

**IN THE MATTER OF:
Human Rights Defense Center v. Ballard, et al.
Case No. 3:17-cv-00057-GFVT
U.S. DISTRICT COURT, EASTERN DISTRICT OF KENTUCKY**

SETTLEMENT AGREEMENT OF DAMAGES CLAIM

THIS SETTLEMENT AGREEMENT OF DAMAGES CLAIM (hereinafter referred to as the "Damages Agreement") is made and entered into as of the date this Damages Agreement is signed, by and among the Kentucky Department of Corrections ("KDOC"), on behalf of itself and all of its officers, directors, employees, former employees, agents, predecessors, divisions, successors, administrators, and assigns, including but not limited to Rodney Ballard, Jim Erwin, Kimberly Potter-Blair, Chris Kleymeyer, Ashley Short, Debbie Kays, Keith Helton, Tiffany Ratliff, Kathy Litteral, Deedra Hart, Janet Conover, Randy White, Aaron Smith, James David Green, Scott Jordan, Don Bottom, Ravonne Sims, Tim Lane, and Anna Valentine (collectively referred to as "Defendants"), 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. Defendants and HRDC collectively are "the Parties".

I. Recitals

A. At all times relevant hereto, the individual Defendants are or were employees of the KDOC.

B. At all times relevant hereto, the Human Rights Defense Center is and was a not-for-profit charitable organization recognized under § 501(c)(3) of the Internal Revenue Code, incorporated in the state of Washington and with principal offices in Lake Worth, Florida. HRDC publishes *Prison Legal News*, a monthly journal of corrections news and analysis.

HRDC has thousands of subscribers in the United States and abroad, including prisoners, attorneys, and judges. Additionally, HRDC publishes and/or distributes dozens of different softcover books about the criminal justice system, legal reference books, and self-help books of interest to prisoners.

C. This Damages Agreement addresses and resolves HRDC's claims for damages arising from and relating to allegations that Defendants violated HRDC's First and Fourteenth Amendment rights as it relates to the handling and delivery of its publications at KDOC's prison facilities, and the alleged lack of due process associated with Defendants' failure to provide HRDC notice and opportunity to be heard regarding rejected or censored publications.

D. The Parties agree that the Defendants deny any liability in this case. However, in order to avoid the expense, delay, uncertainty, and burden of litigation, Defendants have agreed to a settlement of HRDC's claim for damages, in addition to HRDC's claim for injunctive relief as memorialized by prior agreement. This written Damages Agreement memorializes the terms of the settlement reached by Defendants and HRDC as to the claim for damages in this case.

E. Defendants agree that HRDC is a "prevailing party" under 42 U.S.C. §1988 and is entitled to recover reasonable attorneys' fees and costs incurred in these proceedings, but the parties reserve this issue for future negotiation, or resolution by the Court should the parties be unable to reach agreement on the amount of reasonable fees and costs HRDC should recover.

II. Monetary Agreement and Dismissal

1. KDOC agrees to pay HRDC a total of \$26,000.00 in full and final settlement of all claims for damages that were brought in this matter or could have been brought in this matter. KDOC will send direct payment to HRDC's General Counsel, Sabarish Neelakanta, within 20 days of the entry of the Stipulation and Order to Dismiss by the Court.

2. In consideration of the above terms agreed to by Defendants, HRDC agrees to dismiss the damages claim in the instant case. 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 per the terms described in paragraph 3.

III. Reservation of Jurisdiction

3. The Parties agree that the Court shall retain jurisdiction for the purpose of enforcing the terms of this Damages Agreement, by entry of a Stipulated Order of Dismissal of the damages claim stating the same.

IV. Miscellaneous Provisions

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

5. The Parties agree that facsimile or PDF signatures are deemed to be originals and that this Damages Agreement may be executed in counterparts. Upon signature of the Parties, and the necessary approvals referenced in Section V, this Damages Agreement shall be deemed executed, final, and binding.

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

7. This Damages Agreement sets forth the entire understanding between the Parties with respect to the claim for damages in this case, 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 Damages Agreement which are not fully expressed herein.

This Damages Agreement supersedes all prior negotiations, representations, statements, or promises between the Parties, whether written or oral, as to these claims. However, this Damages Agreement does not modify or supersede in any way the Settlement Agreement of Injunctive Claims that was approved by the Court on March 26, 2019.

8. This Damages Agreement shall be binding upon and inure to the benefit of the Defendants and HRDC, and their respective successors and assigns.

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

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

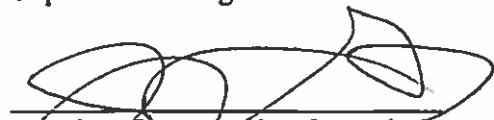
V. Necessary Approvals

11. The Parties acknowledge that 10 KAR 1:010, Section 6 sets out the settlement approval process where the Commonwealth of Kentucky has agreed to pay money in settlement of a civil matter. The Parties further acknowledge that this Agreement must be approved by both the Kentucky Attorney General's Office and the Secretary of the Kentucky Finance and Administration Cabinet before becoming final.


12. The KDOC and its counsel agree to use their best efforts to ensure approval of this Agreement by the Kentucky Attorney General's Office and the Secretary of the Finance and Administration Cabinet in a timely manner. The KDOC shall immediately notify HRDC's counsel in the event the Attorney General and/or Secretary of the Finance and Administration Cabinet decline to approve this Agreement. Upon disapproval by the Attorney General and/or

Secretary of the Finance and Administration Cabinet, this Agreement shall be null and void and have no binding effect on the Parties.

Stipulated and Agreed to:


Jonathan Grate, Acting Commissioner
Kentucky Department of Corrections

4-30-19
Date


Paul Wright, Executive Director
Human Rights Defense Center

April 18, 2019
Date