

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION**

SCOTT TILLMAN and WILLIAM )  
LENNEAR, et al., )

Plaintiffs, )

vs. )

Case No. 83-199-CIV-ORL-22

CLAUDE MILLER, et al., )

Defendants. )

SCOTT TILLMAN and WILLIAM )  
LENNEAR, et al., )

Plaintiffs, )

vs. )

Case No. 83-285-CIV-ORL-22

CLAUDE MILLER, et al., )

Defendants. )

LARRY EUGENE BROWN, JR., )

Plaintiff, )

vs. )

Case No. 88-281-CIV-ORL-22

JERRY W. HICKS, et al., )

Defendants. )

**PLAINTIFFS' MOTION FOR ORDER TO SHOW CAUSE AND FOR ATTORNEYS'**  
**FEES AND EXPENSES**  
**and**  
**REQUEST FOR STATUS CONFERENCE**

Plaintiffs, by and through undersigned counsel and pursuant to Rule 70 of the Federal

Rules of Civil Procedure, seek to enforce the provisions of the Final Consent Decree entered by this Court on December 3, 1993, which directed the Defendants to reduce the jail population of the Brevard County Detention Facility (County Jail), and move this Court for the entry of an order to show cause why the Defendants should not be held in contempt for their failure to comply with the Final Consent Decree.

For many years, Plaintiffs have attempted to compel Defendants to take meaningful steps to reduce the chronic overcrowding of the County Jail. Those efforts have included the engagement of a consultant, mediation, extensive negotiations, persistent monitoring, and monthly phone conferences. Nonetheless, Defendants have failed to alleviate the overcrowding of the County Jail and continue to operate the facility significantly in excess of its operational capacity. Therefore, Plaintiffs have been left with no choice but to file this motion to enforce the Final Consent Decree.

Plaintiffs also seek an award of attorneys' fees and expenses for the work they have performed monitoring and enforcing the Final Consent Decree.

Finally, because this case has spanned for such a long time and may require expert discovery to resolve the issues raised in this motion, Plaintiffs respectfully request a status conference to discuss methods for all parties to move forward with resolving this motion.

### **Factual and Procedural Background**

This case began in 1983 with the filing of *pro se* complaints by plaintiffs Tillman and Lennear (83-cv-199 and 83-cv-285). On May 27, 1983, Plaintiffs retained counsel, who filed an amended complaint challenging the constitutionality of the conditions of confinement at the Brevard County Jail. The challenged conditions related to housing, overcrowding, sanitation, plumbing, recreation, ventilation, classification, lack of due process, staffing, medical care,

visitation, and law library access.

On July 21, 1988, the parties entered into a Partial Stipulation and Agreement for Consent Decree which addressed only the claim related to law library access. That agreement required that the Defendants provide jail detainees a law library. It further required Defendants to modify attorney-client conference rooms to assure privacy during legal visits and to improve general visitation areas so that inmates could speak freely and conveniently with family.

Just months before the entry of the Partial Stipulation and Agreement for Consent Decree, plaintiff Brown filed a *pro se* complaint on April 4, 1988 (88-cv-281), alleging numerous constitutional deficiencies in the Brevard County Jail, including a claim concerning the inadequacy of the inmate law library. On June 25, 1991, the Court granted summary judgment against Brown on all claims, except the claim addressing the inmate law library. The Court severed the law library claim and consolidated it with the on-going class action cases of plaintiffs Miller and Lennear in *Tillman v. Miller*, Case Nos. 83-cv-199 and 83-cv-285. *See* DE 75 (88-cv-281).

On June 30, 1993, all parties entered into the current Final Consent Decree. *See* Final Consent Decree and Order Approving Final Consent Decree, attached as Exhibit 1. In the Final Consent Decree, Defendants agreed not to operate the County Jail in an overcrowded condition and in excess of its overall capacity or in excess of the cell-by-cell capacity approved by the Florida Department of Corrections. The Final Consent Decree further provided for a notification process to the Court and all parties in the event the jail population exceeded the approved capacities. Finally, the Defendants agreed to hire a corrections expert to prepare a report recommending improvements in jail classification to reduce inmate population. The Court issued an Order Approving the Final Consent Decree on December 3, 1993. *See* Exhibit 1.

In the several years after the entry of the Final Consent Decree in 1993, the County Jail remained severely overcrowded. The Board of Brevard County Commissioners conducted several voter referendums for a sales tax to fund an expansion of the County Jail during the 1990s and in 2002, but those were defeated. Other internal administrative efforts to reduce the jail population likewise failed.

On August 11, 2004, Plaintiffs filed a Motion for Rule to Show Cause alleging that the Defendants continued to operate the County Jail in an overcrowded condition in excess of its overall capacity or in excess of the cell-by-cell capacity, in violation of Paragraph I.(A) of the Final Consent Decree. DE 47, 83-cv-199. Citing the County's own jail population numbers, Plaintiffs established that the County Jail had been overcrowded and in excess of capacity for many years. In their response to the motion, Defendant Brevard County admitted that the County Jail was overcrowded and had "been operated on a regular basis in excess of its capacity." *See* Response of Brevard County, DE 53 at 2-3 (83-cv-199). Likewise, Defendant Sheriff of Brevard County responded that there "has been chronic overcrowding" in the County Jail. *See* Response of Sheriff, DE 47 at 2 (83-cv-199).

On November 20, 2007, the parties filed a Joint Report on the Need for an Evidentiary Hearing. DE 80 (83-cv-199). The parties reported that they had explored alternatives to an evidentiary hearing and proposed that the Defendants employ a jail management expert to perform an analysis of the criminal cases affecting the jail population and prepare a report with recommendations to lessen overcrowding. *Id.* at 2. The parties further proposed that, once the report was finished, a mediation/workshop should be attended by all parties plus key criminal justice players not parties to the case, to be held and chaired by a federal judge. *Id.* at 3. On January 7, 2008, the Court entered an Order which postponed the evidentiary hearing, approved

the Report, and designated Judge Gregory A. Presnell as the workshop mediator. DE 83 (83-cv-199).

On August 12, 2008, the mediation/workshop was held. At the mediation, the expert, former Miami-Dade County Judge Charles Edelstein, presented his analysis of the Brevard County criminal justice system and made recommendations for reducing the jail population. As a result, several ongoing workshop groups were established to devise procedures to reduce overcrowding. In March 2010, Brevard County retained a Jail Population Management Coordinator (JPMC) to lead and direct its efforts to reduce the jail population. *See* Joint Status Report, DE 93 at 2-3 (83-cv-199).

On March 29, 2011, the parties submitted a Joint Status Report. DE 93 (83-cv-199). By that time, due to construction and renovation, the County Jail had grown considerably. In the Joint Status Report, the parties agreed that the “optimum amount of inmates that can be housed in the Brevard County Jail Complex with a physical bed count of 1701 (rated design) is 1446 (operational capacity) after factoring 15% for classification purposes.” *Id.* at 4.

In a Memorandum attached as an exhibit to the Joint Status Report, the Brevard County Sheriff explained the significance of the metric “operational capacity” and how the number for the operational capacity of 1446 inmates was derived:

Using the National Institute of Corrections (N.I.C.) classification factor, the 1446 inmate spaces in the Brevard County Jail Complex is calculated by taking the 1701 beds at the jail and subtracting the 15% classification factor of 255 beds for a total of 1446 inmate spaces. ...

The classification factor is designed to place inmates of like custody levels into appropriate housing. Using this evaluation process ensures that the Florida Model Jail Standard for housing are followed.

***Overcrowding occurs when jail population exceeds operational capacity.*** Compromising the jail’s classification capabilities is likely to compromise the safety and well-being of the inmates, staff and public. The National Institute of

Corrections supports the use of the 15-20% classification factor as an industry standard in jail facilities to determine operational capacity. Using this classification factor ensures compliance with the Florida Model Jail Standard as well as maintains and decreases potential liability (emphasis added).

See DE 93-3 at 1 (83-cv-199), attached as Exhibit 2. At the time of the Joint Status Report, the monthly jail population numbers trended from the high 1500s into the 1600s, well above the operational capacity of 1446. DE 93 at 4 (83-cv-199).

The parties reported to the Court that they “remain optimistic that reaching the operational capacity remains doable.” *Id.* at 5. Toward that end, the Defendants requested that the County’s Jail Population Management Coordinator continue to submit reports and that the Court allow for the implementation of the recommendations that the parties anticipated would result from a training of the Brevard County judiciary conducted by the American University’s Criminal Courts Technical Assistance Project, to be held on September 16, 2011. *Id.* The Court held a status conference on the Joint Status Report, accepted the report, and directed the parties to file a follow-up report by September 30, 2011. DE 97 (83-cv-199).

On October 12, 2011, the Defendants filed a Status Report to which Plaintiffs had no objection. DE 100 (83-cv-199). The Defendants outlined the efforts made by the previously established workgroups to track and reduce inmate population through the criminal justice system and reported that the most important development was the case management training presented to the Brevard County judiciary by the Justice Programs Office of the American University in Washington, D.C. *Id.* at 2. The next step as recommended in the case management training was for the Brevard County judiciary to set up a task group to begin to address the principles demonstrated in the training and outlined in the additional materials provided. *Id.*<sup>1</sup>

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<sup>1</sup>The Status report submitted on October 12, 2011, is the most recent docket entry in this case. The Court has thus never ruled on Plaintiffs’ claims of continued excessive overcrowding as

Unfortunately, these efforts all failed and the Brevard County Jail remained stubbornly overcrowded in violation of the Final Consent Decree.

**More Recent Efforts to Address Overcrowding without Judicial Intervention**

More recently, despite Defendants' inability to comply with the Final Consent Decree, Plaintiffs have made every effort to provide Defendants a chance to come into compliance. In May of 2013, the parties' counsel resumed having telephone calls to discuss the best procedures for moving forward. In 2014, the jail numbers were at levels that were just higher than the operational capacity. Plaintiffs decided to monitor the situation to determine whether they would remain these levels.

Unfortunately, they did not. Beginning in 2015, the jail numbers began steadily climbing. From 2015 through 2017, Plaintiffs stayed in regular communication with Defendants, monitoring the jail numbers to determine whether they would fall below the operational capacity. Defendants continued to express to Plaintiffs that changes in the Brevard County Criminal Court system—from new and different judges to increased diversion programs to lower bails to more quickly resolving cases—would alleviate the Jail's overcrowding. Plaintiffs agreed to wait and give these efforts a chance to work.

Again, these efforts did not have their intended effect. On August 10, 2017, Plaintiffs' counsel conducted an inspection of the jail as part of the ongoing monitoring efforts.

In early 2018, the parties began even more frequent communications about the status of the Jail overcrowding. Contact was made with a former Chief Judge who agreed to review all possible resolutions with the current criminal court judges. In December 2018, Plaintiffs

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raised in their Motion for a Rule to Show Cause, DE 47 (83-cv-199). Plaintiffs ask the Court to consider the present motion as either an amendment to that motion, or, as a separate motion to enforce the terms of the Consent Decree on jail overcrowding.

proposed that if Defendants could bring the jail population numbers underneath the cap for six consecutive months, Plaintiffs may be amenable to dismissing the lawsuit upon a resolution of attorneys' fees and costs. Unfortunately, the numbers have not decreased. On July 12, 2019, Plaintiffs sent a letter to Defendants summarizing the failed efforts and the parties' discussions and stating that Plaintiffs had no choice but to return to court.

Plaintiffs have given Defendants every opportunity to come into compliance without court intervention. They have failed to do so. Plaintiffs have been left with no choice but to file this motion to enforce the Final Consent Decree on behalf of the class members.

**Brevard County Jail Remains Overcrowded in Violation of the Consent Decree**

The Brevard County Jail remains overcrowded in violation of Paragraph I.(A) of the Final Consent Decree. Due to another expansion and renovation, the current total bed capacity of the County Jail is 1756, making the operational capacity 1493.

Brevard County is required under state law to report its average daily jail population on a monthly basis to the Florida Department of Corrections pursuant to Florida Statute § 951.23(2).<sup>2</sup> As the chart below demonstrates, the Brevard County Jail continues to be overcrowded and operated far in excess of its operational capacity of 1493. Indeed, as their own reports of the county jail population demonstrate, Brevard County has not reported an average daily jail population under 1600 since March 2018:

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<sup>2</sup> See Florida County Detention Facilities' Average Inmate Population, at <http://www.dc.state.fl.us/pub/jails/index.html>.



**Average Daily Jail Population, Brevard County Jail<sup>3</sup>**

|                  | <b>2017</b>      | <b>2018</b> | <b>2019</b> |
|------------------|------------------|-------------|-------------|
| <b>January</b>   | 1533             | 1654        | 1703        |
| <b>February</b>  | 1570             | 1579        | 1690        |
| <b>March</b>     | 1582             | 1591        | 1689        |
| <b>April</b>     | 1551             | 1678        | 1643        |
| <b>May</b>       | 374 <sup>4</sup> | 1703        | 1723        |
| <b>June</b>      | 1566             | 1718        | 1741        |
| <b>July</b>      | 1666             | 1740        | 1703        |
| <b>August</b>    | 1748             | 1748        | 1736        |
| <b>September</b> | 1679             | 1732        | 1702        |
| <b>October</b>   | 1654             | 1754        | 1681        |
| <b>November</b>  | 1682             | 1734        |             |
| <b>December</b>  | 1679             | 1679        |             |

On a monthly basis, counsel for Defendant Brevard County provides Plaintiffs with the jail population numbers for the last several days of each month. Recently, for November through early December 2019, that snapshot of data for a few select days shows daily population numbers in the range of the mid-1500s. However, these data points are from individual days and do not represent the cumulative monthly average.

The County Jail population still remains well above the operational capacity, and thus, in violation of the Final Consent Decree.

**Attorneys' Fees**

In 2014, as the parties began to explore the possibility of ending this case, the parties also

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<sup>3</sup> The monthly reports for all of 2017 and 2018 are available at the above website. For 2019, the most recent data available is from October 2019.

<sup>4</sup> The reported number of 374 for May 2017 is so clearly an anomaly that it is likely a mistake in recording by the Florida Department of Corrections.

began to discuss the issue of attorneys' fees. On August 1, 2014, Plaintiffs submitted a letter to Defendants outlining their claim to fees, including their specific time sheets detailing the work they had performed, and explaining the number of hours they had incurred and their hourly rates. At that time, Plaintiffs sought \$102,773.21 in fees and expenses. On July 21, 2015, the Brevard County Commission approved a fee settlement of \$98,000 contingent upon the dismissal of the lawsuit. *See* County Attorney Memorandum, attached as Ex. 3. However, because of the persistent overcrowding, the parties never executed this settlement.

Plaintiffs are entitled to their attorneys' fees and costs for the work they have performed in securing, monitoring, and enforcing the Final Consent Decree. The Consent Decree rendered Plaintiffs "prevailing parties." *Maier v. Gagne*, 448 U.S. 122 (1980). As such, they are entitled to fees for all post-judgment monitoring work. *Pennsylvania v. Delaware Valley Citizens' Council for Clean Air*, 478 U.S. 546, 558-559 (1986) ("post-judgment monitoring of a consent decree is a compensable activity for which counsel is entitled to a reasonable fee."). *See also Sierra Club v. Hankinson*, 351 F.3d 1358, 1361 (11th Cir. 2003) (plaintiffs entitled to attorneys' fees for any work that is "relevant to the rights established by the decree and related to the terms of the judgment."); *Turner v. Orr*, 785 F.2d 1498, 1504 (11th Cir. 1986); *Miller v. Carson*, 628 F.2d 346, 348 (5th Cir. 1980).

The Brevard County Commission has approved payment of \$98,000 in fees, but Plaintiffs have incurred further fees and costs since 2015. Moreover, that figure was calculated using the then-prevailing rate under the Prison Litigation Reform Act (PLRA) of \$211.50, which has now increased to \$223.50. Plaintiffs are entitled to fees calculated at current, rather than historic, rates. *Missouri v. Jenkins by Agyei*, 491 U.S. 274, 284 (1989); *Norman v. Hous. Auth. of City of Montgomery*, 836 F.2d 1292, 1302 (11th Cir. 1988). Using that figure, Plaintiffs have incurred

\$122,266.29 in fees.

Given Defendants' position on the issue of attorneys' fees, and the fact that this case may require further proceedings before concluding, Plaintiffs can submit further briefing on this issue at the appropriate time in the future. At the Court's request, Plaintiffs will submit their time sheets, if necessary, describing the work they performed in detail.

### **Request for Status Conference**

Given the long and complex nature of this case, and the possibility that discovery may be needed, Plaintiffs respectfully request that the Court set a telephonic status conference to discuss how best to proceed.

### **Relief Sought by this Motion**

**Wherefore**, Plaintiffs seek the following relief:

- A. That this Court schedule a telephonic status conference.
- B. That the Court enter an Order to Show Cause why the Defendants should not be held in contempt for failure to comply with the Final Consent Decree, and directing Defendants to take such actions as are necessary to reduce the overcrowding of the Brevard County Jail.
- C. Award attorney's fees pursuant to 42 U.S.C. § 1988.

### **Certificate of Counsel**

Pursuant to Middle District Rule 3.01(g), the parties have conferred prior to the filing of this Motion but have been unable to resolve this matter. Defendants oppose Plaintiffs' Motion for a Rule to Show Cause. As to Plaintiffs' Motion for Attorneys' Fees, Brevard County agrees that Plaintiff is a "prevailing party" under 42 U.S.C. § 1998, and that in 2014, the Brevard

County Commission authorized that as part of a settlement agreement wherein the case would be dismissed, the county would pay \$98,000 in attorneys' fees. Brevard County does not agree, however, to pay the current prevailing rate under the Prison Litigation Reform Act (PLRA) of \$223.50 per hour.

Respectfully submitted,

Dante P. Trevisani  
Florida Bar No. 72912  
Ray Taseff  
Florida Bar No. 352500

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[rtaseff@floridajusticeinstitute.org](mailto:rtaseff@floridajusticeinstitute.org)

By: s/ Ray Taseff  
Ray Taseff

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I electronically filed today, January 6, 2020, the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all persons registered to receive electronic notifications for this case, including all opposing counsel.

By: s/ Ray Taseff  
Ray Taseff

6/30/18

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

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LARRY EUGENE BROWN, JR.

Plaintiff,

vs.

Case No. 88-281-CIV-ORL-22

JERRY W. HICKS, et al.,

Defendants.

FINAL CONSENT DECREE

WHEREAS, on July 20, 1983 the Amended Complaint herein was filed on behalf of Plaintiffs Tillman and Lennear and others similarly situated. Plaintiffs allege a cause of action and jurisdiction of the Court arising from the United States Code and United States Constitution, specifically, 42 U.S.C. Section, 1983 and 1988, 28 U.S.C. Sections 2201 and 2202, U.S. CONST. Amend. I.,

IV, V, VI, VIII, IX and XIV; and

WHEREAS, the Amended Complaint alleges, in summary, a failure on the part of the Defendants to carry out their respective statutory and constitutional duties in maintenance and operation of the Brevard County Jail in such a fashion as to violate Plaintiffs' constitutional rights; and

WHEREAS, the signatories to this Stipulation represent that they are authorized to enter into this Stipulation and to take all steps required of them by this Stipulation; and

WHEREAS, both Plaintiffs and Defendants consider it desirable and in the best interests of their respective class or successor, to settle the issues which remain by entering into this Agreement; and

WHEREAS, the parties have entered into this Agreement as a compromise settlement of their dispute, intending that this Stipulation shall not be construed in any way as defining constitutional or statutory standards, nor as an admission that any condition, policy, rule, procedure, act, or omission of the Defendants or of any of their employees or agents were or are in any way in violation of any rights of plaintiff;

THEREFORE, in consideration of the dismissal with prejudice of the allegations, claims and prayers for relief set forth in the complaint, the parties, by and through counsel, hereby stipulate and agree as follows:

I. Overcrowding

(A) Defendants agree not to operate the Brevard County Jail in an overcrowded condition in excess of its overall capacity

of 732 inmates or in excess of the cell-by-cell capacity approved by the Florida Department of Corrections as of the date this agreement is executed by defendants. However, the parties recognize that overcrowding can be subject to factors beyond the control of the Sheriff.

(B) If such overall or cell-by-cell capacities exceed the above levels, defendants shall notify the Chief Judge of the Circuit Court of the Eighteenth Judicial Circuit, in and for Brevard County, Florida, and plaintiffs' counsel, James K. Green, Esq., within forty-eight (48) hours in writing on each day that such capacities are exceeded;

(C) Defendants agree to provide plaintiffs' counsel, James K. Green, Esq., with copies of inspection reports prepared by the Florida Department of Corrections within thirty (30) days of receipt by defendants.

## II. Classification Expert

The defendants shall hire a corrections expert on jail classification who is acceptable to plaintiffs to be compensated by Brevard County who will evaluate the Sheriff's classification system. He or she will prepare a report recommending improvements in classification that will help reduce overcrowding and will prepare a plan to reduce inmate population in the event that the overall or cell-by-cell population exceeds available capacity.

## III. Partial Stipulation and Agreement for Consent Decree

(A) The Partial Stipulation and Agreement for Consent Decree executed by the parties on July 21, 1988 shall remain in full force and effect and is incorporated by reference herein.

#### IV. Miscellaneous

(A) Indigent inmates shall be provided with reasonable free postage for legal mail on weekly basis, and in emergencies.

(B) Further, inmates shall not be required to fill out blank forms. [Defendants deny, however, that they have ever required the execution of blank forms.]

#### V. Reports and Termination of Jurisdiction

(A) The defendants shall file a report at the end of the ninety (90) days from the effective date of this Final Consent Decree, certifying the actions and steps taken to implement this Stipulation.

(B) Within six (6) months from the date that this Final Consent Decree is approved, the defendants shall file a report indicating the status of compliance with this Decree.

(C) If after eighteen (18) months from the date this Consent Decree is approved, defendants have maintained compliance with this decree, the Court shall terminate jurisdiction.

#### VI. Attorneys Fees

(A) Attorneys fees to be awarded to plaintiffs shall be in the discretion of the Court if the parties cannot come to an agreement.

#### VII. Notice to Class Members

(A) Pursuant to Fed.R.Civ.P. 23(e), the Defendants shall within ten (10) days of the execution of this Final Consent Decree provide notice of the Final Consent Decree for proposed settlement to those members of the plaintiffs' class presently incarcerated in the Brevard County Detention Center.



(B) Such notice shall be provided by posting in each cellblock, in a place accessible to prisoners, notice as provided in Exhibit "A" hereto attached.

VIII. Submission to Court of Proposed Final Consent Decree and Use of Best Efforts to Obtain Approval

(A) Promptly upon execution of this Final Consent Decree, counsel for the parties shall jointly submit such Final Consent Decree to the Court for its approval and recommend that the Court approve it. Counsel for both parties also shall take all steps that may be required or requested by the Court and use their best efforts to consummate this settlement, obtain the Court's approval of this Final Consent Decree, and obtain entry of a final judgment.

IX. Effectiveness of Agreement

(A) This Final Consent Decree shall be effective immediately upon approval by the Court. In the event that the court declines to approve this Final Consent Decree or any portion herein, this Final Consent Decree shall be null and void and without prejudice to the parties' rights.

X. Additional Covenants

(A) Defendants agree that they, their officers, employees, agents, successors and all those acting in concert or participating with them shall fully comply with and enforce this Agreement, including all its terms, conditions and exhibits, and the Court's orders.

(B) Within ten (10) days of entry of an order of the Court approving this Final Consent Decree, counsel for the parties shall execute a Stipulation of Dismissal in such form as is


attached hereto as Exhibit B, which, within five (5) days after execution, shall be filed with the court by counsel for plaintiffs.

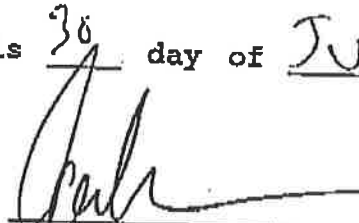
(C) Neither party will appeal the order attached hereto as Exhibit C if such order is entered by the Court.


XI. Entire Agreement

This Final Consent Decree and its exhibits contain the entire agreement between the parties. The issues of attorneys fees remains for the Court to decide.

STIPULATED AND AGREED TO this 30 day of June, 1993.

  
SHANNON WILSON, ESQ.  
OFFICE OF BREVARD COUNTY ATTORNEY  
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JAMES K. GREEN, P.A.  
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BURTON J. GREEN, ESQ.  
103 N. Atlantic Avenue  
Cocoa Beach, FL 32931

ATTORNEYS FOR DEFENDANTS

ATTORNEYS FOR PLAINTIFFS

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

COPY

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JERRY W. HICKS, et al.,

Defendants.

ORDER APPROVING FINAL CONSENT DECREE

THIS MATTER came before the Court for a fairness hearing for approval of the Final Consent Decree executed by the parties on June 30, 1993.

Background

This action began in 1983 with the filing of pro se complaints

by plaintiffs Tillman and Lennear. On May 27, 1983 plaintiffs secured the services of James K. Green, Esq. and other counsel who filed an amended complaint challenging the constitutionality of conditions of confinement at the Brevard County Jail. The conditions challenged related to housing, sanitation, plumbing, recreation, ventilation, classification, lack of due process, staffing, medical care, visitation, and law library access.

On February 6, 1984, this Court entered an order abstaining from adjudicating the claims presented in Count I of the Amended Complaint until the conclusion of state court litigation Department of Corrections v. Claude Miller, et al., Case No. 81-6665 (Fla. 18th Judicial Cir. 1981) which also challenged many of the conditions of confinement complained of in this action. On June 30, 1987, the state court action was dismissed for mootness.

On July 21, 1988, the parties entered into a Partial Stipulation and Agreement for Consent Decree in this case. On June 30, 1993, the parties entered into a Final Consent Decree.

#### The Settlement

The Partial Stipulation and Agreement for Consent Decree requires that defendants provide plaintiffs a law library and access thereto. It further requires that defendants modify attorney-client conference rooms to prevent conversations within such rooms from being overheard and to improve visitation areas so that inmates can communicate adequately in a normal conversational voice with visitors.

In the Final Consent Decree, defendants agree not to operate

the Brevard County Jail in an overcrowded condition and in excess of its overall capacity of 732 inmates or in excess of the cell-by-cell capacity approved by the Florida Department of Corrections. The final decree further provides for notification of plaintiffs' counsel and Chief Judge of the Circuit Court of the Eighteenth Judicial Circuit in the event that the jail populations exceed approved capacities. Defendants also agree to hire a corrections expert on jail classification who will prepare a report recommending improvements in classification that will help reduce overcrowding and who will prepare a plan to reduce inmate population in the event that the overall or cell-by-cell population exceeds available capacity.

The remaining issues raised in plaintiffs' Amended Complaint have been resolved through remedial action taken by defendants pursuant to the state court litigation to comply with Chapter 33-8, F.A.C.

#### Findings

1. The Court, having held a hearing pursuant to court-ordered notice to the plaintiff class in accordance with Rule 23(e) of the Federal Rules of Civil Procedure, finds that the terms of the Final Consent Decree and the Partial Stipulation and Agreement for Consent Decree, dated July 21, 1988, provide for a fair, adequate and reasonable settlement of the claims asserted in the complaint, with the exception of plaintiffs' claims for attorney's fees, costs and expenses.

2. The Plaintiff class has been provided adequate notice.

3. Any objections to the above decrees are hereby overruled.
4. Plaintiffs' counsel is experienced in jail litigation and other institutional reform litigation and has recommended this settlement.


ORDER

1. Defendants are hereby ordered to comply with the terms and conditions of the Final Consent Decree and the Partial Stipulation and Agreement for Consent Decree.

2. The Court retains jurisdiction over this action pursuant to the provisions set forth in paragraph V(C) of the Final Consent Decree.

3. The Court retains jurisdiction over the issue of plaintiffs' attorney's fees should the parties be unable to resolve same.

DONE AND ORDERED at Orlando, Florida, on this 3d day of ~~November~~ <sup>December</sup>, 1993.

  
DAVID BAKER  
UNITED STATES MAGISTRATE JUDGE

Copies furnished:

James K. Green, Esq., JAMES K. GREEN, P.A., One Clearlake Centre, Suite 1503, 250 Australian Avenue South, West Palm Beach, Florida 33401

Shannon Wilson, Esq., Office of the Brevard County Attorney, 2725 St. Johns Street, Building C, Suite 346, Melbourne, Florida 32940

Gayle Swedmark, Esq., Parker, Skelding, McVoy & Labasky, Post Office Box 669, Tallahassee, Florida 32301

Burton Green, Esq., 103 N. Atlantic Avenue, Cocoa Beach, Florida 32931

## Exhibit C

A.M.



# Brevard County Sheriff's Office

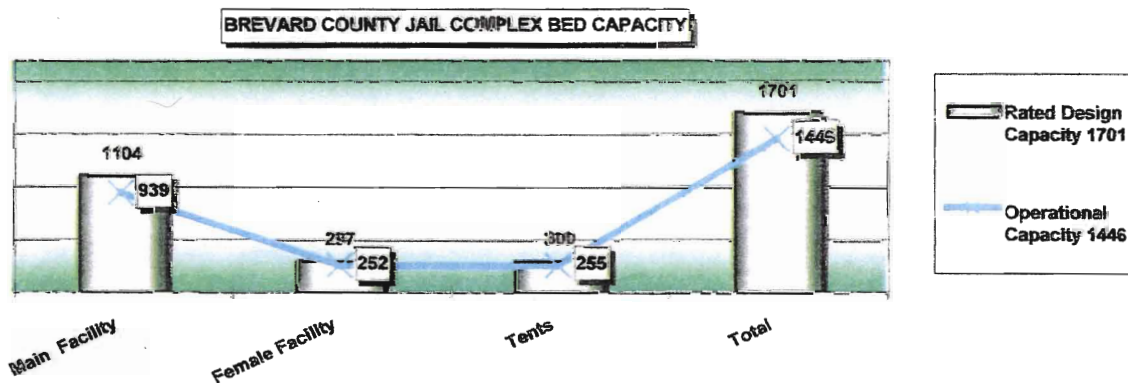
Titusville, Florida

## Memorandum

**Date:** April 27, 2009  
**To:** Commander Jeter  
**From:** Classification  
**Re:** Bed Capacity

*The optimum amount of inmates that can be housed in the Brevard County Jail Complex with a physical bed count of 1701 (Rated Design) is 1446 (Operational Capacity) after factoring 15% for classification purposes. Using the National Institute of Corrections (N.I.C.) classification factor<sup>1</sup>, the 1446 inmate spaces in the Brevard County Jail Complex is calculated by taking the 1,701 beds at the jail and subtracting the 15% classification factor of 255 beds for a total of 1,446 inmate spaces. For example, Alachua County<sup>2</sup> and Broward County<sup>3</sup> use the same N.I.C. standard using a 15%-20% classification factor.*

*The classification factor is designed to place inmates of like custody levels into appropriate housing. Using this evaluation process ensures that the Florida Model Jail Standards for housing are followed.*



*Overcrowding occurs when jail population exceeds operational capacity. Compromising the jail's classification capabilities is likely to compromise the safety and well-being of the inmates, staff and public. The National Institute of Corrections supports the use of a 15%-20% classification factor as an industry standard in jail facilities to determine operational capacity. Using this classification factor ensures compliance with the Florida Model Jail Standard as well as maintains security and decreases potential liability. (See Bibliography)*

*J.R. "Jack" Parker, Sheriff*



5/19/2009

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### Bibliography

- 1 Martin, Mark and Katsampes, Paul, U.S. Department of Justice National Institute of Corrections, "Sheriff's Guide to Effective Jail Operations, Jan. 2007, NIC Accession No. 021925.
- 2 Walpole, K.C., "Jail and Barometers," <http://www.alachuasheriff.org>.
- 3 U.S. Department of Justice National Institute of Corrections, "Jail and Justice System Assessment Broward County Florida," Feb. 13-16, 2007, NIC TA 07-J1032.



BOARD OF COUNTY COMMISSIONERS

FLORIDA'S SPACE COAST



Tammy Etheridge, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001  
Fax: (321) 264-6972

July 22, 2015

MEMORANDUM

TO: Scott Knox, County Attorney

RE: Item II.D.2., Approval of Payment in the Amount of \$98,000 to the Florida Justice Institute, Inc., IOTA Trust Account for Tillman Lennear, et al vs. Brevard County and Brevard County Sheriff et al, Case No. 83-199-cv-ORL-22, 83-285-cv-ORL-22

The Board of County Commissioners, in regular session on July 21, 2015, approved payment to the Florida Justice Institute, Inc., IOTA Trust Account in the amount of \$98,000 in attorney's fees and costs for its representation of the plaintiff's in the Tillman Lennear, et al vs. Brevard County and Brevard County Sheriff, et al, Case No. 83-199-cv-ORL-22, 83-285-cv-ORL-22.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS  
SCOTT ELLIS, CLERK

A handwritten signature in blue ink that reads "Tammy Etheridge".

Tammy Etheridge, Deputy Clerk

/ds

cc: Finance  
Budget

|                      |
|----------------------|
| Meeting Date         |
| <b>July 21, 2015</b> |



| AGENDA   |         |
|----------|---------|
| Section  | Consent |
| Item No. | II.D.2. |

**AGENDA REPORT**  
*BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS*

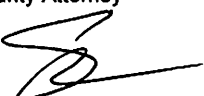
|                     |   |
|---------------------|---|
| <b>SUBJECT:</b>     | Tillman, Lennear, et.al vs. Brevard County and Brevard County Sheriff   |
| <b>DEPT/OFFICE:</b> | County Attorney's Office<br>Contact: Scott.Knox@brevardcounty.us<br>Shannon.wilson@brevardcounty.us; (321) 633-2090 |

**Requested Action:**  
It is requested that the Board of County Commissioners approve payment to the Florida Justice Institute, Inc. IOTA Trust Account in the amount of \$98,000.00 in attorneys fees and costs for its representation of the plaintiff's in the Tillman, Lennear, et.al. v. Brevard County, Brevard County Sheriff, et.al., Case No. 83-199-cv-ORL-22, 83-285-cv-ORL-22.

**Summary Explanation & Background:**  
In conjunction with a dismissal of this case ( the "jail overcrowding lawsuit"), the Florida Justice Institute, Inc., has submitted its final bill for attorney's fees and costs in its representation of the Plaintiff's in this case in the amount of \$102,773.21. This final bill represents the firms expenditure of time and costs since 2004.  
  
An executive session was held on December 16, 2014. There have been ongoing negotiations regarding this bill. The attorneys have reduced their demand, but remain firm at receiving \$98,000.00.

**Fiscal Impact**  
Fund/Account # 0001/200500

**Clerk to the Board instruction:** If approved, forward check (made payable as described above) to attention of Shannon Wilson, County Attorney's Office to coordinate dismissal of case and payment.

|   |  |   |                          |    |                          |    |                          |
|---|--|---|--------------------------|----|--------------------------|----|--------------------------|
| <b>Contract /Agreement (If attached):</b> Reviewed by County Attorney |  | Yes   | <input type="checkbox"/> | No | <input type="checkbox"/> | PR | <input type="checkbox"/> |
| County Manager<br>Stockton Whitten                                    | Assistant County Manager<br>Venetta Valdengo | Department Director / Extension<br>Scott Knox, County Attorney<br>(321) 633-2090<br> |                          |    |                          |    |                          |
|   | Assistant County Manager<br>Frank Abbate     |   |                          |    |                          |    |                          |