IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

LEMUEL MIDDLETON, et al.,

Plaintiffs,

v.

PUBLIX SUPER MARKETS, INC.,

Defendant.

CASE NO. 8:97-cv-760-T-27E
CLASS ACTION

CONSENT DECREE

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I. INTRODUCTION

This Consent Decree has been voluntarily entered into by the parties engaged in this litigation, and has been submitted to the United States District Court for approval. This Decree finally resolves the litigation now pending between the parties.

This Consent Decree includes a joint statement of the purposes of the Decree, a description of the history of the litigation, and various substantive provisions agreed upon by the parties.

II. PURPOSES OF THE CONSENT DECREE

The parties have entered into this Consent Decree for the following purposes:

A. To resolve all disputes covered by this Consent Decree in such a way as to avoid further expensive and protracted litigation;

B. To ensure equal employment opportunity for black associates working within Publix's retail supermarket stores;

C. To establish a discharge review system to ensure that black associates have an opportunity to have discharges reviewed by Publix's Human Resources Department, and the option to submit claims of alleged race discrimination arising from such decisions to mediation.

D. To create an expedited procedure for distributing a monetary settlement to eligible members of the Settlement Class and for implementing equitable relief pursuant to the terms of this Decree; and

E. To provide finality to the resolution of all claims and defenses asserted in this action.

III. DEFINITIONS

The following terms when used in this Decree, in addition to the terms defined elsewhere in the Decree, shall have the following meanings:

A. "Approval Date" means the date upon which the Court signs this Decree, after having determined that it is fair, adequate and reasonable to the Class as a whole, after: (i) notice to the Class, (ii) an opportunity to opt out of the Settlement Class with respect to monetary relief, (iii) an opportunity to submit timely objections to the Decree, (iv) appropriate discovery of the specifics of any such timely objections, and (v) a hearing on the fairness of the settlement.

B. "Best Efforts" means implementing a plan reasonably designed to comply with the specified objectives to which the best efforts are directed.

C. "Class Counsel" means Kent Spriggs and John C. Davis of Spriggs & Davis, P.A., in Tallahassee, Florida.

D. "Class Representatives" means Lemuel Middleton, Reginald Lewis, Sharon Flowers, Gaston Hazlewood, Cynthia Jones-McCall, Willie Jones, and Joya Fulton, who were certified by the Court to represent the class pursuant to Fed. R. Civ. P. 23.

E. "Court" means the United States District Court for the Middle District of Florida, Tampa Division.

F. "Eligible Associates" means those associates who have registered their interest for the pertinent management job pursuant to the Registration of Interest procedures referred to in Section XI.A of the Decree, and have been determined to meet the Minimum Qualifications for that job established and maintained by Publix. In accordance with official usage at Publix, hourly and managerial employees are referred to as "associates" throughout this Decree.

G. "Final Approval" means the signing of this Decree on the Approval Date by the United States District Court for the Middle District of Florida, and either: (1) the expiration of the time for filing of a direct appeal from the Court's approval of the Decree without the filing of a notice of appeal, or (2) if a timely direct appeal is filed, the final resolution of that appeal (including any requests for rehearing and/or petitions for certiorari), resulting in final judicial approval of the Consent Decree.

H. "Final Approval Date" is the date upon which Final Approval of this Decree is attained.

I. "Goal Positions" means the following retail supermarket store positions, as to which the current job code number is stated in parentheses:

Store Manager (101)
Assistant Store Manager (102)
Grocery Manager (122)
Assistant Grocery Manager (123)
Common Area Manager (121)
Assistant Common Area Manager (124)
Produce Manager (140)
Assistant Produce Manager (141)
Meat Manager (150)
Assistant Meat Manager (151)
Bakery Manager (170)
Assistant Bakery Manager (171)
Deli Manager (152)
Assistant Deli Manager (160)

"Goal Positions" will also include any new management job classifications Publix institutes on a regular (rather than pilot program) basis in its retail supermarket stores during the Term of this Consent Decree, excluding those in the Pharmacy Department.

J. "Liability Period" means the period:

- between April 3, 1993 and the Preliminary Approval Date for associates employed in Publix's retail supermarket stores in Florida,

- between April 3, 1994 and the Preliminary Approval Date for associates employed in Publix's retail supermarket stores in South Carolina, between January 14, 1995 and the Preliminary Approval Date for associates employed in Publix's retail supermarket stores in Georgia, and

- between July 31, 1996 and the Preliminary Approval Date for associates employed in Publix's retail supermarket stores in Alabama.

K. "Minimum Qualifications" means those discrete objective qualifications (such as service requirements, educational requirements, achieving a passing score on a required scored test or battery of tests, etc.) that: (i) are used by Publix as preliminary, independent qualifiers, such that the failure to meet the qualification is, itself, used by Publix to preclude further consideration of the individual for a Goal Position; (ii) can be isolated for purposes of determining adverse impact; and (iii) may be applied by Publix to eliminate from the selection pool associates who have registered interest in a Goal Position, prior to determination of goals under this Decree.

L. "Preliminary Approval Date" means the date upon which the Court entered an Order preliminarily approving this Decree, pending notice, an opportunity to opt out of the Settlement Class or submit objections to the Decree, and a fairness hearing thereon. That date is ______________.

M. "Publix," "Defendant" and "the Company" mean Publix Super Markets, Inc. For all purposes and terms of this Decree, unless expressly stated otherwise, only the retail supermarket stores of Publix in Florida, Georgia, South Carolina and Alabama are covered hereunder, and the Pharmacy Departments thereof shall be expressly excluded from coverage.

N. "Race Discrimination" or "Discriminating on the Basis of Race" means unlawful discrimination against associates on the basis of their race with respect to assignment, demotion, transfer, compensation, promotion from part-time to full-time, promotion from full-time to management, promotion within management, and discharge. For all purposes of this Decree, "Race Discrimination" and "Discriminating on the basis of Race" shall <u>not</u> include discrimination with respect to not being hired by Publix.

O. "Selection Standards" means any factors considered by Publix in making a final selection decision, other than Minimum Qualifications.

P. "Settlement Class" is defined in Section VII.

Q. "Term of this Consent Decree" is the period from the Final Approval Date until the expiration of the Decree pursuant to Section VI.

R. "Testing Class Representative" means Michael Killingsworth, who filed a charge of discrimination with the Equal Employment Opportunity Commission on April 17, 2000, contesting on a class basis the lawfulness of certain scored test selection devices utilized by Publix in making promotions to management positions.

IV. LITIGATION BACKGROUND

On April 4, 1997, the Class Representatives and several other black current or former associates of Publix Super Markets, Inc. filed a complaint on behalf of themselves as individuals and on behalf of other similarly situated blacks against Publix pursuant to Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000(e), et seq., Section 1981 of the Civil Rights Act of 1866, 42 U.S.C. § 1981, the Human Rights Act of 1977, Florida Statutes, Chapter 760 (1991) ("Florida HRA"), and the Florida Civil

Rights Act of 1992, Florida Statutes, Chapter 760 (1992)("Florida CRA"). The Complaint commencing this lawsuit, which is titled Middleton, et al. v. Publix Super Markets, Inc., Civil Action No. 97-CV-760 ("the Middleton action"), was filed in the United States District Court for the Middle District of Florida, Tampa Division, and alleged that Publix has engaged in a policy or pattern of unlawful discrimination on the basis of race against the named plaintiffs and against allegedly similarly situated black associates in all of Publix's operations with respect to hiring, assignment, demotion, transfer, compensation, promotion from part-time to full-time, promotion from full-time to management, promotion within management, harassment, retaliation and discharge. Publix categorically denies that it has engaged in any policy or pattern or practice of race discrimination or retaliation against the Class Representatives or against any other black current or former associates, and maintains that its black associates have had equal employment opportunity and are promoted and discharged on the same terms and conditions as Publix's similarly situated non-black associates. Publix further contends that it is in compliance with all applicable state and federal fair employment laws.

The parties commenced discovery on May 2, 1997, directed to issues regarding the suitability of the foregoing claims for class treatment, the adequacy of the named plaintiffs to represent an alleged class of Publix's black associates, and other class certification issues. In the course of this discovery Publix deposed each of the named plaintiffs; the plaintiffs took the depositions of many Publix managers; Publix produced 81,000 pages of documents and extensive computerized data; and each party produced an expert statistical report and deposed the opposing party's expert. Ultimately, the named plaintiffs sought certification only with respect to hiring, promotion and discharge claims.

The Court referred the class certification issue to U.S. Magistrate Judge McCoun, and on June 15, 1998, the Magistrate Judge issued his Report and Recommendation that the named plaintiffs' motion be granted only with regard to Publix's retail stores, and that no class be certified as to Publix's operations outside the retail stores. On March 22, 1999, the Court issued its order adopting, in part, the Magistrate Judge's Report and Recommendation. The Court certified a class comprised of:

a. All black employees and former black employees of Publix Super Markets, Inc. who from April 3, 1993 have sought to be promoted or who have been discharged from employment at Publix retail stores in Florida;

b. All black employees and former black employees of Publix Super Markets, Inc. who from January 14, 1995, have sought to be promoted or who have been discharged from employment at Publix retail stores in Georgia;

c. Excluding such black employees or former employees, whether in Florida or Georgia, who have worked only at Publix pharmacy operations

March 22, 1999, Order (Dkt. 256) at ¶ 2. The Court thereby declined to certify any class in Publix's non-retail operations. The Court also refused to certify a hiring subclass in the retail stores, because there was no hiring representative for said claim. Lemuel Middleton, Reginald Lewis, Sharon Flowers, Gaston Hazlewood, Cynthia Jones-McCall, Willie Jones and Joya Fulton were appointed Class Representatives.

On August 11, 1999, the parties resumed discovery concerning the merits of the Class Representatives' individual and class claims. Discovery included the production of extensive documents from named plaintiffs and Publix, production of Publix's computerized personnel data from 1987 to 1999, interrogatories, and depositions of numerous putative class members. The parties' discovery on merits issues continued through September 2000.

The Class Representatives have vigorously prosecuted this case, and Publix has vigorously contested it. Although discovery has not been completed, the parties have taken extensive discovery that is sufficient to assess reliably the relative merits of the claims of the Class Representatives and the certified class, and of Publix's defenses to those claims. Moreover, when it became apparent that a key legal issue relevant to promotions at Publix since mid-1998 involves the implementation and evaluation of scored test batteries required for promotion to all management positions, Class Counsel located a new potential class representative, Michael Killingsworth, who had been disqualified from promotion through such tests. Mr. Killingsworth filed a charge of discrimination with the EEOC on April 17, 2000, asserting a pattern and practice of discrimination against blacks through this testing practice. Mr. Killingsworth received a right to sue letter from the EEOC on the charge on December 28, 2000, and as part of this settlement was by stipulation added to the case as the Testing Class Representative.

During May of 2000, Class Counsel and Publix began informal settlement negotiations. The parties have exchanged statistical and other expert analyses during these negotiations, including regarding the testing issues. The negotiations that ensued over the next eight months have been conducted at arms-length and without collusion. These efforts resulted in an agreement to settle this action. The terms of the parties' agreement are contained in this Consent Decree.

The parties agree that the formal and informal discovery conducted in this action is sufficient to assess reliably the merits of the respective parties' positions and to compromise the issues on a fair and equitable basis. As indicated by the signature of counsel at the end of this document, the parties have consented to the entry of this Decree.

V. JURISDICTION

The Court has jurisdiction over the parties and the subject matter of this action. The Complaint asserts claims that, if proven, would authorize the Court to grant the equitable and monetary relief set forth in this Consent Decree. Venue is proper in this District. This Court shall retain jurisdiction of this action during the duration of the Decree solely for the purpose of entering all orders authorized hereunder that may be necessary to implement the relief provided herein.

VI. EFFECTIVE DATES AND DURATION OF CONSENT DECREE

A. Unless provided otherwise, the equitable provisions in this Decree are effective upon the Final Approval Date.

B. Except as otherwise provided herein, the provisions of this Decree and the agreements contained herein shall remain in effect for seven (7) years from the Final Approval Date. This Decree shall expire without further action by the parties at midnight on the seventh anniversary of the Final Approval Date.

VII. SETTLEMENT CLASS

A. For purposes of the monetary relief provided in this Decree, the Settlement Class is certified pursuant to Federal Rule of Civil Procedure 23(b)(2) and consists of:

> All black management and non-management associates of Publix Super Markets, Inc. who, between the pertinent Class Commencement Date and the Preliminary Approval Date, have sought to be promoted or have been discharged from employment in Publix's retail supermarket stores in Florida, Georgia, South Carolina or Alabama. Excepted from this definition are those black associates who were discharged from, or were employed only in the following Pharmacy Department positions: Pharmacy Manager, Assistant Pharmacy Manager, Pharmacist, Pharmacy Technician or Pharmacy Clerk. Also excepted from this definition are

> those black associates who file a timely request to opt out of the monetary relief provisions of this Decree. The pertinent Class Commencement Date is as follows: April 3, 1993 for associates who worked at retail supermarket stores in Florida; April 3, 1994 for South Carolina; January 14, 1995 for Georgia; and July 31, 1996 for Alabama.

B. For purposes of the equitable and declaratory relief provided in this Decree, the Settlement Class is certified pursuant to Federal Rule of Civil Procedure 23(b)(2) and consists of:

> All black management and non-management associates of Publix Super Markets, Inc. who, between the pertinent Class Commencement Date and the Preliminary Approval Date, have sought to be promoted or have been discharged from employment in Publix's retail supermarket stores in Florida, Georgia, South Carolina or Alabama. Excepted from this definition are those black associates who were discharged from, or were employed only in the following Pharmacy Department positions: Pharmacy Manager, Assistant Pharmacy Manager, Pharmacist, Pharmacy Technician or Pharmacy Clerk. The pertinent Class Commencement Date is as follows: April 3, 1993 for associates who worked at retail supermarket stores in Florida; April 3, 1994 for South Carolina; January 14, 1995 for Georgia; and July 31, 1996 for Alabama.

C. The Monetary Relief Settlement Class closes on the Preliminary Approval Date. All black associates hired by Publix into its retail supermarket stores after the Preliminary Approval Date may avail themselves of the equitable relief provided in the Decree but shall not be entitled to any portion of the monetary relief provided hereunder.

D. For purposes of Section VIII of this Decree, Settlement Class members who have filed a timely request to opt out of the monetary relief provisions of the Decree shall not be held to release any claims for individual relief.

E. For purposes of Section XIV of this Decree, the Settlement Class does not include those individuals who have filed a timely request to opt out of the monetary relief provisions of this Decree.

F. In the event that Final Approval of this Decree is not attained, nothing herein shall be deemed to waive Publix's objections and defenses to class certification, and this Decree shall not then be admissible in any court regarding the propriety of class certification or any other issue.

VIII. RELEASE OF CLAIMS

A. Release of Claims by Class Representatives and Settlement Class.

1. Scope of Judicial Release.

Upon Final Approval of the Decree, Publix and its subsidiary corporations and limited liability companies, and their respective directors, officers, managers, agents, employees, attorneys, successors and assigns, and anyone acting in concert with or on behalf of any of them, and their respective pension, profit-sharing, savings and other employee benefit plans of whatsoever nature, and those plans' respective trustees and administrators, shall be fully released and forever discharged from any and all individual and/or class-wide claims, demands, charges, complaints, rights and causes of action of any kind, known or unknown, by the Class Representatives, by the Testing Class Representative, by the Settlement Class, and by each member of the Settlement Class, whether seeking monetary and/or equitable relief of any sort, that arise out of or are related to conduct within the Liability Period constituting alleged Race Discrimination in employment under Title VII, 42 U.S.C. § 1981, the Florida CRA, the Florida HRA, and/or any other law prohibiting Race Discrimination, whether statutory, pursuant to local ordinance, or at common law, excepting solely alleged unlawful race discrimination in not being hired by Publix. This release is final and shall survive the expiration of the Decree's Term.

2. <u>Release of Claims by Class Representatives and Testing Class Representative.</u>

Upon Final Approval of the Decree, for and in consideration of the mutual promises, terms and conditions by and between Defendant and the

Class Representatives and Testing Class Representative set forth herein, the sufficiency of which consideration is expressly acknowledged, the Class Representatives and the Testing Class Representative do hereby fully, finally and forever release and discharge Publix and its subsidiary corporations and limited liability companies, and their respective directors, officers, managers, agents, employees, attorneys, successors and/or assigns, and anyone acting in concert with or on behalf of them, and their respective pension, profit-sharing, savings and other employee benefit plans of whatsoever nature, and those plans' respective trustees and administrators, of and from any and all past and/or present claims, demands, actions, causes of action, suits, damages, liabilities, assessments, judgments, costs, losses, debts, obligations and expenses, of any and every nature whatsoever, whether or not known, allegedly incurred by the Class Representatives or the Testing Class Representative, or any of them, because of claimed unlawful Race Discrimination or any other allegedly illegal actions by Defendant, including but not limited to those arising in any way out of the alleged facts, circumstances and occurrences underlying those allegations of violations of Title VII, 42 U.S.C. § 1981, the Florida HRA and the Florida CRA that were asserted or that might have been asserted by or on behalf of the Class

Representatives or the Testing Class Representative against Defendant either in the named plaintiffs' original complaint or in any and all subsequent amended complaints in the Middleton action, and/or in any and all charges of discrimination filed with the EEOC against Publix by some or all of the Class Representatives or the Testing Class Representative.

IX. MISCELLANEOUS PROVISIONS

A. Calculation of Time.

In computing any period of time prescribed or allowed by this Decree, unless otherwise stated, such computation or calculation shall be made consistent with Federal Rule of Civil Procedure 6(a) as it exists on the Preliminary Approval Date.

B. No Admission of Liability.

This Decree represents the compromise of disputed claims that the parties recognize would require protracted and costly litigation to determine. Publix denies that it has engaged in any policy, pattern or practice of unlawful Race Discrimination, and Publix's entry into this Decree is not, and may not be used by any person as, an admission or evidence that Publix has on any occasion engaged in Race Discrimination or any other discriminatory employment practices, such being expressly denied.

C. Modification and Severability of the Consent Decree.

1. Whenever possible, each provision and term of this Decree shall be interpreted in such a manner as to be valid and enforceable; provided, however, that in the event that after Final Approval hereof any provision or term of this Decree should be determined to be or rendered unenforceable on collateral review, all other provisions and terms of this Decree and the application thereof to all persons and circumstances subject thereto shall remain unaffected to the extent permitted by law. If any application of any provision or term of this Decree to any specific person or circumstance should be determined to be invalid or unenforceable, the application of such provision or term to other persons or circumstances shall remain unaffected to the extent permitted by law.

2. Class Representatives and Publix may jointly agree to modify the Decree. In the event that changed circumstances make a modification of the Decree necessary to ensure its purposes are fully effectuated, but good faith negotiations seeking such modification are unsuccessful, any party to the Consent Decree shall have the right to move

the Court to modify this Decree. Such motion shall be granted only upon the movant proving to the Court by clear and convincing evidence that changed circumstances make such modification necessary and that the modification will not materially increase the cost to Publix of compliance (out-of-pocket or otherwise), after an opportunity for the other parties to be heard on the motion. Any such modification to this Decree by the Court shall be ordered in such a fashion that will limit the cost to Publix (out-of-pocket or otherwise) to the extent possible consistent with effectuating the purposes of this Decree.

D. Duty to Support and Defend the Decree.

The Class Representatives, the Testing Class Representative, Class Counsel, Publix, and Counsel for Publix each agree to abide by all of the terms of this Decree in good faith and to support it fully, and shall use their Best Efforts to defend this Decree from any legal challenge, whether by appeal or collateral attack.

X. ENFORCEMENT PROVISIONS

A. Dispute Resolution Procedures.

1. The Court shall have authority to resolve all disputes arising under the Decree, including the interpretation or implementation of

the Consent Decree, as well as Publix's compliance with the Decree, subject to the enforcement standards expressly set forth in this Decree.

2. At the request of Class Representatives or Publix, Class Representatives and Publix shall confer as necessary, and the parties shall use their Best Efforts to resolve promptly any disputes regarding the interpretation or implementation of the Consent Decree, including Publix's compliance with the Decree.

3. Class Counsel's sole involvement in any such disputes shall be exclusively in their role as counsel for the Class Representatives and the Settlement Class, and Class Counsel shall be bound to follow all the provisions of Section X of this Decree in regard to any such dispute. Class Representatives shall be represented by Class Counsel in regard to any interpretation, implementation, compliance or enforcement disputes regarding this Consent Decree, unless Class Representatives and/or Class Counsel successfully have moved previously for substitution of counsel.

4. Class Representatives or Publix shall have the right to file a motion with the Court to resolve any dispute regarding any provisions of the Decree, provided, however, that Class Representatives may not file such a motion with the Court, or otherwise seek relief from the Court, regarding the

extent of Publix's compliance with the goal provisions contained in Section XI of this Consent Decree prior to forty-two (42) months following the Final Approval Date. The parties hereby consent to referral of said motions to the assigned Magistrate Judge for disposition, should the Court so desire.

5. The procedure for resolution of such issues shall be as follows:

a. If Class Representatives or Publix have good reason to believe that a legitimate dispute exists, the initiating party shall promptly give written notice to the other party, including: (i) a reference to all specific provisions of the Decree that are involved; (ii) a statement of the issue; (iii) a statement of the remedial action sought by the initiating party; and (iv) a brief statement of the specific facts, circumstances and any other arguments supporting the position of the initiating party;

b. Within thirty (30) days after receiving such notice, the non-initiating party shall respond in writing to the statement of facts and argument set forth in the notice and shall provide its written position, including the facts and arguments upon which it relies in support of its position;

c. Class Representatives and Publix shall undertake good-faith negotiations, which should include a meeting by telephone or in person and the exchange of relevant documents and/or other information, to attempt to resolve the areas of dispute;

d. The Court, upon motion, may permit either Class Representatives or Publix to take discovery pursuant to any method provided by the Federal Rules of Civil Procedure, but only as to demonstrably relevant documents and/or witnesses, and only if the Court determines that the informal exchange of documents or information has not been sufficient to allow either Class Representatives or Publix to present the dispute upon a factual record adequate for the determination required hereunder;

e. If good-faith efforts to resolve the matter have failed, and after written notice of "impasse" to the non-initiating party, Class Representatives or Publix may file a motion with the Court, with a supporting brief, requesting resolution of the dispute; provided, however, that such motion shall be limited to the dispute(s) as to which the "meet and confer" provisions of this Section X.A.5 have been exhausted;

f. The non-moving party will have thirty (30) days to file a response brief, and no reply briefs shall be permitted; and

g. The Court shall attempt to resolve the dispute within thirty (30) days after briefing is closed, and may schedule a hearing or other proceeding, which any party may attend telephonically unless otherwise ordered by the Court, to aid in resolving the matter.

B. Standard for Judicial Enforcement by Contempt.

1. Class Representatives may petition the Court to hold Publix in contempt, but only after: (i) having exhausted the dispute resolution procedures set forth in Section X.A.4 without having obtained reasonably effective remedial action, and (ii) having, after a reasonable investigation, concluded in good faith that the standards for a contempt citation described below have been met.

a. Officers, managers or supervisors of Publix shall not be held individually in contempt with regard to compliance with this Decree.

b. The parties intend that Publix shall not be held in contempt unless the United States District Judge finds, by clear and convincing evidence, that there has been an intentional disregard or intentional violation of a term or terms of the Decree by one or more Publix agents at the level of officer or above.

2. Third parties shall not have standing to petition the Court to hold Publix in contempt.

XI. JOB SELECTION PROCEDURES

A. Registration of Interest for Selecting Retail Supermarket Store Management.

1. During the Term of this Decree, Publix will continue to use a Registration of Interest ("ROI") system with respect to selections for promotion to management positions in its retail supermarket stores in Florida, Georgia, South Carolina and Alabama.

2. The purposes of the ROI system include the following: (i) to improve the information available to Publix's management in making promotion and associate development decisions; (ii) to provide a systematic Company-wide method, consistent with equal employment opportunity, for Publix associates to make informed and documented decisions about their career preferences; (iii) to provide a systematic Company-wide framework, consistent with equal employment opportunity, within which Publix will incorporate such associate preferences into its retail supermarket store promotion and associate development decisions; and (iv) to establish a meaningful basis for setting goals pursuant to Section XI.C

3. All management positions (except in the Pharmacy Department) currently existing in Publix's retail supermarket stores shall continue to be included in the ROI system. These positions are: Store Manager, Assistant Store Manager, Grocery Manager, Assistant Grocery Manager, Common Area Manager, Assistant Common Area Manager, Meat Manager, Assistant Meat Manager, Produce Manager, Assistant Produce Manager, Deli Manager, Assistant Deli Manager, Bakery Manager, and Assistant Bakery Manager. Any new management job classifications Publix institutes on a regular (rather than pilot program) basis in its retail supermarket stores in Florida, Georgia, South Carolina and Alabama during the Term of this Consent Decree, excluding those in the Pharmacy Department, also will be included in the ROI system.

4. Promotions into Goal Positions generally shall be made from among candidates within the appropriate Eligible Associate pools, giving consideration to the applicable Minimum Qualifications and Selection Standards, and the Goals described in Section XI.C.

5. Nothing herein shall preclude Publix from making changes to the ROI system, as long as such changes are not at variance with the purposes set forth in Section XI.A.2.

B. Selection Standards and Minimum Qualifications.

1. Except for the modifications of the testing batteries described in Section XI.F, Publix retains the right to maintain its existing Selection Standards and Minimum Qualifications for all positions, and to develop and implement new Selection Standards and Minimum Qualifications, subject only to the limitations stated in Section XI of the Decree and to applicable legal standards.

2. Class Counsel will be notified when a change is made to a Minimum Qualification for one of the Goal Positions. For the first twelve (12) months after the Preliminary Approval Date, Publix will adopt no new or modified Minimum Qualification for any Goal Position that has an adverse impact ratio with respect to blacks who meet all other Minimum Qualifications that is less than four-fifths, or .80. If any new or modified Minimum Qualification for a Goal Position adopted thereafter is determined to have an adverse impact ratio with respect to blacks who meet all other Minimum Qualifications that is less than four-fifths, or .80, Publix will provide to Class Counsel the validation evidence Publix believes to demonstrate that the new or modified Minimum Qualification is a lawful selection device under established Title VII standards; Class Counsel may, if

they disagree with Publix's conclusion on the lawfulness of the new or modified Minimum Qualification, pursue the Dispute Resolution Procedures set forth in Section X.A of this Decree.

C. Goals.

1. General Principles.

a. During the Term of this Decree, Publix generally will continue, with respect to class members, its system of ROI-based goals for promotions into the retail supermarket store management positions defined as "Goal Positions" in Section III.I.

b. In attempting to meet these goals, Publix shall not be required to select unqualified persons or to displace any associate from his or her position. These goals are not quotas; rather they are goals designed to afford guidance as to whether Publix is making selection decisions in such a way as to afford equal employment opportunity.

c. In defending against any allegations of non-compliance with the goal provisions of this Decree, Publix may rely upon appropriate evidence demonstrating that it is in fact making promotion selection decisions in such a way as to afford equal employment opportunity to black associates, such as by showing either that the goals do not accurately reflect the proportionate availability of black associates among Eligible Associates available and willing to accept the open positions, or that the promotion selection results do not accurately reflect Publix's Best Efforts to comply with the intent of the goal provisions. Such evidence could include, but would not be limited to, evidence of the following: (i) the proportion of good faith offers made to black associates as compared to non-blacks was at least as high as the percentage goal, or (ii) vacancies disproportionately have occurred in geographic areas with a comparatively low incidence of black Eligible Associates. When citing to evidence of offers made but rejected, an associate who more than once rejects an offered Goal Position within the six-month reporting period will be counted in the same fashion, whether black or non-black.

d. The percentage goal for promotions into a particular Goal Position during a specified selection period shall be based upon the percentage of blacks among the Eligible Associates for that position in the most recent ROI process before the beginning of the selection period, excluding any associates actually promoted into the requested Goal Position before the beginning of the selection period.

e. The goal-related geographical area for all Goal Positions will encompass all Publix retail supermarket stores in Florida, Georgia, South Carolina and Alabama. Goals will be expressed as a percentage of the promotions from other retail supermarket store job classifications into Goal Positions that occur within the six-month selection period covered by the ROI cycle.

f. Calculation: The percentage goal for each Goal Position during a selection period shall be determined by dividing (i) the total number of black Eligible Associates for such position in Florida, Georgia, South Carolina and Alabama in the most recent ROI process who had not already been promoted to the requested Goal Position before the commencement of the selection period by (ii) the total number of Eligible Associates for such position in Florida, Georgia, South Carolina and Alabama in the most recent ROI process who had not already been promoted to the requested Goal Position before the commencement of the selection period. Goals will be stated as percentages, rounded to the nearest whole number.

g. At the end of each selection period the target number of promotions of black associates expected to have been made will be calculated by multiplying the percentage goal by the total number of promotions into that position during the selection period, rounded to the nearest one-tenth.

h. Example: If 110 associates registered their interest for Store Manager positions and were determined to be Eligible Associates not already in the Store Manager position at the beginning of the selection period, and if 31 of those Eligible Associates were black, then the goal for Store Manager would be 28.2 percent, which would then be rounded to 28 percent. Therefore, for the six-month period following the completion of this semi-annual ROI and screening process, the goal for promotions from Assistant Store Manager to vacancies in the Store Manager position would be 28 percent. If at the conclusion of the selection period there had been 14 promotions to Store Manager positions from other job classifications, then the numeric target would be to have filled 3.9 of those Store Manager openings with black associates.

i. "Shortfalls" in selections for promotion to a particular Goal Position compared to the target number shall be carried over from one selection period to the next. In other words, if a numeric target is not achieved for a position during a specified selection period, then the shortfall during the selection period for that Goal Position shall be added to the target number for that position in the subsequent selection period.

j. "Excesses" in selections for promotion to a particular Goal Position compared to the target number shall be carried forward for only one selection period. In other words, if a numeric target is exceeded for a position during a specified selection period, then the excess during the selection period for that Goal Position shall be subtracted from the target number for that position in the subsequent selection period.

k. <u>Examples</u>. If the computed target number for Bakery Manager selections based upon the percentage of blacks among all Eligible Associates not already in the Bakery Manager position before the commencement of the selection period was 15.0 in each of Selection Periods One, Two and Three, then the following results would obtain.

(1) If in Period One Publix selected 13 blacks, then the deficit of two in Period One would be carried forward to Period Two, making the actual target number for Period Two 17.0. If in Period Two Publix selected 12 blacks, then the cumulative deficit of 5 would be carried forward to Period Three.

(2) If in Period One Publix instead selected 18 blacks for the position, then it would carry forward an excess of 3 to Period Two, making the actual target number for Period Two 12.0.

(a) If in Period Two Publix then selected anywhere from 12 to 15 blacks for the position, it would carry forward neither a shortfall nor an excess into Period Three.

(b) Alternatively, if in Period Two Publix instead selected 16 blacks for the position, it would carry forward an excess of only 1, not 4, to Period Three.

(c) Alternatively, if in Period Two Publix instead selected 11 blacks for the position, it would carry forward a shortfall of only 1, not 4, to Period Three.

2. Goal Reporting Requirements.

Within ninety (90) days after the end of each six-month selection period during the term of the Consent Decree, Publix will provide Class Counsel with the following information, in both hard copy and electronic form, for each of the Goal Positions within the Company's retail supermarket stores, aggregated across Florida, Georgia, South Carolina and Alabama:

a. total number of individuals in other job class positions who submitted an ROI request for that Goal Position in the most recent ROI process before the commencement of the selection period but who had not yet obtained promotion to the requested Goal Position before the selection period began, by race (black and non-black);

b. total number of individuals in other job class positions who submitted an ROI request for that Goal Position in the most recent ROI process before the commencement of the selection period but who had not yet obtained promotion to the requested Goal Position before the selection period began, and met all the Minimum Qualifications, by race (black and non-black);

c. percentage goal for class member promotions into that Goal Position from other job class positions;

d. actual number of individuals who submitted an ROI request, met the Minimum Qualifications, and were promoted into that Goal Position from other job class positions during the selection period, by race (black and non-black);

e. carryover excess or shortfall of class member promotions from previous selection period;

f. target number for class member promotions during the selection period; and

g. excess or shortfall of class member promotions during the selection period.

D. Above-Store-Level Positions.

During the Term of this Decree, Publix commits to giving careful and fair consideration to black Store Managers when selecting new retail District Managers.

E. Supplemental Selections.

1. In addition to the ROI-based goals described above, during the first eighteen (18) months following the Preliminary Approval Date, Publix will identify and place in an appropriate management position twelve (12) black full-time associates who are considered by Publix adequately qualified to be placed in the identified position, even if they have not satisfied fully the Minimum Qualifications for that position. These twelve individuals shall not be counted with respect to Publix's ROI-based goals, as described in Section XI.C above. Publix may require such individuals to complete successfully such individualized ad hoc training as

may be appropriate to increase their likelihood of performing successfully in the management position in question.

2. Within ninety (90) days following the conclusion of each six-month selection period, Publix will identify to Class Counsel those class members placed in management positions pursuant to this provision.

F. Testing Provisions.

1. Assistant Department Manager and Department Manager.

In an effort to decrease the adverse impact upon black associates arising from the use of the selection battery now administered to candidates for Assistant Department Manager and Department Manager positions, while maintaining the battery's validity in making such selections, Publix will utilize the joint assistance of an industrial/organizational psychologist of its choosing, and Dr. James Outtz, a consultant originally retained by Class Counsel on behalf of the Plaintiffs, to develop and validate modifications to the battery. Specifically, these modifications will involve only a restructuring of the video assessment questions, without modifying the video vignettes themselves. Generally stated, the purpose of this restructuring is to enable candidates to identify multiple preferred ways to respond to a situation, with each favorable response earning a pre-assigned scaled number of points, rather than to attempt to choose a single "all or nothing" correct response. Publix commits to incorporating such modifications in concept, as long as they do not decrease the overall validity of the selection battery and do not in fact increase any adverse impact upon blacks or other protected groups. Publix will compensate Dr. Outtz for his work on this project at his customary hourly rate for time reasonably and necessarily expended, subject to a project cap for Dr. Outtz's work of $50,000, with all his work on the project to be completed within one year following the Final Approval Date. If these modifications are successful in diminishing adverse impact without decreasing validity, Publix will incorporate the same conceptual approach in subsequent versions of the selection battery, if any, used during the Term of the Decree.

2. Assistant Store Manager and Store Manager.

a. No modifications to any of the test instruments currently administered to candidates for Store Manager and Assistant Store Manager positions will be required hereunder.

b. In an effort to decrease the adverse impact upon black associates arising from the use of the test battery now administered to candidates for Assistant Store Manager and Store Manager positions that consists of a business reasoning test and a bio-data instrument ("Test Battery"), if it has not already done so, Publix will, no later than sixty (60) days after the Final Approval Date, set the passing score on the Test Battery at a level at which the passing rate for black test takers among those in the validation study benchmark group is no less than four-fifths of the passing rate for white test takers among those in the validation study benchmark group.

c. If, during the Term of this Decree but after implementation of the passing score described in Section XI.F.2.b, above, Publix chooses to "recalibrate" the Test Battery by establishing a new passing score, or by otherwise altering the scoring methodology pertinent to passing the Test Battery, Publix will either: (i) before implementing the change in scoring set the new passing score at a level at which the passing rate for black test takers among all actual candidates who have taken the Test Battery in the past twelve (12) months and meet all other Minimum Qualifications for the Goal Position they seek would have been no less than four-fifths of the passing rate for white test takers among all actual candidates who have taken the Test Battery in the past twelve (12) months and meet all other Minimum Qualifications for the Goal Position they seek, or (ii) implement the change in scoring but provide to Class Counsel the validation evidence Publix believes to demonstrate that under the new scoring methodology the Test Battery is a lawful selection device under established Title VII standards. If Publix chooses the second of the foregoing alternatives, then Class Representatives may, if they disagree with Publix's conclusion on the lawfulness of the Test Battery, pursue the Dispute Resolution Procedures set forth in Section X.A of this Decree; the Dispute Resolution Procedures shall be Class Representatives' exclusive remedy to contest any changes to the scoring methodology for the Test Battery implemented during the Term of this Decree. Publix will not, however, rely upon provision (ii) of this subparagraph with respect to any change in scoring on the Test Battery implemented within the first twenty-one (21) months following the Preliminary Approval Date.

d. If, during the Term of this Decree but after implementation of the passing score described in Section XI.F.2.b, above, Publix chooses to implement a new test or battery or substantively modify one or more of the existing Test Battery components, Publix will either: (i) before implementing the modification set the new passing score at a level at which the passing rate for black test takers among all individuals in the validation study group would be no less than four-fifths of the passing rate for white test takers among all individuals in the validation study group, or (ii) implement the new tests and/or modifications but provide to Class Counsel the validation evidence Publix believes to demonstrate that the new or modified Test Battery is a lawful selection device under established Title VII standards. If Publix chooses the second of the foregoing alternatives, then Class Representatives may, if they disagree with Publix's conclusion on the lawfulness of the new or modified Test Battery, pursue the Dispute Resolution Procedures set forth in Section X.A of this Decree; the Dispute Resolution Procedures shall be Class Representatives' exclusive remedy to contest any new tests or modifications to the Test Battery implemented during the Term of this Decree. Publix will not, however, rely upon provision (ii) of this subparagraph with respect to any new or modified Test Battery implemented within the first twenty-seven (27) months following the Preliminary Approval Date.

e. The specific provisions of this Section XI.F.2 shall control in their specific circumstances, as opposed to the more general provisions of Section XI.B.2.

XII. DISCHARGE REVIEW PROCESS

No later than ninety (90) days after the Final Approval Date, Publix will implement a discharge review process providing a procedural protection for black associates who have completed ninety (90) days of continuous employment with Publix at the time of their discharge. The discharge review process need not be made available to review any decision other than a Publix decision to discharge such an associate. Thus, Publix need not make the process available for any good faith "reduction in force" layoffs, associate resignations or job abandonment (even if the former associate claims so-called "constructive discharge"), or for discharges of associates who are not black associates. Rather, only individual conduct-based or performance-based termination decisions with respect to black associates with at least ninety (90) days continuous service with Publix at the time of their discharge need be subject to this discharge review process. The discharge review process will include the following features:

A. Any such black associate whom Publix decides to discharge will be suspended without pay and given a written notice of intent to discharge no fewer than seven (7) calendar days prior to the effective date of the discharge. Such notice will state the reason for discharge. The notice form shall inform the associate of his or her option to contest the proposed discharge by filing a "Discharge Challenge" form, which shall request the reason the associate believes that his or her discharge is unfair and a list of supporting witnesses then known to the associate. The notice form also shall inform the associate that submission of the "Discharge Challenge" form will begin an internal Publix discharge review process, and that the review process is not a substitute for any external complaint the associate may or may not wish to file regarding the circumstances of the discharge.

B. The associate shall have a reasonable time period of not less than seven (7) days to fill out and return the "Discharge Challenge" form to the Manager of HR Investigations or other designee. An associate who does not submit the "Discharge Challenge" form within the specified period will be deemed discharged upon the expiration of the period.

C. In Step 1 of the Discharge Review Process the complaint will be reviewed promptly by Human Resources, under the supervision of the Manager of HR Investigations. A written decision will be forwarded to the associate within a reasonable time, which if reasonably achievable will not exceed forty-five (45) days after the Manager of HR Investigations receives the "Discharge Challenge" form. Prior to reaching this decision Human Resources will give the associate an opportunity to be interviewed, either in person or telephonically, and to respond to the facts cited by management in support of the discharge.

D. The written decision by Human Resources will contain a notice of a right to appeal to Step 2 and a method for returning such an appeal form to the Manager of HR Investigations within a reasonable time period of not less than seven (7) days. The Manager of HR Investigations will be in charge of the Step 2 appeal, and will provide a written decision within a reasonable time, which if reasonably achievable will not exceed twenty-one (21) days after the Manager of HR Investigations receives the Step 2 appeal form.

E. The written decision by the Manager of HR Investigations will contain a notice of a right for any black associate who has alleged Race Discrimination with respect to his or her discharge to file a Step 3 request for mediation, and a method for returning such a request form to the Manager of HR Investigations, or other designee, within seven (7) days after the date of the written decision. (The associate must in some fashion allege a racially discriminatory discharge during Step 1 in order to be entitled to proceed to Step 3; Publix may, however, elect at its option to permit a black associate to proceed to mediation even though he or she did not so allege.)

F. The associate requesting mediation will pay a filing fee of $75 to Publix, to be paid at the time of request and applied toward the cost of mediation. Publix will pay any other mediation fees that may be required.

G. Mediation shall be conducted under the auspices of an Institutional Neutral. The parties have agreed that initially the Institutional Neutral shall be selected jointly, on or before ninety (90) days following the Preliminary Approval Date, from among the following three options: (i) the American Arbitration Association ("AAA"), (ii) JAMS/Endispute ("JAMS"), and (iii) a combination of the Florida Mediation Group (handling all mediation requests regarding Florida associates) and the W.J. Usery Center (handling all mediation requests regarding Georgia, South Carolina and Alabama associates). If the parties cannot agree on the selection of the initial Institutional Neutral by that date, then each party shall strike one of the three foregoing options, with Class Representatives striking first, and the remaining choice will be deemed selected. Annually, on or before thirty (30) days following the anniversary of the Final Approval Date, Publix may elect to replace the Institutional Neutral with another of the three foregoing alternatives, or with another reputable competing entity that previously has been approved by Class Representatives, with notice to Class Counsel. Publix may negotiate with the alternative candidates for the Institutional Neutral position prior to selection or replacement, in order to achieve competitive fees.

H. Publix will notify the Institutional Neutral within ten (10) days after receiving the former associate's Step 3 written request for mediation. The Institutional Neutral will be requested to identify a mediator, and specifically, where possible, one with expertise in mediating employment disputes, within seven (7) days after being informed by Publix of the former associate's request. The mediator will attempt to schedule the mediation, at a mutually convenient location, within fourteen (14) days if practicable, and insofar as possible not more than thirty (30) days after being identified to the parties.

I. If the mediation is successful, the discharged associate will be required to execute a full and final general release of all claims against Publix arising in any way out of the facts and circumstances involved in his or her employment with Publix, or the termination thereof, through and including the date of the mediation. In such event, Publix will pay any agreed-upon consideration within thirty (30) days after receipt of the properly executed release.

XIII. REPORTING AND RECORDKEEPING

A. Reporting Schedule.

Within ninety (90) days after December 31, 2001, and at six-month intervals thereafter throughout the Term of this Decree, Publix shall provide Progress Reports to Class Counsel on the Company's compliance with the Decree's requirements.

B. Contents of the Semi-Annual Progress Reports.

The Semi-Annual Progress Reports described in Section XIII.A shall include the following information:

1. A description of any revisions to the Minimum Qualifications for Goal Positions that are implemented during the reporting period.

2. A chart or charts displaying the goal information described in Section XI.C for the most recently completed selection period.

3. Until Publix has complied with Section XI.E, a list identifying the individuals selected for management positions under Section

XI.E and specifying the management position for which the individual associate was selected.

4. A summary of the use of the Discharge Review System during the reporting period with respect to black associates alleging racially discriminatory discharge from retail supermarket stores in Florida, Georgia, South Carolina and Alabama. This summary shall include:

a. the name, job classification, and store number of the complainant(s);

b. the name of the investigator designated for the complaint;

c. the results of the investigation undertaken in response to such complaint;

d. whether any request for Step 2 appeal was submitted and, if so, the results of the appeal; and

e. whether any Step 3 request for mediation was submitted, and if so, whether the mediation was successful.

f. the total number of black associates and white associates discharged during the reporting period.

5. The Semi-Annual Progress Reports, and all information therein shall be kept confidential and shall not be provided to any person or entity not a party to this Consent Decree. Upon the expiration of this Decree Class Counsel shall promptly return to Publix any and all documents, including electronic information, and all copies thereof, that Publix furnished under this Decree.

C. Access to Documents.

1. Class Counsel shall, upon reasonable notice, be entitled to review all documents constituting the primary source materials for the summary information required to be submitted in the Semi-Annual Progress Reports, except, however, that Class Counsel shall not be entitled to review any such documents that are protected by attorney-client or work product privilege.

2. In response to a request from Class Counsel pursuant to this section, Publix may, to the extent that it maintains some or all of the primary source materials for the summary information required to be submitted in the Semi-Annual Progress Reports on an electronic medium, submit a disc or tape containing the electronic information to Class Counsel in lieu of providing access.

D. Addresses for Reporting.

All reports and documents that Publix is required to deliver or serve on Class Counsel shall be mailed to Kent Spriggs, Spriggs & Davis, P.A., 324 W. College Avenue, Tallahassee, Florida 32301.

XIV. MONETARY AWARDS PROCEDURE

A. Monetary Awards to Settlement Class Members.

Monetary Payments to eligible Settlement Class members shall be of four types: Formula Promotion Payments, Formula Discharge Payments, Individual Allocations to Class Member Deponents, and Individual Allocations to Class Representatives and the Testing Class Representative.

1. Payments to be distributed pursuant to Section XIV.B shall be referred to as "Formula Promotion Payments." Payments to be distributed pursuant to Section XIV.C shall be referred to as "Formula Discharge Payments." Payments to be distributed pursuant to Section XIV.E shall be referred to as "Individual Allocations to Class Member Deponents." The Class Representatives and Testing Class Representative shall be ineligible for payments under any of these sections.

2. Receipt of an award under the Formula Promotion Payment Pool or Formula Discharge Payment Pool, or of an Individual Allocation to a Class Member Deponent, shall require acceptable indorsement of a check incorporating a release of all claims of alleged Race Discrimination in employment, as described in Section VIII.A.1, including without limitation all claims arising under 42 U.S.C. § 2000e, et seq., as amended, 42 U.S.C. § Section 1981, as amended, the Florida HRA, the Florida CRA, and any other federal, state, or local statute, ordinance or other codified or common law cause of action. The form of check release is attached as Exhibit 1.

3. Individual Allocations to Class Representatives shall require execution of an individual general release of all claims against Publix by each of the Class Representatives and the Testing Class Representative, respectively, in the form attached as Exhibit 2.

B. Allocation of Formula Promotion Payments Pool to Individual Monetary Awards.

1. Formula Promotion Payments shall be available only to Settlement Class members, other than the Class Representatives and the Testing Class Representative, who were employed in a full-time capacity by Publix at some time during the applicable class period; such individuals shall

be deemed "Eligible Promotion Class Members" for purposes of this section. Except as provided for in Sections XIV.E and J, the Formula Promotion Payments Pool of $2,250,000 shall be distributed to such Eligible Promotion Class Members according to a point formula based upon the factors described below. Before allocating any portion of the Formula Promotion Payments Pool to payments under this Section XIV.B, the Formula Promotion Payments Pool first shall be adjusted as set forth in Sections XIV.E and J.

2. Points shall be awarded to Eligible Promotion Class Members according to the following formula:

a. Eligible Promotion Class Members who are classified on Publix's Human Resources database as having been employed in a Full-Time status at any time between the relevant class commencement date and January 25, 1997, but who were not issued a check by Publix under the settlement agreement in Kemp v. Publix Super Markets, Inc., Case No. 150-92-1508, shall receive one (1) point.

b. Without regard to whether they are entitled to one point under Section XIV.B.2.a, above, Eligible Promotion Class Members who are not classified on Publix's Human Resources database as having been discharged, shall be awarded one (1) point if they:

(1) are classified on Publix's Human Resources database as having been employed by Publix in a Full-Time status at any time between the relevant class commencement date and September 1, 1998, and registered an interest in promotion under Publix's ROI system on at least one occasion on or before September 1, 1998, or

(2) are no longer employed by Publix on the Preliminary Approval Date but are classified on Publix's Human Resources database as having been employed by Publix in a Full-Time status at any time between the relevant class commencement date and September 1, 1998, and submit a claim form stating under penalty of perjury that they sought unsuccessfully to be promoted by Publix during that time period.

c. If any individual who files a claim form under Section XIV.B.2.b.2 is determined not to be a Settlement Class member, or to otherwise be ineligible to be allocated a point under Section XIV.B.2.b, he or she shall be sent individual notice of such ineligibility, and of an opportunity to appeal that determination to the Awards Arbitrator.

d. Once all promotion points for Eligible Promotion Class Members have been finalized, the value of a point shall be calculated by Class Counsel by dividing the total number of points awarded into the amount of the Formula Promotion Payments Pool, less any deductions pursuant to Sections XIV.E and J. Thereafter, Class Counsel shall determine the appropriate amount to be distributed to each member of the Settlement Class who is eligible for such relief. Once Class Counsel has certified fully to Publix the amounts that should be disbursed from the Formula Promotion Payments Pool to each Settlement Class member, in a computer file format specified by Publix, Publix will transmit checks for such amounts, less appropriate payroll withholding for federal, state and local income taxes and F.I.C.A. and any other legally required deductions, to the address for each recipient identified by Class Counsel. Publix shall deliver the checks within ninety (90) days following (i) receipt by Publix of the foregoing certification by Class Counsel, or (ii) the Final Approval Date, whichever is later.

C. <u>Allocation of Formula Discharge Payments Pool to Individual Monetary Awards.</u>

1. Formula Discharge Payments shall be available only to Settlement Class members, other than the Class Representatives and the Testing Class Representative, who:

a. were discharged by Publix during the Liability Period,

b. had been employed by Publix for at least ninety (90) continuous calendar days at the time of their discharge,

c. were at least twenty (20) years of age at the time of their discharge,

d. were not employed by Publix as a managerial associate at the time of their discharge, and

e. submit a claim form, stating under penalty of perjury that he or she believes that his or her race was some part of the reason for being discharged from employment by Publix.

2. A Settlement Class member who satisfies all the criteria in Section XIV.C.1, above, may be conditionally disqualified from Formula Discharge Payments if:

a. his or her discharge is coded on the Publix Human Resources database under one of the eight designated reason codes, which are 43 (sliding groceries), 44 (suspicion of stealing), 45 (stealing), 46 (time card problems), 47 (false information to company), 48 (lying about being sick), 60 (possession/use of drugs or alcohol), and 61 (alcohol/possession/use),

b. his or her Publix files contain records demonstrating that the associate was discharged for theft, failing a drug test, or job-related violation of a law, and

c. based upon the information reflected in those records, Publix exercises its option to identify the class member as ineligible for Formula Discharge Payments.

3. In addition to the conditional disqualifying factors set forth in Section XIV.C.2, above, Publix may conditionally disqualify from Formula Discharge Payments up to fifty (50) Settlement Class members who meet all other applicable criteria, but whose employment records show that he or she had engaged in conduct that Publix considers to be comparably improper to theft, failing a drug test or a job-related violation of a law, without regard to the reason code for the termination recorded in the Publix Human Resources database. For each such individual, Publix shall identify to Class Counsel the conduct warranting discharge upon which Publix relies for conditional disqualification.

4. A Settlement Class member conditionally disqualified pursuant to Section XIV.C.2, above, can be reinstated to eligibility for Formula Discharge Payments through the procedure provided for in Section

XIV.C.6, by establishing, through appropriate proof, that he or she did not in fact commit the offense of theft, failing a drug test, or a job-related violation of a law.

5. A Settlement Class member conditionally disqualified pursuant to Section XIV.C.3, above, can be reinstated to eligibility for Formula Discharge Payments through the procedure provided for in Section XIV.C.6, by establishing, through appropriate proof, that he or she did not in fact commit the conduct warranting discharge identified to Class Counsel by Publix.

6. Appeal Process.

a. A Settlement Class member who has either been conditionally disqualified from Formula Discharge Payments under Sections XIV.C.2 or 3, or been assigned a lesser multiplier under Section XIV.C.7.b.(2) or (4) because his or her discharge was coded by Publix on its Human Resources database as having been discharged for reason code 43 (sliding groceries), 44 (suspicion of stealing), 45 (stealing), 46 (time card problems), 47 (false information to company), 48 (lying about being sick), 60 (possession/use of drugs or alcohol), and 61 (alcohol/possession/use), shall be sent individual notice by Class Counsel by United States mail at the address indicated on the initial claim form.

b. The notice shall briefly explain the fact of and reason for disqualification or assignment of a lesser multiplier. In addition, the notice shall explain the claimant's right to challenge his or her disqualification or the multiplier assigned, under the limited circumstances explained in Sections XIV.C.6 and 7.d. Each notice shall contain a return form with space for the associate to explain why he or she believes the discharge code is inaccurate, or to identify evidence establishing that he or she did not in fact commit the disqualifying offense. This return form, which will be preaddressed to Class Counsel, must be executed under penalty of perjury. The claimant also will be informed of a right to present other declarations or documentation in support of his or her challenge. The claimant will have thirty (30) days from the time notice was sent to exercise this challenge right.

c. Once Class Counsel receives a timely challenge, they will send it to Publix for processing. Publix will review the submission and inform the claimant of the result through individualized notice. Publix will provide Class Counsel with a list of all such results, in a computer file format specified by Class Counsel. Claimants who are still disqualified from relief altogether shall have a right to appeal their disqualification to the Manager of HR Investigations (or designee) within fourteen (14) days from the date notice was sent; claimants will not have a right to appeal to the Manager of HR Investigations (or designee) the decision on whether his or her termination was inaccurately coded.

d. Claimants whose disqualification appeal is denied by the Manager of HR Investigations (or designee) will be sent individual notice by Publix by United States mail. Class Counsel will also be notified of the results of all such appeals, in one comprehensive report provided in a computer file format specified by Class Counsel. After this notice, a claimant who believes he or she should not be disqualified under the conditions set forth in Sections XIV.C.4 and 5 may within fourteen (14) days further contest this disqualification by notice to Class Counsel and Publix; this process shall not apply to decisions by Publix about the proper coding of a termination.

e. If Publix and Class Counsel cannot resolve by agreement any such claimant's disqualification status, such a claimant may then appeal to an Awards Arbitrator for a determination of the claimant's status, and must file any such appeal within fourteen (14) days after being notified by Class Counsel that he or she had not successfully resolved the dispute. The Awards Arbitrator's determination shall be final, binding and non-appealable. The Awards Arbitrator shall review only disqualification decisions, not termination coding decisions.

f. If Class Counsel determines that any individual who files a claim form pursuant to Section XIV.C.1 is not a member of the Settlement Class, or otherwise determines that the claimant is ineligible to recover a discharge monetary award, Class Counsel shall send individual notice of that determination to the claimant by United States mail, at the address indicated on the initial claim form. The notice shall briefly explain the fact of and reason for this determination of ineligibility. The claimant may appeal this determination to the Awards Arbitrator within thirty (30) days after mailing of the notice by Class Counsel. The Awards Arbitrator's determination shall be final, binding and non-appealable.

7. Except as provided in Sections XIV.E and J, the Formula Discharge Payments Pool of $5,450,000 shall be distributed to claimants who meet all requirements and are not disqualified, according to a point formula based upon the former associate's hourly pay rate at the time of

discharge, Full-Time or Part-Time status at that time, and reason for discharge, all as recorded on Publix's Human Resources database. Before allocating any portion of the Formula Discharge Payments Pool to payments under Section XIV.C, the Formula Discharge Payments Pool first shall be adjusted as set forth in Sections XIV.E and J.

a. For each non-disqualified claimant, Base Points shall be awarded according to the following formula: 5 Base Points if the former associate's hourly pay rate at time of discharge was below \$6.00; 7 Base Points if the former associate's hourly pay rate at time of discharge was between \$6.00 and \$7.99; 9 Base Points if the former associate's hourly pay rate at time of discharge was between \$8.00 and \$9.99; and 11 Base Points if the former associate's hourly pay rate at time of discharge was \$10.00 or above.

b. For each non-disqualified claimant, a Multiplier shall be assigned according to the following formula:

(1) a Multiplier of 4 if the former associate was at the time of discharge classified as Full-Time by Publix and has a discharge reason code on the Publix Human Resources database other than 43, 44, 45, 46, 47, 48, 60 or 61;

(2) a Multiplier of 2 if the former associate was at the time of discharge classified as Full-Time by Publix and has a discharge reason code on the Publix Human Resources database of 43, 44, 45, 46, 47, 48, 60 or 61;

(3) a Multiplier of 2 if the former associate was at the time of discharge classified as Part-Time by Publix and has a discharge reason code on the Publix Human Resources database other than 43, 44, 45, 46, 47, 48, 60 or 61; and

(4) a Multiplier of 1 if the former associate was at the time of discharge classified as Part-Time by Publix and has a discharge reason code on the Publix Human Resources database of 43, 44, 45, 46, 47, 48, 60 or 61.

c. A non-disqualified claimant's points shall be calculated by multiplying his or her Base Points by his or her Multiplier.

d. A claimant shall have the opportunity to contest the accuracy of the Multiplier assigned to him or her through the procedure provided for in Section XIV.C.6, by establishing through appropriate proof either that the discharge reason code assigned to him or her is inaccurate, or that he or she did not in fact commit the misconduct that caused him or her to have a discharge reason code of 43, 44, 45, 46, 47, 48, 60, or 61.

e. Once all discharge claimants' points have been finalized, the value of a point shall be calculated by Class Counsel by dividing the total number of points awarded into the amount of the Formula Discharge Payments Pool, less any deductions pursuant to Sections XIV.E and J. Class Counsel shall use the foregoing formula to determine the appropriate amount to be distributed to each eligible Settlement Class member who has filed a timely claim, and has not been disqualified from Payments (unless reinstated pursuant to Section XIV.C.6, above). Once Class Counsel has certified fully to Publix the amounts to be disbursed from the Formula Discharge Payments Pool to individual Settlement Class members, in a computer file format specified by Publix, Publix will transmit checks for such amounts, less appropriate payroll withholding for federal, state and local income taxes, F.I.C.A. and any other legally required deductions, to the address for each recipient identified by Class Counsel. Publix shall deliver the checks within ninety (90) days following (i) receipt by Publix of the foregoing certification by Class Counsel or (ii) the Final Approval Date, whichever is later.

D. Individual Allocations to the Class Representatives and the Testing Class Representative.

Publix shall pay a gross total amount of $400,000 to the Class Representatives and the Testing Class Representative. This gross total amount of $400,000 shall be distributed as follows: $55,000 to each Class Representative, and $15,000 to the Testing Class Representative. These amounts will be paid in exchange for a general release of all claims, and in lieu of any recovery whatsoever under the formula awards and deponent awards available to other Settlement Class members. Publix will transmit checks for these amounts, less appropriate payroll withholding for federal, state and local income taxes, F.I.C.A. and any other legally required deductions, to Class Counsel within forty-five (45) days after the Final Approval Date as to each such individual who has executed the full release referred to in Section VIII.A.2 and XIV.A.3 and has not opted out under Section VII.D. The payments made to the Class Representatives and the Testing Class Representative under this section shall be allocated in accordance with Section XIV.H.

E. Individual Allocations to Class Member Deponents.

1. In addition to his or her allocation, if any, from the Formula Promotion Payments Pool or Formula Discharge Payments Pool,

any member of the Settlement Class (other than a Class Representative or Testing Class Representative) who was deposed in this action shall be paid an allocation of $3,000 per full or partial day of deposition testimony. A list of Settlement Class member deponents is attached as Exhibit 3.

2. The $51,000 in total allocations under this Section XIV.E will be deducted from the formula pools before any allocations are made from those pools under Sections XIV.B and C. $36,000 shall be deducted from the Formula Promotion Payments Pool and $15,000 shall be deducted from the Formula Discharge Payments Pool.

F. Recipients' Responsibilities.

It shall be the sole responsibility of each member of the Settlement Class who seeks a monetary award to advise Class Counsel promptly of his or her change of address. A Settlement Class member's failure to keep Class Counsel apprised of his or her current address may result in his or her request for an award being denied.

G. Awards Arbitrator.

1. Within thirty (30) days after the Final Approval Date, Class Counsel and Publix shall select an Awards Arbitrator to be approved by the Court. The Awards Arbitrator shall resolve all disputes arising under

this Section, unless otherwise provided herein, and shall also perform any other duties and responsibilities assigned to the Awards Arbitrator under this Decree.

2. All determinations of the Awards Arbitrator are final, binding, and non-appealable.

3. In the event that the Awards Arbitrator resigns or is otherwise unable to perform his or her duties under the Decree, Class Counsel and Publix shall select a new Awards Arbitrator, subject to approval by the Court.

H. Allocation of Monetary Awards.

1. All distributions of individual monetary awards to the Settlement Class members who are entitled to receive awards shall be allocated by Publix between back pay, front pay, and prejudgment interest, in respective proportions as warranted by the facts and the law. In light of the duration of this litigation and the statutory limitations period covered by it, the parties stipulate that such a reasonable allocation for Settlement Class members other than the Class Representatives and Testing Class Representative is 75% back pay and front pay and 25% prejudgment interest.

2. In light of the time, effort and expense incurred by the Class Representatives on behalf of the Settlement Class, their assumption of the risks and potential liability for Publix's taxable legal costs, and their execution of a release of all claims against Publix, whether or not related to Race Discrimination, the parties stipulate that a reasonable allocation for payments to the Class Representatives and the Testing Class Representative is 60% compensatory damages, 30% back pay and front pay, and 10% prejudgment interest.

3. Before distribution, the Company shall calculate and deduct from each Settlement Class member's total gross award the appropriate payroll withholding for federal, state and local income taxes, FICA and any other legally required deductions.

I. Distribution of Uncashed Awards.

Any portion of the Formula Promotion Payments Pool or the Formula Discharge Payments Pool that is not received by Settlement Class members due to the failure of those individuals to properly cash their award checks within six (6) months of the date on the check or otherwise to fulfill their obligations under this Decree shall be distributed to one or more United Negro College Funds in Florida and/or Georgia. Any individual allocation to a Class Representative or Testing Class Representative that is not received by the individual within six months following the Final Approval Date because the individual has not executed the necessary release or has not cashed his or her check will revert to Publix.

J. Opt-Out Credits.

1. In the event that any member of the Settlement Class elects to "opt-out" pursuant to the procedures established by the Court in its Order preliminarily approving the Decree, the total gross amount to be distributed by Publix through the two formula pools shall be decreased by an amount as set forth below ("the Opt-Out Credit"). An Opt-Out Credit for a Settlement Class member who was coded on the Publix Human Resources database as having been discharged during the class period shall be subtracted from the Formula Discharge Payment Pool. All other Opt-Out Credits shall be subtracted from the Formula Promotion Payment Pool. Publix shall receive no Opt-Out Credit with respect to any Settlement Class member who on the Preliminary Approval Date has a pending lawsuit in state or federal court, and all such individuals shall be deemed automatically to have opted out of the Settlement Class unless they affirmatively express a desire to participate in this Settlement by filing a claim form and dismissing

with prejudice their individual lawsuit before the deadline for filing claim forms.

2. Publix shall receive an Opt-Out Credit of $55,000 for each Settlement Class member who opts out and is a Class Representative.

3. Publix shall receive an Opt-Out Credit of $15,000 for each Settlement Class member who opts out and is a Testing Class Representative.

4. Publix shall receive an Opt-Out Credit of $10,000 for each Settlement Class member who opts out and who was discharged by Publix during the relevant class period.

5. Publix shall receive an Opt-Out Credit of $2,500 for each Settlement Class member who opts out and does not meet any of the categories set forth in Section XIV.J. 2, 3 or 4, above.

K. Costs of Decree Administration.

Publix shall pay the following costs associated with the administration of the Decree and distribution of the monetary awards hereunder, and no other such costs:

1. the fees and expenses of the Awards Arbitrator;

2. the costs of producing and mailing or otherwise distributing the checks containing the individual monetary awards to Settlement Class members; and

3. the calculation and submission of all necessary employment and withholding taxes and other legally required deductions and documentation to appropriate government agencies, and the distribution of all W-2 and 1099 forms to each Settlement Class member, as provided in Section XIV.H, provided, however, that individual Settlement Class members at all times remain fully responsible for ensuring the appropriate payment of employment and income taxes on their individual monetary awards hereunder.

XV. ATTORNEYS' FEES, COSTS AND EXPENSES

A. Basis for Award of Fees, Costs and Expenses.

1. The parties have agreed that it is appropriate as part of the settlement underlying this Decree for Publix to pay to Class Counsel, on behalf of the Class Representatives, the Testing Class Representative and the Settlement Class, reasonable attorneys' fees, litigation expenses, and costs in this case.

2. The Company has agreed to pay Class Counsel an award of reasonable attorneys' fees, litigation expenses, and costs in the amount of One Million Eight Hundred Thousand dollars ($1,800,000) for work performed and costs and expenses incurred through and including the Approval Date. Included in this amount is approximately $250,000 for litigation costs and expenses incurred by Class Counsel. This amount of $1,800,000 fully satisfies any arguable obligation the Company may have to pay attorneys' fees, litigation expenses, and costs for and on behalf of the named plaintiffs, the Class Representatives, the Testing Class Representative, and the Settlement Class for any and all work performed and costs and expenses incurred through and including the Approval Date.

3. The Company also has agreed to pay Class Counsel an award of reasonable attorneys' fees, litigation expenses, and costs for work required to be performed by Class Counsel after the Approval Date pursuant to this Decree. The Company agrees that Class Counsel shall be paid such attorneys' fees, expenses and costs, in the amount of Six Hundred Thousand dollars ($600,000), for work performed and costs and expenses incurred after the Approval Date relating to monitoring, administration and implementation and defense of the Decree. This amount satisfies any

arguable obligation the Company may have to pay attorneys' fees, expenses and costs to Class Counsel for any and all work performed and costs and expenses incurred after the Approval Date of the Decree for the monitoring, administration, implementation and defense of the Decree, including any challenges to the lawfulness of any new or modified testing mechanisms or scoring methodologies, or to any new Minimum Qualifications for Goal Positions.

4. Nothing herein shall be interpreted to preclude Publix from seeking attorneys' fees, expenses and costs incurred in litigating enforcement matters according to Title VII law applicable to a prevailing defendant.

B. Payment of Award.

1. Within forty-five (45) days following the Final Approval Date, the Company shall pay to Class Counsel the entire $ 1,800,000 award, for litigation-related attorneys' fees, expenses and costs as set forth in Section XV.A.2.

2. The attorneys' fees, expenses and costs awarded and agreed to be paid by the Company pursuant to Section XVI.A.3 shall be paid

according to the following schedule, but no such payment shall be made before the Final Approval Date.

January 15, 2002	$450,000
January 15, 2003	$ 50,000
January 15, 2004	$ 20,000
January 15, 2005	$ 20,000
January 15, 2006	$ 20,000
January 15, 2007	$ 20,000
January 15, 2008	$ 20,000

IT IS SO ORDERED, ADJUDGED AND DECREED this 11th day of July, 2001.

J. Whittemore
U.S. District Judge
Middle District of Florida

[signatures appear on next page]

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Local counsel for Plaintiffs

Check Release

By endorsing this check, I hereby release all Race Discrimination claims within the scope of the Consent Decree in Middleton v. Publix, Case No. 8:97-cv-760-T-27E.

RELEASE OF CLAIMS

___________________, his/her agents, heirs, personal representatives, successors and/or assigns, jointly and severally, for and in consideration of the mutual promises, terms and conditions set forth in the Consent Decree entered in Middleton, et al. v. Publix Super Markets, Inc., et al., Case No. 8:97-cv-760-T-27E (the "Middleton Action"), including but not limited to the gross monetary award of $55,000.00 allocated to him/her thereunder, less applicable withholding, the sufficiency of which consideration is expressly acknowledged, does hereby fully, finally and forever release and discharge Publix and its subsidiary corporations and limited liability companies, and their respective officers, directors, managers, agents, employees, successors and/or assigns, and anyone acting in concert with or on behalf of them, and their respective pension, profit sharing, savings and other employee benefit plans of whatsoever nature, and those plans' respective trustees and administrators, of and from any and all past and/or present claims, demands, actions, causes of action, suits, damages, liabilities, assessments, judgments, costs, losses, debts, obligations and expenses, of any and every nature whatsoever (collectively "Claims"), whether or not known, allegedly incurred by ___________________ because of any claimed unlawful race discrimination or any other allegedly illegal action by Publix whatsoever occurring at any time on or before the Preliminary Approval Date. Such released Claims include, but are not limited to, those arising in any way out of the alleged facts, circumstances, and occurrences underlying the allegations which might have been asserted against Publix either in the original complaint or in any and all subsequent amended complaints filed by plaintiffs in the Middleton Action, which include allegations arising from: (i) alleged violations of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000 *et seq.*; (ii) alleged violations of Section 1981 of the Civil Rights Act of 1866, 42 U.S.C. § 1981; (iii) alleged violations of the Florida Human Rights Act of 1977, as amended by the Florida Civil Rights Act of 1992, Chapter. 760, Fla. Stat.; (iv) any other applicable federal or state laws prohibiting race discrimination; and (v) all alleged facts, circumstances, and occurrences underlying any and all administrative charges of race discrimination filed by [him/her] against Publix. In addition, such released Claims include, but are not limited to any and all allegations arising under: (1) other anti-discrimination statutes, such as the Age Discrimination in Employment Act, the Equal Pay Act, the Americans with Disabilities Act, and any other federal, state or local laws prohibiting employment discrimination of any type; (2) other federal employment statutes, such as the WARN ACT, the Employee Retirement Income Security Act of 1974, the Fair Labor Standards Act of 1938, and the Family and Medical Leave Act of 1993; (3) other laws, such as any federal, state, or local law enforcing express or implied employment contracts or requiring an employer to deal with employees fairly or in good faith; and (4) any other federal, state or local law providing recourse for alleged wrongful discharge, physical or personal injury, emotional distress, fraud, negligent misrepresentation, or defamation.

IN WITNESS WHEREOF, the undersigned individual has hereunto set [his/her] name and signature this ______ day of _______________, 2001, in the presence of a notary public.

____
Signature

____
Printed Name

____
Social Security Number

Sworn to and subscribed before me on
this ____ day of _____________, 2001.

____
Notary Public

CLASS MEMBER DEPONENTS

Gloria Beckham – 1 day (4/11/00)

Clarence Bryant – 1 day (4/14/00)

Walter Crawley – 1 day (3/2/00)

Melanie Gleabes-Dunn – 1 day (4/12/00)

Rebecca Gold – 1 day (9/16/97)

Adrain Graham – 1 day (4/4/00)

Liem David Hutt – 1 day (4/19/00)

Charles D. Johnson – 1 day (2/18/00)

John Lowery, Jr. – 1 day (3/7/00)

Rhonda Moore – 1 day (2/23/00)

Shawn Myers – 1 day (3/8/00)

Paul Orilien – 1 day (3/7/00)

Patricia Peterson – 1 day (9/19/97)

Sonya Shelton – 1 day (9/22/97)

Reginald Snelling – 1 day (9/12/97)

Herbert Thompson – 1 day (9/17/97)

Annie Walker – 1 day (4/12/00)

FILE COPY

Date Printed: 07/12/2001

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