

SETTLEMENT AGREEMENT

This Stipulated Settlement Agreement is entered into by the parties in *Burke v. Clarke et al.*, Case No. 7:16-cv-00365-PMS, currently pending in the United States District Court for the Western District of Virginia.

Randy Burke (“Plaintiff”) is represented by Eden Heilman of the ACLU of Virginia and Josh Erlich of the Erlich Law Office (Plaintiff’s Counsel”).

The Defendants are Harold Clarke, Leslie Flemings, J.C. Combs, Jimmy Collins, David Robinson, C. King, John Jabe, Robert A. Bivens, Brenda Ravizee, Rebecca Young, Marcia Hensley, and Thomas Jones (collectively, the “VDOC Defendants” or “VDOC”). The VDOC defendants are represented by Laura Cahill at the Office of the Attorney General.

The parties to this Agreement, by and through their respective counsel, jointly stipulate and agree to the following:

1. **Dismissal of Case No. 7:16-cv-00365-PMS:** The Parties shall, by and through their attorneys, cause the complaint pending in the Western District of Virginia, Case No. 7:16-cv-00365-PMS, to be voluntarily dismissed.

2. **Settlement Payment:** In full and fair settlement of this matter, but without admitting liability, the VDOC Defendants, by and through the Commonwealth of Virginia, agree to pay to Plaintiff, within 90 days of full execution of this Agreement, the sum of two thousand three hundred fifty dollars (\$2,350). The check shall be made payable to the order of the ACLU Foundation of Virginia IOLTA in trust for Randy Burke and delivered, in a manner that allows tracking, to the attention of Eden Heilman at ACLU Foundation of Virginia, 701 E. Franklin St., Suite 1412, Richmond, VA 23219. This figure includes all costs, expenses, and/or attorneys’ fees which Plaintiff may otherwise have been entitled to recover against the Commonwealth, including Plaintiff’s district court filing fee of \$350. Undersigned counsel for Plaintiff and Defendants agrees not to seek attorney’s fees or costs associated with this action.

3. **Termination of Virginia’s Interstate Corrections Compact with the Virgin Islands to house Randy Burke:** VDOC shall terminate its agreement to house Randy Burke (VDOC #1473923) pursuant to its interstate corrections compact with the Virgin Islands. Plaintiff will be transferred out of VDOC custody into the custody of the Virgin Islands Department of Justice (“VIDJ”) within 90 days of this Agreement. Plaintiff acknowledges that VIDJ is responsible for Plaintiff’s assignment and transportation to a facility outside the custody of VDOC. VDOC further agrees not to enter into any future agreement with VIDJ to house Plaintiff.

4. **Termination of Federal Jurisdiction:** The parties agree that the United States District Court for the Western District of Virginia does not have jurisdiction over any dispute

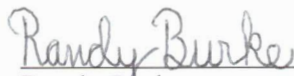
arising out of the execution of this Agreement, which shall instead constitute a Private Settlement Agreement within the meaning of the federal Prisoner Litigation Reform Act (PLRA).

5. **Non-Retaliation Provision:** VDOC agrees to ensure that Plaintiff does not face retaliation by VDOC employees or agents as a result of this settlement or exercising any rights herein. In the event that Plaintiff reports retaliation, VDOC agrees to take all possible measures to mitigate any harm to Plaintiff.
6. **No Admission of Liability:** Plaintiff acknowledges that this Agreement does not constitute an admission by the Defendants of any: (a) liability; (b) violation of any federal, state or local statute, law, regulation, order or other requirement of law; (c) breach of contract, actual or implied; (d) commission of any tort; or (e) other civil wrong.
7. **Virginia Law Applies:** This Agreement shall be deemed to have been made within the Commonwealth of Virginia and shall be interpreted, construed, and enforced in accordance with the laws of the Commonwealth of Virginia. This paragraph is intended only to address the law applicable to the interpretation and enforcement of this Agreement, and not to affect the law that may be applicable to any future claims that the Plaintiff may assert for relief outside of this Agreement.
8. **Severability:** If one or more provisions of this Agreement are ruled unenforceable or void, the parties may enforce the remainder of this Agreement.
9. **Non-Waiver:** Failure of either Party to enforce any provision of this Agreement shall not be construed as a waiver of that or any other provision.
10. **Voluntary Agreement:** The Parties have had an opportunity to consult with an attorney before signing this Agreement. Plaintiff acknowledges that, in signing this Agreement, he relied only on the promises set forth in this Agreement and not on any other promise made by the Defendants. This Agreement has been entered into freely, knowingly, and voluntarily and not as a result of coercion, duress, or undue influence.
11. **Entire Agreement:** This Agreement constitutes the entire understanding and agreement between the Parties hereto with respect to its subject matter. This Agreement supersedes all other understandings, agreements, communications, or negotiations (whether written or oral) between the Parties hereto with respect to such subject matter. Each party represents, warrants, and covenants that it has the full legal authority to enter into this Agreement and to perform the duties and obligations arising under this Agreement.
12. **Written Amendment Required:** This Agreement may not be amended, changed, or altered, except by a writing signed by the Parties.

13. **Binding Obligations:** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors, assigns, estate, heirs, and personal representatives.
14. **Authority to Bind:** Each individual executing this Agreement represents and warrants that such person is authorized to do so, and, that upon executing this Agreement, this Agreement shall be binding and enforceable in accordance with its terms upon the party or parties for whom such individual is acting. The Parties further agree that undersigned counsel have the authority to enter into and execute this Agreement on behalf of their clients.
15. **Counterparts:** This Agreement may be executed in counterparts or with electronic signatures, and if so, executed each such counterpart shall have the force and effect of an original. A facsimile or copy of an original signature transmitted to the other Party is effective as an original document.

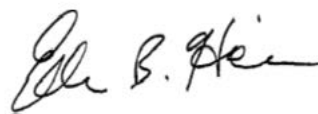
IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the 14th day of December, 2021.

Entered:




Randy Burke
Plaintiff

12-14-21
Date



Eden Heilman
ACLU of Virginia
Counsel for Plaintiff
**Signature as to form only*

01/05/2022
Date



Laura H. Cahill
Assistant Attorney General
Counsel for VDOC Defendants and VDOC

01/06/2022
Date