

FILED

AUG 27 2013

THOMAS K. BAERMAN, Clerk
USDC

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

ROBERT HILTON and LOUIS VASQUEZ, on behalf of
themselves and all others similarly situated,

Plaintiffs,

-against-

LESTER N. WRIGHT, M.D., M.P.H., Associate
Commissioner/Chief Medical Officer for the New York State
Department of Correctional Services; and the NEW YORK
STATE DEPARTMENT OF CORRECTIONAL SERVICES,

Defendants.

SO-ORDERED
STIPULATION
OF DISMISSAL
PURSUANT TO
FRCP 41(a)

05-CV-1038
(DNH/DEP)

WHEREAS, the plaintiff, Robert Hilton, commenced the above-captioned civil action (the "Action") to redress alleged violations of the Eighth and Fourteenth Amendments of the United States Constitution through 42 USC §1983; Title II of the Americans with Disabilities Act, 42 USC §12132; and Section 504 of the Rehabilitation Act, 29 USC §794 on behalf of himself and other inmates seeking treatment for the Hepatitis C virus, and

WHEREAS, by order of February 27, 2006, the court in this matter certified, pursuant to FRCP 23(b)(1) and (2), a class of Hepatitis C-infected prisoners in defendants' custody who, but for defendants' policy of requiring alcohol and substance abuse training as a prerequisite to treatment, would allegedly have received treatment, and

WHEREAS, in an interim settlement agreement dated July 19, 2007, the parties agreed that class members who had previously been denied Hep C treatment for having not satisfied the alcohol and substance abuse requirement were to be reviewed medically again and treated, where medically appropriate, without consideration of those former prerequisites, and

WHEREAS, by order of January 2, 2008 the court approved the Interim Settlement

Agreement as a final settlement of all claims in the action for equitable and injunctive relief and denied plaintiffs' motion to amend their complaint to seek damages on behalf of plaintiff class, and

WHEREAS, on or about ^{10/26/2010} A , Plaintiff Vasquez settled all claims against defendants and is no longer a party to this action, and

WHEREAS, without admitting any wrongdoing or liability of any kind on the part of any party, the Plaintiff Robert Hilton and the defendants – Lester N. Wright and the New York State Department of Corrections and Community Supervision (“DOCCS”), formerly the New York State Department of Correctional Services – desire to voluntarily resolve any and all remaining claims under the terms set forth in this Stipulation of Dismissal Pursuant to FRCP 41(a) (“Stipulation”), and

WHEREAS, no party hereto is an infant or incompetent person for whom a committee has been appointed, and no person not a party has an interest in the subject matter of the action, it is hereby,

STIPULATED AND AGREED, by and between the parties and their respective counsel of record as follows:

1. This action, including any and all claims and counterclaims which have or could have been brought, is hereby discontinued with prejudice pursuant to Rule 41(a) of the Federal Rules of Civil Procedure (“FRCP”) without any damages, costs, interest or attorneys' fees, except as hereinafter set forth.
2. Plaintiff fully discharges and releases all defendants and the State of New York as set forth more fully in the General Release executed in consideration of the terms in this Stipulation of Dismissal Pursuant to FRCP 41(a) (“Stipulation”).

3. No provision of this Stipulation shall be interpreted to be an acknowledgment of the validity of any of the allegations, claims or defenses that have been made in this action. Nor shall this Stipulation be interpreted as a determination of or an admission by any party concerning the merits of any underlying fact or allegation.

4. The settlement of this action is limited to the circumstances in this case alone and shall not be given effect or have any legal precedential value in any other matter, either between the parties hereto or any other parties.

5. After this Stipulation is fully executed, so-ordered and filed on the court docket, defendants shall pay to the plaintiff the sum of \$120,000.00 in full settlement of any and all claims, inclusive of any and all damages, fees and costs of any kind or nature.

6. This payment shall constitute all sums to which plaintiff, his attorneys and any other agents are entitled in this action and plaintiff acknowledges that he is not entitled to any other monies from any defendant or the State of New York.

7. Payment shall be made by check payable to "Robert Hilton and Koob and Magoolaghan" and will be mailed to Koob & Magoolaghan, 221 Devoe Avenue, Yonkers, New York 10705.

8. The final settlement of this matter and payment of the sum set forth above is conditioned upon the approval of all appropriate state officials in accordance with the provisions for indemnification under New York Public Officers Law §17 and all applicable laws. This Stipulation shall be null and void if said approvals are not fully obtained, and this action shall then be placed back on the trial calendar without prejudice.

9. Payment of the above amount shall be considered timely if made within 120 days after the fully executed, so-ordered Stipulation is entered on the court docket. In the event the

approvals in the immediately preceding paragraph are satisfied, but timely payment is not made, interest shall begin to accrue on the outstanding principal balance at the statutory rate on the one hundred and twenty-first day after this so-ordered Stipulation is entered on the court docket.


10. This Stipulation constitutes the entire agreement between the parties. No other promises, agreements or representations of any kind or nature have been made by any party or the State of New York, or any attorney, employee or agent of any party or the State of New York. No other terms shall be binding or modify this Stipulation unless reduced to writing and signed by counsel for all parties to this action.

Dated: Albany, New York
August 23, 2013

FOR PLAINTIFF:

KOOB & MAGOOLAGHAN
221 Devoe Avenue
Yonkers, New York 10705

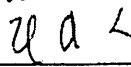
Aug 23, 2013

by 
Elizabeth Koob, Esq. (506158)
914/964-8888

FOR DEFENDANTS:

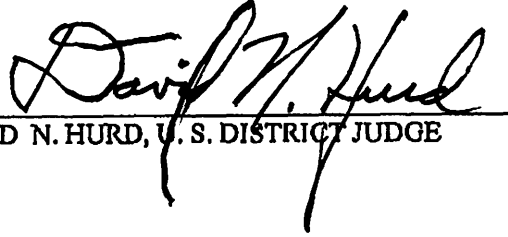
ERIC T. SCHNEIDERMAN,
Attorney General of the State of New York
The Capitol
Albany, New York 12224

Aug 23, 2013

by 
Belinda A. Wagner
Assistant Attorney General, of Counsel
518/486-9718 (103901)

SO ORDERED:
Utica, New York

August 27, 2013



DAVID N. HURD, U. S. DISTRICT JUDGE

ENTER Utica, N.Y.