

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

Case No. 4:07-CV-474-SPM/WCS

FELIX GARCIA, individually,

Plaintiff,

vs.

KENNETH S. TUCKER, in his official
Capacity as Secretary of the Florida
Department of Corrections,

Defendant.

_____ /

SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS

KNOW ALL PERSONS BY THESE PRESENTS:

1. The undersigned, **Felix Garcia DC#482246** (hereinafter "the Plaintiff"), for the total consideration outlined in paragraphs 2-4 below hereby and for his heirs, executors, administrators, successors, and assigns, forever releases, acquits, and discharges the State of Florida, the Florida Department of Corrections, and their agents, servants, employees, and successors of and from any and all claims, actions, causes of action, demands, rights, damages, costs, loss of service, expenses and compensation whatsoever, including attorney's fees, which the undersigned Plaintiff now has or which may hereafter accrue in relation to Plaintiff's request for an accommodation under the Americans with Disabilities Act and Section 504, Rehabilitation Act, for an electronic hearing assistive device which attaches to his hearing aid, as described in greater

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detail below in paragraph two (2), and which is at issue in this cause.

2. As consideration for this settlement, the Defendant agrees to the following. Plaintiff's attorneys shall send to the Defendant for final inspection and approval the following electronic equipment for Plaintiff to use with his hearing aid to hear the television transmissions and radio signals while he is in the custody of the Florida Department of Corrections: (1) Sangean America Pocket AM/FM Receiver, clear case; (2) Clarity MHA100 Cell/Mobile Phone Amplifier; (3) NoiZfree Audio Monaural Earhook; and adaptors (hereinafter referred to as "electronic hearing assistive devices" or "electronic equipment"). Such possession and use shall apply so long as the Plaintiff obeys the Florida Department of Corrections' rules pertaining to retention and possession of said equipment, specifically including but not limited to the rules which prohibit hiding contraband in the electronic equipment or altering the equipment from its original state, and so long as Plaintiff remains in a housing status that permits possession of such electronic equipment. Within ten (10) days of Defendant's receipt of said equipment, Defendant shall have the equipment inspected for approval, and if approved, Defendant shall send the tendered electronic equipment to the Plaintiff for his continued use. If the equipment is not approved for any reason, the equipment shall be immediately returned to the attorneys for the Plaintiff with an explanation of what must be done to secure approval. In the event the electronic equipment later does not operate, Plaintiff or his counsel shall be permitted to purchase through the canteen or from an approved outside vendor, identical or similar replacement

electronic equipment, subject to the inspection and approval of the Department. This Settlement shall apply and remain in full force and effect at all times that Plaintiff is in the custody and control of the Defendant, and the Defendant agrees to house the Plaintiff at a state-operated facility able to accommodate the hearing impaired for the duration of his sentence and custody with the Defendant, and not transfer Plaintiff to any facility that is operated under private contract unless Plaintiff specifically requests a good adjustment transfer to a private contract facility, or to any county jail facility due to prison overcrowding. However, said Settlement shall not apply if the Plaintiff is transferred to any county jail facility to which the Plaintiff may be temporarily housed for purposes of going to court, and over which the Defendant has no control. Additionally, said Settlement shall not apply if Plaintiff is temporarily transferred or relocated to a state-operated facility, a private facility, or a county facility due to emergent conditions not under the control of the Department of Corrections, such as acts of terrorism, or extreme weather conditions, hurricanes, forest fires, floods, or other acts of nature.

3. Defendant shall house the Plaintiff in a correctional institution able to accommodate the hearing impaired and in a housing unit which employs a radio transmitter connected to a television for audio transmission, unless Plaintiff is placed in a confinement status, such as close management, disciplinary confinement, administrative confinement, or similar status or in a restricted housing status, such as a crisis stabilization unit, a transitional care unit, a self-harm observation status (SHOS), a hospital or a

medical infirmary. If Plaintiff is placed in a status that does not allow possession of electronic equipment, the electronic hearing assistive devices will be placed in property storage until Plaintiff is released from that status.

4. Defendant further agrees to pay Plaintiff's counsels' reasonable attorney's fees, expenses, and costs of this litigation for efforts made specifically to further Plaintiff's individual request for an accommodation under the Americans with Disabilities Act and Section 504, Rehabilitation Act, in this suit. Attorney's fees, expenses, and costs incurred in conjunction with previous claims of retaliation in this suit, motions for transfers, efforts to add multiple plaintiffs to the litigation, the related appeal in Case No. 10-15856-GG, the attempts to consolidate this case with the separately filed cases for plaintiffs Tracy Blackburn and Charles Johnson, and the request for class certification shall not be compensated. The parties shall have sixty (60) days from the date of the entry of this Settlement Agreement to engage in settlement discussions to attempt to resolve Plaintiff's claim for attorney's fees, expenses, and costs. In the event the parties are unable to agree and resolve the attorney's fees, expenses, and costs through informal discussions within thirty (30) days, the parties shall select a mutually agreeable mediator at defendant's expense in the Northern District of Florida and mediate the attorney's fees, expenses, and costs within the remaining thirty (30) day period. If the mediation results in an impasse, Plaintiff's counsel shall file with the U.S. District Court for the N.D. Fla. within thirty (30) days from the date of the impasse a Motion and Memorandum for

Plaintiff's Attorneys' Fees, Expenses, and Costs. Defendant shall file his Response within twenty (20) days from the date of Plaintiff's Motion for Attorneys' Fees, Expenses, and Costs, and the matter shall then be resolved by the Court.

5. In order to expedite resolution of the attorney's fees, expenses, and costs, Plaintiff's counsel shall within ten (10) days of executing the Settlement Agreement in this matter, provide Defendant's counsel with attorney time records, in Microsoft Excel, Microsoft Word, or WordPerfect format, detailing the time expended, as well as an itemized statement of expenses and costs.

6. Upon execution of this agreement, the parties shall notify the Court of pending settlement and request the Court to retain jurisdiction for a period of 180 days in order to allow the terms of the Settlement Agreement to be completed, following which the case shall be dismissed with prejudice.

7. When the terms of the Settlement Agreement are completed, the parties hereby agree to file with the Court a Joint Voluntary Dismissal with Prejudice as to said action and to execute any such other documents as may be necessary in order to accomplish the settlement and discharge of the parties contemplated herein.

8. It is understood and agreed that this settlement is the compromise of a disputed claim and that no actions taken as a result of this agreement are to be construed as an admission of liability on the part of the parties hereby released, and that said releasees deny liability therefor and intend merely to avoid further litigation. It is further understood and agreed that this release, and the consideration for it, extends to all claims asserted or which

could have been asserted by the undersigned to obtain a reasonable accommodation in obtaining an electronic hearing assistive device in Case No. 4:07-CV-474-SPM/WCS filed in the United States District Court for the Northern District of Florida.

9. The parties agree that since the U.S. District Court will not retain jurisdiction of this cause once dismissed with prejudice, any alleged breach of this Settlement Agreement would have to be brought in state circuit court as a breach of contract. Should such an action be brought by the Plaintiff, Defendant hereby will not attack the validity of this Settlement Agreement and in accordance with *Pan American Tobacco Corp v. Department of Corrections*, 471 So.2d 4 (Fla. 1985), agrees not to raise the defense of sovereign immunity.

10. The parties agree that venue is proper only in the Second Judicial Circuit in Leon County. The parties further agree that the alleged failure to abide by this Settlement Agreement meets the jurisdictional amounts necessary to be in circuit court, and said jurisdiction will not be contested.

11. The parties agree that before any alleged violation(s) of this Settlement Agreement is brought before a court, the parties shall attempt to resolve the alleged violation(s) among themselves.

12. The parties agree that if any breach of contract action is instituted to enforce this Settlement Agreement, the losing party shall pay the prevailing party's attorneys' fees at market rates, litigation expenses and costs.

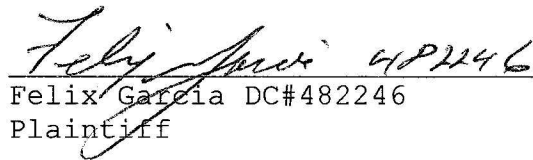
13. The undersigned Plaintiff hereby declares and represents that this Release is made without reliance upon any statement or

representation of the party or parties hereby released or their representatives.

14. The undersigned Plaintiff further declares and represents that no promise, inducement or agreement not herein expressed has been made to him, and that this Release contains the entire agreement between the parties hereto, and that the terms of this Settlement Agreement and Release are contractual and not a mere recital.



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Attorney for Defendant Kenneth S.
Tucker, Secretary, Department of
Corrections

 482246
Felix Garcia DC#482246
Plaintiff

Dated: 03/07/2012

Dated: 2-22-12



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