

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

IN RE: CONDITIONS AT LAKE
COUNTY JAIL

CV 22-127-M-DWM

RELEASE AND SETTLEMENT
AGREEMENT

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This Release and Settlement Agreement (“Agreement”) is made and entered into between Aloysius Blackcrow, Tyler Erickson, Marcus Azure, Nathaniel Madplume, Stoney Corcoran, James Elverud, and Monica Green, as Class Representatives and on behalf of the Class Members that they represent (“Plaintiffs”) pursuant to the October 11, 2022 Court Order certifying the Class (Doc. 49), and Defendant Lake County, collectively referred to herein as “the Parties.” The Parties stipulate and agree to the following:

1. This action has been brought by Plaintiffs and makes certain allegations contained in Plaintiffs’ First Amended Complaint (“Complaint”) in the case entitled *In Re: Conditions at Lake County Jail*, filed in the United States District Court for the District of Montana, Missoula Division, Case No. CV- 22-127 (hereinafter referred to as “Action”). This Agreement does not extend to any

individual complaints brought by Class Representatives or Class Members, except to the extent the individual claims seek the same relief sought in this class action.

2. Defendant Lake County denies each and every allegation of wrongdoing as stated in Plaintiffs' Complaint, and, further, denies liability.

3. The Parties now desire to enter into this Agreement in order to fully and finally settle all claims, causes of action, and defenses, and to dismiss the Action with prejudice, upon the terms and conditions set forth in this Agreement.

4. The Parties and their respective attorneys acknowledge that this settlement is made in good faith, pursuant to 18 U.S.C. § 3626(c)(2) of the Prison Litigation Reform Act, and that settlement of this claim is not an admission of liability, or of unconstitutional or illegal conduct by or on the part of the Defendant Lake County and/or Lake County's future, current or former officers, agents and employees, and shall not serve as evidence of any wrongdoing by or on the part of the Defendant Lake County or Lake County's future, current or former elected officials, agents current or former officers, agents and employees. The Parties and their respective attorneys further acknowledge that settlement is made to conserve the expense in time and money of further litigation, for the purpose of judicial economy and to avoid the uncertainty of the outcome of litigation.

IT IS HEREBY AGREED by and between the Parties as follows:

5. RELEASE AND DISCHARGE:

5.1 The term “Releasees” as used in this Release and Settlement Agreement shall mean the Defendant Lake County and Lake County’s future, current or former officers, employees, agents, attorneys, servants, elected officials, affiliates, partners, insurers, predecessors and successors in interest, and assigns.

5.2 This Release and Settlement Agreement shall be a fully binding and complete settlement between the Plaintiffs and the Releasees and their respective heirs, assigns, and successors.

5.3 Plaintiffs acknowledge and agree that the release and discharge set forth in this Release and Settlement Agreement is a general release. Plaintiffs expressly waive and release any and all claims for damages (including but not limited to declaratory and injunctive relief) that Plaintiffs may have against the Releasees in the Action that exist as of this date, including claims which Plaintiffs do not know or suspect to exist, whether through ignorance, oversight, error, negligence, or otherwise, which if known, would materially affect Plaintiffs’ decision to enter into this Release and Settlement Agreement.

5.4 Plaintiffs expressly do not waive or release future claims for alleged breach of the obligations set out in this Settlement Agreement. Plaintiffs further agree that they will accept the obligations referenced below as a complete compromise of matters involving disputed issues of law and fact concerning this

Action. It is understood and agreed to by the Parties that this settlement is a compromise of a disputed claim, and that the obligations undertaken, and payments made are not to be construed as an admission of liability on the part of the Releasees, by whom liability is expressly denied.

5.5 Plaintiffs represent that there are no liens and acknowledge that the Releasees have materially relied on that representation in entering into this Release and Settlement Agreement.

SUBSTANTIVE PROVISIONS AND OBLIGATIONS:

In consideration of this Release and Settlement Agreement, Defendant Lake County agrees to the following:

6. Facilities

6.1 Defendant Lake County will construct a secure outdoor recreation area of approximately 1,500 square feet of space for the use by inmates of the Lake County Jail. The outdoor recreation area will be directly accessible from the Lake County Jail and constructed in accordance with American Correctional Association Standards and architectural design. Defendant Lake County agrees to have the outdoor recreation area completed no later than one year from the date on which this Court approves this Release and Settlement Agreement and dismisses this matter, unless unforeseen delays arise out of construction of the outdoor recreation area. Defendant Lake County further agrees to provide Plaintiffs' counsel,

Constance Van Kley of Upper Seven Law and Timothy Bechtold of the Bechtold Law Firm, with opportunities to inspect, comment on, and offer reasonable design alternatives to the architectural design plans for the outdoor recreation area.

6.2 Defendant Lake County agrees to construct additional inmate housing units totaling approximately 960 square feet of space. The additional inmate housing units shall be constructed in accordance with American Correctional Association Standards and architectural design. Defendant Lake County agrees to have the additional housing units completed no later than three years from the date on which this Court approves this Release and Settlement Agreement and dismisses this action, unless unforeseen delays arise out of construction of the additional housing units. Defendant Lake County further agrees to provide Plaintiffs' counsel, Constance Van Kley of Upper Seven Law and Timothy Bechtold of the Bechtold Law Firm, with opportunities to inspect, comment on, and offer reasonable design alternatives to the architectural design plans for the additional housing units.

7. Classification

7.1 Defendant Lake County agrees to continue to implement and sustain an objective inmate classification policy consistent with generally accepted jail practices and conforming to the practices supported by the National Institute of Corrections.

7.2 Lake County Jail agrees to appoint a classification officer or shift supervisor, who will receive training specific to inmate classification and review classification at the Jail.

7.3 The inmate classification policy will provide Lake County inmates with an opportunity to (1) learn their specific classification level upon booking; (2) learn whether their placement within the facility corresponds to their classification level; and (3) request a review of their specific classification level after twenty-one (21) days of being assigned their initial classification level.

7.4 Defendant Lake County shall make best efforts to separate female inmates by classification as allowed by the jail design and population.

8. Jail Policies

8.1 Defendant Lake County has adopted Jail policies adapted from Lexipol and is in the process of adopting Jail procedures adapted from Lexipol. These policies and procedures represent appropriate efforts to comply with statutory and constitutional requirements. Defendant Lake County will maintain these policies or similarly appropriate policies and will conduct and provide training for all staff that implement these policies.

8.2 Defendant Lake County has allowed inmates regular access to a Native American religious leader. Defendant will continue to allow inmates with access to Native American religious leaders.

9. Fees

9.1 In consideration of this Release and Settlement Agreement, Defendant Lake County will pay Plaintiffs for their attorneys' fees and costs incurred in this action, and reduced in compliance with 18 U.S.C. § 3626(f)(4), for a total amount of \$189,400.24.

9.2 The attorneys' fees referenced in paragraph 9.1 above shall be paid to Constance Van Kley of Upper Seven Law and Timothy Bechtold of the Bechtold Law Firm, within sixty (60) days from the date on which this Court approves this Release and Settlement Agreement. Defendant Lake County shall remit payment in the amounts of (a) \$132,572.84 to Upper Seven Law, P.O. Box 31, Helena, MT 59624; and (b) \$56,827.40 to Bechtold Law Firm, PLLC, P.O. Box 7051, Missoula, MT 59807.

9.3 Plaintiffs shall be solely responsible for any federal, state, and/or local taxes, interest, penalties, or other charges that may be assessed against them relating to the payments referred to in Paragraph 9.2 of the Release and Settlement Agreement. Within ten (10) days of receipt by either party of a tax-related inquiry or communication regarding the payment provided pursuant to Paragraph 9.2, the receiving party shall send to the other party written notice of the same.

9.4 Plaintiffs and their attorneys release, waive, and relinquish any claims or rights against the Releasees to attorneys' fees, costs, and expenses

incurred beyond the payments set forth in Paragraph 9.2, including waiving and relinquishing any recovery against the Defendants in the Action pursuant to 42 U.S.C. 1988 or any other statute, rule, or common-law provision, including any and all claims to attorney's fees and costs incurred in any proceeding.

General Provisions

10. Notice of the preliminary approval for class action settlement shall be provided by Defendant Lake County posting a Court-approved settlement notice in a visible location within the Lake County Jail's booking room, visitation room, recreation room, and housing units for a 30-day period as determined by the Court. Notice of the final class action settlement shall be provided by Defendant Lake County posting the Court-approved settlement notice in a visible location within the Lake County Jail's booking room, visitation room, recreation room, and, when completed, outdoor recreation facility until Defendant Lake County has fully complied with the obligations set forth in this Agreement.

11. This Release and Settlement Agreement and any documents that may be executed under paragraph 14 herein contain the entire agreement between the Parties with regard to the settlement of this action, and shall be binding upon and inure to the benefit of the Parties hereto, jointly and severally, and the heirs (both known and unknown), interested parties, beneficiaries, executors, administrators, personal representatives, successors, and assigns of each.

12. This Release and Settlement Agreement is entered into in the State of Montana and shall be construed and interpreted in accordance with its laws. Terms contained herein shall not be construed against a party merely because that party is or was the principal drafter.

13. In entering into this Release and Settlement Agreement, Plaintiffs represent that they have relied upon the advice of their attorneys who are the attorneys of their own choice, and that the terms of this Release and Settlement Agreement have been interpreted and explained to them by their attorneys, and that those terms are fully understood and voluntarily accepted by Plaintiffs. Plaintiffs also represent and warrant that no other person or entity has or has had any interest in the claims or causes of action referred to herein, that they and their attorneys have the sole right and exclusive authority to execute this Release and Settlement Agreement, and that they have not sold, assigned, transferred, conveyed, or otherwise disposed of any of the claims or causes of action referred to herein.

14. All parties agree to cooperate fully and to execute a stipulation to dismiss this matter with prejudice, and to take all additional actions which are consistent with, and which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Release and Settlement Agreement.

15. If any provision, or any part of any provision, of this Release and Settlement Agreement is for any reason held to be invalid, unenforceable, or

contrary to any public policy, law, statute, regulation, or ordinance, then the remainder of this Release and Settlement Agreement shall not be affected thereby and shall remain valid and fully enforceable.

16. This Release and Settlement Agreement may be executed by signature in counterparts, and all such counterparts together shall constitute one Release and Settlement Agreement. Executed documents sent via facsimile or electronic mail are valid and binding and shall have the same force and effect for all purposes as the original.