

## CLASS ACTION SETTLEMENT AGREEMENT

**For the Plaintiffs:** John J. Ammann, St. Louis University Legal Clinic, 100 N. Tucker, St. Louis, MO 63101; Amy Nicole Sanders, St. Louis University Legal Clinic, 100 N. Tucker, St. Louis, MO 63101; Barbara Gilchrist, St. Louis University Legal Clinic, 100 N. Tucker, St. Louis, MO 63101; John K. Greider, Greider Law Firm, 8000 Bonhomme Ave., Ste. 207, Clayton, MO 63105; Deborah S. Greider, Greider Law Firm, 8000 Bonhomme Ave., Ste. 207, Clayton, MO 63105.

**For the Defendants:** Ryan L. Bangert, Deputy Attorney General for Civil Litigation, P.O. Box 899, Jefferson City, MO 65102.

### I. Introduction and Background

This Class Action Settlement Agreement is entered into this 28th day of February, 2018, by and between Plaintiffs Linda Gerken, Sheila Holt, Nancy Lynn, Brenda Gardner, Trudy Blood, Galen Blood, Emma Lou Swopes, and the Missouri Council of the Blind, for themselves and on behalf of the Class, on one hand, and Defendants State of Missouri Department of Social Services, State of Missouri Family Support Division, and Steve Corsi, in his official capacity as Director of the Missouri Department of Social Services, on the other hand, and in consideration of the promises, covenants, and agreements herein described and for other good and valuable consideration acknowledged by each of them to be satisfactory and adequate.

On October 6, 2017, the Cole County Circuit Court entered a final judgment in Gerken awarding \$26,312,279.00 in underpayments for blind pension distributions and pre-judgment interest as of September 27, 2017, and directing Defendants to pay nine percent post-judgment interest on that amount from and after September 27, 2017. The Court also awarded 25 percent of the judgment to class counsel as attorneys' fees.

Concurrent with the final judgment, the Court entered a Claims Process Order providing a mechanism for class members to make claims and receive payments from the "common fund" of monies awarded for satisfaction of underpayments and interest. The Order outlines a number of steps Defendants must take to notify class members of their eligibility for payments, to process claims, and to distribute funds. Similarly, the Order outlines steps class members must take to claim distributions and lodge disputes, if any, to Defendants' calculations of any awards.

The Order also provides that all unclaimed amounts in the common fund “shall be paid back into the Blind Pension Fund.” In addition, the Order stays execution of the final judgment until no later than July 1, 2018, to allow the General Assembly sufficient time to “appropriate sufficient funds to satisfy the [j]udgment.” Should insufficient funds be appropriated by July 1, 2018, the Order provides that Plaintiffs “may pursue all available means of enforcement as allowed by law.”

Defendants timely appealed the Circuit Court’s Judgment on October 30, 2017, and that appeal is now pending. The parties subsequently requested that the Court of Appeals stay the appeal, and they now seek to resolve all matters pending in this action.

## **II. Definitions**

- 1.1. “Blind Pension Fund” means the fund established by the Missouri Constitution and §209.030, RSMo, and administered by the Department.
- 1.2. “Class” means persons eligible for and who receive or who have received monthly payments from the Blind Pension Fund in any month during the period beginning February 1, 2001, and ending June 30, 2010, including Supplemental Security Income recipients (whether SAB eligible recipients or AB-Conversion recipients) and State Blind Pension fund pension recipients.
- 1.3. “Claims Process” means the claims process described in Part IV of this Settlement Agreement.
- 1.4. “Class Counsel” means John J. Ammann, Amy Nicole Sanders, Barbara Gilchrist, John K. Greider and Deborah S. Greider.
- 1.5. “Court” means the Circuit Court of Cole County, Missouri.
- 1.6. “Current Eligible Member” means an Eligible Member who is entitled to receive a current, blind pension payment as of the date of calculation of the payment due under this Settlement Agreement.
- 1.7. “Department” means DSS and FSD.
- 1.8. “Defendants” means DSS, FSD, and Steve Corsi, in his official capacity as Director of the Missouri Department of Social Services.

- 1.9. “DSS” means the Missouri Department of Social Services.
- 1.10. “Eligible Member” means a Member who received at least one monthly payment from the Blind Pension Fund for the period of February 1, 2001, through June 30, 2010, and who is entitled to compensation for an underpayment in blind pension benefits that accrued on or after February 1, 2001.
- 1.11. “FSD” means the State of Missouri Family Support Division.
- 1.12. “Ineligible Member” means a Member who is not an Eligible Member, and who shall not be entitled to file a claim for compensation for an underpayment in blind pension payments under this Settlement Agreement.
- 1.13. “Lawsuit” means the case styled in the Cole County Circuit Court as *Gerken v. Sherman*, case number 06AC-CC00123-03, and currently pending in the Western District Court of Appeals as case number WD81188.
- 1.14. “Member” means a member of the Class.
- 1.15. “Parties” means Plaintiffs and Defendants, collectively.
- 1.16. “Plaintiffs” means Linda Gerken, Sheila Holt, Nancy Lynn, Brenda Gardner, Trudy Blood, Galen Blood, Emma Lou Swopes, and the Missouri Council of the Blind, both in their individual capacities and as representatives of the Class.
- 1.17. “Settlement Agreement” means this Class Action Settlement Agreement and any amendments thereto.
- 1.18. “Settlement Fund” means the fund from which the Department will pay claims of the Class Members that are properly due and owing pursuant to this Settlement Agreement. The Settlement Fund may be the General Revenue Fund of the State of Missouri, the State Legal Expense Fund, or any other state fund properly designated by the Missouri General Assembly or the Missouri Attorney General.

### **III. Conditions of Finality of the Settlement Agreement**

- 2.1. *Court Approval.* Class Counsel and Defendants' counsel shall work together in good faith to expeditiously obtain entry of a preliminary approval order followed by entry of a final approval order. The Parties agree that obtaining final approval from the Court of this Settlement Agreement is a necessary condition to effectuate the Settlement Agreement.
- 2.2. *Appropriation of Funds.* If for any reason the State of Missouri fails to appropriate or authorize funds required to make the payments required by this Settlement Agreement on and by the dates specified herein, Plaintiffs may petition the Court for rescission of this Settlement Agreement and reinstatement of the Court's Judgment of October 6, 2017.

### **IV. Settlement Terms**

- 3.1. *Settlement Amount.* The Department will make available a total of \$21,000,000.00 (the "Settlement Amount") from a Settlement Fund. The Parties agree that that Settlement Amount will fully satisfy all claims made in the Lawsuit by the Plaintiffs, both on their own behalf and on behalf of the Class, including but not limited to compensation for underpayment of benefits, attorney's fees, prejudgment interest, and post-judgment interest. The creation of the Settlement Fund shall not have the effect of prospectively reducing the current pension amount owed to pensioners or future pensions as provided by law.
- 3.2. *Allocation of Settlement Amount.* The Settlement Amount shall comprise \$11,478,681.00 to compensate Class Members for underpayments of pension benefits, and \$9,521,319.00 to compensate Class Members for interest on those underpayments.
- 3.3. *Calculation and Payment of Attorneys' Fees.* Attorneys' fees shall be calculated as twenty-five (25) percent of the Settlement Amount of \$21,000,000.00, which equals \$5,250,000.00. An initial installment of one-half of the attorneys' fees amount (\$2,625,000.00) will be paid by Defendant within thirty (30) days after the Court enters its final approval order approving this Settlement Agreement, and one-half of the attorneys' fees amount (\$2,625,000.00) will be paid within 365 days after the date the initial installment is paid. Class Counsel shall not be

required to file a Claim Form for the attorneys' fees awarded herein. Interest at 9 percent shall accrue on either payment not timely made.

- 3.4. *Interest on Settlement Amount.* No interest will accrue on the Settlement Amount provided that valid and properly payable claims made by Class Members are paid within the timeframes set forth in this Settlement Agreement. To the extent any valid and properly payable claims made by Class Members are not paid within the timeframes set forth in this Settlement Agreement, interest will accrue on those unpaid claims only. Such interest will accrue at the Missouri Post-Judgment Interest Rate set forth in the version of §408.040, RSMo, existing at the date of this settlement (9 percent), and shall be measured from the date of the final approval order until the date such claims are paid.

## V. Claims Process

- 4.1. *Claims Process.* The Claims Process described in Part IV of this Settlement Agreement shall provide the mechanism for receiving, reviewing, resolving, determining, and paying Eligible Members' claims from the Settlement Fund.
- 4.2. *Calculation of Payments.* The Department shall calculate the total payment due each Eligible Member if the required monthly pension payment required under the Court's Judgment in the Lawsuit dated September 27, 2017, exceeds the actual payment to the Eligible Member for any month or months beginning February 1, 2001, and ending June 30, 2010, utilizing the following formula:

+Sum of the monthly underpayments (u)

+Prorated share of interest payment (i)

=Gross Damages owed

-Member's pro rata Attorney Fee (25% of Gross Damages owed)

=Total payment due to Eligible Member

Where: Underpayment (u) equals the difference between the required monthly pension payment and the amount actually paid for any given month during the period February 1, 2001 through June 30, 2010; and Prorated Interest (i) equals the Eligible

Member's share of the total interest payment set forth in paragraph 3.2 of this Settlement Agreement as calculated using the methodology set forth in Exhibit F.

Each Eligible Member's damages will be paid from the Settlement Fund.

4.3. *Notice to Eligible Members.*

- a. The Department shall initiate the Claims Process by mailing the "Notice to Eligible Members and Claim Form" which is attached hereto as Exhibit A to each Eligible Member who is not a Current Eligible Member, and Exhibit A-1 to each Current Eligible Member.
- b. The Department shall mail Exhibits A and A-1 no later than August 1, 2018.
- c. The Department also shall post no later than August 1, 2018 a link to an electronic copy of Exhibits A and A-1 on the DSS website. These Exhibits shall remain on DSS's website for no less than ninety (90) consecutive days.
- d. The Department shall mail Exhibit A by first class, United States Postal Service (USPS) mail to each Eligible Member who is not a Current Eligible Member at his or her last known address of record with the blind pension program. In addition, the Department shall mail Exhibit A-1 by first class, USPS mail to each Current Eligible Member at his or her last known address of record with the blind pension program. The Member's address of record shall be the last known address that the Department maintains for the Member in the rolls of the blind pensioners in the Department's information system. If the USPS returns a notice to the Department as undelivered with a new forwarding address, then the Department will forward the notice to the Member at the new address. Forwarding the notice to the new address shall not extend the deadline for filing a claim. The Department shall send a list to Class Counsel of all persons for whom the notice is returned, whether with or without a new forwarding address, together with the last known address of record with the blind pension program. Upon written request of an Eligible Member, the Department shall send the notice to the

Member's authorized representative or attorney in lieu of sending to the Member. The Department will respond to all reasonable written requests by Class Counsel for contact information for an individual Eligible Member.

- e. The Department is under no obligation to locate or identify the personal representative or heirs of a deceased Eligible Member. However, the Department shall send the Notice and Claim Form to any person identifying himself or herself as a personal representative of a deceased Member who makes a request for the same prior to the claims deadline and provides documentation compliant with paragraph 4.10.b(ii) of this Settlement Agreement to establish that the individual is the lawfully appointed personal representative of the deceased Member.
- f. Except as specifically provided herein, the Department is under no further obligation to take any additional steps to locate and notify Eligible Members.
- g. It is the responsibility of all Members (Eligible and Ineligible) to provide the Department with an accurate address for service of notice and correspondence required by this Claims Process. Members shall notify the Department of any change in their address within thirty (30) business days. All correspondence that the Department mails to the Member at his or her address of record shall be deemed properly served.

#### 4.4. *Notice to Ineligible Members.*

- a. The Department shall, within ten (10) days of mailing Exhibits A and A-1 as provided in paragraph 4.3(b) of this Settlement Agreement, mail a notice to all Ineligible Members utilizing the notice form which is attached hereto and incorporated by reference herein as Exhibit B. This notice shall be distributed, mailed, published, and otherwise made available as provided herein.
- b. Ineligible Members are not entitled to file a Claim Form. Any claim filed by an Ineligible Member is void and will be denied without additional notice.

- c. Except as specifically provided herein, the Department is under no further obligation to take any additional steps to locate and notify Ineligible Members.

4.5. *Procedures for Current Eligible Members to File a Claim.*

- a. Current Eligible Members are not required to and shall not file a Claim Form as set forth in paragraph 4.6 of this Settlement Agreement.
- b. Unless a Current Eligible Member serves notice of waiver, or of a request for administrative review on the form provided, and assuming a sufficient appropriation and budget authorization are granted, the Department shall make every effort to begin paying to the Current Eligible Member the amount as calculated in paragraph 4.2 of this Settlement Agreement by February 1, 2019, but in any event, shall make all such payments no later than May 15, 2019.
- c. Current Eligible Members shall have ninety (90) days from the date published on Exhibit A-1 to serve on the Department a request for administrative review of the payment decision set forth therein or a notice waiving payment. No extensions of time shall be allowed. If a Current Eligible Member does not serve a timely request for administrative review, the Department's decision as specified in the notice shall be final, and it shall be conclusively binding on all parties for all purposes and shall not be subject to further administrative or judicial review.
- d. If a Current Eligible Member waives his or her right to receive payment pursuant to paragraph 4.5.b above, then the decision is final, and it shall be conclusively binding on all Parties for all purposes and shall not be subject to further administrative or judicial review.

4.6. *Procedures for Eligible Members Who are Not Current Recipients of a Blind Pension Payment as of August 1, 2018*

- a. Eligible Members who are not Current Eligible Members shall file a completed Claim Form no later than ninety (90) days from the date that the Notice to Eligible Members and Claim Form is originally mailed, which shall be the date printed on the Notice Claim Form. Any Claim Form that is not actually received by the

Department following the procedures and by the deadline set forth in the Settlement Agreement shall be untimely and shall be denied. No extensions of time shall be allowed. The Department shall provide to Class Counsel a list of any such denied Claim Forms.

b. An Eligible Member who is not a Current Eligible Member shall file his or her claim with the Department by one of two methods:

i. By mailing the original, fully completed Claim Form to the Department at the following address:

Family Support Division  
Attn: Blind Pension Claims  
P.O. Box 2320  
Jefferson City, MO 65102

ii. By e-mailing a scanned copy of the fully completed Claim Form in PDF format to the Department of Social Services at the following email address:

BPclaims@dss.mo.gov

The Member who elects to file a claim electronically shall retain the original of the Claim Form and shall produce it to the Department upon request. Failure to produce the original Claim Form without good cause shall result in the denial of the claim.

Any claim that is not timely filed with the Department following one of these procedures shall be denied.

c. The Claim Form must be fully completed. The Eligible Member who is not a Current Eligible Member or the Member's authorized representative shall provide all information requested on the form and shall sign the Claim Form. The Member or the Member's authorized representative shall certify subject to penalty of perjury that all information provided in the Claim Form shall be true, accurate and complete. Claim forms that are incomplete shall be denied. The Department shall provide to Class Counsel a list of any such denied Claim Forms.

- d. Only one Claim Form will be processed for each Eligible Member who is not a Current Eligible Member. The Department shall not be required to review or decide between conflicting claims on behalf of a Member. The Department will process the first completed Claim Form received for a Member.

4.7. *Miscellaneous Notice Provisions.*

- a. The Department shall publish the notice to Members of the Class set forth as Exhibit E in newspapers of general circulation in the following locations within Missouri: St. Louis City, Kansas City, Springfield, Joplin, Columbia and Cape Girardeau. The notice shall be published once each week for one month and two times in the following month, with the first notice to be published no later than ten (10) days after the date that the Department initiates the Claims Process by mailing: “Notice to Eligible Members and Claim Form” (Exhibit A).
- b. The Department shall post a copy of this Settlement Agreement on the DSS website. This document shall be posted no later than thirty (30) days after the Court enters its final approval order. This document thereafter shall remain posted on the website until the Claims Process is concluded.
- c. The Missouri Council for the Blind is permitted to post a copy of any documents referred to herein, including this Settlement Agreement, and to use other reasonable measures to disseminate the Notices and Claim Form, but shall have no obligation to do so. If the Missouri Council for the Blind chooses to post a copy of Exhibits A and A-1 on its website or otherwise disseminate the Notices and Claim Form, the Missouri Council for the Blind shall also post or disseminate a copy of Exhibit B in the same manner.
- d. Class Counsel is permitted to disseminate Exhibits A, A-1 and B by reasonable means, but shall have no obligation to do so. If Class Counsel chooses to disseminate Exhibits A and A-1, they shall also post or disseminate copies of Exhibit B in the same manner.

4.8. *Processing of Claims from Eligible Members Who are not Current Eligible Members.* The Department shall process claims received from

Eligible Members who are not Current Eligible Members by following the procedures set out in this paragraph:

- a. The Department shall have one hundred and twenty (120) days from the date that claims from Eligible Members are due to process the claims and to notify the Eligible Members of the Department's decision. If a claim is complete and the Member is eligible for payment, then the Department shall calculate the amount of the damages owed to that Member following the procedure set forth in paragraph 4.2 of this Settlement Agreement. The Department shall notify each Eligible Member at his or her address of record by first-class mail whether the claim has been approved or denied using the form set forth in Exhibit C [Notice of Approved Claim] or Exhibit D [Notice of Denied Claim].
- b. If an Eligible Member does not file a timely request for administrative review of the Department's decision in paragraph 4.8.a following the procedures specified in paragraph 4.9 of this Settlement Agreement, the Department's decision shall be final for all purposes and shall not be subject to further review. The Department shall pay final claims from Eligible Members who do not file a request for administrative or judicial review within ninety (90) days from the date that the time for requesting such review expires.

4.9. *Requests for Administrative and Judicial Review.* Eligible Members, Current Eligible Members and Ineligible Members who disagree with the Department's decisions set forth in paragraphs 4.9.c and 4.9.e may request administrative review of the decision by following the procedures set forth in this subsection.

- a. To request administrative review, the Member shall file the request for administrative review with FSD within ninety (90) days of the date of the notices provided under paragraphs 4.3 and 4.4 of this Settlement Agreement. Any request for administrative review filed after that date shall be untimely, shall be summarily denied without further proceedings, and the Department's decision shall be final for all purposes. The filing of a timely request for administrative review shall automatically stay the Department's obligation to pay any amounts otherwise due on the claim until after the request for review has been finally resolved.

- b. The request for administrative review shall be in writing and shall clearly state the legal and factual bases for the Member's request for review. The Member shall attach any and all documents that the Member wishes the hearing officer to review.
- c. Administrative review shall be limited to the specific issues raised in the written request or the Department's response thereto, and shall be based solely upon the information attached to the request for review and the Department's response. Any issue not specifically raised is waived for all purposes.
- d. The Department shall have one hundred and twenty (120) days from the date of service of a request for administrative review to file a written response to the request, and shall send a copy of such to the Member.
- e. The request for administrative review shall be limited to the following issues: (i) whether the claim was properly filed pursuant to the requirements set forth in this Settlement Agreement; (ii) whether the Member's authorized representative is appropriately authorized to file a claim on behalf of a Member; and (iii) whether the Department properly calculated the amount owed to the Member, or the Department properly denied the claim. Members are prohibited from requesting any review of or collaterally attacking the Court's Final Approval Order of the Settlement Agreement or any other order made by the Court in this case.
- f. The burden of proof shall be on the Member to establish by a preponderance of the evidence that the Department's decision did not comply with this Settlement Agreement.
- g. The administrative review and the record thereof shall consist of a review of the Member's request for administrative review and supporting documentation and the Department's written response and supporting materials. The administrative review shall be conducted by a special master nominated by the Department and appointed by the Court for that purpose. The Court may appoint more than one special master to process the case. The special master(s) shall be licensed attorneys at law and shall be chosen by the Court from the administrative hearing officers employed by the Division of Legal Services for DSS. The

special master(s) shall receive compensation from their current employer in the normal course of their duties, but shall not receive additional compensation for their duties under this Settlement Agreement.

- h. The hearing officer shall make a decision based solely on the written record unless the Member specifically requests a hearing by a telephone conference call or an in-person hearing. The request for a hearing by telephone conference call or an in-person hearing shall be made in writing, shall specify the reasons therefore, and shall be part of the request for Administrative Review Form as specified in Exhibits A-1, B, C and D. The hearing officer shall grant the request for a hearing by telephone conference if the Member provides good cause. The hearing officer may grant an in-person hearing in the county where the Member is located if the hearing officer determines that there is good cause for an in-person hearing and the Member is reasonably unable to present his or her case for review by written submission or telephone conference call. The hearing shall be conducted as provided by existing statutes and regulations. Evidence shall be submitted under oath. For purposes of this paragraph, good cause shall mean that the Member establishes that the paper review does not afford him or her a reasonable opportunity for review of the Department's decision.
- i. The hearing officer shall prepare a review decision which shall consist of written findings of fact, conclusions of law and a decision based solely on the evidence adduced for the record. A copy of the review decision shall be mailed to the Member (or his/her attorney of record or authorized representative) at his or her address of record, to Class Counsel, and the Department. The original of the review decision shall be signed by the hearing officer and filed with this Court. The review decision shall contain a form that a Member who wishes to request judicial review shall use to make such request.
- j. Any Member who disagrees with the administrative review decision may request judicial review of the review decision. The request for judicial review shall be filed with this Court no later than sixty (60) days from the date of the administrative review decision and a copy sent to the Family Support Division as specified in the notice form. Any request for judicial review filed

after that date shall be untimely, shall be summarily denied without further proceedings, and the review decision shall be final and binding on all parties for all purposes. The filing of a timely request for judicial review shall automatically stay the Department's obligation to pay any amounts due on the claim under review until the request for review has been finally resolved. Upon receipt of notice that a Member has requested judicial review, the special master(s) shall prepare a record on judicial review following procedures set forth in §536.130, RSMo. The scope of the Court's inquiry on judicial review of the review decision shall be limited exclusively to whether or not the Department's decision complies with the Settlement Agreement.

- k. If a Member does not file a request for judicial review of an administrative review decision, the Department shall pay amounts, if any, awarded in the administrative review decision within one hundred and twenty (120) days after the last date for appealing that decision.
- l. Upon the completion of the period for filing and responding to requests for judicial review, the parties shall notify the Court that there are pending requests for judicial review determination. At the request of the Department or Class Counsel, or on the Court's own motion, the Court may schedule a hearing to determine procedures for handling the judicial review requests or to resolve disputes about the implementation of the judicial review process.
- m. The Department shall pay amounts, if any, awarded in all final decisions on judicial review within one hundred and twenty (120) days after the date that the Court's decision on judicial review becomes final.

#### 4.10. *Legal Advice and Assistance to Members.*

- a. Members of the Class with questions about the Claims Process or who request legal assistance with submitting a claim may contact Class Counsel or may seek independent legal advice. The Department shall, upon written request, provide such additional facts and documentation about the Member and the Department's calculation to Class Counsel or the Member's attorney. Any attorney making a request for facts and

documentation under this paragraph, except for Class Counsel, shall provide an authorization to release information executed by the Member or the Member's authorized representative that complies with all applicable privacy laws. The Department shall not be required to provide any information under this paragraph without a valid authorization or an order of this Court.

- b. An Eligible or Ineligible Member may act personally or through an authorized representative.
  - i. An authorized representative of the Member shall be one of the following:
    1. the court appointed, personal representative of the estate of a deceased Eligible Member; or
    2. an individual, competent adult who is authorized by the Member to act on behalf of the Member by a power of attorney for that purpose; or
    3. a court appointed legal guardian or conservator of the Member; or
    4. the Member's attorney.
  - ii. Any person purporting to act as an authorized representative shall submit with the Claim Form one of the following: an original or certified copy of a power of attorney; letters of appointment of guardianship or conservatorship; letters of appointment as personal representative; an official entry of appearance by legal counsel on behalf of the Member; or other official documentation establishing his or her authority to act on behalf of the Member.
  - iii. Any Member acting by or through an authorized representative shall be bound by the acts of his or her authorized representative. Any disputes between a Member and his or her authorized representative shall be a separate matter between the Member and his or her authorized representative and shall not be the subject of litigation or review in this Claims Process in this lawsuit.

- c. The Department, and its employees and contractors are not permitted to provide legal advice or assistance to Members in completing the Claims Process. Members who contact the Department with questions shall be directed to contact Class Counsel.

4.11. *Resolution and Payment of Remaining Claims.*

- a. Upon completion of the processing and payment of all claims, including attorneys' fees, the Department shall file a motion requesting that the Court enter an order finding that all payment obligations under this Settlement Agreement have been satisfied. The motion shall be accompanied by a report containing the following information:
  - i. a list of Eligible Members other than Current Eligible Members who filed claims and the disposition of each claim. The disposition of each claim shall include the following information for each Eligible Member who filed a claim:
    - 1. the amount of the payment, or
    - 2. the reason the claim was denied;
  - ii. a list of Current Eligible Members who have been paid, the date of the payment, and the amount; and
  - iii. a list of Eligible Members, other than Current Eligible Members, who did not file a claim.
- b. The Department shall serve a copy of the motion and report on Class Counsel. Class Counsel shall have sixty (60) days after service of the motion and report to respond. DSS shall respond to all reasonable requests by Class Counsel for a review of documentation concerning individual cases.
- c. If Class Counsel do not file a timely objection, then the Court shall grant the motion without further notice and shall enter an order finding that the Defendants have satisfied the Settlement Agreement in full and also shall enter an order finally disposing of any further proceedings in this case with prejudice.

- d. If Class Counsel files a timely objection or response, the Court shall hold other proceedings as may be appropriate to finally dispose of this case.

4.12. *Costs, Administration and Attorneys' Fees.*

- a. The Department will pay costs associated with publication, notice, mailing, and administration of the Claims Process. The Department will be responsible for overseeing administration of the Claims Process.
- b. The obligation of the Department to pay attorneys' fees and litigation costs for the Class and its Members is limited to the provisions of the Settlement Agreement. The Department shall not be liable for or required to pay attorneys' fees, litigation expenses or costs of the Class, Class Members, Eligible Members, Ineligible Members or their representatives for the Claims Process, requests for administrative and/or judicial review or any other reason except as specifically set forth herein.

4.13. *Disposition of any Unclaimed Balance of Settlement Amount.* Any portion of the Settlement Amount that is not used to pay Class Member claims and attorney's fees shall be transferred into the Blind Pension Fund. The amounts transferred under this paragraph shall not be considered in the calculation of the "annual growth of funds in the blind pension fund" for the purpose of calculating the annual change in the monthly pension payment under §209.040.4, RSMo.

## **VI. Releases**

- 5.1. *Defendant's Release of Named Plaintiffs.* Upon the entry of a final order by the Court approving this Settlement Agreement, the Department absolutely and unconditionally releases and forever discharges Plaintiffs and the Members of the Class from any and all claims relating to the institution or prosecution of the Lawsuit.
- 5.2. *Plaintiffs and Class's Release of Defendants.* Upon the entry of a final order by the Circuit Court approving this Agreement, Plaintiffs, on behalf of themselves and on behalf of the Members of the Class directly, indirectly, derivatively, or in any capacity ever had, now have or hereafter may have, absolutely and unconditionally release and forever discharge Defendants, together with their agents, employees, subsidiaries, successors, and assigns, from any and all claims of any

nature whatsoever, whether accrued or not, whether already acquired or acquired in the future, whether known or unknown, in law or equity, brought by way of demand, complaint, cross-claim, counterclaim, third-party claim, or otherwise, which were or could have been asserted in the Lawsuit by or on behalf of Plaintiffs and Members of the Class concerning matters alleged in the Lawsuit, including but not limited to all claims relating to the calculation of benefits, if any, and interest arising from those claims, if any, payable from the Blind Pension Fund between February 1, 2001, and the date of execution of this Settlement Agreement.

- 5.3. *Scope of Releases.* The releases set forth in paragraphs 5.1 and 5.2 are not intended to include the release of any rights or duties arising out of this Settlement Agreement.

## VII. Covenants

- 6.1. *Plaintiffs' Covenant Not to Sue.* Plaintiffs covenant and agree on their own behalf and on behalf of the Members of the Class not to file against Defendants any additional claim based upon or arising from any of the released claims identified in paragraph 5.2, or to refile the claims brought in the Lawsuit, and that the foregoing shall be a complete defense to any such claims against the Defendants.
- 6.2. *Defendants' Covenant Not to Sue.* Defendants covenant and agree not to file against Plaintiffs or Members of the Class any additional claim based upon or arising from any of the released claims identified in paragraph 5.1, and that the foregoing shall be a complete defense to any such claims against the Plaintiffs.
- 6.3. *Taxation of Settlement Proceeds.* Plaintiffs agree that Defendants have no responsibility for any taxes due on any amounts that Plaintiffs or Class Members receive from the Settlement Amount. Nothing herein shall constitute an admission or representation, however, that any such taxes will or will not be due.

## VIII. Miscellaneous Provisions

- 7.1. *Governing Law.* This Settlement Agreement shall be governed by the laws of the State of Missouri without giving effect to the conflict of laws or choice of law provisions thereof.

- 7.2. *Opportunity for Class Input.* The Class will be given notice and an opportunity to provide input or objections to any proposed Class Action Settlement pursuant to Rule 52.08(e) of the Missouri Rules of Civil Procedure.
- 7.3. *Adequate Investigation.* Each Party represents and warrants that he, she, or it has carefully read the contents of this Settlement Agreement, and that this Settlement Agreement is signed freely by each person executing this Settlement Agreement on behalf of each of the Parties. The Parties, and each of them, further represent and warrant to each other that he, she, or it has made such investigations of the facts pertaining to the settlement, this Settlement Agreement, and all of the matters pertaining thereto, as he, she, or it deems necessary.
- 7.4. *Signatories' Representations and Warranties.* Each person executing this Settlement Agreement does hereby personally represent and warrant that he or she has the authority to execute this Agreement on behalf of, and fully bind, each Party whom such individual represents or purports to represent.
- 7.5. *Single and Plural.* Definitions apply to the singular and plural forms of each term defined.
- 7.6. *Construction.* None of the Parties hereto shall be considered to be the drafter of this Agreement or any provision hereof for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof.
- 7.7. *Entire Agreement.* This Settlement Agreement contains the entire agreement between the Parties relating to the settlement of the Lawsuit and the released claims.
- 7.8. *Counterparts.* This Settlement Agreement may be executed by electronic exchange of executed signature pages, and any signature transmittal by electronic means for the purpose of executing this Settlement Agreement shall be deemed an original signature for purposes of this Settlement Agreement. This Settlement Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same instrument.

7.9. *Binding Effect.* This Settlement Agreement binds and inures to the benefit of the Parties and their assigns, heirs, administrators, executors and successors.

7.10. *Disputes.* To the extent disputes or unresolved issues arise concerning the Claims Process set forth in Section IV of this Settlement Agreement, the Parties agree to submit such disputes or issues to the Court for resolution.

a. If a dispute arises about the implementation of the Claims Process, Class Counsel and the Department's counsel shall first confer and attempt to resolve the dispute. If the Parties are able to resolve the dispute, the Parties shall reduce their proposal to writing and submit it to the Court for approval. The Court may hold a hearing on the proposed resolution on its own motion or upon the request of the Parties.

b. If the Parties are unable to resolve the dispute, then either Class Counsel or the Department's counsel shall file a motion requesting the Court to intervene to resolve the dispute. Plaintiffs and the Department shall each be given a reasonable time and opportunity to respond to the motion. The Court may hold a hearing on the motion as may be necessary.

7.11. *Agreement Execution Date.* The date on which the final signature is affixed below shall be the Agreement Execution Date.

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(Signatures on Continuing Pagesz Below)

**Plaintiffs' Signature Page**

In witness hereof, Plaintiffs Linda Gerken, Sheila Holt, Nancy Lynn, Brenda Gardner, Trudy Blood, Galen Blood, Emma Lou Swopes, and the Missouri Council of the Blind, both in their individual capacities and as representatives of the Class, by and through their undersigned counsel, have executed this Settlement Agreement as of the date indicated below.

Date: \_\_\_\_\_

\_\_\_\_\_  
John J. Ammann  
St. Louis University Legal Clinic  
100 North Tucker  
St. Louis, MO 63101  
(314) 977-2778  
[ammannjj@slu.edu](mailto:ammannjj@slu.edu)

Date: \_\_\_\_\_

\_\_\_\_\_  
John K. Greider  
Deborah S. Greider L.L.C.  
8000 Bonhomme Avenue, No. 207  
Clayton, MO 63105  
(314) 727-8910  
[jkgreider@greiderlaw.com](mailto:jkgreider@greiderlaw.com)

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(Defendants' Signature Page on Continuing Page Below)

**Defendants' Signature Page**

In witness hereof, Defendants Missouri Department of Social Services, State of Missouri Family Support Division, and Steve Corsi, in his official capacity as Director of the Missouri Department of Social Services, by and through the undersigned, have executed this Settlement Agreement as of the date indicated below.

Date: \_\_\_\_\_

\_\_\_\_\_  
Steve Corsi, Psy.D.  
Director, MO Department of Social Services  
P.O. Box 1527  
Jefferson City, MO 65201

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(End)