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STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
No. 20 CVS 500110

NORTH CAROLINA STATE CONFERENCE OF THE NAACP, et al.,

Plaintiff-Petitioners,

v.

ROY COOPER, et al.,

Defendant-Respondents.

JOINT MOTION FOR STAY

(Case assigned to Vinston Rozier, Jr., Superior Court Judge, Designated Pursuant to Tenth Judicial District Local Rule 2.2)

NOW COME the parties jointly, by and through their undersigned counsel, and respectfully move the Court to stay the case in its entirety for a period of 180 days, including a stay of the Court's June 16, 2020 preliminary injunction and all subsequent orders (collectively, the "preliminary injunction"). In support of this joint motion, the parties state the following:

1. After nearly a year of litigation and several all-day mediation sessions facilitated by Mediator Asa L. Bell, Jr., the parties have reached a settlement agreement (the "Agreement") that will resolve all claims pending before this Court.

2. Under the terms of the Agreement, Defendants will, within 180 days from the date of the stay, effectuate the "early reentry" of 3,500 people in their custody as follows: at least 1,500 incarcerated people within 90 days of the stay, and the remaining persons within 180 days of the stay. In addition to the early reentries, Defendants will continue to release people in their custody who

reach their projected release dates.

3. As stated in the attached Agreement, the parties have come to a mutual understanding that an "early reentry" is defined as: (1) transfer of an individual to Extended Limits of Confinement who has at least 14 days remaining until their projected release date ("PRD") as of February 15, 2021; (2) release of an individual at least 14 days before their PRD as of February 15, 2021; or (3) reinstatement or restoration of an individual to post-release supervision sooner than they would otherwise have been reinstated or restored or early release of people with Mutual Agreement Parole Program ("MAPP") agreements.

4. At the conclusion of the 180-day stay, and upon receipt of the final report from Defendants demonstrating that they have effectuated the 3,500 early reentries within the time frames specified by the Agreement, Plaintiffs have agreed to dismiss the instant case with prejudice, with each party bearing its own costs and fees, with the exception of mediator fees and expenses, which will be paid by Defendants. The parties understand and agree that Plaintiffs' dismissal of the case at the conclusion of the stay would automatically dissolve the preliminary injunction.

5. Defendants have agreed to seek a stay of their appeal of the Court's Preliminary Injunction order to the North Carolina Court of Appeals and to dismiss their pending appeal at the end of the stay upon Plaintiffs' dismissal of the case.

6. In addition to effectuating the 3,500 early reentries within the 180-day period, Defendants have agreed to take certain measures in an effort to maintain

the population level achieved by the end of the 180-day period, and to implement or maintain certain COVID-19 mitigation measures, including the current testing and transfer protocols, as specified in Parts II(B)(2) and (3) of the attached Agreement, respectively.

7. Staying the case for a 180-day period while Defendants effectuate the 3,500 early reentries is necessary to facilitate execution of the Agreement. The parties agree that, during the stay, no litigation shall be conducted, and no party shall seek relief from this Court or the court liaison. The parties request that, during the stay, the preliminary injunction shall be lifted and no party will be required to report to the trial court or court liaison, and the parties shall seek no relief from the trial court or court liaison.

8. A stay will not prejudice either party, as it will allow Defendants to concentrate their efforts and resources on effectuating the early reentries and implementing the other provisions of the Agreement, while preserving Plaintiffs' ability to continue to litigate this case if Defendants fail to achieve the early reentries to which they have agreed.

9. A stay will also serve the interests of judicial economy, as it would conserve time and resources the Court would expend reviewing Defendants' ongoing weekly reports, as well as the parties' discovery and dispositive motions that would come due during the 180-day period.

WHEREFORE, the parties respectfully request that the Court approve and enter their joint motion for stay.

Respectfully submitted, this 24th day of February, 2021,

/s/ Leah J. Kang

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ATTACHMENT 1

SETTLEMENT AGREEMENT

This Agreement ("Agreement") is entered into by and between NORTH CAROLINA STATE CONFERENCE OF THE NAACP, DISABILITY RIGHTS NORTH CAROLINA, AMERICAN CIVIL LIBERTIES UNION OF NORTH CAROLINA LEGAL FOUNDATION, KIM T. CALDWELL, JOHN E. STURDIVANT, SANDARA KAY DOWELL, and CHRISTINA RHODES (collectively, "Plaintiffs"), and ROY COOPER, in his official capacity as Governor of North Carolina, ERIK A. HOOKS, in his official capacity as Secretary of the North Carolina Department of Public Safety, and WILLIS FOWLER, ERIC MONTGOMERY, ANGELA BRYANT, and GRAHAM ATKINSON, in their official capacities as North Carolina Post-Release Supervision and Parole Commissioners, ("Defendants");

WHEREAS, Plaintiffs have sued Defendants, in Wake County Superior Court, File No. 20 CVS 500110, claiming that their response to COVID-19 in the North Carolina Prisons System violates the North Carolina Constitution;

WHEREAS, in their lawsuit, Plaintiffs sought a reduction in the prison population and the implementation of other mitigation measures due to COVID-19;

WHEREAS, the Honorable Vinston Rozier granted preliminary injunctive relief to Plaintiffs through the entry of multiple orders;

WHEREAS, the Honorable Vinston Rozier issued an Order stating that it was "necessary, based on the pernicious and present dangers associated with the COVID-19 pandemic, particularly through the lens of the additional risk to individuals as illustrated by the closure of prison facilities and increase of positive cases and pandemic-related deaths, to allow for early release of eligible individuals to the greatest and safest extent possible";

WHEREAS, the Honorable Vinston Rozier appointed Thomas Maher as a court liaison to make recommendations for additional releases and Mr. Maher has recommended significant additional releases;

WHEREAS, Defendants contend that, since the beginning of the pandemic, in addition to implementing other COVID-19 mitigation measures, Defendants have engaged in efforts to reduce the prison population in response to COVID-19;

WHEREAS, from early on in the pandemic the prison population has decreased from 34,437 in February 2020 to 28,581 as of February 2021;

WHEREAS, Plaintiffs contend that these releases alone are insufficient to protect the incarcerated population;

WHEREAS, Plaintiffs and Defendants share the goal of protecting incarcerated persons and mitigating the impact of COVID-19 in North Carolina State Prisons; and

WHEREAS, Plaintiffs and the Defendants desire to resolve their disputes on mutually agreeable terms;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, Plaintiffs and Defendants hereby agree to the following terms of settlement:

I. WARRANTIES

A. Each party warrants and represents to the other that it has been fully informed and has full knowledge of the terms, conditions and effects of this Agreement.

B. Each party warrants and represents to the other that no promise or inducement has been offered or made except as herein set forth, and that this Agreement is executed without reliance upon any statement or representation by any other party or its agent.

C. Each party warrants and represents to the other that they have been advised to consult with legal counsel and have consulted with legal counsel prior to executing this Agreement.

II. OBLIGATIONS

A. The parties shall jointly move for an immediate 180-day stay of this matter in the Superior Court. The requested stay from the Superior Court shall include a stay of the preliminary injunction and any orders issued pursuant to the preliminary injunction (collectively, the "preliminary injunction"). During the stay, the preliminary injunction shall be lifted, no litigation shall be conducted, no party will be required to report to the trial court or court liaison, and the parties shall seek no relief from the trial court or court liaison. Upon the granting of the full relief requested in the Superior Court, the parties shall jointly move for an immediate 180-day stay of this matter in the Court of Appeals.

B. Upon the granting of the full stay requested from the Superior Court in Paragraph A, Defendants shall:

1. Within 180 days of the stay, effectuate the "early reentry" of 3,500 persons, as follows: at least 1,500 within 90 days of the stay; and the remaining persons within 180 days of the stay. The effectuation of such early reentries, as defined herein, may occur through any combination of the use of discretionary sentence credits, transfers to Extended Limits of Confinement ("ELC"), and efforts by the Post-Release Supervision and Parole Commission. For purposes of this Agreement, an "early reentry" is defined as (i) transfer of an individual to ELC who has at least 14 days remaining until their projected release date ("PRD"), as of February 15, 2021; (ii) release of an individual at least 14 days before their PRD as of February 15, 2021; or (iii) reinstatement or restoration of an individual to post-release supervision sooner than they would otherwise have been reinstated or restored or early release of people with MAPP agreements. Any early reentries occurring on or after February 15, 2021, and prior to the stay, will count toward the 3,500 total. In addition, the North Carolina Department of Public Safety will continue to effectuate the release of individuals who are not eligible for "early reentry" but who reach their projected release dates.

    a. Provide Plaintiffs with a monthly list of the OPUS numbers of early reentries, including release date as of February 15, 2021, early reentry date, racial/ethnic information, if available; and county of supervision, if available. This list shall be treated as

"attorneys' eyes only" pursuant to the Protective Order entered in the litigation. Plaintiffs may provide Local Reentry Councils and other reentry service providers with a copy of the monthly lists described herein after receiving and sharing with Defendants a written agreement from such Local Reentry Council or other reentry service provider to: (i) utilize the information solely for the purpose of providing individuals listed with reentry services; and (ii) comply with the terms and conditions of the Protective Order entered in this litigation.

2. Until the earliest of: (i) 12 months from the date of this Agreement; (ii) the State of Emergency set forth in Governor Cooper's Executive Order No. 116 is rescinded; or (iii) the U.S. Department of Health and Human Services rescinds the declaration of a public health emergency in the United States related to COVID-19, Defendants agree to take reasonable steps to maintain the population level achieved through efforts described in paragraph 1 as follows:

   a. Defendants will assess the overall prison population every 90 days following the 180-day period described in paragraph 1, and if the prison population has increased beyond 10% of the population level achieved at the end of the 180-day period, they will reduce the population by: (i) automatically awarding discretionary sentence credits to eligible persons with a PRD within 90 days of the date of assessment; and (ii) applying reasonable efforts to reduce the population through ELC transfers, efforts by the Commission, or other mechanisms available to Defendants, in Defendants' discretion. Eligibility for discretionary sentence credits and ELC transfers shall be determined according to the eligibility requirements that were in place on February 15, 2021, unless those requirements are altered to expand the number of eligible persons. The automatic discretionary sentence credits will be awarded in amounts sufficient to advance the PRDs of those receiving such credits to within 10 days of their mandatory minimum sentences.

   b. If this provision is triggered, Defendants agree to provide Plaintiffs a monthly list of the people in their custody subject to the additional reduction efforts in paragraph 2. The list will include the same information and be treated in the same manner as the lists described in paragraph 1(a) of this Agreement.

3. Until the earliest of: (i) 12 months from the date of this Agreement; (ii) the State of Emergency set forth in Governor Cooper's Executive Order No. 116 is rescinded; or (iii) the U.S. Department of Health and Human Services rescinds the declaration of a public health emergency in the United States related to COVID-19, Defendants agree to continue the following efforts to mitigate the risks from COVID-19 in State prisons:

   a. **Vaccine Education.** Implement an education campaign about the benefits of COVID-19 vaccination to staff and the incarcerated population and consider Plaintiffs' feedback on vaccine education resources.

   b. **Vaccine incentive for Incarcerated Population.** Provide incentive packages to the incarcerated population for volunteering to receive the COVID-19 vaccine.

c. **Cohort Reviews.** Review the size and configuration of cohorts at least once every 90 days to make reasonable efforts to keep cohorts as small as feasible, while accounting for vaccination rates, during the pandemic.

d. **COVID-19 Positive Isolation.** Continue to isolate confirmed COVID-19 positive persons either individually or solely with other persons who are confirmed COVID-19 positive persons.

e. **Provision of Masks and Sanitation Products.** Provide adequate supplies of masks, sanitation and hygiene products for use by the incarcerated population, unless circumstances outside of Defendants' control do not allow for sufficient supplies. With respect to masks, provide sufficient masks such that incarcerated people have at least two masks at all times.

f. **Transfer Protocols.** For transfers of not-fully-vaccinated persons, continue current transfer protocols until May 15, 2021. The current transfer protocols require Defendants to test or quarantine incarcerated people prior to transfer, except for transfers for security or medical reasons. After May 15, 2021, Defendants will continue the current transfer protocols of not fully-vaccinated incarcerated persons, unless and until a different transfer protocol is warranted by new CDC or NC DHHS guidance or following a determination by the Department of Public Safety's Chief Medical Officer in consultation with NC DHHS that such transfer protocols are no longer necessary or warranted based on the overall level of vaccinations and positivity rates. Thereafter, Defendants will continue to conduct transfers in compliance with guidance from the CDC and/or NC DHHS.

g. **Testing Protocols.**

i. Continue current testing protocols of staff and incarcerated persons for any not-fully-vaccinated persons until May 15, 2021, as follows:

1) Biweekly testing of all prison staff who come into proximity of incarcerated people;
2) Surveillance testing protocol of incarcerated people by sample testing of the incarcerated population at the time of their annual screen for tuberculosis and sample testing of 5 percent of the population at certain high-acuity prisons, as identified in Defendants' Amended Testing Strategy (Defs' 22nd Notice of Filing, Aug. 26, 2020).
3) Testing of all symptomatic persons, followed by contact tracing and then testing of those individuals determined to have been in close contact with the COVID-19 positive persons. This shall include testing of cohorts where positive cases are identified.

Otherwise, Defendants will follow CDC guidance with regard to testing.

ii. After May 15, 2021, Defendants will continue the current testing protocols of not fully-vaccinated staff and incarcerated persons, unless and until a different testing strategy is warranted by new CDC or NC DHHS guidance or following a determination by the Department of Public Safety's Chief Medical Officer in consultation with NC DHHS that such testing is no longer necessary or warranted based on the overall level of vaccinations and positivity rates. Thereafter, Defendants will continue to conduct reasonable surveillance testing of inmates and staff, in compliance with guidance from the CDC and/or NC DHHS.

h. **Compliance Monitoring.** Continue monitoring facilities for compliance with COVID-19 mitigation efforts through unannounced internal audits by the Compliance Audit Team. Prisons Leadership will also continue to conduct unannounced spot inspections to monitor compliance. Additionally, facility-level Quality Assurance Teams will regularly assess the facility's compliance with the Department's mitigation policies and practices.

i. **Anonymous Complaint System.** Implement an anonymous system for incarcerated persons specifically for issues related to compliance with COVID-19 mitigation practices. This system will utilize the incarcerated population mail system, will not require postage, and will allow for the submission of a complaint anonymously. The submission of any complaints through this system will not result in any retaliatory adverse action. Defendants will issue a memo to the incarcerated population regarding this newly available option to submit complaints.

j. **Family Notification.** Follow the policy of the North Carolina Department of Public Safety of notifying the individuals designated as emergency contacts when a hospitalized incarcerated persons' condition is classified as seriously ill or critically ill and in cases of death.

k. **Mediator Fees.** Pay all mediator's fees and expenses in full.

C. The parties understand and agree that at any time during the 180-day stay, in the event that any of Defendants' obligations pursuant to this Agreement become unlawful as a result of any act of the North Carolina General Assembly or lawfully entered order by any court of competent jurisdiction, then the parties shall meet and confer within 30 days of such act taking effect to determine whether and how such act or order impacts the parties' obligations under this Agreement. If, after such a meet and confer, the parties cannot agree upon terms to continue this Agreement, then the parties shall jointly inform the trial court and request that the stay be lifted.

D. At the conclusion of the 180-day stay, and upon receipt of the final monthly report from Defendants demonstrating that 3500 early reentries were effectuated within the specified time frames as required by this Agreement, the parties agree to the take the following actions:

1. Plaintiffs shall execute a release of claims with the following language:

Plaintiffs hereby release, acquit and forever discharge The State of North Carolina, The Governor of North Carolina, the North Carolina Department of Public Safety, the Secretary of the North Carolina Department of Public Safety, the North Carolina Post-Release Supervision and Parole Commission and its Commissioners, and all current and former officers, agents and employees of the above named entities (in both their official and individual capacities), and all successors of the above named entities from all claims, actions, causes of action, demands, rights, damages, costs, sums of money, accounts, covenants, contracts, promises, attorney fees and all liabilities of any kind or nature whatsoever at law, in equity, or otherwise, which any Plaintiff ever had, now has, or may have had against these entities related to COVID-19 in state prisons, or state prison population levels through the date of this Agreement. Nothing in this Agreement shall be construed as waiving the rights or claims of individuals who may be members or constituents of the organizational plaintiffs; and

2. Plaintiffs will dismiss the superior court action, with prejudice, with each party bearing its own costs and fees, with the exception of mediator fees and expenses, as specified above;

3. Defendants shall notify the Court of Appeal that the case has been settled and withdraw their appeal.

III. ASSURANCES

The parties understand and agree that they shall continue to be bound by the terms of the Protective Order in this case, and that, within 60 days after the dismissal of the case, Plaintiffs shall return or destroy any confidential material as specified in Paragraph 13 of the Protective Order.

IV. COMPROMISE OF DISPUTED CLAIMS

Each party understands and agrees that this settlement is in compromise of disputed claims; that no covenant herein is to be construed as an admission of liability on the part of Defendants; that each Defendant denies any liability for such claims; and that each party intends merely to resolve the disputed claims between them without further litigation.

V. EFFECT OF AGREEMENT

This Agreement shall be binding upon and inure to the benefit of the parties or their agents, officers, employees, successors, assigns, heirs, executors, and administrators.

VI. SIGNATURES AND EXECUTION

The parties agree that facsimile and electronic signatures shall be treated as original signatures. The Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same Agreement.

I have read, understand and agree with the terms and conditions stated in this Agreement, and by my signature I acknowledge my agreement and my opportunity to have consulted with counsel of my own choosing, and that in signing this agreement I intend to be legally bound by it.

North Carolina State Conference of the NAACP by:

/s/ Rev. Dr. T. Anthony Spearman
Rev. Dr. T. Anthony Spearman Feb. 25, 2021
President, North Carolina State Conference of the NAACP

Disability Rights North Carolina by:

/s/ Virginia Knowlton Marcus
Virginia Knowlton Marcus Feb. 25, 2021
CEO, Disability Rights North Carolina

American Civil Liberties Union of North Carolina Legal Foundation by:

/s/ Chantal Stevens
Chantal Stevens Feb. 25, 2021
Executive Director, American Civil Liberties Union of North Carolina Legal Foundation

/s/ Kim. T. Caldwell
Kim T. Caldwell Feb. 25, 2021

/s/ John E. Sturdivant
John E. Sturdivant Feb. 25, 2021

/s/ Sandara Kay Dowell
Sandara Kay Dowell Feb. 25, 2021

/s/ Christina Rhodes
Christina Rhodes Feb. 25, 2021

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Governor Cooper in his Official Capacity by:

kristi jones, 2/25/21

Kristi Jones (Date)
Chief of Staff, Governor's Office

Secretary Hooks in his Official Capacity by:

_____

Timothy Moose (Date)
Chief Deputy Secretary of Adult Correction and Juvenile Justice, DPS

Commissioners of the North Carolina Post Release Supervision and Parole Commission in their Official Capacities by:

_____

Willis J. Fowler (Date)
Chairman, N.C. Post Release Supervision and Parole Commission

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_____

Kristi Jones (Date)
Chief of Staff, Governor's Office

Secretary Hooks in his Official Capacity by:

2/25/21

_____

Timothy Moose (Date)
Chief Deputy Secretary of Adult Correction and Juvenile Justice, DPS

Commissioners of the North Carolina Post Release Supervision and Parole Commission in their Official Capacities by:

_____

Willis J. Fowler (Date)
Chairman, N.C. Post Release Supervision and Parole Commission

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Governor Cooper in his Official Capacity by:

_____

Kristi Jones (Date)
Chief of Staff, Governor's Office

Secretary Hooks in his Official Capacity by:

_____

Timothy Moose (Date)
Chief Deputy Secretary of Adult Correction and Juvenile Justice, DPS

Commissioners of the North Carolina Post Release Supervision and Parole Commission in their Official Capacities by:

Willis J. Fowler 2/25/2021

Willis J. Fowler (Date)
Chairman, N.C. Post Release Supervision and Parole Commission