

SETTLEMENT AGREEMENT BETWEEN

THE UNITED STATES OF AMERICA

and

CITY OF STOCKTON, CALIFORNIA

DEPARTMENT OF JUSTICE COMPLAINT NUMBER 204-11E-344

I. BACKGROUND

1. The parties to this Settlement Agreement ("Agreement") are the United States of America ("United States") and the City of Stockton, California ("City").
2. This matter was initiated by a complaint filed by Kenneth Williams with the Department of Justice ("Department") against the City's Fire Department under title II of the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 12131 et . seq. and section 504 of the Rehabilitation Act ("section 504"), 29 U.S.C. § 794.
3. The Department is the federal agency responsible for administering and enforcing title II of the ADA. 42 U.S.C. § 12133, 29 U.S.C. § 794.
4. The City is a public entity within the meaning of the ADA, 42 U.S.C. § 12131(1), and a recipient of federal financial assistance under section 504, 29 U.S.C. § 794.
5. Pursuant to title II of the ADA and section 504, the City, as a public entity and recipient of federal financial assistance, must ensure that no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits, services, programs, or activities of the City, or be subjected to discrimination by the City, 42 U.S.C. § 12132, 29 U.S.C. § 794(a).
6. Complainant Kenneth Williams alleges that on or about November 10, 2004, he was denied emergency medical services by the City's Fire Department because he has HIV/AIDS.
7. The City denies that it has engaged in discrimination in violation of the ADA. In order to resolve this matter without engaging in protracted litigation, the parties have agreed to settle this matter according to the terms set forth below. This Agreement shall not be construed as an admission of liability by City.

II. TERMS OF AGREEMENT

A. Injunctive Relief

8. The City, by and through its officials, agents, employees and all persons in active concert or participation with the City, shall not engage in any act or practice that discriminates against any individual on the basis of disability with respect to the provision of

emergency medical services, or excludes from or denies such individuals the benefits of the City's EMS programs and services.

9. Within sixty (60) days of the effective date of this Agreement, the City shall (a) adopt and implement a formal written policy that the EMS employees will not discriminate on the basis of disability, including individuals with communicable diseases, and (b) implement written practices, and procedures for processing and investigating complaints of discrimination on the basis of disability relating to the provision of emergency medical services or the denial of benefits of the City's EMS programs and services. At a minimum, the City's policies shall include the following information:
 - (a) A description of the manner in which an individual, or his or her designee, can make a complaint;
 - (b) Contact information for the person or persons authorized to receive complaints;
 - (c) A statement that all complaints will be reviewed and considered promptly; and
 - (d) A statement that the City will make good faith efforts to provide a response to the complaint, in writing, no later than thirty (30) days from the date the complaint is received.
10. Within ten (10) days from the date upon which the City finalizes the policies and procedures set forth in Paragraphs 9, above, the City shall submit copies to the United States.
11. Within twenty(20) days from the date upon which the City implements the policies and procedures set forth in Paragraph 9, above, the City shall post copies of the policies at each Fire Station for a thirty (30) day period. Thereafter, all policies will be retained in manuals located at each Fire Station...

B. Training

12. Within one hundred twenty (120) days from the date upon which the City implements the policies and procedures set forth in paragraph 10, above, the City shall provide appropriate training regarding the requirements of title II of the ADA to all individuals authorized to review and consider complaints of discrimination.
13. Within sixty (60) days from the effective date of this Agreement, or as soon thereafter as is practicable, the City will implement a training program on infectious diseases ("training program"), the components of which will be pre approved by the United States. The Stockton Fire Department ("SFD") shall be responsible for providing the training program. Participation in the training program will be mandatory for all personnel in the City's Fire Department with responsibility for providing or overseeing emergency medical services. The SFD shall use good faith efforts to provide the training to all currently employed personnel within one hundred and eighty (180) days of the effective date of this Agreement. Thereafter, all newly hired personnel shall receive the training within one hundred and twenty (120) days of the date they graduate from the academy.

14. The training program will consist of a variety of training materials, and will be conducted on an on-going and periodic basis. The training program may be presented live, through a video tape, or internet based and shall, at a minimum, include the following information:
 - a. It is against the policy of the City to discriminate against individuals with HIV/AIDS and 'other' infectious diseases and all emergency medical responders are required to adhere to all protocols, including patient care assessment, regardless of whether a patient has an infectious disease;
 - b. Information, provided by the Centers for Disease Controls, or other entity, that explains how blood borne pathogens are transmitted; and
 - c. A detailed description of the measures that can be taken to avoid exposure.
15. The Stockton Fire Department will devise a procedure to verify that all required personnel participate in the training program, as required. Within one hundred and eighty (180) days of the effective date of this Agreement, the City will submit to the United States records certifying participation in the training program by all currently-employed Fire Department personnel responsible for providing or overseeing emergency medical services.

C. Individual Relief

16. Within forty-five (45) days of the effective date of this Agreement, the City will send a check payable to Kenneth Williams for damages, in the amount of \$25,000.00. The check should be sent by certified mail to an address to be provided by the United States. A copy of the check and the accompanying letter shall be sent to counsel for the United States.
17. To receive the relief provided to him under this Agreement, Mr. Williams must execute the Waiver and Release of Claims form attached hereto as Exhibit 1. In consideration of the promises made in paragraph 17 of this Agreement, the United States agrees that within sixty (60) days from the effective date of this Agreement, it will obtain Mr. Williams's signature on the Waiver and Release of Claims form. The United States will mail the original signed Waiver and Release of Claims form to the City within fifteen (15) days of the United States' receipt of the form from Mr. Williams.
18. In consideration of the terms of this Agreement, the Department closes Complaint No. 204-11E-344, except as provided in Section III of this Agreement.

III. RECORD RETENTION, IMPLEMENTATION AND ENFORCEMENT

19. The City shall retain the following records during the term of this Agreement:
 - (a) Copies of all policies and procedures implemented pursuant to paragraphs 9 and 10, above;
 - (b) All posted notices and posters displayed pursuant to paragraphs 9 and 10, above; and
 - (c) Copies of all documents relating to all private citizen complaints alleging discrimination in the provision of emergency services, including the identity of the individual making the complaint; the date on which the complaint was made; the factual allegations of the complaint; the identities of all individuals who participated in

processing or investigating the complaint; the City's findings; and any actions taken by the City in response to the complaint.

20. The United States may review compliance with this Agreement at any time and may enforce this Agreement if the United States believes that it or any requirement thereof has been violated. If the United States believes that this Agreement or any portion of it has been violated, it will raise its concerns with the City and the parties will attempt to resolve the concerns in good faith. The United States will give the City ninety (90) days from the date it notifies the City of any breach of this Agreement to cure that breach, prior to instituting any court action. If the parties are unable to reach a satisfactory resolution within that time frame, the United States may bring a civil action in federal district court to enforce this Agreement or title II, and may in such action seek any relief available under law.
21. Failure by the United States to enforce this entire Agreement or any provision thereof with regard to any deadline or any other provision herein shall not be construed as a waiver of the United States' right to enforce other deadlines and provisions of this Agreement.
22. This Agreement constitutes the entire agreement between the parties, and no other statement, promise, or agreement, either written or oral, made by any of the parties or agents of any of the parties, that is not contained in this written Agreement, shall be enforceable regarding the matters raised herein.
23. This Agreement shall be in full force and effect for a period of two (2) years after the effective date of the Agreement. The effective date of this Agreement shall be the date of the last signature below.
24. If any term of this Agreement is determined by any court to be unenforceable, the other terms of this Agreement shall nonetheless remain in full force and effect, provided, however, that if the severance of any such provision materially alters the rights or obligations of the parties, the United States and the City shall engage in good faith negotiations in order to adopt mutually agreeable amendments to this Agreement as may be necessary to restore the parties as closely as possible to the initially agreed upon relative rights and obligations.
25. A signatory to this document in a representative capacity for the City of Stockton represents that he or she is authorized to bind the City to this Agreement.

Agreed and consented to:

FOR THE UNITED STATES OF
AMERICA:

Rena J. Comisac
Acting Assistant Attorney General

BY: _____
JOHN L. WODATCH, Chief
PHIIP L. BREEN, Special Legal Counsel
ALLISON NICHOL, Deputy Chief
LAURA F. EINSTEIN, Senior Trial

Attorney
Disability Rights Section
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530
(202) 616-9614

Date: Nov 09, 2007

FOR THE CITY OF STOCKTON:

BY: _____
J. GORDON PALMER, JR., City Manager
J. Gordon Palmer, Jr., signing for the City
Board,
represents that he is authorized to bind it to
this
Agreement.

Date: 11-9-07

APPROVED. AS TO FORM AND
CONTENT

By _____
Deputy City Manager

Exhibit 1

WAIVER AND RELEASE OF CLAIMS

For and in consideration of the acceptance of the injunctive relief offered to me by the City of Stockton ("City"), pursuant to a Settlement Agreement between the United States of America and the City:

I, Kenneth Williams, release and discharge the City and its current, former, and future agents, employees, officials, and designees, of and from all legal and equitable claims, related to Complaint No. 204-11E-344, which I filed with the Department of Justice. I further agree that I will not exercise my right to institute against the City any civil action alleging discrimination on the basis of Complaint No. 204-11E-344.

I understand that the relief offered to me does not constitute an admission by the City of the validity of any claim raised by me or on my behalf. I acknowledge that a copy of the Settlement Agreement between the United States and the City resolving the matter between them has been made available to me. This Release constitutes the entire agreement between me and the City without exception or exclusion. This Release will be avoidable in the event that the City fails to provide me with the relief set forth in the Settlement Agreement.

I have read this Release and understand the contents thereof and I execute this Release of my own free act and deed. I acknowledge that I have had the opportunity to discuss this matter with counsel of my choosing.

Signed_____this day_____of, 2007

Kenneth Williams

Sworn and subscribed to before me this__day of_____, 2007.

Notary Public

My commission expires:_____