

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNIVERSITY LEGAL SERVICES, INC., <u>et al.</u> ,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 05-585 (TFH)
)	
)	
DISTRICT OF COLUMBIA,)	
)	
Defendant.)	
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SETTLEMENT AGREEMENT AND MUTUAL RELEASE

THIS SETTLEMENT AGREEMENT AND MUTUAL RELEASE (the “Agreement”) is entered into this 26th day of October, 2011, by and between University Legal Services, and the Defendant, District of Columbia (the “District”),(collectively, the “Parties”).

RECITALS

WHEREAS, in 2005, Plaintiffs filed this lawsuit alleging constitutional and statutory violations based on the Defendant’s alleged failure to provide Patient A, Patient B, and all other patients at Saint Elizabeths Hospital with the mental health care and conditions required by law, including failing to provide adequate: (a) inpatient treatment and discharge planning, (b) sanitary facilities and patient safety, (c) medical and dental care, (d) adequate staff, and (e) treatment in the most integrated setting.

WHEREAS, Plaintiff also alleged that the District denied University Legal Services access to information requested under the authority of the Protection and Advocacy of the Institutionalized Mentally Ill Act (PAIMI);

WHEREAS, the District has denied the allegations and filed a Motion for Summary

Judgment in 2007 and Plaintiffs have opposed that motion;

WHEREAS, Patients A and B were parties to this litigation but were dismissed on October 24, 2011.

NOW, THEREFORE, in consideration of the mutual agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties have agreed to compromise and settle all remaining claims and disputes related to this litigation, subject to the terms and conditions below:

I. Definitions

The following definitions are applicable only to the terms of this Agreement and do not otherwise affect, implicate, impact, or modify any obligations of the District under applicable federal or local law.

1. "Effective Date" means the date both Parties have signed the Settlement Agreement.
2. "Lawsuit" means the instant action, Civil Action No. 05-585 (TFH) (D.D.C.)
3. "Parties" means, collectively, Plaintiff ULS and the District of Columbia.

II. Agreement Terms

4. The parties acknowledge that the terms or conditions set forth in this Settlement Agreement and Release (hereinafter "Settlement Agreement" or "Agreement") are not intended to be an admission of liability, and said Settlement Agreement does not contain or constitute an admission of liability by any Party.

5. This Agreement is a contract binding upon the Parties and their officials and employees. The Parties agree to make their best good faith efforts to resolve any disputes which relate to or arise under this Agreement. Enforcement of this Agreement shall be in any court in

the District of Columbia having subject matter jurisdiction. Prior to Plaintiffs filing any action alleging a material breach of the Agreement, Plaintiffs will provide to the District written notification of the specific factual grounds of the alleged material breach and will provide at least 60 (sixty) days to cure any such material breach or to otherwise respond to Plaintiffs' allegations.

6. Upon execution of this Agreement by the Parties, ULS and the District will move to dismiss this case with prejudice. The District will pay ULS the amount referenced in paragraph 26 below within 60 days of execution of this agreement and the receipt of all applicable and necessary paperwork, including an original executed W-9 for ULS. Plaintiff ULS and its agents, heirs, and assigns agree to accept the terms and relief contained in this Settlement Agreement as full satisfaction of any and all claims, rights, demands, and/or causes of action, damages, interest, of whatsoever kind and nature, whether based on federal, state or local law, statute, ordinance, regulation, common law or any other sources, that it has or could have had against the District and/or its agents, servants, officers, officials, and/or employees, in their individual and official capacities, arising out of the allegations raised by Plaintiff in the complaint. Plaintiff ULS expressly agrees that this Release includes all injuries and damages to them, individually or collectively, resulting from the allegations that ULS raised or could have raised in the above-captioned civil action, including a request for costs and attorneys fees, whether now manifest or not, together with all direct and indirect consequences thereof which are now known or which may hereafter become known, the intention hereof being to release the District of Columbia, its officers, agents, servants, vendors, employees, contractors and subcontractors, completely, finally and absolutely from all liability whatsoever, under any theory of liability, arising wholly or partially from the allegations raised by ULS in the above-captioned action or any factual or legal claim asserted in the complaint.

7. It is the Parties' intent that this Settlement Agreement bars Plaintiff ULS from bringing a subsequent suit in its own name or in a representative or Fed. R. Civ. P. 23 capacity alleging the same or similar claims for institutional relief as contained in the complaint in this Lawsuit based upon events occurring prior to October 1, 2012. This does not preclude ULS from bringing an individual, non-institutional claim for relief in a civil or administrative forum on behalf of any individual patient.

8. This Agreement constitutes the entire understanding between the Parties hereto and is intended as the complete and exclusive statement of the agreement between the Parties with respect to the subject matter hereof, and supersedes all prior agreements and negotiations thereto.

9. The undersigned representatives of the Parties certify that they are fully authorized to enter into and to execute the terms and conditions of this Agreement and to make such Agreement fully and legally binding upon and enforceable against every Party on whose behalf they have executed this Agreement. The individuals signing for the District are its officials acting within the scope of their authority. The Parties stipulate, agree, and warrant that they will not challenge or contest in any way the capacity or the authority of any Party hereto to make the agreements, covenants, and stipulations herein.

10. This Agreement creates no obligations or duties on the part of Parties other than as stated specifically in this Agreement. The Parties stipulate, agree, and acknowledge that nothing in this Agreement may be used by any person or entity for any purpose in any legal proceeding other than by Plaintiffs as stated specifically in this Agreement. This Agreement does not create any rights that can be relied upon or enforced by individuals who are not Parties to this lawsuit. An alleged violation of this Agreement shall not create a new, independent

private right of action except that Plaintiff may file a separate action to enforce the Agreement in a court of competent jurisdiction. The Parties stipulate, agree, and acknowledge that this Agreement is not intended to create any third party beneficiaries.

11. This Agreement may not be amended or modified in any respect other than by an agreement in writing signed by the Parties.

12. This Agreement shall be construed without regard to any presumption or other rule of law requiring construction against the party who caused it to have been drafted.

13. This Agreement shall be governed by and construed and enforced in accordance with applicable federal statutes, federal decisional law, and the laws of the District of Columbia.

14. Each Party waives and assumes the risk of any and all claims that exist as of the date this Agreement is signed, which that Party does not know of or suspect to exist, whether through ignorance, oversight, error, negligence, or otherwise, with respect to either facts or law, and which if known, would materially affect its decision to enter into this Agreement.

15. None of the obligations and duties of any Party set forth in this Agreement may be assigned or delegated to any other person without the express, prior written consent of all other Parties.

16. This Agreement is not severable except with the prior written consent of all Parties.

17. Provided that all Parties hereto execute a copy of this Agreement, the Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. Executed copies of this Agreement may be delivered by facsimile transmission or other comparable means. This Agreement shall be

deemed fully executed and entered into on the date of execution by the last signatory required hereby.

18. The Parties agree that failure to comply with the provisions of this Agreement shall not be a basis for an entry of contempt or sanctions against the District absent a specific Court order in a subsequent enforcement action to so comply.

19. If any provision of this Agreement is deemed unlawful, either Party may choose to sever such provision or declare the entire Agreement null and void.

20. The District shall not be liable for any failure or delay in performance under this Agreement (other than for delay in the payment of money due and payable hereunder) to the extent said failures or delays are proximately caused by forces beyond the District's reasonable control and occurring without its fault or negligence, including, without limitation, natural disasters, inclement weather, and man-made catastrophes such as terrorist attacks, provided that, as a condition to the claim of non-liability, the District shall give Plaintiffs prompt written notice, with full details following the occurrence of the cause relied upon.

Access to Hospital and Reports

21. The District will provide ULS a hospital card key(s) that will be programmed to provide unaccompanied access from 8 a.m. to 7 p.m. for purposes of conducting monitoring and advocacy under the PAIMI Act by ULS attorneys and advocates identified in writing by ULS. The hospital card key(s) remain the property of the District of Columbia and shall be returned upon request if the District has reasonable cause to believe that the card key(s) have been used in violation of the PAIMI Act or hospital policy. ULS is responsible for maintaining proper custody of the card key(s) and shall immediately report to Saint Elizabeths Hospital any lost or misplaced card key(s). Nothing in this paragraph shall be interpreted as agreeing to provide ULS

with access to patients and facilities beyond which is already provided under the PAIMI Act and regulations and the specific terms above. Similarly, nothing in this paragraph shall be interpreted as agreeing to restrict the access rights provided to ULS by Federal law.

22. The District will provide ULS, on a quarterly basis, the number of seclusion and restraint incidents, number of patients on wards, number of unusual incidents, and redacted (or de-identified) copies of Major Unusual Incidents for deaths, patient and staff assaults, seclusions and restraint incidents, and injuries.

23. The District will inform ULS within three (3) days of any patient death.

24. The District shall provide the information and access described herein during the time ULS acts as the Protection and Advocacy Program for the District of Columbia.

Participation in Department of Justice Site Visits

25. The Parties agree that ULS may participate in the Department of Justice site visits conducted pursuant to the Settlement Agreement in *United States v. District of Columbia*, 07-889 (TFH). It is the intent of the Parties that the participation will not include patient chart reviews with the DOJ psychiatrist or psychologist consultants but may include accompanying the DOJ nurse, social worker and risk of harm consultants during the site visit. ULS hereby agrees that it will maintain any protected mental health information disclosed during the DOJ survey confidentially and to not redisclose it in any civil claim for damages or any claim for attorneys fees absent District consent. Nothing in this paragraph limits ULS' ability to utilize or introduce information obtained during the DOJ site survey in any administrative grievance or civil claim for injunctive relief, subject to the PAIMI Act and the limitations in Paragraph 7. The Parties agree to execute a separate confidentiality agreement containing these requirements.

Financial Settlement

26. The District shall pay Plaintiff ULS the sum of One Hundred Thousand and Seventy-Five Dollars and 00/100 (\$175,000.00) in full satisfaction of Plaintiffs' claims alleged in the complaint, including all injuries, damages, attorneys fees, expenses and costs.

Modification

27. This Agreement may be amended or modified by the consent of both parties in writing.

ACCEPTED FOR PLAINTIFF ULS BY:

Mary Nell Clark on Oct. 24, 2011

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ACCEPTED FOR DEFENDANT BY:

IRVIN B. NATHAN
Attorney General
for the District of Columbia

Ellen A. Efros on Oct 26, 2011

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