

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION

CINDY RODRIGUEZ, STEVEN GIBBS,  
PAULA PULLUM, YOLANDA CARNEY,  
JACQUELINE BRINKLEY, CURTIS  
JOHNSON, and FRED ROBINSON,

Plaintiffs,

Case Number 15-01048  
Honorable David M. Lawson

v.

PROVIDENCE COMMUNITY  
CORRECTIONS, INC., RUTHERFORD  
COUNTY, TENNESSEE, JASMINE  
JACKSON, BRIANA WOODLEE,  
AMANDA ROBERTS, TIARA SMITH,  
AMANDA SCHEXNAYDER, and  
NISHA HYDE,

Defendants.

---

**ORDER GRANTING SECOND UNOPPOSED MOTION TO APPROVE NOTICE  
OF CLASS ACTION SETTLEMENT AGREEMENT, SET HEARING DATE,  
AND AUTHORIZE NOTICE TO CLASS MEMBERS**

On October 18, 2017, the plaintiffs filed their second unopposed motion to approve notice of a class action settlement and set a hearing date. The Court granted in part their previously filed motion, reserving for further consideration the question whether the settlement terms proposed were fair, adequate, and reasonable. As the Court noted in its previous order:

The settlement fund of \$14,300,000 is a gross amount. The proposed settlement agreement requires expenses of administration of the settlement and fees of class counsel to be paid first. The parties have not furnished an estimate of the administration expenses, and have not provided any background information on the proposed settlement administrator, Dahl Administration, LLC. Class counsel fees are projected to be nearly \$1,400,000. The parties estimate that the absent class members could number 29,000 individuals. If all members apply for awards, the individual award would average less than \$500, assuming a reasonable amount for administration expenses. The parties have not furnished any information about the amount of fees a probationer paid to the defendants over an average term of

supervision. Nor have the parties furnished an estimate of the number of likely award applicants and the basis for such an estimate. Without that information, the Court is not able to determine if the proposed settlement is fair, adequate, or reasonable. Due to this lack of information, the Court also is left at a disadvantage in determining whether the quick-pay attorney fee provision is appropriate.

The Court therefore granted the motion only in part and conditionally certified the settlement class, but directed the parties to submit a revised motion for approval of the settlement addressing the Court's concerns over the terms proposed.

The parties subsequently filed a second unopposed motion to approve the class settlement, in which they assert that the settlement fund of \$14,300,000 is sufficient to cover all of the claims that they expect will be submitted, based on estimates of the class population and the expected response rate for absent class members. Based on historical records kept by defendant Providence Community Corrections, Inc. (PCC), and database queries run against those records in August 2017, the parties assert that 27,016 persons were on probation under the defendant's authority during the class period, and that the total fees paid by them to the defendant from October 1, 2011 through March 28, 2016 was \$7,734,776.25. The parties assert that, for those individuals who were on probation between October 1, 2014 and March 28, 2016, who would be entitled under the settlement agreement to an additional payment of \$50 per month for each month they were under supervision, the records indicate that a cumulative total of 79,835 such \$50 stipends could be paid (i.e., that the number of probationers in that period times the number of months each was on probation adds up to an estimated total of just over 79,000 "probationer-months"). Based on those estimations, the parties therefore project that the total gross settlement proceeds payable to claimants, assuming a 100% response rate, would be \$13,660,220.31, which includes refunds of 125% of the fees paid to all class members, plus the additional \$50 per month payable to a subset of the class. The parties

assert, however, that based on historical rates of participation in similar class litigations, they expect the participation rate to be around 20%, which is why they included in the settlement terms a provision to increase the payments to participating claimants by up to five-fold if the settlement fund exceeds the amount needed fully to pay all claims tendered. The parties contend that even if 100% of the identified claimants submit claims, the settlement fund exceeds the total amount required to make the minimum payment promised to all claimants.

The parties also stated that they estimate the attorney fees for class counsel to be \$1,381,115, and that they estimate the costs of the litigation and claims administration to amount to \$105,570. The settlement also calls for incentive payments to seven named individual plaintiffs and class representatives of \$10,000 each, or \$70,000 in total. The total payments for costs and attorney fees therefore are estimated to be \$1,556,685, which, added to the parties' "worst case" estimate of the total payout to class members, comes to just over \$15 million and exceeds the total settlement funds committed by more than \$700,000.

The Court finds, based on the additional information submitted by the parties, that the terms of the proposed settlement appear to be fair, adequate, and reasonable and sufficient to make the class members whole, according to the projected payment schedule and anticipated number of claims that may be filed. However, based on the parties' estimations, it is possible that the fund could be inadequate to satisfy all of the potential claims and to pay all of the projected expenses and attorney fees, in the "worst case" scenario of 100% participation. The Court therefore conditionally will approve the settlement agreement, with the added restriction that class counsel may not be paid more than one-half of the projected attorney fees of \$1,381,115 until after the claims period has closed and the Court has held a fairness hearing and granted final approval of the settlement.

The procedural history of the case and basic facts of the dispute were recited in the Court's previous order. The case arose from the County's outsourcing of misdemeanor probation services to a private for-profit corporation, PCC, which the plaintiffs alleged resulted in an unconstitutional scheme that deprived indigent probationers of their due process and equal protection rights. The plaintiffs alleged in their complaint that the defendants' arrangement constituted a "conspiracy to funnel misdemeanor probation cases in which court debts are owed to a private company, which then extorts money out of individuals who have no ability to pay court costs, let alone private fees." Compl. ¶ 1. The parties engaged in extensive discovery and settlement negotiations, which were facilitated by a team of three mediators. On September 15, 2017, the parties informed the Court that they had reached a settlement of the individual and class claims in the case, and that they needed only to collect final signatures to memorialize the agreement. On September 18, 2017, the plaintiffs filed their first unopposed motion for preliminary approval of the proposed class settlement agreement, and on October 18, 2017 they filed their revised motion.

The proposed settlement agreement would apply to the following class, which was certified by the Court when it granted in part the parties' prior motion:

All persons who, at any time from October 1, 2011 to [October 5, 2017], (1) incurred court-imposed financial obligations arising from a traffic or misdemeanor case in Rutherford County General Sessions or Circuit Court; and (2) were supervised on probation in that case by Providence Community Corrections, Inc. or Rutherford County's Probation Department.

Plf.'s Mot. for Prelim. Approval of Settlement [dkt. #190] at 4 (Pg ID 2412). Based on their database analysis, the parties estimate the class to comprise approximately 27,000 members.

The proposed settlement agreement provides that the defendants will deposit \$14,300,000 into a settlement fund to be used to pay claims by the plaintiffs and class members. Each class

member who submits a timely claim would be paid 125% of all amounts paid by them to PCC for purported fees under the probation outsourcing program, and each of the named individual plaintiffs would receive an additional incentive payment of \$10,000. Any money remaining in the settlement fund after payment of timely-filed claims would be used to increase the payout to class members to a maximum of 500% of the fees paid by them to PCC. In exchange, the plaintiffs would dismiss the case with prejudice and release all of the individual and class claims.

The Federal Rules of Civil Procedure require court approval of settlements in class actions. Fed. R. Civ. P. 23(e). Rule 23(e) provides that “[t]he claims, issues, or defenses of a certified class may be settled, voluntarily dismissed, or compromised only with the court’s approval.” Rule 23(e)(2) states that a settlement that would bind class members may be approved “only after a hearing and on finding that it is fair, reasonable, and adequate.” “The court must direct notice in a reasonable manner to all class members who would be bound by the proposal,” Fed. R. Civ. P. 23(e)(1), and “[a]ny class member may object to the proposal if it requires court approval under” Rule 23(e), Fed. R. Civ. P. 23(e)(5). The approval of a proposed settlement ordinarily involves a two-stage procedure. “First, counsel submit the proposed terms of [the] settlement and the judge makes a preliminary fairness evaluation. . . . Once the judge is satisfied as to the . . . results of the initial inquiry into the fairness, reasonableness, and adequacy of the settlement, notice of a formal Rule 23(e) fairness hearing is given to the class members.” Manual for Complex Litigation (4th ed.) §§ 21.632-.633 (2004); *see also Tenn. Ass’n of Health Maint. Orgs., Inc. v. Grier*, 262 F.3d 559, 565-66 (6th Cir. 2001).

In deciding whether to approve a class action settlement, the “ultimate issue” for the Court is whether the proposed settlement “is fair, adequate and reasonable.” *Williams v. Vukovich*, 720

F.2d 909, 921 (6th Cir. 1983). District courts must “appraise the reasonableness of particular class-action settlements on a case-by-case basis, in the light of all the relevant circumstances.” *Evans v. Jeff D.*, 475 U.S. 717, 742 (1986). “Several factors guide the inquiry: (1) the risk of fraud or collusion; (2) the complexity, expense and likely duration of the litigation; (3) the amount of discovery engaged in by the parties; (4) the likelihood of success on the merits; (5) the opinions of class counsel and class representatives; (6) the reaction of absent class members; and (7) the public interest.” *Int’l Union, United Auto., Aerospace, & Agric. Implement Workers of Am. v. Gen. Motors Corp.*, 497 F.3d 615, 631 (6th Cir. 2007).

The present action has been pending for just over two years. The proposed settlement resulted from negotiations that occurred while the defendants’ motions to dismiss were pending and after the Court held a hearing on and later granted in part and denied in part those motions. The Court believes that the risk of fraud or collusion among the parties is minimal. The parties have exchanged written discovery. Although there has not yet been a reaction from the absent class members, class counsel and the class representative asserts that the settlement is in the best interest of the class as a whole. The Court finds that the public interest favors the resolution of the class claims for the collection of burdensome fees through the probation outsourcing program.

The Court has reviewed the motion and the proposed settlement agreement. The proposed settlement appears to be a result of arm’s-length negotiation that is likely to be in the best interest of class members. Based on the submissions to date, the settlement appears to be fair, reasonable, and adequate. However, the Court reserves the final approval of the settlement and the determination regarding the attorney’s fees and costs incurred by the plaintiffs to a later time, as contemplated by Rule 23(h) and Rule 54(d)(2) of the Federal Rules of Civil Procedure.

The Court also finds reasonable the plan for notifying absent class members proposed by the parties. Under the plan, notice will be sent by postal mail to class members identified by the settlement administrator, and the administrator also will be charged with creating and maintaining a class settlement information website that will provide notice of and information about the class settlement and the process for filing claims. Rule 23 provides that “the court may direct appropriate notice to the class,” Fed. R. Civ. P. 23(c)(2)(A), and “[t]he court must direct notice in a reasonable manner to all class members who would be bound by the proposal,” Fed. R. Civ. P. 23(e)(1). The Court has reviewed the contents of the proposed notice to absent class members, which plaintiffs’ counsel has provided to the Court. The Court finds that the notice is reasonably clear and otherwise conforms to the requirements of Rule 23(c)(2)(A) and 23(e). The proposed notice must be amended, however, to include the deadline dates prescribed by this order.

The Court already conditionally has certified the proposed settlement class under Federal Rule of Civil Procedure 23(b)(3). However, the Court’s certification of the class is based upon, and conditioned on the accuracy of, the parties’ representations.

The motion addresses the factors enumerated in Federal Rule of Civil Procedure 23(a), stating that the class is numerous, that all class members claim that the defendants imposed and attempted to collect from them unlawfully burdensome fees under the probation outsourcing program, that the named plaintiffs’ claims are materially identical to those of all members of the class, the representative plaintiffs do not have any interests that conflict with those of the class members, and the representative plaintiffs have retained skilled attorneys who have, and will, vigorously pursue the interests of the class. Addressing the factors contained in Rule 23(b)(3), the motion states that the claims for recovery of the improper fees form the entire subject of the

controversy affecting those persons who were under sentences of probation during the class period, and that pursuing relief in a single suit would be superior to any other form of claim resolution as it would promote judicial economy and clarity of results. The plaintiffs' lawyers assert that they have extensive experience litigating cases involving class claims of similar type and scope.

Accordingly, it is **ORDERED** that the plaintiffs' second unopposed motion to certify a settlement class and for preliminary approval of the proposed settlement agreement and procedure for providing class notice [dkt #192] is **GRANTED**, and the proposed settlement agreement is **PRELIMINARILY APPROVED**, subject to objections by absent class members and except for the determination of attorney's fees and costs, and subject to the following restrictions on payment of attorney fees to class counsel and directions regarding the notice and hearing procedure.

It is further **ORDERED** that counsel of record for the named plaintiffs, namely attorneys Alec Karakatsanis, Elizabeth Rossi, and Kyle F. Mothershead, are appointed as counsel for the designated settlement class. The named plaintiffs are appointed as class representatives.

It is further **ORDERED** that class counsel may not be paid more than one-half of the estimated attorney fees of \$1,381,115 until after the claims period has closed and the Court has held a fairness hearing and granted final approval of the settlement, and dismissed the case.

It is further **ORDERED** that **on or before February 16, 2018**, the defendants shall provide notice of this proposed class settlement to the appropriate state and federal authorities. The defendants shall file proof that they have provided the required notice with the Court, in compliance with the Class Action Fairness Act, 28 U.S.C. § 1715(b).

It is further **ORDERED** that plaintiffs' counsel or their designated representative shall cause notice of the proposed settlement to be given to class members in the following manner:

(a) **On or before February 16, 2018**, a copy of the Notice of Class Action Settlement Agreement, substantially in the form attached as Exhibit B of the unopposed motion for preliminary approval of class settlement, must be mailed by first-class mail, with postage prepaid, to each class member.

(b) The notice to class members must explain that objections to, and requests to be excluded from, the class settlement must be filed with the Court and the parties' counsel **on or before April 27, 2018**.

(c) The settlement administrator also shall create and maintain a settlement information website as specified in the settlement agreement.

It is further **ORDERED** that plaintiffs' counsel shall file proof of mailing of the class notice in conformity with this order **on or before March 16, 2018**.

It is further **ORDERED** that Dahl Administration LLC is **APPROVED** as the claims administrator for the settlement. The Court further **APPROVES** the deposit of the settlement funds into an escrow account to be held pending final disposition of all settlement claims, or until further order of the Court.

It is further **ORDERED** that the expenses of printing and mailing and publishing all notices required hereby shall be paid as described in the settlement agreement.

It is further **ORDERED** that the notice of class settlement must inform the absent class members that Proofs of Claim and supporting documentation must be submitted **on or before April 27, 2018**. Proofs of Claim sent by mail shall be deemed submitted when postmarked if mailed by first class, registered or certified mail, postage prepaid, addressed in accordance with the instructions in the Proof of Claim. All other Proofs of Claim shall be deemed submitted at the time of actual receipt.

It is further **ORDERED** that, **on or before May 4, 2018**, plaintiffs' counsel must file a motion for final approval of the settlement identifying absent class members who opt out or object.

It is further **ORDERED** that a hearing shall be held at **10:00 a.m.** on **Monday, June 25, 2018** in the United States Courthouse at 801 Broadway, Nashville, TN 37203, to consider any objections to the settlement agreement and to determine whether the settlement agreement should be finally approved as having been negotiated in good faith and as being fair, reasonable, and in the best interest of the class members. The courtroom for the hearing will be determined by the Court at a later date.

It is further **ORDERED** that any class member may appear at the settlement hearing and be heard to the extent allowed by this Court, either in support of or in opposition to the good faith, fairness, reasonableness, and adequacy of the proposed settlement or the plaintiffs' counsel's application for an award of attorney's fees, reimbursement of expenses, and an incentive award to each of the representative plaintiffs. However, no class member shall be entitled to be heard or entitled to contest the approval of the terms and conditions of the proposed settlement or the judgment to be entered pursuant thereto approving the same, or the plaintiffs' counsel's fee, expense and incentive award application, unless, **on or before April 27, 2018**, such person: (a) has filed with the Clerk of Court a notice of such person's intention to appear, together with a statement that indicates the basis for such opposition along with any supporting documentation, and (b) has served copies of such notice, statement, and documentation, together with copies of any other pleadings that such person has filed with the Clerk of the Court and each parties' counsel at the following addresses:

Clerk of Court  
United States District Court for the Middle District of Tennessee  
801 Broadway, Room 800  
Nashville, TN 37203  
Attention: *Rodriguez v. Providence Community Corrections, Inc.*,  
Case No. 15-01048.

Counsel for the Plaintiff

Elizabeth Rossi  
Civil Rights Corps  
910 17th Street NW, Suite 500  
Washington, DC 20006  
Telephone: (202) 599-0953

Counsel for Defendant PCC

Manny A. Abascal  
Latham & Watkins LLP  
355 South Grand Avenue, Suite 100  
Los Angeles, California 90071  
Telephone: (213) 485-1234

Counsel for Defendant Rutherford County

Josh A. McCreary  
Hudson, Reed & McCreary, PLLC  
16 Public Square North  
Murfeesboro, Tennessee 37130  
Telephone: (615) 893-5522

Any class member who does not serve and file an objection to the proposed settlement of the litigation or the fee, expense and incentive award application, in the manner provided for herein, shall be deemed to have waived the right to object, including the right to appeal, and shall be forever foreclosed from making any objection to the settlement, the fee, expense and incentive award application, or to any order or judgment filed or entered thereon, as applicable. Counsel for the plaintiffs must notify all absent class members of this requirement.

It is further **ORDERED** that applications for incentive awards, attorney's fees, or reimbursable expenses under Rule 23(h) must be filed **on or before on or before May 4, 2018**. Counsel must provide notice to class members in accordance with Fed. R. Civ. P. 23(h)(1).

It is further **ORDERED** that class counsel shall be responsible for maintaining a file of all responses to the notice of settlement and any and all other written communications received from the class members. Class counsel immediately shall provide copies of such responses and communications to defendants' counsel.

It is further **ORDERED** that the Court reserves the right to adjourn the settlement hearing from time to time without further notice and to approve the settlement agreement at or after the settlement hearing.

s/David M. Lawson  
DAVID M. LAWSON  
United States District Judge  
Sitting by special designation

Dated: January 2, 2018