

1 PAUL L. REIN, Esq. (SBN 43053)  
 CELIA McGUINNESS, Esq. (SBN 159420)  
 2 CATHERINE M. CABALO, Esq. (SBN 248198)  
 LAW OFFICES OF PAUL L. REIN  
 3 200 Lakeside Dr., Suite A  
 Oakland, CA 94612  
 4 Tel. 510/832-5001  
 Fax 510/832-4787  
 5 reinlawoffice@aol.com

6 Attorneys for Plaintiff  
 DERRICK SAENZ-PAYNE

8 KAMALA D. HARRIS, Esq. (SBN 146672)  
 Attorney General of California  
 9 DAVID A. CARRASCO, Esq. (SBN 160460)  
 Supervising Deputy Attorney General  
 10 1300 I Street, Suite 125  
 P.O. Box 944255  
 11 Sacramento, CA 94244-2550  
 Telephone: (916) 323-1938  
 12 Fax: (916) 324-5205  
 E-mail: david.carrasco@doj.ca.gov

13 Attorneys for Defendants: High Desert State Prison,  
 14 Department of Corrections and Rehabilitation, State  
 of California, and California Correctional Center

17 IN THE UNITED STATES DISTRICT COURT  
 18 IN AND FOR THE EASTERN DISTRICT OF CALIFORNIA

19 DERRICK SAENZ-PAYNE,  
 20 Plaintiff,

CASE NO. 2:10-cv-01455 MCE-EFB  
Civil Rights

21  
 22 v.

**SETTLEMENT AGREEMENT  
 AND ORDER**

23 STATE OF CALIFORNIA;  
 24 CALIFORNIA DEPARTMENT OF  
 CORRECTIONS; CALIFORNIA  
 25 CORRECTIONS CENTER; HIGH  
 DESERT STATE PRISON; and  
 26 DOES 1-10, Inclusive,

27 Defendants.  
 28 \_\_\_\_\_/

- 1 1. Plaintiff DERRICK SAENZ-PAYNE filed a First Amended Complaint in  
2 this action on July 9, 2010, to obtain recovery of damages for his alleged  
3 discriminatory experiences, denial of access, and denial of his civil rights,  
4 and to enforce provisions of the Americans with Disabilities Act of 1990  
5 (“ADA”), 42 U.S.C. sections 12101 *et seq.*, and California civil rights laws  
6 against Defendants STATE OF CALIFORNIA; CALIFORNIA  
7 DEPARTMENT OF CORRECTIONS; CALIFORNIA CORRECTIONS  
8 CENTER; and HIGH DESERT STATE PRISON relating to the condition  
9 of their public accommodations as of April 11, 2009, and continuing.  
10 Plaintiff has alleged that Defendants violated Title II of the ADA;  
11 California Civil Code sections 51, 52, 54, 54.1, 54.3 and 55; California  
12 Health & Safety Code section 11135; and California Government Code  
13 section 4450 *et seq.* by failing to provide full and equal access to their  
14 programs, services and activities at the public visiting areas of High Desert  
15 State Prison and the California Corrections Center, located at Susanville,  
16 California.
- 17 2. Defendants STATE OF CALIFORNIA; CALIFORNIA DEPARTMENT  
18 OF CORRECTIONS; CALIFORNIA CORRECTIONS CENTER; and  
19 HIGH DESERT STATE PRISON deny the allegations in the Complaint  
20 and by entering into this Settlement Agreement and [Proposed] Order do  
21 not admit liability to any of the allegations in Plaintiff’s Complaint filed in  
22 this action. Plaintiff DERRICK SAENZ-PAYNE and defendants STATE  
23 OF CALIFORNIA; CALIFORNIA DEPARTMENT OF CORRECTIONS;  
24 CALIFORNIA CORRECTIONS CENTER; and HIGH DESERT STATE  
25 PRISON , hereinafter collectively, “the parties,” hereby enter into this  
26 Settlement Agreement and [Proposed] Order for the purpose of resolving  
27 this lawsuit without the need for protracted litigation and without the  
28 admission of any liability.

1 **JURISDICTION:**

2 3. The parties to this Settlement Agreement and [Proposed] Order agree that  
3 the Court has jurisdiction of this matter pursuant to 28 U.S.C. section 1331  
4 for alleged violations of the Americans with Disabilities Act of 1990, 42  
5 U.S.C. sections 12101 *et seq.*, and pursuant to supplemental jurisdiction  
6 for alleged violations of California law.

7 4. In order to avoid the costs, expense, and uncertainty of protracted  
8 litigation, the parties to this Settlement Agreement and [Proposed] Order  
9 agree to entry of this Settlement Agreement to resolve all claims raised in  
10 the Complaint filed with this Court. Accordingly, they agree to the entry  
11 of this Settlement Agreement and [Proposed] Order without trial or further  
12 adjudication of any issues of fact or law.

13  
14 WHEREFORE, the parties agree and stipulate to the Court’s entry of this  
15 Settlement Agreement and [Proposed] Order, which provides as follows:  
16

17 **SETTLEMENT OF INJUNCTIVE RELIEF:**

18 5. This Order shall be a full, complete, and final disposition and settlement of  
19 Plaintiff’s claims against Defendants. The parties agree that there has been  
20 no admission or finding of liability for any claim in this Action, and this  
21 Settlement Agreement and [Proposed] Order shall not be construed as  
22 such.

23 6. The parties agree and stipulate that the agreed-upon modifications will be  
24 performed in compliance with the standards and specifications for disabled  
25 access as set forth in the California Code of Regulations, Title 24-2, and  
26 the Americans with Disabilities Act Accessibility Guidelines, unless other  
27 standards are specifically agreed to in this Settlement Agreement and  
28 [Proposed] Order.

1     **7. Modifications:** Defendants agree to perform modifications at High Desert  
2     State Prison (HDSP) and California Corrections Center (CCC), both  
3     located at Susanville, California. For High Desert State Prison, defendants  
4     will complete all the recommendations delineated in the “Survey, Report  
5     and Recommendations for High Desert State Prison” by Peter Margen,  
6     dated January 17, 2011, and incorporated herewith by reference as  
7     **Attachment A.** For California Correctional Center, defendants will  
8     complete all the recommendations delineated in the “Survey, Report and  
9     Recommendations for California Correctional Center” by Peter Margen,  
10    dated January 17, 2011, and incorporated herewith by reference as  
11    **Attachment B.** Defendants agree to institute written policies for both  
12    prisons as delineated in **Attachment C**, incorporated herewith by  
13    reference.

14    **8. Timing of Injunctive Relief:**

- 15    a. All modifications identified in Paragraph 7 will be completed no  
16    later than September 30, 2013, except for the items delineated in  
17    **Attachment D**, incorporated herewith by reference. The items in  
18    Attachment D will be completed within 30 days of defendants  
19    signing this Settlement Agreement.
- 20    b. In the event that unforeseen difficulties prevent Defendants from  
21    completing any of the agreed-upon injunctive relief within the  
22    designated time frame, Defendants or their counsel will notify  
23    Plaintiff’s counsel in writing within 15 days of discovering the  
24    delay.
- 25    c. Policies as outlined in Attachment C, incorporated herewith by  
26    reference, will be implemented within 30 days of the signing of this  
27    Settlement Agreement. All current employees whose duties are  
28    affected by the policies will be trained within 21 days of

1 implementing the policies. All employees hired after the  
2 implementation date will be trained in these policies within 21 days  
3 of hiring.

4 **9. Monitoring:** Defendants or their counsel will notify Plaintiff’s counsel  
5 when the modifications are completed, and in any case will provide a  
6 status report no later than 45 days from the entry of this Settlement  
7 Agreement and [Proposed] Order and every 180 days until corrective work  
8 is complete. Upon notifying plaintiff that the work has been completed,  
9 defendants will cooperate with plaintiff’s counsel in arranging for a review  
10 of the facilities by Peter Margen within a reasonable time period. Attorney  
11 fees for enforcement of injunctive relief will not accrue during the  
12 monitoring period. Defendants will not be charged for Peter Margen’s  
13 facilities review under this paragraph.

14  
15 **DAMAGES AND ATTORNEY FEES, LITIGATION EXPENSES AND**  
16 **COSTS:**

17 10. The parties have reached an agreement as to plaintiff’s damages, attorney  
18 fees, litigation expenses and costs. Defendants shall pay \$ 96,300 as full  
19 and final resolution of Plaintiff’s claims for all statutory, actual, and  
20 personal injury damages, including, but not limited to, general,  
21 compensatory, and special damages, attorney fees, litigation expenses and  
22 costs. Payment shall be made by one check made payable to “Paul L. Rein  
23 in Trust for DERRICK SAENZ-PAYNE.” Payment shall be received at  
24 the Law Offices of Paul L. Rein, 200 Lakeside Drive, Suite A, Oakland,  
25 CA 94612 no later than November 28, 2011. If payment is not received by  
26 November 28, 2011, the Court will issue an Order to Show Cause Re:  
27 Contempt as delineated in paragraph 12, below. Upon receipt of (1) the  
28 executed Settlement Agreement and Order and (2) a fully completed Payee

1 Data Record Form (collectively referred to as "closing documents"),  
2 CDCR shall use reasonable efforts to process the necessary paperwork in  
3 order to procure a check for payment of the settlement amount. While  
4 CDCR will attempt to make the settlement payment as soon as practicable,  
5 the parties understand that this payment can take up to 180 days because of  
6 contingencies such as funding, including the absence of a state budget; a  
7 funding shortfall despite the presence of a state budget; delays within the  
8 State Controller's Office and other additional delays due to no fault on the  
9 part of CDCR. Unless otherwise ordered by the Court, no interest shall  
10 accrue or be paid on any sum made payable under the terms of this  
11 settlement agreement.

12  
13 **ENFORCEMENT:**

- 14 11. Except for payment of damages and fees outlined in paragraph 12 below, if  
15 any party believes that another party has failed to fulfill any obligation  
16 under this Settlement Agreement, the Party shall, prior to initiating any  
17 court proceeding to remedy such failure, give written notice of the failure  
18 to the lead counsel of record for the other Party and attempt in good faith  
19 to resolve any such failure. The parties shall negotiate for not less than 60  
20 days after receiving written notice and attempt to resolve their differences  
21 in good faith, before any court action is initiated.
- 22 12. Should defendants fail to pay the damages, attorney fees, litigation  
23 expenses and costs by November 28, 2011, the Court will issue an Order to  
24 Show Cause re: Contempt, requiring a CDCR representative at Deputy  
25 Warden level or higher to personally appear and explain why the payment  
26 has not been made. At the hearing on the OSC the Court will also  
27 entertain an oral motion from plaintiff's counsel for compensation for their  
28 attorney fees, litigation expenses and costs incurred in attending the

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

hearing.

13. All motions for enforcement of the terms of this Agreement shall be heard by Magistrate Judge Dale A. Drozd.

**ENTIRE SETTLEMENT AGREEMENT AND [PROPOSED] ORDER:**

14. This Settlement Agreement and [Proposed] Order and Attachments A through D to this Settlement Agreement and [Proposed] Order, which are incorporated herein by reference as if fully set forth in this document, constitute the entire agreement between the signing parties on the matters of injunctive relief, damages, attorney fees, litigation expenses and costs.

**SETTLEMENT AGREEMENT AND [PROPOSED] ORDER BINDING ON PARTIES AND SUCCESSORS IN INTEREST:**

15. This Settlement Agreement and [Proposed] Order shall be binding on the parties and all successors in interest. The parties have a duty to notify all such successors in interest of the existence and terms of this Settlement Agreement and [Proposed] Order during the period of the Court’s jurisdiction of this Settlement Agreement and [Proposed] Order.

**MUTUAL RELEASE AND WAIVER OF CIVIL CODE SECTION 1542:**

16. Each of the parties to this Settlement Agreement and [Proposed] Order understands and agrees that there is a risk and possibility that, subsequent to the execution of this Settlement Agreement and [Proposed] Order, any or all of them will incur, suffer or experience some further loss or damage with respect to the lawsuit which are unknown or unanticipated at the time this Settlement Agreement and [Proposed] Order is signed. Except for all obligations required in this Settlement Agreement and [Proposed] Order,

1 the parties intend that this Settlement Agreement apply to all such further  
2 loss with respect to the lawsuit, except those caused by the parties  
3 subsequent to the execution of this Settlement Agreement and [Proposed]  
4 Order. Therefore, except for all obligations required in this Settlement  
5 Agreement and [Proposed] Order, this Settlement Agreement and  
6 [Proposed] Order shall apply to and cover any and all claims, demands,  
7 actions and causes of action by the parties to this Settlement Agreement  
8 and [Proposed] Order with respect to the lawsuit, whether the same are  
9 known, unknown or hereafter discovered or ascertained, and the provisions  
10 of Section 1542 of the California Civil Code are hereby expressly waived.  
11 Section 1542 provides as follows:

12 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS  
13 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO  
14 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING  
15 THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST  
16 HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH  
17 THE DEBTOR.

16 17. Except for all obligations required in this Settlement Agreement and  
17 [Proposed] Order, each of the parties to this Settlement Agreement and  
18 [Proposed] Order, on behalf of each, their respective agents,  
19 representatives, predecessors, successors, heirs, partners and assigns,  
20 releases and forever discharges each other Party and all officers, directors,  
21 shareholders, subsidiaries, joint venturers, stockholders, partners, parent  
22 companies, employees, agents, attorneys, insurance carriers, heirs,  
23 predecessors, and representatives of each other Party, from all claims,  
24 demands, actions, and causes of action of whatever kind or nature,  
25 presently known or unknown, arising out of or in any way connected with  
26 the lawsuit.



1 **TERM OF THE SETTLEMENT AGREEMENT AND [PROPOSED]**  
2 **ORDER:**

3 18. This Settlement Agreement and [Proposed] Order shall be in full force and  
4 effect for a period of six years after the date of entry of this Settlement  
5 Agreement and [Proposed] Order.  
6

7 **SEVERABILITY:**

8 19. If any term of this Settlement Agreement and [Proposed] Order is  
9 determined by any court to be unenforceable, the other terms of this  
10 Settlement Agreement and [Proposed] Order shall nonetheless remain in  
11 full force and effect.  
12

13 **SIGNATORIES BIND PARTIES:**

14 20. Signatories on behalf of the parties represent that they are authorized to  
15 bind the parties to this Settlement Agreement and [Proposed] Order. This  
16 Settlement Agreement and [Proposed] Order may be signed in counterparts  
17 and a facsimile signature shall have the same force and effect as an  
18 original signature.  
19

20 Dated: August 10, 2011 PLAINTIFF DERRICK SAENZ-PAYNE  
21

22 /s/  
23 \_\_\_\_\_  
DERRICK SAENZ-PAYNE

24 Dated: July 27, 2011 DEFENDANT STATE OF CALIFORNIA  
25

26 By: \_\_\_\_\_  
27 (Print name: \_\_\_\_\_)  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Dated: July 27, 2011 DEFENDANT CALIFORNIA DEPARTMENT OF CORRECTIONS

By:       /s/        
(Print name: \_\_\_\_\_)

Dated: July 27, 2011 DEFENDANT CALIFORNIA CORRECTIONS CENTER

By:       /s/        
(Print name: \_\_\_\_\_)

Dated: July 25, 2011 DEFENDANT HIGH DESERT STATE PRISON

By:       /s/        
(Print name: \_\_\_\_\_)

APPROVED AS TO FORM:

Dated: August 10, 2011 PAUL L. REIN  
CELIA McGUINNESS  
CAT CABALO  
LAW OFFICES OF PAUL L. REIN

By:       /s/        
Attorneys for Plaintiff  
DERRICK SAENZ-PAYNE

DATED: July 27, 2011 KAMALA D. HARRIS  
Attorney General of California  
DAVID A. CARRASCO  
Supervising Deputy Attorney General

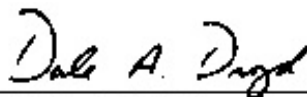
      /s/        
DAVID A. CARRASCO  
Supervising Deputy Attorney General  
Attorneys for Defendants  
High Desert State Prison, Department of  
Corrections and Rehabilitation, State of  
California, and California Correctional Center

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**ORDER**

Pursuant to stipulation, and for good cause shown, IT IS SO ORDERED.

DATED: September 26, 2011.



\_\_\_\_\_  
DALE A. DROZD  
UNITED STATES MAGISTRATE JUDGE

Ddad1\orders.civil\saenz-payne1455.stipord.settagr