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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION**

WILLIAM DIAZ-WASSMER,

Plaintiff,

vs.

MIKE FERRITER, in his official capacity;
MIKE MAHONEY, in his official
capacity; TOM WOOD, in his official
capacity; and DENISE DEYOTT, in her
official capacity,

Defendants.

Case No. 6:10-cv-00060-RKS

**STIPULATION OF DISMISSAL
AND SETTLEMENT
AGREEMENT**

Pursuant to Fed. R. Civ. P. 41(a)(1), Plaintiff and Defendants agree that this case shall be dismissed with prejudice on the following terms, and request that the

Court enter the case as dismissed, in accordance with terms and conditions of this Settlement Agreement.

SETTLEMENT AGREEMENT

I. Introduction

The parties have agreed to fully and finally resolve this action pursuant to the terms of the following Settlement Agreement (“Agreement”). As part of this Agreement, the parties have agreed to modify the language of the Montana Department of Corrections (“MDOC”) Policy No. 3.3.6: Correspondence, Publications, & Packages, and Montana State Prison (“MSP”) Procedure No. 3.3.6 (formerly 5.4.1): Correspondence, Publications, & Packages, which currently govern incoming and outgoing inmate mail at Montana State Prison.

Plaintiff and Defendants enter into this Agreement with the purpose of ensuring that inmates at Montana State Prison can receive correspondence, written in a language other than English.

1. This Agreement is designed to ensure that MDOC and MSP policies and procedures that govern correspondence are consistent with the rights guaranteed under First and Fourteenth Amendments of the United States Constitution.

2. The Parties recognize that ensuring MDOC and MSP inmates have access to correspondence that is written in a language other than English serves the

important correctional goals of maintaining public safety and facility order, security, health, and rehabilitation.

3. By signing this Agreement, Plaintiff agrees to dismiss all claims and defenses in the above–entitled action. This Agreement resolves Plaintiff’s civil lawsuit, based on the First and Fourteenth Amendments, against Defendants pertaining to MDOC Policy No. 3.3.6 and MSP Procedure No. 3.3.6 that restricts mail that is written in “code or a foreign language.”

4. This Agreement is legally binding and enforceable on the Parties as a contract formed under Montana law.

II. Substantive Provisions

To protect Plaintiff’s right to freedom of speech and expression under the First Amendment, and his right to equal protection of the laws, on the basis of race and national origin, under the Fourteenth Amendment of the United States Constitution, the Parties agree that Defendants will implement the following changes to the MDOC and MSP correspondence, publications, and packages policies and procedures:

1. MSP staff shall exercise due diligence and make a good faith effort to translate correspondence that is written in a language other than English within ten (10) calendar days.

2. If attempts to translate such written correspondence are unsuccessful, MSP staff shall provide the inmate with a written notice of undeliverable mail.

This notice shall include a description detailing both the reason the document was rejected and MSP staff's good faith effort(s) to translate the document.

4. The correspondence, publications, and packages policies and procedures shall be revised to include a provision to address correspondence that is written in a language other than English, and a separate provision to address correspondence that is written in code.

5. The correspondence, publications, and packages policies and procedures shall be revised to replace the term "foreign language" with the term "a language other than English."

6. Other than the above terms, mail or correspondence that is written in a language other than English shall not be treated differently because it is not written in English. Mail or correspondence may be rejected only if it is determined that the document contains written material that is detrimental to the security, order, or discipline of the institution.

7. The correspondence, publications, and packages policies and procedures shall be revised to allow magazines and newspapers that are written in a language other than English, subject to determination whether the document

contains written material that is detrimental to the security, order or discipline of the institution.

8. Defendants shall contract with an independent translator, on an as-needed basis, and ensure that said contract is current and up-to-date. Should a translator become unavailable for translation services, Defendants have a duty to ensure that inmates will continue to receive mail or correspondence that is written in a language other than English.

9. Defendants agree to pay to the ACLU of Montana the sum of \$7,500.00 for attorneys' fees and costs.

Respectfully submitted this 8th day of March, 2012.

/s/ Jennifer A. Giuttari
Jennifer A. Giuttari
Attorney for Plaintiff

/s/ Colleen E. Ambrose
Colleen E. Ambrose
Attorney for Defendants

/s/ Ira Eakin
Ira Eakin
Attorney for Defendants