

Federal Overcrowding Court Order

Revision of Federal Overcrowding Order

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**FILED**

**FEB 25 1994**

CLERK, U. S. DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

Attorneys for Defendants  
COUNTY OF FRESNO, SHERIFF STEVE MAGARIAN

**LODGED**

FEB 10 1994

IN THE UNITED STATES DISTRICT COURT

JACK L. WAGNER, CLERK, U.S. DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
BY DEPUTY CLERK

EASTERN DISTRICT OF CALIFORNIA

|    |                           |   |                                 |
|----|---------------------------|---|---------------------------------|
| 13 | JOHN B. CRUZ, et al.,     | ) | No. F-93-5070 JFM [P]           |
| 14 |                           | ) |                                 |
| 15 | Plaintiffs,               | ) |                                 |
| 16 | v.                        | ) | <b>STIPULATION RE PERMANENT</b> |
| 17 | COUNTY OF FRESNO, et al., | ) | <b>INJUNCTION; ORDER</b>        |
| 18 | Defendants.               | ) |                                 |

The parties hereby agree and stipulate to the following  
Permanent Injunction:

1. The parties stipulate that this litigation is a class  
action as defined by Rule 23 of the Federal Rules of Civil  
Procedure.

2. Defendants shall limit and control the population level  
within the Fresno County Jails as follows:

///

1           A. Defendants are enjoined from bedding inmates on the  
2 floor.

3           **NORTH ANNEX JAIL**

4           B. Defendants shall operate the North Annex Jail at the  
5 bed capacities set forth below:

| 6  | Second Floor | Number of Beds |
|----|--------------|----------------|
| 7  | Pod A        | 72             |
|    | Pod B        | 72             |
| 8  | Pod C        | 72             |
|    | Pod D        | 72             |
| 9  | Pod E        | 72             |
|    | Pod F        | 72             |
| 10 |              |                |
| 11 | TOTAL        | 432            |

12           C. Defendants shall operate the North Annex Jail utilizing  
13 the five additional correctional officers added to the North  
14 Annex Jail's staff as part of the settlement concerning  
15 plaintiffs' Application for Temporary Restraining Order.

16           D. Inmates in the North Annex Jail shall be provided  
17 access to one hour of daily exercise in the North Jail exercise  
18 area. Recreation time outside the housing unit will not be made  
19 up for those inmates who are away from the housing unit at other  
20 activities during the housing unit's regularly scheduled  
21 recreation. Inmates housed in discipline isolation will not be  
22 provided with recreation time during their length of stay in  
23 discipline isolation housing up to a maximum of ten [10]  
24 consecutive days.

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**MAIN JAIL**

E. Defendants shall operate the Main Jail under the Pilot Project approved by the California Board of Corrections with sixteen "general population" housing pods which are triple bunked [768 beds] and operated as dormitories; eight "special handling" pods which are double bunked [256 beds] with special handling inmates having controlled dayroom access; and forty "administrative segregation" cells which will be operated for single occupancy housing [40 beds].

F. Defendants shall implement the transition to the housing configurations set forth in paragraph E above under the time phased "Pilot Project Staffing and Capital Project Transition Plan" previously filed with the Court as Exhibit A in the Stipulation approved by the Court on October 29, 1993. Specifically, this Transition Plan establishes the timing of the addition of staff [seven Correctional Sergeants, seventeen Correctional Officers, and one Office Assistant]; the addition of one shower in each general population housing pod; the addition of isometric exercise equipment, etc.

G. Defendants shall implement their plan to reduce the noise levels in the Main Jail by providing acoustical treatment for the ceilings of the Main Jail as set forth in the Transition Plan.

H. Plaintiffs' counsel Paul Comiskey shall be provided reasonable access to the Main Jail during the Pilot Project

1 period to monitor the transition as described above. Defendants  
2 shall provide Paul Comiskey with copies of those reports  
3 required by the Board of Corrections during the pilot period.  
4 Should for any reason the Board of Corrections disapprove the  
5 Pilot Project, or recommend modifications of the operation of  
6 the Main Jail during the pilot period, defendants shall notify  
7 plaintiffs' counsel in writing within ten [10] days of receiving  
8 such notification from the Board of Corrections. In the event  
9 of disapproval or modification of the Pilot Project during the  
10 pilot period, either party may seek to change the terms of this  
11 injunction pursuant to the standards set forth in Rufo v.  
12 Inmates of Suffolk County Jail, \_\_\_ U.S. \_\_\_, 112 S.Ct. 748  
13 (1992).

14 I. Inmates housed in the Main Jail shall be offered the  
15 opportunity to receive recreation as follows:

16 1. Inmates housed in general population units shall  
17 be provided with the opportunity for twenty [20] hours of  
18 recreation outside their housing unit each month. These  
19 recreation opportunities shall include at least 1.5 hours of  
20 roof recreation each week. In addition, general population  
21 inmates will receive the opportunity to participate in at least  
22 eight indoor recreation sessions outside their housing unit each  
23 month.<sup>1</sup>

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24  
25 <sup>1</sup>. General population inmates are currently housed in pods  
26 C, D, E, and F on each Main Jail floor.

1           2. Inmates housed in Administrative Segregation and  
2 Special Housing units shall receive twelve [12] hours of  
3 recreation each month outside their housing unit each month in  
4 addition to dayroom access as appropriate for administrative  
5 segregation and special housing inmates.<sup>2</sup>

6           3. Recreation time outside the housing unit will not  
7 be made up for those inmates who are away from the housing unit  
8 at other activities during the housing unit's regularly  
9 scheduled recreation. Inmates housed in discipline isolation  
10 will not be provided with recreation time during their length of  
11 stay in discipline isolation housing up to a maximum of ten [10]  
12 consecutive days.

13           4. The provisions for Main Jail recreation outside  
14 the housing unit shall begin after the completion of the  
15 renovations required by the Board of Corrections Pilot Project  
16 as set forth in the aforementioned Transition Plan;<sup>3</sup>

17           5. Defendants shall make available to the Sheriff's  
18 Department jail recreation specialists the "Recommendations and  
19 Suggestions" of Dr. Edward Bernauer dated December 31, 1993.  
20 Defendants shall retain, evaluate, and consider implementing  
21 those suggestions that they deem reasonable and useful,  
22 reserving the right to implement none of those suggestions.

23 \_\_\_\_\_  
24           <sup>2</sup>. Administrative segregation and special housing inmates  
are currently housed in units A, B, and FF on each floor.

25           <sup>3</sup>. Defendants anticipate those renovations to be completed  
26 by July 1, 1994.

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**SOUTH ANNEX JAIL**

J. Defendants shall operate the South Annex Jail at the following capacities:

|                |                     |
|----------------|---------------------|
| SAJ 1 A [DORM] | 45 beds             |
| SAJ 1 B [DORM] | 15 beds             |
| SAJ 1 C [DORM] | 45 beds             |
| SAJ 1 D [DORM] | 20 beds             |
| SAJ 1 E [DORM] | 6 beds <sup>4</sup> |
| SAJ 1 F        | 20 beds             |
| SAJ 1 G        | 36 beds             |
| SAJ 2 D        | 6 beds              |
| SAJ 2 F        | 24 beds             |
| SAJ 2 G        | 48 beds             |
| SAJ 3 A        | 24 beds             |
| SAJ 3 B        | 24 beds             |
| SAJ 3 C        | 43 beds             |
| SAJ 3 D        | 43 beds             |
| SAJ 3 F        | 24 beds             |
| SAJ 3 G        | 48 beds             |
| SAJ 4 A        | 50 beds             |
| SAJ 4 B        | 8 beds              |
| SAJ 4 C        | 50 beds             |
| SAJ 4 D        | 32 beds             |

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<sup>4</sup>. The agreed upon population for each South Annex Jail dormitory is 140% of said dormitory's Board of Corrections "rated capacity."

1 SAJ 4 F 32 beds

2 SAJ 4 G 32 beds

3 K. The above referenced dormitories shall be offered the  
4 opportunity to receive 30 hours of recreation per month in  
5 either the South Annex Jail's indoor or outdoor recreation  
6 areas. All other housing units in the South Annex Jail shall be  
7 offered the opportunity to receive 20 hours of recreation per  
8 month in either the South Annex Jail's indoor or outdoor  
9 recreation areas. Recreation time outside the housing unit will  
10 not be made up for those inmates who are away from the housing  
11 unit at other activities during the housing unit's regularly  
12 scheduled recreation. Inmates housed in discipline isolation  
13 will not be provided with recreation time during their length of  
14 stay in discipline isolation housing up to a maximum of ten [10]  
15 consecutive days.

16 L. The provision for South Annex Jail exercise outside  
17 the housing unit shall begin when the Fresno Superior Court  
18 reopens and vacates the recreation and exercise orders set forth  
19 in Lynn Polard et al. v. Harold McKinney, Case No. 227358-9,  
20 dated July 7, 1978; Paul Daniels et al. v. Harold McKinney, Case  
21 No. 259869-6, dated January 30, 1981; In re Richard Morgan, Case  
22 Nos. 281302-0, 281438-2, 284164-1, dated January 17, 1983; In re  
23 Richard Morgan, Case Nos. 308318-5, 316580-0, dated March 27,  
24 1985; In re Steven Ransbury, et al., Case Nos 286040-1, 285427-  
25 1, 289487-1, dated April 29, 1985. Counsel for plaintiffs shall



1 cooperate with counsel for defendants in filing and appearing in  
2 court, if necessary concerning the County's motion to reopen and  
3 vacate those orders.

4 3. The Sheriff of Fresno County is authorized by this  
5 order to release inmates from the Fresno County Jail System or  
6 refuse to accept inmates for booking into the Fresno County Jail  
7 System whenever the Fresno County Jail System, or any facility  
8 therein, or any specific housing unit therein, reaches ninety  
9 percent [90%] of capacity. The Sheriff shall release inmates or  
10 refuse to accept newly-committed inmates when the total  
11 population of the Fresno County Jail System, or any facility  
12 therein, or any housing unit therein, reaches one hundred  
13 percent (100%) of capacity.

14 4. Either party may seek to change the terms of this  
15 injunction pursuant to the standards set forth in Rufo v.  
16 Inmates of Suffolk County Jail, \_\_\_ U.S. \_\_\_, 112 S.Ct. 748  
17 (1992).

18 5. In the event that an emergency threatens the Sheriff's  
19 ability to comply with these orders, counsel for defendants will  
20 notify counsel for plaintiffs no later than the next business  
21 day.

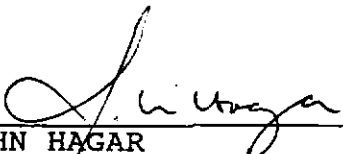
22 6. Defendants shall pay to plaintiffs' counsel Paul  
23 Comiskey attorney fees in the amount of \$33,000.00 at the time  
24 of the filing of the Final Judgement.

25 7. The parties stipulate that the Honorable Gregory  
26

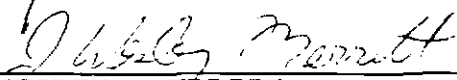
1       Hollows be the judge for all purposes concerning the fairness  
2       hearing and Final Judgement in this case.

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4               **IT IS SO STIPULATED:**

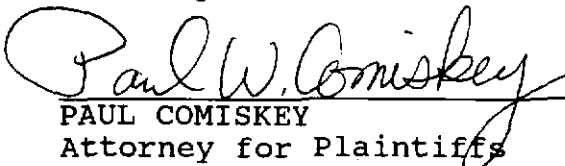
5  
6       DATED:   January   28 , 1994

  
\_\_\_\_\_  
JOHN HAGAR  
Attorney for Defendants

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8       DATED:   February  5 , 1994

  
\_\_\_\_\_  
J. WESLEY MERRITT  
Attorney for Defendants

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10  
11       DATED:   February  4 , 1994


  
\_\_\_\_\_  
PAUL COMISKEY  
Attorney for Plaintiffs

12  
13                               \* \* \* \*

14                               **ORDER**

15  
16               **IT IS SO ORDERED.**

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18       DATED:   February  23 , 1994

  
\_\_\_\_\_  
HONORABLE GREGORY HOLLOWES  
United States Magistrate Judge  
Eastern District of California

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9 Attorneys for Defendants COUNTY OF FRESNO and MARGARET MIMS, FRESNO  
COUNTY SHERIFF

10 **UNITED STATES DISTRICT COURT**  
11 **EASTERN DISTRICT OF CALIFORNIA**  
12

13 JOHN B. CRUZ, et al.,  
14 Plaintiffs,  
15 vs.  
16 COUNTY OF FRESNO, *et al.*,  
17 Defendants.  
18

Case No. 1:93-cv-05070-MCE

**STIPULATED MODIFICATION RE JAIL  
CAPACITY; ORDER**

19  
20 Unanticipated changes in fact and law have arisen that require the parties to  
21 modify the terms of the *Stipulation Re Permanent Injunction; Order* filed February 25,  
22 1994 (“Order”). Specifically:

23 A. At the time of the Order, defendants were engaged in programs to expand the  
24 Fresno County jail system, including the construction of additional jail housing units.  
25 The expansion was completed, and the new housing units staffed and made  
26 operational. However, over the past several years unanticipated and severe budget  
27 shortfalls faced by the State of California (“State”), and by defendants, created  
28 circumstances whereby defendants have been unable to staff all of the housing units

1 in the Fresno County jail system . As a result, some housing units have been rendered  
2 unusable.

3 B. In response to serious budget shortfalls, and in response to a United States  
4 Supreme Court decision affirming a three-judge panel order requiring time-phased  
5 reductions of the inmate population in the California Department of Corrections and  
6 Rehabilitation (“CDCR”), the State has effectuated an unanticipated change in the  
7 California law governing incarceration responsibilities. Pursuant to recent legislation  
8 commonly known as “realignment” (including Assembly Bills 109 and 117), the State  
9 has transferred responsibility for the incarceration of certain classifications of offenders  
10 and parolees from state prison to county jails. However, questions have arisen  
11 concerning the availability of funding necessary to house these additional inmates in the  
12 Fresno County Jail. Furthermore, while the long term impact of realignment cannot yet  
13 be measured, serious initial problems have arisen because of: (a) the transfer of more  
14 inmates into the Fresno County Jail than the CDCR had estimated; (b) an increase in  
15 the average length of stay for inmates in the jail because of these transfers, thereby  
16 limiting the beds available for new bookings; (c) additional classification challenges  
17 created by the influx of former state prisoners; and (d) increased correctional and health  
18 care costs.

19 In addition, on July 14, 2011, the Fresno County Superior Court filed a motion to  
20 intervene in this matter, seeking clarification of the term “capacities,” as set forth in  
21 paragraphs 2.B. and 2.J. of the Order; and the term “capacity” as set forth in paragraph  
22 3 of the Order. Specifically, the question was raised whether the term “capacity” should  
23 be defined as “design capacity” or “actual staffed capacity.”

24 Because of the unanticipated changes of fact and law set forth above, the parties  
25 stipulate, pursuant to paragraph 4 of the Order, to modify the *Stipulation Re Permanent*  
26 *Injunction; Order* filed February 25, 1994 as follows:

27 1. The term “capacities,” as set forth in paragraphs 2.B., and 2.J. of the Order, is  
28 defined as actual staffed capacities.

1           2. The term "capacity," as set forth in paragraph 3 of the Order, is defined as  
2 actual staffed capacity.

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**IT IS SO STIPULATED.**

Dated: December 5, 2011

KEVIN  
County

B. BRIGGS  
Counsel

By: Michael

/s/ Michael Linden  
R. Linden, Deputy  
Attorney for Defendants  
OF FRESNO and  
MARGARET MIMS, FRESNO COUNTY  
SHERIFF

COUNTY

Dated: December 5, 2011

By:

/s/ John Hagar  
JOHN H. HAGAR  
Attorney for Defendants  
OF FRESNO and  
MARGARET MIMS, FRESNO COUNTY  
SHERIFF

COUNTY

Dated: December 5, 2011

By:

/s/ Paul Comiskey  
PAUL COMISKEY  
Attorney for Plaintiffs

1 Dated: December 5, 2011

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By:

/s/ Catherine Campbell  
CATHERINE CAMPBELL  
Attorney for Plaintiffs

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**IT IS SO ORDERED.**


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Dated: February 13, 2012

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MORRISON C. ENGLAND, JR.  
UNITED STATES DISTRICT JUDGE

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