

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

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|---|---|---------------------------|
| THOMAS HOOTSELLE, JR., |) | |
| DANIEL DICUS, OLIVER HUFF, |) | Cause No. 12AC-CC00518-01 |
| |) | |
| Plaintiffs, Individually and on behalf of |) | |
| All others similarly situated, |) | |
| |) | |
| v. |) | |
| |) | |
| ANNE PRECYTHE, in her official |) | |
| Capacity as Director of the Department |) | |
| Of Corrections, and |) | |
| MISSOURI DEPARTMENT OF |) | |
| CORRECTIONS |) | |
| |) | |
| Defendants. |) | |

NOTICE OF CLASS ACTION AND NEW TRIAL

TO: All Persons Employed In Positions As Corrections Officer I Or Corrections Officer II By The Department Of Corrections Of The State Of Missouri At Any Time From August 14, 2007 To The Present Date.

PLEASE READ THIS CLASS ACTION NOTICE CAREFULLY.

THE COURT AUTHORIZED THIS NOTICE.

IT IS NOT A SOLICITATION FROM A LAWYER.

YOU ARE NOT BEING SUED.

Pursuant to Rule 52.08(c)(2) of the Missouri Rules of Civil Procedure, which permits a class action to be filed by representative parties on behalf of all others who may have been similarly damaged, and which requires notice of the class action to be given to all persons reasonably believed to be potential members of the Class, you are hereby notified of this class action case. This notice is being sent electronically, wherever practical.

You may have already received previous Notices about this class action case, in Notices approved by the Court, in or about October of 2015 and September of 2018. This is another Notice about additional proceedings in the same case.

PRIOR PROCEEDINGS IN THIS CASE AND NEW TRIAL

This case, which was certified as a class action in February of 2015, was tried to Jury Verdict on August 15, 2018 (“First Trial”), after which the Court entered Judgment on August 17, 2018 (“First Trial Judgment”). After the First Trial, the MDOC appealed the First Trial Judgment, first to the Missouri Court of Appeals and later to the Missouri Supreme Court. Although the First Trial Judgment was affirmed at the Court of Appeals, the Missouri Supreme Court issued an opinion on June 1, 2021 that sent the case back to Cole County Circuit Court. The Missouri Supreme Court found that proceeding as a class action was proper and that significant portions of the Corrections Officers’ time spent on pre- and post-shift activity is compensable and must be paid. The Missouri Supreme Court sent the case back to Cole County for further determinations on compensability and damages, and vacated the First Trial Judgment.

The Cole County Circuit Court has set a new trial date for this case on June 14-17 and June 21-24, 2022 (“New Trial”). As described in prior Notices approved by the Court, your rights will be determined and you will be legally bound by any Jury Verdict and Judgment resulting from the New Trial. If there is a successful outcome in the New Trial, you will be entitled to share in any recovery obtained in the class action per Judgment and Court Order.

OVERVIEW OF THE CLASS ACTION

On August 14, 2012, this class action was brought against the Missouri Department of Corrections and Anne Precythe, in her official capacity, by Plaintiffs Thomas Hootselle, Jr., Daniel Dicus and Oliver Huff, individually and as representatives of all persons who have been employed as Corrections Officers I or Corrections Officers II at any time from August 14, 2007 to present for claims involving unpaid straight-time compensation and anytime from August 14, 2010 to present for claims involving unpaid overtime compensation.

Plaintiffs’ Petition alleges that the Missouri Department of Corrections does not pay straight-time or overtime wages for pre- and post-shift activities Plaintiffs claim that CO I and CO II employees are required to perform before and after every shift. Plaintiffs are requesting the Department of Corrections pay all class members for those pre- and post-shift activities.

Plaintiff’s Petition contains multiple counts. In Count III, Plaintiffs seek damages for the Department’s alleged breach of contract in not paying wages for work performed. In Count IV, Plaintiffs seek damages for the Department’s alleged unjust enrichment for pre- and post-shift activities completed by CO I and CO II employees that Plaintiffs allege was not paid. In Count V, Plaintiffs seek relief in quantum meruit for pre- and post-shift activities completed by CO I and CO II employees. Counts I and II have been previously dismissed by the Court.

The Department of Corrections denies that the pre- and post-shift activities identified by Plaintiffs are compensable and that it must compensate employees for time spent performing those activities. It raises several affirmative defenses, including that the time spent on such activities is small, or de minimis, and that the activities are pre- or post-work activities that are not compensable under applicable law.

THIS NOTICE SHOULD NOT BE UNDERSTOOD AS AN EXPRESSION OF ANY OPINION BY THE COURT CONCERNING THE MERITS OF THE ALLEGATIONS MADE AGAINST THE MISSOURI DEPARTMENT OF CORRECTIONS.

ACTION OF THE COURT

On September 29, 2015, the Court ordered that notice of this case be communicated to all potential Class members, informing them of its pendency and status, explaining the nature of the action and the rights of Class members in it, and describing what Class members can do to protect their interests. The purpose of this notice is to supplement that original notice.

The Court has by Order certified the following “Class”:

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

Thomas Hootselle, Jr., Daniel Dicus, and Oliver Huff have been designated by the Court as representatives of the Class. Attorney Gary K. Burger and the law firm of Burger Law LLC have been appointed Class Counsel.

YOUR RIGHTS AND CHOICES

If your employment by the Missouri Department of Correction as Corrections Officer I or Corrections Officer II began prior to September 29, 2015, the period for opting out of this Class expired on December 29, 2015, as explained in the original Notice. **The procedure for opting out of the Class, described below, is only available if your employment as Corrections Officer I or Corrections Officer II began after September 29, 2015.** If you fall within the Class definition and the starting date of your employment was after September 29, 2015, you will be included in the class action unless you opt-out pursuant to the procedure described below.

If you remain in the Class (by taking no action to opt-out of the Class), your rights will be determined in the pending lawsuit and you will be legally bound by any judgment therein, whether favorable or unfavorable. You will be entitled to share in any recovery obtained in the class action, whether by settlement or judgment, subject to deductions for costs, expenses, and attorney fees approved by the Court. However, in order to obtain any recovery you may first be required to supply such proof as the Court may direct. Your interests will be protected by the attorneys representing the Class, but you may, if you wish, select your own attorney to enter an appearance in this case and to represent you at your own expense.

If you choose to opt-out and not to be included in the Class, you will not be bound by any decisions or judgments in this class action, and you will not be entitled to share in the proceeds of any settlement or judgment obtained in the class action. However, you retain any rights to pursue a claim against the Missouri Department of Corrections on your own and at your own expense.

If you DO NOT wish to be included in the Class, you must return the enclosed Opt-Out Form stating that you want to be excluded from the Class.

Be sure to include your name, address, and telephone number, and sign the Form. The Opt-Out Form should be mailed to “DEPARTMENT OF CORRECTIONS LITIGATION, Burger Law LLC, 500 North Broadway, Suite 1860, St. Louis, MO 63102.”

Opt-Out Forms must be received no later than May 15, 2022. All eligible Class members who fail to return an Opt-Out Form by that date will automatically be included in the Class.

Counsel for the plaintiffs and for the members of the Class (“Class Counsel”) is:

Gary K. Burger
Burger Law LLC
500 North Broadway, Suite 1800
St. Louis, MO 63102
(314) 542-2222 (phone)

All communications and questions concerning this notice should be sent to “DEPARTMENT OF CORRECTIONS LITIGATION, Burger Law LLC, 500 North Broadway, Suite 1860, St. Louis, MO 63102 or email Gary Burger at MDOC@burgerlaw.com or call at (314) 542-2222. For more information, visit <https://burgerlaw.com/>. **Do not contact the Court.**

If your address, phone number or email address changes or is different from the address stated on the envelope enclosing this notice, please send notice of the change or a correction to “DEPARTMENT OF CORRECTIONS LITIGATION, Burger Law LLC, 500 North Broadway, Suite 1860, St. Louis, MO 63102,” or email at MDOC@burgerlaw.com or go to <https://burgerlaw.com/missouri-department-of-corrections-class-action/>.

YOUR OBLIGATIONS AS A CLASS MEMBER

If you are and remain a member of the Class, you may be called upon in due course to provide information concerning your claim. Your failure to provide this information in the manner required by the Court is important and may affect your claim. If you do not exclude yourself from the Class, you will be sent appropriate notices with regard to filing your claim. Class Counsel and the representatives of the Class will present the case at trial on behalf of the Class. You do not need to attend the trial or take other action.

AVAILABILITY OF FILED PAPERS

This Notice provides only a summary of matters regarding the lawsuit. Copies of the Class Notice, Plaintiffs’ First Amended Petition, Defendants’ Answer to Plaintiffs’ Petition, and the Order Granting Class Certification can be found at <https://burgerlaw.com/missouri-department-of-corrections-class-action/>. The pleadings and other papers filed in this action are available for inspection at the Office of the Clerk of the Circuit Court of Cole County, 301 E. High St., Jefferson City, MO 65101 during regular business hours.

If you wish, you may seek the advice and guidance of outside attorneys, at your own expense. If you wish to communicate with or obtain information from attorneys for the Class, you may do so by letter at the addresses listed below. You should direct any such inquiries concerning the matters described in this Notice to Class Counsel:

Gary K. Burger
Burger Law LLC
500 North Broadway
Suite 1860
St. Louis, MO 63102
(314) 542-2222 (phone)
Gary@burgerlaw.com

Please do not contact the Court, Counsel for Missouri Department of Corrections, or any Department of Corrections representative for information.

Dated: February 7, 2022

By Order of the Circuit Court of
Cole County, State of Missouri

OPT OUT FORM

[Full Name - Printed]

hereby requests to be excluded from the class action, *Hootselle v. Missouri Department of Corrections*, Case No. 12AC-CC00518-01, pending in Cole County Circuit Court, State of Missouri, in accordance with the terms of the Notice of Class Action.

It is my understanding that by this request, I will not be entitled to share in the benefits of the judgment if it is favorable to the plaintiffs, and I will not be bound by a judgment which is favorable to the defendant.

Signature

Address

Email

Telephone

**MAIL TO: DEPARTMENT OF CORRECTIONS LITIGATION
Burger Law LLC
500 North Broadway
Suite 1860
St. Louis, MO 63102**