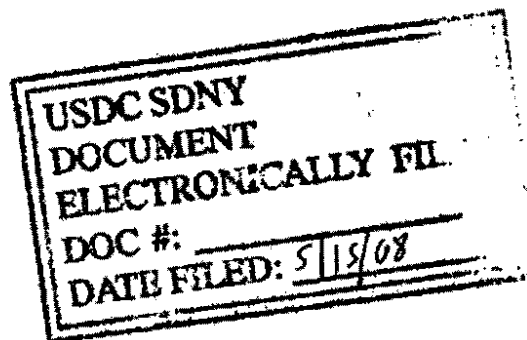


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



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ROBERT WRIGHT, KATHLEEN WALKER,
HENRY ROMAN, ELIZABETH ROGERS,
DAVID RAY, ODESSA PORTLETTE,
PAULA LOVING, ANGELO COLON
JACQUELINE BROWN, WALTER BEACH,
CARRIE ANDERSON, individually and as
class representatives,

01 CV 4437 (DC)

Plaintiffs,

-against-

~~PROPOSED~~ STIPULATION AND
ORDER

DC

HENRY J. STERN, individually and in his
official capacity as Commissioner of the New
York City Department of Parks and
Recreation, ADRIAN BENEPE, individually
and in his official capacity as Commissioner of
the New York City Department of Parks and
Recreation, and THE CITY OF NEW YORK,

Defendants.

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CARRIE ANDERSON, individually and as
class representatives,

01 CV 4437 (DC)

Plaintiffs,

-against-

STIPULATION AND ORDER

HENRY J. STERN, individually and in his
official capacity as Commissioner of the New
York City Department of Parks and
Recreation, ADRIAN BENEPE, individually
and in his official capacity as Commissioner of
the New York City Department of Parks and
Recreation, and THE CITY OF NEW YORK,

Defendants.

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WHEREAS, Robert Wright, Kathleen Walker, Henry Roman, Elizabeth Rogers, David Ray, Odessa Portlette, Paula Loving, Angelo Colon, Jacqueline Brown, Walter Beach, and Carrie Anderson, individually and as class representatives ("plaintiffs"), commenced this action to enforce the provisions of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, et seq., as amended ("Title VII"), the Civil Rights Act of 1871, as amended in 1991, 24 U.S.C. §§ 1981 and 1983, the New York Constitution, the New York Human Rights Law, N. Y. Exec. Law § 296, the New York City Human Rights Law, 1 New York City Administrative Code, 8-101 and the New York City Charter, Chapter 35;

WHEREAS, the plaintiffs allege that the New York City Department of Parks and Recreation ("Parks" or the "Parks Department"), former Parks Commissioner Henry J. Stern, and Parks Commissioner Adrian Benepe have engaged in a pattern or practice of discrimination against African American and Hispanic employees with respect to promotions, recruitment, job classification and assignment, salary and compensation, resource and funding allocation, racially hostile work environment, the maintenance of a segregated workforce, and retaliation against employees who assert their civil rights;

WHEREAS, the defendants deny any and all liability arising out of the plaintiffs' allegations and admit no fault or liability, and specifically deny that defendants engaged in a pattern or practice of discrimination against African Americans and Hispanics with respect to promotions, recruitment, job classification and assignment, salary and compensation, resource and funding allocation, racially hostile work environment, the maintenance of a segregated workforce, and retaliation against employees who assert their civil rights; and

WHEREAS, the parties, having the mutual goals of ensuring equal employment opportunity within the Parks Department and of settling this action to avoid additional protracted, expensive and unnecessary litigation, agree to the entry of this Stipulation and Order to resolve all issues that were or could have been raised in this class action by the plaintiffs individually or as class representatives.

NOW, THEREFORE, in resolution of this action, and with the agreement of all parties it is hereby ORDERED, ADJUDGED AND DECREED as follows:

I. PROCEDURAL HISTORY

Beginning in March 1999, plaintiffs and several other African-American and Hispanic Parks' employees filed individual and pattern and practice disparate treatment and impact charges of employment discrimination based upon race, color and national origin with the United States Equal Employment Opportunity Commission ("EEOC"). The Department of Justice ("DOJ") subsequently commenced an investigation.

On January 30, 2001, as amended on March 14, 2001, the EEOC issued a Determination finding reasonable cause to believe that Parks engaged in a pattern and practice of racial discrimination through its promotions and assignments. The EEOC also found segregated supervisory lines of authority and retaliation, and referred its findings to DOJ.

This action was commenced on May 24, 2001. On June 19, 2002, the DOJ filed its own action against New York City ("City"). This Court consolidated the two cases on July 14, 2002.

By Order dated July 7, 2003, this Court certified a class consisting of all present and former African-American and Hispanic employees employed on a full time basis since May 24, 1997.

On June 8, 2005, the DOJ and the City defendants entered into a consent decree in settlement of DOJ's action.

By motion dated December 29, 2005, defendants moved for summary judgment on plaintiffs' class claims and some, but not all, of the plaintiffs' individual claims.

By Decision dated September 15, 2006, the Court denied defendants' motion in part and granted it in part. The Court dismissed plaintiffs' class claims of discriminatory

assignment of employees/allocation of funding and racially hostile work environment. The Court denied defendants' motion with respect to plaintiffs' class claims of promotion and compensation discrimination and retaliation and with respect to plaintiffs' individual claims. The Court subsequently set a trial date for the trial on liability on the class claims for promotion, compensation and retaliation.

In December 2006, the parties commenced mediation before the Hon. Kathleen A. Roberts (Ret.). The mediation process included more than twenty-five (25) in-person negotiation sessions, many of which lasted a full day. Negotiations under Judge Roberts's supervision continued through November, 2007 when the Hon. Denny Chin assumed oversight of the final stages of the settlement talks. The parties resolved all issues of class relief -- both monetary and injunctive relief -- before conducting negotiations regarding an award of reasonable attorneys' fees and expenses. The negotiation process concluded on January 31, 2008.

II. DEFINITIONS

As used in this Stipulation and Order, the following terms shall have the following meanings:

"African-American" shall mean persons who identify themselves as Black or African-American.

"Claims Administrator" is Settlement Services, Inc., 2032-D Thomasville Rd., Tallahassee, Florida 32308.

"Class Members" shall mean all African-American and Hispanic full time employees of the Parks Department employed at any time between May 24, 1997 and June 30, 2004, excepting those employees excluded from the class by the Court's Order

of November 7, 2003 and, fifteen days following the Fairness hearing, also excepting those individuals who exercised their right to opt out in accordance with the procedures set forth in Section XII.

“Class claims” shall mean the claims certified by this Court for class treatment by Order dated July 7, 2003 including claims for compensatory and punitive damages for alleged race, color and national origin discrimination in promotions, recruitment, job classification and assignment, salary and compensation, resource and funding allocation, racially hostile work environment, the maintenance of a segregated workforce, and retaliation against employees who assert their civil rights.

“Class Counsel” shall mean all counsel of record who are signatories to this Stipulation and Order on behalf of the Class.

The “Class Period” is the period between May 24, 1997 and June 30, 2004.

“Class Representatives”, “Plaintiffs” or “Named Plaintiffs” mean Robert Wright, Kathleen Walker, Henry Roman, Elizabeth Rogers, David Ray, Odessa Portlette, Paula Loving, Angelo Colon, Jacqueline Brown, Walter Beach, and Carrie Anderson.

“Day” or “days” refer to calendar and not business days unless otherwise specified.

“Defendants” shall mean the City of New York, the New York City Department of Parks & Recreation, Former Commissioner Stern and Commissioner Benepe.

The “Effective Date” of the terms of this Stipulation and Order shall be the thirtieth day after the entry of this Court’s Final Approval of the Stipulation and Order and either: (1) the expiration of the time for filing an appeal from the Court’s approval of the Stipulation and Order without the filing of a notice of appeal; or (2) if an appeal is

filed, the final resolution of the appeal (including any requests for rehearing and/or petitions for a writ of certiorari), resulting in final judicial approval of the Stipulation and Order.

“EEO” means equal employment opportunity.

“EEO Officer” refers to the individual at Parks designated as such.

“Final Approval Date” shall mean the entry date of the Court’s Order granting approval of this Stipulation and Order as fair, reasonable and adequate to the Class as a whole after notice to Class Members, the opportunity to opt out as to monetary relief, and a hearing on the fairness of the settlement (“Fairness Hearing”).

“Hispanic” shall mean persons who identify themselves as Mexican, Puerto Rican, Cuban, Central American, South American or of other Hispanic, Spanish or Latino culture or origin, regardless of race.

An “in-house title” refers to a Parks Department job title, other than a civil service title, that is used by an employee in the ordinary course of business or in interacting with the general public.

A “job vacancy” refers to any vacant position within the Parks Department that requires working a full time schedule on a year round basis, either existing or newly created, known either by its civil service or in house title, that the Parks Department has decided to fill, and for which there is no existing civil service list from which the appointment to fill the position must be made.

“Personnel Division” refers to the Parks Department’s Central Personnel Office presently located in Arsenal West and headed by the Parks Department’s Director of Personnel.

A "posting" refers to any written or electronic notice or advertisement of a job vacancy.

"Preliminary Approval Date" shall mean the entry date of the Court's Order granting preliminary approval of this Stipulation and Order or the date on which the Court authorizes giving notice to the class of the proposed settlement and fairness hearing.

A "promotion" refers to a discretionary appointment to a position of greater rank and responsibility and an accompanying increase in salary within six months after the change in rank and responsibility.

"Uniform Guidelines" refers to the Uniform Guidelines on Employee Selection Procedures (1978) found at 29 C.F.R. sections 1607.1, et seq.

A "wage promotion" means an increase in base pay of 10.3 percent or greater which lasted for more than 6 months, was net of any collective bargaining increase, was not associated with a competitive civil service promotion and need not have been accompanied by a change in job title, excluding step-ups of more than 6 months if the employee receiving the step-up returned to his/her previous job title at the conclusion of the step-up.

III. JURISDICTION, SCOPE OF STIPULATION & ORDER, AND CLASS CERTIFICATION

A. This Court has jurisdiction over the parties and the subject matter of this action. The Court shall retain jurisdiction over the parties to enforce and administer the terms of this Stipulation and Order during the period it, or any of its provisions, remain in effect.

B. If this Stipulation and Order is approved by the Court, all persons within the Class as defined herein are subject to its injunctive and its monetary relief provisions.

C. Pursuant to prior Orders of the Court and the agreement of the parties, the class is defined as all African-American and Hispanic full time employees of the Parks Department employed at any time between May 24, 1997 and June 30, 2004, excepting those employees excluded from the class by the Court's Order of November 7, 2003 and those who exercise their right to opt out in accordance with the procedures set forth in Section XII.

IV. INJUNCTIVE RELIEF – GENERAL

A. Implementation and Term

Unless otherwise provided herein, the provisions of this Stipulation & Order shall remain in effect until December 31, 2009. The following provisions of this Stipulation & Order shall remain in effect until three years after its Final Approval Date: Section IV(D) - Advisory Committee; Section V(A)(3) – Statistically Close Scores; Section V(C) – Review of Practices for Adverse Impact; Section VII (B) – Salary Review; Section XVI (A)(5, 6, 7, 12, & 14) and (B) – Reporting & Monitoring. The City will commence implementation of all provisions of Sections IV through IX and XVI of this Stipulation & Order upon the Final Approval Date. Payments to Class Members pursuant to the terms of this Stipulation & Order shall not be made until after the Effective Date. In the event the distribution of funds provided for in Sections X and XIV of this Stipulation & Order is not completed by December 31, 2009, the parties will consult with the Court regarding the continuation of applicable provisions.

B. Incorporation of Provisions of June 8, 2005 Consent Decree

Sections I, III through X, XI 34(a), XII through XIV of the Consent Decree between the United States of America and the Defendants entered in this Court on June 8, 2005 in the action captioned United States of America v. City of New York, 02 Civ. 4699 ("Consent Decree"), are incorporated into this Stipulation and Order, and shall remain in effect until December 31, 2009, including the Policy for Posting and Filling Job Vacancies ("VAT process") as modified effective December 7, 2007, and including the further modifications as follows: The City shall not be required to produce documents/data specified in paragraphs 41(a) and (j); as to paragraph 41(c), the City shall only be required to produce the VAT tracking database (excluding breakdown) and PMS data as specified below in Section XVI (A) (14); and as to paragraphs 41(f) and (h), the City shall make the documents specified therein available for inspection and will not be required to produce such as part of the periodic reporting process. For purposes of this Stipulation and Order, references in the Consent Decree to the United States shall be deemed to include plaintiffs. The incorporation of these terms is not intended to and does not extend the right of the United States to enforce and administer the terms of the Consent Decree after the Consent Decree's dissolution on or about June 8, 2008.

C. General Injunctive Relief

1. In addition to the injunctive relief granted in Section III.a of the Consent Decree, enjoining the Parks Department, its officials, agents, employees, and successors from engaging in any act or practice that has the purpose or effect of unlawfully discriminating against employees in making promotion decisions based on race, color or national origin including but not limited to adopting or implementing any policy, process or practice for job appointments, promotions, seasonal step-up appointments or hiring

that has the purpose or effect of discriminating against any employee, job applicant or prospective job applicant based on race, color or national origin, and creating or implementing any internship or recruitment program that has the purpose or effect of discriminating against any employee, job applicant or prospective job applicant based on race, color or national origin, the Parks Department, its officials, agents, employees, and successors are enjoined from engaging in any act or practice that has the purpose or effect of unlawfully discriminating against any employee based on race, color or national origin with respect to salary, compensation, or in making compensation decisions.

2. The Parks Department, its officials, agents, employees, and successors are enjoined from retaliating against any person asserting race, color or national origin claims under federal, state or local law or otherwise opposing practices that discriminate based on race, color or national origin.

D. Advisory Committee

1. The Parks Department shall establish a five person Advisory Committee, chaired by its General Counsel, to address employment discrimination and retaliation concerns. In addition to Parks' General Counsel, the Committee members shall include Parks' EEO Officer and three African American and/or Hispanic employees who are employed full-time by Parks. The Commissioner shall select the initial Committee members representing the Class based on the recommendations of the Named Plaintiffs. The Commissioner shall select all replacement members based on the recommendation of the Parks' General Counsel, EEO Officer, and Class Members on the Committee.

2. Committee meetings shall be held quarterly or more frequently as needed.

3. Any committee member may ask the Advisory Committee's Chair to put an item on the agenda or may raise an issue as new business at an Advisory Committee meeting.

4. The Advisory Committee Chair will report back to the Advisory Committee on issues raised with the Advisory Committee provided that a report does not violate any employee's privacy rights.

V. INJUNCTIVE RELIEF – PROMOTIONS

A. Process for Filling Job Vacancies

1. Training & Guidelines for Panel Interview Process

a. Parks will provide training to all panel interviewers who participate in the interview process, pursuant to the Policy for Posting and Filling Job Vacancies ("VAT process")¹ except under unusual or emergency circumstances, such as if the panel is screening candidates for a specialized title that is rarely vacant or if an emergency replacement for a panelist is required; exceptions must be approved by Parks' EEO Officer and Director of Personnel. The training will be similar to that provided for the CPW interview process that occurred in February 2007 ("VAT interview training"). Such training will also be provided to Parks' EEO Officer and advisors/counselors. Such training which started in February 2007 will be substantially completed within one year of the Effective Date of this Stipulation.

b. The VAT interview training will include training, among other things, (i) on how to avoid common scoring errors; (ii) on conferring in advance of any actual interviews regarding anticipated responses to the interview questions; (iii) on

¹ Within a reasonable time after the Effective Date of this Stipulation & Order, Parks will modify the Policy for Posting and Filling Job Vacancies to incorporate changes provided herein.

establishing the criteria for scoring responses in advance, for example, how to distinguish between question responses that deserve a "2", "3" or "4" rating; (iv) on the value of taking notes during the course of the interview to assist in rating the candidates; and (v) on ways to avoid stereotypical thinking. If upon review of panel ratings by the Personnel Division and the EEO Officer it is determined that any panelists are in need of retraining, such retraining will be provided.

c. With respect to interviews conducted as part of the VAT process, Parks will provide standardized instructions to the interviewers in advance of the interviews which will incorporate guidelines taught in the training process. To the extent practicable, Parks will attempt to place on the panel at least one employee within the chain of command of the job title for which the interview is conducted, or other persons with actual job experience in the subject position, in an effort to assure that interviews are conducted with the benefit of the participation of persons with background experience in the job.

d. Within one year of the Effective Date of this Stipulation, Parks will adopt a scoring system based upon the system used for the February 2007 CPW interviews for the titles of Recreation Center Manager and above in Recreation, PRM and above in Maintenance and Operations ("M&O"), and Director and above in Administration and Capital, or for a posting used to fill five or more vacancies, specifically including the following features: the competencies being measured and the questions being used will be established in advance of the interview, the rating scales will be established in advance of the interview for each competency being measured and the process for combining scores will be established in advance.

e. Panel interviewers will make their own independent judgment regarding interview scores and are expected to make notes respecting the interviewees' responses to questions.

f. Parks will consider relevant step-up experience of job applicants who are applying for year-round appointments. An employee with step up experience who applies for but is not selected for a year-round appointment may obtain information from a career counselor as provided in Section VI.

g. Whenever relevant to the job in question as determined by Parks, Parks will consider the tenure at Parks of job applicants who are applying for year-round appointments.

h. After panel members complete their individual interview rating sheets for a job applicant, the scores will be averaged and rounded to the nearest tenth of a decimal point.

i. The minimum and preferred qualifications for job vacancies shall be furnished with selection checklists that will be completed by panel members as part of the screening process for the selection of job applicants for interviews.

j. A panelist will recuse himself from the panel interview of any employee who has filed a written discrimination charge against him within the two year period preceding the date of the job posting.

2. Diversity of Interview Panels

Parks will continue to use its best efforts to diversify the makeup of the panels for job interviews. Through December 31, 2009, Parks agrees to make records identifying

the individuals on each panel available for review by the Advisory Committee and to Class Counsel upon request.

3. Statistically Close Scores

For purposes of ascertaining the names of candidates to be submitted to the selecting official for final selection, persons scoring within 0.3 (three-tenths) points of the highest scorer will be deemed to be tied, or “statistically close” as used in the Parks posting policy, and will be reported to the selecting official as ranking #1. In those instances where there are no candidates deemed tied with the highest scoring candidate, any candidates scoring within 0.3 (three-tenths) points of the second highest scorer will be deemed tied, or “statistically close,” and will be reported to the selecting official as ranking #2. Similarly, so long as there are fewer than three candidates reported to the selecting official, any candidates scoring within 0.3 (three-tenths) points of the third highest scorer will be deemed to be tied, or “statistically close”, and will be reported to the selecting official as ranking #3. For example, if the average scores of the top three candidates are, respectively, 4.5, 4.4 and 4.0, the candidates scoring 4.5 and 4.4 will be reported as tied at #1, and the candidate scoring 4.0 will be reported as #3. In the instance of four candidates scoring, respectively, 4.5, 4.4, 4.0 and 3.8, the candidates scoring 4.5 and 4.4 will be reported as tied at #1, and the candidates scoring 4.0 and 3.8 will be reported as tied at #3. All candidates reported for consideration by the selecting official will be reported by rank only, without scores from the interview process, except in those instances where the difference in scores is 0.75 (three-quarters) points or higher. In those instances, Parks may report to the selecting official the magnitude of the difference in the rankings.

4. Candidate Lists

Parks will have the option of treating the candidate list created as a result of a panel interview process as a list from which selections will be made for any vacancies occurring in the subject position for a period of 6 (six) months following the completion of the panel interview process. This option will be applicable only to appointments that are subject to the VAT process or for postings that are used to fill five or more vacancies and if there is no significant expansion of the promotable pool.

B. City Park Workers

Except as provided herein, Parks will appoint City Park Workers who pass the Associate Park Service Worker ("APSW") examination and obtain a commercial driver's license to the permanent title of Associate Park Service Worker provided that job vacancies exist, and so long as the City Park Worker does not have a record of drug or alcohol test failure, conflict of interest, insubordination, violence or having made threats of violence, or an absence control record with a "sanctions status." If a candidate who passes the APSW examination is not appointed for any other reason, the basis for the non-appointment will be documented and approved by the Deputy Commissioner for the applicable division.

C. Review of Practices for Adverse Impact

1. Parks will conduct annually an adverse impact study of the selections made for the following job titles: Chiefs, Deputy Chiefs, PRMs, Directors, Team Leaders, Recreation Center Managers and Parks Administrators. Even though Parks does not agree that it is appropriate under the Uniform Guidelines to aggregate job titles or racial groups in performing an adverse impact study, Parks will aggregate job titles and racial groups in this annual study to make an overall determination of whether or not the

selection rate for African-American and Hispanic candidates (combined) is less than four-fifths (4/5) (or eighty percent) of the selection rate for Caucasian candidates.

In each year (if any) in which the aggregate analysis does show a selection rate for African-American and Hispanic candidates (combined) that is less than eighty percent of the selection rate for Caucasian candidates, Parks will conduct a content validity study of one job title amongst those subject to the adverse impact study. The content validity study will include the elements described in the document titled "Steps in Establishing the Content Validity of Interviews" and attached hereto as Exhibit 1. In the event the aggregate analysis shows a selection rate for African-American and Hispanic candidates (combined) that is less than eighty percent of the selection rate for Caucasian candidates in more than one year, the content validity study conducted in subsequent year(s) will be for a different title from those previously studied.

For each annual study, Parks will consider all selections for the applicable job titles occurring within a calendar year. The first study will cover selections occurring within calendar year 2008. In each year, Parks will complete the study by March 15 of the subsequent year. In any year in which a content validity study is required, Parks will complete the content validity study within ninety (90) days after the registration of the contract authorizing retention of the expert retained to perform the content validity study. Parks will make its best efforts to register the contract no later than June 15. If the aggregate analysis does not show a selection rate for African-American and Hispanic candidates (combined) that is less than eighty percent of the selection rate for Caucasian candidates, no action by Parks need be taken.

The job titles to be subject to the content validity study described in the preceding paragraph, in order of priority, are as follows: 1) PRM; 2) Recreation Center Manager; and 3) Deputy Chief of Operations.

VI. INJUNCTIVE RELIEF – CAREER DEVELOPMENT & TRAINING

A. Training Program similar to “Parks 40”

1. Parks will reestablish a training program similar to the “Parks 40” Program for the purpose of attempting to develop future agency managers. The program will be offered annually to full-time employees of the Parks Department and will be open to employees with one or more years of experience at Parks who are not holding entry level positions as defined in the VAT process and who have received an overall performance rating of very good or above during the previous two years. If a candidate has not had a performance evaluation during the previous two years, a recommendation from a supervisor can be substituted for the performance rating.

2. Each annual program will have openings for approximately forty (40) employees. The existence of the program shall be publicized throughout Parks. Parks will not be required to conduct the program if fewer than twenty (20) employees enroll in it.

3. The selection process shall consist of a written application and personal interview. Selections for the program will be made by the Director of Training. Training shall be designed to prepare employees for management positions in all divisions of Parks, including M & O. The tentative curriculum for the program is attached hereto as Exhibit 2. Parks will use its best efforts to select a diverse class for each annual program.

B. External Training Programs

Information as to available external training programs such as the Management Academy and Leadership Institute shall be publicized throughout Parks.

C. Civil Service Career Ladders

Parks has prepared charts that show the lines of progression for civil service titles at Parks. The charts will be posted on Parks' intranet and copies of them will be available in Parks' personnel offices and from its career counselors.

Parks has developed a "feeder chart" relative to recreation and M&O titles describing possible avenues for advancement. The chart will be made available to career counselors to share with employees.

D. Organizational Charts

Parks' organizational charts will be posted on Parks' intranet. The charts for positions from Commissioner down to Chief positions shall contain names of the persons occupying the titles and will be updated annually.

E. "Recreation Leadership" as qualifying experience for APRM/PRM, Director Regional Joint Interest Parks, Deputy Chief of Operations and Chief of Operations

Parks will continue to include "recreation leadership" as qualifying experience in postings for the title of APRM/PRM. Parks will treat "recreation leadership" as qualifying experience for the titles of Director Regional Joint Interest Parks and Deputy Chief of Operations and will include that term in its vacancy notices for those titles.

Parks will insert the following statement in each of its postings for Chief of Operations and Deputy Chief of Operations: "Any Parks employee meeting the minimum qualifications for the position of Chief of Operations and Deputy Chief of Operations will

be eligible to apply for such positions without regard to the division in which the employee is employed.”

F. Career Guidance/Career Counselors

This section supplements the provisions of Part IX (“Career Counselors”) of the DOJ Decree as follows:

Parks will designate an individual in the Personnel Division to act as central coordinator to provide guidance to and oversight of the career counselors and to review their reports. Career counselors shall be approved by the Director of Personnel and EEO Officer. Parks will make its best efforts to advertise the availability of career counselors through notices in paychecks, newsletter and postings.

Job applicants will be encouraged to contact a career counselor after an unsuccessful job application. At the employee’s request, the career counselor shall obtain information, including among other information, interview scores to assist such employee in future job applications.

G. Information about Salary for Parks Jobs

The Director of Personnel or his designee shall continue to make himself available to respond to questions from potential job applicants about actual and/or likely salaries for posted positions and will include a statement in postings regarding contacting the Personnel Division to resolve questions employees may have regarding the posted vacancy.

VII. INJUNCTIVE RELIEF – COMPENSATION

A. Salary Adjustments for Certain Recreation Jobs

Effective upon the Final Approval Date, Parks will increase the salaries of each of its Chiefs of Recreation to \$94,000 (other than the Chief for Staten Island) and Deputy

Chiefs of Recreation to \$75,000 as specified in Exhibit 3. Effective upon the Final Approval Date, Parks will increase the salaries of those Recreation Center Managers responsible for large and medium centers to sixty thousand dollars (\$60,000) and those responsible for small centers to fifty thousand dollars (\$50,000). A list of the recreation centers by size and applicable salary level is attached as Exhibit 4.

B. Salary Review

1. Internal Individual complaints of salary disparities

A) During the term of this Stipulation & Order as described in Section IV.A. above, upon the filing of an internal individual complaint of salary disparity by an African American or Hispanic employee, Parks will conduct a study of the alleged disparity. The study will be conducted by Parks' Chief Financial Officer and Director of Personnel. The study will examine the base pay rates of similarly situated employees holding the same in-house title or, where applicable, civil service title. The study will compare pay of employees in the same title with comparable job responsibilities in light of the criteria used by Parks to establish pay upon initial hire or upon entering a job title through transfer or promotion, and criteria used to increase pay for incumbents holding the position. Those criteria may include, among others, the following: a) the terms of applicable collective bargaining agreements; b) the salaries of incumbent employees in the same title and with comparable job responsibilities, c) Parks tenure, c) prior work experience, d) prior merit increases, d) longevity increases, and e) other pay-related factors as applicable. The review will include ethnicity data as reflected in the PMS database in order to ascertain whether any pattern of differential treatment based on ethnicity exists.

If the Chief Financial Officer and Director of Personnel conclude that some or all of a salary disparity is not explained by these criteria, they will recommend to the Commissioner of Parks that a salary adjustment be made increasing the salary of the affected individual to remove the disparity, or that portion of the disparity not attributable to these criteria.

If the Commissioner accepts the recommendation in whole or in part, then the proposed salary adjustment will be subject to the normal New York City budgetary process respecting the implementation of increases in employee salary. Parks will provide the complainant a written statement of the basis for its conclusions reached in the study.

B) Whenever the study conducted for an individual allegation of salary disparity reveals disparities in the pay of other employees that are not explained by application of the criteria set out above, the City will take such remedial actions as are appropriate consistent with paragraph A above.

2. Review of Non-Flat Rate Salaries

A) During the term of this Stipulation & Order as described in Section IV.A. above, the City, through the Parks' Chief Financial Officer and Director of Personnel, shall continue to review the non-flat rate salaries of Parks employees. Such reviews will take place 1) at the time of new hires or promotions into positions, at which time the salaries of incumbent employees in the same position with comparable responsibilities shall be reviewed for unjustified disparities, and 2) as ongoing reviews based on their own observations and feedback from managers. Among the factors to be included in the review are a) the terms of applicable bargaining agreements, b) the salaries of incumbent

employees in the same title and with comparable job responsibilities, c) Parks tenure, d) prior work experience, e) prior merit increases, f) longevity increases, and g) other pay-related factors as applicable. The review will include ethnicity data as reflected in the PMS database in order to ascertain whether any pattern of differential treatment based on ethnicity exists.

B) Whenever the review conducted reveals disparities in pay that are not explained by application of the criteria set out above, the City will take such remedial actions as are appropriate consistent with the standards and procedures outlined in paragraph 1 above.

3. Reports

The City will retain copies of the final reports created as part of the studies conducted pursuant to this part. All Reports for studies conducted during any calendar year subject to this Stipulation & Order will be completed by March 15 of the following year, except that reports for the final year of the Stipulation and Order will be finalized by two months prior to the end of the third year of the Stipulation & Order.

VIII. INJUNCTIVE RELIEF - EEO INVESTIGATIVE PROCESS

A. EEO Policy

Parks agrees that the provisions of the New York City Equal Employment Opportunity Policy are binding on Parks in all respects and this policy is incorporated herein in its entirety.

B. EEO Post-complaint Follow-up

Nine (9) to eighteen (18) months after the filing of a internal EEO complaint of race, color or national origin discrimination, the EEO Officer or his designee shall use his best efforts to contact the complainant to determine whether the complainant believes that

he has been retaliated against for having filed the EEO complaint and if the response is affirmative, the basis for believing that retaliation has occurred. Parks' EEO officer or his designee will investigate all complaints of retaliation. Best efforts in this context shall mean using all available means of contacting the complainant and persuading him to respond voluntarily to all questions concerning any alleged retaliation.

C. EEO Counselors

1. EEO Counselors who have other regularly assigned duties shall be selected by the EEO Officer taking into consideration input and recommendations of the Advisory Committee, which may also have input in how the EEO counselors function. Parks will use its best efforts to make the services of EEO counselors more responsive to employees, including insuring that individuals designated as EEO counselors receive training and have sufficient time and availability to provide effective counseling and are evaluated on their performance in this role.

2. EEO counselors will receive training from the central EEO office with regard to their responsibilities, how to document complaints to insure that they are recorded on the central complaint tracking system and how to conduct initial investigations of complaints, how to interact with the central EEO office, and how to inform complainants about the procedures involved in resolving their complaints, and what recourse complainants may have to outside agencies and the statutory time periods involved for filing.

3. EEO counselors shall have no authority to resolve complaints on their own as all resolutions must come from the Central Office.

IX. INJUNCTIVE RELIEF FOR CERTAIN NAMED PLAINTIFFS

Effective upon the Final Approval Date of this Stipulation & Order, the salaries and/or provisional civil service titles of Kathleen Walker, Angelo Colon, Henry Roman, Odessa Portlette, and Elizabeth Rogers will be adjusted as specified in Exhibit 5. These salaries and provisional civil service titles shall not preclude promotions and salary increases occurring in the future, including in the period up to and including the Final Approval Date of the Stipulation and Order.

Further, effective upon the Final Approval Date of this Stipulation & Order, David Ray will be transferred from Queens to the Bronx.

X. MONETARY RELIEF

A. Class Settlement Amount

The City will pay a total of \$11,869,856.25 in settlement of monetary claims of Class Members, exclusive of attorneys' fees and expenses. The funds will be allocated in the following manner:

1. **Promotion Fund** A total of \$4,951,013.88 will be paid in settlement of promotion claims ("Promotion Fund"). Of that total, \$2,970,156.70 will be paid as back pay, \$432,084.65 will be paid as prejudgment interest and \$1,548,772.53 will be paid as compensatory damages.

2. **Pay Fund** A total of \$5,804,886.12 will be paid in settlement of pay claims ("Pay Fund"). Of that total, \$3,518,242.72 will be paid as back pay, \$901,660.20 will be paid as prejudgment interest and \$1,384,983.20 will be paid as compensatory damages.

3. **Retaliation Fund** A total of \$563,956.25 will be paid in settlement of retaliation claims ("Retaliation Fund"). This entire amount will be paid as compensatory damages.

4. **Service Awards-Named Plaintiffs** \$50,000 will be paid to each of the eleven named plaintiffs as awards, for services provided to the class and for any inconvenience, pain, suffering and other non-pecuniary loss experienced as a result of having been a named plaintiff in this action. Each of the named plaintiffs will, in addition, receive any share of the promotion, pay or retaliation funds for which they meet the eligibility requirements set forth below.

B. Pension Treatment of Awards

Amounts received by class members as "back pay" pursuant to the Final Award List created under this Stipulation & Order will be treated as pensionable amounts, but compensatory damages, interest and incentive awards will not be.

C. Duties of Claims Administrator

1. There shall be a Claims Administrator whose duties will consist of administering that portion of the monetary settlement allocated to the Class Settlement Fund as described below, including the following matters, as described more fully below: (1) issuing notice to Class Members describing this Stipulation & Order and the right to object or opt out of the settlement; (2) locating Class Members who are no longer employed by the City; (3) distributing Releases to, and receiving executed originals of same from Class Members; (4) establishing and administering the Class Settlement Fund and upon conclusion of the process, closing the Fund; (5) paying all federal income taxes owed by the Class Settlement Fund; (6) determining eligibility for awards on the basis of information provided by counsel for the parties and the plaintiffs' labor economist; (7)

supervising the calculation of amounts of awards; (8) writing and mailing checks for the compensatory damages and interest amounts, and issuing and filing all appropriate tax forms and statements; (9) developing procedures and responding to questions from Class Members about this Stipulation & Order and the procedures contained herein including the use of a toll-free number; (10) creating a database of Class Members who have filed timely and valid claims.

2. The City agrees reasonably to facilitate administration of the class settlement fund by, among other things, obtaining and providing to the Claims Administrator, non-privileged information, data, documents and records in the City's possession or otherwise reasonably retrievable by or accessible to the City, which is relevant and appropriate to facilitate the administration of the settlement fund. Within thirty (30) days after Final Approval of the Stipulation and Order, the City shall designate an individual (including telephone and e-mail contact information) to whom inquiries and requests relating to or arising in connection with the administration of the class settlement fund may be referred by the Claims Administrator. The City's determination as to the reasonability, relevance and appropriateness of such requests shall be conclusive. The City shall notify the Claims Administrator regarding any such determination.

D. Establishment of Class Settlement Fund

1. The Claims Administrator will apply for a tax ID number and take all necessary steps for the timely creation of the class settlement fund account ("CSFA") prior to the forty-fifth day from the Final Approval Date of this Stipulation and Order.

2. Provided that the Claims Administrator has given to the City the Employer Identification Number for the Class Settlement Fund, a completed W-9 Form and bank routing information for the trust fund account, the City will, within 45 (forty-five) days of

the Final Approval of this Stipulation and Order, cause to be deposited in the CSFA the sum of \$4,831,456.83, less specific deductions made for Liens (as defined below). The gross amount to be deposited represents the total of prejudgment interest and compensatory damages to be paid pursuant to Part A, above. In the event an appeal is filed from the Order of Final Approval of the Stipulation and Order, payment of the amount to be deposited by the City into the class settlement fund account shall be deferred and, in such event, the City shall deposit the sum in the class settlement fund account within 45 (forty-five) days of the Effective Date as defined herein.

3. Interest accruing to the class settlement fund account from the date of deposit of the funds provided in paragraph 2, above, through a date 10.5 months from the date of such deposit ("the Initial Interest Period") shall be used to pay the costs of and expenses of administration and distribution of funds incurred by the Claims Administrator and the plaintiffs. Costs and expenses shall include all costs and expenses of and incurred by the Claims Administrator, including, but not limited to, federal income taxes payable on the interest earned in the CSFA and costs for the services of plaintiffs' labor economist in assisting the Claims Administrator. If costs of distribution, together with federal income taxes, do not equal or exceed the total amount of CSFA interest accrued during the Initial Interest Period, any excess will be paid to the City Comptroller. Any interest earned beyond the Initial Interest Period will be paid to the City Comptroller.

4. The Claims Administrator will treat federal income taxes as the first priority for payment, and therefore, shall, on a quarterly basis, set aside an amount sufficient to pay all federal income taxes owed by the Trust on interest earned to date.

The Claims Administrator shall pay all federal income taxes on a quarterly basis. The City Comptroller shall have the right to inspect and copy all tax forms (and worksheets), and the monthly bank statement of the CSFA. The Claims Administrator will provide to Class Counsel and the City Comptroller a monthly statement of expenses paid. The City will not be responsible for federal taxes, penalties or interest.

E. Withholding of Amounts for Liens

1. Plaintiffs will provide to the City a complete list of Class Members believed by plaintiffs to be eligible to receive any awards under this Stipulation & Order on or before the thirtieth (30th) day preceding the Fairness Hearing. Within sixty (60) days of the receipt of such list, the City will review the list for the purpose of identifying any persons with child support, recoupment liens (i.e., liens for public assistance payments made in error), state and federal tax levies and Higher Education Loan Liens (federal & state), restraining notices or orders and judgment liens ("Liens"). The City will deduct from the total amount paid into the CSFA, for each Class Member who is subject to a Lien and whose name appears on the October 28, 2007 List as eligible for an award of compensatory damages or interest, an amount which equals the amount owing under the Liens, but in no event shall the amount deducted for each Class Member exceed the October 28, 2007 estimate of the total compensatory damages and interest awards for the Class Member subject to a Lien, as supplemented to include all categories of compensatory damages and interest. The City will provide a list to the Claims Administrator of the names of Class Members subject to Liens and amounts withheld ("First City Lien List").

2. Subsequently, after the completion of the process of receiving Releases from eligible Class Members as described below, the Claims Administrator will provide a

revised list of Class Members for the City to review to identify any additional Liens against any persons on the list. ("Preliminary Award List"). The Claims Administrator will, at the same time, provide the City with a breakdown, by year, of each Class Member's back pay amount in the form attached as Exhibit 6.

3. The City will have forty-five (45) days from receipt of the Preliminary Award List to review the list for additional Liens or increases in Lien amounts and provide a list of names and amounts to be withheld by the Claims Administrator from any award ("Second City Lien List.") to the Claims Administrator. Based upon the information provided in the Second City Lien List, the Claims Administrator shall prepare the Final Award List. The Claims Administrator will pay over to the City the lien amounts identified in Second City Lien List within fifteen (15) days of its receipt of the Second City Lien List.

4. In the event that the Lien amounts deducted from the CSFA in accordance with paragraph X. E. (1) & (3) are insufficient to satisfy the Liens against a particular Class Member's awards, the City shall have the right, consistent with applicable law, to deduct any remaining Lien balances as of the date of payment of the back pay awards from that Class Member's back pay award.

F. Eligibility Criteria & Allocation Plan

1. **Promotion Fund** To be eligible to receive a share of the Promotion Fund, it is necessary for a Class Member (i) to have been employed for a minimum of six (6) months during the Class Period (May 24, 1997 – June 30, 2004) and (ii) to have completed at least two years of full-time work experience with Parks prior to June 30, 2004 and (iii) not to have received two or more Wage Promotions during the Class Period. City records will be conclusive with respect to a Class Member's dates of

employment. All Class Members meeting these eligibility requirements will share equally in the Promotion Fund. However, no person otherwise eligible under the terms of this paragraph will be eligible to receive a share of the Promotion Fund if a state or federal court has dismissed or ruled adversely on promotion claims raised by the Class Member, or the Class Member has settled a state or federal court action raising promotion claims, unless the dismissal was to permit the Class Member to pursue claims in this action. Further, however, if plaintiffs' regression analyses conducted for the plaintiffs in support of their claims in this action, show estimated losses for a time period not covered by the state or federal court action, the Class Member may recover for such time period(s) within the Class Period.

2. **Pay Fund** To be eligible to receive a share of the Pay Fund, it is necessary for a Class Member to have held a position in a non-flat rate title during the Class Period, and be shown to have experienced a deficiency in pay, when compared to the average pay of Caucasian employees in the same civil service or in-house job titles, as shown by plaintiffs' regression analyses conducted for the plaintiffs in support of their claims in this action, including the analysis conducted for the mediation of this lawsuit. (hereinafter "Estimated Pay Damages.") City records will be conclusive with respect to job positions held by a Class Member. If those regression analyses show that a Class Member has experienced a loss for any year of the Class Period (May 24, 1997 – June 30, 2004), the Class Member is eligible for a share of the Pay Fund. Any Class Member whose Estimated Damages are greater than \$0 but less than \$1,000 will receive a minimum gross award of \$1,000 (back pay and prejudgment interest combined) and proportionate distributions described below will be calculated so that no recovery from

this fund (prior to applicable deductions) shall be less than \$1,000. Employees receiving more than \$1,000 will receive a proportionate share of the back pay and interest amounts based upon the proportion of their Estimated Pay Damages to the total Estimated Pay Damages. However, no person otherwise eligible under the terms of this paragraph will be eligible to receive a share of the Pay Fund if a state or federal court has dismissed or ruled adversely on pay claims raised by the Class Member, or the Class Member has settled a state or federal court action raising pay claims, unless the dismissal was to permit the Class Member to pursue claims in this action. Further, however, if plaintiffs' regression analysis shows Estimated Pay Damages for a time period not covered by the state or federal court action, the Class Member may recover for such time period(s) within the Class Period.

The compensatory damage component of the Pay Fund will be distributed on the basis of a formula providing recoveries ranging from \$0 to \$5,250, factored upon the basis of the amount of Estimated Pay Damages as shown by plaintiffs' regression analyses. That formula is subject to adjustment based upon the total number of eligible claimants at the time the Claims Administrator makes the final calculations of amounts payable to Class Members following the mailing of notices to the class and the opt-out period. The Claims Administrator will adjust each of the formula amounts to adjust for increases or decreases in the number of class members receiving awards.

3. **Retaliation Fund** To be eligible to receive a share of the Retaliation Fund, it is necessary for a Class Member to have filed (i) a charge of discrimination alleging race, color and/or national origin discrimination or (ii) a charge of retaliation arising from the filing of a charge of race, color and/or national origin discrimination or

(iii) a charge of retaliation arising from opposition to practices alleged to be discriminatory on the basis of race, color and/or national origin. Such charge must either have been filed by the Class Member between May 24, 1997 and the Preliminary Approval Date or if filed prior to May 24, 1997 but not earlier than January 1, 1997, the charge must have remained pending after May 24, 1997. It is sufficient for purposes of eligibility under this paragraph that the charge was filed internally with the Parks Department or externally with the New York City Commission on Human Rights, the New York State Division of Human Rights or the United States Equal Employment Opportunity Commission. Eligibility will be based upon contemporaneous written documentation. However, no person otherwise eligible under the terms of this paragraph will be eligible to receive a share of the Retaliation Fund if a state or federal court has dismissed or ruled adversely on any claims of retaliation that were raised by the Class Member in the court litigation, unless the dismissal was to permit the Class Member to pursue claims in this action, or unless, subsequent to such court ruling, the Class Member has filed a subsequent charge of discrimination or retaliation meeting the eligibility requirements set out in the first sentence of this paragraph. Further, in order to be eligible to recover a share of the Retaliation Fund, any Class Member whose eligibility is based solely upon a discrimination charge as described in subpart (i) of the first sentence of this paragraph shall be eligible only if he or she files a statement with the Claims Administrator affirming the Class Member's belief that he/she experienced retaliation at the Parks Department after filing the charge of discrimination. No such assertion is required for Class Members meeting the eligibility criteria established in subparts (ii) and/or (iii) of the first sentence of this paragraph, i.e., those who filed retaliation charges.

Each Class Member eligible for a share of the Retaliation Fund shall receive an equal share of the fund.

4. Final Determination of Eligibility The Claims Administrator will make the final determination as to whether a Class Member meets the criteria for eligibility for an award under each of the funds established herein.

G. Procedures for Distribution of Funds

The Claims Administrator shall use his best efforts to deliver requisite notices, including the Class Notice and Releases to all Class Members. Those efforts will include re-mailing notices and Releases to any Class Member whose mailing is returned as undeliverable. Class Counsel's determination whether the efforts of the Claims Administrator in this regard constitute "best efforts" shall be conclusive.

1. Mailing of Notice of Settlement and Fairness Hearing On the basis of the list of Class Members provided by plaintiffs to the City on October 28, 2007, the City will provide to the Claims Administrator the last known addresses of Class Members within fifteen (15) days of the Preliminary Approval of the Stipulation and Order. The initial mailing to Class Members will consist of the Notice to Class Members of Settlement and Fairness Hearing ("Class Notice") (attached hereto as Exhibit 8). The Class Notice will include information regarding eligibility and a preliminary estimate of amounts of awards for each eligible Class Member. The Claims Administrator will mail such notice, first class mail, within twenty-one (21) days of the receipt of Class Member addresses from the City.

Class Members who wish to file an objection to the settlement agreement, or to Opt-out, shall file such objections or Opt-out notices within forty-five (45) days from the

mailing of the Class Notice, but in no event later than ten (10) days prior to the Fairness Hearing.

2. **Mailing of Notice to Eligible Class Members** Within twenty-one (21) days of the Effective Date, the Claims Administrator will mail to eligible Class Members a Release in the form attached hereto as Exhibit 7. The Claims Administrator will also provide a self-addressed prepaid envelope for the return of the Release. The Release shall be returned within forty-five (45) days from the date of postmark of the mailing of the Release.

3. **Claims Administrator Follow-Up**

The Claims Administrator will have up to one-hundred-twenty (120) days from the due date for return of Eligible Class Member Forms to address any defects in the Release forms (e.g. where there is no signature or incomplete information on the form) and to conduct re-mailing & tracing of mail to eligible Class Members that is undeliverable and to contact eligible Class Members who do not respond to mail containing the Release Form.

Upon the completion of all reasonable efforts to contact eligible Class Members, or the passage of one hundred twenty (120) days from the due date for return of Release Forms (whichever is sooner), the Claims Administrator shall have an additional thirty (30) days within which to address defects in the Forms. At the end of such period, the Claims Administrator will provide the originals to the City. Class Counsel's determination whether the efforts of the Claims Administrator in this regard constitute "reasonable efforts" shall be conclusive.

The Claims Administrator shall have an additional thirty (30) days in which to complete the process of determining eligibility and calculating individual awards. As necessary, the Claims Administrator will confer with plaintiffs' labor economists and/or Class Counsel to resolve any ambiguities with respect to individual calculations, or, as necessary, to obtain calculations for any Class Member's claims not previously addressed in plaintiffs' regression analyses. As noted above, the Claims Administrator's determination of eligibility and the amount of awards will be final and not subject to appeal. The City will cooperate with the plaintiffs and the Claims Administrator to assure the broadest possible distribution of funds to eligible Class Members.

The Release shall contain language by which the eligible Class Member affirms that he/she is a Class Member. Moreover, the Claims Administrator will require those eligible for a share of the Retaliation Fund pursuant to Paragraph X(F)(3) above, but who did not file a claim of retaliation, to complete a statement affirming the Class Member's belief that he/she experienced retaliation at the Parks Department after filing his/her charge of discrimination.

Each eligible Class Member's share of the respective funds will be determined once the Claims Administrator and Class Counsel are satisfied that all reasonable efforts have been made to locate eligible Class Members and Release Forms have been received. Each eligible Class Member who has not opted out and has timely submitted a Release pursuant to the procedure set forth above shall receive the amounts calculated according to the distribution formulas set forth above, subject to deductions for Liens as provided for in Section X above. Upon completion of those calculations, the Claims Administrator will provide to the City a list of awards by fund (promotion, pay and

retaliation) which includes (i) Class Member name, (ii) social security number and (iii) back pay amount. ("Final Award List") The Claims Administrator will also provide to the City a separate statement of back pay amounts to be paid to each Class Member, with a breakdown by year in the form attached as Exhibit 6.

H. Waiver of Confidentiality & Access to Records of Lawsuits

Any Class Member who seeks to recover an award under this Stipulation & Order and who has previously maintained his own lawsuit against defendants alleging race, color or national origin discrimination, or retaliation for having filed a charge of race, color or national origin discrimination, and has settled the lawsuit on confidential terms, will be required, upon request of the Claims Administrator, to provide a copy of any Court Order granting summary judgment or otherwise dismissing the action and/or any settlement agreement if such documents are in the possession of the Class Member and to sign a waiver of confidentiality permitting the City to provide to the Claims Administrator and Class Counsel a copy of any such Settlement Agreement. If the Class Member fails to provide available copies of such Orders or agreements, or fails to sign the applicable waiver, the Claims Administrator may find that the Class Member is ineligible to recover any funds under this Stipulation & Order. However, notwithstanding the foregoing, the Class Member is presumptively entitled to recover an award for any time period he/she is otherwise eligible under the terms of the distribution formulas set forth above, for any period following the date of entry of any order of dismissal in the Class Member's lawsuit.

The City separately waives any claim of confidentiality with respect to any such settlement agreements for the limited purpose of providing copies to the Claims Administrator and Class Counsel solely for the purpose of determining the Class

Member's eligibility (if any) for relief under this Stipulation & Order. Class Counsel and the Claims Administrator will treat the terms of any such agreements as confidential and will use the information only for the purpose of calculating awards under this Stipulation & Order. The City will also make its best efforts to provide copies of any order of dismissal of any lawsuit known by the City to have been filed by a Class Member raising claims of race, color or national origin discrimination during any part of the Class Period, or retaliation related to claims of race, color or national origin discrimination during any part of the Class Period.

I. Records of EEO Filings

The City will make its best efforts to provide to the Claims Administrator and Class Counsel written documentation of internal or external EEO charges to assist in the determination of eligibility for awards under the Retaliation Fund. That documentation will be provided as soon as possible, but no later than fifteen (15) days after the Final Approval of this Stipulation & Order.

J. Payment by City of Back Pay Amounts

1. The City will be responsible for the payment to Class Members of all back pay amounts and service awards less all applicable payroll deductions and Lien deductions, if any. The City will make individual back pay and service award payments to Class Members using a supplemental payroll that coincides with a regular pay period for Parks. The payments will be made over two payrolls starting on the third Parks pay date following the receipt of the Final Award List from the Claims Administrator. Payments will not be made during payroll periods occurring during the months of October and November. Required employee deductions for federal, state, and local taxes, employee retirement account contributions, Medicare taxes and any other routine payroll

deduction required by law, as determined by the City, and Lien amounts, if any, as defined herein, shall be deducted from back pay and service awards.

2. The City will provide an itemized statement of all deductions made with each back pay and service award. The City will provide to Class Counsel, within 10 business days of payment to Class Members, a report of all checks issued to Class Members, showing net amounts paid and deductions taken, together with such other information as to enable Class Counsel to understand the amount of the award paid. Neither Class Counsel nor the Claims Administrator shall be responsible for calculating the applicable taxes or withholding or reporting to the government any amount so withheld

K. Distribution of Compensatory Damages & Interest Awards by Claims Administrator

The Claims Administrator will be responsible for paying out to Class Members from the CSFA all amounts calculated as prejudgment interest and compensatory damages pursuant to Part A. The Claims Administrator will cause the payment to be made by first class mail within 30 days, or as soon as practicable after completion of the Final Award List. The Claims Administrator will provide each recipient a 1099 form and a statement identifying the amounts distributed from each fund.

Any amounts designated as interest shall not be subject to withholding and shall be reported by the Claims Administrator to the IRS. The amounts paid for compensatory damages shall not be subject to withholding and shall be reported to the IRS. The Claims Administrator will be responsible for filing all appropriate forms including tax forms relative to the management of the money deposited into the CSFA and the distribution of those amounts to Class Members.

L. Survival of Claims

Rights and claims hereunder shall survive the death of Class Members. If a Class Member who is eligible to receive monetary relief under this Consent Decree is deceased at the time of the distribution of awards, the amount payable to such deceased Class Member shall be paid to the appropriate representative of his/her estate. If the Claims Administrator determines, after reasonable opportunity has been given, that there is insufficient information or proof regarding the deceased person's estate to permit such payment, the deceased person's share shall be distributed in accordance with the terms provided for the distribution of unclaimed shares or returned checks.

M. Unclaimed Shares/Uncashed Checks

In the event of opt-outs and unclaimed shares known to the Claims Administrator prior to the final calculation of amount of awards, the Claims Administrator will distribute any total amounts resulting from such unclaimed shares proportionately amongst the other eligible Class Members receiving awards under the applicable monetary fund. If a Class Member fails to cash an award check within one hundred eighty (180) days following the date of the check, then the Claims Administrator and the City will issue supplemental checks of \$250 each to award recipients, in order from lowest to highest in terms of total awards, until the excess funds are exhausted. The Claims Administrator will determine eligibility for supplemental checks, payable either by the Claims Administrator or the City. In the event the Claims Administrator must choose between Class Members receiving equal total awards, the Class Member with the lower social security number will receive priority for the payment of supplemental checks.

For any checks issued by the City and not cashed within 180 days, the City will advise the Claims Administrator of the total of the gross amounts involved, and the Claims Administrator will provide the City with a list of the next available Class Members who, pursuant to the procedure described in the preceding paragraph, would be eligible for supplemental checks of \$250. Only Class Members eligible to receive a back pay award will be eligible for receipt of a supplemental check of \$250 from the City.

N. Report from Claims Administrator & the City

Within thirty (30) days of the distribution of the monies from the monetary funds established above, the Claims Administrator and the City shall furnish an accounting of all distributions to the Court with copies to counsel for the class plaintiffs and the defendants. The accounting provided by the Claims Administrator at this time will include a breakdown, by year, of each Class Member's back pay amount.

XI. PROCEDURES FOR NOTICE TO THE CLASS OF SETTLEMENT AND FAIRNESS HEARING

A. On the basis of the list of Class Members provided by plaintiffs to the City on October 28, 2007, within fifteen (15) days of the Preliminary Approval of this Stipulation and Order by the United States District Court, the City will provide to the Class Counsel and the Claims Administrator, the last known addresses of Class Members. The Claims Administrator will make his best efforts as is customary to locate all Class Members based upon lists of names and last known mailing address provided to him by the City. Within twenty-one (21) days of receipt of the Class Members' names and addresses, the Claims Administrator shall provide notice to the members of the Class, in the form attached hereto as Exhibit 8 ("Class Notice"). Class Members will be given notice of the terms of the settlement agreement, their opportunity to object to the

settlement and/or opt-out of the class and the date of the fairness hearing. The notice to Class Members will include a preliminary determination of each Class Member's eligibility to receive a monetary award under any of the funds, and, if a Class Member is determined to be eligible, a preliminary estimate of the range of such an award. As set forth in paragraph XIV(C), the parties agree to request that the Court schedule the fairness hearing at the earliest practicable time on or after seventy-five (75) days from the Preliminary Approval of this Stipulation & Order. Class Members will also be given notice of their obligation to notify the Claims Administrator of any changes in their mailing address.

B. The Claims Administrator will provide for publication of a notice of the settlement and the fairness hearing in no fewer than three newspapers. Within twenty-one (21) days of the Preliminary Approval Date, the Claims Administrator will complete arrangements for publication of the notice.

XII. OPT OUTS

A. Opt-Out Procedure

Any Class Member who chooses to opt-out of the class and thereby receive no monetary benefits from this Stipulation and Order may do so only by filing an "Opt-out" Statement in the form described below and mailed to the Claims Administrator, Settlement Services, Inc., 2032-D Thomasville Road, Tallahassee, Florida 32308, postmarked no later than ten (10) days before the fairness hearing. To opt out of this lawsuit, a Class Member must submit the following Opt-out Statement containing his/her full name, address, date and signature sworn to before a notary public:

"I am a Class Member in the lawsuit of Wright v. Stern. I understand that in choosing to opt out of the class and settlement in this case, I will not be entitled to any

money under the settlement. I also understand that if I file a separate lawsuit or other legal proceeding:

- I may lose my case and receive nothing;
- It may take several years to obtain any money or other relief, if I receive any relief at all;
- I may have to pay my own attorneys' fees and the costs of litigation;
- I may obtain less money than I can get under this settlement;
- I also understand that, if the Court approves the settlement, Class Members who do not opt out may be eligible to receive a monetary payment under the settlement. I still choose to opt out and to be excluded from the settlement.

The Claims Administrator shall stamp the date received on the original of any Opt-out Statement and serve copies on Class Counsel and Counsel for Defendants no later than five (5) business days prior to the date of the Fairness hearing. The Claims Administrator will also file the date-stamped originals with the Clerk of the Court no later than five (5) business days prior to the date of the Fairness hearing. The Claims Administrator shall retain copies of all Opt-Out Statements until such time as the Claims Administrator is relieved of its duties and responsibilities under this Stipulation & Order.

B. Rescission of Class Member Opt-Outs

The parties recognize that some class members who initially submit Opt-out forms seeking exclusion may, upon further reflection, wish to withdraw or rescind such Opt-out Statements. The parties agree that Class Members shall be permitted to withdraw or rescind their Opt-out Statements by submitting a "Rescission of Opt-out"

Statement to the Claims Administrator. The Rescission of Opt-out Statement shall include the following language:

"I previously submitted an Opt-out statement seeking exclusion from the class monetary settlement. I have reconsidered and wish to withdraw my Opt-out statement. I understand that by rescinding my Opt-out I may be eligible to receive an award from one or more of the funds and may not bring a separate legal action against the defendants seeking damages.

The Claims Administrator shall stamp the date received on the original of any Rescission of Opt-out Statement and serve copies on Class Counsel and Counsel for Defendants no later than two (2) days after receipt thereof. The deadline for filing a Rescission of Opt-Out Statement is fifteen (15) days after the Fairness Hearing. The Claims Administrator shall retain copies of all Rescissions of Opt-Out Statements until such time as the Claims Administrator is relieved of duties and responsibilities under this Stipulation & Order.

XIII. CITY OPTION TO VOID AGREEMENT

The City may unilaterally declare this settlement null and void and shall not be obligated to comply with any of the terms of this Stipulation and Order upon the occurrence of either of the events described in Sealed Exhibit 9, filed with the Court under seal concurrently with this Stipulation & Order. The City shall inform Class Counsel prior to the date of the Fairness Hearing whether it believes it is entitled to exercise this clause and whether it is considering doing so and shall exercise this clause, if at all, not later than thirty (30) day after the Fairness Hearing. For purposes of this provision, "Class Member" is defined as those individuals who were identified as Class

Members on the list of Class Members provided by plaintiffs to the City on October 28, 2007.

XIV. PROCEDURES FOR FAIRNESS HEARING

A. Subject to approval by the Court, the parties hereby agree to the following procedures and schedule for notice to Class Members and submission of this Stipulation and Order to the Court for approval pursuant to Rule 23(e) of the Federal Rules of Civil Procedure.

B. At the time this Stipulation and Order is submitted to the Court, the parties each agree to opine to the Court that it is fair, reasonable, and adequate to the Class as a whole, within the meaning of that phrase contemplated by Rule 23(e) of the Federal Rules of Civil Procedure. Counsel for the parties shall request prompt judicial approval of this Stipulation and Order as written.

C. The parties agree to request that the Court schedule a hearing to determine whether this Stipulation and Order is fair, reasonable, and adequate to the Class as a whole (the "Fairness Hearing"), as required by Rule 23(e) of the Federal Rules of Civil Procedure, at the earliest practicable time on or after seventy-five (75) days following Preliminary Approval of this Stipulation & Order.

D. Any Class Member who wishes to object to the terms of this Stipulation & Order, or its implementation, shall be required to submit to the Court, not later than ten (10) days before the fairness hearing (the "Cutoff Date"), which will be stated as a "date certain" in the Notice of Proposed Class Action Settlement and Fairness Hearing mailed to the Class, a written statement of any objections, with copies to counsel for both parties. The statement shall comport with the procedures set forth in the Notice of Proposed Class

Action Settlement and Fairness Hearing. The statement shall contain the individual's name, address and telephone number, along with a statement of his objection(s) to the Stipulation & Order and the reason(s) for those objection(s), and an express statement of whether the Class Member wishes to speak at the Fairness Hearing.

E. Any attorney retained by an individual Class Member at his own expense to submit objections and/or appear at the Fairness Hearing on his behalf must, not later than the Cutoff Date, identify himself in writing to the Court, submit written objections, with copies to counsel for both parties, and state expressly whether he desires to speak at the Fairness Hearing. The statement shall comport with the procedures set forth in the Notice of Proposed Class Action Settlement and Fairness Hearing. Objections raised at the Fairness Hearing shall be limited to those matters addressed in timely written objections.

XV. RELEASES

A. Named Plaintiffs

The Named Plaintiffs agree that they will not opt-out of the class, will not object to the settlement and will accept the settlement amounts calculated in accordance with the allocation plan described in Section X.

B. Release of Claims

1. **Release of Claims by Class Members.** Except with respect to any persons who have effectively exercised a right to opt out of this Stipulation and Order, upon the Final Approval of this Stipulation and Order, and payment by the City as described in this Stipulation and Order, Defendants and their employees, supervisors, managers and agents shall be fully released and forever discharged from any and all individual and/or class-wide claims, demands, charges, actions, complaints, rights and

causes of action, suits, damages, liabilities, assessments, judgments, costs, losses, debts, obligations and expenses, of any and every nature whatsoever, whether seeking monetary and/or equitable relief of any sort, whether or not known, by the Class Representatives, Charging Parties, or Class Members ("Releasers"), and the Releasers' representatives, agents, heirs, estates, executors, administrators, successors and assigns, which arise out of conduct from May 24, 1997 through the Preliminary Approval Date relating to race, color or national origin discrimination against African-Americans or Hispanics with respect to promotions, recruitment, job classification and assignment, salary and compensation, resource and funding allocation, racially hostile work environment, the maintenance of a segregated workforce, and retaliation for asserting civil rights or opposing civil rights violations, any terms and conditions of employment that were or could have been raised in this action under any federal, state, city or local law prohibiting race, color or national origin discrimination, whether statutory, regulatory, pursuant to local law or ordinance, or at common law against Defendants. As used in this release, claims "for monetary relief" shall include all claims for economic or non-economic monetary damages of any kind including, without limitation, interest, compensatory and punitive damages. This release shall survive the expiration of the term of this Stipulation and Order. This release does not operate to release any rights, benefits or claims to benefits under New York City's retirement plans, health plans or other benefit plans and fringe benefit programs.

2. Release of Named Plaintiffs' Claims. Upon Final Approval of this Stipulation and Order, and payment by the City as described in this Stipulation and Order, for and in consideration of the mutual promises, terms and conditions by and between the Named Plaintiffs and Defendants set forth herein, the sufficiency of which

consideration is expressly acknowledged, the Named Plaintiffs and each of their representatives, agents, heirs, estates, executors, administrators, successors or assigns, whether seeking monetary and/or equitable relief of any sort, do hereby fully, finally and forever release and discharge the Defendants and their employees, supervisors, managers and agents from any and all individual and/or class-wide claims, demands, charges, actions, complaints, rights and causes of action, suits, damages, liabilities, assessments, judgments, costs, losses, debts, obligations and expenses, of any and every nature whatsoever, whether seeking monetary and/or equitable relief of any sort, whether or not known by the Class Representatives, Charging Parties or Class Members, that they have had, now have, or may have from May 24, 1997 to the Preliminary Approval Date, arising in any way out of the alleged facts, circumstances and occurrences underlying those allegations of violations of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, et seq., as amended ("Title VII"), the Civil Rights Act of 1981, as amended in 1991, 24 U.S.C. §§ 1981 and 1983, the New York Constitution, the New York Human Rights Law, the New York City Human Rights Law, and the New York City Charter that were asserted or might have been asserted by or on behalf of the Named Plaintiffs against Defendants either in the class action complaint filed in this action or in the charges filed by the Named Plaintiffs with the Equal Employment Opportunity Commission ("EEOC") or the New York State Human Rights Division or the New York City Commission of Human Rights. As used in this release, claims "for monetary relief" shall include all claims for economic or non-economic monetary damages of any kind including, without limitation, interest, compensatory and punitive damages. This Release shall survive the expiration of the term of this Stipulation and Order. This release does not operate to

release any rights, benefits or claims to benefits under New York City's retirement plans, health plans or other benefit plans and fringe benefit programs.

C. Requirement and Effect of Releases

No individual, including the Named Plaintiffs, shall be entitled to any distribution from the Settlement Fund unless and until he has executed and submitted a Release in the form attached as Exhibits 7 and 10. All claims of Class Members eligible to receive a monetary award under this Stipulation & Order are released and discharged as of the date of the delivery to the City of the Final Award List, whether or not the Class Member has signed a Release. In the event the City and/or the Claims Administrator has withheld amounts from the award to an eligible Class Member who does not sign a Release, the amounts withheld will be paid by the City toward the satisfaction of the Liens.

XVI. REPORTING & MONITORING

A. The City will provide to plaintiffs' counsel the following documents and information evidencing its performance of the terms of this Stipulation & Order:

- 1) Training materials used in the training ("VAT training") provided panel interviewers who participate in the VAT process for titles of Recreation Center Manager and above in Recreation, PRM and above in M&O, and Director and above in Administration and Capital, Parks' EEO Officer and advisors/counselors; [Section V]. The City will provide such materials upon their initial use and subsequently only if substantive changes are made in the training materials;
- 2) Names of persons who received VAT training;
- 3) Standard instructions provided to interviewers in advance of the interviews; [Section V-A] The City will provide such instructions upon their initial use and subsequently only if changes are made in the standard instructions;

4) Scoring system adopted for VAT titles of Recreation Center Manager and above in Recreation, PRM and above in M&O, and Director and above in Administration and Capital; [Section V-A] For the titles of Recreation Center Manager and above in Recreation, PRM and above in M&O, and titles above director in Administration and Capital, the City will provide scoring systems upon their initial use and subsequently only if changes are made in the scoring system. For director titles, the City will provide the scoring systems upon request of Class Counsel;

5) Scoring information reported to the selecting official after a panel interview process; [Section V-A]

6) Summary memorandum reflecting the results of the City's annual adverse impact study including data on job titles, names of applicants, ethnicity of applicants, and names of persons selected; [Section V-C]

7) Summary report of any content validity study conducted by Parks; [Section V-C]

8) An outline of training materials used in the training program similar to Parks 40; [Section VI-A]

9) Copies of announcements used to publicize the opportunity to apply for such training program; [Section VI-A]

10) Names of applicants for the "Parks 40" training program; [Section VI-A]

11) Names of persons selected for the "Parks 40" training program; [Section VI-A]

12) Final reports concerning all pay studies; [Section VII-B]

13) Summary Memo or Chart reflecting EEO post-complaint follow-up; [Section VIII] This Summary Memo or Chart shall be provided to Class Counsel as part of the annual reporting cycle.

14) PMS data for Parks in the format provided to the experts in this litigation. The City will provide this data annually on March 31. Two months prior to the expiration of the term of this Stipulation & Order, the City will provide a final update of the PMS data. If the PMS data is not retrievable as such due to systems changes, modifications, or replacements, the City will provide the same data, to the extent available, in the City's successor format.

B. For the term of this Stipulation & Order, the City will retain all postings and "Job Appointment Packets" created pursuant to the Parks Department's Policy for Posting and Filling Job Vacancies and will make such available to plaintiffs' counsel for inspection and copying upon request.

C. The City will produce all reports and other materials required to be produced by the terms of this Stipulation & Order annually on March 31, or such other date as mutually agreed upon by the parties within thirty days of the Final Approval Date. The City will produce the reports and other materials for the final 12 months of the three-year period referred to in Section IV (A) two months prior to the end of that period, or such other date as mutually agreed upon by the parties within thirty days of the Final Approval Date. Notwithstanding the foregoing, any content validity study produced in the third year of this Stipulation and Order will be produced within 30 days of its completion.

XVII. MISCELLANEOUS

A. Before any payment is made to an individual Class Member, the Class Member shall execute and deliver to the Claims Administrator all documents deemed necessary by counsel for the parties, including without limitation, executed releases and stipulations of dismissal with prejudice in pending individual actions, all in a form that is satisfactory to counsel.

B. The City agrees not to assert any liens, other than Liens as defined above, which the City itself may have respecting a Class Member and/or the Class Member's award(s) from the funds established under this Stipulation & Order.

C. Counsel for the parties agree that they will take all reasonable steps to ensure that this settlement is approved by the Court and becomes effective.

D. If any collateral challenge to this settlement or Stipulation and Order arises in a court, the parties are obligated to inform one another of such a challenge and defend each and every term.

E. The Named Plaintiffs, Class Counsel and the Defendants and the Office of the Corporation Counsel each agree that they shall use their best efforts to defend this settlement and Stipulation and Order from any legal challenge, whether by objection, appeal or collateral attack.

F. Any amendments or modifications to this Stipulation and Order shall be in writing and signed by Defendants' Counsel and Class Counsel on behalf of their respective clients.

G. Only Class Counsel may bring a motion to enforce any provision of this Stipulation and Order, including a motion alleging a violation of the Stipulation and Order or for contempt.

H. The parties shall attempt to resolve informally any dispute, concerns, or perceived violations that may arise under this Stipulation and Order. To that end, Class Counsel will notify Defendants' Counsel in writing of any perceived instances of non-compliance by the Parks Department with the Stipulation and Order's terms. The parties also agree to meet and confer in good faith to discuss such matters and try to resolve them prior to any party seeking court intervention.

I. If Class Counsel has reason to believe that Defendants have violated the terms of this Stipulation and Order, it shall notify counsel for Defendants, in writing, thirty (30) days prior to bringing any motion to enforce the Stipulation and Order, including a motion for contempt, provided however, it may give less notice if it demonstrates to the Court that an emergency need prevented it from giving the thirty (30) days notice and that the amount of notice it did give was warranted under the circumstances.

J. Any application to the Court in connection with this Stipulation and Order shall be on notice to Defendants and Named Plaintiffs.

K. Nothing contained herein shall be deemed to be an admission by Defendants that they have in any manner or way violated the rights of any person or entity, as defined in the constitutions, statutes, ordinances, rules or regulations of the United States, the State of New York, or the City of New York or any other rules, regulations or by-laws of any department or subdivision of the City of New York.

L. The parties agree that this Stipulation and Order is subject to Rule 408 of the Federal Rules of Evidence. It is therefore the parties' understanding that the Stipulation and Order is not admissible to prove Defendants' liability for any of the individual or Class Claims that allege that Defendants engaged in a pattern or practice of discrimination against African American and Hispanic employees on the basis of their race, color or national origin with respect to promotions, recruitment, job classification and assignment, salary and compensation, resource and funding allocation, racially hostile work environment, in maintaining a segregated workforce, and by retaliating against employees who assert their civil rights.

M. The terms and conditions contained herein do not constitute an official policy or practice of the City of New York for purposes other than enforcement of this Stipulation and Order.

N. Copies of all notices, correspondence, reports or documents required to be provided by one party to the other under this Stipulation and Order shall be mailed to:

Cynthia Rollings
Beldoek Levine & Hoffman LLP
99 Park Ave.
New York, NY 10016-1503

Lewis M. Steel, Esq.
3 Park Ave., 29th Floor
New York, NY 10016

Robert H. Stroup, Esq.
NAACP Legal Defense and Education Fund, Inc.
99 Hudson Street, Suite 1600
New York, NY 10013

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

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

XVIII. ATTORNEYS' FEES AND COSTS

The City will pay plaintiffs' attorneys' fees in the following amounts: NAACP Legal Defense and Educational Fund, Inc., -- \$1,500,000; Beldock Levine & Hoffman, LLP -- \$3,440,000, Lewis M. Steel (and associated firms) -- \$3,040,000, and Steve Goldman -- \$20,000. These amounts were agreed upon after negotiations between the parties and were based upon the plaintiffs' counsels' contemporaneous time records, and consideration of what would constitute a reasonable fee given the history of this litigation and applicable legal precedent.

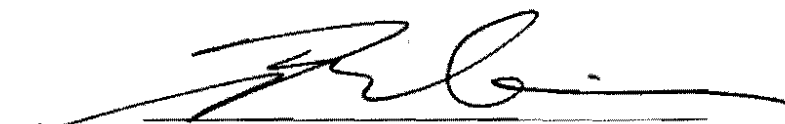
The City will also pay plaintiffs' expenses of litigation in an amount totaling \$999,999.79. This amount, too, was agreed upon after negotiations between the parties and is based upon actual costs incurred by the plaintiffs' counsel. This total includes, among others, the plaintiffs' expert witness fees.

The City will issue one check to the NAACP Legal Defense & Educational Fund, Inc., for plaintiffs' attorneys' fees and expenses of litigation, and LDF will be responsible for disbursements of those amounts in accord with the agreement of plaintiffs' counsel as to their allocation.

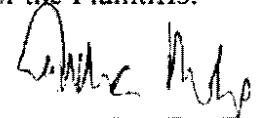
The City will pay the amounts agreed upon for fees and costs within 45 days of the Final Approval Date of this Stipulation & Order, or, if an appeal is filed from the

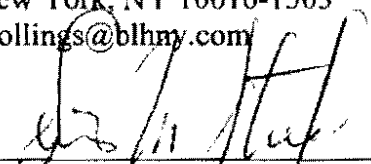
Order of Final Approval, within 45 days of the Effective Date of this Stipulation & Order. Each of plaintiffs' counsel will provide a release relating to their professional services in this action in a form agreed upon by the parties, no later than 45 days prior to the date provided herein for payment of attorneys' fees and expenses.

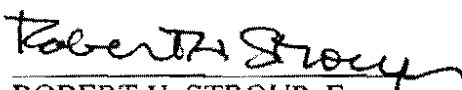
IT IS SO ORDERED, this 15th day of May, 2008.


DENNY CHIN,
United States District Judge

AGREED TO:
For the Plaintiffs:


CYNTHIA ROLLINGS
Beldock Levine & Hoffman LLP
99 Park Ave.
New York, NY 10016-1503
crollings@blhny.com

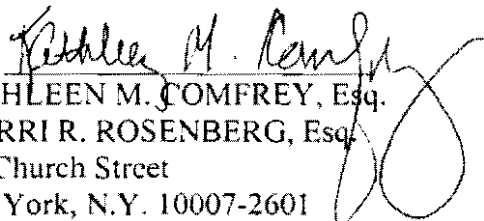

LEWIS M. STEEL, Esq.
3 Park Ave., 29th Floor
New York, NY 10016
ls@outtengolden.com


ROBERT H. STROUP, Esq.
NAACP Legal Defense and Education Fund, Inc.
99 Hudson Street, Suite 1600
New York, NY 10013
rstroup@naacpldf.org

For the Defendants:

MICHAEL A. CARDOZO
Corporation Counsel of the City of New York

BY:


KATHLEEN M. COMFREY, Esq.
SHERRI R. ROSENBERG, Esq.
100 Church Street
New York, N.Y. 10007-2601
kcomfrey@law.nyc.gov
shrosenb@law.nyc.gov