

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW

TRACY NEAL, et al.,

Plaintiffs,

v

Case No. 96-6986-CZ
Hon. Timothy P. Connors

MICHIGAN DEPARTMENT OF CORRECTIONS,
et al.,

Defendants.

NICOLE ANDERSON, et al,

Plaintiffs,

v

Court of Claims
Case No. 03-162-MZ

MICHIGAN DEPARTMENT OF CORRECTIONS,
et al.,

Defendants.

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CLASS SETTLEMENT AGREEMENT

I.

RECITALS

1. **Introduction**

The Parties engaged in extensive settlement negotiations through the facilitation process that were conducted in good faith and at arms length. Through these settlement negotiations, the Parties have reached agreement on a proposed settlement of *Tracy Neal, et al v Michigan Department of Corrections, et al*, Washtenaw County Circuit Court no. 96-6986-CZ, in joinder with *Nicole Anderson, et al, v Michigan Department of Corrections*, Court of Claims No. 03-162-MZ, ("Class Action"), and *Tammy LaCross, et al v Nancy Zang, et al*, Washtenaw County Circuit Court No. 05-944-CZ and *Natheauleen Mason, et al v Granholm, et al*, U.S. District Court for the Eastern District of Michigan No. 05-cv-73943 ("Related Cases") that they believe to be fair, adequate and reasonable, and in the best interests of the Plaintiffs, the members of the Settlement Class, and the Defendants. This Settlement Agreement memorializes the terms of the final settlement between the Parties at the conclusion of the settlement negotiations.

Pursuant to the terms set forth below, and the Parties' belief that settlement is in their best interests, the Plaintiffs and the Defendants enter into this Settlement Agreement to bring about a full, complete and final resolution of all claims which are or could have been raised in the Class Action and the Related Cases.

II.

TERMS AND CONDITIONS

1. **Effective Date**

As used in this Settlement Agreement, "Effective Date" means the date on which this

Settlement Agreement is finally approved by the Court and the Order approving the Settlement Agreement becomes final. For the purposes of this paragraph, the Order approving the Settlement Agreement "becomes final" upon the later of (a) the expiration of the time for filing an appeal from that Order or otherwise seeking appellate review; or (b) if an appeal is timely filed or other appellate review sought from that Order, the date the decision affirming the settlement approval becomes final and all other means of appellate review are exhausted or expire.

2. Dismissal Of Class Action And Related Cases And General Release

In consideration of the payments set forth below in section II (3) and the equitable relief described in section II (8), the Plaintiffs and members of the Settlement Class hereby completely release and forever discharge Defendants, their employees, agents, predecessors, successors and indemnors, heirs and assigns, from any and all claims, demands, obligations, actions, causes of action, wrongful death claims, judgments, rights, damages, costs, losses of services, expenses and compensation of any nature whatsoever, whether based on a tort, contract or other theory of recovery, which the Plaintiffs and members of the Settlement Class now have, or which may hereafter accrue or otherwise be acquired, on account of, or may in any way grow out of, or which are the subject of the Class Action complaints, all related pleadings, and any judgments entered in the Class Action, including, without limitation, any and all known or unknown claims for bodily and personal injuries or any future wrongful death claim, which have resulted or may result from the alleged acts or omissions described in the Class Action and Related Cases prior to August 14, 2009.

The Plaintiffs acknowledge that they are solely responsible for the Plan of Allocation and Distribution and Defendants have no responsibilities, involvement or liability arising out of that Plan or the distribution of proceeds.

This release shall be a fully binding and a complete settlement among the Parties, their employees, attorneys, agents, predecessors, successors, indemnors, heirs and assigns.

The Plaintiffs and the members of the Settlement Class acknowledge and agree the release and discharge set forth above is a general release. The Plaintiffs and members of the Settlement Class expressly waive, and assume the risk of, any and all of their claims for damages which exist as of August 14, 2009 arising out of any incidents which are the subject of the above-captioned and Related Cases, but of which they do not know or suspect to exist whether through ignorance, oversight, error, negligence, or otherwise, and which, if known, would materially affect their decision to enter into this Settlement Agreement. The Plaintiffs and members of the Settlement Class further agree to accept payment of the sums specified herein as a complete compromise of matters involving disputed issues of law and fact. The Plaintiffs and members of the Settlement Class assume the risk that the facts or law may be other than as believed. It is understood and agreed to by the Parties that this Settlement is a compromise of disputed claims, and the payment is not to be construed as an admission of liability on the part of any Defendant, the State of Michigan, the Michigan Department of Corrections or its employees or agents, by whom liability is expressly denied.

3. Payments

In consideration of the release set forth above, and in settlement of all claims, including attorney fees, costs and interest, in the Class Action and Related Cases, the Michigan Department of Corrections shall pay the sum of One Hundred Million (\$100,000,000.00) Dollars. This amount shall be paid via electronic funds transfer made by the Michigan Department of Treasury to an escrow account to be identified by the Plaintiffs, in accordance with the following schedule:

October 15, 2009:	\$10,000,000.00
October 15, 2010:	\$10,000,000.00
October 15, 2011:	\$15,000,000.00
October 15, 2012:	\$20,000,000.00
October 15, 2013:	\$20,000,000.00
October 15, 2014:	\$25,000,000.00

The amounts paid as described shall be held in Plaintiffs' identified escrow account pending distribution in accordance with the Court's approved Plan of Allocation. If this Settlement Agreement is nullified as described in Section IV, any undistributed funds shall be returned to the Michigan Department of Corrections. If an appeal from the Order approving the Settlement Agreement is filed, distributions from this escrow account shall be suspended until conclusion of that appeal. If the Order approving the Settlement Agreement is reversed, any undistributed funds shall be returned to the Michigan Department of Corrections.

In the event the Michigan Department of Corrections fails to make a payment on the due dates set forth above, the Plaintiffs and members of the Settlement Class may, at their option, terminate this Settlement Agreement in accordance with the following terms and those set forth in

Section IV of this Settlement Agreement. Alternatively, Plaintiffs may, at their discretion, enforce the Settlement Agreement pursuant to the terms set forth in Section V (2).

In the event Plaintiffs decide to terminate this Settlement Agreement, the Parties shall be returned to their respective status as of the date and time immediately prior to its effective date and the Parties shall proceed in all respects as if this Settlement Agreement had not been executed and effected, including the reinstatement of the Class Action and Related Cases in the trial courts.

If the Plaintiffs terminate this Settlement Agreement based on the Michigan Department of Corrections' failure to make a payment on the due dates as set forth above, all judgments obtained before or thereafter shall be offset by any amounts previously paid by the Michigan Department of Corrections and disbursed according to the Court's approved Plan of Allocation. If this Settlement Agreement is terminated by the Plaintiffs and members of the Settlement Class prior to completion of all payments identified in paragraph II(3) above, the Plaintiffs and members of the Settlement Class shall provide the Defendants with all necessary records showing the distributions, including the amounts and to whom made, through the date of termination.

4. Waiver Of State Reimbursement Under The State Correctional Reimbursement Act

In further consideration of the release set forth above, Defendants agree that the payments to the named Plaintiffs and settlement class members and interest thereon, will not be subject to the State Correctional Facility Reimbursement Act, MCL 800.401.

5. Waiver Of Prohibition Against Personal Bank Accounts

In further consideration of the release set forth above, Defendant Michigan Department of Corrections agrees to waive the prohibition on prisoners maintaining accounts at financial institutions outside of their Department of Corrections institutional account as set forth in Michigan

Department of Corrections Policy Directive 04.02.105. The waiver will cover those incarcerated individuals that receive settlement funds under the terms of this Settlement Agreement, and shall be in effect until the individual is no longer incarcerated. Further, this waiver shall be subject to the following four conditions: (i) There will not be more than four quarterly disbursements (i.e. one withdrawal every three months) from the accounts; (ii) The disbursements will be to the prisoner's Department of Corrections institutional account only; (iii) The only money deposited in the account will be the settlement proceeds and; (iv) The Department of Corrections may promptly obtain a statement of the account at any time, including any deposits or withdrawals for any or no reason.

6. Delivery Of Dismissals With Prejudice

Concurrent with the effective date of this Settlement Agreement, counsel for the Plaintiffs and members of the Settlement Class shall deliver to counsel for Defendants mutually agreed upon, executed Orders dismissing the Class Action and Related Cases with prejudice, except as set forth below. Plaintiffs hereby authorize defense counsel to file said dismissals with the respective courts and enter them as a matter of record.

The Plaintiffs and members of the Settlement Class further agree that all monetary judgments entered in the Class Action shall be set aside or vacated concurrent with the filing of the Order dismissing the Class Action with prejudice.

The Plaintiffs and members of the Settlement Class do not agree to set aside or vacate the January 23, 2007 Order granting them partial summary judgment entered in *Mason, et al v Granholm, et al*, US District Court Case No. 05-73943. The Parties, however, stipulate to dismiss all remaining claims in *Mason et al v Granholm, et al*, with prejudice, and, in the same Order, to enter a declaratory judgment from the court's January 23, 2007 Order, that will be entered as a final judgment, which would then be subject to an appeal by right.

7. Dismissal Of Appeals

In consideration of the Release described above, Defendants shall move to dismiss all appeals arising from the Class Action and the related state court case *Tammy LaCross, et al v Nancy Zang, et al*, within five (5) business days after the effective date of this Settlement Agreement.

8. Equitable Relief

Defendant MDOC believes it has implemented policy and training changes to improve its investigations of grievances and complaints related to sexual assaults and sexual harassment by male MDOC staff against female prisoners over the course of several years, beginning in 2000. Most particularly, beginning in 2006, under this administration, Defendant MDOC made significant changes in the staffing of the housing units in female correctional facilities to specifically address and reduce sexual assaults and sexual harassment by male staff toward female prisoners.

In addition to steps already taken by the MDOC to address past alleged sexual assaults and sexual harassment by male staff toward female prisoners, the MDOC further agrees to implement the following action:

A. MDOC shall inform the complainant female prisoners of the results of its investigations of a complaint of all sexual assault or sexual harassment, whether the prisoner has been transferred or released from custody.

B. Upon a female prisoner's release from custody from a correctional facility, the MDOC shall advise the female prisoner that any claims of alleged sexual assault or sexual harassment that may have occurred during the female prisoner's incarceration, may be filed with the Michigan State Police.

C. The MDOC shall establish a Retaliation Review Committee at each female correctional facility, consisting of the Grievance Coordinator, and at least one person in the position

of Assistant Deputy Warden, Inspector or Deputy Warden, which shall be maintained for one year from the date of the preliminary approval of this Settlement. Within five (5) days of receipt of an allegation of retaliation from a prisoner who has reported sexual misconduct or sexual harassment, the Review Committee shall begin review of the allegations, including major and minor misconduct tickets issued against the prisoner. Factors which may be considered by the committee shall include, but not be limited to: 1) the connection between the staff who issued the ticket and the staff accused of sexual misconduct or sexual harassment; 2) any evidence or witness statements submitted by the prisoner alleging retaliation; 3) critical incident reports, grievances, kites and any other documents related to the prisoner's report of sexual misconduct or sexual harassment; 4) the prisoner's prior allegations of retaliation; 5) the amount of time between the reporting and the misconduct ticket; and 6) the prisoner's prior misconduct history.

Within ten (10) days, unless a one time extension of not more than two weeks is granted by the warden, the Review Committee shall report its findings to the warden with an explanation of the factual basis for its finding. The warden or designee shall promptly notify the prisoner of the review results. Findings or recommendations of the Review Committee are advisory only, and shall not have any bearing upon the hearings process for prisoner misconduct or grievances established by statute, administrative rule and policy directive unless the hearings officer, hearings administrator or grievance coordinator chooses to consider the information gathered. If the warden determines that there is evidence of retaliation, the warden shall take appropriate action which may include withdrawing a ticket pursuant to PD 03.03.105(K)(3), bringing it to the attention of the hearing officer or requesting a rehearing if the ticket has already been heard.

D. Female prisoners will not be issued a misconduct for filing a complaint of sexual misconduct, sexual harassment, or retaliation which is not sustained, unless it is shown by a

preponderance of evidence that the complaint was intentionally false.

E. The MDOC will facilitate outside, ongoing independent counseling/psychological treatment paid for by the Plaintiffs as approved consistent with PD 04.06.135.

F. The MDOC agrees to create a counseling group to provide group counseling, at a minimum of once per year, for female prisoners who are victims of custodial sexual abuse.

G. The MDOC will refer grievances that allege sexual abuse or sexual misconduct to the MDOC's Internal Affairs for review and action, notwithstanding the rejection or denial of the grievance for technical reasons.

H. The MDOC's Internal Affairs shall conduct semi-annual reviews of complaints alleging staff sexual misconduct toward female prisoners.

I. The Director of the MDOC agrees to appoint a member of her staff to review and analyze the Prison Rape Elimination Act (PREA) Report and Recommended Standards for reducing rape and sexual misconduct in correctional facilities in relation to issues related to the grievance process, investigation process, treatment, monitoring process, and training. The appointed member will prepare a report recommending changes to MDOC policy, if any, and the adoption of any suggested Standards, if any, to continue to improve the MDOC's response to sexual misconduct of staff toward prisoners by February 15, 2010. The MDOC Director shall review and authorize the adoption of any staff recommendation within thirty (30) days after issuance of that report. The MDOC shall provide Plaintiffs' counsel with a copy of the report and the Director's decisions related to the report.

III.

NOTICE OF CLASS ACTION

The Parties agree to provide a Notice of Class Action to potential class members who were sexually assaulted, sexually harassed, or had their privacy rights violated by male staff of the MDOC for the first time, after September 1, 2004, who had not previously had an opportunity to opt out of this class action.

IV.

NULLIFICATION OR SUSPENSION OF THE SETTLEMENT AGREEMENT

In the event that: (i) the Court does not enter an Order approving the Notice of Settlement of Class Action, or; (ii) the Court does not approve the Settlement Agreement and enter a final Order accordingly, or; (iii) the respective Courts do not enter dismissal Orders incorporating the Parties' agreed terms, or; (iv) the Settlement does not become final for any other reason, the Settlement Agreement shall be null and void and the Class Action and Related Cases shall be reinstated. The Parties agree that prior to terminating the Settlement Agreement on the grounds set forth above, the issues causing termination will first be submitted to facilitation for attempted resolution.

In the event that final approval of the Settlement is not achieved, or the Settlement Agreement is terminated as provided herein, the Parties and their counsel agree that, as required by law, everything contained in the pleadings, papers, or verbal statements submitted during or related to the settlement negotiations or the settlement approval proceedings, other than those documents filed with the court, will be kept confidential, will not be disclosed to others, and will not be used, quoted, referenced, proffered or admitted in the lawsuit or any other litigation as evidence or for any other purpose.

V.

SCOPE OF SETTLEMENT AGREEMENT

1. Exclusive Agreement

This Settlement Agreement, the Notice of Class Settlement, and Plan of Allocation, incorporated by reference into this document shall together comprise a full and exclusive agreement of the Parties with respect to the matters discussed herein.

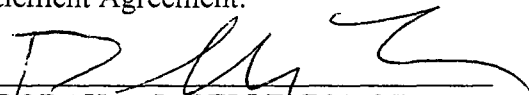
There have been and are no representations or inducements to compromise these actions other than those recited or referenced in this Settlement Agreement.

2. Exclusive Enforcement


Nothing in this Settlement Agreement is expressly or impliedly intended to confer any rights upon any person other than the Parties hereto. The right to seek judicial enforcement of this Settlement Agreement is vested exclusively in the Parties. Enforcement of this Settlement Agreement is governed by the applicable laws and court rules of the State of Michigan. The Parties agree that this court has full authority to enforce the terms and conditions of this agreement and

issue any orders of compliance, costs, or fees, related to the enforcement of the provisions of the

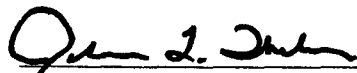
Settlement Agreement.



DEBORAH A. LaBELLE (P31595)
Co-Counsel for Plaintiffs
Dated: 7/15/09, 2009



PATRICIA CARUSO
IN HER OFFICIAL CAPACITY AS
DIRECTOR OF THE MICHIGAN
DEPARTMENT OF CORRECTIONS.
Dated: JULY 15, 2009



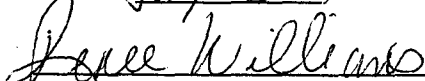
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Counsel for Defendants
Dated: July 15, 2009

CLASS REPRESENTATIVES:



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Dated: July 15, 2009



Renee Williams
Dated: July 15, 2009