

Hon. Fred Van Sickle

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8
9 UNITED STATES DISTRICT COURT
10 FOR THE EASTERN DISTRICT OF WASHINGTON

11 SHAWN HUSS, a single man, and
12 others similarly situated,

13 Plaintiff,

14 vs.

15 SPOKANE COUNTY, a municipal
16 corporation,

17 Defendants.

No. CV 05-180-FVS

ORDER
GRANTING JOINT MOTION
FOR PRELIMINARY
APPROVAL OF PROPOSED
CLASS ACTION SETTLEMENT
AND FORM AND MANNER OF
NOTICE

18 WHEREAS, a certified class action matter, entitled *Shawn Huss v. Spokane*
19 *County*, Case No. CV-05-180-FVS, is currently before the Honorable Fred Van
20 Sickle in the United States District Court for the Eastern District of Washington
21 for purposes of settlement approval;

22 WHEREAS, the *Named Plaintiff* and *Defendant* have applied to the Court,
23 pursuant to Fed. R. Civ. P. 23, for an Order preliminarily approving the
24 settlement of the above-named action in accordance with the *Settlement*
25

1 *Agreement* which, together with the exhibits thereto, sets forth the terms and
2 conditions for a proposed settlement of this matter;

3 WHEREAS, the Court has previously certified the *Named Plaintiff's*
4 claims for class treatment pursuant to Fed. R. Civ. P. 23(b)(3); and
5

6 WHEREAS, having read and considered the parties' joint motion for
7 preliminary approval, and the *Settlement Agreement* and Notice Forms attached
8 thereto, and based on the preliminary approval hearing on September 14, 2009,
9 the Court hereby finds and ORDERS:
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11 1. This Order ("*Preliminary Approval Order*") incorporates by
12 reference the definitions in the *Settlement Agreement*; all italicized terms shall
13 have the same meanings set forth in the *Settlement Agreement*.
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15 2. The Court has jurisdiction over the subject matter of this action and
16 over all parties to this action, including all *Class Members* and the *Defendant*.
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18 3. The Court preliminarily approves the *Settlement Agreement* and the
19 *Plan of Allocation* to be fair, reasonable, and adequate.

20 4. The *Settlement Class* in this matter is the same class identified and
21 certified by this Court, and consists of:
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23 "all individuals from May 5, 2004 to December 20, 2006, who
24 were deprived of their property pursuant to the booking fee
25 policy of the Spokane County Jail without being provided the
constitutionally guaranteed due process of law."

1 Individuals “who were deprived of their property” without being provided due
2 process of law includes only those individuals who were charged a booking fee
3 and who actually paid money towards that fee.

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5 5. The Court approves, as to form and content, the *Proposed Settlement*
6 *Agreement*, which is annexed as Exhibit A to the Memorandum in Support of the
7 Parties’ Motion for Preliminary Approval of Proposed Class Action Settlement
8 and Form and Manner of Notice.

9
10 6. The Court approves, as to form and content, the *Official Notice of*
11 *Class Action* and *Publication Notice*, which is annexed as Exhibit B to the
12 Memorandum in Support of the Parties’ Motion for Preliminary Approval of
13 Proposed Class Action Settlement and Form and Manner of Notice.

14
15 7. The date and time of the *Fairness Hearing* shall be added to the
16 *Mailed Notice* and the *Publication Notice* before they are mailed and published,
17 respectively, in accordance with paragraph 12(a) and (b) below.

18
19 8. The Court finds that the mailing, publication, and distribution of the
20 *Mailed Notice* and *Publication Notice* substantially in the manner and form set
21 forth in paragraphs 10(a), and (b) below, constitutes the best notice practicable
22 under the circumstances, including individual notice to all *Settlement Class*
23 members who can be identified through reasonable effort, and constitutes valid,
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1 due, and sufficient notice to all persons entitled thereto, complying fully with the
2 requirements of Fed. R. Civ. P. 23 and due process.

3 9. The Court approves the following schedule:
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5 Notice mailed to Class Members	Within 30 days after this Order of Preliminary Approval is entered by the Court.
6 <i>Publication Notice</i> published in English in the Spokesman Review	No later than 14 days after the <i>Mailed Notice</i>
7 Last day for class members to object to Settlement	No later than 90 days before the Final Approval Hearing (December 16, 2009)
8 Final Approval Hearing	March 16, 2010 at 1:00 p.m.
9 Last day for class members to submit a <i>Class Claim Form</i> or opt-out of the Settlement	No later than 90 days before the Final Approval Hearing (December 16, 2009)

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14 10. Notice shall be issued as set forth below:

15 (a) Commencing within 30 days from the date of this Preliminary
16 Order, *Defendant* shall cause to be mailed, by first class mail, copies of the
17 *Mailed Notice* and *Claim Form* to all *Class Members* who can be identified by
18 *Defendant* with reasonable effort at each such *Class Member's* last known
19 address; *Class Counsel* will create this list based upon the Spokane County Jail
20 records and data systems; and
21
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23 (b) Within 14 days from the date of *Mailed Notice*, or 44 days
24 from the date of the *Preliminary Approval Order*, *Class Counsel* shall cause the
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1 *Publication Notice* to be published twice in the *Spokesman Review*. One
2 publication shall run on a Sunday, and the other will run on a weekday.

3 11. At or prior the *Fairness Hearing* (as defined below), *Defendants*
4 shall file with the Court and serve on *Class Counsel* proof by declaration or
5 affidavit of the mailing and publication described in paragraphs 10(a) and 9(b)
6 above.
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8 12. A hearing (the "*Fairness Hearing*") shall be held on **March 16,**
9 **2010 at 1:00 p.m.**, before the Honorable Fred Van Sickle, United States District
10 Court Judge, at the United States District Court for the Eastern District of
11 Washington, 920 West Riverside Avenue, Spokane, WA 99201, for the purpose
12 of determining (a) whether the proposed *Settlement* as set forth in the *Agreement*
13 is fair, reasonable and adequate and should be approved by the Court; (b) whether
14 an *Order of Final Judgment and Dismissal*, substantially in the form of Exhibit B
15 to the *Agreement*, should be entered; (c) whether the proposed *Plan of Allocation*
16 is fair and reasonable and should be approved by the Court; (d) whether and in
17 what amount attorneys' fees and costs should be awarded to *Class Counsel*;
18 (e) whether and in what amount *Incentive Awards* should be issued to the *Named*
19 *Plaintiffs*, and to rule upon such other matters as the *Agreement* contemplates and
20 as the Court may deem just and proper.
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1 13. A joint motion for Final Approval of the Class Settlement and Final
2 Judgment and Dismissal, and all papers in support of the *Settlement* shall be filed
3 at least fifteen (15) days prior to the *Fairness Hearing*.
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5 14. Any *Class Member* may appear and show cause as to why the Court
6 should or should not (a) approve the proposed *Settlement* as set forth in the
7 *Settlement Agreement* as fair, reasonable and adequate; (b) enter the *Order of*
8 *Final Judgment and Dismissal*, substantially in the form of Exhibit B to the
9 *Agreement*; (c) award attorneys' fees and costs to *Settlement Counsel* and/or
10 (d) award *Incentive Awards* to the *Named Plaintiffs*, **provided, however**, that no
11 person shall be heard with respect to, or shall be entitled to contest, the foregoing
12 matters unless on or before **December 16, 2009**, that person has mailed notice of
13 his, her or its intention to appear, setting forth briefly each objection and the basis
14 therefore, together with copies of any papers and briefs in support of said
15 objections and proof of membership in the *Class*, to: the Clerk of the Court at the
16 following address: Thomas S. Foley U.S. Courthouse, 920 West Riverside
17 Avenue, Spokane, WA 99201.
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21 Unless otherwise ordered by the Court, any *Settlement Class* member who
22 does not make his or her objection in the manner provided for herein, shall be
23 deemed to have waived such objection and shall forever be foreclosed from
24 making any objection to the foregoing matters.
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1 15. The Court may adjourn the *Fairness Hearing* from time to time and
2 without further notice to the *Class*. The Court reserves the right to approve the
3 *Settlement* at or after the *Fairness Hearing* with such modifications as may be
4 consented to by the *Settling Parties* and without further notice to the *Class*. The
5 Court further reserves the right to enter a *Final Order*, dismissing the action with
6 prejudice as to the *Settling Defendant* and against the *Named Plaintiff* and the
7 *Class* at or after the *Fairness Hearing* and without further notice to the *Class*.
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10 16. Upon entry of the *Final Order*, the *Named Plaintiff*, and each of the
11 *Class Members*, on behalf of themselves, their successors, assigns, and any other
12 person claiming (now and in the future) through or on behalf of them, and
13 regardless of whether any such *Named Plaintiff* or *Class Member* ever seeks or
14 obtains by any means any distribution from the *Settlement Fund*, shall be bound
15 by the *Final Order* and by the terms of the *Settlement Agreement*.
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17 Upon entry of the *Final Order*, the Court will dismiss the action in its
18 entirety as to Defendant Spokane County, with prejudice and without costs
19 (except as otherwise provided in the *Agreement*).
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21 17. All reasonable costs and expenses incurred in identifying and
22 providing notice to *Class Members* and in administering the *Settlement Fund* shall
23 be paid as set forth in the *Settlement Agreement*.
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1 18. The Court retains jurisdiction over all proceedings arising out of or
2 related to the *Settlement Agreement*.

3 19. If for any reasons the *Settlement Agreement* does not become
4 effective in accordance with the terms of the *Settlement Agreement*, this
5 *Preliminary Approval Order* shall be rendered null and void and shall be vacated
6 *nunc pro tunc*.
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8 20. Without further order of the Court, the *Settling Parties* may agree to
9 reasonable extensions of time to carry out any of the provisions of this
10 *Preliminary Approval Order* or the *Agreement*.
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12 21. Pending final determination as to whether the *Settlement*, as set forth
13 in the *Settlement Agreement*, should be approved, no *Class Member* shall
14 commence, prosecute, pursue, or litigate any *Released Claims* against the
15 *Defendant*, whether directly, representatively, or in any other capacity, and
16 regardless of whether or not such *Class Member* has appeared in the action.
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19 IT IS SO ORDERED.

20 Dated: 9/18/09

21 s/ Fred Van Sickle

22 _____
23 FRED VAN SICKLE,
24 U.S. DISTRICT COURT JUDGE
25 EASTERN DISTRICT OF WASHINGTON