

ATTACHMENT B

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)

DECLARATION OF ED BARRERO

I, ED BARRERO, declare the following:

1. I am currently a Senior Project Manager with The Garden City Group, Inc. ("GCG"). GCG was appointed by the Court to serve as Claims Administrator in this case. I have been employed by GCG since March 2001, and I have been assigned to this case since June 2013.

2. I understand that the City of New York (the “City”), the United States, and the Plaintiffs-Intervenors have agreed on the total amount of the City’s liability for back pay, fringe benefits, and interest. I also understand that the United States and the Plaintiffs-Intervenors have agreed to an allocation methodology apportioning this back pay, fringe benefits, and interest among individuals who submitted claim forms and who the Court determined are eligible for relief (hereinafter, “Claimants”).

3. The United States and the Plaintiffs-Intervenors have asked GCG to prepare the Proposed Relief Awards List, identifying how much each Claimant should receive in back pay, fringe benefits, and interest awards. GCG received instructions from the United States and the Plaintiffs-Intervenors regarding the methodology for the allocation of individual monetary relief awards to be used in the preparation of the Proposed Relief Awards List. I understand that the United States and the Plaintiffs-Intervenors agree that the instructions are consistent with the terms of their agreement regarding the allocation of individual monetary relief among Claimants.

4. The Proposed Relief Awards List prepared by GCG is attached to the Monetary Relief Consent Decree as Attachment A.

5. Each Claimant has been assigned to a category of damages based on the race identified on his/her claim form (black or Hispanic), as well as the Court’s determination of the exam for which the Claimant is eligible for relief (Exam 7029 or Exam 2043) and the Claimant definition met (Nonhire Claimant or Delayed-Hire Claimant) (hereinafter, “damages category”). Claimants deemed eligible for relief based on both Exam 7029 and Exam 2043 were assigned to the Exam 7029 damages category.

Back Pay

6. GCG was instructed to allocate the back pay settlement amounts to Claimants according to the eight damages categories listed in Table 1, attached hereto as Exhibit A.

Allocation of Back Pay to Nonhire Claimants

7. The United States and the Plaintiffs-Intervenors provided GCG with each Nonhire Claimant's interim earnings, which GCG understands consist of the earnings listed on his/her earnings statement from the Social Security Administration ("SSA"), any payments made by the City to the Claimant for unemployment insurance or workers compensation, and any additional earnings from railroad employers, if the Claimant indicated working for a railroad employer, because such earnings do not appear on SSA earnings statements.

8. To allocate the aggregate back pay amounts to Nonhire Claimants, GCG first averaged each Nonhire Claimant's annual interim earnings during the period in which the Claimant's back pay accrued (the Claimant's "damages period"). GCG averaged each Claimant's interim earnings across the appropriate damages period: (a) 2001-2011 for Exam 7029 Nonhire Claimants, and (b) 2005-2011 for Exam 2043 Nonhire Claimants.

9. As per the United States' and the Plaintiffs-Intervenors' instructions, nineteen Nonhire Claimants who failed to respond to multiple requests for information about their interim earnings were assumed to have earned the maximum amount of average interim earnings because their actual average interim earnings could not be calculated.

10. Based on his/her average annual interim earnings, GCG next placed each Nonhire Claimant into the appropriate earnings band, depending on the exam for which the Claimant is eligible for relief. Seven earnings bands were identified for each exam by the United States and the Plaintiffs-Intervenors pursuant to the allocation methodology. Each earnings band has an

associated “point value” that dictates the value of the award for each band, such that Claimants in the two-point band for a particular damages category will get twice the award amount as Claimants in the one-point band for that category. Thus, when each Claimant was placed into an earnings band, s/he was allocated between one to seven points. The nineteen Nonhire Claimants whose interim earnings information is incomplete were each allocated one point.

11. After placing all Nonhire Claimants into the appropriate band, GCG determined the allocation of the aggregate back pay amount for each of the four Nonhire Claimant damages categories based on the value of one point. The value of one point for each Nonhire Claimant damages category was determined by dividing the aggregate back pay amount for that category by the total number of points allocated to Claimants in that category.

12. Tables 2, 3, 4, and 5, attached hereto as Exhibit B, reflect the current back pay award amounts for each of the four Nonhire Claimant damages categories. Note that the back pay award amounts will change if the number of Claimants in any band changes.

Allocation of Back Pay to Delayed-Hire Claimants

13. The United States and the Plaintiffs-Intervenors identified each Delayed-Hire Claimant’s appointment date and associated months of delay. GCG understands that a Claimant’s appointment date refers to the date of the FDNY Academy class to which a Delayed-Hire Claimant was appointed. GCG understands that the months of delay refers to the delay in hiring experienced by a Delayed-Hire Claimant, which is the number of months between the first FDNY Academy class appointed off of the eligible list of the exam for which the Claimant is eligible for relief and the Claimant’s FDNY appointment date.

14. To allocate the aggregate back pay amounts to Delayed-Hire Claimants, GCG first calculated the value of one month of delay for each Delayed-Hire Claimant damages category. For each Delayed-Hire Claimant damages category, the value of one month of delay

equals the aggregate back pay award divided by the total months of delay experienced by Delayed-Hire Claimants in that category.

15. Table 6, attached hereto as Exhibit C, reflects the current total months of delay and the value of one month of delay for each of the four Delayed-Hire Claimant damages categories. Note that the back pay award amounts in a particular damages category will change if the total months of delay experienced by Delayed-Hire Claimants in that damages category changes, because the total months of delay affects the value of one month of delay.

16. Finally, GCG allocated each Delayed-Hire Claimant's back pay award by multiplying that Claimant's months of delay by the value of one month of delay for the Claimant's damages category.

Fringe Benefits

17. GCG was also instructed to allocate the fringe benefits settlement amounts listed in Table 7, attached hereto as Exhibit D, to Claimants according to the eight damages categories. See ¶ 5, above.

18. GCG allocated the fringe benefits settlement by providing all Claimants with a fixed, minimal award ("Fixed Share") and by providing Claimants who submitted a fringe benefits claim on or before May 9, 2014, with a proportion of their claimed fringe benefits expenses ("Claimed Expenses Share").

19. At the direction of the United States and the Plaintiffs-Intervenors, GCG first allocated the Fixed Share to each Claimant, regardless of whether s/he submitted a Fringe Benefits Claim Form or claimed any fringe benefits expenses. The amount of the Fixed Share depends on the damages category: each Exam 7029 Nonhire Claimant (regardless of race)

received \$1,400; each Exam 2043 Nonhire Claimant (regardless of race) received \$960; and each Delayed-Hire Claimant (regardless of race and exam taken) received \$50.

20. After allocating the Fixed Shares, GCG allotted the remainder of the fringe benefits settlement amount in each damages category proportionally to Claimants in that category based on the fringe benefits expenses claimed, subject to a cap on the maximum amount of reimbursable fringe benefits expenses.

21. GCG determined the amount of fringe benefits expenses for each Claimant by evaluating the Claimant's Fringe Benefits Claim Form and/or other relevant documentation submitted by the Claimant on or before May 9, 2014. At the direction of the United States and the Plaintiffs-Intervenors, GCG did not seek to verify the fringe benefits claimed on the Fringe Benefits Claim Form and reviewed timely submitted documentation only for fringe benefits that were unclaimed by Claimants on their Fringe Benefits Claim Forms. Each Claimant was reimbursed only for unique fringe benefits expenses timely claimed during the Claimant's damages period, which is the period of time that the Claimant accrued damages for lost fringe benefits and is the same period of time that the Claimant's back pay accrued.

22. After determining the amount of each Claimant's claimed fringe benefits expenses, GCG calculated the cap on the maximum amount of reimbursable fringe benefits expenses for each of the following three groups: (a) all Exam 7029 Nonhire Claimants (regardless of race); (b) all Exam 2043 Nonhire Claimants (regardless of race); and (c) all Delayed-Hire Claimants (regardless of race and exam taken). To calculate the cap for each of the three groups, GCG calculated the mean (average) of the claimed fringe benefits expenses for all Claimants in the group and then calculated the standard deviation of the claimed fringe benefits expenses for all Claimants in the group. Next, GCG calculated the cap on reimbursable

expenses for each group as the mean plus two standard deviations, or the 97.5th percentile, of the amount of expenses claimed. Claimants with claimed fringe benefits expenses exceeding the cap were treated as claiming the cap. Table 8, attached hereto as Exhibit E, reflects the current caps on reimbursable fringe benefits expenses. Note that the caps will change if the amount of reimbursable expenses claimed by Claimants changes.

23. After calculating each Claimant's claimed fringe benefits expenses, capped if applicable, GCG performed the following four steps to determine each Claimant's Claimed Expenses Share. First, GCG calculated the settlement funds remaining in each damages category after the Fixed Shares were paid out. Next, GCG calculated the aggregate fringe benefits expenses claimed by Claimants within each damages category, capped if applicable ("aggregate claimed expenses"). Third, GCG calculated the ratio of aggregate claimed expenses to settlement funds remaining for each damages category ("reduction ratio"). Finally, GCG calculated each Claimant's Claimed Expenses Share by multiplying the Claimant's claimed fringe benefits expenses, capped if applicable, by the appropriate reduction ratio.

24. Table 9, attached hereto as Exhibit F, lists for each damages category: the current settlement funds remaining after distributing the Fixed Shares; the aggregate claimed expenses; and the reduction ratio. Note that the settlement funds remaining and the reduction ratios will change if the number of Claimants receiving a Fixed Share changes.

Interest

25. GCG was also asked to calculate the total amount of interest on the aggregate amounts agreed to by the parties for back pay and fringe benefits and to allocate the total interest among Claimants as part of the Proposed Relief Awards List.

26. To calculate the total interest on the aggregate back pay and fringe benefits amounts, GCG applied as the interest rate the average market yield on the United States one-year constant maturity Treasury yield during the applicable time period, which is available at <http://www.federalreserve.gov/releases/h15/data.htm>. For Nonhire Claimants, the applicable time period was the beginning of the appropriate damages period (January 1, 2001, for Exam 7029 Claimants, and January 1, 2005, for Exam 2043 Claimants) through April 25, 2014. For Delayed-Hire Claimants, the applicable time period was the year in which the eligible list for the relevant exam closed (January 1, 2004, for Exam 7029 Claimants and January 1, 2008, for Exam 2043 Claimants) through April 25, 2014. The average interest rates applied are shown in Table 10, attached hereto as Exhibit G.

27. GCG then compounded the interest annually through December 31, 2014, allocating the Nonhire Claimants' back pay and fringe benefits awards to each year of the applicable damages period and allocating the Delayed-Hire Claimants' back pay and fringe benefits awards to only the year in which the eligible list for the relevant exam closed.

28. Table 11, attached hereto as Exhibit H, lists the total interest amounts calculated by GCG.

29. The manner in which GCG allocated the interest on back pay awards is similar to the manner in which it allocated the back pay awards.

- a. For Nonhire Claimants, GCG first placed all Nonhire Claimants into the same average earnings bands used to determine their back pay awards and then determined the value of one point. The value of one point for each Nonhire Claimant damages category was determined by dividing the aggregate interest

amount for that category by the total number of points allocated to Claimants in that category.

- b. For Delayed-Hire Claimants, GCG first determined the interest associated with one month of delay for each Delayed-Hire damages category (the total interest associated with that damages category divided by the total months of delay experienced by Claimants in that damages category). Next, GCG multiplied the interest associated with one month of delay by the number of months of delay experienced by Delayed-Hire Claimants in that damages category.

30. GCG allocated the interest on fringe benefits awards proportionally in relation to each Claimant's total fringe benefits award. For each Claimant, regardless of whether Nonhire Claimant or Delayed-Hire Claimant, GCG calculated the proportion of the aggregate fringe benefits amount for his/her damages category that will be awarded to the Claimant (the amount of the Claimant's total fringe benefits award divided by the aggregate fringe benefits award for the relevant damages category). Next, GCG multiplied the proportion of the aggregate fringe benefits amount awarded to the Claimant by the total fringe benefits interest for the relevant damages category.

31. Finally, for each Claimant, GCG summed the interest on the Claimant's back pay award and the interest on the Claimant's fringe benefits award to list one value for interest on the Proposed Relief Awards List.

Executed this 25th day of June, 2014.


Ed Barrero

Exhibit A

Table 1: Aggregate Back Pay Amounts by Damages Category

Damages Category	Number of Claimants	Aggregate Back Pay Amount
Exam 7029 Nonhire Claimants		
Black Exam 7029 Nonhire Claimants	332	\$38,818,871.58
Hispanic Exam 7029 Nonhire Claimants	225	\$17,097,828.56
Exam 2043 Nonhire Claimants		
Black Exam 2043 Nonhire Claimants	234	\$15,495,383.14
Hispanic Exam 2043 Nonhire Claimants	204	\$8,359,839.74
Exam 7029 Delayed-Hire Claimants		
Black Exam 7029 Delayed-Hire Claimants	104	\$ 444,509.77
Hispanic Exam 7029 Delayed-Hire Claimants	144	\$443,638.42
Exam 2043 Delayed-Hire Claimants		
Black Exam 2043 Delayed-Hire Claimants	84	\$175,039.37
Hispanic Exam 2043 Delayed-Hire Claimants	143	\$129,547.39
TOTAL	1,470	\$80,964,657.97

Exhibit B

Table 2: Back Pay Award Amounts Associated with the Earnings Bands for Black Exam 7029 Nonhire Claimants

332 Claimants

Total fund: \$38,818,871.58

Value of one point: \$ 25,983.18

Interim Earnings (min.)	Interim Earnings (max.)	Points	Number of Claimants in Band	Award Amount
\$0	\$11,390.85	7	48	\$181,882.27
\$11,390.86	\$22,781.71	6	53	\$155,899.08
\$22,781.72	\$34,172.56	5	78	\$129,915.90
\$34,172.57	\$45,563.42	4	65	\$103,932.72
\$45,563.43	\$56,954.28	3	40	\$77,949.54
\$56,954.29	\$68,345.14	2	22	\$51,966.36
\$68,345.15	--	1	26	\$25,983.18

Table 3: Back Pay Award Amounts Associated with the Earnings Bands for Hispanic Exam 7029 Nonhire Claimants

225 Claimants

Total fund: \$17,097,828.56

Value of one point: \$ 19,211.04

Interim Earnings (min.)	Interim Earnings (max.)	Points	Number of Claimants in Band	Award Amount
\$0	\$11,390.85	7	24	\$134,477.30
\$11,390.86	\$22,781.71	6	25	\$115,266.26
\$22,781.72	\$34,172.56	5	46	\$96,055.22
\$34,172.57	\$45,563.42	4	43	\$76,844.17
\$45,563.43	\$56,954.28	3	30	\$57,633.13
\$56,954.29	\$68,345.14	2	23	\$38,422.09
\$68,345.15	--	1	34	\$19,211.04

Table 4: Back Pay Award Amounts Associated with the Earnings Bands for Black Exam 2043 Nonhire Claimants

234 Claimants

Total fund: \$15,495,383.14

Value of one point: \$ 16,208.56

Interim Earnings (min.)	Interim Earnings (max.)	Points	Number of Claimants in Band	Award Amount
\$0	\$9,270.15	7	36	\$113,459.91
\$9,270.16	\$18,540.30	6	31	\$97,251.36
\$18,540.31	\$27,810.46	5	34	\$81,042.80
\$27,810.47	\$37,080.62	4	42	\$64,834.24
\$37,080.63	\$46,350.78	3	37	\$48,625.68
\$46,350.79	\$55,620.93	2	15	\$32,417.12
\$55,620.94	--	1	39	\$16,208.56

Table 5: Back Pay Award Amounts Associated with the Earnings Bands for Hispanic Exam 2043 Nonhire Claimants

204 Claimants

Total fund: \$8,359,839.74

Value of one point: \$ 11,014.28

Interim Earnings (min.)	Interim Earnings (max.)	Points	Number of Claimants in Band	Award Amount
\$0	\$9,270.15	7	16	\$77,099.98
\$9,270.16	\$18,540.30	6	29	\$66,085.69
\$18,540.31	\$27,810.46	5	41	\$55,071.41
\$27,810.47	\$37,080.62	4	19	\$44,057.13
\$37,080.63	\$46,350.78	3	34	\$33,042.84
\$46,350.79	\$55,620.93	2	25	\$22,028.56
\$55,620.94	--	1	40	\$11,014.28

Exhibit C

Table 6: Total Months of Delay and Value of One Month of Delay by Delayed-Hire Damages Category

Damages Category	Aggregate Back Pay Amount	Total Months Delay	Value of One Month
Exam 7029 Delayed-Hire Claimants			
Black Exam 7029 Delayed-Hire Claimants	\$ 444,509.77	2,901	\$153.23
Hispanic Exam 7029 Delayed-Hire Claimants	\$443,638.42	4,014	\$110.52
Exam 2043 Delayed-Hire Claimants			
Black Exam 2043 Delayed-Hire Claimants	\$175,039.37	2,280	\$76.77
Hispanic Exam 2043 Delayed-Hire Claimants	\$129,547.39	4,074	\$31.80

Exhibit D

Table 7: Fringe Benefits Settlement Amounts Associated by Damages Category

Damages Category	Number of Claimants	Aggregate Fringe Benefits Amount
Exam 7029 Nonhire Claimants		
Black Exam 7029 Nonhire Claimants	332	\$2,564,188.85
Hispanic Exam 7029 Nonhire Claimants	225	\$1,394,558.83
Exam 2043 Nonhire Claimants		
Black Exam 2043 Nonhire Claimants	234	\$1,314,375.43
Hispanic Exam 2043 Nonhire Claimants	204	\$821,484.33
Exam 7029 Delayed-Hire Claimants		
Black Exam 7029 Delayed-Hire Claimants	104	\$30,677.17
Hispanic Exam 7029 Delayed-Hire Claimants	144	\$36,121.84
Exam 2043 Delayed-Hire Claimants		
Black Exam 2043 Delayed-Hire Claimants	84	\$24,600.69
Hispanic Exam 2043 Delayed-Hire Claimants	143	\$23,611.39
TOTAL	1,470	\$6,209,618.53

Exhibit E

Table 8: Caps on Reimbursable Fringe Benefits Expenses by Damages Category

Damages Category	Cap on Reimbursable Fringe Benefits Expenses
All Exam 7029 Nonhire Claimants Black Exam 7029 Nonhire Claimants Hispanic Exam 7029 Nonhire Claimants	\$105,806.96
All Exam 2043 Nonhire Claimants Black Exam 2043 Nonhire Claimants Hispanic Exam 2043 Nonhire Claimants	\$99,280.68
All Delayed-Hire Claimants Black Exam 7029 Delayed-Hire Claimants Hispanic Exam 7029 Delayed-Hire Claimants Black Exam 2043 Delayed-Hire Claimants Hispanic Exam 2043 Delayed-Hire Claimants	\$17,779.03

Exhibit F

Table 9: Fringe Benefits Settlement Funds Remaining, Aggregate Claimed Fringe Benefits Expenses, and Reduction Ratios by Damages Category

Damages Category	Settlement Funds Remaining After Distribution of Fixed Shares	Aggregate Claimed Expenses	Reduction Ratio
Exam 7029 Nonhire Claimants			
Black Exam 7029 Nonhire Claimants	\$2,099,388.85	\$2,943,427.50	0.713246327
Hispanic Exam 7029 Nonhire Claimants	\$1,079,558.83	\$2,092,720.28	0.515846639
Exam 2043 Nonhire Claimants			
Black Exam 2043 Nonhire Claimants	\$1,089,735.43	\$1,613,381.97	0.675435484
Hispanic Exam 2043 Nonhire Claimants	\$625,644.33	\$1,750,147.34	0.357480948
Exam 7029 Delayed-Hire Claimants			
Black Exam 7029 Delayed-Hire Claimants	\$25,477.17	\$55,297.58	0.460728475
Hispanic Exam 7029 Delayed-Hire Claimants	\$28,921.84	\$83,160.82	0.347782042
Exam 2043 Delayed-Hire Claimants			
Black Exam 2043 Delayed-Hire Claimants	\$20,400.69	\$43,457.56	0.469439379
Hispanic Exam 2043 Delayed-Hire Claimants	\$16,461.39	\$66,568.55	0.247284789
TOTAL	\$4,985,588.53	\$8,648,161.60	

Exhibit G

Table 10: Average Interest Rate Applied by Damages Category

Damages Category	Average Interest Rate
All Exam 7029 Nonhire Claimants Black Exam 7029 Nonhire Claimants Hispanic Exam 7029 Nonhire Claimants	1.864561
All Exam 2043 Nonhire Claimants Black Exam 2043 Nonhire Claimants Hispanic Exam 2043 Nonhire Claimants	1.73963
All Exam 7029 Delayed-Hire Claimants Black Exam 7029 Delayed-Hire Claimants Hispanic Exam 7029 Delayed-Hire Claimants	1.753729
All Exam 2043 Delayed-Hire Claimants Black Exam 2043 Delayed-Hire Claimants Hispanic Exam 2043 Delayed-Hire Claimants	0.499455

Exhibit H

Table 11: Total Interest Amounts on Back Pay and Fringe Benefits by Damages Category

Damages Category	Interest on Aggregate Back Pay Amounts	Interest on Aggregate Fringe Benefits Amounts
Exam 7029 Nonhire Claimants		
Black Exam 7029 Nonhire Claimants	\$5,892,695.44	\$389,243.26
Hispanic Exam 7029 Nonhire Claimants	\$2,595,446.30	\$211,693.69
Exam 2043 Nonhire Claimants		
Black Exam 2043 Nonhire Claimants	\$1,562,726.43	\$132,556.20
Hispanic Exam 2043 Nonhire Claimants	\$843,099.03	\$82,847.60
Exam 7029 Delayed-Hire Claimants		
Black Exam 7029 Delayed-Hire Claimants	\$93,679.44	\$6,465.14
Hispanic Exam 7029 Delayed-Hire Claimants	\$93,495.80	\$7,612.60
Exam 2043 Delayed-Hire Claimants		
Black Exam 2043 Delayed-Hire Claimants	\$6,212.16	\$873.08
Hispanic Exam 2043 Delayed-Hire Claimants	\$4,597.65	\$837.97
TOTAL	\$11,091,952.25	\$832,129.54