

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

RUSSELL K. OGDEN, BEATRICE
HAMMER, and JOHN SMITH,
on behalf of themselves and on behalf of
a class of persons similarly situated;

Plaintiffs,

v.

Case No. 2:16-cv-02268-JAR-KGG
CLASS ACTION

PETE FIGGINS, in his official capacity as
Sheriff for Wilson County, Kansas,

Defendant.

SETTLEMENT AGREEMENT AND CONSENT DECREE

Plaintiffs Russell K Ogden, Beatrice Hammer, and John Smith, individually and on behalf of the Settlement Class defined below (“Plaintiffs”), and Defendant Pete Figgins, in his official capacity as Sheriff for Wilson County, Kansas (“Defendant Sheriff” and collectively referred to as the “Parties”), hereby agree to and submit the following Settlement Agreement and Consent Decree (“Consent Decree”) for adoption and entry by the Court.

I. RECITALS

A. WHEREAS Plaintiffs filed this action on April 28, 2016, seeking declaratory and injunctive relief pursuant to 42 U.S.C. § 1983, and seeking to enjoin the Defendant Sheriff from forbidding inmates housed in the Wilson County Correctional Facility (“Jail”), and their parents, children, spouses, relatives, friends, and other correspondents, in violation of the First and Fourteenth Amendments to the U.S. Constitution, from sending letters enclosed in envelopes to and from the Jail (“Postcard-Only Mail Policy”); and

EXHIBIT A

B. WHEREAS the United States District Court for the District of Kansas has subject matter jurisdiction over this dispute; *see* 28 U.S.C. § 1331 (federal question) and 28 U.S.C. § 1343(a)(3) (civil rights); and

C. WHEREAS the Parties, in an effort to avoid the burden, costs, and inherent risks of further litigation, agree that settlement is in their best interests; and

D. WHEREAS the Parties have engaged in formal and informal discovery in this matter, including the exchange of information and documents; and

E. WHEREAS this action has been certified by the Court, pursuant to Rule 23, Federal Rules of Civil Procedure, as a class action on behalf of all current and future outside correspondents who wish to write letters to, and/or receive letters from, inmates in the Jail and who are subject to or affected by the Postcard-Only Mail Policy; and

F. WHEREAS by agreeing to this Consent Decree, the Defendant Sheriff does not admit to liability; and

G. WHEREAS the signatories to this Consent Decree represent that they are authorized to enter into this Consent Decree and promise to carry out the various promises and representations made in it; and

H. WHEREAS this Consent Decree includes a general release and, upon execution by the Defendant Sheriff of the promises and representations made and the Court's entry of this Consent Decree, the Defendant Sheriff will be released from all claims and liability as stated in this Consent Decree; and

I. WHEREAS the Parties agree that the relief provided in this Consent Decree is narrowly drawn and extends no further than necessary to correct the alleged violation of

Plaintiffs' constitutional rights, and is the least intrusive means necessary to correct the alleged violation of Plaintiffs' constitutional rights, 18 U.S.C. § 3626(a)(1)(A); and

J. WHEREAS the Parties agree that the terms and conditions of this Consent Decree constitute a fair, reasonable, and adequate resolution for the Plaintiffs under Rule 23(e)(2), Federal Rules of Civil Procedure.

NOW, THEREFORE, the Parties agree, subject to the Court's entry of this Consent Decree, as follows:

II. DEFINITIONS

1. The following terms as used in this Consent Decree have the meanings set forth below. In construing these definitions, the singular shall include the plural and the plural shall include the singular:

(a) **"Envelope Correspondence"** means a letter enclosed in an envelope. Such correspondence includes, but is not limited to, letters, paperwork, newspaper clippings, photographs, drawings, or a combination of one or more of these items.

(b) **"Privileged"** describes a piece of correspondence that is sent to or from attorneys, the courts, officials of the confining authority, state or local chief executive officers, administrators of grievance systems, members of the paroling authority and public officials, and local, state, and federal government correspondence.

(c) **"Non-Privileged"** describes all other correspondence that is not otherwise Privileged.

(d) **"Jail"** refers to the Wilson County Correctional Center.

III. SETTLEMENT CLASS

2. The Settlement Class, as used herein, will hereby be defined as:

All current and future outside correspondents who wish to write letters to, and/or receive letters from, inmates in the Wilson County Correctional Facility and who are subject to or affected by the Postcard-Only Mail Policy.

IV. TERMS AND EFFECT OF CONSENT DECREE

3. **Full Resolution.** This Consent Decree resolves in full all claims against the Defendant Sheriff by all Plaintiffs, including named Plaintiffs Russell K. Ogden, Beatrice Hammer, and John Smith and all members of the settlement class, involving alleged violations of their First and Fourteenth Amendment rights, or of any other federal, state or local law, regulation, duty, or obligation which are based upon or could be based upon or arise from Defendant Sheriff's Postcard-Only Mail Policy and from the facts alleged in Case No. 2:16-cv-02268-JAR-KGG, filed in the United States District Court, District of Kansas.

4. **Release.** Upon execution by the Defendant Sheriff of the promises and representations made herein and the Court's entry of this Consent Decree, the Plaintiffs agree that the Defendant Sheriff is released from any and all liability, claim, action or demand of whatever kind or sort which any of them might have against the Defendant Sheriff, and that they release Defendant Sheriff from any and all grievances, suits, causes of action, and claims of any nature whatsoever, whether known or unknown, including but not limited to all claims asserted in this action together with any and all charges, complaints and claims, which are based on actions, facts or occurrences that relate to the facts alleged in the Complaint.

5. **Merger.** This Consent Decree contains all the terms and conditions agreed upon by the Parties hereto regarding the subject matter of the instant proceeding, and no oral agreement entered into at any time nor any written agreement entered into prior to the execution

of this Consent Decree shall be deemed to exist, or to bind the Parties hereto, or to vary the terms and conditions contained herein, except as expressly provided herein.

6. **Liability.** Nothing contained in this Consent Decree, nor any order entered by the Court adopting this Consent Decree, is or shall be construed as an admission by the Defendant Sheriff of the truth of any allegations or the validity of any claim asserted in the Complaint, or of the Defendant Sheriff's liability therefor, nor as a concession or an admission of any fault or omission, of any act or failure to act, or of any statement, written document, or report heretofore filed or made by the Defendant Sheriff. Nor shall this Consent Decree nor any confidential papers related hereto and created for settlement purposes only, nor any of the terms of either, be offered or received as evidence in any civil, criminal or administrative action or proceeding against the Defendant Sheriff, nor shall they be construed by anyone for any purpose whatsoever as an admission or presumption of any wrongdoing on the part of the Defendant Sheriff, nor as an admission of the Defendant Sheriff that the modifications or concessions given hereunder represents the relief that could be recovered at trial. However, nothing herein shall be construed to preclude the use of this Consent Decree in order to effectuate the consummation, enforcement, or modification of its terms.

7. **Assignment.** This Consent Decree shall apply to all persons who are members of the Settlement Class. This Consent Decree creates no rights in favor of any other person and creates no obligations or duties on the part of the Defendant Sheriff beyond the terms of this Consent Decree. This Consent Decree shall bind all parties to this action as well as the successors in office to the Defendant Sheriff, and to any other person or entity who in the future operates the Jail. The Defendant Sheriff agrees to use his best efforts to make the requirements of this Consent Decree known to each of his employees, deputies, and agents who are

responsible for operation of the Jail. Nothing set forth in this particular Paragraph shall bar or limit the Court's power to enforce the terms of this Consent Decree or the right of the Defendant Sheriff or any successor Sheriff or any other person or entity who in the future operates the Jail to petition the Court for modification of this Consent Decree.

8. **Enforcement.** Except as otherwise provided in this Consent Decree, if class counsel believes that there has been a failure to comply with the terms of this Consent Decree, before moving the Court to redress the non-compliance, class counsel must notify the Defendant Sheriff and his counsel in writing of the alleged non-compliance and include in the notice sufficient specificity so that the Defendant Sheriff can identify the nature of the allegation, including describing with particularity the terms of the Consent Decree that are alleged to have been violated, the specific errors or omissions upon which the alleged violations are based, and the corrective action sought. Upon class counsel's request, the Defendant Sheriff shall provide additional, relevant information pertinent to the alleged violations. The Parties then have twenty-eight (28) days from the date of written notification to meet and confer to attempt to resolve the issues. If the Parties are unable to resolve the dispute within twenty-eight (28) days, class counsel may file a motion or notice with the Court seeking appropriate relief. Class counsel may file such a motion without substituting new named representative plaintiffs, if the named plaintiffs at the time of the entry of this Consent Decree are no longer members of the class at the time of the filing of such a motion.

9. **Costs, Expenses, and Attorneys' Fees.** In settlement of all claims for attorneys' fees, taxable costs, and non-taxable litigation expenses incurred through the date of entry of the proposed Consent Decree, the Defendant Sheriff agrees to tender to Class Counsel the gross sum of TEN THOUSAND DOLLARS (\$10,000.00), via check made payable to the Social Justice

Law Collective Trust Account (Fed. Tax ID No. 46-0961071) (the “Settlement Amount”), within fourteen (14) days of the Court’s final entry of this Consent Decree. The Parties agree that this Settlement Amount includes the resolution and payment in full of all of Plaintiffs’ claims for reasonable attorneys’ fees and costs.

10. **Court Approval.** The Parties agree that they will take all necessary and appropriate steps to obtain preliminary approval from the Court of this Consent Decree, final approval and entry by the Court of this Consent Decree, and dismissal of the action with prejudice, subject to the Court’s jurisdiction to enforce this Consent Decree and adjudicate any dispute over Plaintiffs’ attorney fees, costs, and litigation expenses.

11. **Effective Date.** This Consent Decree shall be effective immediately upon its entry by the Court.

12. **Settlement Contingent on Court Adoption.** The Parties agree that this Consent Decree is subject to and conditioned upon the Court’s entry of this Consent Decree. In the event that the Court declines to approve or enter this Consent Decree, the Parties agree that this Consent Decree shall be null and void and without prejudice to the Parties’ rights.

13. **Waiver of Appeal.** Upon the Court’s entry of this Consent Decree, the Parties waive their rights to appeal any existing order, decision, or ruling in this action. The Parties further waive their rights to appeal the Court’s entry of this Consent Decree.

14. **Default.** Subject to the foregoing terms, and following the Court’s entry of this Consent Decree, no default by any person or party to this Consent Decree in the performance of any of the covenants or obligations under this Consent Decree, or any judgment or order entered in conjunction with it, shall affect the dismissal of the Complaint, the preclusion of prosecution of actions, the discharge and release of the Defendant Sheriff, or the judgment entered approving

these provisions. Nothing in the preceding sentence shall be construed to affect the Court's jurisdiction to enforce this Consent Decree on a motion for contempt or any other motion seeking appropriate relief.

15. **Captions.** The captions of this Consent Decree are for convenience of reference only and in no way define, limit, or describe the scope or intent of this Consent Decree.

16. **Severability.** This Consent Decree is subject to the restrictions, limitations, terms and conditions of all applicable government regulations, approval, and clearances. If any term or provision of this Consent Decree is held invalid, illegal, or unenforceable in any respect for any reason, that invalidity, illegality, or unenforceability shall not affect any other term or provision hereof, and this Consent Decree shall be interpreted and construed as if such term or provision, to the extent the same shall have been held to be invalid, illegal, or unenforceable, had never been contained herein.

17. **Recitals.** The parties agree that recitals set forth above are true and that they constitute a part of this settlement.

V. INMATE MAIL PROVISIONS

18. The Defendant Sheriff's specific obligations regarding Jail policies and practices under this Consent Decree are as follows:

- (a) **Inmates May Send Letters.** The Defendant Sheriff will not prohibit or restrict Jail inmates from mailing Non-Privileged Envelope Correspondence to correspondents outside the Jail, except as set forth in this paragraph.
- (b) **Inmates May Receive Letters.** The Defendant Sheriff will not prohibit or restrict Jail inmates from receiving Non-Privileged Envelope Correspondence from correspondents outside the Jail, except as set forth in this paragraph.

- (c) **No Volume Restrictions on Mail.** The Defendant Sheriff will not restrict the number of pieces of Envelope Correspondence or Postcards that a Jail inmate can send or receive unless there is clear evidence that such correspondence (i) poses a safety threat to the Jail, its inmates and/or staff; or (ii) regards the conducting and/or encouraging of criminal activity. Additionally, Jail inmates may not correspond with (i) other inmates within the Jail or another correctional facility; or (ii) any individual that is listed as non-contact by a court or law enforcement agency due to domestic violence, endorsed witnesses, or victims of a crime.
- (d) **Content regulation not covered.** This Consent Decree is not intended to restrict any authority the Defendant Sheriff may have to regulate the content of Envelope Correspondence.

19. Within twenty-one (21) days from the Court's entry of this Consent Decree, the Defendant Sheriff shall revise all written policies, procedures, orders, regulations, and rules to conform to the above specific injunctive relief, including, but not limited to, the Postcard-Only Mail Policy, and shall provide copies of all such revised policies, procedures, orders, regulations, and rules to class counsel.

VI. NOTICE

20. Pursuant to Rule 23(e), Federal Rules of Civil Procedure, the Defendant Sheriff, within fourteen (14) days of the Court's preliminary approval of the Notice of Proposed Settlement (hereinafter "Notice") attached to this Consent Decree as Exhibit A, shall provide the Notice to those members of the Settlement Class as presently constituted by publication in the Wilson County Citizen. Additionally, the Defendant Sheriff shall post a copy of the attached Notice in each pod and visitation area in the Jail, to remain posted for no less than sixty (60)

days, and shall publish a copy of the Notice on the Jail's public website. The attached Notice shall be posted, provided, and published, in English and Spanish. The cost of providing such notice shall be borne by the Defendant Sheriff in his official capacity.

21. Class members shall have sixty (60) days from the date of the Defendant Sheriff's posting, providing, and publishing of the attached Notice to file with the Clerk of the Court any written objections to this proposed Consent Decree, with a copy to class counsel.

VII. CONSENT AND EXECUTION BY PARTIES AND COUNSEL

WHEREFORE the Parties and their counsel agree to the terms and conditions of the Consent Decree as set forth above.

Russell K. Ogden
Class Representative

Date: _____

Pete Figgins
Sheriff of Wilson County

Date: 06/06/2017

John Smith
Class Representative

Date: _____

Beatrice Hammer
Class Representative

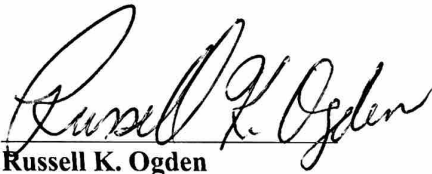
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VII. CONSENT AND EXECUTION BY PARTIES AND COUNSEL

WHEREFORE the Parties and their counsel agree to the terms and conditions of the Consent Decree as set forth above.



Russell K. Ogden
Class Representative

Date: 6/5/17

Pete Figgins
Sheriff of Wilson County

Date: _____

John Smith
Class Representative

Date: _____

Beatrice Hammer
Class Representative

Date: _____

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Class Representative

Date: _____

Pete Figgins
Sheriff of Wilson County

Date: _____


John Smith
Class Representative

Date: 6-3-17

Beatrice Hammer
Class Representative

Date: _____

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Class Representative

Date: _____

Pete Figgins
Sheriff of Wilson County

Date: _____

John Smith
Class Representative

Date: _____

Beatrice Hammer
Beatrice Hammer
Class Representative

Date: 6/3/17

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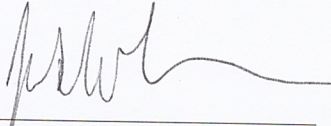


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