give written notice of that failure to MDOC. The parties will conduct good faith discussions to resolve the dispute. If the parties are unable to reach agreement within 7 days of Plaintiffs' written notice, the parties will submit the dispute to mediation before the magistrate judge who is assigned to this case. The parties will attempt in good faith to mediate the dispute for a period of 21 days with the magistrate judge. The terms of this MOA are not subject to state or federal court enforcement other than the reinstatement of those paragraphs of the Complaint that this MOA settled. If MDOC has substantially failed to comply with any obligation under this agreement, Plaintiffs may reinstate the mental health provisions of the Complaint. In the case of an emergency posing an immediate threat to the health or safety of the individuals housed at WGYCF, Plaintiffs' counsel may omit the notice and cure requirements herein (including the provision regarding mediation) before reinstating the Complaint. All Plaintiffs are bound by this MOA, and a Plaintiff or Plaintiffs may not initiate a legal action asserting claims contained within the Complaint filed in cause number 3:10cv663 (S.D. Miss.) as long as this MOA is in effect. Nothing in this MOA bars a member of the Plaintiff class from bringing an individualized suit seeking damages or prospective relief under state and/or federal law. Only class counsel may seek to enforce the terms of this MOA.

- 8) In the event that Plaintiffs reinstate the Complaint, the parties agree that this case will proceed expeditiously. To that end, the parties agree to the following procedures for reinstatement:
- a. Plaintiffs will file a Notice of Re-instatement and an Amended Complaint.
 - b. Within 20 days of Plaintiffs' filing, Defendants will file a responsive pleading.
 - c. The case management conference, unless stayed pursuant to court order, will occur within 35 days of Plaintiffs' filing or at the earliest date that is convenient for the court.
- 9) This MOA will terminate five years from the date it is executed, unless the Complaint is reinstated as referenced above. When the MOA is terminated, all claims pertaining to mental health in case number 3:10cv663 (S.D. Miss.) will be dismissed without prejudice. The MOA may also terminate earlier than five years from the date it is executed if the magistrate judge determines MDOC has substantially complied with each of the provisions of this MOA and has continuously maintained substantial compliance for at least two years. Noncompliance with mere technicalities, or a brief lapse in compliance during a period of otherwise sustained compliance, will not constitute failure to maintain substantial compliance.

Executed the 15th day of February, 2012

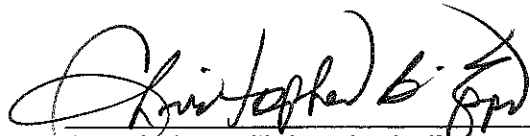
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For the Plaintiffs



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For the Defendant