

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE

TUESDAY THE 18th

JUSTICE PERELL

DAY OF SEPTEMBER, 2018

B E T W E E N :

CONREY FRANCIS

Plaintiff

- and -

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Defendant



Proceeding under the *Class Proceedings Act, 1992*

ORDER

THIS MOTION, made by the Plaintiff for certification, was heard on this day;

ON READING the motion records of the Plaintiff and the Defendant, and on hearing the submissions of the lawyer(s) for the Plaintiff and the Defendant;

AND ON BEING ADVISED of the parties' consent to this Order;

1. **THIS COURT ORDERS** that this action be and hereby is certified as a class proceeding pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, c. 6.

2. **THIS COURT ORDERS AND DECLARES THAT** the Class is defined as:

All current and former Inmates, who were alive as of April 20, 2015:

I. Inmates with a Serious Mental Illness

a) who were subjected to Administrative Segregation for any length of time at one of the Correctional Institutions between January 1, 2009 and the date of certification;

b) who were diagnosed by a medical doctor before or during their incarceration with at least one of the following disorders, as defined in the relevant Diagnostic and Statistics Manual of Mental Disorders (“**DSM**”):

- (A) Schizophrenia (all sub-types),
- (B) Delusional disorder,
- (C) Schizophreniform disorder,
- (D) Schizoaffective disorder,
- (E) Brief psychotic disorder,
- (F) Substance-induced psychotic disorder (excluding intoxications and withdrawal),
- (G) Psychotic disorder not otherwise specified,
- (H) Major depressive disorders,
- (I) Bipolar disorder I,
- (J) Bipolar disorder II,
- (K) Neurocognitive disorders and/or Delirium, Dementia and Amnestic and Other Cognitive Disorders,
- (L) Post-Traumatic Stress Disorder;
- (M) Obsessive Compulsive Disorder; or
- (N) Borderline Personality Disorder;

and who suffered from their disorder, in a manner described in Appendix “A”, and,

c) who reported such diagnosis and suffering to the Defendant's agents before or during their Administrative Segregation (the “**SMI Inmates**”);

or,

II. Inmates in Prolonged Administrative Segregation

a) who were subjected to Administrative Segregation for 15 or more consecutive days (“**Prolonged Administrative Segregation**”) at one of the Correctional Institutions between January 1, 2009 and the date of certification (the “**Prolonged Inmates**”)

(together the “**Class Members**”).

“**Correctional Institutions**” are correctional institutions as defined in the *Ministry of Correctional Services Act*, R.S.O. 1990, c. M.22, excluding St. Lawrence Valley Correctional and Treatment Centre.

“**Inmates**” are inmates as defined in the *Ministry of Correctional Services Act*, R.S.O. 1990, c. M.22.

“**Administrative Segregation**” refers to segregation as outlined in section 34 of Regulation 778, R.R.O. 1990 under *Ministry of Correctional Services Act*, R.S.O. 1990, c. M.22.

3. **THIS COURT ORDERS AND DECLARES** that the only causes of action asserted against the Defendant are systemic negligence and breaches of sections 7 and 12 of the *Canadian Charter of Rights and Freedoms* (the “*Charter*”) resulting from the use of Administrative Segregation and Prolonged Administrative Segregation on Class Members.

4. **THIS COURT ORDERS AND DECLARES** that the common issues be and are hereby certified as:

Systemic Negligence

(a) By the operation and management of the Correctional Institutions from January 1, 2009 to the date of certification, did the Defendant owe a duty of care to the Class Members?

(b) If the answer to (a) is yes, what is the nature of that duty of care?

(c) By the use of Administrative Segregation and/or Prolonged Administrative Segregation at the Correctional Institutions from January 1, 2009 to the date of certification, did the Defendant breach a duty of care owed to some or all of the Class Members?

Sections 7 & 12 of the *Charter*

(d) Did the use of Administrative Segregation deprive the SMI Inmates of security of

the person under s. 7 of the *Charter*?

(e) Did the use of Prolonged Administrative Segregation deprive the Prolonged Inmates of security of the person under s. 7 of the *Charter*?

(f) If the answer to (d) or (e) is “yes”, does the deprivation fail to accord with the principles of fundamental justice for some or all of the Class Members?

(g) If the answer to either question in (f) is “yes”, does the deprivation fail to accord with the principles of fundamental justice where the Class Members were placed in Administrative Segregation or Prolonged Administrative Segregation and the reason indicated for such placement was:

- (i) at their own request;
- (ii) for their own protection, including protection for medical reasons;
- (iii) to protect the security of the institution or safety of others, including protection for medical reasons;
- (iv) for alleged misconduct of a serious nature; or
- (v) for any other reason?

(h) Does the deprivation of liberty under s. 7 of the *Charter* fail to accord with the principles of fundamental justice for some or all of the Class Members?

(i) If the answer to (h) is “yes”, does the deprivation fail to accord with the principles of fundamental justice where the Class Members were placed in Administrative Segregation or Prolonged Administrative Segregation and the reason indicated for such placement was:

- (i) at their own request;
- (ii) for their own protection, including protection for medical reasons;
- (iii) to protect the security of the institution or safety of others, including protection for medical reasons;
- (iv) for alleged misconduct of a serious nature; or
- (v) for any other reason?

(j) Did the use of Prolonged Administrative Segregation constitute cruel and unusual treatment or punishment under s. 12 of the *Charter* for the Prolonged Inmates where the Prolonged Inmates were placed in Administrative Segregation and the reason indicated for such placement was:

- (i) at their own request;
- (ii) for their own protection, including protection for medical reasons;
- (iii) to protect the security of the institution or safety of others, including protection for medical reasons;
- (iv) for alleged misconduct of a serious nature; or
- (v) for any other reason?

(k) Did the use of Administrative Segregation constitute cruel and unusual treatment or punishment under s. 12 of the *Charter* for the SMI Inmates where the SMI Inmates were placed in Administrative Segregation and the reason indicated for such placement was:

- (i) at their own request;
- (ii) for their own protection, including protection for medical reasons;
- (iii) to protect the security of the institution or safety of others, including protection for medical reasons;
- (iv) for alleged misconduct of a serious nature; or
- (v) for any other reason?

(l) If the answer to questions (g), (i), (j) or (k) is “yes”, were such violation(s) justified under section 1 of the *Charter*?

(m) If the answer to question (l) is “no”, are damages pursuant to section 24(1) of the *Charter* an appropriate remedy?

Aggregate damages

(n) Is this an appropriate case for an award of aggregate damages pursuant to section

24(1) of the *Class Proceedings Act, 1992*?

(o) If the answer to (n) is “yes”, what is the appropriate quantum of such damages?

Punitive damages

(p) Does the conduct of the Defendant merit an award of punitive damages?

(q) If the answer to (p) is “yes”, what quantum should be awarded for punitive damages?

Limitation period

(r) What limitation period or limitation periods apply to the causes of action advanced in this case?

(s) What circumstances are relevant to determining when the limitation period or limitation periods referred to in question (r) begin to run?

5. **THIS COURT ORDERS AND DECLARES** that Conrey Francis is hereby appointed as the representative Plaintiff for the Class Members.

6. **THIS COURT ORDERS AND DECLARES** that Koskie Minsky LLP is hereby appointed as class counsel (“**Class Counsel**”).

7. **THIS COURT ORDERS** that Crawford Class Action Services (the “**Administrator**”) be and is hereby appointed as the Administrator.

8. **THIS COURT ORDERS** that Class Members shall be notified that this proceeding has been certified as a class proceeding as follows:

- (a) by the Administrator placing, within thirty (30) days of the date of this Order, the Publication Notice found in **Schedule "A"** in the newspapers set out in **Schedule "B"** attached hereto, or a French language version which is to be agreed upon by the parties, in ¼ of a page size in the weekend edition of each paper, if possible;
- (b) by the Administrator distributing the Publication Notice to all Ontario offices of the Elizabeth Fry Society, the John Howard Society, the Ontario Federation of Indigenous Friendship Centres, Nishnawbe Aski Nation Legal Clinic (Thunder Bay), Aboriginal Legal Services (Toronto), and the Chiefs of Ontario;
- (c) by the Defendants posting the Publication Notice in a conspicuous place within each Correctional Institution in common areas, making it possible for Class Members to see it;
- (d) by posting the Publication Notice and Long Form Notice set out in **Schedule "C"**, and the French language translations of these documents which are to be agreed upon by the parties, on Class Counsel's and the Administrator's website;
- (e) by the Administrator forwarding the Publication Notice and Long Form Notice to any Class Member who requests it;
- (f) by the Administrator establishing a toll-free support line within Ontario, to provide assistance to Class Members, family, guardians or agency staff, or other persons who make inquiries on their own behalf or on behalf of Class Members;
- (g) by the Defendant providing copies of the Publication Notice and Long Form Notice to all probation and parole officers within Ontario, and making best efforts to have all probation and parole officers within Ontario distribute the Publication Notice and Long

Form Notice to each parolee/former Inmate assigned to them; and,

(h) by the Defendant directing that the Publication Notice be posted in all probation and parole offices throughout Ontario.

9. **THIS COURT ORDERS** that the Plaintiff shall pay half and the Defendant shall pay half of the expense of the notice in paragraph 8(a) through 8(h), subject to review and readjustment by agreement or order at the termination of this proceeding.

10. **THIS COURT ORDERS** that the Administrator shall receive opt out forms from the Class Members.

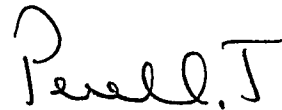
11. **THIS COURT ORDERS** that the Administrator shall preserve all opt-out notices it receives until permitted to dispose of such information by further order of this Court or by written direction jointly signed by Class Counsel and the Defendant.

12. **THIS COURT ORDERS** that a Class Member may opt out of the class proceeding by delivering a signed opt-out coupon, a copy of which is attached as **Schedule "D"**, or some other legible signed request to opt out, by 90 days after notice published (the "**Opt Out Deadline**"), sent to the Administrator, at the following address:

CRAWFORD & COMPANY
3-505, 133 Weber St. North
Waterloo, Ontario N2J 3G9

13. **THIS COURT ORDERS** that if a Class Member has delivered an opt-out coupon to the Administrator, they may withdraw their opt-out before the Opt-Out Deadline by advising the Administrator, in writing, that they wish to withdraw their opt-out.

14. **THIS COURT ORDERS** that no Class Member may opt out of the class proceeding after the Opt-Out Deadline, except with leave of the Court.
15. **THIS COURT ORDERS** that the Administrator shall serve on the parties and file with the Court, within sixty (60) days of the expiry of the Opt Out Deadline, an affidavit listing all persons who have opted out of the class proceeding, if any.
16. **THIS COURT ORDERS** that no other proceeding may be commenced in Ontario in respect of the subject matter of this action without leave of this court.
17. **THIS COURT ORDERS** that each party shall bear its own costs of the within motion for certification of this proceeding.



JUSTICE PERELL

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

SEP 18 2018

PER / PAR: 

Appendix "A"

- *Significant impairment in judgment (including all of the following: the inability to make decisions, confusion, and disorientation);*
- *Significant impairment in thinking (including both paranoia and delusions that make the offender a danger to self or others);*
- *Significant impairment in mood (including constant depressed mood plus helplessness and hopelessness; agitation; manic mood that interferes with ability to effectively interact with other offenders or staff);*
- *Significant impairment in communications that interferes with ability to effectively interact with other offenders or staff;*
- *Hallucinations; delusions; or, severe obsessional rituals that interferes with ability to effectively interact with other offenders or staff;*
- *Chronic and severe suicidal ideation resulting in increased risk for suicide attempts; or*
- *Chronic and severe self-injury.*

Please note: the glossary of the relevant DSM is to be used to interpret the foregoing terms where appropriate.

SCHEDULE "A"

PUBLICATION NOTICE

*Were You Incarcerated in an Ontario Correctional Institution Between January 1, 2009 and
[insert certification date]?*

A lawsuit may affect you. Please read this carefully.

The Ontario Superior Court of Justice decided that a class action on behalf of people who were inmates in Correctional Institutions from January 1, 2009 to [insert certification date] who were subjected to Prolonged Administrative Segregation (15 or more consecutive days) or who were subjected to Administrative Segregation for any length of time and were diagnosed with a Serious Mental Illness (with some exclusions) (the "Class") can proceed.

You have a choice of whether or not to stay in the Class.

To stay in the Class, you do not have to do anything. If money or benefits are obtained, you will be notified about how to make a claim. You will be legally bound by all orders and judgments, and you will not be able to sue Ontario about the legal claims in this case.

If you want to remove yourself from the class action, you must submit an opt out form by [insert opt out deadline]. Opt out forms are available here: [website]. If you remove yourself, you cannot get money or benefits from this lawsuit if any are awarded.

The Court has appointed Koskie Minsky LLP ("Class Counsel") to represent the Class. You don't have to pay Class Counsel to participate. If they get money or benefits for the Class, they may ask for lawyers' fees and costs which would be deducted from any money obtained or to be paid separately by Ontario.

For more information about your rights, go to [website], call toll-free [number] (TTY: [number]) or write to [address], or by email at: [email].

SCHEDULE "B"

Publication	Circulation	Unit Type/Size
Globe & Mail	416,409	¼ Page
National Post	181,525	¼ Page
Toronto Star	440,442	¼ Page
Ottawa Citizen	98,204	¼ Page
The Windsor Star	54,767	¼ Page
The Hamilton Spectator	116,635	¼ Page
London Free Press	72,791	¼ Page
Kingston Whig-Standard	18,668	¼ Page
The Chronicle-Journal	17,200	¼ Page

Press Release

North American distribution of an English and French press release via the CNW Newswire. 400 words in English and in French

SCHEDULE "C"

LONG FORM NOTICE

**Were You Incarcerated in an Ontario
Correctional Institution Between January 1, 2009
and [insert certification date]?**

If YES, A Class Action May Affect Your Rights.

A Court authorized this notice. You are not being sued.

- You could be affected by a class action involving Correctional Institutions.
- A Court has approved a lawsuit as a class action for current and former inmates of Correctional Institutions who were subjected to Prolonged Administrative Segregation (15 or more consecutive days) or who were subjected to Administrative Segregation for any length of time and were diagnosed with a Serious Mental Illness (with some exclusions). **If you know a current or former inmate who cannot read this notice please share this information with them.**
- The Court has not decided whether Ontario did anything wrong, and there still has to be a court case about whether Ontario did anything wrong. There is no money available now and no guarantee there will ever be any money. However, your rights are affected, and you have a choice to make now. This notice is to help you make that choice.

YOUR LEGAL RIGHTS AND OPTIONS AT THIS STAGE

<p>Do NOTHING</p>	<p>Stay in this lawsuit and wait for the outcome. Share in possible benefits from the outcome but give up certain individual rights.</p> <p>By doing nothing, you keep the possibility of getting money or other benefits that may come from a trial or settlement. But, you give up any rights to sue Ontario on your own about the same legal claims in this lawsuit.</p>
<p>REMOVE YOURSELF (OPT OUT)</p>	<p>Get out of this lawsuit and get no benefits from it. Keep rights.</p> <p>If you ask to be removed (opt out) and money or benefits are later awarded, you won't share in those. But, you keep any rights to sue Ontario on your own about the same legal claims in this lawsuit, subject to any applicable limitation period.</p>

- Lawyers must prove the claims against Ontario at a trial or a settlement must be agreed. If money or benefits are obtained you will be notified about how to ask for your share.
- Your options are explained in this notice. To be removed from the lawsuit, you must ask to be removed by **[90 days from publication date of notice]**

WHAT THIS NOTICE CONTAINS

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1. Why was this notice issued?
2. What is this lawsuit about?
3. Why is this a class action?
4. Who is a member of the Class?
5. What is the Plaintiff asking for?
6. Is there any money available now?

YOUR RIGHTS AND OPTIONS.....Page 5

7. What happens if I do nothing?
8. What if I don't want to be in the Class?

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9. Do I have a lawyer in the case?
10. How will the lawyers be paid?

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11. How and when will the Court decide who is right?
12. Will I get money after the trial?

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13. How do I get more information?

BASIC INFORMATION

1. Why is there a notice?

This lawsuit has been “certified” as a Class Action. This means that the lawsuit meets the requirements for class actions and may proceed to trial. If you are included, you may have legal rights and options before the Court decides whether the claims being made against Ontario on your behalf are correct. This notice explains all of these things.

A judge of the Ontario Superior Court of Justice is currently overseeing this case. The case is known as *Francis v. Ontario*, Court File No. CV-18-591719-00CP. The person who sued is called the Plaintiff. Ontario is the Defendant.

2. What is this lawsuit about?

The lawsuit says that Ontario improperly subjected inmates to administrative segregation. The lawsuit says that such administrative segregation constitutes systemic negligence and breach inmates' rights under the *Canadian Charter of Rights and Freedoms*. Ontario denies these claims. The Court has not decided whether the Plaintiff or Ontario is right. The lawyers for the Plaintiff will have to prove their claims in Court.

If you are having a difficult time dealing with these issues you can call [number] (TTY: [number]) for assistance.

3. Why is this a class action?

In a class action, a person called the “Representative Plaintiff” (in this case, Conrey Francis) sued on behalf of people who have similar claims. All of these people are a “Class” or “Class Members.” The court resolves the issues for all class members in one case, except for those who remove themselves from the class.

4. Who is a member of the Class?

The Class includes:

All current and former Inmates, who were alive as of April 20, 2015:

I. Inmates with a Serious Mental Illness

a) who were subjected to Administrative Segregation for any length of time at one of the Correctional Institutions between January 1, 2009 and the date of certification;

b) who were diagnosed by a medical doctor before or during their incarceration with at least one of the following disorders, as defined in the relevant Diagnostic and Statistics Manual of Mental Disorders (“DSM”):

- (A) Schizophrenia (all sub-types),
- (B) Delusional disorder,
- (C) Schizophreniform disorder,
- (D) Schizoaffective disorder,
- (E) Brief psychotic disorder,
- (F) Substance-induced psychotic disorder (excluding intoxications and withdrawal),
- (G) Psychotic disorder not otherwise specified,
- (H) Major depressive disorders,
- (I) Bipolar disorder I,
- (J) Bipolar disorder II,
- (K) Neurocognitive disorders and/or Delirium, Dementia and Amnestic and Other Cognitive Disorders,
- (L) Post-Traumatic Stress Disorder;
- (M) Obsessive Compulsive Disorder; or
- (N) Borderline Personality Disorder;

and who suffered from their disorder, in a manner described in Appendix “A”, and,

c) who reported such diagnosis and suffering to the Defendant's agents before or during their Administrative Segregation (the “SMI Inmates”);

or,

II. Inmates in Prolonged Administrative Segregation

a) who were subjected to Administrative Segregation for 15 or more consecutive days (“**Prolonged Administrative Segregation**”) at one of the Correctional Institutions between January 1, 2009 and the date of certification (the “**Prolonged Inmates**”)

“Correctional Institutions” are correctional institutions as defined in the *Ministry of Correctional Services Act*, R.S.O. 1990, c. M.22, excluding the St. Lawrence Valley Correctional and Treatment Centre.

“Inmates” are inmates as defined in the *Ministry of Correctional Services Act*, R.S.O. 1990, c. M.22.

“Administrative Segregation” refers to segregation as outlined in section 34 of Regulation 778, R.R.O. 1990 under *Ministry of Correctional Services Act*, R.S.O. 1990, c. M.22.

Appendix “A”

- *Significant impairment in judgment (including all of the following: the inability to make decisions, confusion, and disorientation);*
- *Significant impairment in thinking (including both paranoia and delusions that make the offender a danger to self or others);*
- *Significant impairment in mood (including constant depressed mood plus helplessness and hopelessness; agitation; manic mood that interferes with ability to effectively interact with other offenders or staff);*
- *Significant impairment in communications that interferes with ability to effectively interact with other offenders or staff;*
- *Hallucinations; delusions; or, severe obsessional rituals that interferes with ability to effectively interact with other offenders or staff;*
- *Chronic and severe suicidal ideation resulting in increased risk for suicide attempts; or*
- *Chronic and severe self-injury.*

Please note: the glossary of the relevant DSM is to be used to interpret the foregoing terms where appropriate.

5. What is the Plaintiff asking for?

The Plaintiff is asking for money or other benefits for the Class. He is also asking for lawyers' fees and costs, plus interest.

6. Is there any money available now?

No money or benefits are available now because the Court has not yet decided whether Ontario 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 they are, you will be notified about how to ask for your share.

The action has received financial support from the Class Proceedings Fund. There will be a levy that reduces the amount of any award or settlement funds to which Class Members may become entitled that is the sum of the amount of any financial support paid from the Fund and 10 per cent of the amount of the award or settlement funds payable to Class Members, if any.

YOUR RIGHTS AND OPTIONS

You must decide whether to stay in the Class or whether to remove yourself before a possible trial, and you have to decide this by **[90 days from notice publication date]**

7. What happens if I do nothing at all?

If you do nothing you will automatically remain in the lawsuit. You will be bound by all Court orders, good or bad. If any benefit is awarded, you may need to take action in order to receive any benefits.

8. What if I don't want to be in the Lawsuit?

If you do not want to be in the lawsuit, you must remove yourself – this is sometimes referred to as “opting out.” If you remove yourself, you will not receive any benefit that may be obtained from the lawsuit. You will not be bound by any Court orders and you keep your right to sue Ontario as an individual regarding the issues in this case.

To remove yourself, send a letter that says you want to be removed from the Class in *Francis v Ontario*. Include your name, address, telephone number, and signature. You can also get an Opt Out Form at [website]. You must mail your Removal Request postmarked by **[90 days from notice publication date]** to: [address], or by email at: [email].

Call **[number]** (TTY: **[number]**) if you have any questions about how to get out of the Class.

THE LAWYERS REPRESENTING YOU

9. Do I have a lawyer in the case?

Yes. The Court has appointed Koskie Minsky LLP from Toronto to represent you and other Class Members as “Class Counsel.” You will not be personally charged for these lawyers. If you want to be represented by another lawyer, you may hire one to appear in Court for you at your own expense.

10. How will the lawyers be paid?

Class Counsel will only be paid if they win a trial or if there is a settlement. The Court has to also approve their request to be paid. The fees and expenses could be deducted from any money obtained for the Class, or paid separately by the Defendant.

A TRIAL

11. How and when will the Court decide who is right?

If the lawsuit is not dismissed or settled, the Plaintiff will have to prove his claims at a trial that will take place in Toronto. During the trial, a Court will hear all of the evidence, so that a decision can be reached about whether the Plaintiff or Ontario is right about the claims in the lawsuit. There is no guarantee that the Plaintiff will win any money or benefits for the Class.

12. Will I get money after the trial?

If the Plaintiff obtains money or benefits as a result of a trial or settlement, you will be notified about how to ask for a share or what your other options are at that time. These things are not known right now. Important information about the case will be posted on the website, [website], as it becomes available.

GETTING MORE INFORMATION

13. How do I get more information?

You can get more information at [website], by calling toll free at [number] (TTY: [number]), or writing to: [address], or by email at: [email].

SCHEDULE "D" – OPT OUT FORM

To: ●
c/o Crawford Class Action Services
3-505, 133 Weber Street North
Waterloo, Ontario
N2J 3G9
Email: [EMAIL]@crawco.ca

This is **NOT** a claim form. Completing this OPT OUT COUPON will exclude you from receiving any compensation arising out of any settlement or judgment in the class proceeding named below:

Court File No.: CV-18-591719-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

CONREY FRANCIS

Plaintiff

- and -

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ONTARIO

Defendant

I understand that by opting out of this class proceeding, I am confirming that I do not wish to participate in this class proceeding.

I understand that any individual claim I may have must be commenced within a specified limitation period or it will be legally barred. I understand that I must mail this opt-out form before _____ or else it will not be valid.

I understand that the filing of this class proceeding suspended the running of the limitation period from the time the class proceeding was filed. The limitation period will resume running against me if I opt out of this class proceeding.

I understand that by opting out, I take full responsibility for the resumption of the running of any relevant limitation period and for taking all necessary legal steps to protect any claim I may have.

Date _____

Name of Class Member: _____

Signature of Witness

Signature of Class Member Opting Out or
Guardian of Property (if applicable)
Telephone: _____

Name of Witness:

Name of Guardian of Property (if applicable):

Telephone: _____

