UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

UNITED STATES OF AMERICA, Plaintiff, v. **STATE OF RHODE ISLAND,** **RHODE ISLAND DEPARTMENT OF CORRECTIONS,** Defendants.	Civil Action No.: 1:14-cv-78S

MEMORANDUM IN SUPPORT OF THE JOINT MOTION FOR FINAL APPROVAL OF THE SETTLEMENT AGREEMENT AND RESPONSES TO OBJECTIONS

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Plaintiff United States of America ("United States") and Defendants the State of Rhode Island and the Rhode Island Department of Corrections ("RIDOC," and collectively with the State, "Rhode Island") submit this memorandum in support of the Joint Motion for Final Approval of the Settlement Agreement ("Agreement"). The Agreement was provisionally approved by the Court on October 20, 2017, and an initial fairness hearing is set for February 7, 2018. Order Granting Mot. for Provisional Entry, Dkt. 82. The United States and Rhode Island (collectively, the "Parties") have worked diligently to notify applicants and other potentially affected individuals of the terms of the Settlement Agreement. This memorandum details those efforts, the nature of the few objections received, and the Parties' responses. The objections submitted do nothing to affect the conclusion that the terms of the Agreement are fair, reasonable, and adequate.[1] Accordingly, the Court should overrule all objections and finally approve the Agreement as a resolution of all claims asserted by the United States against Rhode Island.

I. INTRODUCTION

The Parties seek final approval of the previously filed Settlement Agreement ("Agreement"), which resolves the United States' allegations that the RIDOC engaged in a pattern or practice of employment discrimination in its selection procedure for the entry-level correctional officer ("CO") position. Specifically, the United States contended that the CO selection process resulted in a disparate impact on African American and Hispanic applicants, was not job-related or consistent with business necessity, and did not otherwise meet the requirements of Section 703(k) of Title VII, 42 U.S.C. § 2000e-2(k) ("Title VII"). The United States does not, however, allege that the State has intentionally discriminated against any person

[1] The Parties have included the objections as Exhibits A-1, A-2, A-3, and A-4 to this filing. The objections are Bates numbered for ease of reference.

or group of persons. Rhode Island denies the challenged employment practices violate Title VII, and does not admit to liability in this case. In the interest of resolving this matter and promoting the purposes of Title VII, the Parties reached a settlement that is now before the Court for approval.

The major components of the settlement include establishment of a new selection procedure for entry-level COs, monetary relief, and priority hiring relief (with retroactive noncompetitive seniority) to qualified African American and Hispanic applicants who were affected by the employment practices that the United States challenged in this case. The Agreement is a product of lengthy negotiations held after substantial litigation, including fact and expert discovery. It is a thoughtful, reasonable compromise between the Parties resolving highly complex legal and factual issues. The Agreement represents a balancing of the goals and interests of the Parties against the costs, uncertainties, and delays inherent in further contested litigation.

The background of this action, including a summary of the allegations in the United States' complaint and the extensive discovery the Parties engaged in before reaching a settlement, is set forth in the Memorandum of Law in Support of Joint Motion to Provisionally Enter the Settlement Agreement ("Initial Mem."), as well as the attached declarations. Dkt. 80-7 at 1-11. This brief does not repeat that material but rather summarizes and responds to the objections received by the Parties. The Court should approve final entry of the Agreement because its terms are lawful, fair, reasonable, adequate, and consistent with the public interest and because, for the reasons discussed below, none of the objections warrants modification or non-approval of the Agreement.

II. NOTICE

Beginning in November 2017, well in advance of the initial fairness hearing scheduled for February 7, 2018, the Parties completed a notice process that meets the requirements of Section 703(n) of Title VII, 42 U.S.C. § 2000e-2(n). In particular, pursuant to Section IV of the Agreement, the Parties, with assistance from the Claims Administrator, sent notice of both the Agreement and the initial fairness hearing, along with instructions for filing objections, to: (1) the applicants identified as preliminarily eligible for relief under Paragraph 19 of the Agreement; (2) each CO currently employed by RIDOC; and (3) the Rhode Island Brotherhood of Correctional Officers ("RIBCO"), the only union or association recognized as being authorized to represent COs at RIDOC. Declaration of Eric Schachter ("Schachter Decl."), Ex. B at ¶¶ 5-7; Declaration of Leann Anderson ("Anderson Decl."), Ex. C at ¶¶ 3, 6-7. Notices were transmitted by the methods set forth in detail in the Agreement at IV.C and IV.D. Ex. B, Schachter Decl. at ¶¶ 5-7 and Ex. C, Anderson Decl. at ¶¶ 6-7.

The Claims Administrator established a toll-free telephone number for interested individuals to call for information about the Agreement and filing an objection. Ex. B, Schachter Decl. at 8. In further compliance with the notice provisions set forth in Paragraph 23 of the Agreement, Rhode Island provided a link on its public websites where the Notice Documents and the Agreement can be accessed. Ex. C, Anderson Decl. at ¶¶ 4-5. Also in fulfillment of Paragraph 23, RIDOC published the information on its Facebook page, and the State published the information via Twitter. Ex. C, Anderson Decl. at ¶ 9. Finally, Rhode Island published notice of the Agreement and of the initial fairness hearing in the *Providence Journal* in a form substantially the same as contained in Appendix A to the Agreement. Ex. C, Anderson Decl. at ¶ 8. Thus, the Parties complied with their obligations under the Agreement by providing notice to third parties. *See Durrett v. Hous. Auth. of the City of Providence*, 896 F.2d 600, 604 (1st Cir.

1990) (approval of a proposed settlement agreement requires, among other factors, reasonable notice to possible objectors and third parties who may be affected by the terms of the agreement).

III. SUMMARY OF OBJECTIONS

Having completed the notice and objection process described above, the Parties are able to report that the five substantive objections received by the Parties fall within just a few categories: (1) all applicants, not just African Americans and Hispanics, should receive relief; (2) the exams were fair in form and therefore did not violate Title VII; (3) the Agreement will result in the hiring of less-qualified COs, or that priority hires will experience harassment; and (4) the relief provided is not adequate to fully compensate the claimants. As the Parties describe more fully below, the relief that the Agreement provides is appropriate in terms of both quantity and scope to resolve the United States' complaint, which alleged a Title VII violation. Importantly, the Agreement does not require the RIDOC to hire any individual who is not currently qualified to be a correctional officer. Rather, all priority hires will need to pass all components of the CO selection process, including any new test developed as a result of this settlement, and successfully complete the CO academy. And the unsupported assertion that the Agreement will result in harassment is no basis to deny relief to those who have been affected by the practices challenged here. In summary, none of these objections provides a basis for disturbing the settlement, and all should be overruled.[2]

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[2] Of the objections received, sixteen objectors request an opportunity to address the Court at the Initial Fairness Hearing. For the Court's convenience, a list of those objectors is attached as Exhibit D. However, the Parties wish to note that most of these objectors appear to actually be interested in relief. Of these sixteen individuals, four indicated that they are represented by counsel.

In fact, the majority of the objections received were not objections at all; rather, thirty-seven of the fifty-four submissions were from individuals who are actually interested in relief and who erroneously submitted objection forms apparently believing it was necessary to preserve their claims for relief.[3] Another twelve individuals provided no clear basis for objection, or explicitly indicated "no objection" on their submissions. The Parties received three untimely objections, one of which was blank, one of which was unclear, and one of which appeared to be by a potential claimant interested in relief. None of these should cause a delay in entering the Agreement. Instead, the fact that over 90% of those who submitted objection forms appear to be interested in receiving relief or did not set forth an actual objection only further supports entering the Agreement as written.

IV. ARGUMENT

As discussed in the Initial Memorandum, the Parties have demonstrated that the Agreement meets the requisite standard for approval, as its terms are lawful, fair, reasonable, adequate, and consistent with the public interest. *See* Initial Mem. at 11-24. The few objections received should be overruled because they either misunderstand the scope of the underlying lawsuit or the nature of the relief provided.

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[3] The Parties received three untimely objections, but two appear to be from possible claimants who are interested in relief and are not challenging the settlement; a third is unclear. *See* Coakley Obj., Bates No. OBJ00046-49, and Maner Obj., Bates No. OBJ000107-109; *see also* Cheaye Obj., Bates No. OBJ00040-42. There were also a few claimants who submitted more than one objection, but for purposes of this brief, these will be referred to as one objection because each individual's objections were either identical to one another, or one version was blank while one was completed.

A. The Protected Groups Alleged to be Affected by the Challenged Selection Devices Are Those Receiving Relief Under the Agreement.

The United States received one objection, from Daniel Desrochers, challenging the Agreement on the basis that it limits relief to only African American and Hispanic candidates and does not extend relief to all other groups. *See* Desrochers Obj., Bates No. OBJ00060.[4] This lawsuit only challenges the impact of RIDOC's hiring practices on African American and Hispanic applicants seeking positions as entry-level COs; as the Initial Memorandum explains, the United States marshaled evidence of adverse impact against only those two applicant groups and not other groups. Initial Mem. at 2-6. Mr. Desrochers's objection must be rejected because providing relief to other groups would exceed the scope of this lawsuit, and individuals in other protected categories have not been alleged to have been harmed by Rhode Island's challenged employment practices. Indeed, two other courts have overruled objections by individuals whose claims were outside the scope of the underlying lawsuit precisely because relief is not appropriate for groups of individuals for whom relief was not sought in the complaint. *See E.E.O.C. v. Astra USA, Inc.*, No. CIV.A. 98-40014-NMG, 1999 WL 342043, at *3 (D. Mass. May 20, 1999) (approving of special master's decision to deny relief, under Title VII consent decree, to would-be claimants whose allegations were not covered by the complaint in the case); *United States v. State of New Jersey*, No. CIV. 87-2331 (HAA), 1995 WL 1943013, at *25-26 (D.N.J. Mar. 14, 1995) (approving relief set forth in consent decree and overruling objections by members of protected categories, where, among other things, individuals in those categories were outside the scope of the complaint).

[4] Notably, Mr. Desrochers did not take the challenged exams during the relevant time period in this lawsuit nor can the Parties envision a scenario where he would take any future test.

B. Whether the Challenged Tests Were Fair in Form is Irrelevant to Whether They are a Proper Basis for Disparate Impact Allegations Under Title VII.

One objector, Tisha Alhassan, asserts that the challenged tests were lawful because all applicants were on a level playing field; Ms. Alhassan argues that "a general education is free in the United States," and that all applicants took the same test, under the same conditions. Alhassan Obj., Bates No. OBJ00011.[5] Inherent in the objection is Ms. Alhassan's view that Rhode Island did not intentionally discriminate, so it cannot be liable for violating Title VII. But in bringing this case, the United States relied exclusively on the disparate impact theory of liability, which is premised on an employer's unintentional violation of Title VII. Title VII, of course, allows for exactly this type of claim. *Griggs v. Duke Power Co.*, 401 U.S. 424, 431 (1971). After all, Title VII proscribes "not only overt discrimination but also practices that are *fair in form*, but discriminatory in operation." *Id.* (emphasis added); *see also* 42 U.S.C. § 2000e-2(k) (codifying the "disparate impact" theory of liability that *Griggs* recognized). The Supreme Court has explicitly recognized written exams as one type of selection procedure subject to challenge by disparate impact theory, and Congress, in codifying disparate impact theory, specifically intended for Title VII to protect minorities against exams that create artificial barriers to job opportunities in state and municipal government. *Griggs*, 401 U.S. at 430; *see also Connecticut v. Teal*, 457 U.S. 440, 448-49 (1982).

Facial neutrality of the challenged practices gives no basis for non-approval or modification of the Agreement. Thus, the fact that a written or video exam may be fair in form, as Ms. Alhassan suggests, is only a starting point to determine whether disparate treatment or

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[5] The anonymous objection discussed *infra* in this brief implies this argument as well. *See* Anonymous Obj., Bates No. OBJ00012-15. In addition, although the Parties received Ms. Alhassan's objection in a timely manner, she did not use the Court-approved objection form, instead sending an e-mail to the Claims Administrator. The United States made attempts to reach Ms. Alhassan to correct this error but she did not respond.

disparate impact analysis is appropriate. Here, the relevant inquiry is whether a facially neutral written or video exam nonetheless prevented African American and Hispanic applicants from enjoying equal employment opportunities at the Rhode Island Department of Corrections. In the disparate impact context, to demonstrate a nexus between an employment test and any resulting disparities in pass rates, a plaintiff need only show that statistical evidence has sufficiently diminished chance as an explanation for the difference in pass rates between different groups. *Fudge v. City of Providence Fire Dep't*, 766 F.2d 650, 658 (1st Cir. 1985). Courts typically accept, as sufficient to establish the first prong of a disparate impact case, disparities that are statistically significant at the level of two to three units of standard deviation. *See Hazelwood Sch. Dist. v. United States*, 433 U.S. 299, 308 n.14 (1977); *Cotter v. City of Boston*, 193 F. Supp. 2d 323, 349 n.12 (D. Mass. 2002), *aff'd in part and rev'd on unrelated grounds by Cotter v. City of Boston*, 323 F.3d 160 (1st Cir. 2003). Dr. Bernard R. Siskin, the United States' statistical expert, found in this case that the disparities caused by the challenged employment practices far exceed this standard. Initial Mem. at 3-6; Dkt. 80, Ex. B, Siskin Decl. at ¶¶ 3-6. These disparities, in conjunction with either successfully challenging Rhode Island's validity evidence or establishing alternative selection devices with less disparate impact, would establish a Title VII violation. *Ricci v. DeStefano*, 557 U.S. 557, 578 (2009). Accordingly, the Court should overrule this objection.

C. Only Qualified Candidates Will Receive Priority Hire Awards and Safety Concerns for Priority Hires are Unfounded.

One anonymous objector claims that the Agreement will result in Rhode Island appointing less qualified candidates to be entry-level COs.[6] *See* Anonymous Obj., Bates No.

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[6] This objector did not identify himself or herself, and the Court should disregard the objection for that reason; further, the objection is a conclusory assertion and the objector offers no specific

OBJ00012-15. Another objector, Daniel Hall, raises the concern that those who passed (presumably) earlier exams will subject priority hires to harassment. *See* Hall Obj., Bates No. OBJ00081-83.

The anonymously submitted objection regarding the qualification of priority hires demonstrates a misunderstanding of Title VII disparate impact liability and the relief provided by the Settlement Agreement. To be clear, the Parties share the same goals of hiring qualified COs using a nondiscriminatory selection procedure and believe this Settlement Agreement furthers these objectives. To show likelihood of success on the merits, the United States has put forth evidence that the challenged practices could not distinguish meaningfully between qualified and unqualified candidates. Dkt. 80-9, Declaration of Dr. David P. Jones at ¶¶ 22-30. As previously discussed, the Parties disagree as to whether this evidence is sufficient to establish liability under Title VII; however they agree the United States' evidence is sufficient to satisfy the "strong basis in evidence" standard. *See* Initial Mem. at n.5. Regardless, Rhode Island will adopt a new selection procedure for entry-level COs that will be rigorously examined to ensure that it selects qualified candidates for these important public safety positions in accordance with Title VII. Agreement at ¶ V.D. A Claimant will not be hired pursuant to the Agreement unless, like everyone else, the Claimant passes the newly adopted selection procedure and successfully completes all lawful steps in the hiring process that are in effect at the time, including the training academy. Initial Mem. at 8; Agreement at ¶ 97. There simply is no support for the idea that the Agreement will cause Rhode Island to hire unqualified COs. Instead, the Settlement Agreement will help ensure that the most qualified individuals are screened and selected.

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evidence to support his or her claim. However, out of an abundance of caution, the Parties still address the objection here.

With respect to Mr. Hall's objection, there is no basis to believe that the Agreement will cause a hostile work environment for any individual. In any event, that others may wrongfully stigmatize individuals receiving relief is not a legitimate basis for denying final approval. *See Local No. 93, Int'l Assoc. of Firefighters, AFL-CIO C.L.C. v. City of Cleveland*, 478 U.S. 501, 511-12, 529 (1986) (affirming approval of a consent decree over objections that the decree would cause "serious racial polarization"); *see also Franks v. Bowman Transp. Co. Inc.*, 424 U.S. 747, 775 (1976) (concluding that relief cannot be denied "merely because the majority group of employees, who have not suffered discrimination, will be unhappy about it") (citation omitted). For these reasons, these objections related to priority hires also should be overruled.

D. The Relief Provided by the Settlement Agreement is Fair, Reasonable, and Adequate.

One objector, Jayson Badillo, claims that the Parties' agreed-upon relief is not enough to make claimants whole for the harm they suffered. *See* Badillo Obj., Bates No. OBJ00016-30. Because there are no other objections in this vein, the Parties will address each of this objection's subparts in this section.

1. Mr. Badillo's Argument about Inadequate Monetary Relief Mistakenly Conflates a Liability Judgment and a Settlement.

The major issue Mr. Badillo takes with the Agreement is that the monetary relief the Parties agreed upon, after years of litigation, is not make-whole relief in the sense that it does not represent full monetary recovery. Badillo Obj., Bates No. OBJ00019. At the heart of Mr. Badillo's argument is the assumption that Rhode Island has been found liable for a violation of Title VII after a trial on the merits. *See* Badillo Obj., Bates No. OBJ00025, citing *Albemarle Paper Co. v. Moody*, 422 U.S. 405 (1975) (reversing lower court's decision to deny backpay after employer was found liable under Title VII after trial). Like the sole, unsuccessful objector in the *Officers for Justice v. Civil Serv. Comm'n of City & Cty. of San Francisco* case, Mr.

Badillo approaches the Agreement as "if he were appealing from the award of relief after a fully contested trial on the merits instead of from a judgment approving a settlement of the case." *Officers for Justice v. Civil Serv. Comm'n of City & Cty. of San Francisco*, 688 F.2d 615, 628 (9th Cir. 1982) (affirming district court's approval of consent decree over objection to monetary amount).

Here, the monetary relief is the result of a settlement reached after protracted litigation between two government entities involving extensive discovery, and after extended arms-length settlement negotiations in which the plaintiff is a federal agency charged with enforcing civil rights laws. It stands to reason that the monetary amount is the result of a compromise reflecting a thorough assessment, by both parties, of the risks of further litigation, not only through trial, but through any associated appeals. A review of the public record reveals that the Parties propounded multiple sets of interrogatories, document requests, and requests for admissions; took numerous fact and expert depositions; and exchanged several sets of expert reports. Dkt. 80-7 at 19. The Settlement Agreement that has been negotiated between the Parties provides a fair and reasonable settlement fund that takes into account not only relief for persons harmed by the challenged selection process but also the inherent risks of protracted litigation to both sides.

2. An Unlimited Settlement Fund is Neither a Legal nor Practical Requirement for a Settlement Agreement.

Mr. Badillo's next argument proposes that the Court should presume liability here and establish an unlimited settlement amount to compensate claimants. Badillo Obj., Bates No. OBJ00025; *see also Cotton v. Hinton*, 559 F.2d 1326, 1338 (5th Cir. 1977). An unlimited settlement fund, however, is neither required under Title VII nor necessary in order for this Court to determine that the Settlement Agreement is fair, reasonable, and adequate. Moreover, the single case cited by the objector is an outlier: it is the only instance of an unlimited settlement fund known to the Parties, was decided over forty years ago, and is contrary to the weight of federal law and common practice by the Department of Justice in negotiating settlements or consent decrees in disparate impact cases. *See* Badillo Obj., Bates No. OBJ00025 and citations to *Cotton* therein.[7] And, although an unlimited settlement fund is the highest hope of any claimant, it is certainly not determinative of the fairness of a settlement. For that reason, "[i]t is well-settled law that a cash settlement amounting to only a fraction of the potential recovery will not per se render the settlement inadequate or unfair." *Officers for Justice*, 688 F.2d at 628; *see also United States v. State of New Jersey*, No. CIV. 87-2331 (HAA), 1995 WL 1943013, at *13 (D.N.J. Mar. 14, 1995) (reasonableness of the settlement fund in light of the best possible recovery must be weighed against risks and costs of litigation) (internal citation and quotation marks omitted); *E.E.O.C. v. McDonnell Douglas Corp.*, 894 F. Supp. 1329, 1335 (E.D. Mo. 1995) (in assessing settlement's fairness, court does not make a *de novo* evaluation of recovery for each claimant).

3. The Adequacy of a Pattern or Practice Settlement Agreement Factors in All of the Relief Provided to Groups of Individuals, Not the Monetary Relief Provided to One Individual.

This Settlement Agreement represents a compromise of monetary claims that are just one component of the relief sought by the United States. Over the course of lengthy negotiations, both the United States and Rhode Island agreed to terms that would remedy the claims brought by the United States in its complaint. In addition to the establishment of a settlement fund, the

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[7] That said, *Cotton* does speak to the type of speculation that Badillo would ask the Court to engage in here, holding that "[t]he trial court should not make a proponent of a proposed settlement 'justify each term of settlement against a hypothetical or speculative measure of what concessions might have been gained; inherent in compromise is a yielding of absolutes and an abandoning of highest hopes.'" *Cotton v. Hinton*, 559 F.2d 1326, 1330 (5th Cir. 1977) (internal citation and quotation marks omitted) (emphasis added).

Parties have negotiated: (1) priority hiring relief (with pension benefits and non-competitive retroactive seniority) for eligible, qualified candidates who were previously denied hire, and (2) the development of new selection devices to ensure protected classes have equal employment opportunities in the future in accordance with Title VII. The Court must consider all of the relief provided to claimants as a whole, including all terms, when considering whether the Agreement is fair, and, for this reason alone, Mr. Badillo's objection should be overruled. *See Officers for Justice*, 688 F.2d at 628 ("[M]onetary relief is but one form of relief requested . . . [i]t is the complete package taken as a whole, rather than the individual component parts, that must be examined for overall fairness.").

Next, Mr. Badillo argues that the proposed Settlement Agreement is inadequate because the Parties did not seek individualized financial information from him or seek to depose him (*see* Badillo Obj., Bates No. OBJ00023 and OBJ00029). He contends that the monetary relief that the Parties negotiated as a settlement fund does not adequately compensate him for the full value of the losses he incurred as a result of Rhode Island's putative Title VII violation. Simply put, the purpose of a settlement agreement in a disparate impact case like this one is to provide class-wide relief without particularized individual assessments that require the type of extensive discovery Mr. Badillo describes. Disparate impact cases such as this one are pattern or practice lawsuits aimed at dismantling employment processes that discriminate against an entire protected class or classes. *See* 42 U.S.C. § 2000e-6(a). Akin to class action lawsuits, the focus in a case of this type is to provide a remedy to the class as a whole and not to specific individuals, as would be appropriate in a single-plaintiff case. *See, e.g.*, *Franks v. Bowman Transp. Co. Inc.*, 424 U.S. 747, 763 (1976) (emphasizing importance of class-based relief and listing possible forms of relief).

The Settlement Agreement incorporates several remedies aimed at addressing Rhode Island's allegedly discriminatory practices, of which monetary relief is just one component. *Id.* In these types of settlements, parties typically look at the base salary for a particular position as well as relevant fringe benefits to calculate monetary damages by class. *See, e.g.*, *E.E.O.C. v. McDonnell Douglas Corp.*, 894 F. Supp. 1329, 1336 (E.D. Mo. 1995) (approving of similar methodology for calculating monetary award); *Pettway v. Am. Cast Iron Pipe Co.*, 494 F.2d 211, 263 (5th Cir. 1974) (after liability finding, calculating backpay based on salaries earned by actual incumbents, and including fringe benefits in calculation). Generally, parties do not calculate or consider the lost pay of every individual potentially harmed by the failure to hire in assessing make whole relief to the class. *United States v. State of New Jersey*, No. CIV. 10-91 KSH MAS, 2012 WL 3265905, at *22 (D.N.J. June 12, 2012), *aff'd sub nom. United States v. New Jersey*, 522 F. App'x 167 (3d Cir. 2013) (overruling similar objections based on adequacy of monetary relief and observing that "[a]lthough the record demonstrates this to be a strong case, that does not guarantee that the United States would have obtained the maximum relief available under Title VII had the case gone to trial."). It would be futile to expend resources and time to establish or counter individual claims of lost pay, especially where, as here, it is impossible to predict how applicants would have fared in other steps of the hiring process that are not challenged in this lawsuit. Instead, the Parties here have attempted to implement a relief process that employs fundamental fairness principles, which require that qualified claimants be adequately compensated for losses without exceeding make-whole relief.

In order to recover full back pay, including benefits, Mr. Badillo would have needed to file a timely EEOC charge within 300 days of use of the challenged selection device, and then bring a Title VII case. 42 U.S.C. § 2000e-5(b) and 42 U.S.C. § 2000e-5(e)(1) (describing an aggrieved person's ability to file a charge to preserve a claim). That window of opportunity has passed. It is not feasible now for the Parties to speculate for claimants, including Mr. Badillo, whether they would have passed all of the other components at the time they applied, and how long they would have worked for Rhode Island had they been employed at that point. Indeed, the Parties' proposed settlement clearly affords a greater opportunity for more potential claimants like Mr. Badillo to obtain relief. *See, e.g.*, *E.E.O.C. v. McDonnell Douglas Corp.*, 894 F. Supp. 1329, 1335 (E.D. Mo. 1995) (observing that objectors whose EEOC charges would no longer be timely would recover as a result of a negotiated settlement, where such objectors might not be able to file timely individual EEOC charges).

Having assessed the costs and benefits of settlement instead of protracted litigation, the Parties chose to resolve the lawsuit voluntarily, without a trial on the merits, in a manner consistent with Title VII's aims. *E.E.O.C. v. Astra USA, Inc.*, 94 F.3d 738, 744 (1st Cir. 1996) (citing *Carson v. Am. Brands, Inc.*, 450 U.S. 79, 88 n.14 (1981) ("In enacting Title VII, Congress expressed a strong preference for encouraging voluntary settlement of employment discrimination claims."). As a result, the monetary relief component of the Agreement is necessarily the product of compromise and does not provide full compensatory damages for each claimant. As the Ninth Circuit aptly put in describing a consent decree approved by the district court: "Undoubtedly, the amount of the individual shares will be less than what some class members feel they deserve but, conversely, more than the defendants feel those individuals are entitled to. This is precisely the stuff from which negotiated settlements are made." *Officers for Justice*, 688 F.2d at 628. For the aforementioned reasons, the Court should overrule Mr. Badillo's objection to the monetary relief agreed upon by the Parties.

E. The Majority of "Objectors" Appear to be Interested in Obtaining Relief, and Not in Upsetting the Settlement.

Most of the objections (thirty-seven of fifty-four) received by the Parties do not appear to be objections at all; rather, the objectors assert that they took the challenged exams and either did not pass or were told they did not pass, or they have not heard whether they passed. *See, e.g.*, Kollie Obj., Bates No. OBJ00090-92; Torres Obj., Bates No. OBJ000154-156; Ugarte Obj., Bates No. OBJ000157-159; Jackley Obj., Bates No. OBJ00087-89; Kuyon Obj., Bates No. OBJ00097-100. Some of these objectors make clear that they would like to be considered for relief. *See, e.g.*, Ugarte Obj., Bates No. OBJ000157-159. Others assert that they believe they were not hired due to their race, national origin, or age, that the test was unfair to them, or that the test was too difficult, though these objectors do not specifically say they are interested in relief. *See, e.g.*, DeJesus Obj., Bates No. OBJ00057-59; Komolafe Obj., Bates No. OBJ00093-96. To the extent these objectors are eligible claimants as defined in the Settlement Agreement, they will receive Interest-in-Relief forms upon final entry of the Agreement, and may submit those forms, at which point the Parties will make relief determinations.[8] Since these objectors did not contest any of the terms of the Agreement, their objections should be overruled.

F. Some Objection Forms Are Blank or Unclear, Preventing the Parties From Responding.

The Parties received twelve objection forms that do not provide any basis for objecting to the Agreement. *See* Davila Obj., Bates No. OBJ00054-56; Goncalves Obj., Bates No. OBJ00072-74; Cheaye Obj., Bates No. OBJ00040-42. These include objection cover sheets that contain only the objector's name and contact information, as well as one that only says

[8] Indeed, when the Department of Justice contacted twelve of these "objectors" to clarify their forms and confirm their contact information, those individuals indicated that they had not meant to object at all, but out of an abundance of caution, the Parties count their forms as objections here.

"Discrimination." *See* Mendez Obj., Bates No. OBJ000120-122. The Parties are unable to comment on these submissions except to state that they do not provide any basis for denying final approval.

V. CONCLUSION

For the foregoing reasons, as well as those stated in the Initial Memorandum, the Court should find that the terms of the Agreement are lawful, fair, reasonable, adequate and consistent with the public interest, and that no objection warrants modification or non-approval of the Agreement. Accordingly, the Court should overrule all objections and finally approve the Agreement as a resolution of all claims in this case.

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