

UNITED STATES DISTRICT COURT
District of Maine

DALE DARE, on behalf of himself and)
on behalf of others similarly situated,)

Plaintiffs)

vs.)

Docket No. 02-251-P-C

KNOX COUNTY, DANIEL DAVEY,)
In his individual capacity and in his official)
Capacity as Knox County Sheriff,)

Defendants)

**PLAINTIFFS' REPLY TO DEFENDANT'S RESPONSE TO PLAINTIFFS'
MOTION FOR FINAL SETTLEMENT APPROVAL**

NOW COME Plaintiffs, by and through counsel, and hereby reply to Defendants' Response to Plaintiffs' Motion for Final Settlement Approval.

A. DEFENDANTS' CLAIMS AGAINST LAURIE TARDIFF

The Defendants efforts to shoehorn Laurie Tardiff back into class membership is a non-starter. The Court heard extensive argument from all parties regarding a second opt out opportunity for all class members and Laurie Tardiff in particular. The Court approved a second opt out opportunity which seven (7) class members in addition to Laurie Tardiff elected to opt out. To carve an exception to the opt out provision and preserve a place for Laurie Tardiff as a class member is unfair to those 366 people who filed timely claims and to take away from those people any of the money that they can

expect to receive from this class settlement is unfair. It is also unfair in its discriminatory impact on Laurie Tardiff as a person who exercised her right to opt out of the class.

B. CORRECTIONS TO PLAINTIFFS' MOTION FOR FINAL SETTLEMENT APPROVAL

2. Discovery and Electronic Data

The Defendant is correct that neither party served interrogatories on the other. Plaintiffs, however, served extensive and repetitive sets of document discovery requests and Requests for Admissions on the Defendants. The discovery efforts in this case were astronomical and when Defendants did not comply, discovery conferences were held with Magistrate Judge Cohen and with the Court. The latest tally on ECF filings stands at 390.

The electronic information gathered on site was extensive and served as the sole means of verifying charge information for class members. The five hard-bound books (Plaintiffs' trial exhibits 3a through 3e) were distilled from the electronic data file. Plaintiffs complained vociferously about the jail's poor record keeping with respect to identifying individuals detained at the jail because of mistakes in birthdates, spelling, social security numbers and the like, but the database obtained through the recovery of electronic records was priceless in its ability to provide information about crimes committed and to shed light on discrepancies between the respective positions of the parties as to when, how and under what circumstances individuals came to the jail. The electronic files became doubly valuable in sorting out the validity of claims made by class members to the Claims Administrator.

3. The Paper Records

The Defendants are incorrect when they suggest that the paper records were used by the Claims Administrator for purposes of acting upon the claims by class members. In fact, the records used were the electronic version of Plaintiffs' trial exhibits 3a through e were generated from the electronic database assembled by Plaintiffs' computer experts from the on site recovery of electronic records at the jail. No reference was made to the intake release records for purposes of claims administration.

The Defendants are incorrect when they suggest that available booking data is obtained exclusively from the paper records. The booking data is not limited to paper intake and release records. There is extensive booking data in the electronic records which, cross-checked against Defendants "List of Objections", made resolution of claims eligibility decisions relatively easy.

Respectfully, Plaintiffs request that the Court approve settlement in this matter finally.

Dated: April 20, 2007

/s/ Sumner Lipman
Sumner Lipman, Esq.
Attorney for Plaintiffs
Lipman, Katz & McKee
227 Water Street, P.O. Box 1051
Augusta, ME 04332-1051

Dated: April 20, 2007

/s/ Robert Stolt
Robert Stolt, Esq.
Attorney for Plaintiffs
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Augusta, ME 04332-1051

Dated: April 20, 2007

/s/ Dale Thistle

Dale Thistle, Esq.
Attorney for Plaintiffs
103 Main Street, P.O. Box 160
Newport, ME 04953

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CERTIFICATE OF SERVICE

I hereby certify that on April 20, 2007 I electronically filed the Plaintiffs' Reply To Defendant's Response To Plaintiffs' Motion For Final Settlement Approval With the Clerk of Court using the CM/ECF System, which will send notification of such filing(s) to the following:

Peter Marchesi, Esq.- pbear@wheelerlegal.com;

George Dilworth, Esq.-tdilworth@lawmmc.com;

John Wall - jwall@monaghanleahy.com

Dale F. Thistle-dthistle@verizon.net;

Sumner H. Lipman – slipman@lipmankatzmckee.com

William Robitzek – wrobitzek@bermansimmons.com

and all other counsel of record.

I hereby certify that on April 20, 2007, I mailed the above-mentioned documents by U.S.

Postal Service to the following non-registered participant(s):

None.

Dated: April 20, 2007

/s/ Robert J. Stolt, III

Robert J. Stolt, Esq.

Attorney for Plaintiffs

Lipman, Katz & McKee, P.A.

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**SUPPLEMENTAL MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTIONS
FOR FINAL APPROVAL OF SETTLEMENT AND AWARD OF ATTORNEY'S
FEES**

NOW COME Plaintiffs, by and through counsel, to offer this supplemental memorandum in support of the pending Motions for Final Approval of the class settlement and award of attorney's fees.

A. Class Membership

Claims have been approved for 366 claimants out of a total of 423 timely filed claim forms. An additional 14 claims were filed late and 8 individuals opted out. Of the 423 timely received claims, 366 were approved and 57 were rejected. 15 of the rejected claimants stated on their claim forms that they were neither held nor strip searched. The remainder were rejected because they were either serving a sentence or had been charged with a disqualifying crime.

67 claimants were found to be obligors owing child support arrearages from whom the State will recoup approximately \$350,000.00.

B. The Fund

The Knox County Settlement Fund has been deposited in the Marshall Money Market Fund as required by the Preliminary Settlement Approval Order. It earns interest at the rate of 4.235% and has earned interest to date in the amount of \$20,485.81. The settlement check from Knox County was received and deposited on the 14th day of February, 2007 and the check from the Risk Pool was received and deposited on 16th day of February, 2007. The projected interest to be earned through May 30, 2007 is estimated at \$16,350.00 at which time the total estimated amount of the settlement fund available available to be distributed by May 31, 2007 is \$3,036,835.81.

C. Claims Administrator

Attached as Exhibit 1 to this Memorandum is the Affidavit of Becky L. Oelschlager detailing the efforts made by the Claims Administrator getting notice to potential claimants and in approving and denying of claims. Attached to that Affidavit are Exhibits A-G relating to publication of the claims notice and form. Exhibit G identifies the 8 individuals who elected to opt out of the class settlement.

Also attached as Exhibit 2 to this Memorandum are bills dated April 13, 2007 from Analytics for services rendered between March 1, 2007 and April 13, 2007. And finally, also attached as Exhibit 3 is Becky Oelschlager's e-mail of April 12, 2007 estimating additional costs of \$30,592.13 to close out the claims process. Class counsel

had previously paid \$8,684.33 to the Claims Administrator on its previous invoice (see Plaintiffs' Motion for Attorney's Fees).

D. Class Members

Class counsel have fielded a multitude of phone calls from class claimants asking questions about the claims process, final approval and payment and expressing their gratitude for the work done and the benefits obtained for class members. For many it was the first time they had stood up to the plate.

CONCLUSION

Class counsel respectfully requests the Court approve the pending Motions as submitted.

Dated: April 20, 2007

/s/ Sumner Lipman
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Augusta, ME 04332-1051

Dated: April 20, 2007

/s/ Robert Stolt
Robert Stolt, Esq.
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I hereby certify that on April 20, 2007 I electronically filed Supplemental Memorandum In Support Of Plaintiffs' Motions For Final Approval Of Settlement And Award Of Attorney's Fees the With the Clerk of Court using the CM/ECF System, which will send notification of such filing(s) to the following:

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