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THE HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

SHAWN ORNDORFF, on behalf of himself  
and others similarly situated,

Plaintiff,

vs.

JEFFERSON COUNTY, PETER PICCINI,  
CARLA SCHUCK, and STEVE  
RICHMOND,

Defendants.

NO. 02-5096 (RJB) RBL

SETTLEMENT AGREEMENT

Plaintiff Shawn Orndorff, on behalf of himself and the class of individuals he represents,  
through attorneys David C. Fathi and Aaron H. Caplan, and Defendants Jefferson County, Mike

SETTLEMENT AGREEMENT - 1  
CV02-5096

CARNEY  
BADLEY  
SPELLMAN

LAW OFFICES  
A PROFESSIONAL SERVICE CORPORATION  
700 FIFTH AVENUE, #5800  
SEATTLE, WA 98104-5017  
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TEL. (206) 622-8020

1 Brasfield and Steve Richmond,<sup>1</sup> through their attorneys David W. Silke and Jon A. Payne, based  
2 upon consideration and the mutual promises contained herein, and as a mutual decision to  
3 resolve the above-captioned matter without further litigation, hereby agree as follows:

4 1. The parties hereby agree that the attached Stipulation and Order of Dismissal  
5 shall be entered, subject to the approval of the Court and notice to the class members.

6 2. The parties agree that this Settlement Agreement, together with the Stipulation  
7 and Order of Dismissal to which it is attached, are entered to resolve and settle all claims for  
8 declaratory relief, injunctive relief, attorneys' fees, and costs, that were set forth in the  
9 Complaint that was filed February 25, 2002 under this cause number.

10 3. This Settlement Agreement shall not be construed as an admission by any party,  
11 person, or entity regarding liability or violation of any law by defendants or any other person or  
12 entity, and this Settlement Agreement may not be used as evidence in any proceeding other than  
13 for the sole and limited purpose of enforcing this Settlement Agreement. The parties enter into  
14 this Settlement Agreement for purposes of settling the disputed contentions and controversies  
15 arising from this action. The parties stipulate, based upon the entire record, that the relief set forth  
16 in this agreement is narrowly drawn, extends no further than necessary to correct violations of  
17 federal rights, and is the least intrusive means necessary to correct violations of federal rights.

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<sup>1</sup> Current Sheriff Mike Brasfield and Jail Superintendent Steve Richmond did not hold these positions at the time of the alleged acts contained in the Complaint.

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4. Definitions:

a. Defendants: Defendants are defined as Jefferson County, the Jefferson County Jail ("Jail"), Mike Brasfield, Steve Richmond, and all of their successors, assigns, commissioners, supervisors, officers, agents, employees, and insurers.

b. Plaintiffs: Plaintiffs are defined as Shawn Orndorff and the class of "all persons who are now, or who will in the future be, incarcerated at the Jefferson County Jail," as certified by United States District Court Judge Robert J. Bryan in the instant matter on September 3, 2002.

c. Execution Date: The execution date of this Settlement Agreement, as referred to below, shall be date on which the Court enters an order of final approval of the settlement under Fed. R. Civ. P. 23(e).

Agreements by Defendants

5. a. Defendants agree to comply with the terms of this Settlement Agreement for 36 months, beginning on the date of execution of this Settlement Agreement. At the expiration of the 36-month enforcement period, this Settlement Agreement shall automatically terminate, unless extended under Paragraph 7(a).

b. On or before 6 months from the execution date of this Settlement Agreement, Jefferson County shall have drafted, adopted and implemented the necessary policies and procedures to ensure compliance with the requirements of this Settlement Agreement, as

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1 provided in paragraphs 6(c)-(jj) below. Copies of policies will be provided to counsel for  
2 plaintiffs upon adoption.

3 c. Jefferson County agrees to seek accreditation for the Jail's system for  
4 delivery of medical services to inmates from the National Commission on Correctional Health  
5 Care ("NCCHC") or other accrediting organization upon mutual agreement with the ACLU,  
6 within 12 months of the execution date of this agreement. The Jail will adopt and implement  
7 health care policies and procedures that would allow accreditation to be granted.

8 d. Jefferson County agrees to maintain a temperature in all inmate areas of  
9 the Jail of between 60° and 80° Fahrenheit. For 36 months following the execution date of this  
10 agreement, either the Jefferson County Health Department or a mutually agreed upon  
11 independent contractor paid for by Jefferson County shall test the temperature within all inmate  
12 areas of the Jail four times per year to verify that all temperatures are within the mandated range.  
13 Temperature checks will be performed in the months of February, May, August, and November  
14 on dates chosen without advance notice to jail staff. Defendants shall provide the results of the  
15 tests to counsel for Plaintiffs.

16 e. Defendants will ensure that a sufficient supply of toilet paper and sanitary  
17 napkins are maintained at the Jail. Such hygiene supplies will be delivered to inmates when  
18 needed, even if the need arises sooner than, or in addition to, the Jail's ordinary distribution  
19 schedule. Toilet paper and sanitary napkins will not be withheld as discipline for inmate  
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1 behavior. However, Defendants reserve the right to discipline inmates for stockpiling or abusing  
2 toilet paper or sanitary napkins.

3 f. Inmates shall be offered a clean towel on a daily basis. Clean uniforms  
4 will be offered twice per week. Permanently stained uniforms will be discarded.

5 g. Inmates in cells with exterior walls shall be entitled, upon request, to  
6 receive up to two blankets in addition to the blankets that are issued when the inmate is booked  
7 into the Jail.

8 h. Inmates may receive long underwear from outside retail vendors, provided  
9 that the long underwear is sent directly to the inmate from the manufacturer or retailer in an  
10 unopened, factory-sealed package.

11 i. The Jail will offer recreation to each inmate, other than those inmates in  
12 the holding or crisis cells, for at least one hour per day, seven days per week, of which no less  
13 than four days per week are outdoor recreation. The Jail reserves the right to withhold indoor or  
14 outdoor recreation for safety or security purposes, documented by an incident report. "Safety or  
15 security purposes" shall include, but not be limited to, withholding recreation from inmates who:  
16 1) have previously committed infractions during indoor or outdoor recreation and have received,  
17 after suitable procedures, a sanction of denial of recreation, which sanction may not exceed one  
18 week of denial; or 2) pose an increased threat of harm to themselves, others, or property if they  
19 are allowed to participate in indoor or outdoor recreation. A written record will be kept of the  
20 recreation periods given in the Jail's general log book. Any instances where indoor or outdoor  
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1 recreation is withheld shall be logged in the Jail's log book, which shall state the reason for  
2 withholding the indoor or outdoor recreation.

3 j. Toilets, hot water faucets, and showers that are not functioning will be  
4 evaluated by a representative of Jefferson County Department of Public Works within one  
5 business day of jail staff receiving notification of the malfunction. Business days are Monday  
6 through Friday. During any period of time when either the toilet or the hot water in an inmate's  
7 cell is not functioning, the Jail will take the necessary steps to ensure that the affected inmate has  
8 access to a functioning toilet and hot water. Inmates will not be housed in cells with  
9 malfunctioning toilets unless a cell with a functioning toilet is not available.

10 k. The Jail will adopt policies and procedures to ensure that the drainage  
11 pipes in the Jail are kept moist to prevent odors in the Jail.

12 l. An inmate who has spent at least five consecutive days assigned to a  
13 portable bunk (also referred to as a "boat") will be reassigned to a regular bed, unless the inmate  
14 requests continued assignment to the portable bunk.

15 m. The Jail and/or the Jefferson County Department of Public Works will  
16 develop and adhere to a preventative maintenance program for maintenance of the Jail's heating,  
17 ventilation and air conditioning ("HVAC") system.

18 n. The Jail will provide some form of personal property storage unit for each  
19 inmate.

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SETTLEMENT AGREEMENT - 6  
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1           o.     The Jail will prepare and maintain fire preparedness plans and will  
2 implement and perform fire drills at least once per year.

3           p.     The Jail's crisis cell will not be used as discipline for infractions or  
4 misbehavior, unless both of the Jail's segregation cells are occupied, in which case an inmate  
5 assigned to segregation may be assigned to the crisis cell for no more than 24 hours per 72 hour  
6 period. The crisis cell may be used to house: 1) inmates who show evidence of being a risk of  
7 harm to themselves, to others, or to Jail property in the form of property destruction or intentional  
8 flooding; 2) inmates who require medical or psychiatric supervision; or 3) inmates who are  
9 intoxicated.

10          q.     The Jail will maintain a separate crisis cell log, which will document the  
11 time of entry to and exit from the crisis cell for any reason, and a record of a corrections officer  
12 directly observing the crisis cell occupant in person and not by video monitoring at least every 15  
13 minutes during crisis placement. Further, during the entire course of an inmate's stay in the crisis  
14 cell, the Jail will keep with the crisis cell log a sheet indicating the reasons for placing the inmate  
15 in the crisis cell. Upon the inmate's transfer from the crisis cell, the sheets will be placed in a  
16 central file of crisis log materials. The Jail may also place the sheets in the inmate's general  
17 and/or medical file.

18          r.     A corrections officer's decision to place an inmate in the crisis cell must  
19 be reviewed by a supervising officer by the end of the supervising officer's first shift following  
20 the inmate's placement in the crisis cell. If the inmate is placed in the crisis cell by the Jail  
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1 superintendent, review will be by the undersheriff or sheriff. The Jail will develop and implement  
2 a policy to determine when an inmate should be released from the crisis cell. The supervisor will  
3 be notified when the inmate is released from the crisis cell.

4 s. Jefferson County Mental Health will be called at the time an inmate is  
5 placed in the crisis cell for mental health reasons. The Jail's health care professional will be  
6 called at the time an inmate is placed in the crisis cell for medical reasons. Inmates will not be  
7 placed in the crisis cell in the nude. If a determination is made that the inmate's clothing should  
8 be removed in order to protect the inmate's safety, to prevent property destruction, or to facilitate  
9 clothing exchange, the inmate will be provided with a suicide smock or other suitable clothing.

10 t. Grievance forms, medical request forms, and regular request forms will  
11 be made available in each cell block day room. The forms will be replenished as needed. The  
12 medical request form will be amended to provide space for the inmates to describe their current  
13 symptoms.

14 u. The Jail will respond in writing to all written grievances within seven days  
15 of receipt by Jail staff. Jail staff will not retaliate against or deny privileges to any inmate for  
16 writing grievances, contacting counsel, or complaining to any person about Jail conditions based  
17 solely on the fact that the inmate has complained about Jail conditions. However, this paragraph  
18 does not limit the Jail's ability to discipline inmates for violations of the Jail's Policies and  
19 Procedures.  
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SETTLEMENT AGREEMENT – 8  
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1 v. The reasons for, and a description of, all disciplinary action will be  
2 recorded in writing. Copies of documentation pertaining to the disciplinary action will be placed  
3 in a central disciplinary file, in addition to any other file locations. The term "disciplinary action"  
4 means denial of privileges, lockdown, infractions, or segregation in response to misbehavior, but  
5 does not include verbal reprimands or instructions that are not accompanied by punishment or  
6 loss of privileges.

7 w. The Jail will develop and implement an objective inmate classification  
8 system.

9 x. All altercations between inmates involving the use or threat of violence of  
10 which Jail staff are aware shall be documented. Inmates threatening fights with each other will be  
11 separated, unless either the corrections officer or the inmates themselves are able to resolve the  
12 issue between the inmates.

13 y. All use of force by Jail staff, including application of restraints, shall be  
14 documented in an incident report. Copies of the incident report will be kept in a central incident  
15 report file and in the individual inmate's file.

16 z. The Jail shall keep accurate records of the good time credits applied for  
17 and awarded pursuant to its written Policies and Procedures, and reports of good time credits shall  
18 be made available to inmates weekly upon request. No good time credits will be revoked without  
19 notice to the inmate and an opportunity for a hearing.  
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SETTLEMENT AGREEMENT - 9  
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1           aa.     The Jail will keep accurate computerized records of inmate commissary  
2 accounts. Such records will be made available to the inmates weekly upon request.

3           bb.     All current Jail staff will attend professionalism training from an outside  
4 provider within one year of the execution date of this agreement. The content and provider of the  
5 training will be of the Jail's choosing, so long as the training is offered by or approved by the  
6 National Institute of Corrections, the American Correctional Association, the Washington  
7 Association of Sheriffs and Police Chiefs, a similar nationally accredited corrections organization,  
8 or as otherwise agreed between the parties to this Settlement Agreement. Thereafter, all new  
9 hires will undergo the same training. A refresher course will be attended at least every five years  
10 by staff with continuous service for five years.

11           cc.     There will be a minimum of two correctional staff budgeted by the County  
12 and scheduled by the Jail for duty at all times. County employees operating the dispatch desk are  
13 not considered correctional officers for purposes of this paragraph.

14           dd.     The Jail's ban on outside reading material shall be rescinded as of the  
15 execution date of this agreement. In its place, the Jail may implement content-based prohibitions  
16 with regard to literature received by inmates, so long as those policies do not infringe upon those  
17 First Amendment rights retained by the relevant party. Books may be limited to those shipped  
18 directly from the publisher or retailer and received unopened at the Jail. The Jail will incur no  
19 liability for failure to forward incoming mail, publications, or books to inmates who have been  
20 released from the Jail.

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SETTLEMENT AGREEMENT - 10  
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1 ee. The Jail's ban on printouts from the Internet is rescinded. The Jail may  
2 impose a limit on the number of pages of internet printouts per day an inmate may receive by  
3 mail, as long as the limit is not less than ten pages per inmate per day. Incoming Internet  
4 materials shall be subject to review by Jail staff pursuant to the Jail's content-based restrictions,  
5 and such documents may be withheld by the Jail on this basis, so long as those policies do not  
6 infringe upon those First Amendment rights retained by the relevant party.

7 ff. Mail may not be withheld, delayed, or denied as a disciplinary device.  
8 The Jail may withhold mail to prevent violation of a protective order, violation of a noncontact  
9 order, or other criminal conduct. All deliverable mail shall be given to inmates within two  
10 business days of receipt by the Jail.

11 gg. Upon request, inmates will be allowed to make confidential phone calls to  
12 counsel on an unmonitored phone outside the hearing of Jail staff and other inmates. If requested,  
13 inmates shall be afforded at least two attorney calls per day and may receive calls from their  
14 attorney within two hours of requesting an opportunity to receive a call from their attorney.

15 hh. Jail staff will not read outbound or inbound legal mail. Incoming  
16 envelopes marked "legal mail" may be opened by Jail staff and inspected for contraband only in  
17 the presence of the recipient. Nothing contained in this paragraph, however, shall preclude the  
18 Jail from taking the necessary steps to ascertain whether an item purporting to be legal mail is  
19 actually legal mail.  
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SETTLEMENT AGREEMENT - 11  
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1           ii.     The Jail will not have scheduled daily lockdown periods during daytime  
2 hours. The Jail may impose daytime lockdowns if necessary for security reasons, with any  
3 security lockdowns documented in an incident report.

4           jj.     Defendants will make payment to the "American Civil Liberties Union of  
5 Washington Foundation" in the amount of \$82,500.00 within ten days of the execution date of  
6 this agreement. Such payment shall be in full settlement of any and all attorneys' fees and costs  
7 incurred by plaintiff Shawn Orndorff and/or the class as of the execution date.

8                               **Settlement Agreement by Plaintiffs**

9           6.     Plaintiffs agree that, upon this Court's approval of the Settlement Agreement,  
10 plaintiffs' Complaint under the above cause number shall be dismissed with prejudice pursuant to  
11 the Stipulation and Order of Dismissal.

12                               **Mutual Settlement Agreement by Defendants and Plaintiffs**

13           7.     a.     An independent monitor or monitors, mutually agreed upon by the parties  
14 and paid for by the County, will make periodic visits to the Jail and shall have full access to  
15 inmates, records, and facilities. The monitor will make the first of such visits on a date  
16 approximately one year after the date of execution of this Settlement Agreement. Thereafter, the  
17 monitor shall visit and evaluate the Jail's compliance with this agreement two times per year until  
18 36 months have elapsed from the execution date of this agreement. Counsel for Plaintiffs and  
19 Defendants shall use their best good-faith efforts to agree to a monitor or monitors at reasonable  
20 cost to the County. In the event the parties are unable to agree on monitor(s), they will submit  
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SETTLEMENT AGREEMENT – 12  
CV02-5096

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1 their nominations in a motion to the federal court or to a mutually agreed upon outside arbiter.

2 The approximate schedule for monitoring shall be as follows:

<u>Visit/Report</u>	<u>Time</u>
(1)	1 year after execution of the agreement;
(2)	1.5 years after execution of the agreement;
(3)	2 years after execution of the agreement;
(4)	2.5 years after execution of the agreement;
(5)	3 years after execution of the agreement.

9 The monitoring shall be broken down into two main categories, entitled "Facilities/Operations"  
10 and "Medical." If the Jail is found to be in full compliance in either of these areas for two  
11 consecutive monitoring periods, the monitoring for that category shall terminate. If the monitor  
12 for either category does not report substantial compliance on the last monitor visit scheduled  
13 above, the duration of the agreement will be extended and additional monitor visits scheduled on  
14 six-month intervals, until such time as the monitor reports substantial compliance. Under no  
15 circumstances will the agreement be extended more than an additional two years past the  
16 originally scheduled termination date.

17 b. Plaintiffs must attempt to resolve any and all disputes concerning the  
18 Defendants' continuing compliance with this Settlement Agreement through the following  
19 dispute resolution process. Plaintiffs shall inform counsel for Defendants in writing of any  
20 alleged substantial non-compliance. If the issues are not resolved at that stage, counsel for  
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SETTLEMENT AGREEMENT - 13  
CV02-5096

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1 Plaintiffs and counsel for Defendants shall meet and confer in good faith to try to resolve any  
2 differences. If the issues are not resolved at that stage, the parties and their counsel must attempt  
3 to resolve the issues at mediation using a mutually acceptable mediator. If the dispute is not  
4 resolved at mediation, Plaintiffs' counsel may file a motion in this Court. This Settlement  
5 Agreement does not require Plaintiffs to exhaust the Jefferson County Jail's administrative  
6 grievance process prior to attempting to resolve any disputes through the alternative dispute  
7 resolution process described in this Settlement Agreement.

8 c. The prevailing party in any motion to enforce this agreement shall be  
9 entitled to recover attorneys' fees and costs consistent with applicable law and the Prison  
10 Litigation Reform Act. Otherwise, each party shall bear its own costs and attorneys' fees  
11 regarding this Settlement Agreement. Nothing in this Settlement Agreement precludes the use of  
12 any other type of alternative dispute resolution process that the parties agree to use to resolve  
13 disputes.

14 d. This document is not a Consent Decree, but it is an agreement that is  
15 enforceable through the remedies specified herein. None of the provisions contained in this  
16 Settlement Agreement should be construed as creating or extinguishing any statutory rights or  
17 federal constitutional interests. In the event a federal court rules it is without jurisdiction to  
18 enforce this Agreement, the parties may seek enforcement, including specific performance, in  
19 Washington state courts under applicable law.

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SETTLEMENT AGREEMENT - 14  
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1 e. Class counsel will have full access to inmates, records, and facilities upon  
2 24 hours notice to the Jail.

3 f. This Settlement Agreement constitutes the final written expression of all  
4 of the terms of settlement and is a complete and exclusive statement of those terms. No other  
5 agreements, oral or written, bind the parties.


6 g. This agreement may be modified at any time by a written and signed  
7 document executed by mutual agreement of plaintiffs' and defendants' counsel. To give the  
8 provisions contained herein an opportunity to be implemented and evaluated, the parties agree not  
9 to challenge this agreement for a period of three years from the execution date.

10 h. The undersigned hereby acknowledge that the terms of this Settlement  
11 Agreement have been completely read, wholly understood, and voluntarily accepted for the  
12 purpose of making a full, final and binding compromise, adjustment and settlement of any and all  
13 claims, disputed or otherwise, that are asserted in the Complaint.

14 i. This Settlement Agreement may be signed in counterpart originals and  
15 may be delivered by facsimile with originals to follow. Defendant Jefferson County certifies that  
16 Dan Titterness has authority to bind the County to the terms of this Agreement.

17 For Defendants:

18 JEFFERSON COUNTY

19 By:   
20 Dan Titterness

21 Dated: 10-6-2003

SETTLEMENT AGREEMENT - 15  
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By Mike Brasfield  
Sheriff Mike Brasfield  
Dated: 9/8/03

For Plaintiffs:

NATIONAL PRISON PROJECT OF THE  
AMERICAN CIVIL LIBERTIES UNION

By David C. Fathi  
David C. Fathi  
Attorneys for Plaintiffs  
Dated: 9/5/03

AMERICAN CIVIL LIBERTIES UNION OF  
WASHINGTON

By Aaron H. Caplan  
Aaron H. Caplan  
Attorneys for Plaintiffs  
Dated: 9/4/2003

For Plaintiffs:

By Shawn Orndorff  
Shawn Orndorff  
Dated: 9-3-03

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Approved as to form:

CARNEY BADLEY SPELLMAN, P.S.

By David W. Silke

David W. Silke  
Jon A. Payne  
Attorneys for Defendants

Dated: 10-8-03

SETTLEMENT AGREEMENT - 17  
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