

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

REGINALD G. MOORE, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No. 00-953 (PLF/DAR)
	)	
JEH C. JOHNSON, Secretary,	)	
U.S. Department of Homeland Security,	)	
	)	
Defendant.	)	

SETTLEMENT AGREEMENT, RELEASE, AND CONSENT DECREE

This Settlement Agreement, Release, and Consent Decree (hereinafter, “Agreement” or “Settlement” or “Consent Decree”) is entered into by and between Reginald G. Moore, John E. Turner, C. Yvette Summerour, Leroy Hendrix, Cheryl L. Tyler, Luther K. Ivery, Andrew E. Harris, Jr., and Kenneth Rooks (hereinafter, “Class Representatives”), on behalf of themselves and a class of individuals they represent, and Camilla Simms and Lisa Robertson (hereinafter, “Individual Plaintiffs”) (together with Class Representatives, collectively “Named Plaintiffs”), in the above-captioned matter (hereinafter, “Litigation”), and Jeh Johnson, Secretary, U.S. Department of Homeland Security (hereinafter, “Defendant”) (together with Named Plaintiffs and Class Members, collectively “Parties”), with the approval and entry of the Court.

I. RECITALS AND BACKGROUND

WHEREAS, on May 3, 2000, ten (10) African-American Special Agents of the U.S. Secret Service (“Secret Service”) filed a Complaint in the U.S. District Court for the District of Columbia (hereinafter, the “district court” or the “Court”) initiating this Litigation, that alleged race discrimination claims of disparate treatment and disparate impact under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and the Civil Rights Act of 1991, as

amended, 42 U.S.C. § 1981(a), dating back to 1974, concerning the Secret Service's hiring practices, promotions (to the GS-14, GS-15, and SES levels), transfers and assignments, performance evaluations, bonuses and awards, discipline, retaliation, and the creation of a hostile work environment;

AND WHEREAS, over the course of the next sixteen (16) years, this Litigation was refined as amended complaints and pleadings were filed, claims and parties were dismissed and added, and relevant time periods were established by the Parties' motions and the courts' rulings;

AND WHEREAS, this Litigation has been vigorously prosecuted and defended with extensive discovery, including the production of tens of thousands of pages of documents, the taking of numerous depositions, and the exchange of multiple expert reports, and with the filing of numerous motions and appeals;

AND WHEREAS, on August 7, 2006, the Named Plaintiffs filed a Second Amended and Supplemental Complaint that is the operative complaint in this Litigation, alleging individual and putative class claims of disparate treatment and disparate impact based on race under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and the Civil Rights Act of 1991, as amended, 42 U.S.C. § 1981(a);

AND WHEREAS, on February 25, 2013, the district court granted a motion for class certification, certifying disparate treatment and disparate impact race discrimination claims, pursuant to Federal Rule of Civil Procedure 23(b)(3), for a class defined as all current and former African-American Special Agents who bid for promotion to the GS-14 level during the years 1995-2004 and/or to the GS-15 level during the years 1995-2005, who were not promoted on the first bid list on which they bid, and who did not serve as an Assistant Director, Deputy Director, or the Director of the Secret Service during those defined periods;

AND WHEREAS, on August 1, 2015, the U.S. Court of Appeals for the D.C. Circuit denied review of the district court's certification order, in *In re Johnson*, 760 F.3d 66 (D.C. Cir. 2014);

AND WHEREAS, Defendant currently has two dispositive motions pending before the district court;

AND WHEREAS, since this Litigation began certain Named Plaintiffs and members of the class have been promoted within the Secret Service, and the Secret Service has changed and improved its promotions practices and processes;

AND WHEREAS, in July 2016, upon consent of the Parties, the district court informally stayed ruling on all pending motions so the Parties could attempt to negotiate a settlement to resolve this Litigation;

AND WHEREAS, the Parties have reached a settlement and now wish to resolve this longstanding action cooperatively and without resort to continued contested and protracted litigation with its attendant burden, expense and risk;

AND WHEREAS, the Parties agree that a settlement of this Litigation is in the public interest;

AND WHEREAS the Secret Service has independently and proactively undertaken and implemented numerous modifications to its policies and practices concerning promotions to the GS-14 and GS-15 levels;

AND WHEREAS, the Parties agree to the entry of this Agreement that resolves all issues raised in this Litigation, including, but not limited to, those raised in the operative complaint, *i.e.*, the Second Amended and Supplemental Class Complaint filed on August 7, 2006;

AND WHEREAS Defendant denies any and all liability or damages to anyone with respect to the alleged facts or causes of action asserted in this Litigation;

NOW THEREFORE, in consideration of the mutual covenants and promises set forth in this Agreement, as well as the good and valuable consideration provided for herein, the Parties hereto agree to a full and complete settlement of this Litigation on the following terms and conditions, and with the approval and entry of the Court, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

II. DEFINITIONS AND PARTIES

A. **Advisory Board.** “Advisory Board” means and refers to an executive board, created through Secret Service policy, that makes selection decisions for GS-14 level vacancies and provides consensus selection recommendations for GS-15 level vacancies, when such vacancies are announced as vacant and to be filled through the Secret Service’s competitive GS-1811 merit promotion process.

B. **Agreement.** “Agreement” or “Settlement” or “Consent Decree” means and refers to this Settlement Agreement, Release, and Consent Decree.

C. **Claim Form.** “Claim Form” means and refers to the Claim Form, as approved by the Court in substantially the form of the document attached to Plaintiffs’ Motion for Preliminary Approval of Distribution of Settlement Proceeds, whereby a Class Member may elect to participate in this Settlement.

D. **Class Administrator.** “Class Administrator” means and refers to the individual or entity retained and compensated by Class Counsel for purposes of obtaining assistance with implementing the administrative requirements of this Agreement.

E. **Class Counsel.** “Class Counsel” means and refers individually and collectively

to the law firm Hogan Lovells US LLP and the attorneys practicing therein, and the law firm Relman, Dane & Colfax PLLC and the attorneys practicing therein, which the Court found, in the context of its class certification ruling of February 25, 2013, to be capable of fairly and vigorously defending the interests of the Class Members in this Litigation.

F. **Class Members.** “Class Members” means and refers collectively to the class certified by the district court on February 25, 2013, defined as all current and former African-American Special Agents who bid for promotion to the GS-14 level during the years 1995-2004 and/or to the GS-15 level during the years 1995-2005, who were not promoted on the first bid list on which they bid, and who did not serve as an Assistant Director, Deputy Director, or the Director of the Secret Service during those defined periods, excluding the seven (7) such individuals who requested to be excluded pursuant to the May 13, 2013 order of the district court approving the form of class notice and notice plan. Those seven (7) individuals who asked to be excluded from the class are: William Lewis, Jeffrey T. Gilbert, Isaiah Mapp, Jr., Michael A. Lee, Keith Hill, James L. Dunlap, and Paula A. Reid.

G. **Class Period.** “Class Period” means and refers to the relevant time periods for the class certified by the district court on February 25, 2013, defined as the years 1995-2004 for all current and former African-American Special Agents who bid for promotion to the GS-14 level, and the years 1995-2005 for all current and former African-American Special Agents who bid for promotion to the GS-15 level.

H. **Class Representatives.** “Class Representatives” means and refers collectively to Reginald G. Moore, John E. Turner, C. Yvette Summerour, Leroy Hendrix, Cheryl L. Tyler, Luther K. Ivery, Andrew E. Harris, Jr., and Kenneth Rooks.

I. **Court.** “Court” means and refers to the U.S. District Court for the District of

Columbia where this Litigation was originally filed and is currently pending, also referred to in this Agreement as the “district court.”

J. **Defendant.** “Defendant” means and refers to the Secretary of Homeland Security—styled in the caption of this case as “Secretary, U.S. Department of Homeland Security”—who heads the U.S. Department of Homeland Security, of which the U.S. Secret Service is a component.

K. **Effective Date.** “Effective Date” of this Agreement means and refers to the latest of the following dates: (a) the date sixty-one (61) calendar days after the entry of an order by the district court granting final approval to this Agreement, if there are no appeals; or (b) if there is any appeal of the district court’s order granting final approval, the day after all appeals are finally resolved in favor of final approval of this Agreement.

L. **Final Fairness Hearing.** “Final Fairness Hearing” means and refers to the hearing before the district court relating to the Motion for Final Approval.

M. **Final Approval Order.** “Final Approval Order” means and refers to the order entered by the district court after the Final Fairness Hearing, approving the terms and conditions of this Agreement.

N. **Individual Plaintiffs.** “Individual Plaintiffs” means and refers collectively to Camilla Simms and Lisa Robertson, who are not members of the class.

O. **Named Plaintiffs.** “Named Plaintiffs” means and refers collectively to Class Representatives and Individual Plaintiffs.

P. **Parties.** “Parties” means and refers collectively to Named Plaintiffs, Class Members, and Defendant.

Q. **Plaintiffs.** “Plaintiffs” means and refers collectively to Named Plaintiffs and Class Members.

R. **Preliminary Approval Hearing.** “Preliminary Approval Hearing” means and refers to the hearing before the district court relating to the Motion(s) for Preliminary Approval.

S. **Secret Service.** “Secret Service” means and refers to the U.S. Secret Service, which is a component of the U.S. Department of Homeland Security, which is headed by Defendant.

T. **Settlement Class.** “Settlement Class” means and refers collectively to Class Members and Individual Plaintiffs. The Settlement Class excludes any individual who has opted out of the class at the time of the execution of this Agreement or who opts out of the class in the future between the Preliminary Approval Hearing and the Final Fairness Hearing. Those excluded because they had opted out of the class at the time of the execution of this Agreement include the seven (7) such individuals who requested to be excluded pursuant to the May 13, 2013 order of the district court approving the form of class notice and notice plan. Those (7) seven individuals are: William Lewis, Jeffrey T. Gilbert, Isaiah Mapp, Jr., Michael A. Lee, Keith Hill, James L. Dunlap, and Paula A. Reid.

U. **Settlement Class Members.** “Settlement Class Members” means and refers collectively to the individuals who are members of the Settlement Class, but does not include, for purposes of a particular provision of this Agreement, any such individual or individuals who is or are expressly excluded for purposes of that particular provision of this Agreement.

V. **Settlement Proceeds.** “Settlement Proceeds” means the twenty-four million and No/100 dollars (\$24,000,000.00), subject to the provisions of Section V.D.5., below, that Defendant will pay to settle this Litigation.

III. MONETARY RELIEF

A. Defendant shall pay the sum of twenty-four million and No/100 dollars (\$24,000,000.00), subject to the provisions of Section V.D.5., below, in full and complete satisfaction of all claims made in this Litigation, including, without limitation, claims for economic and non-economic damages of any kind, back pay, front pay, interest (including both pre-judgment and post-judgment interest), compensatory damages, attorney's fees, litigation expenses, and costs through the Effective Date of this Agreement.

B. Simultaneously with the filing of the Joint Motion for Preliminary Approval, Plaintiffs will file their Motion for Preliminary Approval of Distribution of Settlement Proceeds that delineates Plaintiffs' proposal regarding the distribution of the Settlement Proceeds to the Plaintiffs, which will include a provision that no Plaintiff, including no Named Plaintiff and no Class Member, may be awarded monetary relief in excess of \$300,000. The proposed distribution shall provide that the Settlement Proceeds will be entirely exhausted by distributions to Named Plaintiffs, Class Members, attorney's fees and costs, service awards, and administrative costs, such that there are no remaining funds following those distributions. Defendant reserves its right, for ten (10) days after the filing of Plaintiffs' Motion for Preliminary Approval of Distribution of Settlement Proceeds, to object or respond to Plaintiffs' Motion for Preliminary Approval of Distribution of Settlement Proceeds. After the Preliminary Approval Hearing, and if Plaintiffs' Motion for Preliminary Approval of Distribution of Settlement Proceeds is granted, Plaintiffs will provide notice to the Settlement Class of the distribution of the Settlement Proceeds in accordance with the notice procedures herein. No later than thirty (30) calendar days prior to the Final Fairness Hearing, Plaintiffs will file their brief in support of attorney's fees and costs to be paid out of the Settlement Proceeds. While Defendant

does not object to the reimbursement to Plaintiffs' counsel for reasonable attorney's fees and costs consistent with the controlling law, Defendant nonetheless reserves its right to object or respond to the Plaintiffs' attorney's fees and costs motion when it is filed.

C. Pursuant to the normal processing procedures of the U.S. Department of the Treasury, and after the accrual of the Effective Date of this Agreement, Defendant shall deposit the sum of twenty-four million and No/100 dollars (\$24,000,000.00), subject to the provisions of Section V.D.5., below, into an account in a federally insured institution agreed to by the Parties. Class Counsel will propose in writing to Defendant a federally insured financial institution for deposit of the Settlement Proceeds no later than fourteen (14) calendar days after the entry of an order by the Court granting final approval of this Agreement. Defendant agrees to submit within five (5) days after the Effective Date of this Agreement a request to the U.S. Department of the Treasury that payment of the Settlement Proceeds be made.

D. Nothing in this Settlement constitutes an agreement by the United States concerning the characterization of any portion of the Settlement Proceeds for purposes of the Internal Revenue Code, Title 26 of the United States Code.

IV. NON-MONETARY RELIEF

The following provisions herein Section IV. will become operative on the Effective Date of the Settlement, unless otherwise stated herein:

A. Scoring Phase of the Merit Promotion Plan

The Secret Service utilizes a multi-phase Merit Promotion Plan ("MPP") to make promotions of Special Agents to the GS-14 and GS-15 levels, which are supervisor ranks. The first phase of the MPP is the scoring phase.

1. Since the Class Period, the Secret Service independently implemented substantial modifications to its scoring process for promotions to the GS-14 and GS-15 levels under the MPP. The Secret Service used an outside expert and subject matter experts to construct a competency-based model and conduct validation studies. Plaintiffs have reviewed these improvements and agree that they are satisfactory with respect to construction of the scoring system (the “2017 MPP scoring process”).

2. For the duration of this Agreement, the Secret Service agrees and commits to maintain a competency-based scoring process validated by an outside expert, chosen solely by the Secret Service, in accordance with standard federal government procurement procedures and appropriations laws, and subject to the availability of funds and to the restrictions of the Anti-Deficiency Act, including the prohibition codified at 31 U.S.C. § 1341. The Secret Service will continue to publish the competencies used in the scoring process. If testing reveals that the 2017 MPP scoring process’s reliability falls below the range generally accepted in the field based on the assessment of an outside expert, chosen solely by the Secret Service, in accordance with standard federal government procurement procedures and appropriations laws, and subject to the availability of funds and to the restrictions of the Anti-Deficiency Act, including the prohibition codified at 31 U.S.C. § 1341, the Secret Service will work with its outside expert to assess possible changes to improve reliability.

3. As of the date of this Agreement, the Secret Service is working with an outside expert and subject matter experts to update the competencies and make additional improvements to the 2017 MPP scoring process. The Secret Service will complete its testing of the validity and reliability of the 2017 MPP scoring process. The

Secret Service will provide Plaintiffs the opportunity to review the final 2017 report reflecting the validity and reliability testing and, if any, efforts to improve reliability.

The review of this report shall be used only in assessing compliance with this Agreement and shall create no independent cause of action unrelated to the enforcement of this Agreement. Plaintiffs, their counsel, and any experts or others who they may consult shall maintain the confidentiality of any information contained in this report that may be marked by the Secret Service as Law Enforcement Sensitive, as well as any information that may be contained in this report that constitutes Personally Identifiable Information (“PII”), which generally references information that can be used on its own or with other information to identify, contact, or locate an individual, or to identify an individual in context.

B. *Recommendation and Selection Phase of the MPP*

With respect to the final phase of the MPP, the recommendation and selection phase, the Secret Service agrees and commits to completing the further development and implementation of a competitive selection process that is based upon standardized evaluative factors that are job-related, and that provides for accountability and flexibility in decision-making. To that end, the Secret Service shall undertake the following actions:

1. *Analysis of the MPP Recommendation and Selection Phase by an Outside Expert*

a. The Secret Service shall retain an outside expert, chosen solely by the Secret Service, in accordance with standard federal government procurement procedures and appropriations laws, and subject to the availability of funds and to the restrictions of the Anti-Deficiency Act, including the prohibition codified at 31 U.S.C. § 1341, to assist in analyzing the existing MPP recommendation and

selection procedures and to develop a list of job-related standardized evaluative factors to be used in making recommendation and selection decisions for vacancies at the GS-14 and GS-15 levels.

b. The outside expert will be responsible for determining the specific methodology for conducting the analysis and determining possible enhancements to the Advisory Board's selection process.

c. The outside expert may seek information from sources it deems appropriate while conducting the analysis, which shall include working with subject matter experts to assist in identifying the experience, qualifications, and unique requirements for vacancies that may exist at the GS-14 and GS-15 levels.

d. As part of its analysis and development of standardized evaluative factors for selection, the outside expert may, but is not required to, consider grouping the vacancies into categories or batches utilizing position titles, location of the position, or primary function, or any other similar grouping.

e. The outside expert should consider as part of its analysis and development of standardized evaluative factors for selection whether the knowledge, skills, and abilities possessed by candidates already at the subject grade levels (*i.e.*, laterals) are appropriate requirements for certain positions.

f. The outside expert will also analyze reasonable and legitimate organizational factors that may be considered, as set forth in Section IV.B.3.c., below, in narrowing candidate pools. These organizational factors may be driven by current events, budgetary considerations, or other organizational mission-related factors.

g. The outside expert's analysis is not intended to replicate the competencies identified and assessed during the scoring phase of the MPP. It is intended that the standardized evaluative factors developed will involve objective elements, rather than subjective elements.

h. The Secret Service shall endeavor to have the outside expert complete the analysis within six (6) months of the Effective Date of this Agreement, subject to Section IV.B.1.a., above.

i. Upon completion of the analysis, the outside expert, using its professional judgment, will develop standardized evaluation factors to be used to guide Advisory Board recommendations and selections to vacancies at the GS-14 and GS-15 levels.

i. The Secret Service will provide Plaintiffs the final report of the outside expert subject to Section IV.E., below. This final report shall be used only in assessing compliance with this Agreement and shall create no independent cause of action unrelated to the enforcement of this Agreement.

2. *Implementation of Standardized Evaluative Factors*

a. The Secret Service shall adopt the use of objective standardized evaluative factors developed through the above-described analysis and, additionally, will consider including the use of any equal employment opportunity performance-related factors identified by the outside expert as a relevant evaluative factor.

b. Regardless of the results of the outside expert's analysis, the Secret Service shall not be required to assign "weights" or "scores" to any identified evaluative factors for any specific position or vacancy.

c. The work of the outside expert and implementation of any changes to the MPP made by the Secret Service will be completed as expeditiously as practicable, with an effort to complete this process within six (6) months from receipt of the outside expert's final recommendations and proposals. If the process cannot be completed within this period, counsel for the Secret Service will advise Class Counsel with respect to the anticipated schedule for completion.

3. *Use of Standardized Evaluative Factors and Organizational and Other Factors*

a. The Secret Service shall use the standardized evaluative factors, as identified through the analysis conducted by the outside expert and adopted by the Secret Service, to consider and evaluate candidates whose names appear on the Best Qualified List ("BQL"), Reassignment Certificate, and, if utilized, Promotion Register, to the extent set forth in the Office of Personnel Management ("OPM") regulations, for selection for those vacancies at the GS-14 and GS-15 levels that may be filled through competitive promotion. The Parties agree and acknowledge that any vacancy that is filled outside the MPP process through lateral reassignment is outside of the scope of this Agreement.

b. The Secret Service retains discretion to determine whom to select from among the candidates on the BQL, Reassignment Certificate, and Promotion Register through the application of the standardized evaluative factors, the use of MPP scores (subject to Section IV.C., below), or the consideration of any job-

related factor other than the standardized evaluative factors identified by the outside expert (pursuant to Section IV.B.3.d., below).

c. The Secret Service also retains the discretion to consider organizational factors, whether or not identified by the outside expert, in making selection decisions subject to the following restrictions:

i. The consideration of such organizational factors must be applied in a neutral and objective fashion and must not be prohibited by OPM regulations;

ii. Those organizational factors that are used regularly across a set of positions shall be published to Secret Service employees;

iii. Organizational factors are to be applied first to narrow the pool of candidates prior to the application of the standardized evaluative factors;

iv. A candidate who lacks an organizational factor identified by the Secret Service for that position shall not be selected for promotion to that position unless no other qualified candidates for the position are available; and

v. The use of organizational factors will be documented as provided for in Section IV.B.4., below.

d. If, through the normal operation of the MPP selection process, the Secret Service finds it necessary to consider a job-related factor other than the standardized evaluative factors identified by the outside expert in order to fill a vacancy, nothing prevents the Secret Service from taking such a factor into

consideration. However, if that factor is utilized in connection with more than ten (10) selections within a selection year for promotion or reassignment, the Secret Service shall utilize an outside expert, consistent with the procedure set out in Section IV.B.1., with the exception of Section IV.B.1.g., above, and chosen solely by the Secret Service, in accordance with standard federal government procurement procedures and appropriations laws, and subject to the availability of funds and to the restrictions of the Anti-Deficiency Act, including the prohibition codified at 31 U.S.C. § 1341, to evaluate that factor and determine if it is appropriate to add it to the formalized evaluative factors. The resulting final report will be provided to Plaintiffs subject to Section IV.E., below. This final report shall be used only in assessing compliance with this Agreement and shall create no independent cause of action unrelated to the enforcement of this Agreement.

e. The Secret Service retains discretion to work with an outside expert, chosen solely by the Secret Service, in accordance with standard federal government procurement procedures and appropriations laws, and subject to the availability of funds and to the restrictions of the Anti-Deficiency Act, including the prohibition codified at 31 U.S.C. § 1341, to modify the standardized evaluative factors as needed, following the procedure set forth in Section IV.B.1., with the exception of Subsection IV.B.1.g., above. If modified during the term of this Agreement, the resulting final report from the outside expert shall be provided to Plaintiffs subject to Section IV.E., below. This final report shall be

used only in assessing compliance with this Agreement and shall create no independent cause of action unrelated to the enforcement of this Agreement.

4. *Documentation of Advisory Board Selection Decisions*

a. The Secret Service agrees to create and maintain contemporaneous written records of decisions regarding MPP selections identified in Sections IV.B.3.a. through IV.B.3.d., above. The written record for each specific selection will include a brief record of the criteria considered and how they were applied in making the selection, including consideration of any organizational factor or any job-related factor other than the standardized evaluative factors identified by the outside expert, and the reason(s) for the candidate's selection.

b. If a candidate is recommended for promotion/selection under the MPP, but is not ultimately selected because of information identified during the vetting process as described in the MPP, the Advisory Board will document the reason(s) for that candidate's initial recommendation, the reason(s) for withdrawing this recommendation or non-selection, and the reason(s) for the recommendation and/or selection of the individual ultimately chosen to fill the vacancy.

c. All required documentation will be retained with the Secret Service's MPP records in accordance with the applicable federal records retention and disposition schedules.

5. *Notice of Modifications to the MPP Selection Procedures to Reflect Standardized Evaluative Factors*

The Secret Service shall provide employees with notice of the new MPP selection procedures by publishing them as part of the MPP. This includes

publication of the standardized evaluative factors and modification of the MPP to reflect the requirement that the Advisory Board will utilize the published standardized evaluative factors.

6. *Advisory Board Training*

a. The Secret Service shall ensure that Advisory Board members, and those reasonably likely to sit on an Advisory Board as the designee of an Advisory Board member, will be trained regarding changes to the selection process pursuant to this Agreement, including the standardized evaluative factors and their application. Advisory Board members, and those reasonably likely to sit on an Advisory Board as the designee of an Advisory Board member, shall also be instructed on how they should consider and compare multiple candidates, rather than focusing solely on one individual, if there are multiple candidates for a vacancy.

i. This training may consist of the provision of written guidelines for the use of the factors and the comparison of the candidates, and oral briefings concerning this same material.

ii. This training shall be conducted before the Advisory Board first uses the standardized evaluative factors to make recommendations and selections.

iii. Each new Advisory Board member and each of those reasonably likely to sit on an Advisory Board as the designee of an Advisory Board member shall be trained prior to taking part in an Advisory Board meeting. Once an Advisory Board member or a person

reasonably likely to sit on an Advisory Board as a designee is trained, that individual does not need to go through training again unless there are relevant and material changes to the use of the standardized evaluative factors and the comparison of the candidates.

b. Special Agents in Charge (“SAICs”) and Division Chiefs, however titled, shall also be trained regarding those portions of the new MPP selection process in which they are to be directly involved. This will include providing SAICs and Division Chiefs with training on the need to use the new standardized evaluative factors and the use of those factors in making recommendations as part of the MPP process. After the initial publication and informational period concerning the new selection process, those obtaining the position of SAIC or Division Chief will receive and be required to review these same training materials.

7. *Compliance Review and Assurance*

a. The Secret Service’s Executive Chief of the Office of Human Resources (or equivalent position, however subsequently titled) (hereinafter referred to as “EC HUM”), or designee, shall attend all Advisory Board meetings where selection decisions are discussed and/or made, in order to provide assistance to the other Advisory Board members with the new selection procedures and application of their requirements.

b. The Secret Service’s EC HUM, or designee, shall be responsible for ensuring that the Advisory Board members engage in discussions to consider multiple candidates for each vacancy (unless multiple candidates did not bid on

the vacancy), during the course of Advisory Board proceedings. At the conclusion of Advisory Board proceedings when selections are finalized, the EC HUM, or designee, shall certify that such discussions and consideration occurred for each such vacancy for which a selection was finalized.

c. The Secret Service's EC HUM, or designee, shall be responsible for determining if a factor has been utilized other than those adopted by the Secret Service from the outside expert's recommendation, and the EC HUM, or designee, shall keep a record of the number of times any such factor is utilized. If such a factor is utilized in connection with more than ten (10) selections within a selection year for promotion or reassignment, the EC HUM, or designee, shall be responsible for alerting counsel for the Secret Service of this fact so that the provisions of this Agreement set forth in Section IV.B.3.d., above, may be implemented.

d. The Secret Service will conduct annual audits of the required MPP selection documentation as set forth in Sections IV.B.7.d.i. and IV.B.7.d.ii., below. The purpose of these audits is to ensure that the standardized evaluative factors are being used, that multiple candidates are being discussed and considered for each vacancy where multiple candidates exist, that organizational factors are applied in the manner prescribed by this Agreement, that the recommendation/selection decisions are being properly documented, and that the documentation is being maintained in accordance with policy and the provisions of this Agreement.

i. The audits shall be conducted by the Secret Service's Office of Equity, Diversity, and Inclusion Programs or its successor.

ii. The audits shall be conducted for four (4) years from the Effective Date of this Agreement, with the first audit to take place in 2019, which audit shall consist of a review of the selection documentation from 2018, and the final audit occurring in 2022, which audit shall consist of a review of the selection documentation from 2021. The audits shall randomly examine ten percent (10%) of the selection documentation.

C. *Consideration of MPP Scores*

Beginning with the 2017/2018 MPP cycle, the Secret Service's Advisory Board will not consider MPP scores that are not different from each other in a statistically significant manner as a basis for differentiating between candidates with such scores. Nothing in this Agreement limits the ability and discretion of the Secret Service to determine what methodology will be utilized to ensure that scores that are not different from each other in a statistically significant manner are not used to distinguish between candidates with such scores in selection. Methodologies that the Secret Service may implement include, but are not limited to, modifying the scoring process such that final MPP scores that are not different from each other in a statistically significant manner will be identified as the same score, or instructing the Advisory Board that MPP scores that are not different from each other in a statistically significant manner cannot be used as a basis for differentiating between candidates with such scores. The Secret Service will notify Class Counsel of the manner in which it has implemented this requirement.

D. *Statistical Testing and Reporting*

1. The Secret Service shall retain an outside expert, chosen solely by the Secret Service, in accordance with standard federal government procurement procedures and appropriations laws, and subject to the availability of funds and to the restrictions of the Anti-Deficiency Act, including the prohibition codified at 31 U.S.C. § 1341, to analyze data from specified stages of the MPP to determine whether that stage has an adverse impact on African-American Special Agent candidates.

a. The outside expert will perform the following statistical testing on these identified stages of the MPP:

i. At the First Level Evaluation (FLE) score, the cut-off score pass rate;

ii. At the final MPP score, a t-test of the total final scores of all eligible scores;

iii. On the finalized Promotion Register at the start of a selection cycle, a Mann-Whitney Rank Sum Test; and

iv. At the selection phase, a BQL-to-Selected Pools Analysis.

b. Adverse impact testing will be performed for African-American Special Agent candidates as compared to white Special Agent candidates.

c. Adverse impact testing will be conducted separately for those Special Agents competing for promotion to the GS-14 level and those competing for promotion to the GS-15 level.

2. In testing for adverse impact, the four-fifths or 80% rule will be used for the FLE cut-off score pass rate and BQL-to-Selected Pools analyses; a standardized

mean difference of 0.50 will be utilized for the t-tests of the total final MPP scores and the Mann-Whitney Rank Sum Tests of the Promotion Register.

3. Should the results of the statistical testing indicate adverse impact under the standard in Section IV.D.2., above, for African-American Special Agent candidates versus white Special Agent candidates, an outside expert, chosen solely by the Secret Service, in accordance with standard federal government procurement procedures and appropriations laws, and subject to the availability of funds and to the restrictions of the Anti-Deficiency Act, including the prohibition codified at 31 U.S.C. § 1341, will assist the Secret Service in trying to ascertain the cause of the impact and will also assist the Secret Service in considering and testing alternatives to address the adverse impact. Nothing in this Agreement requires any specific change to be made to the MPP if adverse impact is identified. The final report of the outside expert will be provided to Plaintiffs subject to Section IV.E., below. This final report shall be used only in assessing compliance with this Agreement and shall create no independent cause of action unrelated to the enforcement of this Agreement.

4. Nothing in this Agreement will prevent or constrain the Secret Service from making modifications to the MPP should adverse impact be identified with respect to minority groups other than African-American Special Agents.

5. The analyses of the FLE cut-off score pass rate and the t-test of the total final MPP scores will be undertaken no later than sixty (60) calendar days after MPP scores have been finalized. The finalization process includes the completion of the Secret Service's grievance procedure.

6. The Mann-Whitney Rank Sum test of the Promotion Register will be performed sixty (60) calendar days after the finalization of the first Promotion Register of a selection cycle.

7. The BQL-to-Selected Pools Analysis will be undertaken no later than sixty (60) calendar days after the close of a selection cycle. A selection cycle is considered closed when the last selection for all vacancies announced in a calendar year is made.

8. All statistical testing and analyses will be conducted utilizing data obtained during the individual year and aggregated data dating back to the first analyses of the new 2017 scoring process and new selection procedures conducted under this Agreement, as outlined in Section IV.D.9., below.

9. The analyses of the FLE cut-off score pass rate and the total final MPP scores will be conducted beginning with the MPP scores obtained for the 2017/2018 promotion cycle and continuing through and including the MPP scores obtained for the 2020/2021 promotion cycle. The analyses of the Promotion Register and BQL-to-Selected Pools will be conducted beginning with selections made utilizing the new selection procedures outlined in Section IV.B. For the purposes of this Agreement, that is expected to occur during the latter part of 2017, and will, as a result, encompass partial selection data from the 2016/2017 promotion cycle. These analyses will continue through and include the selections made as part of the 2020/2021 promotion cycle, concluding with 2021 selections being statistically analyzed in 2022. This timeline presumes the new selection procedures will be implemented by mid-2017. The Advisory Board currently meets on a quarterly cycle. Should implementation of the new selection procedures be delayed beyond the third quarterly Advisory Board cycle of 2017, then

testing will be extended for an additional Advisory Board cycle for each Advisory Board cycle implementation is delayed.

10. All final reports of the statistical analysis required by this Section IV.D. will be provided to Plaintiffs subject to Section IV.E., below.

E. *Final Reports of Outside Expert(s) Provided to Plaintiffs*

The Secret Service shall provide Plaintiffs with a copy of all final reports provided to the Secret Service by the outside expert(s) described in the non-monetary relief provisions of Sections IV.A. through IV.D., above. The Secret Service shall be deemed to have provided any such final report to Plaintiffs by the Secret Service delivering a copy of such report to Class Counsel within thirty (30) calendar days of receipt of that final report by the Secret Service from the outside expert(s). These reports shall be used only in assessing compliance with this Agreement and shall create no independent cause of action unrelated to the enforcement of this Agreement. Plaintiffs, their counsel, and any experts or others who they may consult shall maintain the confidentiality of any information contained in these reports that may be marked by the Secret Service as Law Enforcement Sensitive, as well as any information that may be contained in these reports that constitutes Personally Identifiable Information (“PII”), which generally references information that can be used on its own or with other information to identify, contact, or locate an individual, or to identify an individual in context.

F. *Commitment to Equal Employment Opportunity and Diversity*

1. *Consideration of Equal Employment Opportunity Record in Selection Decisions*

Through this Agreement, the Secret Service agrees and commits that if the Equal Employment Opportunity (“EEO”) Director is aware of information, beyond an official finding of discrimination or retaliation, about a promotion/reassignment candidate that

may raise a concern, that information shall be shared with the Advisory Board. Such information includes, but is not limited to, objective evidence of inappropriate activity by an individual that is raised through the EEO Hotline or in an EEO Complaint, even if such activity does not rise to the level of actionable discrimination or if an investigation is ongoing; multiple complaints against a particular candidate for promotion that the Office of Equity, Diversity, and Inclusion Programs concludes are potentially indicative of poor management rather than discrimination; or multiple complaints about harassment that is not sexual and/or does not rise to the level of creating a hostile work environment. The determination of the amount and type of information that may raise a concern such that it should be shared with the Advisory Board is solely in the discretion of the EEO Director.

2. *MPP Advisory Board Briefing Regarding Equal Employment Opportunity and Diversity Awareness*

The Secret Service agrees and commits that, during the duration of this Agreement, it will provide a briefing to the Advisory Board on equal employment opportunity and diversity issues, including but not limited to unconscious bias and stereotyping. This briefing will be given to the Advisory Board once a year. The Secret Service will provide Plaintiffs with a copy of written briefing materials, if any, thirty (30) calendar days prior to the first briefing being given. This briefing shall be used only in assessing compliance with this Agreement and shall create no independent cause of action unrelated to the enforcement of this Agreement.

3. *Equal Employment Opportunity Information*

- a. In addition to the Advisory Board training referenced in Section IV.F.2., above, the Secret Service will by no later than calendar year 2018

incorporate training on unconscious bias into its diversity training given to all Special Agents.

b. Starting on the Effective Date of this Agreement and continuing for a period of three (3) years, the Secret Service shall document the Responsible Management Officials (RMOs) named in complaints filed by African-American Special Agents alleging race discrimination so that the Secret Service may evaluate whether any cognizable patterns exist.

c. Within sixty (60) calendar days of the Effective Date of this Agreement, the Secret Service shall create and publish to all Secret Service employees a policy to provide for the use of the existing Prevention of Harassment Hotline to be used as a mechanism for reporting incidents of misconduct and discrimination, including relating to race. Calls to the Hotline reporting incidents of discrimination against African-American Special Agents on the basis of race will be tracked by RMOs to determine if a cognizable pattern exists. The Secret Service will, through counsel, provide a copy of the newly created policy concerning the use of the Hotline to Plaintiffs' Counsel. This policy may be used only in assessing compliance with this Agreement and shall create no independent cause of action unrelated to the enforcement of this Agreement.

4. Since the Class Period, the Secret Service independently implemented a specific discipline policy for those engaged in biased conduct or who fail to report biased conduct. The Secret Service agrees to maintain and publish a specific

discipline policy for those engaged in biased conduct or who fail to report biased conduct.

G. *Second Look Process*

1. The Secret Service agrees and commits that, once the selection process standardized evaluative factors have been created and adopted, the Secret Service shall give the following Class Representatives and Class Members a Second Look:

a. Such individuals who have not been promoted to the GS level to which they were seeking promotion during the Class Period, who are participating in the MPP scoring process for the 2016/2017 promotion cycle, and who receive a final score; and

b. Such individuals promoted to the GS-14 level after a longer period than the average non-African American Special Agent as determined by the Secret Service for the Class Periods, who are participating in the MPP scoring process of 2016/2017, and who receive a final score.

2. The Second Look Process shall consist of the following:

a. A review group will be established composed of an EEO representative, the Assistant Director of the Office of Investigations, and an Assistant Director who is a Class Member. If there are no Class Members who are Assistant Directors, then a Class Member at the SES level will serve on the review group. A member of the Office of Chief Counsel will serve as an advisor to the review group.

b. The review group will be provided with the following information for the applicable Settlement Class Members:

- i. MPP score for the years since the Class Period;
- ii. Bids for promotion since the Class Period, and, if the individual made the BQL, the BQL and Reassignment Certificate for the position;
- iii. Job history including entered-on-duty date, date of last promotion, positions held with the Secret Service, and length of time within each such position; and
- iv. The information that would be provided through the vetting process (as described in the MPP) for the Settlement Class Member under consideration.

c. The above-listed information along with the newly created and adopted selection process standardized evaluative factors will then be considered by the review group in order to make a determination for each of the Settlement Class Members meeting the criteria stated as to whether that individual was mistakenly overlooked in the promotion process and should be referred to the Advisory Board for further consideration for promotion.

d. If any Settlement Class Member is so referred pursuant to Section IV.G.2.c., for a period of one (1) year following that referral, the Advisory Board will give additional consideration to those individual(s) with regard to any position on which the individual bids and makes the BQL.

e. Once the Second Look process has been completed, Defendant will, through counsel, advise Class Counsel in writing that that process has been completed.

f. No right of action shall accrue for any individual who is or is not the subject of the above-described Second Look Process with respect to any of the actions or decisions of the Secret Service as part of this Second Look Process, including, but not limited to, being identified as someone who is or is not subject to a Second Look, the review conducted and determination made by the review group, whether or not an individual is referred to the Advisory Board, and whether or not an individual is selected for promotion by the Advisory Board.

V. NOTICE OF SETTLEMENT AGREEMENT AND FAIRNESS HEARING

A. Within two (2) days of execution of this Agreement, the Parties shall request from the Court an expeditious preliminary fairness hearing, and within ten (10) calendar days, the Parties shall file a joint motion with the Court for preliminary approval of this Agreement. In the Joint Motion for Preliminary Approval, the Parties will ask the Court

1. to set dates for individuals to opt out of this Agreement or to submit objections to this Agreement, which dates both will be thirty-six (36) calendar days from the date the Notice of Settlement and Fairness Hearing is transmitted to the Class Members, and

2. for a Final Fairness Hearing for Final Approval of the Settlement before the Court at the earliest practicable date following the sixtieth (60th) day after the Preliminary Approval Hearing.

B. No later than fifty-one (51) calendar days prior to the Final Fairness Hearing, the Class Administrator shall mail a Notice of Settlement and Fairness Hearing (which will include notice of the proposed award of attorney's fees and costs), Instructions for Filing an Objection Prior to the Fairness Hearing, and an Objection to the Approval and Entry of the Settlement

Agreement form, in a form substantially similar to that provided to the Court as an Appendix to Plaintiffs' Motion for Preliminary Approval of Distribution of Settlement Proceeds, via certified U.S. mail to the last known address of each and every Plaintiff, which includes the Named Plaintiffs and Class Members. The Secret Service will provide Class Counsel a list, which will include for each Class Member who is currently employed by the Secret Service, his or her full name, self-reported email address, last known street address, and last-known phone numbers.

C. If the Court denies the Preliminary Approval Motion, the Parties will work together in good faith to address the Court's concerns and consider options for continuing to pursue a mutually agreed resolution to this Litigation. If these efforts are ultimately unsuccessful, this Litigation will resume as if no settlement had been attempted, and this Agreement will be null and void, with no force or effect.

D. Class Member Opt Outs.

1. Any Class Member who chooses to opt out of the monetary relief provided through this Agreement must mail via First Class U.S. Mail, postage prepaid, a written, signed statement to the Class Administrator that states he or she is opting out of the Agreement, and include his or her name, address, e-mail address(es), and telephone number(s) and state, "I opt out of the *Moore v. Johnson* Settlement" ("Opt Out Statement").

2. The end of the time period to opt out of this Agreement ("Opt Out Period") shall be thirty-six (36) calendar days after the day on which the Class Administrator transmits a Notice to a Class Member.

3. Any Class Member who does not properly submit an Opt Out Statement pursuant to this Agreement will be deemed to have accepted this Agreement and its terms, and will be eligible to participate as a Class Member by filing a Claim Form.

4. The Class Administrator will stamp the postmarked date on the original of each Opt Out Statement that it receives and shall send copies of each Opt Out Statement to Class Counsel and Defendant's Counsel not later than three (3) calendar days after receipt thereof. The Class Administrator will also, within five (5) calendar days of the end of the Opt Out Period, file with the Clerk of Court stamped copies of any Opt Out Statements. The Class Administrator will retain the stamped originals of all Opt Out Statements and originals of all envelopes accompanying Opt Out Statements in its files until such time as the Class Administrator is relieved of its duties and responsibilities under this Consent Decree.

5. If, after the final date on which requests to opt out of the Settlement must be received, fifteen (15) or more individuals who would otherwise be Class Members pursuant to this Agreement opt out of the proposed Settlement as specified in the procedure in the Notice, then the Settlement Proceeds to be paid by Defendant shall be reduced by two million and No/100 dollars (\$2,000,000.00), except that if, after the final date on which requests to opt out of the Settlement must be received, thirty (30) or more individuals who would otherwise be Class Members pursuant to this Agreement opt out of the proposed Settlement as specified in the procedure in the Notice, then Defendant has the sole discretion to choose whether the Settlement Proceeds to be paid by Defendant shall be reduced by three million and No/100 dollars (\$3,000,000.00) or whether this Agreement shall be cancelled and null and void in its entirety.

E. **Objections.** Persons who wish to object to the terms of this Agreement may submit objections, in accordance with the requirements and format described in the Appendix to the Joint Motion for Preliminary Approval, as follows:

1. Objections shall state the objector's name, address, and telephone number; set forth a description of the objector's basis for objecting; include copies of any documentation supporting the objections; state the name and address of the objector's counsel, if any; and state whether the objector wishes the opportunity to be heard in Court at the Final Fairness Hearing on this Agreement.

2. Objectors shall file their objections on the docket with the Court, with service on Class Counsel and Counsel for Defendant.

3. Objections must be filed with the Court and served on Class Counsel and Counsel for Defendant no later than thirty-six (36) calendar days after the day on which the Class Administrator transmits the Notice of Settlement and Fairness Hearing to the Class Members.

4. A Class Member who has submitted an Opt Out Statement may not submit objections to this Agreement.

5. No later than five (5) calendar days prior to the Final Fairness Hearing on this Agreement, the Parties shall file their responses, if any, to all objections timely received by the Court in accordance with the deadlines set forth in this Section V.E.

VI. APPROVAL AND ENTRY OF THIS AGREEMENT

A. If the Court determines that the terms of this Agreement are fair, reasonable, equitable, and otherwise consistent with federal law, the Court may approve and enter this Agreement at or following the Final Fairness Hearing on this Agreement.

B. As a part of the opt out and objection process, Class Counsel will inform each and every Plaintiff of his or her potential right under the Older Workers' Benefit Protection Act, 29 U.S.C. § 626(f)(1)(A), and will provide each Plaintiff subject to the Act the statutorily required time to consider this Agreement and to opt out of its provisions if so desired. Any such revocation must be made in writing and delivered to Class Counsel and counsel for Defendant on or before the seventh (7th) calendar day after each Plaintiff receives notice of these rights. Class counsel will ensure that each Plaintiff represents that he or she is represented by counsel in this action; that he or she has conferred with his or her attorney after receiving notice of this Agreement; that he or she has examined and understands the provisions of 29 U.S.C. § 626(f)(1)(A) through (E); and that the requirements of those provisions are fully met and satisfied in connection with this Agreement.

VII. NO ADMISSION OF LIABILITY

This Agreement does not constitute and shall not be deemed to be a finding, determination, or adjudication by the Court, nor an admission by any Party, regarding the merits, validity, or accuracy of any of the allegations, claims, or defenses. This Agreement represents the compromise of disputed claims that the Parties recognize would require contested, protracted, costly, and burdensome litigation to otherwise resolve. Defendant denies that it or the Secret Service has any policy or engaged in any pattern or practice of unlawful discrimination, or that it has violated any applicable law, statute, regulation, or policy, including, but not limited to, Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and the Civil Rights Act of 1991, as amended, 42 U.S.C. § 1981(a).

VIII. COLLATERAL USE OF THIS AGREEMENT PROHIBITED

Defendant's entry into this Agreement, its provisions, the negotiations leading up to this Agreement, and/or the data, documents, and information exchanged between the Parties in the course of those negotiations, may not be offered, taken, construed, introduced, or admitted as evidence of liability or as an admission or statement of wrongdoing by Defendant and its officials, agents, managers, and employees, either in this Litigation or in any pending or subsequent proceeding of any nature. Defendant has voluntarily entered into this Agreement because it believes that the actions it has agreed to undertake herein demonstrate Defendant's continued and strong commitment to equal employment opportunity and that resolution of this matter without further contested, protracted, costly, and burdensome litigation is in the best interest of the Parties and the public.

IX. RIGHTS TO ENFORCE THIS AGREEMENT

Only Class Counsel who execute this Agreement may seek to enforce applicable provisions of this Agreement through the applicable dispute resolution process provided for herein. To the extent that individual Class Members and Settlement Class Members have complaints regarding Defendant's implementation of the provisions of this Agreement, those individuals may bring those complaints to the attention of Class Counsel who, as appropriate, will decide whether to pursue such complaints through the applicable dispute resolution process provided for herein.

X. COMPUTATION OF TIME AND DEADLINES

A. In computing any period of time prescribed or allowed by this Agreement, unless otherwise stated, "days" refers to business days. If any deadline referenced in this Agreement falls on a weekend or a federal holiday, the deadline will be moved to the next business day.

B. The Parties recognize that, from time to time, unforeseen events, such as exigent business circumstances, personnel issues, and contract negotiations with third parties, cause delays in the accomplishment of objectives, no matter how well intentioned and diligent the Parties may be. Accordingly, with regard to provisions of this Agreement that require that certain acts be taken within specified periods, except as otherwise provided, the Parties understand and agree that Court approval will not be required for reasonable extensions of deadlines. In the event that any Party determines that an action required by this Agreement cannot be taken within the specified time period, that Party will promptly notify the other Party/Parties that it anticipates a delay, the reason for the delay, and a reasonable proposed alternative deadline. The Parties will endeavor to cooperate in reasonably adjusting such deadlines.

XI. DISPUTE RESOLUTION AND DEFENSE OF THIS AGREEMENT

A. The Parties shall attempt to resolve informally any dispute(s) that may arise under this Agreement. If the Parties are unable to reach a resolution after reasonably seeking to resolve a dispute that arises under this Agreement, then either Party may move the Court for resolution, but only after:

1. Providing written notice to the other Party(ies) of the dispute at least thirty (30) calendar days prior to filing such a motion; and
2. Submitting with its motion a written certification that it has conferred with counsel for the other Party(ies) and unsuccessfully attempted to resolve the issue through reasonable negotiation.

B. The thirty (30) calendar day period of written notice and attempted resolution may be waived by the Court if the matter, in the Court's judgment, requires a more immediate resolution.

C. In the event this Agreement or its implementation is challenged by the filing of an action, including a claim for entitlement to damages arising out of the implementation of this Agreement, the Parties shall fully defend the lawfulness of this Agreement. If such collateral challenge arises in state court, the Parties shall promptly seek to remove such action to federal court.

XII. COMMUNICATIONS WITH AND AMONG THE PARTIES

A. Except as otherwise provided in this Agreement, all notifications, reports, documents, or materials required to be delivered under this Agreement will be sent to the following representatives at the following addresses:

1. For Plaintiffs:

Jennifer I. Klar and Megan Cacace
Relman, Dane & Colfax PLLC
1225 19th Street NW
Suite 600
Washington, DC 20026
(202) 728-1888

2. For Defendant:

Marina Braswell, Benton Peterson, and Peter Pfaffenroth, Civil Division
United States Attorney's Office
555 Fourth Street NW
Washington, DC 20530
(202) 252-7566.

B. Any Party may change such representative and/or address by written notice to the other Party(ies) setting forth the new representative and/or address for this purpose.

XIII. ENTIRE AGREEMENT

This Agreement, including all materials attached hereto, constitutes the entire agreement between and among the Parties with respect to this Litigation and it supersedes all prior negotiations, representations, comments, contracts, writings, and agreements, written or oral, with respect thereto prior to the date of this Agreement.

XIV. MODIFICATION

No waiver, modification, or amendment of any term of this Agreement will be effective unless made in writing, approved by Counsel for the Parties, and approved and entered by the Court.

XV. SEVERABILITY AND CONSTRUCTION

A. Whenever possible, each term of this Agreement will be interpreted in such a manner as to be valid and enforceable, provided, however, that in the event any term of this Agreement should be determined to be or rendered invalid or unenforceable, all other terms of this Agreement will remain in force. If application of any term of this Agreement to any person or circumstance should be determined to be invalid or unenforceable, the application of such term to other persons and circumstances will remain in force and unaffected to the extent permitted by law.

B. The terms of this Agreement are the product of joint negotiation and will not be construed as having been authored by one party rather than another.

C. The captions or headings in this Agreement have been inserted for convenience of reference only and shall have no effect upon the construction or interpretation of any part of this Agreement.

XVI. NON-RETALIATION

Retaliation is prohibited by federal law, regulation, and agency policy. Defendant agrees that it will not retaliate—as prohibited by Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-3(a), and the relevant decisions addressing retaliation from the Supreme Court of the United States and the U.S. Court of Appeals for the D.C. Circuit—against any Plaintiff, which includes the Named Plaintiffs and Class Members for commencing or pursuing the above-referenced case or any claims under this Agreement. Complaints of retaliation are processed through the procedures set out at 29 C.F.R § 1614.105, *et seq.*

XVII. RELEASE

A. Upon the Effective Date of this Agreement, this Litigation will be dismissed with prejudice in its entirety and all claims and matters raised therein fully resolved, to include any and all claims of each and every Plaintiff, which includes the Named Plaintiffs and Class Members, except that the Court will retain jurisdiction over this matter and the Parties during the duration of this Agreement only for the purpose of enforcing this Agreement and issuing any orders necessary to implement this Agreement and the relief provided herein.

B. Upon the Effective Date of this Agreement, Defendant and all of its current, former, and future directors, officers, officials, managers, agents, employees, and designees, predecessors, and successors in interest, will be fully released and forever discharged from any and all past, present, and future individual and/or class-wide claims, liabilities, obligations, demands, charges, complaints, rights and causes of action of any kind, known or unknown, by each and every Plaintiff, which includes the Named Plaintiffs and Class Members including their heirs, assigns, and estates, whether seeking monetary and/or equitable relief of any sort which arise out of or are related to any and all issues that were or could have been raised in this action,

and that accrued prior to or during the Class Period, including any future effects of the acts, practices, or omissions alleged in this action or which could have been therein alleged, pertaining to violations of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, *et seq.*, the Civil Rights Act of 1991, 42 U.S.C. § 1981(a), or any other federal, state, or local law or order, whether statutory, regulatory, or policy.

Notwithstanding any limitations in the prior sentence, this release also applies to claims brought by any Plaintiff who initiated formal equal employment opportunity administrative complaints for non-promotion after the Class Period, who agreed to stay, toll, or hold their complaints in abeyance pending resolution of this Litigation. This release is final and will survive the expiration of this Agreement.

C. This Agreement bars any claims and future claims, in law or equity, of each and every Plaintiff, which includes the Named Plaintiffs and Class Members, which any of them may have, may have had, or in the future may have against Defendant and all of its current, former, and future directors, officers, officials, managers, agents, employees, and designees, predecessors, and successors in interest, arising prior to or during the Class Period regarding race discrimination in promotions and the building blocks of promotion, and any and all claims brought or which could have been brought in connection with this action or any administrative or judicial action.

D. Res judicata will apply to each and every Plaintiff, which includes the Named Plaintiffs and Class Members with respect to all issues of law and fact and matters of relief within the scope of this action, including, without limitation, discrimination, retaliation, or hostile work environment against African-Americans and any alleged continuing violation(s) for the Class Period.

E. Any Plaintiff, which includes the Named Plaintiffs and Class Members, so desiring may opt out of the Settlement Class with respect to the monetary relief provided in this Agreement, by following the procedures set forth in Section V.D., above. Any Plaintiff opting out will not be bound by this Agreement with respect to monetary damages claims, but will be bound by this Agreement with respect to all other claims covered by the Agreement, including, but not limited to, all claims for injunctive relief, discriminatory denial of employment opportunities, and all claims for punitive damages.

XVIII. DURATION AND EFFECTIVENESS OF THIS AGREEMENT

A. This Agreement and its terms shall become effective upon accrual of the Effective Date as defined in Section II.K., above.

B. Unless otherwise specifically provided for herein, this Agreement and its terms shall remain in effect until the date on which the Secret Service delivers to Plaintiffs, by delivering to Class Counsel, the last statistical report required for the BQL-to-Selected Pools Analysis (as described in Section IV.D.). If no adverse impact, as defined by this Agreement, is identified in the last set of data provided, then this Agreement shall expire within five (5) days of the delivery of that data without any further action by the Parties or the Court absent any pending litigation to enforce this Agreement as provided for in Section XI. If adverse impact, as defined by this Agreement, is identified in the last set of data provided under this Agreement, then all provisions of this Agreement shall still expire on that date without further action by the Parties or the Court, except those provisions set forth in Section IV.D.3. and Section IV.E., above, which shall expire when completed without further action by the Parties or the Court. If there remains pending litigation to enforce this Agreement on the date on which the Secret Service delivers to Plaintiffs, by delivering to Class Counsel, the last statistical report for the BQL-to-Selected Pools

Analysis, then all provisions of this Agreement shall still expire on that date without further action by the Parties or the Court, except that only those specific provisions of this Agreement that are relevant and material to that pending litigation will not expire until final resolution of that pending litigation, at which time they also shall expire without further action by the Parties or the Court.

C. In the event that the Effective Date of this Agreement does not accrue because one or more of the actions necessary for such accrual does not occur, nothing herein will be deemed to waive or affect Defendant's objections and defenses to class certification, liability, or monetary, non-monetary, equitable, injunctive, or other relief, or any other issue, and this Agreement shall neither be admissible nor relied upon in any manner before any court, tribunal or other forum regarding any issues, claims, or subjects related to this Litigation.

XIX. COSTS, EXPENSES, AND FEES

Except as set forth in this Agreement in Section III.A., above, each Party shall bear its own costs, expenses, and attorney's fees incurred in connection with this Litigation, including any costs, expenses, and attorney's fees incurred as a result of obligations imposed by this Agreement.

XX. RETENTION OF JURISDICTION AND SIGNATURE

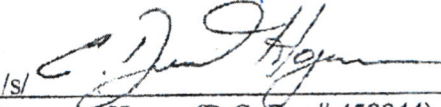
A. As of the Effective Date, the Court shall retain jurisdiction over this matter and the Parties during the duration of this Agreement only for the purpose of enforcing this Agreement and issuing any orders necessary to implement this Agreement and the relief provided herein. This Agreement shall in all respects be interpreted, enforced and governed by and under the laws of the United States and the District of Columbia, and all claims relating in

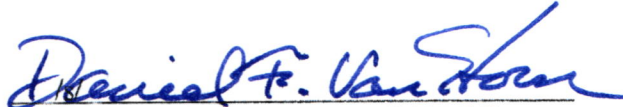
any way to this Agreement shall be brought in the United States District Court for the District of Columbia.

B. Any signature made and transmitted by facsimile or email for the purpose of executing this Agreement shall be deemed an original signature for purposes of this Agreement and shall be binding upon the Party whose counsel transmits the signature page by facsimile or email.

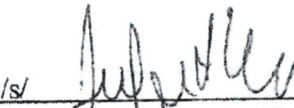
WE AGREE TO THESE TERMS,

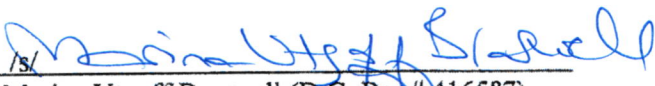
Dated: January 17, 2017

/s/ 
E. Desmond Hogan (D.C. Bar # 458044)
Kathryn Marshall Ali (D.C. Bar #994633)
Hogan Lovells USA
555 Thirteenth Street, N.W.
Washington, D.C. 20004
(202) 637-5600


Channing D. Phillips (D.C. Bar # 415793)
United States Attorney
for the District of Columbia

Daniel F. Van Horn (D.C. Bar # 924092)
Chief, Civil Division

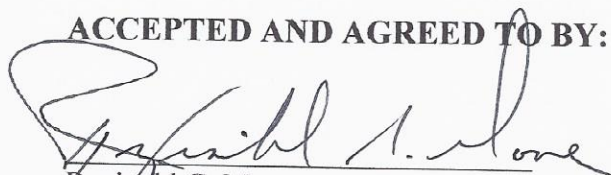
/s/ 
John P. Relman (D.C. Bar # 405500)
Jennifer I. Klar (D.C. Bar # 479629)
Megan Cacace (D.C. Bar # 981553)
Relman, Dane & Colfax PLLC
1225 Nineteenth Street, N.W., Ste 600
Washington, D.C. 20036
(202) 728-1888

/s/ 
Marina Utgoff Braswell (D.C. Bar # 416587)
Benton G. Peterson (WI Bar # 1029849)
Peter C. Pfaffenroth (D.C. Bar # 496637)
Assistant U.S. Attorneys, Civil Division
555 Fourth Street, N.W.
Washington, D.C. 20530
(202) 252-2561

Attorneys for Plaintiffs & the Class

Attorneys for Defendant

ACCEPTED AND AGREED TO BY:


Reginald G. Moore

Andrew E. Harris, Jr.

John E. Turner

Kenneth Rooks

C. Yvette Summerour

Camilla Simms

Leroy Hendrix

Lisa Robertson

Cheryl L. Tyler

Luther K. Ivery

Named Plaintiffs

SO ORDERED, ADJUDGED, AND DECREED, this ____ day of _____, 2017:

U.S. DISTRICT JUDGE

ACCEPTED AND AGREED TO BY:

Reginald G. Moore

Andrew E. Harris, Jr.

John E. Turner

Kenneth Rooks

C. Yvette Summerour

Camilla Simms

Leroy Hendrix

Lisa Robertson

Cheryl L. Tyler

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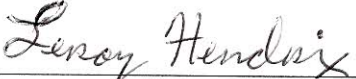
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Luther K. Ivery

Named Plaintiffs

SO ORDERED, ADJUDGED, AND DECREED, this ____ day of _____, 2017:

U.S. DISTRICT JUDGE

ACCEPTED AND AGREED TO BY:

Reginald G. Moore

Andrew E. Harris, Jr.

John E. Turner

Kenneth Rooks

C. Yvette Summerson

Camilla Simms

Leroy Hendrix

Lisa Robertson

Cheryl L. Tyler


Luther K. Perry

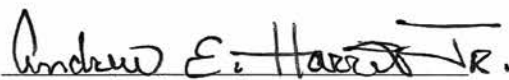
Named Plaintiffs

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U.S. DISTRICT JUDGE

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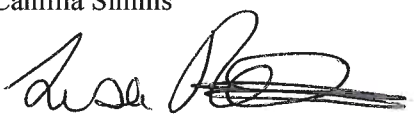
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