

**SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release ("Agreement") is entered into this 1st day of June 2022, by and between Plaintiffs Thomas Hootselle, Jr., Oliver Huff, and Daniel Dicus (who were appointed to serve as Class Plaintiffs and Class Representatives) and Missouri Corrections Officer Association ("MOCO"), individually and as representative of the "Certified Settlement Class" (as defined herein) (collectively, "Plaintiffs") and Missouri Department of Corrections ("MDOC") (collectively, Plaintiffs and MDOC are referred to herein as "Parties"). This Agreement, together with its Exhibits, is intended by the Parties to fully, finally, and forever settle and compromise this Action, as defined herein, and to settle, resolve and discharge the Released Claims, as defined herein, according to the terms and conditions of this Settlement Agreement. This Agreement includes the attached exhibits, which are incorporated by reference as though fully set forth herein:

Exhibit A – Proposed Preliminary Approval Order

Exhibit B -- Proposed Post Card Notice to the Certified Settlement Class

Exhibit C – Proposed Email Notice to the Certified Settlement Class

Exhibit D – Proposed Claim Form

Exhibit E – Proposed Final Approval Order

In consideration of, and subject to, the promises, covenants, terms and conditions contained in this Settlement Agreement, the Parties hereby agree, subject to Court approval pursuant to Missouri Rule of Civil Procedure 52.08, as follows:

## **I. RECITALS**

The following recitals are material terms of this Agreement. This Agreement is made with reference to and in contemplation of the following facts and circumstances:

A. Plaintiffs filed their Petition on August 14, 2012. A Second Amended Petition was filed on June 19, 2017, and was thereafter amended by interlineation on May 3, 2018 and February 24, 2022. Plaintiffs asserted claims for violation of Missouri's Wage and Hour laws, violation of the Fair Labor Standards Act, breach of contract, unjust enrichment, quantum meruit, declaratory judgment and injunctive relief.

B. Plaintiffs asserted claims individually and on behalf of a Class defined as follows:

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.

and sought various categories of damages on behalf of themselves and the Class. Note that these officers are now called Correctional Officer and Correctional Sergeant by the MDOC.

C. 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 Supreme Court of Missouri in its opinion in this matter on June 1, 2021. The Court ordered supplemental class notice on February 24, 2022, which has occurred. The Class Members have previously received notice and an opportunity to opt out of this action.

D. MDOC vigorously denies all claims asserted against it in the Action, denies all allegations of wrongdoing and liability, and denies all material allegations contained in the Petition. MDOC also asserts numerous defenses as to liability and damages.

E. Class Counsel for Plaintiffs and the Certified Settlement Class have concluded that the Settlement embodied in this Settlement Agreement is fair, reasonable, adequate, and in the best interests of the Certified Settlement Class.

F. MDOC has also considered the risks and potential costs of continued litigation, the benefits of the proposed Settlement, and the desire to settle upon the terms and conditions set forth in this Settlement Agreement.

G. This Settlement Agreement was reached as a result of extensive, arms-length negotiations between counsel for Plaintiff and counsel for MDOC, including multiple sessions before a neutral mediator, William Ray Price, Jr. of Armstrong Teasdale, LLP.

H. The Parties understand, acknowledge, and agree, subject to the approval of the Court, that the execution of this Settlement Agreement constitutes the full and final settlement and compromise of disputed claims. It is the Parties' desire and intention to effect a full, complete, and final settlement and resolution of all existing disputes and claims in this Action as set forth herein.

## II. DEFINITIONS

As used in this Agreement, capitalized terms have the meanings specified below:

1. "Action" means and refers to the matter entitled *Thomas Hootselle, et al. v. Missouri Department of Corrections*, Case No. 12AC-CC00518-01, pending in the Circuit

Court of Cole County, Missouri.

2. "Administration Fees and Costs" means the reasonable fees and expenses incurred by the Claims Administrator or any third parties appointed by the Parties to perform tasks related to the notice and administration of the Settlement and to secure performance as set forth in this Settlement.

3. "Agreement" or "Settlement Agreement" means this Settlement Agreement and Release, containing all terms, conditions, and Exhibits, which constitutes the entire agreement between the Parties.

4. "MDOC" means Missouri Department of Corrections and each and all of its respective affiliates, subsidiaries, agents, successors, predecessors-in-interest, officers, directors, employees and attorneys.

5. "Certified Settlement Class" means the Class Certified by the Court and approved by the Supreme Court of Missouri as follows:

**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.**

The Parties will seek conditional certification of the Certified Settlement Class as part of the Settlement Agreement. Note that these officers were previously identified as Correctional Officer I and Correctional Officer II and are now called Correctional Officer and Correctional Sergeant by the MDOC- those terms are used interchangeably herein.

6. "Challenge Period" means the period of time in which a Class Member may submit a proof of claim challenging the allocation from the Settlement Fund.

7. "Claims Administrator" means CPT Group of Irvine California, and/or any third party retained by the Parties to manage and administer the process by which the members of the Certified Settlement Class are notified and paid pursuant to this Agreement.

8. "Claimant(s)" means any Class Member of the Certified Settlement Class.

9. "Class Counsel" means Gary K. Burger, Burger Law, LLC, 500 North Broadway, Suite 1860, St. Louis, Missouri 63102 and Michael J. Flannery, Cuneo Gilbert & LaDuca, LLP, 500 North Broadway, Suite 1450, St. Louis, Missouri 63102.

10. "Class List" means the confidential list of persons identified by MDOC as being in the Certified Settlement Class according to MDOC's records and/or previous Class Lists. Such confidential list will be provided to Class Counsel and the Claims Administrator.

11. "Class Member" means a Person in the Certified Settlement Class who does not timely opt out of the Settlement.

12. "Class Notice" means the written "Notice of Pendency of Class Action and Proposed Settlement," the Parties' proposed form of which is attached hereto as Exhibit B and the Postcard Notice, the Parties' proposed form of which is attached hereto as Exhibit C.

13. "Class Period" means the period "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."

14. "Class Representative" means Plaintiffs Thomas Hootselle, Jr., Oliver Huff, and Daniel Dicus. In consideration of this Agreement, Plaintiffs Thomas Hootselle, Jr., Oliver Huff, and Daniel Dicus agree to dismiss their individual claims against MDOC, with prejudice, within twenty (20) days of the Consent Judgment becoming final under Missouri

law.

15. “Petition” means the Class Action Petition filed in this Action on August 14, 2012, as well as the Second Amended Petition that was filed on June 19, 2017, and amended thereafter by interlineation on May 3, 2018 and February 24, 2022.

16. “Court” means the Circuit Court of Cole County, Missouri.

17. “Defendant” means Missouri Department of Corrections and/or MDOC, as defined herein.

18. “Defense Counsel” means Denise McElvein and Deborah Bell Yates of the Missouri Attorney General’s Office, 815 Olive Street, Suite 200, St. Louis, MO 63101.

19. “Effective Date” means the date ten (10) calendar days after each and all of the following conditions have occurred: (a) the Court has entered the Consent Judgment and appeal rights have expired or been exhausted; (b) the Court has entered a judgment with respect to any attorneys’ fees and expenses to be awarded to Class Counsel and appeal rights have expired or been exhausted; and (c) all appeal rights have been expired or been exhausted.

20. “Final Approval” means that this Agreement has been approved by the Court in accordance with the Final Approval Order and has been entered in accordance with this Agreement.

21. “Final Approval Hearing” means the hearing at or after which the Court will make a final decision about whether to approve the settlement set forth in this Agreement as fair, reasonable, and adequate.

22. “Final Approval Order” means the order to be entered by the Court after the Final Approval Hearing granting the final approval of the Settlement.

23. "Consent Judgment" shall mean the agreed-upon final judgment dismissing the Petition, with prejudice, according to the approved Agreement of the Parties and prior Orders of this Court. It is expected that the Consent Judgment shall issue contemporaneously with the Final Approval Order but as a separate document.

24. "Parties" (or "Party" individually) means, collectively, Plaintiffs, the Certified Settlement Class, and MDOC.

25. "Person" means any individual, corporation, partnership, limited partnership, limited liability company or partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity, and their respective spouses, heirs, affiliates, attorneys, predecessors, successors, representatives, and/or assignees.

26. "Preliminary Approval Order" means the order granting preliminary approval of this Agreement, approving the Class Notice to the Class Members as described herein, and setting a hearing to consider final approval of the settlement and any objections thereto, in a form substantially similar to Exhibit A, attached hereto.

27. "Proof of Claim" or "Claim Form" means the proposed claim form in substantially the form attached hereto as Exhibit D to be used by the Claimants to challenge or contest the allocation of their share of the Settlement Fund, which form is to be approved by the Court and to be posted on the Settlement Webpage as well as made available upon request from the Claims Administrator.

28. "Released Claims" means and includes any and all rights, duties, obligations, claims, actions, causes of action, or liabilities, whether arising under local, state, or federal law, whether by Constitution, statute, contract, common law, or equity, whether known

or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent, liquidated or unliquidated, and including, but not limited to, nuisance, breach of contract, unjust enrichment, quantum meruit, violation of the Missouri Wage and Hour Laws, Mo. Rev. Stat. §§ 290.500 *et seq.*, and violation of the Fair Labor Standards Act of 1938, as of the Effective Date of this Agreement, that relate to MDOC's alleged failure to compensate Certified Settlement Class Members for pre- and post-shift activities as alleged in Plaintiffs' Petition.

29. "Released Parties" means and includes: MDOC and its attorneys, agents, principals, servants, representatives, employees, officers, directors, shareholders, heirs, executors, administrators, predecessors and successors in interest, subsidiaries, sisters, affiliates, parents, partners, owners, managers, privies, assigns, and insurers (including excess insurers and reinsurers).

30. "Settlement Webpage" means the internet webpage, which will be established by the Claims Administrator, and will contain information about the Action, this Settlement, and will make available the Class Notice and the Proof of Claim for copying and for online completion, execution and submission. The Settlement Webpage will be separate and distinct from, and not linked to, any other websites including, but not limited to, those belonging to Class Counsel, Defense Counsel, or MDOC.

31. "Valid Claim" means a claim from a Class Member of the Certified Settlement Class challenging or contesting the amount allocated to that Class Member. The Claims Administrator shall determine the amount of the allocation to each Class Member and then may modify that allocation as a valid Proof of Claim contesting the allocation is submitted and approved by the Claims Administrator. The Claims Administrator may require additional information from the Claimant to validate the claim. The Claims Administrator shall be



indemnified and held harmless from any claim or allegation against it that the allocation of Settlement Funds to the Class Member is incorrect.

### **III. BENEFITS TO THE CERTIFIED SETTLEMENT CLASS**

A. **Settlement Fund.** If the Court grants Final Approval, MDOC shall pay a total of \$49,500,000 to the Claims Administrator to establish a "Settlement Fund" for the payment of claims of the Class Members deemed eligible under the terms of this Agreement, (less Attorneys' Fees, Service Awards, and Class Notice and Administration Fees and Costs), provided that the Effective Date has occurred. No portion of the Class Settlement Fund shall be funded until the Effective Date has occurred. The Claims Administrator shall pay Claims, resolve contested claims and pay same, pay Attorneys' Fees, Service Awards, and Class Notice and Administration Fees and Costs, as well as a second payment to the Class Members to entirely deplete the Settlement fund, pursuant to the agreed-upon plan of distribution approved by the Court.

B. **Apportionment of the Class Settlement Fund.** The Class Settlement Fund shall be apportioned in the specific order as follows: (1) Attorneys' Fees and Costs as set forth herein and approved by the Court; (2) Service Awards as set forth herein and approved by the Court; (3) Payment of the Valid Claims pursuant to the plan of distribution approved by the Court.

#### **C. Service Awards to Individual Class Representatives.**

Plaintiffs will seek, and MDOC agrees not to oppose, payment of a service award to each of the three Individual Class Representatives of Twenty-five Thousand Dollars (\$25,000). Plaintiffs will retain their ability to submit Claim Forms and participate fully in the other benefits of the Settlement.

The Service Awards, if approved by the Court, shall be paid within fifteen (15)

calendar days from the Effective Date and shall be paid out of the Class Settlement Fund.

**D. Reasonable Fees and Expenses of Class Counsel.** Class Counsel and Plaintiffs will seek, and MDOC agrees not to oppose, payment of reasonable fees of \$16,500,000 (the "Fee Award"). Class Counsel and Plaintiffs will seek, and MDOC agrees not to oppose, payment of reasonable expenses incurred by counsel in prosecuting this action in addition to the Fee Award. The Fee Award, if approved by the Court, shall be paid within sixty (60) calendar days from the Effective Date and shall be paid out of the Class Settlement Fund. Class Counsel shall file an application with the Court for reasonable attorneys' fees and expenses. MDOC and Defense Counsel shall have no responsibility for, and no liability whatsoever with respect to the division or allocation of the Fee Award with respect to any person, entity, or law firm who or that may assert some claim thereto. Any order or proceeding relating to the Fee Award shall not operate to terminate the Settlement or affect the finality or binding nature of the Settlement. If the Court determines to approve the Settlement but reserves decision on the Fee Award, any Settling Party may request that the Court enter final judgment approving the Settlement pursuant to Rule 74.01(b) of the Missouri Rules of Civil Procedure.

**E. Payment of Valid Class Member Claims.** Class Members shall be eligible for reimbursements for their alleged damage according to the plan of distribution approved by the Court. The parties intend that the Class Members shall receive a share of the Settlement Fund consistent with time they spent working as a member of the Certified Settlement Class. Any distributions to Class Members should be among their next of kin per stirpes, and those next of kin may make a claim. Should any initial distribution to Plaintiffs' Members not be claimed, unclaimed funds shall be redistributed pro rata among Class Members receiving a distribution.

F. **Administration Fees and Costs.** If final approval of the Settlement is granted, Administration Fees and Costs necessary to effectuate the Settlement, including but not limited to the fees and costs associated with sending the Class Notice and establishing the Settlement Webpage shall be paid from the Settlement Fund.

G. **Future Compensation.** MDOC will compensate current and future Correction Officer I and II's (now described as Correctional Officer and Correctional Sergeant by MDOC) an additional 15 minutes per shift (not to exceed 15 minutes in any 24-hour period) beginning July 1, 2022 for 8 years through June 30, 2030 for pre- and post-shift activity. This compensation will be applied on the employees next regular pay cycle and if that payment constitutes overtime under MDOC's compensation policy for that officer, the compensation will be at time and a half. This compensation will constitute full and complete compensation for pre- and post-shift activity during this time and completely release Defendant MDOC for any claim therefor for these 8 years. This is monetary consideration for the Settlement. It is the intent of the Parties that these 15 minutes will not apply to Defendant MDOC employees in secondary employment status. Should a Class Member claim they were not correctly compensated their 15 minutes per shift, the MDOC will attempt to resolve that claim in good faith. Should resolution not occur, Class Counsel shall be notified of the dispute to represent that Officer's claim with the MDOC. Any claim that remains unresolved shall be presented to the Court for resolution. This is an agreed obligation of MDOC that continues yearly for 8 years and can be enforced with this Agreement before the Court should a breach by MDOC occur.

H. **Annual Payments to Class Counsel.** MDOC will pay the amount of \$1,732,650, each year, to court-approved Class Counsel for obtaining the 15 minute per shift compensation for 8 years described in Section III.G. above. These payments will be made by

June 30, for each of the years 2023 through 2030, and tendered to Burger Law. After the first year, Defendant MDOC will seek to maintain this appropriation as part of its ongoing core budget. This is an agreed obligation of MDOC that continues yearly for 8 years and can be enforced with this Agreement before the Court should a breach by MDOC occur.

#### **IV. RELEASES**

A. Upon the entry of the Final Approval Order and without any further action by the Court or by any Party to this Agreement, Plaintiffs, on their own behalf and on behalf of each Class Member, on behalf of their respective heirs, executors, administrators, representatives, agents, attorneys, partners, clients, successors, predecessors-in-interest, assigns, and affiliates, acknowledge full satisfaction of and fully, finally, and forever settle with, release, and discharge the Released Parties of and from all Released Claims. Subject to Court approval of this Agreement, all Class Members shall be bound by this Agreement and all of their claims shall be dismissed with prejudice and released even if they never received personal notice of the Action or the settlement, never received a payment or contested their allocation of the settlement in a Proof of Claim.

B. Plaintiffs, on their own behalf and on behalf of each Class Member, acknowledge that they are aware that they may hereafter discover facts in addition to, or different from those facts that they now know or believe to be true with respect to the subject matter of the settlement, but state that it is their intention to release fully, finally, and forever all Released Claims, and in furtherance of such intention, the release of the Released Claims will be and remain in effect notwithstanding the discovery or existence of any such additional or different facts.

C. The releases contained herein shall apply to and bind all members of the Certified Settlement Class who do not opt out including, but not limited to, those Class

Members whose Class Notices are returned undeliverable, those who do not negotiate checks sent to them, and/or those for whom no current address can be found through reasonable efforts.

**V. ADMINISTRATION OF THE SETTLEMENT**

A. **Administration of the Settlement.** The Claims Administrator shall administer the Settlement in accordance with the terms and conditions of this Settlement Agreement.

B. **Settlement Webpage.** Prior to the Notice Date, the Claims Administrator shall establish the Settlement Webpage, which shall contain the Class Notice with relevant information relating to the Action and the settlement. The Settlement Webpage will also contain a contact information page that includes the contact information for the Claims Administrator, and addresses and telephone numbers or email addresses for Class Counsel and Defense Counsel. The Settlement Webpage will also contain the Settlement Agreement, signed Preliminary Approval Order, the Proof of Claim form available for copying and for completion, execution and submission on-line on the Settlement Webpage, and other filings submitted to the Court in connection with this settlement.

C. **Timing of Class Notice.** Class Notice shall be accomplished within thirty (30) calendar days following the date of entry of the Preliminary Approval Order by the Court.

D. **Procedure and Format of Class Notice.** To the extent possible, the Class Notice shall be disseminated by electronic mail to all members of the Certified Settlement Class. Notice also may be sent via postcard notices (approximately 8" by 6" in size) via first class, U.S. mail in the form substantially similar to the document attached to Plaintiffs' Motion for Preliminary Approval of the Settlement and approved by the court.

In addition, the Class Notice and the Proof of Claim to contest a settlement allocation will be available to download on the Settlement Webpage. The Settlement Webpage will also provide an online opportunity to submit a Proof of Claim to contest a settlement allocation and/or notification information for Claimants to be paid.

E. **Eligibility.** To be eligible to receive a Settlement Payment, Class Members must (i) fall within the herein defined Certified Settlement Class; (ii) not opt-out of the Settlement or class; (iii) not be deemed ineligible under any other provision of this Agreement; and (iv) meet other criteria as set forth in this Agreement.

F. **Challenge Period.** Class Members shall have forty-five (45) days after receipt of an initial payment to challenge the amount of the payment with the Claims Administrator.

G. **Payments and Challenges to Payment Amount.** The initial payments of the claim by the Claims Administrator to the Certified Settlement Class Members will be calculated using the class list and in conjunction with Plaintiffs' expert based on the time period the Class Member worked for Defendant at MDOC's facilities during the Class Period. Those payments will be made without any Proof of Claim being filed. Certified Settlement Class Members disputing their allocation can file a Proof of Claim form disputing or challenging the amount allocated to that Class Member within the forty-five (45) day challenge period. A reserve of 20% or another appropriate amount of the net settlement amount after payment of attorney fees and expenses will be retained in the Qualified Settlement Fund for those claims. The Claims Administrator will address, resolve and/or pay Class Member submitting a Proof of Claim challenging their distribution. Any unclaimed, undeliverable or uncashed settlement checks will be used for a second distribution of the balance of the Settlement Fund to Certified Settlement Class Members.

In order to contest or challenge a Settlement Payment allocation, Claimants must submit a Proof of Claim within the Challenge Period. Proofs of Claim challenging the allocation determined by Class Counsel and the Claims Administrator are to be submitted by mail to the Claims Administrator or may be submitted electronically via the Settlement Webpage or emailed to a designated email address of the Claims Administrator. The Claims Administrator will have no obligation to honor any Proof of Claim challenging an allocation received with a postmark dated after the end of the Challenge Period, even if such claim otherwise would be valid. The Claims Administrator has full authority to address and resolve Proofs of Claims challenging an allocation, in conjunction with Class Counsel. The Claims Administrator will have no obligation to honor any Proof of Claim that is submitted through the Settlement Webpage after the Challenge Period ends. The Claims Administrator will have no obligation to honor any Proof of Claim that is mailed to an address other than that of the Claims Administrator. In submitting a Proof of Claim challenging an allocation, Class Members or their counsel must fully complete all portions of said Proof of Claim designated as "required."

H. **Invalid Proof of Claim.** Any Proof of Claim challenging a distribution that is materially false or incomplete with regard to "required" fields, shall be deemed invalid and shall not be eligible for reconsideration for additional compensation under this Agreement. Claims submitted by persons or entities not identified on the Class List, shall be deemed invalid and shall not be eligible for reconsideration for additional compensation under this Agreement. The Claims Administrator shall notify a Class Member if his or her Claim or request for additional compensation has been rejected and shall notify Class Counsel as well. Upon notification, a Class Member shall have twenty (20) days after the date of the deficiency notice to cure the deficiency. If the Claim remains

disputed or if the Claim for additional compensation is denied or partially denied, the Class Member may challenge the invalidity and the allocation of Settlement Funds to that Class Member by notifying the Court of the dispute.

I. **Payment of Eligible Claims.** Class Members who are eligible for Settlement Payment(s) hereunder shall, provided the Effective Date has occurred, receive a check in the amount of the Settlement Payment(s), mailed to the Person(s) on record (either the Class Member or their next of kin if they have died). Each check mailed shall bear a conspicuous legend indicating that it will be void if not cashed within one hundred and twenty (120) calendar days after issuance. If a Settlement Payment check becomes void or is returned, the Class Member shall forfeit his/her right to payment, but this Agreement shall in all other respects, including the Releases contained herein, be fully enforceable against the Class Member.

J. **Payment of Disputed Claims.** Settlement Payments to Class Members eligible for a Settlement Payment under this Agreement, including Settlement Payments of disputed claims determined to be valid by the Court, shall be made by the later of thirty (30) calendar days after the date on which the Claims Administrator receives notice of the Court's resolution of the disputed claim or within sixty (60) calendar days after the Effective Date, whichever is later.

K. **Failure to Submit a Challenge to Payment Amount.** Any Class Member who does not submit a Proof of Claim challenging their disbursement or allocation shall not be entitled to challenge said disbursement, but shall nonetheless remain a Class Member and be bound by this Agreement and the Releases contained herein, unless a timely opt-out is filed in accordance with the terms set forth herein. Any Class Member who does not timely cash the settlement check sent to them, shall not be



entitled to a Settlement Payment, but shall nonetheless remain a Class Member and be bound by this Agreement and the Releases contained herein, unless a timely opt-out is filed in accordance with the terms set forth herein.

**L. Payment of Entire Settlement Fund to the Class Members.** Once all initial settlement payments have been made to class members and all Valid Claims challenging the disbursement and Disputed Claims challenging the disbursement that were deemed valid and addressed, any remaining and unclaimed funds in the Settlement Fund, and the 20% retention amount, shall be distributed to the Class Members pro rata to their original claim amount. This second Settlement Payment(s) hereunder be mailed to the Person(s) submitting the claim(s). Each check mailed shall bear a conspicuous legend indicating that it will be void if not cashed within one hundred and twenty (120) calendar days after issuance. If a Settlement Payment check becomes void or is returned, the Class Member shall forfeit his/her right to payment, but this Agreement shall in all other respects, including the Releases contained herein, be fully enforceable against the Class Member. Payments shall be made to the Certified Settlement Class until the Settlement Fund is depleted.

## **VI. PROCESSING THE SETTLEMENT**

**A. Conditional Certification of Certified Settlement Class.** Solely for the purposes of Settlement, providing Class Notice, and implementing this Agreement, the Parties agree to conditional certification of the Certified Settlement Class, which shall be certified for settlement purposes only.

**B. Motion for Preliminary Approval.** Class Counsel shall file a motion for the Court to enter a Preliminary Approval Order. Defense Counsel shall have the opportunity to review the motion in advance and object to any portion thereof.

C. **Notice.** Following entry of the Preliminary Approval Order, notice shall be provided to the Certified Settlement Class pursuant to this Agreement and as directed and approved by the Court in its Preliminary Approval Order.

D. **Final Approval Hearing.** The Parties agree that they will request the Court to enter the Final Approval Order after the Final Approval Hearing, which shall take place as soon as practicable after the conclusion of the Challenge Period. The Parties expressly acknowledge that the claims administration process will not be completed by the date of the requested Final Approval Hearing. The Parties further expressly acknowledge that the Court will schedule the Final Approval Hearing as the Court deems appropriate.

E. **Final Approval Order.** Following the Final Approval Hearing, the Parties will request the Court to enter the Final Approval Order and the Judgment.

F. **Effect if Settlement is Not Approved, Agreement is Terminated.** If the Court does not approve the Settlement, certification of the Certified Settlement Class will be void, and no doctrine of waiver, estoppel, or preclusion will be asserted in any litigated certification proceedings in the Action. The Parties will be returned to their positions *status quo ante* with respect to the Action as if the settlement had not been entered into.

G. **Evidentiary Preclusion.** In the event that the Settlement set forth in this Agreement is not approved as presented, the Parties agree that neither the settlement terms nor any publicly disseminated information regarding the Settlement, including, without limitation, the Class Notice, court filings, orders, and public statements, may be used as evidence for any purpose whatsoever. In addition, neither the fact of, nor any

documents relating to, any failure of the Court to approve the settlement, and/or any objections or interventions may be used as evidence for any purpose whatsoever.

## **VII. OBJECTIONS AND OPT-OUTS**

Regarding potential objections and/or opt-outs to the Settlement, so-called “mass or “class” opt-outs shall be barred and not allowed under either circumstance.

### **A. Objections to the Settlement.**

1. **Objecting to the Settlement.** Class Members who do not timely request exclusion from the Settlement have the right to object to the proposed settlement by filing an objection in writing with the Cole County Circuit Clerk, located at 301 East High Street; Jefferson City, Missouri 65101, no later than the final day of the Challenge Period. The objection must also be mailed to each of the following, postmarked on or prior to the last day to file the objection:

**a. Class Counsel:**

Gary K. Burger  
Burger Law LLC  
500 North Broadway  
Suite 1860  
St. Louis, Missouri 63102

**b. Defense Counsel:**

Denise McElvein  
Deborah Bell Yates  
Missouri Attorney General’s Office  
815 Olive Street, Suite 200  
St. Louis, MO 63101

**c. Claims Administrator:**

CPT Group  
Class Action Administrators  
50 Corporate Park  
Irvine, CA 92606

2. **Content of the Objection.** A written objection must include: (i) proof of membership in the Certified Settlement Class including, but not limited to, the full name and address of the objector; (ii) the specific grounds for the objection and the reasons why such Class Member desires to appear and/or be heard; and (iii) all documents or writings that such Class Member desires the Court to consider. The Class Member must sign the objection for such objection to be valid.

3. **Appearance at Final Approval Hearing.** Any Class Member who wishes to appear in person at the Final Approval Hearing must timely submit a written objection to the Settlement and, no later than five (5) calendar days before the date of the Final Approval Hearing, file with the Clerk of the Court, at the above-referenced address, a written notice of intention to appear at the Final Approval Hearing and mail copies of the same to Class Counsel and Defense Counsel, at the above-designated addresses, postmarked by the last date to file the notice of intention to appear.

4. **Failure to Properly Object to Settlement.** Any Class Member who fails to object in accordance with the foregoing shall be deemed to have waived his or her objections and forever be barred from making any objections in the Action.

**B. Requests for Exclusion from the Settlement.**

1. **Opting Out of the Settlement.** Persons in the Certified Settlement Class shall be given the opportunity to opt out of participating in the settlement. Each Person in the Certified Settlement Class who wishes to opt out of this Agreement shall do so by serving a written opt-out request to each of the following, via first class mail, postage pre-paid, postmarked no later than the final day of the Challenge Period:

**a. Class Counsel:**

Gary K. Burger  
Burger Law LLC  
500 North Broadway  
Suite 1860  
St. Louis, Missouri 63102

**b. Defense Counsel:**

Denise McElvein  
Deborah Bell Yates  
Missouri Attorney General's Office  
815 Olive Street, Suite 200  
St. Louis, MO 63101

**c. Claims Administrator:**

CPT Group  
Class Action Administrators  
50 Corporate Park  
Irvine, CA 92606

2. **Content of the Exclusion Request.** Exclusion requests must: (i) be signed by the Class Member; (ii) include the full name and address of the Person(s) requesting exclusion; (iii) be timely postmarked and mailed to the address designated in the Class Notice; and (iv) include the following statement: "I request to be excluded from the proposed class settlement in *Thomas Hootselle, et al. v. Missouri Department of Corrections*, Case No. 12AC-CC00518-01, pending in the Circuit Court of Cole County, Missouri." No request for exclusion will be honored as valid unless all of the prerequisites described above are adhered to in full. Class Counsel will keep any such opt-out information confidential and will use it only for purposes of determining whether a person has properly opted out. All Persons in the Certified Settlement Class who do not opt-out in accordance with the terms set forth herein will be deemed Class Members, and will, in turn, be bound by all determinations and judgments in the

Action.

3. **Effect of Submitting a Valid Opt-Out Notice.** All Persons in the Certified Settlement Class who exclude themselves from participation in the Settlement will not be eligible to receive any Settlement Payment, will not be bound by any further orders or judgments entered for or against the Certified Settlement Class, and will preserve their ability to independently pursue any claims they may have against MDOC by filing their own lawsuit at their own expense. Due to a potential conflict between the Certified Settlement Class and opt-out individuals, Class Counsel agree that they will not represent any Persons who opt out of the Settlement in any claims and/or actions asserting the Released Claims against the Released Entities.

#### **VIII. REPRESENTATIONS AND WARRANTIES**

A. Each Party has had the opportunity to receive, and has received, independent legal advice from his or her or its attorneys regarding the advisability of making the Settlement, the advisability of executing this Agreement, and fully understands and accepts the terms of this Agreement.

B. MDOC represents and warrants: (i) that it has the requisite authority to execute, deliver, and perform the Agreement and to consummate the transactions contemplated hereby; (ii) that the execution, delivery, and performance of the Agreement and the consummation by them of the actions contemplated herein have been duly authorized by necessary action on the part of MDOC; and (iii) that the Agreement has been duly and validly executed and delivered by MDOC and constitutes its legal, valid, and binding obligations.

C. Plaintiffs represent and warrant that they are entering into the Agreement

on behalf of themselves individually and as the proposed representatives of the Certified Settlement Class Members of their own free will and without the receipt of any consideration other than what is provided in the Agreement or disclosed to, and authorized by, the Court. Plaintiffs represent and warrant that they have reviewed the terms of the Agreement in consultation with Class Counsel and believe them to be fair, reasonable and adequate, and covenant that they will not file an Opt-Out request from the Certified Settlement Class or object to the Agreement.

D. Plaintiffs represent and warrant that no Person has any legal or equitable interest in the claims, demands, actions, or causes of action referred to in this Agreement except as set forth above.

E. No Party relies or has relied on any statement, representation, omission, inducement, or promise of the other Party (or any officer, agent, employee, representative, or attorney for any other party) in executing this Agreement or entering the Settlement provided for herein, except as expressly stated in this Agreement.

F. Class Counsel represent and warrant that they are authorized to take all appropriate actions required or permitted to be taken by or on behalf of Plaintiffs and, subsequent to an appropriate Court Order, the Certified Settlement Class in order to effectuate the terms of this Agreement and are also authorized to enter into appropriate modifications or amendments to this Agreement on behalf of Plaintiffs and, subsequent to an appropriate Court Order, the Class Members.

## **IX. MISCELLANEOUS PROVISIONS**

A. **Material Modification of Settlement.** In the event the terms or conditions of this Agreement are materially modified by any court, any Party may declare this Agreement null and void in its sole discretion to be exercised within ten

(10) calendar days after receiving notice of such a material modification. For purposes of this paragraph, material modifications include, but are not limited to, any modifications to the definitions of the Certified Settlement Class, Class Members, Released Claims, Released Parties, Releasing Parties, material modifications to the Claim Form, changes to the Notice Plan and procedure described in this Agreement, and any modifications to the terms of the settlement consideration.

C. **Confidentiality.** There shall be no confidentiality regarding the terms of this settlement.

D. **Entire Agreement.** This Agreement, together with the Exhibits hereto, constitutes the entire agreement between and among the Parties with respect to the settlement of the Action. This Agreement supersedes all prior negotiations and agreements and may not be modified or amended except by a writing signed by or on behalf of Plaintiffs, the Certified Settlement Class, Defendant, and their respective attorneys. Such a writing may be executed in counterparts.

E. **Change of Time Periods.** The time periods and/or dates described in this Agreement with respect to the giving of notices and hearings are subject to approval and change by the Court or by the written agreement of Class Counsel and Defense Counsel, without notice to Class Members except that the Claims Administrator shall ensure that such dates are posted on the Settlement Webpage.

F. **Extension of Time.** The Parties reserve the right, by agreement and subject to the Court's approval, to grant any reasonable extension of time that might be needed to carry out any of the provisions of this Agreement.

G. **Cooperation.** The Parties and their respective counsel agree to work



cooperatively to prepare and execute any and all documents that may reasonably be necessary to effectuate the terms of this Agreement.

H. **Governing Law.** This Agreement shall be construed and governed in accordance with the laws of the State of Missouri.

I. **Construing the Agreement.** The terms of this Agreement are contractual and are the result of negotiation among the Parties. Each Party, in consultation with his, her, their or its attorneys, has cooperated in the drafting and preparation of this Agreement. Hence, in any construction to be made of this Agreement, the same shall not be construed against any Party. In addition, no Party may seek to rescind this Agreement on the grounds of mistake either of fact or law.

J. **Signatures.** This Agreement may be signed in one or more counterparts.

K. **Binding on Successors.** This Agreement shall be binding upon the heirs, executors, administrators, successors, and assigns of the Plaintiffs, Certified Settlement Class Members, and Defendant.

L. **Exhibits.** All Exhibits to this Agreement are material and integral parts hereof and are incorporated by reference as if fully rewritten herein.

M. **Taxes.** Plaintiffs, Certified Settlement Class Members, and Defendant stipulate and agree that all payments to Certified Settlement Class Members and the service fees to Plaintiffs be allocated as 50% back-payment of lost wages (taxed via W-2 form) and 50% payment of damages and interest (taxed via 1099 form). Plaintiffs, Certified Settlement Class Members, and Defendant believe this allocation is reasonable. Plaintiffs, Certified Settlement Class Members, and Defendant understand and agree that the Qualified Settlement Fund will issue Certified Settlement Class Members an Internal Revenue Service ("IRS") Form W-2 for 50% of the payments made to them set forth herein and IRS Form 1099

for the other 50% of the payments made to them set forth herein), and will report such payments to the IRS and other taxing authorities as may be required by law. For the \$49.5 Million payment to the Settlement Fund, Plaintiffs, Certified Settlement Class Members, and Defendant agree that the Qualified Settlement Fund is responsible for and will pay any Employer portion of taxes on the Wage portion of the payments to Plaintiffs and Certified Settlement Class Members. No opinion concerning the tax consequences of the Agreement is made to any Plaintiff or Certified Settlement Class Member or will be made by Class Counsel, Defendant, or Defense Counsel; nor is any Party or their counsel providing any guarantee regarding the tax consequences of the Agreement as to any Plaintiff or Certified Settlement Class Member. Each Plaintiff (including Class Counsel) and Certified Settlement Class Member is responsible for his/her/its tax reporting and other obligations respecting the Agreement, if any, in addition to that set forth herein.

O. **Waiver.** The waiver by one Party of any breach of this Agreement by any other Party shall not be deemed a waiver, by that Party or by any other Party, of any other prior or subsequent breach of this Agreement.

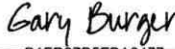
P. **Provisions Deemed Invalid.** In the event any one or more of the provisions contained in this Agreement shall for any reason be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, such invalid, illegal, or unenforceable provision shall be ineffective, but shall not in any way invalidate or otherwise affect any other provision.

Q. **Retention of Jurisdiction.** The Court shall retain jurisdiction with respect to the implementation and enforcement of the terms of this Agreement, and all Parties submit to the jurisdiction of the Court for purposes of implementing and enforcing the settlement embodied in this Agreement. Should either party breach any of the


provisions of this Settlement Agreement after its approval, the other party may bring a Motion to Enforce Settlement in this court. This includes the agreements to compensate 15 minutes a shift and attorney fees in the future.

WHEREFORE, INTENDING TO BE BOUND, THE PARTIES, INDIVIDUALLY OR BY THEIR DULY AUTHORIZED AGENTS AND UNDERSIGNED COUNSEL, HAVE SET THEIR HAND AND SEAL AND EXECUTED THIS AGREEMENT AND RELEASE, EFFECTIVE THE LAST DAY SIGNED BY ALL PARTIES HERETO:


Dated: 6/1/2022, 2022

DocuSigned by:  
  
B1FD97B3FBA8477...  
Gary K. Burger  
Class Counsel  
On behalf of Plaintiffs and the Class

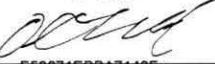
Dated: 6/1/2022, 2022

DocuSigned by:  
  
B34527F848924CF...  
Michael J. Flannery  
Class Counsel  
On behalf of Plaintiffs and the Class

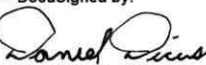
Dated: 6/1/2022, 2022

DocuSigned by:  
  
45207FB7FB9D4EB...  
Thomas Hootselle, Jr.  
Class Representative

Dated: 6/1/2022, 2022

DocuSigned by:  
  
E53071E8B7129F...  
Oliver Huff  
Class Representative

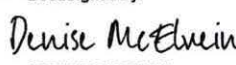
Dated: 6/1/2022, 2022

DocuSigned by:  
  
F9447D3E83854A3...  
Daniel Dicus  
Class Representative


Dated: 6/1/2022, 2022

DocuSigned by:  
  
50FD4CB149C14AF...  
Tim Cutt  
Missouri Correctional Officers Association

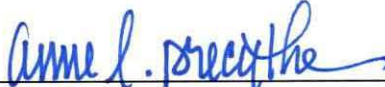
Dated: \_\_\_\_\_, 2022

DocuSigned by:  
  
8CDDF8085DE648D...  
Denise McElvein  
Missouri Attorney General's Office

Dated: 6/1/2022, 2022

DocuSigned by:  
  
BD03F19A20D2400...  
Deborah Bell Yates  
Missouri Attorney General's Office

Dated: 6/1/22, 2022

  
Anne Precythe  
Director, Missouri Department of Corrections