

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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KATRINA MACK, et al., on behalf of  
themselves and others similarly situated,  
Plaintiffs

v.

SUFFOLK COUNTY, et al.,  
Defendants

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Civil Action No. 98-12511-NG

**MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION  
TO HOLD SUFFOLK COUNTY IN CONTEMPT**

**I. INTRODUCTION**

Plaintiffs ask this court to hold Suffolk County in contempt of the court's order of February 26, 2003. Plaintiffs ask the court to fine the County for each day that it fails to comply with the order. Plaintiffs suggest a fine beginning at \$3,000 per calendar day with the amount of the daily fine increasing by \$1,000 each subsequent Monday until the County complies with this court's order. The plaintiffs propose that the fines collected be used to establish a fund for the benefit of Suffolk County's women prisoners.

Plaintiffs request the fine to motivate the County to pay without disrupting the County's operations. But this order would put the County and its officials on notice that if the County remains in contempt, further sanctions may be imposed, such as the seizure of county property or an order directing the county treasurer to make payment

from the county's operating accounts. Measures beyond a fine would be a last resort because they could impair the County's ability to run the jail and prison. The requested fine is consistent with the equity court's obligation to use the "least possible power adequate to the end proposed." Spallone v. United States, 493 U.S. 265, 276 (1990). Likewise, plaintiffs do not seek a finding of contempt against county officials at this time, but if the County's obstreperous behavior persists, such a motion might become necessary. See Spallone.

## II. STATEMENT OF FACTS

This civil rights class action suit settled after mediation by Senior District Judge A. David Mazzone on May 30, 2002. Over the next month, class counsel negotiated the terms of the Settlement Agreement with counsel for the City and County. The parties agreed that the defendants would each pay \$5 million by September 6, 2002. Because counsel for the County were concerned they might need more time, the County agreed to make its "best effort" to pay by the September 6 deadline, but the agreement gave the County a grace period of seven weeks before it would "in any event" make its payment by November 29, 2002. The parties agreed that if either defendant failed to pay its share by November 29, it would pay interest from that date forward.<sup>1</sup>

On July 1, 2002, General Counsel Melissa Garand reported to class counsel that the Commonwealth's Executive Office of Administration and Finance was committed

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<sup>1</sup>See Affidavit of Howard Friedman at ¶¶2-3.

to paying the \$5 million and that the money would be put in the supplemental budget for 2002. Attorney Garand hoped that this would be accomplished by the end of July 2002 but could not give class counsel a firm date. The Settlement Agreement was signed on July 8, 2002.<sup>2</sup>

The court granted preliminary approval of the settlement on July 10, 2002. Based on the agreed dates class counsel and the claims administrator developed a time-line for administering the settlement and mailed notice of the settlement to class members on July 22, 2002. The court held a fairness hearing on September 26, 2002, on the assented-to motion to give final approval to the settlement. The County did not raise any objections to approval of the settlement. This court granted final approval on October 1, 2002.<sup>3</sup>

Class counsel and the defendant City of Boston took the steps necessary to consummate the settlement and to ensure that the settlement funds would be distributed on time. Only the County failed to fulfill its settlement obligations. On November 18, 2002, class counsel wrote to remind the County that its payment was due on November 29, 2002, and that after that date interest would accrue at a rate of about \$50,000 a month. On January 14, 2003, class counsel wrote to the County seeking payment by February 28, 2003. Class counsel informed the County that if the County

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<sup>2</sup> See Affidavit of Howard Friedman at ¶¶4-5.

<sup>3</sup> See Affidavit of Howard Friedman at ¶¶6-8.

did not guarantee payment by February 28, 2003, the plaintiffs would file a motion to enforce the settlement at the beginning of February. On January 24, 2003, counsel for the County told class counsel that the plaintiffs would need to file the motion to secure payment.<sup>4</sup>

On February 3, 2003, plaintiffs filed a motion to enforce the settlement. In response to the motion, on February 24, 2003, the County acknowledged its obligation but claimed that the County does not have the money to pay the amount it agreed to pay. The County did not explain what steps it took to comply with the Settlement Agreement. On February 26, 2003, the court ordered the County to pay the \$5 million and accrued interest “forthwith.” On March 4, 2003, class counsel reported the court’s order to Assistant General Counsel James Davin by telephone and faxed a copy of the docket sheet.<sup>5</sup>

On March 5, 2003, the Sheriff’s General Counsel Anne Powers forwarded the court’s order to the County commissioners with copies to other County officials “for resolution.” On March 6, 2003, the County commissioners responded by reminding the General Counsel that the County’s budget is set by the County Government Finance Review Board suggesting that the order be referred there.<sup>6</sup>

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<sup>4</sup> See Affidavit of Howard Friedman at ¶¶9–12.

<sup>5</sup> See Affidavit of Howard Friedman at ¶¶13–14.

<sup>6</sup> See Affidavit of Howard Friedman at ¶¶15–16.

The County's failure to pay on time prevents complete distribution of the settlement funds as planned. A timetable was established and class members were notified based on the County's promise to pay by November 29, 2002. The claims administrator expects, by the end of March 2003, to have finished processing all claims and appeals (including those claims that were permitted to be filed late by the court) and to be ready to distribute settlement funds. The County's failure to make its payment is the only cause for delay in distributing the settlement funds.<sup>7</sup>

Class members are expecting to receive the promised settlement funds soon. Many of these women need the money.<sup>8</sup> To minimize their harm, class counsel will shortly make a separate motion for permission to make partial distributions from the City's payment.

### III. ARGUMENT

#### A. This Court Has the Power to Enforce the Agreement

This court has the power to secure the County's compliance with this class action settlement for several reasons. First, the settlement agreement explicitly provides that the court will have the power to "enter orders as appropriate to enforce the settlement."

Second, when parties voluntarily enter into a settlement agreement, the agreement cannot be repudiated by either party, and the court will summarily enforce the

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<sup>7</sup> See Affidavit of Howard Friedman at ¶17.

<sup>8</sup> See Affidavit of Howard Friedman at ¶18.

agreement. In re Mal De Mer Fisheries, 884 F.Supp. 635 (D.Mass. 1995); Mathewson Corp. v. Allied Marine Indus., Inc., 827 F.2d 850, 852-53 (1<sup>st</sup> Cir. 1987); Malave v. Carney Hospital, 170 F.3d 217, 220 (1<sup>st</sup> Cir. 1999); Kokkonen v. Guardian Life Ins. Co., 511 U.S. 375, 381 (1994). Federal courts have enforcement jurisdiction so that each court may “function successfully, that is . . . manage its proceedings, vindicate its authority, and effectuate its decrees.” U.S.I. Properties Corp. v. M.D. Construction Company, 230 F.3d 489,496 (1<sup>st</sup> Cir. 2000) quoting Kokkonen, 511 U.S. at 380.

Finally, given its supervisory role over the settlement of class actions, this court has an even stronger obligation to ensure the settlement is completed. “In a class action, the district court has a duty to class members to see that any settlement it approves is completed, and not merely to approve a promise . . . to pay the relief to which it has decided class members are entitled.” In re Corrugated Container Antitrust Litigation, 752 F.2d 137, 141 (5th Cir.1985).

**B. The County Has Violated a Court Order**

Just as Suffolk County flouted its obligations under the settlement agreement, it has disregarded the court’s order. The County agreed to make its “best efforts” to pay the settlement amount by September 6, 2002, and “in any event” to pay by November 29, 2002. But, the County has not made a payment. Instead it seems the County waited for a motion to enforce the settlement before trying to secure the needed money.

On February 26, 2003, this court ordered Suffolk County pay the \$5 million plus accrued interest “forthwith.” This was the least intrusive mechanism to secure

compliance with the Settlement Agreement. The Sheriff's Department, which throughout this long litigation has been representing the County, responded by sending the court order to the County's commissioners. The commissioners referred the matter back to the Sheriff's Department, claiming that it had not followed proper procedure. Only now is the County planning a meeting for officials to discuss this matter—which they should have done before the County signed the agreement on July 8, 2002.

Twenty days after the court commanded payment “forthwith,” the County has still not paid. Because the County did not comply with the court order, this court should hold the County in contempt and order the County to pay a fine until it complies.

C. Contempt Is the Proper Remedy

Courts have broad discretion in holding a party to be in civil contempt and in imposing a sanction for the contempt. AccuSoft Corporation v. Palo, 237 F.3d 31 (1<sup>st</sup> Cir. 2001). “Courts have inherent power to enforce compliance with their lawful orders through civil contempt.” Spallone v. United States, 493 U.S. 265, 276 (1990), quoting Shillitani v. United States, 384 U.S. 364 (1966). The contempt sanction should recognize the interest of local authorities in managing their own affairs. Id.

“Intent is not an issue in civil contempt proceedings. The sole question is whether a party complied with the district court's order.” Donovan v. Mazzola, 716 F.2d 1226, 1240 (9<sup>th</sup> Cir. 1983). Even good faith is not a defense to civil contempt. Fortin v. Commissioner of Massachusetts Department of Public Welfare, 692 F.2d at 796. Civil contempt can be justified by showing clear and convincing evidence that the party had

notice of the court's order and that the order was violated. AccuSoft Corporation v. Palo. In this case, it is undisputed that the County had notice of the court's order to pay "forthwith" but has not paid.

A finding of civil contempt and an increasing fine would help prevent further harm to class members' interests. Already, class members' settlement checks will be delayed. A contempt ruling and fines should provide the necessary motivation to the County to make payment without further delay. Giving the County more time, in exchange for yet another promise, would not likely result in compliance.

**D. The County's Obligation Is Not Excused by its Failure to Take the Necessary Steps to Obtain Payment**

The County may not be excused from its obligation by its failure to take the steps needed to secure funds. Fortin v. Commissioner of Massachusetts Department of Public Welfare, 692 F.2d 790 798, n.9 (1<sup>st</sup> Cir. 1982). The County might argue that it cannot pay because it has not complied with state law requirements. For example, it might claim that it does not have the approval of the County Government Finance Review Board or that the funds have not been included in the County's budget. But the County has had nine months since it agreed to the settlement to take the steps needed for payment. The Settlement Agreement was not conditioned on securing funding from the Commonwealth, nor did it specify that the payment would be made only from a specific account. Before signing the Settlement Agreement and asking this court to approve the class settlement, the County should have secured funding. The County's failure to take



the necessary steps months ago does not excuse its failure to comply with the court order. Were such an excuse a valid excuse, “defendants could evade court orders simply by refusing to take preliminary steps toward compliance and claiming impossibility.” Id.

Neither may a government entity escape its responsibilities in a civil rights case by arguing that compliance violates state law. Hook v. Arizona, 907 F.Supp. 1326 (D. Ariz. 1995) (failing to pay a court-appointed special master is not excused by an Arizona statute that prohibits the payment of special masters appointed by a federal court). Nor may the County be excused by protesting that compliance would result in a financial crisis. Stone v. City and County of San Francisco, 968 F.2d 850, 858 (9<sup>th</sup> Cir. 1992).

**E. A Fine of \$3,000 per Day, Increasing Each Week, Is Proper**

A sanction to induce compliance with a court’s order should take into account the probable effectiveness of the sanction. Morales-Feliciano v. Parole Board of Puerto Rico, 887 F.2d 1, 6 (1<sup>st</sup> Cir. 1989). Factors the court should consider in determining the amount of the fine are: the magnitude of the harm threatened by future violations, the fine’s probable effectiveness as a coercive sanction, and the financial burden it would impose. Perfect Fit Industries v. Acme Quilting Company, 673 F.2d 53, 56-58 (2<sup>nd</sup> Cir.1982); Princess House v. Jewels by Park Lane, 1991 WL 35495 (D. Mass. 1991).

The most important factor in this case is the sanction’s probable effectiveness. The County did not make its payment on time despite an interest provision requiring that the County pay interest on its \$5 million obligation at the rate of 12% per year

compounded daily, which equals approximately \$50,000 per month.<sup>9</sup> Since \$50,000 a month was not large enough to move the County, the fine should start at an amount that is larger. And to impress ever-increasing urgency, the amount of the fine should increase regularly. Plaintiffs suggest that the fine begin at \$3,000 per calendar day and that each subsequent Monday the daily fine increase by \$1,000.<sup>10</sup> Such fines would be incurred in addition to the accruing interest.

A daily fine against the City of Yonkers beginning at \$100 a day and doubling each day of noncompliance though not to exceed \$1 million a day was affirmed by the Supreme Court in Spallone, a case in which the defendant city had agreed to a judgment requiring legislation but had then failed to pass the legislation. 493 U.S. 265 (1990).

**F. The Fine Should Establish a Fund to Assist Women Prisoners**

Fines for civil contempt may serve a coercive purpose, a compensatory purpose, or both. Local 28 of Sheet Metal Workers' International Association v. EEOC, 478 U.S. 421, 443 (1986). Because the participating class members will receive interest, the fine need not be compensatory. Thus the requested fine would be primarily for coercing compliance. Plaintiffs ask the court to use its equitable power to create a fund to benefit women incarcerated in the County's facilities. The many class members who did not

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<sup>9</sup> See Attachment A: Calculation of Interest.

<sup>10</sup> Thus each day of the second calendar week would cost \$4,000, each day the third calendar week would cost \$5,000, and so on. If the court issued this order on, say, Monday, March 31, with the first fine's being incurred on Tuesday, April 1, then the fines would total \$151,000 by May 1. See Attachment B: Sample Calculation of Fines.

submit claim forms will not share in the class distribution. The proposed fund would benefit some of these woman and many others in similar situations. The fund should be administered by a non-profit group named by the court at a later date.

Precedent supports this proposal. In Local 28 of Sheet Metal Workers' International Association v. EEOC, the Supreme Court affirmed a court's order that \$150,000 in fines be used to finance a fund to increase minority membership in a union apprenticeship program and in the union. The Sixth Circuit affirmed the use of contempt fines in a fund used for women inmates in a similar class action. Glover v. Johnson, 199 F.3d 310 (6<sup>th</sup> Cir. 1999). The First Circuit has also affirmed establishing a fund from coercive sanctions to benefit plaintiffs. Cabrera v. Municipality of Bayamon, 622 F.2d 4 (1<sup>st</sup> Cir. 1980). Other district courts have created funds used to benefit class members generally. Palmigiano v. DiPrete, 710 F. Supp. 875 (D. R.I. 1989) aff'd, 887 F.2d 258 (1st Cir. 1989); Mobile County Inmates v. Purvis, 581 F.Supp. 222 (S.D. Ala. 1984). Contempt fines have also been used to fund a special master and hearing master. Halderman v. Pennhurst State School and Hospital, 526 F.Supp. 423 (E.D. Pa. 1981). Using the fines to aid women prisoners would, like this lawsuit, promote their humane treatment.

#### IV. CONCLUSION

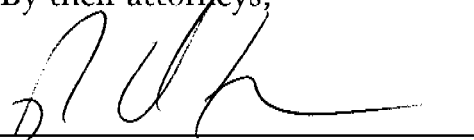
This court should hold Suffolk County in contempt of this court's order of February 26, 2003, and should order the County to pay a non-refundable fine beginning

at \$3,000 per calendar day, with the daily fine increasing by \$1,000 each subsequent Monday, until the County pays the plaintiffs the settlement amount and interest. The fines collected should be used to establish a fund for the benefit of Suffolk County's women prisoners.

**RESPECTFULLY SUBMITTED,**

For the plaintiffs,

By their attorneys,

A handwritten signature in black ink, appearing to read 'H. Friedman', written over a horizontal line.

Howard Friedman

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Myong J. Joun

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**Mack, et al., v. Suffolk County, et al.**

**Attachment A: Calculation of Interest**

According to the Settlement Agreement's Formula

<b>Date</b>	<b>Day's Interest</b>	<b>Total Due</b>
11/29/02		\$5,000,000.00
11/30/02	\$1,643.84	\$5,001,643.84
12/01/02	\$1,644.38	\$5,003,288.21
12/02/02	\$1,644.92	\$5,004,933.13
12/03/02	\$1,645.46	\$5,006,578.59
12/04/02	\$1,646.00	\$5,008,224.58
12/05/02	\$1,646.54	\$5,009,871.12
12/06/02	\$1,647.08	\$5,011,518.20
12/07/02	\$1,647.62	\$5,013,165.83
12/08/02	\$1,648.16	\$5,014,813.99
12/09/02	\$1,648.71	\$5,016,462.70
12/10/02	\$1,649.25	\$5,018,111.95
12/11/02	\$1,649.79	\$5,019,761.74
12/12/02	\$1,650.33	\$5,021,412.07
12/13/02	\$1,650.88	\$5,023,062.94
12/14/02	\$1,651.42	\$5,024,714.36
12/15/02	\$1,651.96	\$5,026,366.32
12/16/02	\$1,652.50	\$5,028,018.83
12/17/02	\$1,653.05	\$5,029,671.87
12/18/02	\$1,653.59	\$5,031,325.46
12/19/02	\$1,654.13	\$5,032,979.60
12/20/02	\$1,654.68	\$5,034,634.28
12/21/02	\$1,655.22	\$5,036,289.50
12/22/02	\$1,655.77	\$5,037,945.27
12/23/02	\$1,656.31	\$5,039,601.58
12/24/02	\$1,656.86	\$5,041,258.43
12/25/02	\$1,657.40	\$5,042,915.83
12/26/02	\$1,657.94	\$5,044,573.78
12/27/02	\$1,658.49	\$5,046,232.27
12/28/02	\$1,659.04	\$5,047,891.30
12/29/02	\$1,659.58	\$5,049,550.88
12/30/02	\$1,660.13	\$5,051,211.01
12/31/02	\$1,660.67	\$5,052,871.68
01/01/03	\$1,661.22	\$5,054,532.90
01/02/03	\$1,661.76	\$5,056,194.66
01/03/03	\$1,662.31	\$5,057,856.97
01/04/03	\$1,662.86	\$5,059,519.83
01/05/03	\$1,663.40	\$5,061,183.23
01/06/03	\$1,663.95	\$5,062,847.19
01/07/03	\$1,664.50	\$5,064,511.68
01/08/03	\$1,665.04	\$5,066,176.73
01/09/03	\$1,665.59	\$5,067,842.32
01/10/03	\$1,666.14	\$5,069,508.46
01/11/03	\$1,666.69	\$5,071,175.15
01/12/03	\$1,667.24	\$5,072,842.38
01/13/03	\$1,667.78	\$5,074,510.17
01/14/03	\$1,668.33	\$5,076,178.50
01/15/03	\$1,668.88	\$5,077,847.38

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**Attachment A: Calculation of Interest**

According to the Settlement Agreement's Formula

<b>Date</b>	<b>Day's Interest</b>	<b>Total Due</b>
03/05/03	\$1,695.98	\$5,160,298.20
03/06/03	\$1,696.54	\$5,161,994.74
03/07/03	\$1,697.09	\$5,163,691.83
03/08/03	\$1,697.65	\$5,165,389.49
03/09/03	\$1,698.21	\$5,167,087.70
03/10/03	\$1,698.77	\$5,168,786.46
03/11/03	\$1,699.33	\$5,170,485.79
03/12/03	\$1,699.89	\$5,172,185.68
03/13/03	\$1,700.44	\$5,173,886.12
03/14/03	\$1,701.00	\$5,175,587.13
03/15/03	\$1,701.56	\$5,177,288.69
03/16/03	\$1,702.12	\$5,178,990.81
03/17/03	\$1,702.68	\$5,180,693.49
03/18/03	\$1,703.24	\$5,182,396.73
03/19/03	\$1,703.80	\$5,184,100.54
03/20/03	\$1,704.36	\$5,185,804.90
03/21/03	\$1,704.92	\$5,187,509.82
03/22/03	\$1,705.48	\$5,189,215.30
03/23/03	\$1,706.04	\$5,190,921.35
03/24/03	\$1,706.60	\$5,192,627.95
03/25/03	\$1,707.17	\$5,194,335.12
03/26/03	\$1,707.73	\$5,196,042.84
03/27/03	\$1,708.29	\$5,197,751.13
03/28/03	\$1,708.85	\$5,199,459.98
03/29/03	\$1,709.41	\$5,201,169.39
03/30/03	\$1,709.97	\$5,202,879.37
03/31/03	\$1,710.54	\$5,204,589.90
04/01/03	\$1,711.10	\$5,206,301.00
04/02/03	\$1,711.66	\$5,208,012.66
04/03/03	\$1,712.22	\$5,209,724.88
04/04/03	\$1,712.79	\$5,211,437.67
04/05/03	\$1,713.35	\$5,213,151.02
04/06/03	\$1,713.91	\$5,214,864.93
04/07/03	\$1,714.48	\$5,216,579.41
04/08/03	\$1,715.04	\$5,218,294.45
04/09/03	\$1,715.60	\$5,220,010.05
04/10/03	\$1,716.17	\$5,221,726.22
04/11/03	\$1,716.73	\$5,223,442.95
04/12/03	\$1,717.30	\$5,225,160.25
04/13/03	\$1,717.86	\$5,226,878.11
04/14/03	\$1,718.43	\$5,228,596.53
04/15/03	\$1,718.99	\$5,230,315.52
04/16/03	\$1,719.56	\$5,232,035.08
04/17/03	\$1,720.12	\$5,233,755.20
04/18/03	\$1,720.69	\$5,235,475.89
04/19/03	\$1,721.25	\$5,237,197.14
04/20/03	\$1,721.82	\$5,238,918.96
04/21/03	\$1,722.38	\$5,240,641.34

**Mack, et al., v. Suffolk County, et al.**

**Attachment A: Calculation of Interest**

According to the Settlement Agreement's Formula

<b>Date</b>	<b>Day's Interest</b>	<b>Total Due</b>
04/22/03	\$1,722.95	\$5,242,364.29
04/23/03	\$1,723.52	\$5,244,087.81
04/24/03	\$1,724.08	\$5,245,811.89
04/25/03	\$1,724.65	\$5,247,536.54
04/26/03	\$1,725.22	\$5,249,261.76
04/27/03	\$1,725.78	\$5,250,987.55
04/28/03	\$1,726.35	\$5,252,713.90
04/29/03	\$1,726.92	\$5,254,440.82
04/30/03	\$1,727.49	\$5,256,168.31
05/01/03	\$1,728.06	\$5,257,896.36
05/02/03	\$1,728.62	\$5,259,624.98
05/03/03	\$1,729.19	\$5,261,354.18
05/04/03	\$1,729.76	\$5,263,083.94
05/05/03	\$1,730.33	\$5,264,814.27
05/06/03	\$1,730.90	\$5,266,545.16
05/07/03	\$1,731.47	\$5,268,276.63
05/08/03	\$1,732.04	\$5,270,008.67
05/09/03	\$1,732.61	\$5,271,741.27
05/10/03	\$1,733.18	\$5,273,474.45
05/11/03	\$1,733.75	\$5,275,208.19
05/12/03	\$1,734.32	\$5,276,942.51
05/13/03	\$1,734.89	\$5,278,677.39
05/14/03	\$1,735.46	\$5,280,412.85
05/15/03	\$1,736.03	\$5,282,148.87
05/16/03	\$1,736.60	\$5,283,885.47
05/17/03	\$1,737.17	\$5,285,622.64
05/18/03	\$1,737.74	\$5,287,360.38
05/19/03	\$1,738.31	\$5,289,098.69
05/20/03	\$1,738.88	\$5,290,837.57
05/21/03	\$1,739.45	\$5,292,577.02
05/22/03	\$1,740.03	\$5,294,317.05
05/23/03	\$1,740.60	\$5,296,057.65
05/24/03	\$1,741.17	\$5,297,798.82
05/25/03	\$1,741.74	\$5,299,540.56

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Attachment B: Sample Calculation of Fines

(Using the plaintiffs' proposed formula and with fines beginning to be incurred Tuesday, April 1, 2003.)

Day	Date	Day's Fine	Cumulative
Tu	04/01/03	3,000	3,000
W	04/02/03	3,000	6,000
Th	04/03/03	3,000	9,000
F	04/04/03	3,000	12,000
Sa	04/05/03	3,000	15,000
Su	04/06/03	3,000	18,000
<b>Monday</b>	<b>04/07/03</b>	<b>4,000</b>	<b>22,000</b>
Tu	04/08/03	4,000	26,000
W	04/09/03	4,000	30,000
Th	04/10/03	4,000	34,000
F	04/11/03	4,000	38,000
Sa	04/12/03	4,000	42,000
Su	04/13/03	4,000	46,000
<b>Monday</b>	<b>04/14/03</b>	<b>5,000</b>	<b>51,000</b>
Tu	04/15/03	5,000	56,000
W	04/16/03	5,000	61,000
Th	04/17/03	5,000	66,000
F	04/18/03	5,000	71,000
Sa	04/19/03	5,000	76,000
Su	04/20/03	5,000	81,000
<b>Monday</b>	<b>04/21/03</b>	<b>6,000</b>	<b>87,000</b>
Tu	04/22/03	6,000	93,000
W	04/23/03	6,000	99,000
Th	04/24/03	6,000	105,000
F	04/25/03	6,000	111,000
Sa	04/26/03	6,000	117,000
Su	04/27/03	6,000	123,000
<b>Monday</b>	<b>04/28/03</b>	<b>7,000</b>	<b>130,000</b>
Tu	04/29/03	7,000	137,000
W	04/30/03	7,000	144,000
Th	05/01/03	7,000	151,000
F	05/02/03	7,000	158,000
Sa	05/03/03	7,000	165,000
Su	05/04/03	7,000	172,000
<b>Monday</b>	<b>05/05/03</b>	<b>8,000</b>	<b>180,000</b>
Tu	05/06/03	8,000	188,000
W	05/07/03	8,000	196,000
Th	05/08/03	8,000	204,000
F	05/09/03	8,000	212,000
Sa	05/10/03	8,000	220,000
Su	05/11/03	8,000	228,000
<b>Monday</b>	<b>05/12/03</b>	<b>9,000</b>	<b>237,000</b>
Tu	05/13/03	9,000	246,000
W	05/14/03	9,000	255,000
Th	05/15/03	9,000	264,000
F	05/16/03	9,000	273,000
Sa	05/17/03	9,000	282,000



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**Attachment B: Sample Calculation of Fines**

(Using the plaintiffs' proposed formula and with fines beginning to be incurred Tuesday, April 1, 2003.)

Day	Date	Day's Fine	Cumulative
Su	05/18/03	9,000	291,000
<b>Monday</b>	<b>05/19/03</b>	<b>10,000</b>	<b>301,000</b>
Tu	05/20/03	10,000	311,000
W	05/21/03	10,000	321,000
Th	05/22/03	10,000	331,000
F	05/23/03	10,000	341,000
Sa	05/24/03	10,000	351,000
Su	05/25/03	10,000	361,000
<b>Monday</b>	<b>05/26/03</b>	<b>11,000</b>	<b>372,000</b>
Tu	05/27/03	11,000	383,000
W	05/28/03	11,000	394,000
Th	05/29/03	11,000	405,000
F	05/30/03	11,000	416,000
Sa	05/31/03	11,000	427,000
Su	06/01/03	11,000	438,000
<b>Monday</b>	<b>06/02/03</b>	<b>12,000</b>	<b>450,000</b>
Tu	06/03/03	12,000	462,000
W	06/04/03	12,000	474,000
Th	06/05/03	12,000	486,000
F	06/06/03	12,000	498,000
Sa	06/07/03	12,000	510,000
Su	06/08/03	12,000	522,000
<b>Monday</b>	<b>06/09/03</b>	<b>13,000</b>	<b>535,000</b>
Tu	06/10/03	13,000	548,000
W	06/11/03	13,000	561,000
Th	06/12/03	13,000	574,000
F	06/13/03	13,000	587,000
Sa	06/14/03	13,000	600,000
Su	06/15/03	13,000	613,000
<b>Monday</b>	<b>06/16/03</b>	<b>14,000</b>	<b>627,000</b>
Tu	06/17/03	14,000	641,000
W	06/18/03	14,000	655,000
Th	06/19/03	14,000	669,000
F	06/20/03	14,000	683,000
Sa	06/21/03	14,000	697,000
Su	06/22/03	14,000	711,000
<b>Monday</b>	<b>06/23/03</b>	<b>15,000</b>	<b>726,000</b>
Tu	06/24/03	15,000	741,000
W	06/25/03	15,000	756,000
Th	06/26/03	15,000	771,000
F	06/27/03	15,000	786,000
Sa	06/28/03	15,000	801,000
Su	06/29/03	15,000	816,000
<b>Monday</b>	<b>06/30/03</b>	<b>16,000</b>	<b>832,000</b>
Tu	07/01/03	16,000	848,000
W	07/02/03	16,000	864,000
Th	07/03/03	16,000	880,000

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**Attachment B: Sample Calculation of Fines**

(Using the plaintiffs' proposed formula and with fines beginning to be incurred Tuesday, April 1, 2003.)

<b>Day</b>	<b>Date</b>	<b>Day's Fine</b>	<b>Cumulative</b>
F	07/04/03	16,000	896,000
Sa	07/05/03	16,000	912,000
Su	07/06/03	16,000	928,000
<b>Monday</b>	<b>07/07/03</b>	<b>17,000</b>	<b>945,000</b>
Tu	07/08/03	17,000	962,000
W	07/09/03	17,000	979,000
Th	07/10/03	17,000	996,000
F	07/11/03	17,000	1,013,000
Sa	07/12/03	17,000	1,030,000
Su	07/13/03	17,000	1,047,000
<b>Monday</b>	<b>07/14/03</b>	<b>18,000</b>	<b>1,065,000</b>
Tu	07/15/03	18,000	1,083,000
W	07/16/03	18,000	1,101,000
Th	07/17/03	18,000	1,119,000
F	07/18/03	18,000	1,137,000
Sa	07/19/03	18,000	1,155,000
Su	07/20/03	18,000	1,173,000
<b>Monday</b>	<b>07/21/03</b>	<b>19,000</b>	<b>1,192,000</b>
Tu	07/22/03	19,000	1,211,000
W	07/23/03	19,000	1,230,000
Th	07/24/03	19,000	1,249,000
F	07/25/03	19,000	1,268,000
Sa	07/26/03	19,000	1,287,000
Su	07/27/03	19,000	1,306,000
<b>Monday</b>	<b>07/28/03</b>	<b>20,000</b>	<b>1,326,000</b>
Tu	07/29/03	20,000	1,346,000
W	07/30/03	20,000	1,366,000
Th	07/31/03	20,000	1,386,000
F	08/01/03	20,000	1,406,000
Sa	08/02/03	20,000	1,426,000
Su	08/03/03	20,000	1,446,000