

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

JAMES HANDWORK

Lake Erie Correctional Institution

P.O. Box 8000

Conneaut, Ohio 44030

Plaintiff,

v.

**THE OHIO DEPARTMENT OF
REHABILITATION AND CORRECTION**

777 West Broad St.

Columbus, OH 43222

And

GARY C. MOHR

In his official capacity as Director of Ohio Department
of Rehabilitation and Correction

777 West Broad St.

Columbus, OH 43222

Defendants.

Civil Action No. 1:16-cv-00825

Judge: Solomon Oliver, Jr.

SETTLEMENT AGREEMENT AND RELEASE

This Parties to this Settlement Agreement and Release (Agreement) are Plaintiff James Handwork (Plaintiff) and Defendants Ohio Department of Rehabilitation and Correction (ODRC) and its Director Gary Mohr (together, Defendants), collectively referred to as “the Parties.”

By this Agreement, the Parties want to resolve this dispute, fully and finally. The sole purpose of this Agreement is to settle all of the Parties’ claims in this litigation. This Agreement is not an admission of wrongdoing or liability by any Party.

I. Introduction

1. **Whereas**, in the action entitled James Handwork v. Ohio Department of Rehabilitation & Correction, et al., filed in the United States District Court for the Northern District of Ohio, Eastern Division, Case No. 16-cv-825 (the "Litigation"), Plaintiff brought suit against defendants, Gary C. Mohr, Director, Ohio Department of Rehabilitation and Correction and Ohio Department of Rehabilitation and Correction ("ODRC"), in his individual capacities, asserting violations of federal constitutional rights;
2. **Whereas**, the Parties agree that litigation brings with it inherent risks, they seek to resolve their dispute and all claims within the Litigation without either side admitting liability or the lack of any ability to sustain a claim or defense, and with each Defendant and ODRC expressly disclaiming any fault, wrongdoing, or liability;
3. **Whereas**, Plaintiff and Defendants have reached an agreement resolving the dispute underlying this Litigation on terms that are satisfactory to the Parties involved (the "Settlement");
4. **Whereas**, this Agreement is intended to formalize the Parties' Settlement for the purpose of making full and final compromise, adjustment, and settlement of this Litigation;

The Parties agree as follows:

II. Terms of Settlement

1. In consideration of Plaintiff's release of all claims as further set forth in Sect. II and III, Defendants will reimburse the ACLU of Ohio for attorney fees and costs in the amount of Twenty-two Thousand Dollars (\$22,000.00) ("The Payment). The Parties agree that the Payment is for all damages, claims, costs, attorney's fees, interest, and any other charge, assessment, or

compensation that Plaintiff did pursue, had pursued, or could have pursued in this Litigation or against Defendants or ODRC or the State of Ohio.

2. This payment shall be by one check payable to the ACLU of Ohio Foundation. The payment shall be sent by regular U.S. Mail to 4506 Chester Avenue, Cleveland, Ohio 44103 within 90 days of the execution of this agreement.

3. The Parties understand and agree that this Settlement is not to be construed as an admission of liability on the part of Defendant or the ODRC.

4. The Parties understand and agree that this Payment is for all damages, claims, costs, reimbursements, attorney's fees, interest, and any other compensation that Plaintiff could have pursued, or did pursue within the Litigation.

5. Each party shall bear his or her own costs, expenses, and fees associated with this Litigation, including any costs, expenses, and fees related to this Settlement Agreement.

6. Defendants have, or promptly will, clarify their policies governing the provision of hearing aids, to establish that prisoners who are eligible to receive hearing aids and/or have hearing aids replaced, are not limited to one hearing aid, but may receive hearing aids in either or both ears, based on an individualized medical evaluation. Defendants will communicate this clarification by emailing a memorandum to all relevant staff, to CoreCivic staff, and to the privately operated prison facilities, explaining the clarified policy, and by conducting in-person training on the clarified policy at their upcoming quarterly medical staff seminar.

7. Non-retaliation. The parties acknowledge that they are not aware of any information indicating that there has been or is likely to be retaliation against Plaintiff. Nevertheless, and notwithstanding any release of claims, or other consideration or promise contained in this Agreement, Defendants agree that they will not retaliate against Plaintiff, or permit retaliation

against him by any of their officers, agents, contractors, or employees, for having brought the above-captioned litigation, or with respect to any aspect of the litigation, its conduct, subject matter, or settlement.

III. Release of Claims

1. Upon execution of this Agreement, and in consideration of payment, Plaintiff agrees to dismiss this Litigation with prejudice as to all Parties and all claims that were or could have been asserted in this Court or in any other court of competent jurisdiction based upon the same alleged acts, or alleged omissions to act by any and all of the Defendants named and served in the original and/or Amended Complaints by signing a Stipulation of Dismissal With Prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii).

Furthermore, Counsel for the Plaintiff agrees to file a Notice of Stipulated Dismissal with Prejudice, in a form corresponding to Exhibit A hereto, within two (2) days of full execution of this Agreement.

2. In addition, in consideration of the Payment, for himself and for his personal representative(s), attorneys, successor(s), heir(s), assign(s), and/or spouse(s), Plaintiff fully and forever releases all Defendants and defendants named at any point in this Litigation, or individuals who could or should have been named, whether in their individual and/or official capacities, along with the State of Ohio ("the State") and ODRC, and all agents, employees, contractors, officers, partners, attorneys, representatives, successors, heirs, estates, and assigns of Defendants, the State, and ODRC or any entity in which they have a legal interest, from any and all known or unknown claims, liabilities, promises, contracts, suits for damages, court costs, litigation costs, and attorney's

fees past, present, or future that were, have been, or could have been asserted by Plaintiff in this Litigation.

3. Plaintiff further agrees to waive any and all claims, liabilities, promises, contracts, suits for damages, and attorney's fees past, present, or future that were, have been, or could have been asserted by the Plaintiff based on events alleged in this Litigation against any person, entity or agency, in any individual or official capacity, that could have been named as a defendant in this Litigation.

4. Plaintiff warrants that he has not assigned or otherwise transferred any interest in any claim or right of recovery reflected in this Litigation to any third party, and that he has the capacity to make these releases in full.

5. Plaintiff also agrees that he will not seek to reopen this Litigation in this Court or in any other court anywhere.

6. Plaintiff further agrees to waive any and all claims, liabilities, promises, contracts, suits for damages, and attorney's fees, which have been or could have been asserted by Plaintiff based on events alleged by Plaintiff in the Litigation against any person, entity or agency, in any individual or official capacity, that could have been but was not named and served as a defendant in the Litigation. Such waiver applies to any claims that have been raised in any other lawsuit filed by Plaintiff or on his behalf or that could have been raised and which are related to the events alleged by Plaintiff in the Litigation.

IV. Nature of Agreement and Jurisdiction.

This is a private settlement agreement pursuant to 18 U.S.C. §§ 3626(c)(2) and 3626(g)(6). This agreement is not subject to federal court enforcement other than reinstatement

pursuant to 18 U.S.C. § 3626(c)(2)(A) of the civil proceedings that was settled by this agreement, or Plaintiff may seek any remedy available under Ohio law in an appropriate state court of competent jurisdiction. Judge Solomon Oliver, in the U.S. District Court for the Northern District of Ohio, will retain jurisdiction over this Agreement only until its terms are performed. This private agreement is not a consent decree, and the parties do not intend it to be construed as such, and the parties do not intend for the U.S. District Court to adopt this agreement as its own order or judgment. The United States District Court shall not retain constitutional or statutory jurisdiction of this case or Dispute. Once terms are performed, the United States District Court shall not retain constitutional or statutory authority jurisdiction of this case or dispute.

V. Miscellaneous

A. Governing Law

The interpretation and construction of this Agreement, and all matters relating hereto, shall be governed by the laws of the State of Ohio applicable to agreements executed and to be performed solely within such State.

B. Headings

The Parties agree that the headings and subheadings shall have no force or effect in interpreting any term or phrase within this Agreement.

C. Severability

The Parties agree that if a subsequent order or proceeding deems any one term, phrase, or portion of this Agreement to be unenforceable, then all other unaffected terms will continue to remain binding and in effect.

D. Approval

The Parties agree that this Agreement shall not be effective until it is approved by the Ohio Attorney General, and the Director of the ODRC as indicated by each of their signatures or those of their authorized designees affixed hereto.

E. Modification

No amendments or modification of this Agreement shall be valid or binding upon the Parties unless made in writing and signed by each of the Parties.

F. Entirety of Agreement

This Agreement embodies the entire agreement of the Parties with respect to the subject matter involved. All previous communications or agreements, whether written or oral, between and among the Parties and/or their attorneys, or other third-party, entity, or person, are superseded unless expressly incorporated and made a part of this Agreement.

G. Separate Signature Pages

This Agreement may be executed on separate signature pages by each of the Parties, and this Agreement shall be fully executed when each Party has signed on a signature page. All executed signature pages shall be aggregated and attached to this Agreement and shall constitute the entire agreement of the Parties.

VI. Execution

IN WITNESS WHEREOF, the undersigned have executed this Settlement Agreement and Release of Claims on the date indicated below.

Plaintiff:

I, JAMES HANDWORK IM # 440-603, being over the age of eighteen (18) years of age, have read this Settlement Agreement and Release of Claims and understand all of the terms. I have had the opportunity to review this Settlement Agreement with my attorney, FRED A LEVENSON (0045916).

I execute it voluntarily and with full knowledge of its significance.

5/22/17
Date

5/22/17
Date


JAMES HANDWORK, Plaintiff

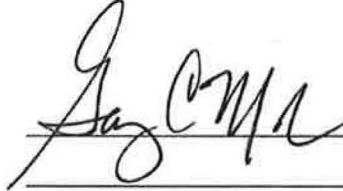

FRED A LEVENSON (0045916)
Attorney for Plaintiff

Defendant(s):

I, GARY C. MOHR, have read this Settlement Agreement and Release of Claims. I agree to the terms of this Settlement Agreement on behalf of the State of Ohio and approve it pursuant to Section 9.87(E)(1) of the Ohio Revised Code.

Date

6/12/17

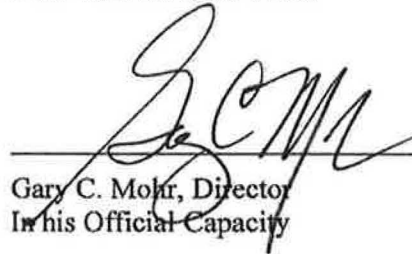


For ODRC, in their Official Capacity

I, GARY C. MOHR, have read this Settlement Agreement and Release of Claims. I agree to the terms of this Settlement Agreement on behalf of the State of Ohio and approve it pursuant to Section 9.87(E)(1) of the Ohio Revised Code.

Date

6/12/17



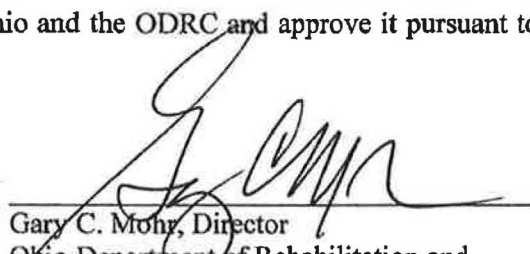
Gary C. Mohr, Director
In his Official Capacity

Approvals:

I, Gary C. Mohr, Director of the Ohio Department of Rehabilitation and Correction (ODRC), have read this Settlement Agreement and Release of Claims. I agree to the terms of this Settlement Agreement on behalf of the State of Ohio and the ODRC and approve it pursuant to Section 9.87(E)(1) of the Ohio Revised Code.

Date

6/12/17




Gary C. Mohr, Director
Ohio Department of Rehabilitation and
Correction

I, R. David Picken, Chief of the Criminal Justice Section of the Office of the Ohio Attorney General, have read this Settlement Agreement and Release of Claims. I agree to the terms of this settlement on behalf of the State of Ohio and approve it pursuant to Section 9.87(E)(1) of the Ohio Revised Code.

Date

6-8-17



R. David Picken (0012629)
Chief, Criminal Justice Section
Office of the Ohio Attorney General