

STATE OF MICHIGAN
IN THE COURT OF CLAIMS

JOHN CHAPPEL CAIN, RAYMOND C. WALEN, JR.,
ELTON FLOYD MIZELL, PAUL ALLEN DYE,
JOHN CHANDLER EWING, DELBERT M. FAULKNER,
C. PEPPER MOORE, RAMON COBOS, RONALD SIMPSON-BEY
On behalf of themselves and all others similarly situated,

HONORABLE JAMES R. GIDDINGS

Plaintiffs,

Case Nos: 88-61119-AZ
93-14975-CM
96-16341-CM

v.

MICHIGAN DEPARTMENT
OF CORRECTIONS,

Defendant.

Prison Legal Services of Michigan, Inc.
Attorneys for Plaintiffs
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**ORDER APPROVING AGREEMENT REGARDING MISCELLANEOUS ISSUES AND
CLOSING *CAIN v MDOC* #88-61119-AZ, #93-14975-CM AND #96-16341-CM**

At a session of the Court held on

Nov. 4, 2003

PRESENT: HON. JAMES R. GIDDINGS
Court of Claims Judge

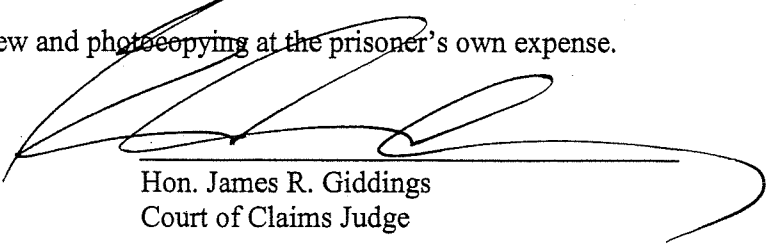
This matter having come before the Court on the attached private settlement agreement,
as defined by MCL 600.5531(f) entitled, "Agreement Regarding Miscellaneous Issues" and the
Court being otherwise fully advised in that Agreement and in the status of this litigation;

IT IS ORDERED that the Agreement Regarding Miscellaneous Issues is approved.

IT IS FURTHER ORDERED that any order(s) in this case granting prospective relief, the Order of Reference of November 23, 1992, as amended, and as further amended by the October 22, 2003 Amended Order Regarding A *Cain* Monitor, and except for those claims dismissed without prejudice in the Court's August 28, 2003 Order Dismissing Certain Claims Without Prejudice, are vacated. Any claims remaining from Plaintiffs' Consolidated Court of Claims Complaint are dismissed with prejudice. This dismissal is not intended to foreclose the bringing of any claim such as that described above, which may arise after November 1, 2005.

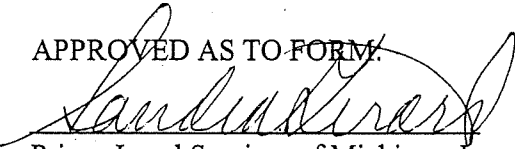
IT IS FURTHER ORDERED that Defendant shall maintain copies of the July 15, 2003 Order Dismissing Plaintiffs' Claims Regarding Personal Typewriters, the July 15, 2003 Stipulation to Settle Plaintiffs' Claims Regarding Personal Typewriters, the November 4, 2003 Order Approving Agreement to Resolve Plaintiffs' Claims Regarding Access to Courts, the November 4, 2003 Agreement to Resolve Plaintiffs' Claims Regarding Access to Courts, the November 4, 2003 Order Approving Agreement to Resolve Plaintiffs' Claims Regarding Classification and Dismissing Plaintiffs' Claims Regarding Classification, the November 4, 2003 Agreement Regarding Miscellaneous Issues, and the November 4, 2003 Order Approving Agreement Regarding Miscellaneous Issues and Closing *Cain v MDOC* #88-61119-AZ, #93-14975-CM and #96-16341-CM in each law library in a Correctional Facility Administration

institution and in each segregation unit until November 1, 2005. These Agreements and Orders shall be made available for prisoner review and photocopying at the prisoner's own expense.



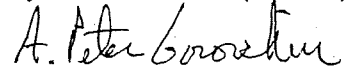
Hon. James R. Giddings
Court of Claims Judge

APPROVED AS TO FORM:



Prison Legal Services of Michigan, Inc.
Attorney for Plaintiffs

By: Sandra Girard (P33274)



A. Peter Govorchin (P31161)

Allan J. Soros (P43702)
Attorneys for Defendant

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Defendant.

Prison Legal Services, Inc. of Michigan
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AGREEMENT REGARDING MISCELLANEOUS ISSUES

The parties, through counsel, stipulate to the following provisions to end this litigation.

1. The Plaintiffs' claims in this case have been resolved in the following Agreements and/or Orders: A) July 15, 2003 Stipulation to Settle Plaintiffs' Claims Regarding Personal Typewriters; B) August 28, 2003 Order Dismissing Certain Claims Without Prejudice; C) November 3, 2003 Agreement to Resolve Plaintiffs' Claims Regarding Access to Courts; D) October 14, 2003 Order Dismissing Certain Claims Without Prejudice; E) November 3, 2003 Agreement to Resolve Plaintiffs' Claims Regarding Classification; F) October 27, 2003

Stipulation and Order to Resolve Pending Contempt Motion (Jerry Clay); G) October 27, 2003 Stipulation and Order to Resolve Pending Contempt Motion (Lionel Stewart); H) October 27, 2003 Stipulation and Order to Resolve Pending Contempt Motion (Reynaldo Flores and Luis Gutierrez); I) October 27, 2003 Stipulation and Order to Resolve Pending Contempt Motion (Kevin King, Jeffrey Parker, Richard Baker and William Taylor); J) October 27, 2003 Stipulation and Order to Resolve Pending Contempt Motion (Kevin King, D. James Gunnett, Thomas Weisenberg, Keith Holton and Keith Weiner); K) November 23, 1992 Order of Reference to a Monitor as modified by the Orders of July 9, 1993, October 11, 1993, July 10, 2003 and October 21, 2003.

2. Except for the Orders listed above, any order providing for prospective relief entered in this case shall be vacated.

Property. The parties agree as follows:

3. If a prisoner is placed at security Level IV or above, except as an initial placement from a reception facility or as a result of a misconduct hearing, and the prisoner's true security level is less than the security level at which the prisoner is placed, the prisoner's property which is not allowed at that level shall be stored for the prisoner at the receiving facility until his/her return to a security level at which the property is allowed. The prisoner may elect to send the property out of the prison or to dispose of the property as set forth in PD 04.07.112, in lieu of storage. The property which is stored shall be itemized on a receipt and the prisoner shall sign to indicate that s/he agrees with the list. If the prisoner contends that the list does not correctly itemize the property in his or her possession to be stored, he or she may write on the list items that should be included. If the prisoner refuses to sign, the refusal shall be documented on the form. A copy of the form shall be given to the prisoner.

4. Where a prisoner is placed in a higher security level and the placement is the result of a departure not based on a guilty misconduct finding, the prisoner's property which is not allowed at the higher level may, pursuant to PD 04.07.112 shall be sent out on a visit or mailed at the prisoner's expense to one address specifically designated by the prisoner at the time he or she is provided with the receipt. The property shall be itemized on a list and the prisoner shall sign to indicate that s/he agrees with the list. If the prisoner contends that the list does not correctly itemize the property in his or her possession to be shipped, he or she may write on the list items that should be included. If the prisoner refuses to sign, the refusal shall be documented on the form. A copy of the form shall be given to the prisoner.

5. Defendant will not issue any class member a misconduct report for lawfully acquired property unless Defendant has published a notice, at least 30 days earlier, informing all prisoners that the item is prohibited.

6. This Stipulation is not intended to abrogate any rights class members may have under a pre-existing court order in any other case.

7. If the Office of Policy and Hearings determines an indigent prisoner has necessary excess legal property, then the Defendant shall loan the prisoner footlockers or provide other means of storage.

8. Defendant will provide a prisoner who has a typewriter with an appropriate container and adequate packing materials (e.g., newspaper) if the prisoner is allowed to pack the machine for transfer. Staff members will also use an appropriate container and adequate packing material if they pack a typewriter for transfer. Prisoners may choose to keep their typewriter boxes flattened and stored in their personal footlocker.

9. Defendant will continue to allow class members to retain the winter gloves or mittens they possess and shall permit class members to acquire winter gloves or mittens, subject

to the price and style limitations of PD 04.07.112. Personal winter gloves or mittens shall not be limited to those with a single layer.

10. Twyla Snow, in conjunction with Sandra Girard, shall select a minimum of three models of winter gloves/mittens that Defendant will allow class members to purchase, possess and wear at all Correctional Facility Administration (CFA) institutions. From time to time, as they deem fit, they may select a replacement model or models.

11. Defendant will continue to allow class members to retain the winter coats they possess and will permit class members to acquire winter coats, subject to the price and style limitations of PD 04.07.112. A prisoner may receive funds to be deposited in the prisoner's account in accord with PD 04.02.105. If the sender designates those funds to be used for a winter coat, such funds shall be frozen and used only for the purchase of a winter coat, subject to the price and style limitations of PD 04.07.112.

12. Defendant will continue to provide to all prisoners two pair of thermal underwear.

13. At institutions where class members are not permitted to leave the yard at will, Defendant will continue to allow half-time yard by announcement and enforce the requirement of allowing class members to come in from the yard at half-time.

14. Defendant will continue to provide, in conjunction with the regular laundry schedule, an adequate number of underwear to ensure that prisoners are provided at least one pair of clean underpants per day. Defendant will continue to make available at all Level V and VI housing units the approved vendor catalogs from which prisoners may order a reasonable selection of personal socks, t-shirts, undershorts and thermal underwear.

15. Defendant will continue to allow a widow or widower at all security levels to have and wear his or her wedding band, consistent with PD 04.07.112.

16. Defendant will continue to allow personal letters and photographs at all security levels, consistent with PD 05.03.118.

17. Defendant will provide some meaningful in-cell recreational activity for class members confined at Level VI.

18. Defendant will continue to provide each prisoner with three sets of blues (three shirts for men, three blouses for women, and three pairs of trousers for both).

19. Defendant's state-issued clothing operating procedure will continue to provide: A) prisoners are responsible for willful loss or for willful damage to state-issued clothing; B) the mere absence of an item is not proof of willful loss; C) if after notice and hearing Defendant finds a prisoner has willfully lost or willfully damaged state-issued clothing, or if the prisoner admits responsibility in writing, Defendant will not charge the prisoner more than 70% of the average replacement cost for any item issued new to the prisoner or 30% of the average replacement cost for any item issued used to the prisoner; D) if state-issued items were packed outside the prisoner's presence or if the seal on the duffel bag was broken outside the prisoner's presence, the item will not be considered willfully lost or damaged unless the prisoner admits responsibility in writing; E) Defendant will record at the time clothing is issued whether it is new or used; F) if Defendant is unable to provide fringe sizes from regular sources within 30 days of a prisoner's request, Defendant will immediately order the item from another source; and G) Defendant will note on the CSJ-254 form items turned in at the receiving facility.

20. Class members' claims alleging being improperly charged for state-issued clothing as described in the Court's June 18, 2001 Order have been presented to the MDOC for resolution. If the parties have not resolved these claims by November 21, 2003, the Plaintiffs may submit the unresolved claims to the Monitor as Monitor complaints.

Legal Counsel

21. Prison Legal Services of Michigan, Inc. (PLSM) shall continue as counsel for Plaintiff class representatives. PLSM shall continue to receive 100% of its current monthly funding from the prisoner benefit funds through November 1, 2005.

22. Counsel for Plaintiff class members, who may be accompanied by law students or paralegals working under their supervision, shall be allowed to meet with Plaintiff class members as follows: A) Meetings of up to 25 class members, Levels I and II, subject to only occasional "walk-in" checks; B) Meetings of up to 12 class members, Levels III and IV, subject only to occasional "walk-in" checks; and D) Meetings with Level VI prisoners will be conducted individually, except that E) Counsel for Plaintiffs may visit Units 1 through 5 at Ionia Maximum Correctional Facility to talk with prisoners at their cell doors, in lieu of group meetings.

23. This Stipulation does not limit counsel's discretion to meet with class members individually or in smaller groups than those set forth in A-C above. The terms of this Stipulation are in addition to those set forth in PD 05.03.116(II)(B) and (C). Plaintiffs' counsel will be permitted to bring a laptop computer, printer and necessary accessories to group or individual meetings with class members set forth in (A) through (D).

24. Plaintiffs' counsel will notify the Warden's office of the institution at least one business day in advance of the meetings of the names of the attorneys and paralegals and/or law students who will attend the meeting and the names of class members with whom counsel and/or law students working under counsel's supervision wishes to meet, and the time(s) of the proposed meeting(s). Plaintiffs' counsel will notify the ICF Warden's office at least one business day in advance the name of the attorney(s) who will be visiting the housing unit(s). The Attorney General may send a representative(s) to visit the housing unit at the same time. The

times of the proposed meetings will be mutually agreed upon between Plaintiffs' counsel and the facility.

25. Defendant will continue to instruct the wardens at each institution to notify all staff who act as litigation coordinators during business hours or who act as shift commanders assigned to evenings and weekends that they have authority to authorize a prisoner to phone a PLSM attorney at the request of a PLSM attorney. Upon the request of a PLSM attorney, the prisoner will be informed and allowed to telephone PLSM using the prisoner telephone system and the PLSM universal PIN number.

26. Defendant will not prevent mail between any class member and the Plaintiffs' representatives, John Chappel Cain, Raymond C. Walen, Jr., Paul Allen Dye, John Chandler Ewing, Delbert M. Faulkner, C. Pepper Moore, Ramon Cobos and Ronald Simpson-Bey, or between other class members about this case.

27. Claims for damages by Eugene Burks-Bey #198591, preserved in the August 19, 2002 Order are dismissed without prejudice.

28. Claims for damages by Love-El #150094, preserved in the April 1, 1997 Order, are dismissed without prejudice.

29. Tyrone Anastasio Williams #126996, will not be returned to Alger Maximum Correctional Facility as provided in the February 14, 2000 Order.

30. Each party shall bear its own costs and attorney fees and will retrieve its trial exhibits from the Court within 56 days.

31. Dispute resolution:

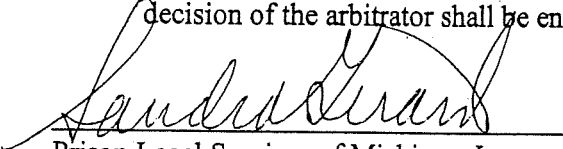
A. A party must bring an alleged violation of this Agreement to that party's counsel within 30 days of becoming aware of the alleged violation.

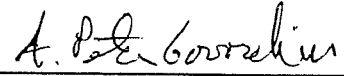
- B. Within 30 days notice of a violation of this Agreement, counsel for complainant will give written notice to opposing counsel, with any supporting documentation of the alleged violation.
- C. Within 10 business days of receipt of a complaint alleging a violation of this Agreement, the respondent shall submit its response to the complainant.
- D. If the initial complaint and response do not resolve the issue to the parties' satisfaction either party may, but is not required to, supplement its submissions to the other party.
- E. If either party believes, after reviewing the above described submissions, that the other party is not in compliance and has not come into compliance with this Agreement in regard to the situation described in the submissions, that party may set forth the basis for the alleged non-compliance in writing and file that complaint with the arbitrator. A copy of the documents filed with the arbitrator shall be simultaneously mailed to the other party.
- F. The responding party shall submit a response to the arbitrator and the complaining party within 10 business days of receipt of the complaint filed with the arbitrator.
- G. The arbitrator may request additional information from either party, at the arbitrator's discretion, relevant to the complaint presented. The arbitrator may request a telephone conference or meeting with the parties' counsel on the issues presented in the complaint.
- H. Within 30 days of the arbitrator's receipt of the complaint, the arbitrator shall decide whether neither, either, or both parties are in violation of the Agreement and send that decision in writing to the parties.
- I. Each party, regardless of the outcome of the complaint, is responsible for its own costs and attorneys fees.
- J. The arbitrator's fees shall be paid as follows:
1. If the arbitrator determines that the respondent is in violation of the Agreement, the respondent shall be responsible for the arbitrator's fee.
 2. If the arbitrator finds that the respondent is not in violation of the Agreement, the complainant shall be responsible for the arbitrator's fee.
 3. If the arbitrator finds that both parties are in violation of the Agreement, each party shall be responsible for one half of the arbitrator's fee.

K. The arbitrator may order a party found to be in violation of the Agreement to comply with the Agreement by taking the actions specified by the arbitrator and the arbitrator's written decision. The arbitrator may consult with the parties in determining what is a reasonable time for compliance. Neither party may appeal or otherwise seek review of the arbitrator's decision.

L. The parties have agreed that the Hon. Michael G. Harrison should serve as the Arbitrator under this Agreement. If for any reason the Hon. Michael G. Harrison becomes unavailable, the parties shall mutually agree on a substitute Arbitrator to act until such time as the Hon. Michael G. Harrison is again available. That substitute arbitrator shall be Carolyn Koenig.

M. The parties agree that compliance with this Agreement is enforceable through arbitration as described above, under MCL 600.5001, et seq and the decision of the arbitrator shall be enforceable under MCL 600.5025.


Prison Legal Services of Michigan, Inc.
Counsel for Plaintiffs
By: Sandra Girard (P33274)


A. Peter Govorchin (P31161)
Allan J. Soros (P43702)
Assistant Attorneys General
Counsel for Defendant

November 4, 2003
Date

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