

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

ZACHARY SMITH,	)	
	)	
Plaintiff,	)	
	)	Civil Action No. 1:18-cv-00288-NT
v.	)	
	)	
JOSEPH FITZPATRICK, et al.,	)	
	)	
Defendants	)	

**NOTICE OF SETTLEMENT AND JOINT MOTION TO INCORPORATE TERMS OF  
SETTLEMENT INTO ORDER OF DISMISSAL**

Pursuant to F. R. Civ. P. 41(a)(2), Plaintiff, Zachary Smith, and Defendant Joseph Fitzpatrick, Commissioner of the Maine Department of Corrections (collectively, “the Parties”) hereby provide notice of settlement and move to dismiss this action as to Defendant Fitzpatrick, without prejudice, upon the condition that the Court incorporate the agreement into the order of dismissal and retain jurisdiction to enforce the agreement.

The Parties have reached an agreement to settle Plaintiff’s claim against Defendant Fitzpatrick. A copy of the Settlement Agreement is submitted with this motion as Exhibit A. Notably, the Agreement does not resolve any parties’ claim for fees or costs, and the Plaintiff intends to file a motion for attorneys’ fees and costs pursuant to Fed. R. Civ. P. 54(d)(2)(B) with subsequent briefing and documentation of fees and costs to be submitted.

Pursuant to the Settlement Agreement, the Parties request that the court order the following:

1. That the court retain jurisdiction over the case for the purpose of enforcing the Settlement Agreement and determining an award of attorneys’ fees and costs, if any;

2. That the Court incorporate the terms of the Settlement Agreement into its order of dismissal and agree to retain jurisdiction over the Settlement Agreement for purposes stated above;

4. That, should the above provisions be acceptable, the Court dismiss the Complaint without prejudice as to defendant Fitzpatrick.

Respectfully submitted,

September 27, 2018

/s/ James E. Fortin  
James E. Fortin  
Assistant Attorney General  
Attorney for Defendant Joseph Fitzpatrick

/s/ Zachary L. Heiden  
Zachary L. Heiden  
American Civil Liberties Union  
of Maine Foundation  
121 Middle Street, Suite 200  
Portland, ME 04103  
(207) 619-6224  
[heiden@aclumaine.org](mailto:heiden@aclumaine.org)

/s/ Emma E. Bond  
Emma E. Bond  
American Civil Liberties Union  
of Maine Foundation  
121 Middle Street, Suite 200  
Portland, ME 04103  
(207) 619-8687  
[ebond@aclumaine.org](mailto:ebond@aclumaine.org)

Gabe Eber\*  
American Civil Liberties Union  
National Prison Project  
915 15th St., NW, 7th Floor  
Washington, DC 20005  
(202) 548-6601  
[geber@aclu.org](mailto:geber@aclu.org)

*On behalf of Plaintiff, Zachary  
Smith  
\*admitted pro hac vice*

**Certificate of Service**

The undersigned hereby certifies that he electronically filed the above document with the Clerk of Court using the CM/ECF system, which will serve a copy on all counsel of record.

September \_\_, 2018

/s/ James E. Fortin  
James E. Fortin  
Assistant Attorney General