

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

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U.S. DISTRICT COURT
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UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CIVIL ACTION NO.
	)	95-4915 (AMW)
STATE OF NEW JERSEY;	)	
NEW JERSEY STATE DEPARTMENT	)	
OF PERSONNEL; COMMISSIONER	)	
OF PERSONNEL, NEW JERSEY	)	
STATE DEPARTMENT OF	)	
PERSONNEL; and NEW JERSEY	)	
DEPARTMENT OF HUMAN	)	
SERVICES, DIVISION OF	)	
YOUTH AND FAMILY SERVICES,	)	
	)	
Defendants.	)	
	)	

MEMORANDUM IN SUPPORT OF JOINT
MOTION TO TERMINATE SETTLEMENT AGREEMENT AND DISMISS CASE

The complaint in this case was filed on September 9, 1995, and a Settlement Agreement in resolution of the case was approved by the Court on September 28, 1995.

Pursuant to paragraph 25 of the Settlement Agreement, the Court retained jurisdiction to, among other things, effectuate the State of New Jersey defendants' ("State's") full and complete compliance with the Settlement Agreement and enter any orders necessary to implement the relief provided in the Agreement. The Settlement Agreement provided for its expiration and the dismissal of the action after three years unless the State failed

to comply with the terms of the Agreement in all material respects.

The State satisfied its obligations under paragraphs 10-18 of the Settlement Agreement by providing promotions and monetary and other relief to eight named charging parties. Seven were promoted to Supervisory Family Service Specialist II (SFSS II) and one was promoted to Supervisory Family Service Specialist (SFSS I). The State, however, failed, within the three year period after the Settlement Agreement was entered, to meet the requirements of paragraph 5 of the Agreement. Paragraph 5 called for the State to develop lawful selection procedures for the hiring and promotion of applicants to positions in the Family Service Specialist (FSS) series that either have no adverse impact on the basis of race; or are demonstrated to be job related for the positions in question or otherwise consistent with business necessity.

Pursuant to a Joint Motion by the parties, on September 29, 1998, the Court ordered that the Settlement Agreement's termination date be extended until such time as the State developed lawful testing procedures for the FSS series of jobs. (See Appendix A).

The State subsequently developed lawful selection procedures that have no adverse impact on the basis of race. An analysis of applicant flow data showing applications and promotions for the

FSS series of jobs from January 1, 2000 to May 30, 2003 shows that there is no statistical significance between African-American and white hires and promotees in any of the positions in the FSS series. (See Appendix B and supporting Declaration of Vivian Toler).

The parties further note the following:

(1) As of June 25, 1994, African-Americans constituted 41.1% of the employees in the FSS series of positions. African-Americans constituted 30.1% of the employees in the SFSS II position and 17.5% of the employees in the SFSS I position. (See Appendix C).

(2) As of April 28, 2004, African-Americans constituted 44.8% of the employees in the FSS series of positions. African-Americans comprised 47.8% of the employees in the SFSS II position and 38.1% of the employees in the SFSS I position. (See Appendix D).

Thus, the total percentage of African-American employees in the FSS series of positions increased from 41.1% in 1994 to 44.8% in 2004; and in that same time frame the percentage of African-American employees working as SFSS IIs increased from 30.1% to 47.8%, and the percentage of African-American employees holding the SFSS I position increased from 17.5% to 38.1%.

An evidentiary hearing is neither required nor necessary prior to dissolution of a settlement agreement where, as here, compliance with the settlement agreement has been monitored since its inception and where the parties have set forth an evidentiary foundation for dissolution of the settlement agreement. Patterson v. Newspaper & Mail Deliverers' Union, 797 F. Supp. 1174, 1182(S.D.N.Y.1992), aff'd, 13 F.3d 33 (2d Cir. 1993).

Conclusion

Since the State has complied with the Settlement Agreement in all material respects, it is no longer necessary to require the State to remain under the Settlement Agreement.

Accordingly, the Court should enter an order terminating the Settlement Agreement and dismissing the case.

Respectfully submitted,

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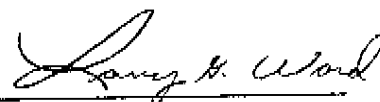
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CERTIFICATE OF SERVICE

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I, Larry G. Ward, hereby certify that on July **6**, 2004, a copy of a Joint Motion to Terminate Settlement Agreement and Dismiss, and a Memorandum in Support of Joint Motion to Terminate Settlement Agreement and Dismiss Case with appendices were delivered by Federal Express to:

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

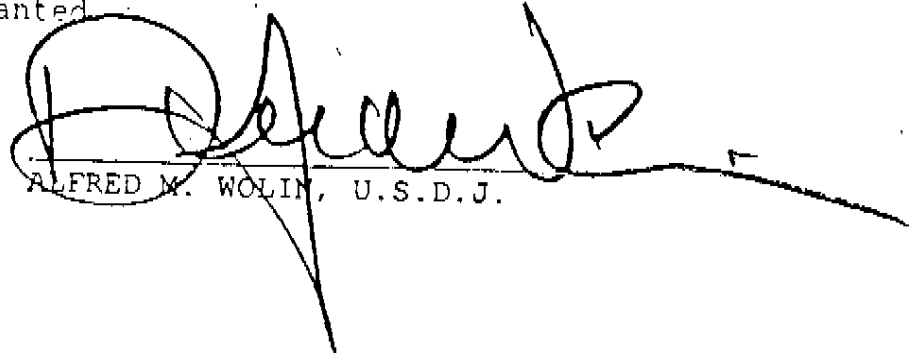
UNITED STATES OF AMERICA,)
)
 Plaintiff,) Civil Action No.
) 95-4915
 v.)
) O R D E R
 STATE OF NEW JERSEY, et al.,)
)
 Defendants.)

In accordance with the Parties' Joint Motion to Extend the Settlement Agreement's Termination Date, which Motion was filed on September 24, 1998

It is on this 29th day of September 1998,

ORDERED that: (a) the termination date of the Settlement Agreement be extended until March 27, 1999 so that the State can develop lawful testing procedures; and (b), if the State is unable to develop lawful testing procedures by March 27, 1999, to provide a report to the United States on its progress toward developing and administering such lawful testing procedures every three months after that date until the administration of such procedures has been completed. Such report should be filed by the twenty-seventh day of the third month after the extension of time and should include a summary of the actions that the State took in the preceding three months to develop or administer lawful testing procedures, a description of the actions it intends to take in the next three months to develop or administer lawful testing procedures, and an explanation as to why the

deadline was not met and the State's estimate of when the project will be completed is granted.

A handwritten signature in black ink, appearing to read "Alfred M. Wolin", is written over a horizontal line. The signature is stylized with a large initial "A" and a long, sweeping underline that extends to the right.

ALFRED M. WOLIN, U.S.D.J.

Applications and Promotions in the Family Service Specialist Series Between
January 1, 2000 and May 30, 2003

Position	Applications	Promotions	Promotion Rate	Salary Range	Salary Range	Salary Range
Family Service Specialist Trainee	1005	512	50.2%	504.51	7.49	-0.47
Family Service Specialist I	376	214	51.5%	193.64	20.36	2.10
Family Service Specialist II	52	30	48.8%	25.38	4.62	1.28
Supervisory Family Service Specialist I	35	13	33.7%	11.80	1.21	0.43
Supervisory Family Service Specialist II	158	79	51.0%	80.58	-1.58	-0.25

NEW JERSEY DEPARTMENT OF PERSONNEL
HUMAN RESOURCE INFORMATION SERVICES

FAMILY SERVICE SPECIALIST EMPLOYEES AS OF 6/25/94

TITLE CODE	TITLE	EMPLOYEES IN TITLE	BLACK EMPLOYEES	PERCENT BLACK
62141	SUPERVISING FAMILY SERVICE SPECIALIST 2 -	246	74	30.08%
62141C	SUPERVISING FAMILY SERVICE SPECIALIST 2 BILINGUAL	23	0	0.00%
62150	FAMILY SERVICE SPECIALIST TRAINEE	1	0	0.00%
62151	FAMILY SERVICE SPECIALIST 3	879	481	54.72%
62151C	FAMILY SERVICE SPECIALIST 3 BILINGUAL	83	0	0.00%
62152	FAMILY SERVICE SPECIALIST 2	157	62	39.49%
62152C	FAMILY SERVICE SPECIALIST 2 BILINGUAL	15	1	6.67%
62153	FAMILY SERVICE SPECIALIST 1	212	65	30.66%
62153C	FAMILY SERVICE SPECIALIST 1 BILINGUAL	10	0	0.00%
62155	SUPERVISING FAMILY SERVICE SPECIALIST 1	63	11	17.46%
TOTAL EMPLOYEES IN FAMILY SERVICE SPECIALIST SERIES		1689	694	41.09%

APPENDIX C

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NEW JERSEY DEPARTMENT OF PERSONNEL
HUMAN RESOURCE INFORMATION SERVICES

FAMILY SERVICE SPECIALIST EMPLOYEES AS OF 4/28/04

TITLE CODE	TITLE	EMPLOYEES IN TITLE	BLACK EMPLOYEES	PERCENT BLACK
62141	SUPERVISING FAMILY SERVICE SPECIALIST 2	343	164	47.81%
62141C	SUPERVISING FAMILY SERVICE SPECIALIST 2 BILINGUAL	28	0	0.00%
62150	FAMILY SERVICE SPECIALIST TRAINEE	548	251	45.80%
62150S	FAMILY SERVICE SPECIALIST TRAINEE BILINGUAL	40	0	0.00%
62152	FAMILY SERVICE SPECIALIST 2	865	440	50.87%
62152C	FAMILY SERVICE SPECIALIST 2 BILINGUAL	113	2	1.77%
62153	FAMILY SERVICE SPECIALIST 1	575	292	50.78%
62153C	FAMILY SERVICE SPECIALIST 1 BILINGUAL	35	0	0.00%
62155	SUPERVISING FAMILY SERVICE SPECIALIST 1	118	45	38.14%
TOTAL EMPLOYEES IN FAMILY SERVICE SPECIALIST SERIES		2665	1194	44.80%

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