

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

GARY MINNIS, <i>et al.</i>,)	
)	
Plaintiffs,)	
)	
v.)	1:10-cv-96-TSE-TRJ
)	
GENE JOHNSON, <i>et al.</i>,)	
)	
Defendants.)	

**PLAINTIFFS’ CONSENT MOTION FOR VOLUNTARY DISMISSAL OF
VIRGINIA DEPARTMENT OF CORRECTIONS DEFENDANTS**

Plaintiffs Gary Minnis, Larry More, David Richardson, Ronald Roman, Delonte Tinsley, and Wolfjunge Wolfsburger (“Plaintiffs”) move to dismiss the Virginia Department of Corrections (“VDOC”) defendants¹ from this action under Federal Rule of Civil Procedure 41(a)(2). The VDOC defendants consent to this motion. In support of their motion, Plaintiffs state as follows:

1. Plaintiffs have entered into a private settlement agreement (“Agreement”) with the VDOC Defendants within the meaning of the Prison Litigation Reform Act (“PLRA”), 18 U.S.C. § 3626(g)(6).² The PLRA applies to prisoners bringing civil actions under Federal law “with respect to the conditions of confinement.” 18 U.S.C. § 3626(h)(2).
2. Under the Agreement, Plaintiffs agree to dismiss all claims against the VDOC defendants with prejudice, except for the claim for an interpreter for weekly religious services at Powhatan

¹ The VDOC defendants include the following parties to the case: Gene Johnson, Fred Schilling, Robin Hulbert, G. K. Washington, Lois Fegan, James Camache, Malcolm L. Taylor, Tony E. Reese, Donald Guillory, Walter McFarlane, Sharon Trimmer, Eddie Pearson, P. C. Hunnel, Sandra Parker, B. Morris, Virginia Department of Corrections, Community Corrections, Virginia Correctional Enterprises, Virginia Department of Correctional Education, and Powhatan Correctional Center (collectively, “VDOC Defendants”).

² Under the PLRA, “the term ‘private settlement agreement’ means an agreement entered into among the parties that is not subject to judicial enforcement other than the reinstatement of the civil proceeding that the agreement settled.” 18 U.S.C. § 3626(g)(6).

Correctional Center brought by plaintiff Larry More, which the Plaintiffs agree to dismiss without prejudice. Ex. A (Agreement) at 20-21.

3. The Agreement expressly limits judicial enforcement of the settlement to (1) a motion in this Court to reinstate the lawsuit against the VDOC defendants or (2) an action brought in state court under state law. Ex. A at 21.

4. Parties claiming that a private settlement agreement entered into under the PLRA has been breached may seek “the reinstatement of the civil proceeding that the agreement settled” or bring an action “in State court [for] any remedy available under State law.” 18 U.S.C. § 3626(c)(2).

5. Thus, consistent with the PLRA, the Agreement may be enforced by “the reinstatement of the civil proceeding that the agreement settled” — that is, the reinstatement of the present lawsuit against the VDOC defendants. 18 U.S.C. § 3626(c)(2).

6. In order for this Court to retain federal subject matter jurisdiction to reinstate this lawsuit against the VDOC defendants in the event of a breach, the order of dismissal must expressly retain jurisdiction. *Kokkonen v. Guardian Life Insurance Co. of America*, 511 U.S. 375 (1994). As the Fourth Circuit has held, “[t]he obligation to comply with a settlement's terms must be expressly made part of a court's order for jurisdiction to enforce the settlement after dismissal of the action to exist.” *Smyth v. Rivero*, 282 F. 3d 268, at 283 (4th Cir. 2002). “Either incorporation of the terms of the agreement or a separate provision retaining jurisdiction over the agreement will suffice” to retain federal court jurisdiction over the private settlement agreement. *Id.*

7. Plaintiffs and the VDOC Defendants therefore request that this Court’s Order dismissing the case under Federal Rule of Civil Procedure 41(a)(2) expressly retain jurisdiction under *Smyth*, 282 F. 3d at 283, for the limited purpose of preserving this Court’s power to reinstate this lawsuit against the VDOC defendants under 18 U.S.C. § 3626(c)(2) only.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court enter an Order dismissing this matter with prejudice with respect to the VDOC defendants, except for the claim for an interpreter for weekly religious services at Powhatan Correctional Center brought by plaintiff Larry More, which the parties agree to dismiss without prejudice, and that this Court expressly retain jurisdiction to reinstate this lawsuit in the future should the Plaintiffs so move.

November 9, 2010

Respectfully

submitted,

/s/

Adèle Hutton Auxier, Esq.
Virginia Bar No. 76476
Attorney for Plaintiffs Minnis, More,
Richardson, Roman, Tinsley, and
Wolfsburger
Winston & Strawn LLP
1700 K Street, N.W.
Washington, DC 20006-3817
(202) 282-5000
Facsimile: (202) 282-5100
aauxier@winston.com

Telephone:

Jay L. Levine
Gregory L. Ewing
Luciano Racco
Amadou K. Diaw
Winston & Strawn LLP
1700 K Street, N.W.
Washington, DC 20006-3817
Telephone: (202) 282-5000
Facsimile: (202) 282-5100
jlevine@winston.com
gewing@winston.com
lracco@winston.com
adiaw@winston.com

E. Elaine Gardner
Ivy Finkenstadt
Washington Lawyers' Committee for Civil
Rights and Urban Affairs
11 Dupont Circle, N.W.; Suite 400
Washington, D.C. 20036
Telephone: (202) 319-1000
Facsimile: (202) 319-1010
elaine_gardner@washlaw.org
Ivy_Finkenstadt@washlaw.org

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of November, 2010, I electronically filed the foregoing Notice of Motion with the Clerk of Court using the CM/ECF system, which then sent a notification of such filing (NEF) to the following:

Charles Manley Allen, Jr
William Francis Demarest, III
Goodman, Allen & Filetti, PLLC
4501 Highwoods Parkway, Suite 210
Glen Allen, VA 23060
callen@goodmanallen.com
wdemarest@goodmanallen.com

*Attorneys for Defendants Retchin, Duval,
Davis, Dodd, VCUHS, and MCV*

George Walerian Chabalewski
Office of the Attorney General
Civil Litigation Division
900 E. Main St
Richmond, VA 23219
gchabalewski@oag.state.va.us,
cchill@oag.state.va.us,
ddavis@oag.state.va.us

Mark Ralph Davis
John Michael Parsons
Office of the Attorney General
Public Safety & Enforcement Division
900 E. Main St
Richmond, VA 23219
mark.davis@oag.state.va.us,
jparsons@oag.state.va.us,
ayawn@oag.state.va.us,
vferry@oag.state.va.us

*Attorneys for Defendants Johnson, Schilling,
Hulbert, Washington, Fegan, Guillory,
McFarlane, Trimmer, Pearson, Hunnel,
Parker, Morris, Camache, Taylor, Reese,
VDOC, VC Enterprises, VC Education,
Powhatan, and Community Corrections*

/s/
Adèle Hutton Auxier, Esq.
Virginia Bar No. 76476
*Attorney for Plaintiffs Minnis, More,
Richardson, Roman, Tinsley, and Wolfsburger*
Winston & Strawn LLP
1700 K Street, N.W.
Washington, D.C. 20006-3817
Telephone: (202) 282-5000
Facsimile: (202) 282-5100
auxier@winston.com

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[PROPOSED] ORDER

The Plaintiffs and the VDOC Defendants have entered into a private settlement agreement (“Agreement”) pursuant to 18 U.S.C. § 3626. UPON CONSIDERATION of Plaintiffs’ Consent Motion For Voluntary Dismissal of Virginia Department of Corrections Defendants, and the record herein, it is hereby:

1. ORDERED that all claims against the VDOC Defendants are dismissed from the above-captioned action with prejudice, except for the claim for an interpreter for weekly religious services at Powhatan Correctional Center brought by plaintiff Larry More, which is dismissed without prejudice;

2. ORDERED that by consent of the parties and consistent with 18 U.S.C. § 3626(c)(2), the Court shall retain jurisdiction pursuant to *Kokkonen v. Guardian Life Insurance Co. of America*, 511 U.S. 375 (1994) through October 18, 2015 for the limited purpose of reinstating this lawsuit under the terms of the Agreement.

ENTERED this ____ day of _____ 2010.

Hon. T.S. Ellis
United States District Judge

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I hereby certify that on this 9th day of November 2010, I electronically filed the foregoing Proposed Order with the Clerk of Court using the CM/ECF system, which then sent a notification of such filing (NEF) to the following::

Charles Manley Allen, Jr
William Francis Demarest , III
Goodman, Allen & Filetti, PLLC
4501 Highwoods Parkway, Suite 210
Glen Allen, VA 23060
callen@goodmanallen.com
wdemarest@goodmanallen.com

*Attorneys for Defendants Retchin, Duval,
Davis, Dodd, VCUHS, and MCV*

Edward J. McNelis, III
Elizabeth Martin Muldowney
Kimberly Jane Raab
Rawls & McNelis PC
1111 East Main Street
Suite 1701
Richmond, VA 23219
emcnelis@rawlsmcnelis.com,
emuldowney@rawlsmcnelis.com,
dminnick@rawlsmcnelis.com,
fbarnes@rawlsmcnelis.com,
kraab@rawlsmcnelis.com

*Attorneys for Defendants Toney, Watson, and
Stewart*

George Walerian Chabalewski
Office of the Attorney General
Civil Litigation Division
900 E. Main St
Richmond, VA 23219
gchabalewski@oag.state.va.us,
cchill@oag.state.va.us,
ddavis@oag.state.va.us

Mark Ralph Davis
John Michael Parsons
Office of the Attorney General
Public Safety & Enforcement Division
900 E. Main St
Richmond, VA 23219
mark.davis@oag.state.va.us,
jparsons@oag.state.va.us,
ayawn@oag.state.va.us,
vferry@oag.state.va.us

*Attorneys for Defendants Johnson, Schilling,
Hulbert, Washington, Fegan, Guillory,
McFarlane, Trimmer, Pearson, Hunnel,
Parker, Morris, Camache, Taylor, Reese,
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/s/
Adèle Hutton Auxier, Esq.
Virginia Bar No. 76476
Attorney for Plaintiffs Minnis, More,
Richardson, Roman, Tinsley, and Wolfsburger
Winston & Strawn LLP
1700 K Street, N.W.
Washington, D.C. 20006-3817
Telephone: (202) 282-5000
Facsimile: (202) 282-5100
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