

**UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND**

UNITED STATES OF AMERICA,

Plaintiff,

v.

**STATE OF RHODE ISLAND,
RHODE ISLAND DEPARTMENT OF
CORRECTIONS,**

Defendants.

Civil Action No.: 1:14-cv-78S

**JOINT MOTION TO PROVISIONALLY ENTER
THE SETTLEMENT AGREEMENT AND
SCHEDULE FAIRNESS HEARING**

Plaintiff United States of America (“United States”) and Defendants State of Rhode Island (“Rhode Island”) and the Rhode Island Department of Corrections (“RIDOC”) (collectively, “Parties”) jointly move the Court to provisionally enter the Settlement Agreement, attached as **Exhibit A**, and to schedule a Fairness Hearing on the Terms of the Settlement Agreement. Plaintiff United States also attaches the Parties’ Memorandum of Law in Support of this Motion, accompanying declarations and Proposed Order.

Under the terms of Settlement Agreement, the Parties respectfully request that the Court provisionally enter the proposed Settlement Agreement and schedule the Initial Fairness Hearing on the terms of the Agreement no less than 100 days from the date of the Court’s order on this Joint Motion. The Parties will provide the individuals whose interests may be affected by the Settlement Agreement with notice of and an opportunity to object to the terms of the Settlement Agreement. Prior to the Initial Fairness Hearing, the Parties will address each of the objections timely received.

At the Initial Fairness Hearing, the Court will have the opportunity to consider and resolve any objections to the terms of the Settlement Agreement. Assuming the Court concludes at the end of the Initial Fairness Hearing that the Settlement Agreement is lawful, fair, reasonable, adequate and consistent with the public interest, the Court shall give final entry of the Settlement Agreement.

I. SUMMARY OF THE CENTRAL PROVISIONS OF THE SETTLEMENT AGREEMENT

In order to assist the Court, below is an overview of the central provisions of the Settlement Agreement.¹

A. Injunctive Relief

- The State is hereby enjoined from using the initial, revised written, or video exams at issue in this case, for the position of correctional officer. Exhibit A, ¶ 28.
- The State will adopt and use a new selection device or devices to hire correctional officers in place of the revised written exam and video exam that will not have a statistically significant disparate impact on the basis of national origin or race or will be job related for the correctional officer position and consistent with business necessity in accordance with Title VII. *Id.*, ¶ 34-35.
- In order to address the State's immediate operational needs while mitigating the potential adverse impact that gave rise to this action, the

¹ This is intended only as a summary of the major elements and does not set forth every detail of the Settlement Agreement.

Parties agree that the State may use, on an interim basis, and for the purpose of hiring one class of candidates, the revised written exam with a passing score of 70% (57 out of 82 questions), and the video exam with a passing score of 70% (290 out of 415 possible points), with passing candidates processed in rank order on the basis of their video exam scores. *Id.*, ¶¶ 32-33.

B. Individual Relief

- The State will provide individual relief to eligible Claimants in the form of monetary relief and/or priority hiring relief, including noncompetitive retroactive seniority. *Id.*, ¶ 40.
- The State shall set aside \$450,000 in a Settlement Fund, from which monetary relief will be distributed to eligible Claimants per the terms of the Agreement. *Id.*, ¶ 41.
- The State shall provide priority hire awards to eighteen (18) eligible African American Claimants and nineteen (19) eligible Hispanic Claimants. *Id.*, ¶ 90. Priority hiring relief includes an award of noncompetitive retroactive seniority benefits corresponding with the Claimant's retroactive seniority date, including retroactive pension benefits for failers of the initial written, revised written, and video exams administered from 2000-2013. *Id.*

C. Fairness Hearings and Individual Relief Claims Process

- Prior to the Initial Fairness Hearing, individuals whose interests may be affected by the Agreement will receive notice of the Settlement

Agreement and an opportunity to file objections. *Id.*, ¶¶ 19-24.

- The Court will consider and resolve any objections to the terms of the Settlement Agreement at the hearing. If the Court concludes that terms of the Agreement are fair, reasonable and adequate, the Court shall enter the Settlement Agreement at or following the fairness hearing. *Id.*, ¶ 27.
- The Settlement Agreement sets forth a process for persons who believe they are entitled to individual relief to submit Interest-in-Relief forms to the United States. *Id.*, ¶ 44. The United States, in consultation with the State, will make individual relief determinations for all Claimants. *Id.*, ¶¶ 47-52.
- At the second fairness hearing, the Fairness Hearing on Individual Relief, the Court will enter or modify the individual relief determinations and consider any timely objections. *Id.*, ¶¶ 65-67. If the Court determines that the individual relief awards are fair, reasonable and adequate, the Court shall enter the Monetary Awards List and Priority Hire Claimant List as final. *Id.*, ¶ 67.

D. Duration of the Settlement Agreement

- Upon completion of the terms of the Settlement Agreement, provided there are no outstanding disputes, the Parties will promptly file a request with the court to dismiss this action. *Id.*, ¶¶ 111-112.

II. TIMELINE OF ACTIONS RELATED TO FAIRNESS HEARINGS UNDER THE SETTLEMENT AGREEMENT

In order to assist the Court, below is a timeline of actions related to the Fairness Hearing on the Settlement Agreement and the Fairness Hearing on Individual Relief.

A. Fairness Hearing on the Terms of the Settlement Agreement

- Fairness Hearing on the Terms of the Settlement Agreement: At least **100 days** after the Court provisionally enters the Settlement Agreement. *Id.*, ¶ 15.
- **80 days** before the Fairness Hearing on the Terms of the Settlement Agreement: The Claims Administrator and State shall give notice of the Agreement and forms for objections. *Id.*, ¶¶ 20-23.
- **50 days** before the Fairness Hearing on the Terms of the Settlement Agreement: Deadline for mailing objections to the Settlement Agreement to the Claims Administrator. *Id.*, ¶ 24.
- **45 days** before the Fairness Hearing on the Terms of the Settlement Agreement: The Claims Administrator will provide the Parties, on a rolling weekly basis, with copies of the objections received. *Id.*, ¶ 25.
- **10 days** before the Fairness Hearing on the Terms of the Settlement Agreement: The United States will file with the Court copies of all objections received and the Parties shall file their responses to the objections. *Id.*, ¶ 26.
- [Date to be determined by the Court]: Fairness Hearing on the Terms of the Settlement Agreement, which will be held at :__:__ a.m./p.m. at the

United States District Court for the District of Rhode Island, 1 Exchange Terrace, Providence, RI 02903.

- During or after the Fairness Hearing on the Terms of the Settlement Agreement, the Court shall enter the Settlement Agreement. *Id.*, ¶ 27.

B. Creation of Individual Relief Awards List

- **30 days** after final entry of the Settlement Agreement: The Claims Administrator will mail the Notice of Final Entry of the Settlement Agreement and Interest-in-Relief Forms. *Id.*, ¶ 42.
- **75 days** after final entry of the Settlement Agreement: Deadline for mailing Interest-in-Relief Forms to the Claims Administrator. *Id.*, ¶ 44.
- **85 days** after final entry of the Settlement Agreement: The Claims Administrator shall provide the Parties with copies of all Interest-in-Relief Forms. *Id.*, ¶ 46.
- **120 days** after final entry of the Settlement Agreement: The United States will provide the State with Proposed Individual Relief Awards Lists. *Id.*, ¶ 53.
- **150 days** after final entry of the Settlement Agreement: The State will notify the United States if it objects to any of the individual relief determinations. *Id.*, ¶ 54.
- **180 days** after final entry of the Settlement Agreement: The United States will file with the Court proposed Individual Relief Awards Lists and simultaneously move the Court to hold a Fairness Hearing on Individual Relief. *Id.*, ¶¶ 55, 57.

C. Fairness Hearing on Individual Relief

- **80 days** before the Fairness Hearing on Individual Relief: The Claims Administrator will mail notice of the hearing and related documents to Claimants. *Id.*, ¶ 58.
- **50 days** before the Fairness Hearing on Individual Relief: Deadline for mailing objections to the Proposed Individual Relief Awards Lists. *Id.*, ¶ 60.
- **45 days** before the Fairness Hearing on Individual Relief: The Claims Administrator shall serve on the Parties copies of all objections received. *Id.*, ¶ 61.
- **10 days** before the Fairness Hearing on Individual Relief: The United States shall file with the Court copies of all objections received and the Parties shall file responses to the objections. *Id.*, ¶¶ 62-63.
- [Date to be determined by the Court]: Fairness Hearing on Individual Relief, which will be held at :__:__ a.m./p.m. at the United States District Court for the District of Rhode Island, 1 Exchange Terrace, Providence, RI 02903.

III. CONCLUSION

For the reasons above, the Parties respectfully request that the Court enter the accompanying proposed Order, which provisionally enters the Settlement Agreement and sets the time, date, and location of the Fairness Hearing on the Terms of the Settlement Agreement.

Dated: September 18, 2017

Respectfully submitted,

FOR PLAINTIFF UNITED STATES OF AMERICA:

JOHN M. GORE
Acting Assistant Attorney General
DELORA L. KENNEBREW
Chief



CLARE GELLER
Deputy Chief
DAVID REESE
(AL Bar No. ASB-0087-I67R)
david.reese@usdoj.gov
KUNTI SALAZAR
(CA Bar No. 279090)
kunti.salazar@usdoj.gov
EMILY GIVEN
(NY Reg. No. 5420211)
emily.given@usdoj.gov
Trial Attorneys
U.S. Department of Justice
Civil Rights Division
Employment Litigation Section
950 Pennsylvania Avenue, NW
Patrick Henry Building, Room 4510
Washington, DC 20530
Telephone: (202) 514-3851
Facsimile: (202) 514-1005

STEPHEN G. DAMBRUCH
Acting United States Attorney
RICHARD MYRUS
Assistant United States Attorney
District of Rhode Island

Attorneys for Plaintiff United States of America

FOR DEFENDANTS STATE OF RHODE ISLAND AND RHODE ISLAND DEPARTMENT OF CORRECTIONS:

PETER F. KILMARTIN
Attorney General



NEIL F.X. KELLY
(RI Bar No. 4515)
nkelly@riag.ri.gov
REBECCA TEDFORD PARTINGTON
(RI Bar No. 3890)
rpartington@riag.ri.gov
Assistant Attorneys General
ARIELE YAFFEE
(RI Bar No. 8646)
ayaffee@riag.ri.gov
Special Assistant Attorney General
150 South Main Street
Providence, RI 02903
Telephone: (401) 274-4400, Ext. 2284
Facsimile: (401) 222-3016

Attorneys for Defendants State of Rhode Island, Rhode Island Department of Corrections