UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

JENNIFER UNDERWOOD, on behalf of herself and the defined class,
Plaintiff,

v.

No. 3:13-cv-00192-~~UAMH-TEM~~ J-34PDB

SHERIFF FOR FLAGLER COUNTY, FLORIDA,

Defendants.

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CONSENT DECREE & ORDER

Plaintiff JENNIFER UNDERWOOD, individually and on behalf of the Settlement Class defined herein, ("Plaintiffs"), and Defendant SHERIFF FOR FLAGLER COUNTY, FLORIDA ("Sheriff"), (Collectively "Parties") wish to avoid further costly and protracted disputes and have agreed voluntarily, as indicated by the signatures below, to resolve the Plaintiffs' claims by entering into and consenting to the Court's adoption of this Consent Decree and Order (hereinafter "Consent Decree"):

Background

In January 2010 former Flagler Sheriff Donald W. Fleming instituted a postcard-only policy at the Flagler County, Florida Jail ("Jail") that restricted non-legal inmate mail to postcards and thus banned personal letters enclosed in envelopes. In January 2013, Fleming left office after Jim Manfre defeated Fleming in the election and replaced him. In February 2013, Jennifer Underwood initiated this lawsuit to challenge Fleming's carry-over postcard-only policy.

Jennifer Underwood is a Florida resident and is married to Thomas Underwood, who is an inmate in the Jail. The postcard-only policy adversely affected Jennifer Underwood's ability to effectively communicate with her husband.

Pursuant to the policy, Jail officials would not deliver to inmates, letters or messages from their family and friends. Instead, family and friends, like Jennifer Underwood, had to write to inmates on approved postcards. Additionally, Jail officials would not mail messages from inmates that contained "obscene language" (including ordinary swear words) or letters that exceeded two sheets of paper. Plaintiff Jennifer Underwood challenged the Sheriff's Postcard-Only Mail Policy and Outgoing Mail Censorship Policy as they each impermissibly restricted Jennifer Underwood's ability to send and receive communications from Jail inmates like her husband, in violation of the First and Fourteenth Amendments to the United States Constitution. On February 20, 2013, the Plaintiffs sued Defendants pursuant to 42 U.S.C. § 1983 in a three count complaint (DE 1) and immediately moved the court to certify a class (DE 4).

In furtherance of settlement, the Sheriff agreed to repeal these unconstitutional policies instituted by his predecessor, Donald Fleming.

The Court certified a class action on January 8, 2014. *See* Order (DE 34). mmh

The Parties, having carefully considered the issues of affirmative injunctive relief, costs and attorneys' fees sought by the Plaintiffs, and in an effort to avoid the burden, costs and inherent risks of further litigation, agree that it is in the best interests of the Parties and the public interest to settle this action without further litigation. The Parties agree that the challenged Sheriff's Postcard-Only Mail Policy and Outgoing Mail Censorship Policy are unconstitutional and should not be permitted or reinstated. The Parties agree that the relief provided herein is

narrowly drawn and extends no further than necessary to correct the violation of Plaintiffs' constitutional rights, and is the least intrusive means necessary to correct the violation of Plaintiffs' constitutional rights. The Parties agree that this Settlement is fair, reasonable, and adequate for the Settlement Class. Fed.R.Civ.P. 23(e)(2).

The Parties agree that this settlement and Consent Decree resolves in full all claims against the Defendant by Plaintiff Jennifer Underwood and all Settlement Class members involving violations of their First and Fourteenth Amendment rights, or of any other federal, state or local law, regulation, duty, or obligation which are based upon or could be based upon or arise from the facts alleged in this matter.

The Parties request that the Court enter this Consent Decree that provides for enduring injunctive relief for the Settlement Class and then dismiss the case pursuant to Fed.R.Civ.P. 41(a)(2). 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.

Court Action

This matter came before the Court for a Fairness Hearing on April 29, 2014. The Court has reviewed the Complaint (DE 1), the Motion for Class Certification (DE 4), the Unopposed, Renewed Motion for Class Certification (DE 9), and the terms of the Parties' agreement in the form of a Consent Decree, which the parties together reached after arms-length negotiations. The Court concludes that it has federal question subject matter jurisdiction over this dispute. *See* 28 U.S.C. §1331. The Court further concludes that the agreement and the relief granted in this Consent Decree is appropriate under the circumstances presented, the entry of this Consent

Decree comports with federal law and the United States Constitution, and it is entered into in good faith, provides a fair, reasonable, and adequate resolution of the Plaintiffs' claims, and is in the best interest of the Settlement Class. *See* Fed.R.Civ.P. 23(e)(2). With the approval and agreement of the Parties, the Court being otherwise fully advised in the premises, it hereby

ORDERS, ADJUDGES, and DECREES as follows:

1. **Settlement Class**. Pursuant to Fed.R.Civ.P. 23(c)(3)(A), the Settlement Class will be defined as the following:

All Florida residents who are current and future friends, family, or non-privileged correspondents of inmates incarcerated or detained in the Flagler County, Florida, Jail.

2. **Definitions**. The following definitions shall apply to this Consent Decree. In construing these definitions the singular shall include the plural and the plural shall include the singular:

(a) **"Envelope Correspondence"** means a correspondence enclosed in an envelope. The correspondence may consist of a letter, paperwork, newspaper clippings, photograph, drawing, or a combination of one or more of these items.

(b) "**Non-Privileged Correspondent**" means the sender or recipient of Non-Privileged mail. A Non-Privileged Correspondent is person with whom the inmate would exchange messages of a personal or business nature, like a friend, family member, or a landlord.

(c) **"Postcard"** means a stiff piece paper (normally cardstock) that complies with U.S. Postal Service's requirements for a postcard, including those for size, shape, and thickness.[1]

(d) **"Privileged"** describes a correspondence that is sent to or from a court, attorney, government official or agency, or news media. **"Non-Privileged"** describes all other correspondence.

(e) **"Writing Materials"** means envelopes, Postcards, blank paper, and postage.

3. **Injunction**: The Sheriff is enjoined from taking action or failing to take action that is inconsistent with the following mandates:

(a) **Inmates May Receive Letters**: The Sheriff shall deliver to Jail inmates Non-Privileged Envelope Correspondence that are mailed from friends, family, and other Non-Privileged Correspondents. The Sheriff shall deliver to Jail inmates Non-Privileged Envelope Correspondence that include cards, photographs, full-page drawings, newspaper and magazine clippings, Writing Materials, photocopied materials, and pages printed from an internet webpage. The Sheriff shall deliver Non-Privileged Envelope Correspondence addressed to individual inmates regardless of the postage rate paid (e.g. bulk rate) by the sender. Before delivering incoming Envelope Correspondence to a Jail inmate, the Sheriff may detach, remove, or tear off from the envelope any affixed stamps or labels, including postage stamps, stickers, and return

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[1] Currently, the U.S. Postal Service limits postcards to rectangles measuring at least 3.5" x 5" x 0.007" and up to 6.125" x 11.5" x 0.25", but requires a first class letter stamp for postcards that exceed 4.25: x 6" x 0.016".

address labels. However, if the Sheriff removes a return address label, then the Sheriff shall (a) notify the sender and inmate of this removal (and provide them with an opportunity to challenge this action) or (b) provide the inmate the address by handwriting it on the envelope, photocopying the envelope with the return address label, or other similar means.

(b) **Mail Restrictions**. With respect to incoming and outgoing inmate mail, the Sheriff will not censor or restrict the number of Postcards or Envelope Correspondence a Jail inmate can send or receive, the number of pages or items included in an Envelope Correspondence that has sufficient postage, or the length, language, content, recipient or source of such Postcards or Envelope Correspondence, except where the restriction is necessary or essential to preserve internal order and discipline, maintain institutional security against escape or unauthorized entry, or rehabilitate the sentenced inmates or prevent the sending of (i) threats of physical harm against persons or threats of criminal activity, (ii) threats of blackmail or extortion, (iii) plans for escape, or (iv) information, which if communicated, would create a clear and present danger of violence and physical harm to a human being.

(c) **Notice of Rejection**. In each instance in which the Sheriff refuses to deliver a piece of mail sent to or from an inmate, the Sheriff shall inform the sender and inmate (when the sender is not also the inmate) of the refusal, provide the reason(s) why the Sheriff refused the mail, and provide the sender and inmate (if not the sender) with an opportunity to appeal this refusal.

(d) **Revision of Sheriff's Policies**. Within fifty-six (56) days of the Court's entry of this Consent Decree, the Sheriff shall revise all written policies, procedures, orders, regulations and rules to conform to the above specific injunctive relief.

4. **Notice**. Within fourteen (14) days of the Court's entry of this Consent Decree, the Sheriff shall post a copy of the signed Consent Decree for fourteen (14) days. The Sheriff shall post the Consent Decree in each common dorm or sleeping cell in which inmates are confined during the night in a place plainly readable and accessible to inmates generally, or providing a copy of the attached Consent Decree individually to any inmate who is not housed in a dorm or cell in which the Consent Decree is posted. Additionally, the Sheriff shall post the Consent Decree in the Jail lobby and visiting area where visitors may easily see it.

5. **Enforcement**: The Parties to this Consent Decree shall endeavor in good faith to resolve informally any differences regarding interpretation of and compliance with this Consent Decree before bringing such matters to the Court for resolution. However, in the event that the Sheriff either fails to perform in a timely manner any act required by this Consent Decree or act in violation of any provision of this Consent Decree, Class Counsel or any member of the Settlement Class through Class Counsel may move the Court to impose any remedy authorized by law or equity, including, but not limited to, an order requiring performance or non-performance of certain acts. Before the Class Counsel moves the Court to initiate a contempt proceeding, Class Counsel shall notify the Sheriff of the alleged violation and permit the Sheriff an opportunity to investigate and remediate any violation. Upon Class Counsel's request, the Sheriff shall provide additional, relevant information reasonably necessary for the Class Counsel to assess the appropriateness of the Sheriff's response. The Sheriff shall timely inform the Class Counsel of the results of its investigation and response. If the Class Counsel believes that the Court should take action against the alleged violation, the Sheriff's response, or both, then Class Counsel may move the Court for an Order to Show Cause. If the Court initiates a contempt proceeding based on the Class Counsel motion, the Sheriff shall be liable to the Class Counsel

for reasonable attorneys' fees incurred in investigating, prosecuting, and moving the Court about the contemptuous conduct. Class Counsel must meet "prevailing party" status to recover fees. Class counsel may file a motion for contempt 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.

6. **Attorney Fees, Costs, and Litigation Expenses.** Each party will bear its own attorney fees, costs, and litigation expenses except as otherwise provided for herein.

7. **Dismissal and Retention Jurisdiction**. Pursuant to Fed.R.Civ.P. 41(a)(2), the case is dismissed. However, this Court retains jurisdiction of this case to enforce the terms of this Consent Decree.

SO ORDERED, this 29th day of April, 2014.

Marcia Morales Howard

HON. MARCIA MORALES HOWARD
U.S. District Judge

By their signatures on this and the following page(s), the Parties agree to the terms of the Consent Decree and affirm that the statements in it are true and constitute part of their agreement:

DEFENDANT SHERIFF FOR FLAGLER COUNTY, FLORIDA

s/Jim Manfre
by Jim Manfre, Sheriff

JENNIFER UNDERWOOD

s/Jennifer Underwood

s/ Benjamin James Stevenson
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