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UNITED STATES OF AMERICA,

Plaintiff,

v.

STATE OF NEW JERSEY AND NEW  
JERSEY CIVIL SERVICE  
COMMISSION,

Defendants.

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

VICINAGE OF NEWARK

Civil Action No.  
2:10-cv-00091-KSH-CLW

Hon. Katharine S. Hayden

**JOINT RESPONSE TO OBJECTIONS TO THE RELIEF AWARDS LIST**

Pursuant to Paragraph 48 of the Second Amended Consent Decree (“Decree”), entered as final by this Court on June 12, 2012, Dkt. No. 49, Plaintiff United States of America (“United States”) and Defendants State of New Jersey and New Jersey Civil Service Commission (the “State”), (collectively, the “Parties”), submit the objections received to the United States’ individual relief determinations and the Parties’ response to those objections.

## I. BACKGROUND

On June 12, 2012, following the March 12, 2012, Initial Fairness Hearing, the Court entered as final the Second Amended Consent Decree (“Decree”) in this action. The Decree provides for both injunctive and individual remedial relief. Paragraphs 32 through 48 of the Decree set forth the procedures for notifying presumptive claimants of the individual relief process and for making individual relief determinations. The Parties assert that all of the requirements set forth in Paragraphs 32 through 48 of the Decree have been met.

As part of the individual relief process, on July 9, 2012, the State sent, via certified U.S. mail, return receipt requested, the Notice of Entry of Consent Decree and an interest in relief form to all presumptive claimants listed on First Amended Attachments B and C to the Decree.<sup>1</sup> *See* Decree, ¶ 33. In addition to this required notice under the Decree, the United States reached out by telephone to approximately 450 presumptive claimants who did not receive the first mailing. *See Declaration of Michelle Brown* (“Brown Decl.”), ¶¶ 3-4, Appendix D, Exh. 88. To ensure that notice was provided to all of the presumptive claimants, the United States sent a second mailing, via first class U.S. mail, to the last known address of approximately 350 presumptive claimants with whom the Parties otherwise had not made contact.<sup>2</sup> *Id.* at ¶¶ 5-6. The presumptive claimants were invited to file a claim for individual relief by returning an

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<sup>1</sup> Presumptive claimants listed on First Amended Attachment B to the Decree received the Interest in Back Pay Form, and presumptive claimants listed on First Amended Attachment C to the Decree received the Interest in Back Pay and/or Priority Promotion Form. Both of these forms were set forth in First Amended Attachment H to the Decree.

<sup>2</sup> Each candidate’s last known address was determined using a combination of information contained in the State’s databases, information reported by candidates to the Parties, and information available through the LexisNexis Accurint Batch database service. *See* Brown Decl., ¶ 6. The United States conducted 379 paid Accurint Batch searches for updated address information in order to gather the most accurate address data possible.

“interest in relief” form to the United States by October 19, 2012.<sup>3</sup> *See* Decree, ¶ 34. Based on the “interest in relief” forms that were returned, on December 6, 2012, the Parties filed a Relief Awards List with the Court, outlining the United States’ determinations regarding the type and amount of individual relief to be awarded to each of the 804 candidates who had requested relief.<sup>4</sup> *See id.*, ¶ 40.

On February 7 and 8, 2013, the United States sent, to each of the candidates who returned an interest in relief form, a letter notifying the candidate of the United States’ determination regarding his or her eligibility for relief under the Decree. Brown Decl., ¶ 7; *see* Decree, ¶ 44. These letters were sent by certified U.S. mail, return receipt requested, to each candidate’s last known address as determined through the process outlined in footnote 2. Brown Decl., ¶ 7; *see* Decree, ¶ 44. In addition to this required mailing under the Decree, the United States reached out by telephone to approximately 270 candidates. Brown Decl., ¶ 9. Furthermore, to ensure that notice of the determination was provided to all of the candidates who had submitted a request for individual relief, the United States elected to send a second mailing, via first class U.S. mail, to approximately 240 candidates who had not signed for their initial determination letter or been reached telephonically, and sent a third copy of the letter, upon request, to approximately 34 of those candidates. *See id.*, ¶¶ 10-11.

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<sup>3</sup> The initial deadline for submitting an interest in relief form to the United States was August 13, 2012, but this deadline was extended by more than two months to provide presumptive claimants who did not receive the initial notice mailing with every opportunity to submit a timely claim.

<sup>4</sup> Since the December 6, 2012, filing, the United States has received interest in relief forms from two additional candidates, Nelly Loiacono and Marlon Parrott. *See* Appendix D, Exhs. 64 & 65. The United States has determined that neither candidate is eligible for relief because their claim forms were not timely submitted to the United States by the extended deadline of October 19, 2012. Additionally, Mr. Loiacono is not eligible for relief because no Hispanic shortfall occurred in Newark in 2001 when he sat for the exam, and, therefore, he does not satisfy the definition of “Claimant” in the Decree, as is discussed further *infra*, Section II.C.

The determination letters followed the format provided in First Amended Attachment I to the Decree and indicated whether the candidate was determined to be eligible for back pay and/or priority promotion; the reason for any determination of ineligibility for relief; the candidate's proposed share of back pay, if any; and notice of the Fairness Hearing on Individual Relief. *See* Decree, ¶ 44. The United States included with the determination letters two additional forms: "Instructions for Filing an Objection to Individual Relief" and a blank "Objection to United States' Determination Regarding Individual Relief to be Awarded Under the Consent Decree" form, as provided in First Amended Attachment I to the Decree. *See id.* The determination letter informed each candidate that to be timely, any objections to the United States' determinations regarding individual relief had to be mailed to the United States in accordance with the enclosed instructions with a postmark date not later than March 9, 2013. *See id.*, ¶ 46.

In response to the determination letters, the United States received 63 objection forms from 54 candidates.<sup>5</sup> *See* Appendix C. These objections fall into one or more of the following seven categories:

- (1) 17 objections to the amount of back pay per Claimant,
- (2) 22 objections to ineligibility for priority promotion,
- (3) nine objections to ineligibility for relief by candidates who do not satisfy the Decree's definition of "Claimant,"
- (4) one objection to limiting priority promotion eligibility to the jurisdiction in which the candidate took the police sergeant written exam,
- (5) one objection to paying a fee to take the new police sergeant exam,

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<sup>5</sup> The United States received 8 duplicate objection forms and 1 revised objection form. *See* Appendix C, Exhs. 35, 36, 38, 42, 44, 48, 50, & 63 (duplicate forms), Exh. 31 (revised form).

- (6) five objections to ineligibility for relief based on the candidates' failure to comply with the Decree's procedures, and
- (7) six blank objections.

As discussed below, the Parties recommend that the Court sustain the objections of three candidates, Nathaniel Johnson, Jr., Appendix C, Exh. 1; Brian Logan, Appendix C, Exh. 15; and Richard Hernandez, Appendix C, Exh. 2; and hold that they are eligible for priority promotion because the United States' earlier determination of ineligibility was the result of administrative circumstances. The Parties defer to the Court with regard to the objections of four candidates, Bernard Davis, Appendix C, Exh. 53; James Davis, Appendix C, Exh. 11; Lydell James, Appendix C, Exh. 12; and Jose Ramirez, Appendix C, Exh. 43; who were deemed ineligible for relief and have submitted objections suggesting that their ineligibility is the result of procedural circumstances beyond their control. The Parties recommend that the Court overrule the objections of the remaining 47 candidates for the reasons set forth below. Attached are a Proposed Order, *see* Appendix A, and an Amended Relief Awards List to be entered as the Final Relief Awards List, *see* Appendix B, should the Court sustain the objections of the seven individuals listed above and overrule all other objections.<sup>6</sup>

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<sup>6</sup> The Court has scheduled a Fairness Hearing on Individual Relief for May 8 and 9, 2013, to consider these objections. Though the Parties appreciate that the Court has set aside two full days for this hearing, because only 54 candidates have submitted objections (and only 18 of those objectors have requested to appear at the hearing, including Leroy Bibbs, Dexter Bright, Eric Brown, Linda Burroughs, Desmond Clark, David Cruz, Brian Davis, Beverly Downey, Quincy Hendryx, Albert Jenkins, Jr., Nathaniel Johnson, Jr., Brian Logan, Keli Mainor-Oatman, Hector Marrero, Andree Nelson, Vilma Plaza, James Walters, and Sherise Wilson), the Parties do not foresee the hearing extending beyond one day.

## II. THE PARTIES' RESPONSE TO OBJECTIONS

### A. Response to Objections to the Amount of Back Pay Per Claimant

The United States received 17 objections from candidates regarding the amount of back pay for which the United States has determined they are eligible individually.<sup>7</sup> For the reasons discussed below, each of these 17 objections should be overruled.

The Decree provides for a total of \$1,000,000 in back pay to be distributed to eligible Claimants.<sup>8</sup> Decree, ¶ 28. Objections stating that \$1,000,000 is an insufficient back pay award were previously considered and rejected by the Court at the Fairness Hearing on the Decree's terms.<sup>9</sup> *See U.S. v. New Jersey*, Civ. No. 10-91, 2012 WL 3265905, at \*21-22 (D.N.J. June 12, 2012). In overruling these objections, the Court stated:

Lines are inevitably drawn when a settlement provides tiered relief. Although 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. The Court's task here is to determine whether the settlement is fair, reasonable, adequate, and consistent with federal law. . . . The settlement extends relief to many affected claimants, and when taken in conjunction with the other relief afforded in the decree, the Court is satisfied that the totality of the relief afforded is adequate. Accordingly, the Court finds that the back pay award is appropriate.

*Id.* at \*22 (citations omitted).

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<sup>7</sup> These objections were submitted by Arthur Alvarado, Ronald Boyce, Dexter Bright, Desmond Clark, Edwin Cooper, David Cruz, Erik Davis, Darrell Henderson, Quincy Hendryx, Woodrow Key, Jr., Hector Marrero, Rogelio Perez, Antonio Rentas, Nelson Rivera, Janell Robinson, Sanford Thigpen, and James Walters. *See* Appendix C, Exhs. 20, 34, 59, 19, 45, 14, 18, 3, 25, 47, 16, 37, 6, 8, 23, 41, & 51.

<sup>8</sup> This sum is to be divided into two funds, \$710,000 into Settlement Fund I for African-American Claimants, and \$290,000 into Settlement Fund II for Hispanic Claimants. Decree, ¶¶ 28-29.

<sup>9</sup> For example, counsel for Desmond Clark argued that the \$1,000,000 back pay award was insufficient. *See* Transcript, 193:8-196:6, Dkt. No. 69. Desmond Clark has now submitted an objection to the United States' relief determination, arguing that his back pay award is too low. *See* Appendix C, Exh. 19.

While the Court has already ruled that \$1,000,000 is an appropriate back pay award as a whole, the Court has not yet considered whether the United States' individual determinations on the amount of back pay per Claimant are appropriate. To make these determinations, the United States used the process outlined by Dr. Siskin in his Second Amended Declaration. *See Second Amended Declaration of Dr. Bernard R. Siskin* ("Siskin Decl.") (*United States' Memorandum in Support of Final Entry of Consent Decree and Response to Objections* ("Final Entry Memo"), Appendix E, Exh. 468), ¶ 24, Dkt. No. 64-25. First, for each of the two settlement funds, Dr. Siskin determined the total number of years of back pay that all of the Claimants combined are eligible to receive.<sup>10</sup> *Id.* Second, he divided the amount of money in each settlement fund by the total number of years of back pay attributable to that fund to determine the monetary value of one year of back pay in each fund. *Id.* Based on the calculations used to create the Relief Awards List that was filed with the Court on December 6, 2012, one year of back pay from Settlement Fund I was worth \$217.66, and one year of back pay from Settlement Fund II was worth \$192.31. *See Relief Awards List*, Exh. A, Dkt. No. 79. Third, Dr. Siskin multiplied the

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<sup>10</sup> Very generally, each Claimant is eligible to receive back pay for each year between the exam he or she took (which made him or her eligible for relief) and December 31, 2010 (because 2010 was the last full calendar year before the settlement in this case was reached and the back pay amount was initially calculated). However, if a Claimant separated on or before June 30, 2010, from service as a police officer in any jurisdiction participating in the New Jersey civil service system, then the number of years in which he or she is eligible for back pay would be reduced accordingly. For purposes of calculating back pay eligibility, Claimants who separated from service as a police officer after June 30 of a given year were considered to be employed for that entire calendar year (rounding up), and Claimants who separate from service on or before June 30 were considered to be separated from service for that entire calendar year (rounding down). Thus, if the first year that a Claimant took and failed the exam between 2000 and 2009 was 2002, and the appointments from that exam resulted in a shortfall of that candidate's race, making him a Claimant under Paragraph 3 of the Decree, then the Claimant would be eligible for back pay beginning in 2003. If the Claimant was still employed as a police officer as of July 1, 2010, then the Claimant would be eligible for 8 years of back pay. However, if the Claimant separated from service as a police officer (via retirement or other circumstances) on June 1, 2007, for example, then the Claimant would be considered eligible for back pay between 2002 and 2006 (a total of four years).

monetary value of one year of back pay from the relevant settlement fund by the number of years of back pay the Claimant is eligible to receive to determine the total amount of damages to be paid to each Claimant. *See* Siskin Decl., ¶ 24.

The objections submitted in response to the United States' individual relief determinations allege that the back pay amounts are too low. Six of these objections allege that the Claimants are entitled to more than \$100,000 in back pay while others allege they are entitled to \$80,000, \$66,000, and \$40,000 in back pay. These objections do not take into account that the \$1,000,000 back pay award is (1) a negotiated settlement amount necessarily involving compromise and (2) based on damages due to 105 unidentifiable candidates that must be distributed among 730 actual candidates since we cannot know who among them would have been selected under a nondiscriminatory exam.

In sum, the United States' methodology fairly distributes the negotiated back pay award to those harmed by the challenged exam. Thus, objections to the amount of back pay to be awarded to individual Claimants should be overruled.

**B. Response to Objections to Ineligibility for Priority Promotion**

The United States received 22 objections to determinations of ineligibility for priority promotion. Nineteen of these objections should be overruled, and three should be sustained. The objections of 17 candidates who did not take the police sergeant written exam in a jurisdiction listed on First Amended Attachment K to the Decree in which priority promotion relief is available<sup>11</sup> and of Jerry Burgos, Appendix C, Exh. 13, and Arthur Alvarado, Appendix

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<sup>11</sup> These objections were submitted by Linda Burroughs, Robert Cherry, Desmond Clark, Erik Davis, Beverly Downey, Quincy Hendryx, Betty Hill, Fidel Hunter, Albert Jenkins Jr., Joseph Lane, Rontesia Lewis, Robert Polhill, Steven Rhodes, Rene Saldarriaga, Karyn Tisdale-Dickson, James Walters, and Litasha Worthen. *See* Appendix C, Exhs. 30, 46, 19, 18, 27, 25, 9, 55, 26, 21, 40, 24, 22, 57, 39, 51, & 32.

C, Exh. 20, should be overruled. The objections of Richard Hernandez, Appendix C, Exh. 2, Brian Logan, Appendix C, Exh. 15, and Nathaniel Johnson, Jr., Appendix C, Exh. 1, should be sustained.

The United States received objections from 17 candidates who did not take the police sergeant written exam in a jurisdiction listed on First Amended Attachment K to the Decree in which priority promotion relief is available. These candidates serve as police officers in Bayonne, Hamilton Township, Irvington, Morristown, Orange, Plainfield, and Weehawken. An additional candidate, Jerry Burgos, took the exam in Hoboken, which is a priority promotion jurisdiction. However, Mr. Burgos transferred to the Hazlet Police Department in 2003 and seeks priority promotion in Hazlet, which is not a priority promotion jurisdiction. These 18 objections should be overruled because the Court has already considered and rejected requests to expand the number of jurisdictions where priority promotions may occur. Prior to the Initial Fairness Hearing, candidates submitted objections stating that candidates for police sergeant in jurisdictions other than those 13 listed on Attachment K should be eligible for priority promotion.<sup>12</sup> At the hearing, counsel for objectors from Hamilton Township and Irvington argued that priority promotions should not be limited to jurisdictions with a shortfall of three or more. Transcript, 100:8-110:17, 148:21-156:5. The Court rejected this argument, concluding that

[t]he practical decision to limit priority promotions to those jurisdictions with shortfalls of three or more serves the twofold purpose of affording the strongest relief only to those jurisdictions most affected by the examination's disparate impact while also limiting the disruptive effects of priority promotions.

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<sup>12</sup> Four of those objections prior to the Initial Fairness Hearing were submitted by Claimants who have again objected to their ineligibility for priority promotion: Jerry Burgos, Desmond Clark, Quincy Hendryx, and James Walters. *See Objections of Jerry Burgos, Desmond Clark, Quincy Hendryx, and James Walters* (Final Entry Memo, Appendix E, Exhs. 40-41, 72, 205, 447), Dkt. Nos. 64-6, 64-7, 64-12, 64-24.

Recognizing the frustration, the Court still does not find the limitations unreasonable, especially where the decree provides objectors with the opportunity to pursue back pay claims and to take a new, fairer examination.

*U.S. v. New Jersey*, 2012 WL 3265905, at \*25. Consequently, the Court has already considered and rejected the substance of these 18 objections.

Furthermore, of these 18 candidates, only Robert Cherry, Appendix C, Exh. 46, Erik Davis, Appendix C, Exh. 18, and Jerry Burgos, Appendix C, Exh. 13, actually submitted requests for priority promotion. Litasha Worthen, Appendix C, Exh. 32, did not submit an interest in relief form, and the remaining 14 candidates submitted only an Interest in Back Pay Form, rather than an Interest in Back Pay and/or Priority Promotion Form. *See* Appendix D, Exhs. 66-80. Thus, the Court should also overrule the objections of these 15 candidates because they failed to request priority promotion.<sup>13</sup>

The United States also received an objection from one candidate who was deemed ineligible for priority promotion because he has separated from service as a police officer in the jurisdiction in which he took the police sergeant written exam. Arthur Alvarado, Appendix C, Exh. 20, who retired from the Newark Police Department on August 1, 2011, objects to his ineligibility for priority promotion. The Decree makes no provision for reinstatement of individuals who have separated from service as a police officer in the jurisdiction in which they took the police sergeant examination. Therefore, the Parties recommend that the Court overrule Mr. Alvarado's objection.

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<sup>13</sup> Furthermore, Rene Saldarriaga's objection should be overruled because it was untimely submitted. *See* Appendix C, Exh. 57. The determination letter mailed to Mr. Saldarriaga was signed for on March 1, 2013. *See* Appendix D, Exh. 84. However, he did not submit his objection until March 16, 2013, a full week after the deadline for submitting timely objections had passed, and he provided no explanation for the late submission.

The remaining three objections should be sustained. The first two involve errors in the State's database that mistakenly led the Parties to believe that Richard Hernandez, Appendix C, Exh. 2, and Brian Logan, Appendix C, Exh. 15, were no longer employed by their respective jurisdictions. Having received the objections of Mr. Hernandez and Mr. Logan and having verified their status as current employees of the jurisdictions in which they took the police sergeant examination, the Parties recommend that the Court find them eligible for priority promotion.

The Court should also sustain the objection of Nathaniel Johnson, Jr. He states that he requested both back pay and priority promotion even though the interest in relief from the United States has on record sought only back pay. *See* Appendix C, Exh. 1; Appendix D, Exh. 81. In his objection, Mr. Johnson stated that, in addition to mailing an Interest in Back Pay Form to the United States, he sent an Interest in Back Pay and/or Priority Promotion Form to the United States via facsimile on September 8, 2012, requesting both back pay and priority promotion. The United States did not receive this facsimile; however, its facsimile log indicates that a facsimile was transmitted to the United States from Mr. Johnson's facsimile number on that date, suggesting a printing error may have occurred. Thus, the United States believes that he should be considered eligible for priority promotion.

**C. Response to Objections to Ineligibility for Any Relief**

The United States received nine objections to ineligibility for any relief from candidates who do not satisfy the Decree's definition of "Claimant." All nine should be overruled. To qualify as a "Claimant," a candidate must have (1) taken the exam between 2000 and 2009, the years challenged in this action, (2) not been promoted to police sergeant, and (3) taken the exam in a jurisdiction and year in which there was a shortfall of the candidate's race. *See* Decree, ¶ 3.

Attachment A to the Decree sets forth the jurisdictions and years in which there was a shortfall of African-American and/or Hispanic candidates who were not promoted to police sergeant due to the disparate impact of the challenged practices.<sup>14</sup>

The definition of “Claimant” was crafted during settlement negotiations to ensure that the negotiated relief was distributed to those candidates who were most harmed by the State’s challenged practices. When entering the Decree, the Court rejected objections to this definition, including an objection from Leroy Bibbs, who both then and now objects to the fact that African-American candidates from Kearny are not eligible for relief while Hispanic candidates are. *See U.S. v. New Jersey*, 2012 WL 3265905, at \*21-22; *see also* Appendix C, Exh. 5; Final Entry Memo, Appendix E, Exh. 25, Dkt. No. 64-5. The Court noted that “Kearny’s shortfall is such that although Hispanic candidates may be eligible for back pay, African Americans are not, and neither African Americans nor Hispanics are eligible for priority promotion there.” *U.S. v. New Jersey*, 2012 WL 3265905, at \*21. The Court stated that

[t]he United States and the State reached an agreement in which limited back pay is made available only to claimants in jurisdictions with a shortfall of at least one. Such a decision is neither unreasonable nor inequitable; to the contrary, it targets the back pay remedy exclusively to officers in jurisdictions where a statistically discernible disparate impact exists, ensuring relief in the most affected jurisdictions. . . . The settlement extends relief to many affected claimants, and when taken in conjunction with the other relief afforded in the decree, the Court is satisfied that the totality of the relief afforded is adequate.

*Id.* at \*22.

Thus, the Parties recommend that the Court overrule the objections of (1) Jamal Minitee, Appendix C, Exh. 10, who took the challenged exam in Union County in which a shortfall did not occur; (2) Patrick LaGuerre, Appendix C, Exh. 52, who took the challenged exam in East

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<sup>14</sup> Attachment A has been amended, and the operative attachment is now Second Amended Attachment A. *See Relief Awards List*, Exh. B, Dkt. No. 79.

Orange in 2008 in which a shortfall did not occur; (3) Leroy Bibbs, Appendix C, Exh. 5, who took the challenged exam in Kearny in which a shortfall of African-American candidates did not occur;<sup>15</sup> (4) Eric Brown, Appendix C, Exh. 62,<sup>16</sup> who took the challenged exam in New Brunswick in 2004 and 2007 in which a shortfall of African-American candidates did not occur; and (5) Keli Mainor-Oates, Appendix C, Exh. 49, who took the exam in 1998 and, therefore, outside of the date range challenged in this action.

In addition, according to the express terms of the Decree, candidates who have been promoted to police sergeant are not Claimants and are not eligible for relief. Thus, the Parties recommend that the Court also overrule the objections of Kevin Coleman, Appendix C, Exh. 7; Iris Cruz, Appendix C, Exh. 28; Patrick Forrest, Appendix C, Exh. 29; and Lawrence Flanagan, Appendix C, Exh. 33.

**D. Response to Objection to Limiting Priority Promotion Eligibility to the Jurisdiction in Which the Candidate Took the Police Sergeant Written Exam**

The United States received one objection to limiting priority promotion eligibility to the jurisdiction in which the candidate originally took the police sergeant written exam. This objection, submitted by Darrell Henderson, should be overruled. Mr. Henderson, a Claimant who the United States determined was eligible for back pay and priority promotion, objected to the limitation of his eligibility for priority promotion to the jurisdiction in which he took the police sergeant examination, the City of Camden, and asserted that he should be eligible for

<sup>15</sup> Additionally, Mr. Bibbs' objection should be overruled because, as discussed above, the Court rejected Mr. Bibbs' previous, identical objection at the Initial Fairness Hearing seeking a broader definition of "Claimant."

<sup>16</sup> Mr. Brown's objection was also untimely. However, the first determination letter that was sent to him via certified mail was returned to sender, and a second determination letter was not mailed to him until March 8, 2013, the day before the deadline for submitting timely objections, and so the United States does not base its recommendation to overrule Mr. Brown's objection on its untimeliness.

priority promotion in any other jurisdiction participating in the civil service system. *See* Appendix C, Exh. 3. Since the submission of his objection, Mr. Henderson has been hired as a police sergeant in the Camden County police force, effective April 12, 2013. *See Declaration of Daniel Hill* (“Hill Decl.”), ¶ 6, Appendix D, Exh. 89. Mr. Henderson’s current status as a police sergeant renders his objection regarding priority promotion relief moot, and the Parties therefore recommend that his objection be overruled as moot.

On a broader level, however, Mr. Henderson’s objection draws attention to the unique circumstances of Claimants who took the police sergeant examination in the City of Camden, whose police force is in the midst of dissolution. The City of Camden police force is currently the subject of a layoff plan approved by the New Jersey Civil Service Commission, pursuant to which all uniformed personnel are expected to be laid off on or before April 30, 2013, at which time the City of Camden police force will cease to exist. *See id.*, ¶ 2. At the same time, a new Camden County police force has been created and has been hiring uniformed personnel, some of whom were previously employed by the City of Camden. *See id.*, ¶¶ 3-5. To date, Camden County has hired approximately nine individuals as police sergeants who otherwise would have been eligible for priority promotion in the City of Camden. *See id.*, ¶ 5. Mr. Henderson is one such individual. *See id.*, ¶ 6. Notably, the City of Camden was allotted a total of four priority promotion slots as part of the Decree, *see* Decree, First Amended Attachment K, meaning that a larger number of Claimants have been hired as police sergeants by Camden County than would have been selected for priority promotion in the City of Camden. The substance of Mr. Henderson’s objection, therefore, is also moot.

**E. Response to Objection to Paying a Fee to Take the New Police Sergeant Exam**

The United States has received one objection to paying a fee to take the new police

sergeant exam.<sup>17</sup> The State has always charged a fee for candidates to take promotional exams, and the Decree does not disturb this requirement. As such, the Parties request that the Court overrule this objection and maintain the generally applicable procedure requiring all candidates for police sergeant, including those candidates who are eligible for priority promotion, to submit an application and fee to sit for the new selection procedure for police sergeant.

**F. Response to Objections Involving Procedural Circumstances**

The United States received five objections involving procedural circumstances. The objection of Vilma Plaza should be overruled, and the Parties do not object to the Court sustaining the remaining four objections of Bernard Davis, James Davis, Lydell James, and Jose Ramirez.

Ms. Plaza, a presumptive claimant from Newark who is listed on First Amended Attachment C, submitted an objection stating that she did not receive any information about the lawsuit. *See* Appendix C, Exh. 58. The notice of entry of the Decree and instructions for submitting a claim for relief were sent to Ms. Plaza by both the State and the United States but were returned to the senders due to an insufficient address. *See* Brown Decl., ¶ 15, Appendix D, Exh. 88. Upon receiving her objection, the United States called Ms. Plaza three times and left her three messages to notify her that she must submit an Interest in Back Pay and/or Priority Promotion Form to be considered for relief. *See id.*, ¶ 16. However, the United States has not heard back from Ms. Plaza as of the date of this filing. *See id.*, ¶ 17. The Parties recommend

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<sup>17</sup> This objection was submitted by Darrell Henderson. *See* Appendix C, Exh. 3. As is discussed in Section III.D., *supra*, Mr. Henderson was hired as a police sergeant in the Camden County police force, effective April 12, 2013. *See* Hill Decl., ¶ 6. Mr. Henderson's current status as a police sergeant renders his objection relating to priority promotion relief moot, and the Parties therefore recommend that his objection to paying a fee to take the new police sergeant exam also be overruled as moot.

that the Court overrule Ms. Plaza's objection because she has not submitted a claim form requesting relief.

The Parties do not object to the Court sustaining the remaining four objections involving procedural circumstances. Bernard Davis submitted an untimely claim form to the United States on November 9, 2012, requesting both back pay and priority promotion in Newark. *See* Appendix D, Exh. 82. Had this form been timely submitted, the United States would have determined that Bernard Davis was eligible for three years of back pay from Settlement Fund I and for priority promotion in Newark. In his objection, Bernard Davis states that he was living at his elderly parents' house to provide them with care and was not regularly checking his mail. Appendix C, Exh. 53. He alleges he read his notice letter after October 19, 2012, and was, therefore, unable to timely submit a request for relief. *Id.* Though Bernard Davis is technically not eligible for relief, due to his explanation of the circumstances surrounding his submission of the claim form, the Parties have no objection to the Court sustaining his objection and granting him relief, including three years of back pay from Settlement Fund I and eligibility for priority promotion in Newark.

James Davis submitted a timely but incomplete claim form, including only the first page of the Interest in Back Pay and/or Priority Promotion Form, on October 16, 2012. *See* Appendix D, Exh. 83. He then submitted an untimely but complete form on January 8, 2013, requesting both back pay and priority promotion. *See id.* Had the complete form been timely submitted, the United States would have made a determination that James Davis was eligible for 9 years of back pay from Settlement Fund I but was not eligible for priority promotion because he retired in 2010 from service as a police officer in Atlantic City. According to his objection, James Davis did not receive the notices sent to him by the State or the United States and initially learned of

the interest in relief forms from a former coworker who provided him with only the first page of the form, which he submitted. Appendix C, Exh. 11. He alleges he was unaware that the form was incomplete. *Id.* The United States has confirmed that James Davis did not receive the notices sent to him by the State or by the United States because they were returned to the senders due to an insufficient address. Though James Davis is technically not eligible for relief, due to his explanation of the circumstances surrounding his submission of the claim form, the Parties have no objection to the Court sustaining his objection and granting him relief, specifically, nine years of back pay from Settlement Fund I.

The United States received an objection from Lydell James, who did not submit the revised claim form approved by the Court in First Amended Attachment H despite being sent notice that this revised claim form must be submitted for him to be considered for relief. *See* Appendix C, Exh. 12. Forty-two presumptive claimants, including Mr. James, submitted a request for individual relief to the United States using the unrevised forms. *See* Appendix D, Exh. 85. The United States notified the presumptive claimants, including Mr. James, via telephone and/or a letter sent via first class U.S. mail, that to be considered for relief they were required to submit the revised form approved by the Court in First Amended Attachment H. *See* Appendix D, Exh. 86. Thirty-eight of these presumptive claimants submitted revised forms. However, both the notice sent to Mr. James by the United States regarding the revised form and the Notice of Entry of Consent Decree, with the revised forms attached, sent to him by the State were returned to the senders as unclaimed. In the original form that Mr. James submitted, he requested both back pay and priority promotion. According to the Parties' records, Mr. James is an African-American candidate for police sergeant who took the police sergeant written exam in Newark in 2001. Thus, had he submitted the correct form, the United States would have made a

determination that he is eligible for nine years of back pay from Settlement Fund I and priority promotion in Newark. Though Mr. James is technically not eligible for relief because he failed to submit the revised claim form, the Parties have no objection to the Court sustaining his objection and granting him relief, specifically, nine years of back pay from Settlement Fund I and eligibility for priority promotion in Newark.

Finally, the United States received an objection from Jose Ramirez, who stated that he submitted an interest in relief form requesting back pay. *See* Appendix C, Exh. 43. The United States has no record of receiving this form. Upon receiving his objection, however, the United States requested that Mr. Ramirez submit an interest in relief form, which he did on April 10, 2013, requesting back pay. *See* Appendix D, Exh. 87. Had the United States received a timely form from Mr. Ramirez, a Hispanic candidate for police sergeant who took the police sergeant written exam in Newark in 2004 and separated from service in May 2007, it would have determined that he was eligible for two years of back pay from Settlement Fund II. The Parties have no objection to the Court sustaining Mr. Ramirez's objection and granting him relief, specifically, two years of back pay from Settlement Fund II, based on his claim that he did not timely submit the form.

**G. Response to Blank Objections**

The United States received six objections from people who submitted forms that did not specify any basis for or the nature of their objections.<sup>18</sup> Appendix C, Exhs. 4, 17, 54, 56, 60, and

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<sup>18</sup> Three of these objections were not timely submitted. *See* Appendix C, Exhs. 56, 60, & 61. However, the candidates who submitted these objections did not receive the first determination letters that the United States mailed to them, and the United States mailed their second determination letters near to the March 9, 2013, deadline for submitting timely objections. Therefore, the United States does not base its recommendation that the Court overrule these objections on their untimely submission. One of these Claimants submitted an untimely blank objection form along with a copy of his determination letter that contained a note at the bottom stating "relief back pay excepted at this time." *See* Appendix C, Exh. 56.

61. The Parties are unable to comment on these submissions except to state that they do not provide any basis for amending the United States' relief determinations.

### **III. CONCLUSION**

For the reasons stated above, the Parties respectfully request that the Court sustain the objections of Richard Hernandez, Brian Logan, and Nathaniel Johnson, Jr., as to their eligibility for priority promotion. The Parties leave to the Court's discretion whether to sustain the objections of Bernard Davis, James Davis, Lydell James, and Jose Ramirez, who are technically ineligible for relief but have provided explanations as to why the procedural circumstances surrounding their claim submissions should not preclude them from receiving relief. The Parties request that the Court overrule all other objections. Attached are a Proposed Order and Amended Relief Awards List, incorporating relief for Richard Hernandez, Brian Logan, Nathaniel Johnson, Jr., Bernard Davis, James Davis, Lydell James, and Jose Ramirez for the Court to enter as the Final Relief Awards List should the Court sustain these seven objections while overruling all of the other objections.

Dated: April 26, 2013

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on April 26, 2013, I electronically filed the Joint Response to Objections to the Relief Awards List and a Proposed Order with the Clerk of the Court using the CM/ECF system, which will then send a notification of electronic filing to the following:

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# APPENDIX

## A

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UNITED STATES OF AMERICA,

Plaintiff,

v.

STATE OF NEW JERSEY AND NEW  
JERSEY CIVIL SERVICE  
COMMISSION,

Defendants.

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

VICINAGE OF NEWARK

Civil Action No.  
2:10-cv-00091-KSH-CLW

Hon. Katharine S. Hayden

**FINAL ENTRY ORDER**

Upon consideration of Plaintiff United States of America's and Defendants State of New Jersey and New Jersey Civil Service Commission's Joint Response to Objections to Relief Awards List ("Response") and all supporting attachments,

It is hereby **ORDERED** that the Amended Relief Awards List attached as Appendix B to the Response is approved and entered as the Final Relief Awards List; and it is

**FURTHER ORDERED** that all of the deadlines set forth in the Decree are incorporated

herein.

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**KATHARINE S. HAYDEN**  
UNITED STATES DISTRICT JUDGE