

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ANTHONY ACCURSO,)	
)	
Plaintiff,)	Civil Action No. 17-2626 (APM)
)	
v.)	
)	
FEDERAL BUREAU OF PRISONS,)	
)	
Defendant.)	
_____)	

STIPULATION OF SETTLEMENT AND DISMISSAL

Plaintiff Anthony Accurso (“Plaintiff”) and Defendant Federal Bureau of Prisons (“BOP”), by and through the United States Attorney for the District of Columbia, (collectively, the “parties”) hereby agree and stipulate that the above-captioned case shall be settled and dismissed on the following terms.

1. The parties enter into this Stipulation in order to make full and final settlement of any and all claims, allegations, or causes of action that Plaintiff raised or could have raised in this action. Plaintiff also agrees to accept the terms set forth herein in full satisfaction of any and all claims, demands, rights and causes of action of any nature based upon or related to this cause of action at any BOP facility through the date of this Stipulation, including but not limited to all claims asserted or that could have been asserted in the above-captioned civil action.

2. Accommodation. While Plaintiff is housed at Seagoville Federal Correctional Institution (“Seagoville FCI”), BOP agrees to provide Plaintiff access to the approved inflatable zafu (“zafu”) and the approved dense foam zabuton (“zabuton”) currently in Plaintiff’s possession for in-cell use three times a day (a) around the time of the 5:00 a.m. count, (b) mid-day, and (c) around the time of the 10:00 p.m. count. Plaintiff is currently permitted to keep the

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zafu and zabuton at the end of his bed. The Warden maintains the right to modify how in-cell access to the zafu and zabuton is provided to Plaintiff. This accommodation is limited to use in general population. BOP maintains the right to discontinue this in-cell accommodation if the zafu and zabuton are not exclusively used for meditation, are used by another inmate, or are removed from Plaintiff's cell unless such removal is authorized by BOP facility staff.

Plaintiff shall notify the institution chaplain if the zafu or zabuton becomes damaged. The institution chaplain will work with Plaintiff to obtain, at Plaintiff's expense, a replacement zafu or zabuton that is the same as the zafu and zabuton currently in Plaintiff's possession. If the existing zafu or zabuton is no longer being produced or cannot be sourced, the chaplain shall assist Plaintiff in obtaining, at Plaintiff's expense, a replacement zafu and zabuton that is comparable to the inflatable zafu and dense foam zabuton currently in Plaintiff's possession.

3. Any Transfer from FCI Seagoville. In the event Plaintiff is transferred from FCI Seagoville to another BOP facility, BOP will ship to the other facility, at BOP's expense, the zafu and zabuton with Plaintiff's authorized personal property. Upon arrival at the other facility, Plaintiff may request permission to maintain and use the zafu and zabuton in his cell for religious purposes in a manner consistent with Paragraph 2 of this Stipulation. Plaintiff must first attempt informal resolution; this informal resolution requirement is satisfied if Plaintiff does not receive a response to his informal resolution attempt within five business days after he submits it. Plaintiff must then (a) submit the request as a Request for Administrative Remedy (BP-9) to the Warden then responsible for Plaintiff's confinement and (b) send a letter, via a traceable mail delivery method, to the South Central Region ("SCR") Regional Counsel that identifies the above-captioned case name and civil action number and contains a copy of the BP-9 provided to the custodial Warden. The letter to the SCR Regional Counsel must reference the below

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provision waiving BP-10 and BP-11 exhaustion for any new litigation.

4. New Civil Action. After a period of 40 days following the date on which Accurso submits a BP-9 and letter to the SCR Regional Counsel, *see supra* Paragraph 3, Accurso may institute a new civil action on or before March 31, 2026. BOP agrees to waive the defense of failure to exhaust administrative remedies in the new civil action so long as (a) the claims asserted in that action are limited to Accurso's request for accommodation with respect to the zafu and the zabuton; and (b) Accurso submitted a BP-9 asking for the accommodation and provided the letter notice to the SCR Regional Counsel, *see supra* Paragraph 3, and 40 days have elapsed since the date on which Accurso made those submissions.

5. Attorneys' Fees & Costs. Defendant shall pay Plaintiff a lump sum of twenty-five thousand dollars (\$25,000.00) in attorneys' fees and costs. This payment is inclusive of any and all attorneys' fees, costs, and litigation expenses and is in full and final satisfaction of all of Plaintiff's claims in this case. BOP, the United States, and their employees shall have no further liability to Plaintiff for any amounts.

This payment shall be made by an electronic transfer of funds to the Interest on Lawyer's Trust Account for Brandon Sample PLC as specified in written instructions provided by Plaintiff's counsel to BOP's counsel. Payment of the \$25,000.00 shall be made as promptly as practicable, consistent with the normal processing procedures followed by the Department of Justice and the Department of the Treasury, following the dismissal of the above-captioned civil action pursuant to Paragraph 6 hereof. Plaintiff and Plaintiff's counsel shall cooperate with BOP's counsel to ensure that all documentation required to process this payment is complete and accurate. BOP's counsel shall initiate the payment process within 14 days after receipt of all necessary documentation from Plaintiff's counsel.

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The Court shall retain jurisdiction to enforce compliance with Paragraph 5 of this agreement.

6. Dismissal with Prejudice. The filing of this stipulation shall constitute a dismissal of the above-captioned civil action with prejudice pursuant to Rule 41(a)(1)(A)(ii) of the Federal Rules of Civil Procedure. BOP's counsel may file the fully executed Stipulation with the Court. Plaintiff agrees that execution of this Stipulation by him and BOP shall constitute a voluntary dismissal with prejudice of the matters pending against BOP under Rule 41(a)(1) of the Federal Rules of Civil Procedure.

7. Release. As noted in Paragraph 1 above, this Stipulation provides for the full and complete satisfaction of all claims which have been or could have been asserted by Plaintiff in the above-captioned civil action and in any administrative complaint and/or grievance, including without limitation all claims for costs, attorneys' fees, and interest or other compensation for delay, and Plaintiff agrees not to hereafter assert any claim or institute or prosecute any civil action or other proceeding against BOP or the United States, its agencies or officials, or its present or former employees or agents, in either their official or individual capacities, with respect to any event complained of therein. Plaintiff hereby fully and forever releases and discharges BOP and the United States, its agencies and officials, and its present and former employees and agents, in their official and individual capacities, from any and all rights and claims of every kind, nature, and description, whether presently known or unknown, which Plaintiff now has or may have based upon or related to this cause of action arising out of or in connection with any event occurring on or before the date on which he has executed this Stipulation, including without limitation any rights or claims under the Religious Freedom Restoration Act, as amended and currently in effect. In connection with this release, Plaintiff

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acknowledges that he is aware that he may hereafter discover rights or claims presently unknown and unsuspected, or facts in addition to or different from those which he now knows with respect to the rights and claims released herein. Nevertheless, Plaintiff agrees, through this Stipulation, to settle and release all such rights and claims; provided, however, that nothing in this Stipulation shall affect any rights or claims that may arise after the date Plaintiff signs this Stipulation.

8. No Assignment. Plaintiff represents and warrants that he is the sole lawful owner of all the rights and claims which he has settled and released herein, and that he has not transferred or assigned any of those rights and claims or any interest therein. Plaintiff shall indemnify, hold harmless, and defend BOP and the United States, its agencies and officials, and its present and former employees and agents, in their official and individual capacities, from and against any transferred, assigned, or subrogated interests in those rights and claims.

9. No Admission of Liability. This Stipulation has been entered into by Plaintiff and BOP solely for the purposes of compromising disputed claims without protracted legal proceedings and avoiding the expense and risk of such litigation. Therefore, this Stipulation is not intended and shall not be deemed an admission by either party of the merit or lack of merit of the opposing party's claims and defenses. Without limiting the generality of the foregoing, this Stipulation does not constitute, and shall not be construed as, an admission that BOP or any of BOP's present or former employees or agents violated any of Plaintiff's rights or any laws or regulations, or as an admission of any contested fact alleged by Plaintiff in connection with this case or otherwise. This Stipulation may not be used as evidence or otherwise in any civil or administrative action or proceeding against BOP or the United States or any of its agencies or officials or present or former employees or agents, either in their official or individual capacities, except for proceedings necessary to implement or enforce the terms hereof.

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10. Tax Consequences. Plaintiff acknowledges that he has not relied on any representations by BOP or BOP's employees or agents as to the tax consequences of this Stipulation or any payments made by or on behalf of BOP hereunder. Plaintiff shall be solely responsible for compliance with all federal, state, and local tax filing requirements and other obligations arising from this Stipulation that are applicable to Plaintiff.

11. Entire Agreement. This Stipulation contains the entire agreement between the parties hereto and supersedes all previous agreements, whether written or oral, between the parties relating to the subject matter hereof. No promise or inducement has been made except as set forth herein, and no representation or understanding, whether written or oral, that is not expressly set forth herein shall be enforced or otherwise be given any force or effect in connection herewith.

12. Amendments. The terms of this Stipulation may not be modified or amended, and no provision hereof shall be deemed waived, except by a written instrument signed by both parties.

13. Construction. The parties acknowledge that the preparation of this Stipulation was collaborative in nature, and so agree that any presumption or rule that an agreement is construed against its drafter shall not apply to the interpretation of this Stipulation or any term or provision hereof.

14. Headings. The paragraph headings in this Stipulation have been inserted for convenience of reference only, and shall not limit the scope or otherwise affect the interpretation of any term or provision hereof.

15. Severability. The provisions of this Stipulation are severable, and any invalidity or unenforceability of any one or more of its provisions shall not cause the entire agreement to

fail or affect the validity or enforceability of the other provisions herein, which shall be enforced without the severed provision(s) in accordance with the remaining provisions of this Stipulation.

16. Further Assurances. Each party agrees to take such actions and to execute such additional documents as may be necessary or appropriate to fully effectuate and implement the terms of this Stipulation.

17. Right to Cure. If either party at any time believes that the other party is in breach of this Stipulation, that party shall notify the other party of the alleged breach. The other party shall then have thirty (30) days to cure the breach or otherwise respond to the claim. The parties shall make a good faith effort to resolve any dispute arising from or regarding this Stipulation before bringing the dispute to the Court's attention.

18. No Waiver. The failure of either party to enforce at any time any provision of this Stipulation shall not be construed to be a waiver of such provision, nor in any way affect the validity of this Stipulation, in whole or in part, or any right of any person or entity thereafter to enforce each and every provision. No waiver of any breach of this Stipulation shall be held to constitute a waiver of any other breach.

19. No Waiver of Pre-Existing Rights for Claims Arising After Settlement. Nothing in this agreement shall be construed as precluding Plaintiff from making claims that arise after he signs this Stipulation based upon any regulatory, statutory or constitutional right, including rights already in existence at the time he signs this Stipulation.

20. Notices. Any notice required or permitted to be given pursuant to this Stipulation shall be in writing and shall be delivered by hand, or transmitted by e-mail, addressed as follows or as each party may subsequently specify by written notice to the other:

If to Plaintiff: ANTHONY ACCURSO
28981-044
Federal Correctional Institution
P.O. Box 9000
Seagoville, TX 75159

With a copy to: BRANDON SAMPLE, ESQ.
Brandon Sample PLC
P.O. BOX 250
Rutland, VT 05702
E-mail: Brandon@brandonsample.com

If to BOP: REGIONAL COUNSEL
South Central Region
Federal Bureau of Prisons
U.S. Armed Forces Reserve Complex
344 Marine Forces Drive
Grand Prairie, TX 75051

With a copy to: CHIEF, CIVIL DIVISION
United States Attorney's Office
for the District of Columbia
555 Fourth Street, N.W.
Washington, D.C. 20530

21. Execution. This Stipulation may be executed in two or more counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same agreement. A facsimile or other duplicate of a signature shall have the same effect as a manually-executed original.

22. Governing Law. This Stipulation shall be governed by the laws of the United States without regard to any conflicting choice of law rules. The exclusive venue for any legal action related to or arising out of this Stipulation shall lie in the United States District Court for the District of Columbia.

23. Binding Effect and Effective Date. Upon execution of this Stipulation by all parties hereto, this Stipulation shall be binding upon and inure to the benefit of the parties and

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their respective heirs, personal representatives, administrators, successors, and assigns. Each signatory to this Stipulation represents and warrants that he or she is fully authorized to enter into this Stipulation.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound, have executed this Stipulation on the dates shown below.

Anthony Accurso
ANTHONY ACCURSO
Plaintiff

Date: 9/6/2019

Brandon Sample
Brandon Sample
Brandon Sample PLC
Bar ID: TX0144
P.O. BOX 250
Rutland, VT 05702
Tel: 802-444-4357
E-mail: Brandon@brandonsample.com

Counsel for Plaintiff Anthony Accurso

Date: 9-6-19

JESSIE K. LIU, D.C. Bar # 472845
United States Attorney

DANIEL F. VAN HORN, D.C. Bar # 924092
Chief, Civil Division

By: _____

MARSHA W. YEE
Assistant United States Attorney
Civil Division
United States Attorney's Office
555 4th Street, N.W.
Washington, D.C. 20530
Telephone: (202) 252-2539
Email: Marsha.Yee@usdoj.gov

Counsel for Defendant Federal Bureau of Prisons

Date: _____

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IN WITNESS WHEREOF, the parties hereto, intending to be legally bound, have executed this Stipulation on the dates shown below.

ANTHONY ACCURSO
Plaintiff

Date: _____


Brandon Sample
Brandon Sample PLC
Bar ID: TX0144
P.O. BOX 250
Rutland, VT 05702
Tel: 802-444-4357
E-mail: Brandon@brandonsample.com

Counsel for Plaintiff Anthony Accurso

Date: _____

JESSIE K. LIU, D.C. Bar # 472845
United States Attorney

DANIEL F. VAN HORN, D.C. Bar # 924092
Chief, Civil Division

By: 
MARSHA W. YEE
Assistant United States Attorney
Civil Division

United States Attorney's Office
555 4th Street, N.W.
Washington, D.C. 20530
Telephone: (202) 252-2539
Email: Marsha.Yee@usdoj.gov

Counsel for Defendant Federal Bureau of Prisons

Date: September 6, 2019