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

3 **Agreement Resolving Plaintiffs' Pending Motions and Establishing a Settlement**
4 **Negotiation Process**

5 **1. Introduction**

6 In consideration of the Parties' commitment to uphold this Court's Orders to provide timely
7 competency evaluations and restoration services, the Parties seek approval of a framework to settle
8 Plaintiffs' claims in this case. This proposal addresses (i) the most immediate opportunities to
9 secure expedited relief for Plaintiffs; (ii) resolution of Plaintiffs' outstanding motions; and (iii) a
10 process to negotiate and hopefully develop a subsequent comprehensive settlement agreement to
11 reform the current forensic mental health care system. Parties appreciate that reforming the
12 forensic mental health system necessarily requires consideration of civil inpatient and community
13 mental health services. Therefore, the process for negotiating reforms will include examination of
14 these aspects of the state's mental health care system. If appropriate, reforms of the broader mental
15 health care system may be included or referenced in the subsequent agreement for which the
16 Parties will ultimately seek Court approval. We appreciate the breadth of this undertaking and the
17 challenges that may present themselves along the way. Plaintiffs recognize Defendants' failure to
18 provide timely competency evaluation and restoration services in violation of the civil rights of
19 class members. Thus, this Agreement contains measurable deadlines that, if missed without good
20 cause, can trigger meaningful consequences. Moreover, the Parties understand that should this
21 process fail to yield measurable results in the timeframe contemplated by this settlement, Plaintiffs
22 anticipate moving the Court for further and appropriate remedies.
23

1 **2. Immediate Actions: Use of Building 27 Instead of Expanding the Yakima**
2 **Competency Restoration Center**

- 3 a. Parties agree that the Yakima Competency Restoration Center (hereinafter “YCRC”) will not
4 be expanded. Instead, subject to approval of all necessary permits and licensing requirements,
5 space currently leased for the provision of evaluation and treatment services through December
6 2017 in one half of Building 27 (hereinafter “Building 27 space”) on the grounds of Western
7 State Hospital will be used to serve class members.
- 8 b. Defendants will use funds intended for the YCRC expansion for the operation of the Building
9 27 space, contingent on approval of all necessary permits and licensing requirements and on
10 the Court authorizing contempt fines to cover necessary construction costs. If the Court does
11 not authorize contempt fines to be used for this purpose, Defendants will not be obligated under
12 this Agreement to operate services for class members in Building 27, will not be restricted
13 under this Agreement from pursuing expansion at YCRC, and Parties will meet to consider
14 whether an alternative agreement can be reached.
- 15 c. The Parties agree to utilize the renovation process developed by the Court Monitor in
16 coordination with AustinCina architectural firm (hereinafter the “Monitor’s Plan”). *See*
17 Building 27 space Timeline provided by Court Monitor, and attached as Attachment A. In
18 order to open beds in the Building 27 space in accordance with the Monitor’s Plan before the
19 conclusion of the Systems Improvement Agreement at Western State Hospital, the Parties
20 agree that Building 27 will be licensed and operated as a Residential Treatment Facility (the
21 same licensure and model employed at YCRC and Maple Lane). However, instead of
22 contracting to a third party for the provider services, the Department will operate and manage
23 the Building 27 Residential Treatment Facility (hereinafter “RTF”). The Department agrees
to hire the staff necessary to be ready to operate Building 27 as an RTF. Nothing in this

1 Agreement prevents or limits the authority of the Department from contracting, in accordance
2 with statutory and collective bargaining requirements, for services needed to operate Building
3 27 as an RTF.

4 d. The Parties request that the Court distribute the funds necessary to complete construction
5 required under the Monitor's Plan from the contempt funds held by the Court for the benefit
6 of class members. Funds shall be distributed directly to the Court Monitor, Project Manager,
7 or Contractor, or as otherwise directed by the Court Monitor.

8 e. In order to allow construction on Building 27 as set forth by the Monitor's Plan, the Department
9 agrees to execute a lease of the Building 27 space to the chosen Contractor and/or the entity
10 chosen by the Court Monitor as the Project Manager overseeing the construction project. The
11 lease will terminate upon acceptance of the Building 27 space by the State of Washington as
12 described below. In order to ensure that the State of Washington is adequately protected from
13 liability exposure, receives a building that is safe and usable for patients, and ensure that
14 renovations to the building meet all relevant codes and regulations, as well as to ensure that
15 the construction process meets all industry standards, the Parties agree that the renovation and
16 construction process shall be performed in accordance with the following conditions:

17 i) The State of Washington has the authority to approve the scope of work, approve all
18 phases of design, and may participate in all design meetings.

19 ii) The Contractor will warrant that all work conforms to the requirements of the Contract
20 Documents and is free of any defect in equipment, material, or design furnished, or
21 workmanship performed by Contractor for a period of one year. All warranties are to
22 be executed, in writing, for the benefit of the State of Washington.

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1 iii) The building permit and final occupancy permit will be the responsibility of the
2 Contractor or Project Manager. Contractor or Project Manager shall obtain permits,
3 certificates, and approvals from all applicable regulatory agencies and authorities
4 having jurisdiction (AHJ), to include the City of Lakewood, Department of Health
5 (DOH), West Pierce Fire Department, and others as required by law. Permitting and
6 licensing for the treatment program will be the responsibility of the Department.

7 iv) Contractor and/or Project Manager shall defend, indemnify, and hold the State of
8 Washington and Architect/Engineer harmless from and against all claims, demands,
9 losses, damages, or costs including but not limited to damages arising out of bodily
10 injury or death to persons and damage to property, caused by or resulting from the
11 negligence of the Contractor or subcontractors.

12 v) The Project Manager and/or Contractor shall coordinate utility outages and any
13 disruptions to WSH patients with a minimum of 1-week of notice to the State of
14 Washington. The Project Manager and/or Contractor must remain aware that WSH
15 patients are served in the other side of Building 27 and outages must not jeopardize
16 patient care or safety.

17 vi) The Project Manager and/or Contractor shall protect from damage all existing
18 structures, equipment, improvements, utilities, and vegetation at or near the project site.

19 vii) The Project Manager and/or Contractor shall comply with all Western State Hospital
20 safety and security procedures, including mandatory safety and security trainings and
21 background and badging requirements.

22 viii) Construction shall be limited to between the hours of 7:00 a.m. and 7:00 p.m.
23 weekdays and between 9:00 a.m. and 6:00 p.m. on weekends.

1 ix) The State of Washington may participate in all construction meetings and shall have
2 approval authority for the acceptance process at the end of the project, which includes
3 Substantial Completion and Final Acceptance.

4 x) The Contractor shall carry sufficient insurance to cover all liability, shall be licensed
5 and bonded, and shall have the State of Washington added as a named additional
6 insured.

7 xi) The State of Washington may seek replacement of the Project Manager for cause, in
8 consultation with Plaintiffs and the Court Monitor.

9 **3. Resolution of Outstanding Motions**

10 This Agreement resolves Plaintiffs' motion regarding the expansion of the YCRC facility and any
11 related contempt fines; and addresses the enhanced contempt fines sought in Plaintiffs' Third
12 Motion for Contempt.

13 **A. Contempt Fines Resulting from Delay in Operation of Building 27 Space**

14 a. Parties agree to adjust contempt fines in order to account for the shift away from the YCRC
15 expansion to the Building 27 space, in the event that this decision leads to a delay in the
16 opening of additional bed capacity.

17 b. Because the Parties have agreed to shift state operating funds away from the expansion of
18 YCRC, the Parties request that the Court modify the contempt fines to account for any
19 associated loss of projected bed capacity. This modification is intended to operate only during
20 the time periods where the Department's expanded bed capacity would have been otherwise
21 available to serve class members, but because of this Agreement, that bed capacity will not be
22 available.

1 c. The two time periods impacted by this agreed change include: (1) beginning from the time
2 when the YCRC expansion would have opened, and ending when the newly agreed-to bed
3 capacity at the Building 27 space opens, and (2) beginning when the necessary renovations to
4 the Building 27 space would have been completed, had funding been appropriated in a biennial
5 capital budget during the 2017 legislative session such that additional bed capacity would have
6 been added to the previously expanded YCRC capacity.

7 1. The first period shall begin six months from the date the Department delayed
8 expansion to begin negotiation of this Agreement with Plaintiffs. This delay began on
9 September 21, 2017, and therefore the first period shall begin on March 21, 2018. The
10 period shall end 65 days after the Contractor has made at least 24 beds at Building 27
11 available for use, regardless of Defendants' staffing or patient assignment decisions. If 24
12 beds are made available at Building 27 before the 6-month period expires, there shall be
13 no modification to the contempt fines for the first period.

14 2. The second period shall begin on February 1, 2019, the date on which the Building
15 27 space bed capacity would have been added to expanded YCRC capacity, only if the
16 legislature provides all of the funds requested for both capital improvements and operations
17 that would have been used for Building 27 and all of the other beds in the earlier proposal
18 by June 30, 2018, or by the end of the 2018 legislative session, whichever is later. *See* Dkt.
19 # 414-8. Under the circumstances that funds are appropriated for capital improvements for
20 Building 27, but those improvements have instead been paid by the Court, the Department
21 shall request transfer of those funds to an existing Department capital project with the
22 purpose of serving class members' needs, other than YCRC or Maple Lane. Any such
23 transfer would be subject to required approval by the Office of Financial Management and

1 legislative review. If such a transfer cannot be accomplished, the Department shall allow
2 the funds to lapse, but shall request appropriation of those funds in a future budget for the
3 purpose of creating additional competency services capacity. *See* Dkt. # 414-8.

4 3. Mirroring the structure of the contempt fines, the proposed modification shall be
5 calculated on a per bed, per day basis. Contempt fines shall be reduced during the two
6 periods specified above by calculating the beds that would have otherwise been available,
7 and reducing contempt fines by \$1000 per bed, per day.

8 4. For the first period, contempt fines shall be reduced by a maximum of 24 beds per
9 day, until the period ends, or until replacement bed capacity opens at the Building 27 space.

10 5. For the second period, contempt fines shall be reduced by a maximum of 24 beds
11 per day until further modification of contempt fines is requested by the Parties, or until
12 further order of the Court.

13 **B. Enhanced Contempt Fines Motion Withdrawn**

14 a. Plaintiff's Third Motion for Contempt sought increased fines from Defendants for each person
15 who did not receive timely in-hospital competency services. Plaintiffs sought to increase the
16 amounts from \$500 to \$1,000 per day per person for each of the first six days of delay; from
17 \$1,000 to \$2,000 for 7-13 days of delay; \$3,000 for days 14-20; and \$4,000 for every day of
18 delay from 21 days on ("increased rate".) Defendants contested those increases.

19 b. Through the term of this Agreement, Defendants agree that they will continue to pay in
20 accordance with the existing court orders, and as modified by this Agreement. If Parties cannot
21 reach the subsequent agreement contemplated herein, or if the Court finds that Defendants
22 have not followed the terms of this Agreement, Plaintiffs may renew the Third Motion for
23 Contempt and set an expedited hearing or noting date in consultation with the Court. The

1 briefing, argument and evidence already provided will be used should this motion be renewed,
2 but each party will have the option to provide a six page update two court days prior to the
3 hearing or noting date.

4 c. This Agreement has no effect on contempt fines relating to the failure to provide timely in-jail
5 competency evaluations, which will continue as directed by the Court's order.

6 d. Nothing in this Agreement relieves Defendants of their ongoing duty to comply with this
7 Court's orders.

8 **4. Process for Pursuing a Comprehensive Settlement**

9 a. At the end of the negotiation period described herein, the Parties' goal is to provide this Court
10 with a proposed settlement that, if fully implemented, will resolve the issues in this case and
11 bring Defendants into substantial compliance with this Court's orders. Given the decades of
12 increasing referrals for competency and restoration services, the persistent difficulty in hiring
13 certain critical staff, and other factors that have long contributed to this problem, the Parties
14 know this is a bold statement. We hope to craft a similarly bold solution that details proposed
15 investments in services to divert individuals with behavioral health disorders from the criminal
16 justice system. For example, Parties intend to explore opportunities to provide access to
17 appropriate behavioral health services which are designed to dramatically reduce the number
18 of individuals with mental illness entering the criminal justice system. Parties' stated goals are
19 to articulate a vision for significant changes to achieve timely competency evaluation and
20 restoration services, to collaborate on a plan to implement those changes, and to discuss how
21 to prepare relevant funding requests for additional resources necessary to fund these changes.
22 Parties are committed to coming together to discuss, negotiate, and design solutions that will
23 truly fix this problem.

- 1 b. Should negotiations be successful, designing such a system will take significant time and
2 resources, and it will take years of sustained and focused efforts by the Parties and relevant
3 stakeholders¹ to fully implement the plan. During the negotiation and planning process, the
4 Parties will provide the Court and Court Monitor regular updates as appropriate within the
5 boundaries of settlement discussions and will seek input on the options considered during the
6 negotiating and planning phase. If a plan is substantially developed by agreement of the Parties,
7 it will be presented to the Court so that a fairness hearing may be held. If the Court finds the
8 settlement substantially addresses the needs of the class in a fair, reasonable, and adequate
9 manner, the next stage will be to pursue funding by the Legislature during the 2019 legislative
10 session. Parties acknowledge that appropriating adequate funding to substantially implement a
11 subsequent settlement agreement is outside of the Parties' authority to direct or control, and
12 that adequate funding may not be appropriated in a single biennium. Parties believe that this
13 refocusing of efforts from litigation of piecemeal issues to collaborative efforts over a sustained
14 period of time is the best way to reach compliance and provide class members with competency
15 evaluation and restoration services within constitutional timeframes.
- 16 c. Parties agree to use best efforts in this process, to negotiate in good faith, and if successful, to
17 file with the Court a subsequent agreement designed to achieve substantial compliance with
18 this Court's Orders.
- 19 d. Parties anticipate that if a subsequent agreement is achieved, it will have a significant impact
20 on the state's budget. Parties' proposed timeline for negotiating a subsequent agreement and
21 securing approval of that agreement from this Court is designed with this fiscal reality in mind.
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¹ Specific stakeholders are described and listed in Section 5(e).
SETTLEMENT AGREEMENT RE YCDC AND 3RD
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1 In order to negotiate the terms of the potential subsequent agreement and secure an approval
2 Order from this Court prior to the submission of the governor's budget for the 2019-2021
3 biennium the parties agree as follows:

- 4 1. Parties will endeavor to accomplish the goals of this Agreement on or before
5 November 1, 2018.
- 6 2. Should either party have concerns about how the negotiations are progressing, the
7 parties agree to meet in-person, at least once, to discuss the specific concerns and
8 make a good faith effort to resolve any disputes prior to filing a motion or seeking
9 relief with the Court.
- 10 3. If at any point during the negotiations either Party believes that the negotiations
11 have reached a genuine impasse, either Party may notify the Magistrate Judge² of
12 their belief that negotiations have reached an impasse. The Magistrate Judge shall
13 provide further directions to the Parties. In the event that the Magistrate Judge
14 agrees the negotiations have reached an impasse, the Magistrate Judge shall
15 recommend that the Parties discontinue negotiations, and the Parties shall
16 immediately notify the Court of this development. Nothing in this Agreement shall
17 obligate either Party to enter into a subsequent agreement should negotiations be
18 unsuccessful.
- 19 4. Parties intend that the above-mentioned negotiations will result in a subsequent
20 agreement that will bring Defendants into compliance with this Court's previous
21 Orders. The Parties acknowledge that fiscal realities may require that a subsequent
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² The engagement of a Magistrate Judge is discussed in more detail below in section 4(j).

1 agreement, if achieved, will necessarily be reflected in multiple phases of budget
2 submissions, rather than one package to be included in the Governor's 2019-2021
3 biennial budget. Parties further acknowledge they lack authority to direct the
4 legislature to make fiscal appropriations that may be necessary to implement a
5 subsequent agreement. But should a subsequent agreement be reached, the Parties
6 agree to collaborate in good faith to seek legislative support to adopt appropriate
7 funding.

8 5. Parties agree that the timeline of activities proposed below is a tentative schedule
9 and subject to change by agreement of the parties in light of stakeholder
10 unavailability, constraints on Parties created by the 2018 legislative session, or
11 other good cause.

12 6. In order to negotiate the terms of a subsequent agreement and, if successful, secure
13 an Order from this Court approving said agreement prior to the submission of the
14 governor's 2019-2021 biennial budget the parties will:

15 A. Meet frequently to learn from stakeholders, negotiate terms, and inform
16 stakeholders of progress. Parties acknowledge that they lack authority to direct
17 or control the participation or actions of key stakeholders to this Agreement, but
18 agree to seek their participation in good faith. These meetings will include, at a
19 minimum:

20 1. Within one week of the next Court hearing on January 17, 2018– one full
21 day of in-person negotiation;

- 1 2. January through March – one full day in-person negotiation every other
2 week and two in-person, web, or phone based stakeholder listening
3 sessions each month;
- 4 3. April through July – one full day in-person negotiation and one web or
5 phone based negotiation each month; and
- 6 4. Throughout – additional meetings as needed of small workgroups
7 comprised of members of the negotiation team and other necessary
8 stakeholders to solicit feedback from stakeholders as described in more
9 detail below.

10 B. Focus on the following tasks with a goal to meet the following interim deadlines
11 on or before the dates listed below, subject to change based on good cause and
12 agreement of the parties:

- 13 1. January 1, 2018 – May 4, 2018 – Parties attempt to negotiate the key
14 principles and substantive elements of a subsequent agreement;
- 15 2. Within two weeks of approval of this Agreement – Parties identify
16 necessary stakeholders and devise strategy for stakeholder
17 communications and meetings. Invites are sent to the necessary
18 stakeholders as identified by the parties to solicit input on issues and
19 solutions they have and to begin scheduling in-person, web, or phone
20 based meetings;
- 21 3. January 15, 2018 – March 31, 2018 – Stakeholder issue and solution input
22 meetings are conducted;

- 1 4. April 1, 2018 – April 30, 2018 – Parties participate in two full-day
2 negotiations to discuss stakeholder issues and solution input, to be
3 incorporated into a confidential draft containing key principles and
4 substantive elements of a subsequent agreement by May 4, 2018 as
5 referenced below;
- 6 5. By May 4, 2018 – If the parties are continuing to move toward developing
7 a subsequent agreement, then all key principles and substantive elements
8 will have been agreed to by the parties and are detailed in writing in an
9 initial confidential draft of a subsequent agreement;
- 10 6. By June 8, 2018 – If the confidential draft outlined above is achieved,
11 Parties present to stakeholders regarding these key principles and
12 substantive elements and solicit feedback;
- 13 7. June 11, 2018 – July 31, 2018 – Parties consider, incorporate, or otherwise
14 respond to feedback received from stakeholders about key principles and
15 substantive elements. As appropriate, feedback is incorporated into the
16 subsequent agreement;
- 17 8. By August 1, 2018 – assuming the parties’ negotiations are successful, the
18 language of the subsequent agreement is finalized and circulated to the
19 Parties;
- 20 9. August 10, 2018 – all signatures on a subsequent agreement have been
21 secured;

1 10. August 16, 2018 – the joint motion for primary approval of the subsequent
2 agreement and a proposed notice process for a related fairness hearing is
3 filed with the court;

4 11. August 31, 2018 – a motion for preliminary approval and notice process
5 is noted for court consideration;

6 12. September 7, 2018 – the last day for an order granting preliminary
7 approval and notice process in order to provide a 30 day notice period;

8 13. September 8, 2018 – October 7, 2018 – notice period;

9 14. October 12, 2018 – deadline to send electronically or postmark written
10 objections or notice of intent object in person at the fairness hearing;

11 15. October 17, 2018 – Parties file their response to written objections and
12 declarations confirming completion of approved notice process;

13 16. Week of October 22, 2018 – Fairness hearing to be held on a date to be
14 determined by the court;

15 17. November 1, 2018 –Should a subsequent agreement be reached as
16 outlined above, a court order must be issued by this date in order to meet
17 state budgeting timelines and include relevant provisions regarding that
18 negotiated agreement in the Governor’s budget submission to the
19 legislature. Should the Court alter or amend the subsequent agreement of
20 the Parties in its court order, the State of Washington reserves the right to
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1 appropriately challenge that order and/or exercise its discretion in putting
2 forth a budget as it sees fit.³

3 e. Engaging the stakeholders and managing this schedule over a relatively compressed period of
4 time will take considerable effort, therefore the Parties agree to jointly seek approval from the
5 Court to expend the Court's contempt fees on employees to help in this process.

6 f. Plaintiffs seek funding for an individual to assist class counsel in providing meaningful input
7 to and oversight of the contempt-funded services and processes. Plaintiffs are relying primarily
8 upon the class counsel to perform these services while performing the more typical job of class
9 counsel: assessing Defendants' compliance with the law and either negotiating a resolution to
10 this case or bringing motions to enforce the Court's orders. Plaintiffs respectfully request that
11 a small portion of the contempt fines be provided to DRW to hire a fulltime staff person to
12 meet individually and with groups of various stakeholders across the state including class
13 members and people at imminent risk of becoming class members, courts, defense counsel,
14 prosecutors, community and jail mental health providers, jail staff, law enforcement, and local
15 and state policy and budget makers to:

- 16 1. Inform class members and other stakeholders of the current status of the case;
- 17 2. Learn about how to best spend the growing fines in a manner that will support
18 people with mental illness to avoid criminal justice involvement and/or incarceration that
19 stems from it;

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23 ³ Items 10 through 17 shall only occur should the parties successfully achieve item 9: a fully signed (by all Parties)

1 3. Oversee a second Request for Information process to help determine which
2 intercepts and interventions should be the focus of additional Requests for Proposals for
3 contempt fines;

4 4. Educate stakeholders about the availability and process for accessing contempt
5 funding and contempt-funded services and processes;

6 5. Serve as a point person to work with the Court Monitor and her experts
7 overseeing subsequent RFP processes that will disperse contempt fines;

8 6. Assess the impact of the implementation of contempt-funded services and
9 processes;

10 7. Understand how the contempt-funded services and processes fit with the changing
11 landscape of Defendants' mental health system;

12 8. Inform the Court, Court Monitor and her experts, and Parties about the impact
13 contempt-funded services and processes have had on class members and the rest of the
14 mental health system that is designed to meet class members' needs;

15 9. Develop relationships and regularly communicate with regional and state actors to
16 fully understanding the regional variations and how they fit within the statewide system
17 as well as educating those various regional and state actors on how emerging services fit
18 within the historic service delivery system; and

19 10. Assist stakeholders to coordinate and message the status of the mental health
20 system to policy and budget makers to ensure the benefits reached through contempt-
21 funded projects and the other proposed reforms to the mental health system negotiated in
22 this case are maintained and expanded in a sustainable manner.
23

1 g. Defendants seek funding for an individual to serve as a full-time Project Manager for the
2 negotiations and agreement described herein. The Project Manager will create and manage a
3 comprehensive project plan that tracks all tasks and deliverables. The Project Manager will
4 provide reports on progress on the project plan at intervals described within the Agreement
5 and as requested by either Party or the Court. The Project Manager will be responsible for
6 coordinating meetings outlined in the Agreement, compiling information gathered in meetings,
7 preparing materials for use by the project team in developing proposals and recommendations,
8 and other tasks as jointly agreed to by the Parties.

9 h. Parties will request that the positions described above be funded. The request will be that each
10 position is funded by the Court's contempt fund for two years to allow for work throughout
11 the negotiation process, notice period, 2019 legislative session, and a transition period
12 following the legislative session to work on rollout of the subsequent agreement or transition
13 to other permanent hires. Either or both Parties may ask the Court to continue funding such
14 positions beyond this point.

15 i. Parties will seek permission to be reimbursed for individualized expenses that may be incurred
16 by the participation of class members and their family members. Class members and their
17 family members are the most important people in this process but often do not have day jobs
18 that allocate time and pay for their transportation and participation in these meetings. The
19 Parties would like to be able to assist people who may have limited resources for transportation,
20 child care, days off from work, or accommodation needs that require additional costs.
21 Therefore, the Parties will request the Court authorize reimbursement from contempt funds for
22 per diem stipends or actual cost reimbursement, whichever best meets the needs of the
23 individual class members or their family members.

1 j. The Parties jointly recognize their history of contentious litigation, the complexity and
2 challenges of this negotiation, and the importance of success. Therefore, the Parties jointly
3 ask the Court to assist them by providing access to a Magistrate Judge to serve as a Neutral to
4 assist the Parties through this negotiation process. In accordance with the nature of this
5 settlement negotiation process, and in order to foster open, honest, and fruitful negotiations,
6 the Magistrate Judge shall treat the negotiations as confidential. Information shared by the
7 Magistrate Judge, including with the Court and the Court Monitor, will be limited to that
8 specified in this Agreement, or as agreed to by the Parties.

9 **5. Compliance Measures**

- 10 a. Compliance with this Agreement shall be measured by the Parties' good faith efforts towards
11 achieving both the immediate actions outlined in this proposal as well as a subsequent
12 agreement. As acknowledged above in 4. d. 3. the Parties recognize they cannot guarantee any
13 specific action or outcome by the Washington State Legislature.
- 14 b. In the event that the Magistrate Judge assigned to act as the Neutral during the negotiation
15 process described in this Agreement determines that either party is not participating in the
16 process in good faith or not making reasonable efforts to comply with the terms of this
17 Agreement, the Neutral may make a recommendation to the Court to find that party in contempt
18 with the order approving this negotiation process.

19 **6. Additional Stipulations**

- 20 a. During the term of this Agreement, the Department will continue work in key areas designed
21 to provide relief to class members. Key initiatives currently in progress include:
- 22 1. Continued collaboration on enhancements to triage—in order to identify and assess the
23 most acute class members for expedited admission to a treatment facility, the Department

1 will train and distribute the complete guidebooks for prosecutors and defense attorneys as
2 well as jail mental health staff.

3 2. Continued development and implementation of the Forensic Data System—in order to
4 further streamline the evaluation process and enhance the data tracking abilities of the
5 Department’s forensic services the Department will deploy the new data system. The Court
6 Monitor has been engaged as a member for the advisory committee for the build and testing
7 of each of the 15 modules of the system.

8 3. Pilot of Telehealth solutions—The Department continues work to establish and test secure
9 videoconferencing links between the state hospitals, forensic evaluators, and county jails
10 that will allow greater capacity to conduct timely forensic evaluations. The Department is
11 coordinating with judges to foster acceptance of this technology.

12 4. Prosecutorial Diversion—The Department continues work with its three pilot sites to
13 improve diversion options for class members.

14 b. Milestones and progress in each of these areas will be reported in the monthly reports filed
15 with the Court Monitor. The Department will continue to pay the previously ordered contempt
16 fines, which are calculated based on the Department’s performance. These continued contempt
17 fines ensure there is no reason for the Department to delay available compliance efforts during
18 the term of this Agreement.

19 **5. Additional Terms**

20 a. No filings – The Parties agree to refrain from filing any contested motions prior to November
21 1, 2018 or the termination of this Agreement as otherwise described herein, except for a
22 possible motion to enforce the terms of this Agreement if a Party believes the other Party is
23 not complying with the terms of this Agreement.

1 b. Monthly updates – During the period prior to the possible filing of a subsequent agreement for
2 preliminary approval by the Court, the Parties will provide monthly updates to the Court and
3 the Court Monitor addressing: 1) the status of negotiations; and, 2) the scope of work parties
4 intend to focus and report on in their next status update.

5 c. Status Hearings – The Court will continue to receive updates on the negotiations through status
6 hearings conducted every two months. These status hearings will provide an opportunity for
7 the Court to address any concerns and give Parties guidance into their negotiations.

8 d. Court and Court monitor involvement – Throughout this process the Parties will remain
9 cognizant of the Court’s comments regarding the Court Monitor being an officer of the Court
10 and the limited role of the Court and its officers in settlement negotiations, and will limit or
11 incorporate the Court and the Monitor’s participation accordingly.

12 e. Stakeholders – Given the prevalence of mental illness, many residents of Washington are
13 touched by Washington’s mental health system. The system is vast and includes many non-
14 state actors. It also touches upon and directly affects many other systems. Therefore, any
15 negotiations to achieve timely competency evaluation and restoration services will require
16 engaging numerous state and local stakeholders, including representatives from various levels
17 of state and local government. The Parties will involve stakeholders, especially class members
18 and legislative partners, in this process of negotiating and developing a subsequent agreement.

19 Stakeholders include, but are not limited to:

- 20 1. Class members;
- 21 2. Class members’ families;
- 22 3. State Legislators;
- 23 4. Labor organizations;

- 1 5. Mental health provider agencies and advocates;
- 2 6. Behavioral Health Organizations and advocates;
- 3 7. Law enforcement;
- 4 8. Local jails;
- 5 9. State and municipal courts;
- 6 10. Prosecuting attorneys;
- 7 11. Defense attorneys;
- 8 12. Homeless and housing providers and advocates;
- 9 13. Employment support providers and advocates;
- 10 14. Individual clinicians;
- 11 15. Education programs for needed clinicians;
- 12 16. Other departments of the administration outside DSHS, including the Governor's
- 13 Health Sub-Cabinet;
- 14 17. Local Legislators and Executives; and
- 15 18. Washington residents.

16 f. The Parties may seek permission to utilize services of a third-party entity, such as the
17 Behavioral Health Council, to help support the administrative aspects of the stakeholder work
18 contemplated by this Agreement. If the Parties agree to utilize these services, the parties shall
19 jointly solicit the Court for funding from the contempt monies.

20 g. Amendment – This Agreement may be modified or amended only by written agreement signed
21 by or on behalf of all Parties with notice to and approval by the Court.

22 h. Waiver – The provisions of this Agreement may be waived only by an instrument in writing
23 executed by the waiving Party, upon notice to and approval by the Court. The waiver by any

1 Party of any breach of this Agreement shall not be deemed or be construed as a waiver of any
2 other breach, whether prior, subsequent or contemporaneous of this Agreement.

3 i. Construction – None of the Parties hereto shall be considered to be the drafter of this
4 Agreement or to any provision thereof for the purpose of any statute, case law, or rule of
5 interpretation or construction that would or might cause the provision to be construed against
6 the drafter thereof.

7 j. Counterparts – This Agreement may be executed by exchange of executed faxed or .PDF
8 signature pages, and any signature transmitted in such a manner shall be deemed an original
9 signature. This Agreement may be executed in two or more counterparts, each of which shall
10 be deemed to be an original, but all of which when taken together shall constitute one and the
11 same instrument.

12 k. Binding Effect – This Agreement binds and inures to the benefit of the Parties hereto, their
13 assigns, heirs, administrators, executors, and successors-in-interest, affiliates, benefit plans,
14 predecessors, and transferees, and their past and present shareholders, officers, directors,
15 agents and employees.

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1 1. Further Assurances – Each of the Parties agree, without further consideration, and as part of
2 finalizing the Agreement hereunder, that they will in good faith promptly execute and deliver
3 such other documents and take such other actions as may be necessary to consummate the
4 subject matter and purpose of the Agreement.

5
6 DATED: January 11, 2018.

7
8 s/ David R. Carlson

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