

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

FILED

JAN 16 2001

CLERK  
U. S. DISTRICT COURT  
MIDDLE DIST. OF ALA.  
MONTGOMERY, ALA.

JOHNNY REYNOLDS, et al., )

Plaintiffs, )

v. )

ALABAMA DEPARTMENT OF )  
TRANSPORTATION, et al. )

Defendants. )

CIVIL ACTION NO:  
CV-85-T-665-N

JOINT MOTION AND STIPULATION  
CONCERNING APPROVAL OF  
PROPOSED SETTLEMENT AGREEMENT

Comes the plaintiffs and defendants who, pursuant to F. R. Civ. P. 23 (e), move the Court for preliminary approval of the attached Settlement Agreement (Attached as Tab "1"), approval of the form and means of notice of such settlement, scheduling of objections and hearing, and ultimately for final approval and entry of the settlement as a fair, adequate and reasonable resolution of various parts of this lawsuit. In support of this motion, the plaintiffs and defendants state as follows:

1. The parties have reached agreement for this proposed Settlement Agreement after a long period of difficult, arms length negotiations in which they have considered all facets of the settlement, including its fairness to all Named Plaintiffs and class members.

2. The parties jointly certify to the Court that they believe this settlement is fair and reasonable, that the relief therein is adequate and sufficient for the Named Plaintiffs and

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for all class members.

3. The parties attach hereto a copy of an Order Preliminarily Approving the Settlement Agreement, which Order is designated as Tab "2", and move that this Order be adopted and issued by the Court.

4. The parties also attach hereto a Notice of Settlement and Right to Object Or Opt Out (attached hereto as Tab "3"), an Opt-Out Form (attached hereto as Tab "4"), and a Participation Form (attached hereto as Tab "5") and move that this Court authorize, as part of its preliminary approval of this Settlement Agreement, the issuance of said Notice, Participation Form, and Opt-Out Form to each Named Plaintiff and class member.

5. Subject to objections of the class, but over any such objections, counsel for the parties recommend that the Settlement Agreement be herewith adopted in its entirety by the Court.

WHEREFORE, the parties respectfully request that this Motion be forthwith granted and the Order Preliminarily Approving the Settlement Agreement be signed by this Court, that a hearing be set as specified therein, and that this Settlement Agreement be preliminarily approved.



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Robert L. Wiggins, Jr.  
Alabama State Bar Number: WIG-001  
Russell W. Adams  
Alabama State Bar Number: ADA-041

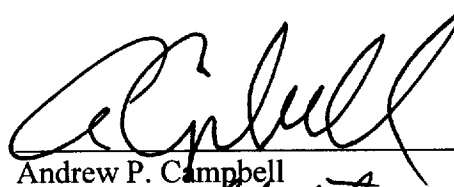
Attorneys for Named Plaintiffs,  
Plaintiff-Intervenors, and Class  
Members



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Lisa W. Borden  
Attorney for all Defendants

OF COUNSEL:  
BERKOWITZ, LEFKOVITS, ISOM & KUSHNER  
1600 SouthTrust Tower  
Birmingham, Alabama 35203



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Andrew P. Campbell  
Attorney for *Defendants*

OF COUNSEL:  
CAMPBELL, WALLER MCCALLUM, & LOPER, LLC  
Suite 450, 2100-A SouthBridge Parkway  
Birmingham, Alabama 35209

CERTIFICATE OF SERVICE

This is to certify that a copy of the above and foregoing has been served by United States mail, postage prepaid and properly addressed on the following:

Mr. R. Scott Clark  
FITZPATRICK, COOPER AND CLARK  
Suite 600 - Farley Building  
1929 Third Avenue North  
Birmingham, Alabama 35203

Ms. Alice Ann Byrne  
Attorney at Law  
State Personnel Department  
3<sup>rd</sup> Floor - Folsom Administrative Building  
64 North Union Street  
Montgomery, Alabama 36130-4100

Mr. Larry Menefee  
Attorney at Law  
407 South McDonough  
Montgomery, Alabama 36104

This the 16th day of January, 2001.

Russell W. Ord  
Of Counsel

EXHIBITS TO THIS  
DOCUMENT NOT SCANNED

**IN THE DISTRICT COURT OF THE UNITED STATES FOR THE  
MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION**

<b>JOHNNY REYNOLDS, et al.,</b>	)	
	)	
<b>Plaintiffs,</b>	)	
	)	
<b>v.</b>	)	<b>CIVIL ACTION NO. 85-T-665-N</b>
	)	
<b>ALABAMA DEPARTMENT OF TRANSPORTATION, et al.</b>	)	
	)	
<b>Defendants.</b>	)	

**SETTLEMENT AGREEMENT**

This Settlement Agreement is entered into as of the 16<sup>th</sup> day of January, 2001, by and among Johnny Reynolds, Ouida Maxwell, Martha Boleware, Peggy Allen, and Jeffrey Brown, on behalf of themselves and as class representatives on behalf of all others similarly situated, comprising two "Classes" and two groups of "Class Members," as more particularly described herein below (sometimes herein referred to collectively as "Plaintiffs"), as parties of the first part, and by G.M. Roberts, individually and as Director of the Alabama Department of Transportation, Alabama Department of Transportation (sometimes herein referred to as "ALDOT"), Tommy Flowers, individually and as Director of State of Alabama Personnel Department, State of Alabama Personnel Department (sometimes herein referred to as "SPD"), State of Alabama, Henry Mabry, as Director of Finance Department, State of Alabama, and Don Siegelman, individually and as Governor, State of Alabama (sometimes herein referred to collectively as "Defendants"), as parties of the second part.

**WITNESSETH:**

WHEREAS, there are claims pending before the Court of racial discrimination in hiring, promotions, compensation and other employment opportunities for the period since May 21, 1979;

WHEREAS, there are also claims pending before the Court for compensatory remedies for Defendants' contempt of Consent Decree I and related orders and injunctions;

WHEREAS, Defendants have denied the material allegations of racial discrimination and all liability that may ensue from such allegations;

WHEREAS, the parties hereto materially desire to settle certain of the matters in controversy between them by entering into this Settlement Agreement and having it approved and entered by the Court after notice and an opportunity for members of the plaintiff class to be heard, while reserving other claims Plaintiffs make against Defendants that are not settled by this Agreement; and

WHEREAS, the parties do not desire to alter the existing Consent Decree or to enter a new Consent Decree, but to resolve certain claims as set forth in the Agreement.

NOW, THEREFORE, in consideration of the premises, of the mutual promises of the parties and for other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties hereto contract, covenant and agree as follows:

**Definitions:**

1. "Claims Form" shall mean a written description of a Class Member 's claim, or of an Opt-out 's claim, setting forth such information as may be required by this Agreement.
2. "Class Members" shall mean each and every member of the Class, including, but not limited to, the named Plaintiffs and the Testifying Plaintiffs.
3. "Class Representatives" shall mean Johnny Reynolds, Ouida Maxwell, Martha Boleware, Peggy Allen, and Jeffrey Brown.
4. "Court" shall mean the United District Court for the Middle District of Alabama.
5. "EIT" shall mean Engineer in Training status granted by the State Board of Licensure for Professional Engineers and Land Surveyors as used by the State Personnel Department as part of a selection procedure for Graduate Civil Engineers and other associated selection criteria.
6. "Fairness Hearing" shall mean the hearing to be held by the Court to determine finally whether this Settlement Agreement is fair, adequate and reasonable, and whether it will be approved in whole or in part.
7. "Final Judgment" or "Final Order" shall mean the Final Order and Judgment approving this Settlement to be entered by the Court pursuant to this Agreement.
8. "Hiring Class" shall mean and include the following: All African-Americans who contend that they have been denied hiring opportunities with ALDOT on the basis of race at any time since May 21, 1979. With the exception of Jeffrey Brown, Peggy Allen, Jameria Moore,



Edward Baldwin, and Dwayne Hood, who may participate in the Hiring Class settlement only to the extent of claims not covered by Article XIII of Consent Decree I, persons who received compensation in connection with Article XIII of Consent Decree I shall not be entitled to participate in the Hiring Class settlement, provided, however, that Defendants will not contend that this provision bars Peggy Allen from pursuing any claim under Article XX of Consent Decree I, including claims that are based upon the EIT or related requirements for the GCE classification.

9. "Named Plaintiffs" shall mean Johnny Reynolds, Ouida Maxwell, Florence Belser, Martha Boleware, Jeffrey Brown, Peggy Allen, Cecil Parker, Robert Johnson and Frank Reed.

10. "Notice" shall mean with respect to each class the "Notice of Settlement and Right to Object or Opt-Out" that is to be mailed to Promotion Class Members, mailed to the last known address of Hiring Class Members and published to Hiring Class Members as further described herein. This Notice will contain a summary of this Settlement Agreement, but the Notice is not to be used to interpret the Settlement Agreement.

11. "Opt-out" shall mean a person who falls within the definition of Class Member, but who excludes himself or herself from this Settlement.

12. "Opt-out Form" shall mean the form filed in Court to effectuate a Class Member's Opt-out from this Settlement.

13. "Participating Individuals" shall mean Jeffrey Brown, Peggy Allen, Jameria Moore, Edward Baldwin and Dwayne Hood who, despite having received compensation in

connection with Article XIII of Consent Decree I, may participate in the settlement of the Hiring Class claims.

14. "Participating Class Members" shall mean those Class Members who timely file a Participation Form in Court.

15. "Participation Form" shall mean a written statement filed in Court by each Class Member who elects to participate in the Settlement indicating such election to participate.

16. "Parties" shall mean Plaintiffs and all Defendants separately and jointly.

17. "PDRI" shall mean Personnel Decisions Research Institute, Inc.

18. "Plaintiffs" shall mean the Named Plaintiffs and Class Members.

19. "Plaintiffs' Counsel" or "Plaintiffs' Attorneys" shall mean the law firm of Gordon, Silberman, Wiggins & Childs.

20. "Preliminary Approval" or "Preliminary Approval Order" shall mean the order to be entered by the Court, as provided hereinafter in this Agreement, and to be given continued effect unless otherwise modified pursuant to the Final Hearing.

21. "Promotions Class" shall mean and include the following: All African-Americans who were employed by ALDOT at any time since May 21, 1979.

22. "Rotation" shall mean the training and rotation module system developed by PDRI.

23. "Settlement Agreement" or "Agreement" shall mean this Agreement between the Plaintiffs, including named Plaintiffs and Class Members, and Defendants.

24. "Settlement Period" shall mean that period of time between the deadline for class members to opt out of the settlement for a particular class and the date by which any election to void the settlement as to that class must be exercised. The Settlement Period is a time during which the parties will attempt to reach settlement with respect to individual Opt-outs.

25. "Testifying Plaintiffs" shall mean Class Members who have testified in this action other than those whose backpay has already been paid to them through Article XIII of Consent Decree I.

**Denial of Liability**

Defendants have entered this Agreement in a spirit of voluntary cooperation. They, however, expressly deny any wrongdoing or liability whatsoever. This Agreement represents the compromise of disputed claims. It reflects the Defendants' recognition that litigation of the claims settled by this Agreement would severely burden all concerned and would require a massive commitment of time, resources, and money. This Agreement does not, therefore, constitute, and it is not intended to constitute, and it shall not under any circumstances be deemed to constitute, an admission by any Defendant of the merit, validity, or accuracy of any of the allegations or claims made by Plaintiffs in this case.

**Terms of Agreement**

I. The Hiring Class

1. Not later than October 5, 2001, ALDOT will place into an interest bearing escrow account \$15,000,000 (\$5,500,000 in back pay, \$2,000,000 in compensatory damages, and \$7,500,000 in interest), plus interest on the \$15,000,000 from the date of Preliminary Approval

of the Hiring Class settlement at 7%, compounded, if at all, at the same rate as SouthTrust Bank would have compounded the interest had the money been paid into an escrow account at that bank on the date of Preliminary Approval. At the election of Defendants, this account may be with the Court, or handled through an escrow account. If the latter option is chosen, the account will require two signatures for disbursements, one being a lawyer for the Plaintiffs and the other being a representative of Defendants.

2. The time line to be followed by the parties in the implementation of the Hiring Class settlement is as set forth in Exhibit "A", attached hereto and incorporated herein. The Notice to be given to the Hiring Class will be as set forth in Exhibits "B-1" and "B-2", attached hereto and incorporated herein.

3. Class Members in the Hiring Class who submit Claims Forms will be sorted into the following tier categories in accordance with the procedure set forth below in paragraph 10 of the Hiring Class part of this Agreement:

Tier 1: Applicants who were placed on the SPD register and were certified for an ALDOT vacancy, and Testifying Plaintiffs who are also Hiring Class Members;

Tier 2: Applicants who were placed on an SPD register of applicants for a classification used by ALDOT, but who were never certified to ALDOT for a vacancy;

Tier 3: Applicants who submitted an application and met the minimum qualifications for employment in a classification used by ALDOT but who were not placed on the SPD register of applicants;

Tier 4: Applicants who submitted an application for a classification used by ALDOT but did not meet minimum qualifications and were not placed on an SPD register of applicants;

Tier 5: People who unsuccessfully sought employment with ALDOT, but who did not submit an application because they were discouraged from doing so by one of the challenged practices of Defendants.

4. Each Class Member who timely files a Claims Form, and who qualifies for placement in one of the tiered categories set forth above, will receive the settlement payment designated for the tier into which said Class Member properly falls. The tiered payments shall be as follows: \$5,000 for Tier 1; \$4,000 for Tier 2; \$2,000 for Tier 3; \$1,000 for Tier 4; and \$500 for Tier 5.

a. The Claims Form for people who feel they fit within the 5<sup>th</sup> tier will require that the claimant state with as much specificity as is available to the claimant the steps taken to seek a job with ALDOT; when those steps were taken; what position or positions (as opposed to "classification" or "classifications") the claimant was seeking; at which office, if any, the claimant sought employment; the claimant's education and work experience as of the relevant time; and why the claimant ultimately did not submit an application.

b. If Defendants determine that the claimant does not properly fall within the fifth tier, they will object to the claim.

c. With respect to any claims for the 5<sup>th</sup> tier to which Defendants object, Plaintiffs' Attorneys have the right to submit the claims forms to the Court Monitor for ultimate, final, binding and unappealable determination. With respect to each such claimant, the Court Monitor shall determine on the basis of the Claims Form whether the claimant "unsuccessfully

sought" employment with ALDOT (within the meaning of the Teamsters v. United States, 431 U.S. 324 (1977) or other applicable law.)

d. EIT claimants (i.e., people who had the required academic degree, but did not have the EIT, and who filed an application with SPD for a classification used by ALDOT that required the EIT, and were rejected by SPD due to the lack of the EIT) will be paid at the \$5,000 level. The records of SPD will be used to determine the people who fall within this EIT category, and people otherwise meeting the above definition will be deemed to have been rejected for the classification because of the lack of an EIT unless the records of SPD affirmatively demonstrate that there was a different reason for the rejection.

e. Persons who received compensation in connection with Article XIII of Consent Decree I shall not be entitled to participate in the Hiring Class settlement, with the exception of Jeffrey Brown, Peggy Allen, Jameria Moore, Edward Baldwin, and Dwayne Hood ("Participating Individuals"), who may participate in the settlement only to the extent of claims not covered by Article XIII of Consent Decree I. If any of these Participating Individuals opt out of the Hiring Class settlement, Defendants reserve all defenses to their Opt-out claims, including without limitation *res judicata*, collateral estoppel, the defense that said Participating Individuals have been fully compensated, and any and all other available defenses. It is agreed that Defendants will not contend that the provisions of this paragraph bar Peggy Allen from pursuing any claim under Article XX of Consent Decree I, including claims that are based upon the EIT or related requirements for the graduate civil engineer classification. Subject to part VII. 1.(v) and (w) and VII. 2.(v) and (w) of the Terms of Agreement section of this Settlement Agreement, the

individual claims of all other persons who received compensation in connection with Article XIII of Consent Decree I are resolved.

5. If the total of the claims and Opt-outs exceeds \$12,000,000, Defendants will have the right to void the settlement as it relates to the Hiring Class.

a. For purposes of this voidability determination, Opt-outs are valued at \$30,000 each.

6. If there are more than 200 Opt-outs from the Hiring Class settlement, Defendants have the right to void the settlement as it relates to the Hiring Class.

a. Testifying Plaintiffs within the Hiring Class who do not choose to participate in the tiered settlement count against the Opt-out voidability level of 200 Opt-outs. If Testifying Plaintiffs do participate in the tiered settlement, the payments made to them count against the \$12,000,000 voidability option threshold.

b. Opt-outs with whom Defendants conditionally settle during the Settlement Period (See paragraph 11 of the Hiring Class part of this Agreement) will not count against the Opt-out voidability level of 200 Opt-outs, but the amount of each such conditional settlement will count against the \$12,000,000 voidability threshold.

7. If there are more than 300 Opt-outs from the Hiring Class settlement, the settlement of the Hiring Class is automatically void unless the Parties mutually agree otherwise.

a. Testifying Plaintiffs within the Hiring Class who do not choose to participate in the tiered settlement count against the 300 Opt-out level.

b. Opt-outs with whom Defendants conditionally settle during the Settlement Period do not count against the 300 Opt-out level.

8. In order to participate in the settlement, a claimant must file a Participation Form in court within 45 days of the date of last Notice to the class. (See time line attached hereto as Exhibit "A".) Even if no Participation Form is filed by the deadline, a Class Member's claims will not be barred unless the Class Member fails to file a Participation Form in Court by the end of business on the day of the Fairness Hearing. If no Participation Form is filed by that time, the claims of the Class Member are barred. This provision does not affect any post-judgment or post-settlement rights of Class Members under the Rules of Civil Procedure or under due process.

9. A claimant's Participation Form or Opt-out Form must be filed in Court within 45 days of the date of last notice to the class as set forth in the time line attached hereto as Exhibit "A", but will in the first instance be filed with Plaintiffs' Attorneys, who have the right to advise with their clients as to the final content of the form to be filed with the Court. With respect to Class Members who change their minds about participating in the Settlement or about opting out after the time their form is filed with Plaintiffs' Counsel, Plaintiffs' Counsel, with the Class Member's permission, may sign the Class Member's name to the appropriate form before it is filed in Court.

10. Plaintiffs' and Defendants' Counsel will attempt to jointly determine into which tier "Participating Class Members" (i.e., those Class Members who have filed a



Participation Form in Court) fall prior to the time such Participating Class Members are mailed a Claim Form. In addition, Defendants will have the right to verify through their own records the accuracy of Claims Forms actually filed in Court. With respect to any claimant with whose designation of tier placement the Parties cannot agree, such differences will be submitted to the Monitor for final, binding, and unappealable determination. The Monitor's determination shall be based solely on documents submitted by the Parties and a letter brief not exceeding four pages in length from each side.

11. Following the deadline for filing Participation Forms and Opt-out Forms in Court, Defendants will have a settlement period of 75 days as set forth in the time line attached hereto as Exhibit "A", or such longer time as the Parties may mutually agree, within which to settle with Opt-outs. Settlements reached during this period are conditioned on Defendants' not subsequently exercising a voidability option.

12. At the end of the Settlement Period, if either criterion for voidability is satisfied, and the settlement is not otherwise void, Defendants shall elect whether to void the settlement with respect to the Hiring Class. Defendants must make their voidability election within 75 days after the deadline for filing Participation or Opt-out Forms in Court, as set forth in Exhibit "A".

13. If the settlement is not voided, or void, Defendants shall pay all negotiated and tiered settlements within the time frame set forth in Exhibit "A". No interest will be paid to individual Class Members beyond that included in their respective shares of the settlement fund. Plaintiffs and Plaintiffs' Counsel will provide to ALDOT all information necessary for

defendants to comply with federal and state laws and regulations, including, without limitation, all laws and regulations of the Social Security Administration, the Internal Revenue Service, and the Alabama Department of Revenue. After making all appropriate withholdings in accordance with federal and state laws and regulations, Defendants will write a check to each such class member for his or her net share of the settlement. Defendants will be financially responsible for the employer's share of any withholding requirements, and for any errors with respect to FICA and Medicare withholdings, including for interest and penalties arising from such errors. Defendants will deliver said settlement checks to Hiring Class Members.

14. Opt-outs who do not settle during the Settlement Period have the time set forth in Exhibit "A" within which to file a bare bones Claims Form in this case, that includes an allegation setting forth the basis of the claim and the time of the events giving rise to the claim. Any claims not filed within the period designated in Exhibit "A" are barred.

15. After the resolution of all litigated Opt-out claims, or 4 years after the time the \$15,000,000 is deposited into escrow, whichever is earlier, the money remaining in escrow, including any accrued interest, will be returned to Defendants, and will be used to enhance the implementation of Consent Decree I.

16. If the Hiring Class settlement does not receive final approval by the courts (including any appellate courts) or otherwise becomes void, the contempt and moratorium provisions of this Agreement, hereinafter set forth, will be unaffected, provided that the Promotions Class settlement does receive final approval by the courts (including any appellate courts) and does not otherwise become void. If, however, the contempt and moratorium

provisions of this Agreement hereinafter set forth do not receive final approval by the courts (including any appellate courts), or if said provisions otherwise become void because the Promotions Class settlement does not receive final approval from the courts (including any appellate courts), the Hiring Class settlement is voidable at the election of Defendants.

II. The Promotions Class

1. Defendants will pay \$14,000,000 in back pay, \$3,500,000 in compensatory damages, and \$22,500,000 in interest to the class. This money will be paid into an interest bearing escrow account designated by Plaintiffs' Counsel on the day the settlement of the Promotions Class claims is preliminarily approved by the Court. Until the voidability date for the Promotions Class passes, Defendants' counsel will be a joint signatory on this escrow account, so that no disbursements can be made without the signatures of both a lawyer for Plaintiffs and a lawyer for Defendants.

2. If there are more than 75 Opt-outs from the Promotions Class settlement, Defendants will have the right to void the settlement as it relates to the Promotions Class.

a. Each Testifying Plaintiff in the Promotions Class who opts out counts against the Opt-out voidability level of 75 Opt-outs.

3. If there are more than 200 Opt-outs from the Promotions Class settlement, the settlement of the Promotions Class is automatically void unless the Parties mutually agree otherwise.

4. Assuming that voidability is not exercised, that the Promotion Class settlement does not become void, and that the Promotions Class settlement receives final

approval from the Court, Defendants agree that Plaintiffs have ownership of any growth in the court's escrow account, and any successor escrow account, from July 7, 2000, for use as Plaintiffs' counsels' fees or costs for claims administration and representation of Opt-outs.

5. If the Promotions Class settlement is voided, or is otherwise automatically void, all funds for the Promotions Class, including interest, will be returned to Defendants within 90 days.

6. The settlement monies will be allocated among Class Members by Plaintiffs' Counsel in accordance with whatever plan or mechanism or other method of determination is devised by Plaintiffs' Counsel. Defendants will have no responsibility or liability for developing any such plan or mechanism for allocating the settlement funds. The plan to be developed by Plaintiffs' Counsel will include a process that evaluates years of employment, years of education, training, experience, applications and such other information as Plaintiffs' Counsel deems necessary, which may include the following:

Ranks on registers; ranks on certificate-of-eligibles; satisfaction of minimum qualifications; examination scores; positions held while employed at ALDOT ; length of time in each position held while employed at ALDOT; compensation paid by ALDOT; hours worked overall, and by year; number and length of breaks in service; total earnings from ALDOT; positions, if any; positions for which applied while working at ALDOT, but which were awarded to white employees; performance problems on positions held at ALDOT; training received on positions held at ALDOT; total earnings at employers other than ALDOT; discipline received while employed at ALDOT; and training received outside of ALDOT which is relevant to jobs desired.

Upon completing the allocation plan, Plaintiffs' Counsel will provide a designated third party trustee with a list of Plaintiffs' Class Members and the gross amount of money each Class Member is to receive from the settlement. In addition, Plaintiffs and Plaintiffs' Counsel will provide to ALDOT all information necessary for the trustee to comply with federal and state laws and regulations, including, without limitation, all laws and regulations of the Social Security Administration, the Internal Revenue Service, and the Alabama Department of Revenue. ALDOT will provide the trustee with appropriate W-2 withholding information. After making all appropriate withholdings, including both employee and employer contributions, where applicable, in accordance with federal and state laws and regulations, trustee will write a check to each such Class Member for his or her net share of the settlement. All withholding, including both employee and employer contributions to withholding, shall be deducted from the gross amount of back pay due each Class Member, up to and including the first 60% of such amount of back pay. Defendants will be financially responsible for the employer's share of any withholding requirements on the remaining 40% of the gross amount of back pay due each Class Member, and for any errors with respect to FICA and Medicare withholdings, including for interest and penalties arising from such errors. The trustee will deliver said settlement checks to members of Plaintiffs' class. The trustee shall keep all individual payment amounts confidential. Defendants shall have no responsibility for the costs of the services of the third party trustee.

7. The time line to be followed by the Parties in the implementation of the Promotions Class settlement is attached hereto as Exhibit "C" and is incorporated herein. As set forth in Exhibit "C", a Class Member's Participation Form or Opt-out Form must be filed in Court within 45 days of the date of last Notice to the class. Even if no Participation Form is filed by the deadline, the Class Member's claims will not be barred unless the Class Member fails to file a Participation Form in Court by the end of business on the day of the Fairness Hearing. If no Participation Form is filed by that time, the claims of the Class Member are barred. This provision does not affect any post-judgment or post-settlement rights of Class Members under the Rules of Civil Procedure or under due process. The Named and Testifying Plaintiffs do not have to file a Claims Form, but any Named or Testifying Plaintiff who chooses to opt out of the settlement must, within the time set forth in Exhibit "C", file a bare bones Claims Form in this case, that includes an allegation setting forth the basis of the claim and the time of the events giving rise to the claim.

8. As set forth in Exhibit "C", following the deadline for filing Participation Forms and Opt-out Forms in Court, Defendants will have a Settlement Period of 75 days, or such longer time as the Parties may mutually agree, within which to settle with Opt-outs. Settlements reached during this period are conditioned on Defendants not subsequently exercising a voidability option.

9. As set forth in Exhibit "C", a claimant's Claims Form is to be submitted to Plaintiffs' Counsel within 150 days of the date of the last notice to the class. A Class Member

who fails to file a monetary Participation or Claims Form does not give up non-monetary claims other than those agreed herein to be released in this Settlement Agreement.

10. Upon the Court's final approval of the settlement, and if the settlement is not voided or does not otherwise become automatically void, Defendants' payment of the settlement funds to Plaintiffs' Counsel shall constitute full and complete performance by Defendants with respect to the released claims, as set forth in the Scope of the Settlement part of this Agreement, and Defendants shall thereby be fully released from all claims of Promotions Class Members who do not opt out of the Promotions Class settlement and from all liability with respect to all released claims, as set forth in the Scope of the Settlement part of this Agreement, including all Article XX claims of Class Members who do not opt out of the Promotions Class settlement, all retrospective monetary contempt remedies, and any other claims which are released by the terms of this Settlement Agreement.

11. Defendants will make no state pension contributions in connection with this settlement, and will bear no expense with respect to any pension contribution made by any Class Member with funds received pursuant to this settlement.

### III. Both Classes

1. Defendants will contribute \$5,500,000 for Plaintiffs' Counsel's attorney fees and expenses for the administration of both the Promotions and Hiring Class settlements by Plaintiffs' Counsel commencing with the execution of this Settlement Agreement. This sum also covers attorney fees for legal representation provided by Plaintiffs' Counsel to all Opt-outs in both the Promotions and the Hiring Classes through resolution of every Opt-out's claim.

Subject to subparagraph 1.a, 1.c and 1.e of this paragraph, Defendants will have no additional liability for attorney fees in connection with these matters, including no liability for prevailing party fees in connection with the claims of any Opt-outs from a settlement fund that has been approved and has not become void. That is, Defendants' obligations, if any, with respect to the payment of attorney fees for the administration of the settlement of the two classes and for Plaintiffs' Attorneys' representation of Opt-outs from the two classes are satisfied by the \$5,500,000 payment and the interest provided in paragraph II.4 above. This payment of attorney fees, however, does not settle any claims for attorney fees or expenses for any matter not set forth in this paragraph.

a. Plaintiffs' Attorneys will encourage Opt-outs to accept representation in the pursuit of their Opt-out claims from Plaintiffs' Attorneys, and will not suggest to Opt-outs or potential Opt-outs that other counsel be used to pursue Opt-out claims. If Plaintiffs' Counsel associate outside counsel to represent Opt-outs, Plaintiffs' Counsel will pay such Opt-out counsel for their representation, and Defendants shall have no responsibility for the fees of such counsel, whether prevailing party fees or otherwise. Plaintiffs' Counsel will not be responsible for payment of any attorneys' fees for representation of Opt-outs who decide independently of Plaintiffs' Counsel not to be represented by Plaintiffs' Counsel.

b. Plaintiffs' Attorneys may reject representation of Class Members who opt out with individual claims they determine in good faith to be frivolous within the meaning of Rule 11 of the Federal Rules of Civil Procedure, and will not be responsible for payment of any



attorneys' fees in connection with such claims. Defendants will not argue to the Court that any such claim is frivolous on the basis that Plaintiffs' Counsel rejected the representation and, except in connection with a claim against Plaintiffs' Counsel, will keep the fact of the rejection confidential. Plaintiffs' Attorneys' will contemporaneously document the date and fact of any rejection by them of representation.

c. Plaintiffs' Attorneys will be paid under the "Agreement on Attorney Fees", dated February 26, 1999, for legal work performed in connection with the settlement approval process, including the Fairness Hearing for, and any appeal relating to the effort to seek approval of, the settlement contemplated by this Agreement. If the settlement is ultimately approved in the courts, Defendants will receive a credit against the \$5,500,000 provided for in this paragraph 1 for all sums paid under the said "Agreement on Attorney Fees" for legal work performed by Plaintiffs' Counsel in connection with the settlement approval process, after preliminary approval of this Agreement. If by the time final approval in the courts is obtained, the \$5,500,000 already has been paid into escrow, Defendants will receive a payment from the escrow fund equal to the credit to which they are entitled. Other than with respect to the payments provided for in this paragraph, this paragraph shall not otherwise affect or waive any party's position with respect to the duration or applicability of the "Agreement on Attorney Fees", dated February 26, 1999.

d. On or before January 18, 2001, the \$5,500,000 will be paid into an interest bearing escrow account mutually agreed upon by Plaintiffs and Defendants, and on which a

lawyer for Plaintiffs and a lawyer for Defendants shall be joint signatories. If the settlement is approved by the Court, and neither class is voided or otherwise becomes void, so that the \$5,500,000 is ultimately paid to Plaintiffs' Counsel, Plaintiffs' Counsel will receive all interest that has accrued on that money from the time of deposit until the time of payment.

e. If only the Promotions Class settlement is not approved, is voided by Defendants, or otherwise becomes void, \$4,250,000, plus a pro rata share of the interest that has accrued on the money in the escrow account, will be paid to Defendants, and the remaining amount will be paid to Plaintiffs' Counsel, and the Defendants' liability for attorneys fees and expenses related to the claims that would have been released by the Promotions Class settlement shall be unaffected by this Agreement. If only the Hiring Class settlement is not approved, is voided by Defendants, or otherwise becomes void, \$1,250,000, plus a pro rata share of the interest that has accrued on the money in the escrow account, will be paid to Defendants, and the remaining amount will be paid to Plaintiffs' Counsel, and Defendants' liability for attorneys fees and expenses related to the claims that would have been released by the Hiring Class settlement shall be unaffected by this Agreement.

2. If the settlement, as it relates either to the Promotions Class or the Hiring Class is not approved by the courts, all funds, including interest, paid into any escrow account in connection with the unapproved part of the settlement will be returned to Defendants. If the contempt and moratorium provisions of this Settlement Agreement hereinafter set forth are not approved, the entire settlement is voidable at the election of Defendants. If Defendants elect to void the entire settlement because the contempt and moratorium provisions of this Agreement

are not approved, all funds, including any interest, paid into any escrow account in connection with the settlement will be returned to Defendants.

3. Plaintiffs and Defendants will advocate to the Court that it expedite the setting of and ruling on claims of Opt-outs.

4. This settlement creates no rights in the Adams Intervenors.

5. The Parties recognize that delays may result in the time lines attached hereto as Exhibits "A" and "C" either from appeals or from other delays in judicial processes. In addition, although the Parties' best efforts will be exercised to make payments to Class Members within the times set forth in Exhibits "A" and "C", it is recognized that delays may occur, and payments will be made as soon as practicable in light of such delays.

6. Notice of the Settlement Agreement shall be published by Defendants following Preliminary Approval by the Court as follows:

a. Notice in the form of Exhibit "B-1" to the Settlement Agreement shall be published by Defendants on three consecutive Sundays following approval in the classified section of the principal newspaper in Birmingham, Alabama; Mobile, Alabama; Huntsville, Alabama; and Montgomery, Alabama.

b. Notice in the form of Exhibit "B-2" to the Settlement Agreement (the "Short Form Notice") shall be published by Defendants on three consecutive Sundays following Preliminary Approval in the principal newspaper in the following cities: Birmingham, Alabama; Decatur, Alabama; Mobile, Alabama, Montgomery, Alabama; Dothan, Alabama; Huntsville, Alabama; Florence, Alabama; Anniston, Alabama; Tuscaloosa, Alabama; Gadsden, Alabama;

Atlanta, Georgia, Tallahassee, Florida; Jackson, Mississippi; and Nashville, Tennessee. The notice to be published pursuant to this subsection in the newspapers in Birmingham, Mobile, Huntsville, and Montgomery shall reflect that further information is contained in the newspaper's classified section;

c. Notice in the form of Exhibit "B-2" to the Settlement Agreement (the "Short Form Notice") shall be published by Defendants on the day of greatest circulation for three consecutive weeks following Preliminary Approval in the Birmingham Times, the Montgomery-Tuskegee Times, and the Mobile Beacon; and

d. The Short Form Notice shall be published by Defendants in the Black Collegian and the Black E.O.E. Journal. If these two magazines are unavailable for timely publication of notice, the parties will agree to comparable additional notice, the cost of which shall not exceed the cost of publication in these two magazines.

e. Defendant shall pay no more than \$50,000.00 to publish the Short Form Notice in the U.S.A. Today Friday/Weekend edition.

f. Notice in the form of Exhibit "B-1" to the Settlement Agreement shall be sent by Defendants by first class mail to the last known address, if any, of members of both classes.

Defendants shall have no further obligation or expense for other notices; however, Plaintiffs' Counsel at their expense may give such additional notices which they desire or deem appropriate.

#### IV. Grievances

The Parties agree that Plaintiffs' grievances will remain pending. If, however, Defendants settle all grievances of the Adams Intervenors seeking backpay or instatement relief on the basis of only a monetary payment, or monetary payments, Plaintiffs will dismiss all of their grievances seeking back pay and instatement relief upon receipt of an amount equal to the total amount of money paid in settlement of the Adams Intervenors' grievances. If the Defendants pay the Adams Intervenors any amount of money for the settlement of all such grievances, Defendants will pay the Plaintiffs an equal amount on the same date. It is understood that Defendants are not obligated to settle the grievances of the Adams Intervenors, and if those grievances are not settled, Plaintiffs are free to pursue their grievances. Defendants do not waive their position that neither back pay nor instatement may be awarded through the grievance procedure, and Plaintiffs do not waive their positions with respect to what remedies are available to what parties under the grievance procedure. The concept of this agreement is that unless Defendants settle with the Adams Intervenors as a class with respect to their grievances, so that all of the Adams Intervenors' grievances are settled, no money will be paid to Plaintiffs, and Plaintiffs' are free to pursue their grievances.

#### V. Contempt

1. To settle all of Plaintiffs' monetary contempt claims arising at any time from March 15, 1994 until the close of business on the day the Fairness Hearing is held:

a. Defendants will pay Plaintiffs \$4,600,000.

b. Defendants will also pay to Plaintiffs the same amount of money it may hereafter pay to the Adams Intervenors, whether by settlement or court order, in connection with contempt claims, except for those contempt claims arising from Article XV, paragraph 3d of Consent Decree I. The agreement in this subparagraph does not include money, if any, the Court orders Defendants to pay, without Defendants' agreement or consent, to the Adams Intervenors out of the contempt fine fund or as compensation for their contempt claims.

c. If the Adams Intervenors do not settle their claims pursuant to Article XV, paragraph 3d, Plaintiffs will have the option to void their settlement of their Article XV, paragraph 3d claims upon the refund to Defendants of \$1,100,000 of the amount paid pursuant to paragraph V. 1 above.

d. Subject to this Agreement, no party waives its right to argue to the Court what the disposition should be of contempt fine money.

e. Within thirty days of the execution of this Agreement, Defendants will pay the \$4,600,000 into an interest bearing escrow account, to be approved by Plaintiffs' and Defendants' Attorneys, with both a Plaintiffs' Attorney and a Defendants' attorney as joint signatories. If the settlement is approved by the Court so that the \$4,600,000 is ultimately paid to Plaintiffs, Plaintiffs will receive all interest that has accrued on that money from the time of deposit until the time of payment. If the settlement of the Parties is not approved by the Court, or does not otherwise become effective, Defendants will receive all money paid into escrow, including all accrued interest.

f. This Contempt part of the Agreement settles only the compensatory, monetary claims of Class Members and not their instatement claims or their claims for other non-monetary claims for contempt or their claims for attorney fees or expenses related to contempt. Neither Plaintiffs nor Plaintiffs' counsel will claim attorney fees in connection with work performed to obtain the monies paid pursuant to this Contempt part of the Agreement other than the claim already made under the "Agreement on Attorney Fees" dated February 26, 1999.

2. Moratorium

1.a. The Contempt settlement includes a moratorium of fines for 12 months (or for such longer periods as set forth below) beginning December 19, 2000, as set forth below in paragraph 1.f of the moratorium part of this Agreement, and if no finding of full compliance has been entered by the Court by the end of the moratorium period, then subject to subparagraphs 1.d and 1.e below, Defendants will pay any coercive penalties that would have been due under the January 31, 2000 Contempt Order absent the moratorium.

b. With respect to the length of the moratorium period, the following provisions shall apply to the development of selection procedures under Articles II and III:

(1) The moratorium on contempt fines for SPD's compliance with Articles II and III of Consent Decree I shall be extended by the period of time, defined below, in which SPD delays development, administration or use of a selection procedure as a result of the Plaintiffs' and the Adams Intervenors' objections or comments with respect to any job analysis report, minimum qualification, examination plan including examination items, recruitment, rotation, training, validation report, test administration issue, multigrade job study, job

announcement, or "how to prepare" booklet, or as a result of Plaintiffs' request. The extension of the moratorium provided for herein shall include all time during which the court considers an issue as to which Plaintiffs or the Adams Intervenors have made an objection or an adverse comment, and all time required to remedy the objection or adverse comment, regardless of whether the remedy is agreed to by the parties or ordered by the court. "Plaintiff", as used in this paragraph, refers collectively to Plaintiffs and their attorneys and experts. The moratorium period shall be extended only for the specific classification(s) to which the delay applies. Multiple extensions of the moratorium period for a single classification shall run concurrently, and are not cumulative in nature.

When during the validation process, Defendants submit information to the Plaintiffs and the Adams Intervenors for response, Defendants will designate the time within which the Plaintiffs and the Adams Intervenors should respond. The time so designated will not be less than 14 days, nor more than thirty days. (If SPD submits information to Plaintiffs on more than one classification at the same time, the period designated for review shall be 30 days.) As long as the Plaintiffs' and the Adams Intervenors' review consumes no more than the designated time, there will be no tolling of the moratorium period arising from said review. Any time consumed by the Plaintiffs or the Adams Intervenors in excess of that designated by Defendants for review tolls the moratorium period from the end of the designated period until the time the Plaintiffs and the Adams Intervenors respond to the submission. If Plaintiffs are unable to respond within the designated period, they may notify SPD that their response will be forthcoming within an extended period of time, not to exceed an additional 60 days. The fact



that Plaintiffs have chosen to respond within the extended period will not be used to argue that Plaintiffs have defaulted in their obligations or that they have waived their objections.

SPD will determine in good faith when a response or comment made by Plaintiffs to a submission from SPD, or to a position taken by SPD relative to a course of action SPD is pursuing in the development, administration, or use of a selection procedure, delays SPD in its process of validating or using a selection procedure. The tolling of the moratorium period shall commence upon written notification to the parties by SPD identifying the matter in dispute and stating that SPD will not proceed without a resolution of the dispute. The Parties shall have ten business days (or such longer period, not to exceed thirty calendar days, upon which the Parties may agree) from the date of SPD's notification letter within which to attempt in good faith to resolve the dispute. If the dispute is not resolved within the resolution period, there shall be an additional ten day period during which any party may file an appropriate pleading in court seeking resolution of the dispute. If no party requests a resolution from the court within the said ten day period, the tolling period expires at the end of the ten day period. If within the ten day period a pleading seeking court resolution is filed, the tolling continues until the matter is thereafter resolved either by the court or by agreement of the Parties, and until Defendants have implemented the resolution ordered by the court or agreed upon by the Parties either during the resolution period or thereafter. The Parties agree to cooperate in seeking to have the court reach an expeditious resolution of any dispute presented to the court.

Defendants will not administer any non-entry level SPD Project class examination or Transportation-specific classification examination (unless the classification is to be used by

another agency, in which case, SPD will not give the examination for the purpose of filling a vacancy at ALDOT), or use any non-entry level non-SPD project classification register to fill positions at ALDOT, until Rotation for persons in feeder classes relevant to the examination has been implemented and in operation for eighteen months for the feeder classes relevant to Civil Engineer and Civil Engineer Manager examinations, and for twelve months for other such examinations, or for such shorter period as may be required for ALDOT to satisfy its Rotation obligation to employees in such feeder classes under Consent Decree I. ALDOT represents that on the basis of an opinion provided to it by PDRI, it believes that a period of up to eighteen months, or twelve months, as applicable, is an adequate time for it to comply with its Rotation obligation under Consent Decree I relative to any feeder classes. The moratorium period will be tolled until Rotation has been implemented and in operation for the specified period, or for such other period as may be required for ALDOT to comply with its Rotation obligation under Consent Decree I, and if, during any delay from Rotation, the content of a job classification changes sufficiently to necessitate development of a new selection procedure, the moratorium shall be extended through the time required to develop, administer, and place into use the new selection procedure. Extension of the moratorium period in this regard shall include the time required for SPD to conduct a job analysis to determine whether a new selection procedure is needed. Extension of the moratorium period for development of a new selection procedure shall continue thereafter only where the content of the job(s) performed in the subject classification has changed sufficiently to necessitate the development of a new procedure.

Defendants also will not administer or use any such examination until it has completed the provision of training pursuant to Article Sixteen, paragraph 1, of Consent Decree I to persons in feeder classes relevant to such examination. Plaintiffs and Defendants reserve their contentions concerning whether Rotation or on-the-job training are required to be included in training under Article Sixteen, paragraph 1 of Consent Decree I.

If the Adams Intervenors object to the approval of any term of this Agreement delaying the administration or use of examinations as set forth above, it is understood and agreed that the Defendants will support the approval of such term only on the grounds that it is part of the Settlement Agreement, but will take no position in the District Court, or upon any subsequent appeal, concerning the substantive merits of whether such provision should be approved. Defendants agree to abide by the final ruling of the courts as to whether such provision is approved, and will file no pleading and make no argument in this regard. Provided, however, that Defendants' neutrality applies only to the courts' determination as to whether an agreed upon settlement term should or should not be approved.

It is further understood and agreed that, in the context of approval of this Settlement Agreement, if any party requires, pursuant to subpoena, the testimony of Defendants' employees or consultants with respect to factual matters that bear on this issue, such persons shall provide complete and accurate testimony, and the giving of such testimony shall not be considered a breach of Defendants' obligation to refrain from taking a substantive position on the issue.

If the Adams Intervenors prevail on their objection either in the trial court or on appeal, the remaining provisions of the moratorium agreement will be unaffected.

PDRI will monitor the operation of the Rotation program and will determine after eighteen months, or after such other period as may be required for ALDOT to comply with its Rotation obligation under Consent Decree I relative to the relevant feeder classes, whether the Rotation program with respect to the said feeder classes has been adequately operated to satisfy ALDOT's obligations under Consent Decree I. PDRI will certify in writing its opinion as to whether the Rotation program with respect to such feeder classes has been operated adequately to satisfy ALDOT's obligations under Consent Decree I. Within 20 days after receiving the said written certification from PDRI, Plaintiffs may object to the administration of the examination. Plaintiffs' objection with respect to the issue of Rotation shall not concern substance or content of the Rotation program, but shall be solely on the basis that the Rotation program was not adequately operated to satisfy ALDOT's obligation under Consent Decree I. The Parties shall have 10 days to attempt to resolve any such objection. If the Parties are unable to resolve the objection, Plaintiffs shall have 15 days to file an appropriate pleading seeking relief. If Plaintiffs seek relief from the Court, the exam shall not be administered until further order of the Court. If Plaintiffs do not seek relief from the Court, administration of the exam may go forward. Nothing in this paragraph is intended to waive Plaintiffs' rights to raise objections to exam validation or administration that are not related to the Rotation issue. Anything herein to the contrary notwithstanding, the moratorium period will not be tolled when an action taken by SPD and submitted to Plaintiffs for objection or comment, and to which Plaintiffs have objected, is found

to have been taken other than in good faith. At the time Plaintiffs object to, or comment adversely on, said action, Plaintiffs will notify SPD in writing of their contention that the action objected to was not in good faith.

(2) With respect to non-SPD Project classes in which there are vacancies in ALDOT before October 1, 2001, the one year moratorium period begins to run on October 1, 2001. With respect to any non-SPD project class for which there is no vacancy in ALDOT before October 1, 2001, the moratorium period begins to run for such class on the date SPD receives notice of a vacancy in said class, and Defendants will not be required to pay fines on the basis of said class prior to the expiration of the moratorium period applicable to said class

(3) Until a permanent selection procedure is validated and ready for use to make appointments for any classification, selections will be made pursuant to the presently existing interim procedure for said class, including agreed upon modifications as set forth herein, and/or other modifications agreed upon by the Parties or ordered by the court. The Parties agree, however, to reduce the time required to make selections pursuant to the interim procedures in at least the following ways: 1. eliminate vacancy interest inventory; 2. eliminate separate application deadlines for each vacancy; 3. fill any given vacancy from those who are in the eligible pool at the time the vacancy is to be filled; and 4. conduct OCB interviews monthly. Although adverse impact information will continue to be provided to the Parties at each step of the interim process, absent the filing of a motion with the court the selection process will not be delayed on the basis of any adverse impact objection made by anyone prior to the conclusion of the process; provided, however, that this is not intended to alter the objection process with

respect to newly developed components as set forth in paragraph VI.4 of the Terms of Agreement section of this Agreement. All objections based on adverse impact will be reserved until the end of the process when Plaintiffs and intervenors are notified of a selection. ALDOT will have 30 days from the time it receives a list of the top 5 eligibles from AUM within which to make a selection and to provide notice to Plaintiffs and intervenors of the selection. Seven days following notice of the selection to Plaintiffs and intervenors, absent an objection to the appointment, ALDOT shall appoint the selectee. This paragraph does not preclude Defendants' use of transfers to fill positions and does not preclude Plaintiffs' right to contest the use of transfers for that purpose. When a vacancy in such a classification has been submitted to the interim process, ALDOT may elect to fill the vacancy through the permanent process until the time that a list of eligible candidates has been issued to ALDOT by AUM.

(4) SPD will not be responsible for validating a selection procedure for any non-SPD project class where the Parties agree that the existing selection process has not resulted in adverse impact. Defendants reserve whatever right they may have independently of this Settlement Agreement to seek relief from the court relative to any requirement of validating a selection procedure Defendants contend has no adverse impact.

(5) With respect to the 51 non-SPD project classes listed in Exhibit D attached hereto and incorporated herein, the moratorium period expires on October 1, 2003, or on such later date as to which the moratorium period may be extended pursuant to other provisions of this Agreement. With the approval of Plaintiffs, Defendants may substitute other non-SPD Project classes on a one for one basis with the classes listed in Exhibit "D".

(6) The imposition of sanctions for non-compliance with Articles II and III of Consent Decree I shall otherwise be governed by part V.2.1.a of the Terms of Agreement section of this Settlement Agreement, except that sanctions shall be payable only on a pro rata basis with respect to those classifications for which a register is not established and ready for issuance of certificates of eligibles when the time period for compliance has expired. The pro rata amount shall be determined by reference to the number of classifications for which the deadline set forth above, absent tolling, has passed (October 1, 2001 for SPD Project Classes, October 1, 2002 for non-SPD Project Classes, and October 1, 2003 for those classes listed on Exhibit "D"). The pro rata for classes with an original deadline of October 1, 2001, October 1, 2002, October 2, 2003, respectively, shall be based upon the number of classifications having the same respective deadlines. Provided, however, that unless full compliance has been achieved by the deadline date, the amount of sanctions to be paid shall be no less than \$75.00 per day, up to a maximum sanction of \$1500.00 per day for Articles II and III of Consent Decree I, subject to Plaintiffs' right to seek escalated fines pursuant to the immediately following subparagraph, 1(c), of this part of the Settlement Agreement and the Court's civil contempt order.

c. During the moratorium period and thereafter, Plaintiffs shall have the right to enforce Consent Decree I and related orders and injunctions, including the Court's contempt orders, by seeking whatever contempt relief they deem appropriate other than fines, and the right to such relief shall not be effected by this Agreement in any way. With respect to the validation related Articles of Consent Decree I (i.e., Article 2, except paragraph 2 (b); Article 3, except paragraphs 2, 3 (b), 4 (b), and 12; Article 4, except paragraph 3; and Article 8, paragraph 2), if

Plaintiffs determine during the moratorium period or thereafter that Defendants have not made, or are not making, sufficient progress toward compliance with said Articles, they may petition the Court to re-institute or escalate the fines applicable to said Articles (or applicable to the relevant paragraphs of said articles) or to grant such other relief as may be available under Consent Decree I, related orders and injunctions, or the Court's Contempt orders; provided, however, that for the first 180 days of the moratorium period, Plaintiffs will not seek to re-institute the said fines. If Plaintiffs petition the Court after the expiration of 180 days from the beginning of the moratorium period to re-institute or escalate fines, or to seek other relief, with respect to the validation related Articles, or with respect to the relevant paragraphs of said Articles, Plaintiffs, at their election, may also petition at that time for an order requiring Defendants to pay into the Court's Contempt Fine Fund those validation related fines that would have been due during the first six months of the moratorium period but for the moratorium. Defendants understand, and will not argue to the contrary, that the moratorium of fines does not compromise or affect the right or ability of Plaintiffs to seek contempt remedies other than coercive fines during the moratorium period.

The Parties hereto recognize the possibility that the Court may, during the first six months of the moratorium period, determine on its own, or pursuant to an argument made by other parties to the litigation, that contempt fines are the only relief appropriate to remedy Defendants' failure to make adequate progress toward compliance with the validation related provisions of Consent Decree I. The Parties agree that under such circumstances, the Court will not be prohibited from imposing fines, and Defendants will not argue that this Settlement



Agreement precludes the Court from ordering the payment of fines under such circumstances. However, Plaintiffs will not seek or advocate such fines during the 180 day period.

During the moratorium period, the Defendants will disclose all aspects of the work being undertaken as a means of complying with Consent Decree I, related orders and injunctions, and the Court's contempt orders, as well as the progress of all steps undertaken. Defendants will consult with Plaintiffs on all aspects of validity including potential experts to be retained and the likely impact of such change of experts or retention of experts on the progress toward compliance with Consent Decree I, related orders and injunctions, and the Court's contempt orders. This process of disclosure and consultation will begin immediately. This paragraph shall not be construed as Plaintiffs' endorsement of, or acquiescence in, Defendants' changing experts.

This moratorium agreement shall not impair Plaintiffs' rights, whatever they may be, to oppose Defendants' Motion to Modify Schedule for Validation of Examinations, Notice of Withdrawal of Engineering Assistant Validity Report, and any effort to change experts or alter any aspect of compliance efforts with Consent Decree I, related orders and injunctions, or the Court's contempt orders through any means they choose, and nothing in this Agreement or the moratorium of fines will be argued or construed to adversely effect any such right.

d. If full compliance on each Article of Consent Decree I is not achieved as of the last day of the moratorium period, Defendants will be responsible only for fines that accrued during the moratorium period on the Articles with which full compliance has not been

achieved as of that date. With respect to Articles on which full compliance is achieved as of the last day of the moratorium period, Defendants will not be responsible for any fines that accrued on said Articles during the moratorium period before full compliance was achieved. The Defendants will have the right to seek interim determinations of compliance from the Court on an article by article or deadline by deadline basis as a means of reducing the amount due at the end of the agreed upon moratorium period.

e. A Court hearing for a determination of whether full compliance has been achieved, (except with respect to Article 2 and Article 3, paragraphs 3a, 4a and 5 through 12) will be sought within ten days after execution of this Settlement Agreement, with both Plaintiffs and Defendants requesting that the hearing be set at least two weeks before the expiration of the first year of the agreed upon moratorium period. The Parties will also request that the Court enter an order that it will make a determination of the Defendants' compliance by a date certain mutually agreed upon by the Parties and the Court. (The Parties will agree to a proposed scheduling order, and will present that order to the court. If the court prefers, the Parties will meet with the court to arrive at a scheduling order.)

In the event the District Court does not rule by the end of the moratorium period, all retrospective fines, and all prospective fines, as they become due, on Articles that the Defendants admit not to be fully complied with will be paid at the end of the moratorium period to the District Court's Contempt Fine Fund. No payments shall be required from Defendants as to those Articles of Consent Decree I as to which the Parties agree the Defendants are in compliance, or as to which the Court has already found the Defendants in compliance. With

respect to those Articles on which there is a dispute relative to compliance, Defendants will pay into an interest bearing escrow account, on which a representative of both Plaintiffs and Defendants will be joint signatories, all prospective fines as they become due and all retrospective fines that would have been due on said Articles but for the moratorium. If the Court ultimately holds that the Defendants are not in compliance with an Article of Consent Decree I, the escrowed contempt fines, plus interest that has accrued in the escrow account, relating to said Article, shall be placed in the Contempt Fine Fund. If the Court ultimately holds that the Defendants are in compliance with an Article of Consent Decree I, said escrowed contempt fines, plus interest that has accrued in the escrow account, relating to said Article, shall be returned to Defendants. By entering into this Agreement, Defendants do not waive any rights they otherwise have to seek relief from the Court with respect to the payment of fines, and Plaintiffs do not waive any rights they may have to oppose such relief.

f. The agreed upon moratorium will go into effect on December 19, 2000, although Defendants will continue paying contempt fines until such time as the Settlement Agreement of the Parties receives Preliminary Approval from the District Court. Upon receipt of Preliminary Approval of the Promotions Class settlement and the moratorium settlement, Defendants shall receive a refund of all fines paid into the Contempt Fine Fund between December 19, 2000 and the date the Court preliminarily approves the settlement of the Parties. The entire settlement will be presented to the District Court at the same time.

If the Promotions Settlement Agreement does not receive final approval by the courts (including any appellate courts) or otherwise becomes void, the moratorium agreement is

null and void, and Defendants will immediately pay all fines, plus interest, that would have been required under the January 31, 2000 Contempt Order in the absence of the moratorium.

g. As a condition of obtaining Plaintiffs' consent to the moratorium period, Defendants have affirmatively advocated to Plaintiffs that this agreement is equally as coercive as the current Contempt Order; that it is not intended to compromise the coercive effect of that Order; that compliance cannot be achieved in less time regardless of the fines imposed; and that the problems associated with continuing non-compliance can best be addressed through this Agreement as opposed to contemporaneous fine payments.

3. Subject to paragraph 1.d of the Moratorium part of this Settlement Agreement, the moratorium agreement will have no effect on any Parties' right to claim any fine funds paid into the Court Contempt Fine Fund for contempt.

4. The remaining terms of the Contempt Order, including monitoring, remain in place and are unaffected by the moratorium agreement

#### VI. Miscellaneous Provisions

1. The deadline for eliminating construction, engineering and inspection consultants shall be extended for such period of time as may be required to employ and train sufficient civil engineers to satisfy the presently projected needs of ALDOT, which projection is for 30-40 civil engineers in addition to those currently in the interim process. It is agreed and understood that consultants shall not occupy merit system positions that could otherwise be filled by employees. Consultants may be used for training purposes and to perform work so long as

ALDOT complies with the above limitation. ALDOT will not delay appointing employees as a result of consultants performing work.

2. The Parties agree to eliminate the WCI as part of the interim selection procedure for the following upper level classifications: civil engineer manager, civil engineer administrator, and civil engineer senior administrator, and for the non-engineering management classifications set forth and incorporated herein as Exhibit "E".

3. The Parties further agree that with the exception of people who have applied for appointment through the interim procedure as of November 22, 2000, consideration of appointment through interim procedures shall be promotional only for the following classifications: civil engineer manager, civil engineer administrator, and civil engineer senior administrator, and the non-engineering management classifications set forth in Exhibit "E". Use of "promotional only" herein will not be used or advocated as a basis for any other use of "promotional only" restrictions in the permanent or other selection processes.

4. AUM shall develop additional components of the selection procedures for the foregoing classifications, and ALDOT shall have the right to implement these additional components upon their completion, subject to the restrictions on making selections set forth below. Such additional components shall consist of assessment center and/or role playing exercises and other similar components. Plaintiffs reserve the right to object to appointments made using such components based upon adverse impact if the application of any component results in adverse impact (a) such that the proportion of successful black candidates is 75% or less than that of white candidates when the 4/5ths Rule is applied, or (b) a statistically significant

disparity in the performance of black applicants at the level of .05 (two tailed) or less if the Fisher's Exact test is applied. The determination of which test is applied shall be made jointly by John Veres/AUM for Defendants and Joel Lefkowitz or Jim Outtz for Plaintiffs. Such determination shall be made based upon the number of candidates, the number of vacancies, and other appropriate factors before the results of the procedure by race are known. If the Parties are unable to agree, both tests will be applied and data from both provided to the Parties.

AUM will provide adverse impact data for the additional component upon completion of the scoring process for that component. The Parties shall then have ten days to notify Defendants of any objections. If objections are made, ALDOT shall not proceed with the making of selections until the objections are resolved. The Parties shall have fifteen days to attempt to resolve their differences. Any party may then submit an appropriate pleading seeking resolution of remaining disputes to the court within fifteen days. ALDOT may proceed with the making of selections upon either the agreement of the Parties or order of the court.

Vacancies that are currently a part of the interim selection process shall continue to be filled through the existing procedures until such time as the newly developed components are available for use.

## VII. Scope of the Settlement

1. The claims released by the Promotion Class settlement are all individual non-contempt, non-grievance claims of Promotions Class Members for race discrimination seeking monetary relief, including, but not limited to, back pay, compensatory damages, and interest, and all individual non-contempt, non-grievance claims to reinstatement or other

nonmonetary relief for the period prior to the close of business on the day of the Fairness Hearing. The Promotion Class settlement does not resolve the following: (a) relief under Consent Decree I other than all individual non-contempt, non-grievance claims of Class Members for race discrimination seeking monetary relief as set forth above and all individual non-contempt claims to instatement or other nonmonetary relief; (b) compliance with Consent Decree I or class based non-monetary remedies for noncompliance with Consent Decree I; (c) class claims for injunctive, declaratory, or other nonmonetary relief, if any; (d) non-monetary relief awarded pursuant to Article XIX, ¶ 6(c-d) or other provisions of Consent Decree I providing for further relief; (e) the Parties' contentions with respect to the provisions of Consent Decrees II and III; (f) coercive or non-coercive, non-monetary remedies for contempt of Consent Decree I or any provision thereof; (g) compliance with the Contempt Orders entered July 8, 1998 (Doc. No. 2954), September 23, 1998 (Doc. No. 3163), and January 31, 2000 (Doc. No. 4284), or the Agreement on Remedies for Contempt filed December 17, 1999 (Doc. No. 4247); (h) compliance with any Orders of the Court that are unrelated to the matters released herein (i.e., all individual non-contempt, non-grievance claims of Class Members for race discrimination seeking monetary relief as set forth above, and all individual claims to instatement or other nonmonetary relief), and any remedies necessary to effectuate such orders; (i) relief sought pursuant to any motions pending before the Court that are unrelated to the matters released herein, (i.e., individual non-contempt, non-grievance claims of Class Members for race discrimination seeking monetary relief as set forth above, or to individual claims to instatement or other nonmonetary relief); (j) individual lawsuits having a separate case number, and having

been filed prior to July 7, 2000; (k) relief sought by way of grievances, unless the contingent provisions of section IV of this agreement are effectuated; (l) claims of individual Class Members who opt out of the Promotions Class settlement, other than those claims released in the contemporaneous contempt settlement agreement; (m) new claims of individual Class Members for employment discrimination arising after the close of business on the day of the Fairness Hearing; (n) subject to the provisions of section VI.1 above, claims related to or arising from the use of consultants or their employees to perform jobs which the Plaintiffs contend should be performed by persons employed by defendant ALDOT; (o) relief under Article XV, ¶ 3(d) of Consent Decree I or for contempt of such provision (to be removed if settled); (p) individual non-monetary remedies for contempt; (q) individual or class based monetary remedies for contempt arising after the close of business on the date of the Fairness Hearing; (r) relief (except for individual non-contempt, non-grievance claims of Class Members for race discrimination seeking monetary relief as set forth above and all individual claims to instatement or other nonmonetary relief) related to the Defendants' recruitment, screening, examination, training, certification, interview, compensation, or selection processes, including without limitation, the interim selection process or any alternative selection processes; (s) relief (except for individual non-contempt, non-grievance claims of Class Members for race discrimination seeking monetary relief as set forth above and all individual claims to instatement or other nonmonetary relief) related to Defendants' job assignment procedures and practices; (t) relief (except for the individual non-contempt, non-grievance relief as set forth above) related to Defendants' training and the practices and procedures that provide training; (u) relief (except for the individual non-



contempt relief as set forth above) related to racial harassment or the practices and procedures and training associated therewith; (v) the individual claims of George King and Renee Hamilton (or their replacements pursuant to Article 13 of Consent Decree I) for monetary relief and reinstatement or other nonmonetary relief; (w) relief related to any miscalculation of the back pay paid under Article XIII to Sandra Bonner, Valerie Branyon, Lionel Harbin, Ivy Harris, or Dewayne Hood; (x) relief for any Class Member appointed under Article XIII related to the taxation of back pay paid under Article XIII; (y) relief against agencies, departments, or employers of the State of Alabama, except for those claims against the Alabama Department of Transportation and the State Personnel Department as set forth in this Agreement relating to employment opportunities at the Alabama Department of Transportation; (z) relief against the State of Alabama or the State of Alabama Personnel Department related to claims or employment opportunities at state agencies, departments or employers other than the Alabama Department of Transportation.

2. The claims released by the Hiring Class settlement are all individual non-contempt, non-grievance claims of Hiring Class Members for race discrimination seeking monetary relief, including, but not limited to, back pay, compensatory damages, and interest, and all individual non-contempt, non-grievance claims to reinstatement or other nonmonetary relief for the period prior to the close of business on the day of the Fairness Hearing. The Hiring Class settlement does not resolve the following: (a) relief under Consent Decree I other than all individual non-contempt, non-grievance claims of Class Members for race discrimination seeking monetary relief as set forth above and all individual non-contempt claims to reinstatement

or other nonmonetary relief; (b) compliance with Consent Decree I or class based non-monetary remedies for noncompliance with Consent Decree I; (c) class claims for injunctive, declaratory, or other nonmonetary relief, if any; (d) non-monetary relief awarded pursuant to Article XIX, ¶ 6(c-d) or other provisions of Consent Decree I providing for further relief; (e) the Parties' contentions with respect to the provisions of Consent Decrees II and III; (f) coercive or non-coercive, non-monetary remedies for contempt of Consent Decree I or any provision thereof; (g) compliance with the Contempt Orders entered July 8, 1998 (Doc. No. 2954), September 23, 1998 (Doc. No. 3163), and January 31, 2000 (Doc. No. 4284), or the Agreement on Remedies for Contempt filed December 17, 1999 (Doc. No. 4247); (h) compliance with any Orders of the Court that are unrelated to the matters released herein (i.e., all individual non-contempt, non-grievance claims of Class Members for race discrimination seeking monetary relief as set forth above, and all individual claims to reinstatement or other nonmonetary relief), and any remedies necessary to effectuate such orders; (i) relief sought pursuant to any motions pending before the Court that are unrelated to the matters released herein, (i.e., individual non-contempt, non-grievance claims of Class Members for race discrimination seeking monetary relief as set forth above, or to individual claims to reinstatement or other nonmonetary relief); (j) individual lawsuits having a separate case number, and having been filed prior to July 7, 2000; (k) relief sought by way of grievances, unless the contingent provisions of section IV of this agreement are effectuated; (l) claims of individual Class Members who opt out of the Hiring Class settlement, other than those claims released in the contemporaneous contempt settlement agreement; (m) new claims of individual Class Members for employment discrimination arising after the close of

business on the day of the Fairness Hearing; (n) subject to the provisions of section VI.1, claims related to or arising from the use of consultants or their employees to perform jobs which the Plaintiffs contend should be performed by persons employed by defendant ALDOT; (o) relief under Article XV, ¶ 3(d) of Consent Decree I or for contempt of such provision (to be removed if settled); (p) individual non-monetary remedies for contempt; (q) individual or class based monetary remedies for contempt arising after the close of business on the date of the Fairness Hearing; (r) relief (except for individual non-contempt, non-grievance claims of Class Members for race discrimination seeking monetary relief as set forth above and all individual claims to instatement or other nonmonetary relief) related to the Defendants' recruitment, screening, examination, training, certification, interview, compensation, or selection processes, including without limitation, the interim selection process or any alternative selection processes; (s) relief (except for individual non-contempt, non-grievance claims of Class Members for race discrimination seeking monetary relief as set forth above and all individual claims to instatement or other nonmonetary relief) related to Defendants' job assignment procedures and practices; (t) relief (except for the individual non-contempt, non-grievance relief as set forth above) related to Defendants' training and the practices and procedures that provide training; (u) relief (except for the individual non-contempt relief as set forth above) related to racial harassment or the practices and procedures and training associated therewith; (v) the individual claims of George King and Renee Hamilton (or their replacements pursuant to Article 13 of Consent Decree I) for monetary relief and instatement or other nonmonetary relief). (w) relief related to any miscalculation of the back pay paid under Article XIII to Sandra Bonner, Valerie Branyon, Lionel Harbin, Ivy

Harris, or Dewayne Hood; (x) relief for any Class Member appointed under Article XIII related to the taxation of back pay paid under Article XIII; (y) relief against agencies, departments, or employers of the State of Alabama, except for those claims against the Alabama Department of Transportation and the State Personnel Department as set forth in this Agreement relating to employment opportunities at the Alabama Department of Transportation; (z) relief against the State of Alabama or the State of Alabama Personnel Department related to claims or employment opportunities at state agencies, departments or employers other than the Alabama Department of Transportation.

3. The claims released by the contempt settlement are all individual claims of Class Members for monetary relief for contempt arising prior to the close of business on the day of the Fairness Hearing subject to the provisions of part V.1.(c) with respect to Article XV, ¶ 3(d), and all grievances of plaintiff Class Members seeking back pay or reinstatement relief if the contingent provisions of part IV of the Terms of Agreement Section of this Agreement are effectuated. The contempt settlement does not resolve the following: (a) relief under Consent Decree I, other than individual monetary relief; (b) compliance with Consent Decree I or class based nonmonetary remedies for noncompliance with Consent Decree I; (c) class claims for injunctive, declaratory, or other non-monetary remedies as settled by Consent Decree I, if any; (d) non-monetary relief awarded pursuant to Article XIX, ¶ 6 (c-d) or other provisions of Consent Decree I providing for further relief; (e) the Parties' contentions with respect to the provisions of Consent Decrees II and III; (f) coercive or non-coercive, non-monetary relief for contempt of Consent Decree I or any provision thereof; (g) compliance with the Contempt

Orders entered July 8, 1998 (Doc. No.2954), September 23, 1998 (Doc. No. 3163), and January 31, 2000 (Doc. No.4284), or the Agreement on Remedies for Contempt filed December 17, 1999 (Doc. No.4247), except for retrospective, non-coercive monetary remedies for the period prior to the close of business on the day of the Fairness Hearing; (h) compliance with any Orders of the Court that are unrelated to the matters released herein (i.e., individual claims of Class Members for monetary relief for contempt arising prior to the close of business on the day of the Fairness Hearing), and any remedies necessary to effectuate such orders; (i) relief sought pursuant to any motions pending before the Court that are unrelated to the matters released herein, (i.e., individual claims of Class Members for monetary relief for contempt arising prior to the close of business on the day of the Fairness Hearing); (j) individual lawsuits having a separate case number and having been filed prior to July 7, 2000; (k) relief sought by way of grievances; (l) individual non-monetary remedies for contempt; (m) individual or class based monetary remedies for contempt arising after the close of business on the day of the Fairness Hearing; (n) relief (except for retrospective monetary relief) related to the Defendants' recruitment, screening, examination, training, certification, interview, compensation, or selection processes, including without limitation, the interim selection process or any alternative selection processes; (o) relief (except for retrospective monetary relief) related to Defendants' job assignment procedures and practices; (p) relief (except for retrospective monetary relief) related to Defendants' training and the practices and procedures that provide training; (q) relief (except for retrospective monetary relief) related to racial harassment or the practices and procedures and training associated therewith; (r) claims related to or arising from the use of consultants or their

employees to perform jobs which the Plaintiffs contend should be performed by persons employed by defendant ALDOT; (s) Article XX claims of individual Class Members who opt out of the Promotions or Hiring Class settlements; (t) Non-monetary contempt claims are not encompassed within the settlement.

4. With respect to all of the foregoing claims released in paragraphs 1, 2, and 3 of this "Scope of Settlement" part of the Settlement Agreement. (cumulatively "the Released Claims") which any Class Members have, or may have, or may have had, whether asserted or unasserted, whether known or unknown, and regardless of the actions or causes of action by which any of such claims might be designated, characterized, or asserted, all Class Members who do not opt out of this Settlement, do hereby for themselves, their heirs, personal representatives, agents, executors, administrators, successors, assigns and for anyone claiming for them, or on their behalf, release, acquit and forever discharge Defendants and their predecessors, successors, heirs executors, administrators, employees, agents, and all others acting for them or in concert with them. No Class Member who does not opt out shall ever hereafter sue any of those hereby released on any of the Released Claims, nor make any administrative or other claim against those hereby released based on any of the Released Claims. The principles of *res judicata* and collateral estoppel shall be fully applicable to all such Released Claims.

**Final Approval by the Court**

A Fairness Hearing will be held by the Court at such time or times as the Court may direct to determine whether the proposed settlement on the terms and conditions provided for in this Agreement is fair, reasonable and adequate, and whether the Preliminary Approval

Order entered by the Court should be made final. If, after the Fairness Hearing, this Agreement or certain portions thereof are finally approved by the Court, a Final Judgment consistent with the terms of this Agreement, or the approved portions thereof, shall be entered by the Court.

**Best Efforts**

Subject to specific limitations in this Agreement, all Parties and counsel will use their best efforts to cause the Court to give preliminary approval to this Agreement as promptly as possible, and to take all steps contemplated by the Agreement to effectuate the settlement on the stated terms and conditions and further to obtain final approval of the settlement contained in this Agreement. Plaintiffs' Counsel agrees to recommend the settlement contained in the Agreement as being in the best interests of the Class Members. No Class Member shall be precluded from objecting to the proposed settlement at the hearing for final approval thereof, notwithstanding Class Counsel's recommendation, provided that such Class Member follows the procedures for objections set forth in Exhibit "B-1". The Parties and their counsel agree not to solicit, request or advise Class Members, or others, to object to the settlement. The Parties shall not institute or encourage any appeal from an order approving this Agreement.

**Binding Effect of Agreement**

This Agreement shall be binding upon and inure to the benefit of the Parties to this Agreement, their counsel, and their respective heirs, predecessors, successors, and assigns.

**Procedures for Presenting Objections**


Class Members shall have the right to appear and show cause, if any they have, why the proposed settlement should not be approved by the Court. The right of the Class Member to object shall be deemed waived, however, and the Class Member will not be heard unless the Class Member files a written statement of any objections he or she may have in accordance with Exhibit "B-1". Objections made in accordance with the foregoing procedure may be considered by the Court whether or not the objecting Class Member appears personally or by counsel at the hearing to argue the same.

**Counterparts**

This Agreement may be executed in any number of counterparts and by different Parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts together shall constitute one and the same document.

**Entire Agreement**

This Settlement Agreement constitutes the entire understanding and agreement among the Parties hereto relative to the settlement of the matters addressed in the Agreement. This Agreement may not be modified or amended other than by a writing executed by an authorized representative of each party.

  
\_\_\_\_\_  
ROBERT L. WIGGINS, JR.  
RUSSELL W. ADAMS  
Attorneys for the Named Plaintiffs and the  
Promotions and Hiring Classes  
Date signed: January 16, 2001





CASE: 2:85-cv-00665/P  
DOCUMENT: 4700  
DATE: 01/16/01  
  
CLERK: djy

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\_\_\_\_\_  
Lisa W. Borden  
Attorney for all Defendants  
Date signed: 1-16-01



\_\_\_\_\_  
Andrew P. Campbell  
Attorney for Defendants  
Date signed: 1-16-01

## **HIRING**

	Date of last notice to class
45 days	Filing of objections, participation form and opt-out forms
60 days	Fairness Hearing
120 days	Defendant's election to void (Try to work out the opt-outs during the 45 to 120 day period)
	Defendant's list of awards
150 days	Plaintiff's letter in response to Defendant's list of awards
180 days	Filing of statement of claim form
approximately 270 days	Payment of claims
315 days	Deadline for opt-outs to file bare bones document setting forth claims

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

JOHNNY REYNOLDS, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	CIVIL ACTION NO:
	)	CV-85-T-665-N
ALABAMA DEPARTMENT OF	)	
TRANSPORTATION, et al.	)	
	)	
Defendants.	)	

**NOTICE OF SETTLEMENT AND RIGHT TO OBJECT OR OPT-OUT**

You have been identified as a possible member of a class of African-Americans having claims of alleged racial discrimination in hiring, promotions, compensation or other employment opportunities with the Alabama Department of Transportation, formerly known as the Alabama Highway Department. This is Notice of a proposed settlement of such claims. You should carefully read this Notice to learn what claims are proposed to be settled and what rights you may have to participate in or oppose the settlement. No monies will be paid under this settlement unless the settlement is approved by the Court after a hearing known as a Fairness Hearing.

**WHAT IS PROPOSED TO BE SETTLED**

What is proposed to be settled are claims to individual relief for racial discrimination against African-Americans in hiring, promotion, compensation and other employment opportunities of the Alabama Department of Transportation formerly known as the Alabama Highway Department from May 12, 1979 to present, as well as certain aspects of relief for defendants' contempt of the

injunctive relief provided in Consent Decree I and related orders and injunctions of the Court entered since March 16, 1994. The settlement proposes to pay \$40 million dollars in settlement for promotion and compensation claims, up to \$15 million dollars in settlement of hiring claims, and at least \$4.6 million dollars in settlement of the compensatory damage aspects of plaintiffs' contempt claims.

**PERSONS ELIGIBLE TO PARTICIPATE IN THE SETTLEMENT**

The following African-Americans are eligible to participate in, to opt-out, or to object to the settlement:

Those who applied for hiring by the Alabama Transportation Department, formerly known as the Alabama Highway Department between May 21, 1979 and \_\_\_\_\_, 2001 by submitting an application to either the Alabama State Personnel Department, the Alabama Highway Department or the Alabama Transportation Department; or

Those who did not apply for such hiring but would have done so in the absence of the racially discriminatory practices challenged in this case; or

Those who worked for the Alabama Department of Transportation, formerly known as the Alabama Highway Department, at any time since May 21, 1979.

While persons who did not actually apply for hiring are eligible to submit a Participation Form, they will be expected to provide additional information at a later date in order to be considered for a share of the settlement fund. You will be notified of such additional requirements at a later date if you are someone who did not submit a written application for hiring.

**HOW TO PARTICIPATE IN THE SETTLEMENT OR TO  
OBJECT OR OPT OUT**

Persons eligible to participate in the settlement have the right to make a claim for part of the

money being paid in settlement of their claims, to object to such settlement, or to opt-out of the settlement in order to have the Court determine the remedies, if any, they are due in this case independent of the proposed settlement.

**THE DEADLINE IS \_\_\_\_\_, 2001** for notifying the attorney for the plaintiff class of which of these three alternatives you wish to pursue.

**Participation:** If you want to preserve your right to make a claim for part of the money being paid in the settlement, you must complete a **Participation Form** listing your name, address, telephone number and social security number by the deadline date of \_\_\_\_\_, 2001. You must submit such a Participation Form to the plaintiffs' attorney by the deadline date regardless of whether you also object to the settlement. A Participation Form is attached hereto.

**Objection:** If you want to object to the settlement, you must submit that objection **in writing** to the plaintiffs' attorney by the deadline date of \_\_\_\_\_, 2001. Plaintiffs' attorney will file such objections with the Court. Such written objection must list the reasons why you are objecting. The date and place of the hearing on objections is set forth below.

**Opting-Out:** If you do not want to settle your individual claim for a share of the money being paid in the proposed settlement, or want to have the Court determine the relief to which you are entitled in this case independent of this settlement, you must opt-out of the settlement by submitting an OPT-OUT FORM or by otherwise notifying the plaintiffs' attorneys in writing that you want to opt-out by the deadline date of \_\_\_\_\_, 2001.

An OPT-OUT FORM is attached hereto.

**NAME AND ADDRESS OF PLAINTIFFS' ATTORNEY**

The name and address of the plaintiffs' attorney to whom you must submit a Participation Form, an Objection, or an Opt-Out Form by the deadline date of \_\_\_\_\_, 2001 is the following:

Robert L. Wiggins, Jr.  
1400 SouthTrust Tower  
Birmingham, Alabama 35203

Telephone: 205/ \_\_\_\_\_

QUESTIONS ABOUT THIS SETTLEMENT SHOULD BE ADDRESSED TO PLAINTIFFS' COUNSEL. UNDER NO CIRCUMSTANCES SHOULD YOU MAKE INQUIRIES TO THE COURT ABOUT THIS SETTLEMENT

**RIGHT TO ADVICE AND ASSISTANCE OF COUNSEL**

You have the right to seek advice and assistance from the plaintiffs' attorney listed above, or any other attorney of your choice, in deciding whether to submit a Participation Form or Opt-Out Form or in making an objection to the proposed settlement. You will not be charged for such advice or assistance by the plaintiffs' attorney listed above. The plaintiffs' attorney has records and other information that may assist you in deciding what decision to make regarding whether to participate in or opt-out of the proposed settlement. In order to receive such advice or assistance, however, you must first submit either a Participation Form or an Opt-Out Form. If as a result of such advice or assistance you change your mind as to which form you want to file with the Court, you may submit a new form to plaintiffs' attorney or request that plaintiffs' attorney submit a new form on your behalf to the Court, so long as it is done by the deadline date of \_\_\_\_\_, 2001. To make sure there is adequate time to provide such advice or assistance, you should submit your Participation Form or Opt-Out Form to the plaintiffs' counsel as soon as possible and not wait until

a few days before the deadline.

**WHAT HAPPENS IF YOU DO NOTHING**

You will be bound by the settlement and receive nothing if you do not submit either a Participation Form or an Opt-Out Form by the deadline date of \_\_\_\_\_, 2001. While the Court may have the power to relieve you from a failure to timely submit one of those two forms if you have a strong enough reason for your failure, you should not expect that to occur. You should *timely* file either a Participation Form or an Opt-Out Form by the deadline date unless you have no claim or intend to settle it for nothing.

**WHAT HAPPENS IF YOU SUBMIT A PARTICIPATION FORM**

Submitting a Participation Form assures that you will be *considered* as a claimant if the settlement is approved by the Court, but it does not guarantee that you will receive part of the money paid in settlement. If you submit a Participation Form, you will later be sent a Notice of how and when to file a Claim Form setting forth the facts necessary to show that you may be entitled to share in the settlement fund.

Persons submitting a Participation Form for the hiring Settlement will be paid between \$500 and \$5,000 according to the following categories of payment:

Tier 1: Applicants who were placed on the SPD register and were certified for an ALDOT vacancy, or who were not placed on an SPD register because they did not have the EIT certification, and Testifying Plaintiffs who are also Hiring Class Members;

Tier 2: Applicants who were placed on an SPD register of applicants for a classification used by ALDOT, but who were never certified to ALDOT for a vacancy;

Tier 3: Applicants who submitted an application and met the minimum



qualifications for employment in a classification used by ALDOT but who were not placed on the SPD register of applicants;

Tier 4: Applicants who submitted an application for a classification used by ALDOT but did not meet minimum qualifications and were not placed on an SPD register of applicants;

Tier 5: Persons who did not submit an application because they were discouraged from doing so by one of the challenged practices of defendants.

Persons submitting a Participation Form for the hiring settlement will be notified at a later date which category applies to them according to the State of Alabama's records and other available information. You will then be given the opportunity to show that one of the other categories of payment applies to your claim. In no event, however, will an amount greater than \$5,000 be paid on any hiring claim. It is anticipated that no payments will be made under this Settlement Agreement until some time after \_\_\_\_\_. If you do not want to settle your hiring claim for automatic payment of the amount applicable to your category of claim in the list above, then you must submit an Opt-Out Form by the deadline date of \_\_\_\_\_, 2001 to preserve your claim independently in this case.

Only the hiring settlement involves automatic categories of payment that limit the amount of money you can be paid as a participant in such settlement. The settlement of promotion, compensation and other claims for racial discrimination and contempt will be divided pursuant to a claims process administered by the attorneys for the plaintiff class based on standards applied to the facts and records applicable to each class member's claims, such as years of employment, years of education, training, experience, applications and such other information as Plaintiffs' counsel deems necessary, to evaluate the relative merits of such claims.

All monies received under this settlement are subject to state and federal taxes.

**WHAT HAPPENS IF YOU OPT-OUT OF THE SETTLEMENT**

Opting out of the settlement means that your claim will not be settled on the terms provided in the proposed settlement and you will have to file a Claim Form at a later date in order to have the Court determine the back-pay, jobs and other remedies that you may be entitled to in this case independent of the settlement. You will be sent a later Notice concerning how and when to file a Claim Form in the event that you opt-out. You should not opt-out unless you believe that the proposed settlement is likely to provide you significantly less relief than you believe you would receive in the event that you prevailed in future proceedings before the Court in this case, and unless you believe you will prevail in such future proceedings.

**TERMS OF THE SETTLEMENT**

The proposed settlement provides only a monetary payment to the class, and does not provide any other form of relief to which you might be entitled if you prevailed on your individual race discrimination claim in this lawsuit, such as a job, promotion, hiring, reinstatement, adjustment to your pension or current salary, or other nonmonetary remedies. Unless you opt-out of the settlement, you give up all race discrimination claims and remedies before \_\_\_\_\_, 2001. However, you do not give up any claims for jobs, promotions, hiring, salary or pension adjustments or other non-monetary remedies for defendants' contempt for failure to meet the requirements of Consent Decree I or related orders and injunctions for the period from March 16, 1994 to present. You also do not give up any claims of race discrimination or contempt for the period after \_\_\_\_\_, 2001.

The proposed settlement also resolves defendants' obligation to pay for attorneys' fees to plaintiffs' current counsel for future administration of the monetary settlement funds and representation of opt-outs by providing for payment for such services in an amount up to 5.5 million dollars plus interest on certain funds deposited into escrow accounts pursuant to the Settlement Agreement.

The proposed settlement further provides for certain terms and conditions related to the Court's Civil Contempt Order of January 31, 2000, as well as the interim selection procedure previously approved by the Court, which are detailed in the Settlement Agreement.

You should not rely on the summary of the Settlement Agreement as a full statement of the terms of the settlement. You should read the full Settlement Agreement which can be obtained by visiting the following web-site addresses or calling the attorney for the class for a copy.

\_\_\_\_\_ (web-site address).

**WHY THE SETTLEMENT MAY NOT GO FORWARD EVEN  
IF APPROVED BY THE COURT**

The settlement allows the Defendants the right to cancel the settlement agreement if certain things occur. If more than 200 people opt-out of the hiring class settlement, the defendants can cancel the hiring class settlement if they choose to do so. The Defendants also have the right to withdraw from the hiring class settlement if there are more than \$12 million dollars of claims when opt-outs are valued at \$30,000 each. If more than 300 people opt-out of the hiring class settlement, the hiring class settlement is automatically cancelled unless both the Defendants and the Plaintiffs agree otherwise. If more than 75 people opt-out of the promotions class settlement, the defendants can cancel the settlement if they choose to do so. If more than 200 people opt-out of the promotions

class settlement, the promotions class settlement is automatically cancelled unless both the Defendants and the Plaintiffs agree otherwise.

**WHEN AND WHERE THE COURT WILL HEAR OBJECTIONS**

A hearing will be held on \_\_\_\_\_, at \_\_\_\_:00 \_\_.m. before the United States District Court for the Middle District of Alabama, 15 Lee Street, Montgomery, Alabama 36104, to determine whether the proposed settlement and proposed Settlement Agreement should be approved and confirmed by the Court as fair, reasonable and adequate, and whether representation by counsel for the Named Plaintiffs and the class has been adequate. If you so desire, you may appear and object to the proposed settlement and proposed Settlement Agreement or otherwise be heard respecting them.

No member of the class who desires to object to the settlement will be heard at the hearing on \_\_\_\_\_, and no papers submitted by any member of the class will be received or considered by the Court, except as the Court may otherwise direct for good cause shown, unless the person desiring to be heard or to submit papers files written objections or other papers which are received by the Clerk of the United States District Court on or before 5:00 p.m. (CST) \_\_\_\_\_, 2001

\_\_\_\_\_  
MYRON THOMPSON  
UNITED STATES DISTRICT JUDGE

# SETTLEMENT NOTICE

**ALABAMA TRANSPORTATION DEPARTMENT  
and  
ALABAMA PERSONNEL DEPARTMENT**

A class action against racial discrimination in hiring, promotions, compensation and other employment opportunities has been proposed to be:

- **SETTLED FOR 65.1 MILLION DOLLARS.**
- **CLAIMS MUST BE FILED BY \_\_\_\_\_**
- **PERSONS ELIGIBLE TO PARTICIPATE:**
  1. African-American Employees or Applicants for Hiring of the Alabama Transportation Department Since May 21, 1979; **OR**
  2. Other African-Americans Who Would Have Applied For Hiring If The Alleged Racial Discrimination Had Not Occurred Since 1979.
- **Details and Forms To Participate Are Available At:**

1-800-\_\_\_\_\_ OR WWW:\_\_\_\_\_

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The deadline to object to settlement or opt-out is \_\_\_\_\_, 2001. Advice or assistance is available from the attorney for the class without charge:

Robert L. Wiggins, Jr.  
1400 SouthTrust Tower  
Birmingham, Alabama 35203

**SEE FULL NOTICE OF TERMS OF SETTLEMENT IN CLASSIFIED  
AD SECTION OF THIS NEWSPAPER**

## **PROMOTION**

- Date of last notice to class
- 45 days Filing of objections, participation form and opt-out forms
- 60 days Fairness Hearing
- 120 days DOT's election to void  
(Try to work out the opt-outs during the 45 to 120 day period)
- 150 days Filing of statement of claim form
- approximately 270 days Payment of claims
- 315 days Deadline for opt-outs to file bare bones document setting forth claims

**CLASSES WITH A 3 YEAR DEADLINE FOR EXAM ADMINISTRATION**

20-Nov-00

<b>CLASS CODE</b>	<b>CLASS TITLE</b>
10431	COMPUTER OPERATOR I
10432	COMPUTER OPERATOR II
10433	COMPUTER OPERATOR III
10436	COMPUTER OPERATOR SUPV I
10437	COMPUTER OPERATOR SUPV II
10441	DISTRIBUTED SYSTEMS TECH I
10442	DISTRIBUTED SYSTEMS TECH II
10443	DISTRIBUTED SYSTEMS SPEC
10502	PROGRAMMER
10503	SENIOR PROGRAMMER
10505	PROGRAMMER ANALYST I
10506	PROGRAMMER ANALYST II
10507	PROGRAMMER ANALYST III
10511	DATA PROCESSING SPEC I
10512	DATA PROCESSING SPEC II
10513	DATA PROCESSING SPEC III
10537	DATA CENTER OPERATIONS MGR
10601	ACCOUNT CLERK
10603	ACCOUNTING TECHNICIAN I
10604	ACCOUNTING TECHNICIAN II
10611	ACCOUNTANT I
10612	ACCOUNTANT II
10613	ACCOUNTANT III
10635	AUDITOR I
10636	AUDITOR II
10637	AUDITOR III
10830	PERSONNEL ASSISTANT I
10851	DEPT PERSONNEL MANAGER I
10853	DEPT PERSONNEL MANAGER III
10863	TRANSPORTATION RECRUITMENT MGR
10911	STOCK CLERK I
11041	PUBLIC INFORMATION SPECIALIST I
11530	ATTORNEY I/II
21058	GRADUATE ELECTRICAL ENGINEER
21059	ELECTRICAL ENGINEERING TECH
21060	ELECTRICAL ENGINEER I
21061	ELECTRICAL ENGINEER II
21130	TRAFFIC SIGNAL TECHNICIAN
21146	ELECTRONIC TECHNICIAN I
21221	TRANSPORTATION PLANNER I

30445	ARCHAEOLOGIST II
30422 (175)	CULTURAL RESOURCES COORD II (ARCH HISTORY)
30444 (385)	ARCHAEOLOGIST I (PROJECT ANALYST)
70721 (045)(048)	BIOLOGIST I (WILDLIFE) (ECOLOGY)
70722 (045)(048)	BIOLOGIST II (WILDLIFE)(ECOLOGY)
70723 (048)	BIOLOGIST III (ECOLOGY)
70724 (048)	BIOLOGIST IV (ECOLOGY)
90230	TUNNEL MAINTENANCE SPECIALIST
90232	TUNNEL OPERATOR ASSISTANT
90403	WELDER
90564	TRAFFIC SIGN PAINTER I



## LIST OF ALDOT NON-MANAGERIAL CLASSES

10537 Data Center Operations Manager  
10541 DP Information Systems Manager I  
10542 DP Information Systems Manager II  
10608 Accounting Manager I  
10610 Accounting Manager III  
10639 Chief Auditor  
10673 Project Cost Auditor III  
10803 Equal Employment Opportunity Coordinator  
10851 Departmental Personnel Manager I  
10853 Departmental Personnel Manager III  
10863 Transportation Recruitment Manager  
10949 Departmental Procurement Officer II  
11043 Public Information Manager  
11534 Attorney IV  
20225 Cartographic Manager  
20437 Chief Engineer, Transportation  
20483 Civil Engineering Manager  
20484 Civil Engineering Administrator  
20485 Civil Engineering Senior Administrator  
20813 Chemist III  
21061 Electrical Engineer II  
21223 Transportation Planner III  
30423 Cultural Resources Administrator  
70724 Biologist IV  
90221 Underwater Bridge Inspector III  
90238 Tunnel Maintenance Supervisor  
90348 Air Transportation Administrator  
90352 Aeronautics Administrator  
90466 Equipment Maintenance Supt  
90468 Equipment Management Coordinator  
90568 Traffic Sign Shop Supervisor

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION**

**JOHNNY REYNOLDS, et al.,** )

**Plaintiffs,** )

**v.** )

**CIVIL ACTION NO:  
CV-85-T-665-N**

**ALABAMA DEPARTMENT OF  
TRANSPORTATION, et al.** )

**Defendants.** )

**ORDER PRELIMINARILY APPROVING SETTLEMENT AGREEMENT**

This cause is before the Court on the "Joint Motion and Stipulation Concerning Preliminary Approval of Proposed Settlement Agreement" submitted by counsel for the parties hereto who seek preliminary approval of a proposed Settlement Agreement settling all aspects of this action. The Court has reviewed the Joint Motion and Stipulation, the proposed Settlement Agreement, the proposed Notices and Forms to be sent to the named plaintiffs and the settlement class, and the applicable law. The Court has also heard arguments of counsel for the respective parties supporting the fairness, reasonableness and adequacy of the proposed settlement, and the Court is otherwise familiar with the record and proceedings in this case.

The Court is of the opinion that the Joint Motion and Stipulation is due to be granted and accordingly, it is hereby ORDERED, ADJUDGED and DECREED as follows:

1. The proposed Settlement Agreement, a copy of which is attached to the Joint Motion and Stipulation, and the proposed class set forth in the Settlement Agreement are hereby tentatively

certified and approved based on this Court's finding that (a) there has been a showing that the settlement is fair and reasonable and that the relief therein is adequate and sufficient to warrant submitting it to the class; (b) the terms of the proposed Settlement Agreement were reached through extensive arms-length negotiations between the parties; (c) no conflicts have been demonstrated between the claims of the Named Plaintiffs and the interests of absent class members; (d) plaintiffs' attorneys have extensive experience litigating similar civil rights actions in courts around the country, and neither defendants nor this Court question their skill or ability to represent the class in this case vigorously and competently; (e) the monetary relief provided to each class member is substantial; (f) there is no evidence suggesting that this settlement is the product of fraud, duress or collusion, based on the length and complexity of the Settlement Agreement itself and the trade-offs reflected therein; and (g) the proposed method of distributing settlement funds among class members based on enumerated factors is a fair and reasonable method of approximating relative amounts of monetary damages.

2. The proposed Notices and Forms to be sent to the named plaintiffs and the class members, sample copies of which are attached to the Joint Motion and Stipulation, and the procedures set forth therein, satisfy the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process, satisfactorily convey to class members all information relevant to an informed decision, and are hereby approved.

3. The Defendants are ordered to send a copy of the approved Notice of Settlement And Right To Object Or Opt Out, a copy of the Opt-Out Form, and a copy of a Participation Form by first class mail to the last known address of each class member. The Defendants are ordered to publish the notice of this Settlement Agreement in the manner set forth in the Settlement Agreement.

4. The costs associated with the publishing and transmittal of the notices and forms

required by this Order shall be paid by Defendants.

5. A hearing will be held on \_\_\_\_\_, at \_\_\_\_:00 \_\_.m. before the United States District Court for the Middle District of Alabama, 15 Lee Street, Montgomery, Alabama 36104 to determine whether the proposed Settlement Agreement should be finally approved. Any objections to the terms of the proposed Settlement Agreement will be heard at that time. The hearing may be adjourned from time to time by the Court at the hearing or at any adjourned session thereof without further notice. After the hearing, the Court will enter an order either approving or disapproving the proposed Settlement Agreement.

DONE this \_\_\_\_\_ day of \_\_\_\_\_, 2001

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Myron H. Thompson  
United States District Judge

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

JOHNNY REYNOLDS, et al., )

Plaintiffs, )

v. )

CIVIL ACTION NO:  
CV-85-T-665-N

ALABAMA DEPARTMENT OF )  
TRANSPORTATION, et al.

Defendants. )

**NOTICE OF SETTLEMENT AND RIGHT TO OBJECT OR OPT-OUT**

You have been identified as a possible member of a class of African-Americans having claims of alleged racial discrimination in hiring, promotions, compensation or other employment opportunities with the Alabama Department of Transportation, formerly known as the Alabama Highway Department. This is Notice of a proposed settlement of such claims. You should carefully read this Notice to learn what claims are proposed to be settled and what rights you may have to participate in or oppose the settlement. No monies will be paid under this settlement unless the settlement is approved by the Court after a hearing known as a Fairness Hearing.

**WHAT IS PROPOSED TO BE SETTLED**

What is proposed to be settled are claims to individual relief for racial discrimination against African-Americans in hiring, promotion, compensation and other employment opportunities of the Alabama Department of Transportation formerly known as the Alabama Highway Department from May 12, 1979 to present, as well as certain aspects of relief for defendants' contempt of the

injunctive relief provided in Consent Decree I and related orders and injunctions of the Court entered since March 16, 1994. The settlement proposes to pay \$40 million dollars in settlement for promotion and compensation claims, up to \$15 million dollars in settlement of hiring claims, and at least \$4.6 million dollars in settlement of the compensatory damage aspects of plaintiffs' contempt claims.

**PERSONS ELIGIBLE TO PARTICIPATE IN THE SETTLEMENT**

The following African-Americans are eligible to participate in, to opt-out, or to object to the settlement:

Those who applied for hiring by the Alabama Transportation Department, formerly known as the Alabama Highway Department between May 21, 1979 and \_\_\_\_\_, 2001 by submitting an application to either the Alabama State Personnel Department, the Alabama Highway Department or the Alabama Transportation Department; or

Those who did not apply for such hiring but would have done so in the absence of the racially discriminatory practices challenged in this case; or

Those who worked for the Alabama Department of Transportation, formerly known as the Alabama Highway Department, at any time since May 21, 1979.

While persons who did not actually apply for hiring are eligible to submit a Participation Form, they will be expected to provide additional information at a later date in order to be considered for a share of the settlement fund. You will be notified of such additional requirements at a later date if you are someone who did not submit a written application for hiring.

**HOW TO PARTICIPATE IN THE SETTLEMENT OR TO  
OBJECT OR OPT OUT**

Persons eligible to participate in the settlement have the right to make a claim for part of the

money being paid in settlement of their claims, to object to such settlement, or to opt-out of the settlement in order to have the Court determine the remedies, if any, they are due in this case independent of the proposed settlement.

**THE DEADLINE IS \_\_\_\_\_, 2001** for notifying the attorney for the plaintiff class of which of these three alternatives you wish to pursue.

**Participation:** If you want to preserve your right to make a claim for part of the money being paid in the settlement, you must complete a **Participation Form** listing your name, address, telephone number and social security number by the deadline date of \_\_\_\_\_, 2001. You must submit such a Participation Form to the plaintiffs' attorney by the deadline date regardless of whether you also object to the settlement. A Participation Form is attached hereto.

**Objection:** If you want to object to the settlement, you must submit that objection **in writing** to the plaintiffs' attorney by the deadline date of \_\_\_\_\_, 2001. Plaintiffs' attorney will file such objections with the Court. Such written objection must list the reasons why you are objecting. The date and place of the hearing on objections is set forth below.

**Opting-Out:** If you do not want to settle your individual claim for a share of the money being paid in the proposed settlement, or want to have the Court determine the relief to which you are entitled in this case independent of this settlement, you must opt-out of the settlement by submitting an OPT-OUT FORM or by otherwise notifying the plaintiffs' attorneys in writing that you want to opt-out by the deadline date of \_\_\_\_\_, 2001.

An OPT-OUT FORM is attached hereto.

**NAME AND ADDRESS OF PLAINTIFFS' ATTORNEY**

The name and address of the plaintiffs' attorney to whom you must submit a Participation Form, an Objection, or an Opt-Out Form by the deadline date of \_\_\_\_\_, 2001 is the following:

Robert L. Wiggins, Jr.  
1400 SouthTrust Tower  
Birmingham, Alabama 35203

Telephone: 205/ \_\_\_\_\_

QUESTIONS ABOUT THIS SETTLEMENT SHOULD BE ADDRESSED TO PLAINTIFFS' COUNSEL. UNDER NO CIRCUMSTANCES SHOULD YOU MAKE INQUIRIES TO THE COURT ABOUT THIS SETTLEMENT

**RIGHT TO ADVICE AND ASSISTANCE OF COUNSEL**

You have the right to seek advice and assistance from the plaintiffs' attorney listed above, or any other attorney of your choice, in deciding whether to submit a Participation Form or Opt-Out Form or in making an objection to the proposed settlement. You will not be charged for such advice or assistance by the plaintiffs' attorney listed above. The plaintiffs' attorney has records and other information that may assist you in deciding what decision to make regarding whether to participate in or opt-out of the proposed settlement. In order to receive such advice or assistance, however, you must first submit either a Participation Form or an Opt-Out Form. If as a result of such advice or assistance you change your mind as to which form you want to file with the Court, you may submit a new form to plaintiffs' attorney or request that plaintiffs' attorney submit a new form on your behalf to the Court, so long as it is done by the deadline date of \_\_\_\_\_, 2001. To make sure there is adequate time to provide such advice or assistance, you should submit your Participation Form or Opt-Out Form to the plaintiffs' counsel as soon as possible and not wait until



a few days before the deadline.

**WHAT HAPPENS IF YOU DO NOTHING**

You will be bound by the settlement and receive nothing if you do not submit either a Participation Form or an Opt-Out Form by the deadline date of \_\_\_\_\_, 2001. While the Court may have the power to relieve you from a failure to timely submit one of those two forms if you have a strong enough reason for your failure, you should not expect that to occur. You should *timely* file either a Participation Form or an Opt-Out Form by the deadline date unless you have no claim or intend to settle it for nothing.

**WHAT HAPPENS IF YOU SUBMIT A PARTICIPATION FORM**

Submitting a Participation Form assures that you will be *considered* as a claimant if the settlement is approved by the Court, but it does not guarantee that you will receive part of the money paid in settlement. If you submit a Participation Form, you will later be sent a Notice of how and when to file a Claim Form setting forth the facts necessary to show that you may be entitled to share in the settlement fund.

Persons submitting a Participation Form for the hiring Settlement will be paid between \$500 and \$5,000 according to the following categories of payment:

Tier 1: Applicants who were placed on the SPD register and were certified for an ALDOT vacancy, or who were not placed on an SPD register because they did not have the EIT certification, and Testifying Plaintiffs who are also Hiring Class Members;

Tier 2: Applicants who were placed on an SPD register of applicants for a classification used by ALDOT, but who were never certified to ALDOT for a vacancy;

Tier 3: Applicants who submitted an application and met the minimum

qualifications for employment in a classification used by ALDOT but who were not placed on the SPD register of applicants;

Tier 4: Applicants who submitted an application for a classification used by ALDOT but did not meet minimum qualifications and were not placed on an SPD register of applicants;

Tier 5: Persons who did not submit an application because they were discouraged from doing so by one of the challenged practices of defendants.

Persons submitting a Participation Form for the hiring settlement will be notified at a later date which category applies to them according to the State of Alabama's records and other available information. You will then be given the opportunity to show that one of the other categories of payment applies to your claim. In no event, however, will an amount greater than \$5,000 be paid on any hiring claim. It is anticipated that no payments will be made under this Settlement Agreement until some time after \_\_\_\_\_. If you do not want to settle your hiring claim for automatic payment of the amount applicable to your category of claim in the list above, then you must submit an Opt-Out Form by the deadline date of \_\_\_\_\_, 2001 to preserve your claim independently in this case.

Only the hiring settlement involves automatic categories of payment that limit the amount of money you can be paid as a participant in such settlement. The settlement of promotion, compensation and other claims for racial discrimination and contempt will be divided pursuant to a claims process administered by the attorneys for the plaintiff class based on standards applied to the facts and records applicable to each class member's claims, such as years of employment, years of education, training, experience, applications and such other information as Plaintiffs' counsel deems necessary, to evaluate the relative merits of such claims.

All monies received under this settlement are subject to state and federal taxes.

**WHAT HAPPENS IF YOU OPT-OUT OF THE SETTLEMENT**

Opting out of the settlement means that your claim will not be settled on the terms provided in the proposed settlement and you will have to file a Claim Form at a later date in order to have the Court determine the back-pay, jobs and other remedies that you may be entitled to in this case independent of the settlement. You will be sent a later Notice concerning how and when to file a Claim Form in the event that you opt-out. You should not opt-out unless you believe that the proposed settlement is likely to provide you significantly less relief than you believe you would receive in the event that you prevailed in future proceedings before the Court in this case, and unless you believe you will prevail in such future proceedings.

**TERMS OF THE SETTLEMENT**

The proposed settlement provides only a monetary payment to the class, and does not provide any other form of relief to which you might be entitled if you prevailed on your individual race discrimination claim in this lawsuit, such as a job, promotion, hiring, reinstatement, adjustment to your pension or current salary, or other nonmonetary remedies. Unless you opt-out of the settlement, you give up all race discrimination claims and remedies before \_\_\_\_\_, 2001. However, you do not give up any claims for jobs, promotions, hiring, salary or pension adjustments or other non-monetary remedies for defendants' contempt for failure to meet the requirements of Consent Decree I or related orders and injunctions for the period from March 16, 1994 to present. You also do not give up any claims of race discrimination or contempt for the period after \_\_\_\_\_, 2001.

The proposed settlement also resolves defendants' obligation to pay for attorneys' fees to plaintiffs' current counsel for future administration of the monetary settlement funds and representation of opt-outs by providing for payment for such services in an amount up to 5.5 million dollars plus interest on certain funds deposited into escrow accounts pursuant to the Settlement Agreement.

The proposed settlement further provides for certain terms and conditions related to the Court's Civil Contempt Order of January 31, 2000, as well as the interim selection procedure previously approved by the Court, which are detailed in the Settlement Agreement.

You should not rely on the summary of the Settlement Agreement as a full statement of the terms of the settlement. You should read the full Settlement Agreement which can be obtained by visiting the following web-site addresses or calling the attorney for the class for a copy.

\_\_\_\_\_ (web-site address).

**WHY THE SETTLEMENT MAY NOT GO FORWARD EVEN  
IF APPROVED BY THE COURT**

The settlement allows the Defendants the right to cancel the settlement agreement if certain things occur. If more than 200 people opt-out of the hiring class settlement, the defendants can cancel the hiring class settlement if they choose to do so. The Defendants also have the right to withdraw from the hiring class settlement if there are more than \$12 million dollars of claims when opt-outs are valued at \$30,000 each. If more than 300 people opt-out of the hiring class settlement, the hiring class settlement is automatically cancelled unless both the Defendants and the Plaintiffs agree otherwise. If more than 75 people opt-out of the promotions class settlement, the defendants can cancel the settlement if they choose to do so. If more than 200 people opt-out of the promotions

class settlement, the promotions class settlement is automatically cancelled unless both the Defendants and the Plaintiffs agree otherwise.

**WHEN AND WHERE THE COURT WILL HEAR OBJECTIONS**

A hearing will be held on \_\_\_\_\_, at \_\_\_:00 \_\_.m. before the United States District Court for the Middle District of Alabama, 15 Lee Street, Montgomery, Alabama 36104, to determine whether the proposed settlement and proposed Settlement Agreement should be approved and confirmed by the Court as fair, reasonable and adequate, and whether representation by counsel for the Named Plaintiffs and the class has been adequate. If you so desire, you may appear and object to the proposed settlement and proposed Settlement Agreement or otherwise be heard respecting them.

No member of the class who desires to object to the settlement will be heard at the hearing on \_\_\_\_\_, and no papers submitted by any member of the class will be received or considered by the Court, except as the Court may otherwise direct for good cause shown, unless the person desiring to be heard or to submit papers files written objections or other papers which are received by the Clerk of the United States District Court on or before 5:00 p.m. (CST) \_\_\_\_\_, 2001

\_\_\_\_\_  
MYRON THOMPSON  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

JOHNNY REYNOLDS, et al.,	)	
	)	
Plaintiffs,	)	
	)	CIVIL ACTION NO.
v.	)	
	)	85-T-665-N
ALABAMA DEPARTMENT OF	)	
TRANSPORTATION, et al.,	)	
	)	
Defendants.	)	

NOTICE OF INTENT TO OPT OUT FROM  
CLASS ACTION SETTLEMENT

I INTEND TO OPT OUT OF THE HIRING CLASS SETTLEMENT AND PURSUE MY INDIVIDUAL RIGHTS AND REMEDIES IN THIS CASE AS IF THIS SETTLEMENT HAD NOT OCCURRED.

I INTEND TO OPT OUT OF THE PROMOTIONS CLASS SETTLEMENT AND PURSUE MY INDIVIDUAL RIGHTS AND REMEDIES IN THIS CASE AS IF THIS SETTLEMENT HAD NOT OCCURRED (THIS OPTION APPLIES ONLY TO EMPLOYEES AND FORMER EMPLOYEES OF THE ALABAMA DEPARTMENT OF TRANSPORTATION).

\_\_\_\_\_  
Signature

NAME (printed): \_\_\_\_\_

ADDRESS: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

E-MAIL ADDRESS (if you have one): \_\_\_\_\_

TELEPHONE NUMBER:( ) \_\_\_\_\_

SOCIAL SECURITY #: \_\_\_\_\_

DATE OF BIRTH: \_\_\_\_\_