

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

MICHAEL L. SHAKMAN, PAUL M. LURIE,)
KENNETH AYERS, ANN M. KING,)
INDEPENDENT VOTERS OF ILLINOIS-)
INDEPENDENT PRECINCT ORGANIZATION,)
MICHAEL SULLIVAN, DARRYN JONES,)
STUART MAJERCZYK, RICHARD)
GRAMAROSSA and CONNIE GRAMAROSSA,)
et al.,)

Plaintiffs,

v.

DEMOCRATIC ORGANIZATION OF COOK)
COUNTY, THE CITY OF CHICAGO,)
RICHARD M. DALEY, INDIVIDUALLY AND)
AS MAYOR OF THE CITY OF CHICAGO,)
REPUBLICAN STATE CENTRAL)
COMMITTEE OF ILLINOIS, REPUBLICAN)
COUNTY CENTRAL COMMITTEE OF COOK)
COUNTY, et al.,)

Defendants.

Case Number: 69 C 2145

Judge Andersen

Magistrate Judge Schenkier

AGREED SETTLEMENT ORDER AND ACCORD

SUMMARY OF PROCEEDINGS

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In 1972, Defendants the City of Chicago (hereinafter “the City”) and its Mayor entered into a Consent Judgment which, among other things, prohibited Defendants from “conditioning, basing or knowingly prejudicing or affecting any term or aspect of governmental employment, with respect to one who is at the time already a governmental employee, upon or because of any political reason or factor.” On June 20, 1983, the City entered into a Consent Judgment which incorporated the 1972 Consent Judgment’s prohibitions and extended those prohibitions to include the City’s hiring practices, with certain exclusions. The 1983 Consent Judgment specifically empowers this Court to enforce the terms of both the 1972 Consent Judgment and the 1983 Consent Judgment. On November 11, 2001, the Plaintiffs filed a Motion For Entry of Rule to Show Cause Why the City of Chicago and Its Mayor Should Not Be Held in Civil Contempt of Court and Various Relief Granted (“November 11, 2001 Motion”) for alleged past violations of the 1972 and 1983 Consent Judgments. The Court granted the November 11, 2001 Motion in part and the City appealed. On November 17, 2005, the United States Court of Appeals for the Seventh Circuit vacated and remanded the matter which is now pending before this Court. On January 24, 2002, the City filed a Motion seeking to vacate the 1983 Consent Judgment. The Court denied that Motion and the City appealed that decision to the United States Court of Appeals for the Seventh Circuit. On July 26, 2005, the Plaintiffs filed an Application to Hold the City of Chicago and Its Mayor in Civil Contempt (“July 26, 2005 Application”) for alleged past violations of the 1972 and 1983 Consent Judgments. On August 2, 2005, the Court appointed a Shakman Decree Monitor and her counsel (collectively referred to as “SDM”) “to ensure future compliance” with the Court’s prior orders in *Shakman et al. v. The Democratic Organization of Cook County, et al.*, Case No. 69 C 2145. On October 24, 2005, the United States Court of Appeals for the Seventh Circuit issued a decision reversing the denial of the

City's Motion to Vacate and remanding to the District Court with instructions. On January 11, 2006, the Plaintiffs filed a Second Amended Complaint and the City and the Mayor filed a Motion to Dismiss the Second Amended Complaint along with a renewed Motion to Vacate the 1983 Consent Judgment.

The City of Chicago and the Plaintiffs (collectively "the Parties") agree as follows:

1. Rule 23 Order. The Court shall enter an order in the form attached as Exhibit A provisionally certifying the additional classes in the Second Amended Complaint as follows: (i) all past employees and applicants for employment with the City of Chicago to the date of the entry of this Accord pursuant to Federal Rule of Civil Procedure 23(b)(2) and (b)(3) and (ii) all employees or applicants for employment with the City of Chicago during the life of the Accord.

The order shall appoint current class counsel as counsel for the additional classes.

- (a) Settlement of Complaint, Motion for Contempt and Eventual Dissolution of Injunction. Effective when finally approved by the Court, this Accord fully and finally resolves all of Plaintiffs' claims against the City and the Mayor in the Second Amended Complaint and the Plaintiffs' motion to hold the City and its Mayor in civil contempt and is intended to have res judicata effect regarding those Plaintiffs' claims and that Plaintiffs' motion. Effective when the Accord is finally approved by the Court, Plaintiffs covenant not to sue the City or its Mayor regarding the claims resolved by this Accord. Upon the termination of this Accord pursuant to Section I.F, all injunctive provisions of the Accord shall dissolve and all obligations of the City under this Accord shall cease.
- (b) Contingent Final Accord Approval. This agreement to certify the above classes is contingent upon final approval of the Accord (which has become not further appealable). No certified settlement class or other class of applicants and employees pursuant hereto, or other agreement set forth herein, shall remain effective if the Accord is not approved and such approval does not become final and not further appealable. In that event, the terms of this Accord, including any agreed or certified settlement classes, shall be without force or effect for any purpose.
- (c) Accord Preliminary Approval; Contempt Motion and City Motion to Vacate Become Moot; Rule 23 Procedures and Injunction of Further Complaints. The order also preliminarily approves the Accord, denies as moot the Plaintiffs' November 11, 2001 Motion and July 25, 2006 Application to hold the City and its Mayor in civil contempt and the City's motion to vacate the 1983 Consent

Judgment, sets forth procedures for notice, hearing and final approval of the Accord, and preliminarily bars and enjoins the institution and prosecution, by class members who do not opt out of this Accord, of any claims against the City and the Mayor that were or could have been asserted in the underlying Action.

2. Conditions Precedent to Final Approval of Accord. Prior to final approval of the Accord by the Court:

- (a) the Mayor will have signed an Executive Order, a draft of which is attached as Exhibit B and which shall be finalized within 30 days, (i) forbidding unlawful political discrimination in all aspects of employment with the City except with respect to exempt positions and endorsing the Accord and (ii) requiring City employees to report unlawful political discrimination to the Inspector General's Office directly and without undue delay;
- (b) the City Council will have approved all elements of the Accord which include, but are not limited to (i) the \$12,000,000 of funding for Claims awards pursuant to Section III, (ii) claims administration pursuant to Section III, (iii) the SDM monitoring and procedures set forth in Sections I.E. and III, and (iv) the Inspector General's investigation and remedial procedures set forth in Section IV; and
- (c) the Inspector General will have agreed to investigate claims that arise after the Court's final approval of the Accord.

3. Dismissal of Mayor; Vacate 1983 Consent Judgment as to Mayor. Effective upon final approval of the Accord, the Mayor of Chicago, Richard M. Daley, is dismissed with prejudice as a party in his individual and official capacities and all claims asserted against the Mayor in the Second Amended Complaint are dismissed with prejudice. The 1983 Consent Judgment shall be vacated as to Mayor Richard M. Daley in his individual and official capacity and to successor Mayors when the Court finds that Richard M. Daley and the City have presented and the Court has approved the "New Plan" (for all categories of covered employees except fire and police) provided for in Section II.

4. Accord Supersedes and Replaces 1983 Consent Judgment. This Accord provides for the superseding and replacement of the 1983 Consent Judgment with this Agreed Settlement

Order with regard to the City and Plaintiffs may not petition the Court to have it reinstated after the Accord has been finally terminated.

5. Non-Effect of Accord on Other Parties. This Accord shall have no effect on non-City parties to other judgments or orders, or persons who opt out of the Accord pursuant to the procedure ordered for submission of this Accord for judicial approval (collectively, “Other Parties”). This Court retains jurisdiction to hear and determine all claims and issues involving the validity of the 1983 Consent Judgment or the Accord brought in proceedings initiated by Other Parties.

6. Status of 1972 Consent Judgment. The 1972 Consent Judgment remains in full force and effect after the Court’s approval of the Accord. However, the remedy provided in this Accord is the exclusive remedy for Class Members seeking remedies for claims under both the 1972 and 1983 Consent Judgments based on events occurring prior to the entry of the Accord who fail to opt out as provided herein. The City may petition the Court to vacate the 1972 Consent Judgment at any time, including prior to, during, at the time of termination of the Accord, or after the termination of the Accord.

7. City Council. The City Council of the City of Chicago and the Aldermen are not, and have never been, named parties to the 1972 and 1983 Consent Judgments, nor are they named parties to the underlying Action or this Accord. Plaintiffs further agree they will not add any new defendants employed by the City or officials of the City to the Second Amended Complaint or to the Accord. The foregoing is without prejudice to Plaintiffs’ rights to enforce the Accord.

The Parties further agree and the Court hereby Orders as follows:

I. Prohibited Activities.

A. Injunction. Other than for exempt positions, the City, its present and future officers, members, agents, servants, employees, attorneys and those acting at the direction of and/or in concert with such persons are permanently enjoined from directly or indirectly, in whole or in part:

(1) conditioning, basing or knowingly prejudicing or affecting any term or aspect of government employment (other than for exempt positions) or offering employment (whether to a prospective or current City employee) based upon or because of any political reason or factor, including, without limitation, any individual's political affiliation, political support or activity, political financial contributions, promises of such political support, activity or financial contributions, or such individual's political sponsorship or recommendation; or

(2) knowingly inducing, aiding, abetting, participating in, cooperating with the commission of any act which is proscribed in Section I.A(1), or threatening to commit any action proscribed in Section I.A(1).

B. Covered City Employees. The prohibitions set forth in Section I.A(1) and (2) above shall extend to all employment by or for the City, or by or for any person or entity under the direction and control of the City, except for those positions excluded by the Accord. For this purpose "employment" means the relationship that constitutes employment at common law by the City or by or for any person or entity under the direction and control of the City except for those positions excluded by the Accord and includes probationary, temporary, part time and permanent employment, whether pursuant to a written contract or otherwise. The prohibitions set forth in Section I.A(1) and (2) above do not apply to the retention

of independent contractors by the City or employment by other agencies not under the direction and control of the City, including but not limited to, the Chicago Transit Authority, the Chicago Public Schools, the Chicago Housing Authority, the Board of Elections, the Public Buildings Commission, or the Chicago Park District (which is subject to separate judgments in this case).

C. Recommendations and Definition of Political Reasons and Factors. Nothing in the Accord or the New Plan shall limit the right of any citizen, including elected officials, to make recommendations not based on political reasons or factors to personnel involved in making employment decisions on behalf of the City. In the case of hiring for positions that are not exempt from the requirement that political reasons or factors be excluded from consideration, recommendations from public office holders or political party officials that are based on their personal knowledge of the person's work skill, work experience or other job-related qualifications are permitted and may be considered. Recommendations based on political reasons or factors shall not be given any effect, and shall be reported as provided in the New Plan. As used herein, "political reasons or factors" include:

1. Recommendations for hiring, promotion or other employment terms for specific persons from public office holders or political party officials that are not based on personal knowledge of the person's work skills, work experience or other job-related qualifications.

2. The fact that the person worked in a political campaign or belongs to a political organization or political party. Or the fact that the person chose not to work in a political campaign or to belong to a political organization or a political party. The mere

fact that a person worked for a political campaign for elective office does not prohibit consideration of a recommendation related to that person insofar as the basis for that recommendation relates to the person's relevant work experience.

3. The fact that the person contributed money, raised money or provided something else of value to a candidate for public office or a political organization. Or the fact that the person chose not to contribute or raise money for a candidate for public office or a political organization.

4. The fact that the person is a Democrat or a Republican or a member of any other political party or group. Or the fact that the applicant is not a member.

5. The fact that the person expressed views or beliefs on political matters such as what candidates or elected officials he or she favored or opposed, what public policy issue he or she favored or opposed, or what views on government actions or failures to act he or she expressed.

D. Continued Jurisdiction of the Court; Funding of Shakman Decree Monitor. The Court shall retain jurisdiction for purposes of enforcement and ongoing monitoring of the City's compliance with the Accord, including monitoring by the SDM and the SDM's counsel and staff, until such time as the Accord shall terminate, as described in Section I.E. During such period, the City shall continue to pay the reasonable fees and expenses of the SDM and her counsel and staff as may periodically be adjusted with Court approval or with agreement by the City, pursuant to the process previously ordered by the Court.

The SDM will prepare and file semi-annual reports with the Court, and copies will be provided to counsel for the parties. The parties may provide input to the Court regarding information contained in the SDM's reports.

E. Post-Accord Review and Enforcement.

(1) Plaintiffs' Review of Accord Performance. Plaintiffs shall be entitled to review the City's performance under the Accord and the new hiring and promotion plan described in Sections II.A-C (the "New Plan") through counsel of their choice, may present matters to the Court, including but not limited to, suggestions or objections to any proposal or motion for termination or modification to the Accord or the New Plan, and may petition the Court for costs and attorneys' fees incurred as part of their reasonable and appropriate review hereunder.

(2) Plaintiffs' Enforcement Actions on Behalf of Class Members Other Than Campaign Candidates. Plaintiffs may also seek enforcement of the Accord and New Plan (although as provided in the next paragraph Michael L. Shakman and Paul Lurie may not seek enforcement on behalf of individual candidates or slate of candidates in connection with any particular campaign for public office), through counsel of their choice on behalf of Class Members for matters arising after the final approval of the Accord ("Enforcement Actions"). In the event Plaintiffs prevail in any Enforcement Actions, the City shall pay the Plaintiffs' reasonable attorneys' fees and costs incurred in any such Enforcement Actions.

(3) Waiver by Named Plaintiffs of Enforcement on Behalf of Campaign Candidates. Although Michael L. Shakman and Paul M. Lurie have not been dismissed as Plaintiffs in the Second Amended Complaint, by agreeing to the Accord, they waive any and all rights

to assert any claims or requests for relief on behalf of individual candidates or slate of candidates for violations of the Accord or the 1972 or 1983 Consent Judgments in connection with any particular campaign for public office. This stipulated limitation on the enforcement rights of Paul M. Lurie and Michael L. Shakman is without prejudice and without any admission, stipulation or adjudication as to whether either of them has standing to seek remedies for such violations of the Accord in such capacities, and does not divest them of any other right to seek enforcement of the Accord, the 1972 Consent Judgment, or of the 1983 Consent Judgment with respect to parties other than the City. If Plaintiffs seek to enforce the 1972 or 1983 Consent Judgments with respect to the City, the City reserves the right to assert all arguments and defenses including standing.

(4) Candidate Rights for Post-Accord Ac's. Any candidate for public office who alleges that she or he is a victim of unlawful patronage practices at any time between the date of entry of the Accord and the date the Accord has been ordered terminated by the Court, may pursue legal remedies under the Accord in this Court, or as otherwise provided by law.

F. Implementation of New Plan; Continued SDM Monitoring. The New Plan that replaces the current Detailed Hiring Plan shall be implemented by the City and be effective on or before April 30, 2007, or as soon thereafter as adopted in accordance with the procedure described in Sections II.A-E. The New Plan shall be fully incorporated by reference into the Accord. The SDM, with her counsel and staff, shall continue to actively monitor the City's compliance with the Accord until its termination.

G. Sunset Procedures

(1) DHR Certification of Substantial Compliance. On or after December 31, 2008, the Commissioner of the Department of Human Resources may sign a Certification of Substantial Compliance (“DHR Certification of Substantial Compliance”) in a form attached as Exhibit I.F(1) stating that, after appropriate review and inquiry, the Commissioner believes that the City is in Substantial Compliance (as defined below) with the Accord. The DHR Certification of Substantial Compliance shall be served on the SDM and Plaintiffs’ Class Counsel.

(2) Mayoral Declaration. On or after December 31, 2008, the Mayor may sign a mayoral declaration in the form attached as Exhibit I.F(2) (“Mayoral Declaration”). The Mayoral Declaration shall be served on the SDM and plaintiffs’ counsel.

(3) SDM’s Opinion. The SDM shall, within 30 days after the receipt of both the Certification of Substantial Compliance from the Commissioner of the Department of Human Resources and the Mayoral Declaration, advise the Court whether, in the opinion of the SDM (“SDM’s Opinion”), the City is or is not in Substantial Compliance with the Accord. The City and Plaintiffs’ Class Counsel have the right to challenge the SDM’s Opinion and to request a hearing from the Court.

(4) Conditions to Termination of the Accord. The Accord shall terminate if (i) the DHR Certification of Substantial Compliance has certified that the City is in Substantial Compliance, in the form attached as Exhibit I.F(1), (ii) the Mayor has signed the Mayoral Declaration, in the form attached as Exhibit I.F(2) (iii) the SDM shall have filed with the Court the SDM’s Opinion finding that the City is in Substantial Compliance, and (iv) the

Court has not determined, after such procedures the Court deems appropriate, that the SDM's Opinion is contrary to the preponderance of the evidence.

(5) Hearing if Negative SDM Opinion. If the SDM's Opinion finds that Substantial Compliance has not been achieved, the City may request a hearing, and the Accord shall terminate if the Court determines, after such procedures the Court deems appropriate, that the SDM's Opinion that Substantial Compliance has not been achieved is contrary to the preponderance of the evidence.

(6) Effective Date of Termination; Pending Arbitration Demands. The effective date of termination shall be thirty (30) days after the delivery to the parties of an SDM's Opinion finding Substantial Compliance if the Plaintiffs have not sought review by the Court. If either the Plaintiffs or the City have sought Court review of the SDM's Opinion and findings, the effective date of termination shall be the date of the District Court's order finding that Substantial Compliance has been achieved, unless the final order is stayed pursuant to a subsequent Court Order. Termination of the Accord shall have no effect on any claim, complaint or written demand for arbitration filed prior to termination of the Accord.

(7) Reinitiating Substantial Completion Process. If the Accord is not so terminated, it shall remain in effect, and at the end of each successive six-month period, the City may by written request to the Court reinitiate the above SDM Substantial Compliance statements and Opinion process.

(8) Substantial Compliance Definition. Substantial Compliance means:

1. the City has implemented the New Plan, including procedures to ensure compliance with the New Plan and identify instances of non-compliance;

2. the City has acted in good faith to remedy instances of non-compliance that have been identified, and prevent a recurrence;

3. the City does not have a policy, custom or practice of making employment decisions based on political factors except for positions that are exempt under the Accord;

4. the absence of material noncompliance which frustrates the Accord's essential purpose. The SDM and the Court may consider the number of post-Accord complaints that the Inspector General found to be valid. However, technical violations or isolated incidents of noncompliance shall not be a basis for a finding that the City is not in substantial compliance; and

5. the City has implemented procedures that will effect long-term prevention of the use of impermissible political considerations in connection with City employment.

H. Post-Accord Relief and Defenses.

(1) Accord Claims and Other Relief. Applicants, employees, candidates and voters may file for post-Accord claim relief under the post-Accord claim procedure set forth herein or may seek relief as otherwise provided by law. Voters and candidates may not invoke the Arbitration Process provided in Section IV.B, but they may submit complaints to the Inspector General's Office pursuant to Section IV.A and may pursue other legal remedies under the Accord, in this Court, or as otherwise provided by law. If any post-Accord claims are brought outside of the Accord, the City reserves the right to raise any and all defenses to such claims, including standing.

(2) Waiver of Challenge to Accord Validity and Class Member Standing; Preservation of Other Defenses. The City shall not seek to vacate, appeal or otherwise challenge the validity of the Accord, and the City stipulates and agrees that the Court has continuing jurisdiction and authority to enforce the Accord. The City expressly waives, covenants and agrees not to assert any argument or claim that any Class Member who seeks relief under the pre or post-Accord claim procedure lacks standing to enforce the Accord or to seek relief under the Accord. However, the City is not precluded from defending a claim brought under the Accord on the basis that the Class Member is not entitled to relief on grounds other than standing.

II. The New Plan.

- A. New Plan to Replace Detailed Hiring Plan. The City will create a New Plan that will replace the current Detailed Hiring Provisions. When adopted and approved by the Court, the New Plan shall be deemed fully incorporated by reference into this Accord. The existing Detailed Hiring Provisions, as modified from time to time by the Court, shall continue in effect until the New Plan is adopted and approved by the Court.
- B. New Plan Development. The SDM will facilitate the development of the New Plan and may make written objections. The Plaintiffs may participate and consult with the SDM and may also object to provisions of the New Plan.
- C. Interim New Plan Components. As individual components of the New Plan are finalized by the City, the City shall present such components to the Court for approval, subject to final adjustment and approval of the entire New Plan by the Court.

- D.** Impasse Resolution for New Plan Development. If, at any time prior to the adoption of the New Plan, the City and the SDM reach an impasse regarding any component of the New Plan, the SDM shall report to the Court the nature of the unresolved issue(s) and shall make a written recommendation as how to resolve such issue(s) for the Court's determination. The Parties shall have the right to be heard and make submissions concerning the resolution of any unresolved issue(s), and the Court shall then rule on the SDM's recommendation. Provisions directed by the Court pursuant to such ruling(s) shall become part of the New Plan.
- E.** Senior Manager Hiring Process. The New Plan shall provide for a Senior Manager Hiring Process (attached as Exhibit II.E(1)) which shall identify those senior managers covered by such process (attached as Exhibit II.E(2)).
- F.** Private Secretary Hiring Process. The New Plan shall provide for a Hiring/Transfer Process for Private Secretary or Assistant to Department or Agency Head and Schedule G Exempt Employees (attached as Exhibit II.F(1)) which shall identify those positions covered by such process.
- G.** Exemptions. The New Plan shall include a new list of exempt positions (attached as Exhibit II.G).
- (1) The City may from time to time add positions or delete positions from Part G of the Schedule of Exempt Positions so long as the total number of positions in any of the five categories (VIII-XIII) does not increase by more than 10% of the initial number of positions in such category. The City shall notify the SDM and plaintiffs' counsel in writing and post on the City's website the revised number of exempt positions by the end

of each calendar quarter. The SDM or the plaintiffs may file with the Court an objection to any such increase as being not eligible for exemption under applicable legal principles.

(2) If the City transfers, reassigns or reclassifies an individual holding an exempt position to a non-exempt position, the City shall notify the SDM and plaintiffs' counsel in writing with thirty (30) days.

(3) If the City transfers, reassigns or reclassifies an individual holding an exempt position to a non-exempt position, or reclassifies a previously exempt position to a non-exempt position, the City shall notify the SDM and plaintiffs' counsel in writing within thirty days. In addition, the position to which the exempt employee is transferred or which has been reclassified as exempt shall continue to be counted as exempt until the person who is so transferred or reclassified leaves the employment of the City.

III. Claims Procedure for Alleged Past Violations Pre-Dating Entry of the Accord.

The following claim procedures set forth in this Section and Section IV below shall apply after final approval of the Accord.

A. Claim Fund. The City of Chicago will establish a fund of \$12,000,000 to compensate Class Members for any and all injuries of any kind (including but not limited to back pay, front pay, emotional distress, or compensatory damages) allegedly arising out of alleged violations of the 1972 or 1983 Shakman consent decrees between the period of January 1, 2000 and the date of entry of the Accord.

B. Notice. The City shall provide a Notice of the Claims Procedure and Notice of Opt-Out Rights to Class Members, in a form and manner approved by the Court, as soon as practicable, and in any event, no later than thirty (30) days following the final approval of the Accord by the Court. The Notice shall include a Claim

Form, in the form attached as Exhibit III.D, and an Opt-Out Request Form, in the form attached as Exhibit III.C.

- C.** Opt-Out Rights. Any Class Member who alleges a violation of the 1972 or 1983 Shakman consent decrees occurring prior to January 1, 2000, is not provided relief by this Accord, but may opt out of the Accord and assert whatever rights she or he may have regarding any such claim by submitting a written Opt-Out Request to the SDM. The Opt-Out Request Form (attached as Exhibit III.C) must be received by the SDM by the date specified in the Notice which shall be approximately one hundred twenty (120) days after the final approval of the Accord (the "Opt-Out Date"). Any Class Member who alleges a violation of the 1972 or 1983 Shakman consent decrees arising between January 1, 2000 and the final approval date of the Accord may elect not to participate in the Claims Procedure detailed herein by submitting an Opt-Out Request to the SDM received on or before the Opt-Out Date. Unless such individual Class Member opts-out of the Accord in the manner provided herein, her or his rights regarding any such claim shall be governed solely by the Claims Procedure set forth in the Accord. Opt-Out Requests must be in writing, signed by the Class Member, and must include the Class Member's full name, address and telephone number and must state that the Class Member requests to be excluded from the Accord. Within seven (7) days of the Opt-Out Date, the SDM shall provide copies of all Opt-Out Requests to the Parties.
- D.** Certain Named Plaintiffs Incentive Awards. The City shall pay each of named plaintiffs Michael Sullivan, Richard Gramarossa, Ann King, Stuart Majerczyk,

Darryn Jones and Kenneth Ayers an incentive award of \$25,000.00 (the “Incentive Awards”) for their efforts as named plaintiffs on behalf of all class members and for risking possible employment harm and harassment from fellow employees and others. The Incentive Awards shall be paid within fourteen days after approval of the Accord and the expiration of time to appeal or the affirmance of the Accord upon such appeal. Upon payment of the Incentive Awards, and without further documentation, the Incentive Award recipients shall be deemed to have released, pursuant to the terms in paragraphs III.G, any claim to any additional award based on such efforts and risks as named plaintiffs. The Incentive Awards shall be deducted from the \$12,000,000 settlement fund created pursuant to Section III.A of this Accord. Each of the named plaintiffs receiving an Incentive Award may submit a claim based on other rationale to the SDM pursuant to the claims procedure in Section III of this Accord for up to \$100,000 notwithstanding their receipt of an Incentive Award. However, they may not seek or be paid any additional award from the SDM that is predicated on the factors supporting their Incentive Award .

E. Claim Forms. Class Members who wish to file a claim against the City must submit a Claim Form (attached as Exhibit III.D) to the SDM. All Claim Forms must be received by the SDM by the date specified in the Notice which shall be approximately one hundred twenty (120) days after the final approval of the Accord (the “Claim Deadline”).

1. Contents. The Claim Form will consist of sworn statements setting forth individual claims including: the date of the alleged violation; a narrative description of

the alleged violation; a description of alleged damages; identifying information including the claimant's full name, address and telephone number; and a release of certain claims as defined below. Claimants must attach any supporting documentation to the Claim Form. Claimants may only submit one Claim Form but may allege facts supporting more than one claim on their Claim Form. No Claimant will receive more than \$100,000 total, regardless of the number of claims.

2. Interpretation. The SDM shall interpret the Claim Forms in a liberal, non-technical manner, and may request further information to facilitate identifying valid claims and eliminating those that are not. Such information shall be deemed part of the Claim Form as of the date filed.

3. Cooperation of City and Claimants. During the claims review process the City and/or the Claimant shall provide any and all information reasonably requested by the SDM that she determines necessary for assessment of any claim.

4. Eligibility Period. Only claims of violations between the period of January 1, 2000 and the date of final approval of the Accord shall be eligible for recovery under these procedures. Claims for losses during this period that are not properly presented to the SDM through the prescribed claims procedure will be barred. Claims for violations prior to January 1, 2000 are not eligible for recovery under the Accord.

5. Availability of Claim Forms. Claim Forms will be available from the SDM, the City and Class Counsel. Claim Forms can be obtained from the SDM's website at www.shakmanmonitor.com and the City's website at www.cityofchicago.org. Copies of all Claims Forms and supporting documentation filed with the SDM will be made available to the Parties for review and copying.

6. Claim Determination. Within ninety (90) days of the Claim Deadline, the SDM in her sole discretion, shall determine whether the claimant is eligible for recovery and, if so, shall assign a monetary award to the claimant based on the relevant information presented to the SDM or otherwise in her possession. No single award shall exceed \$100,000. The decision of the SDM will be final.

7. Matters to Be Considered. In determining the assigned award amount for any claim, the SDM may consider all relevant factors and evidence regarding the claim, including but not limited to the following, to the extent applicable: (a) the ratio of applicants to the actual number of positions filled; (b) the facts presented regarding the alleged violation; (c) the salary of the position sought or held; (d) the economic benefit of the action at issue and the number of eligible recipients; (e) the strength of the evidence presented; (f) the amount of the Claim Fund; and (g) the number of claims submitted. In the event additional time is required by the SDM to assess a claim, the SDM shall so inform the Claimant and the City within the ninety (90) day period, and the time shall be extended for the period so specified.

8. Notice of SDM Decision. The SDM shall inform the parties of her decision by sending a Notice of Determination to the Claimant, the City and Plaintiffs' Class Counsel. The SDM's decision shall be final, and not subject to appeal.

F. Disbursement of Awards. Within thirty (30) days following the SDM's determination on all claims, the SDM shall provide Corporation Counsel with a list of Claimants eligible for an award, the Claimants' last known mailing address, and the amount of each award. Within sixty (60) days of receipt of the SDM's list of Claimants and awards, the City will mail a check in the amount of the award to

each Claimant who has received an award at her or his last known mailing address. The City shall provide the SDM and Plaintiffs' Class Counsel with a complete list of all amounts paid, the recipients and the dates of payment.

G. Remainder to the City. Any portion of the fund remaining after payment of all claims will revert to the City.

H. Release.

1. Released Claims. As used herein, the term "Released Claims" means any and all claims, causes of action, rights, actions, suits, obligations, debts, demands, judgments, agreements, promises, liabilities, controversies, costs, expenses or attorneys' fees, of every nature and description whatsoever that have been or could have been asserted in the Action and whether now known or unknown, suspected or unsuspected, arising out of employment decisions of any kind (including, but not limited to, hiring, promotion, termination, assignments, disciplinary decisions, overtime and the like) made by the City with respect to Class Members prior to the final approval of the Accord by the Court and based on the claim that those employment decisions were impermissibly motivated by political considerations, including but not limited to any claims for violations of the 1972 Consent Judgment or the 1983 Consent Judgment.

2. Released Parties. As used herein, the term "Released Parties" means: the City, Mayor Richard M. Daley, the City Council, and all of the City's employees, agents, advisors, and attorneys, and their respective heirs, executors, administrators, personal or legal representatives, successors, transferees and assigns.

3. Final Settlement of Claims. The obligations incurred by the City pursuant to this Accord shall be in full and final disposition and settlement of all claims, actions,

suits, causes of action, and liabilities relating to any of the facts, transactions, events, occurrences, acts or omissions which have been asserted or could have been asserted by the Class against the Released Parties in the Action.

4. Effect of Release. Once the Accord has been finally approved by the Court, the time for appeal has run or all appeals have been finally exhausted and the Accord has been affirmed upon any such appeal, and the City has made the payments from the \$12 million fund required by the Accord, all Released Claims that have been or could have been asserted by any member of the Class against the Released Parties or any of them shall be forever extinguished and released, regardless of whether any claim has been filed pursuant to the Claims provisions of the Accord in Section III above.

IV. Procedure for Alleged Violations Occurring After the Entry of the Accord.

Any individual who believes that he or she is a victim of unlawful political discrimination in connection with any aspect of City employment alleged to have occurred during the period that this Accord is in effect may file a complaint with the Inspector General's Office, elect to go to Arbitration under the Accord, and/or file a complaint in federal court. In order to elect to go to Arbitration under the Accord, the individual must first file a complaint with the Inspector General's Office. If an individual elects to go to Arbitration under the Accord, that individual is barred from also filing a complaint in federal court. If an individual files a complaint in federal court for a violation that occurs during the period that this Accord is in effect, that individual cannot elect to go to Arbitration under the Accord.

A. Accord Complaint Process

(1) Making an Accord Complaint. Any individual who believes that he or she is a victim of unlawful political discrimination in any aspect of City employment alleged to have occurred during the period that this Accord is in effect can make an Accord Complaint. In order

to seek remedies through the Arbitration Procedure detailed in Section IV.B for unlawful political discrimination in connection with any aspect of City employment alleged to have occurred during the period when the Accord is in effect, an individual (hereafter referred to as “Accord Complainant”) must submit an “Accord Complaint Form” to the Inspector General’s Office (“IGO”) attached as Exhibit IV.A(1). The Accord Complaint Form must be received by the IGO within 180 days after the Accord Complainant knew or should have known of the alleged unlawful conduct. The Accord Complaint Form shall include a sworn statement setting forth the Accord Complainant’s claims, including:

- a. the date or dates of the alleged violation;
- b. narrative description of the alleged violation;
- c. a description of the alleged damages;
- d. identifying information including the Accord Complainant’s name, address, telephone number; and
- e. copies of the appropriate supporting documentation, if in the possession of the Accord Complainant.

Nothing in this Accord shall restrict the IGO’s authority or ability to investigate any allegations of unlawful political discrimination in City employment received in any other manner established by the IGO, including through the IGO’s complaint hotline, through its website complaint system, by fax, by phone or by letter. The filing of an Accord Complaint shall toll an individual’s federal statute of limitations as described in paragraph VI.A(10) below.

(2) Availability of Accord Complaint Forms. Accord Complaint Forms will be available from the SDM, the City, and Plaintiffs’ Class Counsel. Accord Complaint Forms can also be obtained from the SDM’s website at www.shakmanmonitor.com, from the IGO’s website at www.chicagoinspectorgeneral.org and the City’s website at www.cityofchicago.org.

(3) IGO Investigation. The IGO shall be responsible for conducting or directing the investigation of the Accord Complaint. The IGO's jurisdiction, powers and duties to investigate shall be those set forth in the City's IGO Ordinance.

(4) Distribution to SDM. Within seven (7) days of receiving an Accord Complaint Form, the IGO shall provide a copy of the Accord Complaint Form to the SDM. The IGO shall also provide the SDM with the internal IGO case number for the investigation for tracking purposes. The Accord Complaint to the IGO shall otherwise remain confidential and shall not be disclosed to anyone outside the IGO except as provided for in the IGO Ordinance. The SDM and her agents shall not disclose the contents or existence of the Accord Complaint to anyone other than the Court except as provided below. The SDM shall, within 30 days of receipt of the Accord Complaint Form send a "Notice of Rights," in the form attached as Exhibit IV.A(4), to the Accord Complainant. If Accord Complaint(s) received by the IGO involve an ongoing hiring sequence or a systemic problem, the SDM shall notify the City, if in her discretion such notification is warranted; provided, however, that if the IGO determines, in his sole discretion, that notification to the City would significantly interfere with the IGO's ongoing investigation, the IGO shall instruct the SDM to delay notification to the City until further instruction and the SDM shall do so. The SDM shall report the IGO's instruction to the Court. If the IGO makes such a determination, it shall renew such determination every month and shall, for each such determination, report to the SDM. If the Court determines that the IGO's instruction is unreasonable, the Court shall, after giving the IGO an opportunity to be heard, instruct the SDM to provide notification to the City. In the event that the SDM delays notification to the City based on the IGO's instruction, the SDM shall not consider the City's failure to act in this

situation in determining whether or not the City is within substantial compliance with the Accord.

(5) Cooperation with IGO. The City's Executive branch, its departments and their employees and agents, and the SDM and her agents, shall fully cooperate with the IGO's investigation of the complaint, by, among other things, promptly providing any and all requested documents and information to the IGO, and providing the IGO with access to all requested documents and records in a manner that will preserve the confidentiality of the IGO investigation.

(6) Timing of IGO Investigation. The IGO shall investigate Accord Complaints expeditiously. The IGO shall attempt to complete its investigation within six months after its initiation. If any investigation is not completed within six months after its initiations, the IGO shall notify the City's Law Department, the SDM, Class Counsel, and the Complainant of the general nature of the complaint and the reasons for its failure to complete the investigation within six months.

(7) Sustained Cases. If the IGO finds at the conclusion of its investigation that impermissible political factors were considered in an employment decision ("Sustained Case Report"), the IGO shall report in writing the results of its investigation to the Accord Complainant, SDM, Plaintiffs' Class Counsel, the City's Department of Human Resources, the City's Law Department, and the department head of any other affected department. The IGO's report shall include the names of all individuals who, according to its investigation, were victims of unlawful political discrimination in connection with any aspect of government employment with the City and the names of any individuals responsible for such discrimination. The IGO's

report shall be accompanied by a Notice of Rights (attached as Exhibit IV.A(4)) and a Arbitration Demand Form (attached as Exhibit IV.B(1)).

(8) Non-Sustained Cases. If the IGO concludes its investigation without finding that impermissible political factors were considered in an employment decision (“Non-Sustained Case Report”) the IGO shall send a report of its findings to the SDM, and to the Accord Complainant. When the IGO sends a report to the Accord Complainant under this paragraph, it shall be sent via certified mail and the IGO shall include a Notice of Rights and a Arbitration Demand Form.

(9) Quarterly Reports. No later than the fifteenth day of January, April, July, and October of each year, the IGO shall file with the Court a report, accurate as of the last day of the preceding month, indicating: the number of Accord Complaints received since the date of the last report; the number of investigations initiated since the date of the last report; the number of investigations concluded since the last report broken down by Sustained and Non-Sustained Cases; and the number of investigations pending as of the reporting date.

(10) Tolling During IGO Investigation. The filing of an Accord Complaint shall toll an individual’s statute of limitations in federal court as follows. An individual shall have thirty (30) days after he or she receives the IGO’s Investigative Case Report to file a complaint in federal court for a violation of the Accord. If an individual elects to file a complaint in federal court, that individual cannot elect to participate in the Arbitration Procedure described below. If an individual elects to file an Arbitration Demand, he or she must do so within thirty (30) days after receipt of the IGO’s Investigative Case Report.

B. Arbitration Procedure.

(1) Written Arbitration Request Due Date. Any written demands for arbitration must be received by the Law Department within thirty (30) days after the IGO issues its Investigative Case Report. The Accord Complainant must submit a written demand for arbitration on the Arbitration Demand Form in the form attached as Exhibit IV.B(1). The Arbitration Demand must state with reasonable specificity sufficient to put the City on notice of the actions that are alleged to violate the Accord and the relief sought. The Arbitration Demand must also include a copy of the Accord Complaint Form submitted to the IGO and the IGO's Case Report. The City's Law Department shall provide a copy of any written Arbitration Demand Form to the SDM within seven (7) days of its receipt.

(2) Settlement Offer. The Law Department will have twenty-eight (28) days from receipt of a Demand for Arbitration to make a written settlement offer to the Accord Complainant or to notify the Accord Complainant in writing that the City declines to make an offer. The Accord Complainant and the City can agree in writing to an extension of this date. Settlement offers will be made at the discretion of the Law Department. Settlement offers may include, but are not limited to, monetary damages, reinstatement or other equitable relief. If accepted by an Accord Complainant, copies of executed settlement agreements shall be provided to the SDM and Plaintiffs' Class Counsel. The City's Law Department shall provide a copy of any written Arbitration Demand Form for claims where no settlement was reached to the SDM and Plaintiffs' Class Counsel within seven (7) days of the expiration of the settlement period.

(3) Timing for Arbitration. After the expiration of the settlement period, the City shall inform the arbitrator of her or his selection within seven (7) days of the City's receipt of the Arbitration Demand Form by sending the Arbitrator a copy of the Arbitration Demand Form and

accompanying documents. Within ten (10) days of being notified of her or his selection, the arbitrator shall provide the Accord Complainant, the City's Law Department, and Plaintiffs' Class Counsel notice of her or his selection and a proposed arbitration schedule. The proposed schedule shall provide for pre-hearing production of documents and information and for completion of the arbitration within one hundred twenty (120) days of the selection of the arbitrator. The arbitration will be scheduled at a time mutually selected by the Accord Complainant, the City and the arbitrator. Failure to complete the arbitration within such period, however, shall not affect the validity of the arbitrator's award.

(4) Arbitrator's Fees; Representatives of Complainant. The Arbitrator's fees and any costs of administration shall be paid by the City. The proceeding shall be electronically recorded. Either party may order a copy of the transcripts at its own expense. Each party is responsible for the costs of compensating its own witnesses and the costs of any transcript, if desired. An Accord Complainant may appear on his or her own behalf, be represented by an attorney, or be represented by any other representative of his or her choice.

(5) Selection of Arbitrator. The Court will establish a panel of ten arbitrators. The City and Class Counsel may submit a list of suggested arbitrators. The arbitrators must be members of the National Academy of Arbitrators or be on a list of arbitrators approved by the American Arbitration Association. The approved arbitrators will serve on a rotating basis.

(6) Governing Rules. Except as modified herein, the arbitration shall be governed by the National Rules for Employment Disputes of the American Arbitration Association.

(7) Arbitrator's Decision. The arbitrator must issue a written award, including written findings of fact, within thirty (30) days of the completion of the arbitration hearing. Copies of the decision shall be provided to the Accord Complainant, the Law Department, the

SDM, and Plaintiffs' Class Counsel. The award shall determine (i) whether the Accord has been violated; (ii) whether the Complainant has met the burden of proof set forth in Mt. Healthy City School Board of Education v. Doyle, 429 U.S. 274 (1977) and any other applicable law; and (iii) the appropriate remedy. Remedies are limited to monetary damages. Prevailing Accord Complainants shall be entitled to reasonable attorneys' fees and costs as determined by the arbitrator. The arbitrator will have no authority to modify any provision of the New Plan or the Accord. The Parties to the Accord recognize and agree that the City has collective bargaining relationships with unions representing City employees, that the Illinois Public Labor Relations Act, 5 ILCS 315, et. seq. ("Act") governs those relationships, and that this Accord will be construed and administered consistent with the Act, to the extent that the construction or administration does not conflict with the United States Constitution or federal civil rights laws. The Parties reserve the right to argue to the arbitrator and the Court the impact of the Act and the collective bargaining agreements negotiated pursuant to the Act on any Accord Complaint. If the arbitrator issues an award that is based on a conclusion that conflicts with a provision of an existing collective bargaining agreement, or if any party objects to the relief granted on the ground that it so conflicts, either party may file an appeal with the Court of the arbitrator's award and decision concerning the effect of the Act and/or a collective bargaining agreement within seven (7) days of the award and the Court shall render its' decision thereon within twenty-eight days of the filing of the appeal.

(8) Finality of Decision. The Arbitrator's award shall be final and binding upon all parties. The award may be reviewed and enforced, and judgment entered in conformity therewith, solely and exclusively by and in this Court, which shall apply the procedures and

standards set forth in Sections 5/11-5/15 of the Illinois Uniform Arbitration Act, 710 ILCS 5/11-5/15, inclusive, and applicable court decisions under those provisions of that Act.

(9) Waiver. Any Accord Complainant who proceeds under the City's Arbitration Process described herein, shall waive any and all rights she or he may otherwise have arising from the alleged violations of the Accord set forth in his or her written Arbitration Demand Form.

(10) Audit Documentation. The City shall maintain all documentation related to complaints, investigations, and arbitrations arising under Section IV until one year after the Accord has terminated.

V. No Admission.

At all times, the City and the Mayor have denied and continue to deny that they have committed any wrongful act or violation of law or the 1972 or 1983 Consent Judgments or any duty of any nature, but have decided to enter into this Accord solely for the purpose of avoiding prolonged and expensive litigation and the drain on the City's resources and employees' time and energy that such litigation would entail, and to finally put to rest any and all claims that were or could have been asserted in the Action, or arising out of the matters set forth in the pleadings, without in any way acknowledging any fault or liability.

VI. No Retaliation.

No person shall take any unlawful retaliatory action against any Class Member who exercises any rights provided by this Accord. A Class Member who believes retaliation has occurred may seek relief under the post-Accord process.

VII. Compliance Reports to Court.

The SDM shall report periodically, and at a minimum every six months, on the status of compliance with the Accord while the Accord is in effect.

VIII. Attorneys' Fees.

The parties represent that they have not agreed to or discussed the amount of attorneys' fees awardable to Plaintiffs' Class Counsel or costs prior to entry of this Accord, but will attempt to reach agreement as to such amount within 45 days of entry of this Accord for presentation to the Court for its review and approval. If the parties are unable to reach agreement, the plaintiffs' counsel shall be entitled to petition for an award of fees and the City shall be entitled to assert objections thereto.

IX. Termination of the Accord.

- A. Effect of Non-Approval. If, for any reason, the Accord does not become final (that is, is finally approved and the time for appeal expires with no appeal being filed or all appellate review has been exhausted and the Accord remains intact), the Parties shall revert to their respective positions immediately prior to the execution of the Accord.
- B. Effect of Termination. If the Accord is terminated, this Accord shall have no further force and effect. All negotiations, proceedings and statements made in connection herewith shall be without prejudice to any person or party hereto, shall not be deemed or construed to be an admission by any Party of any act, matter or proposition, and shall not be used in any manner or for any purpose in any subsequent proceeding in the Action or in any other action or proceeding.

X. Entire Agreement.

All prior negotiations and agreements between the parties hereto, with respect to this Accord, are superseded by this agreement and there are no representation, warranties, understandings, or agreements of the parties relating to the subject matter hereof, other than those expressly set forth in this agreement.

ENTER:

Hon. Wayne R. Andersen
United States District Judge

**AGREED TO ON BEHALF OF THE CITY
OF CHICAGO BY:**

Mara S. Georges
Corporation Counsel for the City of Chicago


Date

**AGREED TO ON BEHALF OF
RICHARD M. DALEY:**

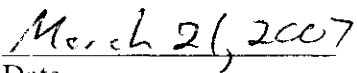
Tyrone Fahner
One of the Counsel for Richard M. Daley

Date

**AGREED TO ON BEHALF OF
THE PLAINTIFFS**



Roger R. Fross
One of the Counsel for the Plaintiff Classes



Date

LIST OF EXHIBITS

- A. Preliminary Approval Order
- B. Mayoral Executive Order
- I.F(1) DHR Certification of Substantial Compliance
- I.F(2) Mayoral Declaration
- II.E(1) Senior Manager Hiring Process
- II.E(2) Senior Managers
- II.F(1) Hiring/Transfer Process for Private Secretary or Assistant to Departmental or Agency Head and Schedule G
- II.G. Exempt List
- III.C Accord Opt-Out Request Form
- III.D Accord Claim Form
- IV.A(1) Accord Complaint Form
- IV.A(4) Notice of Rights
- IV.B(1) Accord Arbitration Demand Form