

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

CARL ROBERT CARSON, JR., ON)	
BEHALF OF HIMSELF AND ALL)	
OTHERS SIMILARLY SITUATED,)	
)	
Plaintiff,)	No. 18-1902C
)	(Judge Somers)
v.)	
)	
THE UNITED STATES,)	
)	
Defendant.)	

SETTLEMENT AGREEMENT

For the purpose of disposing of plaintiff’s claims, without any further judicial proceedings and without there being any further trial or adjudication of any issue of law or fact, and without constituting an admission of liability on the part of the defendant, and for no other purpose, the plaintiffs, and the defendant, the United States, agree as follows:

1. Plaintiffs are current and former supervisory police officers employed by the Veterans Health Administration (VHA), Department of Veterans Affairs (VA), at regional facilities operated by VA.
2. On December 11, 2018, plaintiffs filed their “Class Action Complaint for Money Damages,” alleging that they worked many weekend shifts between January 11, 2004, and July 10, 2014, and were, therefore, entitled to receive but have not received retroactive weekend premium pay for that time, pursuant to 38 U.S.C. §§ 7454(b)(2) and 7453(c), the Back Pay Act, 5 U.S.C. § 5545, and binding VA directives.
3. To identify potential members of the class, the United States produced a list of current and former VA supervisory police officers employed during the relevant time of January

11, 2004, to July 13, 2014, and identifying each shift for which they were not paid the claimed premium pay. This list identified 1,241 individuals, including plaintiff Carl R. Carson, as set forth in a document entitled Exhibit 1, attached to plaintiffs' motion for class certification.

4. On December 20, 2023, the Court certified the following opt-in class:

Any person employed by the VA [Veterans Administration] as a GS-0083-005 VA supervisory police officer at any time between January 11, 2004, and July 13, 2014:

1. Who worked one or more weekend shifts between January 11, 2004, and July 13, 2014
2. Who did not receive premium weekend pay for at least one of these shifts; and
3. Whose name appears on Exhibit 1 [attached to plaintiffs' motion for class certification].

5. Class action notices were subsequently issued, and 565 opt-in responses were timely returned. The time to opt-in has expired. Only those 565 individuals who timely opted-in are class members. "Plaintiffs," as used in this agreement, refers to plaintiff Carson and these 565 opt-in class members, for a total of 566 plaintiffs, and this agreement applies to those plaintiffs so identified on Attachment A to this agreement.

6. Plaintiffs and the United States entered into discussions to attempt to resolve all claims contained in the complaint.

7. As a result of these discussions, plaintiffs have offered to settle their claims in exchange for payment of \$4,092,673.87 (the Settlement Amount), inclusive of \$1,954,516.20 in back pay (subject to applicable withholding of taxes), \$1,336,498.24 in interest, \$666,794 in attorney fees, \$125,000 in class administrator costs, and \$9,865.43 in other litigation costs, all subject to offsets and levies as described in paragraph 20.

8. The terms of this settlement have been accepted on behalf of the Attorney General.

9. Attachment A attached to this agreement specifies the amount of back pay and attributable to each plaintiff, less \$579,313.99 in withholdings for Federal income taxes, Social Security taxes, and Medicare taxes. Attachment A also specifies each plaintiff's share of attorney fees, costs, and expenses.

10. Within a reasonable time following the Court's order granting final approval of the settlement, the United States shall pay the Settlement Amount, \$4,092,673.87 to the Class Administrator, Verita Global, LLC, comprising \$1,954,516.20 in back pay, minus \$579,313.99 in tax withholdings as indicated on Attachment A, \$1,336,498.24 in interest, \$666,794 in attorney fees, \$125,000 in class administrator costs, and \$9,865.43 in other litigation costs, and subject to offsets and levies as described in paragraph 20. The United States shall also pay to the appropriate authorities as required by law the employer's share, if any, of Social Security taxes and Medicare taxes.

11. The Administrator shall issue an Internal Revenue Service (IRS) Form W-2 Wage and Tax statement to each plaintiff under the VA's identification number for the gross amount of back pay identified in Attachment A. The Administrator shall distribute the Form W-2s and Forms 1099s with the checks.

12. As reflected in Attachment A, Federal taxes, Medicare, and OASDI have been withheld from each plaintiff's individual settlement payment, as required by applicable legal requirements. The Administrator shall issue one or more IRS Form 1099 to each plaintiff under the VA's tax identification number for his or her proportionate share of interest, attorney fees, and costs as identified in Attachment A, and the Administrator shall distribute the Form 1099s with

the checks. The Administrator will also issue to [plaintiffs' counsel's law firm] a Form 1099 for the amount of attorney fees and costs paid to counsel on behalf of plaintiffs.

13. The Administrator shall establish a Settlement Trust, designated the "Carson Class Qualified Settlement Trust" (Settlement Trust), to disburse the Settlement Trust. The administration and maintenance of the Settlement Trust shall be the sole responsibility of the Administrator.

14. As approved by the Court, and in accordance with Attachment A, and subject to any offsets as provided in paragraph 20 of this agreement, the Administrator may retain \$125,000 from the Settlement Trust for its services approved by the Court. The Administrator shall disburse \$676,659.43 to Class Counsel and Of Counsel in attorney fees, expenses, and costs. The funds remaining after these payments—\$1,954,516.20 in back pay, and \$1,336,498.24 in interest, minus \$579,313.99 in tax withholdings—comprise the Net Settlement Fund totaling \$2,711,700.45, which shall be disbursed to Class Members in accordance with Attachment A within 45 calendar days of the receipt of payment from the Department of the Treasury's Judgment Fund.

15. The Administrator shall make payments in the form of a check from the Net Settlement Fund, mailed to the last known address of each Class Member. If a Class Member's settlement check is returned as undeliverable, the Administrator shall make a reasonable attempt to locate a mailing address for that Class Member and re-mail the check once, but only if the check is returned within 90 days of the date it was mailed.

16. In the event the Administrator is unable to locate a valid mailing address, after undertaking the efforts discussed in paragraph 16, the amount represented by that check shall revert to the Net Settlement Fund. In the event a Class Member loses, destroys, or is unable to take possession of a settlement check, the Administrator shall void the original check and then

reissue a new check to the Class Member, but only if a request to reissue the check is made by mail and postmarked by the Class Member within 90 days of the issuance of the original check. Any such request must be sent by mail to the Administrator.

17. If any settlement payment check or reissued payment check remains uncashed 90 days after issuance, that check shall be voided, and the amounts represented by that uncashed check shall be returned to the United States, as provided in paragraph 18.

18. After disbursing the amounts listed in paragraph 13, the Administrator shall return any amount that remains in the Net Settlement Fund to the United States, with a cover letter attaching this settlement agreement and identifying the amount returned pursuant to this paragraph. The letter and any returned amount shall be addressed to: Department of Justice, Civil Division, Attn: Director, National Courts Section, P.O. Box 480, Ben Franklin Station, Washington, D.C. 20044. Notwithstanding the return of any individual plaintiff's funds, the United States's obligations with respect to that plaintiff are nevertheless satisfied, any and all claims by that plaintiff against the United States under this agreement are waived and abandoned, and all of the releases, waivers, discharges, representations, and warranties applicable to the plaintiff pursuant to this agreement shall continue in full force and effect.

19. The United States shall have no involvement in any dispute between plaintiffs and their counsel or the class administrator regarding plaintiffs' share of the recovery. The United States shall not be responsible for disbursing funds to individual plaintiffs and shall not bear any liability, cost, expense, or fees, arising out of or related to the distribution of plaintiffs' recovery by Marzulla Law or the Class Administrator.

20. This settlement agreement shall not limit the ability of the United States to offset a portion or the entire amount of the back pay, interest, or attorney fees attributable to a particular

plaintiff to effectuate any offset determined by the Treasury Offset Program. Offsets, if any, shall be determined by the United States prior to disbursement. Any disagreements, challenges, or issues regarding any offset or levy pursuant to the Treasury Offset Program are not part of this litigation and will not affect or impair this settlement agreement. Payment to the Class Administrator as provided in paragraph 10 and as subject to any offsets or levies pursuant to this paragraph constitutes compliance with this Agreement notwithstanding any disagreements, challenges, or issues regarding any offset or levy pursuant to the Treasury Offset Program.

21. No later than six months following the date on which the payment is made to the class administrator pursuant to paragraph 10, the Class Administrator shall provide to the United States an accounting of the disbursements to plaintiffs, including each amount(s) disbursed, the date(s) of disbursement, and the outcome(s) (deposited, returned, or unknown), and shall further provide to the United States additional accountings every six months thereafter until all funds are confirmed deposited, unclaimed funds are returned pursuant to paragraphs 16-18, or the United States releases the Class Administrator from any future accounting obligation.

22. Except for the withheld taxes referenced in this Agreement, this Agreement is in no way related to or concerned with income or other taxes for which plaintiffs or plaintiffs' counsel are liable or may become liable in the future as a result of this Agreement.

23. Within 14 days of payment to the Class Administrator as set forth in paragraph 10 plaintiffs agree to stipulate with the United States to the dismissal of this lawsuit with prejudice. Upon payment to the Class Administrator as set forth in paragraph 10, plaintiffs release, waive, and abandon all claims against the United States, its political subdivisions, its officers, agents, and employees, arising out of the complaint or otherwise involved in this case, regardless of whether they were included in the complaint, including but not limited to any claims for costs, expenses, attorney

fees, and damages of any sort. The parties agree that, unless otherwise specified herein, the United States' obligations and duties to plaintiffs under this settlement agreement will be fully satisfied upon payment by the United States of the Settlement Amount to the Class Administrator.

24. Plaintiffs warrant and represent that no other action or suit with respect to the claims advanced in this suit is pending or will be filed in or submitted to any other court, administrative agency, or legislative body. Plaintiffs further warrant and represent that they have made no assignment or transfer of all or any part of their rights arising out of or relating to the claims advanced in this suit excluding attorney fees, costs and expenses. Should there be now or in the future any violation of these warranties and representations, any amount paid to a plaintiff by the United States pursuant to this agreement shall be refunded promptly by such plaintiff, together with interest thereon at the rates provided in 31 U.S.C. § 3901(A), computed from the date the United States makes payment.

25. As soon as possible and in no event later than 20 business days after the parties have signed this agreement, plaintiffs' counsel shall submit to the Court a motion for preliminary approval of the settlement contemplated by this agreement. The motion shall include (a) a copy of the settlement agreement, (b) the proposed form of the order preliminarily approving this agreement, and (c) the proposed forms of notice of the settlement agreement to the plaintiffs. The parties shall request that a decision be made promptly on the papers or that a hearing on the motion for preliminary approval of the settlement be held at the earliest date available to the Court.

26. If the Court preliminarily approves the settlement, the Class Administrator shall, in accordance with RCFC 23(c) and the Court's order, provide Notice of Proposed Class Settlement to all plaintiffs no later than 45 days after preliminary approval is granted.

27. Any plaintiff may express to the Court his or her views in support of, or in opposition to, the fairness, reasonableness, or adequacy of the proposed settlement. A plaintiff's views will be considered only if the plaintiff files with the Clerk of the Court a written statement describing the basis for his or her position received by the Clerk no later than 30 days following the date on which the Notice of Proposed Settlement was mailed.

28. Plaintiffs' counsel and the United States will have 30 days from the deadline for the submission of class member statements to submit to the Court responses to any objections.

29. Once the time for filing objections and responding to such objections has expired, the Court will hold a fairness hearing at which it will consider any objections made to the proposed settlement and decide whether to approve the settlement. The parties shall request that the Court schedule the fairness hearing for no later than 120 days from the date of preliminary approval and that the hearing shall be conducted in Washington, D.C.

30. Any plaintiff who has filed a timely opposition to the settlement may appear in person or through counsel at the fairness hearing and be heard to the extent allowed by the Court. Plaintiffs wishing to be heard orally in opposition to the proposed settlement should indicate in their written objection their intention to appear at the hearing. Plaintiffs who file statements with the Court need not appear at the fairness hearing for their views to be considered. Any plaintiff who does not file a written objection as provided above shall be deemed to have waived any and all objections.

31. This agreement is for the purpose of settling this case, and for no other. Accordingly, this agreement shall not bind the parties, nor shall it be cited or otherwise referred to in any proceedings, whether judicial or administrative in nature, in which the parties or counsel for the parties have or may acquire an interest, except as is necessary to affect the terms of this

agreement.

32. Plaintiffs' counsel represents that he has been and is authorized to enter into this agreement on behalf of the plaintiffs.

33. This document constitutes a complete integration of the agreement between the parties and supersedes any and all prior oral or written representations, understandings or agreements among or between them.

AGREED TO:

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