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Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

**ALFRED YOUNG and LORRAINE
SCOTT, individually and on behalf of all
other persons similarly situated,**

Plaintiffs,

vs.

**CHRIS SMITH, in his official capacity as
Sheriff of Canyon County, Idaho, and
GARY DEULEN, in his official capacity as
Chief Deputy of the Sheriff's Department,**

Defendants.

CASE NO. 1:11-cv-00579-REB

**ORDER APPROVING
AMENDED SETTLEMENT
AGREEMENT**

The parties to this case, by and through their attorneys of record, hereby move this Court for an order approving and adopting the Amended Settlement Agreement, a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference.

This motion is based upon the stipulation and agreement of the parties hereto that the Settlement Agreement dated June 22, 2012 (Doc. 23) and approved by the Court on

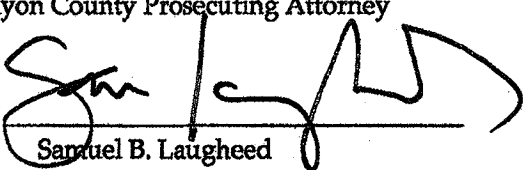
July 9, 2012 (Doc. 25) should be amended to clarify certain provisions and extend the term of the Agreement.

The parties have separately resolved the issue of attorney fees in this matter.

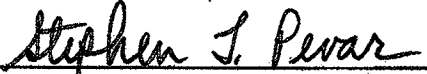
DATED: December 19, 2012.

BRYAN F. TAYLOR
Canyon County Prosecuting Attorney


By:


Samuel B. Laugheed
Deputy Prosecuting Attorney
Attorney for Defendants

DATED: December 19, 2012.


Stephen L. Pevar
American Civil Liberties Union
Attorney for Plaintiffs

DATED: December 18, 2012.


Ritchie Eppink
ACLU of Idaho
Attorney for Plaintiffs

AMENDED SETTLEMENT AGREEMENT

Alfred Young and Lorraine Scott v. Chris Smith and Gary Deulen

Case No. 1:11-cv-00579-REB

1. The parties hereto enter into this amended agreement for the purpose of clarifying certain provisions and extending the term of the settlement agreement approved by the Court on July 9, 2012 (Doc. 25) in order to resolve pending issues regarding the matter of *Alfred Young and Lorraine Scott v. Chris Smith and Gary Deulen*, Case No. 1:11-cv-00579-REB, filed November 23, 2011, alleging retaliation against prisoners in the Canyon County Jail for exercising their First Amendment right of access to courts and to file grievances.

2. The named Plaintiffs in this case are Alfred Young and Lorraine Scott, both former prisoners at the Canyon County Jail, and are represented by the American Civil Liberties Union (“ACLU”). The ACLU acknowledges that it has the power to enter into this agreement on behalf of the Plaintiffs. The parties consent to the jurisdiction of the United States District Court, District of Idaho, to enforce the terms of this settlement as to future prisoners of the Jail.

3. Defendants in this case are Chris Smith, in his official capacity as Sheriff of Canyon County, Idaho, and Gary Deulen, in his official capacity as Chief Deputy of the Canyon County Sheriff’s Office. Because defendants are sued in their official capacities, Canyon County, Idaho is, in essence, the real party. As such, references in this settlement agreement to “Defendants” or “Canyon County” shall refer collectively to the named defendants and Canyon County.

4. The parties agree that the terms of this settlement agreement extend no further than necessary to satisfy the requirements of 18 U.S.C. § 3626(a)(1)(A).

5. Defendants deny all allegations in the complaint filed in this case. This agreement does not constitute, and shall not be construed or interpreted as, an admission of any wrongdoing or liability of any party. Neither the fact of this settlement or any statement contained herein may be used in any other case or administrative proceeding.

6. Defendants will implement a policy providing for a zero tolerance for any kind of actual or threatened retaliatory behaviors by jail officers against prisoners. “Retaliation” includes but is not limited to adverse action, or omission with a potentially adverse effect, or the explicit or implicit threat of either, against a person who has engaged in, or expressed an intent to engage in, a protected activity. Protected activities include submitting a grievance, contacting or attempting to contact an attorney, non-lawyer advocate, jailhouse lawyer, legal or prisoner advocacy organization, complaining or alerting officials about unsafe or unsanitary jail conditions, and conferring with other prisoners as permitted by jail policies about jail conditions. “Adverse action” includes but is not limited to transfer, move, reclassification, denial of benefits or privileges, or any

action that may have a chilling effect on First Amendment rights. A copy of the policy is attached as Exhibit "1."

7. Within ninety (90) days of the approval of this Amended Settlement Agreement, Defendants will conduct a training session with all officers or County employees having contact with prisoners at the Canyon County Jail, including administration, medical staff, maintenance staff, and food service contractors, regarding the jail's zero tolerance retaliation policy. This training will also include training on discrimination based on a prisoner's protected status recognized by law, including race, sex, sexual orientation, religion or disability. This training will be conducted by an attorney from the Canyon County Prosecuting Attorney's Office ("CCPA") or the Idaho Counties Risk Management Program ("ICRMP"). A copy of the training outline and the name and qualifications of the trainer will be provided to the ACLU at least fourteen (14) days prior to the initial training and documentation of the training will be provided to the ACLU upon request.

8. All new detention officers hired for the Canyon County Jail will receive the same retaliation/discrimination training within thirty (30) days of the commencement of their employment as part of the civil liability training provided to the new hires by the CCPA and/or ICRMP.

9. Retaliation training with jail staff will be conducted annually by an attorney from the CCPA and/or ICRMP in conjunction with the annual, required Prison Rape Elimination Act training. Documentation of the training will be provided to the ACLU at its request.

10. Prisoners will not be transferred to another jail for submitting one or more grievances. Whenever a prisoner is moved/transferred from one living unit to another or to another jail facility, the prisoner will be orally notified of the reasons for the move/transfer.

11. All grievances shall be handled in accordance with the jail procedures. In accordance with jail procedures, all grievances are reviewed by jail administration, *i.e.* jail captain or jail lieutenants. Jail administration shall identify all grievances that expressly allege retaliation or allege facts from which adverse actions for retaliatory purposes can be inferred. The jail captain or jail lieutenants will consult with an attorney from the Civil Division of the CCPA on all such grievances regardless of whether the prisoner has indicated acceptance of the first level response to the grievance. Initial investigation of the retaliation allegations of all such grievances will be directed by the jail captain or jail lieutenants in conjunction with the Civil Division of the CCPA, and will include such investigatory measures as will allow the jail captain to identify facts necessary to reach a reasoned and factually supported conclusion regarding whether the jail's anti-retaliation policy was violated and the nature of any ameliorative action. Factors to determine the level of the initial investigation shall include, among other factors: (1) whether the prisoner's allegations, if true, establish retaliation per se, (2) the gravity of the alleged retaliation, and (3) whether the action being grieved was in response to a clear violation of

jail rules by the prisoner. The investigatory measures taken and conclusions reached shall be memorialized by contemporaneous written statement, and provided to the complaining prisoner along with notice of any ameliorative action. Documentation (including audio or video) establishing any fact material to the jail captain's conclusion shall be preserved by the jail as a semi-permanent record. These investigative reports and conclusions will be included in the weekly compliance reports reviewed by jail administration, CCSO administration, and the CCPA civil division and will be made available to the ACLU upon its request.

12. Resolution of a grievance alleging the existence of a condition of confinement covered by either the 2009 *Davis* Consent Decree or this Settlement Agreement that has caused physical injury or pain to the inmate must include a recorded interview conducted by a supervisor with that inmate.

13. When deemed necessary by the Civil Division of the CCPA, because of disputed factual issues unresolved by the initial investigation or other concerns, a more detailed and comprehensive investigation into the allegations of the grievance will be conducted under the direction of the Civil Division of the CCPA. For purposes of this agreement, if the central evidence in the controversy is an unresolved dispute between a prisoner and an employee as to whether the employee threatened to retaliate against the prisoner, a presumption exists that such a dispute will be referred for further investigation. This investigation will be assigned to Bill Crawford, the chief investigator employed by the CCPA, who has twenty-two (22) years' experience as a detective. Notice of the investigation will be provided to the inmate and ACLU. Crawford will personally be responsible for the investigation, but may utilize other POST-certified law enforcement personnel working with him as investigators in the CCPA office to assist him in specific aspects of the investigation. As a trained professional tasked with the responsibility to fully and fairly investigate alleged retaliatory actions, Crawford will perform the investigation using reasonable tools and methods necessary to fully perform his responsibility, including use of polygraph examinations of prisoners and/or jail staff at county expense. A written report on the investigation will be prepared by Crawford within fourteen (14) days of being requested to investigate. The report will be reviewed by an attorney in the Civil Division of the CCPA, and provided to the ACLU and complaining inmate within five (5) days thereafter. If Crawford does not perform polygraphs of the prisoners and jail staff and there are unresolved conflicts between the statements of prisoners and the jail staff, the report will explain why polygraph examinations were not conducted. Following review of the report, appropriate recommendations will be made by the Civil Division of the CCPA to the jail administration.

If the County believes that a portion of the report needs to be redacted for legitimate security reasons (such as the name of a confidential informant), it will send the ACLU both an unredacted copy for ACLU use and a copy of the redacted version provided to the prisoner.

Whenever Crawford makes a finding or a recommendation indicating a problem or shortcoming, the County will address any ameliorative or mitigating steps it has taken in

response in writing and a copy of this response will be sent within five (5) days to the ACLU and the complaining inmate.

14. If Bill Crawford has a conflict of interest in any investigation, Laurie Balmer, the Canyon County Sheriff's Office Investigator for Office of Professional Standards, will perform the investigation.

15. If the ACLU is dissatisfied with the results of the investigation, within ten (10) days after receipt of the investigation report, it may demand that an additional investigation be performed by David Sasser. However, if that investigation results in a finding that there is no basis for the claimed retaliation, or does not differ significantly from the conclusions reached by the prior investigation, the ACLU will be responsible for the costs of the investigation. The parties understand that the Plaintiffs are not required to request an investigation by Mr. Sasser prior to commencing other remedies available under this agreement.

16. The Inmate Handbook will include a notification that staff is not permitted to retaliate, or threaten retaliation, against a prisoner for engaging in any protected activity as set forth in paragraph 6 above and that any prisoner who believes that he/she has been retaliated against, or threatened with retaliation, may file a grievance that will be investigated by jail administration.

17. The parties agree to dismiss this case with prejudice upon the execution of this agreement and a final determination or resolution of the issue of attorney's fees payable to the ACLU for its work on this action. The parties agree that the issue of attorney's fees sought by the ACLU for its work on this case shall be determined independent of this agreement.

18. The relief granted in this amended agreement shall terminate on the two year anniversary of the date that the parties execute this agreement, unless the Plaintiffs demonstrate to the Court that the Defendants are not in substantial compliance with the agreement in a motion filed at least fourteen (14) days prior to the two (2) year anniversary.

19. The parties agree that in the event of a dispute between them regarding the terms and conditions of, or compliance with, this agreement, they will provide written notice to the other of the alleged dispute, including a statement of facts sufficient to identify their dispute and make it possible for them to attempt to resolve the matter through negotiation. In the event they are unable to resolve the matter within twenty (20) days, each party has the option of filing legal action with the Court to seek resolution of the dispute.

20. The parties agree to bear their own attorney's fees and costs relating to the monitoring, enforcement or compliance with this agreement. If a court of competent jurisdiction finds that a material breach has occurred, it may award attorney's fees and costs to the prevailing party.

21. This amended agreement constitutes the entire agreement between the parties as to all claims raised by the Complaint, and supercedes all prior agreements, representations, statements, promises and understandings, whether oral or written, express or implied, with respect to this agreement.

22. This agreement may only be amended by a signed, written agreement of the parties.

21. This amended agreement constitutes the entire agreement between the parties as to all claims raised by the Complaint, and supercedes all prior agreements, representations, statements, promises and understandings, whether oral or written, express or implied, with respect to this agreement.

22. This agreement may only be amended by a signed, written agreement of the parties.

PLAINTIFFS

Stephen J. Pevar

Stephen Pevar
American Civil Liberties Union
Attorney for Plaintiff

Dated: 12/19/12

Ritchie Eppink

Ritchie Eppink
ACLU of Idaho
Attorney for Plaintiff

Dated: 12/18/2012

DEFENDANTS

Chris Smith

Chris Smith
Canyon County Sheriff

Dated: _____

Samuel B. Laugheed

Samuel B. Laugheed
Attorney for Defendants

Dated: 12-19-2012

APPROVED AND ENTERED BY THE COURT:

Dated: February 15, 2013

Ronald E. Bush

Honorable Ronald E. Bush
United States Magistrate Judge



CANYON COUNTY SHERIFF'S OFFICE
DALE G. HAILE DETENTION CENTER STANDARD OPERATING PROCEDURE

Title: Anti-Retaliation Policy Effective: _____, 2012
Procedure: 2.03 Revisions:

Cross Reference: Idaho Jail Standards Chps. 12 and 13; 2009 Decree; 2012 *Young* case.

A. PURPOSE:

The purpose of this procedure is to supplement SOP 2.03 and expressly prohibit staff from engaging in retaliatory conduct.

B. POLICY:

It is the policy of the CCSO that all staff are expressly prohibited from engaging in actual or threatened retaliation against prisoners and such behaviors will not be tolerated.

C. PROCEDURE:

1. Definitions:

- a. "Retaliation" includes but is not limited to adverse action, or omission with a potentially adverse effect, or the explicit or implicit threat of either, against a person who has engaged in, or expressed an intent to engage in, a protected activity.
- b. "Protected activities" include submitting a grievance, contacting or attempting to contact an attorney, non-lawyer advocate, jailhouse lawyer, legal or prisoner advocacy organization, complaining or alerting officials about unsafe or unsanitary jail conditions, and conferring with other prisoners as permitted by jail policies about jail conditions.
- c. "Adverse action" includes but is not limited to transfer, move, reclassification, denial of benefits or privileges, or any action that may have a chilling effect on First Amendment rights.

2. In accordance with jail procedures, all grievances are reviewed by jail administration. The jail administration shall identify all grievances that expressly allege retaliation or allege facts from which adverse actions for retaliatory purposes can be inferred. The jail captain will consult with an attorney from the Civil Division of the CCPA on all such grievances regardless of whether the prisoner has indicated acceptance of the first level response to the grievance.
3. An investigation of the retaliation allegations of all such grievances will be directed by the jail captain in conjunction with the Civil Division of the CCPA, and will include such investigatory measures as will allow the jail captain to identify facts necessary to reach a reasoned and factually supported conclusion regarding whether retaliatory adverse actions were committed and written findings will be made.

CANYON COUNTY SHERIFF'S OFFICE
DALE G. HAILE DETENTION CENTER STANDARD OPERATING PROCEDURE

4. When deemed necessary by the Civil Division of the CCPA, because of unresolved factual issues during the initial investigation, a more detailed and comprehensive investigation into the allegations of the grievance will be conducted under the direction of the Civil Division of the CCPA. A written report will be prepared regarding this investigation.