

Case No. \_\_\_\_\_

**UNITED STATES  
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION  
OFFICE OF FEDERAL OPERATIONS**

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MATTHEW FOGG, *et al.*,

Class Agents,  
Appellants,

v.

MERRICK GARLAND,  
Attorney General,  
Department of Justice,

*Defendant-Appellee.*

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APPEAL, EMERGENCY MOTION FOR A STAY OF THE UNDERLYING PROCEEDINGS,  
AND MOTION TO RECUSE THE ADMINISTRATIVE JUDGE DUE TO FRAUD ON THE  
COMMISSION

(EEOC No. 570-2020-01293X; Agency No. M-94-6376)  
(Judge Sharon Debbage Alexander)

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**APPELLANT'S INFORMAL OPENING BRIEF**

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Matthew Fogg  
Appellant, *pro se*  
Named Class Complainant  
Class Agent Spokesperson  
Retired Chief Deputy U.S. Marshal  
[USMarshal.Fogg@Gmail.com](mailto:USMarshal.Fogg@Gmail.com)

DATE: Monday, June 10, 2024

## **I. Introduction**

This document serves as an Appeal and Emergency Stay of the Proceedings below, filed by Matthew Fogg, representing himself and 10,000 other Class Members (CM), for thirty (30) years since 1994, to the EEOC Office of Federal Operations and DC Field Office. This appeal challenges a May 13, 2024, decision by Administrative Judge (AJ) Sharon Debbage Alexander that removed Matthew Fogg as the original named Class Complainant/Agent in a formal complaint brought against the Department of Justice--U.S. Marshal Service (the Agency) and found the EEOC would maintain jurisdiction over the same class action complaint. Fogg's Pro-Se filing incorporated the his 1994 EEOC Class Action complaint filed in the U.S. District Court on March 19, 2024, [Case No. 1:24-cv-00792 with Jury Demand] and subject to amendments upon retention of new class representatives/counsel, which Fogg alleges removed the jurisdiction of the EEOC upon his official notification to the EEOC March 19<sup>th</sup> over the underlying EEOC Class Complaint and warranted an immediate dismissal by the AJ of the same.

Fogg also moves the EEOC and Washington Field Office Director Mindy Weinstein to issue orders recusing AJ Alexander from the case below due to her acts of fraud on the Commission, specifically banning Matthew Fogg as a Class Agent without addressing Fogg's contention that as class spokesperson, he in fact officially terminated the Firm's services from representing the class October 2023, which the Firm unilaterally entering into a settlement agreement with the Agency on behalf of the class and against the directives of the class agents and without the authorized authority to do so, and for threatening class agents, including Fogg with retaliatory removal as a class agent for speaking up in the best interests of the class during initial settlement

discussions, and later removing Fogg as threatened upon AJ's granting of the Firm's motion to do the same. Significant issues and facts raised in this appeal are as follows.

EEOC Erroneous Actions In Support of Class Representatives/Law Firm's Unethical Conduct

1. In a February 2022 Zoom conference call between the CAs and the Firm, David Sanford ("the Firm Chair") outlined a significant Conflict of Interest (COI) in this matter by advising the CAs that he had a personal relationship with President Biden and made a substantial donation to the Biden/Harris campaign, who became the Chief Executive of the defendant Agency, the U.S. Department of Justice. In the same Zoom CA/Firm conference call, the Firm Chair created an instant hostile environment for the named Complainant, Matthew Fogg, with and among all CAs when the Firm's Chair openly stated that if Matthew Fogg disagreed with the Firm's decisions, the Chair would have the EEOC Administrative Judge remove Matthew Fogg as a Class Agent.

2. The Firm's Chair confirmed a COI with its relationship with the defendant DOJ/US Marshals Service and, by reasonable inference, a motivation to suddenly devalue the Firm's previous settlement evaluation and worth of the instant Class Action from \$300 Million to \$60 Million, and subsequently signing onto an agreement with the Agency against the Class Agents best wishes for a paltry \$15 million covering three decades, despite CA's directives not to agree to any settlement amount with first receiving the CAs explicit agreement in the affirmative, obtained through voting or otherwise polling process.

3. The Firm undertook unauthorized settlement negotiations with the United States Marshals Service (USMS) under the supervision of the U.S. Department of Justice (Agency) without

proper authority and refused the Class Agents' (CAs') request to participate in the settlement negotiations as a past practice, resulting in a March 8, 2022 Memorandum of Understanding that Fogg immediately declared null and void. CA's conducted a subsequent Zoom conference voted and agreed on \$25 million without attorney's fees but was not accepted by the Firm.

4. The Firm knowingly presented incomplete and misleading settlement documents to Class Agents (CAs), signed on March 8, 2022, while withholding an addendum agreement signed March 20, 2024, until finally exposing the document on or around May 2024 as an exhibit in the Firm's Sur-Reply briefing for Fogg's removal as a class agent.

5. The Firm began "Programmatic Relief (PR)" negotiations with the Agency in opposition to CAs' demand for specific changes to the initial PR proposed by the Firm before the firm started negotiations with the defendants.

6. The Firm again refused CAs' request to be seated with the parties at the PR negotiation table. It should be noted that the prior Firm partner Mr. Tom Henderson who represented class agents' best interests passed away, causing the founding partner David Sanford to take over the most recent settlement negotiations unilaterally negotiate against CA's direction in the monetary settlement for \$15 million to include attorney's fees in compensatory damages for the entire class (approximately 10,000 members covering 30 years).

**7.** The proposed settlement would leave the Firm with the lion's share of the \$15 million, approximately \$5 million dollars, for negotiated attorney's fees and costs, each class agent with an approximate \$100k payout, and approximately \$500 per person or nothing at all after accounting for taxes for every other class member, based on a class size of approximately 10,000 claimants.

**8.** CA's Spokesperson, Fogg, notified the Firm again via email (and cc'd all CA's) of the class agents' dissatisfaction with the PR negotiation process, including the extraordinary length of time (from March 2022 through October 2023) for processing the PR negotiations, as set forth in Ex. 1.

**9.** No class did not oppose Fogg's speaking on behalf of the class agents as their previously appointed "spokesperson", until March 20, 2024 and after when the Firm, through threats and coercion, and false information, prevented Fogg from participating in a voice vote with the CAs, and by submitting a motion with the AJ, moved for Fogg to be removed as a class agent.

**10.** CA's Spokesperson, Fogg, officially terminated the Firm's services on September 11, 2023, via a letter cc'd to all parties and Class Agents, prior to the Firm's purported settlement agreement with the Agency, a copy of which is set forth in Ex. 2.

**11.** CA Fogg informed AJ Alexander in two subsequent letters [as set forth in Ex. 3 and 4] on September 28th and October 10th of the firm's termination, detailing serious concerns about the Firm's unethical actions.

**12.** Upon AJ's October 11th, 2023, response [set forth in Ex. 5], Fogg presented an official EEOC motion to AJ on November 1, 2023, requesting four actions to be taken (listed below), including leave to seek a new Class Representative/Firm [as set forth in Ex. 6].

**13.** On or about October 2023, the Firm presented its complete Settlement Package (SP) to the AJ and to the media without sharing its final SP with the CAs. A call from the Washington Post, and not any notification from the Firm, made Fogg aware of the purported Preliminary Settlement Proposal.

**14.** CA Fogg's EEOC Motion requested the immediate withdrawal of the Firm Sanford, Heisler, and Sharp, LLP as Class Representatives and leave to obtain new Class Representatives in the instant EEOC class complaint due to amongst a litany of other attorney/CA's relationship concerns culminating with the unauthorized entering of a settlement agreement that was clearly not in the best interests of the entire class and without settlement authority to do so.

**15.** CA Fogg's EEOC Motion moved the AJ to provide Class Agents with a copy of the Firm's purported preliminary settlement package that had been entered into and submitted to the Administrative Judge with neither CAs prior authorization, review, nor agreement. The motion also moved to provide Class Agents with contact information for all Class Members;

16. Here, Fogg's November 1, 2023 Motion operated in fact as an Objection to any proposed settlement agreement submitted by the Firm for reasons related to the fraudulent and unauthorized activities of the Firm as described herein, and as such contended that any such settlement agreement would not be in the best interests of the 10,000 class members;

17. CA Fogg's EEOC Motion and previous letters should have been treated as a critical objection to the settlement agreement as neither fair, adequate or reasonable to the class as a whole, based on the following EEOC regulation and EEO MD-110 Ch. 8, VIII(C); 29 C.F.R. 1614.204

#### **THE AJ COMMITTED FRAUD ON THE COMMISSION**

The AJ, instead of responding to Fogg's alarming claims of Firm misconduct, which, if accepted as true, would have made the proposed agreement invalid and thus unripe to be a subject of a Fairness Hearing, ignored in bad faith Fogg's objections and planned to hold a Fairness Hearing five months later on 03/20/2024, an act constituting fraud on the EEOC.

The actions, omissions, and procedural failures of the AJ were harmful abuses of discretion that undermined the integrity of the legal process. This justified Fogg's unilateral act as the original Class Agent to protect the rights of all 10,000 Class Members and not just Class Agents when he filed the class complaint in Federal court for the District of Columbia on March 19, 2024 (*Fogg et al., v. Garland*, 1:24-cv-00792), at the eleventh hour [a copy of which is set forth in Ex. 7]. Fogg notified Judge Alexander and the Agency on the same day of said filing [Ex 7a]

After the 3-19-24 Federal Court Filing (FCF), The AJ conducted communications with all parties except CA Fogg, calling for a briefing schedule on Fogg's FCF that would determine the Jurisdiction of the Class Complaint and, apparently, the removal of Fogg as a Class Agent. The

AJ asked the Firm (now acting adversarial to Fogg) to notify CA Fogg that he was ordered to participate in the AJ's briefing schedule.

This conduct by the AJ raises significant due process concerns. Due process, as established in *Mathews v. Eldridge*, 424 U.S. 319 (1976), requires that individuals be given a meaningful opportunity to be heard, which includes receiving notice and an opportunity to respond to adverse actions. The AJ asked the Firm (suddenly an adversary to Fogg) to notify CA Fogg that he was ordered to participate in the AJ's briefing schedule. Still, the AJ failed to ensure that Fogg would be serviced with the Agency's official briefing replies, which constituted another breach of Fogg's due process rights, since he could only respond fully to the briefs submitted by the Firm, which were sent to him by the Firm via email.

The AJ's briefing schedule allowed the Firm to erroneously submit briefs attacking Fogg's credibility and authority via its motion to remove Fogg as Class Agent, its reply and subsequent sur-replies. This action by the AJ violated the principle of fairness in adjudicative procedures, as outlined in *Goldberg v. Kelly*, 397 U.S. 254 (1970), which emphasizes the need for procedures that ensure a fair and impartial hearing.

Also, the AJ's procedural posture via said briefing order encouraged and allowed the Firm to prematurely remove Fogg from a Class Agent Conference call (3-20-24) specifically orchestrated to convince other Class Agents (some not officially approved in accordance with the [AJ's 2017 Order Approving Class Agents](#) [as set forth in Ex. 8]), and some who never participated CA's settlement calls), to agree with the Firm's prefabricated Declarations to remove Fogg as a Class Agent.

This exclusion prevented Fogg from defending his 30-year defense of the class action and Federal court filing to the other Class Agents on the conference call. Furthermore, the Firm,



during the 3-20-24 meeting and during subsequent phone calls threatened to remove CAs who did not agree with the plan to oust Fogg as Class Agent and suggested that CAs declare that Fogg was never an appointed Class Agent's "Spokesperson", which constitutes an attempted conspiracy between the Firm's attorneys and the Class Agents to suborn perjury.

The Firm's obfuscation to CAs about the reason for not allowing Fogg to participate in the 3-20-24 CAs' conference call after other CAs requested his presence covered up the real reason, which was to coercion of CA's. The Firm coerced CAs by advising them how much money they would get if they agreed with the Firm's motion to remove Fogg, and threatened them with removal as a CA if they did not give their consent via prefabricated declarations. These actions constituted unethical behavior. The Firm sought and obtained, via a voice vote, vocal affirmations agreeing to the edited declaration under penalty of perjury that members of the Firm filled out electronically on behalf of each Class Agent via several phone calls which called for the removal of Fogg as a Class Agent. These actions, every declaration, constitutes a fraud upon the EEOC because the many statements were not signed in writing or even electronically by the Class Agents themselves but instead by the Firm, who had control over each edited declaration and did not give each CA the opportunity to sign it in ink or add anything to the contrary, even after objection.

The Firm's only obvious concern was getting its \$5 Million off the top with an additional 1/3 of each CA's payout (due to retainers signed), from the \$15 Million erroneous settlement agreement. The Firm hastily and erroneously convinced the other Class Agents they would personally get more money through the Firm's paltry settlement agreement rather than support the 3/19/24 Federal Court proceedings under Fogg's complaint, which may or may not have resulted in a longer wait for relief providing that a much better settlement offer from the Agency

being fair, reasonable, and just for all 10,000 class members. Fogg Federal Court filing indicated that with maximum Compensatory damages for 10,000 claimants at \$300,000 individually would equate to 3 billion dollars.

On 3/20/24 and thereafter, the Firm coerced, intimidated, offered payout information, and convinced Class Agents to abandon their fiduciary duties to the thousands of potential Class Members in *Fogg v Garland* to carry out the Firm's original FEB-2022 threat to remove Fogg as a disagreeing client and by abandoning the genesis of decades-long civil and human rights violations in the proven form of racism in the USMS/DOJ. This same systemic racism also has a disparate impact on the Black public, which the same US Marshals Service swore to serve and protect without bias. The Firm's actions have made good on its initial (FEB/2022) statement to CA's that some Class Members will get little or nothing and will no doubt face retaliation because of this lawsuit and thereby convinced a few Class Agents to abandon the concerns of 10,000 Class Members to get what more money they could from this erroneous \$15 million settlement. Fogg replied to the Firm's motion by calling for the Firm's motion to be struck for lack of jurisdiction and articulating several reasons why EEOC lacked jurisdiction, explained herein, since that the class complaint had been filed in D.C. Federal court. In *United States v. Munsingwear, Inc.*, 340 U.S. 36 (1950), the Supreme Court underscored that once a case has been brought to federal court, the jurisdiction of other adjudicative bodies over the same matter is precluded, highlighting that the AJ should have respected the federal filing.

The Agency, in their briefs, took the position that Fogg's complaint filed in Federal Court removed the jurisdiction of the EEOC over the underlying administrative complaint:

The Agency asserts that the Commission's jurisdiction appears to be terminated because the Agency has not taken final action as contemplated in EEOC Regulations at 29 C.F.R. §1614.407, and 29 C.F.R. §1614.107(a)(3). The latter provision requires an agency to dismiss a complaint "that is the basis of a

pending civil action in a United States District Court in which the complainant is a party provided that at least 180 days have passed since the filing of the administrative complaint...” The Agency notes that the requirement for dismissal of EEO complaints upon a filing in federal court is animated by an interest in avoiding the wasted resources associated with adjudicating the same complaint in two fora, and granting “due deference to the authority of the federal district court.” Agency Response at 4, (*citing Ted L., Class Agent v. Dept. of Veterans Affs.*, EEOC Appeal No. 0120182368 (Apr. 11, 2019)).

The Agency argues that as a Class Agent at the time of the filing of the civil action, Fogg “appears to have acted within his purported rights to file a civil complaint under 29 C.F.R. §1614.407(b)... ..The consequence of Class Agent Fogg’s civil filing appears to be complete removal of this matter from the administrative process pursuant to 29 C.F.R. §1614.107(a)(3), which specifies that an agency ‘shall dismiss and entire complaint’ that is the basis of a pending civil action in a district court.” [] The Agency asserts that “given the interests in judicial economy and irreparable harm that could be caused by the issuance of conflicting opinions, the circumstances justify the Commission’s exercise of judicial restraint to take no further action given the pendency of federal court proceedings.” Internal quotes removed.

The Agency’s position was not respected by the AJ, who subsequently granted the Firm’s motion to remove Fogg as a class agent in an order that did not contain a named class agent in the heading and thus was facially invalid and created a constitutional crisis. This act by the AJ contravenes the principle established in *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83 (1998), which requires that jurisdictional issues must be resolved before proceeding on the merits. The failure to address the jurisdictional question first not only undermined the legitimacy of the AJ’s decision but also violated Fogg’s constitutional rights under the Due Process Clause of the Fifth Amendment.

AJ Alexander’s 5-13-24 Order did not indicate any Appeal rights for named CA Fogg. However, since the rulings on the removal of a class agent come with appeal rights, it was clear legal error and an abuse of discretion to not attach appeal rights to the order. *See* 29 C.F.R. § 1614.204(g)(C)(1)-(3):

If the judge determines that the resolution is not fair, adequate, and reasonable, s/he will vacate the proposed resolution and may replace the class agent with the petitioner or other class member who is eligible to serve as class agent... ..The decision must inform the petitioner of the right to appeal the decision to the Commission. The decision must include a copy of EEOC Form 573, Notice of Appeal/Petition.

Here, the AJ clearly put the cart before the horse, by replacing class agent Fogg prior to determining if the proposed settlement was fair, adequate, and reasonable. Therefore, the AJ committed gross procedural error that amounts to fraud on the Commission, which must be reversed on appeal.

The AJ 5-13-24 Order instituted clear EEOC impartiality by granting the Firm's post-FCF motion to maintain Class jurisdiction and removing the named Complainant Matthew Fogg after 30 years. It ignored the class Agent Spokesperson Matthew Fogg's detailed November 1st, 2023, motion terminating the Firm's services for a litany of unethical conduct which could have prevented the Federal Court Filing.

This Emergency Appeal for a stay of proceedings, filed by Matthew Fogg, represents himself and an estimated 10,000 other class members to the Equal Employment Opportunity Commission (EEOC) Office of Federal Operations is necessary. The appeal addresses explicitly significant legal, procedural, and ethical issues arising from the conduct of the proceedings below.

Matthew Fogg, the named Complainant/Agent and appointed Class Agent spokesperson, raised serious concerns regarding the most recent settlement process of the class action lawsuit beginning in February 2022, mainly focusing on the Firm's unethical actions and the Administrative Judge's most recent (5-13-24) erroneous decision. These concerns were initiated around unauthorized settlement negotiations conducted by the Firm without proper authority from the class Agents, which Fogg contends have expanded and compromised the integrity and

the outcome of the latest settlement process. Furthermore, Fogg argues that the AJ's decision to proceed with a fairness hearing, despite being put on official notice with two letters [EXs. 3 and 4] of several unresolved significant issues presented in an EEOC motion [Ex. 6] and a letter terminating the services of class counsel [Ex. 2], constitutes a failure to ensure a fair and just legal process for all parties involved. Due to the harmful clear procedural, factual, and legal error, the emergency appeal must be granted. An instant stay must be issued pending resolution of Fogg's filing a U.S. District Court Complaint [March 19, 2024, 1:24-cv-00792 Jury Demand] (Ex. 7) of Fogg's original EEOC Class Complaint by EEOC regulations and a final U.S. District Court finding.

## **II. Background**

*Fogg v. Garland* is a race discrimination class action pending before the Equal Employment Opportunity Commission (EEOC), initiated against the United States Marshals Service (USMS) by former deputy U.S. Marshal Matthew Fogg in 1994. Initially, the class comprised current and former African-American Deputy U.S. Marshals, and later, the EEOC allowed for the expansion of the Class to involve Detention Enforcement Officers and all African American candidates who had applied for positions as Deputy U.S. Marshals since 1994 but never hired. The EEOC's most recent [Certification of the Class](#) [as set forth in Ex. 9] also allowed the class to enjoin approximately 14 other Class Agents who represented the expansion of the Class.

## **III. LEGAL STANDARD**

Per 29 C.F.R. § 1614.204(g)(C)(1)-(3): If the judge determines that the resolution is not fair, adequate, and reasonable, s/he will vacate the proposed resolution and may replace the class agent with the petitioner or other class member who is eligible to serve as class agent... ..The

decision must inform the petitioner of the right to appeal the decision to the Commission. The decision must include a copy of EEOC Form 573, Notice of Appeal/Petition. The legal standard for EEOC Office of Federal Operations (OFO) appeals, as set forth in 29 C.F.R. § 1614.405, requires a thorough review of the record and a determination of whether the findings and conclusions of the AJ are supported by substantial evidence and whether the AJ's actions were arbitrary, capricious, or an abuse of discretion. Furthermore, the OFO reviews the AJ's decisions de novo, meaning that the Office re-examines all evidence and issues from the beginning, without deference to the AJ's prior findings. Under EEOC regulations, an appeal is permitted when there are substantial questions of law, conflicting decisions, or where an immediate appeal may materially advance the ultimate termination of the litigation.

#### **IV. ARGUMENTS FOR APPEAL**

The AJ committed harmful procedural and legal error by maintained jurisdiction over the instant complaint despite clear evidence of unauthorized negotiations and actions by the Class Counsel that were contrary to the directives provided by the class representatives, including the fact that they were fired from further representing class agents by class spokesperson Matthew Fogg; threats against Fogg and Class agents that they would and could be removed as class agents if they objected or disagreed with the legal strategy of the class representatives; failure to include class agents in the actual negotiations, and failing to keep the directives of the class agents to not unilaterally agree to a settlement amount without first getting the agreement of the class agents.

Relevant case law supports the appellant's position that actions taken by legal representatives that undermine the integrity of judicial proceedings and the ability of representatives to protect the class's interests adequately can constitute grounds for appeal. *S.J.D. v. Azar*, 925 F.3d 1291,

1312 (D.C. Cir. 2019) ("Conflicts of interest and unethical practices by counsel can significantly affect the outcome of class action lawsuits"). *See also Amchem Products, Inc. v. Windsor*, 521 U.S. 591 (1997). In *Amchem*, the Supreme Court emphasized the importance of fair and adequate representation in class action settlements, whereby the assurance of fairness requires scrutiny of the conduct of the litigation. In *Amchem*, the Court noted that settlements must be thoroughly examined to ensure that all class members' interests are protected and that there is no conflict of interest between different groups within the class. Here, the AJ's jurisdictional error also implicates the principles set forth in *Matsushita Electric Industrial Co. v. Epstein*, 516 U.S. 367 (1996), which requires that class action settlements be scrutinized for fairness, particularly regarding the adequacy of representation and the presence of conflicts of interest.

In early February 2022, a second round of settlement negotiations commenced shortly after the passing of the Firm's lead attorney, Mr. Tom Henderson, and shortly before a featured story in the Washington Post. By March 2022, Matthew Fogg, acting as the appointed spokesperson for the Class Agents, formally rejected a \$15-million settlement agreement signed by the law firm's chairman, David Sanford, Esq. because Fogg previously directed the Firm not to agree on any monetary preliminary settlement amount without prior approval of the class agents. (See EX. 3 and 4, email from Fogg to Class Agent Representatives).

During a settlement conference in February 2022, the Firm's Chair who replaced attorney Henderson, stated openly in a Class Agents and Firm meeting that he could request the presiding Administrative Judge remove Matthew Fogg as a Class Agent if Fogg disagreed with his settlement negotiations, a threat Fogg and other Class Agents took seriously creating a sense of intimidation and hostility within the class. By March 2023, tensions escalated when all Class Agents were excluded (after demanding to be present) from the financial settlement discussions,

resulting in the Firm's unilateral agreement on an inexplicable 15-million-dollar settlement (in opposition to \$60 million in the last settlement discussions) via a memorandum of understanding (MOU) dated March 20, 2022. Fogg immediately notified the Firm that the MOU was Null & Void. Subsequently, the Firm started Programmatic relief discussions, which involved approximately three Class Agents' meetings on the Firm's progress. Fogg again suggested concerns and directed the Firm to include provisions to address reprisal concerns for Class members currently being charged with internal investigations, denied retirement credentials, etc., and significant changes in USMS programs utilized to retaliate against Class members, such as the Internal Affairs Division and the Office of General Counsel. The Firm refused to address these issues, although it knew settlement discussions could allow any programmatic changes to address the disparate impact. On September 11, 2023, Fogg sent a detailed letter to the attorneys, expressing ongoing concerns and citing instances of potential conflicts of interest and violations of attorney-client trust that had accumulated over the 18-month settlement negotiation period. The attorneys responded in the usual dismissive reply on September 15, 2023, refusing to resolve the disputes. (See EX-4, an email from the attorneys to Fogg.) Subsequently, on September 21, 2023, the EEOC Administrative Judge (AJ) issued an order granting preliminary approval of the Firm's apparent preliminary settlement agreement submitted to the EEOC without notification or final approval of the Class Agents. The AJ scheduled a Fairness Hearing for a Preliminary Settlement (PS) on March 20, 2024. The Class Agents received the AJ's Order on September 26, 2023, and only after receiving a phone call from the Washington Post asking for a statement on the PS, which Fogg expressed his surprise and opposed being the Class Agents Spokesperson due to ongoing significant conflicts in the Firm and Class Agents' relationship.



Further complicating matters, Fogg raised concerns about some attorneys from the firm who had previously worked or would return to work for the U.S. Department of Justice (DOJ), the defending Agency. Additional issues included the firm chairman's unsolicited advising about his political donations and the inexplicably low (\$15 million down from \$300 million and \$60 million) monetary settlement negotiated against the Agents' wishes. The Class Agents also criticized the law firm for refusing to provide access to legal motions, the contact information of all class members, and documents related to the final "Programmatic Relief" resolution initiated in March 2022 and provided to the AJ in September 2023. Considering these issues, Fogg terminated the Firm's services in a letter and requested the AJ removal of Sanford Heisler Sharp, LLC, from the case for not acting in good faith. Fogg further asked to renegotiate the settlement terms and seek new counsel.

On March 19, 2024, Fogg filed a complaint in the United States District Court for the District of Columbia, notifying that the AJ and EEOC no longer retained jurisdiction over the matter. This federal filing was predicated on Fogg's concerns regarding the "gravity of the claims and the potential impact on thousands of class members," coupled with a desire for a "more detailed examination and determination of fairness, beyond the scope of what may be achieved through administrative processes alone." These actions reflect profound disillusionment with the administrative forum and the settlement process managed by the Class.

In response to Fogg's Federal Court filing and a Federal Bar Complaint, the AJ canceled the scheduled March 20, 2024, Fairness Hearing meeting and scheduled a meeting with all parties except Fogg and ordered a briefing schedule on the impact of Fogg's filing on the Commission's jurisdiction. Fogg was later notified by the Firm that he would be allowed to respond to the briefing schedule but was not allowed access to the EEOC portal where all parties'

briefings are logged. Fogg responded in part via briefs requesting the AJ strike all of the Firm's briefs due to a litany of unethical behavior in the Firm's quest to obtain Class Agents' support with the Firm's prefabricated affidavits and prematurely removing Fogg from a March 20<sup>th</sup> 2024, Class Agents meeting and disregarding Fogg's previous November 1<sup>st</sup> 2023 Motion and official Termination letter to the Firm. Following all briefings, on May 13<sup>th</sup>, 2024, the AJ issued an order retaining jurisdiction and granted the Firm's motion to remove Fogg as a Class Agent.

The AJ's Order acknowledged Fogg's actions as disruptive and framed them as potentially untruthful and not in the best interests of the class. Despite all the unethical evidence presented, the AJ found no unethical conduct by the Firm. The Order further deemed Fogg's jurisdictional response, with which the Agency itself concurred that supported EEOC regulations, insufficient to divest the EEOC of jurisdiction. Fogg's appeal argues that these decisions were reached through a misinterpretation of the jurisdictional implications of his federal court filing and an underestimation of his ongoing commitment to the entire class's welfare, not just for the monetary relief of a few Class Agents. The appeal challenges the procedural fairness of the AJ's actions and decisions, which it argues overlooked well-documented significant ethical and procedural irregularities, including conflicts of interest and unauthorized actions by the Firm.

This emergency appeal is thus predicated on the fundamental principle that all judicial and quasi-judicial proceedings, especially those affecting the rights of a large group of class members, must be conducted strictly to the principles of fairness, transparency, and legal correctness. Matthew Fogg's actions were taken in a desperate and last-ditch effort to ensure that these principles are not merely upheld but championed within the confines of a legal framework that failed the potential 10,000 class members he has represented for three decades.

The background of this appeal is rooted in the complexities of class action management, where the rights and interests of numerous parties are interlinked. When Class Counsel/Firm acts beyond their authority, and when the judicial authority overseeing the case does not adequately address such actions, the legal process's foundation of trust and justice is undermined. Fogg's appeal alleges that the AJ failed to recognize the gravity of the procedural irregularities and the conflicts of interest presented via an official EEOC Motion on November 1<sup>st</sup>, 2023, thus leading to decisions unfairly affecting the rights of the thousands of class members over thirty years. Moreover, Fogg's challenge to the jurisdiction of the EEOC to continue overseeing this case after a related complaint was filed in federal court raises crucial questions about jurisdictional authority and the proper venue for resolving the disputes at hand. This appeal seeks not only to overturn what is perceived as erroneous decisions by the AJ but also to halt further proceedings to prevent ongoing harm to the class members resulting from these decisions. Therefore, this emergency appeal is filed under a cloud of concern regarding adherence to legal standards and ethical practices when handling class action lawsuits. It calls for an urgent review and reassessment of the proceedings by the EEOC Office of Federal Operations to ensure that justice is served in form and substance, upholding the highest standards of fairness and legal integrity. The emergency motion for a stay of proceedings underscores the immediate nature of these concerns and the potential irreversible impact of proceeding without addressing these critical issues. In conclusion, this appeal and motion are predicated on the fundamental principle that every legal process, especially one as impactful as a class action lawsuit, must be conducted within the bounds of legal authority and ethical conduct to ensure fair and equitable outcomes for all parties involved.

## **V. EMERGENCY MOTION FOR STAY OF PROCEEDINGS**

Given the substantial questions of law raised and the ongoing harm to most of the class members that could result from proceeding under the current circumstances, an emergency stay is requested. This stay would preserve the status quo while the appeal is considered, preventing irreparable harm to the class members and ensuring the integrity of the judicial process. Fogg has always made it clear from his initial filing of this Class Complaint in 1994 and who was the only employee who advanced the Class until hiring the Firm in 2004 or thereafter, that the Claims are racially motivated civil and human rights violations in nature against the U.S. Department of Justice and U.S. Marshals Service responsible for “Justice and Integrity for all American citizens.” The Complaint alleges these Bigots With Badges have been racist for 30-plus years against colleagues and applicants because of their race. In this case, only GOD knows the devastation, convicted innocence, excessive force, and racial profiling our communities have faced in those same decades of racial degradation in enforcement operations of the United States Marshals Service. In a Zoom Settlement meeting, the firm Chair stated that some class members will not get any relief and that there is no doubt that some will face retaliation due to this process. Fogg clarified that, like the motto of the U.S. Marines, this case will leave no claimant behind. We are all for one and one for all, and if one claimant/whistleblower is not compensated and protected henceforth, then there is no settlement.

## **VI. Legal Standard for Fraud on the EEOC**

Fraud on the tribunal involves a party or counsel materially misrepresenting facts or withholding information directly pertinent to issues under adjudication. According to legal precedents, actions that intentionally mislead the court or parties or involve collusion or manipulation of the court may constitute fraud on the tribunal.

## **VII. Evidence of Fraud on the EEOC in Current Case**

In this case, evidence from the Class Agents' motion indicates that Class Counsel engaged in negotiations without proper authorization, misrepresented their authority to the tribunal, proceeded contrary to their clients' explicit instructions, and were officially terminated as Class Counsel, thus potentially constituting fraud on the tribunal. There are compelling indications that the Class Counsel may have engaged in actions constituting fraud on the tribunal, which raises serious concerns about the integrity of the legal proceedings. Fraud on the tribunal is a severe allegation involving dishonest behavior by a party or its counsel that materially misleads the court, directly affecting the case outcome. The evidence supporting these allegations is primarily drawn from Exhibits listed herein, which details several instances where Class Counsel's actions are shown as contrary to the class's best interests, deceitful and misleading.

As described in Exhibit 1, Class Counsel undertook settlement negotiations without proper authorization from the class representatives after their services were terminated in November 2023. This unauthorized action is a critical issue because it bypasses the established legal protocols that ensure all parties are represented fairly, and decisions are made with full consent. Exhibit 1 also reveals instances where Class Counsel misrepresented their authority to the tribunal. This includes making commitments or agreements ostensibly on behalf of the class without the requisite approval or mandate from the class agents. Misrepresenting such authority undermines the legal process and potentially deceives the tribunal into believing that all procedural requirements and consents have been duly met.

Perhaps most troubling are the indications that Class Counsel proceeded in a manner explicitly contrary to the instructions given by their clients, the class representatives. Class Counsel ignored or contravened direct instructions from the class agents regarding the handling of the case, including settlement discussions and strategic decisions, and were subsequently

terminated via written notice by Matthew Fogg, appointed Class Agents Spokesperson. Failure of AJ and Class Counsel to respond to Fogg's EEOC motion and the Firm's termination letter promptly constitutes fraud on the tribunal--a deliberate attempt to manipulate the legal process to serve interests other than those of the class they represent.

The actions of Class Counsel, as detailed, materially affected the tribunal's decisions, which relied on the integrity and accuracy of the representations made by Class Counsel in making its rulings. If the tribunal was led to believe that the negotiations and representations were fully endorsed by all class representatives when, in fact, they were not, this constitutes a misleading of the EEOC. The evidence suggests a pattern of behavior by Class Counsel to be classified as fraud on the tribunal. This behavior includes making unauthorized decisions, misrepresenting authority, and acting contrary to explicit instructions, all of which have significantly impacted the fairness and outcome of the proceedings. Given the seriousness of these allegations and their implications for the class members' legal rights and the integrity of the judicial process, this issue demands scrutiny and appropriate actions by the overseeing authorities to correct any injustices that may have occurred.

### **VIII. Recusal of AJ is Warranted**

Given the significant procedural and ethical violations committed by Administrative Judge (AJ) Sharon Debbage Alexander, it is imperative that she be recused from this case to uphold the integrity of the adjudicative process. The AJ's failure to ensure proper notice and opportunity for CA Fogg to respond to all briefs, as required by due process principles established in *Mathews v. Eldridge*, 424 U.S. 319 (1976), along with her unilateral communications with adverse parties, constitutes a clear bias and lack of impartiality. Additionally, her actions in granting the Firm's motion to remove Fogg as Class Agent without proper jurisdiction, as delineated in *Steel Co. v.*

*Citizens for a Better Environment*, 523 U.S. 83 (1998), further undermine her impartiality and create a conflict of interest. These actions not only violate Fogg's due process rights but also create a constitutional crisis by failing to address the jurisdictional preclusion due to Fogg's federal court filing on 3-19-20. As a result, Fogg respectfully requests the immediate recusal of AJ Alexander and the issuance of an emergency stay of the EEOC administrative proceedings. This stay is necessary to prevent further violations of due process, ensure fair and impartial adjudication, and protect the rights of all 10,000 Class Members involved in this action. Furthermore, the reinstatement of Fogg as the Class Agent is essential to rectify these procedural injustices and restore the integrity of the class action process. The appointment of new counsel and an order sanctioning the Firm for their blatant breach of the public trust and their own attorney-client privilege without the permission of Fogg is necessary to keep the proceedings moving forward in integrity.

### **VIII. Conclusion**

This EEOC has now decided to make Matthew Fogg the "fall guy" and follow the Firm's initial threat to have the AJ remove Fogg for standing up against more than three decades of the same racism that has permeated America for centuries. This action also comes after Fogg had put over 10,000 Black Class members first despite all the internal dangers of Whistleblower racial retaliation in U.S. Marshals Service pre and post-retirement that he faced, including being abandoned on an America's Most Wanted armed & dangerous manhunt and today having his name along with many other colleagues identified on the Law Firm's letterhead to Congress making all the named Class Members official [Congressional Whistleblowers](#). (as set forth in Ex. 10).

The same AJ who once stated in a previous Order denying the Agency's request to remove Fogg as a Class Agent said (paraphrased) that if it had not been for Fogg, the Class members would get nothing -- has now allowed coercion, intimidation, and false information by the class law firm (representatives) to convince other Class Agents to now retaliate against Fogg. This occurred only after Fogg filed the Complaint in Federal Court and with the Federal Bar Association of the District of Columbia. The Firm utilized motivation to remove Fogg in a last-minute prefabbed affidavit process and by promising Class Agents more money in an inextricably low settlement amount of \$15 million, and well beyond the best interest of thousands of other Class Members who stand to get little or nothing in this decades-long racial saga. The Firm receives \$5 plus million out of the \$15 million. What is evident in this appeal is that the Firm Chair made good on his initial promise (February 2022) to have Fogg removed as a Class Agent if he disagreed with the Firm's settlement negotiations by directing the AJ in a recent motion to remove Fogg, which she did. Therefore, Fogg can now use the words spoken at a U.S. Congressional Confirmation Hearing by a sitting Supreme Court Justice who once headed up the same U.S. Equal Employment Commission. Removing Fogg and his legacy of championing the Class Complaint after 30 years and replacing him with the name of another Class Agent only appointed in recent years with no history of meaningful advocacy against discrimination is an EEOC-orchestrated ***"High-tech Lynching."***

Matthew Fogg alone filed the Civil Rights Class Complaint in 1994, when many of his colleagues were afraid, rightfully so, of deadly retaliation from white colleagues and therefore avoided the racist backlash by hiding from the truth and putting their heads in the sand, so to speak, while Fogg continued to endure the long racial hatred and 30- year nightmare on their behalf. Despite the overt racism, Fogg's career was documented as an [America's Top Cop](#) [as set



forth in Ex. 11] with awards from the USMS Director, The U.S. Attorney for DC, the Chiefs of Police, the DEA, and NASA as a “First Responder at Ground Zero in NYC on 9/11 and he did not deserve this EEOC Finding.

The Class Firm Chair and the EEOC AJ are both white Americans and by default, neither have lived nor could understand the humiliation and degradation of the same remnants of racial hatred that have permeated this nation since the holocaust or Slavery that should have ended this human exploitation in 1876. Yet, it still divides this powerful nation in every way indicative of how this case was allowed to fester for decades without some government official realizing the devastating impact of racism on human life. Black Lives Don't Matter has been the motto of this litigation. Both the Firm Chair and AJ, in concert, have now diverted the real meaning of this racial-initiated civil rights class complaint in the context of handling this matter, which will allow another facade of justice settlement process. At the same time, systemic racism in America's Chief law enforcement agency remains at the discretion of the racist individuals who always avert policy and are never held accountable. The dubious longevity of this matter setting a historical record has allowed the U.S. Marshals Service and U.S. Department of Justice to justify discrimination against approximately 10,000 African American employees and applicants while reeking racial disparate impact on the Black public via racial profiling, excessive and deadly force, death in custody and validating a proven racial hostile criminal justice system for more than a century. For the reasons detailed above, Matthew Fogg respectfully requests that the Office of Federal Operations grant this locutory emergency appeal, reverse this AJ's rulings, and issue a stay of all proceedings below pending the outcome of this appeal and rely on the DC Federal Court jurisdiction. This intervention is necessary to correct significant legal and procedural errors that potentially adversely impact the rights of thousands of class members.

Respectfully submitted on this 10th day of June 2024,

/s/ /MATTHEW FOGG/  
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Retired Chief Deputy United States Marshal  
Named Class Complainant/Agent and  
Appointed Class Agent Spokesperson

### **CERTIFICATE OF SERVICE**

I, Matthew Fogg, certify, under penalty of perjury, on June 10, 2024, that the statements in the foregoing are true and correct to the best of my information, knowledge, and belief, and that I am competent to testify thereto; and that a copy of the foregoing was uploaded to the EEOC Office of Federal Operations via the EEOC portal, and a copy of the sent to the following individuals electronically via email.

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All Class Agents & Known Class Members

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06/10//2024  
Date