

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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LUCY AMADOR, et al., on behalf of themselves :
and all others similarly situated, :

Plaintiffs, :

- against - :

ANGINELL ANDREWS, et al., :

Defendants. :

----- X

03 Civ. 0650 (KTD) (GWG)

STIPULATION OF SETTLEMENT AND ORDER OF DISMISSAL

WHEREAS, plaintiff, Shenyell Smith, along with fourteen other women, filed a Complaint (“Federal Action”) dated January 28, 2003, in the Southern District of New York, challenging the policies and procedures set by high-ranking officials of the New York Department of Corrections and Community Supervision (“DOCCS,” formerly known as the Department of Correctional Services or “DOCS”) alleging that the policies enabled the sexual abuse of women prisoners by male correctional staff;

WHEREAS plaintiff individually sought compensatory and punitive damages in the Federal Action from Officer defendant Delroy Thorpe for sexually abusing her in violation of her Constitutional rights while housed at Bedford Hills Correctional Facility;

WHEREAS on October 10, 2003, defendant Delroy Thorpe moved pursuant to

Fed. R. Civ. P. 42(b) to sever the claims asserted against him from all other claims in the Federal Action;

WHEREAS the Honorable Kevin T. Duffy granted defendant Delroy Thorpe's motion for severance in the Federal Action on December 6, 2010;

WHEREAS on October 14, 2003, plaintiff along with sixteen other women, filed a First Amended Complaint in the Federal Action;

WHEREAS defendant Delroy Thorpe answered the First Amended Complaint in the Federal Action on November 18, 2003, and denied all allegations that his conduct violated plaintiff's Constitutional rights;

WHEREAS on December 3, 2007 the Court dismissed plaintiff's claims for injunctive and declaratory relief against the Supervisory Defendants as moot because she had been released from prison;

WHEREAS plaintiff appealed the dismissal of her claims for injunctive and declaratory relief to the Second Circuit, and on August 19, 2011 the Second Circuit issued an opinion remanding the issue of whether plaintiff, despite the fact her individual claims were moot, could nonetheless act as a class representative in this case;

WHEREAS plaintiff, Shenyell Smith, filed a Claim on January 21, 2003, in the State of New York Court of Claims ("Court of Claims Action") alleging that defendant State of New York was negligent in its hiring, training, retention, and supervision of Delroy Thorpe, who engaged in improper sexual contact with plaintiff while housed at

Bedford Hills Correctional Facility;

WHEREAS the parties wish to resolve the issues alleged in the First Amended Complaint by Shenyell Smith in the above-captioned Federal Action and against defendant State of New York in the Court of Claims Action, and have negotiated in good faith for that purpose; and

WHEREAS the parties to the Federal Action wish to discontinue litigation solely as to the claims asserted by plaintiff Shenyell Smith without the need for further proceedings and without admitting any wrongdoing on the part of any defendant; and the parties to the Court of Claims Action wish to discontinue litigation without the need for further proceedings and without admitting any wrongdoing on the part of defendants.

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

1. This Agreement will resolve all plaintiff Shenyell Smith's claims in *Amador et al. v. Andrews et al.*, 03 Civ. 0650, pending before the Honorable Kevin T. Duffy in the United States District Court for the Southern District of New York ("Federal Action"), and for monetary damages in *Shenyell S. v. The State of New York*, Claim No. 107224, pending before the Honorable Thomas H. Scuccimarra in the New York Court of Claims ("Court of Claims Action").

2. The parties hereby agree that all plaintiff's claims in the Federal Action are dismissed with prejudice, and all plaintiff's claims in the Court of Claims Action shall be dismissed as provided in paragraph 5 below.

3. Defendants shall pay to plaintiff the sum of \$10,000 in full satisfaction of all plaintiff's claims in the Federal Action and all of plaintiff's claims in the Court of Claims Action; shall pay to plaintiff's attorneys Dori Lewis and Veronica Vela of The Legal Aid Society the sum of \$5,000 in full satisfaction of any claims for attorneys' fees, costs, and disbursements arising out of plaintiff's individual monetary damages claims in the Federal Action; and shall pay to plaintiff's attorney Rebecca Houlding the sum of \$5,000 in full satisfaction of any claims for attorneys' fees, costs, and disbursements arising out of plaintiff's claims in the Court of Claims Action. The amount of fees being paid to plaintiff's counsel, The Legal Aid Society, in the Federal Action may not be referred to as a precedent in any future proceedings in the Federal Action or as a precedent in any future actions. Plaintiff's co-counsel in the Federal Action, Debevoise & Plimpton LLP, hereby waives any claim to an award of attorneys' fees, costs, and disbursements under 42 U.S.C. § 1988 arising out of plaintiff's individual claims for damages in the Federal Action, without waiver of or prejudice to its right to seek an award of attorneys' fees, costs, and disbursements under 42 U.S.C. § 1988 for its work in connection with any other claims in the Federal Action. Debevoise & Plimpton's waiver of attorneys' fees, costs and disbursements may not be referred to as a precedent in the Federal Action or as a precedent in any future actions.

4. Payments shall be made in three checks. The first check, in the amount of \$10,000, shall be made payable to plaintiff and mailed in care of plaintiff's attorney Rebecca Houlding, 163 Washington Avenue, 13A, Brooklyn, NY 11205. The second

check, in the amount of \$5,000, shall be made payable to The Legal Aid Society Prisoners' Rights Project and mailed to plaintiff's attorney Dori Lewis, Legal Aid Society Prisoners' Rights Project, 199 Water Street, New York, NY 10038. The third check, in the amount of \$5,000, shall be made payable to Rebecca Houlding and mailed to 163 Washington Avenue, 13A, Brooklyn, NY 11205, **or to any other address specified by Ms. Houlding in writing, in advance of mailing.** Plaintiff's attorney shall forward the check to plaintiff at her then current facility of incarceration for deposit in her inmate facility account. **If Plaintiff is no longer incarcerated, Ms Houlding will make arrangements to forward the check to Plaintiff.**

5. As an express condition precedent of the defendants' obligation to make payments as set forth in paragraphs 3 and 4, plaintiff **shall file a Stipulation of Discontinuance (with prejudice) in the New York State Court of Claims in the case Smith vs State of New York, Claim No. 107224.** In the event Defendants fail to make the payments set forth in Paragraphs 3 and 4, except as may be provided in Chapter 62 of the Laws of 2001, and 180 days have passed since counsel for Defendants received the "so ordered" settlement stipulation from the federal court, plaintiff may move on 30 days written notice for reinstatement of the instant federal action.

6. In consideration of the payment of the sums recited in paragraphs #3 and #4 above, the plaintiff, Shenyll Smith, hereby releases and discharges each of the defendants and any and all current or former employees or agents of New York State or

the 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 Action, or which relate to or arise out of this Action or any of the incidents alleged in the complaint herein which plaintiff or plaintiff's representatives, heirs or assigns ever had, now has or hereafter shall or may have for, upon, or by reason of any matter, cause or thing whatsoever from the beginning of the world to the date of this stipulation and order. In further consideration of the payment of the sums recited in paragraphs #3 and #4 above, the plaintiff, Shenyell Smith, hereby releases and discharges defendant State of New York and its agencies, including the New York State Department of Corrections and Community Supervision, from any and all claims for monetary damage, including compensatory and punitive damages, which plaintiff or plaintiff's representatives, heirs or assigns ever had, now has, or hereafter shall or may have, arising out of the facts giving rise to the Court of Claims Action. Nothing in this agreement shall be construed as a release or discharge of any claims asserted by any other plaintiff in the federal action, or a release or discharge of any claims of the purported class for injunctive and declaratory relief asserted in the Federal Action against any defendant.

7. Nothing in this Stipulation of Settlement shall be construed as an admission or acknowledgement of liability by any defendants or by the New York State

Department of Corrections and Community Supervision or by the State of New York regarding any allegations in the Federal Action or made by the plaintiff in the Court of Claims Action.

8. Payment of the amounts recited in paragraphs #3 and #4 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. Except for the payments to be made to plaintiff's attorneys in satisfaction of any claims for attorneys' fees, costs, and disbursements, payments by defendants hereunder are subject to the provisions of Chapter 62 of the Laws of 2001.

9. Subject to the provisions of the foregoing paragraphs, the State shall make payments of the amounts recited in paragraphs #3 and #4 above within ninety (90) days after the receipt by defendants' counsel, from plaintiff, of a copy of the fully executed so-ordered Stipulation of Settlement as entered by the Court in the Federal Action. In the event that the aforesaid payments are not made within the ninety (90) day period, 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.

10. 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.

Dated: New York, New York
_____, 2012

ERIC T. SCHNEIDERMAN
Attorney General of the State of New York
Attorney for the Supervisory Defendants

By: _____
Daniel Schulze
Special Litigation Counsel
120 Broadway
New York, New York 10271
(212) 416-6557 (telephone)

Dated: White Plains, New York
_____, 2012

BOEGGEMAN, GEORGE & CORDE, P.C.
Attorneys for Defendant Delroy Thorpe

By: _____
Cynthia Dolan
Boeggeman, George & Corde, P.C.
1 Water Street, Suite 425
White Plains, New York 10601
(914) 761-2252 (telephone)

Dated: New York, New York
May 30, 2012

DEBEVOISE & PLIMPTON LLP
Attorneys for Plaintiff

By: 

Portia Pedro
Svetlana M. Eisenberg
Debevoise & Plimpton LLP
919 Third Avenue
New York, New York 10022
(212) 909-6000 (telephone)
(212) 909-6836 (fax)

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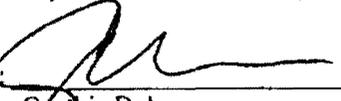
Dated: New York, New York
5/31, 2012

ERIC T. SCHNEIDERMAN
Attorney General of the State of New York
Attorney for the Supervisory Defendants

By: 
Daniel Schulze
Special Litigation Counsel
120 Broadway
New York, New York 10271
(212) 416-6557 (telephone)

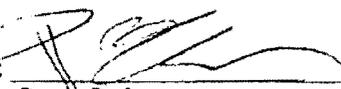
Dated: White Plains, New York
7/2/12, 2012

BOEGGEMAN, GEORGE & CORDE, P.C.
Attorneys for Defendant Delroy Thorpe

By: 
Cynthia Dolan
Boeggeman, George & Corde, P.C.
1 Water Street, Suite 425
White Plains, New York 10601
(914) 761-2252 (telephone)

Dated: New York, New York
May 30, 2012

DEBEVOISE & PLIMPTON LLP
Attorneys for Plaintiff

By: 
Portia Pedro
Svetlana M. Eisenberg
Debevoise & Plimpton LLP
919 Third Avenue
New York, New York 10022
(212) 909-6000 (telephone)
(212) 909-6836 (fax)

Dated: New York, New York
May 30, 2012

THE LEGAL AID SOCIETY
PRISONERS' RIGHTS PROJECT
Attorneys for Plaintiff

By: *Dori Lewis*
Dori Lewis
Veronica Vela
199 Water Street
New York, New York 10038
(212) 577-3530 (telephone)

Dated: Brooklyn, New York
5/30, 2012

REBECCA HOULDING, ESQ.
Attorneys for Plaintiff

By: *Rebecca Houlding*
Rebecca Houlding
163 Washington Avenue, 13A
Brooklyn, New York 11205
(347) 564-7494 (telephone)
(347) 521-1725 (fax)

Dated: Troy, New York
5/30, 2012

By: *Shenyell Smith*
SHENYELL SMITH

ACKNOWLEDGEMENT

On the 30th day of MAY, 2012, before me came Shenyell Smith, known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed on the within instrument, and acknowledged to me that she executed the same.

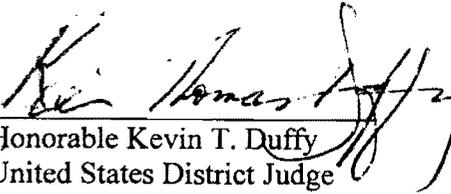
Lindsay J. Kerrigan
Notary Public

LINDSAY J. KERRIGAN
Notary Public, State of New York
No. 01KE6231492
Qualified in Westchester County
Commission Expires November 29, 2014

Lindsay J. Kerrigan

SO ORDERED.

Dated: New York, New York
7/25/12, 2012


Honorable Kevin T. Duffy
United States District Judge

USDC SDNY
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DOC #:
DATE FILED: 7-26-12