

County Council of Cuyahoga County, Ohio

Resolution No. R2013-0048

Sponsored by: **County Executive FitzGerald/Department of Law on behalf of Office of the Prosecuting Attorney**

A Resolution authorizing a Stipulation for Entry of Consent Decree in the total amount of \$128,268.00 in connection with *Andrew Dombroff vs. Cuyahoga County, et al.*, U.S.D.C. Case No. 1:12cv2189; authorizing the County Executive to execute the Consent Decree and all other documents consistent with this Resolution; authorizing the appropriation of funds for payment of settlement amounts set forth herein; and declaring the necessity that this Resolution become immediately effective.

WHEREAS, Cuyahoga County and the Cuyahoga County Sheriff have been named in a lawsuit filed in the United States District Court, Northern District of Ohio, in *Dombroff v. Cuyahoga County et al.*, U.S.D.C. Case No. 12cv2189, by individuals arrested in Cuyahoga County, maintaining that their Eighth and Fourteenth Amendment rights were violated; and,

WHEREAS, pursuant to Ordinance No. O2011-0033, Section 1, subsection (c), the Cuyahoga County Executive is authorized to settle or compromise any lawsuit against the County except that any settlement resulting in the County's expenditure of an amount in excess of \$100,000.00 shall require the prior approval of the Council; and,

WHEREAS, the County's legal representatives have recommended settlement of the claims of these Plaintiffs in the total amount of which is One Hundred Twenty Eight Thousand, Two Hundred Sixty Eight Dollars (\$128,268.00); and,

WHEREAS, the Plaintiffs have executed Stipulation for Entry of Consent Decree for specified amounts contingent upon the approval of the County Council; and,

WHEREAS, it is necessary that this Resolution become effective immediately to authorize immediate processing of the settlement of these claims and closure of the case.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNTY COUNCIL OF CUYAHOGA COUNTY, OHIO:

SECTION 1. That the County Executive is hereby authorized to execute the Stipulation for Entry of Consent Decree with the Plaintiffs in *Dombroff vs. Cuyahoga*

County et al., in the total amount of One Hundred Twenty Eight Thousand, Two Hundred Sixty Eight Dollars (\$128,268.00).

SECTION 2. That the County Executive is authorized to execute all other necessary documents required to provide for the payments set forth in the Consent Decree.

SECTION 3. It is necessary that this Resolution become immediately effective in order that the proceedings in *Dombroff vs. Cuyahoga County, et al.* may proceed as directed by the Court. Provided that this Resolution receives the affirmative vote of at least eight members of Council, it shall take effect and be in force immediately upon the earliest occurrence of any of the following: (1) its approval by the County Executive through signature, (2) the expiration of the time during which it may be disapproved by the County Executive under Section 3.10(6) of the Cuyahoga County Charter, or (3) its passage by at least eight members of Council after disapproval pursuant to Section 3.10(7) of the Cuyahoga County Charter. Otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

SECTION 4. It is found and determined that all formal actions of the Council relating to the adoption of this Resolution were adopted in an open meeting of the Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

On a motion by Mr. Schron, seconded by Ms. Conwell, the foregoing Resolution was duly adopted.

Yeas: Jones, Rogers, Simon, Greenspan, Miller, Brady, Germana, Gallagher, Schron, Conwell and Connally

Nays: None

I, JEANNE M. SCHMOTZER, CLERK OF COUNCIL OF THE COUNCIL OF CUYAHOGA COUNTY, OHIO, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND EXACT COPY OF THE ORIGINAL OF A RESOLUTION DULY ADOPTED OR AN ORDINANCE DULY ENACTED BY SAID COUNCIL ON THE 12th DAY OF March 2013.

BY: Jeanne M. Schmotzer

[Signature]
County Council President

3-12-13
Date

[Signature]
County Executive

3/18/13
Date

Jeanne M. Schmotzer
Clerk of Council

3/12/2013
Date

Journal CC009
March 12, 2013

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

ANDREW DOMBROFF)	CASE NO. 1:12cv2189
)	
Plaintiff,)	JUDGE GWIN
)	
vs.)	MAG. JUDGE WHITE
)	
CUYAHOGA COUNTY, et al.)	
)	
Defendants.)	
)	

STIPULATION FOR ENTRY OF CONSENT DECREE

WHEREAS, the Plaintiff herein commenced this action against The Cuyahoga County Sheriff Bob Reid and Cuyahoga County (hereinafter the "County Defendants") on August 27, 2012; and

WHEREAS, Plaintiff alleges in the Complaint that Defendants have adopted and pursued a policy whereby persons arrested by municipalities for felony offenses are initially held in the municipal jail without bail and then transferred to the custody of the County Sheriff where they are held until bail is set by the Common Pleas Court; and

WHEREAS, Plaintiff has alleged that this policy results in arrestees being held for days after their arrest without bail in violation of the Eighth and Fourteenth Amendment to the United States Constitution and Ohio law; and

WHEREAS, the complaint seeks an order certifying a class of plaintiffs consisting of those persons arrested in Cuyahoga County since August 27, 2010 by a municipality without a warrant and who were initially held in the municipal jail and then transferred to

the custody of the Sheriff and whose bail was set by the Common Pleas Court rather than the municipal court; and

WHEREAS, the County Defendants deny the validity of the claim or claims asserted in the complaint, or of the County Defendants' liability therefore; and

WHEREAS, in order to save time, avoid expense, and to avoid the uncertainty of continued litigation of this matter, the Plaintiff and the County Defendants, (hereinafter sometimes referred to collectively as the "Settling Parties,") desire to fully settle and resolve all the claims raised in or arising out of this lawsuit, including, without limitation, compensatory and punitive damages, restitution, injunctive relief, costs and attorney fees; and

NOW THEREFORE, in consideration of all of the foregoing, the Settling Parties agree to and consent to the entry of this consent decree with the following terms and conditions:

PROPOSED CONSENT DECREE

1. **Jurisdiction.** The Settling Parties agree that this Court has jurisdiction over the subject matter of this action and of the Settling Parties.
2. **Stipulation as to Creation and Certification of Class:** The Settling Parties stipulate and agree to the creation, pursuant to Fed.R.Civ. P. 23, of a class of plaintiffs (the "Plaintiff Class"), consisting of those persons who, during the period of time from August 27, 2010 through November 23, 2012, were arrested in Cuyahoga County by a municipality without a warrant, initially held in the municipal jail without bail and then transferred to the custody of the Sheriff and were held for more than four days before bail was set by the Common Pleas Court. The Class excludes individuals who: (1) were

given credit for time served, (2) had setting of bond delayed by medical or mental health transportation needs, (3) were unable to make bond within five days, (4) were held for municipal prosecution prior to being transferred to the County for felony charges; or (5) were held pursuant to an outstanding warrant.

3. **Stipulation as to Class Representative and Class Counsel.** The Settling Parties further stipulate and agree to the designation of Plaintiff Andrew Dombroff as the Class Representative of said Class, and to the designation of Philip Kushner of the Law Firm of Kushner & Hamed Co. L.P.A., as Class Counsel to said Class.

4. **Stipulation as to Class Representative.** The Settling Parties stipulate and agree that the claims of Plaintiff Andrew Dombroff are typical of the claims of the Plaintiff Class members as defined above, that the interests and representation to be afforded by the named attorneys for Plaintiff Dombroff are adequate to represent the interests of the Plaintiff Class.

5. **Further Stipulations as to Creation and Certification of Class.** The Settling Parties further stipulate and agree that the representative-party-Plaintiff, Andrew Dombroff, and his counsel, Philip Kushner of the Law Firm of Kushner & Hamed Co. L.P.A., will fairly and adequately represent the interests of the Plaintiff Class; that the questions of law and fact common to the members of the Plaintiff Class predominate over questions of relevance only to individual members of said class; that those questions of law and fact common to the Plaintiff Class include: (1) whether transferring arrestees to the custody of the Cuyahoga County Sheriff, holding them in the County Jail, and bringing them before a Cuyahoga County Common Pleas Court Judge rather than bringing them before a municipal judge for a bail determination violates the Eighth

and/or the Fourteenth Amendments to the U.S. Constitution; (2) whether transferring arrestees to the custody of the Cuyahoga County Sheriff, holding them in the County Jail, and bringing them before a Cuyahoga County Common Pleas Court Judge rather than bringing them before a municipal judge for a bail determination constitutes "unnecessary delay," in violation of Ohio law; and (3) whether the Cuyahoga County Sheriff has a policy of taking custody of arrestees and continuing to detain them, knowing that they are being held without bail and knowing that they have not been brought before a judge for a bail determination "without necessary delay"; and that class adjudication is superior to any other method of adjudication for the fair and efficient adjudication of this controversy.

6. **Future Conduct.** Within ninety (90) days of the execution of this Consent Decree, the following will occur:

In felony warrantless arrest cases, the County Sheriff will not accept custody of arrestees from a municipality unless an authorized representative from the municipality provides proof that within 48 hours of the arrest a probable cause determination was made and bond was set by the municipal court.

Notwithstanding the foregoing, in homicide, rape and cases classified as First Degree Felonies under Ohio Law, and in other exceptional cases in which the interests of justice or public safety demand it, exceptions to the forgoing policy may be made on a case-by-case basis with the written approval of the County Prosecutor or his/her Supervisor designee. In such circumstances, the Initial Appearance may take place at the Court of Common Pleas. The probable cause determination will remain the responsibility of the municipal court. Nothing in this Consent Decree is intended to

limit the authority of the municipal court to hold the initial appearance on any felony case within forty-eight hours of the arrest.

In addition, Cuyahoga County, through the Prosecutor's Office, shall establish a policy to require that a warrantless arrestee charged with a felony has legal representation at the initial appearance and is provided with reasonable discovery prior to or at the initial appearance.

7. **Class Compensation.** The Defendant Cuyahoga County shall remit to the appropriate Plaintiff Class member compensation per the following schedule:

Days held in jail between arrest and setting of bail at initial appearance:

Day 5 - \$25.00.

Day 6 - \$50.00.

Day 7- \$ 75.00.

Day 8 - \$100.00

Day 9 - \$125.00

Day 10 - \$150.00

Day 11 - \$175.00

Day 12 and each day thereafter - \$200.00.

Attached hereto as Exhibit "A" is, to the best of the Parties' knowledge, a complete and accurate list of all individuals comprising the Plaintiff Class, together with the number of days the class member was held in jail. The County Defendants shall pay any and all costs necessary to accomplish said compensation.

8. **Procedure for Handling of Payments.** Payments shall be accomplished as follows:

(a) Within 30 days from the entry of the Court's Final Judgment approving this Consent Decree, the Cuyahoga County Sheriff's Department shall mail a "Notice and Voucher," to each individual listed in Exhibit "A" or any amendments thereto at the last known address of each such person for which there is an address. That notice shall inform the recipient of his or her entitlement to compensation, and that he or she may obtain such compensation by presenting the voucher, together with photo identification, at a designated location to be described particularly in said notice, at or near the Cuyahoga County Justice Center on weekdays during the period from 8:30 A.M. to 12:30 P.M; or by mailing the voucher, with a copy of recipient's photo identification and social security number, to the address identified in said notice.

(b) Thereafter, the Cuyahoga County Sheriff's Department shall, upon the presentation of the aforementioned voucher and appropriate photo identification, begin paying the amounts listed in Exhibit "A" to the individual members of the County Plaintiff Class. The County Defendants will allow Class Counsel to monitor the payment process at all times and in all manners which are reasonable.

(c) Unclaimed checks or warrants or checks or warrants that are not cashed or negotiated within one year from the date of the entry of the judgment approving this Settlement shall be remitted to the County Treasurer as unclaimed funds, and the County Defendants' obligation to pay amounts under this paragraph and under paragraph seven herein shall cease.

9. **Compensation to Named Plaintiff.** Named Plaintiff Andrew Dombroff has devoted a substantial amount of time, energy, and out-of-pocket expense in prosecuting this case on behalf of the class, including but not limited to assisting class counsel in

prosecution of the case and attending court hearings, conferences, and mediation sessions. In consideration of the actions Mr. Dombroff has taken to protect the interests of the class, the degree to which the class has benefitted by those actions, and the time and effort he expended pursuing this litigation, and the compensation owed to Mr. Dombroff as a member of the class, Mr. Dombroff shall be paid a total of \$2,268. The County Defendants agree that they will pay \$2,268 to Mr. Dombroff forthwith upon the Court's approval of this Consent Decree.

10. **Attorney's Fees.** Class counsel shall be entitled to reasonable attorney's fees and costs in the amount not to exceed \$94,000.

11. **Release.** As provided by the ordinary standards governing the preclusive effects of consent decrees entered in class actions, all members of the Plaintiff Class who have not opted out of this Consent Decree, and their heirs, administrators, successors, or assigns (together, the "Releasors"), hereby release and forever discharge the County Defendants and their respective administrators or successors, and any department, agency, or establishment of the defendant, and any officers, employees, agents, or successors of any such department, agency, or establishment (together, the "Releasees") from – and are hereby themselves forever barred and precluded from prosecuting – any and all claims and/or causes of action which have been asserted in the Complaint, or could have been asserted in said Complaint at the time it was filed, on behalf of this class, by reason of, or with respect to, or in connection with, or which arise out of, any matters alleged in the complaint which the Releasors, or any of them, have against the Releasees, or any of them.

12. **No Admission of Liability.** Neither this Consent Decree nor any order approving this Consent Decree is or shall be construed as an admission by the County Defendants of the truth of any allegation or the validity of any claim asserted in the complaint, or of the County Defendants' liability therefore, nor as a concession or an admission of any fault or omission of any act or failure to act, or of any statement or written document heretofore issued, filed or made by the County Defendants, nor shall this Consent Decree nor any pleadings, motions or other papers related hereto and created for settlement purposes only, nor any of the terms of either, be offered or received as evidence of liability for the violation of state or federal law in any civil, criminal, or administrative action or proceeding, nor shall they be construed by anyone for any purpose whatsoever as an admission or presumption of any wrongdoing on the part of the County Defendants, nor as an admission by any party to this Consent Decree that the consideration to be given hereunder represents the relief which could be recovered after trial. However, nothing herein shall be construed to preclude the use of this Consent Decree in order to effectuate the consummation, enforcement, or modification of its terms.

13. **Conditions Precedent; Final Judgment.** The obligations imposed by this Consent Decree shall be expressly conditioned upon the Court's certification of a class of Plaintiffs, and its acceptance of the Consent Decree as fair, reasonable, and adequate. If, after the fairness hearing, the Court approves this Consent Decree as fair, reasonable, and adequate, a Final Judgment, the entry of which shall be a condition precedent to any obligation of any party under this Consent Decree, shall be entered

dismissing with prejudice, pursuant to the terms of this Consent Decree and Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedure, all claims in the litigation.

14. Fairness Hearing; Notice. Upon the parties' execution of this "Stipulation for Entry of Consent Decree" the parties shall transmit the Decree to the Court for preliminary approval; request that the Court schedule a fairness hearing on this Consent Decree. The County Defendants shall provide notice to members of the County Plaintiff Class of the fairness hearing, and of the ability of potential class members to opt out of the class.

(a) **Publication.** The County Defendants shall cause a "Notice of Proposed Class Action Settlement and Hearing" to be published in the *Cleveland Plain Dealer* once a week for three consecutive weeks, the final such publication to occur at least 14 days prior to the deadline set for opting out of the class.

(b) **Mailing.** In addition, the Defendants shall cause a "Notice of Proposed Class Action Settlement and Hearing," to be mailed to the last known address of each individual whose name and address appears on Exhibit "A" at least fourteen days prior to the deadline set for opting out of the class.

(c) **CAFA Notice.** Pursuant to 28 U.S.C. § 1715, the Defendants shall also cause a "CAFA Notice," together with a copy of the complaint and a copy of the "Notice of Proposed Class Action Settlement and Hearing," to be mailed to the Attorney General of the United States and the Ohio Attorney General.

15. Authority of Class Counsel. Class counsel who are signatories hereto hereby represent, warrant, and guarantee that such counsel are duly authorized to execute this Consent Decree as a matter of law.

16. **Expiration.** This Consent Decree shall expire and become null and void five years after the Entry of a final judgment herein approving this Consent Decree.

Thereafter, the County Defendants shall be bound by applicable law.

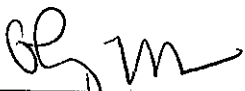
17. **Modification.** No modification of this Decree will be effective unless it is approved and ordered by the Court. If during the effective period of this decree the relevant, controlling law governing this case changes, the Parties reserve the right to seek modification of the Final Decree by appropriate motion.

18. **Entire Terms of Agreement.** The terms of this Consent Decree constitute the entire agreement of the parties, and no statement, remark, agreement, or understanding, or written, which is not contained herein, shall be recognized or enforced. No representations or promises of any kind, other than as specifically set forth and contained herein and/or in the attached Consent decree, have been made by the Parties to induce them to enter into this Stipulation and Consent Decree.

Dated: March 19, 2013

The Plaintiff Class Members


Approved:



PHILIP S. KUSHNER
Kushner & Hamed Co., LPA
1375 E. 9th Street, Suite 1950
Cleveland, Ohio 44114 3
Class Counsel

The County Defendants:

By: 
EDWARD FITZGERALD
CUYAHOGA COUNTY EXECUTIVE

By: 
FRANK BOVA
ACTING CUYAHOGA COUNTY SHERIFF

Approved:


TIMOTHY J. MCGINTY
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