

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

KENNETH FOWLER,

Plaintiff,

v.

Case No. 14-cv-028

EDWARD F. WALL, SECRETARY,
WISCONSIN DEPARTMENT OF
CORRECTIONS,

Defendant.

RELEASE AND SETTLEMENT AGREEMENT

This Release and Settlement Agreement (“Agreement”) is made between Plaintiff Kenneth Fowler (“Mr. Fowler”), Defendant Edward F. Wall, the State of Wisconsin (“the State”), and the Wisconsin Department of Corrections (“DOC”), and all employees of those entities (collectively, “Defendants”) (Mr. Fowler and each of the Defendants are each a “Party” and collectively the “Parties”), as of the date on which it is fully executed by the Parties.

WHEREAS, Mr. Fowler is a prisoner in custody at Jackson Correctional Institution;

WHEREAS, Mr. Fowler has a learning disability (“Learning Disability”) that impairs his ability to read and write;

WHEREAS, Mr. Fowler filed a Second Amended Complaint in the U.S. District Court for the Western District of Wisconsin, in Case No. 14-CV-28 (the “Action”), alleging that various DOC employees violated his rights under the

Americans with Disabilities Act and the Rehabilitation Act by refusing to provide him with reasonable accommodations for his Learning Disability;

WHEREAS, Mr. Fowler and Defendants desire to settle the claims alleged in the Second Amended Complaint without the cost, expense, and uncertainty of trial and without admission of fault or liability;

NOW THEREFORE, in consideration of the monies, mutual promises, and covenants contained herein, the Parties agree as follows:

1. SETTLEMENT PAYMENT. The State agrees to pay the amount of Three Thousand Dollars (\$3,000) to Mr. Fowler (the "Settlement Payment"). The State shall arrange for the full payment of this amount via a check made payable to the client trust account of Foley & Lardner LLP. Mr. Fowler understands and agrees that he is responsible for any possible state or federal taxes that might later be determined to be owed on this payment. A portion of any funds subsequently distributed into Mr. Fowler's prison trust account may be allocated to Mr. Fowler's release account in accordance with Wis. Admin. Code § 309.466(1).

2. COMPUTER ACCESS TO ACCOMMODATE LEARNING DISABILITY. Defendants shall provide the following accommodation to Mr. Fowler for purposes of addressing his Learning Disability:

- a. Mr. Fowler shall have access to a computer equipped with software that reads written text aloud and writes spoken words, such as Dragon Naturally Speaking software;

- b. the above computer access shall be provided to Mr. Fowler in a room or separated area with no inmates, Corrections staff or other third parties present, except that Corrections staff may be present in the event that it is necessary to address a specific security concern or Mr. Fowler is on restricted status; in the event Corrections staff are present to address a specific security concern or Mr. Fowler is on restricted status, the Corrections staff shall make efforts that are reasonable under the circumstances to avoid seeing what Mr. Fowler is reading or writing or listening to what he is speaking to the computer; Corrections staff shall provide Mr. Fowler with a written explanation of all specific security concerns that they believe require the presence of Corrections staff;
- c. the above computer access shall be provided to Mr. Fowler for one hour per day between the hours of 9 a.m. and 5 p.m., Monday through Friday, excluding holidays and any other days in which Corrections staff in control of computer access is unavailable due to trainings, illness, or unexpected security issues; in the event of such situations, Corrections staff shall make reasonable efforts to provide Mr. Fowler with access to the computer as soon as practicable.
- d. this accommodation shall be provided to Mr. Fowler at all correctional institutions having custody of Mr. Fowler.

3. HSU REQUEST FORMS. At all correctional institutions having custody of Mr. Fowler, Mr. Fowler shall be permitted to submit a Health Services Unit (HSU) request form, or its equivalent, that contains only his name in writing. Such a request will be treated as a completed request and Corrections staff shall respond to that request as they would a proper request by any other inmate. Mr. Fowler is not prohibited from writing more than his name on the HSU form.

4. PERSONAL READING DEVICES. In addition to the other accommodations provided in this Agreement, at all correctional institutions having custody of Mr. Fowler, Mr. Fowler shall be permitted to purchase with his own funds and use in his cell a device that reads documents aloud, such as a Franklin Speaking Language Master (LM - 6000B), a "reading pen," or an equivalent machine or device, that meets the security requirements of the correctional institution having custody of Mr. Fowler.

5. WAIVER OF EDUCATION REQUIREMENTS. Mr. Fowler shall continue to have the right to obtain a waiver of education requirements as provided by DOC rules or policies. The Defendants acknowledge that Mr. Fowler has achieved his maximum potential educational benefit from DOC's educational programs.

6. RIGHT TO A TUTOR. Nothing in this Agreement, including the accommodations required by this Agreement, shall in any way limit Mr. Fowler's right to access a tutor as a DOC inmate.

7. NO LIMIT ON FURTHER ACCOMMODATIONS. The accommodations provided in this Agreement shall in no way limit, and shall be in addition to, any other reasonable accommodations that Mr. Fowler may be entitled to under the Americans With Disabilities Act, the Rehabilitation Act, or any other provision of law, subject to the limitations in paragraphs 10, 11, 13 and 14.

8. PAY-TO-STAY FEE POLICIES DO NOT APPLY. The Released Parties agree that the settlement amount payable to Mr. Fowler and interest thereon will not be subject to Wis. Stat. § 301.325 or any other statute, rule or policy requiring prisoners to pay for costs of their incarceration, whether any such statute, rule or policy exists now or in the future.

9. DISMISSAL OF COMPLAINT. Mr. Fowler and his counsel agree to stipulate to and sign any documents necessary to withdraw and dismiss, with prejudice, all claims alleged in the Second Amended Complaint.

10. RELEASE OF CLAIMS. In exchange for the consideration listed above, Mr. Fowler releases and forever discharges the Defendants and their officers, agents, employees, successors, personal representatives, and insurers (the "Released Parties") from any and all manner of action or actions (including cause or causes of action, suits, debts, covenants, agreements, liabilities, rights, damages, costs, claims of interest, awards of attorney fees, claims and demands of every kind and nature whatsoever, in law or equity, whether based on State or Federal law), that relate to Mr. Fowler's Learning Disability and arise from facts existing on or before the Effective Date. For the avoidance of doubt, Plaintiff does not release the

Released Parties from claims under the Eighth Amendment that were alleged in his original Complaint and Amended Complaint in the Action, but which were not included in his Second Amended Complaint.

11. COVENANT NOT TO SUE. This Agreement shall also be deemed a covenant by Mr. Fowler not to sue any of the Released Parties for any of the matters released or discharged by this Agreement and not to file any appeal of any court decision in the Action.

12. COSTS AND ATTORNEYS' FEES. Each party will bear its own costs and attorneys' fees.

13. SCOPE OF AGREEMENT. This Agreement shall bind the undersigned and the heirs, executors, administrators, personal representatives, successors, and assigns of the undersigned.

14. COMPROMISE OF DISPUTED CLAIM. This Agreement is a full, final, and complete compromise of a disputed claim. It is understood and agreed by the undersigned that this settlement is the compromise of a disputed claim, that any payment made hereunder is not to be construed as an admission of liability on the part of the Released Parties herein, and that said Released Parties deny liability or wrongdoing and intend merely to avoid litigation and buy their peace.

15. PUBLIC RECORD. Mr. Fowler and the Released Parties and their agents recognize that this Agreement is a public document and may be subject to disclosure under the Wisconsin public records law.

16. EXECUTION IN COUNTERPARTS. This Agreement may be executed in counterparts.

17. REVIEW AND CONSULTATION WITH COUNSEL. This Agreement contains the entire agreement between the Parties and may be modified only by written agreement of the Parties. Mr. Fowler affirmatively states by signing below, that he had the assistance of counsel during the negotiation and execution of the settlement represented by this Agreement.

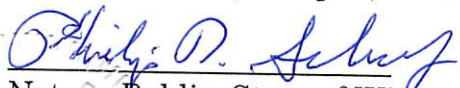
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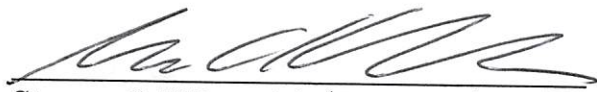

Kenneth Fowler

State of Wisconsin)
County of Jackson)

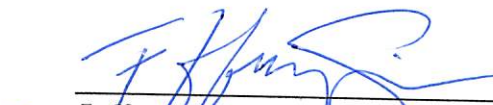
Subscribed and sworn to before me
this 28th day of April, 2016.


Notary Public, State of Wisconsin
My commission expires: 11-6-2016

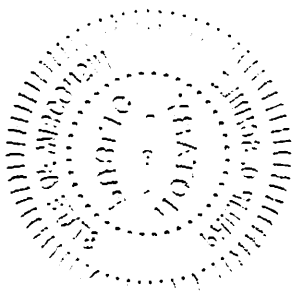
 ^{May}
Date: April 6, 2016


Steven C. Kilpatrick (#1025452)
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Attorneys for Defendants


Jeffrey A. Simmons (#1031984)
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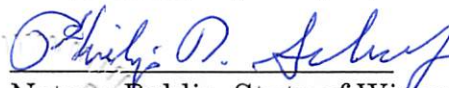
Attorneys for Plaintiff, Kenneth Fowler




Kenneth Fowler

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County of Jackson)

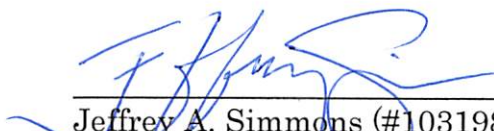
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