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January 31, 2006

Hon. Clare L. Fiorenza
Milwaukee County Circuit Court
Branch 3
901 North 9th Street
Milwaukee, WI 53233-1425

Hon. Peggy A. Lautenschlager
Attorney General
State of Wisconsin
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Hon. E. Michael McCann
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Milwaukee County
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Milwaukee, WI 53233-1427

Re: **Christensen v. Sullivan**
Case No. 96-CV-1835 (Milwaukee County Circuit Court)

Dear Judge Fiorenza, Ms. Lautenschlager, and Mr. McCann:

The undersigned counsel for the plaintiff class respectfully request that the District Attorney, the Attorney General, or a special prosecutor to be appointed by the Court issue a complaint seeking the imposition of punitive sanctions against defendants Milwaukee County and the Sheriff of Milwaukee County ("the County defendants") for contempt of court, pursuant to Wis. Stat. § 785.03(1)(b). We further request that any fines imposed on the County defendants be directed to preventing overcrowding and otherwise improving conditions, facilities, and

programs in the Milwaukee County Jail. As set forth in more detail below, this request is based on the Court's finding that the County defendants committed more than 16,000 intentional violations of the consent decree in this case, and that these violations constitute contempt of court.

Plaintiffs filed this class action in 1996, seeking relief from overcrowding and other unconstitutional conditions at the Milwaukee County Jail. In May 2001, the Milwaukee County Circuit Court (Hon. Thomas P. Donegan) approved and entered a consent decree which included a prohibition against holding inmates for longer than 30 hours in the booking/open waiting area of the jail or without assigning them to a bed.

In November 2003, plaintiffs' counsel became aware of allegations that the County defendants were violating the consent decree. They advised defendants of the allegations, toured the jail, and requested documents relating to the alleged violations. Defendants did not respond to the request for documents. Accordingly, in March 2004 plaintiffs filed a motion asking the Court to permit formal discovery. At the hearing on that motion on April 6, 2004, defendants finally produced some of the requested documents, and defendants admitted that they had been violating the 30-hour provision of the decree for more than 18 months. The Court (Hon. Clare L. Fiorenza) made it clear that, from then on, "there is going to be compliance with this agreement. ..." (Tr. of Hearing, April 6, 2004, at 78) (copy enclosed as Exhibit A). Defendants nonetheless continued violating the decree until at least the end of April 2004, committing 451 violations in that month alone. (See Decision and Order filed January 4, 2006, at 7-8).

On September 13, 2004, following further investigation, plaintiffs filed a motion to enforce the consent decree, alleging that the County defendants had engaged in thousands of violations of the 30-hour provision over the previous three years. On November 15, 2004, the Court (Hon. Jeffery A. Kremers) found that "there have been multiple violations of this consent decree by the sheriff and by the department from the time that it was entered into" (Tr. of Hearing, Nov. 15, 2004, at 13) (copy enclosed as Exhibit B), and directed the parties to conduct discovery and then to advise the Court as to the possible consequences of those violations. *Id.* at 13-14.

Following discovery, on July 29, 2005, plaintiffs filed a motion to impose remedial sanctions for contempt of court and to award monetary damages for breach of contract. After briefing and oral argument, the Court (Hon. Clare L. Fiorenza) filed a Decision and Order on January 4, 2006 (copy enclosed as Exhibit C), finding that, from November 2001 through April 2004, the County defendants committed more than 16,000 intentional violations of the 30-hour provision of the consent decree. (Decision and Order, at 4-7). In support of its finding that the violations were intentional, the Court noted that "the sheer number of violations, 16,662, is staggering" (*id.* at 5); that the violations spanned a relatively long period of time (*id.*); that County officials had the capability to track how long inmates were being held in booking, and did in fact keep a "shower list" of inmates who had been held for longer than 72 hours (*id.* at 5-6); and that the County had been put on notice by complaints from Sheriff's Deputies that

overcrowding in booking was creating unsafe working conditions. *Id.* at 6-7. Moreover, the Court found that the conditions in the booking area – as described in affidavits filed by members of the plaintiff class which were not directly contradicted by the County – were “unacceptable, if not appalling.” *Id.* at 7. They included “overly crowded conditions, inmates who were forced to sit or sleep on the floor next to urinals, inmates who had to sit up for hours and hours, lack of hygiene, unsanitary conditions, inmates who were not given pillows or blankets to sleep on, cells that were infested with bugs, cold temperatures, bodily fluids on the floor and bad odors.” *Id.* The Court further found that, during the period in question, 4811 inmates were kept in this environment for longer than two days, 719 inmates were held there for more than three days, and some were held in booking in excess of 100 hours. *Id.*

Based on the totality of the circumstances, the Court expressly found “that Milwaukee County’s actions were intentional and constitute Contempt of Court.” *Id.* at 8. However, the Court went on to conclude that, under the language of Wis. Stat. § 785.01(3), it could not impose monetary damages as a remedial sanction because the contempt was no longer “continuing.” *Id.* at 8-9. The Court further held that, although the County breached the consent decree, the plaintiff class was not entitled to monetary damages for breach of contract because the language of the decree did not provide for damages and because the Court found no other evidence that the parties had ever contemplated damages for violation of the decree. *Id.* at 9-14.

In sum, the Court found that Milwaukee County engaged in a massive pattern of contempt of court and violations of the decree over a period of years, but that the plaintiff class was not entitled to any monetary remedy. The plaintiffs and the Court are now faced with the situation described by Judge Kremers at the November 2004 hearing in this case:

I’m being asked what to do about past violations that are not on-going or at least there’s no evidence that they’re on-going before this Court. So what’s the – what’s the solution to that. I don’t think it can be, hey, we stopped doing it. So, okay, now we just keep going. Because where would be the incentive to stop it completely if every time you got caught you just said, whoop, we won’t do it anymore. Sorry, Judge. That I don’t think is appropriate. ... (Tr. of Hearing, Nov. 15, 2004, at 10).

What would be appropriate, we submit, is to pursue punitive sanctions against Milwaukee County for its judicially determined contempt of court. If monetary damages are not available as a remedial sanction under § 785.01(3) because the contempt is not “continuing” at the present time, then punitive sanctions must be available under § 785.01(2), which provides for such sanctions “to punish a past contempt of court for the purpose of upholding the authority of the court.”

The procedure for seeking punitive sanctions is set forth in § 785.03(1)(b):

The district attorney of a county, the attorney general or a special

prosecutor appointed by the court may seek the imposition of a punitive sanction by issuing a complaint charging a person with contempt of court and reciting the sanction sought to be imposed. The district attorney, attorney general or special prosecutor may issue the complaint on his or her own initiative or on the request of a party to an action or proceeding in a court or of the judge presiding in an action or proceeding. The complaint shall be processed under chs. 967 to 973. ...

Pursuant to § 785.03(1)(b), the undersigned counsel for the plaintiff class respectfully request that the District Attorney or the Attorney General issue a complaint seeking the imposition of punitive sanctions against the Milwaukee County defendants in this case. In the alternative, we request that the Court appoint a special prosecutor to issue such a complaint. The Court is not required to await a request from the District Attorney or the Attorney General before appointing a special prosecutor for this purpose. 72 Op. Att'y Gen. 1 (1983). Section 785.03(1)(b) constitutes "a clear legislative delegation of authority to the circuit court to appoint a special prosecutor," regardless of whether the District Attorney or any other official has requested such an appointment. *Id.* at 3-4.

As a punitive sanction, § 785.04(2)(a) authorizes the Court to impose a fine of not more than \$5,000 for each separate contempt of court. In this case, such fines could exceed \$83,000,000. We request that, to the extent allowed by law, any such fines be directed to preventing overcrowding and otherwise improving conditions, facilities, and programs in the Milwaukee County Jail.

We would be glad to provide you with copies of the pleadings and discovery in this case. Please let us know if you have any questions or if you need any additional information. We urge you to act promptly upon our request.

Respectfully submitted,



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