

**IN THE MATTER OF:
Human Rights Defense Center v. Carmichael, et al.
Case No. 3:18-cv-00218
U.S. DISTRICT COURT, WESTERN DISTRICT OF NORTH CAROLINA**

SETTLEMENT AGREEMENT AND FULL AND FINAL RELEASE

THIS SETTLEMENT AGREEMENT AND FULL AND FINAL RELEASE (hereinafter referred to as the “Agreement”) is made and entered into as of the date this Agreement is signed, by and among Garry L. McFadden in his official capacity as the Sheriff of Mecklenburg County, North Carolina, and the Human Rights Defense Center (“HRDC”), on behalf of itself and all of its officers, directors, employees, former employees, agents, predecessors, divisions, successors, administrators, and assigns, Defendant McFadden and HRDC collectively are “the Parties”.

I. Recitals

A. At times relevant hereto, Sheriff Irwin Carmichael was the Sheriff of Mecklenburg County, North Carolina.

B. On or about December 4, 2018, Defendant McFadden replaced Irwin Carmichael as the Sheriff of Mecklenburg County, North Carolina.

C. At all times relevant hereto, HRDC is and was a 501(c)(3) non-profit corporation with offices in Lake Worth, Florida. HRDC publishes *Prison Legal News*, a monthly journal of corrections news and analysis.

D. This Agreement addresses and resolves certain disputes arising from and relating to allegations that Carmichael and Defendant McFadden violated HRDC’s First and Fourteenth Amendment rights as it relates to the handling and delivery of its publications at the Mecklenburg County Jail (the “Jail”), and the alleged lack of due process associated with Defendant’s failure to provide HRDC with notice and an opportunity to be heard regarding

rejected or censored publications, which is set forth in the Complaint entitled *HRDC v. Sheriff Irwin Carmichael*, 3: 18-cv- 218-GCM (“Civil Action.”).

E. The Parties agree that the Defendant denies any liability in this case. However, in order to avoid the expense, delay, uncertainty, and burden of litigation, the parties have agreed to a settlement of the litigation. This written Agreement memorializes the terms of the settlement reached by Defendant and HRDC to resolve all issues in the Civil Action.

II. Monetary Agreement and Dismissal

In exchange for HRDC’s release and dismissal of the Civil Action, s, with jurisdiction reserved per the terms in paragraph IV of this Agreement, Defendant hereby agrees to the following terms:

(A) Mecklenburg County agrees to pay HRDC a total of \$45,000 in full and final settlement of all claims for damages, attorneys’ fees, and costs that were brought in this Civil Action or that could have been brought in this Civil Action. The total sum combines damages and attorneys’ fees and costs. HRDC may determine the allocation of this money between damages and attorneys’ fees and costs at its own discretion. HRDC acknowledges that this settlement must be approved by the Mecklenburg County Board of County Commissioners (“BOCC”). The parties acknowledge that if the BOCC does not approve this settlement, all terms of the settlement and this agreement are null and void. Within 20 days of approval of this settlement by the BOCC, Mecklenburg County will send direct payment to HRDC’s local counsel, Ellis & Winters LLP.

(B) In consideration of the above terms agreed to by Defendant, HRDC agrees to dismiss the Civil Action. Said dismissal will be with prejudice in the United States District Court,

though the Court shall retain jurisdiction for the purpose of entertaining enforcement actions only per the terms described in paragraph IV.

III. Consent Decree

Defendant agrees that the Consent Decree entered on June 20, 2018 (Docket Entry 18) shall remain in force and effect.

IV. Reservation of Jurisdiction

The Parties agree that the Court shall retain jurisdiction for the purpose of enforcing the terms of this Agreement and the Consent Decree entered on June 20, 2018 (Docket Entry 18), by entry of a Stipulated Order of Dismissal stating the same.

V. Miscellaneous Provisions

A. Defendant and HRDC acknowledge and agree that they have been represented by legal counsel with respect to the matters that are the subject of this Agreement and that they have entered into this Agreement freely and voluntarily.

B. The Parties agree that facsimile or PDF signatures are deemed to be originals and that this Agreement may be executed in counterparts. Upon signature of the Parties, this Agreement shall be deemed executed, final, and binding.

C. The Parties agree that this case concerns allegations that the First and Fourteenth Amendment rights of a publisher were violated, and is therefore not a case concerning prison conditions as defined in the Prison Litigation Reform Act of 1996.

D. This Agreement sets forth the entire understanding between the Parties with respect to the subject matter contained herein, and there are no representations, warranties, agreements, arrangements, or undertakings, oral or written, between or among the Parties hereto relating to the subject matter of this Agreement which are not fully expressed herein. This Agreement

supersedes all prior negotiations, representations, statements, or promises between the Parties, whether written or oral, as to these claims.

E. This Agreement shall be binding upon and inure to the benefit of Defendant and HRDC, and their respective successors and assigns.

F. The obligations imposed by this Agreement are severable. If for any reason a part of this Agreement is invalid or unenforceable, that determination shall not affect the remainder of this Agreement.

15. This Agreement and any of its provisions may be amended, modified, or terminated only by written agreement by HRDC and Defendant McFadden. Such written agreement(s) shall be effective only upon approval by the Court.

Dated this 21st day of February, 2020.

Stipulated and Agreed to:

Garry L. McFadden, in his official capacity as the Sheriff of Mecklenburg County, North Carolina

Paul Wright
Executive Director, Human Rights Defense Center