

**IN THE CIRCUIT COURT  
FOR COLE COUNTY, STATE OF MISSOURI  
19<sup>TH</sup> JUDICIAL CIRCUIT**

THOMAS HOOTSELLE, JR., <i>et al.</i> , and	)	
MISSOURI CORRECTIONS OFFICERS	)	
ASSOCIATION,	)	
	)	
Plaintiffs, Individually and on	)	
behalf of all others similarly situated,	)	
	)	Cause No. 12AC-CC00518
v.	)	
	)	Div. 4
MISSOURI DEPARTMENT OF	)	
CORRECTIONS,	)	
	)	
Defendant.	)	

**AMENDED JUDGMENT**

1. Plaintiffs Thomas Hootselle, Jr., Oliver Huff, and Daniel Dicus were appointed to serve as Class Plaintiffs and Class Representatives on behalf of the following Class certified by this Court in an amended Order on September 29, 2015:

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.

This is the description of those the court finds to be members of the class. Class notice was provided per Rule 52.08(c)(2) and was directed to these class members. Class plaintiffs introduced exhibits of the class notice, the list of class member and those opting back into the class at trial. The Court finds the above described Corrections Officers employed by Defendant and the members identified in exhibits to be members of the class. The Court previously granted partial summary judgment for Class Plaintiffs against Defendant.

2. Pursuant to the Verdict of the Jury, Judgment is hereby entered in favor of the Class Plaintiffs against Defendant Missouri Department of Corrections in the sum of \$113,714,632.00 in actual damages on Counts III and VI of Plaintiffs' Second Amended Petition, amended by interlineation. Interest shall be allowed on this judgment at nine percent per annum until satisfaction made pursuant to R.S.Mo. § 408.040.2.

3. Of that Judgment of actual damages in the amount of \$113,714,632.00, the Court hereby approves and orders an award of attorneys' fees to Class Counsel, Gary Burger and the law firm Burger Law and Michael Flannery and the law firm Cuneo Gilbert & LaDuca, LLP, equal to one-third of the common fund created as a result of the Judgment, or \$37,904,877, and orders an award of costs advanced on behalf of the Class by Class Counsel in the amount of \$219,647.34 be reimbursed to Class Counsel in addition to the attorneys' fees. The Court finds ample and strong evidence to support the award of attorneys' fees and costs requested, as set forth in Class Plaintiffs' Motion to Approve Attorney Fees and Costs and exhibits thereto.

4. Class Representatives Thomas Hootselle, Jr., Daniel Dicus, and Oliver Huff rendered important and substantial service to the Plaintiffs' Class. The Court orders they each be granted a \$25,000 service award from the common fund.

5. The Court approves the plan of distribution submitted by Class Counsel. Plaintiffs' Class shall receive a share of the judgment consistent with time they spent working for Defendant. Each member of Plaintiffs' Class' distribution from the net judgment (after payment of Court approved attorneys' fees and expenses, service awards and claims administrator costs) shall be calculated by Class Counsel and approved by the Court using the following steps:

a. First, collect all Class Plaintiffs' earnings history through the Missouri Accountability Portal, then match the names and year of employment to the list of Class Plaintiffs' IDs, names and postings provided by the Missouri Department of Corrections (contained in Defendant's documents Bates 374010-374340 through Bates 376860-377203).

b. Second, adjust each Class Plaintiff's earnings by inflation and the Court determined class definition. These values may need to be adjusted due to the timing of payments.

c. Third, create a statistical weight by multiplying the adjusted earnings with the mean pre- and post-shift activity by prison for each Class Plaintiff based on their posting for each year. In the case where a Class Plaintiffs has history at multiple sites for a given year, a simple mean is calculated for relevant sites. In the case when a Class Plaintiff has history at a site without security records, the mean of all sites is used.

d. Fourth, divide each Class Plaintiff's statistical weight by the sum of all weights. The result is a share of the total earnings lump sum payment for each Class Plaintiff. Each Class Plaintiff's share will vary in proportion to their wages, hours worked, location worked, and timing of employment.

e. Finally, the distribution value is found by multiplying each Class Plaintiff's share by the total earnings lump sum payment.

f. The pension distribution is then added to the earnings distribution to reach the final payout for each retired Class Plaintiff.

Any distributions to Class Plaintiffs that are deceased should be among their next of kin per stirpes. Should any initial distribution to Plaintiffs' Class not be claimed,

unclaimed funds may be redistributed pro rata among Class Plaintiffs receiving a distribution. The above-described calculation is a fair, reasonable and adequate method for distributing the net verdict/judgment in this case.

The Court hereby approves, as part of the plan of distribution, the retention of a qualified claims administrator by Class Counsel, to distribute the actual checks to Plaintiffs' Class. These claims administrator costs shall be deducted from the common fund. Post Judgment interest on the common fund judgment shall be allocated proportionally to the distribution to Plaintiffs' Class, Attorneys fees, costs and service awards set forth herein.

6. Regarding Count VII, after trial, the Court finds and concludes that the preponderance of the credible evidence proves:
  - a. The Labor Agreement and D2-8.4 of the Procedure Manual impose contractual obligations on Defendant to pay straight time and overtime compensation for all work performed by the COs as required by the Fair Labor Standards Act, and this work includes the time spent inside Defendant's prisons before and after each shift, including the time spent performing pre- and post-shift activities, as testified to at trial and referenced in Plaintiffs' exhibits 6 and 33.
  - b. Defendant requires all of Plaintiffs' Class do this pre- and post-shift activity in violation of these agreements; it has failed and refused to ever compensate Plaintiffs' Class for performing these activities, in breach of these agreements; it will continue to require this activity of Plaintiffs' Class and refuse to pay them for it in the future; it has continued its policies in the face governmental investigations, Plaintiffs' Class complaints, years of litigation in this case, and the Court's partial summary judgment order and original judgment.

- c. Defendant has failed and continues to fail to comply with its legal obligation to keep comprehensive, accurate, and reliable records of all time worked by Plaintiffs' Class (and its contractual obligations to do so under Policy D2-8.1).
- d. Defendant's past and ongoing course of conduct demonstrates that it will not comply with Section 12.2 of the Labor Agreement or the relevant terms of the Procedure Manual unless a declaratory judgment is entered requiring Defendant to do so. Thus, a justiciable dispute exists about Defendant's future compliance with the Labor Agreement, which is ripe for resolution by a judgment that declares and protects Plaintiff Missouri Correction Officer's Association (MOCOA) and Plaintiffs' Class' contractual rights.

7. Thus, Judgment is hereby entered in favor of the Plaintiffs' Class and MOCOA and against Defendant Missouri Department of Corrections on Count VII of Plaintiffs' Second Amended Petition, amended by interlineation, to settle and afford relief from the uncertainty and insecurity with respect to the parties' contractual rights, obligations, and relations, as follows:

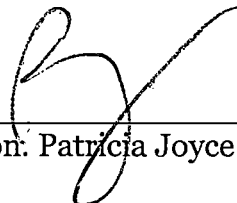
- a. Defendant shall fully comply with the Labor Agreement and Procedure Manual by paying straight time and/or overtime compensation for the following activities performed by Plaintiffs' Class, including, but not limited to, work performed before and after their assigned shifts:
  - 1) electronically logging their arrival or departure from the facility by either scanning a Bar Coded or Radio Frequency Identification (RFID), and/or manually signing or initially a paper entry/exit record, and/or submitting to biometric identification such as a finger print or palm scanning instrument, or a combination of these things;

- 2) utility officers may be required to report to the Central Observation Post to receive assignments;
  - 3) passing through security gates/entry-egress points, including passing through a metal detector in arrival and through and airlock when entering and exiting the security envelope;
  - 4) presenting themselves before a custody supervisor who communicated to the COI or COII's their daily post/duty assignment;
  - 5) picking up or returning equipment such as keys or radios form electronic key boxes or key/radio issue rooms;
  - 6) walking to and from the entry/egress points to duty post and possibly waiting in a line if one has formed for any of the above activities;
  - 7) in the case of vehicle patrol officers, inventorying the vehicle patrol's issued weapons, ammunition, and equipment prior to and at the end of each shift; and
  - 8) Passing of pertinent information from one shift to another.
- b. No later than 90 days from the entry of this judgment, Defendant shall implement a system that complies with this Order and maintains comprehensive, accurate, and reliable records of all time worked by Plaintiffs' Class and payment for pre- and post-shift work. Defendant shall immediately inform the Court, MOCOIA, and Plaintiffs' Class counsel that such a system has been implemented.
- c. Defendant shall make all such records available to MOCOIA, Plaintiffs' Class, and the Court for inspection upon request.

8. This Court has previously dismissed Counts I and II of the Second Amended Petition. This Court now and hereby dismisses Counts IV and V of the Second

Amended Petition as Plaintiffs elected their breach of contract claim and remedy of  
Count III and VI over their equity claim and remedy in Count IV and V.

So ORDERED this 14<sup>th</sup> day of September, 2018.

  
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Hon. Patricia Joyce