

Appeal No. _____

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

MATTHEW FOGG, *et al.*,

Class Agents,
Appellants,

v.

MERRICK GARLAND,
Attorney General,
Department of Justice,

Defendant-Appellee.

**APPEAL OF DECISION RETAINING JURISDICTION IN THE UNDERLYING
COMPLAINT AND REMOVAL OF MATTHEW FOGG AS CLASS AGENT AND
SPOKESPERSON AND EMERGENCY MOTION FOR: A STAY OF THE
UNDERLYING PROCEEDINGS, RECUSAL OF THE ADMINISTRATIVE JUDGE AND
CLASS LAW FIRM DUE TO FRAUD ON THE COMMISSION, AND APPOINTMENT
OF NEW CLASS COUNSEL**

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

APPELLANT'S INFORMAL OPENING BRIEF

Matthew Fogg
Appellant, *pro se*
Named Class Complainant
Class Agent Spokesperson
Retired Chief Deputy U.S. Marshal
USMarshal.Fogg@Gmail.com

DATE: Wednesday, June 12, 2024

I. Introduction

This document serves as an Appeal, Motion for an Emergency Stay of the Proceedings Below (*Fogg, et al. v. Garland*, EEOC Complaint No. 570-2020-01293X), and Motion To Recuse The Administrative Judge Due To Fraud On The Commission, filed by Matthew Fogg, representing himself and Class Agent for approximately 10,000 Class Members, 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 in *Fogg*, that REMOVED Matthew Fogg as the original named Class Complainant/Agent in the formal EEO complaint originally filed in 1994 AND brought against the Department of Justice (U.S. Marshals Service) (the Agency) and FOUND the EEOC still had jurisdiction over the class action despite Fogg's filing of a class action complaint substantially similar to the underlying complaint in the U.S. District Court for the District of Columbia on March 19, 2024, (Case No. 1:24-cv-00792 with Jury Demand). A copy of the underlying decision being appealed is set forth in Ex. 1. A copy of the U.S. District Court filing is set forth in Ex. 2.

Fogg contends that the federal court filing removed the jurisdiction of the EEOC over the underlying EEOC Class Complaint, warranting immediate dismissal of EEOC formal class action complaint by the underlying by the AJ. Accordingly, due to harmful legal and procedural error and abuse of discretion, the decision should be reversed and the underlying case terminated. Additionally, Fogg moves for the recusal of AJ Alexander due to fraud on the Commission, specifically regarding her handling of his removal as a Class Agent and the Firm's unauthorized actions during which she committed grave judicial misconduct.

In short, Matthew Fogg has been made the "fall guy" in a concerted effort by both the Firm and the AJ to remove him from his position as a Class Agent after his steadfast opposition to a

settlement that he in good faith and believes is not in the best interests of the class. Said removal represents a modern-day "high-tech lynching," a term that evokes the historical injustice and racial discrimination that African Americans have faced in this country and a term utilized by a sitting Supreme Court Justice, Hon Clarence Thomas, during his Confirmation Hearing before the U.S. Congress.

Fogg has championed the rights of over 10,000 Black Class Members for three decades, enduring substantial personal and professional risks, including racial retaliation. His name and the names of many of the Class Members were placed on the Firm's letter to U.S. Congress, which was unsealed and made those members who are still employed exposed to retaliation by USMS leadership. A copy of the letter is set forth in Ex. 3.

Despite his documented career as an exemplary law enforcement officer, including accolades as "America's Top Cop" and his service as a First Responder at Ground Zero on 9/11, Matthew Fogg has faced continuous adversity in his fight against systemic racism within the U.S. Marshals Service. The actions taken against Fogg by the Firm and the AJ are a stark reminder that the remnants of racial hatred and systemic discrimination still permeate American institutions. By removing Fogg and replacing him with an individual class member who lacks Fogg's steadfast constitution and history of advocacy and commitment to justice, the EEOC and the Firm have diverted the true meaning of this civil rights class complaint. This move undermines the decades-long struggle against racism in the U.S. Marshals Service and allows the continuation of discriminatory practices that have plagued the Agency for years.

The EEOC and the Firm's actions reflect a betrayal of the principles of justice and equality. Fogg's removal is not just a personal attack on his legacy but a broader assault on the fight against systemic racism. It is a retaliation of the highest degree, designed to silence Whistleblowers who

dare to stand up against entrenched racial biases and to discourage others from following in Fogg's footsteps. This appeal is not only about reversing procedural errors but also about standing firm against the ongoing struggle for racial justice within the federal government. Fogg's unwavering commitment to this cause highlights the need for continued vigilance and advocacy to ensure that Black lives truly matter in every aspect of American life, especially within the justice system.

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. The EEOC later expanded the class to include Detention Enforcement Officers and all African American candidates who had applied for positions as Deputy U.S. Marshals since 1994 but were never hired. A copy of the AJ's most recent order Certifying the Class is set forth in Ex. 4.

III. Procedural Posture

1. On or around February 2022, Firm Chair David Sanford, demonstrated clearly through his statements to CAs the existence of a Conflict of Interest (COI) between the Firm and the class and CAs based on a reasonable inference due to Sanford's admitted personal relationship with President Joe Biden, wherein he advised the President to select Kamala Harris as his Vice-Presidential candidate when Biden was running for office, and due to alleged significant campaign contributions to Biden's presidential campaign, constituting undue influence and the appearance of bias in favor of the administration which extended to the Justice Dept., which obviously conflicted with the best interests of the class, who were suing the Justice Dept.

Sanford's bias and conflicted interests led to Sanford intentionally devaluing the class action settlement from \$300 million to \$60 million, and removing remedies for retaliation under the programmatic relief section of the settlement, eventually signing a settlement agreement with the Agency for a paltry amount of \$15 million, and without class agents' consent, based on the following facts.

2. On February 15, 2022, the Class Agents appointed Matthew Fogg as their class spokesperson to communicate their agreed upon directives to the firm on behalf of all Class Agents.

3. On February 16, 2022, in an email to the firm, Dr. Matthew Fogg, speaking as Class Agent Spokesperson on behalf of all Class Agents, explicitly revoked their consent of the settlement authority previously given to the Firm to negotiate a settlement for an amount at or above \$10 million. Dr. Matthew Fogg then authorized the firm to negotiate a settlement with a minimum of \$28 million to adequately represent the class's suffering over the past 28 years. A copy of that email is set forth in Ex. 5.

4. On March 8, 2022, instead of adhering to the CAs' directives as communicated to them by Spokesperson Fogg, the Firm unilaterally and without settlement authority from the CAs entered into a Memorandum of Understanding (MOU) with the Agency for \$15 million dollars in compensation to the class, out of which a 33% attorney's fee will be extracted, with injunctive and equitable relief to be determined by the parties at a future date. A copy of the MOU is set forth in Ex. 6.

5. On or around March 2022, Fogg had a telephonic meeting with the Firm and informed the Firm that the CAs did not agree to the \$15 million dollar settlement, that it was null and void, and to negotiate the MOU with a floor starting at at least \$28 million, without attorney's fees

coming out of the Class settlement amount but to be paid separately as negotiated between the Agency and the Firm, and to get pre-approval of the highest settlement amount possible from the CAs before signing on to a new MOU, which the Firm in reply refused to adhere to.

6. September 11, 2023: Fogg informed the Firm that their services would be terminated based on the Firm's disagreement with the Class Agents' position that the settlement made in the Memorandum of Understanding was not authorized by the Class Agents, after the CAs revoked their consent to give the Firm settlement authority to enter into an agreement with the Agency with a 10 million dollar floor and required a \$28 million dollar floor, and thereby required pre-approval of any negotiated amount and other relief before any such MOUs were to be agreed to by the parties, via an email cc'd to all parties and Class Agents. A copy of the email is set forth in Ex. 7.

7. On September 21, 2023, the AJ issued an order granting preliminary approval of a settlement agreement between the parties based on the MOU, authorizing notice, and scheduling a fairness hearing for March 20, 2020. A copy of the order is set forth in Ex. 8.

8. On November 1, 2023, Fogg presented an official EEOC motion as Class Spokesperson on behalf of the CAS to the AJ requiring the immediate withdrawal of the Firm (Sanford, Heisler, Sharp, LLP) from this EEOC case and provide class agents relief to receive the firm's final settlement package submitted to the administrative judge and provide all Class Agents with the contact information for all class members, a notice terminating the representation of the Firm that was sent to the Firm on the same day, and requesting five separate actions: (1) an Order supporting the Firm's withdrawal from this matter and to obtain new counsel; (2) an Order to obtain all Class Members' names and contact information that defendants made available to the Firm; (3) an Order to obtain the Firm's Final Settlement Package with the cover letter submitted

to the AJ; (4) an Order for the Firm to make all previous legal documents available to the new council and any CA upon request; and (5), an extension of time of the Notice to Class Members of a settlement agreement until the retainment of new counsel by the Class Agents. In a letter to David Sanford, Dr. Matthew Fogg, a named Class Representative and spokesperson, outlined his deep concerns and dissatisfaction with the legal firm's handling of the settlement negotiations in the *Fogg v. Garland* case. Fogg highlighted the firm's unauthorized decision to settle for \$15 million without class agents' approval, contrary to the class's directive for a minimum of \$28 million, and the firm's failure to adequately represent the class's interests. He emphasized the historical and systemic racial discrimination faced by African-American USMS personnel and the need for a significantly higher settlement amount to adequately address the injustices. Fogg demanded a new negotiation approach, including discussions with White House and DOJ officials, appointment of an independent Special Master, and extensive reforms within the USMS. If the firm disagrees with these directives, Fogg indicated that the class would seek new legal representation due to the firm's conflicts of interest. A copy of the motion is set forth in Ex. 9.

9. The AJ failed to grant or deny Fogg's motion by malfeasance, choosing to ignore it and not address the gross misconduct and unauthorized and unethical behavior of the Firm, wherein the AJ allowed the Fraud on the Commission committed by the Firm to stand unopposed despite being put on notice of the same in a timely manner. Instead, the AJ treated Fogg's motion and notification as arguments in opposition to the Preliminary Settlement Agreement which would be addressed at the Fairness hearing, in an email to Fogg. A copy of that email is set forth in Ex. 10.

10. On March 19, 2024, Fogg filed the class action complaint that was the basis of the underlying EEO complaint at issue in the U.S. District Court for the District of Columbia, along

with a complaint with the DC Bar Association concerning the Firm's unethical or otherwise misconduct in reference to its representation of the class agents and class members in the instant EEO complaint, and a notice notifying the AJ and EEOC that they no longer retained jurisdiction over the matter. A copy of the federal court complaint is set forth in Ex. 10. A copy of the notice to the AJ is set forth in Ex. 11.

11. On May 13, 2024, after completing a round of briefing between Fogg, the Firm, and the Agency on whether the EEOC retained jurisdiction over the underlying complaint despite Fogg's filing of said class action complaint in Federal court, the AJ issued an order retaining jurisdiction of the EEOC over the Formal complaint and granted the Firm's motion to remove Fogg as a Class Agent. That order is set forth in Ex. 1.

12. By allowing the Firm's unauthorized MOU to be accepted as a preliminary settlement agreement and the basis of a Fairness hearing despite being aware of the Firm's unethical behavior and knowing that the settlement agreement entered into was unauthorized by the CAs, and then declaring jurisdiction over the complaint despite Fogg's filing in Federal court, and removing Fogg as a Class Agent without giving appeal rights to the EEOC, the AJ committed judicial misconduct and Fraud on the Commission, warranting her recusal from the instant proceedings, and a reversal of the jurisdictional ruling, and reinstatement of Fogg as Class Agent and Spokesperson, the removal of the Firm as Class Counsel, and dismissal of the underlying EEOC complaint and acknowledgement of the Federal Court's jurisdiction over the underlying complaint.

13. For the reasons stated above, jurisdiction of the OFO and EEOC over the underlying fraudulent proceedings is thus established for the purposes of addressing Fraud on the

Commission in order to preserve the Constitutional rights of Fogg and all Class members and to prevent further harassment and retaliation of Matthew Fogg by the AJ and the Firm.

14. **IV. Legal Standard of Review**

Per 29 C.F.R. § 1614.204(g)(C)(1)-(3), if the judge determines that the resolution is not fair, adequate, and reasonable, they will vacate the proposed resolution and may replace the class agent with the petitioner or another class member eligible to serve as a class agent. The decision must inform the petitioner of the right to appeal to the Commission and include a copy of EEOC Form 573, Notice of Appeal/Petition. The legal standard for EEOC Office of Federal Operations (OFO) appeals 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. The OFO reviews the AJ's decisions de novo, re-examining all evidence and issues without deference to the AJ's prior findings. An order removing a class agent is immediately appealable if filed within 30 days of the order.

V. Arguments for Appeal

The AJ committed procedural and legal errors by maintaining jurisdiction over the complaint despite unauthorized actions by Class Counsel that were contrary to class representatives' directives. The Firm undertook unauthorized settlement negotiations and threatened class agents, including Fogg, with removal if they disagreed with the settlement strategy. The Firm's actions included:

- **Unauthorized Settlement Negotiations:** The Firm negotiated a \$15 million settlement without class agents' approval, contrary to their previous directive to not agree to any settlement without class agents' explicit consent.

- Conflict of Interest: The Firm Chair's personal relationship with President Biden and substantial donations to the Biden/Harris campaign presented a conflict of interest that potentially influenced the Firm's sudden devaluation of the class action settlement from \$300 million to \$15 million.
- Hostile Environment: The Firm Chair threatened to have Fogg removed in a settlement conference meeting with all Class Agent's and attorneys if Fogg disagreed with the Firm's settlement decisions, creating a hostile environment among class agents.
- Misleading Settlement Documents: The Firm presented incomplete and misleading settlement documents to Class Agents (March 8, 2022), signing an addendum agreement on March 20, 2023 without their knowledge.
- Exclusion from Negotiations: The Firm excluded class agents from settlement negotiations, resulting in a March 8, 2022 Memorandum of Understanding that Fogg declared null and void.
- Programmatic Relief Negotiations: The Firm began "Programmatic Relief" (PR) negotiations by refusing class agent's participation in all-party settlement negotiations.
- The Firm refused to incorporate changes in USMS programs directed by Class Agent Fogg to address systemic reprisals by defendants against Whistleblower claimants.
- The AJ's failure to address these issues and her actions, including unilateral communications with adverse parties and improper jurisdictional rulings, demonstrate bias and procedural unfairness, warranting her recusal.

VI. Emergency Motion for Stay of Proceedings

Given the substantial legal questions raised and the ongoing harm to class members, an emergency stay is requested to preserve the status quo while the appeal is considered. This stay will prevent irreparable harm to class members and ensure the integrity of the judicial process.

VII. Legal Standard for Fraud on the EEOC

Fraud on the EEOC involves a party or counsel materially misrepresenting facts or withholding information directly pertinent to issues under adjudication. Actions that intentionally mislead the EEOC or parties or involve collusion or manipulation may constitute fraud on the EEOC tribunal.

VIII. Evidence of Fraud on the EEOC in Current Case

Evidence from the Class Agents' motion indicates that Class Counsel engaged in negotiations without proper authorization, misrepresented their authority to the EEOC, proceeded contrary to their clients' explicit instructions, and were officially terminated as Class Counsel, thus potentially constituting fraud on the EEOC. Specific instances of such conduct include:

- **Unauthorized Negotiations:** The Firm undertook settlement negotiations without proper authorization from class representatives and their services were terminated in November 2023.
- **Misrepresentation of Authority:** The Firm made commitments or agreements on behalf of the class without requisite approval from the class agents.
- **Contrary Actions:** The Firm ignored direct instructions from class agents regarding case handling, including settlement discussions and strategic decisions.
- These actions materially affected decisions and constitute fraud upon the EEOC

IX. Recusal of AJ is Warranted and Reinstatement of Fogg as Class Agent is Warranted

Given the significant procedural and ethical violations committed by Administrative Judge (AJ) Sharon Debbage Alexander, her recusal from this case is imperative to uphold the integrity of the adjudicative process. Her 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), and her unilateral communications with adverse parties, constitute 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 March 19, 2024. 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.

Removing Matthew Fogg as a Class Agent constituted fraud on the Commission because it ignored established legal principles and procedural safeguards, undermining the fair representation of the class. Specifically, the Commission failed to recognize Fogg's legal right to

seek a higher settlement amount and to terminate the firm's authority for unauthorized actions, violating the requirements for class representation as outlined in cases like *Heredia v. Smithsonian Institution* (EEOC Appeal No. 01A22353) and *Joana C. v. Dep't of the Army* (EEOC Appeal No. 0120103378), where the substitution of a class agent was permitted to ensure proper representation and adherence to the class's directives.

X. Conclusion

The latest report from the United Nations states; **GENEVA 28 September 2023** – “Systemic racism against people of African descent pervades America’s police forces and criminal justice system, and US authorities must urgently step up efforts to reform them, the UN International Independent Expert Mechanism to Advance Racial Justice and Equality in the Context of Law Enforcement said in a [new report](#) today.”

We are reminded that racism documented in this Class action that has been allowed to fester for over 30 years in Federal law enforcement is nothing short of an American travesty of justice that has clearly affected the goods and services that the U.S. Marshals Service and Department of Justice provides to the Black public. The EEOC AJ, firm along with (7) seven U.S. Presidents and (12) twelve U.S. Attorney Generals have minimized this widespread racial disparate impact on not only 10,000 USMS claimants but millions more black Americans by allowing these same bigots with badges with an untethered threat to National Security. The UN report makes the case why this Class in Federal law enforcement needs a champion like Matthew Fogg who never wavered in his original motto when he filed the Complaint in 1994. Fogg’s motto is and always will be “All for one and one for all”, wherein he believes that one day the [racism permeating Americas’ lead law enforcement department](#) would be exposed and rooted out in this process. For the reasons detailed above, Matthew Fogg respectfully requests that the Office of Federal

Operations grant this interlocutory emergency appeal, reverse the AJ's rulings, issue a stay of all proceedings below, and recognize the jurisdiction of the DC Federal Court. This intervention is necessary to correct significant legal and procedural errors adversely impacting the rights of thousands of class members.

Respectfully submitted on this 12th day of June, 2024,

/s/ /MATTHEW FOGG/
Dr. Matthew F. Fogg, *pro se*
USMarshal.Fogg@Gmail.com
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 12, 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.

Sharon E. Debbage Alexander (she/her)
Supervisory Administrative Judge
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All Class Agents & Known Class Members

/s/ /MATTHEW FOGG/
Dr. Matthew F. Fogg, *pro se*
USMarshal.Fogg@Gmail.com
Named Class Complainant and
Class Agent Spokesperson

06/12//2024
Date

EXHIBIT 1

certification. *Complainant v. U.S. Dep't of Justice*, EEOC Appeal No. 0120073003 (July 11, 2012). The Agency filed a Request to Reconsider, which the Commission denied. *Complainant v. Dep't of Justice*, EEOC Request No. 0520120575 (Nov. 17, 2015). In the decision denying the Request to Reconsider, the Commission, *sua sponte*, modified its decision on appeal, defining the Class as including “African Americans who served in law enforcement or operational positions and were subjected to discrimination in recruitment, assignments, training and promotional opportunities.” *Id.* The Commission directed Class Counsel to file an amended class complaint, and remanded the complaint for adjudication, directing the AJ to further define the Class in accordance with its decision. *Id.*

On January 27, 2016, the Washington Field Office assigned the case to the undersigned AJ. Briefing on Class Agent’s Motion to Amend proceeded through the Summer of 2016. On February 24, 2017, I granted the Motion to Amend, appointing additional Class Agents and further defining the scope of the Class. Several years of extensive, contentious discovery and motions practice followed. The Parties and I participated in regular Status Conferences to resolve disputes and address obstacles to the development of the evidence caused by the age of the case, the lengthy liability period, and the breadth of the claims. The Parties report that they have exchanged over 1.2 million documents and conducted forty-two depositions thus far.

On September 9, 2020, Class Agents again moved to amend the Class definition. On August 13, 2021, the then-assigned AJ¹ granted Class Agents’ Motion to Amend the Class Charge, further revising the Class definition to include:

All current and former African American Deputy U.S. Marshals who were subjected to USMS policies and practices regarding promotions under the Merit Promotion Process, Management Directed Reassignments, and Headquarters Division assignments, and all African American current and former Deputy U.S. Marshals, Detention Enforcement Officers, and applicants never employed who were subjected to USMS policies and practices for hiring and recruitment of Deputy U.S. Marshal positions from January 23, 1994 to present.

In early 2022, the Parties reported that they were engaged in settlement negotiations. I stayed litigation deadlines for settlement, and from March 2022 through August 2023, the Parties provided periodic status updates on the progress of their settlement talks. The Parties report that they participated in about thirty settlement conferences during this period.

On August 31, 2023, Class Agents, through Counsel, filed their Unopposed Motion for Preliminary Approval of Proposed Class Settlement (Motion) with Exhibits 1-4, along with copies of the Settlement Agreement and Release (Settlement Agreement) with Exhibits A-G. Class Agents, with the Agency’s consent, request: (1) preliminary approval of the proposed Settlement Agreement and all attachments thereto; (2) approval of the Notice of Resolution; (3) approval of the proposed manner of distribution of the Notice of Resolution; and (4) a date for a Fairness Hearing. On September 8, 2023, the Parties and I met for a Status Conference to discuss the Motion and the Settlement Agreement. On September 14, 2023, Class Agents

¹ Administrative Judge Kurt Hodges was assigned to the case from October 2020 to February 2022 while the undersigned served on a detail assignment.

submitted revised documentation addressing the issues discussed during the Status Conference. For the reasons described herein, I conclude that the Motion should be granted.

Legal Standard

EEOC Regulations at 29 C.F.R. § 1614.204(g)(4)(2023) provide that a settlement of a class complaint shall be approved if it is fair, adequate and reasonable to the class as a whole, and does not solely benefit the class agent. *See Complainant v. U.S. Postal Serv.*, EEOC Appeal No. 0120142423 (Nov. 13, 2014); *Grier v. U.S. Postal Serv.*, EEOC Appeal No. 0120081838 (July 1, 2008); *see also* EEOC Management Directive 110 (August 5, 2015) at 8-9, 8-10. Notice of the resolution must be given to the class members, with no less than a thirty-day period to object. 29 C.F.R. §1614.204(g)(4). Commission regulations do not address preliminary approval of the settlement prior to notice of resolution. Federal courts, however, have noted that preliminary approval of class settlements requires a lower standard than final approval. Requests for preliminary approval are evaluated to determine whether the agreement “discloses grounds to doubt its fairness or other obvious deficiencies such as unduly preferential treatment of class representatives or segments of the class, or excessive compensation of attorneys, and whether it appears to fall within the range of possible approval.” *Thomas v. NCO Financial Systems, Inc.* No. CIV. A. 00-5118 (July 31, 2002)(citing *In re Prudential Securities Incorporated Limited Partnerships Litigation*, 163 F.R.D. 200, 209 (S.D.N.Y. 1995)).

Analysis

Having carefully reviewed the Motion and the Settlement Agreement, I see no grounds upon which to doubt its fairness, nor do I see any obvious deficiencies. The Settlement Agreement is the product of over eighteen months of arms-length negotiation by capable counsel on both sides, with the benefit of substantial discovery to help them assess the strengths and weaknesses of their respective positions in litigation. Almost three decades have passed since the complaint was filed. Absent settlement, the Parties face years of continued litigation in the administrative hearings adjudication and appellate fora. All the while, Class Members would continue to wait.

The relief afforded appears to be within the range of what an administrative judge could award at the conclusion of this litigation. Throughout the litigation, the Parties employed experts to analyze their respective positions, the value of the case, and Class Members’ potential entitlement to relief. The \$15 million Settlement Fund constitutes about twenty-five (25) percent of the \$61 million Class Representatives’ experts estimate could be obtained upon successful conclusion of the litigation. It accounts for the uncertainty the Class faces in continuing to litigate the case, the possibility that they may not ultimately prevail, and the risks associated with proving claims for damages. The Settlement Agreement includes criteria for determining individual recovery for Class Members, and assigns the task of determining relief to an experienced third-party Claims Allocator. The Settlement Agreement also provides substantial remedial relief, including opportunities for priority consideration for merit promotions and voluntary reassignments, and important programmatic and policy changes. Finally, the Settlement Agreement provides for recovery of attorneys’ fees up to thirty-three (33) percent of the settlement value, a proportion that is within the typical range for a class action.

Conclusion and Order

Because I find no reason to doubt the fairness of the Settlement Agreement nor any obvious deficiencies, I hereby **ORDER** as follows:

1. The Settlement Agreement resolving the Class Complaint is hereby **PRELIMINARILY APPROVED**. Final approval of the Settlement Agreement is subject to consideration of any objections by Class Members.
2. Pending final determination that the Settlement Agreement is fair, adequate, and reasonable to the Class as a whole, the Commission's Stay of this matter for settlement is **EXTENDED** through the Fairness Hearing and until further notice.
3. The proposed Notice of Resolution is in compliance with the Notice of Resolution requirements set forth at 29 C.F.R. § 1614.204(g)(4). Class Members will be provided access to a copy of the Settlement Agreement which sets out the relief and informs Class Members that the resolution will bind all members of the Class. The Notice of Resolution informs Class Members of their right to submit objections to the Settlement Agreement, along with the name and address of the Administrative Judge assigned to the matter. Therefore, the Notice of Resolution is **APPROVED**.
4. The proposed plan for distributing the Notice is reasonable. Due to the unique procedural history of this matter and the fact that a majority of the Class remains unknown, the Commission finds that the Parties' plan of using a combination of U.S. Mail, electronic mail, and expansive online advertising is reasonably calculated to inform Class Members of the Settlement Agreement and their rights. Therefore, the plan for distribution of the Notice of Resolution is **APPROVED**.
5. Agency Counsel will designate a vendor who will provide notice in the manner described above and subject to the provisions set forth in the Settlement Agreement.
6. Counsel for Class Agents have designated Michael Lewis as Claims Allocator and Settlement Services, Inc. ("SSI") as the Claims Administrator. The Claims Administrator will assist in creating a website for Class Members, answer questions from Class Members, and receive Claim Forms from Class Members. Mr. Lewis will serve as an independent third party to determine allocation of the Settlement pending final approval of the Settlement Agreement.
7. The deadlines set forth in the Chronology, which is Exhibit C to the Settlement Agreement, are **APPROVED**, subject to the provisions set forth in the Settlement Agreement. The Agency will notify the Commission if infeasibility impacts the date of the Fairness Hearing and/or the requirements for notice, or if a stay of the proceedings is necessary.

8. In accordance with 29 C.F.R. § 1614.204(g), the Parties are hereby ORDERED to participate in a Fairness Hearing for **March 20, 2024, at 9:00 a.m. Eastern Time, at the U.S. Equal Employment Opportunity Commission, 131 M Street, NE, Washington, D.C.**² The Agency will provide a court reporter³ for the Fairness Hearing. At the Fairness Hearing, I will consider any objections to the Settlement Agreement; hear the Parties' arguments regarding the fairness, adequateness, and reasonableness of the Settlement Agreement; hear the Parties' arguments on the motion for service awards for Class Agents and certain Class Members; and consider the attorneys' fee petition and statement of costs for the Class Allocator and Class Administrator.
9. Any Class Member may petition the Commission to vacate the Settlement Agreement because it benefits only the Class Agents, or is otherwise not fair, adequate, and reasonable to the Class as a whole. Any objection must be submitted no later than the date set forth in the Notice of Resolution.
10. Objections must be submitted in writing to Supervisory Administrative Judge Sharon E. Debbage Alexander by U.S. Postal Mail to EEOC Washington Field Office, 131 M Street, N.E., Washington, DC 20507, or by electronic mail to FoggClassAction@eoc.gov. A copy of any objection must also be sent to Agency Counsel and Class Counsel at the addresses included in the Settlement Agreement and the Notice of Resolution.
11. Any Class Member objection must include the following information: (1) the objector's name, address, e-mail address (if available), and telephone number (if available); (2) reason(s) for the objection; (3) whether the objector wants to speak at the Fairness Hearing; (4) if the objector wants to speak at the Fairness Hearing, whether the objector wishes to appear at the Fairness Hearing in person or virtually.
12. The Claims Form will be due no earlier than sixty (60) days after the Date of the Notice of Resolution.
13. Class Counsel shall file a petition for attorneys' fees, statement of costs for SSI, statement of costs for Mr. Lewis, and application for service awards, along with all supporting memoranda, affidavits, declarations and other evidence, no later than seven (7) days prior to the Fairness Hearing.


² EEOC federal sector hearings are closed to the public. Class Members are permitted, but not required, to attend the hearing. Any Class Member wishing to attend the hearing in person or virtually must advise Class Counsel no later than two weeks prior to the Fairness Hearing. In-person attendees will be required to present government-issued identification and go through building security. Virtual participants must participate from a private place, without non-Class Members present. Class Members will advise Class Counsel of any accommodations they require to attend the Fairness Hearing. Class Counsel will include a list of in-person and virtual attendees, including any requests for accommodation, with their prehearing submissions no later than seven (7) days prior to the hearing.

³ The Court Reporter will make an official transcript of the hearing. No other recording of the hearing is permitted.

14. The Parties are hereby **ORDERED** to participate in a **Prehearing Status Conference** on **March 7, 2024 at 2:00 p.m. Eastern Time.**⁴ At the Prehearing Status Conference, the Parties will be prepared to discuss the format and order of presentation for the hearing. At the conclusion of the Prehearing Status Conference, and after consideration of the prehearing submissions due seven (7) days prior to the hearing, I will issue a notice with detailed instructions and an agenda for the Fairness Hearing.
15. I reserve the right to stay the proceedings in this case or continue the deadlines and dates referenced in this Order, including the date of the Fairness Hearing.

It is so ORDERED.

For the Commission:


Sharon E. Debbage Alexander
Supervisory Administrative Judge

By Electronic Mail (via FedSEP/EEOC Public Portal):

Class Representatives:

Saba Bireda: sbireda@sanfordheisler.com

Christine Dunn: cdunn@sanfordheisler.com

James Hannaway: jhannaway@sanfordheisler.com

Kate Mueting: kmueting@sanfordheisler.com

Agency Representatives:

Susan Amundson: Susan.Amundson2@usdoj.gov

Elizabeth Bradley: EBradley@fortneyscott.com

John Clifford: JClifford@fortneyscott.com

Susan Gibson: Susan.Gibson@usdoj.gov

Sean Lee: Sean.Lee@usdoj.gov

Morton Posner: Morton.J.Posner@usdoj.gov

Leah B. Taylor: Leah.B.Taylor@usdoj.gov

⁴ I will provide a conference line to Class Counsel and Agency Counsel under separate cover.

EXHIBIT 2

CIVIL COVER SHEET

JS-44 (Rev. 11/2020 DC)

I. (a) PLAINTIFFS MATTHEW FOGG PRO SE	DEFENDANTS MERRICK GARLAND
(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF (EXCEPT IN U.S. PLAINTIFF CASES)	COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT (IN U.S. PLAINTIFF CASES ONLY) <small>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED</small>
(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER) 2833 Alabama Ave SE No. 0956 Washington, DC 20020 (240) 375-3580	ATTORNEYS (IF KNOWN) Case: 1:24-cv-00792 Assigned To : Cooper, Christopher R. Assign. Date : 3/19/2024 Description: Employ. Discrim. (H-DECK)

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)	III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) FOR DIVERSITY CASES ONLY!																																							
<table style="width:100%;"> <tr> <td><input type="radio"/> 1 U.S. Government Plaintiff</td> <td><input checked="" type="radio"/> 3 Federal Question (U.S. Government Not a Party)</td> </tr> <tr> <td><input type="radio"/> 2 U.S. Government Defendant</td> <td><input type="radio"/> 4 Diversity (Indicate Citizenship of Parties in item III)</td> </tr> </table>	<input type="radio"/> 1 U.S. Government Plaintiff	<input checked="" type="radio"/> 3 Federal Question (U.S. Government Not a Party)	<input type="radio"/> 2 U.S. Government Defendant	<input type="radio"/> 4 Diversity (Indicate Citizenship of Parties in item III)	<table style="width:100%;"> <tr> <td style="text-align: center;">PTF</td> <td style="text-align: center;">DFT</td> <td></td> <td style="text-align: center;">PTF</td> <td style="text-align: center;">DFT</td> </tr> <tr> <td style="text-align: center;"><input type="radio"/> 1</td> <td style="text-align: center;"><input type="radio"/> 1</td> <td>Citizen of this State</td> <td style="text-align: center;"><input type="radio"/> 4</td> <td style="text-align: center;"><input type="radio"/> 4</td> </tr> <tr> <td style="text-align: center;"><input type="radio"/> 2</td> <td style="text-align: center;"><input type="radio"/> 2</td> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="radio"/> 5</td> <td style="text-align: center;"><input type="radio"/> 5</td> </tr> <tr> <td style="text-align: center;"><input type="radio"/> 3</td> <td style="text-align: center;"><input type="radio"/> 3</td> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="radio"/> 6</td> <td style="text-align: center;"><input type="radio"/> 6</td> </tr> <tr> <td></td> <td></td> <td>Incorporated or Principal Place of Business in This State</td> <td></td> <td></td> </tr> <tr> <td></td> <td></td> <td>Incorporated and Principal Place of Business in Another State</td> <td></td> <td></td> </tr> <tr> <td></td> <td></td> <td>Foreign Nation</td> <td></td> <td></td> </tr> </table>	PTF	DFT		PTF	DFT	<input type="radio"/> 1	<input type="radio"/> 1	Citizen of this State	<input type="radio"/> 4	<input type="radio"/> 4	<input type="radio"/> 2	<input type="radio"/> 2	Citizen of Another State	<input type="radio"/> 5	<input type="radio"/> 5	<input type="radio"/> 3	<input type="radio"/> 3	Citizen or Subject of a Foreign Country	<input type="radio"/> 6	<input type="radio"/> 6			Incorporated or Principal Place of Business in This State					Incorporated and Principal Place of Business in Another State					Foreign Nation		
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		Incorporated and Principal Place of Business in Another State																																						
		Foreign Nation																																						

IV. CASE ASSIGNMENT AND NATURE OF SUIT

(Place an X in one category, A-N, that best represents your Cause of Action and one in a corresponding Nature of Suit)

<input type="radio"/> A. Antitrust <input type="checkbox"/> 410 Antitrust	<input type="radio"/> B. Personal Injury/Malpractice <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Medical Malpractice <input type="checkbox"/> 365 Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Product Liability	<input type="radio"/> C. Administrative Agency Review <input type="checkbox"/> 151 Medicare Act <u>Social Security</u> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <u>Other Statutes</u> <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 890 Other Statutory Actions (If Administrative Agency is Involved)	<input type="radio"/> D. Temporary Restraining Order/Preliminary Injunction Any nature of suit from any category may be selected for this category of case assignment. *(If Antitrust, then A governs)*
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<input type="radio"/> E. General Civil (Other)	OR	<input type="radio"/> F. Pro Se General Civil
<u>Real Property</u> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent, Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property <u>Personal Property</u> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<u>Bankruptcy</u> <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <u>Prisoner Petitions</u> <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Conditions <input type="checkbox"/> 560 Civil Detainee – Conditions of Confinement <u>Property Rights</u> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent – Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 (DTSA)	<u>Federal Tax Suits</u> <input type="checkbox"/> 870 Taxes (US plaintiff or defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609 <u>Forfeiture/Penalty</u> <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <u>Other Statutes</u> <input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 430 Banks & Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 462 Naturalization Application
<input type="checkbox"/> 465 Other Immigration Actions <input type="checkbox"/> 470 Racketeer Influenced & Corrupt Organization <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 485 Telephone Consumer Protection Act (TCPA) <input type="checkbox"/> 490 Cable/Satellite TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions (if not administrative agency review or Privacy Act)		

<input type="radio"/> G. Habeas Corpus/ 2255 <input type="checkbox"/> 530 Habeas Corpus – General <input type="checkbox"/> 510 Motion/Vacate Sentence <input type="checkbox"/> 463 Habeas Corpus – Alien Detainee	<input checked="" type="radio"/> H. Employment Discrimination <input checked="" type="checkbox"/> 442 Civil Rights – Employment (criteria: race, gender/sex, national origin, discrimination, disability, age, religion, retaliation) *(If pro se, select this deck)*	<input type="radio"/> I. FOIA/Privacy Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 890 Other Statutory Actions (if Privacy Act) *(If pro se, select this deck)*	<input type="radio"/> J. Student Loan <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (excluding veterans)
<input type="radio"/> K. Labor/ERISA (non-employment) <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Labor Railway Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="radio"/> L. Other Civil Rights (non-employment) <input type="checkbox"/> 441 Voting (if not Voting Rights Act) <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 445 Americans w/Disabilities – Employment <input type="checkbox"/> 446 Americans w/Disabilities – Other <input type="checkbox"/> 448 Education	<input type="radio"/> M. Contract <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholder's Suits <input type="checkbox"/> 190 Other Contracts <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<input type="radio"/> N. Three-Judge Court <input type="checkbox"/> 441 Civil Rights – Voting (if Voting Rights Act)

V. ORIGIN
 1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from another district (specify)
 6 Multi-district Litigation
 7 Appeal to District Judge from Mag. Judge
 8 Multi-district Litigation -- Direct File

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)
 42 USC 2000e

VII. REQUESTED IN COMPLAINT	<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23	DEMAND \$ 300,000	JURY DEMAND: YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>
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VIII. RELATED CASE(S) IF ANY	(See instruction)	YES <input type="checkbox"/> NO <input type="checkbox"/>	If yes, please complete related case form
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DATE: 03/19/2024	SIGNATURE OF ATTORNEY OF RECORD: NCD
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INSTRUCTIONS FOR COMPLETING CIVIL COVER SHEET JS-44
 Authority for Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and services of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. Listed below are tips for completing the civil coversheet. These tips coincide with the Roman Numerals on the cover sheet.

- I. COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF/DEFENDANT (b) County of residence: Use 11001 to indicate plaintiff if resident of Washington, DC, 88888 if plaintiff is resident of United States but not Washington, DC, and 99999 if plaintiff is outside the United States.
- III. CITIZENSHIP OF PRINCIPAL PARTIES: This section is completed only if diversity of citizenship was selected as the Basis of Jurisdiction under Section II.
- IV. CASE ASSIGNMENT AND NATURE OF SUIT: The assignment of a judge to your case will depend on the category you select that best represents the primary cause of action found in your complaint. You may select only one category. You must also select one corresponding nature of suit found under the category of the case.
- VI. CAUSE OF ACTION: Cite the U.S. Civil Statute under which you are filing and write a brief statement of the primary cause.
- VIII. RELATED CASE(S), IF ANY: If you indicated that there is a related case, you must complete a related case form, which may be obtained from the Clerk's Office.

Because of the need for accurate and complete information, you should ensure the accuracy of the information provided prior to signing the form.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MATTHEW FOGG,
individually and on behalf of a class of
all other persons similarly situated,
2833 Alabama Ave SE – No. 0956
Washington, DC 20020
240-375-3580

Plaintiffs,

v.

MERRICK GARLAND,
U.S. Attorney General,
Department of Justice,

Agency.

SERVE ON:

Hon. Merrick Garland
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001
202-353-1555

Defendant.

Case: 1:24-cv-00792 JURY DEMAND
Assigned To : Cooper, Christopher R.
Assign. Date : 3/19/2024
Description: Employ. Discrim. (H-DECK)

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

COMES NOW Plaintiff, Matthew Fogg, individually and on behalf of all similarly situated persons (“Fogg”, “Plaintiff”, “Class Representative”), for their Complaint against, Department of Justice, United States Marshal Service (“Defendant”, “USMS”), allege, upon personal knowledge as to the allegations concerning themselves and upon information and belief based on investigation as to all others. Fogg seeks redress for the class and individually for himself and all members of the class similarly situated for longstanding policies and practices of racial discrimination in employment, a racially hostile work environment, and

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Clerk, U.S. District & Bankruptcy
Courts for the District of Columbia

retaliation, practices which prevented members from advancing to senior levels within the organization.

ADMINISTRATIVE EXHAUSTION

1. Former Deputy United States Marshal (“DUSM”) Matthew Fogg filed an administrative Equal Employment Opportunity (“EEO”) class complaint of racial discrimination against the USMS—for which counseling was first sought on March 10, 1994—on July 12, 1994.

2. The class action administrative complaint asserts claims of race discrimination against African American DUSMs in promotions and various aspects of the promotional process, assignments, training, evaluations, awards and discipline.

3. On April 2, 1996, the USMS dismissed the class complaint and thereafter Mr. Fogg timely filed an appeal of the USMS’s dismissal of the class complaint with the EEOC Office of Federal Operations. The EEOC administratively closed the appeal on October 24, 1997 on the mistaken basis that Mr. Fogg had withdrawn his class complaint.

4. In 2004, Mr. Fogg petitioned the EEOC to reconsider the dismissal of his appeal. The fact that Mr. Fogg had filed a class complaint that was widely known by African American DUSMs and many of them relied on that class charge as a means of addressing the racial discrimination they experienced in the USMS. Indeed, in October 2004 at least eight African American DUSMs, including Class Representatives Brewer and Reid, filed with the EEOC in connection with the effort to reinstate that class charge. Those declarations articulated allegations of continuing class-wide race discrimination by the USMS and examples of such discrimination in promotions, assignments and training, among others, experienced by the declarants and the declarants’ intention and request to be a part of and included in that class complaint.

5. On May 26, 2006, the EEOC re-opened Mr. Fogg's appeal and vacated the USMS's dismissal of the class complaint and remanded the case to the EEOC Washington Field Office to determine whether class certification was appropriate.

6. On March 19, 2007, the EEOC Washington Field Office dismissed the class complaint. Again, the dismissal of the class complaint was timely appealed to the EEOC, Office of Federal Operations on June 20, 2007. Among other grounds, the appeal argued that the Administrative Judge failed to consider evidence submitted in the 2004 declarations, including the declaration of Class Representatives Brewer and Reid, and the allegations and information contained in the 1992 Ad Hoc Committee Report. On July 11, 2012, the EEOC Office of Federal Operations reversed the dismissal of the complaint and certified a class. The USMS moved for reconsideration of the decision, and the motion was subsequently denied.

7. 180 days have passed since the filing of the Initial Class Complaint, with neither a preliminary nor final settlement agreement having been approved by the current EEOC administrative judge assigned to the matter, and with no hearing being held in the underlying proceedings, and thus Fogg exhausted all administrative remedies required to file the instant complaint.

8. Still aggrieved, and gravely dissatisfied with the underlying administrative proceedings, which have gone on for 29 years, 8 months, and several days without being resolved, and thus being subjected to undue delay, and further plagued with legal representatives that appear to be operating with a conflict of interest and/or not in accordance with the D.C. Bar's rules of professional conduct and responsibility, which resulted in Fogg filing a complaint with the DC Bar against those legal representatives for the same, and because said legal representatives having shown in several instances to not advocated for in the best interests of the class, Plaintiff and Class representative Fogg filed the instant individual and Class Complaint pursuant to 29 C.F.R. § 1614.407(b) and was authorized to do so under the law.

JURISDICTION AND VENUE

9. This Court has subject matter jurisdiction pursuant to 42 U.S.C. § 2000e-5(f)(3) and 28 U.S.C. § 1331. Personal jurisdiction over the USMS exists because it maintains offices in Washington, D.C.

10. Venue is proper under 42 U.S.C. § 2000e-5(f)(3) because Class Representative Fogg resides in the District of Columbia and during his employment with USMS, the discriminatory employment practices, acts, and omissions that are challenged occurred while he was employed with USMS, whose headquarters are located in Washington D.C. The District of Columbia is therefore the most logical forum in which to litigate the claims of the Class Representative and the proposed class in this case.

PARTIES

11. At the time of events giving rise to this complaint, Plaintiff worked as a Criminal Investigator, GS-1811-13, for the U.S. Marshal's Service (USMS) in Arlington, VA. Plaintiff is an African American citizen of the United States and a resident of Washington, D.C.

12 Defendant USMS is an agency of the United States Department of Justice, whose headquarters are located in Washington D.C.. According to its website, USMS is the “enforcement arm of the federal courts . . . involved in virtually every federal law enforcement initiative.” Its major operations include judicial security, fugitive investigations, and prisoner services. While the Agency’s headquarters are located in Washington, D.C. Metropolitan area in Arlington, Virginia, the USMS has offices throughout the United States, including in Washington D.C.

FACTUAL ALLEGATIONS

12. USMS fails to recruit Black employees at a rate comparable to the recruitment of White employees.

13. Black employees are denied employment opportunities in favor of less senior less qualified White employees.

14. The penalties for infractions applied to Black employees in USMS disciplinary proceedings are frequently greater and more severe than those applied to White employees.

15. The USMS purposely delays the processing of EEO complaints filed by Black employees.

16. Similarly-situated White and non-Black USMS employees receive preferential treatment with respect to special assignments.

17. Fogg and all similarly-situated class members were subjected to harassment and retaliation by Defendant because of their efforts to enforce equal opportunity and nondiscrimination in federal employment, including but not limited to being passed over for promotions, special assignments, bonuses, and awards, and being abandoned by coworkers while in the field and in the process of apprehending a suspect deemed to be armed and highly dangerous, being denied promotions, being subjected to disciplinary proceedings.

18. Other individuals and/or class members who opposed these practices had their careers destroyed. Fogg, DUSM Stephen Zanowic, and USMS Inspector Bill Scott testified before at a Congressional hearing convened by the Congressional Black Caucus, in 1997 following an article published in the New York Times investigating Fogg's claims and exposing the racism and corruption inside the USMS, entitled "Bigots with Badges".¹ DUSM Stephen Zanowic, whose ethnicity is Jewish, had his career destroyed and was forced out of the USMS in retaliation for standing up against the racism that he observed his Black partner William Bill Scott was subjected to after testifying. Scott later died from injuries after getting into a car

¹ <https://www.scribd.com/document/464963771/Bigots-With-Badges>

accident under mysterious circumstances. Fogg later expounded on his experience with racism in the USMS at a congressional hearing before the CBC in 1999.²

19. Said practices and policies comprised unlawful discrimination, has been the regular policy of the Defendant and was the Defendant's regular practice.

20. The USMS has a long, documented history of continuing systematic discrimination against African Americans, including in the District of Columbia ("DC"). African American DUSMs have asserted claims of systemic discrimination at least since the early 1970's in an effort to remedy this discrimination.

21. The USMS has responded to these claims through studies and reports that have largely substantiated these claims and identified some proposed remedial measures which often were not implemented and have not effectively remedied the continuing discrimination and its effects. For example, administrative claims of race discrimination in 1972 and a civil action in 1974 alleging racially discriminatory promotional and other practices were brought on behalf of African American DUSMs in the USMS's DC Office, where one half of all African American DUSMs were assigned.

22. That litigation was dismissed in 1976 as part of a compromise providing for a study by an intradepartmental panel chaired by then Assistant Attorney General Peter R. Taft. Published in January 1977, the "Taft Report" concluded that charges of racial discrimination against the black deputy marshals had been established and that charges of harassment and retaliation because of efforts to enforce equal opportunity and nondiscrimination in federal employment had been sustained." *Bennett v U.S.*, 1982 U.S. Cl. Ct. LEXIS 2359 at *11, No. 565-78 (Cl. Ct. August 4, 1982).

²Fogg, Matthew. Testimony before Congressional Black Caucus Hearing on Police Brutality in Minority Communities. May 10, 1999. <https://www.c-span.org/video/?123167-1/police-brutality-minority-communities> starting at 3:35:00

23. The Taft Report found discrimination in promotions, assignments, training and other practices and recommended a series of remedial efforts to be implemented by the USMS.

24. In 1991, systemic claims of racial discrimination by the USMS against African American DUSMs across the Service were again initiated. In response, the USMS created the Ad Hoc Committee on Personnel Matters to investigate the claims and make findings and recommendations. The 1992 Report of that Ad Hoc Committee made the findings quoted above regarding perceptions of “a good old boy network” affecting promotions and assignments, and made a number of recommendations for the USMS to implement in order to address the claims and findings. Among its findings were that a number of the 1977 Taft Report recommendations regarding promotions and training had not been implemented, and it recommended that those and other measures should be implemented, including: That the Service insure the integrity of the processes under which employees are hired, promoted, assigned, evaluated, rewarded, and disciplined, and that the Service adopt a policy of openness concerning processes in the areas of promotions, assignments, and awards so that these processes are readily available to employees or to the scrutiny of employee representatives. 1992 Report, at 11-13, 15.

25. However, the “good ole boy network” and said historical discriminatory practices are still practiced today.

26. The alleged actions and practices described herein are common to the class.

27. In 1996, the Office of Inspector General of the Department of Justice issued a report on an investigation of an annual gathering of law enforcement personnel known as the “Good O’ Boy Roundup” that occurred between 1985 and 1995. The Inspector General found “substantial credible evidence of blatantly racist signs, skits, and actions,” including signs that read “nigger checkpoint.” The Inspector General indicated in his report that forty-four past and present DOJ employees had attended at least one roundup. On information and belief, some of

the past and present DOJ employees reported as participants in the “Good O’ Boy Roundup” by the Inspector General were employees of the USMS.

28. In 1999, in upholding a jury verdict finding racial discrimination in promotions and a racially hostile environment by the USMS on the individual claims of Plaintiff Matthew Fogg, this Court held that the evidence “described a U.S. Marshal’s Service . . . that has labored in substantial racial turmoil for at least a decade, and in which racial identities are keenly felt. The perception is pervasive on the part of African American members of the Marshal Service that they are less highly regarded and more is expected of them than of their white peers.”

29. The Court also found that “[t]he USMS concedes that Fogg presented evidence that the USMS in general has had a race problem,” and noted that “[t]hree senior African-American managers in the USMS . . . testified that African-Americans are not treated fairly compared to their white counterparts.” *Fogg v. Reno*, C.A. 94-2814, Memorandum and Order, at 5 & n. 5 (D.D.C. July 1, 1999).

30. Despite the existence of the class administrative charge and a number of individual charges alleging race discrimination, the USMS failed to take meaningful and effective steps to end the continuing pattern and practice of racial discrimination and to remedy the effects of that discrimination.

31. The USMS has not revised its policies and practices so as to eliminate the causes and sources of racial discrimination or the discriminatory effects of those policies and practices.

32. The “good old boy network” affecting promotions and assignments referred to in the 1992 Report of the Ad Hoc Committee has been preserved and perpetuated and continues the discriminatory practices of the USMS and perpetuates the effects of past racial discrimination. Indeed, many individuals currently in senior management and decision-making positions at the USMS benefited from and have continued the “good old boy network.”

33. For example, Michael Earp is the current Assistant Director in charge of the Investigative Operation Division (IOD) at headquarters. In the 1990s's, Michael Earp and Plaintiff Matthew Fogg applied for a position in IOD; Matthew Fogg was at the top of the Certification List, and the IOD Division Chief at the time indicated that Plaintiff would be chosen for the position. Nevertheless, Michael Earp was selected by the then Director for the position despite being ranked fourteenth on the certification list.

34. The pattern and practice of racial discrimination in the USMS is continuing and is manifested in discriminatory employment practices with respect to promotions, transfers, assignments, training, awards, and the use of investigations.

35. As stated above, prior to 1994 and continuing to the present, Class Representative Fogg and the class he seeks to represent have been discriminated against with respect to the promotional policies, practices and procedures for competitive positions including those ranked GS-12, GS-13, GS-14, GS-15, and the Senior Executive Service (SES) within the USMS.

36. USMS promotion policies, practices, and procedures have had a disparate impact on class members compared to their white counterparts. Such policies, practices and procedures are not valid, job-related, or justified by business necessity. There are alternate objective selection procedures available to USMS that would have a less racially disparate impact. In addition, the USMS has failed to implement promotion procedures that are valid and have less adverse impact on African Americans in violation of the Uniform Guidelines on Employee Selection Procedures, 29 C.F.R. § 1607 et seq. The continued use of such policies and practices reflects an intent to discriminate against the class in violation of Title VII. These practices also independently constitute intentional discrimination on the basis of race.

37. The USMS Merit Promotion System relies on subjective selection methods, judgments, procedures, and criteria which perpetuate the “good old boy network” through which African Americans are discriminatorily denied promotions on the basis of race.

38. Specifically, the USMS's so-called "Merit Promotion Plan" of assigning promotions incorporates a number of features that impede the promotion of African American DUSMs. These features include: (1) a scoring, grading and ranking system where criteria are subjectively evaluated; (2) Merit Promotion graders, who are predominantly white peers of the candidates, who favor white candidates for promotions; (3) a merit promotion exam and essay test which favor white deputies and which are not justified by business necessity; (4) subjective and biased scoring of assignments; (5) scoring of awards, assignments, and trainings, which are discriminatorily denied to African Americans, and (6) a discriminatory three-tier ranking system, which includes reranking by the Chief Deputy or US Marshal ("recommending official"), the Career Board, and the Director and Deputy Director.

39. Under the Merit Promotion Plan, the Career Board and the Recommending Official make recommendations to the Director. However, the Director may disregard the recommendation of the Career Board and the Recommending Official and select a candidate for any reason. Affording the Director this authority has a disparate impact on African Americans, who are frequently denied promotions despite being recommended by the Career Board or Recommending Official, and perpetuates the existence of the "good old boy network". The continuation of this policy reflects an intent to discriminate against African American DUSMs in violation of Title VII.

40. African Americans are also routinely denied positions on the Career Board that makes the recommendations for promotions to the Director. The failure to provide all Deputy U.S. Marshals consistent, timely notice of job openings and promotional opportunities denies African American deputies an equal opportunity to apply for and receive promotions and advancement.

41. The USMS discriminates against African American DUSMs by circumventing the merit promotion process by using such devices as: (1) canceling positions when white

applicants do not receive a sufficiently high merit promotion ranking to qualify for the position; (2) giving white deputies “temporary” promotions that are later turned into permanent positions; and (3) using “selective placement factors” to select particular white deputies for promotions.

42. The USMS discriminates against African American DUSMs in terms of promotions by selecting white candidates from outside of a region rather than advancing internal African American candidates to fill vacancies and promotional positions, resulting in a disparate impact on African American deputies.

43. The USMS discriminates against African American deputies by choosing groomed white DUSMs over African American applicants for promotions through the use of selective criteria in the competitive application process, which advantage particular candidates.

44. Pursuant to USMS Directives 3.1 and 3.3, an employee who is under internal investigation may not be considered for a promotion. These policies and procedures discriminate and have an adverse impact against African American DUSMs, who are frequently targeted for internal affairs investigations when they are up for promotion. White Deputies and USMS leadership frequently institute an internal affairs complaint on African American DUSMs to prevent them from being selected for promotions and/or in retaliation for making their own complaints about racial hostility.

45. As a result of the forgoing policies and practices, qualified African American DUSMs are promoted to, or selected for, competitive positions less frequently than similarly situated white Deputies. In addition, African American DUSMs have been and continue to be discouraged from applying for competitive positions because of the discriminatory Merit Promotion System used by the USMS.

46. Additionally, Plaintiff Fogg continued to be retaliated against in violation of Title VII for opposing discrimination via his EEO complaints and testimony before Congress when the

following actions occurred: Post-verdict (*Fogg v. Reno*, C.A. 94-2814 (D.D.C. July 1, 1999)) the Agency refused to have Fogg's U.S. Department of Labor, Office of Workers Compensation Benefits (OWCP) adjusted in connection to the Final Court Order and change his grade from a GS-13 to a GS-14 as awarded to him in the verdict; the Agency caused the DOL-OWCP to force Fogg off Benefits and on OPM Retirement; the Agency miscalculated Fogg's 2008 total monetary relief for Compensatory damages and backpay award; the Agency failed to report its 2008 Final Judgment & Order monetary 'Withholdings' to include Federal and State taxes causing Fogg to be subjected to two IRS Audits, an Annuity Garnishment and Maryland State refusing to renew his Driver's license and automobile registration for non-payment of taxes; Fogg erroneously still owes the IRS; the Agency changed Fogg's retirement credentials from Chief Deputy to Chief Inspector after 8 years after per 2008 Court Order; the Agency has continuously obstructed Fogg's retirement and media livelihood through this day by reporting false information about his retirement title as Chief Deputy.

47. Prior to 1994 and continuing to the present, Class Representatives and the class they seek to represent have been discriminated against with respect to the policies, practices and procedures for assignments and lateral transfers within the USMS. USMS assignment and lateral transfer policies, practices, and procedures are highly subjective. Managers and supervisors in each District have unbridled discretion in many instances with respect to handing out assignments and approving lateral transfers. The high degree of subjectivity in the assignment and lateral transfer process has a disparate impact on African American DUSMs. As compared to their white counterparts, African American DUSMs receive fewer career-enhancing assignments and are routinely denied lateral transfers. Such policies, practices and/or procedures are not valid, job-related, or justified by business necessity. The continued use of such policies and practices reflects an intention to discriminate against class members in violation of Title VII.

48. All of The practices described that have a disparate impact on the class also independently constitute intentional discrimination on the basis of race (African American or Black).

49. These discriminatory policies and practices adversely affected the ability of African American DUSMs to secure promotions or career enhancing opportunities and experiences.

50. USMS Directive 1.1 details the five basic duties and assignments of DUSMs employed at the District (as opposed to Headquarters). The five basic duties/assignments are: (1) Judicial and Court Security; (2) Prisoner Transportation and Cell Block; (3) Investigations and Warrant; (4) Seizure and Process; and (5) Business Management. Serving on warrant squads is important experience to have when a DUSM submits his or her merit promotion application package. Significantly, no guidelines are provided to District management with respect to assignments. Warrant squad experience enhances a DUSM's chance for promotion. The Merit Promotion Application includes a section on warrant-related experience which specifically asks applicants to address "[h]ow much variety is there in your enforcement work? Have you successfully completed investigations on escapees, Drug Enforcement Administration warrants and parole violators?" African American DUSMs are discriminatorily denied assignments to warrant squads.

51. The USMS discriminated against Fogg after he opposed the USMS discriminatory practice of targeting Black communities in the Washington D.C. metropolitan area for intense monitoring and targeting of individuals, especially Black, to arrest for crimes involving the distribution and/or usage of illegal drugs, despite research showing that Black and White individuals use drugs at the nearly the same rate, with the excuse that by arresting White drug dealers, the Agency would be subjected to lawsuits and external pressures from the arrestees' parents or relatives, who may be judges and lawyers, and the whole program might get shut down, by failing to promote him and grant him special assignments, and by leaving him on

scene and abandoning a warrant squad he was assigned to during a drug bust, endangering his life since he had no back up and had to arrest and disarm a dangerous individual who had been featured on “America’s Most Wanted” by himself.

52. Serving in acting supervisory positions is a critical career-enhancing experience. The Merit Promotions Application specifically asks whether an applicant has served as an acting supervisor. African American DUSMs are discriminatorily denied assignments to serve as acting supervisors.

53. Managers and supervisors in each District are also given the discretion to select individuals for career-enhancing headquarter assignments and assignment to specialized task forces and details.

54. The Merit Promotion Plan also discriminates against African American DUSMs seeking lateral transfers. When vacancies in the USMS occur, the positions can either be filled through a promotion (i.e., promoting a DUSM at the GS-12 level to a GS-13) or through a lateral transfer (i.e., filling a GS-13 position with a DUSM who is already a GS-13). DUSMs at the GS-13 to GS-15 level seeking to laterally transfer into a vacant position automatically make the certification list. African American DUSMs are routinely denied lateral transfers, even if they are willing to make a lateral transfer into positions that are lower on the GS scale. In addition, less qualified white DUSMs are frequently chosen for positions that class members are trying to make a transfer into laterally.

55. Prior to 1994 and continuing to the present, Class Representative Fogg and the class he seeks to represent have been discriminated against with respect to the policies, practices and procedures with respect to training within the USMS.

56. USMS training policies, practices, and procedures are highly subjective. Managers and supervisors in each District have unfettered discretion in deciding which DUSMs receive training. The high degree of subjectivity in how DUSMs receive training has a disparate impact

on African American DUSMs. As compared to their white counterparts, African American DUSMs receive fewer career-enhancing training opportunities. Such policies, practices and procedures are not valid, job-related, or justified by business necessity. These discriminatory policies and practices adversely affected the ability of African American Deputies to secure promotions. The continued use of such policies and practices reflects an intention to discriminate against class members in violation of Title VII. These practices also independently constitute intentional discrimination on the basis of race.

57. Directive 14.1 governs the process for approving external training for DUSMs (i.e. training provided outside the Marshals Service). In order for an employee to attend external training, the District or Division (i.e. Asst. Directors and U.S. Marshals) must submit an SF-182 Request, Authorization, Agreement and Certification of Training to the Training Academy for approval. The DUSM requesting the training initially fills out the SF-182, which must then be approved by his/her immediate supervisor. A second-line supervisor must also approve the training. “Only requests approved by district and division management will be processed by the Training Academy.” Thus, local management has the authority to approve training and Directive 14.1 does not include any guidelines on when approval should be granted.

58. Receiving training is critical to advancement within the Marshals Service. Section IV of the Merit Promotion Application specifically asks applicants to list the training they have received. In addition, part of the composite score given to Merit Promotion applications consists of a score for training. African American DUSMs’ training requests are discriminatorily denied.

59. As stated above, prior to 1994 and continuing to the present, Class Representatives and the class they seek to represent have been discriminated against with respect to the policies, practices and procedures with respect to awards within the USMS. USMS award policies,

practices, and procedures are highly subjective. Managers and supervisors in each District have complete discretion in deciding which DUSMs receive certain awards.

60. The high degree of subjectivity in how DUSMs receive awards has a disparate impact on African American DUSMs. As compared to their white counterparts, African American DUSMs receive fewer career-enhancing awards. Such policies, practices and procedures are not valid, job-related, or justified by business necessity. These discriminatory policies and practices adversely affected the ability of African American Deputies to secure promotions.

61. The continued use of such policies and practices reflects an intention to discriminate against class members in violation of Title VII. These practices also independently constitute intentional discrimination on the basis of race.

62. USMS Directive 3.3 describes the Awards Program in the USMS and its administration. There are three basic types of awards: (1) sustained superior performance awards which are cash awards; (2) Special Act Awards, which are also cash awards; and (3) Time Off Awards. Under this Directive, authority is given to each U.S. Marshal to approve awards of up to \$2,500 per employee per year or 80 hours of leave per employee, per leave year. There are also Director's Honorary Awards (which may or may not include cash) and Quality Step Increase (QSI) awards. As explained by Directive 3.3, "[a] QSI is an increase in basic pay from one step of the grade to the next step. A QSI provides faster than normal progression through the steps of the General [pay] Schedule.

63. Unlike other forms of monetary recognition, a QSI permanently increases an employee's rate of basic pay by one step." While the Director sets the percentage of employees within a District that can be submitted for QSIs, District management selects the individual employees who will be chosen to receive QSIs.

64. Receiving awards is critical to advancement within the Marshals Service. Section V of the Merit Promotion Application specifically asks applicants to list the awards they have

received. In addition, part of the composite score given to Merit Promotion applications consists of a score for awards. African American DUSMs receive awards less frequently than their white counterparts.

65. Prior to 1994 and continuing to the present, Class Representatives and the class they seek to represent have been discriminated against with respect to the policies, practices and procedures regarding the use of allegations of misconduct and investigations by the Office of Internal Investigations (OII) within the USMS.

66. USMS policies, practices, and procedures regarding the making of allegations of misconduct that may be investigated by OII are arbitrary and highly subjective. The arbitrary and subjective policies and practices regarding the process for initiating investigations of misconduct have a disparate impact on African American DUSMs. As compared to their white counterparts, African American DUSMs are subjected to investigations by OII for conduct for which white DUSMs are not. African Americans are also unfairly accused of charges that can prevent an individual from being promoted or serving in certain coveted headquarters divisions, such as Investigative Operations.

67. These discriminatory policies and practices adversely affect the ability of African American DUSMs to secure promotions or access to positions and opportunities that are career-enhancing, because DUSMs under investigation by OII are not eligible for promotions, awards, and certain assignments.

68. Such policies, practices and procedures are not valid, job-related, or justified by business necessity. The continued use of such policies and practices reflects an intention to discriminate against class members in violation of Title VII. These practices also independently constitute intentional discrimination on the basis of race.

69. Compounding the adverse impact of these arbitrary and subjective policies and practices on class members is the fact that OII suffers from a lack of resources and high quality

investigators, which often results in the failure to complete investigations within the proscribed 90 day time frame. A March 2010 Report by the United States Department of Justice, Office of Inspector General on the USMS Office of Internal Investigations found that from FY 2004 to FY 2009 OII failed to meet its 90-day standard for completing misconduct investigations in 51% of the cases it closed. The Report also found that OII is “under-resourced, has lower-graded investigator positions, and lacks adequate administrative and analytic support.” Specifically, investigators in the USMS OII had caseloads “three to five times larger” than their counterparts in ATF, DEA, and the FBI. The Report went on to acknowledge that “lengthy investigations can delay promotions and career progression of employees under investigation, which can damage employee morale, and hinder the USMS’s ability to appropriately manage its workforce.”

70. Class members are routinely targeted by their white co-workers and supervisors for investigation by the OII based on false and/or frivolous allegations or for conduct that would not result in an investigation if committed by a white deputy. These frivolous allegations often lead to successive disciplinary action, culminating in a Notice of Proposed Removal, causing Deputies to have to defend themselves against these allegations, which subsequently results in the removal of the Deputy for misconduct because the adjudicators fail to correctly weigh the evidence of falsity properly and discount any evidence that would have led to the revocation of the Proposed Notice of Removal. In contrast, OII discriminatorily declines to investigate white DUSMs, and class members have been reprimanded by their supervisors when they report to OII misconduct by white DUSMs.

71. Because of the Defendant’s systemic pattern and practice of racial discrimination, Class Representatives and the class they seek to represent have been adversely affected by these policies and practices and have experienced harm, including loss of compensation, wages, back pay, and employment benefits.

72. The Class Representatives and class members have no plain, adequate, or complete remedy at law to redress the pervasive wrongs alleged herein; this suit is their only means of securing adequate relief. Additionally, the Class Representatives and putative class are currently suffering injury from USMS's unlawful policies, practices and procedures as described herein, and will continue to suffer unless those policies, practices and procedures are enjoined by this Court.

CLASS ACTION ALLEGATIONS

A. Class Definition

73. The previous paragraphs are incorporated in this section as if set forth herein.

74. Class Representative Fogg seeks to maintain claims on his own behalf and on behalf of a class defined as follows: All current and former African American Deputy U.S. Marshals who are serving or have served with the USMS at any time during the liability period.

B. Efficiency of Class Prosecution of Common Claims

75. Certification of a class of African American DUSMs is the most efficient and economical means of resolving the questions of law and fact common to the claims of Class Representative and the proposed class. Class Representative's claims require determination of whether USMS has engaged in systemic pattern and practice of racial discrimination against African American DUSMs. Further, the Class Representative seeks remedies to eliminate racial discrimination, the adverse effects of such discrimination and to prevent continuing racial discrimination in the future for themselves and on behalf of the class. Without class certification, the same evidence and issues would be subject to repeated litigation in a multitude of individual lawsuits, with an attendant risk of inconsistent adjudications and conflicting obligations.

76. Class Representative's claims are premised upon the traditional bifurcated method of proof and trial for disparate impact and systemic disparate treatment claims of the type at issue here. Such a bifurcated method of proof and trial is the most efficient method of resolving such common issues.

C. Numerosity and Impracticability of Joinder

77. The number of African American DUSMs currently employed by the USMS is approximately several hundred. The proposed class defined above thus consists of hundreds of current and former DUSMs who have served during the liability period, approximately 10,000 individuals total.

78. Therefore, the class that Class Representative Fogg seeks to represent is too numerous to make joinder of all members practicable.

D. Common Questions of Law and Fact

79. Prosecution of Class Representative's claims will require the adjudication of numerous questions of law and fact common to the proposed class. Common questions of law include, inter alia, whether: (a) USMS has engaged in unlawful, systemic racial discrimination, retaliation, and created a hostile work environment against African American DUSMs with respect to its policies, practices and procedures regarding promotions, transfers, assignments, training, awards, and investigations; (b) USMS policies, practices and procedures regarding promotions, transfers, assignments, training, awards, and investigations have an unlawful disparate impact on African American DUSMs; and (c) USMS is liable for continuing violations of Title VII.

80. Common questions of fact include, inter alia, whether USMS has, through its policies, practices and procedures: (a) denied or delayed promotions for African American DUSMs; (b) relied on a promotion system that results in a pattern and practice of discrimination against

African American DUSMs; (c) uses devices to circumvent the Merit Promotion System to promote white DUSMs; (d) used subjective practices and selective criteria to give white DUSMs an advantage over African American DUSMs in applying for promotions; (e) filled job openings with candidates from outside the region to avoid promoting internal African American DUSMs; (f) denied career-enhancing assignments and transfers to African American DUSMs, while granting them to white DUSMs to groom them for promotions; (g) denied career-enhancing training opportunities to African American DUSMs, while granting them to white DUSMs; (h) denied career-enhancing awards and equal treatment regarding awards to African American DUSMs while granting them and granting more favorable awards to white DUSMs; and (i) initiated and conducted investigations of misconduct as to African American DUSMs differently than as to white DUSMs.

81. USMS's employment policies, practices and procedures affecting the Class Representative and members of the proposed class are set at the agency level and apply universally to all class members. These policies, practices and procedures are not unique or limited to any particular USMS unit, but instead concern all units and therefore adversely affect Class Representative Fogg and proposed class members regardless of the USMS division or District in which they work. A pattern and practice of discrimination against African American DUSMs – in promotions, transfers, assignments, training, awards, and investigations – occurs throughout all levels, Districts and divisions of USMS.

E. Typicality of Claims and Relief Sought

82. Class Representative Fogg's claims are typical of those of the proposed class. Class Representative asserts claims in each of the categories of claims asserted on behalf of the proposed class. The relief Class Representative seeks for racial discrimination complained of herein is also typical of the relief sought on behalf of the proposed class. Members of the

proposed class, like Class Representative Fogg, are African American employees who have worked for USMS during the liability period and have been subjected to the pattern and practice of discrimination across all levels, Districts and departments of USMS, as alleged above and that discrimination affects Class Representative Fogg and the proposed class members in similar ways. The relief necessary to remedy Class Representative's claims is the same relief necessary to remedy the claims of the proposed class members.

83. Representatives seek the following relief for their claims and for those of the proposed class: (a) declaratory judgment that USMS has engaged in systemic racial discrimination against African American DUSMs in promotions, transfers, assignments, training, awards, and investigations; (b) a permanent injunction against such continuing discriminatory conduct; (c) restructuring of USMS's policies and practices regarding promotions, transfers, assignments, training, awards, and investigations so that African American DUSMs will be able in the future to compete fairly within the agency; (d) injunctive relief to make whole African American DUSMs and to place them in the positions they would have held in the absence of USMS's past racial discrimination; (e) back pay, front pay and equitable monetary remedies necessary to make African American DUSMs whole for USMS's past discrimination.

F. Adequacy of Representation

84. Class Representative Fogg's interests are co-extensive with those of the members of the class he seeks to represent in this case. As described above, Fogg seeks to bring an end to USMS's discriminatory employment policies, practices and procedures. Class Representative Fogg has no conflicts with other members of the class related to the challenges to the discriminatory USMS practices. Class Representative Fogg is willing and able to represent the class fairly and vigorously in this action.

85. Class Representative Fogg seeks leave from the Court to a stay of the proceedings for 90 days to retain counsel who are qualified, experienced, able to conduct this litigation and to meet the requirements of litigating an employment discrimination class action of this size and complexity. Extraordinary circumstances exist that call for the granting of such a stay: The attorneys' failed to adequately represent the interest of the class in the underlying administrative proceedings, by approving a preliminary settlement on behalf of the class prior to seeking the approval of the class representative Fogg, and by failing to provide a copy to Fogg so he could adequately voice his objection to the same prior to a fairness hearing, and thus their actions allegedly constitute a fraud on the tribunal and a violation of several rules of professional responsibility of the D.C. Bar, culminating in Fogg having no choice but to file the case pro se in Federal court in order to fulfill his duties and responsibilities as the named class representative and after filing a D.C. Bar complaint against said counsel seeking disciplinary action so as to protect the class and the public from their continued alleged misconduct in the future. *See Boussum v. Washington*, 655 F.Supp.3d 636 (2023) (After group of disabled inmates brought *pro se* class action, alleging that problems with staffing and unit's programming, care, in violation of various laws and the Constitution, the court *sua sponte* stayed the case for three months to allow the plaintiffs and the clerk of court to seek pro bono counsel)("Thus, it is common practice in the Eastern District of Michigan to stay a case temporarily to find pro bono counsel for a pro se inmate litigant if "clear extraordinary circumstances exist." E.g., *Fajardo-Garzon v. De Hoffman*, No. 2:21-CV-10340, 2021 WL 1259462, at *2 (E.D. Mich. Apr. 6, 2021) (granting 30-day stay); *Boone v. Heyns*, No. 12-14098, 2017 WL 3977524, at *6 (E.D. Mich. Sept. 11, 2017) (same)").

86. The combined interests, experience and resources of Class Representative Fogg and counsel (once retained) to litigate competently the claims at issue clearly satisfy the adequacy of representation requirement of Fed. R. Civ. P. 23(a)(4).

G. Requirements of Rule 23(b)(2)

87. USMS has acted on grounds generally applicable to the proposed class as a whole by adopting, following and perpetuating policies, practices and procedures that result in systemic discrimination on the basis of race. Racial discrimination is the agency's standard operating procedure rather than a sporadic occurrence. USMS also has refused to act on grounds generally applicable to the class by refusing to adopt and apply policies, practices and procedures that are nondiscriminatory and eliminate the effects of past discrimination against African American DUSMs. USMS's discriminatory actions and refusals to act on grounds generally applicable to the class make appropriate the requested final injunctive and declaratory relief with respect to the class as a whole.

88. Injunctive and declaratory relief are the predominant forms of relief sought in this action because they are absolutely necessary to the cessation of discrimination and elimination of the effects of past discrimination. In addition, injunctive and declaratory relief are the essential predicate for Class Representative and class members' entitlement to equitable monetary and non-monetary remedies. Those equitable monetary and non-monetary remedies flow directly from proof of the common questions of law and fact regarding the existence of systemic racial discrimination against African American DUSMs.

H. Requirements of Rule 23(b)(3)

89. The common issues of law and fact affecting the claims of Class Representative Fogg and proposed class members, including, but not limited to, the common issues identified in Subsection D above, predominate over any issues affecting only individual claims.

90. A class action is superior to other available means for the fair and efficient adjudication of the claims of Class Representative and members of the proposed class. The cost of proving

USMS's pattern and practice of discrimination makes it impracticable for Class Representative and members of the proposed class to pursue their claims individually.

91. A trial by jury is demanded on all counts so triable.

COUNT I
VIOLATIONS OF TITLE VII OF THE CIVIL RIGHTS ACT OF 1964,
42 U.S.C. § 2000, et seq., AS AMENDED
RACE DISCRIMINATION
(On Behalf of Class Representative and the Putative Class)

92. Plaintiff Fogg reasserts and incorporates by reference each allegation in the previous paragraphs of this Complaint.

93. Subsection D above, predominates over any issues affecting only individual claims. Class Representative Fogg re-alleges and incorporates by reference each and every allegation contained in each and every aforementioned paragraph as though fully set forth herein.

94. USMS has discriminated against Class Representative and all members of the proposed class through its policies, practices and procedures regarding promotions, transfers, assignments, training, awards, and investigations in violation of Title VII.

95. USMS's policies, practices and procedures regarding promotions, transfers, assignments, training, awards, and investigations are or have been administered in a manner intentionally to discriminate against Class Representative and the members of the proposed class.

96. USMS's policies, practices and procedures regarding promotions, transfers, assignments, training, awards, and investigations have an unlawful disparate impact against Class Representative Fogg and the members of the proposed class.

97. Because USMS's discriminatory policies and practices have been perpetuated and its discriminatory conduct has been continuing and persistent, Class Representative and the

proposed class members are entitled to application of the continuing violation doctrine to all violations alleged herein.

98. As a direct and proximate result of USMS's conduct, Class Representative and the members of the proposed class have suffered harm, including in their positions and assignments within the USMS, loss of compensation and other employment benefits, and emotional distress, anguish and humiliation.

99. Because of the discrimination they have suffered at USMS, Class Representative and the members of the proposed class are entitled to all legal and equitable remedies available under Title VII.

COUNT II
VIOLATION OF TITLE VII OF THE CIVIL RIGHTS ACT OF 1964
42 U.S.C. § 2000e-3(a)
RETALIATION
(On Behalf of Class Representative Fogg and the Putative Class)

100. Plaintiff Fogg reasserts and incorporates by reference each allegation in the previous paragraphs of this Complaint.

101. Class Representative Fogg and members of the putative class allege, with incorporation by reference of all preceding paragraphs, that the United States Marshals Service (USMS) has engaged in unlawful retaliation against employees for engaging in activities protected under Title VII. Specifically, these protected activities include filing complaints of racial discrimination, participating in investigations, litigation, or opposition to practices deemed unlawful under Title VII.

102. The USMS has subjected the Class Representative and members of the putative class to adverse employment actions following their engagement in protected activities. These actions include, but are not limited to, unjustified negative performance evaluations, denial of

promotions, transfers, assignments, and other benefits of employment, the placement of an oversized BLACK RUBBER RAT given to him by a white Supervisor, continuous racial abuse by white colleagues, death threats, being left in the field on stakeouts to apprehend dangerous criminal suspects by themselves; as well as additional forms of discrimination intended to punish and dissuade further participation in protected activities.

103. Such retaliatory practices by the USMS create a workplace atmosphere that would deter a reasonable worker from making or supporting a charge of discrimination, thus meeting both the subjective belief of the affected employees in the retaliatory motive of the USMS and the objective standard that would dissuade a reasonable person from engaging in protected activities.

104. As a direct and proximate result of the retaliatory conduct by the USMS, Class Representative and the members of the proposed class have suffered significant harm, including, but not limited to, career progression setbacks, loss of compensation, emotional distress, and a chilling effect on the exercise of their rights under Title VII.

105. Therefore, Class Representative and the members of the putative class seek all legal and equitable remedies available under Title VII for the retaliatory actions committed by the USMS.

COUNT IV

VIOLATION OF TITLE VII OF THE CIVIL RIGHTS ACT OF 1964

42 U.S.C. § 2000e-2(a)

HOSTILE WORK ENVIRONMENT BASED ON RACE AND REPRISAL

(On Behalf of Class Representative and the Putative Class)

106. Plaintiff Fogg reasserts and incorporates by reference each allegation in the previous paragraphs of this Complaint.

107. Class Representative and members of the putative class restate and incorporate by reference all previous allegations, asserting that the United States Marshals Service (USMS) has maintained a work environment hostile to employees based on race AND REPRISAL, in violation of Title VII. This hostile work environment is characterized by frequent, severe, and pervasive incidents of racial discrimination, including derogatory remarks, unfair employment practices, and an overall atmosphere of racial hostility that significantly alters the conditions of the employment environment.

108. The conduct in question is not only highly offensive but has also been purposefully designed or negligently allowed to persist by the USMS, thereby creating an intimidating, hostile, or offensive working environment for the Class Representative and members of the proposed class.

109. This pervasive atmosphere of racial hostility meets the legal standards for a hostile work environment, affecting the terms, conditions, and privileges of employment for the Class Representative and the putative class members. It is both subjectively perceived by the affected employees and objectively severe enough to create a work environment that a reasonable person would find hostile or abusive.

110. As a direct consequence of this hostile work environment, Class Representative and the proposed class members have endured considerable emotional distress, humiliation, and adverse employment consequences, including, but not limited to, diminished career advancement opportunities and loss of professional dignity.

111. In light of these violations, Class Representative and the members of the putative class seek recourse through all legal and equitable remedies available under Title VII to address the hostile work environment based on race perpetuated by the USMS.

COUNT IV

VIOLATIONS OF TITLE VII OF THE CIVIL RIGHTS ACT OF 1964

42 U.S.C. § 2000E-3

RETALIATORY HARASSMENT

(On Behalf of Plaintiff Matthew Fogg)

112. Plaintiff Fogg reasserts and incorporates by reference each allegation in the previous paragraphs of this Complaint.

113. Plaintiff Fogg, subsequent to his active engagement in protected Equal Employment Opportunity (EEO) activities of participating in the underlying administrative complaint from the initial filing up to and including the present, engaged in the litigation process as seen in *Fogg v. Reno*, C.A. 94-2814, provided testimony at a Congressional hearing on or around May 10, 1999, and participated in opposition activities, including but not limited to, publicly speaking against the racial discrimination and the hostile work environment created by Defendant in public forums, created and shared content on YouTube and his website www.bigotswithbadges.com about the same.

114. Plaintiff Fogg asserts being subjected to harassment by the Defendant after he engaged in said protected activities, including but not limited too: the Agency failed to properly adjust his worker's compensation benefits in connection to the Final Court Order; failure to change his grade from a GS-13 to a GS-14 as awarded to him in a prior court verdict; force Fogg off Worker's Comp Benefits and on OPM Retirement; miscalculation of Fogg's 2008 total monetary relief for Compensatory damages and backpay award; the failure to report its 2008 Final Judgment & Order monetary 'Withholdings' to the IRS causing the IRS to harass and audit him at his home on two separate occasions seeking to find the withholdings being held by the Dept. of Justice; Continuously garnishing Fogg's monthly retirement annuity over \$1500 dollars; The IRS placed a levy on Fogg's personal bank accounts and took over 25,000.00 dollars; The IRS caused the Maryland State Comptroller to act upon the IRS's erroneous tax

assessment to prevent Fogg from obtaining his vehicle registration and driver's license until he made payments on the high tax assessments; When finally in 2016 the DOJ admitted to its so-called mistake and sent him a check covering the Withholdings with interest dating back to 2008, the accrued IRS and Maryland State penalties caused him to not receive any tax refunds owed him over the last 10 years. These acts, which not only demonstrated a blatant disregard for his Plaintiff's well-being but also highlights a direct causal connection to his protected activities, the small or nonexistent time gap between each activity and the harassment, which was severe and pervasive and constituted conduct based on reprisal.

115. These retaliatory acts clearly establish both a subjective belief by Fogg in the retaliatory nature of the USMS's actions and meet the objective person standard, indicating that such treatment would likely deter a reasonable individual from engaging in protected EEO activities.

116. These actions by Defendant were objectively intimidating, enough to discourage a reasonable person from partaking in similar protected activities.

117. USMS subjected Plaintiff Fogg to adverse actions that would cause a reasonable person under the same circumstances to be deterred from engaging in protected EEO activity.

118. USMS's actions were intentional, deliberate, willful, malicious, reckless, and conducted in callous disregard of causing harm to Plaintiff Fogg.

119. As a direct result of USMS's retaliatory actions, Plaintiff Fogg suffered economic losses, mental and emotional harm, anguish, and humiliation.

120. By reason of the retaliation suffered at USMS, Plaintiff Fogg is entitled to all legal and equitable remedies available under Title VII § 2000E-3.

PRAYER FOR RELIEF

WHEREFORE, Class Representative Fogg, on behalf of himself and the members of the class they seek to represent, requests the following relief:

- A. An order granting Fogg's motion for a 90-stay of the proceedings to obtain counsel.
- B. An order certifying this action as a class action maintainable under Federal Rules of Civil Procedure Rule 23(a), (b)(2), and (b)(3), on behalf of the proposed plaintiff class and appropriate subclasses, designation of Class Representative Fogg as representative of this class and appropriate subclasses, and designation of his subsequently retained counsel of record as class counsel;
- C. A declaratory judgment that USMS's employment policies, practices and procedures challenged herein are unlawful and in violation of Title VII;
- D. A permanent injunction against USMS and its agents, employees and representatives, and any and all persons acting in concert with them, from engaging in any further unlawful discriminatory practices, policies, customs, usages as set forth herein;
- E. An Order requiring USMS to initiate and implement programs that
 - (1) will provide equal employment opportunities for African American DUSMs;
 - (2) will remedy the effects of USMS' past and present unlawful employment policies, practices and procedures; and
 - (3) will eliminate the continuing effects of the discriminatory practices described above;
- E. An Order requiring USMS to initiate and implement systems of promoting, assigning, transferring, training, awarding, compensating and conducting investigations of DUSMs that treat African American DUSMs in a non-discriminatory manner.
- F. An Order establishing a task force on equality and fairness to determine the effectiveness of the programs described in (D) and (E) above, and which would provide for
 - (1) monitoring and reporting to ensure equal employment opportunity;

(2) assuring that injunctive relief is properly implemented; and

(3) quarterly reports setting forth information relevant to the determination of the effectiveness of the programs described in (D) and (E) above;

G. An Order placing or restoring Class Representative(s) and other class members into those jobs they would now be occupying, but for USMS' discriminatory policies, practices and procedures;

H. An Order directing USMS to adjust the wage rates and benefits for Class Representative(s) and other class members to the levels to which they would be entitled but for the Defendant's discriminatory policies, practices and/or procedures;

I. An award of back pay, front pay, lost benefits and equitable monetary relief for lost compensation and job benefits suffered by Class Representative(s) and the class members to be determined at trial;

J. Any other equitable relief to which Class Representative(s) and the proposed class members are entitled;

K. An award of compensatory damages to Class Representative(s) and members of the class in the amounts of 3 billion dollars;

L. An award of compensatory damages to Class Representative(s) on their individual claims of discrimination in an amount of 300,000 dollars.

M. An award of litigation costs and expenses, including reasonable attorneys' fees, to Class Representative(s) and the class;

N. Pre-judgment and post-judgment interest on the amounts of equitable monetary relief awarded;

O. Such other and further relief as the Court may deem just and proper;

P. Retention of jurisdiction by the Court until such time as the Court is satisfied that the Defendant has remedied the practices, policies and procedures complained of herein and is determined to be in full compliance with the law; and

Q. any other relief deemed just and proper by the Court.

Let the words of my mouth and the meditation of my heart be acceptable in your sight, O Lord, my Rock and my Redeemer. In Jesus' mighty name, Amen. Signed, Sealed, and Delivered.

Respectfully Submitted on this 19th Day of March, 2024,

/s/ 

Matthew Fogg,
Chief Deputy U.S. Marshal, Ret.
Plaintiff and Class Named Complainant
2833 Alabama Ave SE – No. 0956
Washington, DC 20020
240-375-3580

CERTIFICATION

I HEREBY CERTIFY that on March 19, 2024, and declare under penalty of perjury under the laws of the United States of America that:

1. The matters sworn herein are made from my personal knowledge and are true and correct to the best of my information, knowledge and belief, and that I am competent to testify thereto.
3. This Complaint was filed with the Clerk for the Federal District Court for the District of Columbia and summons for the Defendant requested, to be served upon the Defendant via the Federal Rules of Civil Procedure.

MATTHEW FOGG Name

 Signature

Executed on (Date): _____

EXHIBIT 3



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New York | Washington D.C. | San Francisco | San Diego | Nashville | Baltimore

May 19, 2021

VIA EMAIL

Phillip Brest, Chief Nominations Counsel, Senate Judiciary Committee Chairman Richard J. Durbin
Phillip_brest@judiciary-dem.senate.gov

Michael Fragoso, Chief Nominations Counsel, Senate Judiciary Committee Ranking Member Charles E. Grassley
Michael_fragoso@judiciary-rep.senate.gov

Re: Nomination of Ronald L. Davis, of California, to be Director of the United States Marshals Service, Nomination Number: PN275-117

Dear Mr. Brest and Mr. Fragoso:

Enclosed is a letter on behalf of current and former African American Deputy U.S. Marshals and Detention Enforcement Officers represented by my firm in *Fogg v. Garland*, EEOC No. 570-2016-00501X; Agency Case No. M-94-6376. As the Senate considers Ronald Davis' nomination as the next Director of the U.S. Marshals Service, we would greatly appreciate the Judiciary Committee considering and acting on their concerns about race discrimination at the agency. Please let me know if you have any questions.

Sincerely,

David Sanford

May 19, 2021

The Honorable Richard J. Durbin
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Chairman Durbin and Ranking Member Grassley,

As the Senate considers the nomination of Ronald L. Davis for Director of the United States Marshals Service (USMS), we write, as current or former Deputy U.S. Marshals and Detention Enforcement Officers, to ask that you request that Mr. Davis and the USMS commit to addressing long-standing issues of race discrimination at the Agency. These issues are at the center of *Fogg v. Garland*, the longest-running employment discrimination class action in U.S. history. **We urge the Committee to ask Mr. Davis to commit to personally investigating the claims in the lawsuit, seek to resolve them, and regularly update the Committee on his progress.**

Fogg v. Garland includes **over 700** current and former African American Deputy U.S. Marshals (DUSMs) and Detention Enforcement Officers (DEOs) who have experienced racism in hiring, promotions, and headquarters assignments. Since the case began in 1994 with a class action charge filed by Deputy U.S. Marshal Matthew Fogg at the Equal Employment Opportunity Commission, the USMS has refused to remedy its discriminatory practices despite a long, well-documented history of racism at the agency:

January 1977: Assistant Attorney General Peter R. Taft published a report finding discrimination against Black Deputy U.S. Marshals in promotions, assignments, training, and other practices, and recommended several remedies.

August 1992: An Ad Hoc Committee appointed by the Director of the U.S. Marshals Service found racial disparities in hiring that confirmed the accuracy of the perception of a **“a good old boy network” that discriminated against African Americans.**

March 1996: The Department of Justice Office of Inspector General issued a report about the annual gathering of law enforcement personnel known as the “Good Ol’ Boy Roundup” that occurred for over a decade. The Inspector General found “substantial credible evidence” of blatantly racist signs reading “n***** checkpoint” and “any n*****s in that car?” and other activities. The OIG found that **44 past and present DOJ employees, including Marshals Service employees, had attended at least one roundup.**

1998: In an annual report to the EEOC, USMS acknowledged that the Department of Justice Civil Rights Division concluded that the USMS’ hiring examination was racially discriminatory. DOJ’s review of USMS hiring practices concluded that **“the current [Deputy hiring] examination has been found to have significant adverse impact on African-Americans.”** Later EEOC reports reveal that no new hiring

exam was developed until 2001 and that, despite the new hiring exam, **there continued to be an under-representation of African Americans in the USMS workforce.**

April 1998: A jury awards Deputy U.S. Marshal Matthew Fogg \$4 million in his individual race discrimination trial. The presiding federal judge and jury heard testimony about a “**U.S. Marshals Service . . . that has labored in substantial racial turmoil for at least a decade, and in which racial identities are keenly felt. The perception is pervasive on the part of African–American members of the Marshals Service that they are less highly regarded and more is expected of them than of their white peers.**” The judge found that this testimony “constituted sufficient evidence to support the jury's finding that Fogg had been exposed to a hostile racial environment.”

October 2008: African American DUSMs David Grogan and James Brooks file a class action complaint in federal court which is eventually subsumed by the *Fogg* class action. Evidence in the case revealed:

- Statistically significant racial disparities in the promotion of African American Deputies to GS-13, GS-14, and GS-15 management positions.
- The Agency’s own expert confirmed that African Americans were significantly under-represented in promotions.
- Significant racial disparities across Marshals Service headquarters divisions. Analysis showed that African American Deputies were statistically significantly less likely to hold positions in the **prestigious and coveted Investigative Operations and Tactical Operations Divisions which were 95% white.** The racial make-up of these divisions remains identifiably white.

July 2012: After years of litigation, the EEOC Office of Federal Operations reverses a previous class certification denial and concludes that “**the practices at issue affect the whole class and not only a few employees.**”

November 2015: The EEOC Office of Federal Operations concludes that “**there is evidence of both centralized control over these promotional decisions, as well as evidence of an Agency-wide discriminatory policy.**”

February 2017: The EEOC Administrative Judge affirms that the class includes African American DUSMs and DEOs subjected to “**policies and practices regarding promotions, including reassignments and transfers, Headquarters assignments, and hiring and recruitment from January 23, 1994 to present.**”

Despite all of this evidence, the USMS has never resolved these allegations of racism after 27 years of litigation at the EEOC and in federal court. The USMS’ position contrasts with other federal law enforcement agencies, such as the Bureau of Alcohol, Tobacco and Firearms, the Federal Bureau of Investigation, and the Secret Service, that have acted to resolve class action race discrimination cases brought at about the same time as *Fogg*.

We are deeply proud to have served our country in the oldest and most storied federal law enforcement agency. Every day, we have protected the federal judiciary, apprehended fugitives, and ensured the smooth functioning of courts, among other functions. **We are dismayed that the USMS’ history of race discrimination threatens the integrity and reputation of an agency with such a critical role to play in our country. It is imperative that Mr. Davis finally put an end to the USMS’ refusal to acknowledge and address race discrimination at the agency.**

Mr. Davis has acknowledged that structural racism and “institutional deficiencies” have harmed both communities of color and law enforcement officers of color. He has confronted structural racism as a police chief and Department of Justice Official. We can think of no more important task for Mr. Davis as Director than to finally confront and dismantle long-standing, documented systemic racism at the Marshals Service by resolving the issues raised by the class in *Fogg*. We ask only that you hold Mr. Davis and the USMS accountable by requesting that he personally investigate the claims in *Fogg*, seek to resolve them, and regularly update the Committee on his progress.

Thank you for your consideration.

Sincerely,

Damon Adams of North Carolina
Senior Inspector, Deputy U.S. Marshal
Served in SC/DC, E/NC, HQ
Employee of the USMS from 2003–Present

Drew Arthur of Texas
Senior Judicial Security Inspector
Served in S/FL, E/VA, D/HI, D/NV, E/TX
Employee of the USMS from 1988–2008

Tricia Ashford of New Jersey
Chief Deputy U.S. Marshal
Served in E/PA, TD, M/GA
Employee of the USMS from March 1992–1996, 2002–2018

J.K. Banks, III of Georgia
Deputy U.S. Marshal
Served in N/GA
Employee of the USMS from 2003–Present

Ivan Baptiste, Jr. of New Jersey
Supervisory Deputy U.S. Marshal, Ret.
Served in D/NJ
Employee of the USMS from 1977–2008

Lori M. Bell of New Jersey
Senior Inspector, Deputy U.S. Marshal
Served in D/NJ, E/NY, HQ
Employee of the USMS from 2003–2008, 2009–Present

Willer Dean Blanding of Florida
Assistant Chief Deputy U.S. Marshal, Ret.
Served in D/NJ, S/FL, E/TN, D/VI
Employee of the USMS from 1979–2006

Timothy A. Boyd of New Jersey
Criminal Investigator, Deputy U.S. Marshal, Ret.
Served in E/NY, D/NJ
Employee of the USMS from 1988–2011

Herman Brewer, Jr. of Virginia
Chief Deputy U.S. Marshal, Ret.
Served in N/IL, E/LA, D/PR, HQ
Employee of the USMS from 1986–2014

Bryan Brown of Virginia
Senior Inspector, Deputy U.S. Marshal
Served in S/CA, N/CA, W/VA, HQ
Employee of the USMS from 2011–Present

Karen J. Brown of Maryland
Assistant Chief Inspector
Served in D/MD, DC/DC, HQ
Employee of the USMS from 1986–Present

Leodus Brown of Virginia
Senior Inspector, Deputy U.S. Marshal
Served in SC/DC, W/WA, HQ
Employee of the USMS from 2011–Present

William “Buz” Brown of Indiana
Chief Deputy U. S. Marshal of the U.S. Marshals Service, Ret.
Served in DC/SC, N/IN, S/IN D/VI, HQ
Employee of the USMS from 1990–2019

Tracy Bryce of Maryland
Detention Enforcement Officer, Ret.
Served in SC/DC
Employee of the USMS from 1992–2015

Steven Burns of Maryland
Criminal Investigator, Deputy U.S. Marshal, Ret.
Served in SC/DC
Employee of the USMS from 1993–2018

Robert C. Byars of Maryland
Deputy U.S. Marshal, Ret.
Served in SC/DC, DC/DC
Employee of the USMS from 1989–2020

Dr. Eric L. Clark of District of Columbia
Supervisory Detention Enforcement Officer
Served in SC/DC
Employee of the USMS from 2000–2017

William M. Coleman of South Carolina
Detention Enforcement Officer Supervisor, Ret.
Served in SC/DC
Employee of the USMS from 1993–2016

Jeremy Conley of Maryland
Deputy U.S. Marshal
Served in E/WA, S/CA, D/MD
Employee of the USMS from 2010–Present

Tyrone Cotton of Maryland
Supervisory Detention Enforcement Officer, Ret.
Served in SC/DC
Employee of the USMS from 1985–2006

Geraldo Crooke of Florida
Senior Inspector, Deputy U.S. Marshal, Ret.
Served in D/VI, N/GA, D/NE, M/FL, HQ
Employee of the USMS from 1991–2016

James Dade of Maryland
Detention Enforcement Officer, Ret.
Served in SC/DC
Employee of the USMS from 1987–2004

Mark Edge of Maryland
Detention Enforcement Officer, Ret.
Served in SC/DC
Employee of the USMS from 1989–2014

Dwayne Epps of California
Senior Inspector, Deputy U.S. Marshal
Served in S/CA
Employee of the USMS from 1997–Present

Jeremy Felton of Arizona
Detention Management Inspector
Served in D/AZ, SC/DC
Employee of the USMS from 2014–Present

Dr. Matthew Fogg of Maryland
Chief Deputy U.S. Marshal, Ret.
Served in SC/DC
Employee of the USMS from 1978–2008

Charles Ernest Fonseca of Michigan
Chief Inspector
Served in E/MI, HQ
Employee of the USMS from 1985–2005

Randy Foster of Florida
Supervisory Deputy U.S. Marshal, Ret.
Served in SC/DC
Employee of the USMS from 1991–2013

Cordell Frazier of Tennessee
Deputy U.S. Marshal
Served in M/TN
Employee of the USMS from 2005–Present

Shervonne S. Gallow of Louisiana
Deputy U.S. Marshal
Served in W/MO, S/CA, W/LA
Employee of the USMS from 2001–Present

Flora Gant Bridges of Missouri
Chief Inspector, Proposing Official, Office of the Director
Served in E/MO, C/IL, HQ
Employee of the USMS from 1999–2018

Maceo Gates of Maryland
Deputy U.S. Marshal
Served in SC/DC, D/MD
Employee of the USMS from 2014–Present

Barrett J. Gay of Georgia
Deputy U.S. Marshal, Ret.
Served in N/GA
Employee of the USMS from 1990–2003

David Gibson of California
Criminal Investigator, Deputy U.S. Marshal
Served in S/CA, C/CA
Employee of the USMS from 2006–Present

Jacob Green of Washington
Chief Inspector, Office of Professional Responsibility
Served in E/NY, SC/DC, W/WA, HQ
Employee of the USMS from 2002–Present

Frederick C. Green of Maryland
Special Deputy U.S. Marshal, Ret.
Served in SC/DC
Employee of the USMS from 1989–1994

Aaron Wesley Hackett of Virginia
Supervisory Inspector, Ret.
Served in SC/DC, HQ
Employee of the USMS from 1988–2016

Jacqueline A. Hargrove of Maryland
Detention Enforcement Officer, Ret.
Served in SC/DC
Employee of the USMS from 1988–2010

Keith Lawrence Harrington of Illinois
Senior Inspector, Deputy U.S. Marshal, Ret.
Served in C/IL, HQ
Employee of the USMS from 1989–2018

Derek Haywood of Virginia
Deputy U.S. Marshal
Served in D/VT, E/VA, DC/DC
Employee of the USMS from 2000–Present

Thomas Hedgepeth of Maryland
Chief Inspector, Office of Security, Safety and Health
Served in SC/DC, HQ
Employee of the USMS from 1991–2017

Regina Holsey of Georgia
Senior Inspector, Deputy U.S. Marshal, Ret.
Served in N/GA, HQ
Employee of the USMS from 1995–2018

Marc A. Howard of Alabama
Criminal Investigator, Deputy U.S. Marshal
Served in S/AL, M/GA, E/TX
Employee of the USMS from 2003–Present

Jeryl Isaac of Virginia
Senior Inspector, Deputy U.S. Marshal
Served in S/CA, HQ
Employee of the USMS from 2007–Present

Leila James of Maryland
Detention Enforcement Officer, Ret.
Served in SC/DC
Employee of the USMS from 1995–2005

Rameen Johnson of Pennsylvania
Deputy U.S. Marshal, Ret.
Served in SC/DC
Employee of the USMS from 2005–2010

Fayette L. Jones of Maryland
Senior Inspector, Deputy U.S. Marshal, Ret.
Served in SC/DC, HQ
Employee of the USMS from 1994–2018

Sylvester Jones of Maryland
Assistant Director of the U.S. Marshals Service, Ret.
Served in N/IL, D/VI, D/PR, N/GA, HQ
Employee of the USMS from 1987–2014

Tony Orlando Jordan of South Carolina
Deputy U.S. Marshal
Served in D/AZ, D/SC
Employee of the USMS from 2001–Present

Arthur L. Lloyd of District of Columbia
Deputy U.S. Marshal, Ret.
Served in SC/DC, DC/DC
Employee of the USMS from 1980–2004

Jerome Mack of Texas
Deputy U.S. Marshal
Served in W/TX
Employee of the USMS from 1995–2009

Jeffrey Malone of Georgia
Senior Inspector, Deputy U.S. Marshal, Ret.
Served in SC/DC, N/GA, HQ
Employee of the USMS from 1993–2017

Travis Marcus of Maryland
Detention Enforcement Officer, Ret.
Served in SC/DC
Employee of the USMS from 2011–2012

Sheldon Martin of California
Deputy U.S. Marshal
Served in S/CA, E/WA
Employee of the USMS from 2013–Present

Kevin Matthew of Virginia
Detention Enforcement Officer
Served in SC/DC
Employee of the USMS from 2008–Present

Shawn J. McMahon of Texas
Criminal Investigator, Deputy U.S. Marshal
Served in N/IN, SC/DC, S/TX
Employee of the USMS from 2000–2011

Charles L. McNeal of New Jersey
Chief Deputy U.S. Marshal, Ret.
Served in N/CA, S/NY, D/NJ
Employee of the USMS from 1979–2003

Charlie Northington of Virginia
Detention Enforcement Officer
Served in DC/SC, D/MD, and E/VA
Employee of the USMS from 2001–Present

Anthony D. Parks of Arizona
Deputy U.S. Marshal
Served in D/AZ
Employee of the USMS from 1994–2017

Michael D. Parks of Oklahoma
Supervisory Deputy U.S. Marshal, Ret.
Served in W/OK, SC/DC
Employee of the USMS from 1994–2006, 2012–2017

Juan P. Peterson of New Jersey
Senior Criminal Investigator, Deputy U.S. Marshal, Ret.
Served in E/NY, E/PA
Employee of the USMS from 1985–1995

Edith S. Pickens
Protective Intelligence Inspector, Ret.
Served in E/MI, W/MI, HQ, N/GA
Employee of the USMS from 1988–2016

Huey D. Pugh of Texas
Supervisory Deputy U.S. Marshal, Ret.
Served in S/WV, E/AR, W/TN, HQ
Employee of the USMS from 1990–2016

Paul P. Rivers of Maryland
Supervisory Deputy U.S. Marshal, Ret.
Served in S/NY, D/SC, SC/DC, D/MD
Employee of the USMS from 1990–2017

Frederick J. Robinson, Jr. of Virginia
Assistant Chief Deputy U.S. Marshal, Ret.
Served in C/CA, HQ, SC/DC
Employee of the USMS from 1988–2012

Mariam Rodgers of Washington
Deputy U.S. Marshal
Served in W/WA, HQ, N/GA
Employee of the USMS from 1997–Present

Brian Sanders of Ohio
Senior Inspector, Deputy U.S. Marshal
Served in W/TN, HQ
Employee of the USMS from 2002–Present

Adam Savoie of California
Deputy U.S. Marshal, Ret.
Served in S/CA, DC/DC
Employee of the USMS from 2009–2019

Jonathon Scott of Maryland
Senior Inspector, Deputy U.S. Marshal
Served in S/NY, N/IL, E/NY, DC/DC
Employee of the USMS from 2011–Present

Todd Singleton of Maryland
Supervisory Deputy U.S. Marshal, Ret.
Served in SC/DC
Employee of the USMS from 1994–2017

Avery Sirmans of Georgia
Deputy U.S. Marshal
Served in N/GA
Employee of the USMS from 2003–Present

Eric E. Smith of Texas
Supervisory Deputy U.S. Marshal, Ret.
Served in N/TX
Employee of the USMS from 1994–2014

Ingra Smith of Tennessee
Detention Enforcement Officer
Served in M/NC, E/TN
Employee of the USMS from 2001–Present

Kermit S. Smith of California
Senior Inspector, Deputy U.S. Marshal, Ret.
Served in C/CA
Employee of the USMS from 1984–2008

Otto Dethaniel Starks, II of Florida
Detention Enforcement Officer, Ret.
Served in SC/DC, C/CA, M/FL
Employee of the USMS from 1989–2015

Zack Stovall of Oregon
Witness Security Inspector, Ret.
Served in W/OR
Employee of the USMS from 1999–2018

Jonathan J. Stover of Maryland
Detention Enforcement Officer, Ret.
Served in SC/DC
Employee of the USMS from 1989–2006

Jose Manuel Tirado of Florida
Detention Enforcement Officer
Served in SC/DC
Employee of the USMS from 1995–2018

Douglas L. Tolliver of South Carolina
Deputy U.S. Marshal
Served in DC/DC, E/VA, D/SC
Employee of the USMS from 2007–Present

Joseph E. Tolson of Maryland
Chief of Background Investigation and Adjudication Unit, Ret.
Served in DC/DC, SC/DC, HQ
Employee of the USMS from 1970–2001

Shawn Travis of Florida
Deputy U.S. Marshal, Ret.
Served in N/FL
Employee of the USMS from 1996–2000

G. Von Brown of Maryland
Special Deputy U.S. Marshal
Served in SC/DC, DC/DC
Employee of the USMS from 1989–1999, 2011–2015

Victor M. Washington of Maryland.
Detention Enforcement Officer, Ret.
Served in SC/DC
Employee of the USMS from 1993–2012

Ronald Wells of Florida
Detention Enforcement Officer
Served in SC/DC
Employee of the USMS from 1988–2002

Jeffrey K. Whitehead of Virginia
Detention Enforcement Officer
Served in S/NY, E/VA
Employee of the USMS from 2000–Present

Charley L. Williams of Missouri
Deputy U.S. Marshal, Ret.
Served in E/MO
Employee of the USMS from 1998–2013

Donald Williams of California
Supervisory Inspector
Served in C/CA, E/VA, M/TN, D/NMI, N/CA, HQ
Employee of the USMS from 1991–2017

Howard Williams of Maryland
Supervisory Detention Enforcement Officer, Ret.
Served in SC/DC
Employee of the USMS from 1989–2013

Roger Williams of Georgia
Deputy U.S. Marshal
Served in N/GA, D/NM
Employee of the USMS from 2003–Present

Marlon Windbush of Virginia
Criminal Investigator, Deputy U.S. Marshal
Served in E/VA, C/CA, and HQ
Employee of the USMS from 2002–Present

Daniel L. Winfield of Georgia
Senior Inspector, Deputy U.S. Marshal
Served in HQ, TD
Employee of the USMS from 2003–Present

Ruth Worsley of North Carolina
Supervisory Deputy U.S. Marshal, Ret.
Served in E/NY and D/NJ
Employee of the USMS from 1980–1998

Gerard Young of Virginia
Senior Inspector, Deputy U.S. Marshal
Served in E/NY, DC/DC, HQ
Employee of the USMS from 2005–Present

EXHIBIT 4



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Office of Federal Operations
P.O. Box 77960
Washington, DC 20013

Matthew F. Fogg,
Complainant,

v.

Eric H. Holder, Jr.,
Attorney General,
Department of Justice
(United States Marshal Service),
Agency.

Appeal No. 0120073003

Hearing No. 570-2006-00483X

Agency No. M946376

DECISION

On June 20, 2007, Complainant filed a timely appeal with the Commission from the Agency's April 27, 2007 decision and order denying class certification and dismissing both the class and individual complaints. The Commission accepts Complainant's appeal pursuant to 29 C.F.R. § 1614.405(a). For the following reasons, the Commission REVERSES the Agency's final order which adopted an EEOC Administrative Judge's decision denying certification of the class complaint for failure to satisfy the requirements set forth in 29 C.F.R. § 1614.204(a)(2), and REMANDS the complaint back to the Agency for further processing in accordance with this decision.

ISSUE PRESENTED

The issue presented is whether the Agency's final order erred and Complainant's class complaint should have been certified.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Criminal Investigator, GS-1811-13, for the U.S. Marshall's Service (USMS) in Arlington, Virginia. On March 10, 1994, Complainant made contact with the EEO counselor, and on or about July 12, 1994 filed a formal complaint alleging discrimination based on race (Black) and reprisal for prior EEO activity on behalf of a "class of employees, former employees, applicants and/or potential employees" of the USMS. Specifically, Complainant alleged that: (1) the USMS has

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not met its Affirmative Action obligation required by section 501 of Title 5 of the Rehabilitation Act of 1973;¹ (2) USMS is not recruiting Black employees at a rate comparable to the recruitment of White employees; (3) the penalties for infractions applied to Black employees in USMS disciplinary proceedings are frequently greater and more severe than those applied to White employees; (4) the USMS purposely delays processing of EEO complaints filed by Black employees; and (5) White USMS employees receive preferential treatment with respect to special assignments.

The complaint was forwarded to the EEOC's Washington Field Office for a determination on whether it met the requirements for class certification. On August 2, 1995, the first administrative judge assigned to the case (AJ-1) issued a request for information (RFI) to both Complainant and the Agency. The case was thereafter assigned to a second administrative judge (AJ-2). The Agency's response to the RFI was received on August 24, 1995. Both AJs granted Complainant multiple extensions of time to file his response. These extensions were premised, in part, on a Freedom of Information Act (FOIA) request Complainant had filed with the Agency. Eventually, AJ-2 reviewed the FOIA request and determined that the information Complainant sought would not lead to information that would be responsive to and/or necessary to respond to the RFI. AJ-2 informed Complainant of this fact on February 22, 1996, and gave him until February 28, 1996, to respond to the RFI. AJ-2 did not receive these responses until after close of business on February 28, 1996. By letter dated March 5, 1996, AJ-2 remanded the complaint to the Agency for dismissal based on Complainant's failure to respond to the RFI. AJ-2 stated that, even considering what she deemed to be an untimely response, she found that it was not responsive, and did not provide adequate and specific information regarding the issues in the complaint. AJ-2 stated further that she recommended that the Agency dismiss the complaint or, in the alternative, issue a final decision in the event it determined there was sufficient information to do so. Notwithstanding a reminder to Complainant that he could pursue EEO counseling on the issues outside of the class complaint, AJ-2 made no remarks pertaining to the individual complaints. The Agency thereafter issued a decision on April 12, 1996, in which it dismissed the class complaint pursuant to § 1614.204(d)(4) on the grounds that the allegations therein lacked specificity and detail.

Complainant subsequently filed an appeal of the Agency's decision with the Commission, which closed that appeal administratively on the grounds that Complainant, by letter dated March 27, 1997, withdrew the class complaint. By decision dated May 26, 2006, the Commission re-opened Complainant's appeal on its own motion. The Commission issued a decision concluding that it had misinterpreted the March 27, 1997 letter. Specifically, it found that the letter did not constitute a withdrawal of Complainant's appeal. Further, the decision addressed AJ-2's dismissal and determined that it had been in error. Specifically, the Commission found that Complainant's February 28, 1996, responses to the RFI were "minimally sufficient to allow [AJ-2] to make a determination" as to whether the prerequisites

¹ Complainant withdrew the Rehabilitation Act class claim in his answers to AJ-1's class certification questions. See August 20, 2007 Appeal, Exhibit 5.

for class certification had been satisfied. Fogg v. Department of Justice (USMS), EEOC Request No. 05A41062 (May 26, 2006). The Commission refrained from making a determination on whether the prerequisites for class certification in fact were met, but found that AJ-2 erred in dismissing the class complaint for vagueness.

The Commission remanded the case to the Washington Field Office, and the case was assigned to a third AJ (AJ-3) for a determination as to whether the prerequisites for class certification had been satisfied. Subsequently, AJ-3 determined that “[i]n the absence of specific examples of how Complainant and other Black individuals have allegedly been discriminated against, coupled with the lack of specifics concerning alleged discriminatory policies or practices ... Complainant is unable to satisfy the commonality, typicality, and numerosity criteria” of 29 C.F.R. § 1614.204. Accordingly, because the class agent failed on the procedural prerequisites for class certification, AJ-3 dismissed the class complaint. The Agency issued a final order on April 27, 2007 fully implementing AJ-3’s denial of class certification and dismissal of the class complaint.

The Commission notes that Complainant has been awarded individual relief in his individual complaints in U.S. District Court; however, the Commission has previously held that an individual award of relief to a class agent, prior to the disposition of a class complaint, does not disqualify the class agent so long as his interests do not become antagonistic to the interest of the other class members. See Washington v. Department of Agriculture, EEOC Request No. 05890052 (May 12, 1989); Tarrats, Rivera, et al. v. Federal Deposit Insurance Corporation, EEOC Appeal No. 01960433 (Jan. 12, 1998).

CONTENTIONS ON APPEAL

On appeal, Complainant argues that we should reverse AJ-3’s decision because: (1) the AJ based his decision on an incomplete record;² (2) the AJ failed to accept the May 26, 2006 decision of the Commission; (3) the AJ failed to recognize the specific examples of how Complainant was discriminated against and satisfied the “aggrieved individual” requirement; (4) the AJ failed to consider specific examples of how other Black USMS employees were discriminated against as illustrated in Complainant’s October 18, 2004 “Comments and Statements in Response to Commission’s Request for Reconsideration;” and (5) the AJ erred in his finding that Complainant had failed to provide specific information regarding allegations of discriminatory policies or practices.

² Complainant asserts that AJ-3 denied class certification without considering the information included in the “Ad Hoc Committee on Personnel Matters” report. The record is silent as to whether this document was available to AJ-3 at the time he rendered his decision. The document is currently present in the record. The document discusses the generalized allegations of racial inequities existing within the USMS prior to July of 1991, and makes specific recommendations to the USMS on addressing these matters.

In response to Complainant's appeal, the Agency requests that we affirm its decision dismissing Complainant's class complaint for failure to meet the prerequisites prescribed in 29 C.F.R. § 1614.204. The Agency submits that Complainant fails to meet the prerequisites prescribed in 29 C.F.R. § 1614.204 because: (1) he fails to specify and identify the particular Agency-wide decision or practice affecting the class and causing the disparity alleged, and (2) he lacks standing because he has not identified any way in which he has been aggrieved by any Agency action.³

ANALYSIS AND FINDINGS

With regard to Complainant's contention that the Agency has not complied with the Commission's decision in EEOC Request No. 05A41062, we find that Complainant has misinterpreted the Commission's May 26, 2006 decision. In that decision, we specifically stated that we "refrain from deciding whether the prerequisites [for class certification] were met. We only go so far as to find that the AJ erred in dismissing the class complaint for vagueness." EEOC Request No. 05A41062 at 3. We remanded the case back to the Washington Field Office and refrained from making any decision on sufficiency of the evidence for that purpose. In addressing the sufficiency of the class complaint, we found only that the evidence was sufficient to permit the AJ to make a decision class certification.

Class Certification

The purpose of class action complaints is to economically address claims "common to [a] class as a whole . . . turn[ing] on questions of law applicable in the same manner to each member of the class." General Telephone Co. of the Southwest v. Falcon, 457 U.S. 147, 155 (1982); Mitchell, et al. v. Department of the Air Force, EEOC Appeal No. 01A41492 (Oct. 18, 2005); Mastren, et al. v. U.S. Postal Service, EEOC Request No. 05930253 (Oct. 17, 1993). Under EEOC regulations, a class complaint must allege that: (1) the class is so numerous that a consolidated complaint concerning the individual claims of its members is impractical; (2) there are questions of fact common to the class; (3) the class agent's claims are typical of the claims of the class; and (4) the agent of the class, or, if represented, the representative, will fairly and adequately protect the interests of the class. 29 C.F.R. § 1614.204(a)(2). A class complaint may be rejected if any of the prerequisites are not met. See Garcia v. Department of Justice, EEOC Request No. 05960870 (Oct. 10, 1998) (citing 29 C.F.R. § 1614.204(d)(2)). An agency must forward the class complaint for assignment to an Administrative Judge, who will determine whether the class complaint meets the criteria for certification. See 29 C.F.R. § 1614.204(d).

³In its reply brief, the Agency argues that Complainant's appeal brief was not timely filed. We find that Complainant's appeal brief was timely. By letter dated July 12, 2007, Complainant requested an extension of time to file a statement or brief in support of his appeal. We granted complainant an extension until August 20, 2007. The record reflects that we received Complainant's appeal brief via facsimile on August 20, 2007.

The class agent, as the party seeking certification, bears the burden of proof, and it is his obligation to submit sufficient probative evidence to demonstrate satisfaction of the four regulatory criteria. See Browder et al. v. USPS, EEOC Appeal No. 0120061423 (Mar. 12, 2009). Further, a class complaint must identify the policy or practice adversely affecting the class, as well as the specific action or matter affecting the class agent. 29 C.F.R. § 1614.204(c)(1). When alleging a claim of “across the board” discrimination, allegations of specific discriminatory treatment, absent evidence of some common policy or practice, such as biased testing procedures or proof of an entirely subjective decision-making procedure, do not support class certification. See id., at 159 n. 15.

Commonality and Typicality

In addressing a class complaint, it is important to resolve the requirements of commonality and typicality prior to addressing numerosity in order to “determine the appropriate parameters and the size of the membership of the resulting class.” See Moten v. Federal Energy Regulatory Commission, EEOC Request No. 05960233 (April 8, 1997) (citing Harris v. Pan American World Airways, 74 F.R.D. 25, 45 (N.D. Cal. 1977)).

The purpose of the commonality and typicality requirements is to ensure that class agent possesses the same interests and suffered the same injury as the members of the proposed class. Falcon, 457 U.S. at 156-57. Often, the commonality and typicality prerequisites tend to merge and are very similar. Id. at 157. Commonality requires that there be questions of fact common to the class, that is, the same action or policy affected all members of the class. Generally, this can be accomplished through allegations of specific incidents of discrimination, supporting affidavits containing anecdotal testimony from other employees who were allegedly discriminated against in the same manner as the class agent, and evidence of specific adverse actions taken. Id.; Belser v. Department of the Army, EEOC Appeal No. 01A05565 (Dec. 6, 2001) (citing Mastren v. U.S. Postal Service, EEOC Request No. 05930253 (Oct. 27, 1993)). Mere conclusory allegations, standing alone, do not show commonality. Garcia, EEOC Appeal No. 07A10107 (citing Mastren, EEOC Request No. 05930253). Factors to consider in determining commonality include whether the practice at issue affects the whole class or only a few employees, the degree of centralized administration involved, and the uniformity of the membership of the class, in terms of the likelihood that the members’ treatment will involve common questions of fact. Id.

Typicality, on the other hand, requires that the claims or discriminatory bases alleged by the class agent be typical of the claims of the class, so that the interest of the putative class members are encompassed within the class agent’s claims. Falcon at 156. A class agent must be part of the class he seeks to represent, and must “possess the same interest and suffer the same injuries” as class members. Id. at 160.

In the instant case, we find that AJ-3 improperly determined that the legal requirements of commonality and typicality were not met.⁴ In his October 17, 2004 declaration, which Complainant included in his "Comments and Statements in Response to Commission's Request for Reconsideration," Complainant alleges that during the course of his 17 year employment with the USMS, he was subjected to discrimination based on race and reprisal. Specifically, Complainant alleges that the Agency had a practice of giving "non-Black employees [...] preferential treatment with respect to the assignment of law enforcement positions." Complainant alleges that this practice had the affect of subjecting him to disparate terms and conditions of employment, including but not limited to less preferable work assignments and opportunities to advance within the Agency.

In this same pleading and attached as Exhibits 2 and 3 to his appeal, Complainant includes declarations from 22 Black USMS employees, alleging that they experienced similar incidences of discrimination over the course of their employment with the USMS. See August 20, 2007 Appeal, Exhibits 2 and 3; See Fitzgerald v. Dep't of Defense, EEOC Appeal No. 0720090003 (Mar. 26, 2010) (The Commission certified a class where complainant alleged a lack of promotional opportunity due to: the agency's performance review process, the ability to fill a position without posting the vacancy, the ranking done by the central rating board, and Commander approval, and supported the allegation with affidavits and statistical evidence showing that other African-American employees, also subject to the same agency promotional process, had not risen to the aspired Pay Band).

CM-1 stated that he worked for the USMS for a total of 12 years, and worked at the GS-12 level as a Deputy Marshall for approximately nine years in Alabama. CM-1 states that he was subjected to discrimination based on his race over the course of his employment by being denied promotions in favor of less senior less qualified White employees, and by being assigned less preferable work than similarly situated white employees. CM-1 states that he was discriminated against because of his race upon being hired by the USMS. CM-1 states that although he had a law enforcement background, he was only permitted to enter the USMS at the GS-5 level while White candidates with no law enforcement background were hired at the GS-7 level. In 1998 CM-1 states that he applied for a merit promotion to an instructor position at the Law Enforcement Academy, and that his application tied with a White Deputy's for fifth place on the "Top Five" list. CM-1 states that only the applications of the White applicants were considered for the position. CM-1 states that he inquired about his application being disregarded, and was informed that a mistake had been made; however, nothing was ever done to rectify the mistake.

CM-2 stated that he has worked for the USMS for over 18 years. At the time he made his declaration, CM-2 indicated that he was a GS-13 Supervisory Deputy. CM-2 stated that

⁴ In his formal complaint, Complainant relied on his characterization of the allegations in his four outstanding individual complaints, and states that the alleged actions and practices contained within were common to the class. The Commission notes that these complaints are absent from the record.

despite being eligible to bid on GS-13 positions in 1990, it took him three years after becoming eligible to be promoted to the GS-13 level. CM-2 stated that, in 1991, he applied for a vacant supervisory position in the Fugitive Division. CM-2 states that he had a background in the Division and was the most senior employee in the division. CM-2 says that despite his qualifications his application was denied and a White male who had never worked in the Division was selected. Throughout the 1990s, CM-2 says that he applied for and made the "Top Five" eligibles list for approximately fifty GS-14 positions. Each time, CM-2 states he was denied the promotion and a less or equally qualified White male was selected.

CM-3 stated that he has been employed by the USMS for approximately 25 years. At the time he made the declaration he was employed as a GS-12 Deputy U.S. Marshall for nearly 11 years. CM-3 alleges that he has only been afforded the opportunity to serve in two temporary promotions at the GS-13 level for a total of five months during his tenure with the USMS, while White employees have been granted more extensive and more regular details. CM-3 states that while he has been repeatedly denied promotions throughout his career despite his qualifications, White Deputy Marshalls that started working with USMS at the same time have been promoted to the GS-13 level and beyond.

CM-4 stated that she had been employed by the USMS for 13 years at the time she made her declaration. In 2004 she had been working for 11 years as a Program Analyst at the GS-9 level. In or around 1993, CM-4 states that she began submitting applications for various GS-12 positions but was not selected for any of them. CM-4 states that she was well qualified for the positions and more senior than most of the White employees selected for the positions, as well as, those hired in the recent years.

The record contains evidence of other examples similar to those summarized above. We find that this evidence is sufficient to meet the commonality requirement. Additionally, we find that this evidence is sufficient to establish that the practices at issue affect the whole class and not only a few employees, and sufficiently alleges a claim of "across the board" discrimination. The declarations Complainant provided from 22 Black USMS employees offer preliminary proof of what appears to be a common Agency practice, and an entirely subjective decision-making procedure affecting Black USMS employees. See Falcon, 457 U.S. at 159 n. 15.

Complainant established typicality for many of the same reasons he met the commonality requirement. The Commission notes that it is necessary for Complainant to make some affirmative showing, beyond individual claims and general class allegations, that discrimination has been suffered by the proposed class. See Roliz v. United States Postal Service, EEOC Appeal No. 01891595 (January 22, 1990). As discussed and presented previously above, Complainant has provided evidence to support his contention that common claims exist among the purported class members. The declarations from 22 Black USMS employees Complainant produced supports Complainant's assertion that a class of employees within the Agency has been discriminated against due to their race.

Numerosity

The numerosity prerequisite states that the putative class must be sufficiently numerous so that a consolidated complaint by the members of the class or individual, separate complaints is impractical. See 29 C.F.R. § 1614.204(a)(2)(i). Numerosity requires that the putative class be large enough that joinder is impractical. 29 C.F.R. § 1614.204(a)(2)(i). The exact number of class members need not be shown prior to certification, but the class agent must make some showing of the number of individuals affected by the alleged discriminatory practices who may assert a claim. See Moten v. Federal Energy Regulatory Commission, EEOC Request No. 05910504 (Dec. 30, 1991). The focus in determining whether the class is sufficiently numerous for certification is the number of persons affected by the agency's alleged discriminatory policy or practice. See White, et al. v. Department of the Air Force, EEOC Appeal No. 01A42449 (Sept. 1, 2005); Moten, supra. The Commission has held that the relevant factors to determine whether the numerosity requirement has been met are the size of the class, the geographical dispersion of the class, the ease with which class members may be identified, the nature of the action, and the size of each member's claim. Carter, et al. v. U.S. Postal Service, EEOC Appeal No. 01A24926 (Nov. 14, 2003). The Supreme Court has stated that Rule 23 does not impose a numerical minimum or cut-off point for the size of the class but, instead, requires an examination of the facts of each case. General Telephone Co. v. EEOC, 446 U.S. 318, 330 (1980); Harris v. Pan American World Airways, 74 F.R.D. 24 (N.D. Cal. 1977).

Complainant includes declarations from 22 Black USMS employees and defines the class in his formal complaint as consisting of "50 expanding Black USMS employees," in all of his pleadings he speaks about his knowledge that the racial discrimination he has suffered at the USMS is consistent with the racial discrimination suffered by other Blacks at the USMS. We find Complainant has met his burden of showing that the class is so large that a consolidated complaint would not be practical. Therefore, we find that Complainant has met the requirement for numerosity.

Adequacy of Representation

The final requirement is that the class agent, or his representative, adequately represent the class. To satisfy this criterion, the agent or representative must demonstrate that he has sufficient legal training and experience to pursue the claim as a class action, and will fairly and adequately protect the interests of the class. Besler, supra; Woods v. Department of Housing and Urban Development, EEOC Appeal No. 01961033 (Feb.13, 1998). In this regard, it is necessary for the class agent, or the representative, to demonstrate sufficient ability to protect the interests of the class so that the claims of the class members do not fail for reasons other than their merits. Complainant has an attorney representative. Therefore, we find that the class would have adequate representation.

CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, we REVERSE the Agency's final order denying certification of the class complaint for failure to satisfy the requirements set forth in 29 C.F.R. § 1614.204(a)(2) and the matter is REMANDED to the Agency for processing in accordance with the Order below.

ORDER

The Agency is ORDERED to perform the following:

1. Notify potential class members of the accepted class claim within fifteen (15) calendar days of the date this decision becomes final, in accordance with 29 C.F.R. § 1614.204(e).
2. Forward a copy of the class complaint file and a copy of the notice to the Hearings Unit of the Washington Field Office within thirty (30) calendar days of the date this decision becomes final. The Agency must request that an Administrative Judge be appointed to hear the certified class claim, including any discovery that may be warranted, in accordance with 29 C.F.R. § 1614.204(f).⁵

The Agency is further directed to submit a report of compliance, as provided in the statement entitled "Implementation of the Commission's Decision." The report shall include supporting documentation of the Agency's actions.

IMPLEMENTATION OF THE COMMISSION'S DECISION (K0610)

Compliance with the Commission's corrective action is mandatory. The Agency shall submit its compliance report within thirty (30) calendar days of the completion of all ordered corrective action. The report shall be submitted to the Compliance Officer, Office of Federal Operations, Equal Employment Opportunity Commission, P.O. Box 77960, Washington, DC 20013. The Agency's report must contain supporting documentation, and the Agency must send a copy of all submissions to the Complainant. If the Agency does not comply with the Commission's order, the Complainant may petition the Commission for enforcement of the order. 29 C.F.R. § 1614.503(a). The Complainant also has the right to file a civil action to enforce compliance with the Commission's order prior to or following an administrative

⁵ On September 29, 2011 the Commission received Complainant's request to amend the class complaint to add two class members. In light of the Commission's decision regarding the class complaint, Complainant should raise his motion to amend the class complaint to include two additional class members to the Administrative Judge appointed to hear the certified class claim.

petition for enforcement. See 29 C.F.R. §§ 1614.407, 1614.408, and 29 C.F.R. § 1614.503(g). Alternatively, the Complainant has the right to file a civil action on the underlying complaint in accordance with the paragraph below entitled "Right to File A Civil Action." 29 C.F.R. §§ 1614.407 and 1614.408. A civil action for enforcement or a civil action on the underlying complaint is subject to the deadline stated in 42 U.S.C. 2000e-16(c) (1994 & Supp. IV 1999). If the Complainant files a civil action, the administrative processing of the complaint, including any petition for enforcement, will be terminated. See 29 C.F.R. § 1614.409.

STATEMENT OF RIGHTS - ON APPEAL

RECONSIDERATION (M0610)

The Commission may, in its discretion, reconsider the decision in this case if the Complainant or the Agency submits a written request containing arguments or evidence which tend to establish that:

1. The appellate decision involved a clearly erroneous interpretation of material fact or law; or
2. The appellate decision will have a substantial impact on the policies, practices, or operations of the Agency.

Requests to reconsider, with supporting statement or brief, must be filed with the Office of Federal Operations (OFO) within thirty (30) calendar days of receipt of this decision or within twenty (20) calendar days of receipt of another party's timely request for reconsideration. See 29 C.F.R. § 1614.405; Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at 9-18 (Nov. 9, 1999). All requests and arguments must be submitted to the Director, Office of Federal Operations, Equal Employment Opportunity Commission, P.O. Box 77960, Washington, DC 20013. In the absence of a legible postmark, the request to reconsider shall be deemed timely filed if it is received by mail within five days of the expiration of the applicable filing period. See 29 C.F.R. § 1614.604. The request or opposition must also include proof of service on the other party.

Failure to file within the time period will result in dismissal of your request for reconsideration as untimely, unless extenuating circumstances prevented the timely filing of the request. Any supporting documentation must be submitted with your request for reconsideration. The Commission will consider requests for reconsideration filed after the deadline only in very limited circumstances. See 29 C.F.R. § 1614.604(c).

COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (R0610)

This is a decision requiring the Agency to continue its administrative processing of your complaint. However, if you wish to file a civil action, you have the right to file such action in an appropriate United States District Court within ninety (90) calendar days from the date that

you receive this decision. In the alternative, you may file a civil action after one hundred and eighty (180) calendar days of the date you filed your complaint with the Agency, or filed your appeal with the Commission. If you file a civil action, you must name as the defendant in the complaint the person who is the official Agency head or department head, identifying that person by his or her full name and official title. Failure to do so may result in the dismissal of your case in court. "Agency" or "department" means the national organization, and not the local office, facility or department in which you work. Filing a civil action will terminate the administrative processing of your complaint.

RIGHT TO REQUEST COUNSEL (Z0610)

If you decide to file a civil action, and if you do not have or cannot afford the services of an attorney, you may request from the Court that the Court appoint an attorney to represent you and that the Court also permit you to file the action without payment of fees, costs, or other security. See Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq.; the Rehabilitation Act of 1973, as amended, 29 U.S.C. §§ 791, 794(c). The grant or denial of the request is within the sole discretion of the Court. Filing a request for an attorney with the Court does not extend your time in which to file a civil action. Both the request and the civil action must be filed within the time limits as stated in the paragraph above ("Right to File A Civil Action").

FOR THE COMMISSION:



Carlton M. Hadden, Director
Office of Federal Operations

JUL 1 1 2012

Date

CERTIFICATE OF MAILING

For timeliness purposes, the Commission will presume that this decision was received within five (5) calendar days after it was mailed. I certify that this decision was mailed to the following recipients on the date below:

Matthew F. Fogg
P.O. Box 30956
Washington, DC 20030

Thomas J. Henderson, Esq.
1666 Connecticut Ave NW #300
Washington, DC 20009

Lisa Dickinson, Director, EEO Staff
Department of Justice
Office of EEO, Suite 103 CS-3
Washington, DC 20530-1000

JUL 1 1 2012

Date

RM

Equal Opportunity Assistant

Class M Fogg v 1903 7/12/12



EXHIBIT 5

Matthew Fogg <usmarshal.fogg@gmail.com>

2/17/22

Fwd: Follow Up From Call Today and the Class Members request to not have a bottom line of \$10,000,000 Ten Million in today's settlement discussions with the DOJ/USMS
To: ReginaFed50@yahoo.com, Charles Fonseca - USMS Class Agent <fonsecha@hotmail.com>, Ivan Baptise - USMS Class Agent <Ivan_B_BOP3027@Yahoo.com>, Tracy Brice - USMS Class <mrstasb@aol.com>, Paul Darby <PDarby225@gmail.com>, Thomas Hedgepath <Degepe@Yahoo.com>, Antonio Tony Gause - USMS Class <gauseaj@gmail.com>, Mariam Thompson - USMS Class <Marmar1149@hotmail.com>, MixItUpOneTime@aol.ccm, Matthew Fogg <usmarshal.fogg@gmail.com>

I don't have emails or phone numbers for four of Class Agents, namely; Kerry Simms, Whitehead, Epps or Jeffery;

Attached below is the email that I sent per your request to the Class attorneys early yesterday morning before they met with the Agency settlement officials and after having discussed it and agreed upon my most of the Class Agents. Please reach forward to the other 4 Class agents if you have their information.

Thanks,

Dr. Matthew Fogg

240-375-3580 Cell

Lead Class Representative

Privileged and Confidential Communications - Do not share outside of the Class participants.

DISCLAIMER: The email above is intended only for the professional and/or personal use of the recipient(s) identified. This email may include attorney-work product and may be an attorney-client communication and as such privileged and confidential. If you have received this email in error, delete the original email and any copies of it and please notify me immediately. You may not review, copy, or distribute this email if you are not an intended recipient.

Begin forwarded message:

From: Matthew Fogg <usmarshal.fogg@gmail.com>

Subject: Re: Follow Up From Call Today and the Class Members request to not have a bottom line of \$10,000,000 Ten Million in today's settlement discussions with the DOJ/USMSPaul

Date: February 16, 2022 at 1:09:12 PM EST

To: "PDarby225@gmail.com" <PDarby225@Gmail.com>

Cc: "carcle1@aol.com" Fogg" <carcle1@aol.com>

On Feb 16, 2022, at 4:07 AM, Matthew Fogg <usmarshal.fogg@gmail.com> wrote:

Dear David, Christine and the entire Fogg v DOJ Class legal team.

First let me again thank the firm for the years it has litigated this matter in good faith. I know that we had a phone conference yesterday (2-15-22) with the Fogg v DOJ/USMS class members. We discussed the information Christine has accurately outlined below which includes that, we the class representatives agreed on a bottom line of \$10,000,000 (ten million) or above for settlement negotiations that you will have with the DOJ/USMS today (2-16-22).

Following our conference call yesterday and receiving Christina's evening email below -- I received several phone calls and had discussions with most of the Class Representatives late in the evening that tasked me to communicate with the 'Firm' that after further thought, most are not comfortable agreeing to a bottom line of \$10 million for your settlement discussions with the DOJ/USMS today.

The Class members recognize that the firm has and will always represent the Class well in good faith but would like for today's settlement discussions with DOJ/USMS officials, to change the Class Reps agreement with the firm and not have a bottom line of \$10 (Million), thereby, leaving it open for further class discussion. Some Class members suggested that \$28 (million) with the justification for at least 1 (million) a year from the inception of the Class in 1994, is in line with Davids thoughts today that he hoped for a minimum settlement in the 20+ million range.

Again, we agree with Christina below that our demands today are significantly different from our original \$40 (Million) demand but we must still seek a reasonable settlement that represents the thousands of suffering or deceased class members we are responsible for representing over 28 years and never before adjudicated by any other plaintiff or class in the past.

The Class Reps clearly understand the discussions below outlining the Firms reason for suggesting a \$10 (million) bottom line including what could or might happen should this case go to court in 2024, knowing the judge could decide either way.

But nevertheless, for today and after all these years the USMS/DOJ are finally requesting good faith negotiations -- due to the compounded negative publicity on America's premier Federal law enforcement agency that will not end until this case is settled.

Therefore, we know the firm will seek the maximum amount from the USMS/DOJ today and come back to the Class Representatives for a discussion and/or agreement on a final settlement amount and if not obtainable, we might suggest a Special Mediator as previously tried prior to the DOJ/USMS willingness to negotiate in good faith.

Dr. Matthew Fogg
Lead Class Representative
Privileged and Confidential Attorney-Client Communications

On Feb 15, 2022, at 8:11 PM, Christine Dunn <cdunn@sanfordheisler.com> wrote:

**Privileged and Confidential Attorney-Client Communication
Do Not Forward**

Dear Class Agents,

Thank you for taking time out of your busy schedules to meet with us today. As always, we greatly appreciate and value your participation in and dedication to this case.

This email serves to memorialize our conversation today with regard to our strategy for settlement negotiations moving forward. First, we agreed that we will attempt to structure settlement negotiations with the Agency as follows:

- First, we will work on reaching an agreement with the Agency on a lump sum number for our two classes (promotion and hiring). This number will include relief for promotions and hiring claims, as well as incentive awards for class agents and other highly involved class members. As we explained, after we have reached agreement with the Agency on a settlement number, it will be allocated by a third-party neutral who will take into account individuals' claims and damages as well as their degree of participation in the case.
- Second, once we have secured monetary relief for the class, we will focus on programmatic relief to ensure the USMS does not continue to use practices and policies that have an adverse impact on African American DUSMs, DEOs, and applicants. As part of this process, we will continue to work with an industrial psychologist who will advise us on what less discriminatory policies and procedures we should request the Agency implement.
- Third, we are proposing to the Agency that once we have accomplished the above-mentioned objectives, we will negotiate payment for our attorneys' fees with the Agency. We are also proposing that if the Agency refuses to negotiate our fees separately from the class claims, we seek court intervention on a petition for fees and expenses.

Additionally, as you know, we will be having a settlement meeting with the Agency tomorrow. Our last settlement demand was \$40 million. On our call today, we discussed all the ways in which this is an incredibly aggressive number, which relies on assumptions that are not likely to hold up in court. We also discussed the practical considerations of continuing to litigate the case, including the legal risks of a possible decertification and the long delay until a potential resolution. As we communicated on our call today, it is our goal to get as much as possible for settlement of the class claims, and we understand we have authorization from you to resolve the class claims for an amount at or above \$10 million.

Lastly, we want to remind you that all discussions surrounding settlement are strictly privileged and confidential. Accordingly, you should not be discussing settlement with any non-class members. Please let us know if you have any questions about privilege or confidentiality.

Again, thank you for your participation today. **There is no need to be on 'stand-by' during the settlement meeting tomorrow**, and we hope we will have an update for you soon.

Best,
David and Team

Christine Dunn

Washington, D.C. and Baltimore Partner, [bio](#)

Criminal/Sexual Violence Practice Group Co-Chair

Baltimore

[111 S. Calvert Street, Suite 1950, Baltimore, MD 21202](#)

DIRECT: [410-291-7087](tel:410-291-7087) | **MAIN:** [410-834-7420](tel:410-834-7420)

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EXHIBIT 6

Memorandum of Understanding: *Fogg, et al. v. Garland*

- A. The parties agree that the terms and conditions herein constitute a “Memorandum of Understanding” (“MOU”) between the parties regarding the initial agreement to settle *Fogg v. Garland*, subject to a final, comprehensive settlement agreement (“Settlement Agreement”) that will cover the currently certified class: All current and former African American Deputy U.S. Marshals who were subjected to USMS policies and practices regarding promotions under the Merit Promotion Process, Management Directed Reassignments, and Headquarters Divisions assignments, and all African American current and former Deputy U.S. Marshals, Detention Enforcement Officers, and applicants never employed who were subjected to USMS policies and practices for hiring and recruitment of Deputy U.S. Marshal positions from January 23, 1994 to date on which the Settlement Agreement is fully executed. Any individuals with a pending EEO complaint asserting claims alleged in the class definition, that was filed after a date to be determined in 2017, will be provided with the option of continuing with their individual claim or participating as a class member. Any EEO complaints filed in or after 2017 where the claimant was provided written notice that the claims were subsumed by this matter will not be provided with the option to continue their individual claim.
- B. The parties agree to have further discussion with regard to how to facilitate notice of class action and/or settlement.
- C. Notice of settlement provided to the class members shall be transmitted via individualized mail and/or email for all class members for whom the Agency has email or mail addresses. Supplemental notice shall also include print publication, internet advertising, and mailings to relevant African American membership organizations and will be reasonably calculated to reach a majority of the potential class.
- D. The parties agree to request to stay the matter for at least 30 days, and to propose that the parties provide the Administrative Judge with status updates every 30 days until a final resolution has been reached.
- E. A settlement fund in the amount of \$15 million will be created (the “Settlement Fund”). All attorneys’ fees and expenses (except those specified in J and K) and all payments to class members will be paid from the Settlement Fund.
- F. Attorneys’ fees for Class Counsel will be 33% of the Settlement Fund. Expenses advanced by Class Counsel will be reimbursed from the Settlement Fund after the allocation of attorneys’ fees.
- G. The remainder of the Settlement Fund will be distributed to Class Agents and class members under a plan of allocation to be negotiated by the parties, which may include

- a third-party neutral. The Settlement Fund will include incentive awards for Class Agents and some class members.
- H. The parties agree the distribution of payments shall include back wages, interest, and compensatory damages and shall be reportable in accordance with the Internal Revenue Code.
 - I. The Agency denies all allegations in the Second Amended Class Charge.
 - J. The provision of the requisite notice of settlement shall be the responsibility of the Agency. The parties agree to further negotiate the necessity of a third-party neutral to allocate settlement funds and related matters.
 - K. The parties agree to negotiate on injunctive and equitable relief in good faith. The parties agree that these negotiations will begin no later than March 28, 2022. All expenses associated with any and all injunctive and equitable relief agreed to by the parties will be borne by the Agency. The parties agree that any resolution of this matter is contingent upon successful negotiation of injunctive and equitable relief.
 - L. The class shall release claims against the Agency alleging race discrimination in USMS policies and practices regarding promotions under the Merit Promotion Process, Management Directed Reassignments, and Headquarters Divisions assignments, and hiring and recruitment of Deputy U.S. Marshal positions from January 23, 1994 to the date on which the Settlement Agreement is fully executed.
 - M. The parties agree that they will fully cooperate with each other in the drafting and execution of the Settlement Agreement setting forth and implementing these provisions in fuller detail, and to cooperate fully in the performance of any additional acts necessary to effectuate the terms of this MOU. Class Counsel will submit motions for approval of the Settlement Agreement. The Agency agrees to not oppose any settlement term set forth in this MOU.
 - N. The parties understand with regard to any obligations under any Settlement Agreement, this MOU shall be governed by the applicable statutes or regulations.
 - O. The parties will confer in good faith to develop a mutually acceptable public statement relating to all settlement matters. In the interim, if a media inquiry is made regarding this case, the response shall be: “The parties have commenced settlement discussions and are continuing to negotiate in good faith. We will offer no further comment at this time.”

THE PARTIES ACKNOWLEDGE THAT THEY HAVE READ AND AGREE TO BE BOUND BY THE FOREGOING MOU.

COUNSEL FOR CLASS MEMBERS

COUNSEL FOR USMS

Name: David Sanford

Name: Lisa Dickinson

Title: Chairman, Sanford Heisler Sharp LLP

Title: General Counsel

Signature: 

Signature: _____

Date: March 8, 2022

Date: March 8, 2022

EXHIBIT 7

David Sanford, Esq.
September 11, 2023
Page 1

David Sanford, Esq.
Sanford & Heisler Sharp LLC.
700 Pennsylvania Ave., SE, Suite 300
Washington, DC 20003

Dear David

I write to you as a friend, the named Class Representative, one of the fifteen (15) class Agent/Representatives and the class “*spokesperson*” identified in our recent settlement negotiations involving *Matthew Fogg v Merrick Garland*, a U.S. Equal Employment Opportunity Commission (“EEOC”) case against the U.S. Marshals Service (“USMS”) under the supervision of the U.S. Department of Justice (“USDOJ”) that names as defendant, the United States Attorney General (“USAG”).

I contacted your firm in 2004 to find adequate legal representation for the Class Complaint I filed ten years earlier (1994), depicting well-documented and systemic racial (Black) discrimination that was ongoing and coincided with my “Individual” claims filed in 1985 against the USMS.

The battle against the nation's premier law enforcement agency has been long and arduous, involving most of my 32-year career and retirement. While the USDOJ was mandated as the "Justice Integrity Agency," it has proven to be everything but justice and integrity for many Black employees and citizens for decades.

As a remnant of my 1985 claim erroneously adjudicated in 2008, this federal government litigation against race discrimination has survived under seven U.S. Presidents and twelve U.S. Attorney Generals. This exemplifies America's non-partisan, racially hostile environment in the criminal justice system for approximately 10,000 African-American USMS personnel, job applicants, plus all the victims we swore to serve and protect who are not named in this class.

The USMS being the country's oldest Federal law enforcement agency, this case is dubiously the United States' most extended Civil Rights litigation in history.

Thank you and your firm’s outstanding team of lawyers and legal support personnel led by the late Tom Henderson, who tenaciously navigated through all the USDOJ patented opposition motions to bring this class to EEOC Certification. The nearly three decades involving this matter is direct proof of the long-awaited need for racial equity in America's Federal Criminal Justice System that has sent the wrong equity and inclusion message to Black government workers and communities of color by Federal, state, and municipal law enforcement departments across America and around the world.

In 2020, USMS/USDOJ spent two days in settlement mediation, though the agency's representations were not in good faith. The mediation was held with USMS officials, some of the

class agents/representatives, and your firm's former lead attorney, Mr. Tom Henderson, who suddenly passed away in the COVID era in October 2021.

In January 2022, the Washington Post published a story on the front page¹. The report spoke of the longevity of litigation against the USDOJ and how the case would soon go before the EEOC for a hearing. Following the *Washington Post* article, which garnered national exposure, the USMS again came to the settlement table, asking to resolve the matter.

In February 2022, you conducted a Zoom meeting with all the class agents. As law firm chair, you advised the class agents/representatives that you would lead the settlement negotiations since Tom's passing. During the Zoom meeting, you informed class agents of the following:

- You met at your home with Biden during his Campaign for President, substantially donated to his Campaign, and “told him to pick Kamala Harris as his running mate.”
- You were concerned about having “so many” 15-class agents.
- Your firm's financial experts told you this case “was not worth as much as your firm had previously assessed.”
- You and your firm attorneys will begin negotiating without the past practice of having the class agents/representatives present at the settlement table.

Additionally, while in the Zoom meeting, you stated, and I paraphrase, the following:

- *“Some class members will get paid, and some will get nothing. That is how Class Complaints work.”* {Paraphrased}
- *“Undoubtedly, some of the class Members will face further retaliation following the settlement.”* {Paraphrased}
- *‘You know what's best for this case and that If Matthew Fogg disagrees with your assessment, you could make a motion to remove Matthew Fogg's name as a Class Agent.’*
- *“Your goal is to resolve this matter by immediately negotiating with the defendant's monetary relief and, subsequent, programmatic relief and submit a settlement package to the Administrative Judge (AJ). If Matthew Fogg or any other class member opposes our*

¹ *“Marshals Service employees have alleged racism for decades. Their case may finally be heard,”* The Washington Post, January 23, 2022, <https://www.keepandshare.com/doc17/27783/washington-post-racism-in-usms-1-26-22pdf-538k?dn=y&dnad=y>

package, they would have an opportunity to inform the AJ in writing why they opposed the settlement.” {Paraphrased}

Before your first settlement meeting with USMS Officials, I advised you via email and a phone call that class agents appointed me as their “spokesperson” and that we wanted it to be clear that

you would not commit to a settlement dollar amount with the DOJ representatives before allowing the class agents’ collective approval.

Following that conversation, on the same morning, you spoke directly with me before you met with the defending agency representatives. Your attorneys also verified my email proclamations and verbal statements by contacting other class agents. Those class agents you spoke to agreed that I was appointed by the class agents as their “spokesperson” to make the assertions that I made to you. Nevertheless, despite the class agents’ direction, you decided on a 15-million-dollar settlement that included attorney fees.

After reviewing your signed March 8, 2022, [Memorandum of Understanding](#) for settlement with the USMS General Counsel (a Principal Agency Witness, also known as the Alleged Discriminating Official), I advised you and the firm in writing that the settlement was unacceptable, null, and void according to the class agents’ previous direction.

Furthermore, in subsequent meetings (including class agents/representatives only without you or firm attorneys), the class agents vehemently questioned why you negotiated such an inexplicably low amount given the firm’s earlier settlement discussions and legally knowing this monetary settlement would set a devastating Civil Rights precedent, one the government would use against other civil rights class litigants in the future and underscores Black lives don’t matter in the USMS.

As you know, I questioned you and the firm attorneys several times, querying the settlement progress, including your briefings on subsequent “Programmatic Relief” discussions. I also contested your firm’s refusal to honor my e-mail request for all current class members’ contact information in your possession.

Therefore, having established by EEOC policy and mandate that your firm works for [the class agents/representatives who have a fiduciary responsibility to advise all other members on the progress of all class proceedings](#), this is the last time that I will request this information and make the following demands below for your firm to adhere:

- (1) Advise White House and USAG Officials, **not** USMS Officials, unless it involves the presence of USMS Director Ronald Davis, that other class agents and I would like a sitdown meeting to work out the parameters to settle this class action, including effective

monetary and programmatic relief. Also, we will discuss USMS resolutions involving racial profiling and excessive force in USMS enforcement operations that significantly have racial disparate impact on African Americans, communities of color, and National Security.

- (2) Advise the White House and USAG Officials that our settlement discussions will include monetary relief commensurate with the outrageous number of 29+ years this matter has been delayed and expanded to 10,000 potential Class members. Previous assertions by your firm and case law signal the current class settlement figure should be between \$300 million and 500 million dollars, if not more. See examples below.

EX: <https://www.washingtonpost.com/wp-srv/pmextra/mar00/22/A60221-2000Mar22.html> **Justice to Pay \$508 Million in Discrimination Suit Involving 11,00 Women for ‘Voices of America’**

EX: <https://legaltimes.typepad.com/blt/2008/10/us-marshals-ser.html>
Sanford Heisler Sharp law firm files \$300 Million Black USMS Class Action Lawsuit in Federal Court.

EX: <https://www.nytimes.com/2005/10/06/us/national-briefing-washington-commerce-dept-accused-ofsystemic-bias.html> **Sanford Heisler Sharp file \$500 Million U.S. Department of Commerce Discrimination Class Action in DC Federal Court – New York Times (potentially 5,000 employees)**

EX: <https://www.npr.org/sections/thetwo-way/2017/01/18/510396659/secret-service-agents-settle-overracial-discrimination-allegations> **Black U.S. Secret Service Agents settle Class Action for \$24-million With just 99 Agents.**

EX: **In September 2021, your firm came to the mediation table initially asking for \$80 and later discounted to 40 million dollars**

- (3) We will insist the Biden Administration assign an independent Special Master and team to this historic matter with full settlement authority to ensure that **any** class member identified will receive a substantial award due to the longevity of this case. Every member must be made whole in these negotiations now that the litigation appears nonexistent. And the settlement will address post-settlement retaliation.
- (4) *Due to the “justice delayed is justice denied”* concept -- in addition to the programmatic relief your firm has sought for promotions and hiring -- our new joint negotiations will also include a total revamping of the USMS Offices of Internal Affairs Division (IAD) and General Counsel’s Office for accountability by establishing an independent oversight office. This request is because IAD and OGC are weaponized with a racially disparate impact on Black employees and White USMS witnesses. These reprisals are the impetus for my filing this 1994 class action because most claimants placed their lives in the line of fire for blowing the whistle on systemic racism inside the USMS.

- (5) As part of our negotiations, we will ask the Biden Administration, including the USAG, to augment President Biden's recent [Executive Order 10474](#) involving changes in Federal law enforcement coinciding with the failed Congressional George Floyd Protection Act, to institute special whistleblower protections for any law officer in the United States whose department receives Federal dollars and is willing to report rogue COP procedures and operations in their rank and file which is tantamount to organized crime personified.
- (6) We strongly suggest the administration consider instituting Federal Civilian Review Boards for Federal law enforcement misconduct where death and Felony charges involve allegations of racial profiling and excessive force, [especially in USMS enforcement operations](#).
- (7) Reduce Qualified Immunity Coverage for Racism and Reckless Law Enforcement Behavior.

In 1963, I was present on the grounds of the Lincoln Memorial when Dr. Martin Luther King Jr. (MLK) gave his iconic, *I Have A Dream* speech, and ironically coinciding with the date of this letter, I was present at Ground Zero in New York City as a *First Responder* immediately following the terrorist attacks on September 11.

My goal and dream when I filed my 1985 individual EEO Complaint and later the 1994 Class Action Complaint was to serve and protect this nation above and beyond the call of duty. I wanted to root out the racism that MLK dreamed would end but, unbelievably, still exists today in the USMS/USDOJ, state, and municipal departments. We must make whole any victims of this ageless and horrific American crime against humanity by Federal law enforcement agents.

My USMS Black class motto has always been – “*All for one and one for all.*” The motto includes law enforcement agents [and civilians whom the internal USMS racist culture has victimized](#). The USMS is today, as in 1997 when the New York Post documented the abuse, an agency inundated with [Bigots With Badges](#).

Finally, should you disagree with the directives in this letter, I don't believe your firm can adequately represent this Class henceforth because of inherent conflicts of interest in several ways, as mentioned in this letter and previous communications. Although your firm will still be paid for time and service, we must seek new attorneys to resolve this matter. Please forward this letter to all the Class Members in your database to familiarize them with our communications.

Dr. Matthew Fogg
Named Complainant/Spokesperson Fogg v
U.S. Attorney General / U.S. EEOC

(Via Email)

September 27, 2023,

Sharon E. Debbage Alexander
Supervisory Administrative Judge
Equal Employment Opportunity Commission

Re: *Fogg, et al. v. Garland*, EEOC No. 570-2020-01293X; Agency Case No. M-94-6376

Dear Judge Debbage Alexander,

I am writing to inform you of the contentious communications between myself as the Class Agents (“Agents”) appointed “Spokesperson” and the attorneys for the law firm of Sanford Heisler, Sharpe, LLC (“The Attorneys”) representing the Class. Attached is my most recent letter to the Attorneys, dated September 11, 2023, and their response to me, dated September 15, 2023. [See Links Below]

As the Spokesperson appointed by the 15 Agents for this Class, I have repeatedly expressed concerns about the Attorney's handling of this matter following the passing of the former lead attorney, Mr. Tom Henderson, and during subsequent settlement discussions. My written concerns date to early February 2022, when these settlement negotiations began.

In March of 2022, as the spokesperson for the Class Agents, I rejected as Null and Void in writing a signed Memorandum of Understanding by the law firm Chairman David Sanford, Esq. who agreed to a \$15-million settlement that was not in line with the Agent’s directives.

Due to the severe nature of our arguments outlined in my 9/11/23 letter covering the elongated 18-month settlement history with much of the same concerns, I assumed that the Attorneys acting in good faith would have asked for your direction, which I believe would have been forthcoming before your recent order.

Your September 21, 2023 ‘**ORDER GRANTING PRELIMINARY APPROVAL OF SETTLEMENT AGREEMENT AUTHORIZING NOTICE AND SCHEDULING FAIRNESS HEARING**’ received by Agents on 9-26-23 following the Attorney’s submission is primarily in opposition to any official Attorney-Client relationship.

My 9/11/23 letter is self-explanatory; therefore, I will only bullet point in this cover letter a few other essential facts about why I believe there has been an irrefutable conflict of interest and possibly other attorney-client violations that should have prevented the Attorneys from representing this matter before your most recent order.

You know the attorney-client guidelines in the EEOC regulations and the governing DC Bar Association rules. Therefore, I know you will identify any conflicts of interest and other violations in this letter and act accordingly.

- In addition to facts stated in the 9/11/23 letter, The firm chair's initial settlement conference statement in February 2022 indicating he can motion the AJ (you) to remove Matthew Fogg as a Class Agent for non-agreement – fostered fear, intimidation, and a hostile environment in Fogg's subsequent class communications with other Agents, class members, and especially the Attorneys.
- It was brought to the Agent's attention that some attorneys hired by the firm for this matter also worked for the U.S. Department of Justice (DOJ) and will or have returned as DOJ employees.
- The Agents believe the Firm Chairs' unsolicited Agent's advisement that he met at his home and made a substantial donation to President Joe Biden and Vice President Kamala Harris's previous campaign for President insinuated he most likely will expect something in return now that Biden is President. It appears that pleasing the Biden Administration to include the DOJ and their attorneys is the only reason the Agents could figure out why the Firm Chair negotiated an inexplicably low monetary settlement against the Agent's wishes and refused the Agent's request to be present at the March 2023 financial settlement table. The Attorneys operated in this manner knowing this matter has lasted an unprecedented 29+ years and after the firm Chairman reported in a 2008 news article that a coinciding Class was worth \$300 million with fewer than the potential 10,000 members represented in this matter.
- The Firm refused to tender Agents all legal motions made in recent years.
- The Firm refused to provide Agents with the contact information of all class members in their database, thereby preventing Agents from carrying out their fiduciary responsibilities to notify all other Class members of all settlement procedures.
- The firm never identified the experts whom the Firm Chair claimed the case was not worth the claims of the Chair or his former lead attorneys' previous monetary assessments in this matter.
- The firm did not provide the Agents a final briefing to include documents of their last "Programmatic Relief" resolution that began in March 2022. It has now been presented to the Admin Judge without the Agent's absolute acknowledgment or approval.

Therefore, for the reasons stated in this cover letter and the attached 9/11/23 letter, please remove the law firm from this matter, thereby allowing the Agents to renegotiate, in part, the

settlement terms in this Administrative process and seek new counsel, which should take little time and effort since we are finally in settlement mode.

Dr. Matthew Fogg

Dr. Matthew Fogg
Named Class Complainant
Class Agent Spokesperson
Retired Chief Deputy U.S. Marshal

Cc. ALL Class Agents/Members/Attorneys

[9-11-23 Fogg Letter To Class Attorneys]

<https://acrobat.adobe.com/link/review?uri=urn:aaid:scds:US:11dcc757-ef3c-441c-ba2c-2f395fd198c0>

[9-15-23 Firm Letter Responding To Fogg 9-11-23 Letter]

<https://acrobat.adobe.com/link/review?uri=urn:aaid:scds:US:ba4855fc-2560-3d9f-a32f-f4b72ebb1d09>

[9-21-23 EEOC Administrative Judges Order]

<https://acrobat.adobe.com/link/review?uri=urn:aaid:scds:US:ff2eaa58-a359-34f0-9701-2db0770f34e4>

EXHIBIT 8

certification. *Complainant v. U.S. Dep't of Justice*, EEOC Appeal No. 0120073003 (July 11, 2012). The Agency filed a Request to Reconsider, which the Commission denied. *Complainant v. Dep't of Justice*, EEOC Request No. 0520120575 (Nov. 17, 2015). In the decision denying the Request to Reconsider, the Commission, *sua sponte*, modified its decision on appeal, defining the Class as including “African Americans who served in law enforcement or operational positions and were subjected to discrimination in recruitment, assignments, training and promotional opportunities.” *Id.* The Commission directed Class Counsel to file an amended class complaint, and remanded the complaint for adjudication, directing the AJ to further define the Class in accordance with its decision. *Id.*

On January 27, 2016, the Washington Field Office assigned the case to the undersigned AJ. Briefing on Class Agent’s Motion to Amend proceeded through the Summer of 2016. On February 24, 2017, I granted the Motion to Amend, appointing additional Class Agents and further defining the scope of the Class. Several years of extensive, contentious discovery and motions practice followed. The Parties and I participated in regular Status Conferences to resolve disputes and address obstacles to the development of the evidence caused by the age of the case, the lengthy liability period, and the breadth of the claims. The Parties report that they have exchanged over 1.2 million documents and conducted forty-two depositions thus far.

On September 9, 2020, Class Agents again moved to amend the Class definition. On August 13, 2021, the then-assigned AJ¹ granted Class Agents’ Motion to Amend the Class Charge, further revising the Class definition to include:

All current and former African American Deputy U.S. Marshals who were subjected to USMS policies and practices regarding promotions under the Merit Promotion Process, Management Directed Reassignments, and Headquarters Division assignments, and all African American current and former Deputy U.S. Marshals, Detention Enforcement Officers, and applicants never employed who were subjected to USMS policies and practices for hiring and recruitment of Deputy U.S. Marshal positions from January 23, 1994 to present.

In early 2022, the Parties reported that they were engaged in settlement negotiations. I stayed litigation deadlines for settlement, and from March 2022 through August 2023, the Parties provided periodic status updates on the progress of their settlement talks. The Parties report that they participated in about thirty settlement conferences during this period.

On August 31, 2023, Class Agents, through Counsel, filed their Unopposed Motion for Preliminary Approval of Proposed Class Settlement (Motion) with Exhibits 1-4, along with copies of the Settlement Agreement and Release (Settlement Agreement) with Exhibits A-G. Class Agents, with the Agency’s consent, request: (1) preliminary approval of the proposed Settlement Agreement and all attachments thereto; (2) approval of the Notice of Resolution; (3) approval of the proposed manner of distribution of the Notice of Resolution; and (4) a date for a Fairness Hearing. On September 8, 2023, the Parties and I met for a Status Conference to discuss the Motion and the Settlement Agreement. On September 14, 2023, Class Agents

¹ Administrative Judge Kurt Hodges was assigned to the case from October 2020 to February 2022 while the undersigned served on a detail assignment.

submitted revised documentation addressing the issues discussed during the Status Conference. For the reasons described herein, I conclude that the Motion should be granted.

Legal Standard

EEOC Regulations at 29 C.F.R. § 1614.204(g)(4)(2023) provide that a settlement of a class complaint shall be approved if it is fair, adequate and reasonable to the class as a whole, and does not solely benefit the class agent. *See Complainant v. U.S. Postal Serv.*, EEOC Appeal No. 0120142423 (Nov. 13, 2014); *Grier v. U.S. Postal Serv.*, EEOC Appeal No. 0120081838 (July 1, 2008); *see also* EEOC Management Directive 110 (August 5, 2015) at 8-9, 8-10. Notice of the resolution must be given to the class members, with no less than a thirty-day period to object. 29 C.F.R. §1614.204(g)(4). Commission regulations do not address preliminary approval of the settlement prior to notice of resolution. Federal courts, however, have noted that preliminary approval of class settlements requires a lower standard than final approval. Requests for preliminary approval are evaluated to determine whether the agreement “discloses grounds to doubt its fairness or other obvious deficiencies such as unduly preferential treatment of class representatives or segments of the class, or excessive compensation of attorneys, and whether it appears to fall within the range of possible approval.” *Thomas v. NCO Financial Systems, Inc.* No. CIV. A. 00-5118 (July 31, 2002)(citing *In re Prudential Securities Incorporated Limited Partnerships Litigation*, 163 F.R.D. 200, 209 (S.D.N.Y. 1995)).

Analysis

Having carefully reviewed the Motion and the Settlement Agreement, I see no grounds upon which to doubt its fairness, nor do I see any obvious deficiencies. The Settlement Agreement is the product of over eighteen months of arms-length negotiation by capable counsel on both sides, with the benefit of substantial discovery to help them assess the strengths and weaknesses of their respective positions in litigation. Almost three decades have passed since the complaint was filed. Absent settlement, the Parties face years of continued litigation in the administrative hearings adjudication and appellate fora. All the while, Class Members would continue to wait.

The relief afforded appears to be within the range of what an administrative judge could award at the conclusion of this litigation. Throughout the litigation, the Parties employed experts to analyze their respective positions, the value of the case, and Class Members’ potential entitlement to relief. The \$15 million Settlement Fund constitutes about twenty-five (25) percent of the \$61 million Class Representatives’ experts estimate could be obtained upon successful conclusion of the litigation. It accounts for the uncertainty the Class faces in continuing to litigate the case, the possibility that they may not ultimately prevail, and the risks associated with proving claims for damages. The Settlement Agreement includes criteria for determining individual recovery for Class Members, and assigns the task of determining relief to an experienced third-party Claims Allocator. The Settlement Agreement also provides substantial remedial relief, including opportunities for priority consideration for merit promotions and voluntary reassignments, and important programmatic and policy changes. Finally, the Settlement Agreement provides for recovery of attorneys’ fees up to thirty-three (33) percent of the settlement value, a proportion that is within the typical range for a class action.

Conclusion and Order

Because I find no reason to doubt the fairness of the Settlement Agreement nor any obvious deficiencies, I hereby **ORDER** as follows:

1. The Settlement Agreement resolving the Class Complaint is hereby **PRELIMINARILY APPROVED**. Final approval of the Settlement Agreement is subject to consideration of any objections by Class Members.
2. Pending final determination that the Settlement Agreement is fair, adequate, and reasonable to the Class as a whole, the Commission's Stay of this matter for settlement is **EXTENDED** through the Fairness Hearing and until further notice.
3. The proposed Notice of Resolution is in compliance with the Notice of Resolution requirements set forth at 29 C.F.R. § 1614.204(g)(4). Class Members will be provided access to a copy of the Settlement Agreement which sets out the relief and informs Class Members that the resolution will bind all members of the Class. The Notice of Resolution informs Class Members of their right to submit objections to the Settlement Agreement, along with the name and address of the Administrative Judge assigned to the matter. Therefore, the Notice of Resolution is **APPROVED**.
4. The proposed plan for distributing the Notice is reasonable. Due to the unique procedural history of this matter and the fact that a majority of the Class remains unknown, the Commission finds that the Parties' plan of using a combination of U.S. Mail, electronic mail, and expansive online advertising is reasonably calculated to inform Class Members of the Settlement Agreement and their rights. Therefore, the plan for distribution of the Notice of Resolution is **APPROVED**.
5. Agency Counsel will designate a vendor who will provide notice in the manner described above and subject to the provisions set forth in the Settlement Agreement.
6. Counsel for Class Agents have designated Michael Lewis as Claims Allocator and Settlement Services, Inc. ("SSI") as the Claims Administrator. The Claims Administrator will assist in creating a website for Class Members, answer questions from Class Members, and receive Claim Forms from Class Members. Mr. Lewis will serve as an independent third party to determine allocation of the Settlement pending final approval of the Settlement Agreement.
7. The deadlines set forth in the Chronology, which is Exhibit C to the Settlement Agreement, are **APPROVED**, subject to the provisions set forth in the Settlement Agreement. The Agency will notify the Commission if infeasibility impacts the date of the Fairness Hearing and/or the requirements for notice, or if a stay of the proceedings is necessary.

8. In accordance with 29 C.F.R. § 1614.204(g), the Parties are hereby ORDERED to participate in a Fairness Hearing for **March 20, 2024, at 9:00 a.m. Eastern Time, at the U.S. Equal Employment Opportunity Commission, 131 M Street, NE, Washington, D.C.**² The Agency will provide a court reporter³ for the Fairness Hearing. At the Fairness Hearing, I will consider any objections to the Settlement Agreement; hear the Parties' arguments regarding the fairness, adequateness, and reasonableness of the Settlement Agreement; hear the Parties' arguments on the motion for service awards for Class Agents and certain Class Members; and consider the attorneys' fee petition and statement of costs for the Class Allocator and Class Administrator.
9. Any Class Member may petition the Commission to vacate the Settlement Agreement because it benefits only the Class Agents, or is otherwise not fair, adequate, and reasonable to the Class as a whole. Any objection must be submitted no later than the date set forth in the Notice of Resolution.
10. Objections must be submitted in writing to Supervisory Administrative Judge Sharon E. Debbage Alexander by U.S. Postal Mail to EEOC Washington Field Office, 131 M Street, N.E., Washington, DC 20507, or by electronic mail to FoggClassAction@eeoc.gov. A copy of any objection must also be sent to Agency Counsel and Class Counsel at the addresses included in the Settlement Agreement and the Notice of Resolution.
11. Any Class Member objection must include the following information: (1) the objector's name, address, e-mail address (if available), and telephone number (if available); (2) reason(s) for the objection; (3) whether the objector wants to speak at the Fairness Hearing; (4) if the objector wants to speak at the Fairness Hearing, whether the objector wishes to appear at the Fairness Hearing in person or virtually.
12. The Claims Form will be due no earlier than sixty (60) days after the Date of the Notice of Resolution.
13. Class Counsel shall file a petition for attorneys' fees, statement of costs for SSI, statement of costs for Mr. Lewis, and application for service awards, along with all supporting memoranda, affidavits, declarations and other evidence, no later than seven (7) days prior to the Fairness Hearing.


² EEOC federal sector hearings are closed to the public. Class Members are permitted, but not required, to attend the hearing. Any Class Member wishing to attend the hearing in person or virtually must advise Class Counsel no later than two weeks prior to the Fairness Hearing. In-person attendees will be required to present government-issued identification and go through building security. Virtual participants must participate from a private place, without non-Class Members present. Class Members will advise Class Counsel of any accommodations they require to attend the Fairness Hearing. Class Counsel will include a list of in-person and virtual attendees, including any requests for accommodation, with their prehearing submissions no later than seven (7) days prior to the hearing.

³ The Court Reporter will make an official transcript of the hearing. No other recording of the hearing is permitted.

14. The Parties are hereby **ORDERED** to participate in a **Prehearing Status Conference** on **March 7, 2024 at 2:00 p.m. Eastern Time.**⁴ At the Prehearing Status Conference, the Parties will be prepared to discuss the format and order of presentation for the hearing. At the conclusion of the Prehearing Status Conference, and after consideration of the prehearing submissions due seven (7) days prior to the hearing, I will issue a notice with detailed instructions and an agenda for the Fairness Hearing.
15. I reserve the right to stay the proceedings in this case or continue the deadlines and dates referenced in this Order, including the date of the Fairness Hearing.

It is so ORDERED.

For the Commission:


Sharon E. Debbage Alexander
Supervisory Administrative Judge

By Electronic Mail (via FedSEP/EEOC Public Portal):

Class Representatives:

Saba Bireda: sbireda@sanfordheisler.com

Christine Dunn: cdunn@sanfordheisler.com

James Hannaway: jhannaway@sanfordheisler.com

Kate Mueting: kmueting@sanfordheisler.com

Agency Representatives:

Susan Amundson: Susan.Amundson2@usdoj.gov

Elizabeth Bradley: EBradley@fortneyscott.com

John Clifford: JClifford@fortneyscott.com

Susan Gibson: Susan.Gibson@usdoj.gov

Sean Lee: Sean.Lee@usdoj.gov

Morton Posner: Morton.J.Posner@usdoj.gov

Leah B. Taylor: Leah.B.Taylor@usdoj.gov

⁴ I will provide a conference line to Class Counsel and Agency Counsel under separate cover.



Fwd: Fogg, et al. v. Garland, EEOC No. 570-2020-01293X; Agency Case No. M-94-6376 - Letter Fr Named Complainant Fogg To Administrative Judge RE: Preliminary Settlement Agreement

MATTHEW FOGG <carcle1@aol.com>

Wed, Oct 11, 2023 at 4:56 PM

To: Ivan Baptise - USMS Class Agent <Ivan_B_Bop3027@yahoo.com>, Tracy Brice <mrstasb@icloud.com>, Charles Fonseca - USMS Class Agent <fonsecha@hotmail.com>, Antonio Tony Gause - USMS Class <gauseaj@gmail.com>, Thomas Hedgepath <thedgepe@yahoo.com>, rileytheodore3@gmail.com, Mariam Thompson - USMS Class <marmar1149@hotmail.com>, Robert Byars <uptown530@gmail.com>, Tracy Brice - USMS Class <mrstasb@aol.com>, Paul Darby <PDarby225@gmail.com>, Damon Adam <MixItUp1Time@aol.ccm>, Jeffrey Whitehead - USMS Class <Shakim07@hotmail.com>, Richard Thomas <RichardThomas196506@gmail.com>, Zachary Thomas <zachary.t@gmail.com>

FYI Class Agents

Administrative Judge Sharon Alexander responded to my email yesterday (10-10-23) today, acknowledging that she received my email on 10-28-23 (attached) and only indicated she will entertain opposition to the Class Settlement in March 2024, approximately another six months away.

She did not respond to my request to remove our Class Counsel (Sanford, Heisler, Sharp, LLC) for possible unethical conduct, which now affects what happens in subsequent individual meetings and six months later.

Matthew Fogg
Named Complainant

<https://www.washingtonpost.com/nation/2023/09/28/marshals-service-discrimination-lawsuit-settlement/>

On Oct 11, 2023, at 9:49 AM, SHARON ALEXANDER [she/her/hers] <SHARON.ALEXANDER@EEOC.GOV> wrote:

Named Complainant Fogg To Administrative Judge RE: Preliminary Settlement Agreement

Date: October 11, 2023 at 9:49:43 AM EDT

To: MATTHEW FOGG <carcle1@aol.com>, "KMuetting@sanfordheisler.com" <KMuetting@sanfordheisler.com>, "Christine Dunn (cdunn@sanfordheisler.com)" <cdunn@sanfordheisler.com>, Saba Bireda <sbireda@sanfordheisler.com>, James Hannaway <JHannaway@sanfordheisler.com>, "Taylor, Leah (USMS)" <Leah.B.Taylor@usdoj.gov>, "Gibson, Susan (USMS)" <Susan.Gibson@usdoj.gov>, "morton.j.posner@usdoj.gov" <morton.j.posner@usdoj.gov>, "Lee, Sean (USMS)" <Sean.Lee@usdoj.gov>, "Gibson, Susan (USMS)" <Susan.Gibson@usdoj.gov>, Elizabeth Bradley <ebradley@fortneycott.com>

Good morning, Mr. Fogg-

As the Class is represented by counsel, and because it would be improper for me to participate in *ex parte* communications with either party, I am copying counsel for the parties and removing all other recipients from this response.

As you know, on September 21, 2023, I issued an Order Granting Preliminary Approval of Settlement Agreement, Authorizing Notice, and Scheduling Fairness Hearing. The USMS has since initiated the process of providing notice of the Class Settlement Agreement in accordance with the September 21, 2023 Order.

On September 28, 2023, you sent a letter to me through the FoggClassAction account established for any objections to Class Settlement Agreement, copying counsel for the parties. Given the timing and content of your letter, I will treat your letter as an objection to the Class Settlement. I will entertain objections to the Class Settlement during the Fairness Hearing scheduled for March 20, 2023.

Sincerely,
Sharon Alexander

Sharon E. Debbage Alexander (she/her)
Supervisory Administrative Judge
Washington Field Office
U.S. Equal Employment Opportunity Commission
131 M Street NE
Washington, DC 20507

From: MATTHEW FOGG <carcle1@aol.com>

Sent: Tuesday, October 10, 2023 4:13 PM

To: SHARON ALEXANDER [she/her/hers] <SHARON.ALEXANDER@EEOC.GOV>; FoggClassAction <FoggClassAction@eEOC.gov>

Cc: Ivan Baptise - USMS Class Agent <Ivan_B_Bop3027@yahoo.com>; Tracy Brice <mrstasb@icloud.com>; Charles Fonseca - USMS Class Agent <fonsecha@hotmail.com>; Antonio Tony Gause - USMS Class <gauseaj@gmail.com>; Thomas Hedgepath <thedgepe@yahoo.com>; rileytheodore3@gmail.com; Mariam Thompson - USMS Class <marmar1149@hotmail.com>; Robert Byars <uptown530@gmail.com>; Tracy Brice - USMS Class <mrstasb@aol.com>; Paul Darby <PDarby225@gmail.com>; Damon Adam <MixItUp1Time@aol.ccm>; Jeffrey Whitehead - USMS Class <Shakim07@hotmail.com>; Richard Thomas <RichardThomas196506@Gmail.com>; Zachary Thomas <zachary.t@gmail.com>

Subject: Fogg, et al. v. Garland, EEOC No. 570-2020-01293X; Agency Case No. M-94-6376 - Letter Fr Named Complainant Fogg To Administrative Judge RE: Preliminary Settlement Agreement

CAUTION: The sender of this message is external to the EEOC network. Please use care when clicking on links and responding with sensitive information. Forward suspicious emails to phishing@eoc.gov.

Dear Judge Alexander;

I emailed you and all parties on September 28, following the 9-26-23 receipt of your 9-21-23 Order in this matter, a letter (dated 2-27-23 attached). My letter explained why the Class Agents believe the Class law firm of Sanford, Heisler, Sharp, LLP (Firm) has not represented this settlement in good faith or in the best interest of the Class Members. I asked you to remove the Firm from this case immediately.

I am forwarding you this same letter with your EEOC-named email to ensure the 'FoggClassAction@eoc.gov' email address matches your direct email.


I'm concerned about the Firm conducting a conference call with Class Agents last Wednesday (10-4-23) and letting us know that they will reach out to each Class Agent in two weeks to discuss the terms of the settlements regarding each Agent.

This further communication is unethical because of the previous issues I have raised. It will cause further discord and intimidation in a hostile environment amongst the Agents and Class members, for which the Class Agents have a fiduciary responsibility. The firm should not have any further contact with the Class Agents before you reply to my letter, and the Class Agents should be allowed to seek other counsel.

Matthew Fogg
Class Spokesperson & Named Complainant.

Begin forwarded message:

From: MATTHEW FOGG <carcle1@aol.com>
Subject: Re: Fogg, et al. v. Garland, EEOC No. 570-2020-01293X; Agency Case No. M-94-6376 - Letter From Named Complainant Fogg To Administrative Judge RE: Preliminary Settlement Agreement
Date: September 28, 2023 at 12:23:34 AM EDT
To: FoggClassAction@eoc.gov, David Sanford <DSanford@SanfordHeisler.com>
Cc: Susan.Amundson2@usdoj.gov, "EBradley@fortneyscott.com" <EBradley@FortneyScott.com>, SanGibson@uadoj.gov, cdunn@sanfordheisler.com, Ivan Baptise - USMS Class Agent <Ivan_B_Bop3027@yahoo.com>, mrstasb@icloud.com, Charles Fonseca - USMS Class Agent <fonsecha@hotmail.com>, Antonio Tony Gause - USMS Class <gauseaj@gmail.com>, Thomas Hedgepath <thedgepe@yahoo.com>, rileytheodore3@gmail.com, "S. Sherelle Gallo" <ruwanted@gmail.com>, Mariam Thompson - USMS Class <marmar1149@hotmail.com>, sandmanbusa09@icloud.com, kelovalintino@yahoo.com, Robert Byars <uptown530@gmail.com>, cscgroup2011@gmail.com, Tracy Brice - USMS Class <mrstasb@aol.com>, Paul Darby <PDarby225@gmail.com>, Thomas Hedgepath <Degepe@Yahoo.com>, Damon Adam <MixItUp1Time@aol.ccm>, K B <KLauryLB1@Yahoo.com>, Jeffrey Whitehead - USMS Class <Shakim07@hotmail.com>, Richard Thomas <RichardThomas196506@Gmail.com>, Zachary Thomas <zachary.t@gmail.com>, Morton.j.Posner@usdoj.gov, kmueting@sanfordheisler.com

 Fogg Class LTR To Judge SDebbage-Final.pdf
183K

UNITED STATES OF AMERICA
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Washington Field Office

MATTHEW FOGG, et al., Class Agents,	)	EEOC No. 570-2016-00501X
	)	AGENCY CASE NO. M-94-6376
)	
vs.)	
	)	Administrative Judge
MERRICK GARLAND,	)	SHARON DEBBAGE ALEXANDRA
ATTORNEY GENERAL.,)	
U.S ATTORNEY OF JUSTICE)	
Agency,	)	Date: November 1, 2023
)	

MOTION REQUIRING THE IMMEDIATE WITHDRAWAL OF SANFORD, HEISLER, SHARP, LLP. CLASS REPRESENTATIVES (“FIRM”) FROM THIS EEOC CASE AND PROVIDE CLASS AGENTS RELIEF TO RECEIVE THE FIRM’S FINAL SETTLEMENT PACKAGE SUBMITTED TO THE ADMINISTRATIVE JUDGE AND PROVIDE CLASS AGENTS CONTACT INFORMATION FOR ALL CLASS MEMBERS

On October 11th, 2023, Supervisory Administrative Judge (AJ) Sharon E. Debbage Alexander responded to the named Complainant and Class Spokesperson, Matthew Fogg’s, letters dated [September 28th](#) and October 10th, which raised ethical concerns regarding violations of the Federal Rules of Civil Procedures(FRCP) and EEOC Regulations taken by SANFORD, HEISLER, SHARP, LLP, the attorneys (“Firm”) for this Class Action.

AJ Alexander [responded in part](#), *“Given the timing and content of your letter, I will treat your letter as an objection to the Class Settlement. I will entertain objections to the Class Settlement during the Fairness Hearing scheduled for March 20, 2024.”*

However, the AJ’s response did not address the emergency circumstances and plethora of EEOC and FRCP ethical violations created by the Firm's refusal to follow the instructions of the Class Agents (CAs), including but not limited to the following:

1. Failure of the Firm to disclose the “Final” comprehensive settlement package to CAs before presenting it to the AJ supporting her September 21, 2023, “Preliminary Order.”
2. Failure to identify an inherited Conflict of Interest (COI) between President Joe Biden, his U.S. Department of Justice & U.S. Marshals Service (DOJ/USMS) (“Agency”), and the Firm.
3. Failure to follow the CA's instruction not to accept any monetary offer (\$15 million - *Null & Void*) by the Defendants (USMS) in a Firm only & USMS settlement conference until subsequently approved by the CAs.
4. Created a hostile environment for the named Complainant with CAs, Firm, and Class Members.

5. Inappropriate and ongoing class representation by refusing to withdraw from representing the Class following the September 11, 2023, letter of instruction.
6. Refusal to share with CAs the Class Members' entire contact list provided by the Agency, thereby severely compromising CA's fiduciary responsibilities to all class members.
7. Continued delays in resolving these internal civil and human rights matters have created enhanced [USMS Racial Profiling dangers to the Black public](#) and communities nationwide.

As a result of the Firm's brazen disregard of its ethical duty to the CAs involving the irreconcilable issues listed, CAs cannot wait six months for a hearing to seek the Firm's immediate termination.

As listed, there is an urgency created by this continued unabated government-sanctioned discrimination within the nation's [lead Federal law enforcement agency rank and file](#) that poses an ongoing threat to National Security and Public Safety. This historic Federal government matter continues to foster imminent danger and the erosion of public trust and transparency.

Hence, I will briefly note this motion supported by previously dated letters sent to all parties.

Threat to National Security and Public Safety:

It is well established in FBI reports that [right-wing racist groups have infiltrated law enforcement](#), including reports from numerous whistle-blowing police officers nationwide, the "George Floyd" and "January 6th" incidents, and a Presidential [Executive Order](#) addressing racism in Federal law enforcement. Specifically, the USMS has created a culture of indifference known as "[Bigots With Badges](#)" within a blue code of silence that has caused the demise of African-American deputy U.S. marshals and white supporting officers. Each minute, hour, and day this [historic litigation remains unabated](#) is indicative of a nation's disregard for systemic racial profiling, excessive force, and unjustifiable homicides in Black communities nationwide orchestrated by the lead law enforcement Agency of the United States. This ongoing racial disparate impact proves the [rightful public distrust](#) for National Security and Public Safety in all law enforcement activities, especially "[Dragnets](#)" involving the [USMS supervised by the DOJ](#).

Withdrawal of Sanford, Heisler, Sharp LLP as Class Representatives:

One of the basic tenets of a class action by the EEOC and FRCP that governs Class Actions is that "*class counsel must fairly and adequately represent the interests of the class.*"

Inherit Conflict of Interest:

In an initial Settlement Conference via the "Zoom" platform (February 2022) involving fifteen CAs and multiple Class Counsel, the Firm ("Chair") David Sanford, Esq. informed all CAs that he had a personal relationship with U.S. Presidential Candidate Joseph Biden before he was elected President.

He invited Candidate Biden to his home and substantially donated to Biden's Campaign for President and further told Candidate Biden to pick Kamala Harris as his running mate, which occurred.

CAs surmised this sudden admission was because the Chair immediately took over the settlement negotiations in this matter following the untimely death of his former lead counsel, Thomas Henderson, Esq. and understood that his direct lead was a “*Conflict of Interest*” (COI), knowing that President Biden was now ultimate manager of the named DOJ defendant in this class action.

Knowing legal standards, all counsel in this matter should have admitted that whenever the Firm Chair and Biden's financial commitment occurred during this matter, the appearance of a COI existed and immediately notified the EEOC and provided CAs the opportunity to seek new counsel.

The CAs assumed the Chair's sudden admission well after his financial commitment to President Biden insinuated a favorable settlement with the DOJ since other Presidents failed in this regard, and it would commiserate with the class action's incredible decades of civil rights litigation, pain, and suffering.

CAs also learned during the Chair's initial Settlement discussions, and afterward, the Firm had completely changed strategy from attorney Tom Henderson's previous lead. The Firm immediately started acting solely in the best interest of President Biden's DOJ by disposing of a 29-year-old Black class for an [inexplicable low monetary amount](#) of \$15 million.

Many CAs and members interpreted the Firm's action that the Black lives of deputy U.S. marshals didn't matter to the Firm in a Biden for President election cycle; therefore, the Firm ceased to operate in good faith, viewing this matter as a laborious racial discrimination nuisance.

Furthermore, it has been brought to the attention of several CAs that members of the Firm are detailed from the U.S. DOJ (Defendants) who have or will return to work for the DOJ.

Created A Hostile Environment:

In the initial Zoom settlement conference, the class counsel Chair informed all CAs that if Matthew Fogg disagreed with the Firm's assessment of this Settlement, the Firm could motion the AJ to remove Fogg as a CA. This assertion created an instant “*Hostile Environment*,” including fear and intimidation for other CAs who might oppose the Chair's new direction. CAs feared receiving a lesser settlement payout by the Chair's motion to remove them for any opposition after being advised the Firm could motion the AJ to remove the named Complainant.

The Firm Chair also stated that there was no doubt that CAs would face retaliation from the USMS due to this settlement process, and some Class Members would not get compensation.

Preventing Class Agents From Fiduciary Responsibilities:

The Firm denied CAs with the class member's contact list obtained from the USMS, stating that providing CAs the list would present “*Privacy*” concerns because some class members may not want their contact information shared. The Firm continues to violate FRCP and EEOC regulations by preventing CAs from acting in their fiduciary CA responsibilities.

This denial has created confusion and hostility among many class members who lack CA information. This further proves the distrust of CAs by the Firm because the Firm was provided the same privacy information from the USMS.

Submitting a Final Settlement Package Without Notifying Class Agents:

On September 26th, the Firm provided the CAs and the Washington Post newspaper with AJ Alexander's Settlement Order dated September 21st without first discussing the firm's Final Settlement Package(FSP) with the CAs or allowing CAs to know the specific content in the FSP submitted to the AJ. This most egregious and unethical conduct has fostered an ongoing hostile environment amongst CAs and class members who now believe the CAs have not been forthcoming on the Settlement progress. What precisely are provisions in the FSP they might oppose or agree with alluded to in the AJ's 9/21/23 order?

Furthermore, the CAs must assume the Firm did not make AJ Alexander aware of the CA's significant concerns *in good faith* throughout the Settlement period. Most importantly, CAs do not believe the Firm advised the AJ that CAs had not reviewed or were briefed on the Firm's FSP before the AJ constructed and issued her Order dated September 21, 2023.

This Motion Seeks EEOC Orders For The Following:

Therefore, given the facts presented in this motion, the Firm has received a letter of termination today (attached) and is directed to withdraw its representation in this EEOC case.

- (1) CAs seek an Order supporting the Firm's withdrawal from this matter and to obtain new counsel.
- (2) CAs seek an Order to obtain all Class Member's names and contact information that defendants made available to the Firm.
- (3) CAs seek an Order to obtain the Firm's Final Settlement Package with the cover letter submitted to the AJ.
- (4) CAs seek an Order for the Firm to make all previous legal documents available to the new council and any CA upon request.

Although the USMS has since initiated the process of providing notice of the Class Settlement Agreement per AJ's September 21, 2023, Order, we ask AJ to extend the process deadline pending the retainment of new counsel and to ensure that CAs connect worldwide with all potential class members. The CAs will immediately seek other counsel solely for settlement purposes.

Respectfully Submitted,

Dr. Matthew F. Fogg

Dr. Matthew F. Fogg

USMarshal.Fogg@Gmail.com

Retired Chief Deputy United States Marshal

Named Class Complainant/Agent and appointed Class Agent Spokesperson

[CNN \(10-27-23\) Law Enforcement Analyst](#)

CERTIFICATE OF SERVICE

I certify that on November 1, 2023, this Class Agent MOTION for an ORDER calling for Withdrawal of the Class Firm's Representation, ORDER for CA's receipt of all Class Member Contact Information, ORDER for CA's receipt of Firm's Final Settlement Submission, and ORDER for any class documents to be delivered to new counsel and Class Agents upon request, was sent to the following individuals electronically via email.

Sharon E. Debbage Alexander (she/her)
Supervisory Administrative Judge
Washington Field Office
U.S. Equal Employment Opportunity Commission
131 M Street NE
Washington, DC 20507
Sharon.Alexander@eoc.gov

Leah Taylor (USMS) <Leah.B.Taylor@usdoj.gov>,
Susan Gibson (USMS) <Susan.Gibson@usdoj.gov>,
Morton J. Posner <morton.j.posner@usdoj.gov>,
Sean Lee (USMS)" <Sean.Lee@usdoj.gov>,
Elizabeth Bradley <ebradley@fortneyscott.com>

David Sanford, Esq.
Sanford, Heisler, Sharp LLP.
700 Pennsylvania Ave., SE, Suite 300 Washington,
DC 20003
Kate Muetting (Kmueting@sanfordheisler.com)
Christine Dunn (cdunn@sanfordheisler.com)
Saba Bireda Esq. (sbireda@sanfordheisler.com),
JamesJHannaway@sanfordheisler.com

All Class Agents & Known Class Members

Respectfully Submitted,

Dr. Matthew F. Fogg

Dr. Matthew F. Fogg
USMarshal.Fogg@Gmail.com
Named Class Complainant and Class Agent Spokesperson

November 1, 2023

TERMINATION OF SERVICE

David Sanford, Esq.

Sanford, Heisler, Sharp LLP.

700 Pennsylvania Ave., SE, Suite 300 Washington,

DC 20003

Dear David

It pains me to terminate your Firm's services in this matter and demand you officially withdraw from this case immediately for the irreconcilable differences and inherent conflicts of Interest as stated in previous correspondence. This requirement coincides with a motion filed with the U.S. Equal Employment Opportunity Commission this day, electronically served to all parties.

I'm writing you this letter as the Class Spokesperson and individually as the named Complainant, having first personally filed this Class in 1994 and legally defended it until personally bringing it to your Firm in 2004. Since then, your firm's lead attorney diligently protected this Class involving systemic racism in the U.S. Marshals Service(USMS), represented by the U.S. Department of Justice(DOJ), arguably a "*Justice Integrity Agency*" in the world's most powerful government.

As you know, today, this nonpartisan class action has the dubious distinction as the most extended outstanding civil rights litigation in American history. It has named or involved 12 U.S. Attorney Generals appointed by (5) U.S. Presidents, incorporating an estimated ten thousand African American class members.

Given the law enforcement nature and longevity of these internal DOJ civil and human rights violations, I hoped you would understand. They have also impacted USMS enforcement operations involving racist interactions with Black people across America and an imminent threat to National Security and Public Safety.

As I said to you in 2004, this case was never just about Black deputy U.S. marshals in a racially hostile environment who are unequally disciplined, promoted, trained, or hired. Still, it involves holding federal law enforcement accountable and how we must protect the public from these same deadly [bigots with badges](#) proven to emanate within our rank and file as a pretext to this Class Action.

It was baffling to see how you entered the 2022 settlement discussions in this case following the 2021 death of your former outstanding lead attorney, Mr. Tom Henderson.

You began settlement discussions by advising the Class Agents of your intimate financial commitment to President Biden, the ultimate defendant in this case. This appears to have affected your judgment in this settlement process. You immediately instituted a strategy to end this 29-year saga to settle in disapproval of the Class Agents' direction with an inexplicably low monetary settlement totaling \$15 million per a March 2022 Memorandum of Understanding(MOU) with the USMS that I immediately stated was "*null & void.*"

You signed this MOU knowing well this same Federal government is giving billions of dollars in foreign wars and to illegal immigrants breaching our borders and knowing well this settlement is not commiserate with your firm's previous assessment of a 2008 congruent class action [[Grogan v. DOJ/USMS](#)] that you filed fifteen years ago in DC Federal Court asking for \$300 million.

You knew well the historic devastation this decades-long case has on so many Black USMS employees and civilian victims. Yet, you signed an MOU compromise that would also set a horrible legal precedent for any great class of civil rights litigants in the future.

Too many Black deputy U.S. marshals paid a severe price protecting Federal Judges, courtrooms, and witnesses, tracking down America's Most Wanted fugitives and being First Responders, securing foreign dignitaries, our borders, dangerous prisoners, and the entire Federal Judicial system. They also faced the dangers of internal hatred from colleagues with unabated racist aggression, proving “Black Lives (Don’t) Matter” in the United States Marshals Service.

I must assume your final “Programmatic” settlement package, which you withheld from the Class Agents in opposition to all regulated attorney-client relationships, was also anti-civil rights and will not hold anyone in the Biden Administration, the DOJ, and USMS accountable today or in the future for repeating these same historic racist abominations that were the impetus for me contacting your firm in 2004, and characteristic of America as Apple Pie.

In closing, we will make sure in the provisions of a settlement that any class member who is retaliated against, as your initial settlement discussion indicated, will end the violation immediately (not in laborious litigation), and the reprisal Bigot or Bigots will be instantly held accountable. Furthermore, in place of the *justice delayed is justice denied* longevity of this matter, every class member coming forward must be well compensated.

As you know, I have advocated my entire career and life against systemic racial discrimination towards Black people by our Federal government. Still, never in my dreams did I imagine I would end up in combat with the same legal advocates I asked to help me in this iconic journey to justice.

Respectfully Submitted,

Dr. Matthew F. Fogg

Dr. Matthew F. Fogg

Named Class Complainant and Class Agent Spokesperson

EXHIBIT 9

UNITED STATES OF AMERICA
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Washington Field Office

_____	)	EEOC No. 570-2016-00501X
MATTHEW FOGG, et al.,	)	AGENCY CASE NO. M-94-6376
Class Agents,)	
)	
vs.)	
	)	Administrative Judge
MERRICK GARLAND,	)	SHARON DEBBAGE ALEXANDRA
ATTORNEY GENERAL.,)	
U.S ATTORNEY OF JUSTICE)	
Agency,	)	Date: November 1, 2023
_____)	

MOTION REQUIRING THE IMMEDIATE WITHDRAWAL OF SANFORD, HEISLER, SHARP, LLP. CLASS REPRESENTATIVES (“FIRM”) FROM THIS EEOC CASE AND PROVIDE CLASS AGENTS RELIEF TO RECEIVE THE FIRM’S FINAL SETTLEMENT PACKAGE SUBMITTED TO THE ADMINISTRATIVE JUDGE AND PROVIDE CLASS AGENTS CONTACT INFORMATION FOR ALL CLASS MEMBERS

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2. Failure to identify an inherited Conflict of Interest (COI) between President Joe Biden, his U.S. Department of Justice & U.S. Marshals Service (DOJ/USMS) (“Agency”), and the Firm.
3. Failure to follow the CA's instruction not to accept any monetary offer (\$15 million - *Null & Void*) by the Defendants (USMS) in a Firm only & USMS settlement conference until subsequently approved by the CAs.
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5. Inappropriate and ongoing class representation by refusing to withdraw from representing the Class following the September 11, 2023, letter of instruction.
6. Refusal to share with CAs the Class Members' entire contact list provided by the Agency, thereby severely compromising CA's fiduciary responsibilities to all class members.
7. Continued delays in resolving these internal civil and human rights matters have created enhanced [USMS Racial Profiling dangers to the Black public](#) and communities nationwide.

As a result of the Firm's brazen disregard of its ethical duty to the CAs involving the irreconcilable issues listed, CAs cannot wait six months for a hearing to seek the Firm's immediate termination.

As listed, there is an urgency created by this continued unabated government-sanctioned discrimination within the nation's [lead Federal law enforcement agency rank and file](#) that poses an ongoing threat to National Security and Public Safety. This historic Federal government matter continues to foster imminent danger and the erosion of public trust and transparency.

Hence, I will briefly note this motion supported by previously dated letters sent to all parties.

Threat to National Security and Public Safety:

It is well established in FBI reports that [right-wing racist groups have infiltrated law enforcement](#), including reports from numerous whistle-blowing police officers nationwide, the "George Floyd" and "January 6th" incidents, and a Presidential [Executive Order](#) addressing racism in Federal law enforcement. Specifically, the USMS has created a culture of indifference known as "[Bigots With Badges](#)" within a blue code of silence that has caused the demise of African-American deputy U.S. marshals and white supporting officers. Each minute, hour, and day this [historic litigation remains unabated](#) is indicative of a nation's disregard for systemic racial profiling, excessive force, and unjustifiable homicides in Black communities nationwide orchestrated by the lead law enforcement Agency of the United States. This ongoing racial disparate impact proves the [rightful public distrust](#) for National Security and Public Safety in all law enforcement activities, especially "[Dragnets](#)" involving the [USMS supervised by the DOJ](#).

Withdrawal of Sanford, Heisler, Sharp LLP as Class Representatives:

One of the basic tenets of a class action by the EEOC and FRCP that governs Class Actions is that "*class counsel must fairly and adequately represent the interests of the class.*"

Inherit Conflict of Interest:

In an initial Settlement Conference via the "Zoom" platform (February 2022) involving fifteen CAs and multiple Class Counsel, the Firm ("Chair") David Sanford, Esq. informed all CAs that he had a personal relationship with U.S. Presidential Candidate Joseph Biden before he was elected President.

He invited Candidate Biden to his home and substantially donated to Biden's Campaign for President and further told Candidate Biden to pick Kamala Harris as his running mate, which occurred.

CAs surmised this sudden admission was because the Chair immediately took over the settlement negotiations in this matter following the untimely death of his former lead counsel, Thomas Henderson, Esq. and understood that his direct lead was a “*Conflict of Interest*” (COI), knowing that President Biden was now ultimate manager of the named DOJ defendant in this class action.

Knowing legal standards, all counsel in this matter should have admitted that whenever the Firm Chair and Biden's financial commitment occurred during this matter, the appearance of a COI existed and immediately notified the EEOC and provided CAs the opportunity to seek new counsel.

The CAs assumed the Chair's sudden admission well after his financial commitment to President Biden insinuated a favorable settlement with the DOJ since other Presidents failed in this regard, and it would commiserate with the class action's incredible decades of civil rights litigation, pain, and suffering.

CAs also learned during the Chair's initial Settlement discussions, and afterward, the Firm had completely changed strategy from attorney Tom Henderson's previous lead. The Firm immediately started acting solely in the best interest of President Biden's DOJ by disposing of a 29-year-old Black class for an [inexplicable low monetary amount](#) of \$15 million.

Many CAs and members interpreted the Firm's action that the Black lives of deputy U.S. marshals didn't matter to the Firm in a Biden for President election cycle; therefore, the Firm ceased to operate in good faith, viewing this matter as a laborious racial discrimination nuisance.

Furthermore, it has been brought to the attention of several CAs that members of the Firm are detailed from the U.S. DOJ (Defendants) who have or will return to work for the DOJ.

Created A Hostile Environment:

In the initial Zoom settlement conference, the class counsel Chair informed all CAs that if Matthew Fogg disagreed with the Firm's assessment of this Settlement, the Firm could motion the AJ to remove Fogg as a CA. This assertion created an instant “*Hostile Environment*,” including fear and intimidation for other CAs who might oppose the Chair's new direction. CAs feared receiving a lesser settlement payout by the Chair's motion to remove them for any opposition after being advised the Firm could motion the AJ to remove the named Complainant.

The Firm Chair also stated that there was no doubt that CAs would face retaliation from the USMS due to this settlement process, and some Class Members would not get compensation.

Preventing Class Agents From Fiduciary Responsibilities:

The Firm denied CAs with the class member's contact list obtained from the USMS, stating that providing CAs the list would present “Privacy” concerns because some class members may not want their contact information shared. The Firm continues to violate FRCP and EEOC regulations by preventing CAs from acting in their fiduciary CA responsibilities.

This denial has created confusion and hostility among many class members who lack CA information. This further proves the distrust of CAs by the Firm because the Firm was provided the same privacy information from the USMS.

Submitting a Final Settlement Package Without Notifying Class Agents:

On September 26th, the Firm provided the CAs and the Washington Post newspaper with AJ Alexander's Settlement Order dated September 21st without first discussing the firm's Final Settlement Package(FSP) with the CAs or allowing CAs to know the specific content in the FSP submitted to the AJ. This most egregious and unethical conduct has fostered an ongoing hostile environment amongst CAs and class members who now believe the CAs have not been forthcoming on the Settlement progress. What precisely are provisions in the FSP they might oppose or agree with alluded to in the AJ's 9/21/23 order?

Furthermore, the CAs must assume the Firm did not make AJ Alexander aware of the CA's significant concerns *in good faith* throughout the Settlement period. Most importantly, CAs do not believe the Firm advised the AJ that CAs had not reviewed or were briefed on the Firm's FSP before the AJ constructed and issued her Order dated September 21, 2023.

This Motion Seeks EEOC Orders For The Following:

Therefore, given the facts presented in this motion, the Firm has received a letter of termination today (attached) and is directed to withdraw its representation in this EEOC case.

- (1) CAs seek an Order supporting the Firm's withdrawal from this matter and to obtain new counsel.
- (2) CAs seek an Order to obtain all Class Member's names and contact information that defendants made available to the Firm.
- (3) CAs seek an Order to obtain the Firm's Final Settlement Package with the cover letter submitted to the AJ.
- (4) CAs seek an Order for the Firm to make all previous legal documents available to the new council and any CA upon request.

Although the USMS has since initiated the process of providing notice of the Class Settlement Agreement per AJ's September 21, 2023, Order, we ask AJ to extend the process deadline pending the retainment of new counsel and to ensure that CAs connect worldwide with all potential class members. The CAs will immediately seek other counsel solely for settlement purposes.

Respectfully Submitted,

Dr. Matthew F. Fogg

Dr. Matthew F. Fogg

USMarshal.Fogg@Gmail.com

Retired Chief Deputy United States Marshal

Named Class Complainant/Agent and appointed Class Agent Spokesperson

[CNN \(10-27-23\) Law Enforcement Analyst](#)

CERTIFICATE OF SERVICE

I certify that on November 1, 2023, this Class Agent MOTION for an ORDER calling for Withdrawal of the Class Firm's Representation, ORDER for CA's receipt of all Class Member Contact Information, ORDER for CA's receipt of Firm's Final Settlement Submission, and ORDER for any class documents to be delivered to new counsel and Class Agents upon request, was sent to the following individuals electronically via email.

Sharon E. Debbage Alexander (she/her)
Supervisory Administrative Judge
Washington Field Office
U.S. Equal Employment Opportunity Commission
131 M Street NE
Washington, DC 20507
Sharon.Alexander@eoc.gov

Leah Taylor (USMS) <Leah.B.Taylor@usdoj.gov>,
Susan Gibson (USMS) <Susan.Gibson@usdoj.gov>,
Morton J. Posner <morton.j.posner@usdoj.gov>,
Sean Lee (USMS)" <Sean.Lee@usdoj.gov>,
Elizabeth Bradley <ebradley@fortneyscott.com>

David Sanford, Esq.
Sanford, Heisler, Sharp LLP.
700 Pennsylvania Ave., SE, Suite 300 Washington,
DC 20003
Kate Muetting (Kmueting@sanfordheisler.com)
Christine Dunn (cdunn@sanfordheisler.com)
Saba Bireda Esq. (sbireda@sanfordheisler.com),
JamesJHannaway@sanfordheisler.com

All Class Agents & Known Class Members

Respectfully Submitted,

Dr. Matthew F. Fogg

Dr. Matthew F. Fogg
USMarshal.Fogg@Gmail.com
Named Class Complainant and Class Agent Spokesperson

November 1, 2023

TERMINATION OF SERVICE

David Sanford, Esq.

Sanford, Heisler, Sharp LLP.

700 Pennsylvania Ave., SE, Suite 300 Washington,

DC 20003

Dear David

It pains me to terminate your Firm's services in this matter and demand you officially withdraw from this case immediately for the irreconcilable differences and inherent conflicts of Interest as stated in previous correspondence. This requirement coincides with a motion filed with the U.S. Equal Employment Opportunity Commission this day, electronically served to all parties.

I'm writing you this letter as the Class Spokesperson and individually as the named Complainant, having first personally filed this Class in 1994 and legally defended it until personally bringing it to your Firm in 2004. Since then, your firm's lead attorney diligently protected this Class involving systemic racism in the U.S. Marshals Service(USMS), represented by the U.S. Department of Justice(DOJ), arguably a "*Justice Integrity Agency*" in the world's most powerful government.

As you know, today, this nonpartisan class action has the dubious distinction as the most extended outstanding civil rights litigation in American history. It has named or involved 12 U.S. Attorney Generals appointed by (5) U.S. Presidents, incorporating an estimated ten thousand African American class members.

Given the law enforcement nature and longevity of these internal DOJ civil and human rights violations, I hoped you would understand. They have also impacted USMS enforcement operations involving racist interactions with Black people across America and an imminent threat to National Security and Public Safety.

As I said to you in 2004, this case was never just about Black deputy U.S. marshals in a racially hostile environment who are unequally disciplined, promoted, trained, or hired. Still, it involves holding federal law enforcement accountable and how we must protect the public from these same deadly [bigots with badges](#) proven to emanate within our rank and file as a pretext to this Class Action.

It was baffling to see how you entered the 2022 settlement discussions in this case following the 2021 death of your former outstanding lead attorney, Mr. Tom Henderson.

You began settlement discussions by advising the Class Agents of your intimate financial commitment to President Biden, the ultimate defendant in this case. This appears to have affected your judgment in this settlement process. You immediately instituted a strategy to end this 29-year saga to settle in disapproval of the Class Agents' direction with an inexplicably low monetary settlement totaling \$15 million per a March 2022 Memorandum of Understanding(MOU) with the USMS that I immediately stated was "*null & void.*"

You signed this MOU knowing well this same Federal government is giving billions of dollars in foreign wars and to illegal immigrants breaching our borders and knowing well this settlement is not commiserate with your firm's previous assessment of a 2008 congruent class action [[Grogan v. DOJ/USMS](#)] that you filed fifteen years ago in DC Federal Court asking for \$300 million.

You knew well the historic devastation this decades-long case has on so many Black USMS employees and civilian victims. Yet, you signed an MOU compromise that would also set a horrible legal precedent for any great class of civil rights litigants in the future.

Too many Black deputy U.S. marshals paid a severe price protecting Federal Judges, courtrooms, and witnesses, tracking down America's Most Wanted fugitives and being First Responders, securing foreign dignitaries, our borders, dangerous prisoners, and the entire Federal Judicial system. They also faced the dangers of internal hatred from colleagues with unabated racist aggression, proving “Black Lives (Don’t) Matter” in the United States Marshals Service.

I must assume your final “Programmatic” settlement package, which you withheld from the Class Agents in opposition to all regulated attorney-client relationships, was also anti-civil rights and will not hold anyone in the Biden Administration, the DOJ, and USMS accountable today or in the future for repeating these same historic racist abominations that were the impetus for me contacting your firm in 2004, and characteristic of America as Apple Pie.

In closing, we will make sure in the provisions of a settlement that any class member who is retaliated against, as your initial settlement discussion indicated, will end the violation immediately (not in laborious litigation), and the reprisal Bigot or Bigots will be instantly held accountable. Furthermore, in place of the *justice delayed is justice denied* longevity of this matter, every class member coming forward must be well compensated.

As you know, I have advocated my entire career and life against systemic racial discrimination towards Black people by our Federal government. Still, never in my dreams did I imagine I would end up in combat with the same legal advocates I asked to help me in this iconic journey to justice.

Respectfully Submitted,

Dr. Matthew F. Fogg

Dr. Matthew F. Fogg

Named Class Complainant and Class Agent Spokesperson

EXHIBIT 10



Fwd: Fogg, et al. v. Garland, EEOC No. 570-2020-01293X; Agency Case No. M-94-6376 - Letter Fr Named Complainant Fogg To Administrative Judge RE: Preliminary Settlement Agreement

MATTHEW FOGG <carcle1@aol.com>

Wed, Oct 11, 2023 at 4:56 PM

To: Ivan Baptise - USMS Class Agent <Ivan_B_Bop3027@yahoo.com>, Tracy Brice <mrstasb@icloud.com>, Charles Fonseca - USMS Class Agent <fonsecha@hotmail.com>, Antonio Tony Gause - USMS Class <gauseaj@gmail.com>, Thomas Hedgepath <thedgepe@yahoo.com>, rileytheodore3@gmail.com, Mariam Thompson - USMS Class <marmar1149@hotmail.com>, Robert Byars <uptown530@gmail.com>, Tracy Brice - USMS Class <mrstasb@aol.com>, Paul Darby <PDarby225@gmail.com>, Damon Adam <MixItUp1Time@aol.ccm>, Jeffrey Whitehead - USMS Class <Shakim07@hotmail.com>, Richard Thomas <RichardThomas196506@gmail.com>, Zachary Thomas <zachary.t@gmail.com>

FYI Class Agents

Administrative Judge Sharon Alexander responded to my email yesterday (10-10-23) today, acknowledging that she received my email on 10-28-23 (attached) and only indicated she will entertain opposition to the Class Settlement in March 2024, approximately another six months away.

She did not respond to my request to remove our Class Counsel (Sanford, Heisler, Sharp, LLC) for possible unethical conduct, which now affects what happens in subsequent individual meetings and six months later.

Matthew Fogg
Named Complainant

<https://www.washingtonpost.com/nation/2023/09/28/marshals-service-discrimination-lawsuit-settlement/>

On Oct 11, 2023, at 9:49 AM, SHARON ALEXANDER [she/her/hers] <SHARON.ALEXANDER@EEOC.GOV> wrote:

Named Complainant Fogg To Administrative Judge RE: Preliminary Settlement Agreement

Date: October 11, 2023 at 9:49:43 AM EDT

To: MATTHEW FOGG <carcle1@aol.com>, "KMuetting@sanfordheisler.com" <KMuetting@sanfordheisler.com>, "Christine Dunn (cdunn@sanfordheisler.com)" <cdunn@sanfordheisler.com>, Saba Bireda <sbireda@sanfordheisler.com>, James Hannaway <JHannaway@sanfordheisler.com>, "Taylor, Leah (USMS)" <Leah.B.Taylor@usdoj.gov>, "Gibson, Susan (USMS)" <Susan.Gibson@usdoj.gov>, "morton.j.posner@usdoj.gov" <morton.j.posner@usdoj.gov>, "Lee, Sean (USMS)" <Sean.Lee@usdoj.gov>, "Gibson, Susan (USMS)" <Susan.Gibson@usdoj.gov>, Elizabeth Bradley <ebradley@fortneyscott.com>

Good morning, Mr. Fogg-

As the Class is represented by counsel, and because it would be improper for me to participate in *ex parte* communications with either party, I am copying counsel for the parties and removing all other recipients from this response.

As you know, on September 21, 2023, I issued an Order Granting Preliminary Approval of Settlement Agreement, Authorizing Notice, and Scheduling Fairness Hearing. The USMS has since initiated the process of providing notice of the Class Settlement Agreement in accordance with the September 21, 2023 Order.

On September 28, 2023, you sent a letter to me through the FoggClassAction account established for any objections to Class Settlement Agreement, copying counsel for the parties. Given the timing and content of your letter, I will treat your letter as an objection to the Class Settlement. I will entertain objections to the Class Settlement during the Fairness Hearing scheduled for March 20, 2023.

Sincerely,
Sharon Alexander

Sharon E. Debbage Alexander (she/her)
Supervisory Administrative Judge
Washington Field Office
U.S. Equal Employment Opportunity Commission
131 M Street NE
Washington, DC 20507

From: MATTHEW FOGG <carcle1@aol.com>

Sent: Tuesday, October 10, 2023 4:13 PM

To: SHARON ALEXANDER [she/her/hers] <SHARON.ALEXANDER@EEOC.GOV>; FoggClassAction <FoggClassAction@eEOC.gov>

Cc: Ivan Baptise - USMS Class Agent <Ivan_B_Bop3027@yahoo.com>; Tracy Brice <mrstasb@icloud.com>; Charles Fonseca - USMS Class Agent <fonsecha@hotmail.com>; Antonio Tony Gause - USMS Class <gauseaj@gmail.com>; Thomas Hedgepath <thedgepe@yahoo.com>; rileytheodore3@gmail.com; Mariam Thompson - USMS Class <marmar1149@hotmail.com>; Robert Byars <uptown530@gmail.com>; Tracy Brice - USMS Class <mrstasb@aol.com>; Paul Darby <PDarby225@gmail.com>; Damon Adam <MixItUp1Time@aol.ccm>; Jeffrey Whitehead - USMS Class <Shakim07@hotmail.com>; Richard Thomas <RichardThomas196506@Gmail.com>; Zachary Thomas <zachary.t@gmail.com>

Subject: Fogg, et al. v. Garland, EEOC No. 570-2020-01293X; Agency Case No. M-94-6376 - Letter Fr Named Complainant Fogg To Administrative Judge RE: Preliminary Settlement Agreement

CAUTION: The sender of this message is external to the EEOC network. Please use care when clicking on links and responding with sensitive information. Forward suspicious emails to phishing@eoc.gov.

Dear Judge Alexander;

I emailed you and all parties on September 28, following the 9-26-23 receipt of your 9-21-23 Order in this matter, a letter (dated 2-27-23 attached). My letter explained why the Class Agents believe the Class law firm of Sanford, Heisler, Sharp, LLP (Firm) has not represented this settlement in good faith or in the best interest of the Class Members. I asked you to remove the Firm from this case immediately.

I am forwarding you this same letter with your EEOC-named email to ensure the 'FoggClassAction@eoc.gov' email address matches your direct email.


I'm concerned about the Firm conducting a conference call with Class Agents last Wednesday (10-4-23) and letting us know that they will reach out to each Class Agent in two weeks to discuss the terms of the settlements regarding each Agent.

This further communication is unethical because of the previous issues I have raised. It will cause further discord and intimidation in a hostile environment amongst the Agents and Class members, for which the Class Agents have a fiduciary responsibility. The firm should not have any further contact with the Class Agents before you reply to my letter, and the Class Agents should be allowed to seek other counsel.

Matthew Fogg
Class Spokesperson & Named Complainant.

Begin forwarded message:

From: MATTHEW FOGG <carcle1@aol.com>
Subject: Re: Fogg, et al. v. Garland, EEOC No. 570-2020-01293X; Agency Case No. M-94-6376 - Letter From Named Complainant Fogg To Administrative Judge RE: Preliminary Settlement Agreement
Date: September 28, 2023 at 12:23:34 AM EDT
To: FoggClassAction@eoc.gov, David Sanford <DSanford@SanfordHeisler.com>
Cc: Susan.Amundson2@usdoj.gov, "EBradley@fortneyscott.com" <EBradley@FortneyScott.com>, SanGibson@uadoj.gov, cdunn@sanfordheisler.com, Ivan Baptise - USMS Class Agent <Ivan_B_Bop3027@yahoo.com>, mrstasb@icloud.com, Charles Fonseca - USMS Class Agent <fonsecha@hotmail.com>, Antonio Tony Gause - USMS Class <gauseaj@gmail.com>, Thomas Hedgepath <thedgepe@yahoo.com>, rileytheodore3@gmail.com, "S. Sherelle Gallo" <ruwanted@gmail.com>, Mariam Thompson - USMS Class <marmar1149@hotmail.com>, sandmanbusa09@icloud.com, kelovalintino@yahoo.com, Robert Byars <uptown530@gmail.com>, cscgroup2011@gmail.com, Tracy Brice - USMS Class <mrstasb@aol.com>, Paul Darby <PDarby225@gmail.com>, Thomas Hedgepath <Degepe@Yahoo.com>, Damon Adam <MixItUp1Time@aol.ccm>, K B <KLauryLB1@Yahoo.com>, Jeffrey Whitehead - USMS Class <Shakim07@hotmail.com>, Richard Thomas <RichardThomas196506@Gmail.com>, Zachary Thomas <zachary.t@gmail.com>, Morton.j.Posner@usdoj.gov, kmueting@sanfordheisler.com

 Fogg Class LTR To Judge SDebbage-Final.pdf
183K