

James West
MAILED TO COUNSEL

PRESKA, J

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LOUIS MILBURN, ET AL.,

Plaintiffs,

v.

THOMAS A. COUGHLIN, III, et al.,

Defendants.

Application of James West in
Case No. 79 Civ. 5077 (LAP)

**USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED. 10/26/10**

STIPULATION OF SETTLEMENT AND ORDER OF DISMISSAL

WHEREAS, Plaintiff James West a/k/a James Wess ("Plaintiff"), a member of the plaintiff class in the above-captioned action, brought a proceeding for contempt ("the Contempt Litigation") in the United States District Court for the Southern District of New York against Defendants Thomas A. Coughlin, III, Henry S. Dogin, Patricia Harris and David R. Harris ("Defendants"), alleging certain violations of the Milburn v. Coughlin Modified Final Judgment dated September 27, 1991 (the "Milburn Judgment");

WHEREAS, following a trial, the District Court issued a decision on or about March 13, 2002 finding Defendants in contempt of the Milburn Judgment but only awarding Plaintiff a nominal damages award (the "District Court Order");

WHEREAS, Defendants appealed from the District Court Order regarding the finding of contempt and Plaintiff cross-appealed from the award of nominal damages to the United States Court of Appeals for the Second Circuit, which issued a Summary Order on or about December 12, 2003 that affirmed the District Court's finding of contempt but remanded the matter to the

District Court for a determination of compensatory damages;

WHEREAS, Plaintiff's claims in which he seeks compensatory damages are pending before the United States District Court for the Southern District of New York on remand from the United States Court of Appeals for the Second Circuit;

WHEREAS, the parties wish to resolve the issues alleged in the complaint in the above-captioned Contempt Litigation, and have negotiated in good faith for that purpose;

WHEREAS, none of the parties to the Contempt Litigation is an infant or incompetent person;

WHEREAS, the parties to this Contempt Litigation wish to discontinue this litigation without admitting any wrongdoing;

WHEREAS, Plaintiff represents and warrants that, other than this Contempt Litigation and West v. Coughlin et al., 93-cv-8948 (LAK), filed in the United States District Court for the Southern District of New York, and which the Plaintiff agrees to voluntarily dismiss as part of this Settlement Agreement, he has no other action or proceeding pending in any court, state or federal, arising out of or relating to the claims asserted in this Contempt Litigation; and

WHEREAS, the parties simultaneously herewith have executed a "Private Settlement Agreement" as that term is used in the Prison Litigation Reform Act (PLRA), 18 U.S.C.A. 3626(c) (the "Private settlement agreement").

NOW, THEREFORE, IT IS HEREBY STIPULATED and AGREED by and between the undersigned parties and their respective counsel as follows:

1. The Contempt Litigation is dismissed and discontinued with prejudice;
2. Defendants shall pay to Plaintiff the sum of NINE THOUSAND, FOUR HUNDRED (\$9,400), in full satisfaction of any and all claims for damages and attorney's fees,

costs and disbursements in this Contempt Litigation. A check in that amount shall be made payable to JAMES WEST a/k/a JAMES WESS and mailed directly to Plaintiff to be deposited in his facility/interdepartmental inmate account at the correctional facility where he is currently housed.

3. In consideration of the payment of the sum recited in ¶ 2 above, as well as the terms of the Private Settlement Agreement executed simultaneously by the parties herewith, Plaintiff hereby releases and discharges Defendants and any and all current or former employees or agents of New York State or New York State Department of Correctional Services, in their individual and official capacities, and their heirs, executors, administrators and assigns, and the State of New York and its agencies, including, without limitation, the New York State Department of Correctional Services, from any and all claims, liabilities and causes of action asserted in, or which could have been asserted in, this Contempt Litigation, or which relate to or arise out of this Contempt Litigation or any of the incidents alleged in the complaint herein, provided however that this release shall not apply to any other pending litigation unrelated to the claims in this Contempt Litigation, to wit, Shariff, et al. v. Goord, et al., No. 05-cv-6504 (CJS), filed in the United States District Court for the Western District of New York and West v. Goord, et al., No. 05-cv-447A (W.D.N.Y.), AP. No. 08-4433-pr, pending in the Court of Appeals for the Second Circuit. A separate Stipulation of Dismissal in West v. Coughlin et al., No. 93-cv-8948 (LAK) will be executed by the parties. In further consideration of the promises and obligations contained herein, Defendants hereby release and discharge Plaintiff from any and all claims, liabilities and causes of action asserted in, or which could have been asserted in, this Contempt Litigation, or which relate to or arise out of this Contempt Litigation or any of the incidents alleged in the complaint herein.

4. In further consideration of the agreements herein, Plaintiff agrees to voluntarily dismiss the action, West v. Coughlin et al., No. 93-cv-8948 (LAK), currently on the docket of the Southern District of New York.

5. Payment of the amount recited in ¶ 2 above is subject to the approval of all appropriate New York State officials in accordance with the provisions for indemnification under Section 17 of the New York Public Officers Law. Plaintiffs and Plaintiff's attorney agree to execute and deliver to counsel for Defendants all necessary or appropriate vouchers and other documents requested with respect to such payment.

6. In the event payments of the amount recited in ¶ 2 above are not made within ninety (90) days after the receipt by Defendants' counsel of a copy of the fully executed So-ordered Stipulation of Settlement and Order of Dismissal as entered by the Court, interest shall accrue on the outstanding principal balance at the rate set forth in 28 U.S.C. § 1961 beginning on the ninety-first day after receipt by Defendants' counsel of a copy of the fully executed So-ordered Stipulation of Settlement and Order of Dismissal. In the event approval of payment of the amount recited in ¶ 4 above is not received and payment is not made within one hundred and eighty (180) days after the receipt by Defendants' counsel of a copy of the fully executed So-Ordered Stipulation of Settlement and Order of Dismissal as entered by the Court, Plaintiff may, upon thirty (30) days written notice to Defendants' counsel, move to restore the Contempt Litigation to the docket.

7. This Stipulation of Settlement Order of Dismissal, and any Order entered thereon, shall have no precedential value or effect whatsoever and shall not be admissible in any other action or proceeding as evidence or for any other purpose, except in an action or proceeding to enforce this Stipulation of Settlement and Order of Dismissal.

8. This Stipulation of Settlement and Order of Dismissal embodies the entire agreement of the parties in this matter and no oral agreement entered into at any time nor any written agreement entered into prior to the execution of this Stipulation and Order regarding the subject matter of the instant proceedings, shall bind the parties hereto, or vary the terms and conditions contained herein.

9. The parties agree that the District Court for the Southern District of New York shall retain jurisdiction over any dispute arising from or relating to the provisions of this Stipulation of Settlement and Order of Dismissal.

10. Notices, requests, approvals, authorizations, consents and other communications required or permitted under this Stipulation of Settlement and Order of Dismissal shall be in writing (whether or not expressly stated as to be in writing hereunder) and shall be (as elected by the person giving such notice) hand delivered by messenger or overnight courier service, mailed by registered or certified mail (postage prepaid), return receipt requested, addressed to:

If to Plaintiff:

Mr. James West
DIN # 89-A-6906
Five Points Correctional Facility
State Route 96, P.O. Box 119
Romulus, New York 14541

or to Plaintiff's new address if Plaintiff is transferred or relocated,

with a copy to:

White & Case LLP
1155 Avenue of the Americas
New York, New York 10036
Attention: Gregory M. Starner, Esq.
Attention: Todd Gluckman, Esq.
Facsimile: (212) 819-8113

If to Defendants:

Office of the Attorney General
State of New York
120 Broadway, 24th Flr.
New York, New York 10271
Attention: Susan H. Odessky, Esq.
Facsimile: (212) 416-6075

Dated: Oct. 20, 2010

James M. West
JAMES M. WEST
Plaintiff

Sworn to before me
This 20 day of October, 2010

Neil Shevlin
Notary Public

NEIL SHEVLIN
Notary Public, State of New York
No. 02SH6052826
Qualified in New York County
Commission Expires Dec. 26, 2008
10

Dated: October 20, 2010

Gregory M. Starnes
Gregory M. Starnes, Esq.
Todd Gluckman, Esq.
White & Case LLP
1155 Avenue of the Americas
New York, New York 10036
Facsimile: (212) 819-8113
Counsel for Plaintiff James West

Dated: New York, New York
October 20, 2010

ANDREW M. CUOMO
Attorney General of the
State of New York
Counsel for Defendants
By:

Susan H. Odessky
SUSAN H. ODESSKY
Assistant Attorney General
120 Broadway - 24th Floor
New York, New York 10271
(212) 416-8572

SO ORDERED

Loretta A. Preska
LORETTA A. PRESKA
UNITED STATES DISTRICT JUDGE

October 25, 2010