

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

STEPHANIE MERCIER,
AUDRICIA BROOKS,
DEBORAH PLAGEMAN,
JENNIFER ALLRED,
MICHELLE GAVIN,
STEPHEN DOYLE, on behalf of themselves
and all others similarly situated,

Plaintiffs,

v.

No. 12-920C
(Judge Kaplan)

THE UNITED STATES OF AMERICA,

Defendant.

NOTICE OF CLASS ACTION SETTLEMENT

You may be entitled to a payment from this settlement of overtime claims against the Veterans Administration. Read this Notice carefully to see what your rights are under this settlement.

1. Why are you receiving this Notice?

You are receiving this Notice because you submitted an opt-in form to join this class action lawsuit asserting claims against the Veterans Administration (“VA”) for unpaid overtime. You are a class member.

2. What is this lawsuit about?

In this lawsuit, Advanced Practice Registered Nurses (“APRNs”) alleged that the VA unlawfully failed to pay overtime during the period from December 28, 2006 to January 16, 2021 for work performed beyond their tours of duty in the Computerized Patient Record System (“CPRS”). This lawsuit was filed on December 28, 2012 in the United States Court of Federal Claims. The presiding Judge is the Honorable Elaine Kaplan. The Government denies all of the Plaintiffs’ allegations and has vigorously contested all issues. After 8 years of litigation and a Court-supervised mediation, the Plaintiffs and the Government have agreed to settle this lawsuit. The Government does not admit any

wrongdoing or liability. In reaching a settlement, both sides seek to avoid the risk, cost and delay of a trial and possible appeal and an uncertain outcome. On July 16, 2021, Judge Kaplan preliminarily approved the settlement, required this Notice to be sent to class members and scheduled a fairness hearing for September 14, 2021 to determine if the settlement and any requested attorneys' fees, expenses and case contribution awards for the 6 Class Representatives should be finally approved.

3. What are the terms of the Settlement?

Pursuant to the Settlement Agreement, the Government will pay \$160,000,000 ("Gross Settlement Fund") to resolve all unpaid overtime claims asserted in this lawsuit as well as claims for attorneys' fees, expenses and interest. If approved by the Court, the settlement will permit you to be paid for your claims in this case sooner, rather than years from now or not at all, depending on the outcome of a trial and possible appeals.

In the Preliminary Approval Order, the Court appointed Brown Greer PLC as the Settlement Administrator. In addition to mailing this Notice to class members, the Settlement Administrator will pay all attorneys' fees, litigation expenses and Case Contribution Awards from the Gross Settlement Fund as approved by the Court. All settlement administration charges also shall be paid from the Gross Settlement Fund. The amount remaining in the Gross Settlement Fund after administration costs, attorneys' fees, litigation expenses and case contribution awards are paid as approved by the Court is the "Net Settlement Fund."

4. How was the amount I would receive determined?

Class members will receive a proportionate share from the Net Settlement Fund, based on the number of hours they worked outside of their tour of duty in the CPRS during the class period, multiplied by their overtime rate of pay. Specifically, the Plaintiffs' lawyers used time-stamped data from the VA for each class member that reflected when the class member was working in the CPRS. This data consisted of electronic signature stamps on Notes and Orders entered into the CPRS by the class member, plus (where available) logs of view alerts received and processed and records of when the class member signed in or out of the CPRS. The data was analyzed to ascertain how much time the class member had spent working outside his or her tour of duty throughout the class period.

The class member's salary at the time the work was done was divided by 2080 hours to determine the straight-time hourly rate of pay. The overtime rate is 1.5 times the straight-time rate. The amount of unpaid overtime at each salary level was then summed (with interest) to determine the maximum amount of damages that each class member could recover, **if the Plaintiffs were to have prevailed at trial on every issue and through all appeals.**

Because the Settlement represents a compromise, the payment to each class member is his or her share of the Net Settlement Fund. That share is calculated by applying the ratio

of his/her individual maximum damages to the total maximum damages for all class members.

If your share of the Net Settlement Fund is below \$250.00, you will receive a minimum recovery of \$250.00 subject to Federal tax withholdings.

Class members will not receive overtime payments for overtime work performed before or after the class period (12/28/06-1/16/21).

5. Who are the lawyers representing Plaintiffs and class members?

Provost Umphrey Law Firm, LLP, Cook, Allen & Logethetis, LLC, E. Douglas Richards, PSC, Mooney, Green, Saindon, Murphy & Welch PC and Motley Rice LLC represent Plaintiffs and the class members in this lawsuit. You are not directly responsible for Plaintiffs' attorneys' fees or expenses. If the Court approves it, these lawyers will be paid out of the Gross Settlement Fund. Plaintiffs' counsel will request that the Court approve attorneys' fees not to exceed 30% of the Gross Settlement Fund plus litigation expenses of \$463,544.33.

6. What are case contribution awards?

Plaintiffs' Counsel will ask the Court to approve case contribution awards in the amount of \$20,000 to each of the six (6) Class Representatives for the extensive work they performed investigating the facts, litigating the case, participating in depositions, and negotiating the settlement at significant costs of time and resources.

7. What are my rights and options under the Settlement?

You have the right to participate in the Settlement and/or to object to the Settlement, the requests for attorneys' fees and expenses and/or the request for Class Representative case contribution awards.

a. Participation

You have opted into this lawsuit and have not withdrawn from it. Accordingly, to participate in the Settlement and receive your portion of the Net Settlement Fund, you do not need to take any action. By opting into the lawsuit, you agreed to be bound by any adjudication by the Court or settlement approved by the Court.

b. Objections

Class members may object to the Settlement Agreement, the award of attorneys' fees and expenses and/or the case contribution awards to the six (6) Class Representatives.

The Court will consider and decide all properly submitted objections. All orders and judgments entered by the Court regarding the Settlement, including whether to accept or reject an objection, are binding on all class members.

To object, you must mail a written statement to Plaintiffs' Counsel Michael Hamilton, saying that you object to the proposed Settlement. You must include in your written statement:

- i. A heading referring to *Mercier, et al. v. United States of America*, Case No. 12-920C, In the United States Court of Federal Claims;
- ii. The objector's name, current address and current telephone number and a statement of whether the objector opted into the case;
- iii. A statement as to whether the objector intends to appear at the Final Fairness Hearing, either in person or through counsel, and if through counsel, identifying counsel by name, address, and telephone number;
- iv. A detailed statement of each objection, including the specific legal and factual basis for each and every objection, and whether it applies only to the objector, to a specific subset of the class, or to the entire class;
- v. A list of any witnesses the objector wishes to call at the Final Fairness Hearing, together with a brief summary of each witness's expected testimony;
- vi. A list of an copies of any exhibits the objector may seek to use at the Final Fairness Hearing;
- vii. A list of any legal authority the objector may present at the Final Fairness Hearing; and
- viii. If the objector is objecting to the any portion of the Plaintiffs' attorneys' fees, case contribution awards, and litigation expenses sought by Plaintiffs' Counsel on the basis that the amounts requested are unreasonably high, the objector must specifically state the portion of Plaintiffs' attorneys' fees, case contribution awards and/or litigation expenses he/she believes is reasonable and the portion that is not.

Your Objection must be mailed to Plaintiffs' Counsel Michael Hamilton no later than August 30, 2021.

Michael Hamilton
Provost Umphrey Law Firm, LLP
4205 Hillsboro Pike
Suite 303
Nashville, TN 37215

UNLESS OTHERWISE ORDERED BY THE COURT, ANY CLASS MEMBER WHO DOES NOT OBJECT IN THE MANNER DESCRIBED HEREIN WILL BE DEEMED TO HAVE WAIVED ANY OBJECTION AND SHALL BE FOREVER FORECLOSED FROM MAKING ANY OBJECTION TO THE PROPOSED SETTLEMENT, INCLUDING THE APPLICATION FOR ATTORNEYS' FEES AND LITIGATION EXPENSES AND CASE CONTRIBUTION AWARDS, AND WILL NOT BE ALLOWED TO PRESENT ANY OBJECTIONS AT THE FINAL FAIRNESS HEARING.

8. What happens to backpay owed to deceased class members?

If you are an heir or beneficiary of a deceased class member and thereby believe you are entitled to receive all, or some portion of the Net Settlement Fund allocable to the deceased class member, you must provide certain information to Brown Greer, the Settlement Administrator on an Heirship/Beneficiary Information Form which is available on the settlement website (www.vaovvertimeclassaction.com) or by requesting that the Administrator mail the form to you. The contact information for the Settlement Administrator is set forth in the response to Question No. 13 below.

9. When and where will the Court decide whether to approve the Settlement Agreement and requests for attorneys' fees, expenses and case contribution awards?

The Court will hold a Final Fairness Hearing on September 14, 2021 at 2:00PM Eastern Time, at the Court of Federal Claims, Howard T. Markey National Courts Building, 717 Madison Place, N.W., Washington, D.C. 20439. At this hearing, the Court will consider whether the Settlement is fair, reasonable and adequate and whether Plaintiffs' requests for attorneys' fees, expenses and case contribution awards are fair and reasonable. If there are objections, the Court will consider them at that time. If you do not have objections to the Settlement, you do not have to attend the hearing.

In addition to holding the Fairness Hearing in person in the National Courts Building in Washington, D.C., the Court will also allow class members to call in to the hearing using the following dial-in instructions:

Class members who would like to call in to the Fairness Hearing scheduled for Tuesday, September 14, 2021 at 2:00PM Eastern Time to listen to the hearing may participate in the following manner:

- 1) DIAL 1-877-810-9415
- 2) ENTER access code: 7790908 #; and
- 3) ENTER security code: 120920 #

10. How can I find out how much I will receive?

An estimate of your individual recovery will be made available on a link to a portal on the settlement website: www.vaovvertimeclassaction.com.

11. When and how would I get paid if the Settlement Agreement is approved?

If the Court finally approves the Settlement Agreement and there are no appeals from the Final Approval Order, class counsel believes that payments would commence approximately forty-five (45) days after Court approval. Your share of the recovery will be paid in two (2) checks; one for the backpay portion and the second for the interest portion.

12. Is my recovery taxable and are taxes being withheld from my recovery?

Your share of the Gross Settlement (the amount before attorneys' fees, expenses and administration costs have been deducted) is considered income. Federal payroll taxes will be withheld from the backpay portion of your recovery. A Federal Form 1099 will be issued to you for the interest portion of your recovery. You are individually responsible for determining whether you owe taxes on the interest portion of your recovery and if so for remitting those taxes to the Federal government. Neither state nor local taxes have been withheld from your recovery. You are individually responsible for determining whether state or local taxes are owed on your recovery and for complying with any tax obligations to state or local governmental entities.

13. Getting more information

This Notice summarizes the Settlement. The complete terms of the Settlement are set out in the Settlement Agreement. You may obtain a copy of the Settlement Agreement, the Preliminary Approval Order and Second Amended Complaint from the settlement website for free at www.vaovvertimeclassaction.com. You can also visit the settlement website to find answers to common questions about the Settlement. An estimate of your proportionate share of the recovery will be made available on the settlement website. You can also call 1-888-594-2070 or write to the Settlement Administrator at the address listed below:

Class Action Administrator: Mercier, et al. v The United States
PO Box 26108
Richmond, VA 23260
1-888-594-2070
www.vaovvertimeclassaction.com

Further information regarding this lawsuit and this Notice may be obtained by contacting Plaintiffs' counsel listed below:

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Please Do Not Contact the Court Regarding This Notice

Dated, July 16, 2021

By Order of the Court