

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

SAMUEL S. UPTHEGROVE,

Plaintiff,

v.

Case No. 15-CV-0509

LESLEY BAIRD, KURT SCHWEBKE,
MARK ISAACSON, RONALD SWENSON,
JEREMIAH MILLARD and ISAAC HART,

Defendants.

AND

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

SAMUEL S. UPTHEGROVE,

Plaintiff,

v.

Case No. 16-CV-424

BRYAN BARTOW, et al.,

Defendants.

SETTLEMENT AGREEMENT, RELEASE AND COVENANT NOT TO SUE

The parties in the above-referenced cases, Samuel Upthegrove, plaintiff, appearing pro se and the Defendants, by their attorneys, Attorney General Brad D. Schimel and Assistant Attorney General Monica Burkert-Brist, have agreed upon the

terms of a resolution of these cases, a release of claims and a covenant by plaintiff not to file further litigation. The plaintiff, the State of Wisconsin and the defendants in the pending cases desire to enter into this agreement with plaintiff for the purpose of settling all of the pending cases as well as to obtain a release of all pending notices of claim and any other claim, whether asserted or unasserted by plaintiff up through the date plaintiff signs this agreement. The parties agree as follows:

1. The parties agree that the State of Wisconsin shall pay the total sum of Thirteen Thousand Dollars and Zero Cents (\$13,000.00) in full settlement of all of the pending cases, and any and all pending notices of claim, pursuant to Wis. Stat. §§ 165.25(6) and 20.865, or any other filed or unfiled and unasserted potential claims or lawsuits that Upthegrove may have against any State of Wisconsin official or employee arising from or related to his incarceration in the State of Wisconsin up to and through the date Upthegrove signs this agreement. All other damages, fees and costs of any kind or type are hereby waived and forever discharged.

2. Upthegrove and the State of Wisconsin agree that the settlement amount shall be distributed by the State as follows: 1) the State will use the settlement funds to first fully discharge the following obligations of Upthegrove, as identified on the Trust Account Statement attached hereto as Exhibit A, in the following order of priority: **first to all OPEN unresolved restitution or victim/witness surcharges, second to all OPEN DNA surcharges, medical copays and legal loans, third to all OPEN court costs, and lastly to all OPEN institution restitution debts;** and 2) after the amounts above are paid, the balance shall be deposited in Upthegrove's

trust account and be distributed as required by the Wisconsin Administrative Code and/or DOC policy and procedures, with the exception that no transfer from these funds shall be made to Upthegrove's release account.

3. The parties agree that based upon their estimates from Exhibit A, the total amount of the funds which will be distributed to pay off existing obligations is estimated to be \$10,643.86, leaving an estimated \$2,356.14 as net proceeds to Upthegrove. The parties acknowledge and agree that these figures may change slightly based upon the actual balances identified in paragraph 2 on the date the funds are received at Upthegrove's institution.

4. Samuel Upthegrove and the defendants, by their counsel, will sign a stipulation for dismissal of each of the pending cases, with prejudice and without costs, upon notice from Green Bay Correctional Institution that it has received the State's payment for deposit in Upthegrove's Trust Account. This payment shall not be deposited until after Green Bay Correctional Institution receives written notice from defense counsel that Samuel Upthegrove has signed the stipulations of dismissal for each of the pending cases.

5. Samuel Upthegrove, for himself, his heirs, and assigns, releases and discharges the State of Wisconsin, the Wisconsin Department of Corrections and the Department of Health Services, including all of its officers, employees, and agents, and specifically each of the named defendants in the pending cases, from any and all present or future, claims, demands, or causes of action he has asserted, which he may have asserted, or which he could have asserted which relate in any manner to the events or

circumstances arising from his incarceration or hospitalization in any State of Wisconsin facilities, as set forth in the complaints and other pleadings in the pending cases, whether or not based on state or federal law, and whether or not said claim, demand, or cause of action now exists or may hereafter accrue, is known or unknown, or is anticipated or unanticipated.

6. This settlement agreement relates not only to past actions described in the complaint and other pleadings of the pending cases, but also to all actions described in any pending Notices of Claim filed pursuant to Wis. Stat. §893.82 and any and all claims whether known or unknown, asserted or unasserted against the State of Wisconsin and any current or former state employee up to and through the date Upthegrove signs this Settlement Agreement.

7. Samuel Upthegrove so releases and so discharges all other persons, corporations, and entities whatsoever, governmental and non-governmental alike, such as are classed as joint tortfeasors under the laws of the state of Wisconsin or the United States, completely barring any right of action against any such tortfeasors whether or not named herein relating to past actions named in the complaint and other pleadings in the pending cases which occurred while Samuel Upthegrove has been incarcerated or medically confined at any correctional institution or state mental health treatment facilities.

8. This agreement is a full, final and complete compromise and settlement of disputed claims arising out of Samuel Upthegrove's incarceration at various facilities of the Wisconsin Department of Corrections and his medical treatment at facilities

operated by the Wisconsin Department of Health Services. The amount to be paid as stated in this Agreement is the sole consideration for this settlement. Neither the execution of this Settlement Agreement, nor any terms thereof, may or shall be construed or used as an admission of any liability or wrongdoing or as evidence thereof, nor as an admission by any party that its respective position heretofore asserted is anything but fully and completely meritorious.

9. This Agreement shall also be deemed to be a covenant by Upthegrove not to sue any of the defendants for any of the matters released or discharged by this Agreement and not to file any new lawsuits against any state employee or official arising from claims discharged under the terms of this Agreement. Upthegrove agrees to indemnify, defend, and hold harmless each Released Party from any obligation, liability, claim, or expense (including reasonable attorneys' fees) resulting from a breach of this covenant not to sue.

10. By signing this agreement, Upthegrove represents that he has read this settlement agreement, understands all its terms, was given an opportunity to ask questions about the agreement and that he signs this document and accept its terms knowingly and willingly.

11. Upthegrove agrees that in making this release he relies on his own judgment, belief, and knowledge as to all of the issues about his current or potential claims, including the nature and extent and duration of his injuries. Upthegrove warrants and acknowledges that he is not relying on representations or statements made by any of the defendants or anyone representing or employed by them other

