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8 *D. Broome, J. Green, S. Wilson and K. Thacker*

9
10 **UNITED STATES DISTRICT COURT FOR THE**
11 **CENTRAL DISTRICT OF CALIFORNIA**

12
13 SHERMAN MANNING, an individual,

14 *Plaintiff,*

15 v.

16 JEFFREY GREEN, et al.,

17 *Defendants.*
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19

CASE NO: 2:17-cv-07832 DDP (GJS)

**STIPULATION OF VOLUNTARY
DISMISSAL WITH PREJUDICE
(FRCP 41(a)(1)(A)(ii))**

20 On March 16, 2108, this Court issued an Order referring this case to
21 Magistrate Judge Victor a. Bianchini for settlement proceedings through the
22 Central District's Prisoner Settlement Program. After mediation before Magistrate
23 Judge Bianchini on April 9, 2018 and over several days thereafter, the parties have
24 resolved this matter in its entirety through settlement, and stipulate to dismissal of
25 this action with prejudice under Federal Rule of Civil Procedure 41(a)(1)(A)(ii). A
26 signed copy of the Settlement Agreement is attached as Exhibit 1.

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1 The parties, through their respective counsel, agree that the settlement
 2 judge, Judge Bianchini, shall retain jurisdiction for the purposes of enforcing the
 3 terms of the Settlement Agreement. In the event that Judge Bianchini is not able to
 4 exercise this authority, jurisdiction shall revert to another settlement judge
 5 associated with the Central District's Prisoner Settlement Program, as agreed upon
 6 by the parties; if that settlement judge is unable to exercise authority to enforce the
 7 terms of the Settlement Agreement, authority shall revert to Judge Pregerson.

8 Pursuant to Central District Local Rule 5-4.3.4(a)(2)(i), the filer attests that
 9 all other signatories listed, and on whose behalf the filing is submitted, concur in
 10 the filing's content and have authorized the filing.

11
 12 Dated: June 1, 2018

ACLU FOUNDATION OF SOUTHERN
 CALIFORNIA

14 LAW OFFICE OF ERIN DARLING

15 AMERICAN CIVIL LIBERTIES UNION
 16 SPEECH, PRIVACY, AND
 17 TECHNOLOGY PROJECT

18 AMERICAN CIVIL LIBERTIES UNION
 19 PROGRAM ON FREEDOM OF
 20 RELIGION AND BELIEF

21
 22 By: /s/ Peter Eliasberg
 23 PETER ELIASBERG
 24 Attorneys for Plaintiff

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26 ///

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28 ///

1 Dated: June 1, 2018

XAVIER BECERRA
Attorney General of California
GRETCHEN K. BUECHSENSCHUETZ
Supervising Deputy Attorney General

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5 By: /s/ Audra C. Call
6 AUDRA C. CALL
7 Attorneys for Defendants
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EXHIBIT 1

SETTLEMENT AGREEMENT AND RELEASE

I. PARTIES

This Settlement Agreement and Release (Agreement) concerns SHERMAN MANNING (Plaintiff) and the California Department of Corrections and Rehabilitation (CDCR) on behalf of Defendants JEFFREY GREEN, KAREN THACKER, DOUGLAS BROOME, and SEAN WILSON. Plaintiff, CDCR, and Defendants shall be referred to as "the parties."

II. RECITALS

Certain disputes and differences have arisen between the parties to this Agreement. These disputes and differences resulted in Plaintiff filing a complaint and Motion for Preliminary Injunction in the United States District Court for the Central District of California, *SHERMAN MANNING v. J. POWERS, et al.*, Case No. 2:17-CV-07832 DDP (GJS) (the Action). This Agreement covers all of the claims and allegations in the Action and any amendments thereto against Defendants, whether named or unnamed and whether served or unserved, and any past or current employees of CDCR.

Defendants, including CDCR, deny all of the allegations of wrongdoing made by Plaintiff in this lawsuit. The parties, however, now desire and intend by this Agreement to settle all disputes between them relating to the claims alleged in the Action, including any rights to appeal, and that concern in any way the allegations of the Action, and to discharge each other from any and all liability with reference to such claims, except as specifically set forth in this Agreement.

Therefore, in consideration of the covenants set forth in this Agreement, the parties settle their dispute on the terms and conditions set forth below.

III. TERMS AND CONDITIONS

1. Plaintiff shall sign a voluntary dismissal with prejudice under Federal Rule of Civil Procedure 41(a)(1)(A)(ii), which Defendants shall file immediately. The settlement judge, Judge Victor Bianchini, shall retain jurisdiction for the purposes of enforcing the terms of the Settlement Agreement. In the event that Judge Bianchini is not able to exercise this authority, jurisdiction shall revert to another settlement judge associated with the Central District's Prisoner Settlement Program as agreed upon by the parties; if that settlement judge is unable to exercise authority to enforce the terms of this Settlement Agreement, authority shall revert to Judge Pregerson.

2. Neither the Plaintiff nor the Defendants shall seek to enforce the terms of this Agreement through a motion to enforce or other procedure involving a judicial officer without first notifying opposing counsel that it believes that the other party is not abiding by the terms of the Agreement. The parties shall then initiate a process whereby they attempt to resolve any dispute about complying with the Agreement informally and in good faith. If, 14 calendar days after notification, the parties have not reached a mutually satisfactory resolution of the dispute, then any party may file a motion with the settlement judge to enforce any terms of the Agreement or otherwise seek the intervention of the settlement judge. In the event of an

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emergency, the parties shall still pursue the meet and confer process as outlined in this paragraph but shall do so on an abbreviated schedule that is reasonable in light of the issues presented, and as agreed upon between the parties.

3. CDCR shall pay Plaintiff \$10,000 (the Settlement Amount). Plaintiff understands and acknowledges that CDCR is obligated by California Penal Code section 2085.8 to collect any amounts owed by a prisoner under a restitution fine or order, including any administrative fees related to such amounts. CDCR shall pay the full amount of Attorneys' Fees to the ACLU Foundation. Such amounts and fees will be deducted from the settlement amount and paid on Plaintiff's behalf as required by Penal Code section 2085.8. If the Settlement Amount exceeds the restitution amounts and fees, the excess balance shall be paid to Plaintiff. Plaintiff further understands that CDCR is obligated to pay all outstanding liens against Plaintiff, known or unknown, if any, which amounts must be deducted from the settlement amount and paid on Plaintiff's behalf to the lienholder(s). As of the date of the signing of this Agreement, Defendants represent, and Plaintiff agrees, that Plaintiff does not owe any amount under a restitution fine or order including any administrative fees related to such amounts. Defendants shall pay to Plaintiff's counsel the ACLU Foundation and the Law Office of Erin Darling the amount of \$100,000 representing attorneys' fees and costs incurred in this matter (Attorneys' Fees). CDCR shall pay the full amount of Attorneys' Fees to the ACLU Foundation.

4. CDCR shall transmit the full Settlement Amount and Attorneys' Fees to the ACLU Foundation of Southern California (ACLUF). The ACLUF will disperse funds to its co-counsel and to Plaintiff as required by the Rules of Professional Conduct of the State of California.

5. Plaintiff shall complete a Payee Data Form to enable payment of the Settlement Amount and credit toward Plaintiff's restitution obligations, if any. Additionally, the ACLUF shall also complete Payee Data Forms to enable transmission of the Settlement Amount and Attorneys' Fees set forth in paragraphs 3 and 4 above. Plaintiff and the ACLUF shall return the completed Payee Data Forms to Defendants' counsel as soon as reasonably possible.

6. CDCR will make a good-faith effort to pay the Settlement Amount and Attorneys' Fees as expeditiously as possible, and no later than 60 days from the date Plaintiff delivers to Defendants a signed settlement agreement, a signed notice of voluntary dismissal with prejudice, and all of the required Payee Data Forms. Plaintiff understands that payment may be delayed by the lack of a State budget, a funding shortfall despite a State budget, the processing efforts of the State Controller's Office, and other events not attributable to Defendants or CDCR. No interest shall be paid on the settlement amount.

7. No other monetary sum will be paid to Plaintiff or any counsel representing Plaintiff.

8. Except as provided in Paragraph 4 above, each party shall bear its own costs and attorney's fees.

9. Defendants agree not to take any retaliatory or discriminatory measures or other adverse actions with the purpose of precluding, deterring, or discouraging Plaintiff from

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exercising his rights under the Petition Clause of the First Amendment by participating in the present action.

10. The language of Plaintiff's Special Condition 018 shall be changed to the following:

"You shall not enter places or loiter within 250 feet of the perimeter of places where children congregate or where activities for children are the primary function of the location (e.g., day care centers, schools, parks, playgrounds, video arcades, swimming pools, fairgrounds, Sunday schools, youth ministries) unless you are in a location intended primarily for adults to congregate but with a section for children separated by sight and sound (e.g., shopping malls with separated tutoring centers; professional sports venues with separated playgrounds, movie theaters with separated video arcades; exercise gyms with separated swimming pools for children; houses of worship with separated Sunday school classrooms)."

For the duration of Plaintiff's parole, Defendants, including their agents and employees of CDCR, shall not prohibit Plaintiff from attending church and preaching in church so long as his attendance or preaching does not violate Special Condition 018, as revised, or any of his other conditions or special conditions of parole. Plaintiff agrees that he will not attend or preach at services such as Sunday School that are specifically for minors under the age of 18.

11. The language of Special Condition 084 shall be revised on a state-wide basis to read as follows:

"You shall not use or access any website or internet platform which allows the user to navigate the internet undetected."

For the duration of Plaintiff's parole, Defendants, including their agents and employees of CDCR, shall not prohibit Plaintiff from using social media so long as his use of social media does not violate any of his other conditions or special conditions of parole, including Special Conditions 085-092 and 105, or any other law or statute.

12. Plaintiff shall continue to maintain his residence within ½ mile of 1546 West MLK Jr. Blvd., Los Angeles, 90062 or 2810 S. Figueroa Blvd., Los Angeles, 90007 during the hours of his curfew as set forth in Special Condition 043. If Plaintiff is not able to park within the established zone, he shall contact his agent for approval of a location for that curfew period. Defendants also agree that they will not require Plaintiff to move his residence from the residence specified in this Paragraph without his consent, unless Plaintiff commits a parole violation that so warrants. In the event that Plaintiff chooses to move his residence from this specified location, Plaintiff will be required to comply with Special Condition 044 and understands that any new residence must be located 35 miles from the residence of his victim from Case No. SA021978, as directed by his assigned parole agent.

13. Defendants agree that during the pendency of Plaintiff's parole, they will not require him to report to a parole office outside the City of Los Angeles, unless Plaintiff commits a parole violation or operational needs so warrant. Should a dispute arise between the parties as

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to whether or not operational needs support a transfer of Plaintiff outside of the City of Los Angeles, that dispute shall be resolved in the same manner as set forth in Paragraphs 1 and 2 of this Agreement.

14. Plaintiff may request exception to the imposition of his curfew conditions, specified in Special Condition 043, by providing details substantiating the request in writing (i.e. e-mail, text, etc.) to his assigned parole agent and a response to the request shall be provided to Plaintiff as soon as practicable given the availability and/or work schedule of the assigned parole agent.

15. The parties recognize that the circumstances involving Plaintiff's parole may change in the future which may result in the need for a modification of Plaintiff's parole conditions, and nothing in this Settlement Agreement shall prevent CDCR from making such modifications if changed circumstances indicate the need to do so, so long as such changes are consistent with the terms of this Settlement Agreement.

16. The parties acknowledge that the State has created a work group to modify, statewide, parole condition language which will relate to the monitoring of a parolee's social media use and the parties agree that such modification is not a part of this Action or Agreement.

17. There are no other actions required on the part of CDCR or Defendants.

IV. GENERAL RELEASE

It is the intention of the parties in signing this Agreement that it shall be effective as a full and final accord and satisfaction and release from all claims asserted in the Action. By signing this Agreement, Plaintiff releases CDCR, Defendants, whether named or unnamed and whether served or unserved, and any other past or current CDCR employees from all claims, past, present and future, known or unknown, that arise from the facts alleged in the Action or could arise from the facts alleged in the Action.

In furtherance of this intention, the parties acknowledge that they are familiar with, and expressly waive, the provisions of California Civil Code section 1542, which states:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

This Agreement is the compromise of various disputed claims and shall not be treated as an admission of liability by any of the parties for any purpose. The signature of or on behalf of the respective parties does not indicate or acknowledge the validity or merits of any claim, defense, or demand of the other party.

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V. SUCCESSORS AND ASSIGNS

This Agreement shall be binding on the parties and their respective officers, agents, administrators, successors, assignees, heirs, executors, trustees, attorneys, consultants, and any committee or arrangement of creditors organized with respect to the affairs of any such party.

Plaintiff represents that he owns the interests, rights, and claims that are the subject matter of this Agreement. Plaintiff and his principals, agents, attorneys, successors, assigns, heirs, descendants, executors, representatives, partners, and associates fully release and discharge the other parties and their principals, agents, attorneys, successors, assigns, heirs, descendants, executors, representatives, partners, and associates from all claims, past, present and future, known or unknown, that arise from the facts alleged in the Action or could arise from the facts alleged in the Action including any claims for attorneys' fees or costs arising from the Action.

VI. REPRESENTATIONS AND WARRANTIES

No other consideration. The consideration recited in this Agreement is the only consideration for this Agreement, and no representations, promises, or inducements have been made to the parties, or any of their representatives, other than those set forth in this Agreement.

Execution in counterpart. This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Execution of further documents. Each party to this Agreement shall complete, execute or cause to be executed such further and other documents as are needed to carry out the expressed intent and purpose of this Agreement.

Entire agreement. This Agreement constitutes a single, integrated agreement expressing the entire agreement of the parties, and there are no other agreements, written or oral, express or implied, between the parties, except as set forth in this Agreement.

No oral modifications or waiver. No supplement, modification, or amendment to this Agreement shall be binding unless executed in writing by all the parties. No waiver of any provision of this Agreement shall be binding unless executed in writing by the party making the waiver. No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver.

Governing law. Unless expressly stated otherwise in this Agreement, the terms, conditions, and provisions of this Agreement are governed by and interpreted under California state law.

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Severability. Should any provision of this Agreement be held invalid or illegal, such illegality shall not invalidate the whole of this Agreement, but the Agreement shall be construed as if it did not contain the illegal part, and the rights and obligations of the parties shall be construed and enforced accordingly.

The undersigned agree to the above:

Dated: 6/1/18

By: 
Plaintiff SHERMAN MANNING

Dated: _____

By: _____
Jeffrey Green, Deputy Director DAPO
California Department of Corrections and
Rehabilitation

Approved as to form:

Dated: _____

By: _____
Audra C. Call, Deputy Attorney General
Counsel for Defendants

Dated: 6/1/18

By: 
Peter J. Eliasberg, Esq.
ACLU Foundation of Southern California

SETTLEMENT AGREEMENT AND RELEASE

I. PARTIES

This Settlement Agreement and Release (Agreement) concerns SHERMAN MANNING (Plaintiff) and the California Department of Corrections and Rehabilitation (CDCR) on behalf of Defendants JEFFREY GREEN, KAREN THACKER, DOUGLAS BROOME, and SEAN WILSON. Plaintiff, CDCR, and Defendants shall be referred to as "the parties."

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Defendants, including CDCR, deny all of the allegations of wrongdoing made by Plaintiff in this lawsuit. The parties, however, now desire and intend by this Agreement to settle all disputes between them relating to the claims alleged in the Action, including any rights to appeal, and that concern in any way the allegations of the Action, and to discharge each other from any and all liability with reference to such claims, except as specifically set forth in this Agreement.

Therefore, in consideration of the covenants set forth in this Agreement, the parties settle their dispute on the terms and conditions set forth below.

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2. Neither the Plaintiff nor the Defendants shall seek to enforce the terms of this Agreement through a motion to enforce or other procedure involving a judicial officer without first notifying opposing counsel that it believes that the other party is not abiding by the terms of the Agreement. The parties shall then initiate a process whereby they attempt to resolve any dispute about complying with the Agreement informally and in good faith. If, 14 calendar days after notification, the parties have not reached a mutually satisfactory resolution of the dispute, then any party may file a motion with the settlement judge to enforce any terms of the Agreement or otherwise seek the intervention of the settlement judge. In the event of an



emergency, the parties shall still pursue the meet and confer process as outlined in this paragraph but shall do so on an abbreviated schedule that is reasonable in light of the issues presented, and as agreed upon between the parties.

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5. Plaintiff shall complete a Payee Data Form to enable payment of the Settlement Amount and credit toward Plaintiff's restitution obligations, if any. Additionally, the ACLUF shall also complete Payee Data Forms to enable transmission of the Settlement Amount and Attorneys' Fees set forth in paragraphs 3 and 4 above. Plaintiff and the ACLUF shall return the completed Payee Data Forms to Defendants' counsel as soon as reasonably possible.

6. CDCR will make a good-faith effort to pay the Settlement Amount and Attorneys' Fees as expeditiously as possible, and no later than 60 days from the date Plaintiff delivers to Defendants a signed settlement agreement, a signed notice of voluntary dismissal with prejudice, and all of the required Payee Data Forms. Plaintiff understands that payment may be delayed by the lack of a State budget, a funding shortfall despite a State budget, the processing efforts of the State Controller's Office, and other events not attributable to Defendants or CDCR. No interest shall be paid on the settlement amount.

7. No other monetary sum will be paid to Plaintiff or any counsel representing Plaintiff.

8. Except as provided in Paragraph 4 above, each party shall bear its own costs and attorney's fees.

9. Defendants agree not to take any retaliatory or discriminatory measures or other adverse actions with the purpose of precluding, deterring, or discouraging Plaintiff from



exercising his rights under the Petition Clause of the First Amendment by participating in the present action.

10. The language of Plaintiff's Special Condition 018 shall be changed to the following:

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12. Plaintiff shall continue to maintain his residence within ½ mile of 1546 West MLK Jr. Blvd., Los Angeles, 90062 or 2810 S. Figueroa Blvd., Los Angeles, 90007 during the hours of his curfew as set forth in Special Condition 043. If Plaintiff is not able to park within the established zone, he shall contact his agent for approval of a location for that curfew period. Defendants also agree that they will not require Plaintiff to move his residence from the residence specified in this Paragraph without his consent, unless Plaintiff commits a parole violation that so warrants. In the event that Plaintiff chooses to move his residence from this specified location, Plaintiff will be required to comply with Special Condition 044 and understands that any new residence must be located 35 miles from the residence of his victim from Case No. SA021978, as directed by his assigned parole agent.

13. Defendants agree that during the pendency of Plaintiff's parole, they will not require him to report to a parole office outside the City of Los Angeles, unless Plaintiff commits a parole violation or operational needs so warrant. Should a dispute arise between the parties as



to whether or not operational needs support a transfer of Plaintiff outside of the City of Los Angeles, that dispute shall be resolved in the same manner as set forth in Paragraphs 1 and 2 of this Agreement.

14. Plaintiff may request exception to the imposition of his curfew conditions, specified in Special Condition 043, by providing details substantiating the request in writing (i.e. e-mail, text, etc.) to his assigned parole agent and a response to the request shall be provided to Plaintiff as soon as practicable given the availability and/or work schedule of the assigned parole agent.

15. The parties recognize that the circumstances involving Plaintiff's parole may change in the future which may result in the need for a modification of Plaintiff's parole conditions, and nothing in this Settlement Agreement shall prevent CDCR from making such modifications if changed circumstances indicate the need to do so, so long as such changes are consistent with the terms of this Settlement Agreement.

16. The parties acknowledge that the State has created a work group to modify, statewide, parole condition language which will relate to the monitoring of a parolee's social media use and the parties agree that such modification is not a part of this Action or Agreement.

17. There are no other actions required on the part of CDCR or Defendants.

IV. GENERAL RELEASE

It is the intention of the parties in signing this Agreement that it shall be effective as a full and final accord and satisfaction and release from all claims asserted in the Action. By signing this Agreement, Plaintiff releases CDCR, Defendants, whether named or unnamed and whether served or unserved, and any other past or current CDCR employees from all claims, past, present and future, known or unknown, that arise from the facts alleged in the Action or could arise from the facts alleged in the Action.

In furtherance of this intention, the parties acknowledge that they are familiar with, and expressly waive, the provisions of California Civil Code section 1542, which states:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

This Agreement is the compromise of various disputed claims and shall not be treated as an admission of liability by any of the parties for any purpose. The signature of or on behalf of the respective parties does not indicate or acknowledge the validity or merits of any claim, defense, or demand of the other party.



V. SUCCESSORS AND ASSIGNS

This Agreement shall be binding on the parties and their respective officers, agents, administrators, successors, assignees, heirs, executors, trustees, attorneys, consultants, and any committee or arrangement of creditors organized with respect to the affairs of any such party.

Plaintiff represents that he owns the interests, rights, and claims that are the subject matter of this Agreement. Plaintiff and his principals, agents, attorneys, successors, assigns, heirs, descendants, executors, representatives, partners, and associates fully release and discharge the other parties and their principals, agents, attorneys, successors, assigns, heirs, descendants, executors, representatives, partners, and associates from all claims, past, present and future, known or unknown, that arise from the facts alleged in the Action or could arise from the facts alleged in the Action including any claims for attorneys' fees or costs arising from the Action.

VI. REPRESENTATIONS AND WARRANTIES

No other consideration. The consideration recited in this Agreement is the only consideration for this Agreement, and no representations, promises, or inducements have been made to the parties, or any of their representatives, other than those set forth in this Agreement.

Execution in counterpart. This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Execution of further documents. Each party to this Agreement shall complete, execute or cause to be executed such further and other documents as are needed to carry out the expressed intent and purpose of this Agreement.

Entire agreement. This Agreement constitutes a single, integrated agreement expressing the entire agreement of the parties, and there are no other agreements, written or oral, express or implied, between the parties, except as set forth in this Agreement.

No oral modifications or waiver. No supplement, modification, or amendment to this Agreement shall be binding unless executed in writing by all the parties. No waiver of any provision of this Agreement shall be binding unless executed in writing by the party making the waiver. No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver.

Governing law. Unless expressly stated otherwise in this Agreement, the terms, conditions, and provisions of this Agreement are governed by and interpreted under California state law.



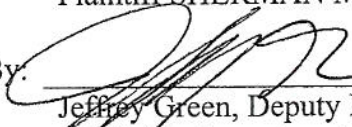
Severability. Should any provision of this Agreement be held invalid or illegal, such illegality shall not invalidate the whole of this Agreement, but the Agreement shall be construed as if it did not contain the illegal part, and the rights and obligations of the parties shall be construed and enforced accordingly.

The undersigned agree to the above:

Dated: _____

By: _____
Plaintiff SHERMAN MANNING

Dated: 6/1/2018

By:  _____
Jeffrey Green, Deputy Director DAPO
California Department of Corrections and
Rehabilitation

Approved as to form:

Dated: 6/1/2018

By:  _____
Audra C. Call, Deputy Attorney General
Counsel for Defendants

Dated: _____

By: _____
Peter J. Eliasberg, Esq.
ACLU Foundation of Southern California

CERTIFICATE OF SERVICE

Case Name: Manning v. Powers, et al. No. 2:17-CV-07832 DDP (GJS)

I hereby certify that on **June 1, 2018**, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

STIPULATION OF VOLUNTARY DISMISSAL WITH PREJUDICE (FRCP 41(a)(1)(A)(ii))

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on **June 1, 2018**, at Los Angeles, California.

M. Martin

Declarant

/s/ M. Martin

Signature