

SETTLEMENT AGREEMENT AND RELEASE

I. PARTIES

This Settlement Agreement and Release (Agreement) concerns JERMAINE PADILLA (Plaintiff) and the California Department of Corrections and Rehabilitation (CDCR) on behalf of Defendants JENNA CASTRO, MARK DREW, CONNIE GIPSON, SABRINA JOHNSON, MICHAEL ROBICHEAUX, MICHAEL STAINER, and ERNEST WAGNER (Defendants). Plaintiff, CDCR, and Defendants shall be referred to as “the parties.”

II. RECITALS

Certain disputes and differences have arisen between the parties to this Agreement. These disputes and differences resulted in Plaintiff filing a complaint in the United States District Court for the Eastern District of California, *JERMAINE PADILLA v. JEFFREY BEARD, et al.*, Case No. 2:14-cv-01118 KJM-CKD (the Complaint). This Agreement covers all of the claims and allegations in the Complaint and any amendments thereto against Defendants, whether named or unnamed and whether served or unserved, and any past or current employees of CDCR, as related to claims and allegations in the Complaint and any amendments thereto.

Defendants, including CDCR, deny all of the allegations of wrongdoing made by Plaintiff in this lawsuit. The parties, however, now desire and intend by this Agreement to settle all disputes between them relating to the claims alleged in the Complaint, including any rights to appeal, and that concern in any way the allegations of the Complaint, and to discharge each other from any and all liability with reference to such claims, except as specifically set forth in this Agreement.

Therefore, in consideration of the covenants set forth in this Agreement, the parties settle their dispute on the terms and conditions set forth below.

III. TERMS AND CONDITIONS

1. CDCR shall pay a total of \$950,000 (settlement amount) in connection with Plaintiff’s claims against Defendants. The settlement amount falls within the meaning of section 104(a)(2) of the Internal Revenue Code of 1986, as amended (26 U.S.C.A. § 104(a)(2) and 130(c)). The settlement amount shall be distributed as follows:

A. CDCR shall pay \$496,031.81 to Plaintiff. As requested, this amount will be paid directly to the “Jermaine Padilla Special Needs Trust.” However, Plaintiff understands that CDCR is obligated by California Penal Code section 2085.8 to collect any amounts owed by a prisoner under a restitution fine or order, including any administrative fees related to such amounts. Such amounts and fees will be deducted from this portion of the settlement amount and paid on Plaintiff’s behalf as required by Penal Code section 2085.8. If the settlement amount exceeds the restitution amounts and fees, the excess balance shall be made by check to Plaintiff as designated in this paragraph. Plaintiff further understands that CDCR is obligated to pay all outstanding liens against Plaintiff, known or unknown, if any, which amounts must be deducted from the settlement amount and paid on Plaintiff’s behalf to the lienholder(s).

B. CDCR shall pay \$453,968.19 to Plaintiff's attorneys at Hadsell, Stormer & Renick LLP. As requested, this amount will be paid to "Hadsell Stormer & Renick LLP General Account."

2. Plaintiff shall sign a voluntary dismissal with prejudice under Federal Rule of Civil Procedure 41(a)(1)(A)(ii), which Defendants shall file by no later than ten days after the Court approves the settlement.

3. Plaintiff shall complete a Payee Data Form to enable payment and credit toward his restitution obligations. Additionally, Plaintiff's counsel shall complete a Payee Data Form to enable payment to Hadsell, Stormer & Renick LLP. If Plaintiff requests that payment be made to another person or entity, then that person or entity must also complete a Payee Data Form. Plaintiff shall return the completed Payee Data Forms to Defendants' counsel as soon as reasonably possible.

4. CDCR will make a good-faith effort to pay the settlement amount (minus any restitution amounts, liens and fees) within 180 days from the date Plaintiff delivers to Defendants a signed settlement agreement, a notice of voluntary dismissal with prejudice, and all of the required Payee Data Forms. Plaintiff understands that payment may be delayed by the lack of a State budget, a funding shortfall despite a State budget, the processing efforts of the State Controller's Office, and other events not attributable to Defendants or CDCR. Unless expressly stated otherwise, no interest shall be paid on the settlement amount.

5. No other monetary sum will be paid to Plaintiff or his attorneys of record.

6. Except as provided above in paragraph 1, each party shall bear its own costs and attorney's fees.

7. The Warden at California State Prison-Corcoran, where the Complaint arose, will sign this Agreement on behalf of CDCR and the Defendants. There are no other actions required on the part of CDCR or Defendants.

8. The Court will retain jurisdiction for twelve months, from the date the agreement is executed by all parties, to enforce this Agreement.

IV. GENERAL RELEASE

It is the intention of the parties in signing this Agreement that it shall be effective as a full and final accord and satisfaction and release from all claims asserted in the Complaint. By signing this Agreement, Plaintiff releases CDCR, Defendants, whether named or unnamed and whether served or unserved, and any other past or current CDCR employees from all claims, past, present and future, known or unknown, that arise or could arise from the facts alleged in the Complaint.

In furtherance of this intention, the parties acknowledge that they are familiar with, and expressly waive, the provisions of California Civil Code section 1542, which states:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

This Agreement is the compromise of various disputed claims and shall not be treated as an admission of liability by any of the parties for any purpose. The signature of or on behalf of the respective parties does not indicate or acknowledge the validity or merits of any claim or demand of the other party.

V. SUCCESSORS AND ASSIGNS

This Agreement shall be binding on the parties and their respective officers, agents, administrators, successors, assignees, heirs, executors, trustees, attorneys, consultants, and any committee or arrangement of creditors organized with respect to the affairs of any such party.

Plaintiff represents that he owns the interests, rights, and claims that are the subject matter of this Agreement. Plaintiff and his principals, agents, attorneys, successors, assigns, heirs, descendants, executors, representatives, partners, and associates fully release and discharge the other parties and their principals, agents, attorneys, successors, assigns, heirs, descendants, executors, representatives, partners, and associates from all rights, claims, and actions that Plaintiff and his successors now may have or at any time in the future may have against the other parties and their successors.

VI. REPRESENTATIONS AND WARRANTIES

No other consideration. The consideration recited in this Agreement is the only consideration for this Agreement, and no representations, promises, or inducements have been made to the parties, or any of their representatives, other than those set forth in this Agreement.

Execution in counterpart. This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Execution of further documents. Each party to this Agreement shall complete, execute or cause to be executed such further and other documents as are needed to carry out the expressed intent and purpose of this Agreement.

Entire agreement. This Agreement constitutes a single, integrated agreement expressing the entire agreement of the parties, and there are no other agreements, written or oral, express or implied, between the parties, except as set forth in this Agreement.

No oral modifications or waiver. No supplement, modification, or amendment to this Agreement shall be binding unless executed in writing by all the parties. No waiver of any provision of this Agreement shall be binding unless executed in writing by the party making the waiver. No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver.

Governing law. Unless expressly stated otherwise in this Agreement, the terms, conditions, and provisions of this Agreement are governed by and interpreted under California state law.

Severability. Should any provision of this Agreement be held invalid or illegal, such illegality shall not invalidate the whole of this Agreement, but the Agreement shall be construed as if it did not contain the illegal part, and the rights and obligations of the parties shall be construed and enforced accordingly.

The undersigned agree to the above:

Dated: August , 2017 By: _____
Cynthia Rodriguez, as Guardian Ad Litem for
Jermaine Padilla, Plaintiff

Dated: August 15, 2017 By: _____
Michael Sexton Warden (A)
California State Prison-Corcoran

Approved as to form:

Dated: August 4, 2017 By: _____
Diana Esquivel, Deputy Attorney General
Attorney for Defendants

Dated: August , 2017 By: _____
Lori Rifkin, Hadsell Stormer & Renick, LLP
Attorney for Plaintiff

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The undersigned agree to the above:

Dated: September 13,
~~August~~, 2017
cg

By: Cynthia Rodriguez
Cynthia Rodriguez, as Guardian Ad Litem for
Jermaine Padilla, Plaintiff
→ Gonzalez cg

Dated: August, 2017

By: _____
Michael Sexton Warden (A)
California State Prison-Corcoran

Approved as to form:

Dated: August 4, 2017

By: _____
Diana Esquivel, Deputy Attorney General
Attorney for Defendants

Dated: September 14
~~August~~, 2017

By: Lori Rifkin
Lori Rifkin, Hadsell Stormer & Renick, LLP
Attorney for Plaintiff