

Exhibit 2

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release, dated as of October 29, 2020, is entered into by the parties in *Lee v. VDOC et al.*, Case No. 2:20cv00006, currently pending in the United States District Court for the Western District of Virginia.

The plaintiff is Tyquine Lee (“Plaintiff”), who has brought suit by and through his guardian, Takeisha L. Brown (“Guardian”). The Plaintiff is represented by Matthew Underwood at Williams & Connolly LLP and Maggie Filler at the Roderick and Solange MacArthur Justice Center.

The Defendants are the Virginia Department of Corrections (“VDOC”), Henry Ponton, Jeffrey Kiser, Arvil Gallihar, Ameer Duncan, Larry Collins, Walter Swiney, Michael Younce, Justin Kiser, Roy Sykes, Gary Adams, Justin Lambert, Terrance Huff, and Donnie Trent (collectively, the “VDOC Defendants”), and Dr. Everett McDuffie. The VDOC defendants are represented by Margaret Hoehl O’Shea at the Office of the Attorney General and Maya Eckstein of Hunton Andrews Kurth, LLP. Defendant McDuffie is separately represented by John Jessee of Lewis Brisbois, and he is not a party to this Agreement.

The parties agree as follows:

1. **Dismissal of Case No. 2:20cv00006:** The Plaintiff shall, by and through his attorneys, cause the Complaint pending in the Western District of Virginia, Case No. 2:20cv00006, to be voluntarily dismissed, in accordance with the terms of this Agreement.
2. **Settlement Payment:** In full and fair settlement of this matter, but without admitting liability, the VDOC Defendants, by and through the Commonwealth of Virginia, agree to pay to Plaintiff, within 60 days of the date of this settlement, the sum of one hundred fifty thousand dollars (\$150,000) for alleged personal injuries suffered, including physical injury. The check shall be made payable to the order of Williams & Connolly LLP DC IOLTA Trust Account #226004438818, and delivered to the attention of Matthew Underwood. This figure includes any costs, expenses, and/or attorneys’ fees which Plaintiff may otherwise have been entitled to recover against the Commonwealth.
3. **Interstate Transfer:** VDOC agrees that it shall initiate the process for Plaintiff to be transferred to another state’s correctional system pursuant to the Interstate Corrections Compact, Virginia Code § 53.1-216, and in accordance with VDOC Operating Procedure 020.2, Compact for Interstate Transfer of Incarcerated Offenders.

VDOC will first send a Request to Proposed Receiving State for Approval of Compact Transfer to the State of New Jersey, subject to New Jersey acceptance. That request will be made within fourteen (14) days from the date of the execution of this Agreement. The Plaintiff acknowledges that VDOC cannot

guarantee that the Plaintiff will be transferred pursuant to an Interstate Corrections Compact transfer because any such transfer depends upon the receiving state's acceptance of Plaintiff. VDOC is agreeing to initiate the transfer process, as described in this paragraph. However, VDOC represents and warrants that, having conferred with New Jersey, that jurisdiction has conditionally indicated that the Plaintiff would be accepted for interstate transfer.

If the Plaintiff is accepted by the receiving state for transfer, VDOC will bear any related transportation costs. VDOC agrees that a full and complete copy of the Plaintiff's VDOC mental health file, along with documentation that Ms. Brown is Plaintiff's duly appointed legal guardian, shall be sent to the receiving jurisdiction, in conjunction with the Plaintiff's interstate transfer.

The Plaintiff acknowledges that the receiving jurisdiction could unilaterally elect to return the Plaintiff to Virginia pursuant to the Interstate Corrections Compact, and that VDOC has no control over whether the receiving jurisdiction does so. The Plaintiff understands that Defendants and VDOC cannot guarantee or control the actions of any state other than Virginia. However, VDOC expressly agrees that it shall not request that the Plaintiff be returned to Virginia from the receiving jurisdiction (*i.e.*, initiate a "retake"), unless and until the Plaintiff makes an express written request to VDOC, asking to be returned to Virginia. If the Plaintiff requests, in writing, that he be returned to Virginia, VDOC will initiate a retake request, in accordance with VDOC Operating Procedure 020.2(I)(E).

4. **Alternative to Transfer:** If the Plaintiff is not transferred via the Interstate Corrections Compact, as set forth in the provisions of Paragraph 3, or if Plaintiff is returned to VDOC custody for any reason, the VDOC Defendants agree as follows:
 - a. The Plaintiff shall be placed in the Secure Diversionary Treatment Program (SDTP) at Marion Correctional Center (MCC) or River North. VDOC agrees that the Plaintiff shall remain housed at the SDTP in MCC or River North absent disciplinary or medical compliance issues that would necessitate his transfer to higher security. In the event of a transfer, the Plaintiff will remain in a program where he receives a level of mental health care substantially equivalent to the level of care provided in the SDTP at MCC and River North.
 - b. Defendants further agree that the Plaintiff's assigned mental health code shall not fall below MH-2S except in the following circumstances:
 - i. A licensed psychiatrist personally evaluates the Plaintiff and makes a preliminary determination that the Plaintiff's schizophrenia diagnosis is no longer warranted;

- ii. Defendants notify the Plaintiff's Guardian of the preliminary determination that the Plaintiff's schizophrenia diagnosis is no longer warranted; and
 - iii. After a period of least 30 days, during which the Plaintiff's Guardian is provided the opportunity to obtain an independent in-person medical evaluation of the Plaintiff, the licensed psychiatrist makes a final determination that the Plaintiff's schizophrenia diagnosis is no longer warranted.
- c. Defendants agree that it shall be noted on CORIS that the Plaintiff has a Guardian duly appointed by the Commonwealth of Virginia. The Plaintiff's Guardian's name and contact information shall be listed on CORIS. Defendants agree that, upon verbal or written inquiry by the Plaintiff's Guardian to the facility at which the Plaintiff is incarcerated at the time of the inquiry, the Plaintiff's Guardian shall promptly be provided with the following information, by email, within five business days following the request:
- i. The Plaintiff's current mental health status;
 - ii. The Plaintiff's current medications;
 - iii. The Plaintiff's current medication compliance;
 - iv. The Plaintiff's current housing status
 - v. Whether the Plaintiff has received any disciplinary infractions within the past 30 days, and, if so, their resolution
 - vi. Any change in the Plaintiff's medical condition that necessitates outside medical treatment
 - vii. The Plaintiff's status or progress in any ongoing programming and treatment
 - viii. The results of any drug testing performed within the preceding thirty (30) days

The Plaintiff's Guardian's point of contact will be the Chief of Housing and Programs (CHAP) at the facility where he is housed. In the event that the CHAP is unavailable, the secondary point of contact shall be the Warden of the facility. The VDOC Defendants agree that the point of contact will notify the Plaintiff's Guardian within 24 hours of:

- i. The Plaintiff's placement in restrictive housing;
- ii. A change in the Plaintiff's Mental Health Code below MH-2S;

- iii. The Plaintiff's transfer to another facility; or
 - iv. A medical emergency.
5. **Releases:** The undersigned Parties unconditionally release and discharge each other, their agents, representatives, insurance carriers, attorneys, predecessors-in-interest, successors-in-interest, heirs, assigns and personal representatives, in their individual and representative capacities (collectively, the "Released Parties"), from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, causes of action, rights, costs, losses, debts and expenses of any nature whatsoever, now known, which they ever had or now have by reason of any matter, fact or cause asserted in Case No. 2:20cv00006. This Release specifically encompasses only those claims, whether under federal or state law, that have been brought against the Commonwealth of Virginia, the Virginia Department of Corrections, or any employees, officers, or agents thereof in Case No. 2:20cv00006.
 6. **No Admission of Liability:** The Plaintiff acknowledges that this Agreement does not constitute an admission by the Defendants of any: (a) liability; (b) violation of any federal, state or local statute, law, regulation, order or other requirement of law; (c) breach of contract, actual or implied; (d) commission of any tort; or (e) other civil wrong.
 7. **Virginia Law Applies:** This Agreement shall be deemed to have been made within the Commonwealth of Virginia and shall be interpreted, construed and enforced in accordance with the laws of the Commonwealth of Virginia. This Agreement shall not be construed with a presumption against the Party causing this Agreement to be drafted. This Paragraph is intended only to address the law applicable to the interpretation and enforcement of this Agreement, and not to affect the law that may be applicable to any future claims that the Plaintiff may assert for relief outside of this Agreement; nothing in this Paragraph shall preclude the Plaintiff from asserting a claim concerning his mental health, his religious rights, or any other right or privilege that he may have, under federal law, state law or other applicable law.
 8. **Severability:** If one or more provisions of this Agreement shall be ruled unenforceable or void, the Parties may enforce the remainder of this Agreement.
 9. **Non-Waiver:** Failure of either Party to enforce any provision of this Agreement shall not be construed as a waiver of that or any other provision.
 10. **Voluntary Agreement:** The Plaintiff, acting by and through his Guardian, has had an opportunity to consult with an attorney execution of this Agreement. The Plaintiff, acting by and through his Guardian, acknowledges that, in authorizing this Agreement, he relied only on the promises set forth in this Agreement and not on any other promise made by the Commonwealth. This Agreement has been

entered into freely, knowingly, and voluntarily and not as a result of coercion, duress, or undue influence.

11. **Entire Agreement:** This Agreement constitutes the entire understanding and agreement between the Parties hereto with respect to its subject matter. This Agreement supersedes all other understandings, agreements, communications or negotiations (whether written or oral) between the Parties hereto with respect to such subject matter.
12. **Written Amendment Required:** This Agreement may not be amended, changed or altered, except by a writing signed by the Parties.
13. **Binding Obligations:** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors, assigns, estate, heirs and personal representatives.
14. **Counterparts:** This Agreement may be executed in counterparts, and if so executed each such counterpart shall have the force and effect of an original. A facsimile or copy of an original signature transmitted to the other Party is effective as an original document.
15. **Court Approval:** The validity of this agreement is expressly conditioned upon obtaining Court approval of its terms and conditions, in accordance with Virginia Code § 8.01-425. The parties agree to request that the Court retain jurisdiction over this matter for a period of 180 days for the purpose of enforcing the parties' compliance with the terms of this agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

Entered:



Takeisha Brown, in her capacity as guardian to Tyquine R. Lee,
by her attorney:
Matthew Underwood
Williams & Connolly, LLP
Counsel for Plaintiff



Margaret Hoehl O'Shea
Assistant Attorney General
Counsel for VDOC Defendants