

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

PLAINTIFF,

THE VULCAN SOCIETY INC., for itself and
on behalf of its members, JAMEL
NICHOLSON, and RUSEBELL WILSON,
individually and on behalf of a subclass of
all other victims similarly situated seeking
classwide injunctive relief;

ROGER GREGG, MARCUS HAYWOOD, and
KEVIN WALKER, individually and on behalf
of a subclass of all other non-hire victims
similarly situated; and

CANDIDO NUÑEZ and KEVIN SIMPKINS,
individually and on behalf of a subclass of
all other delayed-hire victims similarly
situated,

PLAINTIFFS-INTERVENORS

V.

CITY OF NEW YORK, ET AL.,

DEFENDANTS.

CIV. ACTION No. 07-cv-2067 (NGG)(RLM)

**JOINT MOTION FOR FINAL ENTRY OF AMENDED MONETARY RELIEF
CONSENT DECREE**

Plaintiff United States of America (“United States”), the Plaintiffs-Intervenors’ Nonhire and Delayed-Hire Subclasses, and Defendant City of New York (“City”) (collectively “the parties”) jointly move the Court to enter as final the Amended Monetary Relief Consent Decree (“Decree”), including approval of the attached Amended Proposed Relief Awards List as the Final Relief Awards List, upon consideration of all objections and completion of the Fairness

Hearing. Final entry of the Decree, including approval of the Amended Proposed Relief Awards List, will resolve the claims of the United States and the Plaintiffs-Intervenors for back pay and fringe benefits lost by the black and Hispanic applicants for the entry-level firefighter position at the New York City Fire Department who were harmed by the City's use of the examinations held to be discriminatory.

On June 30, 2014, the Court provisionally approved the Monetary Relief Consent Decree (Dkt. 1435) pending consideration of any objections submitted and the completion of the Fairness Hearing, which the Court will conduct on October 1, 2014, and, if necessary, October 2, 2014. *See* Order on Joint Mot. for Provisional Entry of Monetary Relief Consent Decree & Scheduling of Fairness Hr'g, Dkt. 1437.

With this Joint Motion, the parties file an amended Decree containing only technical changes that were necessitated by recently-discovered administrative issues relating to how payment checks will be issued to Claimants. These changes require edits to Paragraphs 37-42 and 44-45 in Section IX, "Payment of Individual Monetary Relief Awards" to reflect that the City will be issuing payment to Claimants for the back pay portions of their awards, from which required withholdings will be made, and the Court-appointed claims administrator, The Garden City Group, Inc. ("GCG"), will be issuing payment to Claimants for the fringe benefits and interest portions of their awards. These changes do not implicate the requirements for providing notice and a reasonable opportunity to object set forth in 42 U.S.C. § 2000e-2(n) because they do not impact any interests from which a collateral attack on the Decree may arise.

With this Joint Motion, the parties also file Attachments A-F to the Decree, some of which have also been amended, as described below:

1. Attachment A: "Amended Proposed Relief Awards List," which incorporates the changes to the "Proposed Relief Awards List" (Dkt. 1435-1) that will be necessary if

the Court agrees with the United States and the Plaintiffs-Intervenors' recommendations to sustain seven Claimants' objections, as discussed in their Memorandum in Support of Final Entry of Amended Monetary Relief Consent Decree and Response to Objections;

2. Attachment B: "Amended Declaration of Ed Barrero," which incorporates the changes to the "Declaration of Ed Barrero" (Dkt. 1435-2) that will be necessary if the Court sustains the seven Claimants' objections as recommended by the United States and the Plaintiffs-Intervenors;
3. Attachment C: "Notice of Monetary Relief Settlement & Fairness Hearing," "Instructions for Filing an Objection Prior to the Fairness Hearing," and a blank "Objection Form," to which no changes were made from the previously-filed versions set forth at Dkt. 1435-3;
4. Attachment D: cover letter that notified each Claimant of the amount of his or her proposed individual monetary relief award listed on the Proposed Relief Awards List (Dkt. 1435-1), to which no changes were made from the previously-filed version set forth at Dkt. 1435-4;
5. Attachment E: amended "Notice of Individual Monetary Relief Award," which incorporates the changes to the previously-filed version (Dkt. 1435-5) necessary to notify Claimants of changes to how payments will be issued; and
6. Attachment F: amended "Acceptance of Individual Monetary Relief Award & Release of Claims" form, which incorporates the changes to the previously-filed version (Dkt. 1435-6) necessary to reflect changes to how payments will be issued to Claimants.

Pursuant to Paragraph 21 of the Decree, the United States files the objections submitted by 101 Claimants, who object to the terms of the parties' proposed settlement of the back pay and fringe benefits claims and/or to their proposed individual monetary relief awards set forth in the Proposed Relief Awards List (Dkt. 1435-1). As required by Paragraph 21, the United States and the Plaintiffs-Intervenors also file an unopposed memorandum in support of this Joint Motion, to which the City does not object.

At the Fairness Hearing, the Court will have the opportunity to consider and to resolve the objections submitted by these 101 Claimants. As discussed in the United States and the Plaintiffs-Intervenors' memorandum in support of final entry, the United States and the

Plaintiffs-Intervenors recommend that the Court sustain the objections of seven Claimants and overrule the objections of the remaining 94 Claimants, as their objections do not warrant modification or non-entry of the Decree or of the Amended Proposed Relief Awards List. The City does not object to the United States and the Plaintiffs-Intervenors' recommendations. At or following the Fairness Hearing, the Court should enter as final the Decree, including approval of the Amended Proposed Relief Awards List as the Final Relief Awards List, because the Decree's terms and the individual monetary relief awards set forth in the Amended Proposed Relief Awards List, which incorporates the changes necessitated by sustaining the recommended seven Claimants' objections, are fair, reasonable, and legal.

Accordingly, the parties respectfully request that the Court enter the accompanying proposed Order, which enters as final the Decree, including approval of the Amended Proposed Relief Awards List as the Final Relief Awards List. The Amended Monetary Relief Consent Decree and Attachments A-F, the United States and the Plaintiffs-Intervenors' unopposed memorandum in support of final entry, and a proposed Order accompany this Joint Motion.

Date: September 22, 2014

Respectfully submitted,

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