

COPY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 76-6086-CIV-HOEVELER

OLLIE CARRUTHERS, et al.,

Plaintiffs,

vs.

KEN JENNE, et al.,

Defendants.

SECOND STIPULATION FOR SETTLEMENT

This Second Stipulation for Settlement is entered into between the Class and Broward:

I. DEFINITIONS

As used herein:

1. "Class" shall mean all persons who have been, are being, or will be confined in the Broward County corrections and rehabilitation facilities, including any facilities that Broward County or the Sheriff of Broward County may in the future operate or contract with a private company to operate.

2. "Broward" shall mean the Office of the Broward County Sheriff, Ken Jenne, individually, and as Sheriff of Broward County, Florida, and any and all of his predecessors or successors in office, and any and all of his deputies, appointees, or employees, including, but not limited to, Harold Wilber, former Executive Director of the Department of Detention

and Corrections, and James Wimberly, Executive Director of the Department of Detention and Corrections, and any and all of their predecessors or successors, and Broward County, Florida, and any and all of its Commissioners, including, but not limited to, Ilene Lieberman, Kristin D. Jacobs, Ben Graber, James A. Scott, Lori Nance Parrish, Sue N. Gunzburger, John E. Rodstrom, Jr., Diana Rubin-Wasserman, and Josephus Eggelleton, Jr., and any and all of their predecessors or successors in office.

3. "Settling Parties" shall mean the Class and Broward.

II. PREAMBLE

That the Class and Broward, on July 27, 1994, entered into a Stipulation for Entry of Consent Decree, which Stipulation was ratified and confirmed by Order Approving Settlement Agreement and Dismissing Case entered on January 31, 1995, by the Honorable William Hoeveler, United States District Judge.

That Defendants' Joint Motion to Termination/Dismiss Consent Decree was filed on September 12, 1996, which Joint Motion was predicated upon the Prison Litigation Reform Act of 1995, 18 U.S.C. §3626, et. seq.

That the Court, pursuant to Stipulation of the Class and Broward, on November 20, 2001, and pursuant to Fed. R. E 702 appointed Steven Martin as an expert witness to conduct inquiry into whether the Broward County jail facilities are being operated in a manner consistent with the requirements of the United States Constitution and federal law. Pursuant to that Order, Mr. Martin, with the retained assistance of Steven S. Spencer, M.D. and Jeffrey L. Metzner, M.D., (herein collectively "the experts") conducted initial on-site inspections of the various jail facilities operated by Broward during the period November

and December, 2001, and February and March, 2002. Extensive documentation relating to all aspects of jail operations were reviewed. A report was issued by Mr. Martin on May 19, 2002. Subsequent, a second series of on-site and document inspections were conducted by Mr. Martin, Dr. Spencer, and Dr. Metzner during January, 2003, at the conclusion of which a report was issued by Mr. Martin dated January 21, 2003, which included the report of Dr. Metzner, as supplemented by the report of Dr. Spencer, dated January 27, 2003.

That the Class and Broward entered into a stipulation for settlement which resulted in a third series of on-site and document inspections being conducted resulting in reports being issued by Mr. martin on January 13, 2004, by Dr. Spencer on January 11, 2004, and by Dr. Metzner on November 16, 2003.

III. COVENANTS OF SETTling PARTIES

The settling parties, in order to avoid the cost and uncertainties of further litigation, have agreed to compromise and adjust the claims and controversies that exist or may exist between them, and therefore in consideration of the mutual provisions set forth herein and for other good and valuable consideration and intending to be legally bound hereby consent and agree as follows:

1. That the stipulations agreed to herein will have preclusive effect only within this litigation and that said stipulations will be inadmissible in any other matter.
2. That the parties stipulate to the dismissal of all claims identified in Steve Martin's reports except those relating to mental health services, inmate rules and discipline, inmate safety and security, facility capacity, and inmate services/programs (limited to

access to religious publications/services and legal access). The dismissed claims shall not be subject to continued monitoring, further inspection or judicial oversight.

The parties agree that the issues identified on Exhibit A shall be points of emphasis for assessing current conditions and practices regarding the remaining claims in this case.

3. With regard to those issues identified in III.2 the Defendants shall produce to Special Master Howard Messing for submission to Mr. Martin and Dr. Metzner ("the experts") and the Class Counsel, two sets of those documents responsive to the expert's inquiries which demonstrate current and continuing compliance by Broward with the requirements and obligations imposed by the United States Constitution and Federal law regarding conditions within the Broward County corrections and rehabilitation facilities. The Class or Broward may submit two sets of additional documents to Special Master Messing who will provide copies to the experts and to opposing counsel for comment and any responsive rebuttal documents, which shall be submitted in two sets back through Special Master Messing. Pending submission of the report described in Paragraph 5 below, counsel for the parties will not contact the experts ex parte.

4. That the experts' reports dated May 15, 2002, and January 21, 2003, November 16, 2003, January 11, 2004 and January 13, 2004, inclusive of the reports of Steven Martin, Esquire, Dr. Jeffrey Metzner, and Steven Spencer, M.D., shall be admitted, without objection.

5. That Steve Martin, with the assistance of Dr. Jeffrey L. Metzner if he deems it necessary, shall conduct such further on-site inspections and/or document review within 60 days of the execution of this agreement, or as soon as practicable thereafter, for the

purpose of determining current and continuing compliance by Broward with the requirements and obligations imposed by the United States Constitution and federal law with respect to the remaining claims regarding conditions within the Broward County corrections and rehabilitation facilities. Plaintiffs will be provided a copy of any documents provided to Mr. Martin or Dr. Metzner through Special Master Messing. The experts shall keep, and provide to counsel for the parties at the conclusion of the on-site inspections, a record of all materials reviewed and persons interviewed during the on-site inspection. Documents reviewed and persons interviewed shall be identified sufficiently to enable the parties to retrieve those documents and identify and locate persons interviewed. At the completion of such inspection a report, and recommendations if any, shall be prepared by Mr. Martin and submitted to the Court and the parties.

6. That, based upon the reports submitted, the Court shall determine, as a matter of law, whether the Broward County corrections and rehabilitation facilities are operated in a manner that is consistent with the requirements and obligations imposed by the United States Constitution and federal law. If the Court finds that Broward is entitled to the entry of a Final Order dismissing this action in part or in its entirety, the Court shall enter such Order. If the Court does not dismiss the action in its entirety, then the Court shall enter a scheduling order and set this matter for final hearing to allow the parties to present evidence as to whether or not the issues remaining after the Court's Order rise to the level of constitutional violation(s). At the conclusion of the hearing, the Court will issue the appropriate Order consistent with the requirements imposed by operation of the Prison Litigation Reform Act (PLRA), 18 U.S.C. § 3626 et seq.

7. As provided in the first stipulation for settlement, all prospective relief as that term is defined in the PLRA and the monitoring of conditions of confinement by Class counsel or the federal court liaison, regardless of whether contemplated by the original Consent Decree or other Order of this Court, or as modified by practice or acquiescence of Broward since that Stipulation for Consent Decree was executed and ratified, shall immediately cease except as provided in this Second Stipulation for Settlement. Until such time as a Final Order of Dismissal is entered, Class counsel shall continue to be permitted to visit each housing unit within the corrections and rehabilitation facilities operated by Broward once per month for the express purpose of inmate interviews within such housing areas, at dates and times to be mutually agreed between Class counsel and the applicable facility commander.

8. As provided in the first stipulation of settlement, the Sheriff agrees to establish the position of "ombudsperson" within the Department of Detention and Community Control, with the sworn equivalent for this position being at the level of captain. This "ombudsperson" shall perform various functions including identification of systemic problems as related to the inmate population and manage the investigation and review of inmate concerns and grievances, and to perform such other functions provided in the classification description as published. Inmates shall have free telephone access to the "ombudsperson". The "ombudsperson" shall be afforded staff, training and resources sufficient to accomplish the task of receiving, reviewing, and addressing inmate concerns and grievances. The calls and grievances received, and dispositions thereof, shall be documented and monthly reports shall be prepared sufficient to enable Class counsel to

track by inmate and facility and categorize (abuse, medical, protection) the calls, concerns, grievances received by the “ombudsperson”, and the dispositions thereof. Until dismissal of this case, the ombudsperson’s log shall be furnished monthly to Chris Cloney via mail or email; the record kept shall be available to Class counsel at the Main Jail upon reasonable notice of not less than 72 hours; and prisoners will continue to have free telephone access to Chris Cloney who will refer all calls and inquiries to the ombudsperson.

9. That, except as provided in Paragraphs 7 and 8 above, and pending submission of the report as contemplated in Paragraphs 4 and 5 above, discovery and all other litigation related activities shall cease. However, Class counsel shall be permitted access to documents maintained by Broward relating to the remaining claims, which inspections shall not exceed two (2) in number or be of a duration exceeding a total of six (6) days. Such inspection shall be conducted at dates and times that are mutually agreed between the parties. Class counsel shall submit a list of records relating to the issues identified on Exhibit “A” to be reviewed at least seven (7) business days prior to the day that any on-site inspection is to begin.

10. That the experts shall be paid by Broward as previously ordered.

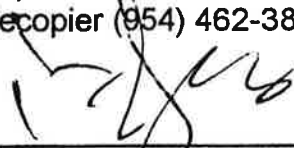
11. Broward agrees that the Class is entitled to an award of attorney’s fees and costs. The amount of attorneys’ fees and costs to be awarded to the Class remains in dispute. Upon entry of a Final Order of Dismissal under the terms of Paragraph 6 above, jurisdiction shall be retained for the specific and limited purpose of determination of

attorneys' fees and litigation costs, to the extent not previously determined or compromised,
upon proper application therefor.

DATED this _____ day of _____, 2004.

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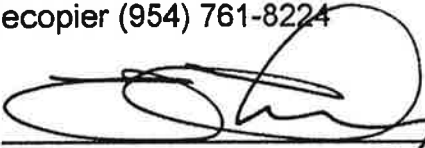
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EXHIBIT "A"

As set forth in paragraph in III.2 of the Second Stipulation for Settlement, the parties agree to the dismissal of all claims except those identified in that paragraph. The items identified on this Exhibit "A" shall be areas of emphasis in the reports of the experts.

For the report to be prepared by Steve Martin:

1. Determine status of the use of temporary beds for maximum security inmates.
2. Determine if the opening of Sheriff's North Facility eliminates further capacity issues.
3. Review inmate-on-inmate assaults at North Broward Bureau since December 2003 to the present.
4. Verify the implementation and effect of the revised SOP on OC spray (SOP 5.14.2).
5. Verify implementation of policy and effect on "Keep Separates" (SOP 7.33).
6. Evaluate Broward's investigation and dispositions regarding possible incidents of unnecessary/excessive use of force including use of OC spray on inmates who passively resist lawful orders of staff.
7. Determine current practices regarding credit for time served while in pre-hearing detention and provision of staff assistance to inmates for disciplinary hearings.
8. Determine current practices regarding inmate access to religious publications (SOP 7.20).
9. Determine whether the legal access law library program at Conte and the

Sheriff's North Jail is adequate.

For the report to be prepared by Jeffrey Metzner:

1. Determine scope of quality improvement activities.
2. Determine whether Broward's restraint policy, practice, and procedure as applied to a mental health caseload inmate is appropriate.
3. Determine whether clinicians/mental health providers have access to past medical records from prior incarcerations in Broward Facilities.
4. Determine whether formulary restrictions and suicide prevention efforts are appropriate.
5. Determine if evaluation and treatment of mental health inmates in open or closed mental health housing unit allows for privacy.
6. Determine whether necessary psychosocial interventions and other mental health treatments are provided to mentally ill inmates.
7. Determine whether the out of cell time provided to inmates in the closed mental health housing is adequate.
8. Determine and evaluate if Broward has implemented discharge planning including the 3-day medication procedure upon release for mentally ill inmates.