April 13, 2022

Class Agent and named Complainant Matthew Fogg responds below (headings in red ink) to each numbered point and assertion made by Attorney Saba Bireda in the Firm's Sanford, Heisler, Sharp, LLP March 18, 2022 letter attached and CC'd Firm and All Class Agent (CA's)

Saba Bireda,esq Partner and Discrimination and Harassment Practice Group Co-Chair (202) 499-5209

sbireda@sanfordheisler.com

VIA EMAIL

Matthew Fogg Carcle1@aol.com USMarshal.Fogg@gmail.com

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

March 18, 2022

Sanford Heisler Sharp, LLP

700 Pennsylvania Ave. SE, Suite 300 Washington, D.C. 20003
Telephone: (202) 499-5200
Fax: (202) 499-5199 www.sanfordheisler.com

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

Saba's Reply to Fogg's March 17 letter to the firm:

Dear Matthew:

I write to follow up on our recent communications with you individually and with the other Class Agents.

On March 15, 2022, Class Agents and class counsel participated in a productive meeting regarding programmatic relief as part of ongoing settlement negotiations with the United States Marshals Service (the "Agency"). We shared our initial proposals for programmatic relief with Class Agents. Class Agents supported and added to those proposals. In meeting with the Agency on March 17, 2021, we shared proposals for programmatic relief that Class Agents helped to shape and supported. As we move forward, we hope that the Agency will take Class Agents'

proposals seriously, and that we can reach a settlement that will meaningfully address the practices that have allowed discrimination at the Agency for so many years.

Your March 17, 2022, letter is troubling because it presents a radically different and false version of these same events. As explained below, you have spread misinformation and sown confusion among class members. Your letter ignores the efforts of class counsel and other Class Agents who have taken their responsibilities to pursue programmatic relief seriously, and it casts doubt on your ability to effectively represent the class.

Named Class Agent Fogg's Reply To Saba/Firms Letter Above;

Dear Saba:

I write to follow-up on your March 18 (inserted) letter to you individually, the Firm and Class Agents (CA's). As you know, these U.S. Department of Justice (USDOJ) and U.S. Marshal Service (USMS) civil rights allegations have occupied my entire career and inundated much of my life. And because of my staunch advocacy for USMS civil rights, I have officially named 12 U.S. Attorney Generals (1985 to present), in these matters. Due to Agency retaliation, I was abandoned by colleagues to die in the line of duty; received death threats and in fear -- my fiancé & her daughter left me; evicted by DC/USMS colleagues; saw an innocent black Marshal & victorious USMS Title VII Plaintiff thrown in prison for 10 years simply trying to protect his wife & young children knowing, the USMS would have protected a white deputy Marshal in the same incident; attended the funeral of an outstanding black USMS Inspector critically injured under suspicious auto accident following job related death threats and alleging racism in the New York USMS Office; observed a white (Jewish) colleague who testified before Congress against the same racism and victimized, given a black rubber rat, life threatened and constructively discharged with a wife and two young children; I was terminated and won a landmark Title VII Jury Verdict; I was denied a promotion opportunity for a GS 15 & SES; I witness the USMS illegally hide my 2008 Judgement/tax withholdings causing a present day MD & IRS nightmare. And unfortunately, two of my lead attorneys passed away during these civil rights matters.

I consider David Sanford a friend and all the Firm attorneys who advocated on the CA's behalf over 18 years as an extended family. We will miss Tom. I also realize civil rights violations in this matter coincides with human rights violation as a unique ageless and horrific crime in America dating back to Slavery. In this class, Compensatory damages are tantamount to 'Reparations' for approximately ten thousand (10,000) Class Members (CM's) since 1994, still seeking racial equality in Americas premier law enforcement Agency. Therefore, in this settlement process we shall not leave any racially harmed and/or known CM behind to suffer.

As I address our issues below, please remember this is about racially motivated Post Traumatic Stress Disorder (PTSD), congruent to the sufferings of our great grandparents & children and their offspring over hundreds of years who endured the holocaust of *"white supremacy"* in America that has now infiltrated our federal government, state and municipal law enforcement agency's well into the 21st century creating the ***Black Lives Matter*** movement. Therefore, my replies below as the named Class Agent/Spokesperson addresses the bigger picture.

How do CM's correct such a powerful mandated ***watchdog*** AKA, the USDOJ/USMS "Justice Integrity Agency" that itself, conducts and condones civil rights violations with impunity against its black colleagues and citizens it serves?

A record 28 years of litigating this Class plus two other separate Class filings represents that USMS/DOJ bigotry is systemic nationwide and nearly insurmountable but not impossible to overcome with GOD on our side.

We cannot let family, friend, or foe stop us from the living the endearing words in the tearful eyes of my mother ref: for whites only 'Boys Club', *"maybe son, one day you will make a difference"* or the words of one who gave his life on behalf of the CM's. *"Truth Pressed Down Will Forever Rise to Surface and We Have Come To Far To Turn Around Now"* (DR. MLK)

Having said above; your March 18 letter is accusatory and dismissive to very important issues in my March 17 letter clarifying myself and other Class Agents (CA's) and Class Members (CM's) concerns, in addition to the Firm (Heisler, Sanford & Sharp) vision of **Programmatic Relief (P/R) in this** administrative matter before the Equal Employment Opportunity Commission (EEOC)**. Using your words above,** your 3/18/22 letter is also troubling because it presents a radically different and false version of these same events.

Mainly, your letter fails to acknowledge that both parties are only discussing settlement before the EEOC and not litigating the merits of this case and therefore, are not bound by any legal facts in dispute, case law and/or the Administrative Judges (AJ) rulings, etc., outlined in your 3/18 letter. That means, addressing racial discrimination not just in the scope of accepted issues for Hearing and/or trial, but ALL three separate Class claims if parties agree will remedy any USMS outstanding civil rights disparities past and present. A "global" settlement is **now necessary** since the Agency will not admit to wrongdoing in this (1994) Class claim, or my 2008 Federal Court - Judgement & Order and a 2012 EEOC Class Certification, indicative of the recent U.S. Marshal Service director, Ronald L. Davis indicating; the USMS does not discriminate.

Just to reiterate, my 1998 personal Title VII trial victory that involved over 30 witnesses and numerous similar civil rights infractions affecting all African American (AA) deputy U.S. marshals (DUSM's). The Jury Found the USMS to be a Racial Hostile Environment for DUSM's before and after 1991. And the trial Judge Thomas Penfield Jackson stated:
"Nevertheless the jury obviously inferred from the evidence of the endemic atmosphere of racial disharmony and mistrust within the USMS* (United States Marshals Service) *that all explanations were suspect, and that occult racism was more likely the reason than any other for Fogg's misadventures with the Marshals Service hierarchy"

The Firm is now addressing "Settlement" as though CA's representing a potential 10,000 Class Members (CM) must rely solely on the firm's expertise, knowing that CA's are the real subject matter experts in these matters having experienced decades of civil rights violations by the USMS supervised by the US/DOJ.

The Firm's P/R process appears to be the same tone of what occurred in the Firm's unacceptable $15 million monetary settlement, and MOU with an Alleged Principal Agency Witness (PAW) and, in total opposition to the CA's February polled consensus majority specifically directing the Firm to settle for $25 million and not to include attorneys' fees.

Having said this, I will briefly address each of your numbered areas of attorney client contention and/or facts in dispute listed hereafter.

Named Class Agent Fogg's & Other CA's Settlement Discussions With Facts Below That Concerned CA's And Opposed The Firms Sole Expertise & Rush-To-Settlement Process:

On February 15, 2022, following the unexpected passing of the Firm's lead Class attorney, Thomas Henderson and the subsequent January 26, 2022, Washington Post article bringing public exposure to the DOJ's unprecedented 28 years of litigation against the USMS, the Firm met with the CA's to discuss the agency's sudden willingness to settle.

The Firms "Chair" David Sanford now leading the Class (after Tom's passing), indicated that previous official settlement discussions (less than seven months prior and discounted from $60 to $40 million agreed upon by Firm & CA's and later negotiated with a paid Mediator at $40 million) "**was unreasonable".** The Chair further stated that monetary valuation of this Class, although lasting 28 years with upwards of $20 million in legal fees, now has a Firm expert indicating CM's compensatory damages including Injunctive relief totaled only $6.5 million.

When CA's questioned the Firms new grossly devalued valuation of Class total damages, inextricably different from the Firms previous purported settlement valuation of $40 million in official negotiations, the CA's presented poignant concerns.

The Firm began to spread misinformation, sowed and initiated confusion and discord among class members initiated in the 2/15/22 settlement meeting with a derogatory tone. The Firm's Chair informed the CA's of an obvious predetermined direction he intended to proceed in a ***"gangster"*** like tone of either ***"take or leave it"*** (later described amongst CA's and to other Firm attorney's). The Chair further threatened he had the option to request the AJ remove the named Complainant and others if they did not agree with the Firm's sole expertise to settle this matter.

Later CA Fogg advised the Firm's Chair (March 15 P/R Zoom conference), that he spoke to the CA's in a degrading ***"childish manner"*** on his 2/15/22 Zoom call. The Chair never apologized. And to make matters worse in that 2/15/22 meeting the Chair further intimidated the CA's by striking confusion and fear by urging CA's to settle now and/or, expect possible unfavorable rulings from the Administrative Judge (AJ) by falsely insisting the AJ's salary was being paid directly by the USMS. Later in the 3/15/22 P/R Zoom meeting (after signing a CA's nonconsensual monetary agreement on 3/8/22), attorney Saba agreed with CA Fogg correcting the Chair's ongoing and misleading information about who pays the AJ's salary.

And finally, in that 2/15/22 meeting the Chair suddenly introduced information that he had a close personal relationship with the Biden Administration due to bringing them into his home

and made a substantial donation to the Biden for President campaign and that, he directed Biden to select Kamala Harris as his Vice President. Obviously, this activity occurred when his Firm was representing the Class interest against the DOJ and he should have advised the CA's at that time but nevertheless, still knowing that Biden would most likely be elected as President and overseer of the US/DOJ the Class defendants. CA's in the 2/15/22 meeting were confused and could only assume the Chair's sudden mention of his Biden relationship in settlement discussions well after-the-fact, was to address any subsequent CA's concerns for a conflict-of-interest involving the Firm and the current Biden Administration's US/DOJ.

One thing for sure, all CA's left the 2/15/22 meeting discussing serious "tone" concerns because of the Firm's sudden urgency to settle the class with a strange new and unheard of low monetary devaluation following 18 years of aggressive litigation. CA's believed the Firms sudden rush-to-settlement immediately following the Washington Post article coupled with the Chair/Biden close relationship -- the Firm is now politically motivated by the Biden Administration to settle this civil rights Class litigation expediently with the least monetary liability and civil rights accountability as possible. CA's later discussed this most likely motivation by the Firm as not in the best interest of class members and advised the Firm's attorneys including Saba of these political incentives and other concerns.

Later the firm further sowed clear and undisputed discord by calling only selected CA's in attempts to change CA's known consensus majority on monetary relief in opposition to the Firms predetermined agenda and low monetary relief.

The Firm further compounded CA and Firm dissention by sending personal letters on or about March 1, 2022, to again, only selected CA's (not to include the named Complainant and other CA's) in stark contrast to initial attorney/CA communications. This action created an intended ***fire storm*** of CA division, uncertainty, and thoughts of intimidation in concert with the Firms first 2/15/22, settlement meeting that threatened to remove CA's not in agreement with the Firm. CA Fogg later obtained copies of that 3/1/22 letter from other CA's although the Firms letter specifically directed each CA-recipient not to share its content with anyone, promoting clandestine CA activity with further coercion by requiring CA's to sign the letters if they wanted to remain as CA's.

Again, CA's discussed the Firms actions to be divisive, intimidating and politically motivated with a pre-determined settlement outcome designed to isolate and remove CA's in opposition of the Firms purported expertise.

Finally, (Saba) you reported to one or more of the CA's that you left the Firm just prior to Tom's passing for a job position at the U.S. Department of Justice (DOJ) and that, you returned to the Firm to complete Class settlement negotiations. CA's believe you should have made this information known to all CA's for inquiry which, also raises CA concerns as to your impetuses and effective Class representation on CM's behalf against the same DOJ defendants in this matter.

For certain the Firms actions above and below began a chain of events which snubbed the CA's & CM's directives, who have taken seriously their responsibilities to a potential 10,000 CM's to

pursue meaningful monetary and programmatic Injunctive relief involving damages for thousands of USMS civil rights violations/allegations in 28 years with pain & sufferings. The actions above cast serious doubt on the Firms ability to further represent this class effectively in settlement.

CA Fogg addresses below each one of Saba/Firms numbered replies to CA Fogg's March 17th letter to the Firm.

Saba's Letter > 1. You Misrepresent that You Are a "Spokesperson" for the Class

In your March 17 letter, you write that you are the "Spokesperson" for the class. Earlier, in a February 28, 2022, email, you claimed to be a "lead" Class Agent or class representative. No matter the exact title, you have not been appointed by the Administrative Judge in any lead role in this litigation. You alone cannot speak for the entire class or the other 14 Class Agents. You have no basis to represent yourself as the voice of the entire class.

Named Class Agent Fogg's Reply Below To Saba/Firms Number 1 Above;

With all due respect, you were not a party in the CA's communications when they asked CA Fogg and named Complainant to speak on their behalf. Therefore, you **Misrepresent by stating**; ***"You (CA Fogg) have no basis to represent yourself as the voice of the entire class".*** Clearly this simple matter has nothing to do with asking the AJ for permission especially since the Firm has decided to **rush this matter to conclusion**. Also, the Firm Chair indicated concern in the 2/15/22 meeting about the unusual high number of 15 CA's. The CA's also understood assembling all 15 CA's on various discussions would be difficult and similar as to not having all 15 CA's in each attorney/CA's Zoom meetings. So, the CA's accepted a consensus majority of CA's replies for Fogg as 'spokesperson' and to direct the Firm accordingly.

Therefore, on the morning of February 16th and in reply to Firm/Christine Dunn's late evening 2/15/22 email sent to all CA's summarizing the earlier 2/15/22 Firm/CA meeting -- CA Fogg sent the Firm a 2/16/22 AM email reply. Subsequently that same morning CA Fogg spoke directly to firm via a follow-up call from the Firm for clarification of CA Fogg's morning email and prior to the Firm & Agency settlement meeting.

CA Fogg clearly advised the Firm that a consensus majority of CA's decided how the Firm should negotiate settlement with the Agency later (2/16/22), and that CA Fogg was asked to speak on the CA's behalf. The Firm even called some of the CA's prior to the CA Fogg & Firm conversation and verified CA Fogg's spokesperson appointment by other CA's. Therefore, the Firm was clearly on notice that CA Fogg was speaking for a consensus majority and on the CA's behalf. Again, your allegation above is false. His reply are clear facts and the basis for CA Fogg stating **"spokesperson"** whether the Firm agrees or not.

* **NOTE** Any law firm without a predisposed agenda would have simply rescheduled the 2/16/22 Firm/Agency settlement meeting and called another CA's meeting for clarification since the

Firm was hired by the Complainants and should act as a family on behalf of the CA's as previously agreed upon. And knowing this unparalleled (longest active American litigation on record) legal matter incorporated decades of compensatory damages naming thousands of civil rights violation/allegations against 10,000 CM's in Americas' lead (US/DOJ) and oldest (USMS) Federal law enforcement department.

Saba's letter >2. You Mischaracterize the Class Agent Meeting Regarding Programmatic Relief

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M. Fogg **(Saba's letter Continues)**
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You write that Class Agents and class members "vehemently disagree with [class counsel's] actions" in negotiating programmatic relief for the class. This statement contrasts with our notes of the Class Agent meeting. According to our verbatim notes from the meeting, other Class Agents agreed with many of our suggestions. They stated that the conversation was "really productive" and that our suggestions were "a good start."

Further, nearly every suggestion from Class Agents was a constructive suggestion that we have considered in negotiations. To provide one example, a Class Agent had great insight on the Management Development Program, suggesting that the Agency has begun such a program and that we can work with the Agency on developing it. We shared those insights with the Agency on March 17, 2022, and the Agency has agreed to share more documentation about the program. As we continue to negotiate programmatic relief, we will always welcome and continue to incorporate ideas from Class Agents about how to remedy discrimination in promotions and hiring at the Agency.

While you claim that you speak for the class, you were the only Class Agent to suggest, as you do in your letter, that injunctive relief should include measures to address claims related to the "EEO, OGC and IA divisions" that have not been part of this lawsuit since 2007. In addition, several Class Agents questioned your suggestion that any injunctive relief might be meaningless because the Agency will always avoid compliance. You may not want to offer the same kinds of suggestions, and you may "vehemently disagree" with negotiating meaningful programmatic relief, but you do not speak on behalf of the class or other Class Agents in that regard.

Named Class Agent Fogg's Reply Below To Saba/Firm's Number 2 Above;

Again, you **misrepresent** CA Fogg's concern above by failing to mention that he was intricately involved in the March 15 P/R meeting (postponing a medical appointment) and gave significant impute in addition to great suggestions from other CA's to include commenting on the P/R notes provided by the Firm. Obviously, **you mischaracterize** the CA's concerns involving the attorney/client dispute in CA Fogg's 3/17/22 letter.

CA's understand the Firm believes reprisal was later (ambiguously) removed after being designated in the EEOC OFO 2012 Class Certification, although, the Firm did not legally clarified the reprisal issue with the AJ or Agency and distinctively omitted CA Fogg's 1994 initial claim basis of "reprisal". See paragraph **12 PG 5** in the Firms (2016) Amended Class Charge/Motion. And even the Agency motions called for Class clarification of overlapping Class claims made by separate Brewer and Tuaua Class actions that presented confusion.

But nevertheless, CA Fogg reminds you of legal prudence that both parties can and should agree on addressing ALL USMS reprisals involving any alleged civil rights violations. We must agree to globally fix all race discrimination matters since this class possibly overlaps other class claims and has lasted way too long (28 years) with reprisal, discipline and/or hostile environment claims most of those years and so that, upon this settlement, the Agency and ALL CM's are totally free from filing further claims involving **ANY** present or past alleged civil rights violation.

The only purpose and ***"trade off"*** of settlement in lieu of an EEOC Hearing especially if the Agency plans as noted in the erroneously signed MOU ***"denies all (civil rights) allegations"*** in the Second Amended Class Charge". Furthermore, and just as important, the USMS historic dismissive pattern and practice is again proven whenever the Class basis involving reprisals was officially (again unclear) removed.

* The Agency in accordance with (29 C.F.R. § 1614.204) apparently did in-part (ambiguous & unclear) , issue an official notice to some but not ALL CM's (attached) on changes to the initial Class Complaint. The Firm/Agency clearly omitted discrimination for Reprisal as a basis for initiating this Class was removed.

Saba's letter > 3. You Falsely State that Claims Related to EEO, OGC and IA Divisions Are Part of the "Scope of this Lawsuit"

You write that the programmatic relief that we discussed does not "encompass the full scope of this lawsuit" related to the "EEO, OGC and IA divisions" because these divisions have been part of a pattern of not properly handling EEO complaints and imposing undue discipline on class members. We have, of course, pursued similar arguments to the ones that you now raise, but these claims have not been part of this case since 2007.

The Administrative Judge dismissed the entire class complaint on March 19, 2007, including claims related to "the processing of EEO complaints" and "discipline." AJ Order (Mar. 19, 2007) at 1, 5. As you know, through our efforts, the Office of Federal Operations (OFO) reversed the Administrative Judge's decision and, on November 17, 2015, reasoned that there was evidence of centralized decision-making regarding "recruitment, promotions, training, and assignments." OFO Order (Nov. 17, 2015) at 7. The OFO, however, found "that there is an absence of evidence regarding centralized control or a discriminatory policy with respect to discipline and EEO complaint processing, and find that the class should be modified as such." *Id.* at 7.

On remand, the Administrative Judge included no mention of retaliation, EEO, OGC, or IA in defining the following class:

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all current and former African American Deputy U.S. Marshals and Detention Enforcement Officers who were subjected to the Agency's policies and practices regarding promotions, including reassignments and transfers, Headquarters assignments, and hiring and recruitment from January 23, 1994, to present.

AJ Order (Feb. 24, 2017) at 2.

Because retaliation claims related to EEO processing, and claims related to disparate discipline have not been part of the class definition, class members have been free to pursue these claims against the Agency. You pursued retaliation claims in your individual case. Other class members have also pursued retaliation claims against the Agency before and after 2007.

We are puzzled by your insistence that these claims are part of this case because we have repeatedly told you—and you have acknowledged—that retaliation claims have not been part of this case for many years. According to our notes, in preparation for your deposition on May 28, 2020, Tom Henderson gave you the following advice: "It would be better if you didn't couch things in retaliation, because that's not a claim." In a July 14, 2021 call with Tom, you stated, "I know retaliation was a part of my class and the OFO threw it out." In a later September 16, 2021 call with Tom, you asked "Let me ask you this, Tom, is there any way the retaliation piece can be brought back?" Tom responded, "No, because the OFO decided that."

We understand that you are disappointed that the OFO excluded these claims from the case. We share that disappointment. Our shared disappointment does not change the fact that, contrary to your letter, claims related to the "EEO, OGC and IA divisions" are not "within the scope of the accepted issues" here.

We remain willing and able to negotiate the most robust relief possible for the class, which may include more aggressive efforts by the EEO office to analyze and report discrimination in hiring and promotions, an adverse impact analysis for IA investigations, and a commitment from the Agency not to retaliate against class members. These proposals related to the IA and EEO offices will continue to be negotiated by the parties. However, retaliation and claims related to the "EEO, OGC and IA divisions" have not been part of this case for *fifteen years*, and we cannot force the Agency to ignore this reality by placing these claims front and center now. The Administrative Judge would not find a settlement that excludes these claims unreasonable.

Named Class Agent Fogg's Reply Below To Saba/Firm's Number 3 Above;

In addition to your last statement above, the Administrative Judge would not find a settlement incorporating ALL civil rights claims addressing reprisals via the "EEO, OGC, IA and any other USMS division's policy or practice **unreasonable.** Again, your reply above clearly

mischaracterizes CA Fogg's 3/17/22 concerns and constructs unnecessary pages depicting factual and comprehensive legal reviews with a timeline that basically concluded what CA's already know.

But for settlement purposes and without a doubt, the Agency's "policies and practices" from January 23, 1994 to present depicts mixed harassment & reprisals fueled by race discrimination affecting promotions, transfers, special assignments, etc. & via interference in the EEO, OGC & IA divisions (mandated for USMS integrity and accountability) – that continued wreaking racial havoc upon CM's and bias operations affecting AA citizens we protect & serve.

Also, let me remind you some of the most egregious USMS civil rights violations affecting CM's and citizens depicted in the class period are illustrated in the 1997 New York Post to include;

- White deputies setting up black deputies for beatings by prison inmates.
- White deputies failing to provide backup for black deputies making dangerous arrests.
- White deputies using Martin Luther King's picture for target practice during an annual firearms qualification test.
- A white deputy terrorizing black female deputies by running through the marshal's office dressed as a member of the Ku Klux Klan.
- Having defaced and obscene autopsy photos of a 7-year-old black murder victim placed on the desks of two deputies who were partners -- one white, the other black.
- 7 Deputy U.S. Marshals attending the famed KKK Good Old Boys Roundups in Tennessee with clear racist displays on hating black Americans

For decades this Class litigation and prior depicts thousands of on and off the job civil rights violations by the USMS good-old-boys hostile work environment and (many are listed on the Agency's Witness List). These bias culprits rewarded each other with promotions up to Senior Executive Service (SES) to include the former USMS Director Michael K. Moore who said himself (deposition) the USMS promotions process was ***"Skewed"*** towards HQ personnel. CA Fogg's Federal Jury also Found Moore to be a Discriminating Official (see interrogatory "e". Moore has sense been promoted to Chief Federal Judge for the Southern District of Florida (Miami). Woe be unto ALL AA's he has Judged!! Again, this systemic bigotry accountable to all USMS divisions translates to racial hatred against the AA citizens we serve & protect.

CA's and CM's in settlement have a stanch right to present concerns, including asking for the removal of bias personnel and for any P/R changes needed to drain the swamp of ***"occult racism"*** in the USMS. New P/R benchmarks must have accountability measures with swift serious penalties for past and present violators.

CA's & CM's agree that M/A & P/R must "globally" address ALL USMS civil rights allegations to date, for and up to 10,000 CM's to be made whole. These ongoing retaliation allegations linked to civil rights violations amongst others must include the USMS denying CM's "Retirement Credentials" so that, NO CM needs additional litigation arising out of these and other civil rights allegatons since 1994.

As I stated on 2/15/22, time & more public exposure are on our side, and we must take this settlement opportunity to drain this decades old bigoted swamp now – not later with more litigation arising out of the same matters!

Saba's Letter > 4. Class Agents Have Not "Advised the Firm About [Class Agents'] OGC Concern"

Relatedly, you write that Class Agents have "advised the firm about [Class Agents'] OGC concern." We understand that you now believe that the current General Counsel of the Agency has a conflict of interest because she once directed the EEO office. You shared this concern with me in our call on February 18. In your February 28 email, you also suggested that no attorney with the USMS Office of the General Counsel could attend negotiations because of this conflict of interest.

M. Fogg **(Saba's letter Continues)**
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Contrary to your letter which references multiple Class Agents, there is no other Class Agent who has advised the firm about any conflict of interest related to OGC. Your February 28 email and your March 17 letter are the only times that any Class Agent has ever raised these concerns. Moreover, to reiterate our previous correspondence, we have no control over who the Agency sends to negotiations.

Named Class Agent Fogg's Reply Below To Saba/Firm's Number 4 Above;

Saba your reply above has taken me beyond puzzled to appalled. You told CA Fogg during the Firm's ***rush-to-settlement*** discussions; the Firm was very much aware of the OGC involvement. And more specifically, you planned to call Lisa Dickerson (now USMS OGC head General Council) as a Principal Agency Witness (PAW) and/or Alleged Discriminating Official about knowledge of any discriminatory activity against CM's when she was assigned TDY from OGC as the USMS EEO Officer, a patently known conflict of interest.

I don't understand why this astute Firm can not realize that it was a laborious and collective effort by the USMS OGC personnel to include former Chief Gerald Auerbach, Associate Joe Lazar, now OGC Head Lisa Dickinson and Associate attorney Susan Gibson amongst others is why all OGC negotiations kept these civil rights matters on hold for **28 years** **hoping for the Firm, CA's, CM's demise**. Again, the one and only reason the Agency/OGC is at the settlement table in 2022 **is NOT because of the merits of this case that you keep asserting,** but only because of the Washington Post exposure depicting the extreme longevity of thousands of historic racial & civil rights allegations/violations in the USMS.

CA's understand with discovery mounting $20 million in legal fees (according to Chair), proves this firm know's the culpability of most USMS Officials involved in each USMS division.

Why would you now suggest the named Complainant was the only CA concerned about OGC violations when many other CM's expressed via affidavits, etc. to this Firm their pain & suffering at the reprisal hands of racial bigots in OGC, EEO or IA divisions amongst others. As CA experts, we've experienced how culprits in various USMS headquarters divisions and field operations **conspire to violate civil rights as one team**. Therefore, the Firm should have known the OGC is problematic and asked the DOJ to send neutral parties long **ago and we probably would have resolved all issues before today.**

And since you mention CA Fogg's personal case in this communique lets simply be transparent to all CA's and address his personal expertise added to why the OGC cannot be trusted having prolonged this class matter for 28 years.

As you know, CA Fogg's Landmark Judgement against the USMS/DOJ occurred April 1998. After 10 years of frivolous appeals with support of the USMS/OGC. His judgment of $4 million was reduced to $300,000 and finally paid in 2008 with his promotion backpay and retirement credentials as Chief Deputy. But the USMS OGC was not done with him.

First, during appeal (1998 – 2008) and while on OWCP benefits, associate OGC Joe Lazar signed a letter mailed personally to his home address (in violation of BAR association rules) knowing well CA Fogg was represented by an attorney throughout trial and on appeal. Lazar's letter illegally threatened him with a Felony and falsely accusing him of impersonating a U.S. Marshal.

Secondly, the OGC in retaliation for CA Fogg's ongoing class activity, motioned the Federal Judge to sanction CA Fogg for testifying before the Congressional Black Caucus (CBC) on Capitol Hill about systemic racism in the USMS and stating he was an inactive (on OWCP benefits) Chief Deputy U.S. Marshal in accordance with the Jury Verdict.

The Judged did in-fact agree with the OGC even after CA Fogg's landmark discrimination victory that CA Fogg had *"unclean hands"* for stating "inactive Chief Deputy" and deducted three years (2005-2008) of his Front-Pay award and reduced his verdict retirement grade from GS 15 to GS 14 although, his final award made him an active US Marshal for the period, he supposedly had unclean hands.

His attorney was very upset but had been fighting the case for 13 years and was tired of fighting and decided to retire and not appeal such an ill-fated ruling.

Third, the USMS in retaliation of CA Fogg's class representation -- incorrectly calculated his 2008 Judgement & Order (J/O) according to financial experts and further refused to report to the OWCP his 2008 J/O to correct a significant increase in salary for 8 more years into his retirement while the Class continued. Also, CA Fogg was illegally forced without consent off of OWCP benefits in 2016 and on to OPM retirement rolls due to USMS OGC direct interference.

Fourth, CA Fogg applied for headquarters (class period 94 to Present) for three post judgment seeking similar GS/15 to SES promotions afforded Mike Earp (recipient of trial verdicts discriminatory & non-promotion claim) and Art Roderick (promoted far less qualified who did

not discipline white deputies who deserted CA Fogg to die on a US Marshals Top 15 arrest of heavily armed fugitives) and Lydia Blakey (his former supervisor whom he filed an EEO complaint against). His USMS post judgement MPP application submitted to the USMS disappeared and/or was destroyed as testified to his class Deposition for non-promotions in retaliation of his Class activity. Ironically Mike Earp, Art Roderick and Donald Ward (who gave deputy Stephen Zanowic a black rat inside a USMS office), all benefited from the racial demise of Zanowic and other CM's and, all three incredibly retired at GS/15 and/or at the SES level.

Fifth, USMS OGC knew that Federal, State and other withholdings for backpay was withheld from CA Fogg's 2008 Judgement before depositing him the balance. Yet the USMS/DOJ with OGC knowledge failed to provide him with a W2 despite his inquiry and knowingly failed to report CA Fogg's withholdings (by FED law) to the IRS. This ***"set-up"*** alone constructively directed the IRS to begin a relentlessly attack upon CA Fogg's retirement years to present by allowing the IRS to assume CA Fogg did not reported the withholdings. The DOJ with OGC approval finally admitted ***8 years later (2016) its so called mistake.***

By that time a Congressional inquiry indicated CA Fogg had already been the subject to two IRS audits, many annuity garnishments, bank account levies and denial of MD State auto registration driving privileges all associated with the 2008 USMS failure to report his 2008 IRS & MD tax withholdings in this matter. Tom/Firm was well aware of CA Fogg's documented OGC/EEO (Pre & Post 2008 J/O) reprisal issues design to interrupt his 2008 retirement life in a IRS & MD tax nightmare through present day.

Sixth, in violation of a 2008 Federal Court order and 8 years following CA Fogg's retirement (2016) OGC directed the USMS to erroneously change his retirement credentials title from Chief Deputy to Chief Inspector. Clearly the OGC/USMS/DOJ has relentlessly harrassed CA Fogg with impunity during retirement and while his named Class has remained outstanding.

I repeat, absolutely the current USMS OGC, EEO & IA personnel cannot be trusted or be involved in any settlement discussions addressing racial allegations if the goal of this Class is to correct ALL outstanding civil rights matters affecting AA's & CM's henceforth.

Finally, CA Fogg submitted this Class file to the Firm on or about 2004. Later, upon Tom taking the lead in this matter, Tom made it clear early on that CA Fogg would not be given a retainer by this Firm because of CA Fogg's needed essential assistance in this matter and, the Firm would construct a way to compensate him as the named Complainant and Class Agent having legally carried this Class for 10 years prior to the Firms involvement.

CA Fogg delivered over 30 large file boxes to the Firm's office obtained from his personal case. He tediously perused at the Firm office & home and tendered thousands of documents supporting this class litigation. CA Fogg further gave a deposition indicating, amongst much other historic racially motivated evidence (besides locating his voluminous Fogg v DOJ DC Federal Court trial transcript), that he applied for merit promotions while on OWCP later corrected to full service 1995-2005) and CA Fogg's MPP package was destroyed and/or removed by USMS personnel.

Furthermore, CA Fogg repeats in opposite of the Firms **recent false assertion**, Tom did in fact, specifically say to CA Fogg early on; ***"the larger the Class the more relief this Class will demand"*** and CA Fogg believes that is proof why the Firm filed successful 2020 motions granted in 2021 by an AJ, to expand the Class to 10,000 CM's.

Saba's Letter > 5. The March 8, 2022 MOU Is Not "Null and Void"

You write that the March 8, 2022 MOU is "null and void." As we have discussed and explained in great detail in David Sanford's March 7 letter to you, class counsel went into settlement discussions with a bottom-line authorization of $10 million to settle class claims, less expenses.

A settlement that includes an all-in number of $15 million, combined with the Agency agreeing to pay for settlement notice and injunctive relief, complies with that authorization and is in the best interests of the class.

Named Class Agent Fogg's Reply Below To Saba/Firm's Number 5 above:

The Firms March 7 letter was absolute intimidation. The letter was well after-the-fact of the Firms February 16th mediocre and partially subdued settlement amount totally contrary to CA's previous known directive that specifically, advised the Firm not to authorize or agree on any Agency offered settlement amount and leaving that decision totally up to the CA's.

Prior to March 7, on or about February 23, and per advising the Firm on 2/17/22, CA Fogg conducted a Zoom call **(poll and voice vote)** with a consensus majority of CA's who agreed on CA Fogg directing the firm to settle for $25 Million not to include attorney fees, which he did.

Again, the Firm on its own volition with its predisposed disposition (interpreted by CA's as a political agenda in favor of defendants) on March 8, simply hijacked the CA's Settlement Authority with a erroneous monetary agreement **(M/A)** and Memorandum of Understanding **(MOU),** despite being on notice of the CA's prior directives.

To reiterate, clearly, the firm's final M/A of $15 million was NOT commiserate with 28 years of obvious severe stress caused by ("justice delayed is justice denied"), agency harassment, and compensatory damages for approximately 10,000 CM's.

This M/A noticeably sets a super negative precedent for future AA Federal law enforcement officers involving civil rights violation when compared to more recent U.S. Secret Service AA civil rights lawsuit settling for 24.7 million with just 100 agents and far less the unprecedented longevity of this litigation

After all withholdings (double taxed and minus more attorney fees) 10'000 USMS CM's would be left with maybe $6 million compensatory dollars for distribution. Nor does the M/A & MOU send a serious message to USMS/DOJ Officials of meaningful financial consequences for extraordinary racially motivated civil rights violations/allegations.

And, especially, at a time when the ***"Black Lives Matter"*** movement exposes nationwide law enforcement abuse against AA's and while the Biden Administration is giving Mexico/US boarder immigrants and foreign countries billions of dollars in relief of wrongdoings.

A properly negotiated settlement would have, at a minimum, covered most of the Firm's approximate $20 million fees, thereby nullifying the Firm's additional 1/3 personal detainer responsible to each CA.

The settlement would also pay the CM's separately $25 million which equals a total of $45 million. And reminding you again -- the Firm & CA's first discussed $60 million 7 months prior. Furthermore, on 2/15/22, the firm stated it would formally propose to AJ (indicating a motion would likely be granted) that attorney fees be paid separately. The Firms 2/15/22 email to CA's partial summary follows:

- **[Firm/** Christine Dunn, Esq. to CA's ~ 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**.]**

I repeat, the Firm's March 8, administrative settlement agreement is ***null & void*** besides all concerns above and was knowingly negotiated & signed by a Principal Agency Witness who the Firm knows has harmed many CM's over decades involving astonishing civil rights delays and other violations to be revealed had this matter proceeded to a EEOC Hearing or subsequently in Federal Court.

Saba's letter > ***Your Repeated Failure to Understand Your Responsibilities as a Class Agent***

As a Class Agent, it is your duty to represent the interests of all members of the class in litigation to attempt to recover monetary and programmatic relief. It remains imperative that you act responsibly on behalf of the class and **not further share misinformation and falsehoods about the case.**

As a reminder, **our communications with Class Agents remain confidential and privileged, and our settlement negotiations with the Agency are confidential.** The purpose of the attorney-client privilege is to encourage the free flow of information between attorneys and clients. We hope to continue the productive flow of information and ideas between Class Agents and class counsel. Class Agents have helped to enable strong potential, programmatic relief for the class. If you were to share the misinformation and falsehoods described above to non-class members, this would not only break the attorney-client privilege. It would materially hurt the class by jeopardizing meaningful programmatic relief.

We understand that you do not believe that negotiating programmatic relief is the best strategy. Rather than negotiating programmatic relief, you believe that we should halt negotiations, create more public relations opportunities, and regressively bargain with the Agency for more money. In pursuit of your personal preference, you have shared multiple mischaracterizations and false claims, chronicled above, and have consistently demonstrated a misunderstanding of your responsibilities as a Class Agent. We will continue to fulfill our fiduciary duty to the class by working with Class Agents to deliver the best possible settlement agreement with the most robust programmatic relief possible. Please let us know if you have any questions.

Sincerely,

/s/ *Saba Bireda* Saba Bireda

Named Class Agent Fogg's Reply Below To Saba/Firm's False Allegation Above:

CA Fogg does believe 100% in a proper Settlement process and has represented many individual federal workers (EEO & Union) over the years in such administrative matters. But again, he notes the low-slung M/A covering 28 years signed by an Agency PAW/ADO was unconscionable and nonconsensual.

P/R must have power to hold prejudiced managers including OGC instantly and futuristically accountable. This includes negotiating instant M/A and P/R that will provide agreed upon injunctive relief for each CM if their cases were filed separately at the EEOC or in Federal Court. That's exactly why this Firm filed in Federal Court (2008) for the USMS AA Brewer Class, estimating a monetary valuation of $300 million for Compensatory damages involving just 1,000 class members. CA's also assume according to the Firm Chair, the unresolved Herman Brewer Class members & attorney fees in that matter have been **"globally"** subsumed in the relief of this Fogg v DOJ/USMS Class matter. And what about the USMS Class naming Ramsey Tuaua pending before EEOC/OFO that also involves similar civil rights claims with numerous CM's and some of the same CA's ?

Furthermore, your March 7, correspondence stated that CA Fogg said the Brewer Complainants received $300 million knowing that your assertion was patently **false and ridiculous**. Certainly, your directive on CA's responsibility above also holds true for this Firm as well that represents the CA's representing 10,000 CM's.

CA's are now hearing that many of the CM's are becoming increasingly upset as CA's share current settlement information to CM's along the way. CA's & CM's are expressing that this settlement process appears to be flawed and bias in total favor of the Agency and a betrayal of CM's civil right concerns for 28 years, causing non-confidence in CA's and this Firm by conflicting with the CM's interest and, further indicating that *"Black lives really don't matter"* in America when it involves decades of racially (black) motivated civil rights matters.

Again, and most importantly, CA's and the Firm must take this current settlement opportunity to **clear up ALL "systemic" USMS civil rights violations for each CA & CM** involved in all three outstanding Class matters with victims of disparate treatment & impact alleging racial discrimination dating back to the AD HOC report findings, **end of the story**!

That was CA Fogg's goal in filing this 1994 Class action addressing the *"good-old-boy"* network, creating a "racially amongst other issues to include reprisals and discipline. And, in his wildest dreams, CA Fogg didn't think the agency would ***combat*** its black law enforcement colleagues with such vigor for 28 years (now including CA/Firm disputes) well documented in the EEOC 2012 OFO Decision; the Firm's subsequent 2016 Amended Class Charge adding new CA's; the latest (2021) AJ Order expanding the Class to 10,000 members and other overlapping racially motivated Class claims filed by Brewer and Tauau.

CA Fogg is totally convinced Complainants **would prevail in an EEOC Hearing or Federal Court trial** following 18+ years of discovery and believing the White House, Congressional representatives and the USDOJ will not allow this racial litigation to proceed further with negative public opinion.

A much better resolve in forthcoming if CA's simply stand our ground for the proper settlement of **ALL ongoing civil rights violations/allegations! This is the least CA's can do for others who suffered under the bias USMS leadership and, for our children henceforth.**

Named CA Fogg suggest effective M/A & P/R matters are as follows;

CA's must negotiate directly with the new USMS Director, unlike his predecessors who made racial matters worse and, ***definitely not negotiate settlement with tainted OGC and EEO personnel.***

The Director will request the DOJ Attorney General appoint an independent Civil Rights "Zarr" and/or committee that CA's will agree upon and address ALL racial allegations filed by named Classes of **Fogg, Brewer and Tauau**.

The **Zarr** will meet with various CA's and/or CM's regularly and report directly to the Director and oversee ALL USMS (1994 to Present) AA civil rights allegations and making whole each CA and CM accordingly.

The Zarr & Committee will oversee all benchmark, desperate treatment & impactful policy & regulatory issues and demand meaningful Agency accountability reduced in writing, henceforth.

The new Director must not be in denial and understand that at the helm, he has now inherited 28 years and beyond thousands of racially motivated USMS civil rights allegations/violations that must be completely addressed immediately and buried by him once and all.

Please send me ASAP the contact information for all current and/or potential Class Members involved in this lawsuit. It is incumbent upon the CA's with fiduciary responsibility to make certain the correct information in these negotiations is disseminated to all CM's as **Privileged &**

Confidential on their behalf. CA's definitely do not want CM's to say that CA's did not share in advance information from these negotiations and further hold Class Agents henceforth accountable, legally or via word of mouth and/or false innuendos, etc. well after the Firm has been paid and are long gone from this process.

Therefore, if this Class Complaint that's predicated upon 28 years of ***"High Tech Lynching's"*** (such as the firm Chair has never lived) against CM's, are not completely settled and/or resolved ***globally***, we the CA's will call a major press conference inviting The Washington Post, Congressional reps, every law enforcement and civilian advocacy group possible with public concerns about lynching's and racial abuse in law enforcement. We will again, address the thousands of civil rights violations inside the USMS/DOJ as an unabated problem in the Biden Administration's DOJ. No, it's not just a ***"Few Bad Apples",*** it's the whole Agency!

Please do not further share misinformation, falsehoods, and dissention about matters in this case and please communicate as previously to all CA's and not personally or individually to some and proceed in the same family motto of "all for one and one for all".

/s/ *Matthew Fogg*~ Named Complainant and CA's appointed spokesperson