

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 76-6068-CIV-MIDDLEBROOKS

OLLIE CARRUTHERS, *et al.*,

Plaintiffs,

v.

SCOTT ISRAEL, *et al.*,

Defendants.

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**SETTLEMENT AGREEMENT**

This Settlement Agreement is entered into between the Class and Sheriff:

**I. INTRODUCTION**

1. The parties to this conditions of confinement class action entered into the Stipulation for Entry of Consent Decree on July 27, 1994 (the "Consent Decree"), which was then ratified and confirmed by Judge Hoeveler on January 31, 1995. On June 7, 1995, Judge Hoeveler issued an amended Order incorporating the settlement agreement of the parties.

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

3. The Court, pursuant to the parties' stipulation and Fed. R. Evid. 706, on November 20, 2001 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 Court's experts") conducted on-site inspections of the various jail facilities operated in Broward County through 2006.

4. As a result of the Court's experts' work, the parties substantially narrowed the scope of this case, culminating in two stipulations for settlement (the "Stipulations"). *See* Exhibits A and B to Defendants Joint Response to Court Order Requiring Response (the "Response") (DE 886).

5. The Plaintiffs contend that the following conditions in the Broward County jails involve current and ongoing violations of federal rights: overcrowding, excessive use of force, inmate violence, inadequate mental health care and facilities, and the imposition of substantial burdens upon religious exercise. Defendant Sheriff of Broward County does not agree that the above conditions constitute current and ongoing violations of federal rights or warrant prospective relief under the PLRA, but does agree that a plan is needed to address potential overcrowding which Sheriff is currently working with the County to address. However, these parties desire to resolve Plaintiffs' concerns and the above-captioned case as set forth herein. The Class and Sheriff believe this agreement is fair, reasonable, and adequate to protect their interests.

## **II. PRELIMINARY AND FINAL APPROVAL OF SETTLEMENT**

6. The settling parties shall jointly submit this Settlement Agreement to the Court for Preliminary Approval and with a proposed order for Preliminary Approval providing a schedule for notice, proposed notices of Preliminary Approval, objection period, and fairness hearing, and proposed notice of the final remedy for posting upon Final Approval under Rule 23(e) of the Federal Rules of Civil Procedure.

## **III. DEFINITIONS**

7. "Class" and "prisoners" 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 may in the future confine Broward County prisoners.

8. "Sheriff" shall mean the Office of the Broward County Sheriff, Scott Israel,

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, employees, or contracted entities or staff, who work at the Broward County corrections and rehabilitation facilities, or otherwise provide services to the Class.

9. "Settling parties" shall mean the Class and Sheriff.

10. "Jail" shall mean the Broward County corrections and rehabilitation facilities, including any facilities that may in the future confine Broward County prisoners.

11. To "implement" means: a policy has been drafted and disseminated to all staff responsible for following or applying the policy; all relevant staff have been trained on the policy; compliance with the policy is monitored and tracked through audit tools; the policy is consistently applied; and, there are corrective action measures to address lapses in application of the policy.

12. "Substantial compliance" shall mean adherence to the requirements of this Settlement Agreement and the Implementation Plan in all material respects, recognizing that 100% compliance is not required. Sporadic and isolated deviations from the requirements of this Settlement Agreement and the Implementation Plan shall not prevent a finding of substantial compliance, provided that the Sheriff demonstrates that the Jail has (a) implemented a reliable system for tracking compliance and for taking appropriate corrective measures in response to instances of non-compliance, and (b) that the Sheriff has instituted policies, procedures, practices, and resources that are capable of durable and sustained compliance. Substantial compliance shall be assessed by the subject-area experts, as set forth below.

#### **IV. COVENANTS OF THE SETTling PARTIES**

13. The settling parties agree that Kathryn Burns, M.D., MPH, and Michael A. Berg (collectively "the experts") shall serve as their joint experts in the fields of mental health, and jail

conditions, respectively. The parties shall split the costs of the experts. The experts shall have the authority to determine the scope of their review in the areas described in paragraph 5, above.

14. With reasonable advance notice, the experts will have full and complete reasonable access to the Jail, facility records and documents, prisoners' health care and custodial records, staff members, and prisoners reasonably necessary to enable the experts to perform their expert functions, as they relate to the specific areas of contention delineated in paragraph 5, herein. The intent of the settling parties is that the experts and the Sheriff's employees and contractors will work together cooperatively and efficiently with the minimum of disruption or inconvenience to the Jail.

15. The experts shall provide the parties with their draft reports ("initial reports") assessing operations and conditions at the Jail in the areas of contention set forth herein and rendering opinions as to whether any of the areas of contention constitute current and ongoing violations of federal rights, state the federal right deemed to be violated, and provide the specific basis for each of their findings (of violations or the absence of violations).

16. If the experts render an opinion that any of the areas of contention constitute current and ongoing violations of federal rights, they will draft Implementation Plans designed to remedy those violations. The prospective relief proposed in the Implementation Plans to remedy the violations shall be narrowly drawn, extend no further than necessary to correct the violation of the federal right, and the least intrusive means necessary to correct the violation of the federal right.

17. Unless otherwise agreed in writing by the settling parties, the experts' initial reports and the Implementation Plans, if any, shall be completed within three (3) months following the approval of this Settlement Agreement by the Court under Fed. R. Civ. P. 23, and shall be sent to the Settling parties via electronic mail (e-mail).

18. The settling parties shall have 14 days from receipt of the e-mail containing the

initial reports and Implementation Plans, if any, to provide written comment to the experts via e-mail as to the initial reports and the Implementation Plans. The experts will then consider such comments and within 14 days, in their sole discretion, revise their respective reports and the Implementation Plans, if any, in response to the comments as they deem appropriate. Their final reports and the Implementation Plans, if any, shall then be filed with the Court.

19. Within 14 days of filing, either party may file objections to any provisions of the Implementation Plans, if any, and challenge the experts' findings of fact as to whether or not a federal right has been violated as not supported by the documentation, data, and information provided to the experts, and request a hearing before the Court on their objections. The party filing the objections shall bear the burden of proving that the objected-to findings of fact in the final reports are not supported by the documentation, data, and information provided to the experts, those findings do or do not involve current and ongoing violations of federal rights, and/or that that the objected-to portions of the Implementation Plans do not comply with the prospective relief requirements of the Prison Litigation Reform Act (PLRA), 18 U.S.C. § 3626(a)(1)(A).

20. The settling parties stipulate that the portions of the Implementation Plans that no party objects to comply with 18 U.S.C. § 3626(a)(1)(A). Provisions of the final reports and Implementation Plans, if any, for which no objection is filed shall be entered as an Order by the Court unless the Court determines that the prospective relief proposed in the Implementation Plans is not in accordance with 18 U.S.C. § 3626(a). Should the Court deny a party's objections, it shall enter the objected-to portions of the Implementation Plans, if any, as an Order of the Court. The portions of the Implementation Plans ordered by the Court shall be deemed by these parties to comply with 18 U.S.C. § 3626(a)(1)(A). Should the final reports filed with the Court determine that there are no current and ongoing violations of federal rights, and should any objections by Plaintiffs to such determinations be overruled, the Court shall enter an order terminating the

Consent Decree.

21. If Implementation Plans are entered by the Court, the experts shall thereafter assess compliance with the Implementation Plans and shall issue reports at six month intervals determining whether the Jail has reached substantial compliance with each of the provisions of the Implementation Plan. The experts shall submit draft reports to the parties for comment no later than 14 days before finalizing their reports. The experts will then consider such comments and within 14 days, in their sole discretion, revise their respective reports. The experts' final reports shall be filed with the Court.

22. Absent agreement by both parties, the experts may not initiate nor receive *ex parte* communications with the Court. Any documents, records, letters, emails, reports, correspondence, photographs, or other items sent by any expert to a party or sent by any party to an expert shall be copied or sent to the other party. The experts may initiate *ex parte* communications with either party.

23. Plaintiffs are entitled to conduct reasonable monitoring of the Jail's compliance with this Agreement and the Implementation Plan, if entered, including the right to inspect the jail, accompany the experts on their tours, interview staff and inmates, review relevant records and observe practices related to compliance with the provisions of this Agreement and Implementation Plan. However, upon the earlier of either: (a) a Court order entering an Implementation Plan, or (b) a Court order terminating the Consent Decree, the system of free phone calls by inmates to Plaintiff's counsel shall terminate.

24. Failure by either party to enforce this Agreement or Implementation Plan, if entered, or any provision thereof with respect to any deadline or any other provision herein shall not be construed as a waiver of its right to enforce other deadlines or provisions of the Agreement or Implementation Plan.

25. If any circumstance occurs that causes a failure to timely carry out any requirements of the Agreement or Implementation Plans, if entered, the Sheriff shall notify Plaintiffs' Counsel in writing within 20 calendar days after the Sheriff becomes aware of the circumstance and its impact on the Sheriff's ability to perform under the Agreement. The notice shall describe the cause of the failure to perform and the measures taken to prevent or minimize the failure. The Sheriff shall implement all reasonable measures to avoid or minimize any such failure.

26. The Agreement and Implementation Plan, if entered, shall be applicable to, and binding upon, all settling parties, and their respective officers, agents, employees, assigns, and their successors in office.

27. In the event that any provision of this Agreement or the Implementation Plan, if entered, is declared invalid for any reason by a court of competent jurisdiction, that finding shall not affect the remaining provisions of this Agreement or Implementation Plan.

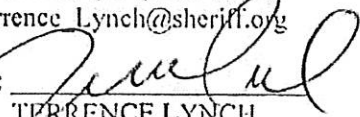
28. If an Implementation Plan is entered by the Court, the Court shall terminate the Consent Decree and dismiss this case when the Jail has maintained substantial compliance with each of the substantive provisions of the Implementation Plan for one (1) year.

29. The Court shall retain jurisdiction to enforce the terms of this Settlement Agreement and the Implementation Plan, if entered, until entry of a Final Order of Dismissal under the terms of Paragraph 28 above.

30. Following entry of an Implementation Plan Order under Paragraph 20 above, or upon termination of the Consent Decree, whichever is earlier, the Court shall determine and award Plaintiffs' attorneys' fees and litigation costs, to the extent not previously determined or compromised, upon proper application therefor as provided in the Second Stipulation for Settlement (DE 913-9).

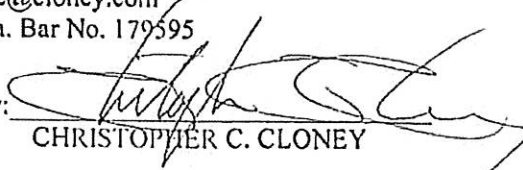
DATED this 22<sup>nd</sup> day of July, 2016.

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