

I. Background History of the Case and Settlement

1. How did this Settlement occur?

This case was initiated on March 23, 2011, and a formal complaint was filed on November 18, 2011, alleging that the Agency failed to take adequate measures to prevent male inmates from sexually harassing female employees. On April 9, 2013, Administrative Judge Brockman (the “Judge”) certified the case as a class action.

Each party then conducted many months of “discovery,” in which it could ask the other side to produce relevant documents and answer questions in writing or in depositions. After discovery was complete, both parties asked the Judge to rule in their favor on at least some issues without the need for a trial. On July 6, 2016, the Judge granted summary judgment in favor of the class finding that the inmate sexual misconduct resulted in a hostile environment, it existed because of the women’s sex, and the environment was unwelcome to Class Members. The only remaining issue that the parties would have had to address at trial was whether the Agency had taken prompt remedial action to stop the inmate sexual harassment.

Although the parties had engaged in settlement talks previously, the discussions intensified after the Judge’s July 6 ruling. After numerous meetings, and with the aid of mediator Elizabeth Newman, the two sides were finally able to reach an agreement in November 2016, and the parties signed the Settlement Agreement on December 5, 2016.

The Judge has reviewed the Settlement and authorized the sending of this Notice.

If the Judge decides that the Settlement is fair, reasonable, and adequate, she will give final approval to this Settlement. The Judge may decide to hold a hearing about whether to approve the settlement or she may decide to do so based on the written submissions. If the Judge grants final approval of the Settlement, the Court’s judgment will be final and binding, unless it is successfully appealed.

2. Am I part of the Class?

According to the Agency’s records, there are 524 members of the class. If you received the Notice in the mail or by email from the Claims Administrator (A.B. Data, Ltd.), then you have been identified by the Agency as a person who is included in the case as a Class Member.

The case covers all women who worked at FCC Coleman at any point in time between February 6, 2011,¹ and January 17, 2017,² with the exception of the following positions: Warden, Associate Warden, Disciplinary Hearing Officer, Executive Assistant, Camp Assistant, Lieutenant, Captain, UNICOR, and Computer Services.³

Women who held these positions are still included in the case if they also held any other position not listed here at any point in time between February 6, 2011, and December 1, 2016. For example, a woman who was

¹February 6, 2011, is 45 days prior to the date the case was initiated on March 23, 2011.

²January 17, 2017, is the date the Judge granted Preliminary Approval.

³On April 9, 2013, the Judge certified the case as a class action. In 2014, the Judge modified the class definition.

a correctional officer from May 31, 2006, until July 12, 2013, when she was promoted to the position of lieutenant on July 13, 2013, is still part of the case and may recover money for the period of time she was a correctional officer.

II. Monetary Portion of Settlement

3. How much money will the Agency pay to the Settlement Fund?

The Agency will pay \$20 million if 350 or more Class Members submit bona fide Claim Forms by the deadline of May 10, 2017. For each bona fide Claim Form under 350, \$40,000 will be subtracted. For example, if 300 Class Members submit bona fide Claim Forms, the Agency will pay \$18 million (\$20,000,000 – (50 x \$40,000)). The Claims Administrator will determine if Claim Forms are bona fide.

4. What is a Claim Form?

A copy of the Claim Form was included in the documents sent to you with this Notice. We strongly encourage you to complete and submit the form online. You may access the Claim Form by going to www.colemansexualharassment.com and clicking on the “Claim Form” button. You should be as detailed as possible when filling out the answers on the Claim Form because the information you provide on the Claim Form will determine how much money you are eligible to recover from the settlement fund. **All of the information you provide will be kept confidential by the Claims Administrator and will NOT be provided to the Agency.**

The Claim Form **MUST** be returned to the Claims Administrator **by no later than May 10, 2017**, or you will waive any right to recover any money from this case. While you may submit the Claim Form by mail, email, or facsimile, we strongly suggest that you complete the form online, as this is the only way to ensure that your form does not get lost and that your entries are accurate.

5. Who is the Claims Administrator?

The Claims Administrator is A.B. Data, Ltd. The company is a professional claims administration company, with a website at www.abdataclassaction.com. The parties chose to use a claims administration company to fairly evaluate whether each Claimant is entitled to recover money in the case and to decide how to allocate the money among all of the women who submit valid Claim Forms.

6. How will the Claims Administrator determine whether Claim Forms are bona fide?

The Claims Administrator will determine whether a Claim Form is bona fide by determining whether a judge reasonably could make an award to the Claimant based on the information in the Claim Form. In making this determination, the Claims Administrator will consider:

- (a) The extent to which the Claimant had contact with male inmates;
- (b) The amount and type of sexual harassment the Claimant experienced from male inmates; and
- (c) Any damage or losses suffered by the Claimant as a result of the harassment and/or the fear or anticipation of additional harassment.

If the Claims Administrator determines that you have not provided enough information from which it can determine that you have a bona fide claim, you will not receive any money from the settlement fund.

7. What if I don't submit a Claim Form?

You **MUST** submit a Claim Form, or you will not receive any money from the settlement.

8. What if I submit a Claim Form after the deadline?

An otherwise bona fide Claimant who submits a Claim Form after the deadline will receive an award only if the Claims Administrator determines that extenuating circumstances justified your failure to submit the Claim Form by the deadline.

9. How will the amount of my award be determined?

From the money paid by the Agency, Class Counsel will be paid attorneys' fees and costs, including the cost of the Claims Administrator. The remaining money will be distributed to the bona fide Class Members who submitted a timely Claim Form based on a formula or points system. At this point, the Claims Administrator has not determined what the formula will be, however, it will take into account information you provide on the Claim Form concerning:

- (a) the time in which you worked at FCC Coleman and the institution to which you were assigned during the recovery period;
- (b) the amount of contact you had with male inmates;
- (c) the amount and type of inmate sexual harassment you experienced;
- (d) your efforts to bring the harassment to the attention of management;
- (e) the harm you suffered as a result of the harassment and of the anticipation of subsequent harassment, including but not limited to mental pain and suffering, physical pain and suffering, damage to familial and personal life, and out-of-pocket expenses; and
- (f) your level of participation in the case, including but not limited to producing documents, answering interrogatories, being deposed, meeting with Class Counsel, and serving as Class Agent.

It is extremely important that you answer the questions on the Claim Form as completely and as with as much detail as possible because your answers will determine what portion of the settlement money you will receive.

The Judge must approve the formula before any Claimant receives an award.

10. If I submit a Claim Form, how large will my award be?

We will not know the amount of any Claimant's award until after the Claims Administrator applies the formula to the information on the Claims Forms and the judge approves the formula.

11. How large will the average award be?

It is not possible for us to know at this time how much any person will receive.

12. When will I receive an award?

You will receive your award in two payments. The first payment, which will be 90% of your award, will be made approximately 45 days after the Judge enters final approval of the Settlement and either the time for appeal has ended without any appeal, or any appeal has been resolved, but may vary based on several factors. The second payment will be made in 2018. The amount of the second payment will depend on whether the Claims Administrator approves any late-submitted forms or if there are additional reimbursed expenses.

13. Who are Class Counsel?

Class Counsel are Heidi Burakiewicz, Michael Lieder, and Amelia Friedman of the firm of Mehri & Skalet, PLLC in Washington, D.C. Ms. Burakiewicz was retained in 2010 and has led the litigation since then. You can read more about them at www.findjustice.com, and the contact information for Ms. Burakiewicz is:

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14. What will Class Counsel receive as fees from the Settlement?

The Settlement Agreement authorizes Class Counsel to ask the Judge to approve fees for the work that they have performed up to one-third of the settlement amount. To date they have not received any compensation for the work that they have performed on the case or for the out-of-pocket expenses that they have incurred. The Judge will approve a request only if she believes that it is fair and reasonable.

15. Will I have to pay taxes on any money I might receive?

The Claims Administrator will treat your award as compensatory damages and issue you a 1099 MISC form in the amount of your award. It will not withhold any money from your award for the payment of taxes, but it will report your award to the appropriate taxing authorities. You should consult a tax advisor for answers to any questions you may have about the tax implications of any award. Class Counsel are not tax advisors and cannot give you advice on any tax matters.

16. Will the Agency know that I submitted a Claim Form?

No. The identity of Claimants, the content of Claim Forms submitted, and the size of awards will be confidential. The Claims Administrator will not disclose that information to anyone other than Class Counsel.

III. Programmatic Portion of the Settlement

17. What types of changes will be made as a result of the Settlement?

The Settlement Agreement requires the Agency to implement widespread programmatic relief. The changes fall into nine broad areas: (1) creation of a Standing Committee and positions to monitor and deal with inmate sexual misconduct toward staff; (2) tracking and processing incident reports; (3) discipline rules; (4) practices to deal with oral harassment and window banging; (5) threat assessments and staff notifications; (6) reducing opportunities for inmate sexual misconduct toward staff; (7) communications to inmates about Coleman's zero tolerance policy; (8) behavior modification and psychology treatment programs; and (9) special housing units. The Settlement Agreement also provides for training to employees on the new processes for dealing with inmate sexual misconduct toward staff.

18. What Training will I receive about these changes?

The Agency will provide in-person training to all staff at FCC Coleman about the changes outlined in the Settlement Agreement.

19. Will Executive Staff be required to attend this training?

Yes, all staff at FCC Coleman will be required to attend the training including Executive Staff. Additionally, everyone will be reminded in the training of performance and conduct responsibilities and of the possible subsequent consequences of failing to comply with those responsibilities. Supervisors may consider Staff's actions, positive or negative, taken regarding inmate sexual misconduct toward staff under existing PWP standards. Incidents of Staff misconduct in responding or failing to respond to inmate sexual misconduct toward staff may be referred for investigation under current policies for possible disciplinary action.

20. What is the Standing Committee?

The parties have agreed to form a Standing Committee to address inmate sexual misconduct toward staff on a continuing basis. It will be comprised of several positions created as collateral duties under the Settlement Agreement: the Class Representative, the Internal Coordinator, and a Facilitator selected from each institution. The Complex Captain and a Union representative will also serve on the Committee.

The Committee will brief the Wardens as needed, but at least quarterly, and all Committee members will have access to the Complex Warden and/or institution Wardens to address issues regarding inmate sexual misconduct. The Class Representative and Internal Coordinator will have access to the Regional Discipline Hearing Administrator to address issues with any DHOs at Coleman. Beginning with the next administered Social Climate Survey and Institution Character Profile ("ICP"), the Agency will add language regarding inmate sexual misconduct. The Internal Coordinator and Class Representative will be interviewed as part of the ICP and Social Climate Survey and will be given the results related to the issue of inmate sexual misconduct.

21. What are the Class Representative and Internal Coordinator?

In addition to serving as a point of contact for staff to ask questions and report concerns or make suggestions about inmate sexual misconduct, the Class Representative's and Internal Coordinator's duties will be to monitor inmate sexual misconduct and how the Agency handles its response to the inmate sexual misconduct and to provide assistance to staff upon request in drafting and rewriting incident reports.

The Class Representative and Internal Coordinator will be given access to gather data and information and shall have sufficient time and resources to review that information and research issues related to inmate sexual misconduct. The Class Agents will select the person who will serve as the Class Representative. The Agency will announce the position of Internal Coordinator and will select a manager from among the applicants to fill the position.

22. What are Facilitators?

The Settlement Agreement creates the collateral duty position called Facilitator. There will be 17 Facilitators stationed throughout the institutions at FCC Coleman: 5 at each of USP 1 and USP 2; 3 at each of the Medium and the Low; and 1 at the Camp. Among other things, the Facilitators' duties will be to help staff who have questions about inmate sexual misconduct, serve as a point of contact for staff to report concerns or make suggestions about inmate sexual misconduct, and assist with the drafting and rewriting of incident reports concerning inmate sexual misconduct when requested by staff. The Wardens will announce the positions and select the Facilitators of each institution from the applicants, taking into consideration the recommendations from the Class Representative and Internal Coordinator. The Wardens will designate one Facilitator from each institution to serve on the Committee.

23. What changes have been made to the tracking and processing of incident reports?

The Settlement Agreement changes the tracking and processing of incident reports dealing with inmate sexual misconduct toward staff in three ways in an effort to ensure that the incident reports are all processed and otherwise properly handled. First, the Agency will establish an Email Resource Box and require staff members to send an email notification to the Email Resource Box for each incident report concerning inmate sexual misconduct toward staff. Employees can do this in one of two ways, by (1) attaching a copy of their incident report (signed or unsigned) to an email or (2) sending an email with the inmate's name, inmate's register number, and incident codes. The Internal Coordinator, Class Representative, and Complex Captain will have read access rights to the Email Resource Box. It is important that staff comply with the requirement to send copies of the incident reports to the Email Resource Box so that the Class Representative and Internal Coordinator can monitor all incidents of inmate sexual harassment to ensure that they are being processed and handled correctly.

Second, the Agency will update the DHO Docket Sheet to identify the original charge(s) for which the staff member originally wrote the incident report and to list any expunged incident reports. The DHO Docket Sheet will be provided to the Class Representative and Internal Coordinator.

Third, the Regional Disciplinary Hearing Administrator will review each incident report involving inmate sexual misconduct toward staff that has been expunged or downgraded for the purposes of training the DHOs for future cases. The Class Representative and Internal Coordinator may raise any concerns they have about the DHOs' handling of incident reports directly with the Regional Discipline Hearing Administrator.

24. Will the discipline rules relating to inmate sexual misconduct toward staff become more effective?

The Agency will provide training to staff regarding violations of code 205 of the Inmate Discipline Policy, the differences between 200 and 300 level violations, and the use of the "attempt" provisions and the 299/399 provisions. The Agency will explain that a staff member should write an incident report if she believes that

an inmate is masturbating at her **even if she did not see the inmate's exposed genitals**, and should explain in the body of the incident report why she believes that the inmate was masturbating.

The Agency also will initiate the process to move the violation for Engaging in a Sexual Act from the 200 level to the 100 level. Because this requires changing a federal regulation, the Agency does not have authority to make the change on its own and must follow process outlined by the Administrative Procedures Act including submitting the proposed change for public comment.

25. What can I do about oral harassment and window banging?

The Settlement Agreement provides processes to address oral harassment and window banging even if a staff member cannot identify the inmate perpetrator. The Agency will number cell windows so that staff on the compound can more quickly tell staff inside the housing unit to go to the correct cell from which the knocking is coming in an effort to identify the inmate.

The Agency will issue a memorandum to staff outlining that:

- When staff can identify the inmate who commits oral harassment, the staff member must write an incident report for the identified inmates.
- When a staff member encounters oral harassment and cannot definitively identify the inmate perpetrator, the staff member will notify a lieutenant or other management official and will provide the identity of the inmate and/or inmates who were part of a group who may have been engaging in this behavior to the extent he or she is able to do so. The lieutenant or other management official may have inmates brought to the lieutenant's office for questioning if possible, or address behavior through other appropriate measures.
- When the inmate perpetrators cannot be identified, methods to address repeated incidents may include: (1) holding town halls on units to clarify expectations of behavior; (2) the Warden of the Institution, or his or her designee directing the withdrawal of certain privileges (e.g., microwave access, television access, commissary access, the order in which units go to the dining hall for meals, etc.) as appropriate; or (3) other measures as appropriate.

Finally, if these measures are not effective in combating oral harassment, the Committee, the Class Representative, or the Internal Coordinator may suggest to the Warden of USP 1 or USP 2 the possibility of allowing staff to use the internal corridors when arriving and departing for their shifts.

26. Will inmates be prosecuted?

The Bureau of Prisons cannot control the U.S. Attorneys' Office or guarantee that they will prosecute any inmates, however, it will (1) follow evidence recovery protocols whenever possible, to include the collection and preservation of substances that may be semen, and (2) refer to the U.S. Attorneys' Office for prosecution all appropriate matters of inmate sexual misconduct toward staff. The Complex Captain will report to the Committee about the status of referrals for prosecution unless the information is prohibited by law enforcement activities.

27. Has the Agency agreed to measures to reduce opportunities for inmate sexual misconduct toward staff?

The Settlement Agreement contains several changes designed to reduce opportunities for inmate sexual misconduct toward staff. First, the Agency will initiate the process for purchasing inmate uniforms without front or side pockets and will purchase those uniforms unless cost, quality, or other concerns make it unreasonable to do so. Second, the Agency will require inmates to be appropriately clothed in all common areas of the institution, including wearing a shirt during recreation. Third, the Operations Lieutenant will notify staff in the Education and Recreation Departments when it is necessary to remove assigned G Corridor Correctional Officers from the G Corridor area and provide additional appropriate monitoring of these areas. Fourth, the Agency will include inmates who have been found to have committed sexual misconduct toward staff in the Posted Picture File. Finally, the Agency will train staff on how to use TRUSCOPE to assist in monitoring inmate behavior.

28. What if I believe that an inmate who sexually harassed me is a threat to my safety?

First, the Agency agrees that when a staff member is concerned for his or her imminent safety as a result of inmate sexual misconduct, the staff should report it to the Captain or other appropriate management official who will immediately safeguard the staff member. Options for safeguarding the staff member include separating the inmate from the staff member by reassigning the inmate to another housing unit, assigning the inmate to the Special Housing Unit or moving the inmate by an intra-complex transfer.

Second, a staff member who believes that an inmate who has engaged in sexual misconduct against her would pose a threat to her safety should request a threat assessment, and the Agency will conduct one. It is important that staff request a threat assessment be performed as soon as possible after an inmate is sent to SHU including while the inmate is pending investigations or disciplinary segregation.

Third, the Institution Captain will notify the reporting staff member when an inmate who has been placed in SHU for inmate sexual misconduct toward staff is released to general population prior to the inmate's release, unless exigent circumstances prevent prior notice. If prior notice is not possible and the reporting staff member is absent at the time the inmate is released from the SHU, the Captain will make reasonable efforts to notify the Staff member before that member enters the Institution.

29. What roles will behavior modification and treatment programs have?

The Settlement Agreement specifies that an inmate who meets certain combinations of mental health care levels and histories of engaging in sexual misconduct toward staff will be referred to Psychology Services. Psychology Services will incorporate appropriate mental health interventions into individualized treatment plans (e.g., individual therapy, medications, group counseling, etc.). The Agency also will offer general programming regardless of mental health care level (e.g. anger management, cognitive behavioral therapy groups, etc.). Inmates who have engaged in sexual misconduct toward staff will be referred for consideration for civil confinement under the Adam Walsh Act.

30. What changes will occur in the SHUs?

To attempt to reduce inmate sexual misconduct toward staff in the Special Housing Units, the Agency will: (1) take into consideration an inmate's history of sexual misconduct toward staff while placing inmates into specific cells in SHU; (2) make video cameras available to staff for purposes of evidence collection when an inmate has continued to engage in sexual misconduct after being housed in the SHU; and (3) purchase and provide rolling medical screens for staff to use at their discretion in the SHU. It is important that staff

prepare incident reports for **all** inmate sexual misconduct in SHU regardless of the possibility of transfer of the inmate. For example, if staff believes an inmate is masturbating they should write an incident report even if they do not see the inmate's exposed penis. The Agency also agrees that its policies, procedures, and sanctions will be applied consistently to inmates regardless of whether an inmate engages in sexual misconduct towards a member of the Executive Staff or another staff member. The Agency also will instruct inmates in SHU to be clothed at all appropriate times including during recreation, and except when sleeping, showering, using the bathroom, etc.

31. Will the changes be communicated to inmates?

The Agency will communicate to inmates that sexual misconduct toward staff is not tolerated at FCC Coleman in several ways. The Wardens of each institution (unless competing obligations make it unreasonable for the Warden to participate and he or she delegates an Associate Warden to take his or her place) will hold town halls concerning the prohibition of inmate sexual misconduct toward staff in each housing unit. The Agency will also place notifications on the inmate television screens during lockdowns and on the electronic bulletin board of the TRULINKS system reminding inmates about Coleman's zero tolerance policy toward inmate sexual misconduct toward staff.

The Agency will add information about the prohibition of inmate sexual misconduct toward staff to the Admission & Orientation ("A&O") materials. The Warden (or other Executive Staff member if the Warden is unavailable) will address the inmate sexual harassment issue at A&O.

32. When will these changes be made?

The Settlement Agreement specifies the implementation date for the various changes. The Agency will be required to implement some of the changes within 30 days after January 17, 2017. Most of the changes must be completed, or in some cases started, within 60 days after January 17, 2017.

33. How will I understand all of these changes?

You should review the Settlement Agreement. It contains additional details about some of the changes described above and identifies other changes not described in this Q&A. In addition, the Agency will provide training to all staff about the new policies and practices within 90 days after January 17, 2017.

34. Will these changes apply to me even if I don't file a Claim Form?

Yes. Your decision whether or not to file a Claim Form affects only your right to receive a monetary award. If the judge approves the settlement, you will be affected by the changes discussed above whether or not you file a Claim Form.

IV. Future Proceedings

35. Is the settlement already final?

No. The settlement is not final until (a) the Judge finally approves it, and (b) either no Class Member appeals the approval or any appeal is denied.

36. How do I express my objections to or comments on the settlement?

You may submit an objection asking the judge to void the Settlement if you think it benefits only the class agent, or is otherwise not fair, adequate and reasonable to the class as a whole. Any objection must be submitted in writing and should include a description of the basis of the objection. Objections or comments must be postmarked (registered or certified mail, return receipt requested) or emailed no later than March 13, 2017. Objections should be submitted to the attorneys for the parties:

Contact Information for the Attorneys for the Class:

Heidi Burakiewicz
MEHRI & SKALET, PLLC
ATTENTION - COLEMAN SEXUAL HARASSMENT
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Contact Information for the Agency and Agency's Attorney:

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Mina Raskin
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Federal Bureau of Prisons
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You should not contact the judge for any reason.

37. May an objector still submit a Claim Form to share in the settlement?

Yes. Even if you want to object, you should still fill out a Claim Form. If the Judge denies your objection, you will only be able to receive money from the settlement if you submitted a Claim Form by the deadline.

38. What standard will the Judge use in deciding whether to approve the settlement?

The Judge will approve the settlement if she determines that it is fair, adequate, and reasonable.

39. What effect will final approval have on any claims that I may have against the Agency?

If the Judge grants final approval to the settlement and there is no successful appeal, you will relinquish any claims against the Agency and its officers, agents and employees regarding the inmate sexual harassment that may have occurred at any time from April 17, 2001 through January 17, 2011. This release will apply whether or not you submit a Claim Form and receive an award. You will not release any other claims that you may have against the Agency.

40. When will the Judge decide whether to grant final approval?

The Judge will not decide whether to grant final approval until the Claims Administrator can notify her how many bona fide Claim Forms were received and inform her of its proposed allocation formula. The Claims Administrator's declaration on these matters is not due until August 8, 2017.

41. How can I get more information, including about developments in the case?

This Notice contains only a summary of the terms of the Settlement. For further information, please review the Settlement Agreement, which accompanies this Notice. The Settlement Agreement and Notice also are available for review or downloading, along with a copy of the Claim Form, at www.colemansexualharassment.com. You also may get additional information by calling Heidi Burakiewicz, Michael Lieder, Amelia Friedman, or Lee-Ann Foster (the paralegal assigned to this case) at 202-822-5100. Finally, you may reach them by email at colemansexualharassment@findjustice.com.

PLEASE DO NOT CALL OR CONTACT JUDGE BROCKMAN (EXCEPT TO SUBMIT AN OBJECTION ABOUT THE SETTLEMENT) WITH QUESTIONS REGARDING THIS NOTICE.

Joy R. Brockman
Administrative Judge
j.brockman-efilebox@EEOC.GOV