Joint Motion for Preliminary Approval of Settlement Agreement

Exhibit A

A.B., by and through TRUEBLOOD, et al., v. DSHS, et al., No. 14-cv-01178-MJP

Comprehensive Settlement Agreement

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I. INTRODUCTION AND GOALS

In consideration of the Parties' commitment to uphold this Court's orders to provide timely competency evaluation and restoration services, the Parties enter into this Settlement Agreement. The Parties intend that implementation of this Agreement will bring Defendants into substantial compliance with this Court's orders. The elements of the Agreement aim to deliver an array of services to better deliver the right care, at the right time, in the right place, for the right cost. The ultimate goal of each element in this Agreement is to reduce the number of people who become or remain Class Members and to timely serve those who become Class Members.

The Parties recognize that there are multiple players in the forensic and broader mental health systems. This creates challenges in establishing continuity and coordination of care and forming long-term and sustainable solutions. In furtherance of the Parties' goals of diversion and providing timely services to Class Members, the Parties believe it is important to break down the silos between the system partners within the larger mental health system. To develop a plan that

yields successful outcomes for Class Members and enhances system collaboration and coordination, this Agreement acknowledges the value brought by every partner in the system and encourages full participation by all of its players.

In developing this Agreement, the Parties held dozens of meetings with hundreds of system partners over the six-month negotiations period.[1] This included meetings with:

- Class Members;
- Class Members' families;
- State Legislators;
- Mental health provider agencies and advocates;
- Behavioral Health Organizations and advocates;
- Law enforcement;
- Local jails;
- State and municipal courts and judges;
- Prosecuting attorneys;
- Defense attorneys;
- Homeless and housing providers and advocates;
- Employment support providers and advocates;
- Individual clinicians;
- Education programs for needed clinicians;
- Other departments of the administration outside DSHS;

[1] Input from these stakeholders is reflected in a publicly-available report, at: https://www.dshs.wa.gov/sites/default/files/BHSIA/FMHS/Trueblood/2018Trueblood/2018-05-Tac-Report.pdf. After this report was drafted, the Parties, collectively and separately, continued to meet with system partners throughout the negotiation process.

- Local Legislators and Executives; and
- Washington residents.

The solutions in this Agreement focus on pursuing effective outcomes and often incorporate demonstrated successes in current programs, entities, and systems in Washington or from other jurisdictions. In crafting these solutions, the Parties recognize the fundamental goal of this Agreement is to provide timely competency services to Class Members pursuant to the Court's orders.

II. DEFINITIONS

1. Approval:
   a. Final Approval: the Court's approval of this Agreement following the notice period to Class Members, resolution of any objections, and the fairness hearing.
   b. Preliminary Approval: the Court's initial approval of this Agreement such that the notice period for Class Members begins.
2. BHA: Behavioral Health Administration.
3. CIT: Crisis Intervention Training.
4. CJTC: Criminal Justice Training Commission.
5. Class Member: All persons who are now, or will be in the future, charged with a crime in the State of Washington and: (a) who are ordered by a court to receive competency evaluation or restoration services through DSHS; (b) who are waiting in jail for those services; and (c) for whom DSHS receives the court order.

6. Co-responder program: The Mental Health Field Response Teams Program, currently administered by WASPC as a grant program, pursuant to Wash. Rev. Code § 36.28A.440.

7. Crisis triage and stabilization facility: means either a crisis stabilization unit or a triage facility as defined in Wash. Rev. Code 71.05.020.

8. Defendants: the named defendants in the lawsuit, including the Department of Social and Health Services, Eastern State Hospital, and Western State Hospital.

9. DSHS or Department: Department of Social and Health Services.

10. Executive Committee: A committee tasked with making ultimate recommendations to the Court, as specifically defined in § IV.B.4. This committee shall be composed of representatives from DSHS, OFMHS, HCA, and Plaintiffs' counsel. The use of this term in any section outside § IV.B.4 refers to the committee defined in § IV.B.4.

11. Forensic Data System: A software program designed by DSHS/BHA information technology to replace two legacy data systems at Western State Hospital and Eastern State Hospital which perform a variety of functions including tracking competency referral data consistently across state hospitals and competency restoration residential treatment facilities.

12. Forensic Risk Assessment: An assessment completed by a forensic evaluator that provides an opinion in regards to whether a criminal defendant meets the standard for not guilty by reason of insanity.

13. General Advisory Committee: The committee specifically defined in § IV.B.2-3 that will be comprised of the Court Monitor, DSHS, HCA, the Governor's office, OFMHS, Plaintiffs' counsel, and any applicable representative from outside

partners. The use of this term in any section outside § IV.B.2-3 refers to the committee defined in § IV.B.2-3.

14. HARPS: Acronym for Housing and Recovery through Peer Services. This term references a team generally consisting of one housing support specialist and two peer support specialists, all of whom have been trained in the permanent supportive housing model. HARPS teams also have access to housing bridge subsidies to facilitate maintaining or obtaining housing.

15. HCA: Health Care Authority.

16. Mature Data: Data that has been fully resolved. Distinct from "first look data" as identified in the monthly reports to the Court Monitor.

17. MCR: Mobile Crisis Responders.

18. Outstation: OFMHS offices and/or staff located in geographic regions somewhere other than the campuses of the two state hospitals.

19. OFMHS: Office of Forensic Mental Health Services; an office dedicated to forensic services within the Behavioral Health Administration of the Department of Social and Health Services.

20. Parties: the Plaintiffs and named Defendants in this case.

21. Peer Support Program: A program for providing a peer counselor certification, as described in Wash. Admin. Code § 182-538D-0200.

22. Phased Regions: the Washington State Managed Care Organizations (MCO) and Administrative Service Organizations (ASO) regions in which the changes contemplated by this Agreement will be implemented. Phase One Regions include the Spokane Region, Pierce County Region, and Southwest Washington Region.

Phase Two Regions include King County Region. Phase Three Regions may include additional regions with high rates of Class Member referral.

23. Regions: specific areas within the State of Washington as defined by the MCO/ASO boundaries/regions.

24. Residential supports: "Residential supports", as used within any section of this Agreement means only the residential supports as described within that section.

25. State:

    a. Where describing an obligation or action under this Agreement: Executive branch agencies of the State of Washington.

    b. Where describing a geographic region or level of government: the State of Washington.

26. Unstably Housed: As relevant to this Agreement, individuals are unstably housed if they:

    a. are living in a place not meant for human habitation,

    b. are living in an emergency shelter,

    c. are living in transitional housing,

    d. are exiting an institution where they temporarily resided, if they resided for up to 90 days and were in shelter or a place not meant for human habitation immediately prior to entering that institution, or,

    e. are losing their primary nighttime residence within 14 days and lack resources or support networks to remain in housing.

27. Wait times: the maximum wait times for admission for inpatient competency services or completion of in-jail evaluations as set by the Federal Court in

Cassie Cordell Trueblood, next friend of A.B., an incapacitated person, et al., v. The Washington State Department Of Social And Health Services, et al., Cause No. 2:14-cv-01178-MJP.

28. WASPC: Washington Association of Sheriffs and Police Chiefs.

III. SUBSTANTIVE ELEMENTS

A. Competency Evaluation

1. The State will seek funding for 18 additional forensic evaluators needed to meet future predicted demand, to meet forensic evaluator demand created by the opening of additional forensic wards, to staff outstations, and to maintain compliance with the Court's injunction during periods of increased demand. The expanded evaluator capacity, when not needed to address periods of increased demand, will be used to perform the Department's other statutorily required evaluation functions, including:

   a. Out of custody evaluations;

   b. Forensic Risk Assessments;

   c. Civil commitment petitions for individuals found incompetent to stand trial under Wash. Rev. Code § 10.88.086 and referred for civil commitment under Wash. Rev. Code § 71.05.280(3);

   d. Other duties as assigned at the Department's sole and exclusive discretion;

   e. Provided that, during periods of increased demand, the Department will prioritize the completion of in-jail evaluations over the other duties outlined in a - d.

2. Approximately 13 of these positions shall be posted and recruited between July 1, 2019 - June 30, 2020, and the remaining positions shall be posted and recruited between July 1, 2020 - June 30, 2021.

3. The Department will complete the implementation of the Forensic Data System, and use that System to collect and utilize data to anticipate, and respond to, periods of increased demand.

4. The Department will collect and utilize data to determine if the increased evaluator capacity in § III.A.1 above maintains substantial compliance with the injunction with respect to in-jail competency evaluations, and whether capacity exists to respond to periods of increased demand. In the event the amount of evaluators is inconsistent with actual need, the Department will report the same in the semi-annual report as set forth in § IV.(B)(14). The report will include a plan to address the inconsistency going forward.

5. The State will continue the use of Outstations.

6. The State will complete the currently planned implementation of and will continue the use of telehealth for competency evaluations.

B. Competency Restoration

1. Legislative Changes

a. During the 2019 legislative session, the State will support and work to achieve legislative changes to reduce the number of people ordered into competency evaluation and restoration, and to use community based restoration services, which may include changes to Wash. Rev. Code § 10.31.110, Wash. Rev. Code § 10.77.086, and

Wash. Rev. Code § 10.77.088. These efforts may include advancing requests for legislative changes through bill proposals or supporting legislation that has been proposed by others that further the goal of reducing the number of individuals ordered to receive competency evaluation and restoration services.

b. If the State fails to pursue legislative changes intended to reduce demand for competency services to aid in reaching substantial compliance with the relevant portions of this Agreement, this will constitute material breach.

2. Community Outpatient Restoration Services

a. The State will seek funding and statutory changes to implement a phased roll out of community outpatient restoration services in targeted areas, including Residential Supports as clinically appropriate. These restoration services will be provided in community settings instead of inpatient units of state psychiatric hospitals or other inpatient restoration facilities.

b. Criminal defendant eligibility for community outpatient restoration services is determined by the criminal court that is making an order for restoration services pursuant to Wash. Rev. Code § 10.77.086 or 10.77.088.

(1) The forensic navigator, as described below in § III.B.3, will provide information, consistent with state and federal law, to the criminal court to assist the criminal court in determining whether a criminal defendant is appropriate for community outpatient restoration services.

(2) A criminal defendant's compliance will be monitored by the community outpatient restoration services provider and the forensic navigator. The forensic navigator will provide periodic updates to the criminal court about the criminal defendant's compliance in the community outpatient restoration program.

c. In accordance with state and federal law, the State will support processes to provide criminal courts with the information necessary to create tailored conditions for release of individuals into community outpatient restoration. The provision of this information will be primarily through the use of forensic navigators as described above in § III.B.3, however, the State may elect to use other means as appropriate.

d. The State will require community outpatient restoration service providers to accept referrals from OFMHS in accordance with an algorithm that prioritizes the intake of Class Members.

e. The State will conduct outreach and will provide technical assistance to criminal courts and other stakeholders, upon request, to support the implementation of community outpatient restoration services, to assist with issues such as:

(1) The determination of criminal defendant eligibility for community outpatient restoration;

(2) The conditions of the criminal defendant's participation in community outpatient restoration services; and,

(3) The use of Residential Supports and other services to encourage the use of community outpatient restoration services.

f. If a Class Member is otherwise determined to be eligible for community outpatient restoration services by the criminal court, but is assessed by the forensic navigator as Unstably Housed, the State shall provide Residential Supports, as specified in this Agreement, for the duration of participation in a community outpatient restoration program. The Residential Supports shall not continue for a Class Member referred for inpatient services. The Residential Supports may continue for a Class Member opined to be competent under Wash. Rev. Code § 10.77.065 for up to 14 days following transmission of the competency evaluation.

g. Forensic navigators will coordinate access to housing for all persons enrolled in community outpatient restoration services. Discharge planning for Class Members begins upon admission to the community outpatient restoration program. If HARPS services are deemed necessary, planning should begin as soon as practicable for post-discharge housing support

h. The State will develop Residential Supports for outpatient competency restoration, as specified in this Agreement, through a procurement process to fund community outpatient restoration providers. Providers will be given the flexibility to propose and deliver residential support solutions unique to the needs of the community in which the service is provided, which may include:

(1) Capital development through the Department of Commerce;

(2) Capital development through a third party source identified by the provider;

(3) Housing voucher programs;

(4) Leveraging existing housing programs locally;

(5) Scattered site housing programs.

i. The State will seek funding to support community outpatient restoration services with a broader package of treatment and recovery services, including mental health treatment, substance use screening and treatment. The restoration portion of these services may be provided in-person, remotely through live video, or via recorded video.

j. For criminal defendants waiting in jail, an offer of admission to the community outpatient restoration services program will occur within the constitutional timelines for restoration as outlined by the Federal Court.

3. Forensic Navigators

a. The State will seek funding to implement a new role within the forensic mental health system. This new role, called a forensic navigator, will assist Class Members in accessing services related to diversion and community outpatient competency restoration.

(1) Class Members will be assigned a forensic navigator at the time that a competency evaluation order is received by the Department in the Class Member's criminal case. The navigator will gather information specific to Class Members, including what services are available for that individual Class Member, and how a community

outpatient restoration order or other court order could be supported. This information will be provided to the criminal court prior to the hearing to determine whether competency restoration should be ordered. The navigator will not make a clinical recommendation to the criminal court.

(2) Forensic navigators will be given discretion to manage their caseload, but will do so using the following guiding principles:

(a) In recognition of the fact that there is a large portion of Class Members who are known to the system, and will have recently had contact with the criminal justice or forensic mental health system, forensic navigators may prioritize their efforts to divert these particular Class Members (or high utilizers as referenced in § III.C.4.a.). This prioritization may include beginning work on gathering information immediately upon being assigned the Class Member.

(b) In recognition of the fact that a large proportion of criminal defendants who are ordered to receive a competency evaluation will be found competent, forensic navigators may prioritize their efforts in order to provide a less intensive level of service until a finding that the Class Member is incompetent. This prioritization may include delaying intensive work on gathering information until more is

learned about the Class Member. Forensic navigators may use a standardized tool or assessment in order to assess Class Members unknown to the system.

(3) Forensic navigators will assist criminal court personnel with understanding diversion and treatment options for individual Class Members in order to support the entry of criminal court orders that may divert Class Members from the forensic mental health system.

(4) When a criminal court enters an order directing a criminal defendant to receive restoration services on an outpatient basis, the forensic navigator shall provide services to the criminal defendant ordered to community outpatient restoration, who shall be a client of the forensic navigators. These services will include:

(a) Assisting the client with attending appointments and classes related to outpatient competency restoration.

(b) Coordinating access to housing for the client.

(c) Meeting individually with each client on a regular basis.

(d) Performing outreach as needed to stay in touch with clients.

(e) Providing information to the criminal court concerning the client's progress and compliance with the court ordered conditions of the client's release. This may include appearing at criminal court hearings to provide information to the criminal court.

(f) Coordinating client access to community case management services, mental health services, and follow up.

(g) Assisting clients with obtaining and encouraging adherence to prescribed medication.

(5) The forensic navigator's services to the criminal defendant shall conclude as follows:

(a) If, after the navigator has advised the criminal court as described in § III.B.3.a.(3) above, the criminal court does not order the criminal defendant into community outpatient restoration services, the role of the forensic navigator shall end. The forensic navigator may facilitate a coordinated transition as described below if the circumstances warrant such coordination.

(b) If, after the forensic navigator has advised the criminal court as described in § III.B.3.a.(3) above, the criminal court does order the criminal defendant into community outpatient restoration services, the forensic navigator shall:

1) Prior to the conclusion of community outpatient restoration services, facilitate a coordinated transition of the criminal defendant's case to a case manager in the community mental health system.

a) The standards for this coordinated transition shall be established through the use of care

coordination agreements, or some similar agreement. To support these coordinated transitions, the forensic navigator shall attempt to follow up with the client to check whether the meeting between the client and community-based case manager took place, or when the client is an identified high utilizer, the forensic navigator shall attempt to connect the client to high utilizer services.

b) To support this coordinated transition, the forensic navigator will also attempt to check in with the Class Member at least once per month, for up to 60 days, but during this time, the client shall not count towards the navigator's caseload. The navigator will not duplicate the services provided by the community based case manager, but if the navigator believes the coordinated transition is not likely to be successful, the forensic navigator will follow up as appropriate.

2) In cases where a criminal defendant regains competency, is found guilty and is sentenced to serve a term of imprisonment in jail or prison, has criminal

charges dismissed pending a civil commitment hearing, enters or returns to jail due to a revocation of the community outpatient restoration order or the filing of new criminal charges, receives a new or amended order directing inpatient admission for restoration, or declines further services after the court ordered restoration treatment ends, the forensic navigator shall create a summary of treatment provided during community outpatient restoration, including earlier identified diversion options for the individual. Through training and technical assistance, the State will encourage third parties, including jails or prisons where a former Class Member is serving a sentence, to request this summary and related treatment records, as allowed by Wash. Rev. Code § 10.77.210.

(c) In other situations not contemplated by this Agreement, the State shall use it discretion in deciding when to end forensic navigator services, and how to accomplish a coordinated transition.

(6) A forensic navigator caseload will not exceed twenty-five Class Members at any given time.

4. Additional Forensic Bed Capacity

a. The State will open additional forensic beds at Western State Hospital and Eastern State Hospital, pursuant to existing funding authorized in the 2018 capital budget. The projected availability of additional forensic beds is as follows:

(1) Develop two forensic wards at Eastern State Hospital by December 31, 2019 (25 beds each for total of 50 beds)

(2) Convert two Western State Hospital civil geriatric wards to two forensic wards by December 31, 2019 (21 beds each for a total of 42 beds)

b. If the State is unable to open the beds in accordance with the projected schedule above, the State shall provide notice to the Executive Committee that additional time is needed, including the projected delay, and the reasons for the delay. This notice shall allow the State an additional six months of time to open the beds. If the State needs additional time beyond this six-month period, the State may request a further extension of time from the Court.

5. Closure of Maple Lane and Yakima

a. In the event wait times for Class Member admission for inpatient competency services reach a median of 13 days or less for four consecutive months, based on mature data, the State will begin ramp down of the Yakima Competency Restoration Program. The Yakima Competency Restoration Program will close, notwithstanding the median wait times

described in this paragraph, no later than December 31, 2021. Failure to close the Yakima Competency Restoration Program by December 31, 2021 constitutes a material breach of this Agreement.

b. In the event wait times for Class Member admission for inpatient competency services reach a median of 9 days or less for four consecutive months, based on mature data, the State will begin ramp down of the Maple Lane Competency Restoration Program. The Maple Lane Competency Restoration Program will close, notwithstanding the median wait times described in this paragraph, no later than July 1, 2024. Failure to close the Maple Lane Competency Restoration Program by July 1, 2024 constitutes a material breach of this Agreement

C. Crisis Triage and Diversion Supports

1. Crisis Triage and Diversion Capacity:

a. During Phase One of this Agreement, the State will seek funding to increase overall capacity for crisis stabilization units and/or triage facilities by 16 beds in the Spokane Region. These beds will address both urban and rural needs. During Phase One of this Agreement, the State will seek to make funds available for enhancements to similar existing or currently funded facilities in the Southwest and Pierce Regions, subject to the identification of appropriate enhancements by community providers in the Southwest and Pierce Regions.

b. In Phase One, the State will assess the need for Crisis Triage and Stabilization capacity for Phase Two Regions, and any gaps in existing

capacity in Phase One Regions, and will report the same to the General Advisory Committee. The report will identify existing resources in the Phased Regions, and will include a plan to increase capacity in the Phased Regions. The State will seek funding to increase capacity in accordance with this plan and the schedule set out in § IV.A and the implementation plan in § IV.D. This process will repeat for subsequent phases.

2. Residential Supports for Crisis Triage and Diversion

a. The State will seek funding to provide short-term housing vouchers to be deployed throughout Crisis Triage and Stabilization Facilities. These short-term vouchers will be disbursed in accordance with the phased schedule set forth in § IV.A. These short-term vouchers will:

(1) Be disbursed by the Crisis Triage and Stabilization Facilities, based on a clinical assessment of need.

(2) The initial housing voucher will cover up to a maximum of 14 days.

(3) At the discretion of the crisis triage and stabilization provider, the short-term housing voucher may be extended up to an additional 14 days.

b. The State will seek funding to create residential support capacity associated with the community outpatient competency restoration program in each Region. These Residential Supports will be implemented in accordance with the phased schedule set forth in § IV.A. In addition to the short-term vouchers described in § III.C.2.a. above, this residential support capacity must offer housing support options that are designed to target individuals

who are clinically-assessed to need more intensive support and stability immediately following discharge from Crisis Triage and Stabilization Facilities. These Residential Supports are intended to provide an individual with a better chance of remaining stable while awaiting more permanent housing solutions, including but not limited to the HARPS program.

(1) Individuals eligible to use this residential support capacity will meet all of the following criteria:

i. Have had at least one prior contact with the forensic mental system in the past 24 months, or, were brought to a Crisis Triage or Stabilization Facility via arrest diversion under Wash. Rev. Code § 10.31.110 as determined by the crisis triage and stabilization provider;

ii. Need assistance accessing independent living options and would benefit from short term housing assistance beyond the 14-day vouchers;

iii. Are diagnosed with an acute behavioral health disorder and are assessed to need housing support beyond what is offered through the Crisis Triage and Stabilization Facilities or the short term voucher as described in § III.C.2.a;

iv. Are Unstably Housed;

v. Are not currently in the community outpatient competency restoration program, and;

vi. Do not meet Involuntary Treatment Act (Wash. Rev. Code 71.05) commitment criteria.

(2) The State shall seek funding to add 10% more Residential Supports as described in § III.C.2.b to the community outpatient restoration program in each Region, with the 10% capacity to be used for this population. In Phase One, the Parties project that the anticipated capacity at any given time will be five individuals in the Pierce Region, three individuals in the Southwest Region, and two individuals in the Spokane Region.

(3) The HARPS housing support program shall also be made available to individuals within this population, for individuals clinically-assessed to benefit from the HARPS program.

(4) When high utilizers, as defined in § III.C.4.a., are identified through their use of the crisis triage and diversion system, they shall be provided access to the Residential Supports and services as described in § III.C.2.b above.

3. Mobile Crisis and Co-responder Response Programs

a. The State will seek funding for Co-Responder Programs as follows:

(1) The State shall seek funding to provide law enforcement agencies with dedicated qualified mental health professionals to assist officers in field response to promote diversion of people experiencing behavioral health crisis from arrest and incarceration.

(2) The Parties appreciate the leadership and affirmative efforts taken by the Legislature and the WASPC in establishing a mental health field response team program as described in Wash. Rev. Code § 36.28A.440. The Parties wish to build upon programs like these. Therefore, in the 2019-2021 biennium, the State shall seek $3 million in additional funding to expand the mental health field response program administered by WASPC pursuant to HB 2892 for the purpose of implementing or expanding response team programs in law enforcement or behavioral health agencies located in the Phase One Regions. In the event WASPC determines that the sum appropriated exceeds the needs of these three Regions during Phase One, WASPC may disburse some grant funding to support Phase Two implementation, including law enforcement or behavioral health agencies located in King County. The failure to secure $3 million in funding to expand Wash. Rev. Code § 36.28A.440 program grants as set forth in this paragraph shall not be deemed a material breach. § V.A.2 does not apply to this paragraph.

(3) The State's implementation plan, as described in § IV.D., shall describe how the State will support and encourage the integration of these programs into the reforms contemplated by this Agreement.

(4) During Phase One of this Agreement, the State shall perform an assessment of law enforcement agency co-responder mental health staffing needs in order to guide future funding requests.

(5) If, during the implementation of this Agreement, it becomes apparent that WASPC has not been appropriated funds for, or is otherwise unable to administer the Co-Responder Program in a manner consistent with, the phased implementation schedule outlined in § IV.A, the Executive Committee will meet and develop recommendations for future action by the Parties regarding use of co-responder programs.

b. The State will seek funding for Mobile Crisis Response ("MCR") behavioral health services as follows:

(1) The State will seek funding to increase MCR services to respond to people experiencing behavioral health crisis in the community. The State will request a plan for the provision of MCR services in each Phased Region, as required by the phased schedule identified in § IV.A. The State will seek funding for MCR services for each Phased Region. This process will be designed to create flexibility that will allow each Phased Region to tailor this resource to meet their local needs.

(2) Each Phased Region will be asked to propose new MCR service resources within their Region, including proposing the numbers, credentialing, and location of mental health professionals. Each

regional plan will be tailored to meet the urban and rural needs of the individual Region, considering the need for timely response throughout the entire Region.

(3) The regional plans, and the resulting contracts for services, will require that providers make available MCR services on a twenty-four (24) hour, seven (7) day per week basis that may be accessed without full completion of intake evaluations and/or other screening and assessment processes. The State will request a recommendation from WASPC and regional MCR providers as to reasonable response times in each Phased Region. In the regional plans and the resulting contracts for services, the contracting entities will include response time targets, after considering the WASPC and regional MCR providers' recommendations. During Phase One, the State will institute reporting requirements to gather data on response times of MCR services. In subsequent phases, the Parties will use this data to inform future funding requests, and possible contractual requirements to meet response time targets.

c. Co-response teams of law enforcement and mental health professionals will be encouraged to rely on MCRs to accept individuals they have identified as needing mental health services, including people eligible for mental health diversion pursuant to Wash. Rev. Code § 10.31.110.

d. The State will seek funding to cover reasonable administrative costs requested by WASPC to enable it to meet the requirements of § III.C.3.a.2 and§ III.C.3.b.3 above.

4. Intensive Case Management Program for High Utilizers

a. The State is developing a model to identify those most at risk of near-term referral for competency restoration. This identified population shall be referred to as high utilizers. The model is designed to identify persons who are likely to be referred for a competency service within the next six months. The model will use available data and include factors such as:

(1) Prior referrals for competency evaluation;

(2) Prior referrals for competency restoration;

(3) Prior inpatient psychiatric treatment episodes;

(4) Criminal justice system involvement, and;

(5) Homelessness.

b. In the semi-annual reports required under § IV.B.14, the State will report on whether or not the model is effective in identifying persons who are likely to be referred for a competency service in the next six months, and the status of outreach to identified high utilizers. This report shall be reviewed by the Oversight and Advisory Committees outlined in § IV.B., and the Executive Committee may make recommendations regarding adjustment of the model.

c. The services provided to this group shall include:

(1) Whenever an identified high utilizer is referred for competency evaluation, they shall be offered intensive case management services.

(2) The intensive case management program will be developed with a phased implementation as outlined in § IV.A that adheres to the following principles:

(a) The program will not duplicate services offered through health and behavioral health benefits provided under other programs, but will leverage services otherwise available and enhance the services available to the high utilizer.

(b) The program will have the ability to provide case management services for individuals who have significant barriers to accessing behavioral health and community supports.

(c) The initial participation period in the program for each individual will be six months.

d. Program services may be provided through community behavioral health agencies through direct contracts with the State. During the initial participation period, the program shall offer:

(1) Funding for engagement activities for those meeting the high utilizer definition.

(2) Housing supports, using the HARPS model, which includes:

(a) Securing and maintaining housing,

(b) Peer support,

(c) Rent or other housing support subsidies, in the amount of up to $1200 per month for up to six months.

(3) Transportation assistance.

(4) Training on accessing resources and other independent living skills.

(5) Support for accessing healthcare services and other non-medical services.

e. The case management program will include an outreach and engagement activities component for those currently identified as high utilizers, which may occur outside the context of a competency referral.

D. Education and Training

1. Crisis Intervention Training (CIT)

a. The State will seek funding to strengthen and expand behavioral health crisis training for law enforcement and corrections officers. At a minimum:

(1) The State shall seek funding to offer the 40 hour enhanced CIT course, to reach a target of 25% of officers on patrol duty in each law enforcement agency within the Phased Regions. The funding will be modeled after the existing funding model used by CJTC, including the current model for any backfill costs, which assumes a State contribution for 16 hours of backfill costs, out of the 40 hours. The 25% target will be measured as reported by CJTC. This target

may be limited by CJTC's ability to offer the necessary number of courses during each phase, so long as the reason is not strictly the unavailability of funding. If CJTC offers a training different from the 40 hour enhanced CIT course, the Parties may mutually agree that this training may count towards satisfying this target. Whenever possible, the State shall ensure that the agencies serving the areas of highest population density in the Phased Regions meet this training target before other agencies with lower population density.

(2) The State shall seek funding to ensure that corrections officers and 911 dispatchers employed by governmental entities within each Phased Region, except those employed by the Washington State Department of Corrections or Federal entities, receive at least eight hours of CIT provided by CJTC, or by an entity approved by CJTC for this purpose.

(3) In the semi-annual report, the State shall include data from CJTC on completion rates of training, and barriers to local jurisdictions to attending the training.

b. The State and Plaintiffs' counsel will invite WASPC and CJTC to meet and discuss how to better deliver behavioral health crisis training to officers employed by agencies with ten or fewer officers on staff.

c. All training efforts described in this section will be made in accordance with the phased implementation schedule set forth in § IV.A.

2. Technical Assistance

a. The State will seek funding for state or contracted resources to develop and provide educational and technical assistance to jails. These efforts will be made in accordance with the phased implementation schedule set forth in § IV.A. The State will include the involvement of peer support specialists in providing this educational and technical assistance.

b. The State will work with Washington's designated Protection and Advocacy System (as designated in Wash. Rev. Code § 71A.10.080), law enforcement entities and associations, and peer support specialists to develop guidance on mutually agreeable best practices for diversion and stabilization of Class Members and potential Class Members in jail during Phase One of this Agreement. To develop this guidance, initial best practices will be proposed by the State, and reviewed and approved by Washington's designated Protection and Advocacy System.

(1) These best practices will at minimum address pre and post-booking diversion, identification of need and access to treatment, guidelines for administration of involuntary medication, continuity of care, use of segregation, and release planning.

(2) In delivering education and technical assistance to jails, the State will develop a plan to proactively engage all jails in the State of Washington, in accordance with the phased implementation schedule set forth in § IV.A. This shall involve offering on-site

trainings to jails and a standard method for jails to seek technical assistance and receive timely responses.

c. The State may leverage the existing training and technical assistance work of law enforcement entities and associations, as appropriate.

E. Workforce Development

1. Enhanced Peer Support Specialists

a. The State will develop an enhanced Peer Support Program for individuals that includes specialized training in criminal justice. This program will include individuals participating in the core curriculum, and then participating in the specialized enhanced program for criminal justice. The State will provide ongoing training for enhanced peer support specialists and targeted training and support to assist with establishing these positions in programs purchased by the State.

b. The State will encourage the use of this enhanced Peer Support Program by integrating the enhanced peer role into the systems developed throughout this Agreement. The Department recognizes the challenges in employing peers with criminal justice lived experience, but is supportive when the nature of that past experience makes them an appropriate candidate for working with individuals with mental illness. This includes the use of enhanced peer support specialists in the intensive case management program (§ III.C.4.), the community outpatient competency restoration program (§ III.B.2), and the HARPS program (§ III.C.4.d.(2)). The State

will explore whether it is feasible to obtain any federal funding for enhanced peer support specialists, to encourage the wider use of this role.

2. Workforce Development; Degree and Certification Programs

a. The State will seek funding to hire, or contract with, workforce development specialists. The positions will be assigned to specific workforce functional areas to include:

(1) Community, including crisis response, homeless, in-home, residential, and clinic based services,

(2) In-patient, including residential treatment facilities, private hospitals, and state hospitals,

(3) Law enforcement and corrections, including jails and prisons.

b. Workforce development specialists may conduct or manage the following duties:

(1) Participate in workforce development workgroups with stakeholders such as state hospitals, community healthcare organizations, law enforcement, and jails;

(2) Conduct training needs surveys/gaps analysis;

(3) Assist in the development of a master training plan(s);

(4) Develop and coordinate training including standardized training manuals and guidelines;

(5) Collaborate with other community-based, organizational workforce development staff;

(6) Conduct training program(s) evaluations; and

(7) Other duties as assigned at the sole and exclusive discretion of the State.

c. The functions and duties outlined in this subsection may be implemented with direct hiring, contracting, or any combination thereof.

d. The workforce development specialists may collaborate with other workforce development efforts (for example, the workforce development efforts of the Economic Services Administration), as appropriate.

e. The State will produce a report annually describing the activities of the workforce development specialists outlined in this subsection, and making recommendations about the specific workforce development steps necessary to ensure success of this Agreement. The State will distribute this report to key and interested legislators. This report will also be distributed to the Executive Committee, and that Committee shall consider whether to adopt those recommendations for possible inclusion in future phases of the Agreement. The annual schedule for this report shall be set as to align with the phased approach of this Agreement, and to allow for consideration of the Executive Committee's recommendations in the established state budget process.

f. The State will assess the need and target areas for training programs, certification programs, and possible degree programs. The State may collaborate with colleges, including community and technical colleges, and universities to accomplish this task, but shall also have discretion to

accomplish this task through other means. This assessment shall include, but not be limited to, the following elements:

(1) Existing training, certifications, and degree programs in Washington for relevant professions; for example, nursing, psychiatry, psychology, counseling, law enforcement, or other professions determined at the discretion of the State.

(2) Programs for relevant professions in other states.

(3) Statewide staffing needs for all programs covered by this Agreement for a period of the subsequent ten years.

g. Upon completion of the assessment in § III.E.2.f. above, the State shall produce a report regarding that assessment that may be shared with appropriate committees of the Legislature. The report will include:

(1) High, medium, and low cost recommendations, and

(2) Long, medium, and short term recommendations for future action regarding training and certification programs.

h. While the State shall pursue the elements outlined this subsection in good faith, the State is not required to establish new degree or certification programs pursuant to this Agreement.

i. In addition to the requirements outlined in § III.E.2.a-h. above, the State will make all reasonable efforts to fill the positions required to timely implement all phases of this Agreement, as outlined in § IV.A. Reasonable efforts may include the use of incentives.

IV. PHASING, OVERSIGHT, AND IMPLEMENTATION

A. Phased Implementation

1. The Parties agree that the implementation of the programs and services described in this Agreement shall occur in phases. In each phase, the State will focus its efforts toward specifically identified and agreed upon Regions for each of the elements outlined in this Agreement. The Parties have agreed to at least three phases for purposes of implementation, which will run parallel to the Legislative biennia beginning with the 2019-2021 biennium. The Parties agree to the phased roll out to specific Regions as follows:

   a. Phase One: the State will focus implementation efforts in the Southwest, Spokane and Pierce Regions. This phase will run parallel with the 2019-2021 biennium.

   b. Phase Two: the State will focus implementation efforts in the King Region. This phase will run parallel with the 2021-2023 biennium.

   c. Phase Three: the Parties agree there will be a review of the progress during the 2021-2023 biennium of the Phase One and Two Regions. The Executive Committee will then make a decision as to whether the State should a) expand or modify the programs in Phases One and Two for purposes of Phase Three; or b) if Phase One and/or Two have been successful, identify and focus efforts in new high-referral Regions for purposes of Phase Three; or c) some combination of the above.

   d. Following Phase Three: The Executive Committee will determine as to whether the State should expand or modify programs in additional Regions

through the phasing process. This process shall continue until the termination of this Agreement.

2. In order to begin implementation in each of the Phased Regions as quickly as possible, upon approval of the Agreement the Parties agree to immediately seek approval from the Court to use contempt fines to staff project managers for the identified Regions in Phase One and Two, as well as a single administrative support position to support these project managers. The Parties shall also seek approval from the Court to use contempt fines to provide the funding necessary to begin development of components of this Agreement, which may include housing supports, provision of case management, high utilizer supports, and outreach and communications regarding implementation of the Agreement, as agreed upon by Parties. The use of contempt fines for this purpose is not meant to supplant or otherwise modify the State's obligations under this Agreement to seek funding for and implement programs and changes described in this Agreement, but instead to ensure that the implementation of Phase One may begin as quickly as possible and that elements of the Agreement have the best chance of overcoming unforeseen funding and implementation challenges. Disbursement of the fines will occur upon Final Approval of this Agreement by the Court.

B. Oversight and Advisory Structure

1. Defendants will use a sustainable oversight structure to inform and provide supervision for high-level policy-making, planning, and decision-making on targeted issues, and for the implementation of this Agreement. A description of this structure is set forth below.

2. The Parties agree to the appointment of a General Advisory Committee to be comprised of the Court Monitor, DSHS, HCA, Governor's office, OFMHS, and Plaintiffs' counsel, and the Parties agree to invite several representatives from local partners to join the General Advisory Committee, to include, but not limited to:

   a. A Judge Representative

   b. A Prosecutor Representative

   c. A Defender Representative

   d. Behavioral health treatment program Representative

   e. A Housing Provider Representative

   f. A Consumers and families Representative

   g. A Law Enforcement Representative and/or a CJTC Representative

   h. A Jail Representative

   i. Plaintiffs' Counsel Representative(s)

   j. Court Monitor Team Representative

3. The General Advisory Committee's main purpose shall be to provide local community feedback, to flag issues, to review data and outcomes, and to make recommendations at specific decision points during the implementation of this Agreement. The General Advisory Committee will be a consulting body to the Executive Committee, but will not be tasked with decision-making or making contact with the Court. Any recommendation of the General Advisory Committee shall be reviewed and considered by the Executive Committee. The General Advisory Committee shall be specifically empowered to make recommendations to the Executive Committee on the following decisions:

a. The nature of the Phase Three implementation as outlined in this Agreement, as contemplated in § IV.A.1.c. This includes whether Phase Three should proceed to expand into Regions not included in Phases One and Two, or whether Phase Three should focus on the expansion or modification of services in the Regions included in Phases One and Two, or some combination thereof.

b. Identification of areas or issues of concern in the implementation of the Agreement based on stakeholder feedback.

c. Reviewing implementation reports and implementation data, and based on that review, making recommendations for changes or modifications based on areas or issues of concern that have been identified in implementation.

4. There will also be a smaller Executive Committee that will be tasked with making decisions and ultimate recommendations to the Court. This Committee shall be composed of representatives from DSHS, OFMHS, HCA and Plaintiffs' counsel. The Executive Committee may elect to consult with others outside of the Executive Committee by agreement.

5. The Executive Committee shall be specifically empowered to make decisions regarding items 5.a., 5.c., and 5.d. below. The Executive Committee will make agreed upon recommendations to the Court regarding 5.b. below.

a. The nature of the Phase Three implementation as outlined in this Agreement, as contemplated in § IV.A.1.c. This includes whether Phase Three should proceed to expand into Regions not included in Phases One and Two, or whether Phase Three should instead be focused on the

expansion or modification of services in the Regions included in Phases One and Two.

b. Changes or modifications based on areas or issues of concern that have been identified in implementation.

c. Overseeing the commission of the semi-annual implementation reports and data collection. The Executive Committee may elect to expand or modify the elements for data collection beyond those expressly identified in this Agreement.

d. Whether the State should expand or modify programs in additional Regions through the phasing process beyond Phase Three. This process shall continue until the termination of this Agreement.

6. If the Executive Committee is unable to reach consensus on a particular issue, they may engage the use of an agreed upon neutral to resolve the issue. Issues not resolved through a neutral may be presented to the Court for consideration. This process is distinct from the process described regarding material breach below in § IV.C.

7. Each identified entity on the Executive Committee will be solely responsible for choosing its representative(s) to the Executive Committee.

8. Defendants are empowered to (1) provide guidance to state agencies and the Parties about implementation and (2) make decisions regarding the implementation of the Agreement not otherwise identified for review by the General Advisory Committee or Executive Committee.

9. The local partner representatives on the General Advisory Committee will be appointed as determined by the Executive Committee. The Executive Committee will also determine whether to make fixed term appointments or to rotate invitations.

10. The General Advisory Committee will meet quarterly. Twice per year the quarterly meeting will be focused on gathering input from stakeholders and community partners. Twice per year the quarterly meeting will be focused on reviewing the semi-annual report and data. This does not limit what may be covered in any quarterly meeting, but simply gives guidance on each meeting's focus.

    a. General Advisory Committee meetings shall be convened in person and via WebEx or a similar remote participation option.

11. The Executive Committee will meet quarterly in alignment with the General Advisory Committee. The Executive Committee may also meet on an as needed basis, and may be convened by the Court Monitor or by majority agreement of the Executive Committee.

    a. Executive Committee meetings shall be convened in person, via WebEx, or via a similar remote participation option.

12. The Parties may also meet with stakeholders independently on an as needed basis.

13. The General Advisory Committee will be supported by OFMHS, the Trueblood project manager, and Research and Data Analysis within DSHS.

    a. The Trueblood project manager will create a project plan, manage the General Advisory Committee and its meetings, and manage and schedule the Executive Committee meetings.

b. The regional project managers will support implementation of this Agreement through efforts such as support through technical assistance, outreach, trainings, summits, and education to local communities. These efforts shall be made in accordance with the phased implementation schedule in § IV.A. This may include incorporation of and cooperation with any work being done in support of the Trueblood Diversion Programs.

c. The State will support data collection and analysis. Data points for analysis shall be included in the implementation plan described below in § IV.D. Data points will be reviewed and refined over time based on the recommendations of the Executive Committee.

d. The raw data gathered pursuant to this Agreement shall be made publically available to the extent permitted by law.

14. The State shall produce a monitoring report semi-annually. This report shall include, at a minimum:

a. Data reporting as described throughout this Agreement

b. Data analysis of the various data elements

c. Updates on the status of the phase programs, based on each of the elements outlined in the Agreement

d. Areas of concern or struggle in implementation

e. Areas of positive impacts or programming in implementation

f. Recommendations for addressing areas of concern or struggle

C. Dispute Resolution

1. Where one Party believes that the other Party is in material breach of the Agreement, the Parties shall engage the Executive Committee in a good faith effort to resolve the allegation of material breach.

2. This process shall be initiated by one Party sending written notice to the other Party that they believe the Party has materially breached the Agreement. The written notice shall specify the section of the Agreement that the Party believes has been materially breached, and explain in detail how that section has been materially breached, and specify the facts and information that support the conclusion.

3. Within ten days, the responding Party shall provide a written response. This written response shall respond to each allegation of material breach, and explain in detail the responding Party's position on the alleged breach, and specify the facts and information that support that position.

4. Upon receipt of the written response, the Parties shall schedule a time to meet and confer within three business days in order to determine if the written response resolves the allegation of material breach.

5. If the allegation of material breach is not resolved by the written exchange and the subsequent meet and confer, the Parties shall schedule a mediation session with an agreed upon neutral. The mediation session must be held within 14 days, unless this timeline is modified by an agreement of the Parties, or if the Parties are unable to secure the services of an agreed neutral within that timeframe.

6. If, after completion of the mediation, the Parties have not resolved the allegation of material breach, the Party alleging a breach may seek relief from the Court.

7. At each of the identified steps regarding material breach, the opportunity to cure any alleged breach shall be considered.

D. Implementation Plan and Process Commitments

1. Defendants will develop an implementation plan beginning on the date the Court gives its Preliminary Approval of the Agreement. A preliminary plan to lay the foundation for implementation and overall planning will be completed within 90 days after the Court gives its Final Approval of this Agreement. A final implementation plan, which accounts for any funding or legislative changes accomplished by the Legislature in the 2019 session will be completed within 60 days from the end of the 2019 Legislative session. Certain tasks related to the implementation within each Region may be reserved to the project management plans to be implemented by each regional project manager.

2. Defendants will develop the preliminary and final implementation plans using input from Plaintiffs' Counsel and the Court Monitor. The implementation plan will:

   a. Identify and sequence tasks necessary to fulfill the commitments and ultimately achieve the exit criteria;

   b. Consider estimates produced by the TriWest Bed Flow Analysis, if available;

   c. Set clear and accountable timelines through the termination of this Agreement;

   d. Assign responsibility for achieving each task to the appropriate agency or entity;

e. Describe how reporting processes shall be established to report on the data elements specified under this Agreement, as well as the development of the ongoing implementation reports;

f. Develop collaboration models for regional project managers and regional implementations to problem-solve challenges encountered; and

g. Describe the communication and outreach activities to inform the community, stakeholders, and policy makers about the access to services and processes described in this Agreement, including development of documentation that provides sufficient information to explain the purpose of and use of services established by this Agreement, and encourage use of those services.

3. Defendants will submit to the Court for approval the preliminary and final implementation plans, which shall describe how the Defendants will fulfill the commitments of this Agreement.

4. Defendants will comply with the implementation plan that is approved by the Court, and any amendments, pursuant to this Agreement.

5. The Parties will repeat this process for creating a final implantation plan for each future Phased Region during subsequent phases of the Agreement.

V. COMPLIANCE AND TERMINATION

A. Contempt Mitigation and Substantial Compliance

1. Assuming the Court's Final Approval of this Agreement, contempt fines will be suspended beginning December 1, 2018. The fines will continue to be calculated,

but no payment on those fines shall be made. The suspended contempt fines shall be calculated using the current rates under the existing Court orders.

a. At the end of each phase, if the State is in substantial compliance, all suspended fines will be waived.

2. If the funding made available for this Agreement is inadequate to implement the identified elements during any phase, this will constitute material breach. In considering whether funding is inadequate, funds available from third party sources shall be considered, and supplemental budget requests made during any phase shall also be considered. No allegation of material breach based on inadequate funding may be made until after the completion of the 2019 Legislative Session.

3. Given the scope and breadth of this Agreement, the Parties agree that a material breach of a particular element does not necessarily constitute material breach of the entire Agreement, unless otherwise specified herein. For purposes of this Agreement, and unless otherwise specified herein, “material breach” is defined as a failure to be in "substantial compliance" with the Agreement, and substantial compliance means something less than strict and literal compliance with every provision of this Agreement. Rather, deviations from the terms of the Agreement may occur, provided any such deviations are unintentional and minor, so as not to substantially defeat the object which the Parties intend to accomplish, or to impair the structure of the Agreement as a whole. This Agreement is a product of extensive work with stakeholders and input from experts in their fields. It is an informed and thoughtful estimation of the best plan to resolve the ongoing constitutional crisis before the Court. However, the Parties recognize and acknowledge the need for

flexibility in developing the comprehensive changes proposed, and that the purpose and intent of each element could be achieved by alternative methods. The Parties further agree to give due consideration to the totality of any decisions or actions taken by the Legislature in implementing this Agreement to determine if the spirit of the Agreement, if not the letter, has been upheld before pursuing an allegation of material breach for any element that does not specifically identify what constitutes material breach.

4. Plaintiffs agree to engage in an ordered process in order to raise any allegation of material breach under this Agreement. The process is more fully described in § II.B.6 of the Oversight and Advisory Structure section, but at a minimum this will include (1) bringing the allegation to the attention of the Executive Committee for possible resolution, (2) engaging in a mediation session with an agreed upon neutral, and then (3) if the issue cannot be resolved, by bringing a motion in Court to seek payment of suspended fines, restart contempt fines, increase future contempt fines, or any other appropriate relief.

   a. If suspended fines are ordered to be paid by the Court, a reasonable schedule shall be set by the Court for payment of the suspended amount on an installment basis. The first installment payment of the suspended amount shall be made at the earliest opportunity after the Legislature has an opportunity to make an appropriation for this purpose.

   b. In assessing suspended contempt fines due to a finding of material breach, the Court may look to the magnitude and impact of any such breach to determine if a lesser or more proportionate sanction is appropriate.

B. Termination

1. This Agreement terminates when Defendants demonstrate substantial compliance with the following requirements:

   a. Completed evaluations for Class Members ordered to receive in-jail evaluations are filed with local criminal courts within the shorter of a) 14 days of the in-jail evaluation order being received by Defendants, or b) 21 days of the criminal court ordering the in-jail evaluation;

   b. Admission for inpatient evaluation services for Class Members ordered to receive inpatient evaluations within the shorter of a) 7 days of the inpatient evaluation order being received by Defendants or b) 14 days of the criminal court ordering the inpatient evaluation;

   c. Admission for inpatient restoration services for Class Members ordered to receive inpatient restoration within the shorter of a) 7 days of the inpatient restoration order being received by Defendants or b) 14 days of the criminal court ordering the inpatient restoration;

   d. Substantial compliance with § V.B.1.a-V.B.1.c has been achieved for nine consecutive months, and evidence does not establish that the State will be unable to continue compliance with the Court's injunction. Alternatively, the State has achieved substantial compliance in 14 of 16 months, and evidence can establish that the two months where substantial compliance was not achieved are outliers. If inpatient evaluations have such a low volume of referrals in any given month as to make substantial compliance with that category hinge on a small number of cases, due consideration will

be given to the totality of compliance rather than looking only to the rate of compliance.

(1) However, after six consecutive months of substantial compliance in any category, § V.B.1.a-V.B.1.c above, the State may request that certain obligations under this Agreement be suspended pending the full nine months of compliance.

VI. ADDITIONAL PROVISIONS

A. Contempt

Nothing in this Agreement shall be deemed to limit the Court's powers of contempt or any other power possessed by the Court.

B. Individual Rights

Nothing in this Agreement shall be deemed to limit the ability of any individual Class Member to obtain individual relief of any kind to which they would otherwise be entitled under state or federal law other than for the claims for systemic injunctive relief adjudicated by this action.

C. Protection and Advocacy Acts

Nothing in this Agreement shall be deemed to limit the ability of Disability Rights Washington (DRW) to fulfill its federal mandates pursuant to the Protection and Advocacy for Individuals with Mental Illness (PAIMI) Act, 42 U.S.C. § 10801, *et seq*., and the regulations promulgated thereto, 42 C.F.R. § 51 *et seq*., the Developmental Disabilities Assistance and Bill of Rights (DD) Act, 42 U.S.C. §15041, *et seq*., and the regulations promulgated thereto, 45 C.F.R. § 1386 *et seq*., and the Protection and Advocacy of Individual Rights (PAIR) Act, 29 U.S.C. § 794e.

D. Terms of Agreement

This Agreement contains all the terms and conditions agreed upon by the Parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the Parties hereto.

The Parties have participated, and had an equal opportunity to participate, in the drafting and approval of drafting of this Agreement. No ambiguity shall be construed against any Party based upon a claim that the Party drafted the ambiguous language.

E. Authority to Bind

Signors of this Agreement represent and warrant they have full power and authority to enter into this Agreement and to carry out all actions required of them to the extent allowed by law. Each of the signors warrants that he/she has fully read and agrees to all the terms and conditions contained herein.

F. Modifications

Distinct from the process set forth in the Oversight and Advisory structure section, § II.B.5, this Agreement may be amended by mutual agreement of the Parties and approval of the Court. In order to be binding, such amendments must be in writing, signed by persons authorized to bind each of the Parties, and approved by the Court. The Parties further agree to work in good faith to obtain Court approval of necessary amendments or modifications.

G. Waiver

The provisions of this Agreement may be waived only by an instrument in writing executed by the waiving Party and approved by the Court. The waiver by any Party of any breach of this Agreement shall not be deemed or be construed as a waiver of any other breach, whether prior, subsequent or contemporaneous of this Agreement.

H. Severability

The provisions of this Agreement are severable. If any court holds any provision of this Agreement invalid that invalidity shall not affect the other provisions of this Agreement.

I. Successors

This Agreement shall inure to the benefit of and be binding upon the legal representatives and any successor(s) of Plaintiffs and Defendants.

J. Non-Waiver of Arguments and Issues

This Agreement represents a compromise of the issues addressed herein. Neither party waives the right to assert legal or factual arguments in any future dispute arising during the term of this Agreement, or in the event that the Agreement ends, terminates, or becomes null and void, for any reason.

K. Effect of Court Denying Motion to Approve

If, for any reason, the Court does not ultimately approve this Agreement as a fair, reasonable, and adequate settlement of the Trueblood litigation as between the Plaintiffs and Defendants, this Agreement shall be null and void.

L. Execution

This Agreement may be executed in counterparts, each of which will be deemed to be an original and all of which taken together shall constitute a single instrument. This Agreement may be executed by signature via facsimile transmission or electronic mail which shall be deemed the same as an original signature.

COUNSEL FOR PLAINTIFFS

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By: _____ Dated: 8/16/2018
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FOR THE DEFENDANTS:

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