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U.S. DISTRICT COURT
EASTERN DISTRICT OF LA

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LORETTA G. WHYTE
CLERK



UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

LOUIS HAMILTON, ET AL.

CIVIL ACTION

VERSUS

NUMBER: 69-2443

ERNEST N. MORIAL, ET AL.

SECTION: "A" (5)

REPORT AND RECOMMENDATION

Presently before the Court is the Sheriff's Eighth Motion for Jail Funding Judgment and for sanctions for contempt. (Rec. doc. 1869). In connection therewith, the Court scheduled an expedited evidentiary hearing which went forward on October 24, 2005.

In that motion, the Sheriff alleged that there were delinquent invoices owed by the City to the Sheriff's office totaling \$3,325,423.30, which sum was essential to his continued operation of the jail. Although the original motion sought sanctions for contempt of Court, counsel for the Sheriff orally advised the Court in a telephonic status conference with opposing counsel that he was withdrawing that portion of the motion dealing with contempt issues. Counsel again reiterated this position in open court this date.

___ Fee _____
___ Process _____
X Dktd _____
___ CtRmDep _____
___ Doc. No. _____

Testimony received in open court reflects that, per invoice dated August 4, 2005 (Exh. A), the City owed the Sheriff the sum of \$1,693,695.13 which sum represents the per diem owed for inmate housing and board, medical costs for inmate care and for court services for the second half of the month of July, 2005. The City was presented with a copy of this invoice on August 4, 2005. To date, none of that amount has been paid.

Further testimony reflects that, per invoice dated August 18, 2005 (Exh. B), the City owed the Sheriff the sum of \$1,631,728.17 which sum represents the per diem owed for inmate housing and board, medical costs for inmate care and for court services for the first half of the month of August, 2005. To date, none of that amount has been paid.

The Court notes that the sums due and owing based upon a per diem for inmate care have been determined between the parties and are memorialized in a settlement agreement dated March 28, 2003, a copy of which is annexed hereto. That document also establishes that all charges submitted to the City by the Sheriff for housing and board per diem become payable thirty days after the City receives an invoice from the Sheriff. There is no question that the Sheriff presented the City with the invoices as noted above. The 30 day period for payment of those invoices has, therefore, elapsed.


The City has not raised any basis upon which to suggest that judgment should not be rendered herein in favor of the Sheriff. Accordingly,

RECOMMENDATION

IT IS RECOMMENDED that there be judgment herein in favor of Sheriff Marlin N. Gusman and against the City of New Orleans in the sum of \$3,325,423.30, representing amounts due and owing for the second half of the month of July, 2005 and the first half of the month of August, 2005 for housing and board per diem for inmates, medical expenses and court services.

A party's failure to file written objections to the proposed findings, conclusions, and recommendation contained in a magistrate judge's report and recommendation within 10 days after being served with a copy shall bar that party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the district court, provided that the party has been served with notice that such consequences will result from a failure to object. Douglass v. United Services Auto. Assoc., 79 F.3d 1415 (5th Cir. 1996) (en banc).

Baton Rouge, Louisiana, this 24 day of October, 2005.


ALMA L. CHASEZ
UNITED STATES MAGISTRATE JUDGE

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

LOUIS HAMILTON, et al.

CIVIL ACTION NO. 69-2443

VERSUS

DIVISION 5; SECTION A

ERNEST N. MORIAL, et al.

JUDGE JAY ZAINEY

**MAGISTRATE JUDGE ALMA L. CHASEZ
SETTLEMENT AGREEMENT**

On February 27, 2002, the Criminal Sheriff for the Parish of Orleans ("Sheriff") filed a motion to increase the housing and board *per diem* payable by the City of New Orleans ("City") established in the Stipulation and Consent Judgment entered on July 18, 1990, and, on March 1, 2002, the Sheriff filed a motion to increase the expenses payable to the Sheriff by the City of New Orleans for providing medical care for City detainees referenced in the Stipulation and Consent Judgment entered on July 18, 1990 and the Agreed Entry on Medical Care entered on December 5, 1990. The City of New Orleans opposed both motions filed by the Sheriff. A contradictory hearing has been scheduled by the Court starting on March 27, 2003 through April 4, 2003 in order for the Court to consider the Sheriff's and the City's respective positions as well as to receive evidence with respect to these motions. The parties have conducted and have scheduled numerous depositions and engaged in other pre-trial discovery in advance of the March 27, 2003 hearing.

In order to conserve the resources of the Sheriff and the City, to facilitate their continued working together to provide appropriate housing, board and medical services to City detainees in the most cost effective manner, and to resolve in an amicable fashion all of the differences between the Sheriff and the City with regard to the pending motions filed by the Sheriff, the Sheriff and the City

have achieved a settlement consisting of the following conditions and terms:

1. The City of New Orleans will pay to the Sheriff a housing and board *per diem* of \$22.39, which is the current statutory *per diem* paid by the State of Louisiana to the Sheriff for the housing and board of State detainees; any increase or decrease in the State statutory *per diem* will not, however, affect the *per diem* rate payable by the City hereunder. The Sheriff will submit semi-monthly invoices and the supporting documentation presently provided to the City plus daily count sheets for these charges which will be payable thirty (30) calendar days after receipt by the City. The City will begin using the *per diem* rate of \$22.39 for each City detainee starting on July 1, 2003 and the City will continue to use this *per diem* rate through December 31, 2005. The Sheriff and the City will continue to use this *per diem* rate of \$22.39 after December 31, 2005 unless the Sheriff or the City files a written motion challenging this rate. No motion shall be filed before December 31, 2005.

2. The City will continue to pay to the Sheriff an annual payment of \$3,200,000.00 to pay for the medical expenses and services provided by the Sheriff and his representatives to City detainees for the healthcare of City detainees in the Sheriff's custody. This annual payment by the City to the Sheriff for medical services will be paid in equal semi-monthly installments throughout the year. This annual payment by the City to the Sheriff for medical services and healthcare for City detainees in the custody of the Sheriff will remain the same through December 31, 2005. The Sheriff and the City will continue to use this compromised cost for healthcare services unless the Sheriff or the City files a written motion challenging this annual sum. No motion shall be filed before December 31, 2005.

3. During the calendar years 2003, 2004, 2005 the City will pay an amount, per annum,

for providing court services (as referenced in the Stipulation and Consent Judgment entered on July 18, 1990) not to exceed the amount paid to the Sheriff for these same court services during the calendar year 2002, namely, the sum of \$2,442,975.00. In other words, the City will not pay more than \$2,442,975.00 per annum through December 31, 2005 for court services.

4. During the calendar years 2003, 2004, 2005 the City will pay expenses for "other costs associated with the Sheriff's Office" (as referenced in the Consent Judgment entered on July 18, 1990), such as utilities, gasoline and oil, health insurance, workmen's compensation expenses and unemployment insurance expenses, in an amount, per annum, not to exceed the amount paid by the City during calendar year 2002 for these same services and supplies namely, the sum of \$5,502,072.00. In other words, the City will not pay more than \$5,502,072.00 per annum through December 31, 2005 for these other costs.

5. On or after January 1, 2004, the Sheriff and the City will jointly begin an analysis to determine the existence of available cost savings measures relating to the expenses of court services and expenses for utilities, gasoline and oil, health insurance, workmen's compensation and unemployment insurance costs. Upon completion of this analysis, the City and the Sheriff agree to cooperate with each other to promptly implement any cost savings measures determined by them to be available.

6. Prior to December 31, 2005, the Sheriff and the City will not file any motions seeking to increase or decrease the *per diem* rate paid by the City of New Orleans, the amounts paid by the City of New Orleans to the Sheriff for medical services, the amount of payments by the City for court services or any other payments made by the City as established in this Settlement Agreement or the Stipulation and Consent Judgment entered on July 18, 1990.

7. The Sheriff and his employees who meet the retirement criteria for City employees shall be covered by the City of New Orleans Health Care Plan in the same manner and with the same benefits as City retirees and at the same rate charged City retirees.

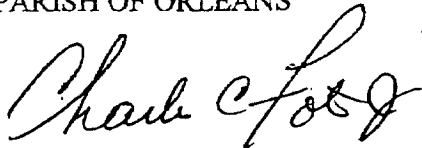
8. Effective as of the date of this Agreement, future applicants for employment with the Sheriff's Office will complete pre-employment medical screening forms furnished by the City, and the Sheriff will require his employees to comply with the light duty program utilized by the City of New Orleans to help minimize workmen's compensation costs.

9. This Settlement Agreement shall not constitute an admission of liability by either the Sheriff or the City. Furthermore, the Sheriff and the City hereby reserve and recognize that each party has properly and fully reserved their respective rights to seek, after December 31, 2005, a judicial determination with respect to any component of the Stipulation and Consent Judgment entered on July 18, 1990 and the Agreed Entry on Medical Care entered on December 5, 1990 including, but not limited to, *per diem* rates and charges for medical care services for City detainees and any other payments established by the Stipulation and Consent Judgment entered on July 18, 1990.

10. The Sheriff and the City can seek assistance of the Court in enforcing the terms of this Settlement Agreement.

This Settlement Agreement has been signed and is effective as of March 26, 2003.

CRIMINAL SHERIFF FOR THE
PARISH OF ORLEANS



By: Charles C. Foti, Jr.

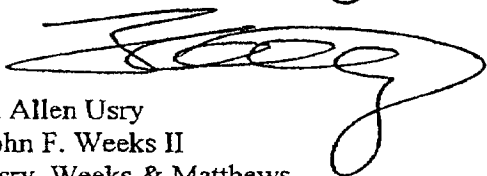
Date: March 28, 2003

CITY OF NEW ORLEANS

By: C. Ray Nagin, Mayor

Date: C. Ray Nagin

ATTORNEYS FOR THE CRIMINAL SHERIFF



T. Allen Usry
John F. Weeks II
Usry, Weeks & Matthews
1717 St. Charles Avenue
New Orleans, LA 70130

Date: March 28, 2003

ATTORNEYS FOR THE CITY OF NEW ORLEANS

Charles L. Rice Jr.
City Attorney, City of New Orleans
1300 Perdido Street, Room 5E03
New Orleans, LA 70112

Date: 

Harry Rosenberg
Phelps Dunbar LLP
365 Canal Street · Suite 2000
New Orleans, LA 70130-6534

Date: 

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

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O R D E R

The Court, having considered the motion, the record, the applicable law, the Magistrate Judge's Report and Recommendation, and the failure of defendant to file any objections to the Magistrate Judge's Report and Recommendation, hereby approves the Magistrate Judge's Report and Recommendation and adopts it as its opinion herein.

Accordingly,

IT IS ORDERED that the Sheriff's Eighth Motion for Jail Funding Judgment is **GRANTED**.

_____, Louisiana, this ____ day of _____,
2005.

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

LOUIS HAMILTON, ET AL.

CIVIL ACTION

VERSUS

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SECTION: "A"(5)

JUDGMENT

The Court, having considered the record, the applicable law, and for the written reasons assigned;

IT IS ORDERED, ADJUDGED, AND DECREED that there is judgment in favor of Sheriff Marlin N. Gusman and against the City of New Orleans in the sum of \$3,325,423.30, representing amounts due and owing for the second half of the month of July, 2005 and the first half of the month of August, 2005 for housing and board per diem for inmates, medical expenses and court services.

_____, Louisiana, this ___ day of _____, 2005.

UNITED STATES DISTRICT JUDGE