

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

TREVOR RICHARDSON, on his own	)	
behalf and on behalf of a class of those similarly	)	
situated,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CAUSE NO. 1:08-CV-174-RLY-JMS
	)	
MONROE COUNTY SHERIFF, in his official	)	
capacity, and the MONROE COUNTY	)	
COMMISSIONERS, in their official capacity,	)	
	)	
Defendants.	)	

**STIPULATION OF PARTIES TO ENTER INTO PRIVATE SETTLEMENT  
AGREEMENT AFTER PLAINTIFF'S COUNSEL GIVES NOTICE TO THE CLASS**

Come now the parties, by their counsel, and stipulate and agree as follows:

**I. Introduction**

1. This is an action for injunctive relief brought by Trevor Richardson, a former detainee at the Monroe County Jail, which challenges conditions in existence at the jail as allegedly unconstitutional under the United State Constitution as well as unlawful under Indiana law.

2. This action has been certified as a class action pursuant to Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure. The class is defined as:

Any and all persons currently confined, or who will in the future be confined,  
in the Monroe County Jail.

3. The defendants do not concede the merits of any of the allegations of the plaintiffs' Complaint. However, the parties are desirous of attempting to reach a settlement of this matter and therefore they enter into this Stipulation. Plaintiffs stipulate that defendants'

entry into this Private Settlement Agreement (“Agreement”) is not an admission of any kind and imposes no liability on defendants for any violation of law, constitutional or otherwise.

4. Although plaintiffs’ counsel has signed this Stipulation, the parties agree that this Stipulation will not be deemed to be approved by the class until notice is given to the class as provided in paragraphs 20 and 21 and until plaintiffs’ counsel notifies the court and the parties following that notice and the court finds that this Agreement is a fair and just resolution of this matter. For purposes of this Stipulation this latter date will be referred to as “the effective date.”

5. Insofar as the plaintiffs have sought relief under 42 U.S.C., § 1983 for violations of the United States Constitution, this litigation is subject to the Prison Litigation Reform Act, 18 U.S.C. § 3626, et seq. This Act imposes certain requirements on agreements made in litigation such as this, but provides that the parties may enter into private agreements which are exempted from the requirements of the Act. 18 U.S.C. § 3626(c). However, such agreements are not subject to enforcement under federal law other than reinstatement of the proceedings, although they are enforceable under state law as breaches of contract. *Id.*

6. Accordingly, to the extent that the parties agree to the terms and conditions as set forth below, this is deemed to be a private settlement agreement under the Prison Litigation Reform Act.

## **II. Private Settlement Agreement – Substantive Terms**

7. At the current time the rated capacity of the Monroe County Jail, based on Indiana’s County Jail Standards and inspections by the Indiana Department of Correction, is 278.

8. In order to assist in addressing population pressures on the Monroe County Jail the defendants have met with the Judges of the Monroe Circuit Court with criminal jurisdiction, to discuss methods of decreasing the population at the Monroe County Jail.

9. Defendants agree that during the pendency of this Agreement they shall make all reasonable efforts to continue to meet with the Judges of the Monroe Circuit Court on a regular basis to discuss ways of keeping the population of the Monroe County Jail under its capacity.

10. The parties agree that the population of the Monroe County Jail has remained at, or below its rated capacity, for at least the last 90 days.

11. The Monroe County Jail temporarily houses arrestees in its detoxification units, who are rarely sent to the housing units. Those individuals are not covered by this agreement. The jail also has 30 beds for trustees and offenders attending a special program. Those beds are presumed to be full. The remaining security beds are 248 in number. In the event that the population for the security beds exceeds 248 for more than twenty-four (24) hours or on more than three (3) occasions in one week, even if each or any occasion is less than twenty-four (24) hours in duration, the defendants agree that they shall take all reasonable steps to lower the population at the earliest reasonable opportunity. These efforts shall include, but not necessarily be limited to the following:

- a) When the population for the available security beds reaches 244, the jail staff will immediately contact the Circuit Court judges with criminal jurisdiction or their designee and request an order releasing inmates in order to avoid the population exceeding the jail's capacity. It is understood that the decision to release any inmate or the identity of those to be released lies solely within the discretion of the Circuit Court judges.
- b) Members of the board of commissioners and the county council will be notified when the population in the security beds reaches 244.

- c) Plaintiffs' counsel will be notified if the population in the available security beds exceed 248.

12. In the event that the population for the available security beds exceed 258 for more than twenty-four (24) hours or on more than three occasions in one week, even if each or any occasion is less than twenty-four (24) hours, the defendants agree that the Monroe County Sheriff shall, in addition to the steps noted in paragraph 11 above, also contact other Indiana jail facilities in order to transfer prisoners out of the Monroe County Jail for housing on a per diem basis until such time as the population of the Monroe County Jail is below the security bed capacity of the facility and shall transfer the prisoners if such out of county beds are available.

13. In the event that the population of the Monroe County Jail exceeds its security bed or rated capacity, all prisoners housed in the jail who do not have a permanent bed will be provided temporary bedding that is off the floor through the use of "Stack" A-Bunks® or similar institutional-grade furniture.

14. To assist in controlling the population of the Monroe County Jail the defendants agree that the Monroe County Sheriff will not accept prisoners from other counties on a *per diem* basis and will only accept into the Monroe County jail prisoners whom the Monroe County Sheriff is legally bound to accept as a matter of law within the jurisdiction of Monroe County, Indiana.

15. In addition to time out of their cells, prisoners will be afforded the opportunity for at least two hours a week of vigorous physical exercise in either the indoor or outdoor recreation areas at the Monroe County Jail. Outdoor recreation will be allowed, weather permitting. This provision does not apply to those prisoners classified as maximum security. Those prisoners

shall continue to have their one hour out of cell time, but be restricted to the dayroom of the cellblock.

16. In the event that defendant sheriff believes that additional staffing positions are necessary he agrees to request those positions as provided for by Indiana law.

17. Prisoners will not be housed in the Jail's indoor gymnasium.

18. The parties agree to the following reporting requirements:

- a. Beginning with 30 days after the effective date of this Agreement, and continuing every 30 days thereafter until the termination of the Agreement, the defendants will provide to plaintiffs' counsel a listing of the daily population of the Monroe County Jail for each day since the prior report. The population is to be computed at a time of day to be selected by defendants and that time of day shall be used consistently to measure the population.
- b. Every six months from the effective date of this Agreement the parties shall file a joint report with the court to apprise the court as to the status of this matter and any changes or problems in the intervening six month period.

19. Defendants agree to pay plaintiffs' attorney's fees and costs in the total amount of twenty thousand dollars (\$20,000). The defendants specifically deny that the plaintiffs are prevailing parties as defined by 42 U.S.C. § 1988, or that plaintiffs are otherwise entitled to recover their attorney fees or costs from the defendants under any federal or state statute or legal theory. This Stipulation, and the effect of this Stipulation shall further not be allowed to be introduced as evidence of entitlement to attorney's fees or costs accrued prior to the effective date of this Stipulation under 42 U.S.C. § 1988, a private attorney general theory, or any other federal or state statute or legal theory. The parties agree that absent any future agreement by the parties to the contrary, the plaintiffs are entitled to attorneys' fees incurred after the effective date of this Agreement only if they demonstrate an entitlement under 42 U.S.C. § 1988. However, if defendants comply with the terms of this stipulation and do not subsequently breach

any terms thereof, plaintiffs and their attorney waive any claim of an entitlement to attorneys' fees for work done subsequent to the effective date of this Stipulation.

### **III. Notice to the Class**

20. The parties acknowledge that Rule 23(e) of the Federal Rules of Civil Procedure requires that before a class action is dismissed or compromised that notice must be given to all class members prior to approval of any settlement.

21. Attached to this Agreement is a proposed notice plaintiffs' counsel has prepared for the class. The parties agree that this notice, if approved by the court, should be given in the following manner;

- on a date selected by defendants, a copy of the attached notice will be given to each prisoner in the Monroe County Jail at that time.
- The attached notice will be posted in a prominent area in each living area of the Monroe County Jail for thirty (30) days.

22. Following the thirty (30) day notice period specified above, counsel for plaintiffs will report to the court and to the defendants as to the comments received by class members and will make further recommendations as to whether, in counsel's estimation, the Agreement is an adequate and fair resolution of this matter pursuant to Rule 23(e) of the Federal Rules of Civil Procedure. Plaintiffs' counsel believes that this Agreement is a just and equitable resolution of the current contested matters in this cause but wishes to hear from the class before final approval is given.

### **IV. Further Proceedings**

23. As specified, the parties intend this to be a private settlement agreement resolving all of the contested issues in this cause. After the effective date of this Agreement either party reserves the right to seek a further hearing before the court if deemed appropriate. However,

absent an emergency, prior to seeking any enforcement of this Agreement or prior to seeking that this case be placed back before the court, plaintiffs will communicate with the defendants' counsel at least 10 days prior to the filing. Likewise, absent an emergency, prior to seeking any changes in this Agreement in court the defendants will communicate with the plaintiffs' counsel at least 10 days prior to the filing.

24. The parties agree that absent an order from the court or a subsequent written agreement by the parties, this Agreement, if approved, should remain in effect until October 1, 2011, at which time the case should be dismissed. The parties agree that this dismissal should be with prejudice as to this action only, preventing this action from being revived by any class member. The parties agree, however, that nothing precludes a future class action brought after this time by a current prisoner at the Monroe County Jail. The parties request that this case be listed as inactive on this court's docket, subject to being made active as specified above at the request of either the defendants or plaintiffs. The parties further agree that should Monroe County construct a new jail with a larger capacity this agreement shall terminate when the inmate population is moved to such new jail.

#### **V. Parties' Further Requests of the Court**

The parties request that this court find, after the required notice, that this proposed private settlement agreement is a fair and equitable settlement pursuant to Rule 23(e) of the Federal Rules of Civil Procedure.

For the plaintiffs:

/s/ Kenneth J. Falk

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