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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

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MICHELLE SEMELBAUER, et al,  
Plaintiffs,  
DOCKET NO. 1:14-cv-1245  
vs.  
MUSKEGON COUNTY, et al.,  
Defendants.

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TRANSCRIPT OF SETTLEMENT AGREEMENT  
BEFORE UNITED STATES MAGISTRATE JUDGE ELLEN S. CARMODY  
GRAND RAPIDS, MICHIGAN  
May 31, 2017

Court Reporter: Glenda Trexler  
Official Court Reporter  
United States District Court  
685 Federal Building  
110 Michigan Street, N.W.  
Grand Rapids, Michigan 49503

Proceedings reported by audio recording, transcript produced by  
computer-aided transcription.

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1 Grand Rapids, Michigan

2 May 31, 2017

3 5:44 p.m.

4 P R O C E E D I N G S

5 *THE COURT:* Good afternoon. The parties -- it's now  
6 twenty to six. The parties have been working since two to try  
7 to get the details of the settlement worked out. I believe we  
8 have an agreement in principle. I think that's a fair way to  
9 put it.

10 And if plaintiff's counsel would put your appearance  
11 on the record and introduce your clients or client  
12 representatives.

13 *MS. AUKERMAN:* Certainly. Miriam Aukerman, ACLU of  
14 Michigan for the plaintiffs.

15 *MR. DREW:* Stephen Drew for the plaintiffs as well.

16 *THE COURT:* Good afternoon.

17 *MS. AUKERMAN:* And we have in the courtroom today  
18 here Paulette Bosch, Denise Vos, Crisa Brown, Stashia Collins,  
19 Judy Pauley, and Delilah Wickliffe. Did I miss -- I'm sorry.  
20 Stashia is not here. Stashia is not here.

21 *THE COURT:* But it's my understanding you have  
22 written authorization to settle on behalf of a plaintiff or  
23 plaintiffs who are not here?

24 *MS. AUKERMAN:* Yes, we have written authorization to  
25 settle on behalf of all of the plaintiffs and the joinder

1 claimants.

2           *THE COURT:* All right. Now, Mr. Karafa, if you would  
3 put your appearances on the record and introduce your client or  
4 client representatives.

5           *MR. KARAFa:* Thank you, Your Honor. John Karafa  
6 appearing on behalf of the County of Muskegon. If I may,  
7 Allan Vander Laan as well.

8           Kristin Wade is here on behalf of the County of  
9 Muskegon Human Resources Department and Lieutenant Mark Burns  
10 from the county jail.

11           *THE COURT:* All right. Now, I don't know -- I think  
12 I'm going to ask you first to put your understanding of the  
13 agreement on the record. And, again, this is in principle. We  
14 understand this requires -- would you go over for us what  
15 additional approval you'll require to firm this up. Or would  
16 you rather have Ms. Aukerman put it on the record?

17           *MR. KARAFa:* I can proceed to do that. This  
18 agreement upon ultimate approval and authority from our  
19 perspective from the County Board of Commissioners and from the  
20 sheriff himself will include a mutual release and a full  
21 settlement agreement. There will be preliminary recitals which  
22 the parties have agreed to. There will be a financial  
23 component to the agreement whereby each of the party  
24 plaintiffs, being Paulette Bosch, Denise Vos, Crisa Brown,  
25 Latrece Baker, Tammy Speers, Londora Kitchens, Stashia Collins,

1 and Judy Pauley, and Delilah Wickliffe will be paid \$20,000  
2 each on behalf of the County of Muskegon to the order of each  
3 of them and their attorneys American Civil Liberties Union Fund  
4 of Michigan. As the parties have agreed as far as that  
5 designation will be made.

6 There are three additional nonparties being  
7 Sarah Swanson, Princess Warren, and Misty Ippen who each will  
8 be paid \$3,000 on behalf of the County of Muskegon as  
9 consideration, part consideration for the terms and conditions  
10 that will be set forth in the settlement agreement.

11 There are nonfinancial terms of the settlement which  
12 will include as captioned here today out-of-cell rights  
13 including exercise. That is something that has not yet been  
14 fully agreed to in terms of the terms and conditions. And the  
15 parties need to work on that further.

16 We've discussed the likelihood that it will be -- any  
17 agreement reached as far as exercise is concerned, it will  
18 involve some type of affirmative sign-up by the inmates with  
19 the jail making accommodation wherever possible so long as it  
20 fits within the jail schedule and subject to various logistical  
21 concerns that we have.

22 With regard to cross-gender viewing claims, we have  
23 mostly reached an accord in this regard: Jail staff will  
24 announce their presence when entering housing units occupied by  
25 inmates of the opposite sex. Male staff will not enter female

1 housing cells during set shower times absent emergent or  
2 exigent circumstances. There's a provision pertaining to  
3 routine activities such as meal distribution which will take  
4 place in the day rooms rather than the cells absent emergent or  
5 exigent circumstances.

6           There is some discussion over medication also being  
7 dispensed only in the housing units, not the cells. But we had  
8 a discussion which has yet to be fine-tuned a bit in that  
9 medication dispensation takes place in the housing units, but  
10 when that happens, the other half of the population in the  
11 housing unit is inside their cells, so the nurses must go to  
12 the individual cells to dispense the medication, and when they  
13 do that they are accompanied by a corrections officer. So that  
14 is what might be considered a routine matter, that is  
15 medication dispensation. Yet it's something that at times must  
16 take place at the cell unit door.

17           There will be a provision where trustees shall not be  
18 assigned duties involving opposite sex housing units unless  
19 under the direct supervision of a corrections officer.

20           With regard to hygiene items. And I may say in  
21 part -- I'll say also what this agreement is not in part, and  
22 that is that there's a provision in one of the written  
23 proposals over the obligation of male staff to log the date,  
24 time, and place of occurrences of viewing breasts, buttocks, or  
25 genitals of female inmates, and that is stricken. That will

1 not be part of the agreement.

2           There's a reference to hygiene items. We have an  
3 agreement in principle that the policy and practice of the jail  
4 will be to make feminine hygiene products available to female  
5 inmates on the medicine cart during medication distribution.

6           With regard to training the agreement is that  
7 Muskegon County shall ensure that all corrections officers are  
8 briefed on the provisions of the agreement, the written  
9 agreement that is ultimately executed in this case and that the  
10 staff shall receive orientation and training on the policies  
11 and practices of the jail, including orientation and training  
12 on the standards of the Prison Rape Elimination Act.

13           There's an agreement as to notice. That the county  
14 shall cause to be posted in some fashion in the jail, including  
15 perhaps by way of Power Point, so that the policies and  
16 practices as set forth in this agreement will be available to  
17 female inmates.

18           This agreement is going to be -- this agreement  
19 contemplates a full, final, and complete resolution with  
20 prejudice of the action that's pending. There will be  
21 withdrawal of the motion for class certification. And the  
22 agreement is going to include all the plaintiff parties that  
23 were named including the so-called joinder claimants that were  
24 named in the financial settlement component.

25           The parties have been represented at all relevant

1 times by legal counsel.

2 There will be some typical provisions contained in  
3 the release and settlement agreement such as a no-admission  
4 clause on the part of the County of Muskegon.

5 There will be a mutual release of all claims that  
6 will be made part of the agreement. In consideration of the  
7 various considerations paid by the county of Muskegon, the  
8 plaintiffs and the joinder claimants will forever release the  
9 County of Muskegon and various other associated and affiliated  
10 parties with the county with regard to all causes of action  
11 that have been brought, all causes of action which could have  
12 been brought as a result of the facts and circumstances set  
13 forth in their Complaints and Amended Complaints filed in this  
14 action. And there will be typical language, which the parties  
15 have agreed to, regarding all damages, damages that are known,  
16 damages that are perhaps latent or unknown that arise from the  
17 facts and circumstances set forth in the plaintiffs' Complaint  
18 and Amended Complaint.

19 There will be dismissal of the action with prejudice,  
20 withdrawal of the motion for class certification, a withdrawal  
21 and/or dismissal with prejudice of the matter on appeal before  
22 the Sixth Circuit Court of Appeals.

23 The no-admission provision which I made reference to  
24 already is a fairly standard clause which will state that the  
25 conditions and circumstances conveyed as part of the county's

1 consideration in support of this agreement shall not be  
2 construed in any way as an admission of liability or fault of  
3 any kind on the part of Muskegon County as to any of the  
4 complaints, allegations, claims, or causes of action stated  
5 against the county by the plaintiffs and/or joinder claimants,  
6 all of which have been and remain denied as untrue. The  
7 purpose of the agreement being to by peace resolve differences  
8 in a mutually acceptable manner and terminate the action fully  
9 and finally and compromise all disputed claims.

10 The agreement that will be entered into will be  
11 construed and interpreted in accordance with Michigan law.

12 The parties agree that venue and jurisdiction for  
13 purposes of the agreement will be Michigan state or federal  
14 court.

15 The plaintiffs and the joinder claimants, all of whom  
16 are receiving financial compensation as part of this agreement,  
17 will understand by execution of this agreement that they are  
18 responsible entirely for their attorney fees and costs and  
19 expenses incurred in connection with this action and hold the  
20 county completely harmless from any such claims.

21 To the extent we went -- there's going to be a whole  
22 Thomas provision in there in favor of the County of Muskegon to  
23 the extent any third party claims any interest in the payment  
24 made to any one of the plaintiffs or joinder claimants, and  
25 they will warrant as part of the execution of this agreement

1 that there are no third parties that they presently know to  
2 assert any liens or claims against the anticipated proceeds  
3 that are going to be subject to this agreement.

4           Once the agreement is executed, there will be no  
5 verbal agreements that apply, and any amendments, if any, will  
6 have to be in writing to be enforceable.

7           I may have already said so, but from our perspective  
8 the agreement -- these are the statements of the general terms  
9 and conditions in principle. We still need to see a final  
10 version exchanged between the parties, between the attorneys  
11 for the parties, and finally agreed to with the approval and  
12 full authority of the respective camps. And, of course, I've  
13 already mentioned a couple of those provisions that need to be  
14 cleaned up with a fair degree of particularity such as the  
15 exercise provision.

16           I think that essentially sets forth the terms and  
17 conditions of the agreement --

18           *THE COURT:* All right.

19           *MR. KARAFa:* -- that we've agreed to in principle  
20 today.

21           *THE COURT:* Thank you.

22           *MR. KARAFa:* But I would like to ask Ms. Wade and  
23 Lieutenant Burns if --

24           *THE COURT:* Right. Do you want to ask them?

25           *MR. KARAFa:* Yes. You don't have the document in

1 front of you, but in essence does that sound like the agreement  
2 that we've reached today?

3 *LIEUTENANT BURNS:* It does.

4 *MR. KARAFKA:* Thank you.

5 *THE COURT:* And, Ms. Wade, you too?

6 *MS. WADE:* It does. Thank you.

7 *THE COURT:* All right. Thank you.

8 And, Mr. Vander Laan, anything you want to add,  
9 subtract, or disagree with?

10 *MR. VANDER LAAN:* Absolutely not, Your Honor. Thank  
11 you.

12 *THE COURT:* All right. Ms. Aukerman, anything you  
13 want to add, subtract, or disagree with?

14 *MS. AUKERMAN:* Just a couple of points of  
15 clarification.

16 I think that Mr. Karafa very -- stated very well what  
17 the general terms of the agreement are.

18 With respect to the issue of exercise, my  
19 understanding is that the parties are still working to nail  
20 that down in terms of the amount of gym time and that we're  
21 looking for -- the sort of general terms -- the general scope  
22 of the discussion is that there would be some kind of  
23 affirmative request on the part of the inmate and that there  
24 would be a specified amount of time as yet to be determined  
25 that would be made available. That's my understanding of where

1 we are on that.

2           The other point that I think is important with  
3 respect to that issue, it's my understanding that we have  
4 agreement with respect to a provision on out-of-cell time that  
5 it's the policy and practice of the jail to maintain scheduled  
6 out-of-cell time such that female inmates, unless subject to  
7 discipline, are not locked down in their cells for longer than  
8 15 consecutive hours and that the jail's schedule for  
9 out-of-cell time will reflect that policy and practice.

10 However, there may be situations where that regular schedule  
11 cannot be followed for reasons of institutional security. So  
12 my understanding is that we have agreement on that provision as  
13 well.

14           There was a comment about meal distribution in the  
15 day rooms. I think that where we're at on that is that, again,  
16 we're trying to negotiate the exact language of that, but we're  
17 talking about that in terms of interfering with set shower  
18 times.

19           A couple of other points just to clarify. That the  
20 payments would be made to the individual -- so the payment  
21 would be sent -- would be made out to the ACLU Fund of Michigan  
22 and to the respective individual plaintiff or joinder claimant  
23 but that upon execution of the release by the plaintiff or the  
24 joinder claimant, that that payment would then be made. In  
25 other words, they would be made on each individual rather than

1 waiting for everyone to have signed the documents. Payments  
2 will be made as releases are set.

3 *THE COURT:* All right.

4 *MS. AUKERMAN:* There's language that the plaintiffs  
5 are not settling this on behalf of the class, that they are  
6 settling only their individual claims.

7 And there's one thing I -- let's see. With respect  
8 to the hygiene provision, my understanding is that we have  
9 agreement on not only that the cart will be used to distribute  
10 medication but that the cart will be brought to the female  
11 inmates on the same regularity as medication is dispensed such  
12 that inmates in need of feminine hygiene products may request  
13 them as the cart enters their area. It's my understanding we  
14 have agreement on that language as well.

15 And then finally, I did not catch this earlier,  
16 Mr. Karafa pointed out language in the sort of general releases  
17 regarding liens and warranting that there are no liens. We may  
18 have to revisit that language. I think there may be a lien on  
19 one of these, but we can -- I'm certain that we can work that  
20 out in terms of drafting the final language.

21 *THE COURT:* All right. Anything further, Mr. Drew,  
22 from your point of view?

23 *MR. DREW:* No, Your Honor.

24 *THE COURT:* Mr. Karafa.

25 *MR. KARAF:* I would just respond to a couple of

1 things. To the extent I did not mention -- and I was --  
2 frankly, I may not have been tremendously prepared for that. I  
3 was looking at three different documents and trying to put it  
4 all together, so --

5 *THE COURT:* And I understand it was a difficult task.

6 *MR. KARAFKA:* Yeah. So with regard to the jail  
7 exercise issue, what Ms. Aukerman said was generally true, that  
8 we're going to work off of a premise that there's going to be  
9 an affirmative obligation on the part of the inmates to request  
10 an opportunity to get to the jail.

11 *THE COURT:* Gym.

12 *MR. KARAFKA:* To get to the gym. To the gym. But  
13 it's her reference to a specified time, and that's the issue  
14 we're having a bit of trouble with.

15 *THE COURT:* Okay.

16 *MR. KARAFKA:* So I want to leave here today with some  
17 implicit acknowledgment that we're going to work off of --  
18 we're going to build in some specific time. If we can do that  
19 and make it a happy world for everybody, we will. But that's  
20 going to be the one sticky point.

21 If I didn't mention the agreement with regard to the  
22 15 consecutive hours, that female inmates will not be in their  
23 cells for longer than 15 consecutive hours, I agree to that,  
24 that's true.

25 The stip and order will be submitted -- there will be

1 a stip and order of dismissal with prejudice with regard to all  
2 of these matters, and the rest of the terms and conditions will  
3 be built into the mutual release and settlement agreement as  
4 set forth.

5 The hygiene products that were mentioned, yes, that  
6 will go with the medical cart. I thought I said that, but  
7 maybe I did not.

8 And if there is a lien, that's okay, we can just --  
9 they just have to be disclosed so we can build them into the  
10 agreement. Thank you.

11 *THE COURT:* All right. Ms. Aukerman, would you  
12 inquire of your clients who are present here today whether they  
13 agree to settle their individual claims on those -- that basis.

14 *MS. AUKERMAN:* Certainly. Do you want me to do that  
15 individually?

16 *THE COURT:* Yes, I would. Thank you.

17 *MS. AUKERMAN:* All right. So, Paulette Bosch, do you  
18 agree to the terms of the settlement as it's been described to  
19 settle your individual claims?

20 *MS. BOSCH:* Yes, I do.

21 *MS. AUKERMAN:* Denise Vos, do you agree to the terms  
22 of this settlement and to settle your individual claims?

23 *MS. VOS:* Yes, I do.

24 *MS. AUKERMAN:* Delilah Wickliffe, do you agree to the  
25 terms of the settlement to settle your individual claims?

1 MS. WICKLIFFE: Yes, I do.

2 MS. AUKERMAN: Judy Pauley, do you agree to the terms  
3 of the settlement and to settle your individual claims?

4 MS. PAULEY: Yes, I do.

5 MS. AUKERMAN: And Crisa Brown, do you agree --

6 MS. BROWN: No, I do not.

7 MS. AUKERMAN: You're not?

8 MS. BROWN: No.

9 MS. AUKERMAN: Agreeing to the terms of the  
10 settlement?

11 MS. BROWN: I feel like --

12 *(Unintelligible conversation in the background)*

13 MS. BROWN: No, you said individual. You all are  
14 gonna still -- they are still gonna to get theirs.

15 THE COURT: No. It's all or none.

16 *(Unintelligible conversation in the background)*

17 MS. BROWN: Well, yes, I agree.

18 MR. KARAFKA: Your Honor, we're on the record. I  
19 don't think there should be a group discussion back there.

20 THE COURT: No, I agree.

21 MR. KARAFKA: Yeah.

22 MS. AUKERMAN: Okay. Ms. Brown, do you agree to the  
23 terms of the settlement as with respect to settling your  
24 individual claims?

25 MS. BROWN: Yes.

1           *THE COURT:* All right. I want to thank each of you  
2 for coming as well as the Muskegon County representatives. And  
3 I will -- did I say two weeks to get your paperwork in?

4           *MR. KARAFa:* You did, Your Honor, yes.

5           *THE COURT:* I will expect -- Ms. Aukerman, let me ask  
6 you one more question: As an officer of the court, do you  
7 represent that any of the plaintiffs who were not here and  
8 responded in open court have given you settlement authority in  
9 writing?

10           *MS. AUKERMAN:* Yes. I have settlement -- written  
11 settlement authority from all of the individuals who are not  
12 present today.

13           *THE COURT:* Okay. All right. And it should be very  
14 clear to all of you -- and this was very clear to me, and I  
15 believe it was clear to your attorney -- that this is an entire  
16 settlement. That it's all or none. You can't settle them  
17 individually. Because that was part of the deal. And that was  
18 the deal from the very beginning. I can say that on the record  
19 because that's true.

20           All right?

21           So thank you all for coming. I wish you all a good  
22 evening. It looks like a beautiful one, so enjoy.

23           *MR. KARAFa:* Your Honor, thank you very much.

24           *MR. DREW:* Thank you, Your Honor.

25           *MS. AUKERMAN:* Thank you, Your Honor, for your time.

