

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

ANTHONY GONZALEZ, IGNACIO RIESCO,
PRECIOUS DANIELS, ALEXIS MATEO,
FELICIA RICKETT-SAMUELS, CHYNELL
SCOTT, VIVIAN KARGBO, SCOTTY DESPHY,
and EDWARD ZAHNLE, on behalf of themselves
and all others similarly situated, and
CEPHUS HOUSER as the Trustee for the Trust
Agreement of EVELYN HOUSER, individually,

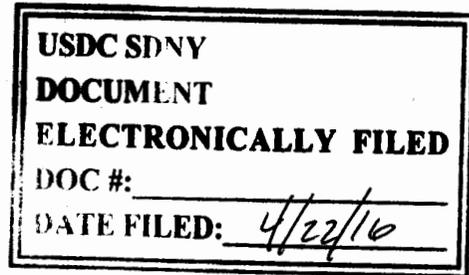
No. 10-CV-3105 (FM)

Plaintiffs,

-against-

PENNY PRITZKER, Secretary, United States
Department of Commerce,

Defendant.



**ORDER GRANTING PLAINTIFFS' MOTION FOR (1) PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT (2) CONDITIONAL CERTIFICATION FOR
DAMAGES OF THE SETTLEMENT CLASS (3) APPROVAL OF THE PROPOSED
NOTICE OF SETTLEMENT AND CLASS ACTION SETTLEMENT PROCEDURE (3)
AND (4) SETTING OF A SCHEDULE FOR FINAL APPROVAL**

The above-entitled matter came before the Court on Plaintiffs' Motion for Preliminary Approval of Settlement, Approval of Plaintiffs' Proposed Notice of Settlement and Class Action Settlement Procedure, and Conditional Certification of the Settlement Class ("Motion for Preliminary Approval"). This Court granted class certification on July 1, 2014, pursuant to Rule 23(b)(2) for purposes of liability for African-American applicants who sought temporary employment during the 2010 decennial census and claim to have been harmed by Defendant's 30-day Letter, its criminal history adjudication criteria, or both. This Court amended that Order on October 2, 2014, to include all Latino applicants who sought temporary employment during the 2010 decennial census and claim to have been harmed by Defendant's 30-day Letter, its

criminal history adjudication criteria, or both.

Having considered the Motion for Preliminary Approval, the supporting declarations, and the complete record in this matter, for good cause shown,

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

I. JURISDICTION

This Court has jurisdiction over the subject matter of the litigation and over all parties to this litigation, including all members of the Settlement Class, as defined below.

As used below, “Defendant” means Penny Pritzker, Secretary of the United States Department of Commerce, in her official capacity, or her successor, and the U.S. Census Bureau.

II. NO DETERMINATION

This Court hereby decrees that neither the Settlement Agreement, nor this Preliminary Approval Order, nor the fact of a settlement, are an admission or concession by Defendant of any liability or wrongdoing.

III. CERTIFICATION OF SETTLEMENT CLASS

1. Plaintiffs allege that Defendant denied them and hundreds of thousands of other African-American and Latino applicants the opportunity to fairly compete for temporary employment positions with the 2010 Decennial Census based on the criminal background check screening process used by the Census Bureau in violation of Title VII of the Civil Rights Act of 1964.

2. For settlement purposes only, the parties have proposed conditional certification of the following settlement class: for purposes of the programmatic and class member relief provided in the Settlement Agreement, a nationwide class certified under Federal Rules of Civil Procedure 23(a) and 23(b)(3) comprised of all African-American and Latino applicants who

sought temporary employment during the 2010 decennial census and claim to have been harmed by Census's 30-day Letter, its Adjudication Criteria, or both (the "Settlement Class").

The Court hereby FINDS and CONCLUDES that, for purposes of this settlement, the Settlement Class set forth above satisfies all of the requirements for certification under Rule 23(a) and Rule 23(b)(3). There are hundreds of thousands of Settlement Class Members, satisfying the numerosity requirement. Named Plaintiffs are typical and adequate representatives of the Settlement Class they seek to represent because their interests are co-extensive with those of Settlement Class Members and they have retained experienced counsel to represent them. Plaintiffs raise common questions, and the Settlement Class satisfies the predominance and superiority requirements for certification under Rule 23(b)(3) for settlement class purposes. The Court CONDITIONALLY CERTIFIES the Settlement Class under Rules 23(a) and 23(b)(3).

IV. **PRELIMINARY APPROVAL OF SETTLEMENT AGREEMENT**

The Court has reviewed the proposed Settlement Agreement and Release ("Settlement Agreement"), attached as Exhibit 1 to the Klein Declaration (Klein Decl.) and Plaintiffs' unopposed Motion for Preliminary Approval and the Klein Declaration which describes Class Counsel's legal and factual investigation, and the settlement process.

1. Based on review of those papers, and the Court's familiarity with this case, the Court concludes that the settlement and the proposed Settlement Agreement was reached after Class Counsel investigated and litigated the claims and became familiar with the strengths and weaknesses of Plaintiffs' case and was a result of extensive, arm's length negotiations between counsel well-versed in the prosecution of complex employment class actions. *See Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 116 (2d Cir. 2005). The Court concludes that the proposed Settlement Agreement is within the range of possible settlement approval, such that

notice to the Settlement Class is appropriate. *See City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 463 (2d Cir. 1974), *abrogated on other grounds by Goldberg v. Integrated Res., Inc.*, 209 F.3d 43 (2d Cir. 2000); *In re Traffic Exec. Ass'n*, 627 F.2d 631, 634 (2d Cir. 1980).

2. The assistance of an experienced mediator reinforces that the Settlement Agreement is non-collusive. *See Capsolas v. Pasta Res., Inc.*, No. 10 Civ. 5595, 2012 WL 1656920, at *1 (S.D.N.Y. May 9, 2012).

3. Having conducted an initial evaluation of the fairness of the proposed settlement on the basis of the Motion for Preliminary Approval, the supporting declarations, and its attached documents, the Court finds that there is “probable cause to submit the [settlement] to class members” and will “hold a full-scale hearing as to its fairness.” *In re Traffic Exec. Ass'n*, 627 F.2d at 634 (internal quotations omitted).

It is therefore ORDERED:

That the Settlement Agreement is hereby PRELIMINARY APPROVED. Final approval and entry of the Settlement Agreement is subject to a final hearing of any objections of members of the class to the proposed Settlement Agreement.

V. **APPROVAL OF THE FORM AND MANNER OF DISTRIBUTING CLASS NOTICE AND CLAIM FORM**

The parties have also submitted for this Court’s approval a proposed Class Notice and a proposed Claim Form, which the Court has carefully reviewed. The Court FINDS and CONCLUDES as follows:

1. The proposed Notice is the best notice practicable under the circumstances and allows Settlement Class Members a full and fair opportunity to consider the proposed settlement. The proposed plan for distributing the Notice and Claim Form likewise is a reasonable method calculated to reach all members of the Settlement Class who would be bound by the settlement.

There is no additional method of distribution that would be reasonably likely to notify Settlement Class Members who may not receive notice pursuant to the proposed distribution plan.

2. The Notice fairly, plainly, accurately, and reasonably informs Settlement Class Members of: (1) appropriate information about the nature of this litigation, the Settlement Class, the identity of Class Counsel, and the essential terms of the Settlement Agreement, including programmatic and class member relief; (2) appropriate information about Class Counsel's forthcoming application for attorneys' fees, the proposed Service Awards to the Class Representatives and other payments that will be deducted from the Settlement Fund; (3) appropriate information about how to participate in the settlement; (4) appropriate information about this Court's procedures for final approval of the Settlement Agreement, and about Settlement Class Members' right to appear through counsel if they desire; (5) appropriate information about how to challenge or opt out of the settlement, if they wish to do so; and (6) appropriate instructions as to how to obtain additional information regarding this litigation or the Settlement Agreement.

3. Specifically, the Notice explains the programmatic relief that addresses Defendant's criminal history screening process, as well as the process for Class Members to obtain relief through individualized assistance in correcting discrepancies in criminal background histories and early job notification of Census's hiring for the 2020 decennial census. The Notice will also provide specific information regarding the date, time, and place of the final approval hearing and how to object to or exclude oneself from the settlement. This information is adequate to put Class Members on notice of the proposed settlement and is well within the requirements of Rule 23(c)(2)(B).

4. The Court finds and concludes that the proposed plan for distributing the Notice

and Claim Form will provide the best notice practicable, satisfies the notice requirements of Rule 23(e), and satisfies all other legal and due process requirements.

5. Accordingly, the Court hereby ORDERS as follows:

a. The form of the Notice and Claim Form is approved. Non-material changes may be made as the parties deem appropriate.

b. The manner for distributing the Notice and Claim Form is approved.

c. The proposed Privacy Act Protective Order is So Ordered.

d. Promptly following the entry of this Order, the settlement administrator shall prepare final versions of the Notice, incorporating into the Notice the relevant dates and deadlines set forth in this Order.

e. Within fourteen (14) business days following entry of this Order, Defendant, to the extent that said information was originally provided by the Settlement Class Member to the Census Bureau, shall provide the settlement administrator the name, Social Security number, self-reported email addresses, last known address, and last known phone number of each Settlement Class Member. This information will be treated in accordance with the Privacy Act Protective Order. The settlement administrator shall utilize such Settlement Class Members' Social Security numbers only for the purpose of locating and identifying Class Members and shall keep those Social Security numbers confidential in accordance with the Privacy Act Protective Order.

f. Within fourteen (14) business days of Defendant's provision of the Settlement Class Members' contact information set forth above, the settlement administrator shall email the Notice and Claim Form to each Settlement Class Member for whom an email address was provided by the Settlement Class Member. Settlement Class Members for whom

Defendant does not produce an email address and those for whom the email notice is returned undeliverable will receive, by first-class U.S. mail, postage prepaid, a postcard notifying them of the settlement and directing them to the settlement website or a 1-800 number for additional information. Settlement Class Members will be able to view the Notice through the website and can either print or request a hard copy to be sent to them via first-class U.S. Mail.

g. The settlement administrator will take all reasonable steps to obtain the correct address of any Settlement Class Members for whom a Notice is returned as undeliverable and shall attempt up to re-mail. The settlement administrator will notify Class Counsel and Defendant's Counsel of any Notice sent to a Settlement Class Member that is returned as undeliverable after the first mailing, as well as any such Notice returned as undeliverable after any subsequent mailings as set forth in the Settlement Agreement. Settlement Class Members for whom any re-mailing is sent shall have ninety (90) days from the last re-mailing to submit their Claim Forms, or one hundred and twenty (120) days from the initial mailing, whichever is earlier.

h. The settlement administrator shall take all other actions in furtherance of claims administration as are specified in the Settlement Agreement.

VI. PROCEDURES FOR FINAL APPROVAL OF THE SETTLEMENT

A. Final Approval Hearing

1. The Court hereby schedules a hearing to determine whether to grant final certification of the Settlement Class, and final approval of the Settlement Agreement (including the proposed plan of programmatic and class member relief, payment of attorneys' fees and costs, and Service Awards to the Named Plaintiffs) (the "Final Approval Hearing") for September 19, 2016, at 10 a.m., in Courtroom 20A.

B. Deadline to Request Exclusion from the Settlement

1. Settlement Class Members may exclude themselves, or opt out, of the settlement.

Any request for exclusion must be in the form of a written, signed statement that states, "I opt out of the Census 2010 Decennial Applicant Settlement." To be effective, this opt-out statement must be received on or before ninety (90) days after the date the Notice is mailed to Settlement Class Members.

2. The settlement administrator shall provide to all counsel and file with the Court all opt-out statements that are timely received and not rescinded. The Settlement Class will not include those individuals who file and serve a timely opt-out statement, and individuals who opt out are not entitled to any class member relief under the Settlement Agreement.

3. Any Settlement Class Member who does not properly submit an opt-out statement will be deemed to have accepted the settlement and its terms, and will be eligible to participate in the class member relief.

C. Deadline for Filing Objections to Settlement

1. Any Settlement Class Member who has not opted out of the Settlement Class and wishes to object to the fairness, reasonableness, or adequacy of the Settlement Agreement must do so in writing. Settlement Class Member objections must be mailed to the Settlement Administrator and include a detailed description of the basis of the objection. The Settlement Administrator will stamp the date received on the original and send copies to Class Counsel and Defendant's Counsel within three (3) days after receipt thereof. The Settlement Administrator must file the date-stamped originals of all Objections with the Court within three (3) days after the end of the Opt out period. No one may appear at the Final Approval Hearing for the purpose of objecting to the Settlement Agreement without first having filed and served an objection(s) in

writing postmarked on or before ninety (90) days after the Notice was mailed to Settlement Class Members.

D. Deadline for Submitting Claims Forms

1. A Settlement Class Member who does not opt out will be eligible to participate in the class member relief as a Group A Filer or Group B Filer, as outlined in the Settlement Agreement. A Settlement Class Member must properly and timely complete and submit a Claim Form to the settlement administrator in accordance with the terms of the Settlement Agreement. To be effective, Settlement Class Members, including the Named Plaintiffs, must submit a Claim Form postmarked no later than ninety (90) days after the date it was mailed by the settlement administrator, but no later than one hundred twenty (120) days after the initial mailing of the Class Notice to Settlement Class Members (the "Claim Bar Date").

2. Additional time may be provided to a Settlement Class Member who misses the Claim Bar Date, if good cause, as determined by the settlement administrator, is demonstrated by the Settlement Class Member, or if Defendant otherwise agrees, provided that in no event may the additional time exceed ninety (90) days after the Claim Bar Date.

E. Settlement Fund and Programmatic and Class Member Relief

1. Defendant will disburse one check, or make an electronic funds transfer, in the amount of Fifteen Million Dollars (\$15,000,000.00) to the Settlement Fund. Defendant will begin to initiate the process to commence payment within five days of the effective date of the settlement (which is defined as the later of: sixty days from the entry of Order granting final approval of settlement if there are no appeals, or if there is an appeal of the Order granting final approval, the day after all appeals are finally resolved in favor of final approval). This amount shall be placed into an interest bearing escrow account established by Outten & Golden LLP, as

escrow agent.

2. The parties have agreed to the tailored programmatic relief as set forth in the Settlement Agreement and accompanying Scope of Work document. The parties have jointly selected Industrial Organizational Psychologists (“IOs”) to work as independent consultants to Defendant relative to the selection and hiring of temporary employees for the 2020 decennial census. The IOs will work together, in consultation with Defendant, to develop a recommended validated structure and selection process for the hiring of temporary employees for various operations of the 2020 decennial census.

3. The parties have also agreed to individualized class member relief, as set forth in the Settlement Agreement. Settlement Class Members will choose between two forms of class member relief: Class A Filers or Class B Filers. Class A Filers will participate in the Records Assistance Project to first obtain computerized criminal history record information and resolve discrepancies in Class A Filers’ criminal history records. The costs and expenses for this project come from the settlement fund, which allocates Five Million Dollars (\$5,000,000.00) to fund the Records Assistance Project and class representative Service Awards approved by the Court. Class B Filers will receive early notice of the commencement of hiring for temporary jobs for the 2020 decennial census. The parties agree to work together to provide meaningful early notice that will assist Group B Filers in pursuing temporary job opportunities for the 2020 decennial hiring, including information about the criminal background check process.

4. The Settlement Fund constitutes the total settlement cash outlay by Defendant in connection with the resolution of this Action. No other money shall be separately paid by Defendant in connection with this settlement, except certain implementation costs of the programmatic relief, such as the IOs’ compensation, as outlined in the Settlement Agreement.

The Settlement Fund is inclusive of payment for: (a) all amounts paid to satisfy the class member relief, including the Records Clearance Project; (b) all amounts paid to Named Plaintiffs for Court-Approved Service Awards; (c) all attorneys' fees and costs awarded by the Court, including those in connection with securing Court Approval of the settlement and the claims process and the monitoring by Class Counsel of the Settlement Agreement; (d) all costs in connection with the Settlement Fund including, but not limited to, those related to investing and liquidating the Settlement Fund; and (e) the settlement administrator's fees and costs. The Settlement Fund does not include the costs of the programmatic relief which costs will be borne by Defendant directly.

F. Deadline for Submitting Motion Seeking Final Approval

No later than fourteen (14) days before the Final Approval Hearing, Plaintiffs shall file a Motion for Final Approval of the Class Action Settlement and Petition for Attorneys' Fees, Costs and Service Awards to Class Representatives ("Motions"). These documents will be posted on Class Counsel's websites.

VII. NAMED PLAINTIFFS' AND SETTLEMENT CLASS MEMBERS' RELEASE

If, at the Final Approval Hearing, this Court grants Final Approval of the settlement and Settlement Agreement, Named Plaintiffs and each individual Settlement Class Member who do not timely opt out will release claims, as set forth in the Settlement Agreement, by operation of this Court's entry of the Judgment and Final Approval Order, regardless of whether the Settlement Class Member has submitted a Claim Form.

It is so ORDERED this 22nd day of April, 2016.


Honorable Frank Maas
United States Magistrate Judge