

IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

**GARRISON S. JOHNSON,**  
  
Plaintiff-Appellant,  
  
v.  
  
**STATE OF CALIFORNIA, et al.,**  
  
Defendants-Appellees.

**SETTLEMENT AND  
RELEASE AGREEMENT**

This Settlement and Release Agreement (Agreement) is entered into as of the last date shown below (the Effective Date) and is made by:

1. Plaintiff GARRISON JOHNSON (Plaintiff), and
2. Defendants JAMES GOMEZ and JAMES ROWLAND, in their individual capacities, and RODERICK Q. HICKMAN, in his official capacity as Secretary of the California Department of Corrections and Rehabilitation (CDCR), formerly known as the California Department of Corrections (CDC). Any references in this agreement to Defendants Gomez and Rowland are made only in their individual capacities as Defendants against whom damages claims have been made; all references related to any injunctive claims or injunctive relief refer to Secretary Hickman and his successors in interest in their official capacities.
3. Plaintiff and Defendants are collectively referred to as the Parties.

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## RECITALS

A. In 1995, Plaintiff filed a complaint entitled *Johnson v. California*, United States District Court for the Central District of California Case No. 95-CV-1192 CBM (BQR) (the Action);

B. Plaintiff filed a Fourth Amended Complaint in 2000 in the Action against former CDC Directors James Gomez and James Rowland, and former acting Director Steven Cambra, in his official capacity, alleging that CDCR's policy of segregation by race of all prisoners violates Plaintiff's right to equal protection guaranteed by the Fourteenth Amendment to the U.S. Constitution;

C. As a direct result of Plaintiff's claims and the opinion of the Supreme Court of the United States in *Johnson v. California*, 125 S. Ct. 1141 (2005), CDCR has begun formulating and implementing a plan by which inmates shall be housed at CDCR reception centers without using race as the determinative housing criterion, while minimizing any potential impact upon inmates' safety and that of institutions, CDCR personnel, and the public, and by which prisoners housed in CDCR facilities shall be racially integrated upon implementation of adequate safety measures, except in instances where to do so would compromise the safety and security of inmates, staff, facilities or the public;

D. Defendants expressly acknowledge that CDCR's decision to begin formulating the above-described plan was precipitated by the above-referenced United States Supreme Court decision rendered in the case filed by Plaintiff;

E. The Parties are fully apprised of the facts set forth in these Recitals and of the facts and contentions raised in the litigation and of all other aspects of the disputes between the Parties, whether pleaded or not, and have been advised, or have had the opportunity to be advised, by their independent counsel as to the

contentions, issues, and possibilities of each and of the matters described in this Agreement;

F. Plaintiff and Defendants desire to avoid the expense, inconvenience, and uncertainty associated with further litigation; and

G. Plaintiff and Defendants have agreed to fully and finally compromise and resolve the litigation between them.

### **AGREEMENT**

NOW, IN CONSIDERATION of the mutual covenants and agreements contained in this Agreement, the Parties agree as follows:

1. Defendants' goal is to treat all male and female CDCR inmates without subjection to any form of racial segregation, while ensuring the security of Defendants' institutions and the effectiveness of inmate treatment programs within the framework of security and safety. To accomplish this goal, Defendants shall integrate their CDCR reception centers by creating a housing protocol that assigns inmates to reception center cells using several criteria, rather than race as a determinative factor, and that minimizes any potential impact upon inmates' safety and that of the institutions, CDCR personnel, and the public. Subject to modifications required to minimize any such impact upon inmates' safety and that of the institutions, CDCR personnel and the public, the reception center housing protocol shall include the following elements:

- a. CDCR staff shall utilize all available information in assigning incoming inmates to cells in reception centers. For example, if an inmate arrives at the reception center with an abstract of judgment, probation or pre-sentencing report, or any other documents, staff shall consider information contained within these documents when determining where to

house the inmate at the reception center. For incoming inmates who have been previously incarcerated in a CDCR facility, staff shall, upon the inmates' arrival at each CDCR facility, make every reasonable effort to obtain the inmates' central files and shall use information within those files and found in existing electronic databases (including, but not limited to, the Offender Based Information System (OBIS)) to ensure that each inmate is appropriately housed in the reception center. CDCR shall use all available and cost-effective information technology to assist staff in accessing such information and making reception center housing decisions.

- b. CDCR shall educate staff regarding housing procedures, including, but not limited to, how to access and use the information developed pursuant to the Agreement and as detailed in Paragraph 1.a. Defendants presently anticipate that such education shall be among the initial steps undertaken in the implementation of the reception center housing protocol required by this Agreement;
- c. CDCR shall develop a violence tracking system within reception centers designed to record, track and analyze violent incidents. CDCR shall use all available and cost-effective information technology as part of this violence tracking system. A component of this violence tracking system shall be to determine whether violent incidents in reception centers are racially motivated;
- d. CDCR shall develop a Confidential Draft Organizational Plan addressing staff responsibilities and time frames for goals and

implementation of the elements described in Paragraph 1 a. through c. (the Confidential Draft Organizational Plan). CDCR shall provide to Plaintiff's counsel prior to execution of the Agreement a copy of the Confidential Draft Organizational Plan in existence as of the Effective Date, which shall remain exclusively in Plaintiff's counsel's possession. Plaintiff's counsel may show a copy of the Confidential Draft Organizational Plan to, and discuss its contents with, Plaintiff. Plaintiff and Plaintiff's counsel shall not disclose the contents of the Confidential Draft Organizational Plan to any third party without CDCR's written consent.

2. Defendants shall integrate the CDCR general inmate population by creating a general population housing protocol that assigns inmates to cells using several criteria, rather than race as a determinative factor, and that minimizes any potential impact upon inmates' safety and that of the institutions, CDCR personnel, and the public. Defendants anticipate that the general population housing protocol shall incorporate relevant policies and procedures developed by the CDCR during the implementation of the reception center housing protocol described in Paragraph 1. The date on which the general housing protocol is implemented, in whole or part, shall be chosen to minimize any potential impact upon inmates' safety and that of the institutions, CDCR personnel and the public. For example, Defendants may determine, during implementation of the reception center housing protocol, that implementation of the general population housing protocol, in whole or in part, prior to completion of the reception center housing protocol, would best accomplish CDCR's goal of treating all male and female CDCR inmates without

subjection to any form of racial segregation while minimizing the potential impact upon inmates' safety and that of the institutions, CDCR personnel and the public.

3. Should Plaintiff be found guilty of a disciplinary offense which allegedly occurred on May 22, 2005, and be required to serve a Security Housing Unit (SHU) term for that offense, Defendants agree that Plaintiff will serve the possible SHU term at the California Correctional Institution (CCI) at Tehachapi. After that, Plaintiff will be considered for placement at CCI so long as that placement is consistent with safety, case factors, other security concerns, and the mission of the institution.

4. If and when Plaintiff is transferred from CSPC, Defendants shall use their best efforts to assign Plaintiff a cell mate of a race other than that of Plaintiff's, if such a housing decision can be made while minimizing any potential impact upon Plaintiff's personal safety, the personal safety of Plaintiff's potential cell mate, and the safety and security of institutions, CDCR personnel, and the public.

5. As further consideration for Plaintiff's release of all claims, Defendants shall, upon execution of this Agreement, dismissal of the Action with prejudice as provided for in Paragraph 9, and execution by Plaintiff's counsel of a Payee Data Record, pay to Plaintiff the total sum of Twelve Thousand Dollars (\$12,000). Defendants shall pay this sum by tendering a draft or check in the amount of \$12,000, made payable to the order of "Proskauer Rose LLP, in trust for Garrison Johnson."

6. In exchange for the commitments and agreements detailed in Paragraphs 1 through 5, the Parties, their agents, servants, employees, attorneys, consultants and

all persons or entities connected with them, release and forever discharge the other Parties and each of the other Parties' agents, servants, employees, attorneys, consultants and all persons or entities connected with them, from all claims, demands, causes of action, and liabilities of any kind or description, whether in law or in equity, in contract or in tort, and whether or not presently known, suspected, claimed, or alleged, which may be based upon, arise from, or may in any manner relate to the subject matter of this litigation. Specifically, any and all claims, allegations, or demands for violation of the Fourteenth Amendment to the U.S. Constitution, denial of equal protection, denial of due process, or any other causes of action of any kind relating to the subject matter of this litigation, are by this Agreement finally compromised and settled. Notwithstanding anything to the contrary, nothing in this paragraph is intended to or should be construed to affect Plaintiff's ability to seek attorneys' fees and costs incurred by Plaintiff in this litigation, consistent with Paragraph 10 below.

7. Liability for all claims mentioned in this Agreement, or in Plaintiff's Complaint, is disputed. The commitments in Paragraphs 1 through 5 above are made to settle this matter and are not, and may not be construed as, an admission of liability or responsibility on the part of Defendants or any of the Parties to this action.

8. This Agreement extends to all claims, whether known or unknown, and to all injuries or damages, and all rights of action for the same arising from the subject matter of this litigation. The Parties expressly waive California Civil Code section 1542, which states:

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“A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”

9. Following execution of this Agreement, Plaintiff shall dismiss the Action as to all Defendants. This dismissal shall be with prejudice as to all Defendants.

10. The Parties defer any decision or agreement regarding attorneys' fees incurred by Plaintiff to subsequent proceedings. The Parties agree that the United States District Court for the Central District of California shall retain jurisdiction to hear any application by Plaintiff seeking attorneys' fees and costs incurred by Plaintiff in this litigation.

11. This Agreement shall be binding upon each of the Parties' respective successors, assignees, heirs, executors, and trustees.

12. The Parties agree that they will not bring, commence, maintain or prosecute, directly or indirectly, any action at law or proceeding in equity or any legal or administrative proceeding or any claim for damages or other relief against those parties released by this Agreement based in whole or in part on any claim, demand, cause of action, obligation, or liability based upon, arising out of, or connected with any act, cause, matter or thing which is released by this Agreement. This Agreement may be pleaded, and shall operate, as a full and complete defense to, and may be used as a basis for an injunction against, any such action, suit or proceeding which may be instituted, prosecuted, or maintained by any Party.



13. This Agreement constitutes the entire agreement among the Parties and is expressly made for the benefit of each Party. Each Party understands and represents that he or she executes this Agreement wholly in reliance upon his or her own judgment, belief and knowledge and the advice of his or her attorney. Each Party understands and represents that no statement or representation respecting the litigation or regarding this Agreement made by any other Party or by any other Party's attorney has influenced, in any way, the execution of this Agreement. Each Party waives any and all rights that may exist and expressly acknowledges and agrees that no claim will be made based upon any alleged oral alteration, oral amendment, oral modification or any other oral statement with respect to any change or any other matter regarding this Agreement.

14. All personal pronouns used in this Agreement, whether used in the masculine, feminine, or neuter gender, shall include all other genders and the singular shall include the plural and vice versa.

15. If any provision or any part of any provision of this Agreement is for any reason held to be invalid, unenforceable or contrary to any public policy, law, statute and/or ordinance, then the remainder of this Agreement shall not be affected and shall remain valid and fully enforceable.

16. In the event of any controversy, claim, or dispute arising from enforcement or interpretation of the terms and conditions of this Agreement, the Parties shall be entitled to commence an action for breach of contract, and the prevailing party shall be entitled to an award of reasonable attorneys' fees in addition to any and all other relief or award granted by the court.

17. The Parties enter into this Agreement freely, voluntarily, and understanding its terms and their effect, after having been fully advised by legal counsel as to its contents, meaning, and significance. The Parties understand that this Agreement is a full and final compromise, release, and settlement of all claims identified in Paragraph 6 above.

18. Plaintiff warrants that there has been no promise or inducement by Defendants, the State of California or CDCR, except as set forth in this Agreement, and that this Agreement is executed without reliance on any statements or representations by Defendants.

19. This Agreement, numbering 11 pages in length, may be executed in any number of counterparts, each of which shall be deemed an original and all of

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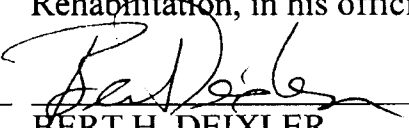
which shall constitute together one and the same instrument. Facsimile copies of this Agreement shall have the same force and effect as an original.

DATE: 11-10-05 \_\_\_\_\_   
GARRISON JOHNSON

DATE: \_\_\_\_\_  
JAMES GOMEZ, in his individual capacity

DATE: \_\_\_\_\_  
JAMES ROWLAND, in his individual capacity

DATE: \_\_\_\_\_  
RODERICK Q. HICKMAN, Secretary  
California Department of Corrections and  
Rehabilitation, in his official capacity

DATE: 11-10/05 \_\_\_\_\_   
BERT H. DEIXLER  
Attorney for Plaintiff  
Proskauer Rose LLP  
2049 Century Park E, Suite 3200  
Los Angeles, CA 90067

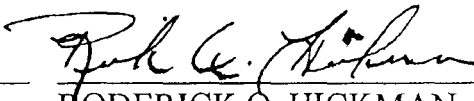
DATE: \_\_\_\_\_  
FRANCES T. GRUNDER  
Senior Assistant Attorney General  
Office of the Attorney General  
Attorney for Defendants  
455 Golden Gate Avenue, Suite 11000  
San Francisco, CA 94102

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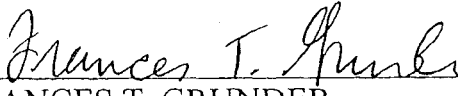
DATE: \_\_\_\_\_  
GARRISON JOHNSON

DATE: \_\_\_\_\_  
JAMES GOMEZ, in his individual capacity

DATE: \_\_\_\_\_  
JAMES ROWLAND, in his individual capacity

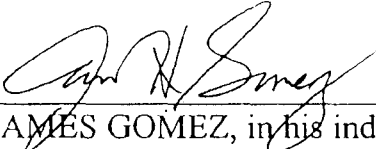
DATE: 11/22/05 \_\_\_\_\_  
  
RODERICK Q. HICKMAN, Secretary  
California Department of Corrections and  
Rehabilitation, in his official capacity

DATE: \_\_\_\_\_  
BERT H. DEIXLER  
Attorney for Plaintiff  
Proskauer Rose LLP  
2049 Century Park E, Suite 3200  
Los Angeles, CA 90067

DATE: 12/12/05 \_\_\_\_\_  
  
FRANCES T. GRUNDER  
Senior Assistant Attorney General  
Office of the Attorney General  
Attorney for Defendants  
455 Golden Gate Avenue, Suite 11000  
San Francisco, CA 94102

which shall constitute together one and the same instrument. Facsimile copies of this Agreement shall have the same force and effect as an original.

DATE: \_\_\_\_\_  
GARRISON JOHNSON

DATE: 11/17/05 \_\_\_\_\_  
  
JAMES GOMEZ, in his individual capacity

DATE: \_\_\_\_\_  
JAMES ROWLAND, in his individual capacity

DATE: \_\_\_\_\_  
RODERICK Q. HICKMAN, Secretary  
California Department of Corrections and  
Rehabilitation, in his official capacity

DATE: \_\_\_\_\_  
BERT H. DEIXLER  
Attorney for Plaintiff  
Proskauer Rose LLP  
2049 Century Park E, Suite 3200  
Los Angeles, CA 90067

DATE: \_\_\_\_\_  
FRANCES T. GRUNDER  
Senior Assistant Attorney General  
Office of the Attorney General  
Attorney for Defendants  
455 Golden Gate Avenue, Suite 11000  
San Francisco, CA 94102

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DATE: \_\_\_\_\_  
GARRISON JOHNSON

DATE: \_\_\_\_\_  
JAMES GOMEZ, in his individual capacity

DATE: 11-16-05 \_\_\_\_\_  
*James Rowland*  
JAMES ROWLAND, in his individual capacity

DATE: \_\_\_\_\_  
RODERICK Q. HICKMAN, Secretary  
California Department of Corrections and  
Rehabilitation, in his official capacity

DATE: \_\_\_\_\_  
BERT H. DEIXLER  
Attorney for Plaintiff  
Proskauer Rose LLP  
2049 Century Park E, Suite 3200  
Los Angeles, CA 90067

DATE: \_\_\_\_\_  
FRANCES T. GRUNDER  
Senior Assistant Attorney General  
Office of the Attorney General  
Attorney for Defendants  
455 Golden Gate Avenue, Suite 11000  
San Francisco, CA 94102