

Richard Eppink
AMERICAN CIVIL LIBERTIES UNION
OF IDAHO FOUNDATION

Idaho State Bar no. 7503

reppink@acluidaho.org

P.O. Box 1897

Boise, Idaho 83701

(208) 344-9750, ext. 1202

Craig Durham

FERGUSON DURHAM, PLLC

Idaho State Bar no. 6428

chd@fergusondurham.com

223 N. 6th Street, Suite 235

Boise, Idaho 83702

(208) 345-5183

Attorneys for Plaintiffs

LAWRENCE G. WASDEN
ATTORNEY GENERAL

STEVEN L. OLSEN

ISB #3586

Chief, Civil Litigation Division

LESLIE M. HAYES

ISB #7995

Deputy Attorney General

954 W. Jefferson Street

Second Floor

P.O. Box 83720

Boise, Idaho 83720-0010

Telephone: (208) 334-2400

Facsimile: (208) 854-8073

leslie.hayes@ag.idaho.gov

Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF IDAHO

BILL BARTLETT, *et al.*, and all those
similarly situated,

Plaintiffs,

v.

HENRY ATENCIO, Director of the
Idaho Department of Correction
(IDOC), *et al.*,

Defendants.

Case No. 1:17-cv-00191

**PARTIAL SETTLEMENT
AGREEMENT**

1. The terms “Defendants” and “IDOC” in this agreement include the defendants and all of their officers, servants, employees, and all those in active concert or participation with them.

2. The terms “Plaintiff” in this agreement include the four named plaintiffs in this action.

3. The term “Parties” in this agreement include the defendants and plaintiffs.

4. The parties agree that the terms of this Agreement extend no further than necessary to satisfy the requirements of 18 U.S.C. § 3626(a)(1)(A).

5. **Common Fare Diet.** No later than November 1, 2017, Defendants shall transition the Common Fare Diet at IDOC to a No Touch diet system available to all prisoners in IDOC’s custody.

6. The Common Fare No Touch menu shall consist of a majority of meals that are pre-packaged or double-sealed frozen meals that are kosher certified. All items served on Common Fare will be individually wrapped and kosher certified or pareve. Except for restrictive housing inmates (as defined by IDOC policy, all meals will be served unprepared and may be heated in a microwave by the prisoner receiving them. For restrictive housing inmates, a staff member will heat frozen meals and ensure that the double seal remains unbroken. If the double seal is broken during heating, the prisoner will receive

a new meal where the seal is unbroken. Staff will verify verbally with the inmate that the seal remains unbroken at the time of serving.

7. All kosher certified items shall be certified by an agency approved by the Chicago Rabbinical Council. A copy of the current list is attached to this Agreement as Exhibit A and can be found at:

http://www.crcweb.org/agency_list.php.

8. Friday dinner through Saturday dinner will consist of lunch meals that can be eaten cold so that inmates may observe the rules of no heating on the Sabbath, if they choose.

9. **Variety.** The menu shall include at least 19 different main entrees offered over breakfast, lunch, and dinner. Each 28-day menu that is implemented at any facility will offer all 19 entrees. The 28-day menu will offer at a minimum 19 different combinations of breakfast, lunch, and dinner. The attached 28-day menu (Exhibit B) demonstrates a sample of what shall be offered, based on a generic menu (Exhibit C). At implementation Common Fare will incorporate the meals described and pictured in Exhibits D and E.

10. Defendants retain the discretion to change the Common Fare Menu. Common Fare Menu items are subject to manufacture and distributor availability. All changes will meet the variety requirement of paragraph 9 except

as otherwise provided in paragraph 11 and unless Defendants utilized the provisions outlined in paragraph 11.

11. If Defendants at any point are unable to implement a 28-day menu that includes 19 different daily variations at all IDOC facilities housing prisoners, despite exhausting all reasonable efforts to do so, the Defendants shall notify Plaintiffs' counsel as soon as the Defendants become aware of their inability to comply. They shall include in the notification the efforts that they have made to comply and a statement of an alternative plan. Upon receipt of notice, the parties will attempt to resolve the issue through negotiation. If they are unable to resolve the issue within 20 days, the issue may be submitted to the Court for resolution.

12. **Passover.** Common Fare will comply with all kosher rules, including kosher for Passover. During Passover, Common Fare will serve the same generic menu set out in Exhibit B, but all prepacked meals shall be certified kosher for Passover.

13. **Serving Food.** Defendants shall serve all no-touch diet system food in the disposable container it comes in with double-wrap intact and with disposable utensils to prevent cross-contamination. Defendants shall serve all food that requires a tray on Common Fare trays that are stored and washed separately from all other food service trays.

14. **Monitoring Period.** The parties agree that Plaintiffs' counsel have a need to conduct reasonable monitoring of this Agreement to ensure compliance. Accordingly, the parties agree that there shall be a monitoring period to begin 30 days from the date that the no-touch diet system is available at any IDOC facility and continuing for six months after the date that the system is available at all IDOC facilities or until the no-touch diet system has been available during Passover at all IDOC facilities, whichever is later.

a. Within 14 days after IDOC has notified plaintiffs' counsel in writing that the no-touch diet system is available at all IDOC facilities housing prisoners, the parties will meet and confer about the date on which this monitoring period will end. If the parties agree on the date, they will file a joint statement of that date with this Court. If there is a dispute between the parties about the date that the monitoring period will end, any party may file a motion with the Court to seek resolution of the dispute.

b. During that monitoring period, the parties agree that:

(i) Defendants must produce any records and answer any questions reasonably requested by Plaintiffs' counsel that are related to compliance with this agreement at no cost to plaintiffs.

These requests shall be sent to Defendants' counsel Leslie Hayes

and Mark Kubinski, or their designated successors. Defendants' counsel shall respond to these requests within 14 days. These requests are subject to the proportionality standard expressed in FRCP 26(b)(1).

(ii) Plaintiffs' counsel will be permitted on-site access for the purposes of inspection and monitoring compliance with this Agreement at any Idaho Department of Correction facility housing prisoners, with 48-hours' notice to Defense counsel and not to exceed five total visits during the monitoring period. During the 48-hour period, counsel will keep the date and time of the monitoring audit confidential. Defendants' counsel and the IDOC Dietary Services Manager, if available, will be present for these visits. The notice of monitoring audit to Defense counsel will include confirmation of the date and time that the Plaintiffs, the facility warden, IDOC Deputy Director, and Director may be notified of the audit. Notice will be given at least 2 hours prior to the monitoring audit. To ensure against interference with monitoring, the Parties shall keep the date and time of the monitoring audit confidential until the audit occurs. Confidentiality of the monitoring audit terminates once the audit occurs.

(iii) Every 30 days, Plaintiffs' counsel shall be provided with all grievances, whether exhausted or not, related to the no-touch diet system or kosher food.

Defense counsel will search IDOC's online grievance system for "no touch," "kosher," and "Common Fare." Defense counsel will also review all food grievances. Defense Counsel will provide Plaintiffs' counsel with the grievances that are relevant.

12. **Federal Court Enforcement.** The parties agree to jointly request that the Court approve this Settlement Agreement, incorporate this settlement agreement into its order approving it, and retain jurisdiction over this matter for the purpose of supervising and enforcing the terms of this Agreement until termination of the monitoring period as provided under ¶ 11. *See Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375 (1994). This Agreement is contingent upon the Court incorporating the settlement agreement into an order and retaining jurisdiction over this matter to supervise and enforce the terms of the Agreement. If the Court does not do all of those things, the Plaintiffs retain all rights to enforce the terms of the Agreement or to withdraw their consent to the Agreement and revive any claims otherwise barred by operation of the Agreement. If the Plaintiffs elect to revive their claims, the case shall be returned to active status and the Defendants shall retain all of their rights and defenses.

13. **Alleged Breach and Other Disputes.** The parties agree that in the event of a dispute between them regarding the terms and conditions of or compliance with this agreement during the monitoring period, they will provide written notice to the other of the alleged dispute, including a statement of facts sufficient to identify their dispute and make it possible for them to attempt to resolve the matter through negotiation. In the event they are unable to resolve the matter within 20 days, each party has the option of filing legal action, including a motion to show cause for contempt, with the Court to seek resolution of the dispute.

14. **Individual Claims for Damages.** The parties agree that this Agreement does not resolve the Plaintiffs' individual claims for damage. That issue shall be resolved by separate agreement or by the Court.

15. **Fees and Costs.** The parties agree that this Agreement also does not resolve the issue of costs and attorneys' fees for Plaintiffs' counsels' work on this case. That issue shall be resolved by separate agreement or by the Court.

EXECUTED:

For Plaintiffs:

DATED: August 11, 2017

AMERICAN CIVIL LIBERTIES UNION OF
IDAHO FOUNDATION

By: /s/ Richard Eppink
Richard Alan Eppink

FERGUSON & DURHAM, PLLC

By: /s/ Craig Durham
Craig Durham, of the firm

For Defendants:

DATED: August 11, 2017

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

By: /s/ Leslie Hayes
Leslie Hayes