

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
COVINGTON DIVISION
CIVIL ACTION NO. 05-79-WOB**

Eastern District of Kentucky
NOV 23 2005
CLERK U.S. DISTRICT COURT

JAMES HOLLINGSWORTH, ET AL.

PLAINTIFFS

v.

CAMPBELL COUNTY, KENTUCKY, ET AL.

DEFENDANTS

**JOINT MOTION FOR ORDER PROVISIONALLY CERTIFYING CLASS,
PRELIMINARILY APPROVING SETTLEMENT, APPROVING FORMS AND
DISTRIBUTION OF NOTICE, AND SCHEDULING DATE FOR FINAL FAIRNESS
HEARING**

Plaintiffs, James Hollingsworth, Charles Breckenridge, Khalil Rahim, Thomas Elliott, Tray James, Chance Hall, Jeff Deal, Ron Gregory, Leon Marshall, Danale Sneed, Dennis Marshall, Chris Dale, Walter Long, Keith Lawson, Arthur Singleton, James Davenport, Ed James, Larry Gaines, Rick Steele, Paul Sandman, Anthony Jordan, James Woodruff, Jason Sumpter, Sean Black, Jacob Bowen, James Smith and Dale Myerhoff (hereinafter "Plaintiffs") and Defendants, Campbell County, Greg Buckler, in his official capacity as Campbell County Jailer and in his individual capacity, and John D. Rees, in his official capacity as Commissioner of the Kentucky Department of Correction, by their undersigned counsel respectfully move this Court for an Order provisionally certifying the class pursuant to Civil Rule 23(b)(2), preliminarily approving their settlement, approving forms and distribution of notice to class members involved in this settlement, and scheduling a final Fairness Hearing with respect to this settlement.

MEMORANDUM IN SUPPORT

In support of the foregoing Motion, the parties state as follows:

1. On April 29, 2005, Plaintiffs, James Hollingsworth, Charles Breckenridge, Khalil Rahim, Thomas Elliott, Tray James, Chance Hall, Jeff Deal, Ron Gregory, Leon Marshall, Danale Sneed, Dennis Marshall, Chris Dale, Walter Long, Keith Lawson, Arthur Singleton, James Davenport, Ed James, Larry Gaines, Rick Steele, Paul Sandman, Anthony Jordan, James Woodruff, Jason Sumpter, Sean Black, Jacob Bowen, James Smith and Dale Myerhoff (hereinafter "Plaintiffs") filed the above-captioned case against Defendants, Campbell County, Greg Buckler, in his official capacity as Campbell County Jailer and in his individual capacity, and John D. Rees, in his official capacity as Commissioner of the Kentucky Department of Correction. Plaintiffs alleged that they were subject to unconstitutional conditions of confinement at the Campbell County Detention Center as a result of the number of inmates housed therein, and Defendants denied those allegations.

2. The requirements of Federal Rule 23(a) and 23(b)(2) are established, such that it is appropriate to certify the class consisting of all persons presently and in the future incarcerated in the Campbell County Detention Center.

3. This Court should designate Plaintiffs James Hollingsworth as Class Representative.

4. This Court should appoint Robert B. Newman as Counsel for the Settlement Class.

5. The law favors settlement of class actions, and this Court should base "its preliminary approval of a proposed settlement upon its familiarity with the issues and evidence of the case as well as the arms-length nature of the negotiation prior to the settlement." *In Re:*

Southern Ohio Correctional Facility, 173 F.R.D. 205, 211 (S.D. Ohio 1997; Spiegel, J.), citing *In Re: Dun & Bradstreet Credit Serv. Customer Litig.*, 130 F.R.D. 366, 369 (S.D. Ohio 1990; Weber, J.). “If the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the range of possible approval, then the Court should direct that notice be given to the class members of a formal fairness hearing, at which evidence may be presented in support and in opposition to the settlement.” *Manual for Complex Litig.* § 0.44 (2d ed. 1985). In light of this standard, and based on the following, this Court should preliminarily approve the Settlement Agreement.

Formal discovery in this case was taken. Plaintiffs supplied Defendants with detailed information about their claims and interests, and Defendants supplied Plaintiffs with exhaustive information about the conditions of confinement at the Detention Center. Following discovery, counsel for the parties conducted extensive arms-length negotiations designed to resolve their differences in a manner that fully addressed their respective concerns. Having done so, the parties have reached a settlement, the terms of which are memorialized in a Proposed Consent Decree, a copy of which is attached hereto in Appendix 1.

6. Counsel for the Settlement Class and for Defendants have concluded that the proposed Settlement provides a fair conclusion to the litigation between Plaintiffs and Defendants.

7. Based upon these events, and upon the judgment of trial counsel, this Court should preliminarily determine that the proposed settlement is “fair, adequate, and reasonable, as well as consistent with the public interest.” *Bailey v. Great Lakes Canning, Inc.*, 908 F.2d 38, 42 (6th Cir. 1990); *Southern Ohio Correctional Facility*, *supra*, 173 F.R.D. at 212.

8. The Court should also approve the forms of notice and the plan for dissemination of notice. *See, e.g., Quigley v. Braniff Airways, Inc.*, 85 F.R.D. 74, 77 (N.D. Tex. 1979) (Rule 23(e) “leaves the Court with virtually complete discretion as to the manner and method of notice”). As more fully described in the Plan for Notice of Class Action and Settlement (“Plan”), which is attached hereto as Appendix 2, the Plan and the contents of the proposed forms of notice are fair and reasonable. As reflected in the Plan and the forms of class notice, the Plaintiffs have complied with Federal Rule of Civil Procedure 23(e) and the requirements of due process. *See, e.g., In Re: Drexel Burnham Lambert Group, Inc.*, 130 B.R. 910, 924 (S.D.N.Y. 1991), *aff’d*, 960 F.2d 285 (2d Cir. 1992). The parties will publish the Summary Notice on the Kentucky Post and the Campbell County Recorder once prior to the final Fairness Hearing and at Campbell County’s expense.

9. The Court should also schedule a final Fairness Hearing in order to have before it all required information necessary to determine that class certification is proper and that the settlement should be approved. *See Manual for Complex Litig.* § 30.44. The Fairness Hearing will provide a forum for the Parties and opponents to explain and describe (or challenge) the terms and conditions of the class certification and settlement, including the fairness, adequacy and reasonableness of the settlement. This information will be incorporated into the various forms of notice.

CONCLUSION

For the foregoing reasons, the parties jointly and respectfully request this Court to enter an Order provisionally certifying a class action, preliminarily approving settlement and the method and forms of notice, and scheduling a Final Fairness hearing. A proposed Order is attached as Appendix 3.

Respectfully submitted,

Robert B. Newman (per authorization 11/23/05)

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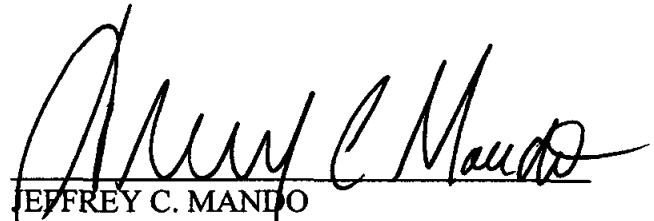
Attorneys for Defendant, John D. Rees

CERTIFICATION

I hereby certify that a true and accurate copy of the foregoing was sent by U.S. mail,
postage prepaid, this 23 day of November, 2005 to:

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