U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
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Thomas Hedgepeth, et al. Class Agents, v. Merrick Garland, Attorney General, Department of Justice, Agency.	EEOC No. 570-2016-00501X Agency No. M-94-6376 June 13, 2024

ORDER GRANTING FINAL APPROVAL OF SETTLEMENT AGREEMENT

Background

On July 12, 1994, Matthew Fogg, then proceeding *pro se*, filed a Class Complaint alleging that the United States Marshals Service (USMS or Agency) discriminated against him and other African Americans on the basis of their race, with respect to various employment practices relating to Deputy U.S. Marshal (DUSM) positions. In 1996, an EEOC Administrative Judge declined to certify the Class, citing a lack of specific information to support class certification. The Agency adopted the Administrative Judge's Order and dismissed the complaint. Mr. Fogg appealed the dismissal to the Commission's Office of Federal Operations (OFO), which closed the appeal based on a clerical error in 1997. *Fogg v. Dep't of Justice*, EEOC Appeal No. 01964601 (Oct. 24, 1997). Nearly ten years later, represented by counsel, Mr. Fogg successfully petitioned OFO to reopen the case. The Commission's subsequent appellate decision overturned the 1996 dismissal of the Class Complaint, remanding it to the EEOC Washington Field Office for a decision on class certification. *Fogg v. Dep't of Justice*, EEOC Appeal No. 01964601 (May 26, 2006). In March 2007, an Administrative Judge again denied class certification and dismissed the Class Complaint. The Agency adopted the Administrative Judge's Order, and again, Class Agents successfully appealed. *Complainant v.*

U.S. Dep't of Justice, EEOC Appeal No. 0120073003 (July 11, 2012). In a decision denying the Agency's 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." *Complainant v. Dep't of Justice*, EEOC Request No. 0520120575 (Nov. 17, 2015). The Commission remanded the Class Complaint to the Washington Field Office, directing Class Counsel to file an amended Class Complaint and instructing the Administrative Judge to further define the Class in accordance with the Commission's decision. *Id.*

In January 2016, the Class Complaint was assigned to the undersigned Administrative Judge. Briefing on Class Agents' 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 contentious discovery and motions practice followed. The Parties and I participated in regular status conferences to address discovery disputes and 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 exchanged over 1.2 million documents and conducted forty-two depositions.[1]

By Order dated August 13, 2021, Administrative Judge Kurt Hodges[2] granted a second Motion to Amend the Class Complaint, again, over the Agency's objection. The Class was amended 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." This remains the operable definition of the Class.

In early 2022, the Parties informed the Commission that they had entered into mediation. On March 8, 2022, the Parties achieved an agreement in principle to resolve the case for $15 million, and began to work toward an agreement on programmatic relief. I stayed litigation deadlines during the pendency of the mediation, and from March 2022 through August 2023, the Parties provided periodic updates on the progress of settlement negotiations. The negotiations were complex, given the length of the liability period; the breadth of the issues; and uncertainty about the size of the class as amended to include applicants never hired by the Agency. The Parties reported that they participated in thirty settlement conferences during this period. On August 31, 2023, Class Agents filed their Unopposed Motion for Preliminary Approval of Proposed Class Settlement, including a copy of the Settlement Agreement and Release (Settlement Agreement). Class Agents requested preliminary approval of the proposed Settlement Agreement; approval of the Notice of Resolution and the plan for distributing the Notice; and a date for a Fairness Hearing. On September 21, 2023, I issued an Order Granting

[1] Discovery also drew upon evidence developed in a related case, *Brewer v. Holder*, No. 1:08-cv-01747 (D.D.C.)
[2] Administrative Judge Hodges was assigned to the case in October 2020, when I left the Washington Field Office for a detail in EEOC Headquarters. I resumed adjudication of the case in February 2022.

Preliminary Approval of Settlement Agreement, Authorizing Notice, and Scheduling Fairness Hearing for March 20, 2024.

The Agency then began the process of notifying Class Members of the Settlement Agreement, utilizing a Notice Vendor. The Notice explained all aspects of the Settlement Agreement including the history of the litigation, the terms of the Settlement Agreement, and the steps Class Members needed to take to make a claim for relief and/or object to the Settlement Agreement. The Notice was distributed by postal mail or email to all identified potential Class Members for whom the Agency or Class Counsel had addresses, and by posting notice on the Parties' websites, in various publications, through Internet advertising, and by mail to African-American law enforcement membership organizations. The Vendor successfully delivered Notice to 17,000 potential Class Members by email and over 1,300 by mail. Notice was also published in eight different publications including Men's Health, Military Times, LA Sentinel, Baltimore Afro-American, Houston Forward Times, and African American News & Issues: Zone 2 (Dallas/Fort Worth). Combined, these publications have a circulation estimated at over 9.3 million. In addition, digital and social media advertising achieved over 6.1 million impressions after advertisements were placed on Facebook, Instagram, YouTube, Google, and Bing. Sponsored keywords and phrases were implemented across major search engines including Google and Bing. The Notice Vendor also mailed and emailed fifty-five different interest groups with a combined estimated membership of greater 37.4 million people, including the National Association of Blacks in Criminal Justice, National Black Police Association, National Association of Black Law Enforcement Officers, and the Afro American Police League to notify them of the Settlement Agreement. The Claims Administrator, Settlement Services, Inc. ("SSI") established a website, toll-free number, and email address to facilitate the filing of claims. SSI received 1,275 claim forms.

Beginning on September 28, 2023, then-Class Agent Matthew Fogg sent a series of letters objecting to the Settlement Agreement and seeking to terminate the representation of Class Counsel.[3] Five individual Class Members subsequently filed written objections, and two, David Grogan and Richard Thomas, have since withdrawn their objections.[4] The remaining individual Class Member objectors are Clarence Brown; Bernard Graham; and Otto Starks. Mr.

[3] Mr. Fogg's objections are further explained in his April 9, 2024 and April 26, 2024 submissions in connection with the briefing on jurisdiction and the Motion to remove him as a Class Agent.

[4] Objections and withdrawals have been uploaded to the electronic docket, with one exception. On January 11, 2024, Mr. Scott Bloch and Mr. William Bloch submitted a document entitled, "Objections to Class Settlement, Motion to Intervene, and Notice of Lien for Attorneys Fees of Tuaua Class Counsel With Overlapping Claims of Detention Enforcement Officers" with three attachments. Attachment 3 contains two agreements signed only by Mr. Bloch, and not by any representative of Sanford Heisler Sharp, and has been uploaded to the electronic docket along with the Objections. Attachments 1 and 2 include roughly 500 pages of documents including the names and/or personally identifiable information (PII) and other private information of numerous individuals, most of whom are not even associated with this case. Examples include the full names and prisoner numbers of incarcerated persons transported by DEOs; full names, addresses, dates of birth, and social security numbers of a number of Agency employees; medical information relating to *Tuaua* putative class members; and other sensitive information. Because these attachments contain extensive PII, I decline to upload them to the electronic docket for this matter. Counsel for the Parties are in possession of the attachments, and the Washington Field Office will retain the original email transmission for the record so that it is preserved in the event the Commission requires it on appeal.

Starks' objection was submitted by the Law Offices of Scott J. Bloch, P.A., which also filed a separate submission on behalf of a putative class in a separate proceeding against the Agency.[5]

On March 6, 2024, Class Agents submitted their Unopposed Motion for Final Approval of Settlement and Related Relief, and Motion for Fees, Costs and Services Awards. The same day, the Agency submitted its Motion for Final Approval of Class Settlement And Responses to Class Member Objections. The Parties participated in a Prehearing Conference on March 7, 2024. The Agency made supplemental submissions in support of its Motion for Final Approval on March 14 and 18, 2024.

On March 19, 2024, the night before the Fairness Hearing was scheduled to take place, Mr. Fogg filed a civil action in federal district court, purporting to terminate the Commission's jurisdiction over the Class Complaint. In response, I canceled the Fairness Hearing to allow for briefing on the impact of Mr. Fogg's filing on the Commission's jurisdiction over the complaint. After consideration of the Parties' briefing, including multiple submissions by Mr. Fogg, Class Counsel, and the Agency, on May 13, 2024, I issued an Order Retaining Jurisdiction Over Class Complaint and Granting Motion to Remove Matthew Fogg as Class Agent. Thomas Hedgepeth was substituted as the named Class Agent. The Parties submitted an amended Settlement Agreement and Class Agents submitted a Notice of Amended Motion for Fees Costs and Service Awards, with minor changes to the original submissions to reflect Mr. Fogg's removal as Class Agent. After consultation with the Parties, on May 24, 2024, I issued an Order Regarding Fairness Adjudication, informing the Parties that I would make a determination as to the fairness, adequacy and reasonableness of the Settlement Agreement based on the Parties' and objectors' written submissions.[6]

Terms of the Settlement Agreement

Monetary Relief

The Settlement Agreement provides for the Agency to make a non-reversionary settlement payment of $15 million (Settlement Fund) to resolve all class claims in the case. The

[5] This submission states objections to the Settlement Agreement on the grounds that it fails to account for claims of DEOs asserted in *Tuaua v. U.S. Marshals Service*, pending on appeal of a denial of class certification before the Commission's Office of Federal Operations. The submission also purports to assert a lien on the attorneys' fees included in the Settlement Agreement. To the extent the submission states objections to the Settlement Agreement, it will be addressed in this Order. Insofar as the submission serves as a Motion to Intervene, after careful consideration, I conclude that it fails to set forth sufficient factual or legal grounds to support intervention or the existence of a valid lien for attorneys' fees. Therefore, the Motion is DENIED.

[6] Unlike the Federal Rules of Civil Procedure, EEOC regulations governing administrative class complaints do not require that a hearing to assess whether the prerequisites for approval of a class action settlement have been satisfied. *Compare* Fed. R. Civ. P. 23(e) and 29 C.F.R. § 1614.204(g)(4) (2023). The Parties' positions as to whether the Fairness Hearing should be rescheduled are stated in their May 16, 2024 and May 22, 2024 Letters, which are uploaded to the electronic docket. My reasons for declining to reschedule the Fairness Hearing are explained in the May 24, 2024 Order. In short, only one objector requested to speak at the hearing. That objector's written submission was clear on its face, such that no further explanation or discussion at a hearing would be necessary or helpful. For this reason, and in light of the exceptionally long pendency of this class complaint, I concluded that rescheduling the Fairness Hearing would unjustifiably delay the fairness adjudication.

Settlement Fund is a common fund from which participating eligible Class Members can receive an individualized award. The Settlement Fund will be allocated by a third-party neutral based on criteria including whether the Class Member alleges they were denied a promotion or an entry-level position based on race; and whether and when they applied for the position(s) or promotion(s). After administrative costs and attorneys' fees and costs, the net amount remaining in the Settlement Fund for the Class will be more than $8.5 million, roughly $1 million of which will go to service awards for Class Agents and Class Members, and roughly $7.5 million of which will be divided among the Class according to the criteria set forth in the Settlement Agreement.

Of the 1,275 claims the Claims Administrator reports having received since issuance of the Notice, 643 had been identified as eligible for monetary relief as of the submission of the Motion for Final Approval. Many potential claimants were deemed ineligible because they were not African-American, had a disqualifying criminal conviction, or submitted a claim form without identification or without a valid social security number. If the eligibility determinations do not change substantially based on follow up by the Claims Administrator, hiring claimants will be entitled to an average award of about $4,755, including an average of $1,292 in backpay and $3,463 in compensatory damages; promotion claimants will be entitled to an average award of $37,482, including an average of $34,200 in backpay and $3,282 in compensatory damages; and "catchall" claimants will receive $788. Class Counsel expects that some individual awards may change given that the third-party neutral's due diligence is ongoing, but the average awards should not change substantially.

Programmatic Relief

The Settlement Agreement also includes substantial programmatic relief. Under the Settlement Agreement, the Agency will create opportunities for Class Members to exercise priority consideration in applications for promotion. Class Members who were allegedly denied promotions through the Merit Promotion Program (MPP) or Voluntary Reassignment to the Tactical Operations Division (TOD) or Investigative Operations (IOD) will be eligible to have their MPP or Voluntary Reassignment applications considered before all other non-priority consideration applicants for the position. Likewise, eligible Class Members who serve as Detention Enforcement Officers (DEOs) and were allegedly denied DUSM positions under certain recent vacancy announcements will be considered for their preferred districts under the conditions set forth in the Agreement.

With an eye to preventing future discrimination, the Settlement Agreement provides for significant changes to Agency policies and procedures in hiring and promotions. The Agency will modify its MPP procedures to ensure that each promotion decision is documented and consistent with job-related criteria, evaluate whether barriers exist in the assignment of African American DUSMs to TOD or IOD, and amend its EEO policy statements regarding the Deputy Development Program and Management Directed Reassignments. With respect to hiring, the Agency will comply with the terms of the Uniform Guidelines for Employee Selection Procedures ("UGESP") for DUSM hiring assessments, commit not to use its 2012 examination or unstructured interviews in the hiring process in future, and modify its final selection procedures to document and justify final selections.

The Settlement Agreement also includes improvements to training and transparency. Chief Deputy U.S. Marshals, certain Executive Staff, Assistant Directors, Deputy Assistant Directors, Career Board members, operational hiring and recruitment supervisors, operational training and professional development supervisors, structured interviewers, and District Recruiting Officers, will receive implicit bias training. The Parties anticipate that these measures will have a positive impact on the experience of African American employees with the Agency. The Settlement Agreement also requires the Agency to submit compliance reports to Class Counsel and appoint a Compliance Monitor who will determine whether the terms and conditions of the Settlement Agreement have been satisfied.

Attorney Fees, Costs, and Service Awards

The Settlement Agreement provides for $4,950,000, or 33 percent of the $15 million Settlement Fund, for an award of attorney fees, and $1,282,498 in litigation costs. Additional costs to be paid under the Settlement Agreement include $125,000 for the Claims Administrator and $38,500 for the Claims Allocator. Finally, the Settlement Agreement provides for $1,019,000 in service awards for the 15 Class Agents and 47 Class Members who aided in the litigation by, for example, participating in depositions; submitting declarations; and sharing their knowledge of the Agency's policies and operations to assist Class Counsel in formulating discovery requests and negotiating the programmatic relief.

Legal Standard

Commission Regulations provide that a settlement of a class complaint shall be approved if it is fair, adequate and reasonable to the class as a whole. 29 C.F.R. §1614.204(g)(4); EEOC Management Directive 110 (August 5, 2015), Chapter 8, Section VIII-C; *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). Notice of the resolution must be given to the class members, with no less than a thirty-day period to file petitions to vacate the resolution on the grounds that "it benefits only the class agent, or is otherwise not fair, adequate and reasonable to the class as a whole." 29 C.F.R. §1614.204(g)(4). After the period for objection, the administrative judge must consider the settlement agreement and any petitions to vacate. *Id.* If the administrative judge finds that the resolution is not fair adequate and reasonable to the class as a whole, the administrative judge must issue a decision vacating the agreement. If the administrative judge finds that the settlement is fair, adequate and reasonable to the class as a whole, the resolution shall bind all members of the class. *Id.*

The Commission has recognized the following factors as relevant to determining whether a settlement agreement is fair, adequate, and reasonable: whether the settlement was a product arm's length negotiation; the complexity, expense, and likely duration of the litigation; the stage of the proceedings, and the extent of discovery completed; the factual and legal obstacles to prevailing on the merits; the range of potential relief, and any challenges to proving damages; and the respective opinions of the participants, including class counsel, class representative, and the absent class members. *See Branch, et. al. v. Dep't of Veterans Affairs*, EEOC Appeal No. 01902620 (November 7, 1990).

Analysis

I find that the Parties have satisfied the Commission's requirement for notice of the resolution and the opportunity to object. As discussed above, in addition to providing notice to known Class Members, the Agency undertook an extensive process to provide notice to absent Class Members. This effort resulted in the submission of 1,275 claim forms.

The Settlement Agreement is the product of over eighteen months of arm's length negotiation by experienced and capable counsel on both sides. As the Agency notes in its Motion for Final Approval, the Settlement Agreement comes after "decades of litigation, motions practice, appeals, factual investigation, legal analysis, discovery, and nearly one-and-a-half years of lengthy settlement discussions" characterized by "extensive debate and dialogue between the Parties and their experienced counsel." Agency Motion for Final Approval and Responses to Class Member Objections at 5. To the extent Mr. Fogg asserts that the Settlement Agreement should be vacated because of collusion between Class Counsel and the government, Mr. Fogg fails to offer evidence to support this claim, and Class Counsel has submitted evidence to the contrary. To the extent Mr. Fogg asserts that the Settlement Agreement was unauthorized or the product of coercion, again, the evidence refutes this assertion. While Mr. Fogg may have desired to continue the litigation or to resolve the case for a larger monetary figure and broader programmatic relief, Mr. Fogg was the only one of more than a dozen Class Agents to take this position. The other Class Agents supported the Settlement Agreement. To the extent Class Counsel cautioned Mr. Fogg that he could be removed as a Class Agent if he continued to advocating his personal interests over those of the Class, the Commission has held that this does not constitute coercion. S*ee Flournoy v. Nat'l Aeronautics and Space Administration*, EEOC Appeal No. 01A24322 (Dec. 18, 2002) ("The class agent alleges that he was coerced by class counsel's warning that he could be replaced as class agent. Upon review of the record, we find that the class agent has failed to establish that the comments allegedly made by class counsel constitute an 'improper threat.' In fact, class counsel's comments appear appropriate if she believed that the class agent was giving overriding consideration to his personal interests.") Documentation provided by Class Counsel show that the firm negotiated toward settlement with the consent and input of Class Agents, who participated in numerous meetings with Class Counsel throughout the course of the negotiations. *See* Correspondence from David Sanford, September 29, 2023, and Exhibits thereto (detailing Class Counsel's communications with Class Agents regarding settlement, documenting Mr. Fogg's attempt to revoke Class Agents' consent to monetary terms, and demonstrating Class Counsel's attempts to dissuade Mr. Fogg from spreading misinformation about the settlement negotiations). The record is clear that Class Counsel zealously represented the interests of the Class and negotiated with the consent and input of Class Agents.

As for the terms of the Settlement Agreement, Mr. Fogg objects to the monetary value of the Settlement Fund, citing alleged statements by Class Counsel early in the litigation that the case was worth $300 - $500 million. Mr. Brown objects that the "amount does not take in the pain and suffering I endured as a black Deputy U.S. Marshal," and Mr. Starks asserts that "[f]or DEO's our portion of the compensatory relief amounts to only a fraction of what we lost due to

the discrimination of the Respondents over a period of many years." The objection filed on behalf of the putative *Tuaua* class similarly asserts that the monetary relief is unfairly low.[7]

These objections to the monetary relief – remarkably few in light of the extensive Notice process and compared against the 1,275 claims submitted by potential Class Members – offer no evidence in support of an alternative valuation of the case. Even assuming Class Counsel estimated the potential value of the case at $300 million early on, the Parties have since engaged in extensive fact and expert discovery. They are now in a far better position to estimate monetary damages and assess the strengths and weaknesses of their respective positions. The $15 million Settlement Fund constitutes almost 25 percent of the approximately $61 million in potential damages estimated by Class Counsel's expert.[8] As is the case with virtually any settlement, the monetary relief is discounted in recognition of the uncertainty the Class faces in continuing to litigate the case, and the benefit of resolving the case sooner, rather than later. Three decades have passed since this Class Complaint was filed. If the case does not settle, it is not out of the question that another decade or more could pass by the time the hearings adjudication and appellate processes conclude. All the while, Class Members would continue to wait. Given these factors, is reasonable for the Parties to agree to a $15 million recovery in the short term instead of taking their chances on the possibility of a larger recovery in the future.

Beyond the monetary relief, the Settlement Agreement provides for substantial programmatic relief that has the potential to benefit not only Class Members, but other current and future employees. No specific objections were filed regarding the programmatic relief, although I note that Mr. Fogg's submissions generally characterize the programmatic relief as inadequate. Upon review of the record, I find the programmatic relief in the Settlement Agreement to be significant and meaningful.

As for attorney fees, the Settlement Agreement allocates $4,950,000, one-third of the common Settlement Fund, for Class Counsel. This percentage is comparable to fees included in the settlements of similar cases. Class Counsel agreed to represent the Class on a contingency basis around 2004. Class Counsel accepted substantial risk in pursuing this case without any guarantee of payment, and asserts that it had invested over 26,673 hours, or $16.6 million worth of time, as of the submission of the Motion for Final Approval. Mr. Graham objects to this aspect of the Settlement Agreement, because the Settlement Agreement does not provide for reimbursement of fees for the attorney who represented him on his individual complaint, Marie Hagen. Mr. Graham asserts that the Settlement Agreement's failure to provide compensation for attorneys who represented Class Members on their individual complaints before they were subsumed into the Class Complaint is "inconsistent with plain language and the intent of both the

[7] The *Tuaua* objection also faults the settlement for failing to account for discrimination faced by Hedgepeth Class Members on other grounds asserted in the *Tuaua* case, specifically, disability, age and race discrimination against Hispanic persons and Pacific Islanders. It is unreasonable to think that the settlement of this Complaint should address the claims of other forms of discrimination asserted in a separate, uncertified class action. As such, these objection does not provide good cause to vacate the Settlement Agreement.

[8] Class Counsel notes that this estimate "evaluates damages from the beginning of the class period (1994) to 2017. It does not include damages from 2017 to the present because it was not clear that the class period would extend past 2017 when the assessment was conducted." Class Counsel Memorandum in Support of Final Approval of Settlement and Related Relief at 12.

statute and EEOC policy." However, Mr. Graham cites to no statute, EEOC policy, or precedent supporting the proposition that attorneys representing clients on individual complaints later subsumed into a class action must be reimbursed as part of a class action settlement agreement. Nor has he offered evidence that Ms. Hagen provided services that benefitted the Class as a whole. The same is true with respect to the objection filed by the counsel for the putative *Tuaua* class. The submission offers no evidence in support of the premise that counsel for the *Tuaua* case performed any work conferring a Class-wide benefit in this case.

The Settlement Agreement also provides for reimbursement of costs in the amount of $1,282,498. This includes costs associated with expert and consultant fees, document management and hosting for discovery, depositions, administrative costs, and other expenses necessary for prosecuting the Class Complaint.[9] No objector addressed the litigation costs included in the Settlement Agreement. The $1,282,498 in costs appears reasonable for a class action complaint of this age and scope, as do the costs for the services of Claims Allocator Michael Lewis (up to $38,500 in fees and costs, with the remainder returned to the Settlement Fund for distribution to Class Members) and Claims Administrator SSI (up to $125,000 in fees and costs, with the remainder returned to the Settlement Fund for distribution to Class Members).

Finally, the Settlement Agreement provides for $1,019,000 in service awards for 15 Class Agents and 47 Class Members who contributed to the case by filing declarations, sitting for depositions, or assisting Class Counsel with interrogatory responses. Class Agents will receive between $29,000 and $62,000 each, and Class Members will receive between $2,000 and $29,000 each, depending on their level of participation.[10] No objections were filed regarding these service awards. These awards are fair as a recognition of the substantial effort that those Class Agents and Class Members have expended for the benefit of the Class, and the risks they have undertaken by in representing the Class.

Conclusion and Order

Having considered the Settlement Agreement and each objection, and taking into account all factors relevant to determining whether a class complaint settlement agreement is fair, adequate and reasonable to the class as a whole, I find that the Settlement Agreement meets that bar, and should therefore be approved. The Settlement Agreement was negotiated at arm's length by experienced counsel after decades of contentious litigation and with the benefit of substantial discovery. The relief afforded is within the range of what an administrative judge could award at the conclusion of the litigation. It accounts for the uncertainty the Class faces in continuing to litigate the case for many years to come, the possibility that they would not ultimately prevail on some or all of their claims, and the risks associated with proving claims for damages on any successful claims. The Settlement Agreement includes criteria for determining individual recovery for Class Members, and assigns the task of determining relief to an third-party Claims Allocator. The Settlement Agreement also provides substantial remedial relief, including opportunities for priority consideration for merit promotions and voluntary

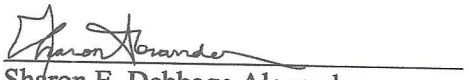
[9] The record shows that costs incurred in prosecuting the *Brewer* matter materially aided discovery in this matter.
[10] The award allocations are detailed in Class Agents' May 22, 2024 Amended Motion for Fees, Costs and Service Awards, Exhibit 2, Declaration of Christine Dunn.

reassignments, and important programmatic and policy changes. Fees, costs and services awards as identified in Class Counsel's Motion for Fees, Costs, and Service Awards are fair and reasonable and shall be paid in accordance with the governing provisions of the Settlement Agreement.

Therefore, for the reasons described herein and in the Parties' Motions and Supplements thereto, the March 6, 2024 Motions for Final Approval of Class Settlement are hereby **GRANTED**; the Settlement Agreement And Release as amended on May 22, 2024 is hereby **APPROVED**; and Class Counsel's Motions for Fees, Costs and Services Awards as amended on May 22, 2024, is hereby **APPROVED**.

It is so ORDERED.

For the Commission:



Sharon E. Debbage Alexander
Supervisory Administrative Judge

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NOTICE OF APPEAL RIGHTS TO CLASS AGENTS, CLASS COUNSEL, AGENCY, AND OBJECTORS TO THE SETTLEMENT AGREEMENT

If an Administrative Judge determines that that the resolution of a class complaint is fair, adequate and reasonable to the class as a whole, the resolution shall bind all members of the class. 29 C.F.R. § 1614.204(g). When an Administrative Judge issues such an order approving a class settlement agreement, an appeal may be filed directly with the Commission. 29 C.F.R. §1614.401(c).

Please take Notice that the Settlement Agreement agreed to by the Parties in this case has received **FINAL APPROVAL** from the Administrative Judge. An appeal of the Order Granting Final Approval of Class Action Settlement Agreement may be filed directly with the Commission's Office of Federal Operations. 29 C.F.R. §1614.401(c). Appeals pursuant to § 1614.401(c) must be filed within 30 days of receipt of the Order Granting Final Approval of Class Action Settlement Agreement. A copy of EEOC Form 573, Notice of Appeal/Petition, is attached in compliance with EEO MD-110. *See* EEO MD-110, Ch. 8, VIII.C.3.

FILING AN APPEAL

To file an appeal, refer to the attached EEOC Form 573, Notice of Appeal/Petition. Do not send your appeal to the Administrative Judge. Your appeal must be filed with the Commission's Office of Federal Operations at the address set forth below, and you must send a copy of your appeal to the Agency and Class Counsel at the same time that you file it with the Office of Federal Operations. In or attached to your appeal to the Office of Federal Operations, you must certify the date and method by which you sent a copy of your appeal to the Agency and Class Counsel. You must attach a copy of this Order Granting Final Approval of Class Action Settlement Agreement to your appeal.

WHERE TO FILE AN APPEAL

All appeals to the Commission must be filed via the EEOC's Public Portal, or by mail, hand delivery or facsimile.

VIA EEOC'S PUBLIC PORTAL (RECOMMENDED METHOD) – The EEOC highly recommends that you file your appeal online using the EEOC Public Portal at https://publicportal.eeoc.gov/, and clicking on the "Filing with the EEOC" link. If you have not already registered in the Public Portal, you will be asked to register by entering your contact information and confirming your email address. Once you are registered you can request an appeal, upload relevant documents (e.g., a statement or brief in support of your appeal), and manage your personal and representative information. During the adjudication of your appeal, you can also use the Public Portal to view and download the appellate record. **If you use the Public Portal to file your appeal, you do not have to send a copy to the agency.** A complainant representative with an account with the EEOC's Public Portal may waive receipt of the appellate decision via U.S. mail and receive the decision via the EEOC Public Portal. Federal agencies will receive the appellate decision via the FedSEP digital platform.

BY MAIL:

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NOTICE OF APPEAL/PETITION - COMPLAINANT
TO THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
OFFICE OF FEDERAL OPERATIONS
P.O. Box 77960
Washington, DC 20013

Complainant Information: (Please Print or Type)

Complainant's name (Last, First, M.I.):	
Home/mailing address:	
City, State, ZIP Code:	
Daytime Telephone # (with area code)	
E-mail address (if any):	

Attorney/Representative Information (if any):

Attorney name:	
Non-Attorney Representative name:	
Address:	
City, State, ZIP Code:	
Telephone number (if applicable):	
E-mail address (if any):	

General Information:

Name of the agency being charged with discrimination:	
Identify the Agency's complaint number:	
Location of the duty station or local facility in which the complaint arose:	
Has a final action been taken by the agency, an Arbitrator, FLRA, or MSPB on this complaint?	□ Yes Date Received _____ (Remember to attach a copy) □ No □ This appeal alleges a breach of a settlement agreement
Has a complaint been filed on this same matter with the Commission, another agency, or through any other administrative or collective bargaining procedures?	□ No □ Yes (Indicate the agency or procedure, complaint/docket number, and attach a copy, if appropriate)
Has a civil action (lawsuit) been filed in connection with this complaint?	□ No □ Yes (Attach a copy of the civil action filed)

NOTICE: Please **attach a copy of the final decision or order** from which you are appealing. If a hearing was requested, please attach a copy of the agency's final order and a copy of the Commission Administrative Judge's decision. Any comments or brief in support of this appeal MUST be filed with the Commission and with the agency **within 30 days** of the date this appeal is filed. The date the appeal is filed is the date on which it is postmarked, hand delivered, submitted, or faxed to the Commission at the address above.

Please specify any reasonable accommodations you will require to participate in the appeal process:

Signature of complainant or complainant's representative:	
Date:	
Method of Service on Agency:	
Date of Service:	

PRIVACY ACT STATEMENT ON REVERSE SIDE.
EEOC Form 573 REV 2/09
PRIVACY ACT STATEMENT

(This form is covered by the Privacy Act of 1974. Public Law 93-597. Authority for requesting the personal data and the use thereof are given below)

1. **FORM NUMBER/TITLE/DATE:** EEOC Form 573, Notice of Appeal/Petition, February 2009

2. **AUTHORITY:** 42 U.S.C. § 2000e-16

3. **PRINCIPAL PURPOSE:** The purpose of this questionnaire is to solicit information to enable the Commission to properly and effectively adjudicate appeals filed by federal employees, former federal employees, and applicants for federal employment.

4. **ROUTINE USES:** Information provided on this form may be disclosed to: (a) appropriate federal, state, or local agencies when relevant to civil, criminal, or regulatory investigations or proceedings; (b) a Congressional office in response to an inquiry from that office at your request; and (c) a bar association or disciplinary board investigating complaints against attorneys representing parties before the Commission. Decisions of the Commission are final administrative decisions, and, as such, are available to the public under the provisions of the Freedom of Information Act. Some information may also be used in depersonalized form as a database for statistical purposes.

5. **WHETHER DISCLOSURE IS MANDATORY OR VOLUNTARY AND EFFECT ON INDIVIDUAL FOR NOT PROVIDING INFORMATION:** Since your appeal is a voluntary action, you are not required to provide any personal information in connection with it. However, failure to supply the Commission with the requested information could hinder timely processing of your case, or even result in the rejection or dismissal of your appeal.

You may send your appeal to:

The Equal Employment Opportunity Commission
Office of Federal Operations
P.O. Box 77960
Washington, DC 20013

Fax it to (202) 663-7022 or submit it through the Commission's electronic submission portal.