

**IN THE CIRCUIT COURT
FOR COLE COUNTY, STATE OF MISSOURI
19TH JUDICIAL CIRCUIT**

THOMAS HOOTSELLE, JR., et al., and)	
MISSOURI CORRECTIONS OFFICERS)	
ASSOCIATION,)	
)	
Plaintiffs, Individually and on)	
behalf of all others similarly situated,)	
)	Cause No. 12AC-CC00518-01
v.)	
)	Div. 3
MISSOURI DEPARTMENT OF)	
CORRECTIONS,)	
)	
Defendant.)	

ORDER GRANTING PRELIMINARY APPROVAL OF SETTLEMENT

Pending before the Court is Plaintiffs' Unopposed Motion for Preliminary Approval of Settlement. The Court conducted a hearing on the Motion on June 7, 2022. Upon consideration and review of the proposed settlement, the Court hereby orders:

1. The Court certified this case as a class action and appointed Class Counsel on February 11, 2015 and issued an Amended Class Certification Order on September 29, 2015. That class certification decision was affirmed by the Missouri Supreme Court its opinion in this matter on June 1, 2021. This Court ordered supplemental class notice on February 24, 2022, which has occurred. The Class Members have received notice and an opportunity to opt out of this action. The Certified Settlement Class is hereby defined as:

All Persons Employed In Positions As Corrections Officer I Or Corrections Officer II By The Department Of Corrections Of The State Of Missouri At Any Time From August 14, 2007 To The Present Date for Claims Relating to Unpaid Straight-Time Compensation and From August 14, 2010 To The Present Date for Unpaid Overtime Compensation.

Excluded from the proposed class are any individuals that opted out of the Class. The Court notes that these officers are now called Correctional Officer and Correctional Sergeant by the MDOC.

2. This Order incorporates, as if fully set forth herein, the definitions contained in the Settlement Agreement entered by the Parties.

3. Thomas Hootselle, Jr., Oliver Huff and Daniel Dicus were appointed as Class Representatives.

4. Gary K. Burger of the law firm of Burger Law, LLP and Michael J. Flannery of the law firm of Cuneo Gilbert & LaDuca, LLP were appointed Class Counsel.

5. The Court finds probable cause to believe the Settlement is fair, reasonable and adequate. Moreover, the Court preliminary finds that the terms of the Settlement (including Class Counsel's application for attorneys' fees, costs, and expenses) appear to be fair, reasonable and adequate, and that the Court is likely to grant final approval of the Settlement.

6. The Court finds that the Settlement Agreement on its face appears to have been negotiated at arm's-length and to be fair, reasonable, and adequate.

7. Pursuant to Rule 52.08, a fairness hearing shall be held before this Court at 10:00 a.m. on October 11, 2022, at the Circuit Court of Cole County, Missouri. At the fairness hearing, the Court will consider: (a) whether the Settlement Agreement should be finally approved as fair, reasonable, and adequate; (b) whether a final judgment should be entered thereon; and (c) whether Class Counsel's application for attorneys' fees, costs, expenses, and Class Representatives' service awards should be approved by the Court. Plaintiffs

will file their Motion for Final Approval 10 days in advance of the fairness hearing. Plaintiffs will file their motion for an award of fees and costs 15 days in advance of the last day to file an objection, as described below.

8. The Court approves the proposed Notices of Proposed Class Action Settlement ("Class Notice") in the form of Exhibits "B" and "C" to the Settlement Agreement. The Class Notices reasonably inform the Class of the essential features of this action, the terms of the proposed settlement, and their rights with respect thereto. In addition, the Court approves the proposed Claim Form, for purposes of challenging a class member's initial distribution, in the form of Exhibit "D" to the Settlement Agreement. The Claim Form is reasonable and is not overly burdensome for Class Members to complete. It requests relevant information needed to determine the validity of their challenge to the initial distribution. In addition, the proposed period for submission of distribution challenges is reasonable and provides Class Members ample time to complete and mail the Claim Form.¹

9. The Court appoints CPT Group to serve as the Claims Administrator overseeing the Settlement. Plaintiffs are hereby directed to require the Claims Administrator to distribute the Class Notice and Claim Form in accordance with the Settlement Agreement, no later than thirty (30) days from the entry of this Order. Furthermore, the Claims Administrator is directed to establish and maintain a settlement website in conformity with the Settlement Agreement.

¹ The Court's approval of the Notices and Claim Forms is approval of the materials in substantially the same form as that presented to the Court. The Court acknowledges that the Claims Administrator may need to make typesetting, formatting, or other non-material adjustments to conform to its practices. The parties are authorized to confer on such changes and jointly approve them without the Court's involvement, provided that the Notices and Claim Form still materially conform to those versions presented to the Court. If the parties cannot agree on any proposed formatting or non-material changes, then the Court will resolve the dispute.

10. The Court finds that, under the circumstances, the distribution of notice described in Paragraph 9 above constitutes the best practicable notice of the fairness hearing, the proposed settlement, Class Counsel's application for fees and expenses, and other matters set forth in the Notice, and that the Class Notice fully complies with the requirements of the Missouri Rules of Civil Procedure and Due Process and is due and sufficient notice to all persons entitled to notice of the settlement. The notice procedure, as contemplated by this Order, is reasonably calculated to communicate actual notice of the litigation and the proposed settlement to Class Members.

11. Any person falling within the definition of the Certified Settlement Class may, upon the person's request, be excluded from the settlement. Any such person must submit a request for exclusion, postmarked on or before the deadline for exclusions, in the manner prescribed by the Settlement Agreement. A request for exclusion must comply with the requirements set forth in the Settlement Agreement and it must (1) be in writing and state the name, address, and phone number of the person seeking exclusion; (2) certify that the signee was employed by the MDOC, along with the beginning and end dates of that employment; and (3) identify the MDOC facility or facilities at which the person was employed.

12. All persons who submit valid and timely requests for exclusion in the manner set forth in Paragraph 11 above shall have no rights under the Settlement Agreement and shall not be bound by the Settlement Agreement or the Final Order or the Judgment. All persons falling within the definition of the Certified Settlement Class who do not request exclusion in the manner set forth in this paragraph and the Settlement Agreement shall be Certified Settlement Class

Members and shall be bound by the Settlement Agreement and the Final Order and Consent Judgment.

13. Any person falling within the definition of the Certified Settlement Class who does not request exclusion in the manner set forth in Paragraph 11 above can object to the proposed settlement by filing and serving a written objection in accordance with the terms and conditions of the Settlement Agreement. Any objection must be filed with the Clerk of the Court and mailed to Class Counsel and counsel for MDOC within 45 days of the last date for the mailing of the Class Notice and Claim Form, and must include the objecting party's name, signature, title, address, telephone number, a statement of each objection asserted, a detailed description of the facts underlying each objection; and a certification that the objecting party is a member of the Certified Settlement Class.

14. If an objector intends to appear personally or through counsel at the fairness hearing, the objector must also include with the objection a notice of the objector's intention to appear at the hearing and comply with the other requirements of the Settlement Agreement. Only persons in the Class who have filed and served valid and timely notices of intent to appear and objections shall be entitled to be heard at the fairness hearing.

15. Any Class Member who does not file and serve a written objection to the Settlement Agreement, to the entry of final consent judgment, or to the Class Counsel's application for fees, costs, expenses and Class Representative compensation, in accordance with the procedure set forth in this Order, shall be deemed to have waived his or her objections and forever be barred from making any such objections in the litigation or in any other action or proceeding concerning the Released Claims.

16. For the plan of distribution, each Settlement Class Member will receive

their pro rata share of the Settlement Fund, based on the time period the Settlement Class Member worked for Defendant at MDOC's facilities during the Class Period. This will be calculated by the Claims Administrator with consultation of Plaintiffs' expert economist. The method to determine a Settlement Class Member's pro rata share of the Settlement Fund should use the following steps:

a. First, collect all Settlement Class Members' earnings history from MDOC and match the names and time of employment to the list of Settlement Class Members provided by MDOC.

b. Second, determine the amount of time each Settlement Class Member worked for MDOC as a Correctional Officer or Correctional Sergeant during the Class Period regardless of the work location (and at what wage rate if available).

c. Third, determine the sum of all of the time that all of the Settlement Class Members worked for MDOC as a Correctional Officer or Correctional Sergeant during the Class Period regardless of the work location (and at the various wage rates if available and if possible).

d. Fourth, divide each individual Settlement Class Member's time worked for MDOC as a Correctional Officer or Correctional Sergeant during the Class Period (and wage rate if available) by the sum of all of the time all the Settlement Class Members worked for MDOC as a Correctional Officer or Correctional Sergeant during the Class Period regardless of the work location (and at the various wage rates if available and if possible). The result is a share of the Settlement Fund for each Settlement Class Member. Note that this share is determined after Court-approved attorneys' fees and expenses are deducted and subject to the 20% retention from the first payment. Each

Settlement Class Member's share will vary in proportion to their wages, hours worked, and time of employment during the Class Period. The Settlement Class Member's share as determined will also be used for the second distribution from the Settlement Fund. If there are some Settlement Class Members whose wage data or time working for MDOC cannot be determined due to a lack of sufficient data, the mean time and wages of all Settlement Class Members may be used if appropriate. If wage rates cannot be used in this distribution because of a lack of data or problems in methodology, the distribution may occur without factoring in wage rates.

e. Fifth, the distribution value to a Settlement Class Member is found by multiplying each Settlement Class Member's share by the amount in the Settlement Fund after Court-approved attorneys' fees and expenses are deducted. This distribution value will be applied to any payments from the Settlement Fund.

17. Settlement Class Members will have the opportunity to challenge their allocation from the Settlement Fund, and those challenges will be resolved by the Claims Administrator. After the first payment, the Claims Administrator will resolve disputes on allocation amount, account for unclaimed payments, and make a second payment to eligible Settlement Class Members until the Settlement Fund is depleted.

18. The Court may, for good cause, extend any of the deadlines set forth in this order or adjourn or continue the Fairness Hearing without further notice to the Class.

19. In the event that the Settlement does not become a Final Order (as that term is defined in the Settlement Agreement) in complete accordance with the terms of the Settlement Agreement, then this Order shall be rendered null and void and be

vacated, and the Settlement Agreement shall be rendered null and void in accordance with the Settlement Agreement.

20. In further aid of the Court's jurisdiction to implement and enforce the settlement, Plaintiffs and all Certified Settlement Class Members shall be enjoined from commencing or prosecuting any action asserting any of the Released Claims (as defined in the Settlement Agreement), either directly, representatively, derivatively, or in any other capacity, whether by a complaint, counterclaim, defense, or otherwise, in any local, state, or federal court, or in any agency or other authority or forum wherever located. Nothing in this paragraph shall be construed to prevent a Certified Settlement Class Member from presenting objections to the Court regarding the Settlement Agreement.

WHEREFORE, for the reasons set forth herein, Plaintiffs' Unopposed Motion for Preliminary Approval of the Settlement is **GRANTED**.

SO ORDERED.



Honorable Cotton Walker
Circuit Court Judge, Division III
19th Judicial Circuit, State of Missouri

DATED: June 7, 2022