IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

LESLIE PURYEAR, *on behalf of himself and all those similarly situated*,

Plaintiff,

v.

CHADWICK DOTSON, *in his individual capacity*,

HAROLD CLARKE, *in his individual capacity*,

Defendants.

Civil Action No. 3:24-cv-00479-REP

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF PROPOSED CLASS ACTION SETTLEMENT, PROVISIONAL CERTIFICATION OF SETTLEMENT CLASS, AND APPROVAL OF NOTICE

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PRELMINARY STATEMENT

Plaintiff Leslie Puryear respectfully submits this memorandum in support of his unopposed motion for an order, pursuant to Federal Rule of Civil Procedure 23, (1) preliminarily approving the proposed Settlement Agreement, a copy of which is attached hereto as Exhibit 1; (2) conditionally certifying a settlement class; and (3) approving the form and manner of giving notice of the settlement to members of the proposed settlement class.

After vigorous advocacy and negotiation, Plaintiff and Defendants Chadwick Dotson and Harold Clarke agreed to settle the claims in this case. The proposed Settlement Agreement provides significant monetary relief to a proposed class of 53 people whom Plaintiff alleges were over-detained pursuant to Virginia Department of Corrections ("VDOC") policy. The Parties negotiated the Settlement Agreement with Magistrate Judge Summer L. Speight, which they believe achieves a fair and adequate resolution and agree that it merits preliminary approval.

BACKGROUND

I. THE LITIGATION BETWEEN PLAINTIFF AND VDOC

In 2020, the Virginia General Assembly amended the state's earned sentence credit ("ESC") program to increase the number of credits that people in VDOC custody could earn for good behavior and program participation. Previously, a person in custody could earn up to 4.5 ESCs for every 30 days in prison; one ESC amounted to one day deducted from the person's sentence. The 2020 law allowed everyone in VDOC custody to earn up to 15 ESCs for every 30 days in prison unless they were serving sentences for a list of offenses enumerated in the statute, in which case they could earn a maximum of 4.5 ESCs for every 30 days served. *See* Va. Code § 53.1-202.3(A)(1)–(17). The new law went into effect on July 1, 2022, and applied retroactively.

One of the enumerated, excluded offenses is "Robbery under § 18.2-58 or carjacking under § 18.2-58.1." Va. Code § 53.1-202.3(A)(9). Plaintiff Leslie Puryear, who was serving a

sentence for *attempted* robbery, was initially told that he would receive expanded ESCs and be released soon after July 1, 2022. But before the law went into effect, VDOC reversed its policy, apparently by interpreting § 53.1-202.3(A)(9) to exclude people serving sentences for inchoate offenses associated with robbery and carjacking, such as Mr. Puryear.

Mr. Puryear, who maintained his entitlement to expanded ESCs, filed a petition for a writ of habeas corpus in September 2023. Before the Virginia Supreme Court could rule on his petition, in November 2023, VDOC again reversed its policy, retroactively granting Mr. Puryear and others serving sentences for inchoate offenses related to robbery and carjacking expanded ESCs. It released those who, like Mr. Puryear, were immediately eligible for release with expanded ESCs. This group included 30 people, whom VDOC referred to in internal documents as the "Puryear Releases."

Between September 1, 2022, when the VDOC's obligation to grant expanded ESCs began, and November 2023, when the "Puryear Releases" occurred, 23 additional people serving sentences for inchoate offenses related to robbery and carjacking were denied expanded ESCs and were released when their release dates came up as calculated without enhanced credits, sometime after September 1, 2022, but prior to November 2023. Had VDOC not excluded these individuals from expanded ESCs, they would have been released sooner.

On June 29, 2024, Mr. Puryear filed a putative class action lawsuit on behalf of himself and all others who had been serving sentences in VDOC custody for inchoate offenses related to robbery or carjacking and who were incarcerated for longer than they would have been had VDOC not excluded them from expanded ESCs prior to November 2023. *See* Dkt. 1.
Mr. Puryear asserted claims under 42 U.S.C. § 1983 for violations of substantive and procedural due process under the Fourteenth Amendment and for cruel and unusual punishment under the

Eighth Amendment, as well as for false imprisonment under Virginia law, against the current and former Directors of VDOC—Dotson and Clarke, respectively.

Defendants moved to dismiss, Dkt. 17, Plaintiff responded, Dkt. 20, and Defendants replied, Dkt. 21. Before the Court ruled on the motion, it ordered the Parties to begin exchanging discovery requests and responses. *See* Dkt. 23. The Court also held a status conference on September 18, 2024, where the Parties agreed that mediation might be productive, and the Court ordered mediation with Magistrate Judge Summer L. Speight. *See* Dkt. 30.

II. THE MEDIATION AND RESULTING SETTLEMENT AGREEMENT

In preparation for mediation, the Parties exchanged discovery requests and responses, prepared mediation statements, and exchanged written settlement offers. *See* Decl. of R. Livengood (Ex. 2) ¶ 12. Defendants provided Plaintiff with a list of potential class members, VDOC policy documents regarding the ESC program, and internal emails regarding the Puryear Releases. *Id.* ¶¶ 8–10. The Parties participated in a full-day mediation session with Judge Speight on October 28, 2024, and another half-day mediation session on November 1, 2024. *Id.* ¶ 12. The Settlement Agreement is the result of these negotiations.

The Parties have agreed, through the Settlement Agreement, to seek certification of a Settlement Class consisting of any individual in the custody of VDOC as of July 1, 2022 serving a sentence for an inchoate crime associated with robbery or carjacking; who was not awarded expanded ESCs on those inchoate offenses under Virginia Code § 53.1-202.3(B), as amended; who was released from VDOC custody on or before November 30, 2023; and who would have been released earlier than they were had they been awarded expanded ESCs as of July 1, 2022. "Class Member" is limited to those individuals who were excluded from earning expanded ESCs solely because of an inchoate robbery and/or carjacking offense. *See* Settlement Agmt. ¶ 1(c). The Parties understand that there are 53 class members. Their identities and the number of days

they served past their release dates as calculated with expanded ESCs (*i.e.*, number of days of over-detention) as currently known to the Parties are contained in Exhibit A to the Settlement Agreement. Based on the information exchanged during discovery, the Parties believe that Exhibit A is a comprehensive list of potential class members.

A. Monetary Terms of Settlement

The Settlement Agreement establishes a Settlement Fund of up to $1,599,694, to be allocated as follows:

- Up to $1,139,694 in cash payments to settlement class members, who will be compensated according to how many days they were over-detained in VDOC custody at a rate of approximately $118 per day, or $43,070 per year, of over-detention;
- Up to $40,000 as a service payment to Mr. Puryear, for his service as the Named Plaintiff, subject to Court approval;
- Up to $20,000 or actual costs to the Settlement Administrator for the costs of executing the Agreement; and
- Up to $400,000 in attorneys' fees to Plaintiff's Counsel, which represents approximately 25% of the Settlement Fund, subject to Court approval.

See Settlement Agmt. ¶ 4.

This is not a claims-made settlement; any class member who does not opt-out during the notice period will receive a payment and will be bound by the terms of the Agreement. The preliminary value of the cash payments to class members ($1,139,694) has been determined based on the total number of days of over-detention as aggregated across the class (9,646), times a payment of $118 per day of over-detention, plus compensation of $1,000 for the three class

members whose award would otherwise be less than $1,000. The projected payment to each class member is listed in Exhibit A to the Settlement Agreement.

Should any potential class member settle their claims separately or opt out prior to final approval of the settlement, Defendants will not be required to fund that member's pro rata share of the settlement fund. Furthermore, the Parties understand that one class member, Jorge Jovel, was deported shortly after he was released from VDOC custody; the Parties will make best efforts to contact Mr. Jovel during the notice period, but if they are unable to do so, Defendants will not be responsible for funding Mr. Jovel's pro rata share of the fund. After final approval, Defendants will deposit the final value of the cash payments—$1,139,694 minus any separate settlements, opt-outs, and Mr. Jovel's share if he is unreachable—into an escrow account. *See* Settlement Agmt. ¶ 4.a.i.

Defendants will also deposit $40,000, intended as a service payment to Mr. Puryear, into the account. *Id.* ¶ 4.b. If the Court approves a service payment of less than $40,000, the difference between the amount approved and $40,000 will be distributed among the class members in proportion to how many days each class member was over-detained. *Id.*

B. Administration of Settlement

The Settlement Agreement provides that Defendants will pay up to $20,000 in administration costs, and Settlement Services, Inc. ("SSI") will be retained as Settlement Administrator to distribute the notice, answer questions from class members, issue payments, prepare tax documents, and otherwise administer the settlement. SSI is an experienced class action claims administrator. *See* Decl. of R. Hyde (Ex. 3) ¶¶ 2–3. SSI has reviewed the preliminary agreement and has agreed to administer it for no more than $20,000. *Id.* ¶ 6.

Plaintiff's counsel have agreed to take on some of the work of settlement administration to ensure that costs do not go over this number. *See* Livengood Decl. ¶ 13.

C. Attorneys' Fees

Under the terms of the Settlement Agreement, Defendants will not oppose Plaintiff's Counsel's request to the Court for up to $400,000 in attorneys' fees at the time that the Parties seek final approval of the settlement. *See* Settlement Agmt. ¶ 4(c). This figure represents approximately 25% of the total Settlement Fund. Defendants will only be responsible for funding whatever amount the Court approves in attorneys' fees; if the Court approves less than $400,000, the difference between $400,000 and the approved amount will not become part of the pro rata fund for class members. *Id.*

ARGUMENT

The Settlement Agreement is a fair, reasonable, and adequate resolution of the matter that provides substantial and meaningful relief to members of the Class, results from extensive litigation and arm's-length negotiations by experienced counsel, and takes account of the complexity and risks at issue in this litigation.

I. PRELIMINARY APPROVAL SHOULD BE GRANTED BECAUSE THE SETTLEMENT AGREEMENT IS IN THE RANGE OF POSSIBLE APPROVAL.

Approval of a proposed class action settlement typically proceeds in two steps. *See In re Jiffy Lube Secs. Litig.*, 927 F.2d 155, 158–59 (4th Cir. 1991). First, the Court grants preliminary approval if it determines that the settlement "is within the range of possible approval." *Comm'rs of Pub. Works of City of Charleston v. Costco Wholesale Corp.*, 340 F.R.D. 242, 249 (D.S.C. 2021) ("*Comm'rs of Pub. Works*") (cleaned up); *see also, e.g.*, *In re Outer Banks Power Outage Litig.*, No. 4:17-CV-141, 2018 WL 2050141, at *3 (E.D.N.C. May 2, 2018); *Manual for Complex Litigation* (Fourth) § 21.632 (Fed. Judicial Center 2024) ("*Manual*").

Second, after notice of the settlement is provided to the Class and the Court conducts a fairness hearing, the Court determines whether the settlement is "fair, reasonable and adequate," as required under Fed. R. Civ. P. 23(e)(2), such that final approval should be granted. *See Comm'rs of Pub. Works of City of Charleston v. Costco Wholesale Corp.*, No. 2:21-CV-42, 2022 WL 214531, at *2-4 (D.S.C. Jan. 24, 2022); *In re Outer Banks Power Outage Litig.*, 2018 WL 2050141, at *2; *Manual* §§ 21.634-35. Fairness and adequacy are both assessed using multi-factor tests, *see, e.g.*, *Jiffy Lube*, 927 F.2d at 158-59; *Comm'rs of Pub. Works*, 340 F.R.D. at 249-50; *In re The Mills Corp. Secs. Litig.*, 265 F.R.D. 246, 254 (E.D. Va. 2009) ("*Mills*"), and there is no specific test used to assess reasonableness, *see, e.g.*, *Comm'rs of Pub. Works*, 340 F.R.D. at 249-50; *Mills*, 265 F.R.D. at 258. The fairness factors are:

> (1) the posture of the case at the time the proposed settlement was reached, (2) the extent of discovery that had been conducted, (3) the circumstances surrounding the settlement negotiations, and (4) counsel's experience in the type of case at issue.

Comm'rs of Pub. Works, 340 F.R.D. at 249 (citing *Jiffy Lube*, 927 F.2d at 158-59).

The adequacy factors are:

> (1) the relative strength of the case on the merits, (2) any difficulties of proof or strong defenses the plaintiff and class would likely encounter if the case were to go to trial, (3) the expected duration and expense of additional litigation, (4) the solvency of the defendants and the probability of recovery on a litigated judgment, [and] (5) the degree of opposition to the proposed settlement[.]

Id. at 250 (citing *Jiffy Lube*, 927 F.2d at 159). Consideration of these factors demonstrates that the proposed settlement is fair, reasonable, adequate, and well within the range of possible approval.

A. The Fairness Factors

1. <u>Posture of the Case</u>

This factor addresses principally "how far the case has come from its inception." *Mills*, 265 F.R.D. at 254. Settlement at a very early stage may suggest "collusion among the settling

parties" and that the proposed settlement is not legitimate. *Jiffy Lube*, 927 F.2d at 159; *see also Mills*, 265 F.R.D. at 254. Here, Defendants filed a motion to dismiss, Dkt. 17, which Plaintiff strongly opposed, Dkt. 20, and the Parties engaged in written discovery, exchanging dozens of interrogatories, document requests, and responses, *see* Livengood Decl. ¶ 8. The vigorous litigation of the motion to dismiss demonstrates a clear lack of collusion, and the exchange of written discovery evinces the Parties' intent to litigate this case fully and aggressively absent a reasonable settlement. At the same time, this settlement is coming early enough that class members may "choose to be included or excluded based on the terms of the proposed settlement." *Horton v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 855 F. Supp. 825, 829 (E.D.N.C. 1994). *See also id.* ("If such agreement had been reached after notification, potential class members would have had to decide whether to opt-in or opt-out of the class without knowledge of the proposed settlement."). As such, the posture of this case favors approval of the settlement.

2. Extent of Discovery

This factor weighs in favor of approval where the parties have conducted "[s]ufficient discovery to permit counsel and the parties to fairly evaluate the liability and financial aspects of a case." *In re A.H. Robins Co., Inc.*, 88 B.R. 755, 760 (E.D. Va. 1988). *See also Lomascolo v. Parsons Brinckerhoff, Inc.*, No. 1:08CV1310, 2009 WL 3094955, at *11 (E.D. Va. Sept. 28, 2009). Such is the case here. Both Parties produced initial disclosures and issued and responded to interrogatories and requests for production of documents, Livengood Decl. ¶ 8, allowing them to enter mediation with a shared sense of the number of potential class members and scope of over-detention, *id.* ¶¶ 10–11, and thereby to assess and negotiate a damages amount. *See Carroll v. Northampton Rests., Inc.*, No. 2:21-CV-115, 2024 WL 1223442, at *4 (E.D. Va. Mar. 21,

2024) (extent of discovery factor weighed in favor of approval where information exchanged in discovery "proved useful because it provided a basis for calculating damages and reaching a reasonable settlement"). Furthermore, during mediation, the Parties informally exchanged information—for example, Plaintiff's Counsel gave Defendants information regarding their fees accrued this far, and the Parties jointly reviewed records to come to a final understanding of the number of class members and length of over-detention, reflected in Exhibit A to the Settlement Agreement. *See Jiffy Lube*, 927 F.2d at 159 (exchange of informal discovery counsels in favor of settlement approval). Between formal and informal discovery and the motion to dismiss briefing—which allowed the Parties to assess the arguments regarding qualified immunity, the primary legal issue in this case—the Parties' communications narrowed points of disagreement and allowed for more informed settlement negotiations. This factor favors approval.

3. Circumstances Surrounding Negotiations

This factor serves to assure that the settlement is the result of arm's-length negotiations based on counsel's informed understanding of the case. *See Mills*, 265 F.R.D. at 255. "Absent evidence to the contrary, the Court should presume that settlement negotiations were conducted in good faith and that the resulting agreement was reached without collusion." *Archbold v. Wells Fargo Bank, N.A.*, No. 3:13-CV-24599, 2015 WL 4276295, at *2 (S.D. W. Va. July 14, 2015); *Kirven v. Cent. States Health & Life Co. of Omaha*, No. CA 3:11-2149, 2015 WL 1314086, at *5 (D.S.C. Mar. 23, 2015) (same). The circumstances here include a vigorously contested motion to dismiss; the exchange of formal discovery; and two mediation sessions overseen by Magistrate Judge Speight, which culminated in an agreement in principle. The success in reaching an agreement was based on a well-developed understanding of the factual and legal issues and the involvement of Judge Speight as a mediator. *See In re Outer Banks Power Outage Litig.*, 2018

WL 2050141, at *3 ("mediation with a highly experienced mediator" supported finding that settlement was the result of "arms-length negotiations"). These circumstances favor approval.

4. Experience of Counsel

Plaintiff's counsel, Relman Colfax PLLC ("Relman Colfax"), is a civil rights law firm based in Washington, D.C., with a national practice. Relman Colfax routinely litigates a wide range of civil rights cases in federal court including many cases, like this one, that involve constitutional claims against government actors, Livengood Decl. ¶ 6, and serves as class counsel for certified class actions, *id.* ¶ 5. Courts have repeatedly found Relman Colfax qualified to serve as class counsel. *See, e.g.*, Walden Tr. (Ex. 5), at 21:25-22:2 ("[C]lass counsel have impressive civil rights and class action litigation experience."); *Moore v. Napolitano*, 926 F. Supp. 2d. 8, 35 (D.D.C. 2013) ("There is no dispute as to whether the plaintiffs' class counsel are appropriate, and there is no indication that class counsel lack the experience and knowledge required to represent the class."). Counsel's experience litigating class actions and constitutional claims gives substantial credence to their representation to the Court herein that the settlement is fair. *See, e.g.*, *Comm'rs of Pub. Works*, 340 F.R.D. at 248.

B. The Adequacy Factors

1. Relative Strength of Plaintiff's Case on the Merits and Difficulties of Proof or Strong Defenses Likely at Trial

The first two adequacy factors are often addressed in tandem. *See, e.g.*, *Haney v. Genworth Life Ins. Co.*, No. 3:22CV55, 2023 WL 174956, at *6 (E.D. Va. Jan. 11, 2023); Fed. R. Civ. P. 23(e)(2) advisory committee's note to 2018 amendment (grouping these two factors together). These factors consider "how much the class sacrifices in settling a potentially strong case in light of how much the class gains in avoiding the uncertainty of a potentially difficult case." *Haney*, 2023 WL 174956, at *6 (quoting *Brown v. Transurban USA, Inc.*, 318 F.R.D. 560,

573 (E.D. Va. 2016)). While undersigned counsel are very confident in the strength of their case, Defendants' Motion to Dismiss demonstrates that there are significant legal hurdles to overcome in order to prevail on the merits. Chief among those hurdles is qualified immunity. "[Q]ualified immunity erects a substantial barrier for plaintiffs," *Kernats v. O'Sullivan*, 35 F.3d 1171, 1177 (7th Cir. 1994), and even if Plaintiff prevails at every stage, because qualified immunity entitles Defendants to interlocutory appeal, *see Mitchell v. Forsyth*, 472 U.S. 511, 530 (1985), it will at the very least prolong the litigation and delay Plaintiff's ability to recover.

Furthermore, in order to succeed on the substantive due process and Eighth Amendment claims, Plaintiff would need to show that Defendants acted with "deliberate indifference," that is, they "(1) . . . had 'subjective knowledge of a risk of serious harm, consisting of continued detention when the plaintiff was entitled to be released'; (2) . . . 'disregarded that risk'; and (3) the disregard was by 'conduct that is more than mere negligence.'" *West v. Prince George's Cnty.*, No. 21-0863, 2022 WL 125936, at *5 (D. Md. Jan. 13, 2022) (citation omitted). Because this is a fact-intensive inquiry, Dkt. 20 at 10, Plaintiff would need jurors to find each of these factors. Defendants would likely argue that, at most, they made mistakes in applying the 2022 ESC law, and thus that their state of mind was not sufficient to incur constitutional liability. While Plaintiff disagrees with this characterization, a fact-finder might not.

In short, there would be genuine factual and legal challenges to prevailing in this case, which favors approval of the proposed settlement.

2. <u>Duration and Expense of Additional Litigation</u>

There is no doubt that litigation of this case through discovery, summary judgment, trial, and perhaps multiple appeals would require substantial additional time and expense. Discovery would include depositions of at least both Defendants, other VDOC officials involved in the

implementation of the ESC program, Plaintiff, and other persons formerly in VDOC custody. *See* Livengood Decl. ¶ 15. The Parties would present dueling experts regarding how to value each day of over-detention in light of both general best practices and the particular circumstances of VDOC custody. *Id.* Trial could be lengthy because there are a large number of potential witnesses; the initial disclosures exchanged by the Parties list dozens of people with knowledge of the facts at issue. *Id.* ¶ 8. Throughout all of this, there would be hard-fought motions practice, as indicated by the history of the litigation to date, and perhaps several interlocutory appeals of qualified immunity, *see Mitchell*, 472 U.S. at 530. And "there is little doubt that a jury verdict for either side would . . . usher[] in a new round of litigation in the Fourth Circuit and beyond, thus extending the duration of the case and significantly delaying any relief for plaintiffs." *In re MicroStrategy, Inc. Sec. Litig.*, 148 F. Supp. 2d 654, 667 (E.D. Va. 2001).

Full litigation, in short, would require several years and millions of dollars in fees and expenses, in addition to the risk of an unfavorable outcome.

3. Solvency of Defendant and Likelihood of Recovery on a Litigated Judgment

Plaintiff does not anticipate difficulty collecting a potential judgment from Defendants.

4. Degree of Opposition

Named Plaintiff Leslie Puryear supports the proposed settlement, *see* Decl. of L. Puryear (Ex. 4) ¶ 16, and no opposition has been identified, *see* Livengood Decl. ¶ 17. If the instant motion is granted, Plaintiff will address at the final approval hearing any opposition articulated after notice is provided to members of the class.

C. Reasonableness

As noted above, there is no specific test used to assess reasonableness in the Fourth Circuit, but several relevant factors favor approval of the proposed settlement.

1. The Size of the Recovery is Reasonable

The settlement achieves an excellent result for the class, especially in light of the legal and factual obstacles that Plaintiff would otherwise need to overcome and the costs of proceeding through trial and appeal. *See supra* sec. I.B.1–2. The settlement reached here will compensate the approximately 53 class members around $118 per day, or $43,070 per year, of over-detention. *See* Settlement Agmt. ¶ 4.a.i. The absolute amount of the payments will be substantial; no class member will receive less than $1,000, *id.*, and approximately three-fourths of the class will receive more than $10,000, *id.* Ex. A. These class members will not have to obtain and pay counsel, file their own cases, respond to discovery requests, or otherwise bear the burdens of litigation in order to obtain these substantial settlement payments.

Compensation of $43,070 per year of over-incarceration is reasonable under the present circumstances. Virginia law provides that persons who are wrongly incarcerated due to a conviction that is later overturned are entitled to $55,000 per year of over-incarceration, plus attorney's fees. *See* Va. Code Ann. § 8.01-195.11(A)(1), (C). This settlement would provide over 50 formerly incarcerated individuals with a recovery that is approximately 80% of that statutory number, without each person having to litigate their claims and engage with thorny legal issues such as qualified immunity. Moreover, Defendants took the position during negotiations that the $55,000 statutory amount is higher than what class members are entitled to because it is the amount set for people who should not have been incarcerated in the first place. While Plaintiff disputes this argument, a jury or Court might find it persuasive.

The recoveries in analogous cases confirm the reasonableness of the settlement amount. For example, in November 2020, a District Court approved a settlement that compensated a class of individuals who were over-detained by the Los Angeles Sheriff's Department up to $25,000

per person, at a rate of $1,000 per day. *See* Preliminary Approval Order, *Roy v. Los Angeles*, No. 2:12-cv-09012 (C.D. Cal. Nov. 25, 2020), Dkt. 610. Those class members remained in jail "after they were acquitted or otherwise ordered released by a judge, or after serving a jail sentence," *id.* at 1, justifying a higher per-day amount than here, but the $25,000 per-person cap is substantially lower than what many class members here will receive, *see* Settlement Agmt., Ex. A. Similarly, a federal court in the District of Columbia approved a settlement that compensated a class of individuals who had been over-detained and/or strip-searched at the D.C. Jail $370 for the first day of over-detention, and $250 per day thereafter. *See* Class Action Settlement Agmt., *Barnes v. District of Columbia*, No. 1:06-cv-00315 (D.D.C. Nov. 4, 2013), Dkt. 465-2. This multiplies out to $91,370 per year of over-detention, but because the *Barnes* class members were over-incarcerated for days or weeks—rather than the months or years alleged here—most payments to the *Barnes* class members would be, individually, lower than those proposed here. As such, the recovery is well within the bounds of reasonableness.

2. <u>The Service Payment to Mr. Puryear Is Reasonable</u>

Fed. R. Civ. P. 23(e)(2)(D) authorizes the payment of incentive awards to named plaintiffs to ensure that the settlement "treats class members equitably relative to each other." *See* William B. Rubenstein, 5 Newberg and Rubenstein on Class Actions § 17:13 (6th ed.) ("To the extent that the class representatives . . . took risks, or protected the class's interests through their work, it is surely equitable to provide them a modest extra payment from the class's recovery."). "The Fourth Circuit has yet to provide clear guidance on the factors to use when assessing the reasonableness of the size of an incentive award," but "several district courts have adopted the test used by the Seventh Circuit that instructs courts to examine 'the actions the plaintiff has taken to protect the interests of the class, the degree to which the class has benefited

from those actions, and the amount of time and effort the plaintiff expended in pursuing the litigation.'" *Burke v. Shapiro, Brown & Alt, LLP*, No. 3:14CV201, 2016 WL 2894914, at *6 (E.D. Va. May 17, 2016) (quoting *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998)).

Here, the class members have benefitted tremendously from Mr. Puryear's steadfast work on their behalf, and he should be compensated accordingly. This is an unusual case, where Mr. Puryear's work on behalf of the class began before the instant class action. Mr. Puryear filed a habeas petition challenging the VDOC policy at issue in this case—excluding people serving sentences for inchoate offenses related to robbery and carjacking from earning expanded credits—in September 2023, which caused VDOC to amend its policy and led to the "Puryear Releases" in November 2023. Mr. Puryear and his wife spent many months securing pro bono counsel to litigate the complex legal issues involved and working with counsel to prepare the habeas petition. *See* Puryear Decl. ¶ 8. Because of his impeccable disciplinary record, *see* Complaint, Dkt. 1, ¶¶ 53–54, Mr. Puryear was a particularly well-suited candidate to bring this habeas petition.

After his release, Mr. Puryear could have brought a civil damages action for himself alone; given the amount of time he was over-incarcerated, 434 days—the longest any class member was overincarcerated was 441 days, *see* Settlement Agmt., Exhibit A—he could have sought a significant monetary recovery for himself. Instead, he chose to represent other similarly harmed individuals, knowing that a class action could be more protracted and involve barriers, such as class certification, not present in an individual case. *See* Puryear Decl. ¶ 12.

And though he brought the action on behalf of a class, Mr. Puryear alone bore the risk of retaliation: Mr. Puryear was on supervised release when he filed the complaint, and suing the head of VDOC, who exercised extraordinary control over his life at the time, *see* Puryear Decl. ¶

13, made Mr. Puryear vulnerable to retaliation. Courts have recognized that class representatives who expose themselves to a risk of retaliation by suing the defendant are entitled to compensation. *See, e.g.*, *In re Peanut Farmers Antitrust Litig.*, No. 2:19-CV-00463, 2021 WL 9494033 (E.D. Va. Aug. 10, 2021) (approving $40,000 service payment to each of six class representatives, who were farmers suing the processing companies who bought their crops, in part because the farmers "pursued the litigation knowing that Defendants might retaliate against them, thus risking their livelihoods"); *Kelly v. Johns Hopkins Univ.*, No. 1:16-CV-2835, 2020 WL 434473 (D. Md. Jan. 28, 2020) (approving $160,000 in service payments across eight named plaintiffs who "risked their reputation and alienation from employers or peers 'in bringing an action against a prominent company [university] in their community'"). This is especially true where a *sole* named plaintiff puts themselves on the line. *See Binotti v. Duke Univ.*, No. 1:20-CV-470, 2021 WL 5366877, at *5–6 (M.D.N.C. Aug. 30, 2021) (approving $65,000 service payment where plaintiff "put her professional career on the line when she came forward" as sole class representative in case against employer). Such is the case for Mr. Puryear, and his service payment should reflect that.

Moreover, as the sole named Plaintiff, Mr. Puryear took on significant reputational harm. Mr. Puryear left prison, as most people do, eager to put the past behind him, but in service of the lawsuit, he put his convictions in the public eye, responding to press inquiries and speaking publicly about the over-detention.[1] As a result, the nature of his conviction is readily apparent online, in a way that is not true for the 52 other class members. The fact that Mr. Puryear has done publicity on the class's behalf should be reflected in his service payment. *See Matheson v.*

[1] *See, e.g.*, Tom Jackman & Laura Vozzella, *Lawsuit: Va. prison leaders kept inmates from early release*, WASH. POST (July 5, 2024), https://www.washingtonpost.com/dc-md-va/2024/07/05/virginia-lawsuit-denial-early-release-puryear/.

T-Bone Rest., LLC, No. 09 CIV. 4214 DAB, 2011 WL 6268216, at *9 (S.D.N.Y. Dec. 13, 2011) ("Media coverage of a class action can benefit the class, and a named plaintiff's involvement in it further supports a service award."); *see also Kelly v. Johns Hopkins Univ.*, 2020 WL 434473, at *7 (recognizing that the class representatives "risked their reputation and alienation from employers or peers" in filing "an action 'against a prominent [university] in their community'") (quoting *Kruger v. Novant Health, Inc.*, No. 1:14CV208, 2016 WL 6769066, at *6 (M.D.N.C. Sept. 29, 2016)).

As the litigation progressed, Mr. Puryear met with counsel in person, by video, and telephonically on many occasions to draft the complaint, respond to written discovery requests, and search for and provide documents. He traveled to Richmond to attend the October 28 full-day mediation in person and virtually attended the second mediation. Throughout the mediation process, he offered valuable input and provided approval at each step of the way—advocating not only for his own interests, but those of the whole class. *See* Puryear Decl. ¶¶ 14–15.

In light of these facts, the $40,000 service payment is reasonable. Courts in this Circuit have regularly approved service payments higher than $40,000. *See, e.g.*, *Binotti*, 2021 WL 5366877, at 5-6 (approving $65,000 payment and collecting cases with payments from $85,000 to $300,000 per plaintiff); *In re Titanium Dioxide Antitrust Litig.*, No. 10-CV-00318, 2013 WL 6577029, at *1 (D. Md. Dec. 13, 2013) (approving $125,000 service payment); *Helmick v. Columbia Gas Transmission*, No. 2:07-cv-00743, 2010 WL 2671506, at *3 (S.D. W. Va. July 1, 2010) (approving $50,000 service payment in addition to regular distribution from settlement proceeds). A $40,000 service payment is particularly reasonable in light of the size of the payments going to each class member. No class member will receive less than $1,000. *See* Settlement Agmt. ¶ 4.a.i. Approximately half of the class will receive payments in excess of

$20,000. Courts have noted that service payments are appropriate where "the relief to the rest of the class is not 'perfunctory.'" *Binotti*, 2021 WL 5366877, at 6 (quoting *Berry v. Schulman*, 807 F.3d 600, 613-14 (4th Cir. 2015)). And the ratio between Mr. Puryear's service payment and what other class members are receiving is, in most cases, no more than 2:1. Courts have approved service payments at a much higher ratio. *See, e.g.*, *id.* (approving service payment which was 20 times higher than payments to class members). The proposed service payment is reasonable.

3. <u>The Attorneys' Fees and Costs are Reasonable</u>

Plaintiff anticipates seeking an award of up to $400,000 for attorneys' fees and expenses, out of the approximately $1.6 million settlement fund.

While "[t]he Fourth Circuit has not explicitly mandated which method district courts should use," "the favored method for calculating attorneys' fees in common fund cases is the percentage of the fund method. . . . And in a fee shifting case, the award is typically calculated using the lodestar method." *Skochin v. Genworth Fin., Inc.*, No. 3:19-CV-49, 2020 WL 6536140, at *3, 4 (E.D. Va. Nov. 5, 2020). Courts will typically apply "one method as the primary calculation and use the other method as a cross check on the reasonableness of the first." *Id.* at 4.

"Once a figure has been calculated using the percentage of the fund or lodestar method, a court must determine if that result is reasonable." *Id.* Given that the Fourth Circuit has been unclear about whether to apply the 12-factor *Johnson* test from the Fifth Circuit or the seven-factor *Gunter* test from the Third Circuit, this Court has applied "both tests to assess the reasonableness of attorneys' fees calculated using the percentage of the fund method." *Id.* at 6.

The *Johnson* test includes the following twelve factors:

> (1) the time and labor expended; (2) the novelty and difficulty of the questions raised; (3) the skill required to properly perform the legal services rendered; (4) the attorney's

> opportunity costs in pressing the instant litigation; (5) the customary fee for legal work; (6) the attorney's expectations at the outset of litigation; (7) the time limitations imposed by the client or circumstances; (8) the amount in controversy and the results obtained; (9) the experience, reputation[,] and ability of the attorney; (10) the undesirability of the case within the legal community in which the suit arose; (11) the nature and length of the professional relationship between attorney and client; and (12) attorneys' fees awards in similar cases.

Id. at 5 (quoting *Brown*, 318 F.R.D. at 577).

> There is significant overlap in the *Gunter* factors, which are:
>
> (1) the results obtained for the class; (2) the quality, skill, and efficiency of the attorneys involved; (3) the complexity and duration of the case; (4) the risk of nonpayment; (5) awards in similar case; (6) objections; and (7) the amount of time devoted to the case by plaintiffs' counsel.

Id. (citing *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 195 n.1 (3d Cir. 2000)).

These factors favor an award of $400,000, or about one-fourth of the common fund. "[T]he most critical factor in determining the reasonableness of a fee award is the degree of success obtained." *Doe v. Chao*, 435 F.3d 492, 506 (4th Cir. 2006) (quoting *Farrar v. Hobby,* 506 U.S. 103, 114 (1992)). Plaintiff's counsel have achieved an extremely successful result here, especially given the difficulty of litigating constitutional damages claims against the government and the vigorous defense mounted by the Office of the Attorney General.

The barriers to prevailing on constitutional claims against the government are significant. In this case, Plaintiff's counsel faced great risk pursuing a legal theory that is not common and devoting hundreds of thousands of dollars' worth of attorney time to a risky lawsuit. *See* Livengood Decl. ¶ 14. Counsel are aware of only one prior lawsuit challenging VDOC's implementation of the new ESC law, and in that case, the Plaintiff lost a motion to dismiss on immunity grounds. *See Swart v. Miyares*, No. 3:23CV753, 2024 WL 466797 (E.D. Va. Jan. 31, 2024). Counsel pursued relief for this Class against that backdrop, distinguishing *Swart* while understanding that it created substantial risk in litigating this case. In light of these challenges,

the result here is remarkable: class members will be paid $43,070 per year of over-incarceration, which represents approximately 80% of what people would receive if the government agreed they should never have been incarcerated in the first place, *see* Va. Code Ann. § 8.01-195.11.

The remaining factors likewise support the fee award. Plaintiff's counsel have a longstanding professional relationship with Mr. Puryear; they represented him *pro bono* in filing the habeas petition that secured his release (and prompted the "Puryear Releases"). *See* Livengood Decl. ¶¶ 7, 9. Counsel have devoted significant time to investigating the underlying claims, drafting the complaint, defending against a hard-fought motion to dismiss, propounding and responding to discovery requests, and negotiating a strong settlement for the class. *Id.* ¶ 14. In order to minimize administration costs and maximize the class members' recovery, Plaintiff's counsel have agreed to take on substantial parts of the settlement administration process. *Id.* ¶ 13.

Another court in this District recently commended counsel's experience, reputation, and ability, *see* Walden Tr. at 21:25-22:2 ("[C]lass counsel have impressive civil rights and class action litigation experience."), and noted the risk assumed by counsel in taking on a class-action lawsuit on a contingency basis, *id.* at 22:7–13, ("Very few lawyers can take on the representation of a class client given the investment of time, substantial time, effort and money, especially in light of the risks of recovering nothing."). The undesirability of the case within the legal community is further evinced by the fee-shifting provisions for both § 1983 cases and cases brought under state law regarding wrongful incarceration. *See* 42 U.S.C. § 1988; Va. Code Ann. § 8.01-195.11(A)(1), (C). "[F]ee awards have proved an essential remedy if private citizens are to have a meaningful opportunity to vindicate the important Congressional policies which these laws contain." S. Rep. No. 94–1011, at 2 (amending 42 U.S.C. § 1988 to shift attorney's fees for prevailing civil rights plaintiffs onto government-defendants). Plaintiff's counsel have shown

they are able and willing to bring constitutional claims against powerful state actors such as VDOC; few others have been willing to do so or capable of achieving similar results.

Fee awards in cases in this Circuit support an award that represents one-fourth of the total settlement. Courts in the Fourth Circuit routinely award a larger portion of the settlement in attorneys' fees. *See, e.g.*, *Galloway v. Williams*, No. 3:19-CV-470, 2020 WL 7482191, at *11 (E.D. Va. Dec. 18, 2020) (final approval of 33% of common fund); *Sims v. BB&T Corp.*, No. 1:15-CV-732, 2019 WL 1993519, at *3 (M.D.N.C. May 6, 2019) (same); *Deem v. Ames True Temper, Inc.*, No. 6:10-CV-01339, 2013 WL 2285972, at *6 (S.D. W. Va. May 23, 2013) (same); *DeWitt v. Darlington Cnty.*, No. 4:11-CV-00740, 2013 WL 6408371, at *7 (D.S.C. Dec. 6, 2013) (preliminary approval of 33.33% of common fund).

Courts using the percentage method often perform a lodestar cross-check to confirm the reasonableness of the percentage award. *See, e.g.*, *In re Cook Med., Inc., Pelvic Repair Sys. Prods. Liab. Litig.*, 365 F. Supp. 3d 685, 701 (S.D. W. Va. 2019). Plaintiff's counsel's lodestar is already over $400,000. *See* Livengood Decl. ¶ 14. This does not account for the time that Plaintiff's counsel will spend defending this motion before the Court, administering the settlement, and seeking final approval. Counsel's recovery will thus be below their lodestar, while the average lodestar multiplier in this Circuit is 2.43. *See* Theodore Eisenberg & Geoffrey P. Miller, *Attorney Fees and Expenses in Class Action Settlements: 1993–2008*, 7 J. EMPIRICAL LEGAL STUD. 248, 272 tbl.14 (2010). Another federal court in this Circuit recently noted the reasonableness of counsel's billing rates. *See* Walden Tr. at 25:1-5 ("Class counsel's hourly rates are well within the goalpost of litigators in their general field of their echelon. Further, counsel's hourly rates are also comfortably within the ranges of rates approved as reasonable in recent

class actions in this circuit . . . ."). In light of these factors, the lodestar multiplier here is reasonable.

In accordance with Fed. R. Civ. P. 23(h) and Fed. R. Civ. P. 54(d)(2), Plaintiff will move for an award of fees in an amount no greater than $400,000 as part of his motion for final approval of the settlement.

II. A SETTLEMENT CLASS SHOULD BE PROVISIONALLY CERTIFIED UNDER RULES 23(a), 23(b)(2), and 23(b)(3).

The Settlement Agreement provides that the settlement will be effectuated through class action treatment, and the Parties will support certification for this purpose. *See* Settlement Agmt. ¶¶ 2–3. For a class to be certified, it must meet the requirements of Fed. R. Civ. P. 23. *Jonathan R. v. Just.*, 344 F.R.D. 294, 302 (S.D. W. Va. 2023). This requires that Plaintiff satisfy each of the four criteria provided in Rule 23(a)(1)-(4), but only one of three subcategories of Rule 23(b). *Id.* Courts "'give Rule 23 a liberal rather than a restrictive construction, adopting a standard of flexibility in application which will in the particular case best serve the ends of justice for the affected parties and . . . promote judicial efficiency.'" *Scott v. Clarke*, 61 F. Supp. 3d 569 (W.D. Va. 2014) ((quoting *Gunnells v. Healthplan Servs., Inc.*, 348 F.3d 417, 424 (4th Cir. 2003)).

In addition to these explicit requirements of Rule 23, the Fourth Circuit has read in an "implicit threshold requirement that the members of a proposed class be readily identifiable." *EQT Prod. Co. v. Adair*, 764 F.3d 347, 358 (4th Cir. 2014) (citation omitted). This requirement, also known as "ascertainability," is clearly met here, where the Parties have compiled a list of all potential class members. *See* Settlement Agmt., Ex. A.

A. Rule 23(a) is Satisfied

1. Rule 23(a)(1) – Numerosity

The Parties' exchange of information during settlement negotiations confirmed that the

proposed class is composed of 53 individuals. *See* Settlement Agmt., Ex. A. This easily satisfies Rule 23(a)(1), requiring that "the class is so numerous that joinder of all members is impracticable." *In re Zetia (Ezetimibe) Antitrust Litig.*, 7 F.4th 227, 233–34 (4th Cir. 2021) (finding that a class of 40 or more members raises a presumption of impracticability of joinder based on numbers alone).

2. Rule 23(a)(2) – Commonality

To satisfy commonality, "a single common question will do." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 359 (2011). Commonality is present when the claims of class members "depend upon a common contention . . . . [that is] capable of classwide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Id.* at 350. "This does *not* mean, of course, that the entire *case* must be decided by a single issue." *Soutter v. Equifax Info. Servs., LLC*, 307 F.R.D. 183, 200 (E.D. Va. 2015). Moreover, the Fourth Circuit has recognized that "a class action will not be defeated solely because of some factual variances in individual grievances" when there are common questions of law. *Williams v. Big Picture Loans, LLC*, 339 F.R.D. 46, 58 (E.D. Va. 2021), *aff'd sub nom. Williams v. Martorello*, 59 F.4th 68 (4th Cir. 2023) (internal quotation marks and citation omitted).

Here, several common factual and legal questions are central to resolving this dispute and capable of class-wide resolution, satisfying Rule 23(a)(2). These include how Defendants determined which categories of offenses were excluded from expanded ESCs under Va. Code Ann. § 53.1-202.3(A); what Defendants' policy was regarding ESC eligibility for people convicted of inchoate offenses related to robbery and carjacking; what roles VDOC officials played in making, promulgating, and enforcing VDOC policy around ESCs; and whether

Defendants' policy and practice of denying ESCs (and thus release) for inchoate versions of robbery or carjacking violated the substantive or procedural due process protections of the Fourteenth Amendment, the Eight Amendment's prohibition against cruel and unusual punishment, and/or the right to be free from false imprisonment under Virginia law. Cases like this, where Plaintiff's allegations are based on VDOC's "standardized conduct," are especially appropriate for class treatment. *Williams v. Big Picture Loans*, LLC, 339 F.R.D. 46, 61 (E.D. Va. 2021), *aff'd sub nom. Williams v. Martorell*o, 59 F.4th 68 (4th Cir. 2023). Standardized conduct allows key questions—*e.g.*, how did VDOC determine who was eligible for expanded ESCs— to be answered "in one stroke," *Dukes*, 564 U.S. at 350, for the whole class.

3. Rule 23(a)(3) – Typicality

"The essence of the typicality requirement is captured by the notion that 'as goes the claim of the named plaintiff, so go the claims of the class.'" *Big Picture Loans, LLC*, 339 F.R.D. at 58 (quoting *Deiter v. Microsoft Corp.*, 436 F.3d 461, 466 (4th Cir. 2006)). Typicality does not mandate that the class representative's claims are identical to those of the class; instead, the representative "must generally be part of the class and have 'the same interest and suffer the same injury as the class members.'" *Id. See also Brown*, 318 F.R.D. at 567.

Mr. Puryear's claims are typical of the Class. Mr. Puryear was incarcerated by Defendants for inchoate offenses related to robbery; engaged in good conduct and program participation; and was subject to prolonged and illegal detention pursuant to Defendants' uniform policy of excluding persons serving sentences for inchoate offenses related to robbery and/or carjacking from the expanded ESC program. *See* Puryear Decl. ¶¶ 2–8. This is precisely what is alleged as to the Class, Compl. ¶¶ 12–20, and satisfies the typicality requirement.

4. Rule 23(a)(4) – Adequacy of Representation

"The adequacy inquiry . . . serves to uncover conflicts of interest between named parties and the class they seek to represent." *Sharp Farms v. Speaks*, 917 F.3d 276, 295 (4th Cir. 2019) (quoting *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 625 (1997)). "For a conflict of interest to defeat the adequacy requirement, 'that conflict must be fundamental.'" *Id.* (quoting *Ward v. Dixie Nat. Life Ins. Co.*, 595 F.3d 164, 179 (4th Cir. 2010)); *see also Nelson v. Warner*, 336 F.R.D. 118, 124 (S.D. W. Va. 2020) (noting that "[o]nly conflicts that . . . go to the heart of the litigation prevent a plaintiff from meeting . . . the adequacy requirement").

No conflict, let alone a substantial one, exists between Mr. Puryear and other members of the proposed class. In fact, all share an interest in being compensated for the damages caused by over-detention due to VDOC's uniform policy of denying expanded ESCs to individuals convicted of inchoate offenses related to robbery and/or carjacking.

Class counsel's competence and experience is also a factor in determining adequacy of representation. *Thomas v. FTS USA, LLC*, 312 F.R.D. 407, 419-20 (E.D. Va. 2016). As described above, undersigned counsel have experience in both constitutional and class action litigation. *See* supra sec. I.A.4. By their litigation of this case, *see, e.g.*, Dkt. 20, counsel have demonstrated that they are able and firmly committed to zealously pursuing the class members' interests.

B. Rule 23(b)(3) is Satisfied

Classes seeking monetary relief are subject to the certification requirements of Rule 23(b)(3). *Dukes*, 564 U.S. at 362. The class here satisfies Rule 23(b)(3)'s two relevant criteria: (1) "questions of law or fact common to class members predominate over any questions affecting only individual members, and (2) "a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3).

Predominance. – The common questions detailed above, *see supra* sec. II.A.2, are the predominant issues pertaining to liability, and the resolution of those questions will serve as the basis for liability determinations as to each of the causes of action at issue. Those common questions predominate over the only potentially individualized issue: damages. "Courts in every circuit have uniformly held that the 23(b)(3) predominance requirement is satisfied despite the need to make individualized damage determinations." *Reed v. Alecto Healthcare Servs., LLC*, 2022 WL 4115858, at *7 (N.D. W. Va. July 27, 2022). This is particularly so here, where the Parties have agreed that individual damages will be determined formulaically according to a per-day amount, a method courts have found appropriate in similar cases. *See Langley v. Coughlin*, 715 F. Supp. 522, 558 (S.D.N.Y. 1989) ("[C]ourts have been perfectly willing, . . . to award *per diem* damages to an inmate unconstitutionally confined.").

Superiority. – Rules 23 identifies four (non-exhaustive) factors that are pertinent to this inquiry:

(A) the class members' interests in individually controlling the prosecution or defense of separate actions;

(B) the extent and nature of a litigation concerning the controversy already begun by or against class members;

(C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and

(D) the likely difficulties in managing a class action.

Id. Subsection (D) is not relevant to a settlement-only class. *Brown*, 318 F.R.D. at 569 ("With settlement classes, . . . courts need not consider the last factor, 'whether the case, if tried, would present intractable management problems, for the proposal that there will be no trial.'") (quoting *Amchem Prod.*, 521 U.S. at 593).

The relevant factors all support certification here. The "dominant[]" purpose of factor (A) is to provide for the "vindication of the rights of groups of people who individually would be without effective strength to bring their opponents into court at all." *Bicking v. Mitchell Rubenstein & Assocs., P.C.*, No. 3:11CV78, 2011 WL 5325674, at *4 (E.D. Va. Nov. 3, 2011) (quoting *Amchem Prod.*, U.S. at 617); *see also In re TD Bank, N.A. Debit Card Overdraft Fee Litig.*, 325 F.R.D 162 (D.S.C. 2018) (finding that "the vast majority of class members have a de minimis interest in individually controlling the prosecution of their . . . claims because the monetary value of their damages would be dramatically outweighed by the cost of litigation an individual case"). The lack of economic resources and incentives for individual class members to bring their own suits are key considerations, *see Pitt v. City of Portsmouth*, 221 F.R.D. 438, 445-46 (E.D. Va. 2004), both of which are present in this case. People who are incarcerated—as the class members necessarily have been—are disproportionately poor[2] and face significant hurdles in obtaining counsel and bringing private litigation. Many of the same challenging factual and legal issues identified above, *see supra* sec. I.B.1, would be present in individual, non-class litigation. As described above, a fair individual recovery in this case could be in the tens of thousands of dollars, which would not justify the substantial cost required to demonstrate Defendants' liability for damages. Given the costliness of individual litigation, this factor supports class certification.

As to the factor in subsection (B), Mr. Puryear is unaware of any other litigation concerning the controversy detailed in the complaint. The factor in subsection (C) has been

[2] *See* Bernadette Rabuy & Daniel Kopf, *Prisons of Poverty: Uncovering the pre-incarceration incomes of the imprisoned*, PRISON POLICY INITIATIVE (July 9, 2015), https://www.prisonpolicy.org/reports/income.html.

addressed and satisfied because Defendants reside in this District and the events giving rise to the claims occurred within this District. Defs. Answer, Dkt. 19, ¶¶ 21–22.

C. Plaintiff's Counsel Satisfy Rule 23(g) Requirements

Rule 23(g) requires the Court to appoint class counsel when it certifies a class. Plaintiff's counsel have carefully investigated the potential class claims in this action; have substantial experience in class action litigation, including complex civil rights matters; are knowledgeable about the law relevant to this action; and have committed significant resources to representing the class. *See supra* sec. I.A.4. Accordingly, class counsel fairly and adequately represents the interest of the class. *See* Fed. R. Civ. P. 23(g)(1) & (4).

III. THE PROPOSED CLASS NOTICE SHOULD BE DISSEMINATED TO THE CLASS.

Prior to finally approving the proposed settlement, the Court "must direct notice in a reasonable manner to all class members who would be bound by the proposal." Fed. R. Civ. P. 23(e)(1). Because Plaintiff requests certification (in part) under Rule 23(b)(3), the notice must be "the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B). Similarly, due process requires reasonable notice and the opportunity to be heard or withdraw from the class. *See McAdams v. Robinson*, 26 F.4th 149, 157–58 (4th Cir. 2022); *see also Good v. Am. Water Works Co., Inc.*, No. CV 2:14-01374, 2016 WL 5746347, at *9 (S.D. W. Va. Sept. 30, 2016) (explaining that the notice should not be "a long brief of the parties' positions" (citation omitted)).

The Settlement Agreement provides that notice of the settlement will be sent by the Settlement Administrator to the individual class members in the form attached as Exhibit B to the Settlement Agreement via first-class U.S. mail and email. VDOC has social security numbers

for all class members and will provide the records necessary to ascertain the identity and last-known contact information of each class member—because almost all class members are on supervised release, VDOC has up-to-date information—and the Parties will seek up-to-date contact information for any class member whose notice is returned undeliverable. *See* Settlement Agmt. ¶ 13. First-class mailing in conjunction with tracing satisfies Rule 23 and due process where, as here, the Parties have addresses, social security numbers, and phone numbers of the class members. *See Thorpe v. Va. Dep't of Corr.*, No. 2:20CV00007, 2023 WL 5038692, at *5 (W.D. Va. Aug. 8, 2023); *Minter v. Wells Fargo Bank, N.A.*, 283 F.R.D. 268, 275 (D. Md. 2012). Emails will make the notice process even more effective. The notice will be provided to class members with adequate time for them to decide if they want to object or opt out. *See* Settlement Agmt. ¶¶ 14–16 (opt-outs, objections, and rescissions due 60, 75, and 90 days after Order for Notice and Hearing, respectively).

The content of the proposed notice is also sufficient. As required under Rule 23(c)(2)(B) and Rule 23(e)(5), it describes the case and terms of settlement, provides the class definition, tells class member that they may appear through an attorney, tells them that they may be excluded from the class or object to the settlement and how to do so, and explains the binding effect of a class judgment on class members. The notice also describes the process by which class members will receive payments and allows them to select a method of payment if the settlement receives final approval. *See* Settlement Agmt., Ex. B.

Because the proposed notice satisfies the requirements of due process and Rule 23, its distribution to the class should be approved.

IV. PROPOSED SCHEDULE RELATED TO FINAL APPROVAL

If the Court grants preliminary approval of the proposed settlement, Plaintiff proposes the following schedule for the remaining procedural steps leading to the Court's final review:

Deadline for sending notice to Class Members identified on the basis of VDOC records	21 days after entry of the Court's order preliminarily approving the settlement
Deadline for opting out	60 days after entry of the Court's order preliminarily approving the settlement
Deadline for filing objection	75 days after entry of the Court's order preliminarily approving the settlement
Deadline for rescinding opt-out	90 days after entry of the Court's order preliminarily approving the settlement
Deadline for Plaintiff to file motion for final approval of settlement and to respond to any objections	100 days after entry of the Court's order preliminarily approving the settlement
Final Fairness Hearing	After final motion filing, at the Court's convenience

This schedule is reflected in the Settlement Agreement and its attachments. If this schedule is not convenient for the Court, Plaintiff requests that the Court use the same or greater intervals between each event listed to provide all Parties sufficient time to comply and to provide class members sufficient time to review the terms of the proposed settlement, consider their options, and act accordingly.

Date: December 16, 2024

Respectfully Submitted,

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**Admitted pro hac vice*

***Pro hac vice application pending*

CERTIFICATE OF SERVICE

I hereby certify that on December 16, 2024, a true and correct copy of the foregoing Plaintiff's Memorandum of Law in Support of Plaintiff's Unopposed Motion for Preliminary Approval of Proposed Class Action Settlement, Provisional Certification of Settlement Class, and Approval of Notice was served via CM-ECF on all attorneys of record.

Date: December 16, 2024

/s/ Michael Allen
Michael Allen

Attorney for Plaintiff

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

LESLIE PURYEAR, *on behalf of himself and all those similarly situated*, Plaintiff, v. CHARWICK DOTSON, *in his individual capacity*, HAROLD CLARKE, *in his individual capacity*, Defendants.	Civil Action No. 3:24-cv-00479-REP

SETTLEMENT AGREEMENT

This Settlement Agreement, dated December 16, 2024 ("Settlement Agreement"), is entered into pursuant to Rule 23 of the Federal Rules of Civil Procedure. Subject to the approval of the Court, the Settlement Agreement is entered into among Defendants Chadwick Dotson and Harold Clarke ("Defendants"), and Plaintiff Leslie Puryear, individually and on behalf of those similarly situated. Defendants and Plaintiff are the "Parties."

BACKGROUND

Plaintiff Leslie Puryear alleges on behalf of himself and a class of similarly situated individuals that the Virginia Department of Corrections ("VDOC") denied them expanded earned sentence credits ("ESCs") to which they were statutorily entitled as of July 1, 2022, and thus imprisoned them for days, weeks, or months after they were entitled to release from incarceration. Defendants are the current and former Directors of VDOC, Chadwick Dotson and Harold Clarke, respectively. Mr. Puryear brings claims under 42 U.S.C. § 1983, alleging

violations of his Fourteenth Amendment rights to substantive and procedural due process as well as his Eighth Amendment right against cruel and unusual punishment, and under Virginia state law, alleging false imprisonment.

In 2020, the Virginia General Assembly amended the state's ESC program to allow most persons in VDOC custody to earn up to 15 ESCs for every 30 days in prison, except for individuals serving sentences for certain offenses enumerated in the statute, who can earn only 4.5 ESCs per 30 days served. One credit equals one day deducted from a person's carceral sentence. Mr. Puryear alleges that Defendants wrongfully included inchoate offenses associated with robbery and carjacking on the list of offenses excluded from expanded ESCs, such that VDOC over-detained him. After Mr. Puryear filed a petition for a writ of habeas corpus, VDOC changed its policy, retroactively granted expanded ESCs to Mr. Puryear and others serving sentences for inchoate offenses related to robbery or carjacking, and released those who were eligible. This group included 30 people. Furthermore, between September 1, 2022, when the expanded ESC statute went into effect, and November of 2023, 23 additional people serving sentences for inchoate offenses related to robbery or carjacking were denied expanded ESCs and were released later than they would have been had they been given the expanded ESCs to which they were entitled. Both groups—the 30 people released in November 2023 and the 23 people released between September 1, 2022 and November 2023—are part of the class.

This case was filed in the United States District Court for the Eastern District of Virginia on June 28, 2024. Defendants subsequently filed a Motion to Dismiss, to which Mr. Puryear responded, and Defendants replied. While that motion was pending, the Court directed the Parties to hold a Rule 26 conference and exchange written discovery. The Parties compiled. At a Rule 16 conference shortly thereafter, the Court referred the Parties to mediation in front of

Magistrate Judge Summer L. Speight. The Parties and their Counsel conducted discussions and arm's length negotiations with respect to a compromise and settlement of this case at mediation sessions on October 28 and November 1, 2024.

Mr. Puryear, without conceding any infirmity in his claims, and Defendants, without admitting or conceding any fault or liability whatsoever, and without conceding any infirmity in their defenses, have concluded that further litigation of this action would be lengthy and expensive and that it is desirable that the litigation be fully and finally settled in the manner and upon the terms and conditions set forth in this Settlement Agreement to limit further expenses and inconvenience and to dispose of burdensome and likely protracted litigation.

Mr. Puryear and his Counsel have concluded that the terms and conditions of this Settlement Agreement are fair, reasonable and adequate to Mr. Puryear and the Class, and in their best interests, and have agreed to settle the claims raised in the Civil Action pursuant to the terms and provisions of this Settlement Agreement, after considering: (i) the benefits that Plaintiff and the members of the Class will receive from the Settlement Agreement; (ii) the attendant risks of litigation; (iii) the difficulties, expense and delays inherent in such litigation; (iv) the belief of Plaintiff that the Settlement is fair, reasonable, and adequate, and in the best interest of all Class Members; and (v) the desirability of permitting the Settlement to be consummated as provided by the terms of this Settlement Agreement.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and among Plaintiff, the Class, and Defendants, subject to the approval of the Court pursuant to the procedures mandated by Federal Rule of Civil Procedure 23(e), as follows:

I. DEFINITIONS

1. The following terms, as used in this Settlement Agreement, have the following meanings:

a. "Civil Action" means the above-styled litigation.

b. "Class" and "Settlement Class" mean all Class Members, excluding (1) the District and Magistrate Judges presiding over this action and members of their families; (2) Defendants and members of their families; (3) persons who properly execute and file a timely request for exclusion from the class; and (4) the legal representatives, successors or assigns of any such excluded persons.

c. "Class Member" means any individual in the custody of VDOC as of July 1, 2022 serving a sentence for an inchoate crime associated with robbery or carjacking; who was not awarded expanded ESCs on those inchoate offenses under Virginia Code § 53.1-202.3(B), as amended; who was released from VDOC custody on or before November 30, 2023; and who would have been released earlier than they were had they been awarded expanded ESCs as of July 1, 2022. "Class Member" is limited to those individuals who were excluded from earning expanded ESCs solely because of an inchoate robbery and/or carjacking offense. The list of potential Class Members and number of days they served past their release dates as calculated with expanded ESCs as currently known to the Parties is contained in **Exhibit A** to this Settlement Agreement.

d. "Court" means the United States District Court for the Eastern District of Virginia, through the Judge assigned to the Civil Action.

e. "Defendants" means Chadwick Dotson, Director of the Virginia Department of Corrections, in his individual capacity; and Harold Clarke, Former Director of the Virginia Department of Corrections, in his individual capacity.

f. "Defense Counsel" means the Virginia Office of the Attorney General.

g. "Effective Date" means the date upon which the Settlement contemplated by this Settlement Agreement shall become effective, as set forth in paragraph 32.

h. "ESCs" means earned sentence credits as established by the Virginia General Assembly in Virginia Code § 53.1-202.2 *et seq.* effective January 1, 1995.

i. "Escrow Account" means a non-interest-bearing federally insured account on behalf of Plaintiff and the Class designated and controlled by the Settlement Administrator.

j. "Expanded ESCs" means expanded earned sentence credits as established by the Virginia General Assembly in Virginia Code § 53.1-202.2 *et seq.* effective July 1, 2022.

k. "Notice" means the Notice of Proposed Settlement of Class Action, which is to be sent to Class Members substantially in the form attached hereto as **Exhibit B**.

l. "Notice and Opt-Out Period" means the period of time between when Notice is sent to the Class Members, and the Court-established deadline for opting out of the Settlement Class.

m. "Order and Final Judgment" means the Order Granting Approval of Proposed Class Action Settlement, and Certification of Class, to be entered by the Court substantially in the form attached hereto as **Exhibit C**.

n. "Order for Notice and Hearing" means the Order Granting Preliminary Approval of Proposed Class Action Settlement, Provisional Certification of Class and Approval of Notice, to be entered by the Court substantially in the form attached hereto as **Exhibit D**.

o. "Per Diem Total" is the amount that Defendants actually deposit into the Escrow Account as payment for class members after the Notice and Opt-Out Period.

p. "Plaintiff's Counsel" means the law firm of Relman Colfax, PLLC.

q. "Peer-to-peer payment" means PayPal or Venmo.

r. "Released Claim(s)" means those claims defined in Section IX.

s. "Settlement" means the settlement embodied by this Settlement Agreement.

t. "Settlement Administrator" means Settlement Services, Inc.

u. "Settlement Administration Costs" means costs and expenses of the Notice and instructions to Class Members and administration of the Settlement Fund, escrow fees, Taxes, custodial fees, and expenses incurred in connection with distributing the Settlement Fund, providing any necessary tax forms to Class Members, and all other costs incurred in connection with administering the Settlement.

v. "Settlement Fund" means all the cash amounts paid by or on behalf of Defendants in settlement of the Civil Action.

w. "Taxes" means all (i) taxes on the income of the Settlement Fund and (ii) expenses and costs incurred in connection with the taxation of the Settlement Fund (including, without limitation, expenses of tax attorneys and accountants).

x. "VDOC" means the Virginia Department of Corrections.

II. SETTLEMENT CLASS

2. The Parties agree and stipulate that for purposes of resolution of claims for monetary relief, pursuant to the Court's approval, the putative Class should be certified under Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure.

3. The Parties agree that the following plaintiff class should be approved and certified pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure: all individuals in the custody of the VDOC as of July 1, 2022 serving sentences for an inchoate crime associated with robbery or carjacking; who were not awarded expanded ESCs on those inchoate offenses under Virginia Code § 53.1-202.3(B), as amended; who were released from VDOC custody on or before November 30, 2023; who would have been released earlier than they were had they been awarded the expanded earned sentence credits as of July 1, 2022; and who were denied expanded ESCs solely because of their inchoate robbery and/or carjacking offense.

III. RELIEF TO CLASS MEMBERS

4. In full, complete and final resolution of the claims asserted or that could have been asserted in the Civil Action, and subject to the satisfaction of all the terms and conditions of this Settlement Agreement, Defendants agree to pay or cause to be paid the following funds, which shall constitute the Settlement Fund. The Settlement Fund shall be distributed as follows:

a. Payments to Class Members: Within sixty (60) days following the Effective Date, Defendants shall pay or cause to be paid the Per Diem Total into the Escrow Account.

i. A preliminary amount of $1,139,694 amount has been calculated assuming a preliminary estimate of 9,646 total days of over-detention across all Class Members, compensated at $43,070/year, or $118/day, plus compensation of $1,000 for class members whose award would otherwise be less than $1,000. Should any Class Member opt out of the Settlement Class during the Notice and Opt-Out Period, that Class Member's pro rata share of the Settlement Fund, as stated in Exhibit A, shall be deducted from the amount that Defendants are required to pay into the Escrow Account.

Furthermore, the Parties understand that one Class member, Jorge Jovel, was deported shortly after he was released from VDOC custody. The Parties will make best efforts to contact Mr. Jovel during the Notice and Opt-Out Period. If they are unable to reach Mr. Jovel during this Period, Defendants will not be responsible for funding Mr. Jovel's pro rata share of the Settlement Fund. Finally, if the Court approves a service payment of less than $40,000 to Mr. Puryear, the difference between $40,000 and Mr. Puryear's actual service payment shall be added into the Per Diem Total and redistributed to the Settlement Class pro rata.

ii. Within twenty-one (21) days after receipt of the Per Diem Total into the Escrow Account, the Per Diem Total shall be distributed pro rata to the Settlement Class based on the number of days that each individual was over-detained, *i.e.*, the number of days between when the individual would have been released had they been given retroactive expanded ESCs as of July 1, 2022, and when the class member was actually released. Should any Settlement Class member's payment be less than $1,000, the payment shall be revised upward to $1,000, and payments to other members of the Settlement Class shall be revised downward, so that the total amount distributed to members of the Settlement Class does not exceed the total value of the Escrow Account.

iii. If the Class Member has informed the Settlement Administrator during the Notice and Opt-Out Period pursuant to the process specified in the Notice (**Exhibit B)** that they prefer to receive payment via peer-to-peer payment and provided the Settlement Administrator with the information necessary to make a peer-to-peer payment, and the Class Member's payment amount does not disqualify them from peer-to-peer payment, the Settlement Administrator shall disburse the Class Member's payment via their chosen

peer-to-peer payment method. If the Class Member has not elected otherwise, the Settlement Administrator shall mail a check to the Class Member's last known address, *i.e.*, the address to which the Class Member has indicated the payment should be sent during the Notice and Opt-Out Period pursuant to the process specified in the Notice (**Exhibit B**), or if no address was indicated, the address to which the most recent Notice not returned undeliverable was sent.

iv. The number of days that each member of the Settlement Class was over-detained as presently known to the Parties is stated in **Exhibit A**. Shall any member's number of days of over-detention be revised, pursuant to the procedures laid out in Section V (Administration of Notice), the Parties shall draft a revised version of Exhibit A and submit it to the Court along with their Motion for Final Approval of Proposed Class Action Settlement.

v. If for any reason any portion of the Per Diem Total money remains in the Escrow Account one year after distribution of payments from the Escrow Account to the Settlement Class, all such remaining money shall be donated to a third-party non-profit organization mutually agreed upon by the Parties.

b. Service Payment: The Parties agree that Plaintiff Leslie Puryear is entitled to reasonable compensation for his service as the sole Named Plaintiff and putative class representative in this litigation. Defendants agree not to oppose Plaintiff's Counsel's petition to the court for up to $40,000 as a service payment to Mr. Puryear. Within sixty (60) days following the Effective Date, Defendants shall pay or cause to be paid $40,000 into the Escrow Account. Within twenty-one (21) days of the receipt of this amount into the Escrow Account, the Settlement Administrator shall pay the amount that the Court approved as a

service payment to Mr. Puryear via the same method of payment used to issue his payment under paragraph 4(a). Any difference between $40,000 and the amount that the Court approved as a service payment shall be added to the Per Diem Total and distributed among the Class Members pro rata.

c. Attorneys' Fees: The Parties agree that Plaintiff, the Settlement Class, and Plaintiff's Counsel are entitled to recover reasonable attorneys' fees and costs in an amount of no more than $400,000. This amount is equal to approximately 25% of the total Settlement Fund. Defendants agree not to oppose Plaintiff's Counsel's petition to the Court for up to $400,000 in attorneys' fees and costs. Within sixty (60) days following the Effective Date, Defendants shall pay or cause to be paid the amount that the Court finally approves in attorneys' fees and costs, up to $400,000, into the Escrow Account. Within twenty-one (21) days after the receipt of this amount into the Escrow Account, the Settlement Administrator shall pay the funds to Plaintiff's Counsel via check or wire transfer made out to Relman Colfax PLLC, 1225 19th Street N.W., Suite 600, Washington, D.C. 20036.

d. Administration Costs: Within sixty (60) days following the Effective Date, Defendants shall pay or cause to be paid $20,000 into the Escrow Account as compensation for the Settlement Administrator. These funds may be dispersed, as reasonably required and without further approval of the Court, to pay Settlement Administration Costs incurred by the Settlement Administrator. Prior to withdrawing any funds from the Escrow Account as payment, the Settlement Administrator shall provide an invoice to both Parties detailing the Administrator's activities to-date and the amount to be billed. Upon receipt, the Parties shall have ten (10) days to object to the invoice. Any disputes regarding the invoice shall be resolved in accordance with the Dispute Resolution Procedures in Section VIII of this

Agreement. If no Party has objected within ten (10) days of the issuance of the invoice, the Settlement Administrator may then pay itself the amount of the invoice from the Escrow Account. The Settlement Administrator has agreed that the Settlement Administration Costs will not exceed $20,000 total.

5. The Settlement Administrator shall provide Counsel for both Parties with a report thirty (30) days after the first payments to Class Members are made, and every thirty (30) days thereafter, outlining the status of each payment (*i.e.*, what method of payment was used; if check, has it been cashed; etc.). The Parties shall make best efforts to contact Class Members who have not yet cashed their checks or otherwise received payment and notify them of their payment. If the Class Member indicates to any party that they would prefer a different method of payment and/or that they would prefer their check be mailed to a different address, the party shall provide this information to the Settlement Administrator and all other parties within two (2) days. Within three (3) days of receiving such information, the Settlement Administrator shall re-issue the payment to the Class Member's preferred method/address, and if necessary, cancel prior checks or payments.

6. The Settlement will be non-recapture; *i.e.*, it is not a claims-made settlement. Defendants have no ability to keep or recover any of the Settlement monies unless the Settlement Agreement does not become effective. Notwithstanding this provision, if the actual Settlement Administration Costs total less than $20,000, the difference between the Settlement Administration Costs and $20,000 shall revert back to Defendants after the Settlement Administrator has been paid for its final invoice.

7. The Settlement Administrator shall provide Class Members and Plaintiff's Counsel with all necessary documentation regarding their payments, including any necessary tax reporting forms.

7. The Settlement Administrator shall be solely responsible for timely filing all informational and other tax returns necessary to report any net taxable income earned by the funds in the Escrow Account and shall timely file all informational and other tax returns necessary to report any income earned by the funds in the Escrow Account and shall be solely responsible for timely taking out of the funds in the Escrow Account, as and when legally required, any tax payments, including interest and penalties due on income earned by the funds in the Escrow Account. All Taxes (including any interest and penalties) due with respect to the income earned by the funds in the Escrow Account shall be paid from the Settlement Fund. Defendants shall have no responsibility to make any filings relating to the Settlement Fund and will have no responsibility to pay taxes on income earned by the Settlement Fund or pay any taxes on the Settlement Fund, unless the Settlement is not consummated and the Settlement Fund is returned. In the event the Settlement is not consummated, Defendants shall be responsible for the payment of all taxes (including any interest or penalties) on said income.

IV. ORDER FOR NOTICE AND HEARING

8. Concurrently with submission of this Settlement Agreement, Plaintiff shall submit to the Court an unopposed motion for entry of the Order for Notice and Hearing, requesting preliminary approval of the Settlement and certification of the Class; and authorization to disseminate Notice of such certification of the Class, of the Settlement, and of the final judgment contemplated by this Settlement Agreement to all known Class Members.

9. Defendants agree to affirmatively support Plaintiff's motion and agree that the relief sought by Plaintiff's motion is fair and adequate, and that the Court should grant it in its entirety.

V. ADMINISTRATION OF NOTICE

10. Within five (5) days after the date of entry of the Order for Notice and Hearing, Defendants shall prepare and deliver an Excel spreadsheet to the Settlement Administrator containing the names, Social Security Numbers, last known addresses, last known telephone numbers, last known email addresses, and dates of over-incarceration of all potential Class Members ("Class Intake List"). Defendants shall simultaneously provide a copy of the spreadsheet to Plaintiff's Counsel.

11. Within twenty-one (21) days after the date of entry of the Order for Notice and Hearing, the Settlement Administrator shall cause a Notice substantially in the form of **Exhibit B** to be distributed via first class mail and email to the most recent contact information for the individuals on the Class Intake List, to the extent mailing and email addresses are available.

12. No later than the date on which the Settlement Administrator first distributes the Notice, the Settlement Administrator shall maintain and staff with live persons a toll free "800" line to receive calls from Class Members between the hours of 9:00 a.m. and 7:00 p.m. (Eastern Standard Time), Mondays through Fridays. At all other times, the line shall be answered by a voicemail message recording device. These hours of telephone coverage shall be subject to revision and modification upon agreement of the Plaintiff and Defendants based on the recommendation of the Settlement Administrator. The live persons staffing the "800" line shall be trained to provide information consistent with the Notice, and the voicemail message shall use language agreed upon by Plaintiff and Defendants.

13. For each Notice mailed to a person on the Class Intake List and returned as undeliverable, the Settlement Administrator shall notify Plaintiff's Counsel and Defense Counsel within two (2) days after receipt of any undeliverable Notice. Counsel shall endeavor to obtain any likely current address(es) of the Class Member, including by obtaining updated contact information from the Class Member's probation/parole officer, and provide it to the Settlement Administrator within five (5) days thereafter. The Settlement Administrator shall simultaneously conduct address "tracing." Within two (2) days after receipt of additional address(es), the Settlement Administrator shall re-mail the Notice to any address(es) provided by the Parties and/or by tracing. Plaintiff's Counsel, Defense Counsel, and Settlement Administrator will take comparable steps with respect to email addresses determined not to be accurate.

14. Class Members who wish to present objections to the proposed Settlement must do so in writing as specified by the procedure in the Notice. Written objections must be mailed and postmarked no later than 75 days after entry of the Order for Notice and Hearing to the United States District Court for the Eastern District of Virginia, 701 East Broad Street, Richmond, VA 23219, and to Plaintiff's Counsel and Defense Counsel. In the event the Settlement Administrator receives a written objection, within five (5) days of receipt, the Settlement Administrator shall serve copies on Plaintiff's Counsel, who will electronically file the written objection with the Court and cause the written objections to be served electronically on Defense Counsel contemporaneously therewith.

15. Class Members who wish to opt out of the proposed Settlement must do so in writing as specified by the procedure in the Notice. Requests to opt out of the proposed Settlement must be received by the Settlement Administrator within 60 days after entry of the Order for Notice and Hearing. The Settlement Administrator shall determine whether a Class

Member has timely satisfied the procedure set forth in the Notice. Within three (3) days of receipt of an opt-out, the Settlement Administrator shall serve copies on Plaintiff's Counsel and Defense Counsel.

16. Any Class Member who exercises the right to opt out of the proposed Settlement shall have a right to rescind his or her opt-out by following the procedure specified in the Notice. Opt-out rescissions must be received by the Settlement Administrator within 90 days after the entry of the Order for Notice and Hearing. The Settlement Administrator shall determine whether a Class Member has timely satisfied the procedure set forth in the Notice. The parties agree that it would be appropriate and beneficial for the Court, through the offices of a Magistrate Judge or otherwise, to communicate with opt-outs prior to the rescission deadline regarding their decision to opt out.

17. Within 95 days after entry of the Order for Notice and Hearing, the Settlement Administrator shall serve all requests to opt out of the proposed Settlement, and any rescissions, on Plaintiff's Counsel and Defense Counsel. The Settlement Administrator shall retain copies of all requests to opt out and rescissions in its files until such time as it is relieved of all duties and responsibilities under this Settlement Agreement.

VI. TERMS AND ORDER OF FINAL JUDGMENT

18. Within one hundred (100) days after the date of entry of the Order for Notice and Hearing, Plaintiff shall move the Court to enter an Order and Final Judgment substantially in the form attached hereto as **Exhibit D** and shall file a memorandum addressing any timely-filed written objections to the Settlement. An updated version of Exhibit A shall be attached to that motion pursuant to paragraph 4(a)(iv).

19. Defendants agree that the relief requested by Plaintiff is fair and adequate and that the Court should grant Plaintiff's motion in its entirety. Defendants agree not to oppose Plaintiff's motion for attorney's fees and agree to affirmatively support the remainder of Plaintiff's motion.

20. The proposed Order and Final Judgment shall provide for the following:

a. Approval of the final Settlement of the claims asserted or that could have been asserted in the Civil Action arising, in whole or in part, from the facts asserted in the Civil Action, including a service payment to Plaintiff; adjudging the Settlement to be fair, reasonable and adequate; directing consummation of the terms and provisions of the Settlement Agreement; and requiring the Parties to take the necessary steps to effectuate its terms and provisions;

b. Dismissal with prejudice of the claims of Plaintiff and the Class in the Civil Action, whether asserted directly, individually or in a representative or derivative capacity, and without additional costs or expenses to any party other than as provided for in this Settlement Agreement;

c. A list of all members of the Class who have timely opted out of the Class and have not rescinded their opt out;

d. To the extent permitted by law, a permanent injunction barring every Class Member who has not opted out of the Class from asserting any Released Claim against Defendants, and Defendants from asserting any Released Claim against any Class Member who has not opted out of the Class, either directly, individually, or in a representative or derivative capacity;

e. The Parties' submission to, and the Court's continuing retention of, exclusive jurisdiction over this matter for the purposes of effectuating and supervising the enforcement, interpretation or implementation of this Settlement and the judgment entered thereon, and resolving any disputes that may arise hereunder; and

f. That on the Effective Date, all Class Members who have not opted-out of the class shall be bound by this Settlement Agreement and by the Order and Final Judgment.

VII. ADMINISTRATION PROCESS

21. Pursuant to the process described *supra* in Section V, the Settlement Administrator shall notify all Class Members of their membership in the Class and the number of days of over-detention for which they will be compensated. In the event that any Class Member contacts the Settlement Administrator to dispute this calculation:

a. The Settlement Administrator shall notify Plaintiff's Counsel and Defense Counsel within two (2) days of receipt of such a dispute. In the event that any Class Member contacts Plaintiff's Counsel or Defense Counsel to dispute this calculation, counsel shall notify counsel for the other Parties within two (2) days of receipt of such a dispute.

b. Upon receipt of such notification from the Settlement Administrator or another party, the Parties shall jointly investigate the Class Member's claim, using VDOC records, and determine whether the Class Member is entitled to compensation for additional days of over-detention.

c. Within seven (7) days, the Parties shall notify the Settlement Administrator of their joint decision regarding the number of days of compensation to which the Class Member is entitled.

d. The Settlement Administrator shall then, within two (2) days of receipt of the Parties' decision, notify the Class Member of the decision.

e. Any disputes between the Parties regarding the number of days of over-detention for which a Class Member is entitled to compensation shall be resolved in accordance with the Dispute Resolution Procedures in Section VIII of this Agreement.

22. In the event that any individual not listed in **Exhibit A** contacts the Settlement Administrator inquiring about membership in the class:

a. The Settlement Administrator shall notify Plaintiff's Counsel and Defense Counsel within two (2) days of receipt of such an inquiry. In the event that any individual not listed in Exhibit A contacts Plaintiff's Counsel or Defense Counsel to inquire about membership in the Class, counsel shall notify counsel for the other Parties within two (2) days of receipt of such an inquiry.

b. Upon receipt of such notification from the Settlement Administrator or another party, the Parties shall jointly investigate the individual's possible membership in the Class, using VDOC records, and determine whether the individual is a Class Member and if so, for how many days of over-detention they are entitled to compensation.

c. Within seven (7) days, the Parties shall notify the Settlement Administrator of their joint decision regarding the individual's membership in the Class and/or their entitlement to compensation under this Agreement.

d. The Settlement Administrator shall then, within two (2) days of receipt of the Parties' decision, notify the individual of the decision.

e. Any disputes between the Parties regarding an individual's membership in the Class shall be resolved in accordance with the Dispute Resolution Procedures in Section VIII of this Agreement.

23. The Settlement Administrator shall submit reports of its activities to all Parties upon request by Plaintiff's Counsel or Defense Counsel. Upon the request of Plaintiff's Counsel or Defense Counsel, the Settlement Administrator shall provide copies of any correspondence sent to or received from Class Members, the Settlement Administrator's records regarding this matter (including billing records), and any and all other documents or information related to the settlement administration procedure.

VIII. DISPUTE RESOLUTION PROCEDURES

24. The Parties recognize that questions may arise as to whether the Parties are fulfilling their obligations as set forth herein. In the spirit of common purpose and cooperation that occasioned this Settlement Agreement, the Parties agree to the following:

25. If differences arise between any of the Parties with respect to the Parties' compliance with, interpretation of, or implementation of the terms of this Settlement Agreement, good faith efforts shall be made by the Parties to resolve such differences promptly in accordance with the following Dispute Resolution Procedure.

26. If one party believes an issue must be resolved, it shall promptly notify the other Parties in writing of the issue and the facts and circumstances relied upon in asserting its position. The Parties notified of the issue shall be given a reasonable period (not to exceed seven (7) days) to review the facts and circumstances and to provide the party raising the issue with their written position including the facts and circumstances upon which they rely in asserting their position. Within a reasonable period of time thereafter (not to exceed seven (7) days), the

Parties shall meet, by telephone or in person, and attempt in good faith to resolve the issue informally. If the Parties do not resolve the dispute during the meeting, either party may then petition the Court for relief.

27. Nothing in this Section shall prevent any party from promptly bringing an issue before the Court when the facts and circumstances require immediate court action. The moving party's papers shall explain the facts and circumstances that necessitate court action and the reasons why the moving party did not attempt to resolve the dispute in good faith informally prior to bringing the issue before the Court. If any party brings a matter before the Court requiring court action, the opposing party shall be provided with appropriate notice under the Local Rules of the United States District Court for the Eastern District of Virginia and the Federal Rules of Civil Procedure.

IX. SCOPE AND EFFECT OF SETTLEMENT

28. Upon the Effective Date of Settlement, all Class Members other than those who have opted out of the Settlement Class shall be deemed to have fully, finally and forever, released, acquitted and discharged Defendants and each of their predecessors, successors, employees, agents, attorneys, accountants, Insurers, co-Insurers, re-Insurers, and the assigns and heirs of each of them from any and all claims and causes of action challenging the fact of over-detention on behalf of any Class Member arising in whole or part from the facts asserted in the Complaint, and including all such claims any Class Members have raised or might have raised now or in the future, from the beginning of time to the Effective Date of Settlement. Moreover, all Class Members other than those who have opted out will not have their calculated period of over-detention applied against any current or future active period of incarceration on a probation violation stemming from their underlying inchoate robbery or carjacking offense. Class members

who elect to receive monetary damages waive the right to have any portion of their prior period of incarceration applied to reduce an active sentence on any subsequent probation violation.

29. Upon the Effective Date of Settlement, Plaintiff and all Class Members who do not opt out, and their attorneys, shall be completely released, acquitted, and forever discharged from any and all claims, demands, actions, suits and causes of action, whether class, individual or otherwise in nature, that the Defendants ever had, now have, or hereafter can, shall, or may have on account of, or in any way arising out of, any and all known and unknown, foreseen and unforeseen, suspected or unsuspected injuries or damages, and the consequences thereof, in any way arising in whole or in part out of, or resulting from the facts alleged in the Complaint or their prosecution of the above-referenced action, and including all such claims Defendants have raised or might have raised now or in the future, from the beginning of time to Effective Date of Settlement.

30. The releases set forth in this Section shall not encompass or be deemed to impair any claims that may arise out of the implementation of this Settlement Agreement.

31. The provisions of this Settlement Agreement are not intended to eliminate or terminate any rights otherwise available to Plaintiff or Class Members for acts by Defendants occurring after the Effective Date of Settlement, nor are intended to eliminate or terminate any rights otherwise available to Defendants for acts by Plaintiff or Class Members occurring after the Effective Date of Settlement.

X. GENERAL PROVISIONS

32. The Effective Date of Settlement shall be the date when all of the following shall have occurred:

a. entry by the Court of the Order for Notice and Hearing in all material respects in the form attached hereto as **Exhibit D**;

b. approval pursuant to Virginia Code § 2.2-514;

c. final approval by the Court of the Settlement Agreement and Settlement, following Notice to the Class and a hearing, as prescribed by Rule 23 of the Federal Rules of Civil Procedure; and

d. entry by the Court of an Order and Final Judgment, in all material respects in the form set forth in **Exhibit C** attached hereto, and the expiration of any time for appeal or review of such Order and Final Judgment, or, if any appeal is filed and not dismissed, after such Order and Final Judgment is upheld on appeal in all material respects and is no longer subject to review upon appeal or review by writ of certiorari, or, in the event that the Court enters an order and final judgment in the form other than that provided above ("Alternative Judgment") and none of the Parties hereto elect to terminate the Settlement Agreement and Settlement, the date that such Alternative Judgment becomes final and no longer subject to appeal or review.

33. On the date that the Parties have executed this Settlement Agreement, the Parties shall be bound by its terms, and this Settlement Agreement shall not be rescinded except in accordance with paragraph 36.

34. After the Court has preliminarily approved this Settlement Agreement and before the Court issues an Order and Final Judgment approving this Settlement Agreement, Defense Counsel shall submit the Agreement for approval pursuant to Virginia Code § 2.2-514.

35. In no event shall Plaintiff, Defendants, or their counsel have any responsibility, financial obligation, or liability whatsoever with respect to the investment, distribution, or

administration of the Settlement Fund, including, but not limited to, the costs and expenses of such distribution and administration, except as expressly otherwise provided in this Settlement Agreement.

36. If the Court does not approve this Settlement Agreement or any part thereof, or if such approval is materially modified or set aside on appeal, or if the Court does not enter the Order and Final Judgment as provided in this Settlement Agreement, or if the Court enters the Order and Final Judgment and appellate review is sought, and following appellate review, such Order and Final Judgment is not ultimately affirmed upon exhaustion of the judicial process, or if the necessary State officials do not approve this Agreement pursuant to Virginia Code § 2.2-514, then Defendants and Plaintiff shall each, in their sole discretion, have the option to rescind this Settlement Agreement in its entirety, and any and all parts of the Settlement Funds shall be returned forthwith to Defendants, except that Defendants shall pay to the Settlement Administrator any already-accrued Settlement Administration Costs. A modification of the proposed order with regard to its provisions for attorneys' fees or service payments, or a modification or reversal on appeal of any amount of Plaintiff's Counsel's fees and expenses awarded by the Court from the Settlement Fund shall not be deemed a modification of all or a part of the terms of this Settlement Agreement or such Order and Final Judgment.

37. Defendants and Plaintiff expressly reserve all of their rights if the Settlement Agreement does not become finally approved or if it is rescinded by the Plaintiff or Defendants under paragraph 36. Further, and in any event, Plaintiff and Defendants agree that this Settlement Agreement, whether or not it is finally approved by the Court and whether or not Plaintiff or Defendants elect to rescind it, and any and all negotiations, documents, and discussions associated with it, shall not be deemed or construed to be an admission or evidence of any

violation of any statute, rule, regulation or law, or of any liability or wrongdoing by Defendants, or of the truth of any of the claims or allegations in this Civil Action, or as a concession by the Plaintiff of any infirmity or weakness in his claims against Defendants, and evidence thereof shall not be discoverable or used directly or indirectly, in any way, whether in the Civil Action or in any other action or proceeding.

38. The United States District Court for the Eastern District of Virginia, through the Judge assigned to the Civil Action, shall retain exclusive jurisdiction over the implementation, enforcement, and performance of this Settlement Agreement, and shall have exclusive jurisdiction over any suit, action, proceeding, or dispute arising out of or relating to this Settlement Agreement or the applicability of this Settlement Agreement that cannot be resolved by negotiation and agreement by Plaintiff, any Class Member, and Defendants. This Settlement Agreement shall be governed by and interpreted according to the substantive laws of the State of Virginia without regard to its choice of law or conflict of laws principles.

39. Defendants agree to cooperate with Plaintiff by providing to the Settlement Administrator documents and electronic information required to facilitate Notice to the Class, eligibility determinations, and allocation and distribution of the fund to Class Members. In addition to the Class Intake List, Defendants agree to conduct a reasonable search for documents and information in Defendants' possession, custody, or control that the Settlement Administrator believes are necessary to effect this Agreement.

40. This Settlement Agreement constitutes the entire agreement among Plaintiff and Defendants pertaining to the Settlement of the Civil Action and supersedes any and all prior and contemporaneous undertakings of Plaintiff and Defendants in connection therewith. This

Settlement Agreement may be modified or amended only by a writing executed by Plaintiff and Defendants and approved by the Court.

41. This Settlement Agreement may be executed in counterparts by Plaintiff and Defendants.

42. Neither Defendants nor Plaintiff shall be considered the drafter of this Settlement Agreement or any of its provisions for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Settlement Agreement.

43. Nothing expressed or implied in this Settlement Agreement is intended to or shall be construed to confer upon or give any person or entity other than Plaintiff, Class Members, Defendants, and those giving or receiving releases, any right or remedy under or by reason of this Settlement Agreement.

44. This Settlement Agreement and its exhibits, along with all related drafts, motions, pleadings, conversations, negotiations, and correspondence, shall be considered a compromise within the meaning of Federal Rule of Evidence 408, and any equivalent rule of evidence or procedure of any state, including the State of Virginia, and, except as permitted in paragraph 45, shall not (i) constitute, be construed, be offered, or received into evidence as an admission of the validity of any claim or defense, or the truth of any fact alleged or other allegation in the Class Action, or in any other pending or subsequently filed action, or of any wrongdoing, fault, violation of law, or liability of any kind on the part of any party hereto, or as a concession by the Plaintiff of any infirmity or weakness in their claims against Defendant; or (ii) be used to establish a waiver of any defense or right, or to establish or contest jurisdiction or venue.

45. This Settlement Agreement, and any orders, pleadings or other documents entered in furtherance of the Settlement, may be offered or received in evidence solely (i) to enforce the terms and provisions hereof or thereof, or (ii) to obtain Court approval of the Settlement.

46. The undersigned counsel represent that they are authorized to enter into this Settlement Agreement on behalf of the Parties they represent, and, on behalf of themselves and the Parties they represent, hereby agree to use their best efforts to obtain all approvals necessary and to do all other things necessary or helpful to effectuate the implementation of this Settlement Agreement according to its terms, including the exchange of documents and materials needed for the purpose of providing the Notice and conducting any hearing, and to satisfy the material conditions of this Settlement Agreement.

47. Time periods set forth in days herein shall be computed in accordance with Federal Rule of Civil Procedure 6.

48. Deadlines set forth herein may be modified by order of the Court.

49. The date of submission of any document submitted in connection with this Agreement shall be determined as follows:

a. Mail: Considered submitted on the postmark date.

b. Overnight Delivery: Considered submitted on the date delivered to the carrier.

c. Facsimile: Considered submitted on the transmission date at the local time of the submitting party.

d. Email: Considered submitted on the date emailed at the local time of the submitting party.

e. Text: Considered submitted on the date texted at the local time of the submitting party.

f. Other Delivery or any situation where the governing date applicable to a category above cannot be determined: Considered submitted on the date of receipt.

The date of submission of documents submitted to Plaintiff's Counsel, Defense Counsel, Defendants, or the Court rather than to the Settlement Administrator shall be determined under the same criteria; to the extent subparagraph (f) applies in such circumstance, receipt by such party shall control.

XI. NOTICE UNDER THE CLASS ACTION FAIRNESS ACT

50. The Class Action Fairness Act of 2005 ("CAFA") requires Defendants to inform certain federal and state officials about this Settlement. *See* 28 U.S.C. § 1715.

51. Under the provisions of CAFA, Defendants will serve notice on the appropriate officials within ten (10) days after the Parties file the Settlement Agreement with the Court. *See* 28 U.S.C. 1715(b).

The Parties consent to this Settlement Agreement as indicated by the signatures of counsel below:

For Plaintiff Leslie Puryear, individually and on behalf of all others similarly situated:

Rebecca Livengood
RELMAN COLFAX PLLC
1225 19th Street, NW
Suite 600
Washington, D.C. 20036
202-728-1888
Fax: 202-728-0848
rlivengood@relmanlaw.com

Attorney for Plaintiff

Date:
__12/16/2024_____

For Defendants Chadwick Dotson and Harold Clarke:

Margaret O'Shea
Office of the Attorney General
Criminal Justice & Public Safety Division
202 North 9th Street
Richmond, VA 23219
804-225-2206
Fax: 804-786-2206
moshea@oag.state.va.gov

Attorney for Defendants

Date: 12/16/2024

EXHIBIT A

Name	Release Date with Expanded Credits	Actual Release Date	Days of Overdetention
Clanton, Kenneth A	*(7/14/2020)* 9/1/2022	11/16/2023	441
Fulton, Michael P	*(6/12/2021)* 9/1/2022	11/16/2023	441
Wiggins, Leon D	*(5/9/2022)* 9/1/2022	11/16/2023	441
Duvall, Devin B	*(8/22/2022)* 9/1/2022	11/15/2023	440
Miller, Zanell L	*(11/23/2021)* 9/1/2022	11/15/2023	440
Puryear, Leslie L	*(3/9/2022)* 9/1/2022	11/9/2023	434
Kebe, George	10/11/2022	11/16/2023	401
Spencer, Mitchell	*(4/14/2022)* 9/1/2022	9/12/2023	376
Williams, Joshua J	*(8/14/2022)* 9/1/2022	8/28/2023	361
Hazley, Treyondle M	1/30/2023	11/14/2023	288
Hargrave, John L	*(8/18/2022)* 9/1/2022	5/22/2023	263
Pitts, Christopher J	2/28/2023	11/16/2023	261

Name	Release Date with Expanded Credits	Actual Release Date	Days of Overdetention
Osborne, Donald L	3/2/2023	11/16/2023	259
Usanga, Imo	3/5/2023	11/15/2023	255
Johnson, Divionne	3/16/2023	11/15/2023	244
Little, Tevin R	3/16/2023	11/14/2023	243
Breeden, Mark E	4/2/2023	11/15/2023	227
Cubbage, Danny R	4/20/2023	11/16/2023	210
Stukes, Dennis A	4/27/2023	11/16/2023	203
Campbell, Olajuwan J	5/14/2023	11/15/2023	185
Jenkins, Paul A	5/16/2023	11/16/2023	184
Kirven, Antonio A	5/24/2023	11/15/2023	175
Pugh, Houston L	*(6/29/2022)* 9/1/2022	2/23/2023	175
Barrrow, Thomas J	5/26/2023	11/13/2023	171

Name	Release Date with Expanded Credits	Actual Release Date	Days of Overdetention
Williams, Joe C	*(1/7/2022)* 9/1/2022	2/6/2023	158
Johnson Zambrano, Darius G	11/15/2022	4/21/2023	157
Everard, Cory	11/8/2022	4/14/2023	157
Thomas, Jesus C	6/11/2023	11/14/2023	156
Lee, Jaloni	12/24/2022	5/22/2023	149
Wilson, Demetrius W	*(8/2/2022)* 9/1/2022	1/26/2023	147
Jerman, Jerel R	6/30/2023	11/15/2023	138
Scroggins, Jerome V	10/22/2022	3/6/2023	135
Dass, Aaaron J	*(8/18/2022)* 9/1/2022	1/3/2023	124
Moore, Ahamad	1/27/2023	5/22/2023	115
Smith, Zachary D	*(8/4/2022)* 9/1/2022	12/12/2022	102
Burks, Karington D	*(6/23/2022)* 9/1/2022	12/8/2022	98

Name	Release Date with Expanded Credits	Actual Release Date	Days of Overdetention
Boone, Khalil R	9/1/2022	11/28/2022	88
Mizelle, Deante	4/11/2023	7/5/2023	85
Banks, Shawn	8/23/2023	11/15/2023	84
Ellington, Jason M**	9/1/2022	11/22/2022	82
Gauzza, Jedidiah	1/11/2023	4/3/2023	82
Jones, Rashaad A	*(6/10/2022)* 9/1/2022	11/17/2022	77
Jones, Raphah W	9/6/2023	11/16/2023	71
Goff, Cameron A	*(11/8/2021)* 9/1/2022	11/2/2022	62
Williams, Christopher C	9/5/2023	11/6/2023	62
Jovel, Jorge A*	9/21/2023	11/16/2023	56
Ratliff, Megan L	10/5/2023	11/14/2023	40
Moore, Christian A	10/10/2023	11/15/2023	36

Name	Release Date with Expanded Credits	Actual Release Date	Days of Overdetention
Marshall, Toi	10/2/2022	11/3/2022	32
Gibson, Jonathan T	*(6/23/2022)* 9/1/2022	9/23/2022	22
Roberson, Tracy J	*(6/15/2022)* 9/1/2022	9/8/2022	7
Peterson, Shedrick W	11/11/2023	11/14/2023	3
Turner, Alexander N	11/12/2023	11/15/2023	3

* Released to the federal authorities on a detainer for deportation

** The Parties are aware that Mr. Ellington recently reached a separate settlement with Defendants regarding his over-detention, and as such will not participate in any class-wide resolution.

EXHIBIT B

United States District Court for the Eastern District of Virginia

Case No. 3:24-cv-00479-REP

Class Action Notice

Authorized by the U.S. District Court

There is a class action lawsuit against the Virginia Department of Corrections for denying earned sentence credits and over-incarcerating people serving sentences for inchoate offenses related to robbery and carjacking.

There is a settlement of this lawsuit.

You are entitled to a portion of this money.

If you want to be part of this settlement, you do not need to do anything.

If you want to opt-out of the settlement, do so by <<date>>.

- **Based on VDOC records, you were over-detained for <<###>> days and are entitled to $<<###>> in compensation.**
- You should read this notice in full.
- If you take no action, you will receive a check for the settlement amount in the mail at this address. If you would prefer to receive a payment by PayPal or Venmo, return the Election Form that is the last page of this packet.
- If you take no action, you will be bound by the settlement, and your rights will be affected.

Table of Contents

About This Notice

Why did I get this notice?

This notice is to tell you about the settlement of a class action lawsuit, brought on behalf of people who were serving sentences in the Virginia Department of Corrections (VDOC) for inchoate offenses[1] associated with robbery or carjacking and were denied expanded earned sentence credits between July 2022 and November 2023. The lawsuit claims that these individuals were entitled to credits, and that by denying them, VDOC kept people in prison for longer than it should have. **You received this notice because VDOC records indicate that you are a member of the group of people affected, called the "class."** This notice gives you a summary of the terms of the proposed settlement agreement, explains what rights class members have, and helps class members make informed decisions about what action to take.

What do I do next?

Read this notice in full. Then, decide if you want to:

Do Nothing	Get a payment via check in the mail after the settlement is finally approved. You will be bound by the settlement.
Challenge Your Payment Amount	Page 1 of this Notice states the number of days that you were over-detained according to VDOC records and the approximate amount of compensation that you will receive. If you believe that the number of days is incorrect, you should contact the Settlement Administrator. You will be bound by the settlement.
Change Your Payment Method	If you prefer to receive your payment via PayPal or Venmo, fill out and return the Election Form on the last page of this packet. You will be bound by the settlement.
Opt Out	Get no payment. Allows you to bring another lawsuit against VDOC about the same issues.
Object	Tell the Court why you don't like the settlement.

[1] Inchoate offenses are attempts, conspiracies, or solicitations to commit an offense. Your records reflect that you were serving a sentence in VDOC custody for attempted robbery, attempted carjacking, conspiracy to commit robbery, conspiracy to commit carjacking, solicitation to commit robbery, and/or solicitation to commit carjacking.

What are the most important dates?

Your deadline to object or opt out: **[date TBD]**
Settlement approval hearing: **[date TBD]**
Your deadline to change your payment method: **[date TBD]**

Learning About the Lawsuit

What is this lawsuit about?

This lawsuit was filed in June 2024. It alleges that, between July 2022 and November 2023, VDOC wrongfully denied enhanced earned sentence credits to people serving sentences for inchoate offenses associated with robbery or carjacking and thus incarcerated these people for longer than it should have.

VDOC denies that it did anything wrong but has agreed to settle the lawsuit on a class-wide basis.

Why is there a settlement in this lawsuit?

In November 2024, the parties agreed to settle, which means they have reached an agreement to resolve the lawsuit. Both sides want to avoid the risk and expense of further litigation.

The settlement is on behalf of Plaintiff Leslie Puryear, who brought the case, and all members of the settlement class. The Court has not decided in favor of either side.

What is a class action settlement?
A class action settlement is an agreement between the parties to resolve and end the case. Settlements can provide money to class members who were harmed.

What happens next in this lawsuit?

The Court will hold a Fairness hearing to decide whether to approve the settlement. The hearing will be held at:

Where: Spottswood W. Robinson III and Robert R. Merhige, Jr. Federal Courthouse, 701 East Broad Street, Richmond, VA 23219.

When: [time] on [date].

The Court has directed the parties to send you this notice about the proposed settlement. Because the settlement of a class action decides the rights of all members of the proposed class, the Court must give final approval to the settlement before it can take effect. Payments will be made only if the Court approves the settlement.

You don't have to attend the hearing, but you may do so at your own expense. You may also ask the Court for permission to speak about the settlement at the hearing. If the Court does not approve the settlement, it will be void and the lawsuit will continue.

Learning About the Settlement

What does the settlement provide?

VDOC has agreed to pay up to $1,139,694 into a settlement fund. Class members will receive $118 for every day that they were over-detained. Page 1 of this Notice lists your projected payment.

Members of the settlement class will "release" their claims as part of the settlement, which means they cannot sue VDOC for the issues that were raised in this lawsuit.[2]

If there is money left over after the claims process is completed, it will be donated to a charitable organization.

[2] Specifically, the release provides that "all Class Members other than those who have opted out of the Settlement Class shall be deemed to have fully, finally and forever, released, acquitted and discharged Defendants and each of their predecessors, successors, employees, agents, attorneys, accountants, Insurers, co-Insurers, re-Insurers, and the assigns and heirs of each of them from any and all claims and causes of action challenging the fact of over-detention on behalf of any Class Member arising in whole or part from the facts asserted in the Complaint, and including all such claims any Class Members have raised or might have raised now or in the future, from the beginning of time to the Effective Date of Settlement. Moreover, all Class Members other than those who have opted out will not have their calculated period of over-detention applied against any current or future active period of incarceration on a probation violation stemming from their underlying inchoate robbery or carjacking offense. Class members who elect to receive monetary damages waive the right to have any portion of their prior period of incarceration applied to reduce an active sentence on any subsequent probation violation."

How much will my payment be?

Your payment amount is based on the number of days that you were over-detained. Page 1 of this Notice states the number of days that you were over-detained according to VDOC records and the compensation that you are entitled to based on that number of days. **If you think the number of days of over-detention is wrong, contact the Settlement Administrator.** If you do not contact the Administrator or opt out, you will receive a payment in this amount and be bound by the terms of this settlement.

If I receive a payment, will I get credit for my over-detention in any future sentence?

If you were to receive an active sentence on a probation violation related to the crimes that you were serving time for during your over-detention, those extra days would be applied as jail credit to reduce the time you spend in custody on that future probation violation. **However, if you receive a payment from this settlement, you are no longer entitled to this credit.** If you would rather be able to receive jail credit against a possible future sentence than receive money, you should opt out of this settlement.

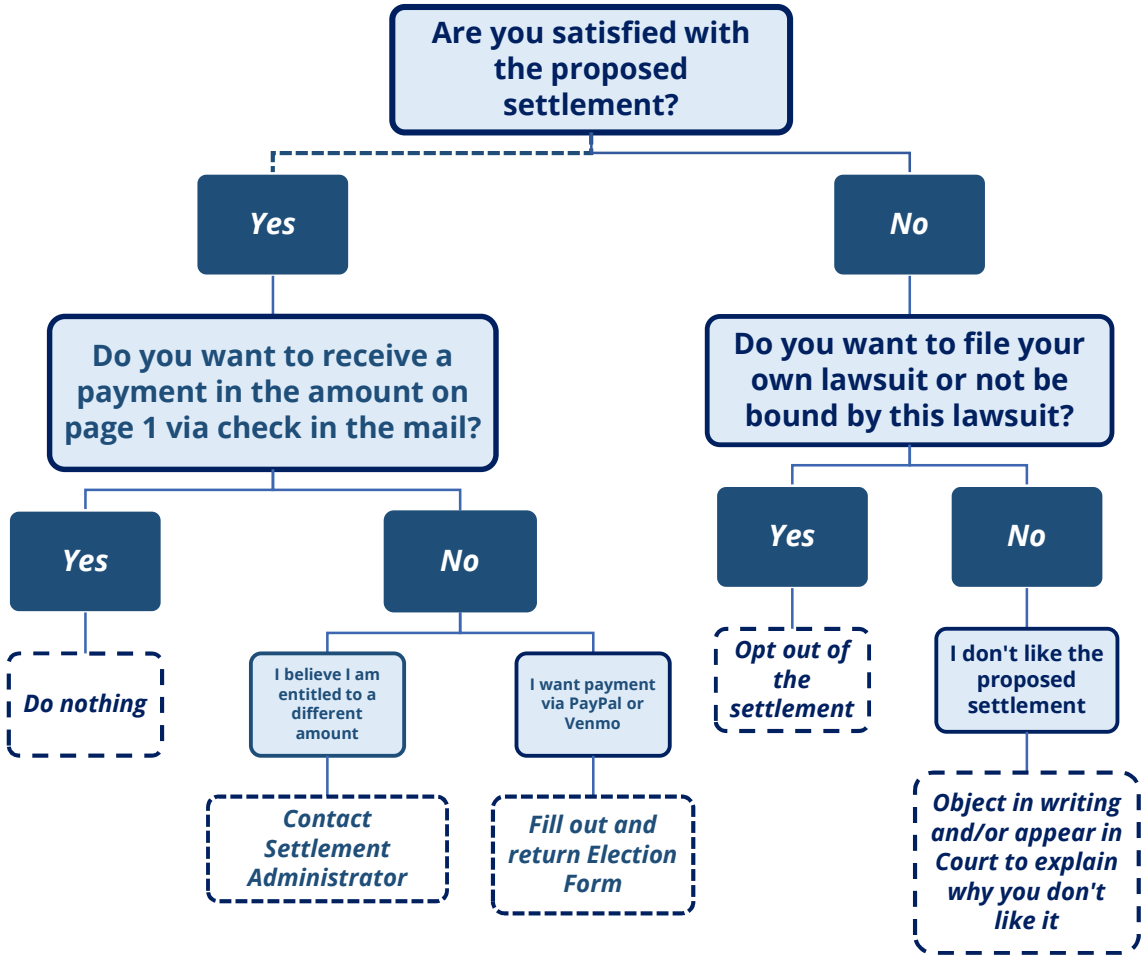
Deciding What to Do

How do I weigh my options?

You have five options. This chart shows the effects of each option:

	Do Nothing	**Challenge Payment Amount**	**Change Payment Method**	**Object**	**Opt Out**
Can I receive a settlement payment if I . . .	YES	YES	YES	YES	NO
Am I bound by the terms of this lawsuit if I . . .	YES	YES	YES	YES	NO
Can I bring my own case if I . . .	NO	NO	NO	NO	YES
Will the class lawyers represent me in this case if I . . .	YES	YES	YES	NO	NO
Can I receive credit against a future probation violation sentence for the time I was over-detained if I . . .	NO	NO	NO	NO	YES

What is the best path for me?



Getting Paid

How do I get a payment if I am a class member?

You do not need to do anything to get paid.

If you do nothing, you will receive a check in the mail at the same address where you received this Notice. The check will be sent after this settlement is finally approved by the Court, likely in mid-2025. Consult page 1 of this Notice for the amount of your check.

What if I prefer to receive my payment via PayPal or Venmo?

If you prefer to receive your payment via PayPal or Venmo, fill out the Election Form on the last page of this Notice and return it to the Settlement Administrator in the pre-paid envelope. **You do not need to return the Election Form if you want to receive a payment by check. You will receive payment by check as a default.**

What if I believe I am entitled to more money?

If you disagree with the number of days of over-detention for which you are being compensated (consult page 1 of this Notice), contact the Settlement Administrator. Their contact information is on the last page of this notice. They will consult with the parties and get back to you with a final calculation. If you disagree with their final calculation, you may object or opt out.

Do I have a lawyer in this lawsuit?

In a class action, the court appoints class representatives and lawyers to work on the case and represent the interests of all the class members. For this settlement, the Court has appointed the following individuals and lawyers.

Your lawyers: Rebecca Livengood, Michael Allen, Ellora Israni, and Emahunn Campbell; Relman Colfax PLLC. These are the lawyers who negotiated this settlement on your behalf.

If you want to be represented by your own lawyer, you may hire one at your own expense.

Do I have to pay the lawyers in this lawsuit?

Lawyers' fees and costs will be paid from the Settlement Fund. **You will not have to pay the lawyers directly.**

To date, your lawyers have not been paid any money for their work or the expenses that they have paid for the case. To pay for some of their time and risk in bringing this case without any guarantee of payment unless they

were successful, your lawyers will request, as part of the final approval of this Settlement, that the Court approve a payment of up to $400,000 total in attorneys' fees and costs. This money will not come out of the fund for the class.

Lawyers' fees and expenses will only be awarded if approved by the Court as a fair and reasonable amount. You have the right to object to the lawyers' fees even if you think the settlement terms are fair.

Your lawyers will also ask the Court to approve a payment of up to $40,000 to Mr. Puryear for the time and effort he contributed to the case. If the Court approves anything less than $40,000, the balance will be redistributed among all of the class members.

Finally, your lawyers will also ask the Court to approve a payment of up to $20,000 to the Settlement Administrator for administering the settlement. This money will not come out of the fund for the class.

Opting Out

What if I don't want to be part of this settlement?

You can opt out. If you do, you will not receive payment and cannot object to the settlement. However, you will not be bound or affected by anything that happens in this lawsuit and may be able to file your own case. You may also receive jail credit if you were to be sentenced to active time on a probation violation related to the crimes for which you were in custody at the time you were over-detained.

Unless you opt out, you will be bound by the settlement and its "release" provisions. That means you won't be able to start, continue, or be part of any other lawsuit against VDOC about the issues in this case. A full description of the claims and persons who will be released if this settlement is approved is listed in footnote 1, above.

How do I opt out?

To opt out of the settlement, you must complete the opt out form included with this notice and mail it by [date] to the Settlement Administrator at:

Puryear v. Dotson Settlement Administrator c/o Settlement Services, Inc. P.O. Box 2715 Portland, OR 97208

Be sure to include your name, address, telephone number, and signature.

Objecting

What if I disagree with the settlement?

If you disagree with any part of the settlement (including the lawyers' fees) but don't want to opt out, you may object. You must give reasons why you think the Court should not approve it and say whether your objection applies to just you, a part of the class, or the entire class. The Court will consider your views. The Court can only approve or deny the settlement — it cannot change the terms of the settlement. You may, but don't need to, hire your own lawyer to help you.

To object, you must send a letter to the Court that:

(1) is postmarked by [date];
(2) includes the case name and number (, No. 3:24-cv-00479);
(3) includes your full name, address and telephone number, and email address;
(4) states the reasons for your objection;
(5) says whether you or your lawyer intend to appear at the fairness hearing and your lawyer's name; and
(6) your signature.

Mail the letter to:

Puryear v. Dotson Settlement Administrator c/o Settlement Services, Inc. P.O. Box 2715 Portland, OR 97208	United States District Court Eastern District of Virginia 701 East Broad Street Richmond, VA 23219

Key Resources

How do I get more information?

This notice is a summary of the proposed settlement. The complete settlement with all its terms can be found [here]. To get a copy of the settlement agreement or get answers to your questions:

- contact the Settlement Administrator or Your Lawyers (information below)
- access the Court Electronic Records (PACER) system online or by visiting the Clerk's office at the Court (address below).

Resource	Contact Information
Settlement Administrator	Puryear v. Dotson Settlement Administrator c/o Settlement Services, Inc. P.O. Box 2715 Portland, OR 97208 [case phone number TBD] claims@ssiclaims.com
Your Lawyers	Relman Colfax PLLC ATTN: Puryear Team 1225 19th St. NW, Suite 600 Washington, D.C. 20036 (202) 728-1888 puryearteam@relmanlaw.com
Court (DO NOT CONTACT)	U.S. District Court Eastern District of Virginia 701 East Broad Street Richmond, VA 23219

ELECTION FORM

If you want to receive payment by PayPal or Venmo, fill out and return this form by [DATE]

* PLEASE RETAIN A COPY OF THIS FORM, ALONG WITH ANY INFORMATION THAT WOULD DEMONSTRATE THE TIME AND MANNER IN WHICH IT WAS SUBMITTED

«FirstName» «LastName» MailID: «MailID»
«Address» «Address 2»
«City», «State» «Zip»
«Country»

Name/Address Changes:
_____
_____
_____

Your estimated settlement payment is <<AWARD>>

Please sign, date, and return this Election Form to the Settlement Administrator by postal mail, email (claims@ssiclaims.com), or fax by [date], if you wish to receive your share of the Settlement Fund via PayPal or Venmo. You are not required to complete this form to receive a payment. If you do not complete this form, you will receive your share of the Settlement Fund in the form of a check sent to your last known mailing address on file, as listed above.

Puryear v. Dotson Settlement Administrator
c/o SSI, an Epiq Company
P.O. Box 2715
Portland, OR 97208
Email: claims@ssiclaims.com
Phone: (8XX) XXX-XXXX
Fax: (850) 385-6008

Check one box below:

[ ]	I would like to receive my Settlement Benefit via PayPal. *Please note that payments above $10,000 cannot be sent via PayPal. If you choose this option and your payment is greater than $10,000, you will still receive a check.* PayPal Username: _____
[ ]	I would like to receive my Settlement Benefit via Venmo. *Please note that payments above $3,000 cannot be sent via Venmo. If you choose this option and your payment is greater than $3,000, you will still receive a check.* Venmo Username: _____ Last 4 digits of phone number:_____

Signature: _____ **Date:**_____

Print Name: _____

You must keep a current address on file with the Settlement Administrator and Class Counsel, along with a valid phone number and email address if you have them for updates.

Mailing Address:

_____

Phone number: _____ Email address: _____

EXHIBIT C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

LESLIE PURYEAR, *on behalf of himself and all those similarly situated*, Plaintiff, v. CHARWICK DOTSON, *in his individual capacity*, HAROLD CLARKE, *in his individual capacity*, Defendants.	Civil Action No. 3:24-cv-00479-REP

[PROPOSED] ORDER GRANTING APPROVAL OF PROPOSED CLASS ACTION SETTLEMENT AND CERTIFICATION OF CLASS

WHEREAS, the Court entered an Order preliminarily approving the Settlement and Settlement Agreement on _____, and held a Fairness Hearing on _____; and the Court has heard and considered all submissions in connection with the proposed Settlement and the files and records herein, including the objections submitted, as well as arguments of counsel;

IT IS HEREBY ORDERED AND ADJUDGED THAT:

1. All terms and definitions used herein have the same meanings as set forth in the Settlement Agreement.

2. The Court has jurisdiction over the subject matter of the Civil Action, the Plaintiff, the Class, and Defendants.

3. The Court finds that, for purposes of the Settlement, the requirements for a class action under Federal Rule of Civil Procedure 23 have been satisfied in that (a) the Class is ascertainable; (b) its members are too numerous to be joined practicably; (c) there are questions of law and fact common to the Class; (d) Plaintiff's claims are typical of the claims of the Class as a whole; (e) Plaintiff will fairly and adequately protect the interests of the Class; (f) neither Plaintiff nor Plaintiff's Counsel have interests adverse to the Class, and Plaintiff's Counsel are competent and experienced; and (g) common questions of law and fact predominate over questions affecting only individual members of the Class and a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

4. For purposes of resolution of claims for monetary relief, pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure, the Court finally certifies the Civil Action, for purposes of the Settlement, as a class action on behalf of the following Class: all individuals in the custody of the Virginia Department of Corrections ("VDOC") as of July 1, 2022 serving sentences for an inchoate crime associated with robbery or carjacking; who were not awarded expanded earned sentence credits ("ESCs") on those inchoate offenses under Virginia Code § 53.1-202.3(B), as amended; who were released from VDOC custody on or before November 30, 2023; who would have been released earlier than they were had they been awarded the expanded earned sentence credits as of July 1, 2022; and who were denied expanded ESCs solely because of their inchoate robbery and/or carjacking offense.

5. Plaintiff's Counsel and Plaintiff Leslie Puryear are hereby appointed to represent the Class. Relman Colfax PLLC is hereby appointed as Plaintiff's Counsel.

6. Notice of the class action Settlement was given to all Class Members pursuant to the Court's Order Granting Preliminary Approval of Proposed Class Action Settlement,

Provisional Certification of Class, and Approval of Notice ("Order for Notice and Hearing"). The form and method by which notice was given met the requirements of due process, Rules 23(c)(2) and 23(e) of the Federal Rules of Civil Procedure, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons entitled thereto.

7. The Settlement is in all respects fair, reasonable, and adequate, and it is finally approved. The Parties are directed to consummate the Settlement according to the terms of the Settlement Agreement. The Settlement Agreement and every term thereof shall be deemed incorporated herein as if explicitly set forth and shall have the full force of an Order of the Court.

8. Upon the Effective Date, Plaintiff, the Class, and each Class Member shall, by operation of this Order and Final Judgment, fully, finally, and forever release, acquit, and discharge the Released Claims against the Released Persons pursuant to the Settlement Agreement. Plaintiff, the Class, and each Class Member are hereby permanently enjoined and barred from instituting, commencing, or prosecuting any Released Claim against a Released Person in any action or proceeding in any court or tribunal.

9. The individuals identified on the list attached hereto **as Exhibit 1** have opted out of the Class and are not bound by the Settlement Agreement, Settlement, or Order and Final Judgment, and have not waived, relinquished, or released the right to assert any claims against Defendants.

10. This Order and Final Judgment, the Settlement Agreement, and any and all communications between and among the Parties pursuant to or during the negotiation of the Settlement shall not constitute, be construed as, or be admissible in evidence as an admission of the validity of any claim or defense asserted or fact alleged in the Civil Action or of any wrongdoing, fault, violation of law, or liability of any kind on the part of the Parties.

11. Plaintiff's Counsel are awarded the sum of $400,000 in attorneys' fees and costs, to be paid by Defendants in accordance with the terms of the Settlement Agreement.

12. Plaintiff Leslie Puryear is awarded $40,000 is awarded as a service payment, to be paid by Defendants in accordance with the terms of the Settlement Agreement.

13. Within twenty-one (21) days after receipt of the Per Diem Total into the Escrow Account, the Per Diem Total shall be distributed pro rata to the Settlement Class based on the number of days that each individual was over-detained, *i.e.*, the number of days between when the individual would have been released had they been given retroactive expanded ESCs as of July 1, 2022, and when the class member was actually released. Should any Settlement Class member's payment be less than $1,000, the payment shall be revised upward to $1,000, and payments to other members of the Settlement Class shall be revised downward, so that the total amount distributed to members of the Settlement Class does not exceed the total value of the Escrow Account. The amount of payment tentatively due to each Class Member is outlined in **Exhibit __** to the Motion for Final Approval.

14. If for any reason any portion of the Per Diem Total money remains in the Escrow Account one year after distribution of payments from the Escrow Account to the Settlement Class, all such remaining money shall be donated to a third-party non-profit organization mutually agreed upon by the Parties.

15. Defendants are directed to pay these amounts within sixty (60) days after the Effective Date, as described in the Settlement Agreement.

16. The Settlement Administrator shall not be responsible for any of the relief provided to the Settlement Class under this Settlement Agreement. For its actions relating to the

implementation of this Settlement Agreement, to the extent permitted by applicable law, the Settlement Administrator shall have the same immunity that judges have for their official acts.

17. Pursuant to Rule 7 of the Federal Rules of Appellate Procedure, "in a civil case, the district court may require an appellant to file a bond or provide other security in any form and amount necessary to ensure payment of costs on appeal." In light of the Court's ruling regarding the adequacy of the relief afforded by the Settlement, the reaction of the Class and the number of Class Members, the Court orders that any appeal of this Order must be accompanied by a bond of $150,000.

18. This Civil Action is hereby dismissed in its entirety with prejudice. Except as otherwise provided in this Order and Final Judgment or in the Settlement Agreement, the Parties shall bear their own costs and attorneys' fees. Without affecting the finality of this Order and the Judgment hereby entered, the Court retains exclusive jurisdiction over the Parties for all matters relating to the Civil Action and the Settlement, including the administration, interpretation, effectuation, or enforcement of the Settlement.

19. Without further Order of the Court, the Parties may agree to reasonable extensions of time to carry out any of the provisions of the Settlement.

Dated: _____

_____

Hon. Robert E. Payne
United States District Judge

Order Granting Approval of Proposed Class Action Settlement and Certification of Class: Exhibit 1 (Opt-Out List)

To be completed after Notice and Opt-Out Period

EXHIBIT D

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

LESLIE PURYEAR, *on behalf of himself and all those similarly situated*,

Plaintiff,

v.

CHARWICK DOTSON, *in his individual capacity*,

HAROLD CLARKE, *in his individual capacity*,

Defendants.

Civil Action No. 3:24-cv-00479-REP

[PROPOSED] ORDER GRANTING PRELIMINAR APPROVAL OF PROPOSED CLASS ACTION SETTLEMENT PROVISIONAL CERTIFICATION OF CLASS AND APPROVAL OF NOTICE

The Court having reviewed the proposed terms of the Settlement set forth in the executed Settlement Agreement, by and between Defendants Chadwick Dotson and Harold Clarke and Plaintiff Leslie Puryear, individually and on behalf of those similarly situated, in the above-styled Civil Action, together with all exhibits thereto, the record in the Civil Action, and the arguments of counsel;

IT IS HEREBY ORDERED AND ADJUDGED THAT:

1. All terms and definitions used herein have the same meanings as set forth in the Settlement Agreement.

2. The proposed terms of Settlement set forth in the Settlement Agreement are hereby preliminarily approved as being within the range of possible final approval as fair, reasonable, and adequate such that notice thereof should be given to members of the Class.

3. For purposes of resolution of claims for monetary relief, pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure, the following class (the "Settlement Class") is provisionally certified for purposes of Settlement only: all individuals in the custody of the Virginia Department of Corrections ("VDOC") as of July 1, 2022 serving sentences for an inchoate crime associated with robbery or carjacking; who were not awarded expanded earned sentence credits ("ESCs") on those inchoate offenses under Virginia Code § 53.1-202.3(B), as amended; who were released from VDOC custody on or before November 30, 2023; who would have been released earlier than they were had they been awarded the expanded earned sentence credits as of July 1, 2022; and who were denied expanded ESCs solely because of their inchoate robbery and/or carjacking offense.

4. Inherent in the Court's provisional certification of the Class are the following findings: (a) the Class is ascertainable; (b) its members are too numerous to be joined practicably; (c) there are questions of law and fact common to the Class; (d) Plaintiff's claims are typical of the claims of the Class as a whole; (e) Plaintiff will fairly and adequately protect the interests of the Class; (f) neither Plaintiff nor Plaintiff's Counsel have interests adverse to the Class, and Plaintiff's Counsel are competent and experienced; and (g) common questions of law and fact predominate over questions affecting only individual members of the Class and a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

5. This Court's provisional certification of the Class and findings incident thereto shall be solely for settlement purposes. Provisional certification of the Class shall be vacated and shall have no effect in the event that the Settlement Agreement is not finally approved by this Court or otherwise does not take effect. In the event the Court's approval of the Settlement

Agreement, entry of the Order and Final Judgment, or certification of the Class is or are disapproved, reversed, vacated or terminated, neither the Settlement Agreement nor the findings in this Order shall affect the rights of the Parties to take action in support of or in opposition to class certification or to prosecute or defend the Civil Action, or this Court's ability to grant or deny certification for litigation purposes. If this Order for Notice and Hearing is vacated, the Parties shall be restored to the *status quo ante* as of the date preceding the date of this Order.

6. The Court finds that the method of providing notice to the Class proposed in the Settlement Agreement constitutes the best method for providing such notice practicable under the circumstances and constitutes valid, due, and sufficient notice to all Class Members of their rights and obligations, complying fully with the requirements of Rule 23 of the Federal Rules of Civil Procedure, the United States Constitution, and any other applicable law. The Notice, which is attached hereto as **Exhibit 1**, is hereby approved as to form. Pursuant to Rule 23(c)(2) of the Federal Rules of Civil Procedure, the Notice, to be distributed by first class mail, text, and email, states: (i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, and defenses; (iv) that a Class Member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion; (v) the binding effect of a class judgment on members under Rule 23(c)(3); and (vi) that more information is available from the Settlement Administrator upon request. The Notice also describes the settlement administration process and informs the Class Members that the Settlement Agreement provides for the release of their Released Claims (as that term is defined in the Settlement Agreement) and the payment of Plaintiff's Counsels' attorneys' fees. *See* Fed. R. Civ. P. 23(h).

7. Settlement Services, Inc. is approved as the Settlement Administrator for the proposed Settlement. Within sixty (60) days following the Effective Date, Defendants shall pay or cause to be paid $20,000 into the Escrow Account as compensation for the Settlement Administrator. These funds may be dispersed, as reasonably required and without further approval of the Court, to pay Settlement Administration Costs incurred by the Settlement Administrator. Prior to withdrawing any funds from the Escrow Account as payment, the Settlement Administrator shall provide an invoice to both Parties detailing the Administrator's activities to-date and the amount to be billed. Upon receipt, the Parties shall have ten (10) days to object to the invoice. Any disputes regarding the invoice shall be resolved in accordance with the Dispute Resolution Procedures in Section VIII of the Settlement Agreement. If no Party has objected within ten (10) days of the issuance of the invoice, the Settlement Administrator may then pay itself the amount of the invoice from the Escrow Account. The Settlement Administrator has agreed that the Settlement Administration Costs will not exceed $20,000 total.

8. Within five (5) days after the entry of this Order for Notice and Hearing, Defendants shall prepare and deliver an Excel spreadsheet to the Settlement Administrator containing the names, Social Security Numbers, last known addresses, last known telephone numbers, last known email addresses, and dates of over-incarceration of all potential Class Members ("Class Intake List"). Defendants shall simultaneously provide a copy of the spreadsheet to Plaintiff's Counsel.

9. Within twenty-one (21) calendar days after the entry of this Order for Notice and Hearing, the Settlement Administrator shall cause to be sent, via first-class mail, text, and email, the Notice substantially in the form of **Exhibit 1** using the most recent contact information of the individuals on the Class Intake List.

10. No later than the date on which the Settlement Administrator first distributes the Notice, the Settlement Administrator shall maintain and staff with live persons a toll-free "800" line to receive calls from Class Members between the hours of 9:00 a.m. and 7:00 p.m. (Eastern Standard Time), Mondays through Fridays. At all other times, the line shall be answered by a voicemail message recording device. These hours of telephone coverage shall be subject to revision and modification upon agreement of the Plaintiff and Defendants based on the recommendation of the Settlement Administrator. The live persons staffing the "800" line shall be trained to provide information consistent with the Notice, and the voicemail message shall use language agreed upon by Plaintiff and Defendants.

11. For each Notice mailed to a person on the Class Intake List and returned as undeliverable, the Settlement Administrator shall notify Plaintiff's Counsel and Defense Counsel within two (2) days after receipt of any undeliverable Notice. All Counsel shall endeavor to obtain any likely current address(es) of the Class Member, including by obtaining updated contact information from the Class Member's probation/parole officer, and provide it to the Settlement Administrator within five (5) days thereafter. The Settlement Administrator shall simultaneously conduct address "tracing." Within two (2) days after receipt of additional address(es), the Settlement Administrator shall re-mail the Notice to any address(es) provided by the Parties and/or by tracing. Plaintiff's Counsel, Defense Counsel, and Settlement Administrator will take comparable steps with respect to phone numbers and email addresses determined not to be accurate.

12. Plaintiff's Counsel and Plaintiff Leslie Puryear are hereby appointed to represent the Settlement Class. Relman Colfax PLLC is hereby appointed as Plaintiff's Counsel.

13. Within one hundred (100) days after the date of entry of this Order for Notice and Hearing, Plaintiff shall move the Court to enter an Order and Final Judgment and shall file a memorandum addressing any timely-filed written objections to the Settlement. The Court will subsequently hold a hearing (the "Fairness Hearing") to consider and determine whether the requirements for certification of the Class have been met; whether the proposed Settlement of the Civil Action on the terms set forth in the Settlement Agreement should be approved as fair, reasonable, and adequate; whether Plaintiff's Counsel's award of attorneys' fees and costs should be approved; whether Plaintiff's service payment should be approved; and whether the Order and Final Judgment approving the Settlement and dismissing the Civil Action on the merits and with prejudice against Class Members should be entered.

14. The Fairness Hearing may, from time to time and without further notice to the Class (except those who have filed timely and valid objections), be continued or adjourned by Order of the Court.

15. Class Members who wish to opt out of the proposed Settlement must do so in writing as specified by the procedure in the Notice. Requests to opt out of the proposed Settlement must be received by the Settlement Administrator within 60 days after entry of this Order for Notice and Hearing. The Settlement Administrator shall determine whether a Class Member has timely satisfied the procedure set forth in the Notice. Within three (3) days of receipt of an opt-out, the Settlement Administrator shall serve copies on Plaintiff's Counsel and Defense Counsel.

16. Any Class Member who exercises the right to opt out of the proposed Settlement shall have a right to rescind his or her opt-out by following the procedure specified in the Notice. Opt-out rescissions must be received by the Settlement Administrator within 90 days after the

entry of the Order for Notice and Hearing. The Settlement Administrator shall determine whether a Class Member has timely satisfied the procedure set forth in the Notice.

17. Within 95 days after entry of the Order for Notice and Hearing, the Settlement Administrator shall serve all requests to opt out of the proposed Settlement that have not been rescinded and an inventory listing the requests to opt out that have not been rescinded on Plaintiff's Counsel and Defense Counsel. The Settlement Administrator shall retain copies of all requests to opt out and rescissions in its files until such time as it is relieved of all duties and responsibilities under this Settlement Agreement.

18. Class Members who wish to present objections to the proposed Settlement must do so in writing as specified by the procedure in the Notice. Written objections must be mailed and postmarked no later than 75 days after entry of this Order for Notice and Hearing to the United States District Court for the Eastern District of Virginia, 701 East Broad Street, Richmond, VA 23219, and to Plaintiff's Counsel and Defense Counsel. In the event the Settlement Administrator receives a written objection, within five (5) days of receipt, the Settlement Administrator shall serve copies on Plaintiff's Counsel, who will electronically file the written objection with the Court and cause the written objections to be served electronically on Defense Counsel contemporaneously therewith. Objections shall be heard and any papers submitted in support of said objections shall be considered by the Court at the Fairness Hearing only if the objector follows the requirements for objection set out in the Notice. Any Class Member who does not comply with these requirements will be deemed to have waived any objections and will be forever barred from making any objections to the proposed Settlement.

19. It is not necessary for an objector to appear at the Fairness Hearing. However, if an objector wishes to appear and/or speak at the Fairness Hearing, they must indicate in their objection letter whether they intend to appear personally or through an attorney.

20. The Settlement Administrator shall not be responsible for any of the relief provided to the Settlement Class under this Settlement Agreement. For its actions relating to the implementation of this Settlement Agreement, to the extent permitted by applicable law, the Settlement Administrator shall have the same immunity that judges have for their official acts.

21. Within one hundred (100) days after entry of this Order for Notice and Hearing, Plaintiff shall move the Court to enter an Order and Final Judgment substantially in the form attached hereto as **Exhibit** and shall file a memorandum addressing any timely-filed written objections to the Settlement.

22. Counsel for the Parties are hereby authorized to utilize all reasonable procedures in connection with the administration of the Settlement which are not materially inconsistent with either this Order or the terms of the Settlement Agreement.

Dated: _____

_____

Hon. Robert E. Payne
United States District Judge

EXHIBIT D-1

United States District Court for the Eastern District of Virginia

Case No. 3:24-cv-00479-REP

Class Action Notice

Authorized by the U.S. District Court

There is a class action lawsuit against the Virginia Department of Corrections for denying earned sentence credits and over-incarcerating people serving sentences for inchoate offenses related to robbery and carjacking.

There is a settlement of this lawsuit.

You are entitled to a portion of this money.

If you want to be part of this settlement, you do not need to do anything.

If you want to opt-out of the settlement, do so by <<date>>.

- **Based on VDOC records, you were over-detained for <<###>> days and are entitled to $<<###>> in compensation.**
- You should read this notice in full.
- If you take no action, you will receive a check for the settlement amount in the mail at this address. If you would prefer to receive a payment by PayPal or Venmo, return the Election Form that is the last page of this packet.
- If you take no action, you will be bound by the settlement, and your rights will be affected.

Table of Contents

About This Notice

Why did I get this notice?

This notice is to tell you about the settlement of a class action lawsuit, brought on behalf of people who were serving sentences in the Virginia Department of Corrections (VDOC) for inchoate offenses[1] associated with robbery or carjacking and were denied expanded earned sentence credits between July 2022 and November 2023. The lawsuit claims that these individuals were entitled to credits, and that by denying them, VDOC kept people in prison for longer than it should have. **You received this notice because VDOC records indicate that you are a member of the group of people affected, called the "class."** This notice gives you a summary of the terms of the proposed settlement agreement, explains what rights class members have, and helps class members make informed decisions about what action to take.

What do I do next?

Read this notice in full. Then, decide if you want to:

Do Nothing	Get a payment via check in the mail after the settlement is finally approved. You will be bound by the settlement.
Challenge Your Payment Amount	Page 1 of this Notice states the number of days that you were over-detained according to VDOC records and the approximate amount of compensation that you will receive. If you believe that the number of days is incorrect, you should contact the Settlement Administrator. You will be bound by the settlement.
Change Your Payment Method	If you prefer to receive your payment via PayPal or Venmo, fill out and return the Election Form on the last page of this packet. You will be bound by the settlement.
Opt Out	Get no payment. Allows you to bring another lawsuit against VDOC about the same issues.
Object	Tell the Court why you don't like the settlement.

[1] Inchoate offenses are attempts, conspiracies, or solicitations to commit an offense. Your records reflect that you were serving a sentence in VDOC custody for attempted robbery, attempted carjacking, conspiracy to commit robbery, conspiracy to commit carjacking, solicitation to commit robbery, and/or solicitation to commit carjacking.

What are the most important dates?

Your deadline to object or opt out: **[date TBD]**
Settlement approval hearing: **[date TBD]**
Your deadline to change your payment method: **[date TBD]**

Learning About the Lawsuit

What is this lawsuit about?

This lawsuit was filed in June 2024. It alleges that, between July 2022 and November 2023, VDOC wrongfully denied enhanced earned sentence credits to people serving sentences for inchoate offenses associated with robbery or carjacking and thus incarcerated these people for longer than it should have.

VDOC denies that it did anything wrong but has agreed to settle the lawsuit on a class-wide basis.

Why is there a settlement in this lawsuit?

In November 2024, the parties agreed to settle, which means they have reached an agreement to resolve the lawsuit. Both sides want to avoid the risk and expense of further litigation.

The settlement is on behalf of Plaintiff Leslie Puryear, who brought the case, and all members of the settlement class. The Court has not decided in favor of either side.

What is a class action settlement?
A class action settlement is an agreement between the parties to resolve and end the case. Settlements can provide money to class members who were harmed.

What happens next in this lawsuit?

The Court will hold a Fairness hearing to decide whether to approve the settlement. The hearing will be held at:

Where: Spottswood W. Robinson III and Robert R. Merhige, Jr. Federal Courthouse, 701 East Broad Street, Richmond, VA 23219.

When: [time] on [date].

The Court has directed the parties to send you this notice about the proposed settlement. Because the settlement of a class action decides the rights of all members of the proposed class, the Court must give final approval to the settlement before it can take effect. Payments will be made only if the Court approves the settlement.

You don't have to attend the hearing, but you may do so at your own expense. You may also ask the Court for permission to speak about the settlement at the hearing. If the Court does not approve the settlement, it will be void and the lawsuit will continue.

Learning About the Settlement

What does the settlement provide?

VDOC has agreed to pay up to $1,139,694 into a settlement fund. Class members will receive $118 for every day that they were over-detained. Page 1 of this Notice lists your projected payment.

Members of the settlement class will "release" their claims as part of the settlement, which means they cannot sue VDOC for the issues that were raised in this lawsuit.[2]

If there is money left over after the claims process is completed, it will be donated to a charitable organization.

[2] Specifically, the release provides that "all Class Members other than those who have opted out of the Settlement Class shall be deemed to have fully, finally and forever, released, acquitted and discharged Defendants and each of their predecessors, successors, employees, agents, attorneys, accountants, Insurers, co-Insurers, re-Insurers, and the assigns and heirs of each of them from any and all claims and causes of action challenging the fact of over-detention on behalf of any Class Member arising in whole or part from the facts asserted in the Complaint, and including all such claims any Class Members have raised or might have raised now or in the future, from the beginning of time to the Effective Date of Settlement. Moreover, all Class Members other than those who have opted out will not have their calculated period of over-detention applied against any current or future active period of incarceration on a probation violation stemming from their underlying inchoate robbery or carjacking offense. Class members who elect to receive monetary damages waive the right to have any portion of their prior period of incarceration applied to reduce an active sentence on any subsequent probation violation."

How much will my payment be?

Your payment amount is based on the number of days that you were over-detained. Page 1 of this Notice states the number of days that you were over-detained according to VDOC records and the compensation that you are entitled to based on that number of days. **If you think the number of days of over-detention is wrong, contact the Settlement Administrator.** If you do not contact the Administrator or opt out, you will receive a payment in this amount and be bound by the terms of this settlement.

If I receive a payment, will I get credit for my over-detention in any future sentence?

If you were to receive an active sentence on a probation violation related to the crimes that you were serving time for during your over-detention, those extra days would be applied as jail credit to reduce the time you spend in custody on that future probation violation. **However, if you receive a payment from this settlement, you are no longer entitled to this credit.** If you would rather be able to receive jail credit against a possible future sentence than receive money, you should opt out of this settlement.

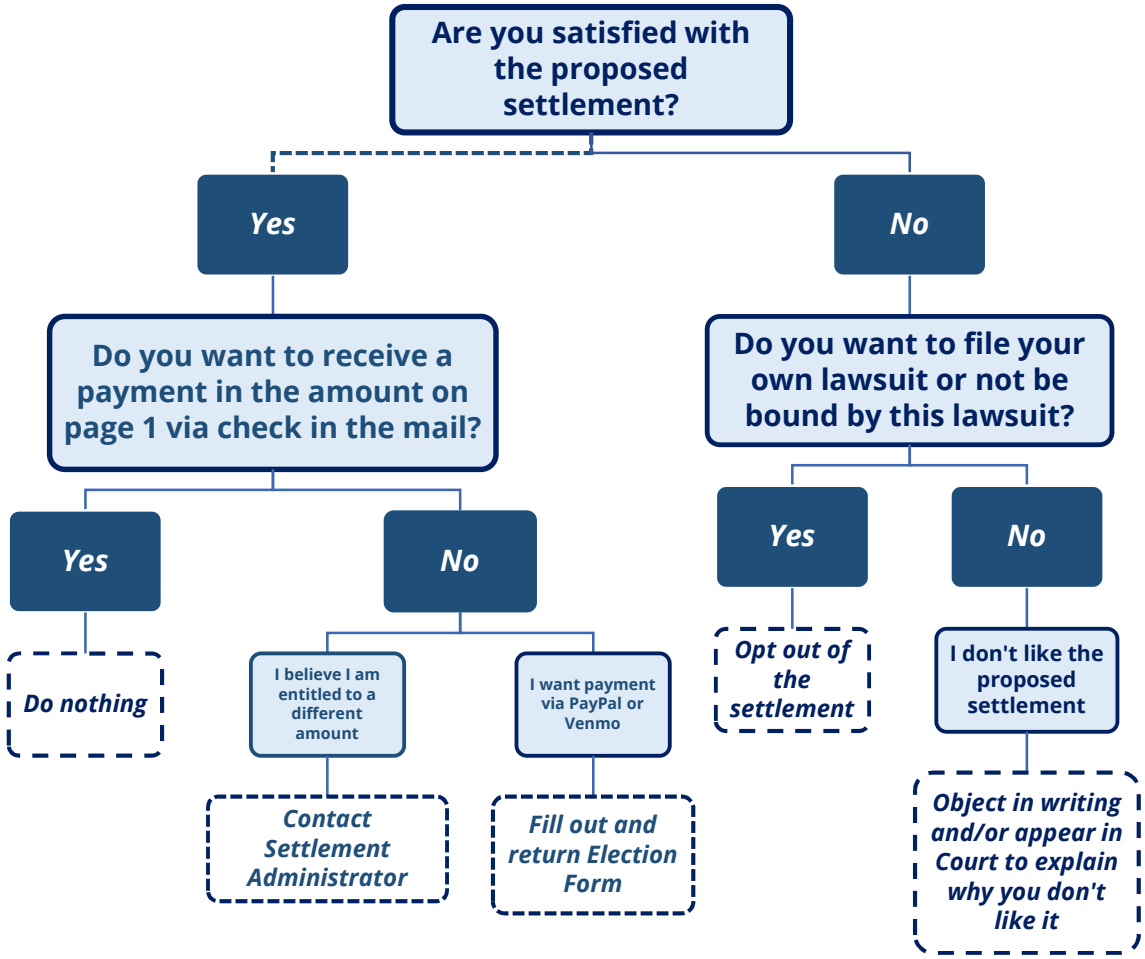
Deciding What to Do

How do I weigh my options?

You have five options. This chart shows the effects of each option:

	Do Nothing	**Challenge Payment Amount**	**Change Payment Method**	**Object**	**Opt Out**
Can I receive a settlement payment if I . . .	YES	YES	YES	YES	NO
Am I bound by the terms of this lawsuit if I . . .	YES	YES	YES	YES	NO
Can I bring my own case if I . . .	NO	NO	NO	NO	YES
Will the class lawyers represent me in this case if I . . .	YES	YES	YES	NO	NO
Can I receive credit against a future probation violation sentence for the time I was over-detained if I . . .	NO	NO	NO	NO	YES

What is the best path for me?



Getting Paid

How do I get a payment if I am a class member?

You do not need to do anything to get paid.

If you do nothing, you will receive a check in the mail at the same address where you received this Notice. The check will be sent after this settlement is finally approved by the Court, likely in mid-2025. Consult page 1 of this Notice for the amount of your check.

What if I prefer to receive my payment via PayPal or Venmo?

If you prefer to receive your payment via PayPal or Venmo, fill out the Election Form on the last page of this Notice and return it to the Settlement Administrator in the pre-paid envelope. **You do not need to return the Election Form if you want to receive a payment by check. You will receive payment by check as a default.**

What if I believe I am entitled to more money?

If you disagree with the number of days of over-detention for which you are being compensated (consult page 1 of this Notice), contact the Settlement Administrator. Their contact information is on the last page of this notice. They will consult with the parties and get back to you with a final calculation. If you disagree with their final calculation, you may object or opt out.

Do I have a lawyer in this lawsuit?

In a class action, the court appoints class representatives and lawyers to work on the case and represent the interests of all the class members. For this settlement, the Court has appointed the following individuals and lawyers.

Your lawyers: Rebecca Livengood, Michael Allen, Ellora Israni, and Emahunn Campbell; Relman Colfax PLLC. These are the lawyers who negotiated this settlement on your behalf.

If you want to be represented by your own lawyer, you may hire one at your own expense.

Do I have to pay the lawyers in this lawsuit?

Lawyers' fees and costs will be paid from the Settlement Fund. **You will not have to pay the lawyers directly.**

To date, your lawyers have not been paid any money for their work or the expenses that they have paid for the case. To pay for some of their time and risk in bringing this case without any guarantee of payment unless they

were successful, your lawyers will request, as part of the final approval of this Settlement, that the Court approve a payment of up to $400,000 total in attorneys' fees and costs. This money will not come out of the fund for the class.

Lawyers' fees and expenses will only be awarded if approved by the Court as a fair and reasonable amount. You have the right to object to the lawyers' fees even if you think the settlement terms are fair.

Your lawyers will also ask the Court to approve a payment of up to $40,000 to Mr. Puryear for the time and effort he contributed to the case. If the Court approves anything less than $40,000, the balance will be redistributed among all of the class members.

Finally, your lawyers will also ask the Court to approve a payment of up to $20,000 to the Settlement Administrator for administering the settlement. This money will not come out of the fund for the class.

Opting Out

What if I don't want to be part of this settlement?

You can opt out. If you do, you will not receive payment and cannot object to the settlement. However, you will not be bound or affected by anything that happens in this lawsuit and may be able to file your own case. You may also receive jail credit if you were to be sentenced to active time on a probation violation related to the crimes for which you were in custody at the time you were over-detained.

Unless you opt out, you will be bound by the settlement and its "release" provisions. That means you won't be able to start, continue, or be part of any other lawsuit against VDOC about the issues in this case. A full description of the claims and persons who will be released if this settlement is approved is listed in footnote 1, above.

How do I opt out?

To opt out of the settlement, you must complete the opt out form included with this notice and mail it by [date] to the Settlement Administrator at:

Puryear v. Dotson Settlement Administrator c/o Settlement Services, Inc. P.O. Box 2715 Portland, OR 97208

Be sure to include your name, address, telephone number, and signature.

Objecting

What if I disagree with the settlement?

If you disagree with any part of the settlement (including the lawyers' fees) but don't want to opt out, you may object. You must give reasons why you think the Court should not approve it and say whether your objection applies to just you, a part of the class, or the entire class. The Court will consider your views. The Court can only approve or deny the settlement — it cannot change the terms of the settlement. You may, but don't need to, hire your own lawyer to help you.

To object, you must send a letter to the Court that:

(1) is postmarked by [date];
(2) includes the case name and number (, No. 3:24-cv-00479);
(3) includes your full name, address and telephone number, and email address;
(4) states the reasons for your objection;
(5) says whether you or your lawyer intend to appear at the fairness hearing and your lawyer's name; and
(6) your signature.

Mail the letter to:

Puryear v. Dotson Settlement Administrator c/o Settlement Services, Inc. P.O. Box 2715 Portland, OR 97208	United States District Court Eastern District of Virginia 701 East Broad Street Richmond, VA 23219

Key Resources

How do I get more information?

This notice is a summary of the proposed settlement. The complete settlement with all its terms can be found [here]. To get a copy of the settlement agreement or get answers to your questions:

- contact the Settlement Administrator or Your Lawyers (information below)
- access the Court Electronic Records (PACER) system online or by visiting the Clerk's office at the Court (address below).

Resource	Contact Information
Settlement Administrator	Puryear v. Dotson Settlement Administrator c/o Settlement Services, Inc. P.O. Box 2715 Portland, OR 97208 [case phone number TBD] claims@ssiclaims.com
Your Lawyers	Relman Colfax PLLC ATTN: Puryear Team 1225 19th St. NW, Suite 600 Washington, D.C. 20036 (202) 728-1888 puryearteam@relmanlaw.com
Court (DO NOT CONTACT)	U.S. District Court Eastern District of Virginia 701 East Broad Street Richmond, VA 23219

ELECTION FORM

If you want to receive payment by PayPal or Venmo, fill out and return this form by [DATE]

* PLEASE RETAIN A COPY OF THIS FORM, ALONG WITH ANY INFORMATION THAT WOULD DEMONSTRATE THE TIME AND MANNER IN WHICH IT WAS SUBMITTED

«FirstName» «LastName» MailID: «MailID»
«Address» «Address 2»
«City», «State» «Zip»
«Country»

Name/Address Changes:
_____
_____
_____

Your estimated settlement payment is <<AWARD>>

Please sign, date, and return this Election Form to the Settlement Administrator by postal mail, email (claims@ssiclaims.com), or fax by [date], if you wish to receive your share of the Settlement Fund via PayPal or Venmo. You are not required to complete this form to receive a payment. If you do not complete this form, you will receive your share of the Settlement Fund in the form of a check sent to your last known mailing address on file, as listed above.

Puryear v. Dotson Settlement Administrator
c/o SSI, an Epiq Company
P.O. Box 2715
Portland, OR 97208
Email: claims@ssiclaims.com
Phone: (8XX) XXX-XXXX
Fax: (850) 385-6008

Check one box below:

[ ]	I would like to receive my Settlement Benefit via PayPal. *Please note that payments above $10,000 cannot be sent via PayPal. If you choose this option and your payment is greater than $10,000, you will still receive a check.* PayPal Username: _____
[ ]	I would like to receive my Settlement Benefit via Venmo. *Please note that payments above $3,000 cannot be sent via Venmo. If you choose this option and your payment is greater than $3,000, you will still receive a check.* Venmo Username: _____ Last 4 digits of phone number:_____

Signature: _____ **Date:**_____

Print Name: _____

You must keep a current address on file with the Settlement Administrator and Class Counsel, along with a valid phone number and email address if you have them for updates.

Mailing Address:

_____

Phone number: _____ Email address: _____

EXHIBIT D-2

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

LESLIE PURYEAR, *on behalf of himself and all those similarly situated*,

Plaintiff,

v.

CHARWICK DOTSON, *in his individual capacity*,

HAROLD CLARKE, *in his individual capacity*,

Defendants.

Civil Action No. 3:24-cv-00479-REP

[PROPOSED] ORDER GRANTING APPROVAL OF PROPOSED CLASS ACTION SETTLEMENT AND CERTIFICATION OF CLASS

WHEREAS, the Court entered an Order preliminarily approving the Settlement and Settlement Agreement on _____, and held a Fairness Hearing on _____; and the Court has heard and considered all submissions in connection with the proposed Settlement and the files and records herein, including the objections submitted, as well as arguments of counsel;

IT IS HEREBY ORDERED AND ADJUDGED THAT:

1. All terms and definitions used herein have the same meanings as set forth in the Settlement Agreement.

2. The Court has jurisdiction over the subject matter of the Civil Action, the Plaintiff, the Class, and Defendants.

3. The Court finds that, for purposes of the Settlement, the requirements for a class action under Federal Rule of Civil Procedure 23 have been satisfied in that (a) the Class is ascertainable; (b) its members are too numerous to be joined practicably; (c) there are questions of law and fact common to the Class; (d) Plaintiff's claims are typical of the claims of the Class as a whole; (e) Plaintiff will fairly and adequately protect the interests of the Class; (f) neither Plaintiff nor Plaintiff's Counsel have interests adverse to the Class, and Plaintiff's Counsel are competent and experienced; and (g) common questions of law and fact predominate over questions affecting only individual members of the Class and a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

4. For purposes of resolution of claims for monetary relief, pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure, the Court finally certifies the Civil Action, for purposes of the Settlement, as a class action on behalf of the following Class: all individuals in the custody of the Virginia Department of Corrections ("VDOC") as of July 1, 2022 serving sentences for an inchoate crime associated with robbery or carjacking; who were not awarded expanded earned sentence credits ("ESCs") on those inchoate offenses under Virginia Code § 53.1-202.3(B), as amended; who were released from VDOC custody on or before November 30, 2023; who would have been released earlier than they were had they been awarded the expanded earned sentence credits as of July 1, 2022; and who were denied expanded ESCs solely because of their inchoate robbery and/or carjacking offense.

5. Plaintiff's Counsel and Plaintiff Leslie Puryear are hereby appointed to represent the Class. Relman Colfax PLLC is hereby appointed as Plaintiff's Counsel.

6. Notice of the class action Settlement was given to all Class Members pursuant to the Court's Order Granting Preliminary Approval of Proposed Class Action Settlement,

Provisional Certification of Class, and Approval of Notice ("Order for Notice and Hearing"). The form and method by which notice was given met the requirements of due process, Rules 23(c)(2) and 23(e) of the Federal Rules of Civil Procedure, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons entitled thereto.

7. The Settlement is in all respects fair, reasonable, and adequate, and it is finally approved. The Parties are directed to consummate the Settlement according to the terms of the Settlement Agreement. The Settlement Agreement and every term thereof shall be deemed incorporated herein as if explicitly set forth and shall have the full force of an Order of the Court.

8. Upon the Effective Date, Plaintiff, the Class, and each Class Member shall, by operation of this Order and Final Judgment, fully, finally, and forever release, acquit, and discharge the Released Claims against the Released Persons pursuant to the Settlement Agreement. Plaintiff, the Class, and each Class Member are hereby permanently enjoined and barred from instituting, commencing, or prosecuting any Released Claim against a Released Person in any action or proceeding in any court or tribunal.

9. The individuals identified on the list attached hereto **as Exhibit 1** have opted out of the Class and are not bound by the Settlement Agreement, Settlement, or Order and Final Judgment, and have not waived, relinquished, or released the right to assert any claims against Defendants.

10. This Order and Final Judgment, the Settlement Agreement, and any and all communications between and among the Parties pursuant to or during the negotiation of the Settlement shall not constitute, be construed as, or be admissible in evidence as an admission of the validity of any claim or defense asserted or fact alleged in the Civil Action or of any wrongdoing, fault, violation of law, or liability of any kind on the part of the Parties.

11. Plaintiff's Counsel are awarded the sum of $400,000 in attorneys' fees and costs, to be paid by Defendants in accordance with the terms of the Settlement Agreement.

12. Plaintiff Leslie Puryear is awarded $40,000 is awarded as a service payment, to be paid by Defendants in accordance with the terms of the Settlement Agreement.

13. Within twenty-one (21) days after receipt of the Per Diem Total into the Escrow Account, the Per Diem Total shall be distributed pro rata to the Settlement Class based on the number of days that each individual was over-detained, *i.e.*, the number of days between when the individual would have been released had they been given retroactive expanded ESCs as of July 1, 2022, and when the class member was actually released. Should any Settlement Class member's payment be less than $1,000, the payment shall be revised upward to $1,000, and payments to other members of the Settlement Class shall be revised downward, so that the total amount distributed to members of the Settlement Class does not exceed the total value of the Escrow Account. The amount of payment tentatively due to each Class Member is outlined in **Exhibit __** to the Motion for Final Approval.

14. If for any reason any portion of the Per Diem Total money remains in the Escrow Account one year after distribution of payments from the Escrow Account to the Settlement Class, all such remaining money shall be donated to a third-party non-profit organization mutually agreed upon by the Parties.

15. Defendants are directed to pay these amounts within sixty (60) days after the Effective Date, as described in the Settlement Agreement.

16. The Settlement Administrator shall not be responsible for any of the relief provided to the Settlement Class under this Settlement Agreement. For its actions relating to the

implementation of this Settlement Agreement, to the extent permitted by applicable law, the Settlement Administrator shall have the same immunity that judges have for their official acts.

17. Pursuant to Rule 7 of the Federal Rules of Appellate Procedure, "in a civil case, the district court may require an appellant to file a bond or provide other security in any form and amount necessary to ensure payment of costs on appeal." In light of the Court's ruling regarding the adequacy of the relief afforded by the Settlement, the reaction of the Class and the number of Class Members, the Court orders that any appeal of this Order must be accompanied by a bond of $150,000.

18. This Civil Action is hereby dismissed in its entirety with prejudice. Except as otherwise provided in this Order and Final Judgment or in the Settlement Agreement, the Parties shall bear their own costs and attorneys' fees. Without affecting the finality of this Order and the Judgment hereby entered, the Court retains exclusive jurisdiction over the Parties for all matters relating to the Civil Action and the Settlement, including the administration, interpretation, effectuation, or enforcement of the Settlement.

19. Without further Order of the Court, the Parties may agree to reasonable extensions of time to carry out any of the provisions of the Settlement.

Dated: _____

_____

Hon. Robert E. Payne
United States District Judge

Order Granting Approval of Proposed Class Action Settlement and Certification of Class: Exhibit 1 (Opt-Out List)

To be completed after Notice and Opt-Out Period

EXHIBIT 2

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

LESLIE PURYEAR, *on behalf of himself and all those similarly situated*, Plaintiff, v. CHADWICK DOTSON, *in his individual capacity*, HAROLD CLARKE, *in his individual capacity*, Defendants.	Civil Action No. 3:24-cv-00479-REP

DECLARATION OF REBECCA LIVENGOOD

I, Rebecca Livengood, hereby declare as follows:

1. I am over the age of twenty-one and am competent to make this Declaration. I have personal knowledge of the matters set forth herein.

2. I am counsel for Plaintiff in the above-captioned case.

3. I submit this Declaration in support of Plaintiff's Unopposed Motion for Preliminary Approval of Proposed Class Action Settlement, Provisional Certification of Class, and Approval of Notice.

4. I am a partner at Relman Colfax PLLC, a civil rights law firm based in Washington, D.C., that routinely litigates a broad range of civil rights cases in federal court, including cases involving constitutional claims against government actors.

5. Relman Colfax attorneys have experience serving as class counsel for multiple certified class actions, such as *Carroll et al. v. Walden University LLC et al.*, No. 1:22-cv-00051

(D. Md. 2022) (reverse redlining on the basis of race and gender); *Fair Hous. Ctr. Of Cent. Indiana, Inc. v. Rainbow Realty Grp., Inc.*, No. 1:17-CV-1782, 2020 WL 1493021 (S.D. Ind. Mar. 27, 2020) (predatory rent-to-buy program targeted on the basis of race and ethnicity); *Flack v. Wis. Dep't of Health Servs.*, 18-cv-209 (W.D. Wis. 2019) (denial of Medicaid coverage for treatments related to gender transition); and *Moore v. Duke*, Civ. No. 00-953 (D.D.C. 2000) (discrimination by U.S. Secret Service). In each of these cases, a court found Relman Colfax to be qualified to serve as class counsel.

6. Relman Colfax attorneys, including myself, also have experience litigating against government actors in cases such as: *Goodwin et al. v. District of Columbia et al.*, No. 1:21-cv-00806 (D.D.C.) (multi-plaintiff action asserting § 1983 and related claims against police officers and department); *Banks et al. v. City of Fredericksburg et al.*, No. 3:21-cv-00065 (E.D. Va.) (multi-plaintiff action asserting § 1983 and related claims against police officers and city); *Kovari v. Brevard Extraditions, LLC*, No. 5:18-cv-00070 (W.D. Va.) (§ 1983 and related claims against private prison companies and employees who assumed governmental role); *Hicks v. Ferreyra*, No. 8:16-cv-2521 (D. Md.) (§ 1983 and related claims against U.S. Park Police). In each of these cases, Relman Colfax attorneys handled all portions of the litigation, including drafting the complaint, motion practice, discovery, and settlement.

7. Relman Colfax attorneys, including myself, represented Mr. Puryear in filing a petition for a writ of habeas corpus in September 2023, which led to the release of Mr. Puryear and other putative class members.

8. Prior to entering mediation in this case, the Parties exchanged written discovery requests. Both parties served initial disclosures and propounded and responded to interrogatories and requests for documents. Through the discovery process, Plaintiff obtained Virginia

Department of Corrections ("VDOC") policy documents regarding the earned sentence credit ("ESC") program, internal emails regarding VDOC's implementation of the 2022 ESC program amendments, VDOC records showing the total number of potential class members and how long each was over-incarcerated, and other pertinent documents and information.

9. Among those pertinent documents were internal VDOC emails from approximately November 2023 referring to the group of people released from VDOC custody as a result of Mr. Puryear's habeas petition as the "Puryear Releases."

10. During the course of settlement negotiations, Defendants provided Plaintiff with a list of all putative class members, including their identities, the conviction that each class member was serving a sentence for, the date that the person would have been released had they been given expanded ESCs as of July 1, 2022, and the date that the person was actually released.

11. Based on this information exchanged between the Parties, Exhibit A to the Settlement Agreement is a comprehensive list of the 53 putative class members and how long each was over-detained.

12. The proposed resolution of this case was reached in light of this information in mediation overseen by Magistrate Judge Summer L. Speight of the Eastern District of Virginia. Prior to mediation, the Parties drafted mediation statements and exchanged written settlement offers. The Parties then held a full-day mediation session with Judge Speight on October 28, 2024, and another half-day mediation session on November 1, 2024. Counsel engaged in frequent communications and negotiations between and after the two mediation sessions. At the conclusion of the sessions, the Parties signed a Term Sheet, which has been expanded upon and memorialized into the Settlement Agreement being submitted to the Court for approval.

13. To ensure that the costs of administering the settlement do not exceed $20,000,

Plaintiff's counsel has agreed to take on some of the work of settlement administration.

14. Plaintiff's counsel has devoted significant resources and time to investigating the underlying conduct, researching the legal claims, drafting the complaint, defending against Defendants' Motion to Dismiss, propounding and responding to discovery requests, and negotiating the Settlement Agreement. As of the filing of this motion, the lodestar for Plaintiff's counsel is greater than $400,000.

15. If the Parties were to continue litigating this case, Plaintiff would anticipate taking several depositions of Defendants and other VDOC officials, defending against any depositions taken by Defendants, providing and/or responding to expert testimony on how to value over-detention, moving for and/or defending against summary judgment, and defending against interlocutory qualified immunity appeals, among other things. This would take hundreds of hours of attorney time.

16. After numerous discussions, negotiations, and mediation with defense counsel, the Parties are in support of the settlement agreement and believe it provides a fair, reasonable, and adequate resolution for the members of the class. Defendants do not object to the settlement agreement and the resolution of this litigation.

17. I am not aware of any putative class members who oppose the settlement agreement.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED WITHIN THE UNITED STATES ON:

December 16, 2024

Rebecca Livengood

EXHIBIT 3

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

LESLIE PURYEAR, *on behalf of himself and all those similarly situated*, Plaintiff, v. CHADWICK DOTSON, *in his individual capacity*, HAROLD CLARKE, *in his individual capacity*, Defendants.	Civil Action No. 3:24-cv-00479-REP

DECLARATION OF ROBERT HYTE

I, Robert Hyte, hereby declare as follows:

1. I am a Director of Operations for Settlement Services, Inc. ("SSI"). My business address is 2032-D Thomasville Road, Tallahassee, Florida, 32308. My direct telephone number 850-523-4929. I am over twenty-one years of age and am authorized to make this declaration on behalf of SSI and myself.

2. SSI has over 30 years of experience, having provided services in over 800 class action settlements and involving all phases of class action settlement administration. SSI has extensive experience in administering settlements in multiple areas of law, which include, but are not limited to, Title VII, wage and hour, and constitutional cases.

3. Examples of cases we have administered include:

   a. *Gonzalez v. Abercrombie & Fitch Stores, Inc*. A $48 million Title VII settlement with a class of over 171,000 people

b. *Scott v. Family Dollar Stores, Inc.* A $45 million Title VII settlement with a class of over 37,229 people.

c. *Walsh v. Corepower Yoga LLC.* A $1.65 million FLSA settlement involving 14,877 Collective Members.

d. *In re Tyson Foods, Inc.* A $17.5 million FLSA settlement involving 16,726 Collective Members.

e. *Hammond v. Lowes Home Center, Inc.* A FLSA (settlement amount was kept confidential) settlement involving more than 58,000 Collective Members.

f. *Hunter v. First Transit, Inc.* A $5.9 million FCRA settlement involving 143,585 Class Members.

Examples of cases against the government that we are currently administering include:

a. *Gabaldon, et al. V. Mayorkas, U.S. Department of Homeland Security*. A $45 million pregnancy discrimination settlement involving approximately 1,000 Class Members.

b. *Hedgepeth, et al. v Garland*. A $15 million race discrimination settlement involving approximately 5,000 Class Members.

4. SSI offers a wide range of services. These can include class notification, such as the design of mailed and published notices, tracing services, claims evaluation and processing, calculation and distribution of awards, and telephone support for responding to inquiries from class members. In addition, SSI has extensive experience in establishing, maintaining, and administering Qualified Settlement Funds, including all tax reporting.

5. I have reviewed the preliminary Settlement Agreement in this matter, discussed the anticipated duties with counsel for all parties, and find that all aspects of the administrator's

duties are common and within SSI's abilities.

6. SSI has agreed to administer this class action settlement for no more than $20,000.

Under penalties of perjury, I declare that I have read the foregoing declaration and that the facts stated in it are true to the best of my knowledge and belief.

EXECUTED WITHIN THE UNITED STATES ON:

December 12 2024

Robert B. Hyte

Robert Hyte

EXHIBIT 4

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

LESLIE PURYEAR, *on behalf of himself and all those similarly situated*, Plaintiff, v. CHADWICK DOTSON, *in his individual capacity*, HAROLD CLARKE, *in his individual capacity*, Defendants.	Civil Action No. 3:24-cv-00479-REP

DECLARATION OF LESLIE PURYEAR

I, Leslie Puryear, hereby declare as follows:

1. I am the Named Plaintiff in the above-captioned action. I am over the age of twenty-one and am competent to make this Declaration. I have personal knowledge of the matters set forth herein.

2. In March 2011, I was convicted of attempted robbery and was sentenced to eighteen years, eight months, and twenty-six days in the custody of the Virginia Department of Corrections ("VDOC").

3. At the time of my sentencing, my projected release date was April 21, 2025. My sentence entitled me to receive earned sentence credits ("ESCs"). Throughout my incarceration, I was eligible to participate in the ESC program and earned the maximum number of ESCs based on good behavior and program participation.

4. After the Virginia General Assembly amended the ESC program, I was informed

in spring 2022 that I would be eligible to receive expanded ESCs and therefore would be eligible for release on July 1, 2022, or soon thereafter.

5. Based on Defendants' information, I prepared to go home by taking re-entry classes, obtaining a state identification card, and having my home plan approved.

6. However, July 1, 2022 came and went, and I remained in prison. I submitted complaints seeking information about why I had not yet been released and when I would be released. My wife also contacted VDOC seeking information on my behalf.

7. On July 19, 2022, VDOC finally informed my wife that I would not be released because it had determined that my crime-of-conviction, attempted robbery, made me ineligible for expanded ESCs.

8. I continued to believe that I was entitled to expanded ESCs and release. My wife and I spent many months looking for counsel to represent me *pro bono* and help me secure my release. This process took time because of the complex legal issues involved.

9. I eventually connected with counsel at Relman Colfax PLLC, who filed a petition for a writ of habeas corpus on my behalf on September 26, 2023.

10. On November 9, 2023, while my petition was pending, VDOC released me from prison. I had been incarcerated for 434 days after I was entitled to release.

11. After my release, I learned that other people were also released as a result of my habeas petition and the resulting change in VDOC policy.

12. I decided to pursue class action litigation on behalf of everyone who was harmed by this VDOC policy; because we were all harmed by the same policy, I wanted everyone to receive compensation.

13. I am currently on probation, and probation monitors where I live, my

employment, my travel, and other parts of my day-to-day life.

14. During the course of this litigation, I have committed significant time and effort to meet with counsel in person and virtually to assist in investigating the case, drafting the complaint, respond to written discovery requests, and provide pertinent documents.

15. I traveled to Richmond to attend and participate in the full-day mediation session on October 28, 2024, and virtually attended the second mediation session on November 1, 2024. During the second mediation session, I approved the monetary terms of the settlement agreement.

16. Based on my overincarceration and my participation in the litigation and mediation discussion, I am in support of the terms of the settlement agreement and believe it provides a fair, reasonable, and adequate resolution for the members of the class.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED WITHIN THE UNITED STATES ON:

December 13, 2024

Leslie Puryear, Jr.

EXHIBIT 5

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
NORTHERN DIVISION

ALJANAL CARROLL, ET AL.,	)
	)
Plaintiff,	)
	)Civil No.
vs.	)22-cv-0051-JRR
	)
WALDEN UNIVERSITY, LLC, ET AL.,	)Baltimore, Maryland
	)
Defendants.	)2:10 p.m.
_____	)

THE ABOVE-ENTITLED MATTER CAME ON FOR SETTLEMENT APPROVAL HEARING BEFORE THE HONORABLE JULIE R. RUBIN

A P P E A R A N C E S

On Behalf of the Plaintiffs:
ALEXA T. MILTON, ESQUIRE
ERIC ROTHSCHILD, ESQUIRE
GLENN SCHLACTUS, ESQUIRE
LILA R. MILLER, ESQUIRE
TARA K. RAMCHANDANI, ESQUIRE

On Behalf of the Defendants:
CAITLIN E. DAHL, ESQUIRE
AMELIA RAETHER, ESQUIRE

(Computer-aided transcription of stenotype notes)

Reported by:
Ronda J. Thomas, RMR, CRR
Federal Official Reporter
101 W. Lombard Street, 4th Floor
Baltimore, Maryland 21201

This comes at great personal expense of time and effort, and exposure, with no promise of a service award or an incentive award. Importantly, Plaintiffs Carroll, Charles, and Fair are forfeiting their individual claims under Minnesota statutes and for common law fraud, which means they have sacrificed the prospect of their personal recovery in favor of representing and fighting for their class. They served their class members well and diligently.

The service award request of 25,000, a total of 100,000, is reasonable; and fairly and adequately reflects the value they added to this case, their personal expense for each of them, and the exposure to potential public ridicule or pressure or just general public exposure, and the ultimate recovery for the class.

Plaintiffs lead counsel is Relman Colfax PLLC, a national D.C.-based civil rights firm, with considerable expertise and depth of experience and complex civil rights litigation in consumer-related cases under state and federal law; the firm litigated what is believed to be the first reverse redlining Title VI and ECOA discrimination class action certified against a for-profit college, like Walden here. Counsel have deep experience and expertise in reverse redlining theories of recovery at issue here, and represented their clients at the highest level of quality, professionalism and diligence. Plaintiffs' co-counsel, the National Student Legal Defense

Network, brought an additional material expertise as a nonprofit whose mission includes addressing disparities in civil rights in the higher education setting, to include student lending.

The Student Defense regularly appears as counsel in cases similar to this action at the national level, both state and federal courts.

Pursuant to Rule 23(h), there are two main methods for calculating the reasonableness of attorneys' fees. There's the lodestar method and the percentage-of-recovery method.

The lodestar method calculates reasonable fees by multiplying the number of reasonable hours expended times a reasonable rate, while the percentage-of-recovery method considers the portion of the total settlement fund that will go to attorneys' fees.

Awarding attorneys' fees on a percentage-of-recovery basis is appropriate.

When the proposed settlement creates a common fund for the class, as is the case here, this Court has regularly awarded attorneys' fees using a percentage-of-recovery method with a lodestar crosscheck or safety net.

The Court is satisfied that there's a clear consensus among the federal and state courts, consistent with Supreme Court precedent, that the amount of award attorneys' fees in common fund cases should be based on percentage of the

recovery.

The Fourth Circuit has explained awarding fees as a percentage of the common fund, quote, "Holds the beneficiaries of a judgment or settlement responsible for compensating the counsel who obtained the judgment or settlement for them," end quote.

The Court also agrees that awarding 25 percent of the settlement fund is reasonable pursuant to the parties' settlement agreement. The defendants do not oppose class counsel's request for an award of attorneys' fees and costs of 25 percent of the settlement sum, which amounts to $7,125,000.

When considering the reasonableness of a percentage of recovery of attorney's fee award, district courts in the Fourth Circuit have analyzed the following seven factors: One, the results obtained for the class. The most critical factor in calculating a reasonable fee award is the degree of success obtained. In this case, the degree of success is substantial for the reasons I recited before. District courts in this circuit regularly approve awards of a quarter of the settlement fund. I was looking at the *McAdams* case out of 2022, approving a 43 percent award from the common fund; *Galloway*, 33 percent; *Sims*, 33 percent; *Deem*, 33 percent; and *Novant Health* and many others.

The second factor is the quality, skill, and efficiency of the attorneys involvement. As I said earlier, class counsel

have impressive civil rights and class action litigation experience including in this niche subject area; and no doubt that experience produced the beneficial results in this case. They worked efficiently and effectively to achieve an exceptional outcome for their clients.

Number three, the third factor is the risk of nonpayment. Class counsel litigated this case on a contingency basis. Basically, what that means is they risked their own time and resources in litigation that involved relatively untested and underdeveloped legal theories and facts. Very few lawyers can take on the representation of a class client given the investment of time, substantial time, effort and money, especially in light of the risks of recovering nothing.

Risks relevant to assessing an atypically large or small fee request are the distinctive risks specific to a particular litigation.

At set forth earlier, if this matter had proceeded in litigation, plaintiffs would have borne considerable additional risks: Including contested class certification for pretrial, the possibility of interlocutory appeal pursuant to Rule 23(f), dispositive motions and potential appeals, and trial itself.

Also important is the relative new-kid-on-the-block character of this class action subject area: Reverse redlining in the for-profit educational market. The law is fairly underdeveloped here, or undeveloped here; counsel take on

considerable opportunity cost associated with contingency cases, not only with respect to opting out of hourly rate work, but also with respect to fronting expenses. I consider that to be extra present here in this case given what I've just said.

Number four, the fourth factor, objections by members of the class to the settlement terms and/or fees requested by counsel. I've already addressed the sole Hoxsey objection, which takes no issue with the requested award of attorneys' fees or class represented or named members incentive awards. Such as lack of opposition strongly supports a finding of adequacy because the attitude of the members of the class, as expressed directly or by failure to object, after notice to the settlement is a proper consideration for the trial Court. That is the Fourth Circuit in *Flinn v. FMC Corp.*, 528 F.2d 1169.

The fifth factor is awards in similar cases. Pursuant to Newberg on Class Actions, a one-third percentage-of-recovery award is consistent with the studies performed over decades and here we have a 25 percent request. Empirical studies show that regardless of whether the percentage method or the lodestar method is used, fee awards in the class action average around a third of their recovery.

The complexity and duration of the case is the sixth factor. This case involved extensive prefiling investigation of claims and damages and in view of the relative nascent stage of this area of law they prosecuted their clients' claims

aggressively and creatively. Settlement negotiations were long and challenging; and the complexity of the case is somewhat mirrored by the extraordinarily complex and thorough settlement agreement. And it's not even technically over because class counsel will have to spend additional time and effort to administer additional possible class members.

The seventh factor is public policy. Public policy favors the requested award where risk of nonpayment exists because the relevant public policy considerations involve the balancing of the policy goals of encouraging counsel to pursue meritorious litigation. This supports approval of the fees and expenses request in this case.

Moving on to the lodestar crosscheck. It does confirm that counsel's fee request is reasonable. A lodestar crosscheck is not required to determine the fairness of a fee when the percentage-of-recovery method is used but we do it as a safety net.

According to Mr. Schlactus' and Mr. Rothschild's very thorough declarations at ECF-101-4 and ECF-101-5, here, the lodestar for class counsel is $3,875,398; class counsel devoted over 6,275 hours to this litigation, which does not include 433 deducted hours based on counsel's review of their time, and more than $30,000 in out-of-pockets not sought through the motion, but what surely would have been requested on a prevailing party fee petition.

Class counsel's hourly rates are well within the goalpost of litigators in their general field of their echelon.

Further, counsel's hourly rates are also comfortably within the ranges of rates approved as reasonable in recent class actions in this circuit, including those I cited earlier.

Class counsel's total lodestar $3,875,398 results in a 1.84 multiplier, which is well within the goalposts set by many other cases in the Fourth Circuit.

The Court also finds that the requested award of expenses is utterly appropriate and reasonable. The Fourth Circuit has opined that litigation expenses are integrally related to the work of the attorney and the services for which outlays are made may play a significant role in the ultimate success of litigation.

The requested service award or incentive awards, as I said here, is reasonable and fair. Newberg and Rubenstein on Class Actions which is -- I consider it the Bible on class actions -- confirms that in 2021 the mean incentive award was under $25,000. For the reasons I said earlier, I do find that they served their class members very well and diligently, and defendant does not oppose this award. No class member has objected to it. With respect to the certification of the proposed class, Rule 23 at subsections (a), (b)(2), (b)(3), and (g) are satisfied.

With respect to Rule 23(a)(1), that issue of numerosity,