

**THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 13-cv-03404-MSK-NYW

SCOTT HILL a/k/a SAMANTHA HILL

Plaintiff,

v.

UNITED STATES BUREAU OF PRISONS, a United States agency,
MICHAEL K. NALLEY, Regional Director, North Central Region, Bureau of Prisons, sued in his individual capacity,
CHARLES A. DANIELS, Warden of the United States Penitentiary – Florence, sued in his individual capacity,
DR. MARK CARTER, Staff Psychologist at the United States Penitentiary – Florence, sued in his individual capacity,
DR. DANIEL SEVERN, Staff Psychiatrist at the United States Penitentiary – Florence, sued in his individual capacity,
WILLIAM HUTCHINGS, captain at the United States Penitentiary – Florence, sued in his individual capacity,
LAMONT ANTHONY, lieutenant at the United States Penitentiary – Florence, sued in his individual capacity,
DIANE BORGES, counselor at the United States Penitentiary – Florence, sued in her individual capacity,
RICHARD DERR, unit manager at the United States Penitentiary – Florence, sued in his individual capacity,
BERNIE JANUSZ, case manager at the United States Penitentiary – Florence, sued in his individual capacity,
GILBERT LYDE, unit manager at the United States Penitentiary – Florence, sued in his individual capacity,
TODD JAVERNICK, CMC at the United States Penitentiary – Florence, sued in his individual capacity,
STEVE BROWN, special investigative agent at the United States Penitentiary – Florence, sued in his individual capacity, and
KEVIN JOHNSON, associate warden of the United States Penitentiary – Florence, sued in his individual capacity.

Defendants.

SETTLEMENT AGREEMENT

It is hereby stipulated by and between Plaintiff Samantha Hill and Defendants United States Bureau of Prisons (“BOP”), and Michael K. Nalley, Charles A. Daniels, Dr. Mark Carter, Dr. Daniel Severn, William Hutchings, Lamont Anthony, Diane Borges, Richard Derr, Bernie Janusz, Gilbert Lyde, Todd Javernick, Steve Brown and Kevin Johnson (collectively, the “*Bivens* Defendants”), by and through their respective attorneys, as follows:

1. The parties do hereby agree to settle and compromise the above-entitled action under the terms and conditions set forth herein.

2. Defendant BOP agrees to the following terms to settle the injunctive and declaratory relief claims in this case:

3. Defendant BOP agrees to make an individualized determination pursuant to 28 C.F.R. Part 524 (Classification of Inmates), in conjunction with 28 C.F.R. § 115.42, regarding housing Plaintiff in safe housing appropriate for a person with her risk characteristics as defined in 28 C.F.R. § 115.41. BOP agrees that for the remainder of Plaintiff’s sentence while she is housed at Butner, Plaintiff will be housed in a wet cell with a pre-screened cellmate unless no wet cell is available due to the medical necessity of assigning those wet cells to other inmates. For the purposes of this agreement, the pre-screening process will include giving serious consideration to Plaintiff’s views regarding the proposed cellmate as provided in 28 C.F.R. § 115.42(e), and making a written note in Plaintiff’s file regarding any objection made by Plaintiff to the proposed inmate. BOP acknowledges that Plaintiff has expressed concerns regarding her current cellmate, and that BOP has not been able to provide alternative housing options to which Plaintiff does not object as of the date of this Settlement. In light of the current circumstances, BOP agrees to continue to seek cellmate alternatives for Plaintiff with the aim of identifying a new cellmate to whom Plaintiff does not object. BOP further agrees that BOP will re-evaluate

the current or any future assigned cellmate promptly upon notice from Plaintiff that the cellmate has asserted threats against Plaintiff, or has otherwise made Plaintiff concerned for her mental or physical health. For purposes of this agreement, “promptly” means no later than seven days after Plaintiff notifies BOP of the threats or of Plaintiff’s concern for her mental or physical health. Plaintiff agrees that she will provide notice as contemplated in this paragraph in writing.

4. Defendant BOP agrees to continue housing Plaintiff at Butner for the remainder of Plaintiff’s incarceration, unless she becomes eligible to be transferred to a lower security institution or a Residential Re-entry Center; she becomes eligible for state placement; she is transferred to a medical referral center; her placement is reassessed pursuant to 28 C.F.R. § 115.42(d); or operational concerns preclude her continued placement at Butner. In light of Plaintiff’s risk profile, Defendant BOP agrees not to transfer Plaintiff to any United States Penitentiary, unless Ms. Hill engages in conduct that would constitute a prohibited act or misconduct as defined by Program Statement 5270.09, Inmate Discipline Program, in which case she may be subject to sanctions in accordance with Program Statement 5270.09 including a greater security or disciplinary transfer in accordance with BOP policy. If either operational concerns preclude her continued placement at Butner or if Ms. Hill engages in conduct that warrants a greater security or disciplinary transfer, Defendant BOP agrees to notify Plaintiff’s counsel, Elisabeth L. Owen and Sarah D. Hartley, prior to the transfer in order to allow Plaintiff to invoke the alternative dispute resolution procedures as set forth in paragraph 26 below.

5. Plaintiff acknowledges and agrees that this agreement in no way vitiates her obligation to adhere to all BOP policies, rules, and/or regulations, including refraining from engaging in conduct that would constitute a prohibited act or misconduct as defined by Program Statement 5270.09, Inmate Discipline Program. Plaintiff acknowledges and agrees that, in the

event that she engages in conduct that would constitute a prohibited act, or misconduct as defined by Program Statement 5270.09, she may be subject to sanctions in accordance with Program Statement 5270.09.

6. This agreement does not override the BOP's statutory authority contained in 18 U.S.C. § 3621(b), and implemented through Program Statement 5100.08, Inmate Security Designation and Custody Classification, to transfer Plaintiff if determined necessary in an emergent circumstance, such as in the case of a natural disaster, safety concerns, or other exigent circumstances (such as a serious event implicating institution security), to an appropriate facility that meets her safety, security, and programming needs and is consistent with the BOP's mission to protect society.

7. Defendant BOP agrees to re-evaluate the propriety of housing Plaintiff at a male facility periodically, including within six months from the date this agreement is signed by all parties and every six months thereafter, as provided in 28 C.F.R. § 115.42(d).

8. Defendant BOP agrees that any bodily searches or pat-downs performed on Plaintiff will be conducted in accordance with BOP policy regarding such searches or pat-downs as determined through negotiations with the employee union and in accordance with the provisions of the Prison Rape Elimination Act.

9. Defendant BOP agrees to include a copy of this Settlement Agreement in the FOIA exempt portion of Plaintiff's central file, as well as a copy of the notification attached as **Exhibit A**.

10. Defendant BOP agrees that Plaintiff has been diagnosed with gender dysphoria and agrees to continue to provide adequate medical and psychological treatment for Plaintiff's gender dysphoria. Defendant BOP further agrees to modify those treatments as necessary to

ensure adequate treatment for Plaintiff's condition. Defendant BOP agrees, at a minimum, to continue Plaintiff's current course of hormone therapy and to initiate and continue finasteride, as long as these medications are clinically indicated and are available to the BOP and there is no contraindication for prescribing them to Plaintiff.

11. Defendant BOP agrees to provide psychological treatment consistent with the community standards of care for gender dysphoria, post-traumatic stress disorder and rape trauma syndrome, and in accordance with the treatment plan adopted for Plaintiff as of the date of this agreement, subject to any clinically indicated modifications. This will include the offering of talk therapy sessions. These sessions will be offered on a bi-weekly basis, unless unforeseen exigent circumstances prevent the offering of a bi-weekly session, for as long as they are clinically indicated. The BOP agrees to re-evaluate the frequency of Plaintiff's therapy sessions on a regular basis, with the first such re-evaluation within two months of the execution of this agreement. The first re-evaluation will determine if weekly therapy is clinically indicated; subsequent re-evaluations will determine whether the same, more, or less frequent therapy is clinically indicated. Defendant BOP agrees to provide Plaintiff a copy of Plaintiff's records indicating such treatment re-evaluations within seven business days of Plaintiff's written request for such records. Plaintiff shall be permitted to request a therapist with whom her individual therapy sessions will be conducted from amongst the therapists employed to provide mental health services to prisoners at FCI Butner I, and that request will be considered in light of available resources and treatment needs and honored unless it is not feasible in light of those considerations.

12. Defendant BOP agrees to have Plaintiff's treating medical professionals periodically and at least once every six months evaluate the sufficiency of Plaintiff's gender

dysphoria treatment protocol to determine if additional treatments, such as sexual reassignment surgery, electrolysis, speech therapy, or other treatments consistent with the community standards of care, are clinically indicated. Defendant BOP agrees to provide a report of such protocol re-evaluations to Plaintiff within seven business days of such evaluations upon request by Plaintiff.

13. Defendant BOP agrees to offer to Plaintiff for purchase the female commissary items listed in **Exhibit B** attached hereto. Defendant will add to the Special Purchase Order (“SPO”) list for transgender inmates the items on the list attached hereto as **Exhibit B**. Defendant BOP will further consider whether the following additional items pose any security or safety concerns: hair clips, emery board, and female shirts/pants/sweatshirts. If these items are approved, the BOP will add those to the SPO within three months of the effective date of this agreement. If Plaintiff wishes to order an item that is not on the attached pre-approval list, Plaintiff agrees to submit a BP-8 to the appropriate BOP staff member to obtain the requested item. If Plaintiff is not able to obtain the requested item via a BP-8, Plaintiff will pursue the BOP administrative remedy process to request that she be permitted to purchase the requested item.

14. Ms. Hill is permitted to dress in her preferred gender role, including female undergarments (bra and underwear), by wearing female clothing items available via the Transgender SPO commissary list. The BOP agrees that it will not take any disciplinary action against Ms. Hill for wearing female clothing, hair, and cosmetic products that are available via the Transgender SPO commissary list. Further, the BOP agrees that it will not take any disciplinary action against Ms. Hill for wearing homemade cosmetic products unless her use of

such products constitutes “wearing a disguise or mask” as prohibited by 28 C.F.R. § 541.3 or otherwise raises a security concern.

15. Defendant BOP will address Plaintiff’s request that she be provided with the means to cover or eliminate facial hair. That request may be addressed by one of the following methods, or by another alternative option that is available at FCI Butner: allowing Plaintiff to purchase foundation (base makeup), providing Plaintiff with electrolysis hair removal, or providing Plaintiff with hair removal using the No!No!® or similar device. Butner will evaluate these options and determine which is appropriate for Plaintiff within 30 days, and will take steps to provide one of them no later than 90 days, of the effective date of this agreement.

16. Upon execution of this agreement, Plaintiff will dismiss the *Bivens* Defendants with prejudice and will file an amended complaint that contains an injunctive relief claim against the BOP and a negligence claim for failure to protect against the United States under the Federal Tort Claims Act (the “FTCA”). Plaintiff will dismiss the failure to treat claim and not reassert it in the amended complaint. Defendants will consent to the filing of the amended complaint pursuant to Fed. R. Civ. P. 15.

17. The undersigned Assistant U.S. Attorney will enter an appearance on behalf of the United States, but the United States will neither answer nor move to dismiss the amended complaint.

18. After the complaint is amended, Plaintiff will sign a standard FTCA stipulation and a stipulation of dismissal. The United States will pay \$70,000 from the Judgment Fund to settle the FTCA claim.

19. Execution of this Agreement by the Parties shall constitute a complete release and bar to Plaintiff of any and all causes of action, claims, or liens, known or unknown to Plaintiff,

by reason of, or arising from the events, circumstances, or incidents giving rise to this lawsuit. The execution of this Agreement shall not, however, preclude Plaintiff from asserting claims under this Agreement or claims arising after the date of this Agreement related to the same or similar circumstances or events.

20. In conjunction with this Agreement, the parties further agree and stipulate that they will file, within three (3) business days of execution of the Agreement, a Stipulation for Dismissal pursuant to Fed. R. Civ. P. 41(a)(1), dismissing this action with prejudice. The parties further agree and stipulate that the United States will prepare and submit to the U.S. Treasury the paperwork for payment to Plaintiff by the Judgment Fund within three (3) business days after the entry of the stipulation of dismissal.

21. This Agreement shall not constitute an admission of liability or fault on the part of the United States, the Defendants, or on the part of any of Defendants' agents, servants, employees, or instrumentalities.

22. Each party will pay its own attorneys' fees, costs, and expenses incurred in conjunction with the above-entitled matter, except as set forth in Paragraph 19, above. There shall be no motion by any of the parties for the payment of such costs, expenses, or fees.

23. If any provision of this Agreement is held to be illegal, invalid, or unenforceable under any present or future laws, such provision shall be fully severable, and the remaining provisions shall constitute the parties' agreement.

24. This Agreement may be signed in multiple counterparts, and each counterpart when taken with the other executed counterpart shall constitute a binding agreement among the Parties as of the date of the last executed counterpart.

25. This Agreement shall be binding upon the Parties and upon their heirs, assigns, agents, successors, and personal representatives.

26. This Agreement shall be governed by and interpreted in accordance with federal law. If Plaintiff believes that the BOP is not in substantial compliance with any injunctive relief provision of this Agreement, Plaintiff's counsel shall notify the U.S. Attorney's Office for the District of Colorado in writing of the specific reasons why they believe BOP is not in compliance. The BOP shall investigate and respond in writing within 15 calendar days. If the parties are unable to resolve the dispute after Plaintiff receives the BOP's response, the parties will endeavor to obtain, within 15 days, a private mediation with either former U.S. Magistrate Judge Boland at JAG, Inc. (or another mutually acceptable private mediator) or a settlement conference with the assigned U.S. Magistrate Judge. If the parties are unable to timely schedule such a mediation or settlement conference, or if the dispute is not resolved by the mediation or settlement conference, Plaintiff may file a motion with the U.S. District Court for the District of Colorado alleging that the BOP has breached the settlement agreement. If the Court finds that there has been such a breach, the Parties agree that Plaintiff's remedy will be reinstatement of the injunctive relief claims brought in the lawsuit. Plaintiff retains the right to amend the injunctive relief allegations, and the BOP reserves any defenses to the claims that it may have.

27. Except as otherwise set forth herein, this Agreement contains the entire agreement between the Parties, and embodies and expresses the entire intent of the Parties with regard to the matters set forth herein. This Agreement supersedes, merges, and replaces all prior or contemporaneous understandings, negotiations, offers, promises, representations and agreements between the Parties or their attorneys to the extent such prior understandings, negotiations and agreements are inconsistent herewith.

28. The term of the injunctive portion of this agreement (*i.e.*, paragraphs 3-15) is two years. This agreement will automatically expire two years after it is signed by the last of all parties below.

PLAINTIFF

Samantha Hill

Samantha Hill, Plaintiff

Scott Hill
Scott Hill, Plaintiff

Elisabeth L. Owen, Esq.
Counsel for Plaintiff

Sarah D. Hartley, Esq.
Counsel for Plaintiff

Dated: 5/08/, 2015

Dated: 5/08/2015

Dated: _____, 2015

Dated: _____, 2015

DEFENDANTS

Amy L. Padden
Assistant U.S. Attorney
Deputy Chief, Civil Division
Counsel for Defendants

Dated: _____, 2015

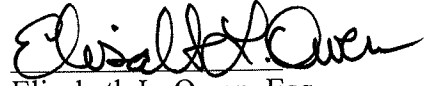
Christopher B. Synsvoll
Supervisory Attorney
Attorney for the Bureau of Prisons

Dated: _____, 2015

PLAINTIFF

Samantha Hill, Plaintiff

Dated: _____, 2015



Elisabeth L. Owen, Esq.
Counsel for Plaintiff

Dated: _____, 2015

Sarah D. Hartley, Esq.
Counsel for Plaintiff

Dated: _____, 2015

DEFENDANTS

Amy L. Padden
Assistant U.S. Attorney
Deputy Chief, Civil Division
Counsel for Defendants

Dated: _____, 2015

Christopher B. Synsvoll
Supervisory Attorney
Attorney for the Bureau of Prisons

Dated: _____, 2015

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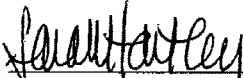
PLAINTIFF

Samantha Hill, Plaintiff

Dated: _____, 2015

Elisabeth L. Owen, Esq.
Counsel for Plaintiff

Dated: _____, 2015



Sarah L. Hartley, Esq.
Counsel for Plaintiff

Dated: May 29, 2015

DEFENDANTS

Amy L. Padden
Assistant U.S. Attorney
Deputy Chief, Civil Division
Counsel for Defendants

Dated: _____, 2015

Christopher B. Synsvoll
Supervisory Attorney
Attorney for the Bureau of Prisons

Dated: _____, 2015

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PLAINTIFF

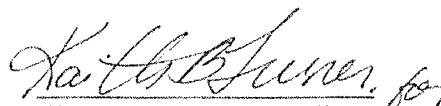
_____ Dated: _____, 2015
Samantha Hill, Plaintiff

_____ Dated: _____, 2015
Elisabeth L. Owen, Esq.
Counsel for Plaintiff

_____ Dated: _____, 2015
Sarah D. Hartley, Esq.
Counsel for Plaintiff

DEFENDANTS

 Dated: 5/29, 2015
Amy L. Padden
Assistant U.S. Attorney
Deputy Chief, Civil Division
Counsel for Defendants

 Dated: May 29, 2015
Christopher B. Synsvoll
Supervisory Attorney
Attorney for the Bureau of Prisons

Please take notice that Scott Hill is a transgendered prisoner who identifies as female and should be referred to by her preferred name, Samantha Hill, and female pronouns (*e.g.*, “she” and “her”).

EXHIBIT A

Pursuant to agreement of the parties, the BOP will ensure the availability of the following items, or comparable items, for Plaintiff to purchase through the commissary:

Items to be maintained on or added to the current Butner Transgender SPO Commissary List:

- Women's watch
- Lady Speed Stick deodorant
- Oil of Olay
- Infusium 23 shampoo and conditioner
- Women's Razor Ladies Personal Twin Blade
- Cotton Swispers
- Hanes bra
- Hanes panties
- Women's Converse and Reebok athletic shoes

Items to be maintained on or added to the current Butner General Population Commissary List:

- Tweezers
- Pumice stone
- Shower cap
- Pony tail holders
- Vent hair brush
- No handle brush
- Next 1 styling gel
- Pantene shampoo and conditioner
- Noxema skin cream
- Thermal shirts and pants
- Sweatshirts
- Freestyle sunglasses