

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

HUMAN RIGHTS DEFENSE
CENTER,

Plaintiff,

v.

ISHEE et al.,

Defendants.

Civil Action No. 5:21-CV-469-FL

**SETTLEMENT AGREEMENT
AND RELEASE**

This SETTLEMENT AGREEMENT AND RELEASE (hereinafter referred to as the “Agreement”) is entered into as of the date of the last signature below (the “Effective Date”) by and among Plaintiff HUMAN RIGHTS DEFENSE CENTER (“HRDC”), on behalf of itself and all of its officers, directors, employees, former employees, agents, predecessors, divisions, correctional facilities, successors, administrators, and assigns, and THE NORTH CAROLINA DEPARTMENT OF ADULT CORRECTION and its predecessor in interest, the North Carolina Department of Public Safety (“NCDPS”), on behalf of itself and all of its officers, directors, employees, former-employees, agents, predecessors, divisions, correctional facilities, successors, administrators, and assigns, including, but not limited to Todd Ishee, Tim Moose, Doug Pardue, Darcell Carter, Larry Dunston, Garry Bleeker, Zachary Kendall, Wendy Hardy, Shane Tharrington, and any other persons named as Defendants in the Complaint at 5:21-CV-469-FL, as amended (the “Complaint”) who are or were employees of the North Carolina Department of Adult Correction or the North Carolina Department of Public Safety (collectively referred to as “NCDAC”).

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I. RECITALS

A. At all relevant times hereto, Defendants Todd Ishee, Tim Moose, Doug Pardue, Darcell Carter, Larry Dunston, Garry Bleeker, Zachary Kendall, Wendy Hardy, and Shane Tharrington are or were employees of the State of North Carolina assigned to either NCDAC or its predecessor, NCDPS.

B. At all times relevant hereto, HRDC is and was a 501(c)(3) nonprofit corporation with offices in Lake Worth or Boynton Beach, Florida. HRDC publishes Prison Legal News, a monthly journal of corrections, news and analysis. HRDC also publishes Criminal Legal News, a monthly journal of court rulings, news, and analysis.

C. This Agreement addresses and resolves certain disputes arising from and relating to allegations that the Defendants violated HRDC's First and Fourteenth Amendment rights as it relates to the handling and delivery of HRDC publications to NCDAC incarcerated prisoners and the alleged lack of due process associated with the NCDAC's failure to provide HRDC notice and opportunity to be heard regarding refused or censored publications.

D. Without making any admission of liability on either part, HRDC and NCDAC have reached a settlement of their disputes and this litigation. This written Agreement memorializes the terms of the settlement reached by and between HRDC and NCDAC.

II. DEFINITIONS

For the purpose of this Agreement, the following definitions shall apply:

1. "Action" shall mean the matter captioned *Human Rights Defense Center v. Ishee, et al.*, Civ. No. 5:12-CV-469-FL (E.D.N.C.).

2. "Additional Approved Publications" shall mean, collectively, the First Additional Approved Publications and the Second Additional Approved Publications.

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3. “Central Review Committee” or “CRC” shall refer to the Central Review Committee to be established by NCDAC for the purpose of reviewing the content of incoming publications for compliance with the Publications Policy.

4. “Criminal Legal News” or “CLN” shall refer to the publication *Criminal Legal News* published by HRDC.

5. “First Additional Approved Publications” shall refer to the HRDC publications set forth on Attachment A to this Agreement.

6. “Intended Recipient” shall refer to each prisoner in a NCDAC facility to whom HRDC mailed a copy of one of the Additional Approved Publications.

7. “Prison Legal News” or “PLN” shall refer to the publication *Prison Legal News* published by HRDC.

8. “Publications Policy” shall refer to NCDAC Policy D.0100 regarding Publications Received/Possessed by Inmates, as may be amended or relocated from time to time.

9. “Publication Review Committee” or “PRC” shall refer to the Publication Review Committee described in Section D.0104 of the Publications Policy, Issue Date August 23, 2022.

10. “Released Parties” shall refer to the State of North Carolina, NCDAC, its predecessor in interest (NCDPS), and its officers, employees, agents, and representatives.

11. “Releasing Parties” shall refer to HRDC together with its officers, directors, employees, agents, and representatives (in their representative capacity).

12. “Second Additional Approved Publications” shall refer to the HRDC publications set forth on Attachment B to this Consent Order.

III. POLICY AND PUBLICATION TERMS

Both parties agree to the following terms:

A. Publications Review

1. No later than sixty (60) days from the date of this Agreement, NCDAC shall amend or revise the Publications Policy, as necessary, to implement the following procedures for review of incoming publications received by NCDAC by mail:

(a) Within seven (7) days of the arrival of a publication at a NCDAC facility, mailroom staff shall perform the initial screening of the incoming publication for contraband or violations not related to the content of the publication and, if the publication is disapproved, NCDAC shall provide notice (including the reason for the disapproval) to each prisoner to whom a copy of the publication was directed and to the publisher of the publication.

(b) Within twenty-eight (28) days of the arrival of a publication at a NCDAC facility, the Central Review Committee shall complete its review of the publication and:

(i) determine whether the publication is approved or disapproved for delivery; (ii) make an internal record of the CRC's determination (including the persons participating in the review, a record of any vote(s) taken, and any reasons for disapproval); (iii) provide notice to each NCDAC facility regarding the approval or disapproval of the publication; and (iv) if the publication is disapproved, provide notice (including the reason for the disapproval) to each prisoner to whom a copy of the publication was directed and to the publisher of the publication indicating that the CRC has disapproved the publication and describing the procedures to appeal the CRC's determination. It shall be the responsibility of NCDAC to establish procedures for the CRC to receive publications from the NCDAC facility receiving such publication.

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(c) Within seven (7) days of the delivery of a timely submitted appeal by a prisoner or publisher, the PRC shall complete its review of the publication and: (i) determine whether the publication is approved or disapproved for delivery; (ii) make an internal record of the PRC's determination (including the persons participating in the review, a record of any vote(s) taken, and any reasons for disapproval); (iii) provide notice to each NCDAC facility regarding the approval or disapproval of the publication; (iv) provide notice to each prisoner to whom a copy of the publication was directed and to the publisher of the publication regarding the approval or disapproval of the publication; and (v) if the publication is disapproved, provide to each prisoner to whom a copy of the publication was directed and to the publisher of the publication the reason for disapproval and directions for filing an appeal to the NCDAC General Counsel's office.

(d) Within seven (7) days of the delivery of a timely submitted appeal from a prisoner or a publisher, an attorney in the NCDAC General Counsel's office shall complete their review of the publication and: (i) determine whether the publication is approved or disapproved for delivery; (ii) make a complete record of their determination (including any reasons for disapproval); (iii) provide notice to each NCDAC facility regarding the approval or disapproval of the publication; and (iv) provide notice to each prisoner to whom a copy of the publication was directed and to the publisher of the publication regarding the approval or disapproval of the publication and, if the publication was disapproved, the reason for disapproval.

2. In each instance where a facility is notified that a publication has been approved for delivery, the facility shall cause the publication to be delivered to any Intended Recipients of such publication without material delay.

3. NCDAC shall not alter the foregoing revisions to the Publications Policy at any time prior to the third anniversary of their implementation.

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4. If NCDAC desires to alter the foregoing revisions to the Publications Policy at any time between the third anniversary of their implementation and the sixth anniversary of their implementation, NCDAC will provide HRDC with advance notice of NCDAC's intent to alter the Publications Policy and fourteen (14) days for HRDC to provide comments to NCDAC about the proposed revisions. NCDAC shall consider any comments submitted by HRDC in good faith, but NCDAC shall not be required to accept or act upon any comments submitted by HRDC.

5. The Publications Policy shall at all times provide publishers with at least as much due process as interpreted by then current Fourth Circuit jurisprudence (as currently set forth in *Montcalm Pub. Corp. v. Beck*, 80 F.3d 105 (4th Cir. 1996), and its progeny).

B. Delivery of Additional Approved Publications

1. No later than five (5) days following the Effective Date, HRDC shall provide NCDAC with: (i) a PDF copy of each of the Additional Approved Publications (the "*Republication Proofs*"); and (ii) a spreadsheet listing the Intended Recipients of each of the Additional Approved Publications (together, the "*Publication Delivery Info*").

2. Within thirty (30) days of the date HRDC provides NCDAC with the Publication Delivery Info, NCDAC shall:

(a) Remove any Additional Approved Publications appearing on NCDAC's Master List of Disapproved Publications from such list.

(b) Print the Additional Approved Publications and distribute each Additional Approved Publication to any Intended Recipients of such publication who remain in NCDAC custody.

(c) Send a communication to all state correctional facility Wardens and all individuals involved in the publications review process (the "*Internal Notice*") that: (i) NCDAC

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leadership has reviewed the Additional Approved Publications and approved them for delivery to prisoners; and (ii) NCDAC does not have a “blanket ban” on publications from HRDC, and facilities should not restrict distribution of PLN, CLN, or any other publications from HRDC except for individual issues that are disapproved as part of the publications review process. NCDAC shall not address in the Internal Notice or otherwise the February 2000 issue of PLN or the May 2022 issue of CLN.

(d) Provide a certification to HRDC that NCDAC has complied with NCDAC’s obligations in Section II(B)(2)(a)-(c) (the “*Delivery Certification*”).

3. HRDC hereby grants to NCDAC a one-year limited, fully paid-up, royalty-free right and license to reproduce, print, distribute, and otherwise use the Republication Proofs solely to the extent necessary to fulfill NCDAC’s obligations under this Agreement.

C. Information Packets and Renewals

No later than ten (10) days following the Effective Date, NCDAC shall communicate to its mail processing vendor (TextBehind) and any other persons involved in the process of delivering mail to prisoners in NCDAC custody, as necessary, that information packets and renewal notices sent by HRDC are not advertisements and should be delivered.

IV. SETTLEMENT PAYMENT

1. NCDAC shall make a settlement payment to HRDC in the amount of one million, two hundred thousand dollars (\$1,200,000.00) (the “*Settlement Payment*”) no later than forty-five (45) days following the Execution Date. NCDAC shall send the Settlement Payment by same day wire transfer to HRDC’s law firm, Wiley Rein LLP, using the instructions provided concurrently herewith. Upon sending the Settlement Payment, NCDAC shall send a remittance notice to ameltzer@wiley.law.

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2. Each party shall be responsible for its own attorneys' fees, costs, and expenses related to the Action, this Settlement Agreement, and the matters and documents referred to herein, except as provided herein for any future litigation. HRDC shall satisfy any retainer agreements or payment arrangements with its attorneys. NCDAC will not be responsible if attorney fees arrangements are not satisfied between HRDC and its attorneys.

V. RELEASE

Effective upon the later of: (1) the date that HRDC receives the Delivery Certification, or (2) the date that delivery of the Settlement Payment is completed, the Releasing Parties fully and forever release and discharge the Released Parties, including their predecessors and successors and all others who could have been named as defendants in the Action, in both their individual and official capacities, from all claims, demands, actions, and causes of actions, including court costs, attorneys' fees, and costs of suit, arising out of any alleged injury or claims incurred by the Releasing Parties up until the Execution Date (the "*Released Claims*"). The Releasing Parties acknowledge and agree that this release and discharge is a general release and expressly waive and assume the risk of any and all claims which exist as of this date, but which it does not know or suspect to exist, whether through ignorance, oversight, error, negligence, or otherwise, and which, if known, would materially affect their decision to enter into this Agreement.

For the avoidance of doubt, the release provided herein shall not preclude HRDC from filing a motion to enforce the terms of this Agreement or from pursuing any available remedies at equity or law for any claims accruing after the Effective Date.

VI. DISMISSAL

Within ten (10) days following the later of: (1) the date that HRDC receives the Delivery Certification, or (2) the date that delivery of the Settlement Payment is completed, HRDC shall

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file a Notice of Dismissal of the Action pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii) dismissing all claims in the Action with prejudice in the form substantially similar to Attachment C hereto.

HRDC shall attach a copy of this Agreement to the Notice of Dismissal.

VII. DISPUTE RESOLUTION

The parties agree that in the event HRDC believes that NCDAC is in breach of any term of this Agreement, HRDC may file a motion to enforce the Agreement in the United States District Court for the Eastern District of North Carolina (a “Motion to Enforce”) subject to the following terms:

A. Prior to filing a Motion to Enforce, HRDC shall provide written notice of the alleged breach to NCDAC and provide NCDAC with no fewer than fourteen (14) days to cure the alleged breach.

B. If, after fourteen (14) days, HRDC does not believe NCDAC has cured the alleged breach, HRDC may file a Motion to Enforce.

C. If HRDC is a prevailing party on a Motion to Enforce, HRDC shall be entitled to recover from NCDAC reasonable costs and attorneys’ fees for pursuing its Motion to Enforce, *provided, however*, that HRDC shall not be entitled to any costs or attorneys’ fees incurred to comply with the notice and cure procedure set forth in the preceding paragraphs.

D. The dispute resolution procedure provided herein is not exclusive, and by agreeing to this dispute resolution procedure, neither party is waiving any claims or defenses it may have against the other party, including the filing of new litigation (for claims other than the Released Claims). However, HRDC shall comply with the notice and cure provisions in this Section before HRDC brings any claim against NCDAC for any alleged breach of this Agreement.

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E. Any future litigation regarding the interpretation or enforcement of this Agreement shall be filed in the United States District Court for the Eastern District of North Carolina in accordance with *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375 (1994).

VIII. MISCELLANEOUS

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

B. The Parties agree that, as it pertains to HRDC, this Agreement is not governed by or subject to the Prison Litigation Reform Act, 42 U.S.C. § 1997e (the “PLRA”). This Agreement does not affect the rights and obligations of prisoners under the PLRA.

C. HRDC and NCDAC each acknowledges and agrees that it has have been represented by legal counsel with respect to the matters that are the subject of this Agreement and that it has entered into this Agreement freely and voluntarily.

D. North Carolina contract law shall apply if there are any disputes about the enforcement of the terms of the Agreement. Federal law shall apply to the extent any dispute involves interpreting or applying federal constitutional or other rights.

E. This Agreement contains the entire understanding between the parties with respect to the matters set forth 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 Consent Order that are not fully expressed herein.

F. This Agreement and any of its provisions shall not be amended, modified or terminated except by written agreement signed by both HRDC and NCDAC.

G. The parties agree that facsimile signatures are deemed to be originals and that this Agreement may be executed in counterparts.

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AGREED TO AND ACCEPTED BY:

Dated:

HUMAN RIGHTS DEFENSE CENTER

DocuSigned by:
By: PAUL Wright
Paul Wright
Executive Director

Dated:

NORTH CAROLINA DEPARTMENT OF
ADULT CORRECTIONS

By: _____
Todd Ishee
Secretary of NCDAC

Dated:

Approved as to form:

By: _____
Jodi Harrison
General Counsel of NCDAC

arrangements, or undertakings, oral or written, between or among the parties hereto relating to the subject matter of this Consent Order that are not fully expressed herein.

F. This Agreement and any of its provisions shall not be amended, modified or terminated except by written agreement signed by both HRDC and NCDAC.

G. The parties agree that facsimile signatures are deemed to be originals and that this Agreement may be executed in counterparts.

AGREED TO AND ACCEPTED BY:

Dated: HUMAN RIGHTS DEFENSE CENTER

By: _____
Paul Wright
Executive Director

Dated: 9-25-24 NORTH CAROLINA DEPARTMENT OF
ADULT CORRECTIONS

By: _____
Todd Ishee
Secretary of NCDAC

Dated: Sept 25, 2024

Approved as to form:

By: _____
Jodi Harrison
General Counsel for NCDAC

ATTACHMENT A

First Additional Approved Publications

Dec. 2018 PLN
Jan. 2019 PLN
Dec. 2019 PLN
Apr. 2020 PLN
June 2020 PLN
July 2020 PLN
Aug. 2020 PLN
Sept. 2020 PLN
Oct. 2020 PLN
Nov. 2020 PLN
Dec. 2020 PLN
April 2021 PLN
May 2021 PLN
June 2021 PLN
Dec. 2018 CLN
Aug. 2020 CLN
Sept. 2020 CLN
Dec. 2020 CLN
Jan. 2021 CLN
2017 Annual Report
2019 Annual Report

ATTACHMENT B

Second Additional Approved Publications

June 2021 PLN
July 2021 PLN
Aug. 2021 PLN
Sept. 2021 PLN
Oct. 2021 PLN
Nov. 2021 PLN
Dec. 2021 PLN
Feb. 2022 PLN
Mar. 2022 PLN
Apr. 2022 PLN
May 2022 PLN
June 2022 PLN
July 2022 PLN
Aug. 2022 PLN
Nov. 2022 PLN
Dec. 2022 PLN
Jan. 2023 PLN
Feb. 2023 PLN
Nov. 2023 PLN
Apr. 2024 PLN
June 2021 CLN
Oct. 2021 CLN
Nov. 2021 CLN
Dec. 2021 CLN
Feb. 2022 CLN
Mar. 2022 CLN
Apr. 2022 CLN

ATTACHMENT C
Form of Dismissal

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION**

HUMAN RIGHTS DEFENSE
CENTER,

Plaintiff,

v.

ISHEE et al.,

Defendants.

Civil Action No. 5:21-CV-469-FL

**STIPULATION OF DISMISSAL
WITH PREJUDICE**

Pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii), and in accordance with the Settlement Agreement and Release attached hereto (the “Settlement Agreement”), Plaintiff Human Rights Defense Center and Defendants Todd Ishee, et al., hereby stipulate that this action be dismissed with prejudice. The parties will each bear their own attorneys’ fees, costs, and expenses incurred in connection with this action.

The parties have agreed to attach a copy of the Settlement Agreement to this dismissal. As noted in the Settlement Agreement, the parties agree that any breach of the Settlement Agreement can be resolved through a motion to enforce filed in this Court in accordance with *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375 (1994), in addition to other remedies.

Dated: _____

HUMAN RIGHTS DEFENSE CENTER

By: _____

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Leah Deskins (by special admission)
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By: _____

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