IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JEFFREY MAYER, individually and on behalf of all others similarly situated, Plaintiff, v. DRIVER SOLUTIONS, INC., DRIVER SOLUTIONS, LLC, DRIVER HOLDINGS, LLC, and C&S ACQUISITION, INC., Defendants.	**10-CV-1939 (JCJ)**

ORDER GRANTING PLAINTIFF'S MOTION FOR FINAL CERTIFICATION OF THE SETTLEMENT CLASS, FINAL APPROVAL OF THE CLASS ACTION SETTLEMENT, MOTION FOR APPROVAL OF ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES, AND MOTION FOR APPROVAL OF CLASS REPRESENTATIVE SERVICE AWARD

Plaintiff Jeffrey Mayer and the class are several thousand African American and Latino applicants for entry-level truck driver positions whose applications were rejected based on their criminal histories.

On April 30, 2010, Mayer filed a class action complaint, asserting a disparate impact claim under Title VII of the Civil Rights Act of 1964 ("Title VII") on behalf of a class of African American and Latino job applicants. He alleged that Defendants' policy of denying placements to truck driver applicants with criminal histories had a disparate impact on African Americans and Latinos in violation of Title VII.

Prior to settling the lawsuit, the parties engaged in motion practice and significant informal and formal discovery. The parties reached a settlement on January 17, 2012, involving monetary

relief of $475,000 and injunctive relief. The injunctive relief requires Defendants to modify the criminal background hiring policy that they apply to applicants. Under the revised policy, Defendants cannot bar applicants with felonies that are more than 10 years old or misdemeanors that are more than 5 years old, unless they are for certain specific crimes, which are identified in Exhibit B to the Settlement Agreement. For those specifically designated crimes, as well as for all felony and misdemeanor convictions that are less than 10 years old or less than 5 years old, respectively, Defendants must consider mitigating factors in addition to the criminal history. *See* The U.S. Equal Employment Opportunity Commission, *EEOC Policy Statement on the Issue of Conviction Records under Title VII of the Civil Rights Act of 1964*, available at: http://www.eeoc.gov/policy/docs/convict1.html (last visited July 10, 2012).

On February 13, 2012, this Court entered an Order preliminarily approving the settlement, conditionally certifying the settlement class, and authorizing notice to be issued to class members. ECF No. 48.

On February 27, 2012, a third-party claims administrator sent notices to all class members informing them of their right to opt out of or object to the settlement and their right to submit a claim form to obtain a monetary recovery. No class members objected to the terms of the settlement and no class members requested exclusion.

On July 16, 2012, Plaintiff moved for Final Certification of Settlement Class and Final Approval of Class Action Settlement ("Motion for Final Approval"). The same day, Plaintiff also moved for Approval of Attorneys' Fees and Reimbursement of Expenses ("Motion for Attorneys' Fees") and for a Class Representative Service Award ("Motion for Service Award").

The Court held a fairness hearing on August 15, 2012. Having considered the Motion for Final Approval, the Motion for Attorneys' Fees, the Motion for Service Award, the supporting

declarations, the arguments presented at the August 15, 2012 fairness hearing, and the complete record in this matter, for good cause shown,

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

I. Final Approval of Settlement

1. The Court grants final approval of the settlement memorialized in the Joint Stipulation of Settlement and Release ("Settlement Agreement"), attached to the Declaration of Rachel Bien, as Exhibit B.

2. The Court concludes that the settlement meets the requirements for settlement approval under *Girsh v. Jepson*, 521 F.2d 153, 157 (3d Cir. 1975).

3. "[T]he probable cost, in both time and money, of continued litigation" weighs in favor of resolution. *See Erie Cnty. Retirees Ass'n, v. Cnty. of Erie, Pennsylvania*, 192 F. Supp. 2d 369, 373 (W.D. Pa. 2002) (citing *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Products Liab. Litig.*, 55 F.3d 768, 785 (3d Cir. 1995)).

4. The reaction of the class to news of the settlement has been positive. *In re Prudential Ins. Co. of Am. Sales Practices Litig*, 148 F.3d 283, 317 (3rd Cir. 1998). None of the class members objected to the settlement or opted out of it, and almost 250 individuals submitted valid claim forms. *See Oslan v. Law Offices of Mitchell N. Kay*, 232 F. Supp. 2d 436, 442 (E.D. Pa. 2002).

5. The parties have completed enough discovery to have "an adequate appreciation of the merits of the case before negotiating." *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 537 (3d Cir. 2004) (internal quotation marks omitted).

6. The risks of proceeding with the litigation, including obtaining class status, favor resolution. *See In re Cendant Corp. Litig.*, 264 F.3d 201, 237-39 (3d Cir. 2001). In addition, the

$475,000 monetary amount and injunctive relief that the settlement provides represent a good value given the attendant risks of litigation. *See In re AT&T Corp.*, 455 F.3d 160, 169 (3d Cir. 2006); *In re Greenwich Pharm. Secs. Litig.*, No. 92 Civ. 3071, 1995 WL 251293, at *5 (E.D. Pa. Apr. 26, 1995).

7. The settlement alleviates any uncertainty about Defendants' financial condition. *See Bonett v. Educ. Debt Servs., Inc.*, No. 01 Civ. 6528, 2003 WL 21658267, at *7 (E.D. Pa. May 9, 2003).

II. Dissemination of Notice

8. The Court-approved notice and claim form was sent by first-class mail to each class member at his or her last known address (with re-mailing of returned notices). The Court finds that the notice fairly and adequately advised class members of the terms of the settlement, as well as their right to opt out of the class, to object to the settlement, to appear at the fairness hearing, and to submit a claim form. Class members were provided the best notice practicable under the circumstances. The Court further finds that the notice and its distribution comported with all constitutional requirements, including those of due process.

III. Final Certification of the Proposed Rule 23 Settlement Class

9. The Court grants final certification of the class under Fed. R. Civ. P. 23(e), for settlement purposes:

> All Latino and African American individuals who submitted applications to Defendants for a placement with one of the trucking companies for which Defendants recruit inexperienced truck drivers and whom Defendants rejected based on their criminal background between January 24, 2009 and September 30, 2010.

10. Plaintiff meets all of the requirements for class certification under Fed. R. Civ. P. 23(a), (b)(2), and (b)(3).

11. Plaintiff satisfies Fed. R. Civ. P. 23(a)(1) because there are over potential 3,000 class members and, thus, joinder is impracticable. *See Jones v. Commerce Bancorp, Inc.*, No. 05 Civ. 5600, 2007 WL 2085357, at *3 (D.N.J. July 16, 2007) ("classes of close to one hundred members are sufficient") (citing *Eisenberg v. Gannon,* 766 F.2d 770, 785-86 (3d Cir. 1985)).

12. Plaintiff satisfies Fed. R. Civ. P. 23(a)(2) because Plaintiff and the class members share common issues of fact and law, including whether Defendants' criminal background hiring policy had a disparate impact on African Americans and Latinos and whether it was justified by business necessity. *See Stewart v. Abraham,* 275 F.3d 220, 227 (3d. Cir. 2001) (commonality satisfied where "at least one common question of fact or law exists among the putative class").

13. The alleged Title VII violation – involving common operative facts stemming from a company policy that affected the class members in the same way – is sufficient to meet Rule 23(a)'s commonality factor. *See Lanning v. Se. Pennsylvania Transp. Auth.*, 176 F.R.D. 132, 150-51 (E.D. Pa. 1997) (commonality satisfied where "[t]he legality of SEPTA's conduct is central to the claims of all the plaintiffs and prospective class members").

14. Plaintiff satisfies Fed. R. Civ. P. 23(a)(3) because Plaintiff's and the class members' claims arise from the same course of events – they all applied for entry-level truck driver placements and were denied those placements as a result of Defendants' criminal background hiring policy. They also make the same legal arguments in support of their claims – that Defendants' criminal background policy had a disparate impact on African Americans and Latinos and was not justified by business necessity. *See Lanning*, 176 F.R.D. at 151 (typicality satisfied because "[t]he legal claims of the named plaintiffs and those of the proposed class members are identical" and "the factual circumstances from which the claims of the named plaintiffs and proposed class members arose are strikingly similar"); *Webb*, 78 F.R.D. at 652

(typicality satisfied where plaintiffs were all subject to the same discriminatory personnel policies).

15. Plaintiff satisfies Fed. R. Civ. P. 23(a)(4) because there is no evidence that the Plaintiff's and the class members' interests are at odds. *See Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 625 (1997) ("The adequacy inquiry under Rule 23(a)(4) serves to uncover conflicts of interest between named parties and the class they seek to represent."); *E. Tex. Motor Freight Sys., Inc. v. Rodriguez*, 431 U.S. 395, 403 (1977) ("[A] class representative must be part of the class and 'possess the same interest and suffer the same injury' as the class members.") (internal quotation marks omitted). In addition, Plaintiff's counsel are competent and well-versed in this area of law. *See, e.g., Easterling v. Connecticut, Dept. of Correction*, 265 F.R.D. 45, 51 n.2 (D. Conn. 2010), *modified sub nom. Easterling v. Connecticut Dept. of Correction*, No. 08 Civ. 826, 2011 WL 5864829 (D. Conn. Nov. 22, 2011); *Ralston v. Zats*, No. 94 Civ. 3723, 2000 WL 1781590, at *4 (E.D. Pa. Nov. 7, 2000).

16. Plaintiff's claim for injunctive relief satisfies Rule 23(b)(2) because Defendants applied the criminal background policy to all members of the class, and thus the class as a whole shares the same interest in obtaining the injunctive relief provided by the settlement – prospective changes to the policy. *See Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2557 (2011) ("The key to the (b)(2) class is the indivisible nature of the injunctive or declaratory remedy warranted—the notion that the conduct is such that it can be enjoined or declared unlawful only as to all of the class members or as to none of them.") (internal quotation marks omitted).

17. Plaintiff's claim for monetary damages satisfies Rule 23(b)(3). Common factual allegations and a common legal theory predominate over any factual or legal variations among class members. *See Easterling*, 2011 WL 5864829, at *8; *United States v. City of New York*, 276 F.R.D. 22, 48-49 (E.D.N.Y. 2011).

18. Class adjudication of this case is superior to individual adjudication because it will conserve judicial resources and is more efficient for class members, particularly those who lack the resources to bring their claims individually. *See Georgine v. Amchem Prods., Inc.*, 83 F.3d 610, 632 (3d Cir. 1996).

IV. Award of Fees and Costs to Class Counsel

19. On February 13, 2012, the Court appointed Outten & Golden LLP and Community Legal Services, Inc. as Class Counsel because they met all of the requirements of Federal Rule of Civil Procedure 23(g).

20. Class Counsel did substantial work identifying, investigating, prosecuting, and settling Plaintiff's and the Class Members' claims.

21. Class Counsel have substantial experience prosecuting and settling employment class actions and are well-versed in employment law and in class action law. *See, e.g.*, *Westerfield v. Washington Mutual Bank*, Nos. 06 Civ. 2817, 08 Civ. 287, 2009 WL 6490084, at *3 (E.D.N.Y. June 26, 2009) ("Courts have repeatedly found [Outten & Golden] to be adequate class counsel in employment law class actions."); *Ralston*, 2000 WL 1781590, at *4 (appointing Community Legal Services as class counsel and describing them as "well-respected, with experience in class action litigation").

22. The work that Class Counsel have performed in litigating and settling this case demonstrates their commitment to the class and to representing the class's interests. Class Counsel have committed substantial resources to prosecuting this case.

23. The Court finds that the factors set forth in *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 195 n.1 (3d Cir. 2000), and *In re Prudential Insurance Company America Sales Practice Litigation Agent Actions*, 148 F.3d 283, 336-40 (3d Cir. 1998), weigh in favor of granting Plaintiffs' Motion for Fees in the amount of $158,333.33, or one-third of the fund.

24. The Court finds that the amount of fees requested is fair and reasonable using the "percentage-of-recovery" method, which is favored in this Circuit. *In re Diet Drugs Prod. Liability Litig.*, 582 F.3d 524, 540 (3d Cir. 2009); *Bredbenner v. Liberty Travel, Inc.*, No. 09 Civ. 905, 2011 WL 1344745, at *19 (D.N.J. Apr. 8, 2011).

25. Class Counsel's request for one-third of the fund is reasonable and well within the range of fee awards in similar cases. *See Stagi v. Nat'l R.R. Passenger Corp.*, No. 03 Civ. 5702, 2012 WL 2581052, at *4 (E.D. Pa. July 3, 2012); *Bredbenner*, 2011 WL 1344745, at *21; *Brumley v. Camin Cargo Control, Inc.*, Nos. 08 Civ. 1798, 09 Civ. 6128, & 10 Civ. 2461, 2012 WL 1019337, *12 (D.N.J. Mar. 26, 2012); *Erie Cnty. Retirees Assoc. v. Cnty. of Erie*, 192 F. Supp. 2d 369, 382-83 (W.D. Pa. 2002).

26. The time and effort that Class Counsel devoted to this case, more than 1,455 hours of attorney, paralegal, and staff time over two years weigh in favor of the requested fees. *See Chemi v. Champion Mortg.*, No. 05 Civ. 1238, 2009 WL 1470429, at *12 (D.N.J. May 26, 2009).

27. The Court also awards Class Counsel reimbursement of their litigation expenses in the amount of $10,000, which the Court deems to be reasonable. *In re Safety Components, Inc. Sec. Litig.*, 166 F. Supp. 2d 72, 108 (D.N.J. 2001) ("Counsel for a class action is entitled to reimbursement of expenses that were adequately documented and reasonably and appropriately incurred in the prosecution of the class action.")

28. The attorneys' fees awarded and the amount in reimbursement of litigation costs and expenses shall be paid from the settlement fund.

V. Service Award

29. The Court finds reasonable the requested service award of $15,000 to Plaintiff in recognition of the services that he provided to the class, including being deposed, producing documents, and attending the mediation, and the risks he incurred. *See In re Janney Montgomery Scott LLC Fin. Consultant Litig.*, No. 06 Civ. 3202, 2009 WL 2137224, at *12 (E.D. Pa. July 16, 2009); *Godshall v. Franklin Mint Co.*, No. 01 Civ. 6539, 2004 WL 2745890, at *6, 8 (E.D. Pa. Dec. 1, 2004). This amount shall be paid from the settlement fund.

VI. Class Action Settlement Procedure

30. The "Effective Date" of the settlement will be 30 days after the entry of this Order if no party appeals this Order. If a party appeals this Order, the "Effective Date" will be the day after all appeals are finally decided.

31. Within 5 days of the Effective Date, the claims administrator will distribute the settlement fund by making the following payments:

a. Paying Class Counsel $158,333.33 in attorneys' fees and $10,000 in costs;

b. Paying the claims administrator's fees;

c. Paying Plaintiff a service award in the amount of $15,000;

d. Paying the remainder of the fund to approved claimants in accordance with the allocation formula set forth in the Settlement Agreement.

32. The Court retains jurisdiction over this action for the purpose of enforcing the Settlement Agreement. The parties shall abide by all other terms of the Settlement Agreement and this Order.

33. Upon the Effective Date, this litigation shall be dismissed with prejudice.

34. Upon the Effective Date, all members of the Class who have not excluded themselves from the settlement shall be permanently enjoined from pursuing and/or seeking to reopen claims that have been released pursuant to the settlement.

It is so ORDERED this 16th day of August, 2012.

Honorable J. Curtis Joyner
United States District Judge