

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA

If you are a current or former non-exempt, hourly-paid employee of the North Carolina Department of Adult Correction (formerly Department of Public Safety) who worked as security personnel in a correctional institution (“CO”)¹ between October 28, 2016 and the present, your rights may be affected.

A Federal Court authorized this Notice. You are not being sued. This is not a solicitation from a lawyer.

- A lawsuit has been filed by Matthew Hodge, David Holbrook, Philip Kay, Jacob Franckowiak, and Ralph Brown (the “Plaintiffs”) against North Carolina Department of Adult Correction (the “Department”).
- Plaintiffs allege that the Department is required to pay, and has not paid, COs for all the time they spend inside a prison facility, including time spent outside the facility but waiting to enter the facility.
- The Court has allowed this lawsuit to be a class action on behalf of everyone who meets the above definition.
- The Court has not decided whether the Department did anything wrong. There is no money available now and no guarantee that there will be. Your legal rights are affected, however, and you have a choice to make now as described in the below table.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT	
DO NOTHING	Stay in this lawsuit. Await the outcome. Give up certain rights. By doing nothing, you automatically remain a class member in the lawsuit and keep the possibility of getting money or benefits that may come from a trial or settlement. You will give up any rights to separately sue the Department about the matters involved in this lawsuit and will be bound by the result of the lawsuit, whether favorable or unfavorable.
ASK TO BE EXCLUDED	Get out of this lawsuit. Receive no benefits from it. Keep rights to sue. If you ask to be excluded and money benefits are awarded later, you will not share in those benefits, but you will keep any right to separately sue the Department about the same matters in this lawsuit and will not be bound by the result of this lawsuit, whether favorable or unfavorable.

- Your options are explained in this Notice. To ask to be excluded, as is set forth in Paragraph 14 below, you must act before June 25, 2024. To remain a Class Member, you do not need to do anything.
- If this case is not dismissed, resolved by motions, or settled before trial, Plaintiffs must prove the claims against the Department at a trial. If money or benefits are obtained from the Department, you will be notified about how you may obtain a share.
- **Any questions? Read on and visit www.ncdaclawsuit.com for additional court documents concerning this case.**

¹ “CO” as used in this Notice includes Correctional Officers and Correctional Sergeants.

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BASIC INFORMATION

1. **Why is there a notice?**

If you receive this notice, you were identified through the Department's records as an individual who is a current or former non-exempt, hourly-paid employee of the Department who worked as a CO between October 28, 2016 and the present. The Court authorized this notice to let you know that the Court has certified (or, allowed to proceed) a class action lawsuit that may affect you. You have legal rights and options that you may exercise before the Court holds a trial. The trial is to decide whether the claims being made against the Department, on your behalf, are correct. Judge James C. Dever of the United States District Court for the Eastern District of North Carolina is overseeing this class action. The lawsuit is known as *Hodge, et al. v. North Carolina Department of Adult Correction*, Case No.5:19-cv-478.

2. **What is this lawsuit about?**

This lawsuit is about whether the Department is required to pay COs for all the time they spend inside a prison facility. Plaintiffs allege that the Department must do so, and has not paid COs for all the time they spend inside the prison. The Department contends that it has no obligation to pay COs for all the time they spend inside a prison facility, including time spent outside the facility but waiting to enter the facility, and that the Department has paid COs for the time they spent performing their duties. The Department also denies that class certification is appropriate.

3. **What is a class action and who is involved?**

In a class action lawsuit, persons called the "Plaintiffs" or "Class Representatives" (in this case, Matthew Hodge, David Holbrook, Philip Kay, Jacob Franckowiak, and Ralph Brown) sue on behalf of a group of people who have a similar claim. The people together are a "Class" or "Class Members." The entity they sue (in this case, the North Carolina Department of Adult Correction) is called the Defendant. In a class action, the court resolves certain issues for all Class Members, except for those who exclude themselves from the Class.

4. **Why is this lawsuit a class action?**

The Court decided that this lawsuit can be a class action and move toward a trial because it meets the requirements of Federal Rule of Civil Procedure 23, which governs class actions in federal courts. Specifically, the Court found that:

- The class is so numerous that joinder of all members is impracticable;
- There are questions of law or fact common to the class;
- The claims or defenses of the representative parties are typical of the claims and defenses of the class; and
- The representative parties will fairly and adequately protect the interests of the class.

The Court certified one class in this case, described below in the answer to Question 11. More information about why the Court is allowing this lawsuit to be a class action is in the Court's Order, dated February 8, 2024, which is available at www.ncdaclawsuit.com.

5. **Was a class already certified?**

The Plaintiffs pursued two forms of group litigation: one collective action under the Fair Labor Standards Act and one class action under Rule 23 of the Federal Rules of Civil Procedure. The Court conditionally certified a collective action under the Fair Labor Standards Act. Unlike a Rule 23 class action, where parties are part of the class unless they affirmatively opt out, a collective action under the Fair Labor Standards Act is the opposite—it requires individuals to affirmatively opt in in order to be a part of the collective. Notice previously went out asking members of the collective to join the case by filing a Notice of Consent to Join. If you already returned that form, you are a part of the collective that asserts the Fair Labor Standards Act claim. The time period for opting in to the collective has already passed. Thus, this notice relates solely to Plaintiffs' class action claim under Rule 23 of the Federal Rules of Civil Procedure.

THE CLAIMS IN THE LAWSUIT

6. **What does the lawsuit claim?**

The claim by Plaintiffs in this lawsuit is described in Question 2. For additional information, you can read a copy of Plaintiffs' Class and Collective Action Complaint, which is available at www.ncdaclawsuit.com.

7. **How does the Department Answer?**

The Department denies that it has an obligation to pay COs for all the time they spend inside the prison facility, time spent outside the facility but waiting to enter the facility, denies that it acted unlawfully, and denies that a class should have been certified. The Department's Answer to Plaintiffs' Class and Collective Action Complaint is available at www.ncdaclawsuit.com.

8. **Has the Court decided who is right?**

No. By certifying the Class and issuing this notice, the Court is not suggesting that the Plaintiffs will win or lose this case. Unless the case settles, Plaintiffs must prove their claims at trial. The Court has not set a trial date in this Action. (See "The Trial" below).

9. **What are the Plaintiffs asking for?**

The Plaintiffs are asking the Court to award each Class Member monetary damages in the form of unpaid wages that Plaintiffs allege are owed by the Department and/or other amounts awardable by law. The Parties disagree on the scope of unpaid wages that are recoverable.

10. **Is there any money available at this time?**

No money or benefits are available now because the Court has not decided whether the Department did anything wrong, and the two sides have not settled the case. There is no guarantee that money or benefits will ever be obtained. If money or benefits are obtained, you will be notified about how to ask for a share (unless you affirmatively opt out of the Class).

WHO IS IN THE CLASS

11. **Am I part of the Class?**

The Class certified by the Court consists of the following individuals:

All current and former non-exempt, hourly-paid employees of DAC who worked as security personnel in a correctional institution in the State of North Carolina at any time between October 28, 2016 and the date of judgment.

You are a class member if: you are or were a non-exempt, hourly-paid employee of DAC (formerly DPS) who worked as a security personnel in a correctional institution in the State of North Carolina between October 28, 2016 and the present. This generally includes Correctional Officers and Correctional Sergeants. Class members are identifiable based on the Department's records.

If you are still not sure if you are included in the Class, you can get help at www.ncdaclawsuit.com or you can contact Class Counsel – their contact information is listed in the answer to Question 16.

YOUR RIGHTS AND OPTIONS

You have to decide whether to stay in the Class or ask to be excluded before the trial, and you have to decide this now.

12. What happens if I do nothing?

You don't have to do anything now if you want to keep the possibility of getting money or benefits from this lawsuit. If you are a Class member, by doing nothing you will stay in the Class. If you stay in the Class and the Plaintiffs obtain money or benefits, either as a result of the trial or a settlement, you will be notified about how to receive a share (or how to ask to be excluded from any settlement). Keep in mind that if you are a member of the Class and you do nothing now, regardless of whether the Plaintiffs win or lose the legal motions or trial you will not be able to separately sue, or continue to separately sue, the Department as part of any other lawsuit about the legal claims that are the subject of this lawsuit. You will also be legally bound by all of the Orders the Court issues and judgments the Court makes in this class action.

13. Why would I ask to be excluded from the Class?

If you already have your own lawsuit against the Department regarding similar allegations and/or claims, and want to continue with it, you need to ask to be excluded from the Class. If you exclude yourself from the Class—sometimes called “opting-out” of the Class—you won't get any money or benefits from this lawsuit if any are awarded or obtained as a result of the trial, legal motions, or from any settlement (that may or may not be reached) between the Department and the Plaintiffs. If you exclude yourself, you will not be legally bound by the Court's judgments in this class action.

If you choose to start your own lawsuit against the Department after you exclude yourself, you may hire and pay your own lawyer for that lawsuit, and you'll have to prove your claims.

14. How do I ask to be excluded from the Class?

To exclude yourself from the Class, you must email, mail or otherwise deliver a letter (or request for exclusion) stating that you want to be excluded from *Hodge, et al. v. North Carolina Department of Adult Correction*, Case No. 5:19-cv-478. Your request for exclusion must include your name and address, and your signature (if your request for exclusion is sent by email, include your name in the email). You must email your request to nccdaclawsuit@rg2claims.com or mail your exclusion request to: *Hodge v. NC Department of Adult Correction c/o Notice Administrator* PO Box 59479 Philadelphia, PA 19102-9479 by mail, postmarked no later than June 25, 2024. You may also get an Exclusion Request form at www.nccdaclawsuit.com.

15. What if I am already part of the collective action?

On September 8, 2020, the Court conditionally certified a collective action under the Fair Labor Standards Act and required individuals to formally opt in to the collective action. The time to opt in to the collective action has passed. If you have already opted in to the collective action, you do not need to opt out of the Rule 23 class action.

THE LAWYERS REPRESENTING YOU

16. Do I have a lawyer in this case?

Yes. The Court has appointed the law firms of DiCello Levitt, Cuneo Gilbert & LaDuca, and Milberg Coleman Bryson Phillips Grossman to serve as “Class Counsel” and represent the Class. Class Counsel can be contacted via phone at 919-600-5000 or 312-214-7900, and you can email them at pwallace@milberg.com or dschwartz@dicellolevitt.com. You may also contact the Notice Administrator at 1-866-742-4955.

17. Should I get my own lawyer?

You do not need to hire your own lawyer because Class Counsel is working on your behalf. You may seek the advice and guidance of your own lawyer, if you wish, at your own expense. You may also ask them to appear in Court for you if you want someone other than Class Counsel to speak for you.

18. How will the lawyers be paid?

If Class Counsel obtains money or benefits for the Class, they may ask the Court for attorneys' fees, costs, and expenses. You won't have to pay these fees, costs, or expenses out-of-pocket. If the Court grants Class Counsel's request, the fees and expenses would generally be deducted from any money obtained for the Class or paid separately by the Department.

THE TRIAL

19. How/when will the Court decide who is right?

If the case is not decided through legal motions or settled, a trial will be scheduled and Plaintiffs will have to prove their claims. The trial will be heard at the United States District Court for the Eastern District of North Carolina, 310 New Bern Avenue, Raleigh, North Carolina. A trial date has not been scheduled yet. During the trial, a jury will hear all of the evidence to help it reach a decision about whether the Plaintiffs or the Department is right about the claims in the lawsuit. There is no guarantee that the Plaintiffs will win or that they will get any money for the Class.

20. Do I have to come to the trial?

You do not need to attend the trial. Class Counsel will present the case for the Plaintiffs and the Department will present their defenses. You are welcome to attend at your own expense.

21. Will I get money after the trial?

If the Plaintiffs obtains money or benefits as a result of the trial or a settlement, and you did not choose to "opt out" or exclude yourself from the Class, you will be notified about how to receive a share of the money or benefits obtained. Currently, we do not know if any benefits will be available or how long this process will take.

22. How do I update my contact information?

If you wish to update your contact information, you may: (1) Send an email with the corrected information to ncdaclawsuit@rg2claims.com; or (2) Mail the updated information to *Hodge v. NC Department of Adult Correction* c/o Notice Administrator PO Box 59479 Philadelphia, PA 19102-9479.

GETTING MORE INFORMATION

23. Where can I get more information?

Visit www.ncdaclawsuit.com, where you will find the Court's February 8, 2024 Order certifying the class, Plaintiff's Class and Collective Action Complaint, Defendant's Answer to the Complaint, as well as an Exclusion Request form (should you want to "opt out" of the Class). The website will be updated with the most current information about the lawsuit as it becomes available. You may also write with questions to *Hodge v. NC Department of Adult Correction* c/o Notice Administrator PO Box 59479 Philadelphia, PA 19102-9479 or to ncdaclawsuit@rg2claims.com. You may call Class Counsel at 919-600-5000 or 312-214-7900 if you have any questions. Before doing so, however, please read this full Notice carefully. You may also contact the Notice Administrator at 1-866-742-4955.

**PLEASE DO NOT CONTACT THE COURT OR THE CLERK'S OFFICE
CONCERNING THIS CASE.**