

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)

**MEMORANDUM IN SUPPORT OF FINAL ENTRY OF PROPOSED
STIPULATION AND ORDER RESOLVING INTENTIONAL
DISCRIMINATION CLAIMS AND IN RESPONSE TO SUPPLEMENTAL
OBJECTION**

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Plaintiffs-Intervenors, The Vulcan Society, Jamel Nicholson, Rusebell Wilson, Roger Gregg, Marcus Haywood, Kevin Walker, Candido Nuñez and Kevin Simpkins submit this memorandum in further support of the Plaintiffs-Intervenors' motion for final approval and entry of the Stipulation and Order resolving Plaintiffs-Intervenors' intentional discrimination claims

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under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 1981 and the State and City Human Rights Laws (“Intent Stipulation & Order”) (see Dkt. 1470). Defendant City of New York (the “City”) does not oppose the relief sought or the positions stated in this memorandum.

Introduction

On April 28, 2014, this Court preliminarily approved the Intent Stipulation & Order and provided that a fairness hearing would be scheduled at a later date (Dkt. 1293). The Court found, as a preliminary matter, that the proposed settlement was “‘the product of serious, informed, non-collusive negotiations,’ and includes no obvious deficiencies or preferential treatment for any segments of the class.” Id. at 2, quoting In re Initial Pub. Offering Sec. Litig., 243 F.R.D. 79, 87 (S.D.N.Y. 2007), adhered to on reconsideration, 21-MC-92 (SAS), 2007 WL 844710 (S.D.N.Y. Mar. 20, 2007). Further, the Court stated that, pending resolution of any objections that might be made, “the Court intends to grant approval of the settlement terms and entry of the Intent Stipulation & Order.” Id. at 2.

Subsequently, this Court, in conference with the parties, ordered that the Fairness Hearing for this Intent Stipulation & Order coincide with the fairness hearing for the Monetary Relief Settlement, and scheduled those hearings for October 1, 2014 and if necessary, October 2, 2014. (Dkt. 1437). The fairness hearing was held on October 1, 2014. On November 14, 2014 the Court directed Plaintiff-Intervenors and the City to submit a proposal for providing notice of the Intent Stipulation & Order to the members of the Injunctive Relief Subclass who opted out of the Plaintiff-Intervenors’ Rule 23(b)(3) Non-Hire or Delayed-Hire Victim Subclasses and did not receive notice of the October 1, 2014, Fairness Hearing (“opt-out claimants”). (Dkt. 1517). On December 1, 2014 Plaintiff-Intervenors and the City notified the Court of their proposal that a supplemental fairness hearing be held for the 23 opt-out claimants. (Dkt. 1527). The Court

approved the proposal and scheduled a supplemental fairness hearing for February 20, 2015 by Order dated December 10, 2014.

This memorandum addresses the single objection submitted to the Court-appointed claims administrator, The Garden City Group, Inc. (“GCG” or “Claims Administrator”) in response to the Notice regarding settlement of the intentional discrimination claims.

After the Court scheduled the supplemental fairness hearing for the Intent Stipulation & Order on February 20, 2015, GCG provided the 23 opt-out claimants with separate notices of the upcoming supplemental fairness hearings and an opportunity to file objections to the terms of the Intent Stipulation & Order. The “Supplemental Notice of Proposed Settlement of Intentional Discrimination Claims” along with “Instructions for Objecting to the Proposed Stipulation & Order” and a blank form—“Objection to Proposed Stipulation & Order”—were mailed and emailed on December 18, 2014 along with a copy of the Intent Stipulation & Order. GCG also uploaded these documents to each of the 23 opt-out claimant’s password-protected portal on GCG’s website, www.fdnylitigation.com.

The Supplemental Notice of Proposed Settlement advised class members who wished to object to the terms of the Intent Stipulation & Order to file an Objection Form by February 2, 2015 which was more than 30 days after the notice documents were mailed to the 23 opt-out claimants. As the parties have noted in their Monetary Relief Memo, this process is sufficient to provide notice and a reasonable opportunity to object as set forth in 42 U.S.C. § 2000e-2(n). (Dkt. 1469).

**POINT I.
THE OBJECTION**

GCG received one objection from Corry M. Heard, claimant number 200000843. The objection reads in its entirety: “I was not chosen. I was a non-hire and a delayed hire. I was also from California.” Claimant 200000843 responded “no” to the question on the objection form asking, “Will you (or your attorney) state your objection in person at the Supplemental Fairness Hearing?” The objection is attached as Exhibit 1 to the declaration of Richard Levy.

**POINT II.
STANDARD OF REVIEW**

As the parties have outlined previously in both the Monetary Relief Memo (Dkt. 1469), at 8, and the Intent Relief Memo (Dkt. 1471), at 5, the proper standard for approval of a consent decree resolving a pattern or practice action brought under Title VII is whether the proposed agreement is lawful, fair, reasonable, adequate, and consistent with the public interest. See United States v. North Carolina, 180 F.3d 574, 581 (4th Cir. 1999); Vulcan Soc’y v. City of New York, 96 F.R.D. 626, 629 (S.D.N.Y. 1983). As this Court has previously recognized, “[I]n reviewing objections to a consent decree or settlement agreement, courts have analyzed whether the proposed settlements are fair, reasonable, and legal, and whether any of the objections has sufficient merits to overcome the presumption of validity accorded to the relief agreement.” This Court also applied the standard set forth in Kirkland v. N. Y. State Dep’t of Corr. Servs., 711 F.2d 1117, 1132 (2d Cir. 1983) where the Second Circuit “approved a district court’s analysis of a settlement agreement where the district court reviewed objections and ultimately asked whether the proposed remedies were (1) ‘substantially related to the objective of eliminating the alleged instance of discrimination,’ and (2) did not ‘unnecessarily trammel the interests of affected third parties.’” October 26, 2012 Mem. & Order, (Dkt. # 1011) at 6.

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Applying these standards to the Intent Stipulation & Order, the Court should find the objection insufficient and approve and enter the Intent Stipulation & Order.

Argument

**THE OBJECTION DOES NOT WARRANT MODIFICATION
OR NON-ENTRY OF THE INTENT STIPULATION AND ORDER**

The single objection received falls short of meeting the standard for requiring modification or rejection of the Stipulation & Order. The objection fails to address the Intent Stipulation & Order and therefore is without merit.

**THE INTENT STIPULATION AND ORDER MEETS
APPLICABLE STANDARDS FOR APPROVAL OF CLASS SETTLEMENTS,
AND SHOULD BE APPROVED**

The provisions of the Intent Stipulation & Order complement and buttress this Court's prior Relief Orders, and does so in a way that is fair, reasonable and lawful. For a detailed discussion of the appropriateness of the proposed settlement please see the memorandum submitted on September 22, 2014 in support of final entry of proposed stipulation and order resolving intentional discrimination claims. (Dkt. 1471)

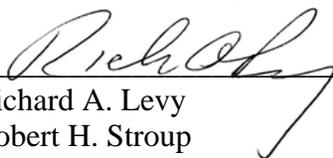
Conclusion

Based upon the foregoing, the Court should overrule the objection to the Intent Stipulation & Order, find that the Intent Stipulation & Order is fair, reasonable and lawful and therefore approve this settlement and enter the Intent Stipulation & Order. In addition, it appears that the Supplemental Fairness Hearing is unnecessary because the sole objector provided his objection in writing and responded that he does not wish to state his objection in person.

Therefore, we respectfully request that the Court cancel the Supplemental Fairness Hearing scheduled for February 20, 2015 and decide this matter on the papers and existing record.

Dated: February 10, 2015
New York, New York

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