

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

EDWARD KITE MCINTYRE, et al., )

Plaintiffs, )

vs. )

RICHARD ROTH, et al., )

Defendants. )

Case No. 80-1721-CIV-WMH

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STIPULATION AND AGREEMENT OF SETTLEMENT

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WHEREAS the First Amended Complaint herein was served on January 7, 1981, on behalf of plaintiffs and others similarly situated, alleging, inter alia, that defendants have failed to carry out their statutory and constitutional duties relating to

the maintenance and operation of the Monroe County Jail and further alleging that, as a result of defendants' acts and omissions, taken under color of state law, defendants have caused plaintiffs continued confinement under conditions that violate plaintiffs' constitutional rights; and

WHEREAS the First Amended Complaint asserts causes of action against defendants arising under, and jurisdiction pursuant to 42 U.S.C. §§ 1983 and 1988; 28 U.S.C. §§ 1331, 1343(a)(3), 2201 and 2202; and the Constitution of the United States, specifically but not limited to the First, Fourth, Fifth, Sixth, Eighth, Ninth and Fourteenth Amendments thereto; and

WHEREAS, pursuant to Rule 23 of the Federal Rules of Civil Procedure, this action has been certified by the Court as a class action on behalf of all persons who are currently incarcerated or who will in the future be incarcerated in any Jail in Monroe County; and

WHEREAS the defendants have filed an Answer denying the allegations in the First Amended Complaint; and

WHEREAS the signatories to this Stipulation and Agreement of Settlement (hereinafter "Agreement") represent that they are authorized to enter into this Agreement and to take all steps required of them by this Agreement; and

WHEREAS plaintiffs consider it desirable and in their best interests, and in the best interests of the members of plaintiffs' class, to settle the issues set forth herein by entering into this Agreement; and

WHEREAS defendants consider it desirable and in their best interests to settle the issues set forth in the First Amended Complaint by entering this Agreement; and

WHEREAS the parties have entered into this Agreement as a compromised settlement of their disputes, intending that this Agreement shall not be construed as an admission that any condition, policy, rule, procedure, or omission of the defendants or any of their employees or agents were or are in any way in violation of any rights of the plaintiffs;

NOW THEREFORE, the parties, by and through their Counsel, hereby stipulate and agree as follows:

**SECTION I.**

**SUBMISSION TO THE COURT OF PROPOSED SETTLEMENT AND USE OF BEST EFFORTS TO OBTAIN APPROVAL AND ENTRY OF JUDGMENT**

1. Promptly upon execution of this Agreement, counsel for the parties shall jointly submit such agreement to the Court for its approval and recommend that the Court approve the Agreement. Counsel for both parties also shall use their best efforts to consummate this settlement, obtain the Court's approval of this Agreement, and obtain entry of a final judgment incorporating the provisions of this Agreement.

**SECTION II.**

**SETTLEMENT CLASS**

2. In accordance with the Court's Certification Order, this action shall be maintained as a class action on behalf of all persons who are currently incarcerated at Jails operated by Monroe County or the Sheriff of Monroe County or who will be

incarcerated in the future. By agreement of the parties, this includes any jails that Monroe County or the Sheriff of Monroe County may in the future contract with a private company to operate.

### SECTION III.

#### NOTICE TO CLASS MEMBERS

3. Pursuant to Rule 23(e), Federal Rules of Civil Procedure, the Sheriff of Monroe County, within ten (10) days of the Court's approval of the Notice of Proposed Settlement, attached to this Agreement as Exhibit A, shall provide notice of this Agreement to those members of the plaintiffs' class presently confined in Monroe County's jails by providing a copy to each class member in each jail on the date of distribution and by posting in each jail in a place accessible to inmates generally, including those inmates in administrative, disciplinary or solitary confinement, a notice in the form attached hereto as Exhibit A. Exhibit A shall be posted and distributed in English, Spanish, and Creole.

The cost of providing such notice and distributing copies of this Agreement shall be borne by the Sheriff of Monroe County in his official capacity. Class members shall have twenty (20) days after notice to them to file with the Clerk of the Court any written objections to this proposed Agreement. The Sheriff of Monroe County shall provide free paper, envelopes and postage to any indigent inmate desirous of filing objections to this Agreement. Such communications with the court shall be considered

legal mail. All objections will be considered fully by the Court.

#### SECTION IV.

##### INTENT

4. It is the intent of this Agreement that all jail facilities now operated in Monroe County or hereinafter operated in Monroe County shall be operated in a manner that complies with the Constitution of the United States and the State of Florida and with applicable federal and Florida law including Chapter 33-8, Florida Administrative Code.

5. The parties recognize that a new Main Jail is being constructed with a significantly larger inmate capacity. As a result, the parties recognize that the staffing levels called for in this Agreement will have to be increased to reflect the increased numbers of inmates. With respect to correctional staff, the parties agree that at a minimum, the new Main Jail will be staffed in accordance with the staffing analysis of the Florida Department of Corrections. With respect to non-correctional staff, excepting medical care providers, the parties agree that the level of non-correctional staffing called for in this Agreement at the Main Jail shall be increased appropriately. The procedure for determining correctional medical staffing is covered in Section VI.T. of this Agreement.

6. The absence of staff or other resources shall not furnish the Defendants a basis to ignore the intent of this Agreement.

7. In considering any dispute that might arise between the parties, this Agreement shall govern.

**SECTION V.**

**GENERAL PROVISIONS**

8. This Agreement shall bind all parties to this action as well as the successors in office to the Sheriff and County Commissioners. Defendants Monroe County and the Sheriff of Monroe County agree to use their best efforts to make the requirements of this Agreement known to each of their employees, deputies, and agents who are responsible for the operation of any jail. Further, the County and Sheriff shall ensure that the relevant requirements of this Agreement are made known to and complied with by any private parties with whom the Sheriff or County now contracts or shall in the future contract with to provide goods or services to any of the Monroe County Detention Facilities.

9. Should Monroe County or the Sheriff of Monroe County hereinafter enter into a contract for the operation of a jail facility by another entity, whether public or private, the County or the Sheriff, as the case may be, shall insure that the terms of this Agreement are incorporated into such contract and the Sheriff of Monroe County, or Monroe County, shall be required to insure that the entity operating the jail complies with the terms of the Agreement.

10. This Agreement applies to all detention facilities now or hereafter operated, directly or by contract, by Monroe County or the Sheriff.

11. As used in this Agreement:

(a) "Inmate" means an individual in the custody of the Sheriff of Monroe County or in a jail in Monroe County or in the custody of any privately operated facility which is operated pursuant to contract with Monroe County or the Monroe County Sheriff.

(b) "Main Jail" means the Monroe County Jail at 500 Whitehead Street, Key West, Florida.

(c) Unless specifically designated, "facility or facilities" means any jail in Monroe County.

(d) "New Main Jail" means the replacement facility for the Main Jail, which is currently under construction on Stock Island.

(e) "Officer-in charge" means the Sheriff or the individual designated by the Sheriff or County Commission to be in charge of each correctional facility or jail.

## SECTION VI.

### OPERATING REQUIREMENTS

12. Defendants shall operate and maintain jail facilities in compliance with the following:

#### A. Capacity and Housing

13. The Main Jail shall not exceed the Court-imposed capacity of one hundred and ninety-six (196) inmates.



14. The Plantation Key Jail population shall not exceed the Court-imposed capacity of forty-six (46) inmates.

15. The Marathon Jail population shall not exceed the Court-imposed capacity of fifty-seven (57) inmates.

16. For every day after April 19, 1991 that the midnight population count of one or more facilities exceeds the above cited caps, the defendants shall have a forty-eight (48) hour grace period to cure said violation(s). At the end of this period, the County will be assessed a fine of \$750.00 per day by the Court for each day it is not in compliance with all ordered caps; said period of fining shall not exceed seven (7) days each time it is invoked. If after the seven (7) day period of fining the County is still unwilling or unable to reduce the jail population below all ordered caps, all Monroe County jail facilities will be closed to new admissions. A new admission will be permitted, however, if a jail facility which has exceeded its cap releases two individuals upon the system's receipt of any new admission. This procedure for limiting new admissions shall remain in effect until such time as all ordered caps are reached and maintained.

17. The forty-eight (48) hour grace period may only be invoked by the Defendants once every thirty (30) days. If within thirty (30) days prior to exceeding an ordered cap the Defendants have invoked the forty-eight (48) hour grace period, no grace period will be allowed and the County will immediately enter the seven (7) day period of fining upon noncompliance.

18. The above cited fine is to be paid to the Clerk of the United States District Court for the Southern District of Florida no later than thirty (30) days after the date that it is incurred. Said fine money is to be used for a purpose or purposes to be later determined by this Court.

19. All newly-admitted inmates shall be provided with a bed, mattress, and bedding, and housed in a cell or dormitory designed for sleeping purposes, within six (6) hours of booking. This six (6) hour housing requirement shall be mandatory for the existing Main Jail in Key West. In the other facilities, including the new Main Jail, should the six (6) hour period currently prescribed in Chapter 33-8 of the Florida Administrative Code be changed, then in that event, the new time period shall be controlling and shall supersede this Agreement, provided, however, that the holding cell facilities in the New Main Jail shall contain a toilet, a water cooler, hot or tempered water, a shower, and benches. In the event that either Chapter 33-8 or Florida Statutes § 951.23 is repealed, the last time period provided in effect at the time of the repeal shall govern.

20. The number of inmates in any new or newly renovated jail shall not exceed the Florida Department of Corrections' design capacity.

21. Should the factoring process be eliminated by the Florida Department of Corrections, the capacity of each facility in operation at the time the factoring process is eliminated shall be limited to the last factored capacity and shall only be

increased as additional housing areas are made available for inmates. In that event, the inmate capacity shall not increase in an amount greater than the increase that the additional housing space bears to the original housing space available.

**B. Improvements and Restrictions on Inmate Housing Areas**

22. In the Main Jail there shall be an absolute cap of ten (10) inmates for Cellblock #1, ten (10) inmates for Cellblock #2, ten (10) inmates for Cellblock #3, and four (4) inmates for Cellblock #4. One set of bunks, each containing two beds, shall be removed from both of the cell areas in Cellblock #4. The sets of bunks to be removed shall be those nearest to the commode in each area. This shall be accomplished within thirty (30) days of the signing of the Order approving this Agreement. As to the Four-Man Security cells adjoining Cellblock #4, there shall be an absolute cap of three (3) inmates for the forward cell area. The last isolation cell at the end of and around the corner from the forward cell area of the Four Man Security cell area shall not be used to house inmates under any circumstances. Attached and incorporated by reference to this Agreement is a diagram of the second floor of the Main Jail which identifies the aforementioned cells.

23. Isolation cells numbers 1, 2, 3, and 4, located in the female area of the Main Jail, and currently used for storage and as a temporary holding area, shall not be used to house inmates until proper plumbing, including sinks, lavatories, provisions for the supply of cold and tempered water, and adequate ventila-

tion is provided for each cell in use, and each cell in use has been approved for occupation by the Jail Inspector for the Florida Department of Corrections and a correctional officer assigned to the post created if any of these cells are used.

**C. Improvements to the Physical Plant of the Main Jail**

24. The officer-in-charge or his designee shall be responsible for periodic (at least weekly) inspections of the physical condition of each facility. The officer-in-charge or his designee shall institute corrective action for any deficiencies discovered during the inspection.

25. The County shall increase cell illumination to at least twenty (20) foot candles at thirty (30) inches above the floor in Cellblocks #1, 2, 3, and 4, the 8-Bunk Cell, the 4 Man Security Cell, and any other area of the Main Jail which fails to provide at least twenty (20) foot candles at thirty (30) inches above the floor.

26. The County shall repair all broken windows and window screens within five (5) working days of the approval of this Agreement and shall in the future repair all broken windows and screens broken within five (5) working days after discovery.

27. The County shall correct the water drip from the ceiling in the eight-bunk female confinement unit adjacent to the female dormitory within thirty (30) days of the entry of an order approving this Agreement.

28. The County shall sandblast and paint with epoxy paint the showers in Cellblocks #1, 2, 3, and 4 in the Main Jail in Key

West within thirty (30) days of the entry of an order approving this Agreement. The County shall thereafter paint and repair the showers in Cellblocks #1, 2, 3, and 4 whenever rusted. The County shall repair all plumbing in Cellblocks #1, 2, 3, and 4 within thirty (30) days of the entry of an order approving this Agreement. The Sheriff and the County shall ensure that the showers and plumbing in Cellblocks #1, 2, 3, and 4 thereafter remain free of rust, in good working order, and free from leaks and foul odor.

29. The County shall be responsible for ensuring that temperate or hot running water shall be provided within thirty (30) days of the entry of an order approving this Agreement in the eight-Bunk Cell and Cell #313 in the Main Jail. Thereafter, temperate or hot running water shall be provided to all cells and dormitories in all jail facilities.

30. The County shall be responsible for ensuring that any other plumbing fixtures, and any ventilation or air conditioning equipment, which are inoperable or malfunctioning on the date this Agreement is approved shall be immediately repaired and thereafter maintained in good operating condition. All plumbing fixtures and ventilation and air conditioning equipment which become inoperable or malfunctions in the future shall be immediately repaired.

31. All housing cells and cell floor areas which are in need of painting shall be painted within thirty (30) days of the approval of this Agreement. Thereafter, the defendants shall

ensure that all areas of the jails are properly maintained and painted.

**D. Sanitation, Maintenance and Repairs**

32. A sanitation, maintenance and repair program shall be instituted immediately and shall be consistent with the applicable standards of the Health Program Office of the Department of Health and Rehabilitative Services (HRS), pursuant to Rule 10D-7, Florida Administrative Code.

33. An extermination contract shall be maintained with respect to all jail facilities and shall provide for periodic inspection and treatment intended to rid the facilities of all insects and vermin.

34. Defendants shall take immediate action to provide for alterations, repairs, and renovations of the physical plant as needed to maintain compliance with all applicable safety codes, and to insure the health, safety, and welfare of the inmate population.

**E. Classification**

35. The parties recognize that a proper classification system is essential to minimize the risk of harm to inmates and officers. The parties further recognize that a complete classification system as required by Chapter 33-8.005, Florida Administrative Code, cannot be implemented in the existing Main Jail due to limitations or space and building design. Notwithstanding these limitations, the Sheriff has prepared a classification system designed to make optimum use of the existing resources. A

written description of the plan will be provided Plaintiffs' Counsel no later than January 30, 1992. Plaintiffs' Counsel shall have thirty (30) days to review the plan. If the plan is satisfactory to Plaintiffs' Counsel, it shall be implemented by the Sheriff, and its use shall continue so long as the existing Main Jail is used. If Plaintiffs' Counsel disagree with all or any aspect of the plan, they shall communicate their objections in writing to the Defendants, who shall respond in writing to the Plaintiffs' Counsel within thirty (30) days from receipt. If the parties are unable, after good faith discussion and negotiation, to agree upon a classification system by March 30, 1992, then an expert in penological classification systems agreed upon by the parties shall be consulted to resolve the dispute. The parties agree to abide by the decision of the expert with regard to any disputed issues. In the event the parties are unable to agree upon an expert in penological classification, Plaintiffs' Counsel shall pick an expert, the Sheriff shall pick an expert, and the two (2) experts shall pick a third expert. The three (3) experts shall then devise a classification system. The cost of devising the classification system shall be borne by the County.

36. The parties further recognize that a proper classification system is also essential to minimize the risk of harm to inmates and officers in the New Main Jail. The Sheriff shall prepare and submit a written description of the New Main Jail's classification plan to Plaintiffs' Counsel no later than January 1, 1993. Plaintiffs' Counsel shall have thirty (30) days to

review the plan. If the plan is satisfactory to Plaintiffs' Counsel, it shall be implemented by the Sheriff, and its use shall continue. If Plaintiffs' Counsel disagree with any aspect of the plan, they shall communicate their objections in writing to the Defendants, who shall respond in writing to Plaintiffs' Counsel within thirty (30) days from receipt, and thereafter the parties shall attempt to settle their differences through good faith negotiations. If the parties are unable, after good faith discussion and negotiation, to agree upon a classification plan by March 30, 1993, then an expert in penological classification systems agreed upon by the parties shall be consulted to resolve the dispute. The parties agree to abide by the decision of the expert with regard to any disputed issues. In the event the parties are unable to agree upon an expert in penological classification, Plaintiffs' Counsel shall pick an expert, the Sheriff shall pick an expert, and the two (2) experts shall pick a third expert. The three (3) experts shall then resolve the differences between the parties. The cost of the experts shall be borne by the County. Once the plan is complete, it shall be implemented by the Sheriff in the new Main Jail. Any subsequent changes in the classification plan shall be in accordance with Florida law in effect on the date of the change.

37. Any classification system devised shall provide for the adequate housing of special needs inmates. Special needs inmates are defined as those that present a threat to the staff, other inmates, or to themselves. Special needs inmates include the



mentally ill, alcoholic, drug addict, sex deviate, or suicide risk, or persons with contagious or communicable diseases. Special needs inmates, who present a threat to the staff, other inmates, or themselves, shall be separated and closely observed. Any inmate who is identified as at risk for suicide shall not be housed in a single occupancy cell unless the inmate is observed by direct visual observation twenty-four (24) hours each day. Close supervision for special needs inmates shall include regular, documented physical sight checks by correctional officers or medical staff persons at intervals not to exceed every 15 minutes.

38. The defendants shall employ a sufficient number of individuals trained as classification officers so as to implement the provisions of this section of the Agreement at all facilities now or hereafter used to house inmates. The training of the classification officers shall be completed within ninety (90) days of the implementation of the classification system.

**F. Juveniles**

39. "Juvenile" means a person who is under the age of eighteen (18).

40. No juvenile shall be admitted into a jail unless he or she is:

- (a) at least fourteen (14) years of age and whose case has been certified and transferred for trial as if the juvenile were an adult pursuant to the provisions of Florida Statutes §§29.022(5)a and 39.022(5)b (1991); or

(b) a juvenile who at the time of the commission of the alleged offense was sixteen (16) or seventeen (17) years of age and against whom an information has been filed by the State Attorney transferring the juvenile for prosecution as an adult pursuant to the provisions of Florida Statute §39.047(4)(e)5 (1991); or

(c) a juvenile of any age indicted by a grand jury on an offense punishable by death or life imprisonment pursuant to the provisions of Florida Statute §39.022(5)(c) (1991); or

(d) a juvenile who is wanted in another jurisdiction for prosecution as an adult pursuant to the provisions of Florida Statute §39.022(4)(b) (1991).

41. When receiving and admitting a juvenile as provided for in paragraph forty (40) of this Agreement, defendants shall inquire and determine that all established rules, regulations and legal procedures for such admission are met. Defendants shall ensure that the arrest and booking report is accompanied by either the grand jury indictment, the court order certifying that the juvenile has been waived for prosecution as an adult, or a certificate of filing of a direct information by the State Attorney. Unless wanted in another jurisdiction as an adult, a juvenile shall not be placed in the jail if one of the aforementioned legal documents is not present with the arrest and booking report. Such proper legal documentation shall remain in the juvenile's file at the jail at all times.

42. Juveniles who are beyond the control of HRS juvenile detention center staff shall not be accepted by the jail unless the juveniles have been transferred for prosecution as adults by waiver, direct file or grand jury indictment.

43. A juvenile who is alleged to be in need of services or is alleged to be from a family in need of services and is not charged with a crime shall not be placed in a jail under any circumstances. This applies to juveniles formerly known as status offenders which includes runaways, truants, and ungovernables.

44. A juvenile who has not been transferred to the adult system by direct file, waiver, or grand jury indictment as provided for in paragraph forty (40), infra, may be held in temporary custody for a period not to exceed six (6) hours in a secure booking area of a jail for the purpose of fingerprinting or photographing the juvenile or awaiting appropriate transportation to the Department of Health and Rehabilitative Services, provided no regular sight and sound contact between the juvenile and adult inmates or trustees is permitted and provided the receiving facility has adequate staff to supervise and monitor the juvenile's activities at all times.

45. When a juvenile has been transferred for prosecution as an adult by direct file, waiver, or grand jury indictment or is wanted by another jurisdiction for prosecution as an adult, the juvenile shall be housed in the present Main Jail as separately as possible from adult inmates to prohibit the juvenile from

having regular contact with incarcerated adults, including trustees. "Regular contact" means sight and sound contact. Separation of the these juveniles from adults shall permit no more than haphazard or accidental contact.

46. When a juvenile has been transferred for prosecution as an adult by direct file, waiver, or grand jury indictment or is wanted by another jurisdiction for prosecution as an adult, the juvenile shall be housed in the New Main Jail separately from adult inmates to prohibit the juvenile from having regular contact with incarcerated adults, including trustees. "Regular contact" means sight and sound contact. Separation of the these juveniles from adults shall permit no more than haphazard or accidental contact.

47. Juveniles shall not be housed at the Marathon or Plantation Key Jails.

48. The New Main Jail shall contain a separate section for juveniles and shall have adequate staff to supervise and monitor the juvenile's activities at all times. Supervision and monitoring of juveniles shall include physical observation and written documented checks by correctional officers at intervals not to exceed fifteen (15) minutes. Defendants shall not use any forms for this documented check on which the times of observation are pre-written.

49. Under no circumstances shall a juvenile, prior to conviction and sentencing, be placed in the same cell as an adult.

50. Juveniles may be housed as adults in the jail if all the following conditions exist:

(a) the juvenile has certified for prosecution as an adult by the courts, by direct file, waiver, or grand jury indictment;

(b) the juvenile has been tried as an adult;

(c) the juvenile has been found to have committed the offense for which he was charged or a lesser included offense; and

(d) the juvenile has been sentenced as an adult. However, no juvenile shall be placed in adult housing unless the juvenile's classification is the same as the adults with whom the juvenile is housed.

#### G. Discipline and Order

51. The rules and regulations governing the conduct of inmates and visitors shall be posted and available to each inmate and all visitors. The rules and regulations shall include prohibited acts and the disciplinary action that can or may be taken to ensure proper conduct. A suggested list of prohibited acts is contained in subsection (16) of Rule 33-8.013, Florida Administrative Code (1991). The rules and regulations shall indicate the procedures for any disciplinary action and the method for the establishment and loss of privileges. Translation (when appropriate) shall be provided. Action to be taken when there is a violation of rules by visitors shall also be specified in the rules and regulations.

52. A disciplinary committee shall be established by the Sheriff or his designee consisting of at least three members with one member to be designated as the chair. Any member of the disciplinary committee shall be disqualified if he has participated as an investigating officer or witness in the case against the inmate.

53. When an infraction of the rules is alleged to have occurred, a disciplinary report shall be processed in accordance with the rules and regulations. The individual who witnessed the alleged violation by the inmate shall prepare the disciplinary report and it shall include, but shall not be limited to the following:

- (a) date of infraction;
- (b) place and time of infraction;
- (c) date of report;
- (d) the specific charge, to include identification of the rule or statute violated;
- (e) details of the infraction;
- (f) the actions taken by the individual who witnessed the infraction;
- (g) the names of all witnesses. Where disclosure of witnesses would endanger the welfare of the inmate, other inmates or staff, the names of witnesses and the names of confidential informants shall be maintained in a confidential file.

54. The Sheriff or his designee shall cause an investigation to be made of the allegations of acts of prohibited conduct

or violation of criminal statutes. The report of investigation shall be forwarded to the disciplinary committee described in paragraph fifty-two (52), infra, along with the original disciplinary report. The disciplinary report may include space for the required investigation.

55. Inmates who are accused of infractions shall be notified in writing at least twenty-four (24) hours in advance of the charges against them and given that period to prepare their defense. They shall acknowledge the receipt of the charges, or there shall be a note in the record that the charges were delivered. The inmate may waive the twenty-four (24) hour notification in writing.

56. A hearing shall be held as soon as possible as circumstances permit after the alleged occurrence of the infraction or violation, after allowing the required twenty-four (24) hours notification period of the charges to the inmate, but in no event later than five (5) working days after the incident. "Working days" shall mean Monday through Friday, excluding holidays. It shall be the requirement of the disciplinary committee, through its chair, to determine that the inmate properly understands the charges against him and the possible adverse actions that can result from the disciplinary committee hearing.

57. When holding the disciplinary hearing, the chair of the committee or the majority of the members shall have authority for the following actions:

(a) at their discretion they may call witnesses or obtain documents;

(b) at their discretion they may approve inmate requests for assistance, summon witnesses requested by the inmate, or obtain documents which the inmates wishes to present;

(c) they shall permit a staff member selected by the accused to assist the inmate during the hearing when the prisoner is apparently illiterate, has a language barrier or the complexity of the issues makes it unlikely that the inmate would be able to properly represent himself. The disciplinary committee, through its chair, shall require the proper decorum throughout the disciplinary hearing.

58. An inmate shall have the following rights at a disciplinary hearing:

(a) an inmate charged with a prohibited rule violation shall be present at the hearing unless he waives in writing his right to attend the hearing or his behavior during the hearing justifies his removal from the hearing; the absence of an inmate from a hearing and the reason therefore shall be documented;

(b) the inmate shall receive a copy of the written decision;

(c) the time spent by an inmate in disciplinary segregation shall be proportionate to the offense committed, but in no event shall be greater than thirty (30) days;

(d) an inmate shall have the right to appeal the decision of the hearing committee to the officer-in-charge;



(e) if the inmate is found not guilty, the disciplinary report and all references to it shall be so indicated in his file; and

(f) the decision shall be based solely upon the evidence presented at the hearing, and shall contain a statement of the reasons for the decision and the evidence relied upon.

59. The results of the hearing after the disciplinary committee has been in closed conference to discuss the evidence presented shall be announced to the inmate so that he knows what recommendations will be made to the officer-in-charge. The recommendations will be forwarded to the officer-in-charge for agreement or reduction and implementation. The officer-in-charge may not increase the disciplinary penalties suggested by the disciplinary committee.

60. Discipline shall not be arbitrary nor capricious nor in the nature of retaliation or revenge. Corporal punishment of any kind is prohibited. Shackles or other personal restraints shall not be used as punishment. This prohibition shall not apply to inmates in transit or to inmates whose behavior presents an immediate danger to themselves, other inmates, or staff. Such inmates may be temporarily restrained by such devices only upon orders of the officer-in-charge and only if such inmates are supervised and monitored at all times.

61. Inmates in disciplinary or administrative confinement shall be checked at intervals not to exceed seventy-two (72) hours by the medical staff and the time of his release will also

be recorded and filed. Each inmate in administrative confinement shall receive housing, food, clothing, medical care, exercise, visitation, showers and other services and privileges comparable to those available to the general population.

62. The defendants shall establish a system to immediately notify and report all incidents concerning inmate deaths, serious injuries to inmates, strikes involving seven or more inmates, riots, attempted suicides, and any other serious or unusual circumstances that occur, and for a period ending twenty (20) months after the opening of the New Main Jail to Plaintiffs' Counsel, and the Special Master.

63. Whenever it is necessary to use force on an inmate, a written use of force report shall be prepared by the staff member or members using force, shall be reviewed by the Shift Supervisor, and shall be submitted to the officer-in-charge. A medical examination of the inmate shall be made a part of the "use of force" report.

#### H. Myers Act Persons

64. It is the policy of the defendants to refrain from detaining intoxicated persons, pursuant to the Myers Act, Florida Statutes § 396.072, in correctional facilities. The defendants shall not detain intoxicated persons in the existing Main Jail. The defendants shall only detain intoxicated persons in the Plantation Key Jail, Marathon Jail, and the New Main Jail when all other housing options, community facilities and hospitals for intoxicated persons are unavailable. All intoxicated persons

temporarily incarcerated shall be detained in appropriate cells and shall be detained only until they are sober. "Appropriate cells" shall be retrofitted as necessary to minimize the risk of suicide, including the removal of bunks, the removal of protruding fixtures, and otherwise made as safe as possible.

#### I. Baker Act Persons

65. Baker Act persons, that is persons believed to be or found to be a danger to themselves or others pursuant to Florida Statutes § 394.451 et seq., shall not be admitted to or detained in any of the existing facilities or the new jail contrary to the provisions of Chapter 394, Florida Statutes. Whenever, in the opinion of jail medical staff, an inmate appears to meet the criteria for a Baker Act admission, the Jail Physician or Jail Psychiatrist shall so advise the officer-in-charge and the Jail Administrator officer-in-charge shall be responsible for initiating a transfer to a Baker Act receiving facility.

#### J. Handicapped Accessibility

66. Defendants shall provide for the needs of handicapped inmates. Within ten (10) days of the date of approval of this Agreement, defendants shall ensure that at least one facility has at least one housing area and bathroom area which complies with the handicapped accessibility standards of Rules 13D-1 and 13D-17, Florida Administrative Code, and the United States of America Standards Institute (ANSI). Each facility shall have at least one (1) bathroom area which complies with the handicapped accessibility standards of Rules 13D-1 and 13D-17, Florida

Administrative Code, and the United States of America Standards Institute (ANSI).

67. The New Main Jail shall comply with the handicapped accessibility standards of Rules 13D-1 and 13D-17, Florida Administrative Code, and the United States of America Standards Institute (ANSI) in at least one housing area, in all common areas, and in at least one visiting and attorney-interview area.

**K. Exercise**

68. All inmates shall have the opportunity to have a minimum of two (2) hours of outdoor exercise three (3) times per week, weather permitting. In the event of inclement weather, every effort shall be made to make-up the lost exercise period. The opportunity to exercise shall be documented in a daily log.

69. At the Main Jail, two (2) full-time recreational officers shall be employed to organize and implement the exercise program.

70. Additional exercise equipment shall be added to the exercise areas at all facilities. At the Main Jail this shall include one (1) additional basketball goal, and other exercise equipment such as pull-up bars, dip bars, and sit-up incline benches. Similar exercise equipment shall be added to Plantation Key and Marathon Jails.

**L. Fire Safety**

71. Defendants shall obtain at least an annual inspection of all jail facilities by the State Fire Marshal. Copies of the fire inspection report shall be filed and available for review at

each facility. Defendants agree to pay whatever fees are required for this inspection.

72. All fire safety violations reported by the State Fire Marshal shall be immediately corrected.

73. Fire exit and evacuation drills shall be conducted at least every three (3) months. These drills shall not involve taking the inmates out of their cells or dormitories. The drills shall be documented in writing, filed and available for review at each facility.

74. The second exit in the laundry in the Main Jail shall be kept unobstructed. The second exit in the kitchen in the Main Jail shall be kept unobstructed.

75. The food storage and dry goods rooms adjacent to the kitchen in the Main Jail shall be protected by sprinklers and smoke detectors tied into the general alarm system in the main control center. This shall be accomplished by the County within thirty (30) days of the entry of the order approving this Agreement.

76. Inmates shall not be allowed to use cardboard boxes and paper bags to store their clothing, personal effects and canteen goods. All inmates shall be provided metal footlockers or other fireproof or fire-resistant containers for personal property.

#### **M. Food Service**

77. The defendants will request monthly sanitation inspections of all kitchens by the Florida Department of Health and

Rehabilitative Services. Deficiencies shall be corrected forthwith.

78. Kitchen staff, and inmate workers, shall be trained in proper sanitation techniques.

79. At all times, dry goods shall be properly stored in containers and on shelves, pallets, or other modalities which will keep them off the floor.

80. Water shall not be allowed to accumulate on the kitchen floor.

81. Garbage and dry trash shall be properly placed in covered containers. Trash pickup shall be scheduled at frequent enough intervals to avoid an accumulation of garbage.

82. The kitchen staff's bathroom, located adjacent to the kitchen in the existing Main Jail, shall be completely cleaned and repaired by the County and made functionable and sanitary. It shall thereafter be maintained in a clean and sanitary condition with all plumbing fixtures in working condition. Signs shall be posted requiring kitchen workers to wash their hands after bathroom use. The bathroom repairs shall be completed within sixty (60) days of the entry of the order approving this Agreement.

83. A dietician/nutritionist shall be charged with the duty of supervising menu planning to ensure that the diet is adequate and varied. Menus shall be planned for not less than twenty-eight (28) days in advance and certified by a dietician/nutritionist. Defendants shall comply with the menu except in cases

of emergency, such as a hurricane, or as modified by the Jail Physician.

84. The Sheriff, or his designee, and the Food Service Director shall conduct a thorough inspection of all food service areas at least weekly. Additionally, at least one (1) meal per week shall be selected at random by the Sheriff or his designee, who shall inspect the appearance, quantity, quality, and serving temperature of each meal item, utilizing scales, measuring cups, thermometers and any other appropriate measuring devices. A written report of each weekly inspection shall be maintained and available for review. All deficiencies noted in the inspection report shall be immediately corrected. The report shall be maintained on file for review.

85. Foods intended to be served hot shall be served hot.

86. The daily calorie count of the meals served in the jail shall not be reduced below twenty-eight hundred (2800) Calories for any inmate without the approval of the Jail Physician or some other person licensed to practice medicine in the State of Florida.

87. An internal temperature gauge shall be immediately installed in the freezer at the Main Jail. The temperature shall be closely observed to insure that it remains on the average at least zero (0) degrees Fahrenheit or below. Should the temperature continue to be above zero (0) degrees Fahrenheit, the freezer shall be immediately repaired or replaced.

88. Defendants shall request that the Health Program Office of the Florida Department of Health and Rehabilitative Services (HRS) conducts a Food Service inspection every three (3) months, as required by State law. Food service operations shall conform to the acceptable standards of the Florida Department of Health and Rehabilitative Services (HRS) Rules 10D-13, Florida Administrative Code. All HRS inspection reports shall be filed and readily available for review. All deficiencies noted in the inspection report shall be immediately corrected. In the event that the Health Program Office of the Florida Department of Health and Rehabilitative Services (HRS) does not conduct a Food Service inspection report every three (3) months, the Sheriff shall notify the Special Master, with a copy to Plaintiffs' Counsel, within one (1) week.

89. Special diets shall be made available to accommodate inmates with legitimate religious or medical requirements.

90. The facility shall have adequate written procedures for the control of sensitive food items which could be used for the production or manufacture of contraband beverages. Once written, those procedures shall be followed.

#### **N. Staffing**

91. Defendants shall, at all times, provide sufficient staff to carry out the provisions of this Agreement.

92. The number of correctional officer posts that shall be staffed at all times in the existing Main Jail is eight (8), or



the number necessary to meet the standards of the Florida Department of Corrections, whichever is greater.

93. The number of correctional officer posts that shall be staffed at all times in the Plantation Key Jail is three (3), or the number necessary to meet the standards of the Florida Department of Corrections, whichever is greater.

94. The number of correctional officer posts that shall be staffed at all times in the Marathon Jail is three (3), or the number necessary to meet the standards of the Florida Department of Corrections, whichever is greater.

95. The number of correctional officer posts that shall be staffed at the New Main Jail shall not be less than as required by the Florida Department of Corrections. In the event that the Florida Department of Corrections is unable to provide a staffing analysis at the time the New Main Jail opens, the number of correctional posts for the New Main Jail shall be determined by a correctional expert recommended by the National Institute of Corrections or other nationally recognized body in the field of corrections. Such expert shall be selected jointly by Plaintiffs' Counsel and Defendants. In the event the parties are unable to agree upon a correctional staffing expert, Plaintiffs' Counsel shall pick an expert, the Sheriff shall pick an expert, and the two (2) experts shall then pick a third expert. The three (3) experts shall then devise a staffing analysis. The cost of devising the staffing analysis shall be borne by the County.

96. Female inmates shall not be housed overnight in a facility which does not have a female correctional officer on duty.

97. All correctional officers employed by the defendants shall be certified or possess a valid temporary employment authorization, in compliance with the Criminal Justice Standards and Training Commission's requirements. All correctional officers shall keep their certification current. Newly hired correctional officers, whether certified or not, prior to commencing work, shall first receive forty (40) hours in-house training. In-house training shall include, but not be limited to, reviewing post orders, fire evacuation and fire drill procedures, the requirements of Chapter 33-8, Florida Administrative Code, the Inmate Handbook, the rules and regulations of the jail, and the provisions of this Stipulation and Agreement of Settlement. After January 1, 1992, uncertified corrections officers shall attend the next correctional officer certification course available in Monroe County.

O. Inmate Activities

98. Inmate activities shall be increased at all facilities.

99. The parties recognize that the activities of Alcoholics Anonymous and Narcotics Anonymous are beneficial to the inmate population. Defendants shall continue their cooperation and active participation with these agencies to assist in the provision of their programs within the jails.

100. Once the New Main Jail is operational, defendants shall explore the availability of existing and potential community resources to provide academic and vocational educational courses to all inmates of all educational and intellectual levels. Defendants shall make maximum use of programs available through local community resources. At least one employee in each detention facility shall act as liaison between the facility and the community agencies that offer programs and services. Defendants shall comply with the Educational Rights of the Handicapped Act, P.L. 94-142. When the new Main Jail is operational, the defendants shall employ a full-time inmate activities coordinator to implement this and other related provisions.

**P. Religious Programming**

101. The parties recognize that opportunities for religious worship, instruction and counseling may be extremely beneficial for inmates. The Defendants agree to continue their practice of appointing a Chaplain for the existing Main Jail and cooperating with qualified members of the clergy in providing religious programs. The Defendants agree to continue their practice of appointing a Chaplain at the New Main Jail and cooperating with qualified members of the clergy in providing religious programs including communal worship, instruction, counseling, and the receiving of sacraments, consistent with available space, security needs, and classification. Further, the Defendants agree to continue to make available to the inmates a list of qualified members of the clergy or lay persons who have expressed an

interest in ministering to the needs of the inmates. The Defendants agree to make good faith efforts to find qualified clergy or lay persons to minister to any bona fide denominational preference expressed by an inmate.

**Q. Visitation**

102. Each of the two visitation booths at the Main Jail shall be partitioned with transparent floor to ceiling privacy screens thereby increasing the sense of privacy for visitors and inmates, consistent with security within thirty (30) days of the approval of this Agreement.

103. Visitation shall be available four (4) days a week at the Main Jail in Key West. Visits shall be at least thirty (30) minutes long. Visitation periods shall be permitted so that each inmate in general population has the opportunity for at least two (2) hours of visitation each week. When the New Main Jail opens, visitation shall be conducted five (5) days a week. At least one visitation day shall be either Saturday or Sunday, and on at least one weekday visitation day, visitation shall be conducted during evening hours.

104. Contact visitation must be requested in writing. Such request must be directed to the officer-in-charge who will approve or reject the request. Approval or rejection of such a request shall be based on the inmate's classification and behavior.

105. Special arrangements shall be made to increase visitation time for inmates with visitors who travel more than fifty (50) miles for the visit.

**R. Access to the Courts**

106. Inmates shall be provided access to a free (no long distance tolls) telephone line to call their public defender, court-appointed criminal defense attorney, and Pretrial Services.

107. The Sheriff of Monroe County shall provide an inmate of any Monroe County Detention Facility who is not represented by counsel physical access to legal materials contained in the Jail, the Monroe County Law Library or a law library outside the Jail three times per week, four hours per visit, for a total of twelve hours per week. This law library visitation limit of twelve hours per week shall be extended if the inmate can demonstrate that he or she has legal deadlines which can not otherwise be met in twelve hours per week. This provision pertains equally to civil and criminal matters.

108. The Sheriff may require a written request from an inmate who desires access to legal materials. Copies of the written request forms shall be maintained in accordance with the State Archives law. Inmates who are illiterate, non-English speaking, or handicapped shall be assisted in completing the request forms. Inmates who are not trained in the law, illiterate or non-English speaking, or handicapped may be assisted in their legal research by other inmates on a volunteer basis.

109. No inmate shall be required to wait more than two working days between the time of the submission of his or her request and being allowed physical access to the law library. "Working days" are defined as Monday through Friday. Legal holidays recognized by the federal government or the State of Florida are excluded from the definition of "working days."

110. An inmate who is without counsel and who is actively in trial in any court of the Sixteenth Judicial Circuit in and for Monroe County, Florida or the United District Court for the Southern District of Florida shall be permitted daily access to legal materials for at least four (4) hours per day. "Actively in trial" for this purpose shall mean that period commencing when a judge calls a case for trial on the trial docket and all parties have announced themselves ready to proceed, or the court has ordered that the trial shall proceed, until the rendition of the verdict or the close of testimony in a non-jury trial.

111. The Sheriff shall place the legal reference materials listed below in the Key West Jail within ninety (90) days of the entry of this Order:

- (a) Southern Reporter, Second Edition (Florida cases) from volume 300 until the present;
- (b) A current set of Florida Statutes Annotated;
- (c) A current set of Florida Statutes;
- (d) Shepard's Florida Citations;
- (e) A set of Florida Jurisprudence, Second Edition;
- (f) Florida Criminal and Civil Rules of Procedure;
- (g) Federal Rules of Criminal and Civil Procedure;

- (h) Florida Rules of Court - Federal;
- (i) Black's Law Dictionary, latest edition;
- (j) Monroe County Code;
- (k) The Code of the City of Key West;
- (l) A treatise on the Fourth Amendment to the United States Constitution;
- (m) A treatise on Florida criminal trial practice; and
- (n) Chapter 33-8, Florida Administrative Code.

Until all publications cited above are installed for use in the Key West Jail, the Sheriff shall take inmates to the Monroe County Law Library.

112. If a pro se inmate needs any publication required by Rule 33-8.009(10), Florida Administrative Code (1991) or any federal material which is not in any Monroe County Jail facility's Law Library but is available in the Monroe County Law Library, he or she shall be taken to the Monroe County Law Library or some other outside law library containing the needed publication.

113. All legal materials shall be kept current.

114. Pens, paper, and legal mail postage shall be available to pro se inmates. If a pro se inmate has enough funds in their inmate account to pay for pens, paper, legal mail postage and photocopies, the actual cost of same shall be deducted from their inmate account. If the pro se inmate has no funds in his or her inmate account and the inmate has been declared indigent by any judge of competent jurisdiction, they shall be provided with a

reasonable quantity of pens, paper, and legal mail postage by the Sheriff.

115. The Sheriff shall have all publications required by Rule 33-8.009(10), Florida Administrative Code (1991) in the Monroe County Jail Facility presently planned for Stock Island. In the event the Stock Island Jail is not constructed and the Key West Jail is instead renovated, the Sheriff shall have all publications required by Rule 33-8.009(10), Florida Administrative Code (1991) in the renovated Jail.

116. Any policy requiring a pro se inmate to obtain a court order prior to going to the law library is prohibited.

#### **8. Inmate Work Assignments**

117. The parties recognize that work opportunities are severely limited at the present Main Jail. Nevertheless, the defendants agree to make every effort to increase the number of work assignments, for both sentenced and non-sentenced inmates.

118. At the Planation Key and Marathon Jails, and the New Main Jail when it becomes operational, the defendants agree to make reasonable provisions for work opportunities to sentenced inmates within six (6) months of the date of the approval of this Agreement. This paragraph shall not require that work opportunities be offered when an inmate's behavior or classification in the reasonable judgment of the officer-in-charge, does not warrant the provision of a work opportunity. In the event the defendants can not provide a for work opportunity to a sentenced inmate willing to work and not otherwise deemed unfit to work by



the officer-in-charge, the Sheriff shall provide an alternative method which will enable to inmate to receive a full measure of work gaintime. Non-sentenced inmates will be offered the opportunity to work if they so desire on the same conditions and subject to the same restrictions as apply to sentenced inmates.

**T. Clothing Supply and Issue**

119. All inmates shall be provided with adequate clothing and sanitation items. If an inmate is booked into a facility without tee shirts, underpants, and shoes, and is unable to purchase or acquire same within twenty-four (24) hours of first appearance, the facility shall provide the following:

- (a) two underpants;
- (b) one bra (non-metal support), if requested, females only;
- (c) two inmate uniforms; and
- (d) one pair of shower shoes.

Inmates who work shall be issued clothing and shoes appropriate for the type of work and prevailing weather. When an inmate turns in set of clothing to be laundered, a clean set of clothing shall be immediately issued.

120. All inmates shall be provided with the following:

- (a) two towels;
- (b) one (1) mattress;
- (c) one (1) blanket;
- (d) two (2) sheets;
- (e) one (1) pillow cover;

- (f) one (1) pillow
- (g) soap;
- (h) toothbrush and toothpaste;
- (i) razor and shaving cream; and
- (j) comb.

#### U. Medical

121. An inmate's medical record (or up-to-date copies) shall be kept at the facility housing the inmate. Physician progress notes and structured management plans shall be kept up-to-date. Paperwork shall be properly filed.

122. Standard operating procedures (or nurse treatment protocols) shall be in writing and available at all facilities. The operating procedure will cover, but not necessarily be limited to the following:

- (a) receiving screening;
  - (b) physical examination;
  - (c) necessary medical, dental and mental health services;
  - (d) emergency medical and dental services;
  - (e) notification of next of kin in cases of serious illness, injury, or death;
  - (f) delousing procedures;
  - (g) detoxification procedures under medical supervision;
- and
- (h) control of pharmaceuticals.

At a minimum, the protocols shall address chronic medical problems, including hypertension, chronic pulmonary disease, bronchi-



al asthma, cardiac disease, seizure disorders, diabetes mellitus, INH prophylaxis for recent PPD skin test converters who are judged at risk for developing active tuberculosis, etc. The procedures shall require initial evaluation and specific periodic follow-up, pertinent medical history, including physical status, documentation of effect of medication and treatment, and utilizing objective observations and ancillary tests as appropriate, to optimize medical management and delay or prevent complications. Medical personnel shall be familiar with the procedures. Each medical care provider shall be provided a copy of the standard operating procedures. Medical personnel shall sign a transmittal sheet signifying that they have received a copy of the procedures, the procedures have been read and they are understood.

123. The medical intake screening procedure performed during admission shall be done by personnel trained in identifying medical problems which require special housing and/or immediate medical attention.

124. Daily sick call, at regular hours, shall be conducted at all facilities.

125. There shall be at least one (1) full-time registered nurse (RN) employed at the Main Jail. There shall also be at least one licensed practical nurse (LPN) at the Main Jail twenty-four (24) hours a day, seven (7) days a week. Any unfilled position shall be filled within three (3) months of the entry of an order approving this Agreement.

126. There shall be at least one (1) full-time registered nurse (RN) employed for the Plantation Key and Marathon Jails.

127. The Jail Physician's contract shall be in writing. The Jail Physician shall determine the number of hours that are necessary to meet his responsibilities under this agreement. The defendants shall increase the Jail Physician's hours to ensure he meets the demand for his services and the responsibilities of the position. The Jail Physician shall be responsible for the overall delivery and coordination of all medical, dental and mental health care services at all Monroe County Jail facilities. The Jail Physician shall periodically inspect the delivery of medical services at Plantation Key and Marathon. This periodic inspection shall be done no less than once every three (3) months and shall be documented in writing. The Jail Physician shall tour and inspect the entire Main Jail once a month to review nurse-administered triage and health care, including sick call, infirmary care, and emergency care. This tour and inspection shall be documented in writing.

128. Each inmate in solitary confinement shall be seen by a nurse at least once each day. This daily visit shall be documented as to the date and time of each visit in the inmate's medical record.

129. The Jail Physician shall initial his review of all laboratory and x-ray reports, plus all other special test results such as EKG's and EEG's, and written consultation reports.

130. The Jail Physician shall initiate selected elements of a quality assurance program, based on perceived or potential deficiencies in the Jail's health care program. All inmate deaths in the Jail (or in a hospital if sent directly from the Jail) shall be subject to critical physician review, with required written evaluation in each instance.

131. Outside consultation logs shall be initiated immediately at all facilities. The logs will track the consultation process from the Jail Physician's or health care practitioner's request for consultation services all the way through to documented implementation of consultant recommendations, or written reasons for their rejection.

132. An emergency room log shall be kept at all facilities.

133. The parties recognize that there is not room in the existing Main Jail for a female infirmary. If a female inmate is in need of infirmary care, she shall be hospitalized or provided segregated housing, as medically necessary. If a female inmate in need of infirmary care is placed in segregated housing, she shall be regularly seen by a member of the medical staff.

134. Separate medical records, including physician admission notes, progress notes as indicated, and discharge notes, shall be required for infirmary patients at the Main Jail. The Jail Physician shall supervise and review nurse-administered infirmary care. A nurse shall conduct overnight observation of infirmary patients.

135. The number of inmates housed in the infirmary at the present Main Jail shall be limited to six (6). Whenever the number of inmates in need of infirmary care exceeds six, a secondary infirmary area shall be made available. Only inmates in need of infirmary care shall be housed in the infirmary.

136. The New Main Jail infirmaries shall be available to both male and female inmates. Any inmate in need of infirmary care shall be housed in the infirmary, in segregated housing, or hospitalized, depending upon medical necessity. Sight and normal sound separation shall be maintained between male and female inmates housed in the infirmary. Sound separation is defined as restricting normal verbal communications.

137. A nurse shall see each inmate that fills out a medical request slip the day the slip is completed or within twenty-four (24) hours if the request is not urgent. Nurses shall take care to ensure that an inmate is not unreasonably denied access to the Jail Physician. Written RN treatment protocols shall provide specific circumstances to indicate referral of an inmate by the nurse to the Jail Physician, including repetitive sick call requests for the same unresolved problem or repetitive requests by an inmate to see the Jail Physician. The Jail Physician shall supervise and review nurse-administered triage and health care, including sick call, infirmary care, and emergency care.

138. All correctional staff shall be CPR certified.

139. Daily sick call shall be available at the Planation Key and Marathon jails. The defendants agree to explore the

possibility of contracting with the hospitals in Planation Key and Marathon for the provision of health services to the inmates in the branch jails.

140. A health appraisal and physical examination shall be conducted within fourteen (14) days of admission by the Jail Physician or qualified health care personnel designated by the Jail Physician, provided, however, that of the inmate's health care records contain written records of an equivalent health appraisal within the previous ninety (90) days, the Jail Physician or his designee shall determine whether a new health appraisal is required. Qualified health care personnel are defined as a physicians' assistant (PA), an advanced registered nurse practitioner (ARNP), a registered nurse (RN), or a licensed practical nurse (LPN) with advanced training in the area physical examination and assessment. Prior to an LPN conducting health appraisals and physical examinations, there shall be written documentation in the LPN's personnel record demonstrating the LPN has received advanced training in health appraisals and physical examinations and that the Jail Physician has certified in writing this proficiency has been demonstrated to the Jail Physician's satisfaction.

141. The health appraisal and physical examination shall cover at a minimum the following:

- (a) review of intake screening forms;
- (b) collection of additional data to complete the medical, dental, psychiatric and immunization histories;



(c) laboratory and diagnostic tests as determined necessary by the facility physician to detect communicable disease, including venereal diseases and tuberculosis;

(d) recording of height, weight, pulse, blood pressure and temperature;

(e) other tests and examinations as appropriate;

(f) medical examination with comments about mental and dental status. Medical examination of females shall include a gynecological assessment;

(g) review of the results of the medical examination, tests and identification of problems by a physician;

(h) initiation of therapy when appropriate. The extent of health appraisal, including the medical examination, shall be defined by the facility physician, but should include at least the items listed above;

(i) the form used for the health appraisal shall be approved by the facility physician; and

(j) the facility policy and procedure requiring a health appraisal shall be contained in the standard operating procedure for the medical section.

142. Copies of an inmate's medical record shall be sent to the Florida Department of Corrections or other correctional facility upon transfer.

143. One (1) year prior to the opening of the New Main Jail, the Jail Physician and the Sheriff shall submit a written "correctional medical care staffing plan" for the New Main Jail

to Plaintiffs' Counsel for review. The "correctional medical care staffing plan" shall provide for the anticipated staff needed for the New Main Jail in the areas of medical, dental, mental health and psychological care. Plaintiffs' Counsel shall have thirty (30) days to review the plan. If the plan is satisfactory to Plaintiffs' Counsel, it shall be implemented by the Sheriff. If Plaintiffs' Counsel disagrees with all or any aspect of the staffing plan, they shall communicate their objections in writing to the Defendants, who shall respond in writing to Plaintiffs' Counsel within thirty (30) days from receipt. If the parties are unable, after good faith discussion and negotiation, to agree upon a correctional medical care staffing plan within sixty (60) days from the date of submission to Plaintiffs' Counsel, then an expert in correctional medical care staffing agreed upon by the parties shall be consulted to resolve the dispute. The parties agree to abide by the decision of the expert with regard to any disputed issues. In the event the parties are unable to agree upon an expert in correctional medical staffing, Plaintiffs' Counsel shall pick an expert, the Sheriff shall pick an expert, and the two (2) experts shall pick a third expert. The three (3) experts shall pick then devise a correctional medical care staffing plan. The cost of devising the correctional medical care staffing plan shall be borne by the County. Once the correctional medical care staffing plan is determined, the County shall budget for the positions needed. At least one hundred and twenty (120) days prior to the anticipated

opening of the New Main Jail, the Sheriff shall begin advertising to fill any new positions called for in the correctional medical care staffing plan.

#### V. Mental Health

144. Written mental health care guidelines or protocols shall be immediately established at all facilities. They shall include at a minimum guidelines for screening, triage, suicide prevention and suicide watch. The general reference to the mental health guidelines in the Jail Policy and Procedure Manual shall be made more specific.

145. The four (4) isolation cells at the Plantation Key and Marathon Jails shall be properly retrofitted for housing inmates that are suicidal or acutely disturbed. The metal beds shall be removed. They shall be replaced with slightly raised, solid, concrete forms in the shape of a bed. Fire-proof, non-tearable mattresses shall be placed on the concrete bed form. Places where inmates with blankets, sheets, pillowcases, etc., might attempt to hang themselves shall be immediately modified and corrected. The defendants shall enter into a contract to retrofit the isolation cells to house suicidal inmates within thirty (30) days of the order approving this Agreement. The contract shall be completed within sixty (60) days of the order approving this Agreement.

146. Paper clothes, or other appropriate clothing, and paper sheets shall be purchased and used for suicidal inmates.

147. The Sheriff shall initiate a suicide prevention program within thirty (30) days of the signing of the order approving this Agreement. Correctional officers and health care staff shall receive, within ninety (90) days of the signing of the order approving this Agreement, a training program on how to identify and supervise suicidal inmates. Thereafter, a regular in-house training program on how to identify and house suicidal inmates shall be conducted twice a year for all jail personnel. This requirement shall be in addition to the correctional officer's certification training program.

148. All correctional staff involved in the intake and booking process shall be trained to identify inmates with mental health and medical problems.

149. Improved access to mental health care shall be undertaken immediately. The written contract for services with a psychiatrist shall continue to provide for a psychiatrist to come to the Main Jail a minimum of four (4) hours per week. In the event that the psychiatrist is unable to administer to the mental health care needs of the inmates in four (4) hours per week, his contract shall be extended to meet the need. The psychiatrist shall annually review with the Jail Physician and the Sheriff in writing his estimation of the number of hours per week necessary to meet his responsibilities. The defendants shall increase the psychiatrist's hours to ensure he meets the demand for his services and the responsibilities of the position. The psychiatrist shall review the results of medication of all inmates on

psychotropic medication at least once every thirty (30) days with monitoring by blood drug levels as appropriate. This review shall be documented in the inmate's medical records. The renewal of psychotropic medication shall be prescribed every thirty (30) days by the psychiatrist. The Jail Physician, the psychiatrist, or the psychologist shall evaluate all suicidal inmates within twenty-four (24) hours. No inmate who is placed on a suicide watch shall be removed from same except upon the direction of a licensed physician or a psychologist.

150. Psychologist services at the Main Jail shall be no less than four (4) hours per week. In the event that the psychologist is unable to administer to the mental health care needs of the inmates in four (4) hours per week, his contract shall be extended to meet the need. The psychologist shall annually review with the Jail Physician and the Sheriff in writing his estimation of the number of hours per week necessary to meet his responsibilities. The defendants shall increase the psychologist's hours to ensure he meets the demand for his services and the responsibilities of the position. The psychologist shall document his work in the inmate's medical records. The psychologist shall coordinate his activities with the psychiatrist.

151. Psychiatrist and Psychologist services shall be available to all inmates.

#### W. Dental

152. Emergency Dental care shall be available to all inmates in need of dental care, without unnecessary delay.

153. In addition to emergency dental care, inmates shall be provided such additional dental care as is necessary to maintain the inmate's dental health in the same condition as when the inmate entered a Monroe County jail facility.

154. Written protocols for interim management of dental pain and triage of dental emergencies shall be immediately developed for health care personnel. Correctional officers shall refer inmates with dental complaints to health care personnel for triage and disposition.

155. The defendants agree to enter into contracts with one or more dentists for the provision of emergency dental care as needed. Pain attributable to dental problems, and not alleviated by available medications, shall be deemed a dental emergency.

156. Non-emergency dental care shall be available within three (3) weeks of the complaint.

157. Dental services will be designed to avoid the unnecessary extraction of teeth.

158. Nothing in this Agreement prevents the defendants from seeking reimbursement for the cost of health services as provided in Florida Statute § 951.032.

#### X. Pharmacy

159. Delays in the provision of prescription medication shall be eliminated. Prescriptions of an emergency nature shall be filled without delay. In the event prescriptions of an emergency nature are not available in the community where the correctional facility is located, they shall be ordered on an

emergency and expedited basis, and filled as soon as they are received. Other non-emergency prescriptions shall be filled within twelve (12) hours. In the event other non-emergency prescriptions are not available in the community where the correctional facility is located, they shall be ordered at once, and filled as soon as they are received.

160. Defendants shall implement a system of periodic inventory checks of drugs in the emergency box at Plantation Key and Marathon Jails, with log entry verification.

161. A program to eliminate the theft of drugs shall be immediately instituted.

**Y. Mail and Communications**

162. Mail shall be handled as follows:

(a) Incoming Mail:

- i. all incoming mail, other than privileged mail, may be opened and inspected for contraband, cash, checks or money orders. The inmate shall receive a receipt for all cash, checks, or money orders received in incoming mail and such funds shall be deposited in the inmate's account. Non-legal mail may be read only when the jail has reason to believe that the mail may contain information related to an escape attempt, threats of physical harm or criminal activity, plans for activities in violation of jail rules, or if the letter is in code or contains information which, if communicat-

ed, would create a clear and present danger of violence or physical harm to a human being. If, for any reason, an inmate's correspondence is withheld, the inmate shall be informed in writing of the reason such action has been necessary. Incoming mail will be distributed on each day that it is delivered by the postal service.

- ii. privileged mail is letters from lawyers, officials of the jail, government officials, the media, and other legal organization such as the ACLU, NAACP, legal services, and all other human and civil rights organizations. Incoming privileged mail shall not be opened for inspection unless there is a reasonable suspicion to believe that the letter contains cash, checks, money orders or physical contraband. In such cases, the incoming mail shall be opened and inspected in the presence of the inmate. Privileged mail shall not be read or withheld from an inmate.

(b) **Outgoing Mail:**

- i. indigent inmates will be supplied three (3) stamped envelopes, three (3) pieces of paper, and one (1) pen or pencil once a week.
- ii. outgoing mail may be sealed, and shall not be interfered with unless it is suspected the letters contain the following: threats of physical harm to



persons, threats of criminal activity, plans to escape, plans to violate the jail rules, threats of blackmail, writing in code, or contraband items.

iii. privileged mail should be marked "PRIVILEGED" or "LAWYER-CLIENT" on the front of the envelope by the inmate and the envelope can then be sealed by the inmate. Outgoing privileged mail shall not be opened, but it may be held for a reasonable time not to exceed seventy-two (72) hours pending verification that it is properly addressed to a person or agency referred to above in subpart a.ii.

iv. all non-privileged outgoing mail must be put into envelopes properly sealed, with the correct postage affixed. If for any reason an inmate's outgoing mail is not sent, he/she shall be informed of this fact and the reason why it was not sent.

There is no limit on the number of letters a non-indigent inmate may send out.

## **2. Inmate Handbook**

163. The Sheriff shall provide each inmate with an Inmate Handbook after booking in the jail. The Handbook shall provide the inmate with information on the rules and regulations of the jail. The rules contained in the Handbook shall apply to all inmates. Their purpose shall be to ensure the safe custody, decent living conditions, fair treatment, and protection of the

inmate's constitutional rights. The Handbook shall be available in English and Spanish. The Handbook shall be consistent with constitutional and legal principles, this Agreement, and Chapter 33-8, Florida Administrative Code.

**AA. DOC Annual Inspections**

164. The defendants shall promptly correct all aggravated and citable violations found in the Florida Department of Corrections' annual inspection reports, performed in compliance with Chapter 33-8, Florida Administrative Code.

**SECTION VII.**

**PRIVATIZATION**

165. The defendants will insure that any Jail operated under contract with Monroe County or the Sheriff of Monroe County will provide inmates with the same rights and privileges afforded inmates in the custody of Monroe County or the Sheriff of Monroe County.

**SECTION VIII.**

**CLOSURE OF MAIN JAIL AND CONSTRUCTION OF NEW JAIL**

166. The New Main Jail shall be completed on or about the spring of 1993, barring any unforeseen circumstances.

167. Once the New Main Jail is opened, the Main Jail shall be closed and the Department of Corrections notified. The Texas Jail (Cellblocks #s 1, 2, 3, 4, and the Four Man Security Cells) shall be closed and never reopened. This shall not preclude the establishment of daytime holding cells for use by those inmates appearing in court so long as they fully meet all of the re-

quirements of Florida Administrative Code Chapter 33-8. The present Main Jail, excepting the Texas Jail section, may be reopened and used as long as it fully meets all of the requirements of Florida Administrative Code Chapter 33-8.

**SECTION IX.**

**CONTINUING ROLE OF PLAINTIFFS' COUNSEL AND SPECIAL MASTER**

168. The parties agree that Plaintiffs' Counsel, the Special Master or their successors shall, beginning immediately upon approval of this Agreement and continuing for a period of twenty (20) months after opening of the New Main Jail, evaluate defendants' implementation and compliance with this Agreement. Defendants shall, in their official capacity, pay the Special Master's fees and expenses to carry out his duties under this Agreement. The Special Master will be responsible for evaluating defendants' implementation and enforcement of and compliance with this Agreement. Nothing in this provision precludes Plaintiffs' Counsel from also evaluating defendants' implementation, enforcement of and compliance with this Agreement.

169. The Special Master and Plaintiffs' Counsel shall have unlimited access, with reasonable notice, to all public or client records, files and papers maintained by the jail facilities. Upon request, the Special Master shall be briefed twice annually by defendants or their designees as to the conditions of the Jails and the status of their compliance with this Agreement. Plaintiffs' Counsel shall be invited to attend any briefing sessions scheduled.

170. Plaintiffs' Counsel and the Special Master shall be allowed reasonable access to the Jails upon request to the Sheriff, or in the Sheriff's absence, the officer-in-charge. Plaintiffs' Counsel and the Special Master shall be accompanied by a staff member designated by the Sheriff or the officer-in-charge.

171. The Special Master shall be authorized to conduct interviews with any staff member or employee of the Sheriff's corrections staff concerning jail conditions at any time. Plaintiffs' Counsel may be authorized by defendants or their designees to conduct interviews with any staff member or employee of the Sheriff's corrections staff concerning jail conditions provided Sheriff's counsel has approved the interview. Defendants recognize the need for and will implement procedures to insure that the Special Master and Plaintiffs' Counsel are permitted to speak privately with inmates.

172. The defendants shall file reports to the Court and the Special Master with copies to all Plaintiffs' Counsel at the end of sixty (60), one hundred and twenty (120), and one hundred and eighty (180) days from the date of the order approving this Agreement, certifying the actions and steps taken to implement this Agreement. Each report shall address each paragraph of this Agreement separately. Each report shall detail the implementation of this Agreement and, to the extent that full implementation has not been achieved, detail the reasons why and provide

a timetable for full implementation. The defendants may provide any other information they deem relevant and useful.

173. The defendants shall submit bi-weekly reports to the Special Master with a copy to Plaintiffs' Counsel at the Florida Justice Institute, reflecting the population count in each of the Monroe County Jails for each day for the next one hundred and eighty (180) days after the order approving this Agreement is entered.

174. No further reporting shall be required unless the parties by stipulation or the Court by order extends the monitoring period.

175. The access provided Plaintiffs' Counsel and the authority and access provided the Special Master shall expire at the end of the twentieth (20th) month following the date the New Main Jail becomes operational, provided, however, that such authority and access may be extended by agreement of the parties or upon order of the Court if the Court finds that a continuation of such authority and access is appropriate to ensure implementation of and compliance with this Agreement.

176. Before any alleged violation of this Agreement is brought before this Court, the parties shall attempt to resolve the problem among themselves by good faith, face-to-face negotiations.

177. Plaintiffs' Counsel may thereafter at any time petition the Court for enforcement of this Agreement and may present all relevant evidence to prove that the defendants are not

complying with the terms of this Agreement, or the Court's orders.

**SECTION X.**

**ADDITIONAL COVENANTS**

178. Defendants agree that they and their successors in office shall fully comply with and enforce this Agreement.

179. Neither party will appeal the Order attached hereto as Exhibit B if such Order is entered by the Court. If the Court does not enter the Order as attached as Exhibit B, this Agreement is null and void.

**SECTION XI.**

**CONTINUED EFFECTIVENESS AND RETENTION OF JURISDICTION**

180. Defendants' obligations under this Agreement shall be ongoing and shall survive the dissolution of the role of the Special Master.

**SECTION XII.**

**COSTS, EXPENSES AND ATTORNEYS' FEES**

181. The parties agree that plaintiffs are the prevailing parties in this action and, as such, are entitled under 42 U.S.C. § 1988 to reasonable attorneys' fees, costs and expenses for their work until such time as the Court approves this Stipulation and Agreement of Settlement and enters the attached order (Exhibit B). Plaintiffs' Counsel shall submit appropriate papers to the defendants' counsel within thirty (30) days of the Court's entry of a judgment approving this Agreement. Counsel for the parties shall thereafter have sixty (60) days to attempt to

settle all attorneys' fees, costs, and expenses. If the matter is not settled within the sixty (60) day time frame, plaintiffs Counsel shall submit appropriate papers to the Court. The aforementioned time frame for attempting to settle the fees and costs may be extended by the filing with the Court of a Joint Stipulation of Extension.

**SECTION XIII.**

**EFFECTIVENESS OF AGREEMENT**

182. This Agreement shall be effective immediately upon entry of an order of Court approving it. In the event that the Court declines to approve this Agreement or any portion herein, this Agreement shall be null and void and without prejudice to the parties' rights.

183. Attached hereto and made a part of this Agreement is a certified copy of the minutes of the County Commission held on 12/11, 1991 wherein the Monroe County Commission approved this Agreement.

**SECTION XIV.**

**DISMISSAL OF DEFENDANTS IN THEIR INDIVIDUAL CAPACITIES**

184. Upon the approval of this agreement by the court the Defendants, GERRY PITA, FRANK ORTA, WADE ODOM, EDWARD JOHNSON, ELMER LOUIS EMERSON ALLEN, DON SCHLOSSER, CURT BLAIR, RICHARD KERR, JERRY HERNANDEZ, JR., GEORGE E. DOLEZAL, J. ALLISON DeFOOR, II, and County Commissioners WILHELMINA HARVEY, DOUGLAS JONES, JACK LONDON, EARL CHEAL, and JOHN STORMONT, and Sheriff RICHARD

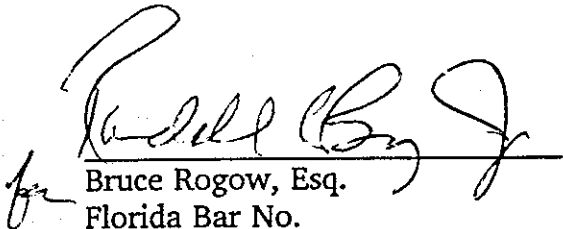
D. ROTH, in their individual capacities but not in their capacity as office holders, shall be dismissed from this lawsuit.

SECTION XV.

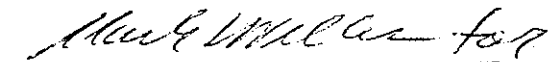
ENTIRE AGREEMENT, MERGER

185. This Agreement contains the entire agreement between the parties. All prior negotiations, discussions and agreements are merged into this Agreement.

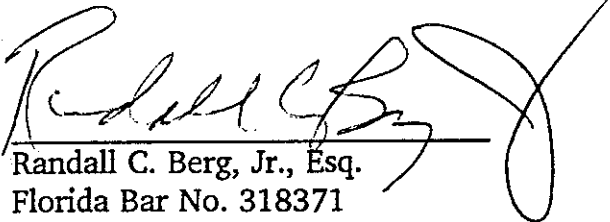
STIPULATED AND AGREED to this 27 day of December, 1991.



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Elmer L. Louis, and Emerson Allen



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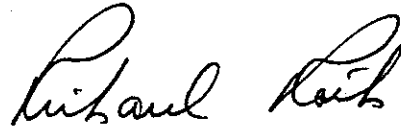


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Sheriff of Monroe County



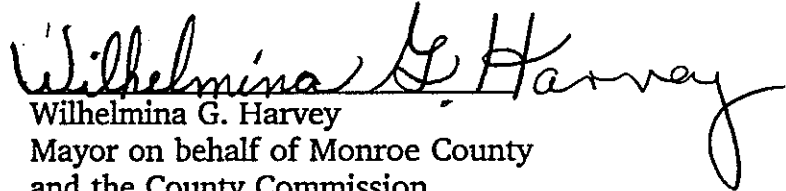
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Earl Cheal, and John Stormont



Wilhelmina G. Harvey  
Wilhelmina G. Harvey  
Mayor on behalf of Monroe County  
and the County Commission  
310 Fleming Street  
Key West, FL 33040

(SEAL)  
ATTEST: DANNY L. KOLHAGE, CLERK

By Rosalie A. Lonnolly, D.C.

DATE: December 11, 1991