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

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

PLAINTIFFS' MOTION TO AMEND JUDGMENT AND APPROVE PLAN OF DISTRIBUTION, ATTORNEYS' FEES AND COSTS, CLASS REPRESENTATIVES' SERVICE AWARDS AND POST-JUDGMENT INTEREST

Plaintiffs, Thomas Hootselle, Jr., Daniel Dicus, and Oliver Huff, and Class Plaintiffs, by their counsel of record, respectfully move the Court to amend the Judgment it entered on August 17, 2018 for the following purposes: (1) to approve the plan of distribution of the judgment proceeds, as described in more detail below; (2) to approve an award of Plaintiffs' counsels' attorneys' fees and costs, as described in more detail below; (3) to provide for an award to the three Class Representatives for their service in this matter; and (4) to provide for post-judgment interest, in accordance with Missouri law.

I. Plaintiffs' Plan of Distribution to Class Members Should be Approved.

Plaintiffs have developed a plan for distribution of the proceeds of the judgment to members of the certified Plaintiffs' Class. As described in the Affidavit of Plaintiffs'

expert, Dr. William Rogers, attached hereto as Exhibit 1, and consistent with his testimony at trial that such a plan of distribution was possible, Plaintiffs propose that the Court approve a distribution plan that provides all class members with a share of the judgment consistent with time they spent working for Defendant Missouri Department of Corrections ("MDOC"). As such, this would be reflective of the time each of the class members spent on the pre and post-shift activities at issue in the litigation.

Class plaintiffs and Dr. Rogers propose that each class members' distribution from the net judgment (after payment of Court approved attorneys' fees and expenses) be calculated using the following steps:

a. First, collect all corrections officer earnings history through the Missouri Accountability Portal, and match the names and year of employment to the list of corrections officer ID, names, and posting provided by the Missouri Department of Corrections. These are contained in Defendant's documents Bates 374010-374340 through Bates 376860-377203.

b. Second, adjust each corrections officer's earnings by inflation, the Court-determined overtime rules, and Court-determined timeframe. These values may need to be adjusted due to the timing of payments.

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

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

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

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

Ex. 1, ¶6, 7.

Any distributions to class members that are deceased should be among their next of kin per stirpes or however the Court directs. After a reasonable time, should any distribution to Class members not be claimed, those unclaimed funds can easily be redistributed pro rata among Class members receiving a distribution. The above-described calculation is a fair, reasonable and adequate method for distributing the net verdict/judgment in this case from an economic perspective. Ex. 1, ¶8.

From documents produced by Defendant (utilizing data that was part of the underpinnings of his expert report at trial, *see* Trial Exhibit 86) Dr. Rogers calculated damages for 15,040 people in Defendant's distribution list. There does appear to be too many people on that list. This could be due to duplicative names, names of non-Class members and other errors in the list (this was encountered with past Class lists from the Defendant). Opt-outs will also be removed. However, Dr. Rogers did the distribution calculation for this list and produced a file named distribution_20180825.csv to Class Counsel, which lists all the potential class members with their ID, name, share of the

distribution, and exact total payout in dollars. Currently, the median payout is $2,743, the mean is $4,988 and the maximum is $34,166. About 80 percent of names will receive $600 or more.

Plaintiffs believe that these amounts are consistent with and reflective of a careful analysis of the available data, and an effort to distribute the proceeds of the judgment to Class Plaintiffs on the most fair and equitable basis. As such, Plaintiffs respectfully request that the Court amend the Judgment to adopt this distribution plan. Dr. Rogers, with approval of the Court, can easily adjust this distribution calculation with more accurate distributees and amounts.

Plaintiffs also request that the Court approve, as part of their plan of distribution, the retention of a qualified claims administrator to distribute the actual checks to Class Members. Class Counsel solicited competitive bids for two such companies, and can provide these bids to the Court at the hearing. These provide a plan for distribution of the actual checks to class members. These claims administrator costs would also come out of the common fund.

II. Awards of Attorneys' Fees and Costs, Service Awards, and Post-Judgment Interest Are Both Warranted and Well-Supported.

A. Class Counsel Are Entitled To An Award of Fees and Costs.

As described in more detail in the attached Affidavits of Gary K. Burger and Michael J. Flannery, Class Plaintiffs' counsel have worked diligently for six years to bring about the verdict rendered by the jury on August 15, 2018 (and incorporated in this Court's Judgment on August 17, 2018). In circumstances like these, Missouri courts have the discretion to make an award of attorneys' fees and costs, to reflect the work done by Plaintiffs' counsel, and such an award is warranted here. As described in more

detail below, Plaintiffs' Counsel is seeking an award of fees equal to one-third of the fund created as a result of the Judgment, and an award of their costs advanced on behalf of the class, which total $ 204,699.24.

Missouri courts have recognized that attorneys' fees are recoverable in class actions under what is known as the common fund doctrine.[1] This rule provides that a trial court may require non-litigants to pay their proportionate share of counsel fees. *Gerken v. Sherman*, 351 S.W.3d 1, 13 (Mo. Ct. App. 2011) (citing *Boeing Co. v. Van Gemert*, 44 U.S. 472, 478 (1980)). The common fund doctrine recognizes that (1) the named plaintiffs' efforts "successfully create[], increase[], or preserve[] a fund in which the non-litigants were entitled to share" and (2) a "successful litigant benefits a group of other individuals similarly situated." *Id.* In short, "the attorney's fees are shared between the litigants benefitting from the suit." *Id.*

The Court is considered to be the expert on the question of attorneys' fees, and enjoys broad discretion in awarding them. *See In re Alcolac, Inc. Litigation*, 945 S.W.2d 459, 461 (Mo. App. W.D. 1979) (citing *Roberts v. McNary*, 636 S.W.2d 332, 338 (Mo. *banc*)(overturned on other grounds) ("The circuit court is an expert on the question of attorney fees. Because the circuit court knows all of the case's issues, it may set a fee award without the aid of evidence."). A fee award will be approved on appeal unless it is "against the logic of the circumstances and so arbitrary and unreasonable as to shock one's sense of justice." *See Bachman v. A.G. Edwards, Inc.*, 344 S.W.3d 260,

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[1] The common fund doctrine is an exception to the "American Rule" (which requires that litigants bear the expense of their own attorney's fees); such exceptions, recognized by Missouri courts, allow a party to recover attorney's fees if (1) a statute allows for their recovery; (2) a contractual provision allows for their recovery; (3) the fees are incurred due to involvement in collateral litigation; or (4) equity demands it. *See Tower Properties Co. v. Allen*, 33 S.W.3d 684, 690 (Mo. App. W.D. 2000).

267 (Mo. App. E.D. 2011); *Berry v. Volkswagen Group of America, Inc.*, 397 S.W.3d 425, 430 (Mo. App. W.D. 2013) ("The trial court is deemed an expert at fashioning an award of attorney's fees and may do so at its discretion.")

In exercising that discretion, trial courts consider various factors, including:

- the importance of the subject matter;
- the complexity of the issues;
- the nature and character of the legal services;
- the experience, skill, and reputation of plaintiffs' counsel;
- the vigor of the opposition;
- the duration of the litigation;
- the results obtained;
- the risks of pursuing this on a contingent basis;
- the attorneys' time and labor; and
- customary fees charged by, as well as awarded to, attorneys in similar cases.

See Berry, 397 S.W.3d at 430; *Bachman*, 344 S.W.3d at 267. Reviewing the long history of this litigation, with which the Court is intimately familiar, there is ample and strong evidence to support the award of attorneys' fees and costs requested by Class Plaintiffs' counsel here. Such an award is merited here.[2]

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[2] Although Plaintiffs' stand-alone FLSA claim was dismissed earlier in this litigation, and the jury verdict was rendered on Plaintiffs' breach of contract claim, the Fair Labor Standard Act (FLSA) actually *requires* courts to award reasonable attorneys' fees in addition to any recoveries made by plaintiffs. *See* 29 U.S.C.A. § 216(b) (emphasis added) ("The court in such action **shall**, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action."). In this litigation, Plaintiffs successfully enforced their rights under the collective bargaining agreement that incorporated the FLSA requirements regarding the payment of overtime compensation. That fact provides a strong equitable basis,

Looking carefully at the factors considered by Missouri courts in such circumstances, the course of litigation and its success, and the evidence provided by Plaintiffs' counsel, provides substantial evidence to support an award of the fees and expenses Plaintiffs' counsel are requesting here. In light of all of these factors, Plaintiffs' request is both reasonable and appropriate.

1. Importance of the Subject Matter

The importance of this case is extraordinary. The gravamen of this litigation is whether the MDOC can force its employees to perform critical, compensable job duties but refuse to pay them for that work. Their unwritten but strictly enforced policy violates state and federal labor laws, violates their contracts with their employees and challenges the basic premise of a fair day's pay for a fair day's work. That it was unwritten in the face of their thousands of pages of policies, that they testified and argued that they would never pay this absent a verdict in this case and that it had been complained of and an issue for decades underscores the importance of Plaintiffs' case. The MDOC knowingly underpaid their employees over $113,000,000 over 11 years and continue to do so. There was zero evidence they are changing any policies about making class members do work and not paying them – and the data for 2017 and 2018 show the pre and post-shift time is increasing.

The pre and post-shift activity at issue is critical to keeping often dangerous criminals incarcerated, to the safety of the correctional institutions and to the safety of all those who guard and take care of the offenders. The MDOC knew this and calculated

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pursuant to the common fund doctrine, for awarding Plaintiffs' Counsel attorneys' fees and litigation expenses, even though Plaintiffs recovered such unpaid compensation via a breach of contract claim.

the cost of adding 15 minutes per 8-hour shift in 2004, went to the legislature for 20 minutes a shift in 2007 and defended against multiple governmental investigations. All of these important issues were front and center during the entirety of this litigation, and the evidence at trial only reinforced all of them. As such, there is little doubt that what was at stake for this certified class of corrections officers was of high importance both to the officers themselves, who typically work for an hourly wage that is in the range of $15/hour, but also to the general public, who have an interest in holding public officials accountable, especially when they are engaging in conduct that is so fundamentally unlawful.

Well before this litigation commenced in 2012 – and continuing to this very moment -- MDOC has refused to pay Class Plaintiffs for hundreds of thousands of hours of compensable work performing critical pre- and post-shift activities. This litigation vindicated the right of 13,000 COs to straight time and overtime compensation owed for such work pursuant to the collective bargaining agreement between MDOC and the Missouri Corrections Officers Association and to MDOC's Procedures Manual (collectively "the Contracts"). The MDOCs duplicity and recalcitrance was shown in its finally admitting at the pretrial argument before the penultimate trial date that there was a contract between the parties – after denying same for 6 years of litigation.

And while those are the technical truths about what was accomplished in the course of this six-year litigation, there are also many important public policy considerations that have been vindicated: fair pay for work done; holding public institutions accountable for their agreements; and affirming the basic rights of workers (and their representatives, in this case, MOCOA) to get the benefit of the bargains they make. In sum, the subject matter of this litigation was very important to the public at

large, and this factor weighs heavily in favor of the award of attorneys' fees and costs Plaintiffs seek here. The verdict has been local and national news, with calls to fix the broken Department of Corrections.

2. Complexity of the Issues

There were numerous complex factual and legal issues in this case, including several that became apparent because of the nature Defendants' records and data. These issues are also set out in the Affidavit of Gary Burger, Attached hereto as Exhibit 2. Among the complex legal and factual issues were the following:

- *The nature and number of hours of work performed by COs assigned to 21 facilities operated by MDOC.* This issue was made all the more complex because MDOC did not keep either time-clock data or shift data, which meant that Plaintiffs' expert was forced to perform a statistical analysis in order to accurately estimate, to a reasonable degree of economic certainty, the damages that had been sustained by the Class (*see generally*, Trial Exhibit 86, Expert Report of William Rogers, as well as the nearly nine hours of trial testimony provided by Dr. Rogers);

- *Certification of the class of those COs.* Class certification was challenged vigorously by MDOC, although the Court was properly persuaded – when it granted certification in February of 2015 and then amended that certification order to address statute of limitations issues in September of 2015 -- that the requirements of Rule 52.08 were satisfied, and that common issues predominated over any individual issues. However, the State continued to challenge class certification, filing a substantial decertification motion on the eve of trial in early 2018 (which the Court properly denied, but only after full briefing and two hearings) and renewing that decertification motion through the very end of trial (which the Court again properly denied, on the record, at trial);

- *The liability issues that pervaded the entire litigation, particularly whether the pre and post-shift activity performed by the Class members was compensable, given the terms of the contract they (and MOCOA) sought to enforce.* Interpretation of the Contracts, which incorporated the Fair Labor Standards Act ("FLSA"), involved complex

legal issues that were the subject of substantial briefing and argument, at all stages of the litigation. The MDOC sought dismissal of Count III and plaintiffs had to add MOCOA as a plaintiff on that and other counts. MDOC then again sought dismissal on these claims as a matter of law. The State unsuccessfully brought summary judgment on these issues (as well as serial attempts to defeat the breach of contract claim through a motion for judgment on the pleadings), and Plaintiffs later successfully sought summary judgment just prior to trial on the key (yet complex) liability issues;

- *Plaintiffs conducted extensive document review and many depositions to prove the sub rosa policy of defendant and prove liability in the case;*

- *Reversal of positions on contract issues.* The MDOC steadfastly refused to admit there was a contract between the parties, including filing Motions for summary judgment and Motions for judgment on the pleadings. Then at the pretrial motion argument before the penultimate trial date, they admitted there was a valid contract - after denying same for 6 years of litigation - to try to get impose res judicata on Plaintiffs;

- *FLSA and Missouri Wage and Hour claims.* On Motions and extensive briefing the court dismissed Counts I and II of plaintiffs' petition. However these issues were reinjected into the case via breach of contract claims.

- *The calculation of class damages.* As noted above, Dr. Rogers' work was complicated by MDOC's failure to keep accurate records of the time worked by the COs, which meant that Dr. Rogers had to perform significant data synthesis and debugging, all in an effort to use the data in performance of his complex statistical analysis, which was the subject of his long report (of which there were several prior versions, to account for new data and information from the Defendant) and 9 hours of trial testimony;

- *Striking of experts.* Under Missouri's new expert rule Plaintiffs successfully struck Defendant's experts and prohibited junk science from being injected into the case – this required extensive work, examination of Defendant's expert three times and review of many documents. Plaintiffs successfully opposed Defendant's attempt to strike their expert; and

- *Several legal defenses raised by MDOC.*[3] Plaintiffs were required to address and defeat issues ranging from res judicata to federal preemption, exhaustion of administrative remedies, and other statutory defenses to overtime claims.

3. Nature and Character of the Legal Services

This litigation was an enormous undertaking, not only because of its length (six years, as of this month), but also because of a number of other issues at play:

- The sprawling nature of the facilities at issue (21 prisons, located in every corner of the state of Missouri);
- The length of time during which the alleged misconduct was alleged to have occurred (evidence and testimony from Dwayne Kempker, Defendant's executive and person designated most knowledgeable, indicated Defendant's improper conduct went back as far as the late 1980s);
- The size of the class (approximately 13,000 members, across the state of Missouri);
- The volume of documents reviewed, collected and analyzed (about 500,000 pages of material – Trial exhibit 115 alone was 442,000 pages);
- Multiple stages of discovery, Motions to compel, Court orders and trying to assess what documents and information had not been produced;
- Continued vigilance and pressure on Defendant yielding thousands of pages produced in 2018 (the sixth year of the litigation), wage information of class members finally coming in May, 2018 (on the eve of trial) and Class members who had retired being produced the Thursday before trial yielding a supplemental expert report and $13 million in additional Class damages; and

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[3] For example, MDOC has unsuccessfully tried to preclude Plaintiffs from maintaining this litigation by arguing the that they were required to submit their wage claims to binding arbitration. *See Robbins v. Prosser's Moving & Storage Co.*, 700 F.2d 433, 440 (8th Cir. 1983) ("Issues of arbitrability can be quite complex.").

- The number of potential witnesses (Plaintiffs conducted over 40 depositions, including MDOC executives and designees, MDOC current and former employees, depositions of members of the Class and expert depositions).

The case required sophisticated and specialized services typical of large class action litigation, which relatively few law firms are capable of providing. As noted, there was an intense and length discovery process, which involved numerous on-site visits to MDOC facilities, lengthy document reviews at those facilities, and the analysis of the materials culled from those document reviews. Because MDOC's record-keeping was so spotty and problematic, Plaintiffs were repeatedly required to seek additional documents, in an effort to fill any gaps. In the context of swipe data, this meant that Plaintiffs sought and analyzed thousands of pages of hand-written logs, which were kept when the electronic swipe systems had malfunctioned (although, for some facilities, there was no data whatsoever, complicating the efforts of Plaintiffs' expert, Dr. Rogers). Beyond these document production efforts, there were numerous motions to compel, necessitated either because Plaintiffs viewed MDOC's compliance as inadequate or MDOC flatly refused to produce key material. The Court's docket, and the numerous motions to compel which the Court heard, demonstrate that Plaintiffs were relentless in their efforts to unearth the information that would allow them to prove their case. *See also* Burger Affidavit, Exhibit 2.

The deposition program undertaken by Plaintiffs was similarly robust, involving numerous depositions of most of the highest ranking MDOC officials, including:

- a lengthy (and critical) deposition of MDOC's designee (Dwayne Kempker), where MDOC's designated witness, on behalf of the Defendant, admitted that the reason that MDOC was refusing to pay was for "cost";

- a deposition of an MDOC accountant (Joe Eddy) who had done a study in 2004 showing that pay for the members of the Class would be over $7.5 Million if their schedules were extended by 15 minutes, a figure that was corroborative of Plaintiffs' expert's (Dr. Rogers) own analysis;
- a deposition of then-MDOC (now retired) Director George Lombardi, who admitted that MDOC had never paid for the pre and post-shift activity at issue and ***would not ever pay*** for such work, absent a verdict against the MDOC in this litigation;
- Depositions of class members showing grievances, complaints, other litigation and recovery in the late 1980s; and
- a deposition of Defendant's experts, which took an entire day and formed the basis of Plaintiffs' successful effort to strike Defendant's proffered expert, Chester Hanvey.

Plaintiffs took many other depositions, including numerous depositions of members of the Class, and put on 15 witnesses at trial, including all three of the Class Representatives.

A primary focus of the discovery, beyond the liability questions, was Plaintiffs' effort to gather sufficient information for their expert, Dr. Rogers, to analyze the work done by the Plaintiffs' Class, and to calculate an estimate of the damages they incurred during the Class Period (which went back to 2007 for straight time and 2010 for overtime). This involved literally years of effort, as Plaintiffs made repeated and diligent efforts to extract every record from MDOC that could be utilized by Dr. Rogers to accurately analyze and calculate the damages to the Class. Dr. Rogers' analysis is the most sophisticated and robust wage loss analysis ever performed on the damages of the Plaintiffs' Class. This yielded documents produced after the March 2018 continuance and after the Court ruled there would be no further discovery. These efforts yielded testimony at trial by Mr. Masegian that the Defendant "cooked the books" and altered pre and post-shift data.

Beyond all of these discovery efforts, Plaintiffs' Counsel also engaged in extensive and complex briefing on a host of key motions, opposed numerous motions (*e.g.*, Defendants multiple motions to dismiss; Defendant's Motion for Summary Judgment; Defendant's Motion for Decertification; and Defendant's Motion to Strike Plaintiffs' Expert) and prosecuted their own offensive motions (Motion for Class Certification; Motion to Strike Defendant's Expert; Motion for Partial Summary Judgment on Liability). All of this briefing required sophisticated legal analysis and research, as well as comprehensive understanding of the evidentiary record.

Plaintiffs' Counsel were also required to prepare for trial on three separate occasions this year, first in mid-February (when the trial date was set to begin on March 5th), then again in June (when the trial was reset to begin on June 18th), and finally in July (when the trial was finally rescheduled to begin on August 6th). Each of these efforts involved the preparation and evaluation of numerous motions in limine, substantial and lengthy witness preparation and scheduling, and preparation of trial exhibits. All on liability as well, until the court's Partial Summary Judgment Order.

Plaintiffs also engaged in a lengthy, though ultimately unsuccessful, mediation process at the very late stage of the six-year process, after the postponement of the trial in June of 2018, and prior to the trial in August of 2018. The mediation effort involved an intense effort to gather appropriate information, and was overseen by a former Chief Justice of the Missouri Supreme Court, Raymond Price. Over several weeks between June and August of 2018, the parties engaged in a series of lengthy, hard-fought and arms' length negotiations, including an all-day, in person session on July 12, which was attended by Class Counsel and all three Class Representatives.

Finally, Plaintiffs' Counsel prepared for and executed on an 8-day jury trial before this Court, which involved the presentation of numerous witnesses, a substantial body of record evidence, and the briefing and argument of numerous complex issues relating to critical evidence, witness testimony, jury instructions and motions (*e.g.*, Defendant's Motion for Directed Verdict).

All of this work shows that Plaintiffs' Counsel grappled with an exceedingly complex litigation with diligence and skill, and those efforts were reflected in the outcome at trial.

4. Experience, Skill, and Reputation of Plaintiffs' Counsel

As shown in the affidavits attached to this memorandum, Plaintiffs' Counsel are comprised of two very well-respected firms, with highly-skilled litigators, who devoted enormous resources to prosecuting this case. Lead counsel Gary Burger of the Burger Law Firm has 25 years of complex litigation and trial experience and has successfully litigated a wide variety of complex and class action cases. Exhibit 2. The Burger Law Firm has been, over the years, both highly respected and highly successful, winning substantial verdicts and negotiating generous settlements for its clients in personal injury, class action, and other litigation. Similarly, Michael Flannery, of the firm of Cuneo, Gilbert & LaDuca, LLP, has extensive experience, over the course of his 27-year career in the litigation and trial of complex class action cases. Attached as Exhibit 3 is Mr. Flannery's Affidavit. Mr. Flannery has been appointed to leadership positions by courts in complex cases across the country. Cuneo Gilbert & LaDuca, LLP is a highly respected class action firm and has worked on some of the most high-profile cases in recent memory, including lawsuits challenging the tobacco industry's advertising

practices (such as their targeting of children with the "Joe Camel" campaign), seeking recovery on behalf of defrauded Enron investors, and seeking recovery on behalf of Holocaust survivors whose personal property had been illegally appropriated by the U.S. Army (from the so-called "Gold Train") at the end of World War II.

Mr. Burger's affidavit describes in detail the extraordinary efforts made by both firms, as well as the substantial resources dedicated to the successful litigation of this matter, both in terms of attorneys, staff and litigation resources. *See* Burger Affidavit Exhibit 2. These details need not be restated here. The two firms combined to dedicate massive numbers of hours to the successful resolution of this litigation. The skill with which they prosecuted the case is reflected in the jury's verdict on August 15, 2018.

5. Vigor of the Opposition

MDOC mounted a fierce and multi-faceted defense to this case, which is reflected both in the length of the litigation and the pitched battles that were required at every step of the case, including:

- An aggressive attempt to derail the case at the motion to dismiss stage, where the MDOC successfully knocked out two of Plaintiffs' claims, under the Fair Labor Standards Act (Count I) and the Missouri Wage and Hour Law (Count II);
- Aggressively resisting and conducting discovery, including numerous Motions to compel, many letters and attempts to resolve discovery disputes, site inspections where counsel made DOC take him to warehouses and get forklifts to get boxes of documents, fighting for exit and entry log data and continued pressure to ensure continued production of same, depositions to ensure discovery compliance, many depositions where Defendant sought to avoid admitting the policies at issue and provide many self-serving responses – this continued into trial, and painstaking and lengthy cross-examination of Plaintiffs' witnesses on irrelevant issues, both in deposition and at trial;

- Resisting Plaintiffs' efforts to certify the Class, and aggressively asserting statutes of limitations arguments in an effort to limit the Class definition;
- Moving for summary judgment on liability, necessitating the first postponement of the trial date (from 2017 into early 2018) and requiring a full examination of the record in Plaintiffs' responsive briefing;
- Requesting trial continuances two more times thereafter extending trial for a year from when first set;
- An effort to disqualify Plaintiffs' expert witness, Dr. Rogers, under the newly-adopted Daubert standard;
- An effort to decertify the class, near the time of trial, and again during trial; and
- reversing its position on the existence of a contract between the parties after 6 years of litigation. Denying the contract and moving for judgment on the pleadings on those counts was in bad faith and needlessly caused many hours of work, expenses and delay. Defendant vigorously contested the existence of a contract and then changed its position for tactical reasons at the final pretrial.

Defendant also vigorously opposed Plaintiffs' motions to disqualify MDOC's expert witness and for summary judgment on the issue of MDOC's liability, and aggressively sought reconsideration of the Court's rulings on those motions. Defendant's denial of the claim and vigorous defense continued through closing argument at trial – no number was suggested by Defendant for the jury to award. Defense counsel vigorously objected to the evidence at trial and during Plaintiffs' closing argument and the Court addressed numerous objections regarding the evidence. As such, there is little doubt that the case was litigated vigorously or that Plaintiffs' Counsel faced serious and unwavering opposition at every turn in the case.

6. *Duration of the Litigation*

This case was filed in August of 2012, a full six years before Plaintiffs obtained a jury verdict. The length of the case was daunting, and is even more remarkable when viewed in light of the fact that MDOC's refusal to pay for this pre- and post-shift activity goes back decades before.

7. *Results Obtained*

The nine-figure verdict awarded by a Cole County jury speaks for itself, especially in light of the significant hurdles overcome by Plaintiffs' Counsel. That verdict provides the full amount of the back-wage damages calculated by Plaintiffs' expert witness. The jury awarded, to the dollar, the damages testified to by plaintiff's expert, and a little more than requested in closing argument by Plaintiffs' Counsel.

Plaintiffs' Counsel also obtained a declaratory judgment that requires MDOC to pay the COs for all of their compensable work performed in the future. That prospective relief ensures that MDOC may not deprive COs of wages that they are rightly owed pursuant to the Labor Agreement.

8. *Attorneys' Time and Labor, Risks of Pursuing Case on a Contingent Fee Basis; Awards in Similar Cases*

The complexity, novelty, and duration of this litigation demonstrate that Plaintiffs' Counsel took an extraordinary risk by pursuing the case on a pure contingent fee basis. In that regard, Plaintiffs' Counsel worked diligently and zealously over six years, as detailed in the Burger Affidavit, and covered litigation expenses totaling $204,699.24, with no assurance of ever recovering any fees or costs. *See* Burger Affidavit, Exhibit 2; Flannery Affidavit, Exhibit 3. The requested fee award is consistent

with the contingent fee agreements entered into with the Class Representatives in this matter.

Missouri courts have routinely approved one-third contingent fee awards and, in some cases even much larger awards, in connection with class action litigation. *See Bachman*, 344 S.W.3d at 267; *Berry*, 397 S.W.3d at 430. The Missouri courts have referred to comparable awards made by federal courts in overtime pay cases. *Id.* ("[T]he average attorney's fee percentage was 31.71%, and the median is one-third.") citing *In re Rite Aid Corp. Secs. Litig.*, 146 F.Supp.2d 706, 735 (E.D.Pa. 2001)); *Corozzo v. Wal-Mart Stores, Inc.*, 531 S.W.3d 566, 574 (Mo. App. W.D. 2017) ("Although we are not bound to follow Eighth Circuit precedent, we look respectfully to such opinions for such aid and guidance as may be found therein."). *See also In re U.S. Bancorp Litig.*, 291 F.3d 1035, 1038 (8th Cir.2002) (no abuse of discretion in awarding 36% of $3.5 million recovery to class counsel); *McKeage v. Bass Pro Outdoor World, L.L.C.*, Case No. 12-03157-CV-S-GAF, 2015 WL 13637253, at *5 (W.D. Mo. August 11, 2015) (Approving a one-third contingency fee in a class action as consistent with class action awards); *Barfield Sho-Me Power Elec. Co-op.*, Case No. 2:11-CV-4321-NKL, 2015 WL 3460346, at *4 (W.D. Mo. June 1, 2015) (One-third contingent fee-and-expense award falls within the range of percentage-fee awards found reasonable in the Eighth Circuit); *Wiles v. Sw. Bill Tel. Co.*, Case No. 09-4236-CV-C-NKL, 2011 WL 2416291, at *4 (W.D. Mo. June 9, 2011) (same).

The fees sought by Class Counsel should be compared to the total benefit conferred on the class, including "the economic value of such prospective injunctive relief obtained for the Class." *Hale*, 2009 WL 2206963. As in *Hale*, the declaratory judgment entered by this Court mandates what COs have sought for decades – future

payment for pre- and post-shift activity and implementation of proper timekeeping systems. *See id.* (injunctive relief designed to prevent employees from working off the clock). The value of this relief is considerable, calculated by Dr. Rogers to total $787,989 per month. It will benefit every current and future employee of MDOC on a daily basis, regardless of whether the class member files a claim. *Id.* As a result, when taking the declaratory relief into account, the fee sought by Class Counsel is substantially less than one third of the total economic benefit obtained by Class Plaintiffs.

In any event, the fee sought by Class Counsel - one-third of the fund created as a result of the Judgment – is consistent with amounts approved in other class action lawsuits. "Missouri courts routinely award fees in the range of 20% - 33% of the common settlement fund." *City of O'Fallon v Centurylink, Inc.*, No. 12SL-CC01723, 2014 WL 10539096, at *2 (Mo. Cir. Ct. Dec. 12, 2014) (collecting cases). "[I]n cases involving complex litigation or in the class action context, a one-third contingent fee award is not unreasonable." *Bachman v. A.G. Edwards, Inc.*, 344 S.W.3d 260, 267 (Mo. App. E.D. 2011); *see also Hale v Wal-Mart Stores, Inc.*, No. 01-CV-218710, 2009 WL 2206963 (Mo. Cir. Ct. May 15, 2009) (approving a requested fee of 38.3 percent). A review of federal jurisprudence, which the Missouri courts often rely on in considering attorneys' fees, confirms this. *See id.* (citing *In re Rite Aid Corp. Secs. Litig.*, 146 F.Supp.2d 706, 735 (E.D. Pa. 2001); *In re U.S. Bancorp Litig.*, 291 F.3d 1035, 1038 (8th Cir. 2002)).

In *Rite-Aid*, a study of 289 settlements ranging from $1 million to $50 million revealed an average fee recover of 31.71 percent and a median recovery of one-third. 146 F.Supp.2d at 735. This holds true in cases with similarly large common funds. *In re*

Vitamins Antitrust Litig., No. 99-187, 2001 WL 34312839, at *10 (D.D.C. July 16, 2001) (awarding 34.06% of $359.4 million recovery for fees); *In re Combustion, Inc.*, 968 F. Supp. 1116, 1136 (W.D. La. 1997) (awarding 36% of $127.4 million recovery for fees); *In re Medical X-Ray Film Antitrust Litig.* ("*X-Ray Film Litig.*"), CV-93-5904, 1998 U.S. Dist. LEXIS 14888, at *7 (E.D.N.Y. Aug. 7, 1998) (approving a 33.33% fee from $39.3 million settlement fund). *See also In re U.S. Bancorp Litig.*, 291 F.3d 1035, 1038 (8th Cir.2002) (no abuse of discretion in awarding 36% of $3.5 million recovery to class counsel); *McKeage v. Bass Pro Outdoor World, L.L.C.*, Case No. 12-03157-CV-S-GAF, 2015 WL 13637253, at *5 (W.D. Mo. August 11, 2015) (approving a one-third contingency fee in a class action as consistent with class action awards); *Barfield Sho-Me Power Elec. Co-op.*, Case No. 2:11-CV-4321-NKL, 2015 WL 3460346, at *4 (W.D. Mo. June 1, 2015) (same); *Wiles v. Sw. Bill Tel. Co.*, Case No. 09-4236-CV-C-NKL, 2011 WL 2416291, at *4 (W.D. Mo. June 9, 2011) (same).[4] And unlike in many cases where attorneys are awarded a one-third fee, the Class Plaintiffs were awarded 100 percent of the damages their expert calculated and will, as noted above, receive the future economic benefits of this Court's declaratory judgment, valued at $787,989 per month. *Compare X-Ray Film Litig.*, 1998 WL 661515, at *7-8 ((court increased 25% benchmark to 33.3% where counsel recovered 17% of damages); *In re Crazy Eddie Sec. Litig.*, 824 F.

[4] *See also Knight v. Red Door Salons, Inc.*, No. 08-01520 SC, 2009 WL 248367, at *6 (N.D. Cal. Feb. 2, 2009) ("[I]n most common fund cases, the award exceeds that [25%] benchmark."); *Lofton v. Verizon Wireless (VAW) LLC*, No. C 13-05665 YGR, 2016 WL 7985253, at *1 (N.D. Cal. May 27, 2016) (30% of the common fund); *Perry v. Arise Virtual Solutions Inc.*, No. 11-01488 YGR, 2013 WL 12174056, at *2 (N.D. Cal. May 15, 2013) (same); *LCD I*, 2011 WL 7575003, at *1-2 (same); *LCD II*, 2013 WL 149692, at *1-2 (same); *SRAM*, No. 07-md-1819, Dkt. 1370 (N.D. Cal. June 30, 2011) (same); *In re Static Random Access Memory Antitrust Litig.*, No. 07-md-1819, Dkt. 1407 at 2-3 (N.D. Cal. Oct. 14, 2011) (33⅓%); *Meijer*, No. C-07-05985, Dkt. 514 (N.D. Cal. Aug. 11, 2011) (33⅓%).

Supp. 320, 326 (E.D.N.Y. 1993) (court increased 25% benchmark to 33.8% where counsel recovered 10% of damages); *In re Gen. Instr. Sec. Litig.*, 209 F. Supp. 2d 423, 431, 434 (E.D. Pa. 2001) (one-third fee awarded from settlement fund that was 11% of the plaintiffs' estimated damages); *In re Corel Corp., Inc. Sec. Litig.*, 293 F. Supp. 2d 484, 489-90, 498 (E.D. Pa. 2003) (one-third fee awarded from settlement fund that equaled about 15% of damages). In light of these factors and precedent, the one-third fee sought by Class Counsel is eminently reasonable.

B. Class Representatives Tom Hootselle, Dan Dicus and Oliver Huff Are Entitled To Service Awards.

The three Class Representatives – Tom Hootselle, Dan Dicus and Oliver Huff – worked diligently for six years on behalf of the class, providing discovery responses and documents, sitting for depositions, participating in mediation, and testifying at trial. For all of that work on behalf of the certified class, they have earned – and should be awarded – compensation for their service, over and above what they would earn as members of the Class. By serving as Class Representatives, Messrs. Hootselle, Dicus, and Huff risked potential retaliation from MDOC, a government agency that has – unfortunately – earned a reputation for engaging in such conduct. They also spent hundreds of hours assisting other Class Members and Plaintiffs' Counsel, including participating in discovery and trial. For that reason, Plaintiffs' Counsel request that each of them be awarded $25,000. *See Pollard v. Remington Arms Co., LLC*, 320 F.R.D. 198, 220 (W.D. Mo. 2017) ("The class representatives gathered and communicated information to class counsel, protected the interests of the class members, acted as the public faces of this litigation, and helped achieve benefits for absent class members."); *Yarrington v. Solvay Pharm., Inc.*, 697 F. Supp. 2d 1057, 1068 (D. Minn. 2010) (The

court recognized that incentive awards are essential to encourage named plaintiffs to undertake significant and visible efforts on behalf of unnamed class members); *In re Dun & Bradstreet Credit Servs. Customer Litig.*, 130 F.R.D. 366, 374 (S.D. Ohio 1990) (awarding two class representatives $55,000 each and three class representatives $35,000 each); *In re Xcel Energy, Inc., Sec., Derivative & "ERISA" Litig.*, 364 F. Supp. 2d 980, 1000 (D. Minn. 2005) (awarding $100,000.00 to the eight class representatives in an $8 million recovery); *Zilhaver v. UnitedHealth Group, Inc.*, 646 F.Supp.2d 1075, 1085 (D. Minn.2009) (awarding two lead plaintiffs $15,000 incentive awards); *Huyer v. Wells Fargo & Co.*, 314 F.R.D. 621, 629 (S.D. Iowa 2016) (awarding $10,000 to each named plaintiff). Messrs. Hootselle, Dicus and Huff rendered extraordinary service to the Class, at a personal cost to themselves (in terms of hours spent and miles driven) and their families (in terms of time away), and that effort should be recognized with the $25,000 service awards Plaintiffs' Counsel have requested.

C. Post-Judgment Interest

The Judgment of August 17, 2018, does not contain a reference to post judgment interest under R.S.Mo. §408.040. Post judgment interest of 9% is mandated by R.S.Mo. § 408.040.2 and is appropriate in this case: MDOC failed and refused to pay class member for pre- and post- shift activity despite complaints, grievances, State and Federal Labor investigations and this Court's Order on Plaintiffs' Motion for Partial Summary Judgment. This statute provides in part: "In all nontort actions, interest shall be allowed on all money due upon any judgment or order of any court from the date judgment is entered by the trial court until satisfaction be made by payment."

Class Plaintiffs wish to amend the judgment to make the Judgment clear on this point and to comply with case law stating post judgment interest should be stated in a

judgment. The court has authority to amend this judgment as requested under Mo.R. Civ.P. 75.01. Plaintiffs request Court enter the Amended Judgment attached hereto as Exhibit A. This adds only one sentence to paragraph two of the Courts Judgement: "Interest shall be allowed on this judgment at nine percent per annum until satisfaction made pursuant to R.S.Mo. § 408.040.2." This is the percentage mandated in nontort actions.

III. Conclusion

For the reasons stated above, Plaintiffs ask the Court to: (1) Approve their Plan of Distribution of the $113,714,632 Verdict for the class and retention of a claims administrator to distribute checks to class members; (2) Approve attorneys' fees to be paid to Plaintiffs' Counsel in the amount of one-third of the Judgment amount ($37,904,877) and reimbursement of litigation expenses from the Judgment amount totaling $204,699.24; (3) Order that Class Representatives Hootselle, Dicus, and Huff receive service awards of $25,000 each (over and above whatever they receive as their share of the Judgment); and (4) Order that post-judgment interest be allowed in accordance with Missouri law.

Dated: August 29, 2018

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing was, on this 29th day of August, 2018, filed electronically with the Court to be served upon all counsel by operation of the Court's electronic filing system.

/s/ Gary K. Burger
Gary K. Burger
Attorney for Plaintiffs and Class Counsel

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

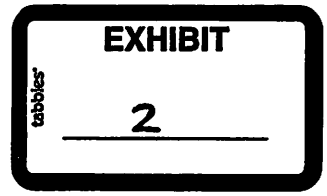
THOMAS HOOTSELLE, JR., DANIEL DICUS, OLIVER HUFF, et al	)	Cause No. 12AC-CC00518
Plaintiffs	)	Div. 4
Plaintiffs, Individually and on behalf of All others similarly situated,	)	
v.	)	
MISSOURI DEPARTMENT OF CORRECTIONS	)	
Defendants.	)	

AFFIDAVIT IN SUPPORT OF CLASS PLAINTIFFS' MOTION FOR ATTORNEYS' FEES, COSTS, AND SERVICE AWARDS

I, Gary Burger, state the following is true to the best of my knowledge, information and belief:

1. I am a partner at the law firm of Burger Law (the "Firm"). I am admitted to practice law in Missouri and Illinois, as well as multiple federal courts. The Firm was involved in all aspects of representing the class and the litigation and trial of the above captioned case ("Litigation"). I have a contract to represent Plaintiffs Thomas Hootselle, Dan Discus, and Oliver Huff, in this case, calling for a 1/3 contingency fee and payment of advanced case expenses. My co-counsel, Michael Flannery, Katherine Van Dyck and Michael Smith of the law firm Cuneo, Gilbert and LaDuca, LLP ("CGL") also represent the plaintiffs and the class through this representation agreement.

2. I have over 25 years of experience in litigation and trial work. I and my firm have extensive experience in class action and other litigation throughout Missouri



and Illinois. I have tried many cases in many contexts over my career, through this Firm and my prior firm Cantor and Burger. Regarding representation of numerous individuals, or class claims, over the years I have represented large numbers of people as plaintiffs in various consumer fraud cases, cases against for-profit schools, and cases for mass employment discrimination. I can provide further details if required. I was class counsel in a certified class action against the State of Illinois, No. 4:02-CV-04201, in the Southern District of Illinois. The undersigned was appointed class counsel in that case, resolved the case with a recovery to the class as well as a State of Illinois policy change to provide contraception coverage for all female employees' health care plans in the State of Illinois.

3. I and various members of my law firm have actively participated in all aspects of the Litigation, including, but not limited to: (1) case investigation; (2) retention of and communication with class representative plaintiffs; (3) preparing formal and informal discovery requests and responses; (4) drafting pleadings; (5) legal research; (6) drafting motions and briefs; (7) participating in litigation strategy decisions; (8) court appearances, including eight days of trial; (9) participating in settlement negotiations; (10) drafting and preparing settlement related documents; and (11) communicating with class members throughout the course of Litigation. Thus, I am fully familiar with the proceedings. If called upon, I am competent to testify concerning the matters set forth herein.

4. I submit this affidavit in support of Class Plaintiffs' Motion to Amend Judgment Regarding Approval of Plan of Distribution, Attorneys' Fees and Costs, Class Representatives' Awards and Post-Judgment Interest.

5. The Firm has dedicated significant time and resources to investigating and advancing this Litigation on behalf of Plaintffs' Class. The Firm's legal services were performed on a wholly contingent fee basis, assuming the risk of no fee absent recovery and the obligation to pay advanced expenses. Based on my knowledge and experience, the hourly rates charged are well within the range of market rates charged by attorneys of equivalent experience, skill, and expertise. If called upon to provide further detail on the time and resources dedicated to this matter, I am prepared to do so.

6. Burger Law has advanced a total of $157,648.52 in expenses reasonably and necessarily incurred in connection with the prosecution of this litigation. They are broken down as follows:

-Deposition of Dwayne Kemper	$869.20
-Copies and Exhibits	$149.30
-Mileage and Parking	$449.95
-Presort Mailing Class Action Notices/Postage	$2,928.81
-Creative Litho/Class Action Mailing Notices	$3,547.83
-Expert Fees to William Rogers	$6,054.00
-Tyco Integrated/MECC Security System	$408.62
-Deposition of Thomas Hootselle	$301.80
-Deposition of Dan Dicus	$469.20
-Deposition of T. Villmer	$819.80
-Robert Half (program)	$6,276.05
-Depositions of Lombardi and Eddy	$760.40
-Depositions of Sachse and Dormire	$1,130.00
-Deposition of Steele and Hurley	$1,489.75
-Electronic Data for SCCC and WMCC	$5,360.00
-Electronic Data for other facilities	$1,466.00
-Mileage, Fees, etc. for Prison Inspections	$1,554.08
-Court Hearing Transcripts	$364.00
-Deposition of William Rogers	$792.40
-Deposition of Cyndi Prudden	$796.70
-Deposition of Brownfield and Moore	$346.00
-Data Entry Fees (Upworks)	$10,357.75
-Deposition of Oliver Huff	$301.50
-Focus Group Fees	$5,200.00
-Focus Group	$450.00
-Video Depo and Transcript for Larry Crawford	$1,428.50
-Deposition Fee and Video Fee for Birch	$562.73

-Deposition of Warren, McCarver, Rainwater	$560.00
-Deposition Fees for Defendants Experts	$2,412.90
-Deposition of April Gibson	$473.30
-Copies of exhibits for hearings and trial	$1,517.81
-Video Deposition Charges	$1,100.00
-Witness Fees for trial	$3,600.00
-Deposition Video Editing for Trial	$1,760.00
-Deposition/Video for Jones and Camp	$2,185.00
-Deposition/Video for Wakefield	$1,068.75
-Robert Half Legal Data Relativity Program	$9,215.71
-Expert Fees to William Rogers	$68,572.5
-Conference Room Rentals for Depositions	$1.068.50
-Deposition Video Sync Program and Fees	$506.57
-Mediation Fee	$1,944.96
-Supplemental Deposition of William Rogers	$298.10
-Trial Exhibits	$669.60
-Trial Director Program and Training	$2,000.00
-Westlaw, Research, etc.	$269.00
-Infusionsoft Class Emails	$600.00
-Website for Corrections Officers	$1,500.00
-Class Notice of Hearing 8/31/18	$8,944.48
-Mileage, Parking, Postage, Copies, Hard/Flash Drives, Scanner/Computers equipment for inspections, Travel Fees Etc.	$3,060.45
TOTAL	**$172,988.91**

7. In my opinion, the time expended and expenses incurred in prosecuting this Litigation were reasonable and necessary for diligent representation, given its scope and complexity.

8. Counsel additionally requests service awards in the amount of $25,000.00 for each named class representative over and above their respective recoveries in the class case. The three class representatives each provided extensive time and efforts in this case and showed no less than exemplary service to the class. Each of the three, separately, assisted in the investigation and prosecution of this case, provided documents to Class Counsel and guidance during discovery, answered Interrogatories and Request for Production, were produced for extensive and long depositions, provided

leadership to fellow class members, and kept class members informed of the status of the case.

9. The class representatives travelled six hours round trip daily to attend each day of trial and were required by Defendant to take administrative leave without pay in order to do so. They each devoted significant time and resources to preparing for and testifying at that trial.

DISCOVERY IN THE LITIGATION

10. To advise the Court in support of this application for fees, the undersigned sets forth the history of this litigation, major events and Plaintiffs' counsels' course of activity. In August 2012, this lawsuit was filed by counsel John Amman and Deborah Greider on behalf of class plaintiffs. The original petition alleged violations of the Missouri Minimum Wage Law the Fair Labor Standards Act and breaches of Defendant's contractual obligations. In 2013, the undersigned was asked to come into the case as co-counsel. Shortly thereafter, I took responsibility for the case and the first set of basic Interrogatories and Request for Production were issued.

11. Plaintiff propounded 3 additional sets of Interrogatories and Request for Production. I took designee depositions of Defendant, which were played at trial. I and other plaintiffs' counsel had many conversations, letters, emails, and in-person discussions with defense counsel to resolve discovery disputes and arrange for document production and interrogatory responses. These resulted in numerous Motions to Compel and argument before the Court regarding production of documents. The Court issued a number of Orders on Plaintiffs' Motions to Compel during the Litigation.

12. Defendant's document production included many stages and many documents produced. As discussed at trial, close to 500,000 documents were ultimately

produced by Defendant in the case. These were extensively organized, reviewed, and cataloged by Plaintiffs' counsel and staff. Plaintiffs paid for and retained a document management system just for this case and used it to help manage the documents. Plaintiffs' counsel spent many hours culling relevant documents from the volume of documents produced, pursing leads from documents produced, requesting new documents and information based on information in those documents, contacting and interviewing witnesses identified in documents produced, and providing hundreds of thousands of documents to their expert to prove class damages. Additionally, pursuant to Court Order, Plaintiffs' counsel conducted extensive document reviews at four of Defendant's correctional institutions, where thousands of documents were pulled from boxes, inspected, scanned, and reviewed. These inspections included working with Defendant's representatives to assess documents and data stored. The inspections also required going to storage buildings, pulling boxes of documents off shelves, and culling through many more thousands of documents to select documents to narrow production to the hundreds of thousands that were eventually produced.

13. Even after these documents were produced, there was extensive continued attention directed to the Defendant to provide additional documents. Plaintiffs served seven sets of Interrogatories and Request for Production on the Defendant. Document production continued through the week before trial. Motions to compel were filed through early 2018, a Court order on a Motion to Compel was entered on January 30, 2018, and numerous conversations took place before and after identifying the areas of documents still not produced and the areas of documents needed to establish the damages in this case. Defendant maintained through and until the final pre-trial

conference that there was not a contract in this case, and Plaintiff conducted extensive document discovery regarding this as well.

14. Plaintiffs took approximately 40 depositions in the case, including at least 3 corporate designee depositions. Plaintiffs deposed Defendant's witnesses to establish liability, including depositions of high ranking officials within the Department of Corrections and numerous wardens. Plaintiffs deposed class members to present their evidence to the Court and at trial. Depositions were identified in a list and presented to the Court during the cross examination of Defendant's expert. Plaintiffs deposed the Defendant's experts. Plaintiffs also defended depositions taken by the Defendants. These depositions proved instrumental in obtaining Partial Summary Judgment and defending against Defendant's Motion for Summary Judgment and Judgment on the Pleadings. Relevant deposition excerpts were culled from thousands of pages of transcripts for presentation at trial.

15. The depositions were further complicated by the many legal issues involved in the case including: MMWL and FLSA claims, Breach of Contract law and facts, equity issues, the long-standing history and policy of Defendant in denying compensation for pre and post shift activity, and Defendant's continuous denial of the allegations. Plaintiffs regularly had to re-argue and prove the same points and establish that pre- and post-shift activity was done at every institution without compensation. Even at trial, Defendant continued to present witnesses trying to cloud the issues to show that different policies existed, but through diligent cross examination, Plaintiffs' counsel highlighted the Defendant's established policy and practice of denying payment for these activities again and again.

16. In addition to the Interrogatories and Request for Production of Documents, Plaintiffs served two sets of Requests for Admissions, issued many letters and emails, and had many conversations regarding discovery issues in repeated attempts to resolve discovery disputes.

COMMUNICATION WITH THE CLASS

17. The Court certified Plaintiffs' Class and issued an initial Class Certification Order and an Amended Class Certification Order in 2015. With collaboration of the Defendant, I created a notice plan, which was submitted to and approved by the Court. I paid for and provided notice to the entire class by mail. I and my staff coordinated communication with the 11,000 class members (at that time) and had extensive written and email communication with them. This continued for the following three years, through trial and after verdict. I set up systems with staff to provide information and answer questions of class members.

18. Plaintiffs' counsel received 341 opt-out forms that were returned following the initial class notice. I, along with Mr. Flannery and the other members of CGL, continued to communicate with these opt outs and other class members, and numerous individuals who initially opted out, retracted their opt outs, and submitted forms to Plaintiffs' counsel opting back into the class. This took extensive time and effort but not persuasion; initially people did not understand the import of the Litgation. Once the issues were explained, these class members readily opted back into the class and continued to do so through the time of trial.

19. I engaged in extensive email and electronic communication with class members via an email data base and special CRM program in order to advise them of developments in this case. These emails were sent to class members at various times

throughout the case to advise them of the many trial continuances and developments in the case and have continued post-judgment.

20. In addition, during the pendency of the case, thousands of additional class members were identified. I issued a supplemental class notice to members of the class approximately two months ago using the form originally approved by the Court, and the option to opt out of the class was provided. No additional class members opted out. These updated class member lists were requested by Plaintiffs for years from the Defendant. The Firm also maintained a website page devoted to the class and this case.

21. In addition to the robust email system, extensive spreadsheets and data bases were created internally by staff to keep track and communicate with class members. These spreadsheets included approximately 13,000 people. Much work was done through spreadsheets to eliminate duplicative data and other data errors in the class list provided by Defendant. The class members identified and provided by Defendant were discovered to have individuals incorrectly identified people in other departments within the State of Missouri, people with name changes, or people with similar names. Much work was necessary in order to maintain an accurate list of the class members. Communication has also occurred with families of deceased class members.

22. In addition, many class members communicated to Plaintiffs' counsel and the Firm email seeking additional information about the Litigation. Plaintiffs' counsel answered questions and extensively communicated with class members. Many individuals provided information. A data base of well over 150 individuals was developed to keep track of potential witnesses and class members who had particular stories to tell or particular issues with grievances involving the Defendant's policy of not

paying for pre- and post-shift activity. All of these individuals were called, communicated with, and interviewed, and their information was documented. Many class members provided Declarations or Affidavits used in various pleadings in this case, including Motions for Class Certification, Statements of Undisputed Facts, and Memoranda in Opposition to Motion Summary Judgment by the Defendant and in support of Plaintiffs Motion for Partial Summary Judgment against Defendant. These databases and interviews were all collected and collated and led to identification of witnesses for trial.

23. Plaintiffs' counsel engaged in extensive efforts to communicate with the class. The hundreds of individuals talked to by the Firm and CGL were extensively honed, and a cross section of individuals with different stories were presented to the Court at trial. The persons being called as witnesses drastically changed following the four continuances in this Litigation and the entry of partial of summary judgment one week before trial. Many more people were initially called for the first trial setting in the fall of 2017. They were all rescheduled for the trial settings in March 2018, June 2018, and August 2018. In addition, over the 6 year of this Litigation, many individuals retired, changed jobs, or moved away. This is reflected in the change of the class representatives. Although certain class plaintiffs were initially identified in the original Petition, these changed over time with people leaving, retiring, or dying.

MAJOR LITIGATION EVENTS IN THE CASE

24. There were major litigation events in this case. I extensively briefed and gathered evidence for Plaintiffs' Motion for Class Certification, to address Defendant's vigorous opposition thereto. This was granted by the Court. I took depositions and gathered documents and affidavits to establish the numerosity, commonality,

superiority, damages, and other aspects required for class certification. Then, we defended against the change in the class definition.

25. Defendant's moved and were successful in dismissing, in decisions of relative first impression, Counts I and II of Plaintiffs' Petition, which sought relief under the MMWL and FLSA. Plaintiffs then refocused their breach of contract and equitable claims. Plaintiffs also coordinated with the Missouri Corrections Officers Association, which joined the Litigation as a Plaintiff bringing separate breach of contract and equitable claims. The Original Petition was amended three times.

26. Plaintiffs' counsel defended against the Defendant's Motion for Judgment on the Pleadings on all other Counts, a motion which was reasserted multiple times by Defendant.

27. After the Defendant's emergency trial continuance in February of 2018, Defendant's again moved for Class Decertification, and this was extensively briefed and defended against as well. This was denied with Motions to Reconsider and additional Motions to Decertify through trial. These were extensively briefed by Plaintiffs' counsel.

28. Plaintiffs' counsel fully prepared for trial three times in the case. Partial preparation was done a fourth time for the first trial setting. This case was continued twice within 10 days of trial. This trial preparation entailed extensive preparation of jury instructions, Motions in Limine, witness preparation and scheduling for trial appearances, travel arrangements, expert trial preparation, trial briefing and other briefing, pre-trial conferences with the Court, and other significant work to prepare and coordinate for trial. All but one of these trial preparations was done prior to Partial Summary Judgment being entered for Plaintiffs, so liability was at issue as well. This extensive trial preparation was by both the Firm and CGL. In addition, Plaintiffs'

counsel dealt with changing defense counsel over time, including 5 lead trial counsel, including Amy Haywood, Bud Luepke, Jennifer Bowman, Mary Reitz, and Ryan Bangert. In addition, numerous attempts were made to settle and resolve this case short of litigation, which included written demands, discussions with counsel, trial continuances, all day mediation with former Supreme Court Judge Price, and continued discussions regarding settlement through trial.

29. Extensive work was done to prepare plaintiffs' expert and defend against Defendant's experts. Cross Motions to Strike experts were filed, briefed, and argued before the Court. Motions to Reconsider regarding same were filed, briefed, and argued. Plaintiffs' counsel deposed and cross-examined Defendants experts. Numerous documents from Defendant's expert files were provided to Plaintiffs' counsel long after their disclosure and depositions, including the night before the argument on the Motion to Strike same. Plaintiffs' counsel successfully struck Defendants experts and successfully defended Defendant's attempt to strike our expert.

30. To prepare for trial, Plaintiffs filed many pages of Motions in Limine, trial briefs, and other briefing regarding the various complex legal issues in the case. Plaintiffs' counsel defended and provided Memorandum in Opposition to many of the legal defenses asserted by the Defendant at trial and various issues in the case. These were argued before the Court at the pre-trial conference shortly before the last trial continuance.

31. At the last pre-trial conference (which preceded another granted motion to continue trial by Defendant), Defendant changed its legal position in the case to admit a contract existed in the case. This change was contrary to prior pleadings. Because of this change, Plaintiffs counsel, within three days, filed a strong Motion for Partial Summary

Judgment, including 107 undisputed facts with full support in the record and a Memorandum in Support. This was briefed and argued to the Court and was granted one week before trial.

32. The above list is a sampling of the work performed by the Firm and CGL in this Litgation, highlighting the most significant events over the past six years. In total, hundreds of pages of legal briefing were provided to the Court over the years arguing the various complicated legal issues in the case and addressing the defenses of defendant. In addition, hundreds of pages of exhibits supporting these legal matters have been compiled and presented to the Court. Furthermore, these pleadings and defendant's legal position changed over the course of six years in a highly complex class action case.

DAMAGES EXPERTS

33. Plaintiffs' counsel hired and retained William Rogers, an economist with Lindenwood University, to testify as an expert in this Litigation. Plaintiffs advanced the cost of Dr. Rogers work, consisting of over 200 hours at a cost of $62,000 before trial. Dr. Rogers engaged in extensive work with Plaintiffs' counsel to review 442,000 pages of records and electronic and handwritten entry and exit log data with Plaintiffs counsel. Plaintiffs' counsel worked with Dr. Rogers for over 2 years to develop an economic model to present to the fact finder in this case. This took extensive time, including herculean efforts described herein to chase down Defendant's documents to prove Plaintiffs damages.

34. As stated on the stand, Dr. Rogers had to use a tertiary approach to calculate damages. Plaintiffs' counsel had to obtain a Court order requiring Defendant to provide the electronic logs of their swipe data. This was then delivered to Dr. Rogers, and a model was built to calculate the time class members spent performing pre- and

post-shift activites. Plaintiffs' counsel and Dr. Rogers worked together to write Plaintiffs' Fifth, Sixth, and Seventh Sets of Interrogatories and Requests for Production of Documents in order to get the documents needed to calculate Class Plaintiffs' damages. Plaintiffs' counsel worked with Dr. Rogers to present his robust damages report and final numbers and presented him for depositions.

35. Because of Defendants continuing production of swipe data, wage loss records, and retirement data, Plaintiffs' counsel continued to work with Dr. Rogers to provide at least four supplement reports after disclosure in order to accurately present the $113 million damages figure to the jury at trial. This included records produced after most of the trial settings in this case, wage data produced in May, and retiree list and data produced four days before trial. Extensive work was done with Dr. Rogers to reorient and retool the damages report and the numbers to make them accurate following each new production by Defendant.

36. Plaintiffs' counsel also worked with Dr. Rogers to oppose Motion to Strike his opinions and testimony. This included extensive work to combat the Defendants' use of their own failure to provide data as a weapon to criticize Dr. Rogers' opinions. With Dr. Rogers' assistance, Plaintiffs' counsel showed this Court and the jury that Defendant had and retained schedule and shift data of all the employees, which they never produced.

37. Defendants' document production was done haphazardly and sporadically throughout the six years of this Litigation. In addition, many of Defendant's records were produced in handwritten format and had to be manually entered into electronic records so that Dr. Rogers could use them. Furthermore, Defendant produced many of the records they should have had in electronic format in a printed or PDF format

instead. This necessitated the retention and hiring of numerous data entry specialists. This was in the face of complaints to Defendant, which were ignored, that Plaintiffs required an electronic production . Plaintiffs counsel took the risk of all this work and all this data entry and expert work in order to accurately calculate Class Plaintiffs' damages and obtain full recovery on their behalf.

38. In addition, Plaintiffs were presented with Defendant's experts and opinions for the first time in January and February of 2018, shortly before the March trial date. Plaintiffs' counsel deposed those experts and successfully moved to strike their opinions and testimony under the *Daubert* recently adopted by the Missouri legislature. Plaintiffs did this in the face of defense experts' changing opinions, late produced documents (over 1,000 pages), and repeated attempts by Defendant to reverse the Court's decision striking its experts. Plaintiffs' counsel also cross-examined Dr. Hanvey during an offer of proof at trial, where they learned for the first time that Dr. Hanvey was continuing to consult and prepare demonstrative exhibits (which were excluded) at trial. Notably, Dr. Hanvey and Defendant never disclosed full file or his work done in the case, to date.

39. The extensive work performed by Plaintiffs' counsel and Dr. Rogers with respect to entry and exit data entry, damage methodology, and Dr. Rogers' opinions proved successful. Dr. Rogers analysis was well taken, accurate, and is the most robust analysis of the Department of Corrections work force every undertaken. This proved extremely persuasive and successful at trial. The only exhibits requested by the jury were Dr. Rogers' reports; which was used to award the full amount of damages calculated by Dr. Rogers.

TRIAL

40. As the Court is well aware, Plaintiffs' counsel engaged in extensive work to try this case: the long litigation history before March of 2018, presenting for trial a State-wide class action case against the State of Missouri covering 13,000 correctional officers and involving complicated legal issues and ever-changing positions of the Defendant, the absence of important records, and continued production of expert opinions and documents after the first trial date. We prepared for trial before the emergency continuance in the spring of 2018 and again prepared for trial and concluded the final pretrial conference for trial before the Defendant again requested a continuance to attempt to settle the case in June of 2018 on a Sunday shortly before trial. We engaged in good faith settlement negotiations thereafter. And while Plaintiffs' counsel understand the reasoning behind those continuances, it resulted in Plaintiffs' trial continuously preparing for trial from January to August 2018. After the final pre-trial conference before the last trial continuance, Plaintiffs engaged in the Summary Judgment work reflected above. Plaintiffs then prepared for the August 6, 2018 trial date that actually occurred.

41. This trial preparation included the marshaling of forces of two law firms in Cole County, Missouri. We presented the live testimony of 16 witnesses from all over the State of Missouri and presented legal memoranda on various legal issues, including Motions for Decertify, Motions for Direct Verdict, Motions to Reconsider Summary Judgment, and Motions to Reconsider Striking of Experts. These legal issues were extensively briefed including filing lengthy legal memoranda during trial. We presented and marked numerous exhibits and presented them to the Court and the jury. We presented the testimony of all three Class Plaintiffs, Dr. Rogers, and 11 live witnesses.

We presented the video and deposition testimony of 10 other witnesses. We prepared and vigorously and successfully crossed examined Defendant's witnesses, including reviewing thousands of pages of documents for these witnesses. Because the officers and employees of the Defendant changed during the six years of this Litigation, only two of the nine witnesses Defendant called to testify had been deposed, necessitating a review of documents that had previously been unused in the case. And because partial summary judgment was entered one week before trial, many aspects of proof and the jury instructions changed at the last minute.

42. Plaintiffs' counsel successfully thwarted Defendant's attempts to dismiss or obtain summary judgment in this case, successfully struck Defendant's attempt to insert junk science into the case, successfully supported our expert, successfully obtained Class Certification and defeated Class Decertification, obtained summary judgment on our breach of contract claims, and won a trial where the jury awarded the class the full amount calculated by our expert – more than what was requested in closing argument - to fully compensate this class. We obtained a $113,714,632 class verdict on behalf of 13,000 corrections officers in the State of Missouri after six years of Litigation against the State challenging its illegal, long-standing practice against its correction officers. This success was against long odds – a risk born by class counsel - and against the Defendant's vigorous defense of the case through trial.

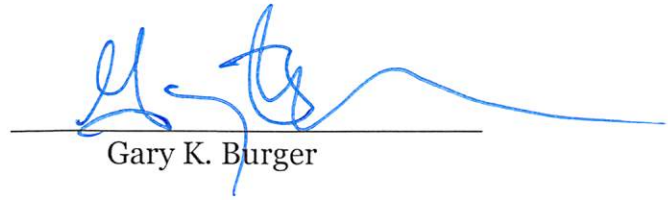
AFTER TRIAL AND JUDGMENT

43. The Court appropriately entered judgment on August 17, 2018. This Affidavit is filed with a Motion to Amend the Judgment to include an award of attorney's fees, costs, and service awards and to provide for post-judgment interest. It should be noted that our work on behalf of Plaintiffs' Class has been significant and full time since

verdict and will continue to be significant. Because of the success at trial, hundreds of class members have reached out and communicated with the Firm and CGL by email and telephone calls. The website, approved by the Court for this case, has been changed with additional information. Class members are contacting us to provide updated current information so they can receive their fair share of verdict judgment in the case. Special website forms and other materials have been quickly created in short order to address this. Plaintiffs' counsel will continue to comply with our duties to serve Plaintiffs' Class after this judgment through appeal and through distribution of the settlement funds in this case. We will continue to protect the interest of Class Plaintiffs by enforcing the judgment entered by this Court requiring Defendant to compensate them for pre- and post-shift activities and stopping their unlawful conduct. We will not stop until this class is compensated for their past work that has been unpaid for and until policy changes by Defendant. This is not a soapbox speech - but the reality of the continued work that will be required of Plaintiffs' counsel after this Affidavit is signed.

44. The staff employed by my Firm has done exceptional work as part of my team in representing this class and much resources of my firm has been devoted to this case. I further note that this work was done in conjunction with co-counsel, Michael Flannery, Katie Van Dyke, Michael Smith, and other personnel at CGL. The team members great work in this case, along with the strong and vigorous support of the class representatives and many class members, made this case possible.

FURTHER AFFIANT SAYETH NOT



Gary K. Burger

STATE OF MISSOURI)
)SS
ST LOUIS CITY)

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal this 29th day of August 2018.

NOTARY PUBLIC

My Commission Expires:

CASEY FLUEGEL
Notary Public - Notary Seal
State of Missouri, Jefferson County
Commission Number 12616720
My Commission Expires Aug 10, 2020

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

THOMAS HOOTSELLE, JR., DANIEL DICUS, OLIVER HUFF, et al.,	)	Cause No. 12AC-CC00518
	)	Div. 4
Plaintiffs, Individually and on behalf of All others similarly situated,	)	
v.	)	
MISSOURI DEPARTMENT OF CORRECTIONS	)	
Defendant.	)	

AMENDED AFFIDAVIT IN SUPPORT OF CLASS PLAINTIFFS' MOTION FOR ATTORNEYS' FEES, COSTS, AND SERVICE AWARDS

I, Michael J. Flannery, state the following is true to the best of my knowledge, information and belief:

1. I am a partner at the law firm of Cuneo Gilbert & LaDuca, LLP (the "Firm" or "CG&L"). I am admitted to practice law in Missouri, Virginia, California and the District of Columbia, as well as numerous federal district and appellate courts. The Firm was involved in all aspects of representing the class and the litigation and trial of the above captioned case ("Litigation"). My co-counsel, Gary K. Burger of the law firm of Burger Law, has a contract to represent Plaintiffs Thomas Hootselle, Daniel Discus, and Oliver Huff in this case, calling for a 1/3 contingency fee and payment of advanced case expenses. My Firm also represents the Plaintiffs and the certified Class through this representation agreement.

2. Over the course of my 27-year career, I have focused my litigation and trial practice on representing victims of race, sex, civil rights, and employment

discrimination; small investors injured by securities fraud; small businesses and individuals hurt by antitrust price fixing; and consumers hurt by fraudulent business practices. Below are some examples of cases demonstrating my professional experience with complex class actions.

3. I am currently serving as Co-Lead Class Counsel in an action in the Central District of California (*In re Toll Roads Litigation*, 8:16-cv-00262 AG (JCGx)) that involves multiple issues relating to privacy protections for millions of consumers' sensitive personal data, and the failure of corporate defendants to protect that data. The Court recently granted our motion to certify a large Privacy Class in that matter.

4. I worked on one of the largest antitrust class actions ever brought, serving as part of the team that prosecuted the *In re NASDAQ Market-Makers Antitrust Litigation*, MDL No. 1023 (S.D.N.Y.). Investors alleged that the NASDAQ market-makers set and maintained wide spreads pursuant to an industry-wide conspiracy in one of the largest and most important antitrust cases in recent memory. After over three years of intense litigation, the case was settled for a total of $1.027 billion, at the time the largest antitrust settlement ever.

5. I represented hundreds of college coaches who were wrongfully denied fair pay by their schools as part of a misguided NCAA effort to cut costs. Serving as lead counsel trial coordinator in the Restricted Earnings Coach Antitrust Litigation, I helped numerous witnesses present their testimony during several weeks of trial before a Kansas federal court. After several weeks of trial and the testimony of college coaches representing virtually every major sport, a federal court jury in Kansas City, Kansas awarded the coaches nearly $70 million. The case was later settled on appeal to the 10th Circuit for $54 million, which was distributed to coaches across the country.

6. I represented hundreds of thousands of consumers, across the nation, who had purchased a computer with a Microsoft operating system. These consumers charged that they had paid more for the computers than was fair due to Microsoft's anticompetitive conduct. Serving as part of the lead counsel team in both state and federal cases against Microsoft, I worked to coordinate and manage dozens of cases, resulting in settlements worth hundreds of millions of dollars to consumers across the nation.

7. I served as co-lead counsel on behalf of classes of Hispanic and female employees of the Regents of the University of California working at Los Alamos National Laboratory in Los Alamos, New Mexico (*Longmire v. Regents of the University of California d/b/a Los Alamos National Laboratory*, No. 03-CV-1404 (District of New Mexico)). Plaintiffs alleged that LANL discriminated against female and Hispanic employees in terms of pay, promotion, educational opportunities and other terms and conditions of employment. The case resulted in a $12 million cash settlement for the affected female and Hispanic employees.

8. Cuneo Gilbert & LaDuca LLP has successfully lead numerous large, multidistrict ("MDL") litigations and has a demonstrated ability to organize and manage complex litigation, working cooperatively with counsel for all of the involved parties. Numerous federal and state courts have recognized as much by appointing CG&L attorneys to leadership positions in numerous MDL matters and other class action cases. The firm has achieved success for a range of clients by: helping to recover billions of dollars in shareholder litigation, obtaining compensation for Holocaust survivors, working to recover hundreds of millions of dollars for homeowners with defective construction materials, and, in several jurisdictions, ending the practice of jails

subjecting minor law violators to unnecessary strip searches. The firm has years of experience litigating and prosecuting complex class actions such as this case, including such cases as the *Enron Securities Litigation,* where more than $7 billion was recovered for defrauded investors and CertainTeed's defective organic shingles litigation, where the firm served as Co-lead Counsel in an MDL that secured a settlement valued at more than $700 million.

9. I and other members of my Firm, including attorneys Katherine Van Dyck and Michael Smith, have actively participated in all aspects of the Litigation, including, but not limited to: (1) case investigation; (2) communication with class representative plaintiffs; (3) preparing formal and informal discovery requests and responses; (4) drafting pleadings; (5) legal research; (6) drafting motions and briefs; (7) participating in litigation strategy decisions; (8) court appearances, including eight days of trial; (9) participating in settlement negotiations; (10) drafting and preparing settlement related documents; and (11) communicating with class members throughout the course of Litigation. Thus, I am fully familiar with the proceedings. If called upon, I am competent to testify concerning the matters set forth herein.

10. I submit this affidavit in support of Class Plaintiffs' Motion to Amend Judgment Regarding Approval of Plan of Distribution, Attorneys' Fees and Costs, Class Representatives' Awards and Post-Judgment Interest.

LEGAL TIME AND EXPENSES

11. The Firm has dedicated significant time and resources to investigating and advancing this Litigation on behalf of Plaintiffs' Class. The Firm's legal services were performed on a wholly contingent fee basis, assuming the risk of no fee absent recovery and the obligation to pay advanced expenses. Based on my knowledge and experience,

the hourly rates charged are well within the range of market rates charged by attorneys of equivalent experience, skill, and expertise. If called upon to provide further detail on the time and resources dedicated to this matter, I am prepared to do so.

12. Cuneo Gilbert & LaDuca LLP has advanced a total of $46,658.43 in expenses reasonably and necessarily incurred in connection with the prosecution of this litigation. They are broken down as follows:

	Cumulative Expenses
Court Reporters/Videos/Transcripts/Publications	$5,524.91
Meals, Hotels and Transportation	$32,398.36
Messenger.Express Mail, Postage	$758.13
Telephone, Facsimile	$41.71
Westlaw/Lexis-Nexis/PACER research	$3,939.28
Expert Fees	$1,944.96
Filing and Service Fees	$1,966.73
Miscellaneous - Office Supplies	$84.35
Total	$46,658.43

13. In my opinion, the time expended and expenses incurred in prosecuting this Litigation were reasonable and necessary for diligent representation, given its scope and complexity.

14. Counsel additionally requests service awards in the amount of $25,000.00 for each named class representative over and above their respective recoveries in the class case. The three class representatives each provided extensive time and efforts in this case and showed no less than exemplary service to the class. Each of the three,

separately, assisted in the investigation and prosecution of this case, provided documents to Class Counsel and guidance during discovery, answered Interrogatories and Request for Production, were produced for extensive and long depositions, provided leadership to fellow class members, and kept class members informed of the status of the case.

15. The class representatives travelled six hours round trip daily to attend each day of trial and were required by Defendant to take administrative leave without pay in order to do so. They each devoted significant time and resources to preparing for and testifying at that trial.

POST-TRIAL AND FINAL JUDGMENT

16. The Court appropriately entered judgment on August 17, 2018. This Affidavit is filed with a Motion to Amend the Judgment to include an award of attorney's fees, costs, and service awards and to provide for post-judgment interest. It should be noted that our work on behalf of Plaintiffs' Class has been significant and full time since verdict and will continue to be significant. Because of the success at trial, hundreds of class members have reached out and communicated with the Firm and Burger Law by email and telephone calls. The Burger Law website, approved by the Court for this case, has been updated with additional information. Class members are contacting us to provide updated current information, so they can receive their fair share of verdict judgment in the case. Special website forms and other materials have been quickly created in short order to address this. Plaintiffs' Counsel will continue to comply with our duties to serve Plaintiffs' Class after this judgment through appeal and through distribution of the funds resulting from the jury verdict in this case. We will continue to protect the interest of Class Plaintiffs by enforcing the judgment entered by this Court

requiring Defendant to compensate them for pre- and post-shift activities. We will not stop until this class is compensated for their past work that has been unpaid and until policy changes are instituted by Defendant.

17. The staff employed by my Firm has done exceptional work as part of the Plaintiffs' Counsel team in representing this class and substantial resources of my firm have been devoted to this case. I further note that this work was done in conjunction with co-counsel, Gary K. Burger and other personnel at Burger Law. The team members great work in this case, along with the strong and vigorous support of the Class Representatives and many class members, made this verdict possible.

FURTHER AFFIANT SAYETH NOT.

Michael J. Flannery

STATE OF MISSOURI)
)SS
ST LOUIS CITY)

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal this 5th day of September 2018.

NOTARY PUBLIC

My Commission Expires:

CASEY FLUEGEL
Notary Public - Notary Seal
State of Missouri, Jefferson County
Commission Number 12616720
My Commission Expires Aug 10, 2020