

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

WAYNE COUNTY JAIL INMATES et al.,

Case No. 71 173 217 CZ

Plaintiffs

Hon. Timothy M. Kenny

v

WILLIAM LUCAS et al.,

Defendants.

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STIPULATED TEMPORARY AMENDMENT TO THE CONSENT ORDER

At a session of said Court, held in the City of Detroit,
County of Wayne, State of Michigan

on 5/18/2020

PRESENT: Timothy M. Kenny
Circuit Court Judge

A. Preamble

The parties hereby agree to the following:

1. The parties agree that this Stipulated Temporary Amendment constitutes a Temporary Amendment to the Consolidated Consent Order dated July 20, 2018, to address certain issues faced by the Wayne County Jail in light of the continuing COVID-19 pandemic. The parties will not object on the basis of jurisdiction or venue to any motions filed or relief sought in this matter that would allow the parties to fully litigate and appeal the claims raised and relief requested in Plaintiffs' complaint in the case titled *Russell, et al., v. Wayne County, et al.*, Case No. 2:20-cv-11094 (E.D. Mich. May 4, 2020).
2. This Court retains jurisdiction to enforce this Stipulated Temporary Amendment to the Consent Order for the duration of this litigation and to issue any remedial orders necessary to address a breach of this Stipulated Temporary Amendment. Plaintiffs' counsel agrees to contact defense counsel to give notice of a breach or suspected breach of the Stipulated Temporary Amendment. If the matter cannot be satisfactorily resolved with defense counsel within 48 hours of notice to defense counsel, Plaintiffs' counsel will contact the court, and within 24 hours of notice from Plaintiffs' counsel that there has been a breach or suspected breach of the Stipulated Temporary Amendment, the Court may schedule a conference call with the parties to discuss the matter and how to best remediate the issue.
3. Defendants' position is that Defendants were in full compliance with all subparagraphs of this Stipulated Temporary Amendment prior to the filing of Plaintiffs' lawsuit. Defendants are making no admissions regarding liability and expressly deny any unlawful acts and/or omissions. Likewise, Plaintiffs are making no admissions that their claims lack merits or that Defendants complied with any of the subparagraphs of this Order prior to the filing of Plaintiffs' lawsuit.
4. Entry of this Stipulated Temporary Amendment as a modification to the Consolidated Consent Order does not in itself deem Plaintiffs as prevailing parties for purposes of attorneys fees pursuant to 42 U.S.C. §1988.
5. This Stipulated Temporary Amendment to the Consolidated Consent Order is intended to address the unique issues faced by the Wayne County Jail as a result of the COVID-19 pandemic and shall terminate 30 days after its entry.

This period may be extended by agreement of the parties or by order of the Court upon good cause shown.

B. Stipulation

The parties herein, by and through their respective counsel, hereby agree and stipulate that upon entry of this Stipulated Temporary Amendment,¹ Defendants shall immediately undertake or continue to implement the following measures related to the conditions of confinement at the Wayne County Jail (“the Jail”) during the pendency of the COVID-19 pandemic:

1. Plaintiffs seek an inspection of all Jail facilities on or before May 18, 2020 by an inspector, to be selected by Judge Kenny at no cost to Defendants. Both parties may submit two proposed candidates for selection of the inspector. If the inspector selected is upon the recommendation of Defendants and requires the payment of a fee, Defendants will cover the cost. The inspection will be limited to the COVID-19 pandemic response, as enumerated in the conditions agreed upon herein. Defendants will not object to Plaintiffs’ request for an inspection of the Jail facilities.
2. Ensure that each incarcerated person receives, free of charge and upon request: (a) a supply of soap and hand towels sufficient to allow regular hand washing and drying each day, and (b) an adequate supply of disinfectant products² effective against the COVID-19 virus.;
3. Provide access to showers on a daily basis;
4. Ensure that, to the fullest extent possible, all Jail staff wear personal protective equipment, including masks and gloves;

¹ Plaintiffs filed an Emergency Motion for Temporary Restraining Order and Preliminary Injunction on May 4, 2020 (ECF No. 3). Neither party waives any arguments with respect to the issues raised in the Emergency Motion.

² Disinfectant products must meet EPA’s criteria for use against SARS-CoV-2, the virus that causes COVID-19. See *List N: Disinfectants for Use Against SARS-CoV-2*, EPA.gov, <https://www.epa.gov/pesticide-registration/list-n-disinfectants-use-against-sars-cov-2> (last visited May 7, 2020).

5. Ensure that, to the fullest extent possible, all Jail staff wash their hands with soap and water or use hand sanitizer containing at least 60% alcohol both before and after touching any person or any surface in cells or common areas;
6. Continue to implement protocols through which medical attention is provided, on a timely basis, to any incarcerated person that reports a need for medical attention for any COVID-19 related symptoms to any member of the Jail staff;
7. Per protocol, continue to make COVID-19 testing available to all incarcerated persons either (a) displaying known symptoms of COVID-19 or (b) who have been in known proximity of other persons, within the last 14 days, who have tested positive for COVID-19;
8. Provide adequate spacing between people incarcerated so that social distancing, as defined by the CDC, can be accomplished to the extent possible;
9. Ensure that individuals identified as having COVID- 19, as having symptoms of COVID-19, or as having been exposed to COVID-19 receive adequate medical care and are properly quarantined in a designated quarantine area, with continued access to showers, mental health services, reading materials, phone and video calling with loved ones, communications with counsel, and personal property (to the extent reasonable to the inmate's physical and mental well-being). Such individuals shall remain in quarantine and be strongly encouraged to wear face masks when interacting with other individuals until they are no longer at risk of infecting other people;
10. Provide sufficient disinfecting supplies,³ without cost, so incarcerated people can clean high-touch areas or items (including, but not limited to, telephones and headphones) between each use;
11. Effectively communicate to all people incarcerated, including low-literacy and non-English-speaking people, sufficient information about COVID-19,

³ Disinfectants must meet EPA's requirements for use against SARS CoV-2. *See supra* note 2.

measures taken to reduce the risk of transmission, and any changes in policies or practices to reasonably ensure that individuals are able to take precautions to prevent infection;

12. Train all staff regarding measures to identify symptoms of COVID-19 in inmates, measures to reduce transmission, and the Jail's policies and procedures during this crisis (including those measures contained in this Order);
13. Refrain from charging medical co-pays to those experiencing COVID-19-related symptoms, including testing; and
14. Ensure that retaliatory discipline is not taken solely in response to (a) incarcerated persons' requests for medical attention and basic, necessary protections, and/or (b) efforts by incarcerated persons to publicize unsafe and life-threatening conditions inside the Jail.

IT IS SO ORDERED.

/s/ Timothy M. Kenny
Circuit Court Judge

Agreed as to form and content:

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