

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

TYRELL JACKSON, et al.,
on behalf of themselves and on behalf of
classes of persons similarly situated;

Plaintiffs,

v.

Case No. 13-cv-2504 EFM/JPO

DONALD ASH, in his official capacity as
Sheriff for Wyandotte County, Kansas,

Defendant.

/

SETTLEMENT AGREEMENT AND CONSENT DECREE

Plaintiffs Tyrell Jackson, Randall Chapman, and Mabel Estes, individually and on behalf of the Settlement Classes defined below (“Plaintiffs”), and Defendant Donald Ash, in his official capacity as Sheriff for Wyandotte County, Kansas (“Defendant Sheriff” and collectively referred to as the “Parties”), agree to and submit the following Settlement Agreement and Consent Decree (“Consent Decree”) for adoption and entry by the Court.

I. RECITALS

A. WHEREAS Plaintiffs filed this action on September 30, 2013, seeking declaratory and injunctive relief pursuant to 42 U.S.C. § 1983, and seeking to enjoin the Defendant Sheriff from forbidding inmates housed in the Wyandotte County Adult Detention Center (“Jail”), and their parents, children, spouses, relatives, friends, and other correspondents, in violation of the First and Fourteenth Amendments to the U.S. Constitution, from sending letters enclosed in envelopes to and from the Jail, as set forth in the Detainee Mail Policy – Standard Operating Procedure (SOP) F-115 (“Postcard-Only Mail Policy”); and

EXHIBIT A

B. WHEREAS the United States District Court for the District of Kansas has subject matter jurisdiction over this dispute; *see* 28 U.S.C. § 1331 (federal question) and 28 U.S.C. § 1343(a)(3) (civil rights); and

C. WHEREAS the Parties, in an effort to avoid the burden, costs, and inherent risks of further litigation, agree that settlement is in their best interests; and

D. WHEREAS the Parties have engaged in discovery in this matter, including exchanging information and documents and preparing and responding to requests for production of documents and interrogatories; and

E. WHEREAS this action has been certified by the Court, pursuant to Rule 23, Federal Rules of Civil Procedure, as a class action on behalf of all current and future detainees in the Jail who are subject to or affected by the Postcard-Only Mail Policy, and all current and future outside correspondents who wish to write letters to inmates in the Jail and who are subject to or affected by the Postcard-Only Mail Policy; and

F. WHEREAS by agreeing to this Consent Decree, the Defendant Sheriff does not admit to liability; and

G. WHEREAS the signatories to this Consent Decree represent that they are authorized to enter into this Consent Decree and promise to carry out the various promises and representations made in it; and

H. WHEREAS this Consent Decree includes a general release and, upon execution by the Defendant Sheriff of the promises and representations made and the Court's entry of this Consent Decree, the Defendant Sheriff will be released from all claims and liability as stated in this Consent Decree; and

I. WHEREAS the Parties agree that the relief provided in this Consent Decree is narrowly drawn and extends no further than necessary to correct the alleged violation of Plaintiffs' constitutional rights, and is the least intrusive means necessary to correct the alleged violation of Plaintiffs' constitutional rights, 18 U.S.C. § 3626(a)(1)(A); and

J. WHEREAS the Parties agree that the terms and conditions of this Consent Decree constitute a fair, reasonable, and adequate resolution for the Plaintiffs under Rule 23(e)(2), Federal Rules of Civil Procedure.

NOW, THEREFORE, the Parties agree, subject to the Court's entry of this Consent Decree, as follows:

II. DEFINITIONS

1. The following terms as used in this Consent Decree have the meanings set forth below. In construing these definitions, the singular shall include the plural and the plural shall include the singular:

(a) **“Envelope Correspondence”** means a letter enclosed in an envelope. Envelope correspondence also may include paperwork, newspaper clippings, photographs, drawings, or other items to the extent permitted by Jail policy. Envelope correspondence does not include correspondence between detainees in the Detention Center or with detainees in Juvenile Detention.

(b) **“Privileged”** describes a piece of correspondence that is sent to or from attorneys, the courts, officials of the confining authority, state or local chief executive officers, administrators of grievance systems, members of the paroling authority, or public officials.

(c) **“Non-Privileged”** describes all correspondence that is not Privileged.

(d) **“Indigent Inmate”** refers to a Jail inmate who has no funds (\$0.00) in his or her inmate account that may be used for the purchase of commissary items, at any given time.

(e) **“Writing Materials”** means a writing instrument (e.g., pen or pencil) approved by the Jail, and, for every piece of Envelope Correspondence, also one (1) No. 10 sized envelope, one (1) piece of paper measuring at least 7.25” wide by at least 10.5” tall, and postage sufficient for mailing a one ounce Envelope Correspondence via First Class U.S. Mail (the Defendant Sheriff will provide prepaid postage to the inmates or affix the postage to the correspondence after receiving it from the inmate for mailing).

(f) **“Jail”** refers to the Wyandotte County Adult Detention Center.

III. SETTLEMENT CLASSES

2. The Settlement Classes are defined as follows:

(a) All current and future detainees in the Wyandotte County Adult Detention Center who are subject to or affected by the Postcard-Only Mail Policy (the “Inmate Correspondent Class”); and

(b) All current and future outside correspondents who wish to write letters to inmates in the Wyandotte County Adult Detention Center and who are subject to or affected by the Postcard-Only Mail Policy (the “Outside Correspondent Class”).

IV. TERMS AND EFFECT OF CONSENT DECREE

3. **Full Resolution.** This Consent Decree resolves in full all claims against the Defendant Sheriff by all Plaintiffs, including named Plaintiffs Tyrell Jackson, Randall Chapman, and Mabel Estes and all members of the settlement classes.

4. **Release.** Upon execution by the Defendant Sheriff of the promises and representations made in this Consent Decree and the Court's entry of this Consent Decree, Plaintiffs agree that the Defendant Sheriff is released from all claims asserted in this action and from all other claims (including all claims for violation of federal or state constitutional, statutory, regulatory, or common law), whether known or unknown, that relate to the facts alleged in their Complaint.

5. **Merger.** This Consent Decree contains all the terms and conditions agreed upon by the Parties concerning the resolution of this proceeding. No oral agreement entered into at any time, nor any prior written agreement, shall be deemed to bind the Parties or to vary the terms and conditions of this Consent Decree, except as expressly provided in it.

6. **Liability.** Nothing contained in this Consent Decree or any order entered by the Court adopting this Consent Decree is or shall be construed as an admission by the Defendant Sheriff of the truth of any allegations or the validity of any claim asserted in the Complaint or of the Defendant Sheriff's liability. Neither this Consent Decree nor any confidential papers related to it and created for settlement purposes only, nor any of the terms of either, shall be offered or received as evidence in any civil, criminal, or administrative action or proceeding against the Defendant Sheriff or be construed as an admission or presumption of any wrongdoing on the part of the Defendant Sheriff or as an admission by the Defendant Sheriff that the promises made represent the relief that could be recovered at trial. However, nothing in this Consent Decree shall be construed to preclude its use to effectuate the consummation, enforcement, or modification of its terms.

7. **Assignment.** This Consent Decree shall apply to all persons who are members of the Settlement Classes. This Consent Decree creates no rights in favor of any other person and

creates no obligations or duties on the part of the Defendant Sheriff beyond the terms of this Consent Decree. The Defendant Sheriff agrees to use his best efforts to make the requirements of this Consent Decree known to each of his employees, deputies, and agents who are responsible for operation of the Jail. Should the Defendant Sheriff enter into a future contract for the operation of the Jail by another entity, whether public or private, the Defendant Sheriff shall insure that the terms of this Consent Decree are incorporated into such contract, and the Defendant Sheriff shall be required to insure that the entity operating the Jail complies with the terms of this Consent Decree. Nothing set forth in this particular Paragraph shall bar or limit the Court's power to enforce the terms of this Consent Decree or the right of the Defendant Sheriff or any successor Sheriff or any other person or entity who in the future operates the Jail to petition the Court for modification or termination of this Consent Decree.

8. **Enforcement.** Except as otherwise provided in this Consent Decree, if class counsel believes that there has been a failure to comply with the terms of this Consent Decree, before moving the Court to redress the non-compliance, class counsel must notify the Defendant Sheriff and his counsel in writing of the alleged non-compliance and include in the notice sufficient specificity so that the Defendant Sheriff can identify the nature of the allegation, including describing with particularity the terms of the Consent Decree that are alleged to have been violated, the specific errors or omissions upon which the alleged violations are based, and the corrective actions sought. Upon class counsel's request, the Defendant Sheriff shall provide additional, relevant information pertinent to the alleged violations. The Parties then have twenty-eight (28) days from the date of written notification to meet and confer to attempt to resolve the issues. If the Parties are unable to resolve the dispute within twenty-eight (28) days, class counsel may file a motion or notice with the Court seeking appropriate relief. Class counsel may

file such a motion without substituting new named representative plaintiffs, if the named plaintiffs at the time of the entry of this Consent Decree are no longer members of the class at the time of the filing of such a motion.

9. **Costs, Expenses, and Attorneys' Fees.** In settlement of all claims for attorneys' fees, taxable costs, and non-taxable litigation expenses incurred through the date of entry of the proposed Consent Decree, the Defendant Sheriff agrees to tender to Class Counsel the gross sum of TWENTY FIVE THOUSAND DOLLARS (\$25,000.00), via check made payable to the Social Justice Law Collective Trust Account (Fed. Tax ID No. 46-0961071) (the "Settlement Amount"), within fourteen (14) days of the Court's final entry of this Consent Decree. The Parties agree that this Settlement Amount includes the resolution and payment in full of all of Plaintiffs' claims for reasonable attorneys' fees and costs.

10. **Court Approval.** The Parties agree that they will take all necessary and appropriate steps to obtain preliminary approval from the Court of this Consent Decree, final approval and entry by the Court of this Consent Decree, and dismissal of the action with prejudice, subject to the Court's jurisdiction to enforce this Consent Decree and adjudicate any future dispute over Plaintiffs' attorney fees, costs, and litigation expenses.

11. **Effective Date.** This Consent Decree shall be effective immediately upon its entry by the Court.

12. **Settlement Contingent on Court Adoption.** The Parties agree that this Consent Decree is subject to and conditioned upon the Court's entry of this Consent Decree. In the event that the Court declines to approve or enter this Consent Decree, the Parties agree that this Consent Decree shall be null and void and without prejudice to the Parties' rights.

13. **Waiver of Appeal.** Upon the Court's entry of this Consent Decree, the Parties waive their rights to appeal any existing order, decision, or ruling in this action. The Parties further waive their rights to appeal the Court's entry of this Consent Decree.

14. **Default.** Subject to the foregoing terms, and following the Court's entry of this Consent Decree, no default by any person or party to this Consent Decree in the performance of any of the covenants or obligations under this Consent Decree, or any judgment or order entered in conjunction with it, shall affect the dismissal of the Complaint, the preclusion of prosecution of actions, the discharge and release of the Defendant Sheriff, or the judgment entered approving these provisions. Nothing in the preceding sentence shall be construed to affect the Court's jurisdiction to enforce this Consent Decree on a motion for contempt or any other motion seeking appropriate relief.

15. **Captions.** The captions of this Consent Decree are for convenience of reference only and in no way define, limit, or describe the scope or intent of this Consent Decree.

16. **Recitals.** The parties agree that recitals set forth above are true and that they constitute a part of this settlement.

V. INMATE MAIL PROVISIONS

17. The Defendant Sheriff's specific obligations regarding Jail policies and practices under this Consent Decree are as follows:

- (a) **Inmates May Send Letters.** The Defendant Sheriff will not prohibit or restrict Jail inmates from mailing Non-Privileged Envelope Correspondence to correspondents outside the Jail, except as set forth in this paragraph.

- (b) **Inmates May Receive Letters.** The Defendant Sheriff will not prohibit or restrict Jail inmates from receiving Non-Privileged Envelope Correspondence from correspondents outside the Jail, except as set forth in this paragraph.
- (c) **Provision of Writing Materials to Indigent Inmates.** The Defendant Sheriff will provide each Indigent Inmate with sufficient Writing Materials so that the inmate may send at least two (2) pieces of Non-Privileged Envelope Correspondence, per week, at no expense to the inmate.
- (d) **Provision of Legal Writing Materials to Indigent Inmates.** The Defendant Sheriff will provide each Indigent Inmate, upon request, with sufficient Writing Materials so that the Indigent Inmate may send at least two (2) pieces of Privileged Envelope Correspondence, per week, at no expense to the inmate.
- (e) **No Volume Restrictions on Mail.** The Defendant Sheriff will not restrict the number of pieces of Envelope Correspondence or Postcards that a Jail inmate can send or receive unless there is clear evidence that such restriction is necessary for the safety of inmates, staff, or the public or for facility order or security. The Defendant Sheriff may restrict the number of pieces of Envelope Correspondence or Postcards that a Jail inmate may keep in his or her cell.
- (f) **Letter Length Restrictions.** The Defendant Sheriff may limit the length of each piece of Envelope Correspondence, incoming or outgoing, to one (1) piece of paper, front and back, measuring at least 7.25" wide by at least 10.5" tall.
- (g) **Content regulation not covered.** This Consent Decree is not intended to restrict any authority the Defendant Sheriff may have to regulate the content of Envelope Correspondence or Postcards.

18. Within twenty-one (21) days from the Court's entry of this Consent Decree, the Defendant Sheriff shall revise all written policies, procedures, orders, regulations, and rules to conform to the above specific injunctive relief, including, but not limited to, the Detainee Mail Policy – Standard Operating Procedure (SOP) F-115, and shall provide copies of all such revised policies, procedures, orders, regulations, and rules to class counsel.

VI. NOTICE

19. Pursuant to Rule 23(e), Federal Rules of Civil Procedure, the Defendant Sheriff, within fourteen (14) days of the Court's preliminary approval of the Notice of Proposed Settlement (hereinafter "Notice") attached to this Consent Decree as Exhibit A, shall provide the Notice to those members of the Inmate Correspondent Class as presently constituted by posting a copy of the attached Notice in each pod and visitation area. The Notice shall remain posted for sixty (60) days. A copy of the Notice shall be provided individually to any inmate who is not housed in a common dormitory setting. In addition, a copy of the Notice shall be published on the Jail's public website. Within fourteen (14) days of the Court's preliminary approval of the Notice, the Defendant Sheriff shall further provide the Notice to those members of the Outside Correspondent Class by publication in the Kansas City Star. The attached Notice shall be posted, provided, and published, in English and Spanish. The cost of providing such notice shall be borne by the Defendant Sheriff in his official capacity.

20. Class members shall have sixty (60) days from the date of the Defendant Sheriff's posting, providing, and publishing of the attached Notice to file with the Clerk of the Court any written objections to this proposed Consent Decree, with a copy to class counsel. The Defendant Sheriff shall provide free paper, envelopes, and postage to any indigent inmate who wishes to

file objections to this Consent Decree. Such communications with the Court shall be considered privileged legal mail by the Defendant Sheriff, his agents, and employees.

VII. CONSENT AND EXECUTION BY PARTIES AND COUNSEL

WHEREFORE the Parties and their counsel agree to the terms and conditions of the Consent Decree as set forth above.

s/ Tyrell Jackson
Tyrell Jackson
Class Representative

Date: 10/28/2014

s/ Donald Ash
Donald Ash
Sheriff of Wyandotte County

Date: 10/28/2014

s/ Randall Chapman
Randall Chapman
Class Representative

Date: 10/28/2014

s/ Mable Estes
Mable Estes
Class Representative

Date: 10/28/2014

s/ Stephen Douglas Bonney
Stephen Douglas Bonney
Kansas Bar No. 12322
ACLU Foundation of Kansas
3601 Main Street
Kansas City, MO 64111
Tel. (816) 994-3311
Fax: (816) 756-0136
E-mail: dbonney@aclukswmo.org

Date: 10/28/2014

s/ Henry E. Couchman, Jr.
Henry E. Couchman, Jr.
Kansas Bar No. 12842
Patrick M. Waters
Kansas Bar No. 21709
Ryan Haga
Kansas Bar No. 22705
Unified Government of Wyandotte
County/Kansas City, Kansas
Legal Department
Municipal Office Building
701 North 7th Street, Suite 961
Kansas City, Kansas 66101

Joshua A. Glickman
Kansas Bar No. 25889
Social Justice Law Collective, PL
P.O. Box 11563
Overland Park, KS 66207
Tel. (913) 213-3064
Fax: (866) 893-0416
Email: josh@sjlawcollective.com

Tel. (913) 573-5060
Fax: (913) 573-5243
Email: hcouchman@wycokck.org
patrickwaters@wycokck.org
rhaaga@wycokck.org

Date: 10/28/2014

Counsel for Plaintiffs

Counsel for Defendant Sheriff