

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

)	
FREDERICK HARPER, <i>et al.</i> ,)	
individually and on behalf of all present)	
and future inmates in the Fulton County)	
Jail,)	
)	
Plaintiffs,)	CIVIL ACTION
)	
v.)	NO. 04-CV-1416-MHS
)	
FULTON COUNTY, GEORGIA, <i>et al.</i> ,)	
)	
Defendants.)	

**CLASS MEMBERS' MOTION TO ORDER DEFENDANTS TO SHOW
CAUSE WHY THEY SHOULD NOT BE HELD IN CONTEMPT**

Plaintiff Class Members move the Court to order the County Defendants and the Sheriff to show cause as to why they should not be held in contempt for violating the terms of the Consent Order [Doc. No. 89] approved and entered by this Court on December 21, 2005.

Defendants are not complying with core provisions of the Consent Order and they have not made reasonable efforts to comply. Defendants continue to force Class Members to sleep on the floor of day rooms in the housing zones of the Jail, exposing them to risk of assault. *See* Consent Decree ¶ 19. From April 2013 to August 2013, Defendants have forced people to sleep on the floor approximately

12,370 times. While women in the custody of the Fulton County Jail have been moved elsewhere, the Jail continues to force men to sleep on the floor; on the night of October 6, 2013, the number was 225. Moreover, the population surged beyond the 2,500-detainee limit 50 times in July and August 2013.

While cell-lock replacement is underway in some of the Jail's housing areas, the County estimates that—assuming no further delays—the process will not be complete until March 2014. *See* Consent Order ¶ 16. In the meantime, detainees continue to exit their cells at will, posing a danger to the other detainees who must live in the Jail and the officers who work there. The threat posed to Class Members by overcrowding and by malfunctioning locks is amplified by the continued understaffing in the Jail—an enduring problem that Defendants have long neglected despite urging from the Court-appointed monitor that they address it.

The appointed monitor, Mr. Calvin Lightfoot, plainly states in his reports to the Court that Defendants have violated the Consent Order by forcing detainees to sleep on the floor of their housing units, by failing to staff all mandated posts in the Jail, and by continuing to detain people in cells whose locks are broken or compromised. Reports of Class Members and records kept by the Jail confirm the violations noted by the monitor. Individually or collectively, Defendants have violated paragraphs 12, 14, 15, 16, 18, 19, 25, 26, 28, 31 and 36 of the Consent

Order, all provisions pertaining to minimally adequate staffing in the Jail, population limits, security and maintenance of cell locks in working order.

Class Counsel has attempted in good faith to remedy conditions in the Fulton County Jail through the dispute resolution procedures set out in paragraph 112 of the Consent Order, but Defendants have not put forth a plan for achieving compliance. Defendants' violations of the Consent Order have led Jail conditions to deteriorate and have violated the constitutional rights of people incarcerated there, and conditions appear unlikely to improve absent this Court's intervention.

To hold Defendants in contempt of the Consent Order, this Court must find by clear and convincing evidence (1) that the Consent Order is valid; (2) that the relevant terms of the Consent Order are clear; (3) that Defendants have not complied with the Consent Order; and (4) that Defendants are able to comply with the Consent Order. *See F.T.C. v. Leshin*, 618 F.3d 1221, 1232 (11th Cir. 2010). As set forth in the attached brief, there is no doubt that the Consent Order is valid, nor is there any doubt that its terms clearly describe what it permits and what it forbids. Clear and convincing evidence shows that Defendants have violated the terms of the Consent Order, and those violations have led to unconstitutional conditions of confinement and violations of the constitutional rights of detainees.

CONCLUSION

Wherefore, Class Members respectfully request that this Court order this case set for a hearing at which Defendants may show cause as to why they should not be held in contempt. If the Court holds Defendants in contempt, Class Members request that the Court impose monetary sanctions until compliance is attained and mandate that Defendants submit to the Court a plan to bring themselves into compliance. Class Members further request that the Court award reasonable attorney fees for bringing this motion and for continued monitoring of the Consent Decree, and provide such additional relief as the Court deems proper.

Respectfully submitted this 10th day of October, 2013.¹

s/ Melanie Velez
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¹ Pursuant to Local Rule 7.1, undersigned counsel hereby certifies that this document has been prepared in compliance with Local Rule 5.1(B).

CERTIFICATE OF SERVICE

I, Melanie Velez, do hereby certify that on October 10, 2013, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of the filing to all attorneys of record in this case.

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