

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WISCONSIN**

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CIRCLE SANCTUARY; ROBERTA STEWART; KAREN DEPOLITO; ISIS INVICTA MILITARY MISSION; and JILL MEDICINE HEART COMBS as spouse and guardian of Gerwin Dee Combs, Incapacitated,

Case No. 06-C-0660-S

Plaintiffs,

v.

R. JAMES NICHOLSON, Secretary of Veterans Affairs, individually and in his official capacity; and WILLIAM F. TUERK, Undersecretary for Memorial Affairs, individually and in his official capacity,

Defendants.

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**SETTLEMENT AGREEMENT AND STIPULATION OF DISMISSAL**

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The Plaintiffs by Hall, Charne, Burce & Olson by F. Thomas Olson and Americans United for Separation of Church and State by Ayesha N. Khan, Richard B. Katskee, Alex J. Luchenitser, and Aram A. Schvey; and Defendants by United States Department of Justice by Richard G. Lepley and Eric J. Soskin, hereby STIPULATE and AGREE that:

1) Individuals of the Wiccan faith are entitled to have the Pentacle (as depicted in Plaintiffs' Complaint, Exhibit J at page 12) made available as an emblem of belief for inscription on headstones, grave markers, and memorial plaques, as described in 38 C.F.R. Part 38. The

Wiccan Pentacle will henceforth have the same status as the other emblems of belief on VA's list of emblems available for inscription on government-furnished headstones and markers.

2) VA will promptly add the Pentacle to its list of available emblems of belief and publish this addition online during the first business day after execution of this Stipulation.

3) Within 14 days from execution of this Stipulation, VA will provide a headstone, marker, or memorial plaque (of a type suitable for placement in the relevant cemetery) inscribed with a Pentacle for Sgt. Patrick Stewart, PFC Jerome Birnbaum, PFC James Price, and any other eligible individuals who have submitted complete applications for Pentacle-inscribed headstones, markers, or memorial plaques, and who have been identified before the execution of this Stipulation. VA will coordinate with the Department of the Army, which controls Arlington National Cemetery, to promptly order headstones, markers, or memorial plaques inscribed with a Pentacle for Abraham and Rosemary Kooiman and for any other eligible individuals who have submitted complete applications for Pentacle-inscribed headstones, markers, or memorial plaques, and who have been identified before the execution of this Stipulation.

4) Within 21 days after receiving a complete application on VA Form 40-1330 from the next-of-kin or personal representative of an eligible decedent for a Pentacle-inscribed replacement for a government-furnished headstone, marker, or memorial plaque without an inscribed emblem of belief, VA will furnish at government expense a replacement headstone, marker, or memorial plaque (of a type suitable for placement in the relevant cemetery) inscribed with the Pentacle. VA will consider an application for a Pentacle-inscribed replacement for a government-furnished headstone, marker, or memorial plaque with another inscribed emblem of belief on a case-by-case basis using secular, non-discriminatory criteria.

5) For any complete application requesting a Pentacle-inscribed headstone, marker, or memorial plaque that is submitted to VA on Form 40-1330 by the next-of-kin or personal representative of the decedent within 30 days from the date that this Stipulation is executed, where the applicant has immediate need at the time that this Stipulation is executed and where the applicant otherwise qualifies to receive a government-provided memorial, VA will provide a Pentacle-inscribed headstone, marker, or memorial plaque (of a type suitable for placement in the relevant cemetery) on an expedited basis. After that 30-day period has expired, applications for Pentacle-inscribed headstones, markers, or memorial plaques will be processed in accordance with the VA's regular procedures applicable to requests for headstones, markers, or memorial plaques bearing any other emblem of belief.

6) Each party agrees not to publish or otherwise disclose any documents produced in discovery or any copies, reproductions, excerpts, or images made of those documents in any form, including but not limited to copies stored in paper, electronic, and photographic form. The parties agree that upon execution of this Stipulation, all such documents and copies (except for Bates No. PR4199-PR4200) shall be remitted to the possession of their Counsel. Within 7 days after the later of (a) the addition of the Pentacle to the online list of emblems of belief, and (b) VA's delivery of Pentacle-inscribed headstones, markers, or memorial plaques for Sgt. Stewart and PFC Birnbaum, each party agrees to return or to destroy all such documents and copies (including PR4199-PR4200). This agreement does not restrict Plaintiffs' retention or use of any documents obtained through a Freedom of Information Act request or obtained from nonparties. Nor does it restrict Plaintiffs' rights to speak or write about this action or about their attempts to obtain Pentacle-inscribed markers or to have the Pentacle placed on the list of available emblems of belief.

7) To the maximum extent permitted by law, Plaintiffs for themselves, their heirs, and their personal representatives, fully and forever release, acquit, and discharge the VA, including all defendants, employees, and former employees, either in their official or individual capacity, from any and all claims, demands, and causes of action, known or unknown, that Plaintiffs may have had, may now have, or may hereafter discover arising out of any event relating to the claims advanced in this proceeding, including without limitation any claims for personal injury or emotional distress.

8) VA agrees not to limit the ability of the Plaintiffs to participate in or assist with applications to add other emblems to the list of available emblems of belief in the future except through the use of secular, non-discriminatory criteria applied to individuals and organizations of all faiths.

9) Defendants agree to pay reasonable costs and attorneys' fees in the amount of \$225,000, in full settlement of Plaintiffs' claims for such costs and fees to obtain this agreement and stipulation.

10) Pursuant to Federal Rule of Civil Procedure 41(a)(1)(ii), this case shall be dismissed with prejudice as to all claims against Defendants R. James Nicholson, Secretary of Veterans Affairs, and William F. Tuerk, Under Secretary for Memorial Affairs, subject to the following retention-of-jurisdiction provision.

11) The Parties intend for the Court to retain jurisdiction over this case for a period of 60 days following the execution of this Stipulation to ensure that the parties have complied with their obligations. The parties jointly submit the proposed order annexed hereto and request that the Court enter it on the record of this case.

Respectfully submitted,

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