

Yaelte, J

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DATE FILED. 6/14/17

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v.

CITY OF NEW YORK,

Defendant.

17 Civ. 0364 (JGK)

CONSENT DECREE

WHEREAS, this action was brought by Plaintiff United States ("United States") against Defendant the City of New York (the "City") and the New York City Department of Transportation (the "NYCDOT") to enforce Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*, as amended ("Title VII").

WHEREAS, this Court has jurisdiction over this matter under 42 U.S.C. § 2000e-6(b) and 28 U.S.C. §§ 1331 & 1345.

WHEREAS, the United States first notified the City of its investigation into the promotional practices of NYCDOT in November 2015.

WHEREAS, based on the information gathered during its investigation, the United States determined that the City has engaged in a pattern or practice of racial discrimination and retaliation in the Fleet Services unit ("Fleet Services") within the New York City Department of Transportation ("NYCDOT").

WHEREAS, the United States notified the City in June 2016 that a lawsuit had been authorized.

WHEREAS, in its Complaint, filed on January 18, 2017, the United States alleges that, as part of an ongoing pattern and practice of discrimination against racial minorities in its Fleet Services, the City failed to promote racial minority employees to supervisory positions and

retaliated against those who criticized the discrimination. Specifically, the United States alleges that, since at least 2007, the City failed to take steps to remedy, and effectively condoned, a management culture in which overt racial animus and inferred racial preference were both tolerated and allowed to thrive.

WHEREAS, the United States and the City, desiring that this action be settled by an appropriate consent decree (the "Decree") and without the burdens of protracted litigation, agree to the jurisdiction of this Court over the Parties and the subject matter of this action.

WHEREAS, the United States and the City further agree to the entry of this Decree as final and binding between themselves as to the issues raised in the United States' Complaint in this action.

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" to this Decree are the United States, by the Department of Justice, and the City.

2. "SOMME" means Supervisor of Mechanics (Mechanical Equipment). For the purposes of this Decree, the term SOMME shall be limited to SOMME positions and employees within NYCDOT Fleet Services.

3. "Applicant" means any individual employed by NYCDOT who applies or has applied for the position of SOMME within Fleet Services from August 6, 2010 through the term of this consent decree.

4. "Claimant" means a person who the Parties have agreed is entitled to an award of individual relief.

5. "Back Pay" means a monetary award that represents the value of the additional wages and/or other benefits that a Claimant would have received if he or she had: (a) been permanently and/or provisionally promoted to the position of SOMME between August 6, 2010 and July 5, 2016; and/or (b) not been retaliated against for having alleged racial discrimination in the selection of candidates for promotion to SOMME.

6. "Complainant" means Seupersaud Bharat.

7. "Day" or "Days" means calendar days unless business days are clearly specified. Any deadline referenced in this Decree shall be calculated pursuant to Rule 6 of the Federal Rules of Civil Procedure.

8. "Defendant" means the City.

9. "Effective Date" means the date on which the Court enters the Decree as final.

10. "Fleet Services" is a NYCDOT unit headed by an Associate Deputy Commissioner, who reports directly to the NYCDOT Chief Operations Officer. Until September 17, 2015, Fleet Services was a sub-division of NYCDOT Roadway Repair and Maintenance Division ("RRM").

11. "Individual relief" under this Decree means:

- a. monetary relief in the form of back pay; and/or
- b. retroactive seniority relief.

12. A "Job Vacancy" refers to any vacancy within Fleet Services for the position of SOMME.

13. "Permanent Appointment" refers to the appointment of an individual to the title of SOMME from an eligible list, as described in N.Y. Civil Service Law § 61(1).

14. "Posting" refers to any written or electronic notice or advertisement of a Job Vacancy.

15. "Provisional Appointment" refers to the appointment of an individual to the position of SOMME, as described in N.Y. Civil Service Law § 65.

16. "Retroactive Seniority Relief" means the award of retroactive seniority for the SOMME position of Complainant and/or a Claimant who is eligible for relief pursuant to Paragraph 37 of the Decree. A Claimant is eligible for Retroactive Seniority Relief under this Decree if the Claimant is a minority Applicant who was called from the Civil Service list in response to a vacancy for Permanent Promotion to the position of SOMME from August 6, 2010, through July 5, 2016; was not selected in favor of non-minority applicants who were ranked lower than the minority applicant on the Certified Civil Service List; and, as described in Paragraph 23(e)(e), has since been permanently promoted to the position of SOMME.

17. "Retroactive Seniority" refers to seniority benefits in the SOMME position that a Claimant who receives retroactive seniority relief described in Paragraph 16 is entitled to receive.

a. Retroactive Seniority is comprised of retroactive benefits seniority, which includes seniority for purposes of calculating an individual's salary or other pay, as well as any other purposes for which seniority is used to determine the amount of or eligibility for employee benefits.

b. An award of Retroactive Seniority shall correspond to June 9, 2013.

18. The "Term of this Consent Decree" refers to the entire period of time during which the Court retains jurisdiction over the Decree, as set forth in Section III of this Decree.

II. RETENTION OF JURISDICTION

19. This Court has jurisdiction over the parties and the subject matter of this action. The Court shall retain jurisdiction over this action for a period of three years after the Effective Date to enforce or modify the Decree, to resolve any dispute that arises under the Decree, and to entertain any application by any party and issue any order that may be necessary or appropriate to effectuate its terms and objectives.

20. The Court may extend the term of the Decree upon consent of the parties, or upon an application of either party for good cause shown.

21. The parties will confer and attempt to negotiate a consensual resolution of any dispute before making an application to the Court.

III. PURPOSES OF THE DECREE

22. The purposes of this Decree are to ensure that:

a. The City does not violate Title VII by using policies or practices that have an adverse impact upon racial minorities for the position of SOMME, or that otherwise violate the Title VII rights of racial minorities to become SOMME;

b. The City utilizes lawful selection procedures that will ensure that promotion to the SOMME title is based on merit and that the City's selection procedure does not discriminate against qualified minority applicants; and

c. The City provides, as appropriate, monetary relief and/or retroactive seniority relief to qualified persons who were denied a promotion to the SOMME position or retaliated against due to the employment practices challenged by the United States in this case.

d. The City takes steps to remedy the manner in which claims of discrimination are investigated and addressed.

IV. STIPULATIONS

23. Subject to the Court's approval of this Decree, the Parties waive findings of fact and conclusions of law on all issues, except as to the following, which the Parties stipulate and which the Court finds:

- a. In 2009, the NYCDOT Equal Employment Opportunity Office ("NYCDOT EEO") conducted an investigation into allegations of racial discrimination within Fleet Services.
- b. As part of its investigation, NYCDOT EEO interviewed numerous Fleet Services employees.
- c. During these interviews, employees reported that they had witnessed the Executive Director of the Fleet Services Unit within RRM at the time, "Executive Director I," use racial epithets to describe African American employees.
- d. One of the employees interviewed during the investigation by NYCDOT EEO was "Executive Director II," a direct report of Executive Director I.
- e. In his initial interview with NYCDOT EEO, on October 23, 2009, Executive Director II denied having ever observed Executive Director I behave inappropriately.
- f. At his request, Executive Director II was interviewed again on October 26, 2009. In his subsequent interview, Executive Director II reported to NYCDOT EEO that he repeatedly observed Executive Director I using racial epithets over the course of several years.

g. Until he was interviewed for the second time by NYCDOT EEO in connection with its investigation of Executive Director I, Executive Director II had never reported these racially discriminatory statements.

h. From 1997 to 2010, Executive Director I had served as the EEO counselor within Fleet Services for the NYCDOT EEO.

i. During the course of the interviews conducted by NYCDOT EEO, employees also reported that they believed that Executive Director I had taken personnel actions which were motivated by racial animus.

j. Following its investigation, NYCDOT EEO recommended that Executive Director I be demoted, suspended, and removed from his function as a NYCDOT EEO counselor.

k. These recommendations were reviewed by the Commissioner of NYCDOT at the time in January 2010, and were shared with NYCDOT's Office of the Advocate, the agency unit charged with overseeing the statutory and contractual disciplinary procedures.

l. After being informed by NYCDOT EEO that his case had been referred to the Office of the Advocate for further disciplinary action, Executive Director I chose to retire.

m. Upon learning of Executive Director I's decision to separate from City service, the City did not continue the formal disciplinary process against him.

n. At the time of his retirement, Executive Director I had never been subject to any formal disciplinary sanctions imposed by the City.

- o. Upon Executive Director I's retirement, Executive Director II was promoted to the position previously held by Executive Director I.
- p. Complainant is a racial minority who has been employed by NYCDOT as an auto mechanic from October 2008 to September 2016 and as a SOMME from September 2016 to the present.
- q. At some time during Complainant's employment, Executive Director II instructed Complainant's direct supervisor to reassign Complainant's supervisory duties to a non-minority auto mechanic who had fewer years of experience as an auto mechanic than Complainant. Executive Director II gave this instruction over the expressed preference of Complainant's direct supervisor.
- r. In 2010, Complainant submitted an application in response to a Job Vacancy notice for provisional appointment to the position of SOMME.
- s. Complainant was not selected for this position.
- t. In May 2013, Complainant was called from the Certified Civil Service List for interview for a permanent promotion to the SOMME position by three NYCDOT employees, including Executive Director II.
- u. A three-person committee of NYCDOT management did not select Complainant for promotion to the position of permanent SOMME.
- v. In 2013, Complainant was not selected in favor of non-minority applicants who had fewer years of experience working as an auto mechanic than Complainant.
- w. During Executive Director II's tenure, from 2010 to 2016, Defendant promoted one minority applicant to the position of SOMME.

x. During Executive Director II's tenure as Executive Director of Fleet Services, non-minority applicants were selected for promotion over minority applicants, even when the minority applicants had more years of automotive experience and had been serving in a supervisory capacity without commensurate compensation or title.

y. When management employees challenged Executive Director II's promotional decisions, however, they were removed from the promotional decision-making process.

z. When a non-management employee accused Executive Director II of discriminating against racial minorities within Fleet Services, Executive Director II verbally threatened the employee, including a threat of physical violence. This verbal threat of physical violence was made in the presence of several other supervisory personnel within Fleet Services.

aa. Two minority employees, including Complainant, asserted complaints of discrimination by Executive Director II in the promotion process. Both of these complaints were investigated and determined to be unsubstantiated by NYCDOT EEO.

bb. On June 2, 2016, the City was informed that the U.S. Attorney's Office had conducted an investigation regarding the allegations in the Complaint.

cc. Up until June 2, 2016, Executive Director II continued to serve as Executive Director of Fleet Services.

dd. After June 2, 2016, the City: (1) removed Executive Director II from all supervisory duties and all functions associated with selecting candidates for promotion; and (2) permanently promoted three minority candidates to the position of SOMME, including Complainant.

V. **GENERAL INJUNCTIVE RELIEF**

24. The City, its officials, agents, employees, and successors shall not engage in any act or practice that violates Title VII of the Civil Rights Act of 1964 in connection with the recruitment, selection, and employment of racial minorities for the position of SOMME.

25. The City, its officials, agents, employees, and successors shall not engage in any act or practice that has the purpose or effect of unlawfully discriminating on the basis of race against Applicants for the position of SOMME.

26. The City, its officials, agents, employees, and successors will take steps to investigate and address claims of discrimination that are brought to the attention of the NYCDOT's Office of Equal Employment Opportunities.

27. The City, its officials, agents, employees, and successors shall not adopt or implement any policy, process, or practice for job appointments, promotions or hiring that has the purpose or effect of discriminating on the basis of race against any Applicant for the position of SOMME.

28. The City, its officials, agents, employees, and successors are enjoined from retaliating against or otherwise adversely affecting any person because he or she opposed the alleged discrimination at issue here, in any way participated in or cooperated with the investigation or litigation of the alleged discrimination at issue here, has been involved with the development or administration of this Decree, or received relief under or otherwise benefited from this Decree.

29. The NYCDOT Office of the General Counsel within the Division of Legal Affairs shall be primarily responsible for enforcing the provisions of this Decree. This Office of the

General Counsel's responsibilities shall include, but not be limited to, ensuring that the City fully implements and complies with all paragraphs of this Decree.

VI. PROCESS FOR FILLING JOB VACANCIES

30. All permanent promotions to the position of SOMME shall be made from the Certified Civil Service List, in accordance with Civil Service Law § 61.

31. The City shall notify the United States within twenty-one (21) days if, at any time during the term of this Decree, there is no existing Civil Service List for the position of SOMME from which a permanent promotion can be made by NYCDOT.

32. If at any time during the term of this Decree, there is no existing Certified Civil Service List, and the exigencies of the City's staffing requirements render it impossible or impractical to delay in hiring for the position of SOMME until another civil service list has been certified, Defendant may fill Job Vacancies through provisional appointments pursuant to Civil Service Law § 65(1), provided, however, that it fills any such Job Vacancy in accordance with the following procedures:

a. Defendant shall publish a Posting for a period of at least thirty (30) days. The Posting shall be published at least forty-five (45) days prior to the deadline for applications for the Job Vacancy.

b. Defendant shall, at a minimum, publish the Posting on the NYCDOT's internet and intranet websites, as well as all other locations at which the NYCDOT typically posts a physical Posting. Defendant will also distribute the Posting to the appropriate union for the position.

c. The Posting shall include, at a minimum, a description of the position, a description of the application process, the salary for the position, the minimum qualifications necessary for the position, and any other eligibility requirements. The Posting shall also include a statement that the NYCDOT is an Equal Opportunity Employer.

d. The City will review all applications received in response to a Posting to ensure that Applicants meet the minimum qualifications and are eligible to apply.

e. Qualified Applicants shall be contacted telephonically, letter and/or via email and scheduled for an interview. A letter and/or email confirming the time and date of each interview shall be sent to each Applicant.

f. Applicants selected for interviews in response to a particular posting shall be interviewed by the same panel of interviewers whenever possible.

g. During the interview, the panel will ask the same prepared questions of all selected Applicants. The interview questions will be prepared in advance by NYCDOT, and reviewed and signed off on by the Associate Deputy Commissioner of the Fleet Services Division (or his/her equivalent), in consultation with the NYCDOT EEO Officer. Panel members may also ask appropriate, job-related follow-up questions of their own. Each panel member must separately fill out an interview rating sheet, ranking each interviewed Applicant based upon the panel member's evaluation of the Applicant's qualifications, including, but not limited to, relevant prior experience, job performance, years of service, and performance during the interview.

h. At the conclusion of the interviews, the panel will meet to discuss the interviewed Applicants and to rank them based on the criteria described in subparagraph 32(g). The panel will produce a list reflecting ranking of the interviewed Applicants.

i. Offers for provisional appointment to the position of SOMME shall be made in order of the Applicant's ranking on the list prepared by the panel. The list shall exist only for the vacancy or vacancies being considered at that time.

j. Offers for the provisional appointment to the position of SOMME shall be made in writing.

33. Nothing in Paragraph 32 shall preclude the City from accepting as a transfer a permanent SOMME from another NYCDOT Division or City Agency for the purpose of filling a SOMME vacancy in Fleet Services.

VII. COMPLAINANT'S RELIEF

34. Within ninety (90) days after the Effective Date, in order to settle any and all claims and demands against the City by Complainant arising from the facts and circumstances giving rise to the Complaint, and any other pending claims Complainant has against the City in any court or other forum, the City agrees to provide the relief to the Complainant described in paragraphs (a), (b), and (c) below:

a. provide Complainant Back Pay and Retroactive Seniority relief pursuant to this Decree;

b. pay to Complainant the sum of one hundred and fifty thousand dollars (\$150,000) as additional compensatory damages; and

c. pay Complainant's reasonable attorneys' fees and costs in the amount of \$70,000.

d. In the event that Complainant becomes deceased prior to the payment of the above amounts, such amounts shall be paid in accordance with New York State law.

VIII. INDIVIDUAL RELIEF

A. Two Forms of Individual Relief

35. The City will provide individual relief to eligible Claimants in the form of monetary relief (*i.e.*, back pay) and/or retroactive seniority relief.

36. A Claimant is eligible for monetary relief (*e.g.*, back pay) under this Decree if the Claimant:

a. is a minority Applicant who submitted an application in response to a Posting for Provisional Appointment to the position of SOMME from August 6, 2010, through July 5, 2016, and was not selected in favor of a non-minority applicant; and/or

b. is a minority Applicant who was called from the Civil Service list in response to a vacancy for Permanent Promotion to the position of SOMME from August 6, 2010, through July 5, 2016; and was not selected in favor of non-minority applicants who were ranked lower than the minority applicant on the Certified Civil Service; and/or

c. is a current or former NYCDOT employee who was deprived of wages, or otherwise suffered a material adverse employment action, in retaliation for having alleged discrimination in the selection of candidates for promotion to the position of SOMME.

37. A Claimant is eligible for retroactive seniority relief if the employee satisfies Paragraph 36(b), and is one of the three minority candidates who, as described in Paragraph 23(d)(d), were permanently promoted to the position of SOMME after June 9, 2016.

B. Monetary Relief

38. The Parties have agreed upon fourteen (14) Claimants (the “Monetary Relief Claimants”) who are eligible for monetary relief pursuant to Paragraph 36.

39. A list of the Monetary Relief Claimants, and the award that the Parties have agreed each Monetary Relief Claimant is entitled to as individual relief is attached as Appendix A to this Decree.

C. Retroactive Seniority Relief

40. The Parties have agreed upon three (3) Claimants (the “Retroactive Seniority Claimants”) who are eligible for retroactive seniority relief pursuant to Paragraph 37.

41. A list of the Retroactive Seniority Relief Claimants is attached as Appendix B to this Decree.

IX. ADMINISTRATION OF INDIVIDUAL RELIEF

A. Notice of Individual Relief Awards and Acceptance of Individual Relief Award and Release of Claims Form

42. No later than fourteen (14) days after the Effective Date, the City shall provide notice to each Monetary Relief Claimant and each Retroactive Seniority Claimant entitled to relief.

43. The City shall send notice to each Monetary Relief Claimant and each Retroactive Seniority Claimant identified in Appendices A and B of this Decree via e-mail to the last-known e-mail address and via first-class U.S. mail to the last-known mailing address. The notice shall include:

a. The Notice of Individual Relief Award in the form set forth in Appendices C and D. If the Claimant is eligible for Retroactive Seniority relief, as set forth in Appendix D,

this notice will include a statement of the Claimant's eligibility for such relief and a description of the retroactive seniority the Claimant will receive upon receipt of Retroactive Seniority relief;

b. An Acceptance of Individual Relief Award and Release of Claims Form in the form set forth in Appendix E; and

c. Any withholding tax forms necessary for the City to comply with its withholding obligations under law and Paragraph 54 of this Decree.

B. Acceptance of Individual Relief Award and Release of Claims

44. To receive an award of individual relief, a Claimant must return to the City an Acceptance of Individual Relief Award and Release of Claims Form as set forth in Appendix E of this Decree, along with any applicable withholding tax forms, no later than sixty (60) days after the Effective Date.

45. The submission date of each Acceptance of Individual Relief Award and Release of Claims Form shall be the date on which the form was e-mailed to the City, as determined by the e-mail date stamp, or the date on which the form was mailed to the City, as determined by the postmark. In the event the postmark is missing or illegible, the submission date of the Acceptance of Relief and Release of Claims Form shall be deemed to be five (5) days prior to the date the form was received by the City.

46. Within five (5) business days of the City's receipt of an Acceptance of Individual Relief Award and Release of Claims Form and any applicable withholding tax forms, or as soon as practicable, the City shall review the form(s) to determine whether it is fully executed with the information that is necessary to effectuate the Claimant's individual relief award.

47. An Acceptance of Individual 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 by the City pursuant to Paragraph 54.

48. If the form is not fully executed, within ten (10) business days, or as soon as practicable, after receipt of the form, the City shall notify the Claimant via mail, e-mail, and telephone that his/her form(s) was not fully executed, and provide information to the Claimant indicating what is required to fully execute the form.

49. The City 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 44.

50. No later than five (5) business days after the deadline provided by Paragraph 44, the City shall forward to the United States copies of all Acceptance of Individual Relief Award and Release of Claims Forms and withholding tax forms it received from Claimants named in Appendices A and B of this Decree. The City shall also provide the United States with a list of all Claimants who submitted Acceptance of Individual Relief Award and Release of Claims Forms and withholding tax forms, identifying which Claimants submitted fully-executed forms, as described in Paragraph 44, and which Claimants submitted forms that were not fully executed.

51. No later than seventy-five (75) days after the Effective Date, Claimants whose Acceptance of Individual 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 must show good cause, to be determined by the United States, for failing to meet the

prior deadline, and must return fully-executed forms. A Claimant's failure to return fully-executed forms or failure to show good cause by this deadline shall constitute a rejection of the offer of individual relief and shall release the Parties from any further obligation under the Decree to make an award of individual relief to the Claimant.

52. No later than five (5) business days after the deadline provided in Paragraph 51, the City shall provide the United States with all of the returned Acceptance of Individual Relief Award and Release of Claims Forms and any applicable withholding tax forms. The City shall also provide the United States with an updated list of all of the Claimants who submitted Acceptance of Individual 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.

C. Issuance of Back Pay Award Checks by City

53. No later than ninety days (90) after the deadline provided in Paragraph 52, the City shall mail via certified U.S. mail (return receipt requested) a back pay award check to each Monetary Relief Claimant listed on Appendix A who submitted a fully-executed, as defined in Paragraph 44, Acceptance of Individual Relief Award and Release of Claims Forms and any applicable withholding tax forms. The amount of the back pay award check shall be the amount shown for the Claimant on Appendix A, less all applicable deductions and withholdings in accordance with Paragraph 54, below.

54. The City shall withhold from each Monetary Relief Claimant's back pay award the employee portions of all appropriate federal, state, and local income taxes; the employee's Medicare and FICA tax; and any other amounts that are required to be withheld by law. The

City shall be responsible for remitting and reporting such employee-side withholdings to the appropriate taxing authorities.

55. The City shall be responsible for and remit to the appropriate taxing authorities the employer portion of all federal and state payroll taxes applicable on any monetary relief award paid to a Monetary Relief Claimant, including employer contributions to Medicare and the Social Security fund. The employer portion of such taxes shall not be deducted from any Monetary Relief Claimant's back pay award.

56. The City shall keep records of all back pay award checks that are returned to the City as undeliverable. If any Monetary Relief Claimant's back pay award check is returned as undeliverable, the City shall promptly notify the United States and attempt to identify an updated mailing address as soon as practicable.

57. If the City or the United States identifies an alternate address, the City shall re-mail the back pay award check within five (5) business days to the Monetary Relief Claimant.

58. No later than two hundred and ten (210) days after the Effective Date, the City shall provide to the United States a statement indicating the amount of the payment made to each Monetary Relief Claimant, the amounts withheld from each such back pay award check for taxes, if applicable, and other amounts required to be withheld by law, and the purpose of each such withholding.

59. No later than thirty (30) days after the deadline in Paragraph 58, the City shall provide to the United States a list of all Monetary Relief Claimants whose award payments are still outstanding. The list shall identify which Monetary Relief Claimant's checks appear to have

been delivered (no returned check) but have not been cashed, and which Monetary Relief Claimant's checks have been returned to the City as undeliverable.

60. No later than forty-five (45) days after the deadline in Paragraph 58, the City shall e-mail and mail a letter to all Monetary Relief Claimants whose award payments are still outstanding to inform such Monetary Relief Claimants that their awards may be redistributed or otherwise reallocated if they do not accept payment by a specified date that is ninety (90) days after issuance of the check. The letter shall state that no further warnings regarding such distribution will be given.

61. No later than ninety (90) days after the deadline in Paragraph 58, the City shall provide the United States with a list of all Claimants whose back pay award checks were returned as undeliverable and/or uncashed.

D. Retroactive Seniority Relief

62. As described in Paragraph 23(d)(d), the individuals listed on Appendix B were permanently promoted to the SOMME position prior to the City providing an offer of retroactive seniority pursuant to this Decree.

63. The City will send to all individuals listed on Appendix B, by e-mail to the last-known e-mail address and by U.S. mail to the last-known mailing address, a written offer to apply for retroactive seniority corresponding with the Claimant's retroactive seniority date as provided by this Decree. This offer will include: (i) the salary and retroactive seniority benefits based on his/her retroactive seniority date that the City will provide upon assumption of the SOMME title; (ii) the telephone number at which the Claimant may contact the City with any questions regarding the offer to have retroactive seniority applied; and (iii) that the Claimant has

at least thirty (30) days from the date on which the Claimant receives the written offer to notify the City that the Claimant accepts the offer.

64. If a Retroactive Seniority Claimant fails to timely accept the City's offer of retroactive seniority, except for good cause as determined by the United States, the City's obligation to provide the offer of retroactive seniority of that Claimant ceases.

65. On the date on which a Retroactive Seniority Claimant is offered retroactive seniority pursuant to Paragraph 63, the City shall credit the Claimant with retroactive seniority corresponding with June 9, 2013. The City will notify the United States in writing within thirty (30) days of crediting any Retroactive Seniority Claimants with such retroactive seniority, pursuant to Paragraph 66, below.

X. MONITORING AND OVERSIGHT

A. Reporting

66. No later than forty-five (45) days after such offers have been made, the City shall provide to the United States a written report identifying whether each Claimant identified in Appendix B accepted the offer of retroactive seniority.

67. During the term of this Consent Decree, the City shall provide the United States with six (6) reports, each covering a six-month reporting period. The first reporting period will begin on the first day of the month following the Effective Date. These reports will be due within thirty (30) days from the closing of the respective reporting period. Defendant will provide the United States with the sixth and final report thirty (30) days before the expiration of the Consent Decree and the reporting period for the final report will cover the period from the closing date of the fifth report until ten (10) business days prior to its issuance. For each of these six reports,

Defendant will provide the United States with the following information and documents relating to the reporting period in question:

a. A list of all individuals transferred into or promoted to the SOMME position in Fleet Services during the reporting period, including (i) names; (ii) race; (iii) the manner in which the vacancy was filled (i.e., from the civil service or through the procedures set forth in this Consent Decree), (iv) the date of promotion, and (v) ranking on the civil service list, if applicable.

b. To the extent that Defendant invoke their discretion under Civil Service Law § 61(1) to promote individuals from the certified civil service list out of rank order, (i) the names and races of all such persons promoted, (ii) the names and races of all persons who were ranked higher on the certified civil service list than the selectees who were not hired for the position of SOMME, and (iii) all information relied upon in making the hiring decision.

c. To the extent any individual receives a Provisional Appointment in accordance with the procedures set forth in Paragraph 32, (i) a list of all Applicants who submitted an application for a provisional appointment to the SOMME position for a prospective vacancy, broken down by race, (ii) a list of all Applicants interviewed for the provisional appointment to the SOMME position, and (iii) the complete application packages for each such Applicant, including all written materials submitted by the Applicant, the list of questions asked at the interview, the interview rating sheets, notes taken by the panel and the panel's ranking list.

d. For each Posting during the reporting period, (i) the date of such Posting, (ii) the content of such Posting, (iii) the manner of such Posting, (iv) the location of such Posting and (v) the duration of such Posting.

e. All complaints filed by Applicants with the NYCDOT EEO or any City, state or federal entity, alleging that s/he was not promoted on the basis of his or her race and/or national origin, or alleging retaliation for complaining regarding another individual being discriminated against because of his or her race and/or national origin, and all reports of investigation or findings regarding those complaints.

68. If any of the information set forth above does not exist or is not applicable for the relevant reporting period, Defendant shall so inform the United States in writing.

B. Record-Keeping

69. In addition to the documents identified in Paragraph 67, above, during the term of this Consent Decree Defendant shall retain all documents created for purposes of compliance with the Decree.

70. During the term of this Decree, the United States may request, in writing, access to any other documents identified or not identified in this Decree that the United States deems necessary to assess Defendant's compliance with the terms of the Decree. Nothing in this Decree will be deemed to waive the City's attorney-client and/or work-product privileges.

XII. DISPUTE RESOLUTION

71. The Parties shall attempt in good faith to resolve informally any disputes that arise under this Decree. If the Parties are unable to resolve the dispute expeditiously, either party may submit the disputed issue to the Court for resolution upon fifteen (15) business days written notice to the other party, unless a different time period has been specified elsewhere in the Decree.

XIII. DURATION OF THE CONSENT DECREE

72. Provided there are no outstanding disputes being resolved pursuant to Paragraph 71, this Decree shall be dissolved without further order of the Court upon the completion of the following:

- a. Fulfillment of the Parties' obligations regarding General Injunctive Relief set forth in Section V of this Decree;
- b. Completion of the process regarding issuance of back pay award checks set forth in Paragraphs 53 through 61 of this Decree; and
- c. The passage of forty (45) days after the date the City provides the last of the reports and statements required by Paragraphs 66 and 67 of the Decree.

73. The Parties will promptly notify the Court of the fulfillment of all obligations set forth under Paragraph 72 and request that this action be dismissed.

XIV. COSTS AND FEES

74. Other than the payment of costs pursuant to Paragraph 34, each party shall bear its own costs, and other expenses incurred as a result of obligations imposed by this Decree.

XV. MISCELLANEOUS TERMS AND PROVISIONS

75. If any collateral challenge to the Decree arises in any court and the City receives notice thereof, the City shall immediately notify counsel for the United States.

76. Any amendments or modifications to this Decree shall be in writing and signed by each of the parties.

77. Nothing in this Decree shall be construed to relieve the City of its obligation to comply with any federal, state or city statute or regulation. In the event that any party contends

that any Constitutional provision, statute or regulation conflicts with the City's obligations under this Consent Decree, such party may apply to the Court for clarification of the City's obligations.

78. Nothing in this Decree shall be construed to limit the authority of the United States, pursuant to Title VII or any other applicable statute, to investigate or act upon any complaint of discrimination brought to its attention, from any source, including but not limited to referrals of complaints by the EEOC, pursuant to 42 U.S.C. § 2000e-5.

79. Nothing in this Decree shall be construed to waive or limit the legal rights and remedies of any Claimant who declines the relief they are entitled to pursuant to this Decree by: (1) indicating their declination of relief in an Acceptance of Individual Relief Award and Release of Claims Form returned to the City; and/or (2) failing to return an Acceptance of Individual Relief Award and Release of Claims Form.

80. Nothing in this Decree shall be construed to waive or limit the legal rights and remedies of any individual who is not entitled to relief pursuant to this Decree.

81. Any applications to the Court under this Decree shall be on notice to all parties.

82. Copies of all notices, correspondence, reports or documents required to be provided by one party to the other under this Consent Decree shall be mailed to:

United States Attorney's Office
Southern District of New York
86 Chambers Street
New York, NY 10007
Attention: Chief, Civil Rights Unit

The City of New York Law Department
100 Church Street
New York, NY 10007-2601
Attention: Chief, Labor and Employment Law Division

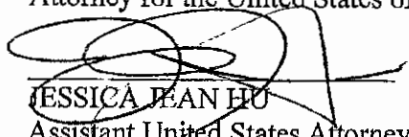
The City of New York, Department of Transportation
Division of Legal Affairs
55 Water Street, 9th Floor
New York, NY 10041
Attention: General Counsel

83. Each party acknowledges that it has not relied upon any representations, warranties or statements of any nature whatsoever, whether written or oral, made by any person, except as specifically set forth in this Decree and that this Decree represents the entire agreement of the parties. No prior agreements, oral representations or statements shall be considered a part of this Decree.

Dated: New York, New York
June 12, 2017

JOON H. KIM
Acting United States Attorney for the
Southern District of New York
Attorney for the United States of America

By:



JESSICA JEAN HU
Assistant United States Attorney
86 Chambers Street, 3rd Floor
New York, New York 10007
Tel. No.: (212) 637-2726
Fax No.: (212) 637-2717
Email: jessica.hu@usdoj.gov

Dated: New York, New York
June 13, 2017

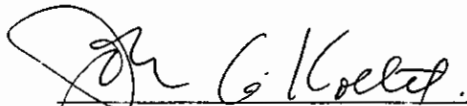
ZACHARY W. CARTER
Corporation Counsel of the City of New York
Attorney for Defendant
100 Church Street, Room 2-101
New York, New York 10007
(212) 356-4015
aconnor@law.nyc.gov

By:



ANDREA O'CONNOR
Assistant Corporation Counsel

SO ORDERED:



HON. JOHN G. KOELTL
United States District Judge

etc

6/14/17

APPENDIX A

Last Name	First Name	Total
Arce	John	\$168,625.58
Bharat	Seupersaud	\$176,097.59
Conca	Robert	\$10,000.00
Connolly	Brian	\$50,000.00
Estrella	Biro	\$64,167.20
Fernandez	Juan	\$64,167.20
Grajales	Albert	\$64,167.20
Oca	Pedro	\$64,095.83
Phanisnaraine	Motie	\$64,167.20
Prophete	Donald	\$140,000.00
Purran	Honif	\$64,167.20
Redman	Oliver	\$104,387.67
Rios	Gustavo	\$64,167.20
Thompson	Damon	\$71,545.60

APPENDIX B

Last Name	First Name
Arce	John
Bharat	Seupersaud
Redman	Oliver

APPENDIX C

NOTICE OF AWARD OF INDIVIDUAL MONETARY RELIEF

Re: *United States of America v. City of New York*
17 Civ. 0364 (U.S. Dist. Ct. S.D.N.Y.)

On [date], the Court approved a final monetary award list pursuant to the Consent Decree entered by the Court earlier in this case. You are receiving this Notice because the Court has determined that you are eligible for an award of backpay and/or emotional distress damages.

PLEASE READ THIS NOTICE CAREFULLY

The Court has determined that you are eligible to receive an award of backpay and/or emotional distress damages in this case. The amount of this award is shown in the enclosed Acceptance of Monetary Relief and/or Retroactive Seniority Relief and Release of Claims form. To receive this award, you must:

- a. Fill out completely the enclosed Acceptance of Monetary Relief and/or Retroactive Seniority Relief and Release of Claims form, including all requested information, initial the first page of the form, and sign it.
- b. Fill out completely the enclosed tax forms, so that appropriate withholdings for taxes, FICA and Medicare may be made from any backpay award, and so that taxpayer identification is provided for any individual receiving damages for emotional distress.
- c. Return the completed Acceptance of Monetary Relief and/or Retroactive Seniority Relief and Release of Claims form and other required forms to the NYCDOT Office of the General Counsel within the Division of Legal Affairs no later than [date]. Send these documents by U.S. mail to:

The City of New York, Department of Transportation
Division of Legal Affairs
55 Water Street, 9th Floor
New York, NY 10041
Attention: General Counsel

Note: if your signed documents are not postmarked by [date], 2017, your monetary relief award may be forfeited.

APPENDIX D

NOTICE OF AWARD OF RETROACTIVE SENIORITY RELIEF

Re: *United States of America v. City of New York*
17 Civ. 0364 (U.S. Dist. Ct. S.D.N.Y.)

On [date], the Court approved a final monetary award list pursuant to the Consent Decree entered by the Court earlier in this case. You are receiving this Notice because the Court has determined that you are eligible for retroactive seniority for the Supervisor of Mechanics (Mechanical Equipment) position corresponding to June 9, 2013, which includes seniority for the purposes of calculating my salary or other pay, as well as any other purpose for which seniority is used to determine the amount of or eligibility for employment benefits.

PLEASE READ THIS NOTICE CAREFULLY

- a. Fill out completely the enclosed Acceptance of Monetary Relief and/or Retroactive Seniority Relief and Release of Claims form, including all requested information, initial the first page of the form, and sign it.
- b. Return the completed Acceptance of Monetary Relief and/or Retroactive Seniority Relief and Release of Claims form to the NYCDOT Office of the General Counsel within the Division of Legal Affairs no later than [date]. Send these documents by U.S. mail to:

The City of New York, Department of Transportation
Division of Legal Affairs
55 Water Street, 9th Floor
New York, NY 10041
Attention: General Counsel

Note: if your signed documents are not postmarked by [date], 2017, your monetary relief award may be forfeited.

APPENDIX E

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v.

CITY OF NEW YORK,

Defendant.

17 Civ. 0364 (JGK)

**ACCEPTANCE OF INDIVIDUAL RELIEF AWARD
AND RELEASE OF CLAIMS**

I, _____, have received notice from the United States Department of Justice of the monetary relief award offered to me pursuant to the provisions of the Consent Decree entered by the Court on ____ in the above-named lawsuit. The Complaint and the Consent Decree are included with this notice.

The MONETARY RELIEF AWARD I am being offered consists of:

1. A backpay award of _____ dollars (\$_____), less required tax withholdings; and
2. An award for emotional distress of _____ dollars (\$_____).

* I ACCEPT THIS AWARD

* INITIAL HERE: _____

[Add where applicable]

I, _____, also am being offered the opportunity to be given retroactive seniority for the Supervisor of Mechanics (Mechanical Equipment) position corresponding to June 9, 2013, which includes seniority for the purposes of calculating my salary or other pay, as well as any other purpose for which seniority is used to determine the amount of or eligibility for employment benefits.

* I ACCEPT THIS AWARD

* INITIAL HERE: _____

In consideration for this award of the relief stated above, I fully and finally release the City of New York, the New York City Department of Transportation, as well as any others that could have been named as defendants in this Action, their successors, or assigns, and all past and present officials, employees, representatives and agents of the New York City Department of Transportation (collectively "Released Parties") from any and all claims, liabilities or causes of action arising out of the allegations in the Complaint, including all claims arising under Title VII of the Civil Rights Act of 1964, the United States Constitution, the New York State Human Rights Law, the New York City Human Rights Law, and any and all common law claims, including claims for attorney's fees, costs and distributions.

The release of claims contained herein is not conditioned on my receipt of any other relief under the Consent Decree that was entered by the Court on [date] and resolved the above-referenced lawsuit. I understand that this release may not be changed, modified or revoked orally.

I understand that I must properly and completely fill out this Acceptance of Monetary Relief and/or Retroactive Seniority Relief, initial the first page of this form, sign the form and return it to the NYCDOT Office of the General Counsel within the Division of Legal Affairs no later than [date] in order to receive the award.

I also understand that I must complete and return the enclosed forms.

I HAVE READ THIS ACCEPTANCE OF MONETARY RELIEF AND RETROACTIVE SENIORITY RELIEF AND RELEASE OF CLAIMS FORM AND UNDERSTAND THE CONTENTS THEREOF. I SIGN THIS FORM OF MY OWN FREE ACT AND DEED.

* _____
Date Signed

* _____
Signature

* _____
(Street Address) (City) (State) (Zip Code)

* () _____ - _____ (Home Telephone) * () _____ - _____ (Work Telephone)

* _____ - _____ - _____ (Social Security Number)

Your E-Mail Address: * _____

If your contact information, including your mailing address, changes at any time after you submit this form, please advise Department of Transportation, Division of Legal Affairs in writing of the change. You can direct any correspondence regarding a change in contact information to address listed below. Otherwise, we may be unable to contact you during future steps in the award process.

Return this and the enclosed forms to:

The City of New York, Department of Transportation
Division of Legal Affairs
55 Water Street, 9th Floor
New York, NY 10041
Attention: General Counsel