

**STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW**

NEAL, et al.,

Plaintiffs,

vs.

Case No. 96-6986-CZ  
Hon. Timothy P. Connors

MICHIGAN DEPARTMENT OF CORRECTIONS,  
et al.,

Defendants.

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ANDERSON, et al,

Plaintiffs,

vs.

Court of Claims  
Case No. 03-162-MZ

MICHIGAN DEPARTMENT OF CORRECTIONS,  
et al.,

Defendants.

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**PLAN OF ALLOCATION OF SETTLEMENT PROCEEDS**

## **I. OVERVIEW**

After litigation which has spanned more than thirteen (13) years; involved over three thousand (3,000) docket entries at the trial level; more than twenty (20) appellate proceedings; two trials involving eighteen (18) class members; multiple court ordered facilitated arbitrations; mediation evaluations for thirty-six (36) class members, together with extensive discovery; the parties entered into Court ordered facilitation in May of 2009. As a result of extensive negotiations with the assistance of two court appointed mediators, William Jack and James Fajen, the parties have reached a proposed global settlement of all class claims, which has been tentatively approved by Judge Connors. The settlement includes injunctive relief and a monetary settlement of One Hundred Million Dollars (\$100,000,000.00), as compensation for class members, costs and attorneys' fees.

The settlement represents all Plaintiffs' best interests as determined by Plaintiff class representatives and Plaintiffs' counsel, in light of the risk of loss including loss on appeal and the delay in resolution presented by continued litigation. Moreover, the amount, together with injunctive relief, provides recognition of the harm caused, the human rights and dignity of the Plaintiffs at issue in this case and the need to prevent any future harm from sexual abuse and degrading treatment of women incarcerated in Michigan's prisons.

The funds will be distributed to the class in accordance with this Plan of Allocation which was preliminarily approved by Judge Connors on July 15, 2009, and subject to final approval following the fairness hearing as set forth in the settlement. The proposed method of allocation, method of distribution to all eligible class members and their attorneys is set forth below and subject to objections and hearing by the Court before final approval.

## **II. ATTORNEY FEES AND COSTS**

### **A. Costs**

The Court has preliminary approved One Million Dollars (\$1,000,000.000) to reimburse Plaintiffs' counsel for costs expended by the attorneys for the Plaintiff class in representing the Plaintiff class over the last thirteen years together with anticipated costs and fees for overseeing the settlement, distribution and enforcement. Plaintiffs' attorneys have expended Five Hundred Seventy-One Thousand, Sixty-Six Dollars and 58 Cents (\$571,066.58), in out of pocket costs which the Court preliminarily approves as reimbursement of costs to date. The Court has also approved an additional amount of costs and fees up to a total of One Million Dollars (\$1,000,000.00) (including out of pocket costs) to be held in escrow to cover future costs and attorneys' fees for administering the settlement and distribution of monies through the year 2015. The additional cost funds will be escrowed and any portion of the additional cost allocation which is not utilized for the above purposes as approved by the Court, shall be distributed to the class on a pro rata basis.

The Court has also preliminarily approved attorney fees at twenty-eight (28%) percent of the remaining pool to compensate the ten (10) attorneys which have expended over thirty thousand (30,000) hours representing the class since filing litigation in 1996. Class counsel has successfully defended challenges to the applicability of the Elliott-Larsen Civil Rights Act (ELCRA) to women prisoners in both state and federal court, secured the remedy of removing male staff from areas where they can view women nude or partially clothed, successfully represented the class through two trials, successfully defended the first trial on appeal and negotiated this settlement for the class.

The remaining amount of Seventy-One Million, Two Hundred Eighty Thousand (\$71,280,000.00) shall be distributed to the eligible class members as set forth below over a period of six (6) years. Ten (10%) percent of each class member's individual award will be distributed in 2009, ten (10%) percent will be distributed in October of 2010, fifteen (15%) percent in October of 2011, twenty (20%) in October of 2012, twenty (20%) percent in October of 2013, and twenty-five (25%) in October of 2014.

### **III. ELIGIBLE CLASS MEMBERS**

In order to be entitled to participate in the settlement a claim must fit the definition of one of the pools described below **and an eligible class member must** fill out a claim form. Each eligible class member will be entitled to participate in only one (1) pool (based on the most serious of their claims). Eligible class members will be divided into four (4) categories (pools) based on the nature of their claims, their injuries and the legal risks involved in proceeding with this litigation.

Certain class members will also be entitled to additional awards (enhancements) which reflect their additional efforts and sacrifices in advancing this litigation and working with counsel on behalf of the class. If a class member is eligible for enhancements, as set forth below, these enhancements will be in addition to the eligible class member's pool award.

#### **A. Trial Pool**

The eighteen class members who have gone through trial will be awarded the following specific amounts as a full and final settlement of all of their claims based on events which occurred prior to July 15, 2009. These amounts reflect the jury's evaluations of their injuries, the

substantial contribution they have made by enduring several weeks of trial, as well as the substantial risks of adverse rulings on post-trial appeals, delay and other legal challenges.

The Plaintiff class members who participated in the first trial completed on February 1, 2008, will receive sixty-seven (67%) percent of the award by the jury for their injuries. The Plaintiffs in the second trial which ended on November 12, 2008, will receive sixty-five (65%) percent of their award by the jury for their injuries. The total amount set aside for the trial pool is Fifteen Million, Eight Hundred Fifty Thousand, Seven Hundred Dollars (\$15,850,700.00). Trial Pool class members are **not** eligible for any additional enhancements set forth in Section D below.

#### **B. Pool 1**

Thirty-seven Million Dollars (\$37,000,000.00) will be set aside for Pool 1 to compensate eligible class members who suffered sexual intercourse, oral sex or digital penetration, by a male employee of the Department between March 27, 1993 and July 14, 2009. In order to be eligible to receive funds from Pool 1, a class member **must not** have received funds from the Trial Pool, **must** file a claim form and **must** satisfy the criteria listed above. Eligible class members will share in the distribution of Pool 1 funds based on the number of points awarded in accordance with the following criteria, divided by the total number of points awarded to eligible class members in the pool. Points will be allocated based on the range of severity of the incidents. The maximum number of points will be ten (10) and the minimum will be two (2). The following factors may be taken into consideration in awarding points:

- 1) the nature of the assault;
- 2) the number of assaults; the number of assailants;
- 3) the time period over which the assaults occurred;
- 4) physical injuries;
- 5) retaliation;
- 6) exacerbating factors; and
- 7) other extraordinary events.

The total number of all class members' points will be divided into the pool fund to determine the value of a point, which will then be multiplied by the individuals' point score to obtain the amount each eligible class member in Pool 1 will receive.

**C. Pool 2**

Eleven Million Dollars (\$11,000,000.00) will be set aside to compensate eligible class members who suffered cross-gender pat-downs, groping by a male employee of the Department, were subjected to a male employee purposefully exposing his genitals and/or masturbating, were forced to touch the genitals of a male employee of the Department, or attempted sexual assault, between March 27, 1993 and July 14, 2009. In order to be eligible to receive funds from Pool 2, a class member **must** submit a claim form satisfying the Pool 2 criteria. In order to participate in Pool 2, class members **must not** have participated in the Trial Pool or Pool 1. Pool 2 will be distributed to eligible class members in accordance with the following criteria. Each eligible class member will share in the distribution of Pool 2 funds. Points will be allocated according to the severity of the incidents and injuries. The maximum number points is ten (10) and the minimum is one (1). The following factors may be taken into consideration in awarding points for this pool:

- 1) the nature of the incident;
- 2) the number of incidents;
- 3) whether the incidents occurred before or after the year 2000;
- 4) retaliation;
- 5) exacerbating factors;
- and 6) other extraordinary events.

The total number of all class members' points will be divided into the pool fund to determine the value of a point, which will then be multiplied by the individuals' point score to obtain the amount each eligible class member in Pool 2 will receive.

**C. Pool 3**

Five Million Dollars (\$5,000,000.00) will be set aside to compensate eligible class members who were sexually harassed or who were subjected to prurient viewing while nude or partially clothed (privacy violation) by an MDOC male employee. In order to be eligible to participate in Pool 3, class members **must not** have participated in the Trial Pool, Pool 1 or Pool 2, and **must** submit a claim form satisfying the Pool 3 criteria.

In the event the entire pool is not fully distributed to the eligible class members, the portion not distributed may be redistributed to compensate Plaintiffs in Pools 1 and 2, if necessary, to address a higher number of claims being filed than anticipated based on current knowledge of the class. Points will be allocated according to the severity of the incidents and injuries. The maximum number points is ten (10) and the minimum is one (1). The following factors may be taken into consideration in awarding points for this pool:

- 1) the nature of the incident;
- 2) the number of incidents;
- 3) the time and location of the incidents;
- 4) retaliation for reporting incident; and
- 5) other extraordinary events.

The total number of all class members' points will be divided into the pool fund to determine the value of a point, which will then be multiplied by the individuals' point score to obtain the amount each eligible class member in Pool 3 will receive. No individual eligible class member in Pool 3 will be entitled to an award in excess of Ten Thousand Dollars (\$10,000.00) excluding enhancements; and the value of each individual point will not exceed One Thousand, Two Hundred Dollars (\$1,000.00).

**D. Enhancement**

In addition to what eligible class members will receive by virtue of being participants in Pool

1, Pool 2 and Pool 3, class members will receive additional sums of money for the contributions they have made to the prosecution of the litigation which resulted in the settlement. To be eligible to receive an enhancement a class member must have identified themselves as a class member and assisted the class by filling out questionnaires and communicating with Plaintiff class' counsel, completing interrogatories, appearing for their depositions, participants in mediation or the facilitation process, representing the class as a representative or providing additional assertions that advanced ongoing assistance, sacrifices and contribution to the class action that enhanced the value of the class action and contributed to its resolution. A total of One Million, Two Hundred Sixty-Eight Thousand Dollars (\$1,268,000.00), will be set aside to compensate class members who are entitled to enhancements. The criteria and amount of the enhancement are set forth in Exhibit 1 to this plan of allocation. Any portion of this amount which is not utilized for the above purposes as approved by the Court, shall be distributed to the class on a pro rata basis to class members in Pools 1 and 2.

**E. Claim Master – Residual Fund**

The remaining settlement monies of One Million, One Hundred Sixty-One Thousand, Three Hundred (\$1,161,300.00) will be reserved for use of the Claims Master, appointed by the Court to ensure the allocations are in compliance with the plan of allocation, to hear any individual class member's appeal of their awards and to award additional appeal points if and where fair and necessary.

The Claims Master shall have the authority to resolve mentioned appeals by use of appeal points which will be compensated from the residual fund, subject to review by this Court. Any portion of the residual fund which is not utilized for the above purposes as approved by the Court,



shall be distributed to the class on a pro rata basis.

#### **IV. CLAIM PROCEDURES**

##### **A. Notice**

Notice of this plan of allocation, together with Notice of Settlement, the preliminary approval of Settlement Agreement and Claims Forms, shall be mailed no later than July 21, 2009, to the last-known address of each class member on class counsel's mailing list and to all last known addresses of released class members incarcerated since March, 1993, based upon information provided by the Department on July 9, 2009.

The Michigan Department of Corrections shall conspicuously post a copy of the Notice and a summary of the settlement, in the public areas of each facility, camp and center housing female prisoners in Michigan and two conspicuous locations within each of the female housing units with a mechanism to obtain claim forms.

A summary of the Notice and summary of the Settlement with a method for obtaining claim forms shall be published in the *Grand Rapids Press*, *Detroit Free Press*, *Detroit News* and *Michigan Chronicle*, for a period of two weeks beginning on July 21, 2009. A website shall be established by July 21, 2009, which class members shall be able to review all proposed settlement documents and download claim forms. [www.nealclassaction.com](http://www.nealclassaction.com).

##### **B. Claims**

Any class member wishing to participate in the class member participation or pool award process **MUST SUBMIT A CLAIM FORM THAT IS RECEIVED BY CLASS COUNSEL NO LATER THAN AUGUST 14, 2009**. The claim form must be sent to the following address and be

received no later than August 14, 2009:

Law Offices of Deborah Labelle  
221 N. Main Street, Ste. 300  
Ann Arbor, MI 48104

Class counsel will review each claim form to determine if the claimant is a class member and eligible for participation in the award process.

**C. Eligibility**

Class counsel will conduct an initial review of the eligible claims and, on or before **September 4, 2009**, will issue a letter to each claimant notifying them of their eligibility for a class member participation award. Any individual determined to be ineligible shall be notified by class counsel with the reason for the determination within fourteen (14) days of receipt of their claim, with details of the appeal process. Individuals determined to be ineligible may appeal an ineligible determination to the Court appointed Claims Master by writing to the Claims Master within fourteen (14) days of receipt of the notice of ineligibility. The Claims Master will notify the individual of the decision, and the reasons for the decision, in writing, within fourteen (14) days of its receipt of the appeal. The individual may appeal the ineligibility decision of the Claims Master by writing to the Honorable Timothy P. Connors and shall include reasons for disagreement with the Claims Master. The appeal to Judge Connors must be received by the Court within 14 days of the individual's receipt of the Claims Master's letter of denial. The Court shall issue a decision on or before November 1, 2009, which decision will be final.

**D. Allocation**

The class counsel will draft all allocation letters informing each eligible claimant of the pool for which they qualify, and the estimated value of a pool point and eligibility for enhancement.

Upon receipt of the letter each participant in the class member pool will be able to calculate the approximate amount of her award. The Claims Master will review all allocation letters to ensure that the proposed allocation is in compliance with the plan of allocation. All allocation letter shall be mailed by **September 4, 2009**.

#### **E. Objections**

Class members who disagree with their own pool award or enhancement will be entitled to appeal their individual award to the Court appointed Claims Master. This appeal to the Claims Master, **must be in writing**, state the reasons for disagreement and be submitted on or before **September 18, 2009**. All allocation letters shall provide the address, date and requirements for filing an appeal of your individual award.

The Claims Master will then conduct a review of the appeal and issue its final decision no later than **October 16, 2009**. The Claims Master may authorize additional compensation from the residual fund. Any monies remaining in the residual fund will be redistributed to the class members in Pools 1 and 2 on a pro rata basis. Any class member dissatisfied with the results of their appeal to the Claims Master may request a review by the Court by submitting a written appeal to the Court by **October 30, 2009**, including the reasons for the appeal and supporting documentation and appear for hearing on **November 14, 2009**, at the following location:

Washtenaw County Courthouse  
101 E. Huron Street  
Ann Arbor, MI 48104

Objections are limited to individual award issues. Objections to the settlement or the Plan of Allocation will not be heard at this stage. All objections to the fairness of the settlement and the Plan of Allocation are waived unless objected to by August 14, 2009.

A time line of important dates to preserve your rights is attached to this plan. Any questions

may be made to class counsel by contacting them at:

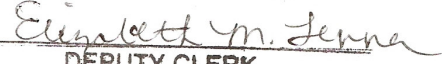
Law Offices of Deborah Labelle  
221 N. Main St., Ste. 300  
Ann Arbor, MI 48104  
734.996.5620  
[info@nealclassaction.com](mailto:info@nealclassaction.com)

DATED: July 15, 2009

  
TIMOTHY P. CONNORS  
Circuit Court Judge

Drafted By:

  
DEBORAH A. LABELLE (P31595)  
Co-Counsel for Plaintiffs

A TRUE COPY  
LAWRENCE KESTENBAUM  
CLERK OF CIRCUIT COURT  
BY   
DEPUTY CLERK

**ENHANCEMENT CRITERIA EXHIBIT 1**

Any class member who completed a questionnaire will receive:	\$ 500.00
Any class member who completed interrogatories will receive:	\$1,500.00
Any class member who appeared for a deposition will receive:	\$5,000.00
Any class member who participated in mediation will receive:	\$2,000.00
Any class member who appeared for two (2) Independent Medical Examinations will receive:	\$20,000.00
Any class member who appeared for one (1) Independent Medical Examination will receive:	\$10,000.00

The following class members acted as Class representatives and will each receive a Ten Thousand Dollar (\$10,000.00) enhancement:

Class Representatives

NeCole Anderson Brown	Tammy LaCross
Carmelita Ayers	LaShunda Lewis
Baldrige, Victoria	Mary Marshall
Jill Flanders	Lynne McIntyre
Sonya Grissom	Brandy Nash
T’Nasa Harris	Alishis Smith
Janelle Knight	Renee Williams

The following class members made exceptional contributions to the litigation and will each receive a Fifteen Thousand Dollar (\$15,000.00) enhancement:

NeCole Anderson Brown	Tammy LaCross
Stacy Barker	Natheauleen Mason
Kandice Hall	Carolyn Moss
T’Nasa Harris	Renee Williams