

DISTRICT JUDGE BENJAMIN H. SETTLE
MAGISTRATE JUDGE J. RICHARD CREATURA

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT TACOMA

NATHAN ROBERT GONINAN

Plaintiff

v.

WASHINGTON DEPARTMENT OF
CORRECTIONS, et al.,

Defendants.

No. 3:17-cv-05714-BHS-JRC

STIPULATED MOTION FOR STAY

**Noted on the Motion Calendar:
March 12, 2020**

The parties to this action, by and through their undersigned attorneys, jointly ask the Court to enter a stay of this litigation for 180 days to allow the parties an opportunity to implement the settlement agreement attached as Exhibit A.

Plaintiff Nonnie Lotusflower, a transgender woman incarcerated in the Washington Department of Corrections, filed this lawsuit in October 2017 to obtain appropriate treatment, including surgical treatment, for her gender dysphoria. The parties recently executed a settlement

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**American Civil Liberties Union
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1 agreement (Exhibit A), under which Ms. Lotusflower will receive the medical treatment she
2 seeks if a professional evaluator determines that she is ready for surgery and that it is medically
3 necessary. The parties have agreed that the Court may retain jurisdiction over this matter solely
4 to enforce the terms of the settlement, and that once the terms of the settlement have been
5 satisfied, they will file a stipulated motion to dismiss this action with prejudice. Therefore, the
6 parties ask the Court to stay this litigation for 180 days to allow them to implement the terms of
7 their settlement prior to dismissing the case.

8 DATED this 12th day of March, 2020.

9 ATTORNEY GENERAL'S OFFICE
10 (SPOKANE-CORRECTIONS)
CORRECTIONS DIVISION

AMERICAN CIVIL LIBERTIES UNION OF
WASHINGTON FOUNDATION

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22 STIPULATED MOTION FOR STAY - 2
No. 3:17-cv-05714-BHS-JRC

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STIPULATED MOTION FOR STAY - 3
No. 3:17-cv-05714-BHS-JRC

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ORDER

IT IS HEREBY ORDERED that the Parties Stipulated Motion for Stay is GRANTED for the reasons set forth in the Stipulation. This action is stayed for 180 days from the date of this order.

SO ORDERED.

DATED this _____ day of _____, 2020.

Honorable Benjamin H. Settle
United States District Judge

Presented by:

ATTORNEY GENERAL'S OFFICE
(SPOKANE-CORRECTIONS)
CORRECTIONS DIVISION

AMERICAN CIVIL LIBERTIES UNION OF
WASHINGTON FOUNDATION

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STIPULATED MOTION FOR STAY - 5
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CERTIFICATE OF SERVICE

I hereby certify that on this date, I filed the attached document electronically with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record named below.

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Corrections Division
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Spokane, WA 99201-1194
Phone: 509-456-3123
Email: CandieD@atg.wa.gov
Attorneys for Defendants

DATED this 12th day of March, 2020.

s/ Hank Balson
HANK BALSON, WSBA No. 29250

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Exhibit A

DISTRICT JUDGE BENJAMIN H. SETTLE
MAGISTRATE JUDGE J. RICHARD CREATURA

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA**

NATHAN ROBERT GONINAN, a.k.a.
NONNIE M. LOTUSFLOWER

Plaintiff,

v.

WASHINGTON STATE DEPARTMENT
OF CORRECTIONS, et al.,

Defendants.

NO. 3:17-cv-05714-BHS-JRC

RELEASE AND SETTLEMENT
AGREEMENT

This is a Release and Settlement Agreement for the above-referenced action. Based upon consideration and mutual promises, the Plaintiff, NONNIE M. LOTUSFLOWER, appearing by and through her attorneys, HANK BALSON, BENJAMIN BYERS, ANTOINETTE DAVIS, and KRISTINA MARKOSOVA, and the Defendants, by and through their attorneys, ROBERT W. FERGUSON, Attorney General, and CANDIE M. DIBBLE, Assistant Attorney General, agree to the following:

1. In consideration of the following provisions of the Release and Settlement Agreement, Plaintiff NONNIE LOTUSFLOWER, DOC #869663, her heirs, assigns or other

1 successors in interest, do hereby release and forever discharge the State of Washington, its
 2 officers, agents, employees and agencies and departments for any and all existing claims,
 3 damages and causes of action of any nature arising out of the claims as described in Plaintiff's
 4 Complaint in this action which are the source of her claims against the Defendants.

5 2. This Agreement is the final, conclusive, and complete release of liability for all
 6 known, as well as all unknown claims for recovery of any sort arising out of the claims set forth
 7 in Plaintiff's Complaint.

8 3. This Agreement shall be effective when signed by all parties and/or their legal
 9 representatives.

10 4. An expert evaluator mutually agreed upon by the parties ("Evaluator") will examine
 11 and evaluate Ms. Lotusflower using the medically necessary standards as stated in the
 12 Department's Offender Health Plan to determine her readiness for gender affirming surgery (the
 13 "Evaluation"). Specifically, the Evaluator will determine whether gender affirming surgery is a
 14 "medical necessity," which means it is:

- 15 a. "Is essential to life or preservation of limb, OR
- 16 b. Reduces intractable pain, OR
- 17 c. Prevents significant deterioration of ADLs, OR
- 18 d. Is of proven value to significantly reduce the risk of one of the three outcomes above
- 19 (e.g. certain immunizations), OR
- 20 e. Immediate intervention is not medically necessary, but delay of care would make
- 21 future care or intervention for intractable pain or preservation of ADLs significantly
- 22 more dangerous, complicated, or significantly less likely to succeed, OR
- 23 f. Reduces severe psychiatric symptoms to a degree that permits engagement in
- 24 programming that advances correctional interests, OR
- 25 g. Is described as part of a Departmental policy or health care protocol or guideline and
- 26 delivered according to such policy, protocol, or guideline, OR

1 h. From a public health perspective, is necessary for the health and safety of a
2 community of individuals and is medically appropriate, but may not be medically
3 necessary for the individual (for example, treatment for head lice).”

4 In addition, the Evaluator will make a recommendation regarding what housing
5 assignment would best support Ms. Lotusflower’s successful recovery and mental wellbeing
6 following surgery.

7 The Department will schedule the Evaluation within forty-five (45) days after the parties
8 have selected an Evaluator.

9 5. If the Evaluator concludes that gender affirming surgery is medically necessary, as
10 defined above, and that Ms. Lotusflower is ready for surgery, DOC will provide gender affirming
11 surgery for Ms. Lotusflower within a reasonable timeframe that is agreed upon by the parties
12 after receipt of the Evaluator’s written report and that is consistent with the requirements of the
13 Apple Health Transgender Program.

14 6. The parties recognize that the potential surgeons for Ms. Lotusflower’s gender
15 affirming surgery may have limited availability. Thus, in order to avoid additional unnecessary
16 delay, within thirty (30) days of receipt of the Evaluator’s report, the DOC will contact
17 Dr. Geoffrey Stiller at Palouse Surgeons, Pullman Washington and Dr. Daniel Dugi at Oregon
18 Health & Science University, Portland, Oregon to determine which surgeon has the earliest
19 availability for gender affirming surgery. Also within thirty (30) days of the Evaluator’s report,
20 DOC will schedule a gender affirming surgery consultation with the surgeon who has the earliest
21 availability to perform Ms. Lotusflower’s gender affirming surgery. The surgeon must also be
22 contracted with Washington Medicaid to provide services consistent with the Apple Health
23 Transgender Program.

24 7. Within 30 days prior to Ms. Lotusflower receiving gender affirming surgery, the
25 Department will complete a housing classification hearing for Ms. Lotusflower to determine
26 which institution she will be transferred to immediately following surgery. In making this

1 classification decision, DOC will solicit and consider Ms. Lotusflower's expressed housing
2 preference as well the recommendation of the evaluator. In the event Ms. Lotusflower is not
3 transferred to the Washington Corrections Center for Women (WCCW) immediately following
4 her surgery, DOC will conduct another housing classification hearing within 30 days after the
5 surgery to further evaluate Ms. Lotusflower's housing assignment, again soliciting and
6 considering Ms. Lotusflower's expressed housing preference as well as the recommendation of
7 the evaluator.

8 8. If the Evaluator determines that Ms. Lotusflower is not currently ready for gender
9 affirming surgery but recommends further evaluation after a specific period of time, DOC will
10 arrange for such a further evaluation reasonably within the time period identified by the
11 Evaluator. If after such further evaluation, the Evaluator concludes that Ms. Lotusflower is ready
12 for gender affirming surgery using the medically necessary standards as stated in the
13 Department's Health Plan, DOC will provide gender affirming surgery consistent with the DOC
14 Gender Dysphoria Protocol, assuming the DOC adopts the protocol produced in this litigation
15 as DEFS 11777-11789.

16 9. The parties agree this Release and Settlement Agreement is not an admission of
17 liability or that any claim or defense advanced by any party lacks merit.

18 10. This Agreement is the final written expression of all the terms of this Agreement and
19 is a complete and exclusive statement of these terms.


20 11. The parties agree that neither party is to be considered a prevailing party in this action
21 for any purpose, including, but not limited to, attorney fees.

22 12. The parties jointly agree that dismissal with prejudice of this action is an appropriate
23 resolution in consideration of the agreed terms provided for in this Agreement. The parties also
24 agree to sign and file a stipulated motion for the entry of an order dismissing this action with
25 prejudice.
26

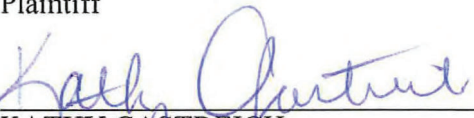
12. The parties jointly agree that dismissal with prejudice of this action is an appropriate resolution in consideration of the agreed terms provided for in this Agreement. The parties also agree that the Court may retain jurisdiction solely to enforce the terms of this Agreement, if necessary. The parties will sign and file a stipulated motion for the entry of an order dismissing this action with prejudice once the parties have fulfilled their obligations under this Agreement.

13. Plaintiff, NONNIE LOTUSFLOWER, DOC #869663, agrees and covenants not to sue the State of Washington or its agencies, employees, and officials over the claims concluded by this settlement agreement.

14. The undersigned parties declare that the terms of this Release and Settlement Agreement are completely read, wholly understood and voluntarily accepted for the purpose of making a full and final compromise, adjustment and settlement of any and all claims brought by Plaintiff in this action against Defendants.



NONNIE LOTUSFLOWER
Plaintiff

2/28/2020
DATE



KATHY GASTREICH
Risk Manager
Department of Corrections

3/5/2020
DATE

APPROVED AS TO FORM:


HANK BALSON, WSBA #29250
BENJAMIN BYERS, WSBA #52299
ANTOINETTE DAVIS, WSBA #29821
KRISTINA MARKOSOVA, WSBA #47924
Attorneys for Plaintiff

2/28/2020
DATE


CANDIE M. DIBBLE, WSBA #42279
Assistant Attorney General
Attorney for Defendants

3/12/2020
DATE