

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

AMERICAN CIVIL LIBERTIES
UNION FUND OF MICHIGAN,

Plaintiff,

Case No. 14-cv-11213

vs.

Hon. Denise Page Hood

LIVINGSTON COUNTY,
BOB BEZOTTE in his official capacity
as Livingston County's sheriff, and
TOM CREMONTE, in his individual
capacity and in his official capacity as
Livingston County's jail administrator,

Defendants.

STIPULATED ORDER OF VOLUNTARY DISMISSAL

The parties stipulate and agree that, pursuant to Fed. R. Civ. P. 41(a)(2) and *Kokkonen v. Guardian Life Insurance Co.*, 511 U.S. 375 (1994), this case shall be dismissed with prejudice, with such stipulation and agreement contingent upon this Court retaining jurisdiction to enforce the terms of the attached settlement agreement.

Based on the foregoing, the Court finds that the terms of this dismissal are just and proper, and it is accordingly ORDERED as follows:

1. The Court retains jurisdiction to enforce the terms of the attached settlement agreement.

2. In all other respects, this case is DISMISSED with prejudice and without costs.

Dated: September 23, 2016

s/Denise Page Hood
Hon. Denise Page Hood
United States District Chief Judge

Stipulated and agreed to by:

/s/ Daniel S. Korobkin
Daniel S. Korobkin (P72842)
Michael J. Steinberg (P43085)
Kary L. Moss (P49759)
American Civil Liberties Union Fund
of Michigan
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/s/ T. Joseph Seward (by consent)
T. Joseph Seward (P35095)
Lindsey A. Peck (P74579)
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Counsel for Defendants

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& COHN LLP
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Dated: September 22, 2016

Counsel for Plaintiffs

Dated: September 22, 2016

SETTLEMENT AGREEMENT

1. This is an agreement by and between the AMERICAN CIVIL LIBERTIES UNION FUND OF MICHIGAN (“ACLU”) and LIVINGSTON COUNTY, BOB BEZOTTE in his official capacity as Livingston County Sheriff, and TOM CREMONTE in his individual capacity and in his official capacity as Livingston County’s jail administrator (collectively, “Livingston County”).

2. The purpose of this agreement is to settle the case known as *American Civil Liberties Union Fund of Michigan v. Livingston County et al.*, Case No. 14-cv-11213-DPH in the United States District Court for the Eastern District of Michigan.

3. In making this agreement Livingston County denies any wrongdoing or admission of liability and ACLU understands and agrees this Settlement Agreement is not an admission of liability. Instead Livingston County is entering into this Settlement Agreement because of the Sixth Circuit Court of Appeals decision rendered in this matter on August 11, 2015.

4. In exchange for and consideration of the payments, acts, and promises set forth below, the ACLU shall cause to be filed the foregoing stipulated order of voluntary dismissal, the form of which has been agreed to by the parties.

5. In the event the Court does not sign the stipulated order as proposed and in the form agreed to by the parties, this agreement shall be null and void.

6. Livingston County shall adopt and adhere to a policy that treats properly labeled mail from an attorney as legal mail, regardless of whether an attorney has an attorney-client relationship with the inmate.

a. *Treats as legal mail* means:

- i. Livingston County shall not enforce a postcard requirement with respect to that mail;
- ii. Livingston County shall promptly deliver the mail to the addressee if the addressee is in Livingston County’s custody;
- iii. Livingston County shall not open legal mail outside the presence of the inmate, but the mail may be inspected for contraband; and

- iv. Livingston County shall not read, share or publish legal mail without a search warrant or probable cause that the communicative content of the mail poses an imminent threat to jail security.

b. *Properly labeled legal mail* means:

- i. conspicuously marked “legal mail,” “privileged,” “attorney-client,” or a similar indication that the correspondence is intended to be confidential;
- ii. conspicuously marked as coming from an attorney or law firm and includes the law firm or legal service provider’s name, address, attorney name, and valid bar number; and
- iii. is addressed by name to a specific inmate.

7. Livingston County shall adopt and adhere to a policy that provides notice of, and an opportunity to contest, non-delivery of mail.

- a. *Non-delivery* means not promptly delivered to the addressee, for whatever reason.
- b. *Notice* means prompt individualized notice to the sender and the addressee (if the latter is in Livingston County’s custody) that:
 - i. indicates the reason for non-delivery; and
 - ii. states how a person aggrieved by the non-delivery can contest the non-delivery.

8. Within 30 days of the date the Court signs and enters the stipulated order of voluntary dismissal, Livingston County shall cause to be paid to the American Civil Liberties Union Fund of Michigan a sum in the amount of \$150,000.00.

9. The ACLU agrees that by entering into this Settlement Agreement the ACLU does release Livingston County and its employees, agents, elected and appointed officials from any claim or demand for damages or other relief which is or could have been sought in this action. Nothing in this paragraph (a) precludes the ACLU from enforcing the other terms of this agreement, or (b) precludes the

ACLU or its attorneys from representing clients who, in an independent action, challenge the “postcard only” policy.

10. The parties agree that the United States District Court for the Eastern District of Michigan retains jurisdiction to enforce the terms of this agreement.

11. The parties recognize that paragraphs 6 and 7 of this agreement operate as a form of prospective equitable relief. Should there come a time when a party believes that it is no longer equitable that all or part this agreement should have prospective application (for example, due to a significant change in the law), and the parties cannot come to an agreement privately on a modification being sought, the party seeking relief may move for such from the Court. The decision on such a motion shall be governed by the legal standard and case law established for relief from judgment under Rule 60(b)(5) or (6) of the Federal Rules of Civil Procedure.

12. This agreement is effective upon being executed by all parties through counsel whose signatures appear below.

Signed and agreed to for the ACLU by:

/s/ Michael J. Steinberg
Michael J. Steinberg (P43085)
American Civil Liberties Union Fund
of Michigan
2966 Woodward Ave.
Detroit, MI 48201
(313) 578-6814
msteinberg@aclumich.org

Dated: September 22, 2016

Signed and agreed to for Livingston County by:

/s/ T. Joseph Seward (by consent)
T. Joseph Seward (P35095)
SEWARD PECK & HENDERSON, PLLC
210 East 3rd Street, Ste. 212
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Dated: September 22, 2016