

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

JOHN DORN,

Plaintiff,

v.

Case NO. 1:15-cv-359

MICHIGAN DEPARTMENT OF
CORRECTIONS (“MDOC”); HARESH
PANDYA, individually and in his official capacity
as the Regional Medical Officer for the Southern
Region of MDOC; JEFFREY STIEVE,
individually and in his official capacity as the
Chief Medical Officer of the MDOC; THOMAS
FINCO, individually and in his official capacity as
Correctional Facilities Administration Deputy
Director of the MDOC; and DANIEL H. HEYNS,
individually and in his official capacity as Director
of the MDOC,

SETTLEMENT AGREEMENT

Defendants.

SETTLEMENT AGREEMENT

I. PARTIES

This Settlement Agreement (“Agreement”) is made between John Dorn (“Mr. Dorn” or “Plaintiff”) and the Michigan Department of Corrections (“MDOC”), Haresh Pandya, Jeffrey Stieve, Thomas Finco, and Daniel H. Heyns (collectively, “Defendants”). Mr. Dorn and Defendants are referred to collectively herein as the “Parties.”

II. RECITALS

On April 2, 2015, Mr. Dorn filed a complaint in the United States District Court for the Western District of Michigan, *Dorn v. Michigan Department of Corrections, et. al.*, Case No. 1:15-cv-359 (PLM), and on May 27, 2015, Plaintiff filed his First Amended Complaint (the “Amended Complaint”), alleging that Defendants’ enforcement of Michigan Department of Corrections Policy Directive 03.04.120, Control of Communicable Bloodborne Diseases (the

“Policy Directive”), and the corresponding Michigan statute, MCL 791.267(3) (the “Statute”) violate Title II of the Americans Disabilities Act (“ADA”) (42 U.S.C. § 12131 et seq.) and Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794 et seq.) because they unlawfully discriminate against incarcerated people living with HIV. Plaintiff also alleged violations of 42 U.S.C. §§ 1983 and 1988 for deprivation of rights secured by the laws and Constitution of the United States. For all claims, he is seeking declaratory and injunctive relief, and money damages. Plaintiff challenges the Policy Directive on its face and as applied to him. Defendants deny all allegations of wrongdoing.

Having engaged in discussions, the Parties believe that it is in their best interests to settle and resolve this matter. The execution of this Agreement shall not be construed as an admission by either party of any wrongdoing or any liability of any kind, all liability and wrongdoing being expressly denied.

Therefore, in consideration of the covenants set forth in this Agreement, the Parties settle their dispute on the following terms and conditions:

III. TERMS OF SETTLEMENT

- A) The Michigan Department of Corrections shall pay the sum of \$150,000.00 to Plaintiff John Dorn. Said payment shall be made payable to John Dorn.
- B) The Michigan Department of Corrections shall implement revisions to the Michigan Department of Corrections Policy Directive 03.04.120 sections 03.04.120(LL)(2), 03.04.120(OO), and 03.04.120(PP) as set forth in Attachment A to this Agreement.
- C) The Michigan Department of Corrections agrees to supplement Plaintiff’s records with a memorandum stating that if the Policy Directive 03.04.120(NN)-(QQ) as amended had been applied to Mr. Dorn’s conduct in 2012, he would not have been reclassified to a higher level of security.
- D) The Michigan Department of Corrections agrees to review the circumstances of other individuals living with HIV who are currently subject to a higher classification pursuant to the Policy Directive, within 30 days of the signing of this Agreement, and to reconsider the placement of such individuals under the Policy Directive as revised by this Agreement.

IV. RELEASE

- A) Subject to the terms set forth herein, by signing this Agreement, the Parties intend that it shall be a full and final accord and satisfaction and release from all allegations and claims asserted in the Amended Complaint.

- B) As consideration for such payments and non-monetary relief described herein, Plaintiff John Dorn shall file a stipulation of dismissal of *Dorn v. Michigan Department of Corrections, et. al.*, 1:15-cv-359 (PLM) with prejudice pursuant to Fed. R. Civ. P. 41.
- C) In consideration of the Terms of Settlement outlined in Section III above, Plaintiff releases and discharges the Defendants from all claims, debts, wages, demands, rights, liens, charges, lawsuits, and causes of action, and shall not further prosecute, shall not in the future prosecute, and shall not bring or cause to be brought any claim or action against the Defendants, either legal or equitable, federal or state, based upon any theory, including but not limited to claims under the United States or Michigan Constitutions; 42 U.S.C. § 1983, as amended; Title VII of the Civil Rights Act of 1964, as amended; Michigan's Elliott-Larson Civil Rights Act, as amended; the Americans With Disabilities Act, as amended; §504 of the Rehabilitation Act, as amended; the Michigan Persons With Disabilities Civil Rights Act, as amended; Michigan common law or doctrines, in law or equity, or any other causes of action relating to the incident described in the complaint filed in this matter whether known or unknown to the undersigned, or that accrue after this agreement by reason of any existing facts, known or unknown, in favor of the undersigned against the Defendants.
- D) Plaintiff further agrees that the \$150,000.00 payment described in Section III(A) above shall be subject to any offset for liens which the Michigan Department of Treasury is empowered to exercise, for such things as outstanding state income taxes. The State of Michigan waives any right to collect any portion of the settlement amount under the State Correctional Facilities Reimbursement Act, MCL 800.401, *et seq.*
- E) Plaintiff is not relying upon any statement or representation by the Defendants. Plaintiff acknowledges that he understands that this is a final disposition of all disputes as to any legal or equitable liability of Defendants as the nature and extent of injuries, losses and damages, which Plaintiff has or may have sustained arising out of this action. Plaintiff acknowledges that this compromise settlement is mutual, final and conclusive, and binding by the undersigned and the Defendants.
- F) Plaintiff represents that he has had adequate time to review the terms of this Release with his attorneys, that he understands all of its provisions, and that he is voluntarily entering into this release.
- G) Plaintiff understands that the cost of litigation arising out of this matter, including all costs, interest, and attorney fees are included herein. In other words, the settlement amount includes all interest, costs, and attorneys' fees, as well as any claimed damages.
- H) The execution of this release shall not be construed as an admission by either party of any wrongdoing or any liability of any kind, all liability and wrongdoing being expressly denied.

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.

VI. REPRESENTATIONS AND WARRANTIES

- A) No modification or waiver of any of the terms of this Agreement, including but not limited to the changes to Defendants' policies required under the terms of this Agreement, shall be valid unless in writing and executed with the same formality as this Agreement.
- B) 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.
- C) In the event that two or more counterparts of this Agreement are executed, all such counterparts shall collectively constitute the same instrument.
- D) Each party to this Agreement shall complete, execute, or cause to be executed, such further documents as are necessary to carry out the expressed intent and purpose of this Agreement.
- E) 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.
- F) Unless expressly stated otherwise in this Agreement, the terms, conditions, and provisions of this Agreement are governed by and interpreted under the laws of the state of Michigan and, where applicable, of the United States.
- G) The Parties acknowledge and agree that, because they have carefully read, reviewed, and considered the terms of this Agreement and have had full opportunity to obtain legal advice from counsel of their choice in connection with this Agreement, any ambiguities contained herein shall not be construed against any party.
- H) Should any provision of this Agreement be held invalid or unenforceable, such holding shall not invalidate the whole of this Agreement, but the Agreement shall be construed as if it did not contain the invalid or unenforceable part, and the rights and obligations of the Parties shall be construed and enforced accordingly.

The undersigned agree to the above:

Dated: 11/5/18

John A. Dorn
John Dorn

Dated: 11/5/2018

[Signature]
On behalf of Michigan Department of Corrections

Approved as to form:
Dated: 11/5/2018

Richard Saenz
Richard Saenz
Scott A. Schoettes
Kara N. Ingelhart
Anthony Pignera
Lambda Legal Defense & Education Fund, Inc.

Chris E. Davis
Michigan Protection and Advocacy Service, Inc.
Counsel for Plaintiff John Dorn

Dated: 11/5/18

[Signature]
Scott A. Mertens
Denise C. Barton
Michael R. Dean
Michigan Attorney General's Office
Counsel for Defendants