

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAI‘I

DONNA OPULENTO, on behalf of  
the Estate of JESSICA FORTSON;  
FRANK HAMPP, and JOSEPH  
TUI, individually and on behalf of  
all others similarly situated,

Plaintiffs,

v.

STATE OF HAWAI‘I  
DEPARTMENT OF PUBLIC  
SAFETY; TOMMY JOHNSON,  
Director, Hawai‘i Department of  
Public Safety; GAVIN  
TAKENAKA, Health Care Director,  
Hawai‘i Department of Public  
Safety, Corrections Division; DOES  
1-30,

Defendants.

CIVIL NO. 19-00315 RT

**NOTICE TO THE CLASS OF  
SETTLEMENT AGREEMENT**

**NOTICE TO THE CLASS OF SETTLEMENT AGREEMENT**

This Notice is to inform you that the parties to the above-referenced lawsuit have entered into a Settlement Agreement and General Release (“Settlement Agreement”) which resolves this class action lawsuit concerning the provision of mental health care and treatment for inmates in Hawaii’s correctional facilities. This Notice is also to give you an opportunity to comment on and/or object to the Settlement Agreement, and to inform you of how, when, and where to mail your written comments and/or objections.

## **I. CASE BACKGROUND**

On June 18, 2019, Plaintiffs filed this lawsuit challenging the adequacy of the mental health care and treatment provided to inmates housed in Hawaii's correctional facilities. This is not a money damages case, but instead Plaintiffs seek class-wide systemic benefits for all members of the class. Plaintiffs alleged that the Department of Corrections and Rehabilitation's (formerly, the Department of Public Safety) practices and procedures violated the Eighth and Fourteenth Amendments to the Constitution of the United States, the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act. The Defendants denied those allegations. After negotiations under the supervision of the Honorable Rom Trader, the parties reached a settlement of Plaintiffs' claims.

On June 30, 2022, the Court certified the following class of plaintiffs:

All persons who are now, or will in the future be, incarcerated in a jail or prison operated by the State of Hawaii, Department of Public Safety, and who have a Serious Mental Illness or Serious and Persistent Mental Illness as defined by Department of Public Safety Policy No. COR.10.1G.04.

As a person with a mental health illness incarcerated in a State of Hawaii jail or prison operated by the Department of Corrections and Rehabilitation, you are a member of the class and you have a right to comment and/or object to the Settlement Agreement.

## **II. THE SETTLEMENT AGREEMENT**

The parties to this lawsuit recently entered into a Settlement Agreement, which is subject to final approval by the Court. Copies of the Settlement Agreement will be available upon written request to the Warden for each facility, or you may request one by writing to Plaintiffs' counsel, listed below.

The principal terms of the Settlement Agreement are:

- Two persons with appropriate knowledge and expertise in the provision of mental health care in a correctional setting shall perform a preliminary assessment of the Oahu Community Correctional Center ("OCCC") and the Halawa Correctional Facility ("HCF") to include the following:

- Review all policies pertaining to mental health inmates including but not limited to assessments, diagnosis, treatment plans, referral criteria, follow up care, Hawaii State Hospital referrals, housing and re-entry.

Outline appropriate treatment plans for severe and persistent mental illness (“SPMI”) inmates, for inmates with dual diagnosis and those with frequent suicide attempts but no SPMI diagnosis.

Recommendation for a preferred screening tool for qualified mental health staff and intake services to trigger referral to licensed staff.

- List of training criteria and content for security staff.

Content for new cadets training.

Content and requirements for retraining seasoned staff.

Identify special requirements for those requesting mental health posts.

- List of training criteria and content for mental health and medical staff.

Identify appropriate staff to sufficiently diagnose and treat mentally ill population given the current climate of staffing options.

Recommend acceptable alternative practices when staffing is insufficient.

Identify appropriate staffing ratios for SPMI census.

Recommend training criteria for medical staff including nursing and LPNs.

Recommend training for unlicensed mental health providers i.e., social workers and human services professionals.

Recommend housing policies for those with active suicidal ideation, including assessment and reassessment criteria.

Identify critical areas of delinquency in current housing and supervision of suicide and safety watch cells.

Review current limitations to diagnosis and recommendations for oversight.

Review and recommend appropriate discharge planning criteria.

Recommendation for a preferred suicide risk assessment with certification program for licensed mental health staff.

- Review and assist in outlining criteria for administrative segregation hearings to include mental health staff to ensure that behavior associated with a known diagnosis does not incur criminal charges, to decriminalize mental health disorders within the facility.
- The two persons described above will provide non-binding, informed guidance and recommendations to aid the Department of Corrections and Rehabilitation in its continuing efforts to provide reasonable and appropriate measures for the treatment of inmates with serious mental illnesses incarcerated in Hawaii's jails and prison.
- The implementation of their recommendations is subject to funding by the Hawaii State Legislature. Subject to such funding, the parties have agreed to the establishment of an Agreement Monitoring Panel to devise procedures for monitoring the Department of Corrections and Rehabilitation's implementations of those recommendations.
- The Department of Corrections and Rehabilitation has agreed to pay Plaintiffs' reasonable attorneys' fees and costs.

To the extent that there is a difference between the summary above and the Settlement Agreement itself, the latter controls. Further details of the settlement terms are in the Settlement Agreement, which will be made available upon written request to the Wardens for each facility or to Plaintiffs' counsel.

### **III. PURPOSES OF THIS NOTICE**

The Settlement Agreement is under review by the Court, and it will not take effect unless and until it is approved by the Court. If you wish to submit any objections to or comments in support of the Settlement Agreement, you should

submit an explanation in writing why you do or do not believe that the Settlement Agreement is fair, reasonable, and adequate. This Notice is not intended to be, and should not be construed as, an expression or any opinion by the Court with respect to the truth of the allegations in the litigation or the merits of the claims or defenses asserted. This Notice is sent to advise you of this action and the proposed settlement and of your rights with respect to this lawsuit.

#### **IV. NOTICE OF FAIRNESS HEARING**

The Court will consider any objections or comments you may have regarding the Settlement Agreement, provided they are received no later than June 11, 2025. All written objections to the pending Settlement Agreement must be mailed to: Eric A. Seitz, Esq., 820 Mililani Street, Suite 502, Honolulu, Hawaii 96813.

A hearing, which may be conducted by teleconference or ZOOM video conference, will be held at the discretion of the Court on June 18, 2025, at 10:00 a.m. at which time the Court will consider the fairness of the Settlement Agreement and whether to approve it. Your objection will only be considered if it is in writing and is received by Plaintiffs' counsel listed above exactly one week prior to the date and time of the fairness hearing, *i.e.*, on or before June 11, 2025. Your personal presence in court will not be required, and no testimony will be taken. The attorneys for the Plaintiffs will collect, summarize and present your comments and objections for the Court and will, if permitted by the Court, make them part of the record in this lawsuit. If you want to comment and/or object, it is important that you do so in writing and that you send your written comments or objections sufficiently in advance of the deadline. Any comments or objections received after that time will not be considered.