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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA,

CASE NO.: CV 04-07699 JFW (JTLx)

Plaintiff,

v.

LOS ANGELES COUNTY
METROPOLITAN TRANSPORTATION AUTHORITY; AND UNITED
TRANSPORTATION UNION.

Defendants.

SETTLEMENT AGREEMENT AND (Proposed) ORDER

1. PROCEDURAL HISTORY

The United States brought this action against the Los Angeles County Metropolitan Transportation Authority ("MTA") pursuant to the provisions of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, et seq., as amended ("Title VII"). An amended complaint was filed to include the United Transportation Union ("UTU") pursuant to court order. This Court has jurisdiction of the action under 42 U.S.C. § 2000e-6, 28 U.S.C. § 1343 and 28 U.S.C. § 1345.

In its amended complaint, the United States alleges that the MTA has engaged in a pattern or practice of employment discrimination based on religion in violation of Title VII by using hiring procedures that have excluded qualified individuals from bus operator positions whose religious observances, practices and/or beliefs preclude them from complying with the MTA's requirement that employees in the Operations Division be available to work weekends, on any shift, at any location, and has discriminated against Henry Asher based on religion by terminating him because his religious observances, practices and/or beliefs precluded him from working during the Sabbath.

The MTA and the UTU deny the United States' allegations, and further deny violating any law, or discriminating against Henry Asher or anyone else on the basis of religion. The assignments for MTA bus operators, with the exception of initial BDOF Bus Operator assignments, are subject to seniority bidding pursuant to a collective bargaining agreement. The MTA asserts that because it cannot guarantee that any bus operator will have sufficient seniority to obtain a work assignment with the desired days off, work hours, or work location, the MTA requires every bus operator applicant to verify that he/she is available to work any shift, at any location, on any day of the week. Nevertheless, the United States, the MTA, and the UTU, desiring that this action be appropriately settled without the burden of protracted litigation, agree to the jurisdiction of this Court over the parties and the subject matter of this action. Subject to the Court's approval of this Settlement Agreement, the parties waive hearings, findings of fact and conclusions of law on all issues, and further agree to the entry of this Settlement Agreement as final and binding between them as to the issues raised in the United States' amended complaint in this case and the matters resolved in this Settlement Agreement.

This Settlement Agreement, being entered with the approval of the United States, the MTA, and the UTU, shall in no way constitute an adjudication or finding on the merits of the case, nor be construed as an admission by the MTA or the UTU, or a finding by the Court, of any wrongdoing or violation of any applicable federal law or regulation.

2. NATURE AND EFFECT OF SETTLEMENT

2.1. No Admission

In entering into this Settlement Agreement, Defendants do not admit any wrongdoing or liability to Plaintiff, to Mr. Asher, or to anyone else, nor any entitlement by Plaintiff to any relief under any claim upon which relief is sought in its First Amended Complaint

("Complaint"). The fact that the MTA is agreeing herein to take specified actions shall not in any way be construed as an admission that taking such actions is not an undue hardship. Any references in this stipulation to policies to be created or enforced by the Defendants or either of them shall not be construed as implying any admission that Defendants, or either of them, have failed to abide by any of these policies or any law in the past. Defendants assert that they are in full compliance with state and federal law, as well as their own policies.

2.2. Settlement Purpose and Scope

2.2.1. The purpose of this Settlement Agreement is to avoid the expense and uncertainty of protracted litigation while ensuring that:

2.2.1.1. Applicants and employees are not subjected to discrimination on the basis of religion in hiring or employment with the MTA in violation of Title VII;

2.2.1.2. the MTA adopts and maintains policies and procedures that prohibit discrimination on the basis of religion in hiring and employment of bus operators;

2.2.1.3. individuals who complain of religious discrimination in employment as bus operators (including being denied employment) shall not be retaliated against because of such complaint(s); and

2.2.1.4. the MTA offers monetary relief to Henry Asher.

2.2.2. Plaintiff and Defendants hereby agree to enter into this Settlement Agreement and its approval and entry by the Court; that it shall be binding upon the Defendants and upon the Plaintiff; and that it shall be in complete satisfaction of all legal and equitable claims accruing prior to the date of entry of this Settlement Agreement, based upon, or which could have been based upon or arise from any of the factual matters alleged in the amended complaint, against any Defendant or any Defendant's respective parents, subsidiaries, owners, officers, directors, agents, employees, or contractors.

3. PROCEDURE

3.1. Court Approval

This Settlement Agreement shall be subject to Court approval, and shall not become binding upon the parties, or any of them, and shall have no force and effect, unless and until the Court approves and enters it. Nothing in this Settlement Agreement shall be deemed to authorize the Court to change or vary any of its terms.

3.2. Additional Steps

The parties will take all procedural steps that may be requested by the Court and shall otherwise use their respective best efforts to consummate this settlement and to obtain entry of the within Order.

4. ORDER

Pursuant to the agreement of the parties and the Court's approval thereof,

IT IS HEREBY ORDERED:

4.1. Definitions

The following terms have the stated meaning when used in this Settlement Agreement unless the context clearly supplies a different meaning:

4.1.1. "**Asher**" shall mean Mr. Henry Asher, who filed EEOC Charge No. 340A202326 against the MTA.

4.1.2. "**BDOF Bus Operators**" shall mean Business Development Operating Facility Bus Operators. BDOF Bus Operators are the lowest level of the MTA's three bus operator classifications.

4.1.3. "**Calendar-Year Quarter**" shall mean those quarterly periods of time from January 1 through March 31, from April 1 through June 30, from July 1 through September 30, and from October 1 through December 31.

4.1.4. "**CBA**" shall mean the collective bargaining agreement negotiated between and approved by the MTA and the UTU, effective July 1, 2003, including each and every side-letter agreement thereto negotiated between and approved by the MTA and the UTU, as well as any subsequent collective bargaining agreement and/or side-letter agreement negotiated between and approved by the MTA and the UTU.

4.1.5. "**Complaint**" shall mean the first amended complaint filed by Plaintiff on December 13, 2004 and bearing Docket No.: CV 04-7699 JFW (JTLx).

4.1.6. "**Dispute**" shall mean and include each and every dispute that arises out of this Settlement Agreement or to any interpretation thereof or to any asserted breach thereof.

4.1.7. "**Effective Date**" shall mean the date on which the Court approves and enters this Settlement Agreement.

4.1.8. "**Equalized**" shall mean a Bus Operator involuntarily transferred by the MTA from one division to another because of the MTA's bus operator personnel needs.

4.1.9. "**Full-Time Bus Operator**" shall mean the highest level of the MTA's three bus operator classifications.

4.1.10. "**Hardship Transfer**" shall mean a transfer of a Bus Operator from one MTA division to another by the MTA at the operator's request.

4.1.11. "**MTA**" shall mean the Los Angeles County Metropolitan Transportation Authority and its officers, directors, employees, agents and affiliates. The MTA is one of the Defendants in this matter.

4.1.12. "**OCI**" shall mean the MTA's Operations Central Instruction department.

4.1.13. **"Part-Time Bus Operator"** shall mean the middle level of the MTA's three bus operator classifications.

4.1.14. **"Plaintiff"** shall mean the United States of America.

4.1.15. **"Plaintiff's Attorneys"** shall mean the United States Department of Justice and the United States Attorney for the Central District of California.

4.1.16. **"Religious Obligations"** shall mean all aspects of religious observance and practice, as well as belief.

4.1.17. **"Religious Accommodation Policy"** shall mean the MTA's written policy to be created pursuant to section 4.5 below.

4.1.18. **"Religious Holiday"** shall mean a particular day of the year that a Bus Operator's Religious Obligations would preclude him/her from working.

4.1.19. **"Religious Unpaid Leave Status"** shall mean a period of time during which a bus operator shall not work for the MTA, and shall not be paid by the MTA, because no Suitable Assignment is available. Religious Unpaid Leave Status is governed by the criteria set forth below in section 4.3.

4.1.20. **"Sabbath"** shall mean a period of rest, occurring weekly, during which a Bus Operator's Religious Obligations preclude him/her from working.

4.1.21. **"Shake-up"** shall mean the reallocation of all bus operator assignments, on a seniority basis, which currently occurs at least twice a year.

4.1.22. **"Suitable Assignment"** shall mean a work schedule (specifying the days of the week to be worked, the sign-on and sign-off times, and the location) that a Bus Operator would not be precluded from working by his/her Religious Obligations, and that is in compliance with the criteria set forth below in section 4.2.

4.1.23. **"UTU"** shall mean the United Transportation Union and its officers, directors, employees, agents and affiliates. The UTU is one of the Defendants in this matter.

4.1.24. **"Weekly Bidding Right"** shall mean the collectively bargained right, such as that currently possessed by Part-Time Bus Operators, to bid weekly for assignments assigned to newly transferred or promoted bus operators of the same classification.

4.2. Suitable Assignments

4.2.1. What makes an assignment a "Suitable Assignment" will likely vary from employee to employee based upon the employee's specific Religious Obligations, but religious accommodations involving scheduling need only be made where the employee's Religious Obligations preclude the employee from working a particular period of time or preclude the employee from working a particular period of time unless required as the result of unforeseeable circumstances. The MTA shall not be required to accommodate religious preferences, such as, for example, a preference not to work on Christmas, or not to work Sunday mornings.

4.2.2. Which assignments are Suitable Assignments for a particular bus operator depend upon factors such as, for example, whether or not that bus operator's Religious Obligations require him/her to be home before the Sabbath begins and whether or not that bus operator's Religious Obligations permit him/her to continue working into the Sabbath if required by unforeseeable circumstances, such as, for example, excessive traffic conditions, his/her relief operator failing to show up on time, or an accident or mechanical breakdown involving his/her bus.

4.2.2.1. If a bus operator's Religious Obligations require him/her to be home before the Sabbath begins, that will require an earlier ending time than if the bus operator need only not be working by the beginning of the Sabbath.

4.2.2.2. If a bus operator's Religious Obligations prevent him/her from working into the Sabbath even if required as a result of unforeseeable circumstances, an assignment will only be considered a Suitable Assignment for that bus operator if it is scheduled to end early enough to account for such unforeseeable circumstances, providing a margin of safety of at least three hours. For example, if a bus operator's Religious Obligations would permit him/her to work until 4:00 p.m. on Fridays, but would not allow exceptions for unforeseeable circumstances, no assignment ending later than 1:00 p.m. would be a Suitable Assignment for that bus operator.

4.2.3. Although Sabbath times may change throughout the year (based upon time of sundown), an assignment is only a Suitable Assignment if it will remain a Suitable Assignment for the entire period of time for which the assignment is expected to last (for example, the six-month period between Shake-Ups). The MTA shall not be required to change the normal duration of any assignment to create a Suitable Assignment.

4.2.4. If the MTA has an open, otherwise Suitable Assignment that the MTA does not, in good faith, intend to fill at that time for legitimate business reasons, the MTA shall not be required to make that assignment available in order to accommodate an employee's Religious Obligations.

4.2.5 The occurrence of a Religious Holiday or Holidays during the effective period of a work assignment (i.e., from the effective date of one Shake-Up to the effective date of the next Shake-Up) will not deem an otherwise Suitable Assignment unsuitable.

4.3. Religious Unpaid Leave Status

4.3.1. Throughout this Settlement Agreement there are circumstances defined under which a bus operator may be allowed or required to go on Religious Unpaid Leave Status because no Suitable Assignment is available. Religious Unpaid Leave Status shall be governed by the following provisions.

4.3.2. Unless expressly stated to the contrary elsewhere in this Settlement Agreement, the maximum duration of any one instance of Religious Unpaid Leave Status shall be 30 calendar days, after which Religious Unpaid Leave Status shall expire. In addition, Religious Unpaid Leave Status shall be limited to a cumulative total of 60 calendar days in any 365-day period, after which Religious Unpaid Leave Status shall expire.

4.3.2.1. If a bus operator's Religious Unpaid Leave Status expires with no Suitable

Assignment available, the MTA may, but is not required to, terminate the bus operator's employment, with the bus operator not eligible for rehire.

4.3.3. A bus operator shall be permitted to go on Religious Unpaid Leave Status no more than three times in any 365-day period.

4.3.3.1. If a bus operator who has already been on Religious Unpaid Leave Status three times in a 365-day period fails to work his/her assigned shift notwithstanding any conflict with his/her Religious Obligations, the MTA may, but is not required to, terminate the bus operator's employment, with the bus operator not eligible for rehire.

4.3.4. The MTA may require a bus operator on Religious Unpaid Leave Status for more than 21 consecutive calendar days to undergo refresher training before returning to work.

4.3.5. A bus operator on Religious Unpaid Leave Status who received health benefits prior to going on Religious Unpaid Leave Status shall continue to receive such health benefits while on Religious Unpaid Leave Status; however, said bus operator shall be required to pay the pro rata portion of the MTA's monthly cost of such benefits (based upon the fraction of the month spent on Religious Unpaid Leave Status), in addition to the bus operator's own monthly contribution (if any).

4.3.5.1. The bus operator shall be required to execute a payroll deduction authorization allowing the MTA to deduct such amounts from the bus operator's paychecks.

4.3.6. Bus operators on Religious Unpaid Leave Status shall not be entitled to receive any benefits (other than health benefits as provided above in section 4.3.5), and the MTA shall not be required to pay any amount (other than the amounts for health insurance to be collected by the MTA from the bus operator as provided above in sections 4.3.5 and 4.3.5.1) for any benefits for a bus operator on Religious Unpaid Leave Status.

4.3.7. Seniority shall continue to accrue for a bus operator on Religious Unpaid Leave Status.

4.3.7.1 Time on Religious Unpaid Leave Status shall not count towards the completion of the bus operator's probationary period.

4.3.7.1.1. The fact that a probationary bus operator was on Religious Unpaid Leave Status, or received any other religious accommodation, shall not be held against that operator by the MTA in determining whether that operator successfully completed his/her probationary period.

4.3.7.2 Time on Religious Unpaid Leave Status shall not count as time worked under the CBA for purposes of calculating entitlement to personal time off (PTO).

4.3.7.3. Religious Unpaid Leave Status shall be treated like other non-military leaves of absence for purposes of calculating service time towards pension entitlement under the CBA and the pension plan for Full-Time Bus Operators.

4.3.7.3.1. Full-Time Bus Operators on Religious Unpaid Leave Status shall be required to pay their pension plan contributions monthly to the MTA in accordance with the pension

plan.

4.3.8. If a bus operator is otherwise entitled to use vacation or other paid time off pursuant to the conditions contained in the CBA, he/she shall be allowed to use such vacation or other paid time off before going on Religious Unpaid Leave Status. The use of vacation or other paid time off shall not count toward the limits on Religious Unpaid Leave Status set forth above in sections 4.3.2 and 4.3.3. If the use of vacation or other paid time off is subject to seniority bidding at the bus operator's division, the bus operator shall only be permitted to use such vacation or other paid time off before going on Religious Unpaid Leave Status if that bus operator successfully bids by seniority for such use.

4.4. Undue Hardship

4.4.1. The MTA has represented to the United States that the CBA requires that any vacancy resulting from a bus operator taking leave can only be filled by a Full-Time Bus Operator. If the number of bus operators within a classification concurrently on Religious Unpaid Leave Status reaches 4 bus operator trainees, 4 BDOF Bus Operators, 7 Part-Time Bus Operators, or 13 Full-Time Bus Operators, the MTA may, but will not be required to, permit another trainee or bus operator within that classification to be placed on Religious Unpaid Leave Status. If, in such a situation, the MTA does not permit another trainee or bus operator of the same classification to go on Religious Unpaid Leave Status, the MTA may, but is not required to, terminate any trainee or bus operator requiring such leave unless such trainee or operator agrees to work his/her assigned work assignment notwithstanding any conflict with his/her Religious Obligations. Bus operator trainees or bus operators so terminated shall not be eligible for rehire.

4.4.1.1. In addition to the limits specified above in section 4.4.1, the maximum number of bus operators at any one division that the MTA shall be required to maintain on Religious Unpaid Leave Status at any one time is six. Accordingly, if a seventh bus operator at any one division were to require Religious Unpaid Leave Status, the MTA may, but is not required to, allow that bus operator to go on Religious Unpaid Leave Status. If, in such a situation, the MTA does not permit that bus operator to go on Religious Unpaid Leave Status, the MTA may, but is not required to, terminate that bus operator unless such operator agrees to work his/her assigned work assignment notwithstanding any conflict with his/her Religious Obligations. Bus operators so terminated shall not be eligible for rehire.

4.4.1.2. If more than one trainee or bus operator requires being placed on Religious Unpaid Leave Status on the same day, seniority shall govern the order in which such trainees or bus operators shall be placed on Religious Unpaid Leave Status.

4.5. Religious Accommodation Policy

4.5.1. No later than ninety (90) days after the Effective Date, the MTA shall create, adopt, and provide to the United States, a written Religious Accommodation Policy that shall set forth in plain language the specific rights and obligations of the MTA and its bus operator employees and applicants and the procedures to be used in asserting those rights and obligations, as those rights, obligations and procedures are defined by this Settlement Agreement. The Religious Accommodation Policy shall include a prohibition of unlawful discrimination on the basis of religion. The Religious Accommodation Policy shall also identify by name and provide contact information for the designated member of MTA

management whose responsibilities are set forth in section 4.5.2. 4.5.2. The MTA shall designate a member of management who is responsible for enforcing the provisions of this Settlement Agreement. This person's responsibilities shall include, but are not limited to:

4.5.2.1. ensuring that all paragraphs of this Settlement Agreement are fully implemented and complied with;

4.5.2.2 overseeing the receiving and investigating of complaints of discrimination in employment with respect to bus operators (including being denied employment as a bus operator) on the basis of religion;

4.5.2.3 overseeing the preparing of a report of the outcome of each investigation of alleged discrimination in employment with respect to bus operators (including being denied employment as a bus operator) on the basis of religion; and

4.5.2.4 distributing information concerning the MTA's Religious Accommodation Policy to bus operators or other individuals upon request.

4.5.3. Within ten (10) days from the date on which the MTA adopts the Religious Accommodation Policy as set forth in section 4.5, the MTA shall post notices stating that anyone desiring more information about the MTA's Religious Accommodation Policy or a copy of the MTA's Religious Accommodation Policy may contact the designee indicated in section 4.5.1 and 4.5.2. This posting shall also include the designee's name, phone number, and a location to obtain a copy of the policy. These notices shall be posted at all locations where equal employment opportunity information is posted for bus operator applicants, bus operator trainees, and bus operators, and on the MTA intranet websites used for posting notices or policy changes for or concerning any of the MTA's bus operator divisions, Operations Central Instruction, and the Human Resources/EEO department.

4.6. Hiring

4.6.1. The MTA shall modify its job marketing materials, job bulletins and job descriptions for bus operators and its appraisal interviews of bus operator applicants, to reflect that the MTA operates bus service 24 hours a day, seven days a week, 365 days a year, out of eleven bus divisions, and that bus operator assignments, including days off and start and stop times are governed by seniority pursuant to a collective bargaining agreement. The MTA's job marketing materials, job bulletins, job descriptions and employment application for bus operators shall state that the MTA is an equal opportunity employer, and does not discriminate on the basis of race, color, creed, national origin, gender, marital status, sexual orientation, religion, age, veteran status, or disability. The materials shall state that more information may be obtained about the MTA's Religious Accommodation Policy by contacting the [name of designee required by section 4.5.2] at [phone number of designee]. The modifications specified in this section (4.6.1) shall be completed no later than ninety (90) days after the Effective Date. A copy of the modified materials shall be sent to the United States no later than one hundred (100) days after the Effective Date. 4.6.2. No later than ninety (90) days after the Effective Date, the MTA shall modify its employment application for bus operators to include a place for applicants who are not available to work any shift, on any day of the week, whether weekday or weekend, to state the reason for their unavailability. A copy of the modified application shall be provided to the United States no later than one hundred (100) days after the Effective Date. If an applicant indicates on

his/her application, or otherwise informs the MTA, that his/her unavailability is compelled by his/her Religious Obligations, the MTA shall provide the applicant with a copy of the MTA's Religious Accommodation Policy, and shall allow the applicant to decide whether or not to continue in the hiring process subject to that Policy.

4.6.3. When a bus operator applicant informs the MTA during his/her appraisal interview or at any other time during the hiring process that the applicant is not available to work any shift, on any day of the week whether weekday or weekend, and that such unavailability is compelled by his/her Religious Obligations, the MTA shall provide the applicant with a copy of the MTA's Religious Accommodation Policy, and shall allow the applicant to decide whether or not to continue in the hiring process subject to that Policy.

4.6.4. The MTA shall, in good faith and pursuant to the terms set forth in its Religious Accommodation Policy and this Settlement Agreement, accommodate the Religious Obligations of any bus operator applicant and/or bus operator on a "first-come, first-serve" basis and as bus operator personnel demands allow. Bus operator applicants and bus operators requesting accommodation due to an inability to work specified periods of time (such as, for example, sundown Friday through sundown Saturday, and/or on Religious Holidays) compelled by their Religious Obligations shall be informed by the MTA that bus operator assignments after the initial assignment are determined based upon seniority as defined by the CBA, and that because bus operators bid for assignments by seniority, the MTA cannot guarantee any bus operator a Suitable Assignment, nor can it guarantee that a bus operator will not receive an unsuitable assignment (i.e., one that conflicts with the bus operator's Religious Obligations). Such bus operator applicants and bus operators shall be informed that they must accept the assignment that their seniority affords them through the bidding process or go on Religious Unpaid Leave Status until a Suitable Assignment is available as set forth in more detail herein.

4.6.5. The MTA may require a bus operator applicant to inform the MTA as soon as possible during the application or interview process of the need for a religious accommodation and to specifically define and document all of his/her Religious Obligations that might affect his/her employment, so that he/she avoids or minimizes scheduling conflicts.

4.6.6. The MTA may require a bus operator applicant or bus operator requesting a religious accommodation to complete a form, attached hereto as Appendix A, specifically defining the manner in which his/her Religious Obligations might conflict with a bus operator's work requirements. In the case of a Sabbatarian, for example, the bus operator applicant or bus operator shall state the specific day(s) and time(s) he or she is precluded from working by reason of his/her Religious Obligations, as well as whether his/her Religious Obligations would allow him/her to continue working past the beginning of the Sabbath under a variety of circumstances the particular occurrences of which are unforeseeable (such as, for example, excessive traffic conditions, his/her relief operator failing to show up on time, or an accident or mechanical breakdown involving his/her bus). The MTA shall not be required to accommodate a bus operator applicant or bus operator who fails or refuses to fully complete and sign this form as required by sections 4.6.5 and 4.6.6. Should the MTA find it necessary to modify the form attached hereto as Appendix A, it shall notify the United States in writing of its proposed changes. The United States shall have ten (10) days to object to the proposed changes, in which case the parties will attempt to informally reach a resolution. If no such resolution can be reached, the parties will proceed according to section 4.17.1. Any modification shall be consistent with the requirements and intent of this

Settlement Agreement.

4.7. OCI Training

4.7.1 A bus operator trainee currently undergoes OCI training Monday through Friday, for four weeks, except when there is a legal holiday during the four week period; then, the holiday class is rescheduled to the weekend. Bus operator applicants whose Religious Obligations prevent them from working on a weekend day shall be scheduled into a training class not containing a holiday during the training class. Additionally, an applicant who has notified the MTA of a Religious Holiday that would fall during the training class and that would accordingly preclude the applicant from working that day, similarly shall initially be scheduled into a later class not containing such a Religious Holiday. If unforeseen circumstances occur that otherwise necessitate a weekend class that the applicant's Religious Obligations preclude him/her from attending, the applicant shall be placed on Religious Unpaid Leave Status for one week, resume training on the same day in the following week's class, and not be charged with an incident of absence or a missout.

4.8. Mentor Training

4.8.1 After successfully completing OCI training, a bus operator trainee undergoes mentor training at an MTA division, currently consisting of the trainee obtaining two weeks of actual, revenue service (passenger carrying), bus driving experience by being paired with a qualified mentor operator and working the mentor's work assignment with the mentor. The MTA shall make good faith best efforts to assign a bus operator trainee whose Religious Obligations preclude him/her from working a particular period of time to an available mentor with a Suitable Assignment. As a result, such trainee may be assigned for mentor training to a division further from the trainee's home than would otherwise be the case.

4.8.2. If no mentor with a Suitable Assignment is available, the bus operator trainee shall be placed on Religious Unpaid Leave Status, for a maximum of three weeks, until a mentor with a Suitable Assignment is available. If no such mentor is available within three weeks, the bus operator trainee shall be required to repeat the four week OCI training.

4.8.2.1. A bus operator trainee shall be permitted to repeat the four week OCI training only once. If no mentor with a Suitable Assignment is available when the bus operator trainee completes his/her second OCI training, the trainee shall again be placed on Religious Unpaid Leave Status for a maximum period of three weeks. If no mentor with a Suitable Assignment is available within this second three week period, the MTA shall be entitled to terminate the bus operator trainee who shall not be eligible for rehire.

4.8.3. The MTA shall be under no obligation to adjust any mentor's assignment to accommodate a bus operator trainee's Religious Obligations.

4.9. Initial BDOF Assignment

4.9.1. The MTA shall make good faith best efforts to assign a new BDOF Bus Operator whose Religious Obligations preclude him/her from working a particular period of time to a division where a BDOF Suitable Assignment is available, and the operator shall be assigned to such an assignment, if there is such a division. As a result, such an operator may be assigned to a division further from his/her home than would otherwise be the case.

4.9.2. If no BDOF Suitable Assignment exists at any division, then the BDOF Bus Operator shall be placed on Religious Unpaid Leave Status until a BDOF Suitable Assignment becomes available (subject to the durational limitations stated above in section 4.3).

4.9.3. The MTA shall not be required to create a Suitable Assignment in order to accommodate an employee.

4.9.4. If, in the future, the UTU seeks and successfully acquires Weekly Bidding Rights for BDOF Bus Operators as are currently possessed by Part-Time Bus Operators, BDOF Bus Operators may be displaced from their initial or subsequently assigned Suitable Assignment by exercise of Weekly Bidding Rights. In such cases, BDOF Bus Operators may be required to go on Religious Unpaid Leave Status if they do not have the seniority to obtain another BDOF Suitable Assignment at that division and if no Hardship Transfer to a division having a BDOF Suitable Assignment is available pursuant to the conditions stated below in section 4.10.

4.10. Shake-Ups and Hardship Transfers

4.10.1. Bus operators whose Religious Obligations preclude them from working a particular period of time shall bid at Shake-Ups, with all other bus operators in the operator's division, in seniority order, for a Suitable Assignment. If such operator's seniority is such that he/she is unable to obtain a Suitable Assignment during the Shake-Up, he/she shall seek a Hardship Transfer to another division where a Suitable Shift is or becomes available. If a Suitable Assignment has not been obtained when the Shake-Up takes effect, and the bus operator does not agree to work his/her assignment notwithstanding any conflict with his/her Religious Obligations, the bus operator shall go on Religious Unpaid Leave Status or, if allowed pursuant to section 4.3.8, use vacation or other paid time off, until a Suitable Assignment becomes available at the operator's division or such Hardship Transfer is granted.

4.10.1.1. Although bus operators seeking a Hardship Transfer generally have to specify a particular division to which they request a transfer, bus operators seeking a Hardship Transfer based upon Religious Obligations shall not be required to so specify; rather, such bus operators shall be permitted to request a Hardship Transfer to any division where a Suitable Assignment is or becomes available.

4.10.1.2. Other than as specified above in section 4.10.1.1, Hardship Transfers shall be governed by the existing rules; that is, Hardship Transfer requests of Equalized employees shall continue to be granted first and according to seniority, and seniority and the MTA's bus operator personnel needs shall continue to govern which other Hardship Transfers are granted. Operators seeking a Hardship Transfer based upon Religious Obligations shall not be given priority beyond their seniority over any other Bus Operators seeking Hardship Transfers.

4.11. Part-Time Bus Operators and Full-Time Bus Operators

4.11.1. Part-Time Bus Operators have the collectively bargained right to bid weekly for assignments assigned to newly transferred or promoted Part-Time Bus Operators. Similar to Shake-Ups, if a Part-Time Bus Operator whose Religious Obligations preclude him/her from working a particular period of time is displaced from a Suitable Assignment by a more

senior Part-Time Bus Operator, the MTA may require him/her to obtain another Suitable Assignment that his/her own seniority allows him/her to obtain, if there are any, or if there are not, he/she shall seek a Hardship Transfer to another division having a Suitable Assignment. If a new Suitable Assignment has not been obtained by the date the displacement becomes effective, and the bus operator does not agree to work his/her assignment notwithstanding any conflict with his/her Religious Obligations, the bus operator shall go on Religious Unpaid Leave Status, or if allowed pursuant to section 4.3.8, use vacation or other paid time off, until a Suitable Assignment becomes available.

4.11.2. The MTA shall explain to BDOF Bus Operators whose Religious Obligations preclude them from working a particular period of time and who are considering promotion to Part-Time Bus Operator that Part-Time Bus Operators are subject to this weekly bidding system, so that they can make an informed decision whether to promote to Part-Time Bus Operator status or remain a BDOF Bus Operator.

4.11.3. Similarly, the MTA shall explain to Part-Time Operators whose Religious Obligations preclude them from working a particular period of time and who are considering promotion to Full-Time Bus Operator that some aspects of Full-Time Bus Operator status may interfere with their Religious Obligations.

4.11.3.1. Specifically, such Part-Time Bus Operators shall be informed that: (1) all new Full-Time Bus Operators must work the extra board until they earn sufficient Full-Time seniority to bid a regular assignment; (2) extra board operators bid for their days off based upon seniority; and (3) it is very unlikely that low-seniority extra board operators will be able to obtain either Friday or Saturday off.

4.12 Voluntary Exchange of Regular Assignments

4.12.1. Consistent with the Collective Bargaining Agreement, a Full-Time Bus Operator who is not able to obtain a shift that does not conflict with his or her Religious Obligations may seek to exchange his or her regular assignment with another willing operator of the same classification at the same division. Such exchanges are subject to the approval of the appropriate Location Manager or designee and the Local Chairman, whose approval will not be unreasonably withheld.

4.13. Religious Holidays

4.13.1. In addition to listing on the form required by section 4.6.6 the Religious Holidays their Religious Obligations preclude them from working, bus operators with such needs shall be expected to remind their Division Transportation Manager or Assistant Transportation Manager, in writing, approximately 30 days in advance of each upcoming Religious Holiday so that a reasonable accommodation can be attempted that does not impact the MTA's service requirements, violate the CBA, or otherwise cause undue hardship to the MTA. If the bus operator fails to give this written reminder, the MTA need not accommodate the bus operator's Religious Holiday.

4.13.2. Bus operators shall be expected to fully cooperate with the MTA in avoiding or minimizing any disruption caused by the Religious Holiday, including, upon request by the MTA, the operator diligently requesting other operators of the same classification to voluntarily swap assignments for the day, and the operator agreeing to accept any other

assignment offered to him/her (so long as the replacement assignment would not violate the operator's Religious Obligations or the terms of the CBA). If the bus operator fails to so cooperate, the MTA need not accommodate the bus operator's Religious Holiday.

4.13.2.1. The bus operator may also elect, or be required by the MTA, to use any vacation or other paid time off the operator is otherwise entitled to for the Religious Holiday consistent with the requirements of the CBA. If the use of vacation or other paid time off is subject to seniority bidding at the Bus Operator's division, the bus operator shall only be permitted to use such vacation or other paid time off if that bus operator successfully bids by seniority for such use.

4.13.3. If the operator is unable to arrange a voluntary swap for the Religious Holiday, or to use vacation or other paid time off as described in section 4.13.2.1, and the MTA's bus operator personnel needs are such that no alternative bus operator of the same classification is available at the division to work on a non-overtime basis, the bus operator will be charged pursuant to the attendance and missout policies of the CBA (or the MOU for probationary employees) with an absence or missout if he/she fails to work his/her assigned assignment notwithstanding the Religious Holiday.

4.14. Relief for Henry Asher

4.14.1. By his and his wife's execution of the notarized general release attached hereto as Appendix B, Henry Asher is accepting, subject only to approval and entry of this Settlement Agreement by the Court, the following relief being offered him by the MTA:

4.14.1.1. Within twenty-five (25) days of the Effective Date, the MTA shall deliver to Asher a check made payable to Asher in the amount of \$25,000. The parties and Asher agree that this payment is not for backpay, and is for his alleged emotional distress.

4.14.1.1.1. Asher shall be solely responsible for any and all federal, state, or other taxes due as a result of the payment made pursuant to section 4.14.1.1. The MTA shall not withhold any taxes from this payment, but shall issue Asher the appropriate tax form to reflect the payment.

4.14.1.2. Asher has informed the undersigned counsel for the United States that he no longer desires a position as a BDOF Bus Operator with the MTA. Accordingly, the MTA is not required to offer Asher reinstatement relief.

4.15. Training

4.15.1. Within one hundred eighty (180) days from the Effective Date, the MTA shall have completed training, of those individuals described in section 4.15.1.1, regarding Title VII's prohibitions against religious discrimination and the religious accommodations set forth in this Settlement Agreement. This training shall include giving each person trained a copy of the MTA's Religious Accommodation Policy created pursuant to section 4.5.

4.15.1.1. The training required by the foregoing section (4.15.1) shall be provided to:

4.15.1.1.1. all MTA Human Resources supervisors and managers, and all MTA Human Resources personnel who regularly speak, or are otherwise in contact, with bus operator

applicants as part of the MTA's bus operator recruitment and hiring process;

4.15.1.1.2. all MTA personnel who interview bus operator applicants as part of the MTA's bus operator recruitment and hiring process;

4.15.1.1.3. the designated member of MTA management identified in the MTA's Religious Accommodation Policy as a contact person regarding religious accommodation issues as specified above in section 4.5.1 and 4.5.2;

4.15.1.1.4. the Manager and Assistant Manager of OCI;

4.15.1.1.5. all OCI Instructors; and

4.15.1.1.6 the Division Transportation Manager and Assistant Transportation Managers at each MTA bus division. 4.15.2. Within thirty (30) days following the completion of the above-specified training, the MTA shall provide Plaintiff's Attorneys with written verification that the training has been completed and that all employees specified in section 4.15.1.1 (and its subsections) have received the training.

4.15.3 The MTA shall bear the cost of the training required in section 4.15.

4.16. Oversight 4.16.1. Commencing with the first Calendar-Year Quarter that begins following the Effective Date, and continuing thereafter for the duration hereof, the MTA shall prepare and provide to Plaintiff's Attorneys no later than the fortieth (40th) day of the next Calendar-Year Quarter, quarterly written reports setting forth for the Calendar-Year Quarter, the following information:

4.16.1.1. A list (with no identifying information of individuals) specifying: (i) all bus operator applicants who marked their applications to indicate that they are not available to work any shift, on any day of the week, whether weekday or weekend who inform the MTA that their unavailability is compelled by their Religious Obligations; (ii) whether such bus operator applicants chose to continue in the hiring process subject to the MTA's Religious Accommodation Policy; (iii) whether such applicants were denied employment with the MTA; and (iv) the reason for any such denial.

4.16.1.2. A list (with no identifying information of individuals) specifying: (i) all bus operator applicants who inform the MTA during their appraisal interview or at any other time during the hiring process that the applicant is not available to work any shift, on any day of the week, whether weekday or weekend, because of the applicant's Religious Obligations; and (ii) whether such bus operator applicants chose to continue in the hiring process subject to the MTA's Religious Accommodation Policy; (iii) whether such applicants were denied employment with the MTA; and (iv) the reason for any such denials.

4.16.1.3. A list (with no identifying information of individuals other than badge number of bus operators) specifying: (i) all bus operator applicants or employees submitting a religious accommodation request form pursuant to section 4.6.6; and (ii) for each such bus operator applicant or employee: (a) the accommodation requested and the asserted reason therefor; (b) the accommodation granted, if any; and (c) if the accommodation was denied, the reason for any such denial.

4.16.1.4 A report of each dispute described in section 4.17.2.3, including a description of the nature of the dispute, the attempted resolution, and any decision of the Executive Officer of the Employee and Labor Relations Department.

4.16.1.5. Upon fifteen (15) days notice to the MTA and upon good cause shown, the United States may inspect the bus operator applications or the religious accommodation requests indicated in sections 4.16.1.1 - 4.16.1.3. The United States and the MTA will enter into a privacy agreement to protect the confidential information of the applicants or employees.

4.16.2. The MTA shall retain copies of the following documents during the term of this Settlement Agreement, and during that time shall make such documents available to Plaintiff for inspection and copying (at Plaintiff's expense) upon thirty (30) days written notice by Plaintiff's Attorneys to the MTA, without further order of this Court:

4.16.2.1. The MTA's Religious Accommodation Policy, created pursuant to section 4.5, including any revisions thereto; and

4.16.2.2. The MTA's job marketing materials, job bulletins, job descriptions, blank appraisal interview forms and blank applications for bus operators, modified pursuant to sections 4.6.1 and 4.6.2, including any revisions thereto.

4.16.2.3 Should the MTA revise the Religious Accommodation Policy or revise any of the modifications required by section 4.6.1 or 4.6.2 on any of the materials referenced in section 4.16.2.2, a copy of such revisions shall be sent to the United States within ten (10) days of their effective date.

4.17. Dispute Resolution

4.17.1 Dispute Resolution Between the Parties. Any Dispute that arises between any of the Defendants and Plaintiff or between Defendants shall be resolved as set forth in this section (4.17.1 and its subsections). Should any such party assert any Dispute, that party shall notify counsel for the other parties, in writing, by facsimile, hand delivery, or U.S. Mail. The parties to the Dispute shall then endeavor in good faith to resolve the reported Dispute informally. If the parties to the Dispute have not reached a mutually satisfactory resolution of the Dispute within thirty (30) calendar days after notification, then any such party may initiate the following dispute resolution process:

4.17.1.1. Any Dispute that cannot be settled through the above informal direct discussions shall be submitted to mediation.

4.17.1.2. Any party to a Dispute may demand mediation by serving a written notice of such demand. Following such notice, the parties to the Dispute shall seek to agree, within fourteen (14) days, upon a mediator for such Dispute. If the parties fail to agree upon a mediator within fourteen (14) days, the mediator shall be selected as provided in section 4.17.1.3.

4.17.1.3. If the parties to the Dispute cannot agree upon a mediator, these parties shall have JAMS/Endispute (hereinafter "JAMS"), in each case, compose and provide to the parties a list of at least ten candidates, all of whom shall be members of the State Bar of California. If the parties cannot agree on a mediator from this list within 10 days of receipt, each party

may strike up to three candidates from the list, all such striking to be done and communicated *ex parte* to JAMS, within fifteen (15) days of receipt of the list. The parties shall then have JAMS select the mediator from the candidates remaining on the list.

4.17.1.4. Each mediation shall be conducted within Los Angeles County.

4.17.1.5. All costs for a mediator shall be split pro rata between the parties to the Dispute.

4.17.1.6. If the mediation is unsuccessful, any party to the Dispute may file an appropriate motion with the trial court in this case to adjudicate the Dispute.

4.17.2 Dispute Resolution Between the MTA and its Bus Operator Applicants or Employees. Should any Dispute arise between the MTA and its Bus Operator applicants or employees regarding the operation of the Settlement Agreement, the MTA shall attempt to resolve such Dispute by means of the following process:

4.17.2.1. The member of MTA management identified in the MTA's Religious Accommodation Policy as a contact person regarding religious accommodation issues as specified above in section 4.5.1 and 4.5.2, shall, within ten (10) days of learning of the existence of the Dispute, endeavor in good faith to resolve the reported Dispute informally.

4.17.2.2. If the Dispute is not resolved by the process specified above in section 4.17.2.1, the bus operator applicant or bus operator may appeal the matter to the MTA's Executive Officer of the Employee and Labor Relations Department within ten (10) days of the decision resulting from section 4.17.2.1. The Executive Officer of the Employee and Labor Relations Department's determination shall be final, subject to section 4.17.2.4.

4.17.2.3 A report of each such Dispute, including a description of the nature of the Dispute, the attempted resolution, and the decision of the Executive Officer of the Employee and Labor Relations Department shall be included in the MTA's quarterly reports to the United States described in section 4.16.

4.17.2.4 Nothing in section 4.17.2 or any other section of this Settlement Agreement in any way limits the rights of any applicant or bus operator who believes he or she has been subject to discrimination in violation of Title VII of the Civil Rights Act of 1964 to file a complaint with the Equal Employment Opportunity Commission or the California Department of Fair Employment and Housing.

4.18. Other Matters

4.18.1. Construction of Settlement Agreement.

4.18.1.1 The inclusion of obligations or requirements in this Settlement Agreement shall not be construed as a concession or admission by Defendants, or either of them, or a finding by the Court, that, absent this Settlement Agreement, Defendants would otherwise have such obligations or requirements.

4.18.1.2. To the extent that any provision in this Settlement Agreement is inconsistent with the CBA, the parties agree that such provision is not precedent for any context other than the reasonable accommodation of the bus operator's Religious Obligations.

4.18.1.3. Nothing in this Settlement Agreement shall be construed in any way whatsoever as requiring the MTA to hire or retain unnecessary personnel or to hire a bus operator applicant or retain a bus operator who does not comply with the MTA's disciplinary rules or meet the MTA's lawful job requirements (as modified by this Settlement Agreement with respect to religious accommodation).

4.18.1.4. Wherever in this Settlement Agreement Defendants, or either of them, are required to provide notice, reports, or other documents or materials ("Material") to "Plaintiff's Attorneys" or to the "United States," it shall be sufficient for Defendants to provide such Material solely to the Chief of the Employment Litigation Section, Civil Rights Division, United States Department of Justice, PHB 4040, 950 Pennsylvania Avenue, NW, Washington, D.C. 20530. Wherever in this Settlement Agreement "Plaintiff's Attorneys" are required to provide Material to Defendants or either of them, it shall be sufficient for Plaintiff's Attorneys to provide such Material, in the case of the MTA, to Mary Reyna of the County Counsel's Office (or to a successor designated by an attorney of the County Counsel's Office, in a writing delivered to Plaintiff's Attorneys) with a copy to Ira Weinreb of Parker, Milliken, Clark, O'Hara & Samuelian (or to a successor designated by an attorney of Parker, Milliken, Clark, O'Hara & Samuelian or of the County Counsel's Office, in a writing delivered to Plaintiff's Attorneys), and, in the case of the UTU, to Lawrence Drasin of Lawrence Drasin and Associates (or to a successor designated by the UTU, in a writing delivered to Plaintiff's Attorneys).

4.19. Term

This Settlement Agreement shall remain in effect, and the Court shall retain jurisdiction for the purpose of resolving any Disputes not resolved by section 4.17.1, until two (2) years following the Effective Date. Two years following the Effective Date, the Complaint shall be dismissed with prejudice in its entirety without further order of the Court.

4.20. Effect

4.20.1. This Settlement Agreement shall be binding upon Defendants and upon Plaintiff, and it shall be in complete satisfaction of all legal and equitable claims accruing prior to the date of entry of this Settlement Agreement, both alleged in the Complaint or otherwise arising out of the facts alleged in the Complaint, against any Defendant or any of its respective parents, subsidiaries, owners, officers, directors, agents, employees, or contractors.

4.20.2. To the extent any of the provisions of this Settlement Agreement, or any actions taken pursuant to such provisions, may be inconsistent with any state or local statute, law, or regulation, the provisions of this Settlement Agreement shall prevail in accordance with the constitutional supremacy of federal law.

4.21. Attorneys' Fees and Costs -- All parties shall bear their own attorneys' fees and costs in this case.

IT IS SO ORDERED.

Agreed and consented to on behalf of Plaintiff United States of America

By:

Bradley J. Schlozman
Acting Assistant Attorney General

By: _____
David J. Palmer
Chief, Employment Litigation Section

William B. Fenton
Leslie M. Gardner
Hector F. Ruiz, Jr.
United States Department of Justice
Civil Rights Division

Agreed and consented to on behalf of Defendant
Los Angeles County Metropolitan Transportation Authority By:

Brenton F. Goodrich
Ira A. Weinreb
Parker, Milliken, Clark, O'Hara & Samuelian

Mary E. Reyna
Principal Deputy County Counsel
Office of the County Counsel

Agreed and consented to on behalf of Defendant United Transportation Union By:

Lawrence Drasin
Lawrence Drasin and Associates

Dated: _____

Honorable John F. Walter
United States District Judge