

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)

**AMENDED MONETARY RELIEF  
CONSENT DECREE**

In May 2007, the United States of America (“United States”) filed a complaint alleging that the City of New York (the “City”) violated Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.* (“Title VII”), by engaging in a pattern or practice of discrimination against black and Hispanic applicants for the position of entry-level firefighter in the New York City Fire Department (“FDNY”). Specifically, the United States challenged the City’s pass/fail use of Written Exams 7029 and 2043, as well as the City’s rank-order processing

and selection of applicants from eligibility lists based on a combination of applicants' scores on those written exams and a physical ability test. The United States alleged that each of these practices resulted in a disparate impact upon black and Hispanic applicants and was not job-related and consistent with business necessity, as required by Title VII. *See* Dkt. 1. In September 2007, the Vulcan Society, Inc., an association of black firefighters, and several individuals (collectively, the "Plaintiffs-Intervenors") intervened in the case, alleging that the same practices challenged by the United States resulted in an unlawful disparate impact upon black applicants in violation of Title VII and state and local human rights laws. *See* Dkt. 47 at 13-20.

In July 2009, the Court entered summary judgment in favor of the United States and the Plaintiffs-Intervenors, finding that the City's pass/fail and rank-order uses of Written Exams 7029 and 2043 had an unlawful disparate impact under Title VII. *See* Dkt. 294. In March 2012, to remedy the City's disparate impact liability, the Court ordered \$128 million in aggregate back pay damages for 2001-2011, the first period in which back pay damages accrued. *See* Dkt. 825. The Court's order held that the City would have the opportunity to reduce the aggregate amount of back pay damages by proving that individual discrimination victims mitigated their losses through interim employment. The Court also held that the City would be liable for a separate amount of aggregate back pay damages for the period between January 1, 2011, and the date the priority hires join the FDNY. *See* Dkt. 825 at 26 n.12.

In October 2012, after a four-day fairness hearing, the Court entered a Final Relief Order providing that black and Hispanic applicants who took Written Exams 7029 and/or 2043, timely submitted claim forms, and met the Court-ordered eligibility criteria would be entitled to individual relief to remedy the City's disparate impact discrimination, including individual

monetary relief in the form of back pay, fringe benefits, and interest. *See* Dkt. 1012; *see also* Dkt. 825. In August 2013, the Court completed its determinations as to which individuals were eligible for relief, finding that 1,470 Claimants are eligible for relief. *See* Dkt. 1251; Dkt. 1236; Dkt. 1201; Dkt. 1195; Dkt. 1190; Dkt. 1184; Dkt. 1182; Dkt. 1144; Dkt. 1135; Dkt. 1112; Dkt. 1106; Dkt. 1059.

As set forth below, the Parties have reached the agreement embodied in this Amended Monetary Relief Consent Decree (“Decree”) and the Amended Proposed Relief Awards List (Attachment A) to resolve the claims of the United States and the Plaintiffs-Intervenors regarding the total amounts and allocation of back pay and fringe benefits to the black and Hispanic applicants for the entry-level firefighter position at the FDNY who were harmed by the use of the exams held to be discriminatory. The Parties have agreed on the total amount of the City’s liability for back pay, fringe benefits, and interest, as set forth in Paragraph 12. The United States and the Plaintiffs-Intervenors have agreed to the allocation methodology apportioning this back pay, fringe benefits, and interest among Claimants. The City did not take a position in negotiations over this allocation methodology because the City concluded that, in this case, allocation issues were for the United States and the Plaintiffs-Intervenors to resolve. The City has no objection to the allocation methodology agreed to by the United States and the Plaintiffs-Intervenors. The Parties desire that the back pay and fringe benefits claims be settled to avoid the burden, expense, and uncertainty of protracted litigation.

In resolution of this action, with the consent of the Parties, IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED as follows:

## I. DEFINITIONS

1. The “Parties” are the United States, by its counsel the United States Department of Justice; the City of New York, by its counsel the Corporation Counsel of the City of New York; the Plaintiffs-Intervenors’ Nonhire Subclass, by its counsel Levy Ratner, P.C.; and the Plaintiffs-Intervenors’ Delayed-Hire Subclass, by its counsel the Center for Constitutional Rights.

2. “Back pay” refers to the monetary value of some or all of the wages that a Claimant would have received from the City if the Claimant had been hired by the City for an entry-level firefighter position into the first FDNY Academy class appointed off of the eligible list of the exam for which s/he is eligible for relief.

3. “Claimants” refers to the 1,470 individuals who submitted claim forms seeking relief in this case and whom the Court determined were eligible for relief because they met the definition of a Delayed-Hire or Nonhire Claimant and satisfied the other lawful qualifications that were mandatory, minimum qualifications at the time the Claimants applied for an entry-level firefighter position. *See* Dkt. 1012 at 4-8.

4. “Damages category” refers to the category used to determine each Claimant’s individual monetary relief award for back pay, fringe benefits, and interest. Each Claimant has been assigned into a single damages category based on the race identified on his/her claim form (black or Hispanic), or as amended by order of the Court (Dkt. 1235), 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 (Delayed-Hire or Nonhire Claimant), *see* Dkt. 1012 at 4-6. Claimants determined to be eligible for relief based on both Exam 7029 and Exam 2043 have

been assigned to the Exam 7029 damages category. The eight damages categories are listed in column 1 of the chart provided in Paragraph 12.

5. “Days” refers to calendar days unless otherwise specified clearly in the context of a particular provision of this Decree. If any deadline referenced in this Decree should fall on a Saturday, Sunday, or federal holiday, the deadline shall be moved to the next day that is not a Saturday, Sunday, or federal holiday.

6. “Entry-level firefighter” refers to a person in the entry-level uniformed position in the FDNY, regardless of whether the person may be called a “recruit,” “trainee,” “probie,” or other title until the individual has completed academy training and/or a probationary period. It does not refer to a person selected for promotion to the position of Firefighter from the position of Emergency Medical Technician or Paramedic through the City of New York’s open-competitive promotional examination.

7. “FDNY appointment date” refers to the date of the FDNY Academy class to which a Delayed-Hire Claimant was appointed. If a Delayed-Hire Claimant was appointed to the FDNY more than once, his/her FDNY appointment date refers to the first time the Claimant was appointed.

8. “Fringe benefits” refers to the monetary value of some of the health insurance premiums and out-of-pocket expenses for medical care that a Claimant would not have paid if s/he had been covered by a health insurance plan provided by the City or the FDNY firefighters’ union.

9. “Individual monetary relief award” refers to an award of back pay, fringe benefits, and interest.

10. “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.

## II. PURPOSE OF DECREE

11. The purpose of this Decree is to require the City to provide individual monetary relief awards to black and Hispanic applicants for the entry-level firefighter position who lost back pay and fringe benefits due to the City’s use of the exams held to be discriminatory and who are Claimants as defined in Paragraph 3.

## III. INDIVIDUAL MONETARY RELIEF AWARDS

12. The City agrees to pay the following aggregate amounts for individual monetary relief awards to Claimants, which includes interest accruing through the end of 2014:

<b>Damages Category</b>	<b>Aggregate Back Pay Amount</b>	<b>Interest on Aggregate Back Pay Amount</b>	<b>Aggregate Fringe Benefits Amount</b>	<b>Interest on Aggregate Fringe Benefits Amount</b>
<b>Exam 7029 Nonhire Claimants</b>				
Black Exam 7029 Nonhire Claimants	\$38,818,871.58	\$5,892,695.44	\$2,564,188.85	\$389,243.26
Hispanic Exam 7029 Nonhire Claimants	\$17,097,828.56	\$2,595,446.30	\$1,394,558.83	\$211,693.69
<b>Exam 2043 Nonhire Claimants</b>				
Black Exam 2043 Nonhire Claimants	\$15,495,383.14	\$1,562,726.43	\$1,314,375.43	\$132,556.20
Hispanic Exam 2043 Nonhire Claimants	\$8,359,839.74	\$843,099.03	\$821,484.33	\$82,847.60
<b>Exam 7029 Delayed-Hire Claimants</b>				
Black Exam 7029 Delayed-Hire Claimants	\$ 444,509.77	\$93,679.44	\$30,677.17	\$6,465.14
Hispanic Exam 7029 Delayed-Hire Claimants	\$443,638.42	\$93,495.80	\$36,121.84	\$7,612.60
<b>Exam 2043 Delayed-Hire Claimants</b>				
Black Exam 2043 Delayed-Hire Claimants	\$175,039.37	\$6,212.16	\$24,600.69	\$873.08
Hispanic Exam 2043 Delayed-Hire Claimants	\$129,547.39	\$4,597.65	\$23,611.39	\$837.97
<b>TOTAL</b>	<b>\$80,964,657.97</b>	<b>\$11,091,952.25</b>	<b>\$6,209,618.53</b>	<b>\$832,129.54</b>

13. Each Claimant's individual monetary relief award is set forth in the Amended Proposed Relief Awards List, which was prepared by the Court-appointed claims administrator, The Garden City Group, Inc. ("GCG"), and is attached hereto as Attachment A. The United States and the Plaintiffs-Intervenors agree that the individual monetary relief awards reflected in the Amended Proposed Relief Awards List are consistent with the allocation methodology to which they agreed.

14. The allocation of individual monetary relief awards to Claimants reflected in the Amended Proposed Relief Awards List was determined as described in the Amended Declaration of Ed Barrero (Attachment B), which is incorporated herein by reference. The United States and the Plaintiffs-Intervenors agree that the Declaration accurately represents their agreement regarding the allocation of individual monetary relief awards to Claimants.

#### **IV. NOTICE OF DECREE AND FAIRNESS HEARING**

15. Upon execution of this Decree by the Parties, the United States shall file the Decree and Proposed Relief Awards List (Attachment A) along with a joint motion requesting provisional entry of the Decree and scheduling of a Fairness Hearing to determine whether the terms of the Decree are fair, reasonable, equitable, and otherwise consistent with federal law and whether the Proposed Relief Awards List should be approved or amended. The Proposed Relief Awards List shall identify each Claimant by claimant number and shall state for each Claimant: damages category; back pay award; fringe benefits award; and interest award. In addition, the Proposed Relief Awards List shall state for each Delayed-Hire Claimant: FDNY appointment date and months of delay.

16. The purpose of the Fairness Hearing and the related notification provisions of this Decree is to provide all persons who may be affected by the terms of the Decree with notice of

the Decree and an opportunity to present objections prior to final entry of the Decree in accordance with Section 703(n) of Title VII, 42 U.S.C. § 2000e-2(n). The Fairness Hearing will also allow the Court to determine whether the Proposed Relief Awards List should be approved or amended.

17. The Court shall provide the Parties with at least 90 days notice of the date and time set for the Fairness Hearing.

18. No later than 80 days before the Fairness Hearing, GCG shall send, via first-class U.S. mail and email, to each Claimant at his/her last known mailing and email address: (a) a “Notice of Monetary Relief Settlement & Fairness Hearing,” (b) “Instructions for Filing an Objection Prior to the Fairness Hearing,” and (c) a blank “Objection Form” (collectively, “Notice Documents”) in the formats set forth in Attachment C to the Decree. GCG shall attach a cover letter to this mailing, notifying the Claimant of the amount of his/her proposed individual monetary relief award listed on the Proposed Relief Awards List, in the format set forth in Attachment D. If any Claimant’s notice is returned to GCG as undeliverable, GCG shall notify the Parties and attempt to identify an updated mailing address as soon as practicable. If GCG or one of the Parties identifies an alternate mailing address, GCG shall re-mail the Notice Documents and cover letter within 2 business days.

19. GCG shall upload the Notice Documents and cover letter to each Claimant’s password-protected portal on GCG’s website, [www.fdnylitigation.com](http://www.fdnylitigation.com). GCG also shall post the provisionally-entered Decree and its attachments (Attachments A-F) on the publicly-available section of [www.fdnylitigation.com](http://www.fdnylitigation.com).



20. Claimants who wish to object to the terms of the Decree and/or to their proposed individual monetary relief award may file an Objection Form in accordance with the requirements set forth in Attachment C.

- a. Objection Forms shall be submitted to GCG and state the objector's name, claimant number, address, telephone number, and email address; set forth a specific description of the objector's basis for objecting; include copies of any documentation supporting the Objection Forms; state the name and contact information of the objector's counsel, if any; and state whether the objector wishes the opportunity to be heard in Court at the Fairness Hearing.
- b. Objection Forms submitted via mail must be postmarked no later than 50 days before the Fairness Hearing, and Objection Forms submitted via email or uploaded to GCG's claimant portal must be transmitted electronically no later than 50 days before the Fairness Hearing.
- c. Any Claimant who fails to follow these instructions shall be deemed to have waived any right to object to the terms of this Decree or to his/her individual monetary relief award, except for good cause as determined by the United States and the Plaintiffs-Intervenors.
- d. Any Claimant who fails to indicate on his/her Objection Form that s/he (or his/her attorney) requests to state his/her objection in person at the Fairness Hearing may waive his/her right to state his/her objection in person.

- e. GCG shall post any Objection Forms submitted via mail or email to each Claimant's portal within 3 business days of receipt.
- f. No later than 65 days before the Fairness Hearing, GCG shall provide each party with all of the Objection Forms it has received up to that date.
- g. No later than 3 business days after the Objection Form deadline, GCG shall provide each party with all of the Objection Forms it has received up to that date. GCG shall notify the Parties of any Objection Forms it receives after this date.

21. No later than 10 days before the Fairness Hearing, the United States shall file with the Court all of the Objection Forms submitted by Claimants. By this date, each party shall file with the Court its responses to Claimants' timely Objection Forms.

22. No later than the date of the Fairness Hearing, the City shall provide to GCG an annotated Proposed Relief Awards List, identifying which Claimants are currently employed by the City and which Claimants are not currently City employees. The City also shall provide GCG with federal, New York State, and District of Columbia withholding tax forms. On the annotated Proposed Relief Awards List, the City shall identify which withholding tax forms, if any, should be sent to each Claimant who is receiving a back pay award.

23. No later than the date of the Fairness Hearing, the City shall provide GCG with a protocol outlining what information must be included on the federal, New York State, and District of Columbia withholding tax forms for them to be considered fully executed for purposes of processing payment to the Claimants.

**V. AMENDMENT OF PROPOSED RELIEF AWARDS LIST**

24. At or following the Fairness Hearing, the Court shall determine which, if any, objections to the Proposed Relief Awards List that were submitted to the Court pursuant to Paragraph 21 are well founded. The Court shall then approve the Proposed Relief Awards List as submitted or, if the Court finds that any objections are well founded, shall request that the Parties make any necessary adjustments to the allocation of relief and file an Amended Proposed Relief Awards List. Such adjustments shall be consistent with the allocation methodology agreed to by the United States and the Plaintiffs-Intervenors. The Court shall find that any objection by a Claimant to the amount of his/her individual monetary relief award is well founded only if the Court finds that the determination reflected was not reasonable, equitable in relation to the number of Claimants and the aggregate award amounts in that Claimant's damages category, or consistent with the provisions of this Decree or federal law.

**VI. ENTRY OF DECREE AND APPROVAL OF FINAL RELIEF AWARDS LIST**

25. If the Court determines that the terms of this Decree are fair, reasonable, equitable, and otherwise consistent with federal law, the Court shall enter the Decree at or following the Fairness Hearing. Upon entry of this Decree, the (Amended) Proposed Relief Awards List shall become the Final Relief Awards List.

**VII. NOTICE OF INDIVIDUAL MONETARY RELIEF AWARDS**

26. No later than 15 days after entry of the Decree and approval of the Final Relief Awards List, GCG shall send, via first-class U.S. mail and email, to each Claimant who is listed on the Final Relief Awards List at his/her last known mailing and email address, a "Notice of Individual Monetary Relief Award," including instructions for submitting an "Acceptance of Individual Monetary Relief Award and Release of Claims" form, in the format set forth in

Attachment E to the Decree, as well as an “Acceptance of Individual Monetary Relief Award and Release of Claims” form in the format set forth in Attachment F to the Decree.

27. For each Claimant who is not currently a City employee, this mailing shall also include the applicable federal, New York State, and District of Columbia withholding tax forms identified in the annotated Proposed Relief Awards List provided to GCG by the City pursuant to Paragraph 22. If the Court sustains any objections pursuant to Paragraph 24 that necessitate changes to the annotated Proposed Relief Awards List, the City shall provide GCG with an updated annotated Proposed Relief Awards List.

28. If any Claimant’s mailing of the Acceptance of Individual Monetary Relief Award and Release of Claims form and any applicable withholding tax forms is returned to GCG as undeliverable, GCG shall notify the Parties and attempt to identify an updated mailing address as soon as practicable. If GCG or one of the Parties identifies an alternate address, GCG shall remail the Acceptance of Individual Monetary Relief Award and Release of Claims form and applicable tax forms within 2 business days.

29. No later than 30 days after entry of the Decree and approval of the Final Relief Awards List, GCG shall send, via first-class U.S. mail and email, to each Claimant at his/her last known mailing and email address, a notice of the upcoming deadline to Claimants who have not yet returned their Acceptance of Individual Monetary Relief Award and Release of Claims forms and any applicable withholding tax forms.

**VIII. SUBMISSION OF ACCEPTANCE OF INDIVIDUAL MONETARY RELIEF AWARD AND RELEASE OF CLAIMS FORM**

30. To receive an award of individual monetary relief, a Claimant must return to GCG no later than 45 days after entry of the Decree and approval of the Final Relief Awards List an

Acceptance of Individual Monetary Relief Award and Release of Claims form and any applicable withholding tax forms in accordance with the requirements set forth in Attachment E.

31. A Claimant's failure to return an Acceptance of Individual Monetary Relief Award and Release of Claims form and any applicable withholding tax forms by the deadline set forth in Paragraph 30 or by the deadline set forth in Paragraph 35, whichever is applicable, shall constitute a rejection of the offer of relief and release the Parties from any further obligation under the Decree to make an award of individual monetary relief to that Claimant.

32. GCG shall post all returned Acceptance of Individual Monetary Relief Award and Release of Claims forms and any applicable withholding tax forms to each Claimant's password-protected portal on [www.fdnylitigation.com](http://www.fdnylitigation.com) within 3 business days of receipt.

33. Within 3 business days, or as soon as practicable, of GCG's receipt of an Acceptance of Individual Monetary Relief Award and Release of Claims form and any applicable withholding tax forms, GCG shall review the form(s) to determine whether it is fully executed with the information that is necessary to distribute that Claimant's monetary relief award.

- a. An Acceptance of Individual Monetary Relief Award and Release of Claims form is fully executed if the Claimant completes all blanks that require a response as indicated by an asterisk on the form. A withholding tax form is fully executed based on whether it complies with the protocol provided to GCG by the City pursuant to Paragraph 23.
- b. If the form(s) is not fully executed, within 3 business days, or as soon as practicable, GCG shall notify the Claimant, via mail, email, and telephone, that his/her form(s) was not fully executed.

- c. GCG shall continue to conduct such review of all returned forms and to notify Claimants who submitted forms that were not fully executed until the deadline set forth in Paragraph 35.

34. No later than 60 days after entry of the Decree and approval of the Final Relief Awards List, GCG shall provide the Parties with a list of all of the Claimants who submitted Acceptance of Individual Monetary Relief Award and Release of Claims forms and withholding tax forms (if applicable), identifying which Claimants submitted fully-executed forms, as described in Paragraph 33(a), and which Claimants submitted forms that were not fully executed.

35. No later than 75 days after entry of the Decree and approval of the Final Relief Awards List, Claimants whose Acceptance of Individual Monetary Relief Award and Release of Claims form and/or any applicable withholding tax forms were not fully executed must provide any missing information, and Claimants who show good cause for failing to meet the prior deadline must return fully-executed forms. A Claimant's failure to return fully-executed forms by this deadline shall constitute a rejection of the offer of individual monetary relief and release the Parties from any further obligation under the Decree to make an award of individual monetary relief to that Claimant. No later than 3 business days after this deadline, GCG shall provide each party with all of the returned Acceptance of Individual Monetary Relief Award and Release of Claims forms and any applicable withholding tax forms.

36. No later than 90 days after entry of the Decree and approval of the Final Relief Awards List, GCG shall provide the Parties with an updated list of all of the Claimants who submitted Acceptance of Individual Monetary Relief Award and Release of Claims forms and any applicable withholding tax forms, identifying which Claimants submitted fully-executed forms and which Claimants submitted forms that were not fully executed. GCG also shall

provide the Parties with an Amended Final Relief Awards List that identifies the individual monetary relief awards to Claimants who timely returned fully-executed Acceptance of Individual Monetary Relief Award and Release of Claims forms and any applicable withholding tax forms, so that the City may issue payments to these Claimants.

**IX. PAYMENT OF INDIVIDUAL MONETARY RELIEF AWARDS**

37. No later than 120 days after entry of the Decree and approval of the Final Relief Awards List, the City shall inform the United States and the Plaintiffs-Intervenors of all categories of moneys that will be withheld from back pay award payments to Claimants, including, but not limited to, withholdings for federal, New York State, District of Columbia, New York City, and Yonkers taxes, child support liens, and employee pension contributions.

38. No later than 150 days after entry of the Decree and approval of the Final Relief Awards List, the City and GCG shall issue payments of individual monetary relief awards to each Claimant who is listed on the Amended Final Relief Awards List. The City shall issue payment for the back pay awards, and GCG shall issue payment for the fringe benefits and interest awards.

39. The City shall withhold all of the appropriate federal, New York State, District of Columbia, New York City, and Yonkers income taxes; the employee's Medicare and FICA tax; and any other amounts that are required to be withheld by law, such as child support liens and employee pension contributions for Claimants who were awarded retroactive seniority, from each Claimant's back pay award. The City shall pay the employer portion of all such taxes or contributions that are normally paid by an employer; these employer contributions shall not be paid out of the aggregate amounts for individual monetary relief awards listed in Paragraph 12.

40. If any Claimant's payment check is returned as undeliverable or any Claimant's direct deposit payment fails, the City or GCG, whichever issued the payment, shall notify the other Parties and GCG, if necessary, within 10 business days, and GCG shall attempt to identify an updated mailing address and/or corrected direct deposit information. If GCG or one of the Parties identifies an alternate address and/or corrected direct deposit information, the City or GCG, whichever issued the payment that was returned or failed, shall retain the payment check or retransmit the payment via direct deposit within 5 business days.

41. No later than 165 days after entry of the Decree and approval of the Final Relief Awards List, the City and GCG shall each provide a statement to the United States and the Plaintiffs-Intervenors indicating the amount of the payment made to each Claimant. The City's statement shall include the amounts withheld from each such back pay award payment for federal, New York State, District of Columbia, New York City, and Yonkers taxes and any other amounts required to be withheld by law.

42. No later than 180 days after entry of the Decree and approval of the Final Relief Awards List, the City and GCG shall each provide a list of all payments returned as undeliverable and/or payments not accepted by the Claimant (e.g., checks that have not been cashed or payments with failed direct deposit transactions). The City shall also provide a statement of the aggregate amounts of back pay remaining for each of the eight damages categories as set forth in Paragraph 12. GCG shall also provide a statement of the aggregate amounts of fringe benefits, interest on back pay, and interest on fringe benefits remaining for each of the eight damages categories as set forth in Paragraph 12.

43. No later than 190 days after entry of the Decree and approval of the Final Relief Awards List, GCG shall notify the Claimants who have not accepted payment that their award



may be redistributed or otherwise allocated if they do not accept payment by a specified date that is 180 days after the issuance of the check.

44. No later than 340 days after entry of the Decree and approval of the Final Relief Awards List, the City and GCG shall each provide an updated list of all payments returned as undeliverable and/or payments not accepted by the Claimant (e.g., checks that have not been cashed or payments with failed direct deposit transactions). The City shall also provide an updated statement of the aggregate amounts of back pay remaining for each of the eight damages categories as set forth in Paragraph 12. GCG shall also provide an updated statement of the aggregate amounts of fringe benefits, interest on back pay, and interest on fringe benefits remaining for each of the eight damages categories as set forth in Paragraph 12.

45. No later than 350 days after entry of the Decree and approval of the Final Relief Awards List, the United States and, for black claimants, the relevant subclass counsel shall inform the City and GCG either that the remaining funds should be reallocated according to the allocation methodology set forth in this Decree and its attachments, or, if the remaining funds are determined by the Parties to be *de minimis*, that the remaining funds should not be reallocated according to the allocation methodology and that the Parties shall confer and attempt in good faith to determine a manner of reallocation that is consistent with the purposes of the Decree.

#### **X. SERVICE AWARDS TO PLAINTIFFS-INTERVENORS**

46. In recognition of the time and effort expended by the individual Plaintiffs-Intervenors, Roger Gregg, Marcus Haywood, Kevin Walker, Candido Nuñez, Kevin Simpkins, Rusebell Wilson, and Jamel Nicholson, and by the Vulcan Society, in assisting in the prosecution of the litigation, including consulting regularly with counsel, reviewing documents, providing affidavits and other evidence, assisting with settlement negotiations, and in several instances

testifying at deposition and/or trial, the City and the Plaintiffs-Intervenors agree that the City shall provide reasonable service awards (also called incentive awards) to the named Plaintiffs-Intervenors. Each of the 7 individually-named Plaintiffs-Intervenors shall receive a \$15,000 service award, which is separate from and in addition to any monetary relief or other non-economic relief to which he may be entitled in connection with this matter. The Vulcan Society shall receive a \$50,000 service award, which shall be used to forward its not-for-profit mission. The service awards shall be issued to the Plaintiffs-Intervenors within 60 days of the Court's entry of the Decree.

#### **XI. DISPUTE RESOLUTION**

47. The Parties shall attempt in good faith to resolve informally any disputes that arise under this Decree. If the Parties are unable to resolve a dispute expeditiously, a party may submit the disputed issue to the Court for resolution upon 5 days' written notice to the other parties.

#### **XII. DURATION OF DECREE**

48. Unless otherwise ordered by this Court, and absent the pendency of any motion related to this Decree, this Decree shall expire without further order of the Court upon fulfillment of the Parties' obligations under this Decree.

49. Any party may move the Court to extend the duration of the Decree only upon a showing of good cause.

#### **XIII. COSTS AND FEES**

50. The City shall bear all of the costs incurred by the Court-appointed claims administrator, GCG, in the implementation of the Decree, including the cost of all of the notification procedures described above.

51. The City shall reimburse the United States \$150,000 in taxable costs allowed by 28 U.S.C. § 1920, which were incurred by the United States as a prevailing party in this litigation. The City shall reimburse the United States' taxable costs within 60 days of the Court's entry of the Decree.

52. Other than payment of the costs pursuant to Paragraph 51, the United States shall bear its own attorneys' fees and expenses related to the obligations imposed by this Decree.

53. Upon the Plaintiffs-Intervenors' submission to the City of an interim fee application for work performed on all aspects of the litigation up to the date of the entry of this Decree by the Court, the City and the Plaintiffs-Intervenors will negotiate in good faith for up to 30 days to agree upon a payment of attorneys' fees and costs. If the City and the Plaintiffs-Intervenors are unable to agree upon the issue of attorneys' fees, the dispute will be submitted to the Court for resolution. Payment of attorneys' fees will be made by the City within 90 days of any agreement with the Plaintiffs-Intervenors regarding attorneys' fees.

#### **XIV. MISCELLANEOUS**

54. The Court shall retain jurisdiction over this Decree for the purpose of resolving any disputes or entering any orders that may be appropriate to implement the Decree, including joining any parties whose joinder is necessary to accord complete relief under this Decree.

55. By mutual agreement, the Parties may change the terms of this Decree, provided that such mutual agreement is memorialized in writing, signed by the Parties, and approved by the Court.

56. This Decree constitutes the entire agreement of the Parties with respect to back pay and fringe benefits claims and supersedes all prior agreements, representations, negotiations, and undertakings not set forth or incorporated herein.

It is so **ORDERED**, this \_\_\_\_\_ day of \_\_\_\_\_, 2014