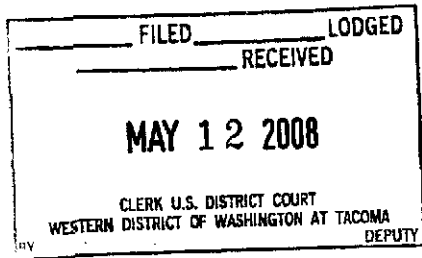


The Honorable J. Kelly Arnold



UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON AT TACOMA

RICKEY PERALEZ, on behalf of himself and
others similarly situated,

Plaintiff,

v.

THE WASHINGTON DEPARTMENT OF
CORRECTIONS, HAROLD CLARKE,
DOUGLAS WADDINGTON, BELINDA
STEWART, KEVIN SHANAHAN, JEAN
STEWART, and JOHN DOES 1-20,
employees and officials of the Washington
Department of Corrections and/or Stafford
Creek Corrections Center,

Defendants.

NO. C06-5625 JKA

~~RECEIVED~~ SETTLEMENT
AGREEMENT

(Subject to Court Approval)

I. INTRODUCTION

This proposed settlement agreement ("Settlement") is entered into as of the date stated below by and between Plaintiff, Rickey Peralez, as representative of the certified class (hereinafter the "Class Plaintiff") and Defendants, the Washington Department of Corrections ("DOC"), Harold Clarke, Douglas Waddington, Belinda Stewart, Kevin Shanahan, Jean Stewart, and any other

1 individuals or entities of the State of Washington who are or might be claimed to be liable for the acts
2 alleged in the Complaint (hereinafter "Defendants").

3 II. RECITALS

4
5 1. This case was initiated by Class Plaintiff, Rickey Peralez, by filing a class action
6 complaint on or about October 30, 2006. The Defendants appeared and answered the complaint,
7 generally denying the substantive allegations. With regard to the Class Plaintiff's allegations
8 concerning discrimination against disabled individuals in connection with the DOC's work release
9 program, the Court granted class action certification on August 10, 2007. The Court later amended
10 the class definition to the following: "All otherwise eligible ADA disabled inmates of the
11 Washington Department of Corrections (DOC) who, from October 30, 2003 through January 2008
12 have been partially or wholly denied participation in the DOC Work Release Program by reason of a
13 disability." [Dkt. 58].
14

15
16 2. Throughout the litigation, Class Plaintiff has been represented by the law firm of
17 Budge & Heipt, P.L.L.C. (hereinafter "Class Counsel"). Defendants have been represented by the
18 Attorney General of Washington (hereinafter "Defense Counsel").

19
20 3. The parties have engaged in substantial pre-trial litigation, including extensive written
21 discovery (resulting in the production of tens of thousands of pages of documents), depositions, and
22 motions practice. The Class Plaintiff, on his own behalf and on behalf of the Settlement Class
23 (defined below), and the Defendants have now agreed to settle the action to avoid the risk and
24 uncertainty inherent in continuing litigation. To that end, the parties have agreed on a Settlement
25 Class as well as the other terms and conditions outlined herein. Determination of this Settlement
26 Class was the result of extensive cooperative efforts on the part of Class Counsel and Defense
27 Counsel, whereby the parties collaboratively reviewed hundreds of offender records in order to
28

1 determine which offenders appeared to fit the foregoing class definition. The parties have negotiated
2 the terms of this proposed Settlement by way of arms-length negotiations. The parties wish to
3 memorialize the complete and full terms of the Settlement and to settle the claims related to disability
4 discrimination in connection with the DOC's work release program. The parties certify that there are
5 no agreements made in connection with this proposed settlement except as explicitly provided herein.
6

7 III. TERMS

8 1. **Resolution of Class Plaintiff's Claims.** This settlement is intended to fully and
9 finally resolve all claims of Class Plaintiff that were or which might have been alleged in the current
10 action.
11

12 2. **Resolution of Settlement Class's Claims.** In addition, this settlement is intended to
13 resolve any potential claim by the individuals identified in Attachment 1 (the "Settlement Class"),
14 who are sent notice as described below, and who do not choose to opt out of the settlement, and
15 which relates to the allegation that they were wholly or partially denied the right to participate in the
16 DOC's work release program because of a disability. Except as specifically provided herein, no other
17 claims are released by way of this Settlement. Therefore, the following claims are not released: (1)
18 claims of any individual who is not sent court-approved notice of this action and Settlement; (2)
19 claims of any individual who timely opts out of this action and Settlement; and (3) claims of any
20 individual, other than the Class Plaintiff, Rickey Peralez, for wrongs or acts other than the act of
21 being wholly or partially denied participation in the DOC's work release program because of a
22 disability.
23

24 3. **Denial of Liability.** Defendants have denied, and continue to deny liability for the
25 allegations alleged in the Complaint. By entering into this Settlement, the parties agree that
26 Defendants are not admitting any liability to the Class Plaintiff, class members, or any other person
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1 or entity, and Defendants expressly deny all such liability. Defendants' choose to expeditiously
2 dispose of the claims that have been asserted against them in the action by settlement and
3 compromise rather than incur the expense and uncertainty of protracted litigation. No part of this
4 Settlement may be admitted into evidence in any action, except as required to enforce this Settlement.
5

6 4. **Benefits Secured by Class Plaintiff.** The parties agree that the Class Plaintiff,
7 Rickey Peralez, has incurred substantial risk, expense, and expenditure of time related to the claims
8 asserted in the complaint. In addition, the parties agree that by virtue of taking on such risk, expense
9 and expenditure of time, Mr. Peralez has secured substantial benefits to class members including, but
10 not limited to, the financial benefits outlined in this Settlement agreement. The parties further agree
11 that Mr. Peralez has, in addition to obtaining financial relief for himself and members of the class
12 secured various non-monetary benefits for current and/or future DOC offenders who may be
13 disabled, which benefits are not directly reflected in the terms of the financial settlement to class
14 members. Among other things, Mr. Peralez, through his counsel, filed a motion for partial summary
15 judgment, which was granted by the Court on January 8, 2008. The Court ruled as follows: "To the
16 extent the Washington State Department of Corrections (DOC) utilizes a practice of scoring inmate
17 offenders according to a numerical profiling system known as PULHESDXT—and then uses that
18 score as a motivating factor to exclude otherwise eligible ADA disabled offenders from the DOC's
19 Work Release Program—such practice violates Title II of the Americans with Disabilities Act,
20 Section 504 of the Rehabilitation Act, and 42 U.S.C. § 1983." As a result of this ruling, and the
21 lawsuit generally, the DOC has gone to significant effort to voluntarily alter and revise various
22 policies and procedures and has educated its personnel and voluntarily taken other steps designed to
23 minimize the future potential for discriminating against disabled individuals in connection with the
24 DOC's work release program. In addition, the DOC has re-screened (and/or will re-screen) various
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1 currently-incarcerated offenders who may have been improperly denied work release in order to
2 determine their future eligibility for work release.

3
4 **6. Payment to Class Representative.** For all of the foregoing reasons, and in
5 consideration for the full release of all claims which were, or which might have been asserted by the
6 Class Plaintiff against defendants, the DOC agrees to pay to plaintiff Rickey Peralez the amount of
7 thirty thousand dollars (\$30,000.00) in consideration of this Settlement and the release of his claims.
8 This sum includes an incentive award, but shall not in any way reduce, offset, or otherwise impact the
9 amounts to be paid to the Settlement Class members as described below.

10
11 **7. Payment to Settlement Class.** In addition to the foregoing, the DOC agrees to pay
12 the sum of one thousand eight hundred dollars (\$1800.00) to each Settlement Class member
13 identified in Attachment 1 for a total collective class settlement of two hundred ninety eight thousand
14 eight hundred (\$298,800.) The parties agree that the sum of \$1800 per person is a reasonable
15 estimate of the average earnings for each individual who might have been eligible to participate in
16 work release for the maximum available period of 180 days. This sum shall be known as the Class
17 Settlement Amount.

18
19 **8. Funding and Payment of Class Settlement Amount.** Defendants will fund the total
20 collective Class Settlement Amount after final approval of this Settlement as described below. From
21 this fund, defendants shall use their best efforts to make payment directly to each of the Settlement
22 Class members identified in Attachment 1 (other than those who choose to opt out of the Settlement).
23 Any unclaimed funds from the Class Settlement Amount shall be used by the DOC exclusively for
24 existing or future programs, services or activities (which the DOC would not otherwise be legally
25 obligated to provide) which are specifically designed to benefit inmates with significant physical,
26 mental or sensory impairments. Such programs, services or activities may include, for example,
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1 improving such inmates' access to work release facilities or for programs tailored to educate, train or
2 otherwise assist such inmates in transitioning from prison to a life outside of prison. The DOC will
3 use its best efforts to determine how it proposes to use such funds within 120 days from the end of
4 the claims period, and will report to Class Counsel about how it intends to use the funds. The DOC
5 will use the unclaimed funds for the aforementioned purposes no later than 18 months following the
6 close of the claims period and will provide an accounting of the use of such funds to Class Counsel.
7

8 **9. Attorneys' Fees and Costs.** Defendants acknowledge that, in addition to the
9 settlement amounts described above, they are liable to pay Class Counsel's reasonable attorneys' fees
10 and statutory costs (which have been advanced by Class Counsel) under the causes of action asserted
11 in the complaint. Payment of attorneys' fees and statutory costs shall be paid over and above, and in
12 addition to, the settlement amounts to be paid to the Class Plaintiff and the Settlement Class members
13 identified in Attachment 1. Payment of attorneys' fees and statutory costs shall in no way reduce or
14 offset the amount to be paid to the Class Representative and Settlement Class members, and shall not
15 impact the funding of the Class Settlement Amount described above. Class Counsel will file a
16 separate motion for attorneys' fees and statutory costs to be noted on the regular motions calendar as
17 described below. Such motion shall set forth the hours and rates claimed by Class Counsel.
18 Defendants will not contest liability for Class Counsel's reasonable attorneys' fees and statutory
19 costs, but reserve the right to contest the amounts requested by Class Counsel.
20
21

22
23 **IV. TIMING, COURT APPROVAL, NOTICE TO CLASS MEMBERS, AND**
24 **PAYMENT OF SETTLEMENT AMOUNTS**

25 **1. Preliminary Approval of Settlement.** The parties jointly request that the Court
26 preliminarily approve this proposed Settlement Agreement at its soonest opportunity. This proposed
27
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1 Settlement Agreement will be presented to the Court by Counsel by the parties for preliminary
2 approval.

3 2. **Timing of Motion for Attorneys' Fees and Costs.** Within ten court days following
4 preliminary approval of this proposed Settlement Agreement, Class Counsel will file a motion for
5 attorneys' fees and statutory costs to be noted on the regular motions calendar. The court will
6 preliminarily rule on the motion for attorneys' fees and statutory costs and preliminarily determine
7 the amount of attorneys' fees and statutory costs to be awarded to Class Counsel.
8

9 3. **Submission of Proposed Notice to Class Members.** Within ten court days following
10 the preliminary ruling on the motion for attorneys' fees and statutory costs, the parties will submit to
11 the Court a joint form of notice and claim/opt-out form to be issued to the Settlement Class members
12 identified in Attachment 1. (If the parties cannot agree on a joint form of notice and claim/opt-out
13 form, they will submit separate proposed notices). These notices shall inform the class members
14 identified in Attachment 1 of the nature of the case, the terms of this proposed Settlement, the
15 preliminary ruling on attorneys' fees and costs, the effect of the settlement and their right to object to
16 or opt-out of the settlement should they choose. The notice shall also inform the Settlement Class
17 members identified in Attachment 1 of a hearing date for the Court to rule on final approval of the
18 settlement and their right to appear at the hearing and object to the terms of the settlement should
19 they wish to do so.
20

21 4. **Delivery of Notice to Class Members.** Defendants agree to notify the Class
22 Members both by mail to the last known mailing address and by publication. Within twenty court
23 days following the Court's approval of the form of notice, defendants will mail the approved notice
24 and claim/opt-out form to the Settlement Class members identified in Attachment 1 at their last
25 known addresses. The approved notice and opt-out form shall be sent via first class mail or certified
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1 mail return receipt requested (at defendants' option). If a notice is returned as undeliverable or
2 addressee unknown, defendants agree to send a second notice by first class mail or certified mail
3 return receipt requested (at defendants' option) to the last known address. Defendant also agrees to
4 publish a legal notice in each of two general circulation newspapers, one in Western Washington and
5 the other in Eastern Washington. Such notice shall describe the suit, the settlement, the name of class
6 members who have been identified and the method for filing a claim. Class members shall have 30
7 days from the date the notice is mailed and published to either return a verified, signed claim form, or
8 opt out. Class members who file a claim form shall be mailed a Settlement check.
9

10
11 **5. Final Approval of Settlement.** On a date specified in the foregoing notice, the Court
12 will conduct a hearing on the subject of final approval of the Settlement and there decide whether or
13 not to give final approval to the Settlement and the amount of attorneys' fees and statutory costs of
14 Class Counsel.
15

16 **6. Timing of Payments.**

17 **A. Payment to Class Representative.** Payment of the Settlement to the class
18 representative, Rickey Peralez, shall occur within thirty calendar days following final court approval
19 of the Settlement.
20

21 **B. Payments to Settlement Class.** Payments to the individual members of the
22 Settlement Class who deliver a verified, signed claim form shall be made not more than thirty
23 calendar days following return of a claim form. Payment shall be made directly by defendants to the
24 Settlement Class members. Defendants will use their best efforts make payment to the individual
25 class members identified in Attachment 1 who receive notice and do not choose to opt out of the
26 Settlement. After the passage of 180 days following final approval of this Settlement, any unclaimed
27 funds shall be used for the purposes described in paragraph III.8 above.
28

1 **C. Payment of Attorneys' Fees and Statutory Costs:** Payment of attorneys'
2 fees and statutory costs to Class Counsel shall occur within ten calendar days following final court
3 approval of the Settlement.
4

5 **D. Notification to DSHS:** DOC reserves the right to notify the State Department
6 of Social and Health Services of the identity of any class member in order that DSHS may attempt to
7 collect outstanding debts subject to collection by that agency. Nothing in this settlement agreement
8 shall constitute an admission that any such amounts are owed nor a waiver of any defenses otherwise
9 available to the class representative or other class members.
10

11 **V. SUSPENSION OF LITIGATION, DISMISSAL AND**
12 **MONITORING OF SETTLEMENT**

13 1. **Suspension of Trial Date and Pretrial Deadlines.** Upon preliminary approval of the
14 settlement as described above, the trial date and pretrial deadlines shall be suspended.

15 2. **Dismissal of Action.** Upon final approval of the settlement, the complaint shall be
16 dismissed with prejudice.
17

18 3. **Monitoring of Settlement.** Even after dismissal of the complaint, the Court will
19 retain jurisdiction to monitor performance of the Settlement and resolve any disputes that may arise
20 concerning performance of the Settlement. Class Counsel shall have the opportunity to request
21 periodic updates from defense counsel concerning performance of the Settlement and Defendants
22 shall keep Class Counsel reasonably informed concerning performance of the settlement. Class
23 Counsel and Defense Counsel may request that the Court resolve any issues relating to the
24 performance of the Settlement.
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26 SETTLEMENT AGREEMENT DATED this 2 day of MAY 2008.
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BUDGE & HEIPT, P.L.L.C.



Erik J. Heipt, WSBA # 28113
Edwin S. Budge, WSBA # 24182
Class Counsel

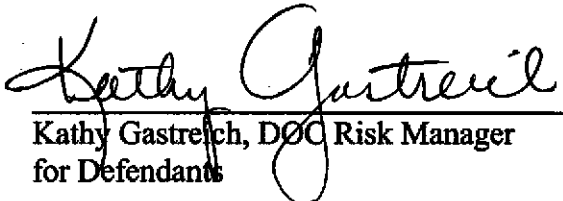


Rickey Peralez
Class Plaintiff

ROBERT M. MCKENNA
Attorney General



Mark C. Jobson, WSBA # 22171
Assistant Attorney General
Defense Counsel



Kathy Gastreich, DOC Risk Manager
for Defendants

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PRELIMINARY COURT APPROVAL

This matter came before the Court on the parties' request for preliminary approval of the foregoing Settlement. The Court has reviewed the proposed Settlement and preliminarily approves it. This Settlement is subject to final approval and shall not take final force or effect until the procedures outlined in the Settlement relating to notice and final approval have been complied with.

The current case schedule is hereby suspended pending completion of the procedures outlined in the Settlement relating to notice and final approval.

Dated this 12 day of May, 2008.


The Honorable J. Kelly Arnold
United States Magistrate Judge

| DOC # | Offender Name |
|-------|-------------------------------|
| 1 | 755089 AJETO, ROMEO S. |
| 2 | 706101 ALCANTARAJAMES, EVA M. |
| 3 | 301616 ANDERSON, ROBIN J. |
| 4 | 966278 ANDREAS, ROBERT D. |
| 5 | 945687 ASKEW, KELLY E. |
| 6 | 927928 AUSTIN, MICHAEL D. |
| 7 | 824037 AYRES, GLEN K. |
| 8 | 909932 BAKER, MICHAEL D. |
| 9 | 812500 BANKS, CHRISTINA M. |
| 10 | 817101 BERG, JUDY K. |
| 11 | 773744 BERGMAN, MICHELLE M. |
| 12 | 727177 BERRY, KIMBERLY A. |
| 13 | 791265 BETHEL, CHRISTOPHER L. |
| 14 | 984561 BLACKMAN, REGINALD K. |
| 15 | 775801 BOOKER, MARCUS |
| 16 | 962061 BROWN, JASON |
| 17 | 893142 BROWN, RONALD D. |
| 18 | 846240 BUSH, MARK A. |
| 19 | 224440 CAHOON, RODNEY G. |
| 20 | 824079 CALDWELL, KIM C. |
| 21 | 821750 CANTIN, KATHY M. |
| 22 | 944282 CARAWAY, JANET M. |
| 23 | 851825 COFFIN, JEREMI C. |
| 24 | 959183 COMENOTE, LAURA R. |
| 25 | 922485 CONERLY, FREDRICK |
| 26 | 820611 CONNER, MARK A. JR. |
| 27 | 752105 COOK, HARRY D. |
| 28 | 897887 CORTEZ, JONATHAN A. |
| 29 | 713713 CUEVAS, MELISSA E. |
| 30 | 955534 DANIELS, RONALD |
| 31 | 247946 DETWILER, DENNIS F. |
| 32 | 727371 DODD, KRISTINA K. |
| 33 | 900845 DONALD, AARON C. |
| 34 | 773272 DUNN, RORILEE L. |
| 35 | 979053 ECRET, JAMES R. |
| 36 | 830676 ELLIOTT, KIM M. |
| 37 | 812627 ESTES, BONNI L. |
| 38 | 736958 ESTRADA, JUAN T. |
| 39 | 735749 EVERETT, JOHN D. |
| 40 | 707139 FAULAAU, ROGER |
| 41 | 308647 FAY, ROBIN L. |
| 42 | 742512 FIJALKA, DAVID W. |
| 43 | 721979 FLOOR, CORNELIS W. |
| 44 | 996577 FORMAN, ROBERT E. |
| 45 | 795515 FREZELL, PHILLIP M. |
| 46 | 907647 GANT, SCOTT E. |
| 47 | 925571 GAYLES, RONNIE L. |
| 48 | 895498 GHEBRE, MICHAEL |
| 49 | 275612 GILSTRAP, MARK L. |
| 50 | 629835 GOSNEY, DONALD D. |
| 51 | 998306 GRANT, ISAAC R. |

52 826949 GRIGSBY, JOHN V.
53 835348 GROSSMAN, WILLIAM C.
54 755524 HANLEY, BRIAN L.
55 797038 HARBIN, RANDALL S.
56 854358 HARRIS, CLARENCE W.
57 843688 HAWKINS, KERRI J.
58 237557 HAZELWOOD, EMIL L.
59 818392 HEDGLIN, JASON K.
60 966914 HILL, SAMUEL J.
61 836274 HOLMES, MATILDA
62 732143 HOLMES, REGINA
63 718253 HOPE, FRANCIS J.
64 731854 HORTON, TERRENCE D.
65 909026 HOUSE, LONNIE D.
66 836784 HOWERTON, JAMIE E.
67 885528 HUTSON, KENNETH J.
68 837262 JOHNSON, DANA M.
69 281293 JOHNSON, MICHAEL E.
70 808426 JOHNSON, MICHAEL R.
71 858207 JOHNSTON, PHILLIP R.
72 880939 JONES, JENNIFER M.
73 249715 JONES, REGINALD P.
74 235299 JORDAN, GREGORY L.
75 919999 JUSTICE, WYMONA D.
76 869307 KAUZLARICH, ALBERT G.
77 762025 KESSLER, NATHAN P.
78 786045 KIKTA, ANTHONY JR.
79 989047 KIMBROUGH, ANDREW B.
80 750135 KIPPES, DAVID M.
81 859800 KNOTT, DAVID G.
82 745719 LANDIS, CODY L.
83 719565 LANDSMAN, LISA J.
84 899976 LAW, JOANN E.
85 624475 LAY, DANIEL E.
86 957547 LEE, RICHARD M.
87 853421 LONG, HAROLD
88 812564 LONG, LUCAS C.
89 862710 LOPEZ, WENDY K.
90 629803 LORENTZEN, DANIEL
91 716944 MANUEL, LATRIA P.
92 782004 MARCUM, RICHARD A.
93 953150 MARSON, RANDY W.
94 807578 MARTIN, KATRINA M.
95 859997 MARTIN, VINCENT E.
96 958949 MARTINEZ, ANDREZ Q.
97 897374 MCCOSHUM, JONATHAN B.
98 922238 MCDONALD, TONY L.
99 735154 MCNARY, KENNETH E.
100 882162 MCQUEENEY, CYNTHIA J.
101 660267 MENEZES, LAWRENCE A.
102 896854 MESSENGER, SYLVIA R.
103 852317 MICHELSON, IDA L.

104 728039 MLECZEK, GILBERT W.
105 243940 MOITORET, PHILIP J.
106 797684 MONSON, DARLENE J.
107 776031 MONTEZ, DENISE R.
108 889392 MOROVIC, DARCEE E.
109 791729 MOULTRY, DARRICK L.
110 272308 NAGY, JAMES M.
111 882202 NOLAND, ELAINE
112 986104 NORRIS, JOHN H.
113 953176 NUTTER, TIMOTHY J.
114 302395 OPENIANO, GEORGE G.
115 247975 ORANGE, CARL
116 872379 PASSFIELD, MELISSA D.
117 243209 PAULEY, ROBERT G.
118 254483 PHAIR, SIDNEY C. JR.
119 239029 PLY, JIMMY D.
120 899449 POOL, MALCOLM E.
121 244393 POWELL, JAMES
122 727046 PRUITT, LENNY R.
123 914604 QUARTIMON, AMOS
124 754697 RANKIN, LEIF F.
125 787039 RAYA, DONNA L.
126 250294 REEVES, JOHN C.
127 976119 RICHARDSON, JAMES R.
128 982484 ROWAN, BRANDY D.
129 832343 SAYERS, JENNIFER
130 926470 SCHULLER, ROGER A.
131 880226 SCOGGINSMCGOLDRICK, ROCHELLE
132 781787 SELF, NORRIS S.
133 267411 SIMPSON, BOBBY J.
134 714068 SMITH, TERRY S.
135 825792 SPARKMAN, SHERRY L.
136 690436 SPEARMAN, THEODORE E.
137 979772 STENSON, ETIENNE P.
138 295415 STEPHENS, JAMES C.
139 831130 STRONG, ALBERT E.
140 997717 SUTTON, ROBERT E.
141 972900 TAIACAN, ALFRED J.
142 764421 TANO, NICHOLAS F.
143 302223 TAYLOR, PAULINE
144 244174 TENNYHILL, RUSSELL J.
145 713124 THAYER, DEBBIE M.
146 821021 THOMPSON, LEEANN E.
147 863063 TIMMONS, JOY S.
148 873225 TURNER, KENYETTA T.
149 305088 TWEDELL, TERRI A.
150 898666 VASQUEZ, CARLO F.
151 901009 VERNOR, MAURICE L.
152 975196 WADE, LYNETTE L.
153 843635 WAFER, ROBERT L.
154 947635 WARD, BENJAMIN A.
155 622403 WARD, JOHN P.

156 885074 WELCH, KENNETH D.
157 848629 WHETSELL, JACQUELYNE R.
158 877833 WHITE, MICHELLE L.
159 898300 WIDENER, GARY F.
160 890862 WILCOX, JASON A.
161 288531 WILLIAMS, MARK E.
162 866475 WOODFIN, LAURA O.
163 898948 WOODS, JOHRAN A.
164 830547 WRIGHT, CHARLENE A.
165 266192 WRIGHT, WILLIAM M.
166 805072 ZENTNER, MICHAEL J.