

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 76-6068-CIV-MIDDLEBROOKS

OLLIE CARRUTHERS, et al.,

Plaintiffs,

v.

EDWARD J. STACK, et al.,

Defendants.

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**DEFENDANTS JOINT RESPONSE TO COURT ORDER REQUIRING RESPONSE**

COMES NOW, Defendants, SCOTT J. ISRAEL, Sheriff of Broward County, Florida, and BROWARD COUNTY, by and through their undersigned counsel, pursuant to this Court's Order dated December 16, 2014, and hereby files this Joint Response to the pro se filings of Broward county jail inmates, Renard Fleuridor, and Greg Jones, and states as follows:

Claims of Renard Fleuridor

1. In a pleading dated November 12, 2014, Renard Fleuridor, an inmate in the custody of the Defendant, Sheriff Scott J. Israel (hereinafter referred to individually as "Defendant Sheriff"), alleged that in July, 2014 he was forced to sleep on a pedestal that was approximately six inches from the floor in the dayroom of the North Broward Bureau, until such time as a bed became available.<sup>1</sup>

2. Fleuridor alleges that requiring inmates to sleep on temporary beds violates the terms of the Consent Decree entered in this case.

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<sup>1</sup> Fleuridor is referring to what is commonly known as a "temporary bed" or a "boat". Temporary beds are elevated sleeping platforms placed on the floor with a mattress.

3. Fleuridor is seeking monetary sanctions in the amount of \$25,000.00 for the alleged violations.

Claims of Greg Jones

4. In a pleading dated November 18, 2014, Greg Jones, an inmate formerly in the custody of the Defendant Sheriff, alleged that the temperature in the North Broward Bureau is excessively cold.

5. Jones alleges that the excessively cold temperatures violates the terms of the Consent Decree.

6. Jones is seeking monetary sanctions in the amount of \$25,000.00 for the alleged violations.

Consent Decree

7. The Plaintiffs' class and the Defendants entered into a Stipulation for Entry of Consent Decree on July 27, 1994, which was ratified and confirmed by an Order Approving Settlement Agreement and Dismissing Case entered on January 31, 1995 by the Honorable William Hoeveler, United States District Judge.

8. The Consent Decree addresses many conditions of confinement, including: Facility Capacity, Classifications, Religious Practices, Use of Force, Housing, Recreation, Visitation, Programs, and Medical, Dental, and Mental Health Services.

9. The Consent Decree has been modified by previous stipulations of the parties. See Exhibits A, Stipulation for Settlement, and Exhibit B, Second Stipulation for Settlement, attached hereto.

10. Pursuant to the Second Stipulation for Settlement, the conditions of confinement currently subject to the Consent Decree include: mental health services,

inmate rules and discipline, inmate safety and security, staffing, facility capacity, and inmate access to religious publications/services.

11. The claims of Ronald Fleuridor are currently subject to the terms of the Consent Decree under the “facility capacity” designation described in the Second Stipulation for Settlement.

12. The claims of Greg Jones regarding facility temperature are not clearly subject to continued monitoring. While the Consent Decree did address facility temperature in the section labeled “Housing,” the temperature of the facilities was not a focus of expert review and was not addressed within any expert reports. The parties stipulated to the dismissal of all claims except those specifically identified in the stipulations. It is not clear that facility temperature was intended to be subject to continued monitoring as this condition does not clearly fit into any of the categories described in the stipulations. However, for the purpose of this response and without conceding that temperature in the facilities is subject to continued monitoring, Defendants will assume that this condition is subject to continued monitoring.

13. Compliance with the Consent Decree is monitored through the Special Master and Class Counsel. See Consent Decree, pages 12 through 16.

14. Pursuant to the terms of the Consent Decree, inmates are required to exhaust their administrative remedies set forth in the grievance procedure before requesting direct assistance from Plaintiffs’ counsel. See Consent Decree, pg. 15, para. 22.b.

15. Additionally, inmates are provided free telephone access to Plaintiffs’ counsel to report complaints about conditions of confinement. See Consent Decree, pg. 15, para. 22.

16. Defendant Sheriff regularly receives correspondence from Plaintiffs' counsel with complaints from inmate class members, which are investigated and remedied, where appropriate.

### Argument

I. Jones lacks standing to enforce the terms of the Consent Decree:

17. Greg Jones was taken into custody on June 11, 2014 following a court order in a criminal proceeding charging him with grand theft, and was issued Broward County jail number 381401143. See Exhibit C, Greg Jones Booking Report.

18. On December 4, 2014, Jones was released from the custody of the Defendant Sheriff and transferred to the custody of the Florida Department of Corrections to begin serving a term of incarceration in state prison. See Exhibit C, referencing transfer to other jurisdiction. Id.

19. The class in the instant case consists of those persons who have been, are being, or will be incarcerated in the Broward County corrections and rehabilitation facilities.

20. While Jones is a person who has been in the custody of Broward County, and who might be in the custody of Broward County in the future, he is not *currently* a member of the class such that he has standing to enforce the terms of the Consent Decree. See Consent Decree, page 2, paragraph 3.

21. Non-parties do not have standing to enforce consent decrees. See Reynolds v. Butts, 312 F.3d 1247, 1249 (11<sup>th</sup> Cir. 2002). Consent decrees are not enforceable, either directly or in collateral proceedings, “. . . by those who are not parties to it even if they were intended to be benefitted by it.” See Reynolds at 1249, *quoting* Blue Chip Stamps v. Manor Drug Stores, 421 U.S. 723, 750 (1975).

22. By virtue of his release from the custody of Broward County, Jones is no longer a party to the Consent Decree. As a non-party, Jones lacks standing to enforce the terms of the Consent Decree.

II. Fleuridor failed to exhaust the administrative grievance process:

23. The Consent Decree required Defendants to establish a grievance process for responding to complaints made by inmate class members. See Consent Decree, page 15, para. 22.a.

24. Defendants have initiated a grievance process for inmate complaints as required by the Consent Decree. See Exhibit D, Jail Grievance Policy.

25. Fleuridor has utilized the grievance process on four (4) occasions since his incarceration. See Exhibit E, Fleuridor Grievance and Request Log.

26. The only grievances that Fleuridor has filed since his incarceration pertain to "Debt Charges."

27. Fleuridor has not filed any grievances pertaining to his placement in a temporary bed.

28. Because Fleuridor has failed to comply with the requirements of the Consent Decree by addressing his complaint through the grievance process, Fleuridor has failed to exhaust his administrative remedies and contempt is therefore not an available or appropriate remedy.

III. Jones obtained a remedy for his complaint through the grievance process:

29. Jones did in fact utilize the grievance process in the jail to address his concerns about facility temperature. See Exhibit F, Jones Grievance No. 431945.

30. As a result of that grievance, Jones obtained a remedy through that process and did not seek to appeal the resolution provided by Defendants. See Exhibit F.

31. Because Jones received a remedy for his complaint about temperature, his complaint is moot and contempt is not warranted or appropriate.

IV. Fleuridor and Jones failed to communicate their complaints with class counsel as required by the Consent Decree:

32. It is the understanding and belief of undersigned counsel that neither Jones nor Fleuridor communicated the complaints described in their respective motions with class counsel prior to the filing of their motions.

33. This belief is based upon the fact that class member complaints made to class counsel of this nature are routinely communicated with the undersigned counsel for Defendant Sheriff. However, undersigned counsel has no record of receiving complaints made by Fleuridor or Jones as described in their motions.

34. To the extent that Fleuridor and/or Jones communicated their complaints to class counsel, neither of those complaints were communicated with Defendants prior to the filing of their motions.

35. Prior to filing motions for contempt to enforce the terms of the Consent Decree, the class must first communicate their complaints with Defendants and attempt to obtain a remedy through that process before seeking court intervention.

36. Since neither Fleuridor nor Jones complied with the terms of the Consent Decree regarding resolution of their complaints, they should not be permitted to circumvent those requirements and directly seek the Court's intervention through contempt.

V. Contempt may only be invoked through class counsel:

37. Even had Fleuridor exhausted the remedies available to them through the grievance process and through communication with class counsel as required by the terms

of the Consent Decree, they would still not be able to enforce compliance with the terms of the Consent Decree through the filing of the instant motions.

38. Rather, class member complaints regarding matters covered under the consent decree may only be raised in a contempt petition filed by class counsel. See Saleem v. Evans, 866 F.2d 1313 (11<sup>th</sup> Cir. 1989); Harper v. Thomas, 988 F.2d 101 (11<sup>th</sup> Cir. 1993).

39. In the instant case, class counsel was not consulted by Fleuridor or Jones prior to filing the individual motions for contempt, and class counsel has not otherwise sought to compel compliance with the Consent Decree through contempt, nor has it adopted either Fleuridor or Jones' motions.

40. Accordingly, the motions for contempt filed by Fleuridor and Jones should be dismissed without prejudice to the filing of a contempt petition by class counsel if counsel finds that there is merit to the claims.

VI. The use of temporary beds does not violate the United States Constitution or the terms of the Consent Decree:

41. The temporary beds utilized by the Defendant Sheriff are substitute mattress frames which hold a mattress at least twelve (12) inches from the floor. See Exhibit G, Jail Policy on Temporary Bed Use, Definition of Temporary Bed.

42. Such sleeping accommodations are used to address temporary space limitations, and their use is in conformity with constitutional requirements. See Hamm v. DeKalb County, 774 F.2d 1567 (11<sup>th</sup> Cir. 1985); Brown v. Crawford, 906 F.2d 667 (11<sup>th</sup> Cir. 1990); Jordan v. Doe, 38 F.3d 1559 (11<sup>th</sup> Cir. 1994).

43. Further, the use of temporary beds does not violate the terms of the Consent Decree.

44. Fleuridor's motion alleges that the Consent Decree requires that capacity in the facilities operated by Defendants not exceed 3,656 inmates.

45. However, Fleuridor fails to realize that the Consent Decree was signed in 1994, when the Defendants maintained three (3) detention facilities.

46. Since the entry of the Consent Decree, Defendants have constructed two (2) additional detention facilities, and have increased the capacity to 5,144 beds. See Exhibit H, Affidavit of Darren Sieger, Classifications Manager.

47. During July 2014, the time period of Fleuridor's complaint, the average occupancy of the jail was 87.8% of capacity, and the average occupancy of the North Broward Bureau, the facility in which Fleuridor was housed, was 80% of capacity. See Exhibit H.

48. Fleuridor was housed in a temporary bed for four (4) days, from July 1, 2014 to July 4, 2014. See Exhibit H.

49. While the Broward County detentions facilities have sufficient permanent bed space to accommodate the current jail population, the use of temporary beds is sometimes necessary.

50. The Broward County detention facilities utilize an "Objection Jail Classification System." In this system, inmates are separated by custody levels and housing types. Because of the daily variations in the custody make-up of the jail population, the jail may require the use of temporary beds to address higher populations within a particular custody level, even though there may be vacant bed space in other areas of the facilities. See Exhibit H.

51. The Classifications Unit monitors and adjusts the population daily to minimize the use of temporary beds. See Exhibit H.



52. Further, the manner of use of temporary beds is regulated by internal jail policy. See Exhibit G. The Defendant Sheriff's policy on the use of temporary beds provides that they are only used as a last resort, and only when a permanent bed is not available. See Exhibit G, Policy Statement.

53. The Defendant Sheriff's policy on the use of temporary beds was adopted, in part, based upon the recommendations of Dr. Steven Martin, the court-appointed expert who evaluated the Broward detention facilities for compliance with constitutional standards.

54. Dr. Martin's initial, supplemental, and third reports addressed the use of temporary beds in Defendants' facilities. See Exhibit "I", Excerpts of Reports of Dr. Steven Martin.

55. Dr. Martin's report was provided to counsel for all parties, as well as to the Special Master.

56. Defendants have implemented all of Dr. Martin's recommendations on the use of temporary beds.

57. Defendants have been receptive to periodic inquiries by class counsel on the use of temporary beds in the facilities, and class counsel and the Special Master have been provided data on the use of temporary beds by the Defendants.

58. Neither class counsel nor the Special Master has ever suggested that the use of temporary beds in the Broward County jail system, in the manner that they are currently being utilized, was in violation of the terms of the Consent Decree.

59. Rather, it is the understanding and belief of the Defendants that class counsel and the Special Master understand the need for the use of temporary beds and have tacitly approved their use in the manner recommended by Dr. Martin and as provided in jail policy.

60. If class counsel or the Special Master have concerns with the use or manner

of use of temporary beds by Defendants, such concerns should be addressed with Defendants before seeking to invoke the Court's contempt powers, as such concerns, if expressed, may be remedied without court intervention.

61. Since neither class counsel nor the Special Master have requested that Defendants discontinue the use of temporary beds, or otherwise requested changes to the manner in which such beds are currently being utilized, contempt is not warranted or appropriate to address Fleuridor's complaints.

Conclusion

For all of the foregoing reasons, Defendants submit that contempt is not an available or appropriate remedy to address the complaints of Renard Fleuridor or Greg Jones, and request that this Court enter an order denying their motions.

Respectfully submitted this 20<sup>th</sup> day of January, 2015.

SCOTT J. ISRAEL  
SHERIFF OF BROWARD COUNTY

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Certificate of Service

I HEREBY CERTIFY that I electronically filed the foregoing document with the Clerk of the Court using CM/ECF, and that the foregoing document is being served on this 20<sup>th</sup> day of January, 2015 on all counsel of record identified in the below Electronic Service List in the manner specified via transmission of Notices or Electronic Filing generated by CM/ECF, and by U.S. Mail to Renard Fleuridor and Greg Jones at the addresses listed on the U.S. Mail Service List below.

/s/ Terrence O. Lynch

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