

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
BECKLEY DIVISION**

MICHAEL D. ROSE, *et al.*,

Plaintiffs,

v.

JEFF S. SANDY, *et al.*,

Defendants.

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**Civil Action No. 5:22-cv-00405
(Judge Volk)**

JOINT MOTION FOR PRELIMINARY APPROVAL

Pursuant to Federal Rule of Civil Procedure 23(e), Plaintiffs Michael D. Rose, Robert C. Church, Sr., Nicole Henry, Edward L. Harmon, Thomas Fleenor, Jr., William Bohn, and Tonya Persinger, individually and on behalf of a putative class of others similarly situated (collectively, “Plaintiffs”) and Defendants Jeff S. Sandy, individually and in his official capacity as the former Cabinet Secretary of the West Virginia Department of Homeland Security, William K. Marshall III, individually and in his official capacity as the Commissioner of the West Virginia Division of Corrections and Rehabilitation, Betsy Jividen, Brad Douglas, and Michael Francis (collectively, “Settling Defendants”) (all collectively, “Settling Parties”) move for entry of a Preliminary Approval Order that, among other things, preliminarily approves the Settlement Agreement and Release (“Agreement”) (Exhibit A)¹ in this Class Action and for settlement purposes only provisionally certifies pursuant to Rule 23(a) and (b)(1)(B) a Class defined as all persons who were incarcerated at the Southern Regional Jail for a period greater than two (2) days during the Class Period.²

¹ The definitions set forth in the Agreement are hereby adopted and incorporated into this Memorandum.

Attached to this motion are the following:

Exhibit A: Settlement Agreement and Release with certain Exhibits³

Exhibit B: Affidavit of Stephen P. New

A Memorandum of Law in Support of Joint Motion for Preliminary Approval is also submitted contemporaneously.

WHEREFORE, the Settling Parties respectfully request that the Court grant this motion and enter an Order that:

- (1) Preliminarily approve the Settlement Agreement, subject to the rights of Class Members to object to the Settlement at the Final Approval Hearing;
- (2) Preliminarily certify for purposes of this Settlement only under the provisions of Rule 23(a) and Rule 23(b)(1)(B) of the Federal Rules of Civil Procedure, a Class as specified herein to include all persons who have been incarcerated at the Southern Regional Jail for a period greater than two (2) days during the Class Period;
- (3) Preliminarily appoint Michael D. Rose, Robert C. Church, Sr., Nicole Henry, Edward L. Harmon, Thomas Fleenor, Jr., William Bohn, and Tonya Persinger. as Class Representatives for Settlement purposes;
- (4) Preliminarily appoint Stephen P. New and Emilee B. Wooldridge and the law firms of Stephen New & Associates, Amanda J. Taylor and the law firm of Taylor, Hinkle & Taylor, Timothy P. Lupardus and the Lupardus Law Office, Robert Dunlap and Robert P. Dunlap and Associates PLLC, and Zachary Kyle Whitten and Whitten Law Office as Class Counsel for settlement purposes;

³ The remaining exhibits to the Settlement Agreement and Release shall be filed with the Court separately within 7 days.

- (5) Approve the form, manner, and content of the Email Notice, U.S. Mail Notice, and Claim Form described in this Settlement Agreement, which is being prepared and will be provided to the Court separately;
- (6) Appoint Tiffany Janowicz and Rust Consulting, Inc. as the Claim Administrator and direct the Claims Administrator to email, mail, and post said Class Notice within twenty-five (25) days of the entry of the Preliminary Approval Order to the Class Members, and order Settling Defendants to provide a Class Member list to the Claims Administrator in electronic format within five (5) days of the entry of the Preliminary Approval Order;
- (7) Find that the provision of the Class Notice as described above constitutes the best notice practicable under the circumstances, and is due and sufficient notice to the Class, and that the Class Notice fully satisfies the requirements of due process and of Rule 23 of the Federal Rules of Civil Procedure;
- (8) Find that Settling Defendants have complied with 28 U.S.C. § 1715;
- (9) Appoint a Guardian Ad Litem to represent and protect the interests of class members who are incarcerated pursuant to Rule 17(c)(2) of the *Federal Rules of Civil Procedure*.

Jointly submitted this 8th day of December 2023.

/s/ Stephen P. New

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Honorable Frank W. Volk**

CERTIFICATE OF SERVICE

I certify that on this 8th day of December, 2023, I filed the foregoing “**Joint Motion for Preliminary Approval**” via the CM/ECF system, which will send a notification to all counsel of record.

s/ Stephen P. New
Stephen P. New (WVSB 7756)