



PC-CA-016-001

FILED

JUN - 5 2000

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIABY _____
DEPUTY CLERKIN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KARLUK MAYWEATHERS, et al.,

Plaintiffs,

No. CIV S-96-1582 LKK JFM P

vs.

CALVINE TERHUNE, et al.,

Defendants.

ORDER

On May 25, 2000 and June 2, 2000 the parties by and through their counsel met in settlement conference. Plaintiffs were represented by Susan Christian and Rikka Fountain; defendants were represented by Jill Bowers. Also present for defendants were Warden A.C. Newland, Barry Smith (CDC Community Resources Officer - Coordinator of Religious Programs), Vimal Singh (Food Manager - CSP Solano), Michael Valdez (Community Resources Manager - CSP Solano). After two days of settlement conference, the parties settled four substantive issues and agreed upon an accelerated litigation process for two issues which could not be settled. This order memorializes and confirms the agreements reached.

Muslim Chaplain

The warden, CSP Solano, or other appropriate official, will announce within two weeks that there will be a full-time Muslim Chaplain limited term position. The person will be

1 hired in the normal process; the hiring process will commence immediately after the
2 announcement. It is contemplated that the Muslim Chaplain will be hired in approximately 90
3 days. The Legislature must thereafter authorize a full time Muslim Chaplain position.
4 Defendants shall seek to input the request for a full time position in the Governor's proposed
5 2001-2002 California State Budget.

6 The Muslim Chaplain is primarily responsible for ministering to persons of the
7 Muslim religion. However, plaintiffs understand that the Muslim Chaplain must be available as
8 well to minister to inmates of other religions.

9 *Religious Oils*

10 Muslims will be allowed to special order: 8oz per order of 100% extract non-
11 alcoholic oil in clear plastic bottles (labeled contents) from an approved vendor. This agreement
12 is limited to CSP Solano, and is not to be interpreted as applying to other institutions. Misuse of
13 the oil, e.g., hoarding, overstocking, selling oil to other inmates, using it to facilitate an offense,
14 may subject the oil to forfeiture and the inmates involved to discipline.

15 *Kuffis*

16 The Muslim community will be permitted to wear kuffis (religious headgear) as
17 described in the September 15, 1997, Memorandum from A.C. Newland, Warden, to All Staff; in
18 addition, the Muslim Community will be permitted to wear the religious headgear while in their
19 cells; provided however, that religious headgear shall not be allowed in the common areas of any
20 celled housing unit. Religious headgear may be worn by Muslims housed in dormitories, but is
21 restricted to the area proximate to their bunks, and during the performance of their five daily
22 prayers (Salaatus Subh (Morning Prayer), Salaatuz Zuh (Noon Prayer), Salaatul 'Asr (afternoon
23 Prayer), Salaatul Maghrib (Evening Prayer); and Salatul "Ishaa (Night prayer).

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1 *Food*

2 Plaintiffs currently receive a religious diet card which authorizes an inmate
3 holding the card to substitute non-meat items in place of meat selections. CSP Solano Prison
4 Management will make best efforts to ensure that bases, seasoning and food additives used in
5 meat substitutes do not contain meat or meat by-products. If an inmate requests that no gravy be
6 placed on his food (gravy generally contains meat products), this request shall be honored.
7 Except in extraordinary circumstances, e.g., lockdowns, emergency situations, and the like, no
8 peanut butter will be served three times a day as a meat substitute whether in sandwiches or in a
9 cup. Servings of peanut butter as a meat substitute will not be made more than four times a week
10 for breakfast and dinner (combined), i.e., no more than two for breakfast and no more than two
11 for dinner. For lunch, peanut butter will not be served as the main meal or substitute more than
12 three times a week. Based on standardized menus, best efforts will be made to introduce as
13 much variety as possible into the substitute meals. At present, the meat substitutes are:
14 Breakfast – eggs, cheese, peanut butter, extra scoops of another served item
15 Lunch – peanut butter, boiled eggs or cheese
16 Dinner – peanut butter, fish (fish is generally served to all inmates approximately seven times a
17 quarter) (fish may be served as a substitute for holiday meals), cottage cheese (double scoop),
18 seasoned beans, macaroni and cheese, potatoes au gratin, three bean salad.
19 For two religious Muslim holidays, halaal meats will be served.

20 The parties understand that different menu standardization requirements may be
21 imposed in the future by CDC such that the above listed substitutes are not guaranteed to be
22 available; however, if the CDC standardization is violative of the law, plaintiffs have not waived
23 their rights by entering into this settlement to contest the standardization.

24 Diet Cards Enforcement – best efforts will be made to check religious diet ID
25 cards such that inmates not authorized to have the special diet meals will not take them; the
26 Warden shall issue a memorandum to appropriate staff with this instruction. Plaintiffs agree that

1 they will not "double back," i.e., go into the line for a second diet meal, or give their diet cards to
2 other inmates.

3 *Beards*

4 The Honorable John F. Moulds has entered Findings and Recommendations
5 which find that a preliminary injunction requiring prison officials to permit plaintiffs to grow
6 one-half inch beards should not issue. The parties are willing to accelerate the ruling on
7 objections to the Findings to be made by the Honorable Lawrence K. Karlton into a final
8 judgment. With one exception, the present record on the preliminary injunction motion is the
9 record upon which Judge Karlton's ruling will be made. Without agreeing to the merits of the
10 justification, the parties stipulate that the defendants may add the following as a justification for
11 their no-beards policy to the extent that the record does not already reflect this justification: that
12 beards could be used as an identification or "badge" of a particular group to the detriment of
13 institutional security and discipline.

14 Judge Karlton remains free to direct the parties to produce additional testimony or
15 documentary evidence if he believes such is necessary to the final ruling.

16 *Jumu'ah*

17 Judge Moulds entered Findings and Recommendations which find that a
18 preliminary injunction should be entered requiring prison officials to permit plaintiffs to use their
19 ETO (excused time off) to attend Jumu'ah services on Friday at noontime. The parties are again
20 willing to accelerate the ruling on objections to be made by Judge Karlton into the final judgment
21 based on the preliminary injunction record and the following additional evidence. The court will
22 hear testimony from Mr. Larson on the WIP (work incentive program) in connection with use of
23 ETO for religious purposes. Moreover, this additional fact is stipulated: an individual plaintiff
24 could seek to change his job, class or shift to days or particular hours in order to be free to attend
25 Jumu'ah services (as would any inmate to attend a particular religious service).

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1 However, depending on the sought change in job, shift or class, there may be institutional delay
2 to re-assignment.

3 Again, Judge Karlton remains free to direct the parties to produce additional
4 testimony or documentary evidence.

5 *Miscellaneous*

6 Plaintiffs agree to waive attorneys' fees. However costs are to be finally
7 determined at the district court level pursuant to the following formula. Plaintiffs' costs will not
8 exceed \$14,000. In the event that plaintiffs prevail at the district court level on both remaining
9 issues (beards and Jumu'ah), plaintiffs will receive all costs. If plaintiffs prevail on one of the
10 issues, plaintiffs will receive one-half their costs. Defendants may seek costs if they prevail on
11 both issues. Further resolution of the remaining issues on appeal, even if contrary to the district
12 court decision, will not affect the cost formula.

13 Appellate fees and costs are not part of this settlement.

14 The court will retain jurisdiction to enforce the terms of the settlement; however,
15 nothing in this settlement affects the legal status of judgments entered on the remaining issues, or
16 the necessity that such judgments be based on the requirements of the Prisoner Litigation Reform
17 Act.

18 Settlement of the four substantive issues encompasses CSP Solano only, and does
19 not stand as required precedent for other institutions.

20 The trial set before Judge Moulds is hereby vacated. The parties shall make
21 arrangements with Judge Karlton's chambers concerning the submission of the Larson testimony.

22 IT IS SO ORDERED.

23 DATED: June 5, 2000.

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26 UNITED STATES MAGISTRATE JUDGE

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