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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

FILED  
DEC-11P 3:22  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

LINDA NUNN, et. al.,

Plaintiff,

Case No. 96-CV-71416-DT  
Honorable John Corbett O'Meara

v.

MICHIGAN DEPARTMENT OF  
CORRECTIONS, et al,

Defendants.

**DEFENDANTS' REPLY TO PLAINTIFFS' RESPONSE AND BRIEF IN OPPOSITION  
TO DEFENDANTS' MOTION FOR FULL UNCONDITIONAL DISMISSAL**

On October 27, 2004, Defendants filed a Motion for Full Unconditional Dismissal pursuant to the February 19, 2003 stipulation between the parties. Defendants' motion was based upon a stipulation entered between Plaintiffs' counsel, Deborah LaBelle, and the Defendants' counsel at that time, Assistant Attorney General Mark Matus. The stipulation, dated February 19, 2003, specifically provided:<sup>1</sup>

1. That the parties had entered into a Settlement Agreement in July 2000;
2. That pursuant to that Agreement, this Court entered an order of conditional dismissal on August 17, 2000;
3. That the compliance expert submitted a final report concluding that the Defendants "have substantially complied with all of the requirements of the Agreement"; and
4. That "because the Defendants are continuing their efforts to staff housing units with female officers pursuant to part IX(A) of the Agreement, that portion of the Agreement remains subject to compliance monitoring for a period **not to exceed twelve months. (Emphasis added).**

<sup>1</sup> See Attachment 1 to Defs' Motion.

Despite this plain and unambiguous language in the stipulation signed by Plaintiffs' counsel, Plaintiffs now assert that the Court must look outside the agreement for an "understanding" that was not in the terms or conditions of a full and final dismissal of this lawsuit. Plaintiffs assert:

The monitor extended the monitoring period in light of *Everson* with the understanding that an evaluation of compliance with this term could not be made until resolution of the pending appeal in *Everson*.<sup>2</sup>

Clearly, the agreement between the parties did not include any such "understanding."

Plaintiffs acknowledge that "settlement agreements are essentially contracts, enforced under the basic terms and principles of contract law."<sup>3</sup> It is well-settled law that in determining the intent of the parties to a contract, the terms in a contract should be given their plain ordinary meaning. *Bandlit Indus., Inc. v Hobbs, Int'l Inc.*, 463 Mich 504; 620 NW2d 531, 533 (Mich 2001); *Rasheed v Chrysler Corp.*, 445 Mich 109; 517 NW2d 19, 24 (Mich 1994). Michigan law dictates that an unambiguous contract should be construed according to its "plain and easily understood" terms. *Hidrofiltros de Mexico v Rexalt Inc.*, 355 F 3d 927, 930 (6<sup>th</sup> Cir 2004).

Plaintiffs are unable to point to any language in either the settlement agreement or in the stipulation between the parties that supports their position. In addition to the language in the stipulation between the parties,<sup>4</sup> the settlement agreement and the Compliance Expert's Final Report are contrary to Plaintiffs' position. The settlement agreement<sup>5</sup> provides in relevant part:

Consistent with the MDOC's announced intention to limit the assignment of staff in facility housing units to female officers, the MDOC will make a good faith effort to accomplish this objective during the monitoring period. **If such efforts are still ongoing at the end of the monitoring period, monitoring will be**

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<sup>2</sup> Pls' Response, at page 5.

<sup>3</sup> *Id* at 5.

<sup>4</sup> Defs' Motion, Att. 1.

<sup>5</sup> See Pls' Response, Att. 1,

**extended as to this issue only for not more than two additional six month periods.<sup>6</sup> (Emphasis added).**

The Final Report of the Compliance Expert<sup>7</sup> further exposes the fallacy to Plaintiffs' position. The language in the Compliance Expert's report is contrary to Plaintiffs' argument. It provides in relevant part:

During the monitoring period, the MDOC has continued to make a good faith effort to limit the assignment of staff in facility housing units to female officers. Their position in the *Everson* case, cited above, is consistent with that announced intention. Since *Everson* is currently on appeal to the Sixth Circuit, the MDOC's efforts are ongoing and, therefore, **the monitoring will be extended as to this issue only for not more than two additional sixth (sic) month periods.<sup>8</sup> (Emphasis added).**

Plaintiffs' position opposing dismissal of this action in its entirety is not warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law.

WHEREFORE, Defendants respectfully request that this Court enter an Order for Full Unconditional Dismissal with prejudice.

Respectfully submitted,

Michael A. Cox  
Attorney General



Frank J. Monticello (P36693)  
Assistant Attorney General  
Attorney for Defendants  
Corrections Division

Dated: November 29, 2004

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<sup>6</sup> *Id* at Section LX, A, pages 5-6.

<sup>7</sup> Defs' Motion at Att. 3.

<sup>8</sup> Att. 3, Defs' Response at page 12.

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Honorable John Corbett O'Meara

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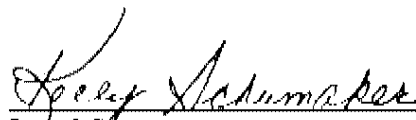
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**PROOF OF SERVICE**

The undersigned, being duly sworn, deposes and says that on November 29, 2004, she served a copy of Defendants' Reply to Plaintiffs' Response and Brief in Opposition to Defendants' Motion for Full Unconditional Dismissal upon Plaintiffs' counsel via first-class mail with postage fully prepaid, plainly addressed as follows:

DEBORAH LABELLE  
221 N MAIN ST STE 300  
ANN ARBOR MI 48104

  
Legal Secretary