

**UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF RHODE ISLAND**

**UNITED STATES OF AMERICA,** )

**Plaintiff,** )

**v.** )

**Civil Action No.: 1:14-cv-78S**

**STATE OF RHODE ISLAND,** )

**RHODE ISLAND DEPARTMENT** )

**OF CORRECTIONS,** )

**Defendants.** )

**SETTLEMENT AGREEMENT**

**TABLE OF CONTENTS**

**I. BACKGROUND AND STIPULATIONS.....1**  
A. Correctional Officer Selection Process .....2  
B. Written and Video Exams .....2

**II. DEFINITIONS .....4**

**III. PURPOSES OF THE SETTLEMENT AGREEMENT.....6**

**IV. FAIRNESS HEARING ON THE TERMS OF THE SETTLEMENT AGREEMENT.....7**  
A. Provisional Entry of this Agreement.....7  
B. Claims Administrator .....7  
C. Notice of Settlement to Applicants .....8  
D. Notice of Settlement to Other Interested Parties.....9  
E. Objections to Entry of the Settlement Agreement.....11  
F. Final Entry of the Settlement Agreement .....12

**V. GENERAL INJUNCTIVE RELIEF .....13**  
A. Injunctions.....13  
B. Settlement Agreement Compliance Officer .....13  
C. Interim Selection Process .....14  
D. Development and Use of Lawful Selection Devices .....14

**VI. INDIVIDUAL RELIEF.....16**  
A. Two Forms of Individual Relief.....16  
B. Institution of the Settlement Fund.....17  
C. Notice of Entry of Settlement Agreement to Applicants .....17  
D. Submission of Interest-in-Relief Forms by Potentially Eligible Applicants.....18  
E. Determination of Claimants’ Eligibility for Individual Relief .....19  
F. Monetary Relief .....20  
G. Priority Hiring Relief .....20  
H. Proposed Individual Relief Award Lists .....20

**VII. FAIRNESS HEARING ON INDIVIDUAL RELIEF.....21**  
A. Filing of Proposed Individual Relief Awards Lists with the Court .....21  
B. Fairness Hearing on Individual Relief .....22  
C. Notice of Preliminary Eligibility Determinations to Claimants.....22  
D. Objecting to Individual Relief Determinations .....23  
E. Filing Objections to Individual Relief .....24  
F. Amendment to Preliminary Individual Relief Awards Lists .....24  
G. Approval of Final Individual Relief Awards Lists.....25

**VIII. EXECUTION OF INDIVIDUAL RELIEF .....25**  
A. Notice of Individual Relief Awards and Acceptance and Release .....25

B. Deposit into the Settlement Fund .....	26
C. Acceptance of Individual Relief.....	26
D. Issuance of Monetary Award Checks by State .....	29
E. Priority Hiring Relief.....	31
i. Priority Hiring Relief Awarded to Eligible Claimants Identified in Paragraph 91.a.....	33
a. Selection Process.....	33
b. Offer of Priority Hire .....	34
c. State’s Reports to the United States on Claimants Hired.....	35
ii. Priority Hiring Relief Awarded to Incumbent Correctional Officers Pursuant to Paragraph 91.b .....	36
iii. Retroactive Pension Benefits.....	36
<b>IX. <u>RECORD KEEPING AND COMPLIANCE MONITORING</u> .....</b>	<b>39</b>
<b>X. <u>DISPUTE RESOLUTION</u>.....</b>	<b>41</b>
<b>XI. <u>DURATION OF THE SETTLEMENT AGREEMENT</u>.....</b>	<b>41</b>
<b>XII. <u>COSTS AND FEES</u>.....</b>	<b>42</b>
<b>XIII. <u>MISCELLANEOUS</u> .....</b>	<b>42</b>

**APPENDICES**

**APPENDIX A** Notice of Settlement and Fairness Hearing, Instructions for Filing an Objection Prior to the Fairness Hearing, and Objection to the Entry of Settlement Agreement Form

**APPENDIX B** Notice of Entry of Settlement Agreement, Instructions for Filing a Claim to be Considered for Monetary Relief or Priority Hiring Consideration, and Interest-in-Relief Form

**APPENDIX C** Cover Letter Regarding Individual Relief Determination and Providing Notice of Fairness Hearing on Individual Relief, Instructions for Filing an Objection to Individual Relief, and Objection to Determination of Individual Relief Form

**APPENDIX D** Notice of Individual Relief Award

**APPENDIX E** Acceptance of Individual Relief Award and Release of Claims Form

**I. BACKGROUND AND STIPULATIONS**

This action was brought by Plaintiff United States of America (“United States”) against Defendants State of Rhode Island and the Rhode Island Department of Corrections (“Rhode Island,” “the State,” or “RIDOC”) (collectively, “Parties”) under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, *et seq.* (“Title VII”). This Court has jurisdiction of this action under 42 U.S.C. § 2000e-6(b) and 28 U.S.C. §§ 1343(a)(3) & 1345.

In its Complaint, filed in February 2014, the United States alleged that the State has used selection procedures that resulted in disparate impact on African Americans and Hispanics, in violation of Section 703(k) of Title VII, 42 U.S.C. § 2000e-2(k). Specifically, the Complaint alleged that the State’s use of a written exam and a video exam had an adverse impact upon African American and Hispanic applicants for the entry-level correctional officer position. The United States further alleged that these practices have not been shown to be sufficiently job related for the position of correctional officer or consistent with business necessity. The United States has never alleged intentional discrimination in this case, whether in its Complaint or in any subsequent filing. The State denies that it has violated Title VII.

Nevertheless, the United States and the State, desiring that this action be settled by an appropriate settlement agreement (“Agreement”) and without the burden of protracted litigation, agree to the jurisdiction of this Court over the Parties and the subject matter of this action. The United States and the State further agree to the entry of this Agreement as final and binding between themselves as to the issues raised in the United States’ Complaint in this action.

Subject to the Court's approval of this Agreement, the Parties waive findings of fact and conclusions of law on all issues, except as to the following, to which the Parties stipulate, and which the Court finds:<sup>1</sup>

**A. Correctional Officer Selection Process**

- Since 2000, the State has used a multi-step selection process to hire entry-level correctional officers. Early in the selection process, the State administered both a written exam and a video exam on a single day to all interested applicants. The State used one version of the written exam (the "initial written exam") from January 2000 through June 2004 and a modified version of that written exam (the "revised written exam") from June 2006 to the present. The video exam has been administered since 2000 (the "video exam"). Those applicants who failed either exam were removed from further consideration.
- Those who passed both the initial or revised written exam and the video exam were required to pass a criminal records check, a physical ability test (starting in 2007), a background investigation, a final interview, a psychological assessment, and a medical screen, including drug testing. Those applicants who passed all of those steps were placed on an eligibility list in descending rank order based on their score on the video exam. Only the State's use of the initial and revised written exams, as well as the State's use of the video exam, are at issue in this lawsuit.

**B. Written and Video Exams**

- For the initial written exam, applicants were required to achieve a total score of at least 70% (64 out of 91 questions) to pass. Generally, for the revised written exam, applicants were required to achieve a total score of at least 70% (57 out of 82 questions) to pass. For the video exam, applicants were required to achieve a total score of at least 79.5% (330 out of 415 possible points) to pass.
- There were three administrations of the initial written exam between January 2000 and June 2004 (in 2000, 2001, and 2004). The disparity in pass rates among African American and white applicants across the three administrations combined is statistically significant. The disparity in pass rates among Hispanic and white applicants across the three exam administrations combined also is statistically significant.
- There were six administrations of the revised written exam between June 2006 and November 2013 (in 2006, 2007, 2008, 2009, 2011, and 2013). The disparity in pass rates among African American and white applicants across the six administrations combined is

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<sup>1</sup> The facts are based on the United States' Complaint (Dkt. 1), the State's Answer (Dkt. 23), the State's responses to the United States' discovery requests, and the declarations of the United States' experts, which are attached to the memorandum in support of the Parties' joint motion for provisional entry of this Agreement.

statistically significant. The disparity in pass rates among Hispanic and white applicants across the six exam administrations combined also is statistically significant.

- There were nine administrations of the video exam between January 2000 and November 2013. The disparity in pass rates among African American and white applicants across the nine administrations combined is statistically significant. The disparity in pass rates among Hispanic and white applicants across the nine exam administrations combined also is statistically significant.
- The United States estimates that an additional 52 African American applicants and an additional 55 Hispanic applicants would have been hired by the State as correctional officers from the nine combined test administrations at issue absent the disparate impact of the pass/fail use of the initial and revised written exams and the video exam.
- The United States contends that the State's use of the initial and revised written exams, as well as the use of the video exam, from January 2000 to November 2013 has not been shown to be job related and consistent with business necessity. The United States also contends that alternative selection devices exist to select candidates for correctional officer positions that would have served the State's legitimate needs and that would have had less disparate impact against African American and Hispanic applicants. The State does not admit to liability under Title VII, and the parties disagree as to whether the United States' evidence as to the issues of job relatedness and business necessity and alternative employment practices is sufficient to establish liability under Title VII.
- The relief provided by this Agreement does not exceed make-whole relief to individuals who would otherwise have been hired as entry-level correctional officers but for the disparate impact of the practices challenged by the United States, and the procedures set forth in this Agreement for identifying Claimants and allocating relief among them are fair, reasonable, equitable, and otherwise consistent with federal law.
- The retroactive seniority awarded to eligible Claimants under this Agreement does not exceed the noncompetitive seniority lost by African American and Hispanic applicants from 2000 to 2013 as a result of the State's pass/fail use of the written and video exams.
- Priority hiring and awards of retroactive seniority under this Agreement are remedial relief for identified individuals based on their status as persons affected by the practices challenged by the United States.

In resolution of this action, with the settlement of the Parties, IT IS THEREFORE ORDERED, ADJUDGED, AND AGREED as follows:

## II. DEFINITIONS

1. “Monetary relief” means a monetary award based on the United States’ calculation of some of the lost wages that the United States alleges would have accrued to those persons who would have been hired into the position of correctional officer but for the disparate impact of the written or revised written exam or the video exam.
2. “Claimant” refers to any African American or Hispanic person who submits an Interest-in-Relief Form.
3. “Days” means calendar days unless business days are clearly specified. If any deadline referenced in this Agreement should fall on a weekend or federal holiday, the deadline shall be moved to the next business day.
4. “Entry of the Agreement” means the date on which the Court enters the Agreement as final in an order at or after the Fairness Hearing on the Terms of the Settlement Agreement as set forth in Paragraph 27 of this Agreement.
5. “Individual relief” under this Agreement means:
  - a. Monetary relief; and/or
  - b. Priority hiring relief in the form of a correctional officer position for qualified candidates with noncompetitive retroactive seniority.
6. The “Parties” to this Agreement are the United States, by the Department of Justice, and the State of Rhode Island and the Rhode Island Department of Corrections.
7. “Initial written exam” means the 91-question written test used by RIDOC to screen applicants for the correctional officer position from January 2000 to June 2004.
8. “Revised written exam” means the 82-question written test used by RIDOC to screen applicants for the correctional officer position from June 2006 to November 2013.

9. “Video exam” means the 83-question video test used by RIDOC to screen applicants for the correctional officer position from January 2000 to November 2013.
10. “Priority hire” means a Claimant who is qualified and eligible for priority hiring relief and is either:
  - a. Hired by RIDOC as a correctional officer and, upon beginning academy training, is credited by the State with noncompetitive retroactive seniority corresponding with the Claimant’s retroactive seniority date, as set forth in Paragraph 91.a; or
  - b. A current RIDOC correctional officer who is credited by the State with non-competitive retroactive seniority corresponding with the Claimant’s retroactive seniority date, as set forth in Paragraph 91.b.
11. “Correctional officer” means a person hired to a correctional officer position by RIDOC, regardless of whether the person may also be called by another title while undergoing academy training or until the person has completed the probationary period applicable to all entry-level RIDOC correctional officers.
12. “Noncompetitive retroactive seniority” refers to seniority credit in the correctional officer position that a Claimant who receives priority hiring relief is entitled to receive.
  - a. Noncompetitive retroactive seniority is comprised of seniority for purposes of calculating an individual’s salary or other pay, certain pension benefits, and future accrual of leave, including the amount of an individual’s available vacation, personal, and sick leave, as well as any other purposes for which seniority is used to determine the amount of or eligibility for employee benefits.

- b. Noncompetitive retroactive seniority does not include seniority used for any purpose in which an incumbent competes with other incumbents for, among other things, transfers/filling of internal vacancies (such as shifts, posts, jobs, and locations), scheduling of leave (to include personal, vacation, and holiday leave), layoffs/reductions in work force, recall from layoffs/reductions in work force, or to satisfy any applicable probationary periods or any time-in-grade requirements associated with promotion eligibility.
  - c. An award of noncompetitive retroactive seniority shall correspond to the graduation date of the first academy class that the Claimant would have entered if he or she had not been disqualified by the written or video exam (“retroactive seniority date”), except that pension benefits will be awarded in the amounts described in Paragraphs 102 to 105.
13. “Selection device” means any examination, test, requirement, or other criterion used to evaluate an applicant’s qualifications for hire as a correctional officer (*e.g.*, written examination, video examination, physical ability test or physical fitness test, background examination, final interview, psychological examination, physical examination, or drug test).

**III. PURPOSES OF THE SETTLEMENT AGREEMENT**

14. The purposes of this Agreement are to ensure that:
- a. The State develops and uses testing and selection procedures that, while ensuring the hiring of qualified correctional officer candidates, do not unnecessarily exclude qualified African American and Hispanic applicants, in accordance with Title VII; and

- b. The State provides, as appropriate, monetary relief and/or priority hiring relief with noncompetitive retroactive seniority to qualified persons who, the United States alleges, were not afforded further consideration for employment as entry-level correctional officers with RIDOC, due to the employment practices challenged by the United States in this case.

**IV. FAIRNESS HEARING ON THE TERMS OF THE SETTLEMENT AGREEMENT**

**A. Provisional Entry of this Agreement**

- 15. Upon execution of this Agreement, the Parties shall promptly file a joint motion for the provisional approval and entry of the Agreement by the District Court and request a Fairness Hearing on the Terms of the Settlement Agreement to allow the Court to determine whether the terms of the Agreement are fair, reasonable, and adequate; and not illegal, a product of collusion, or against the public interest. The Parties will request that the Court provide notice at least one hundred (100) days before the date and time set for a Fairness Hearing on the Terms of the Settlement Agreement.
- 16. The purpose of the Fairness Hearing on the Terms of the Settlement Agreement and the related notification provisions of this Agreement is to provide all persons who may be affected by the terms of the Agreement with notice and an opportunity to present objections prior to final entry of the Agreement, in accordance with Section 703(n) of Title VII, 42 U.S.C. § 2000e-2(n).

**B. Claims Administrator**

- 17. For the purpose of compromising the claims underlying this case only, the United States agrees to enter a contract with a Claims Administrator to assist the Parties with

the notice and claims procedure for individual relief. By agreement of the Parties, limited to the facts underlying the settlement of this case only, the United States shall bear all costs and expenses of the Claims Administrator.

18. The Claims Administrator's contract with the United States will require the Claims Administrator to work under the control and supervision of the Parties in the conduct of its activities, including reporting regularly to and providing all reasonably requested information to the Parties. In the event that the United States or Rhode Island has reason to believe that the Claims Administrator is not materially complying with the terms of the contract with the United States, the United States and Rhode Island will meet and confer to find a mutually agreeable course of action to address the Claims Administrator's material compliance with its contract with the United States. In the event that the United States and Rhode Island are unable to agree upon a course of action to address the Claims Administrator's material compliance with its contract with the United States, the Parties may present the matter to the Court pursuant to the dispute resolution provisions set forth in Paragraph 110 of this Agreement.

**C. Notice of Settlement to Applicants**

19. No later than ninety (90) days prior to the Fairness Hearing on the Terms of the Settlement Agreement, the State shall provide to the Claims Administrator and the United States the last-known mailing address and e-mail address of each applicant who identified as African American or Hispanic when applying for any of the State's selection processes for entry-level correctional officers and who failed the initial written exam, the revised written exam, or the video exam between 2000 and 2013, or who failed the interim selection process as set forth in Paragraph 33 of this Agreement.

20. No later than eighty (80) days prior to the Fairness Hearing on the Terms of the Settlement Agreement, the Claims Administrator shall provide a copy of a Notice of Settlement and Fairness Hearing, Instructions for Filing an Objection Prior to the Fairness Hearing, and a blank Objection to the Entry of the Settlement Agreement Form (collectively, "Notice Documents") in the formats set forth in Appendix A via e-mail to the last-known e-mail address and via first-class U.S. mail to the last-known mailing address of the applicants identified in Paragraph 19 above.
21. The Claims Administrator shall keep records of all Notice Documents that are returned to the Claims Administrator as undeliverable. If any applicant's Notice Documents are returned to the Claims Administrator as undeliverable (whether via e-mail or first-class U.S. mail), the Claims Administrator shall promptly notify the Parties and attempt to identify an updated electronic and/or postal mailing address as soon as practicable. If the Claims Administrator or one of the Parties identifies an alternate electronic and/or postal mailing address, the Claims Administrator shall re-send the Notice Documents within two (2) business days to the applicant.

**D. Notice of Settlement to Other Interested Parties**

22. No later than eighty (80) days prior to the Fairness Hearing on the Terms of the Settlement Agreement, the State shall provide a copy of the Notice Documents described in Paragraph 20 in the formats set forth in Appendix A, to:
  - a. Each correctional officer currently employed by RIDOC, via hand delivery, at the place of the person's employment, by U.S. mail to his or her home address, or as an attachment to or an enclosure with each such person's regularly distributed paycheck; and

- b. The Rhode Island Brotherhood of Correctional Officers and any other union or association recognized as being authorized to represent correctional officers at RIDOC, via U.S. mail.
23. The State shall publish a notice of the Settlement and the Fairness Hearing, in a form substantially the same as contained in Appendix A, on the State's website ([www.ri.gov](http://www.ri.gov)), RIDOC's website, in the *Providence Journal*, and via social media (*i.e.*, Facebook and/or Twitter) regularly used by the State and/or RIDOC.
  - a. The published notice on the State's website and RIDOC's website shall include a publicly-accessible link from which the Notice Documents and the Agreement can be accessed. This publicly-accessible link and notice shall be published and remain on the websites for no less than eighty (80) days prior to the Fairness Hearing on the Terms of the Settlement Agreement.
  - b. Eighty (80) days prior to the Fairness Hearing on the Terms of the Settlement Agreement and again sixty (60) days prior to the Fairness Hearing on the Terms of the Settlement Agreement, the State shall publish a notice in the *Providence Journal* in a form substantially the same as contained in Appendix A. The published notice also shall provide the website address from which Notice Documents and the Agreement can be accessed, and the phone number of the Claims Administrator.
  - c. Eighty (80) days prior to the Fairness Hearing on the Terms of the Settlement Agreement and again sixty (60) days prior to the Fairness Hearing on the Terms of the Settlement Agreement, the State shall publish notice via social media as follows:

- i. The State shall post and not delete the post on the Rhode Island Department of Corrections' Facebook page with the following text and a publicly-accessible link from which the Notice Documents and the Agreement can be accessed: "The State has entered into a Settlement Agreement with the U.S. Department of Justice to resolve a Department of Justice lawsuit alleging that RIDOC's hiring practices had an unintentional disparate impact on African Americans and Hispanics. To learn more, visit: [link]."
- ii. The State shall post and leave up a tweet on the State's Twitter page and on the Rhode Island Department of Corrections' Twitter page with the following text and a publicly-accessible link from which the Notice Documents and the Agreement can be accessed: "The State settled an unintentional disparate impact lawsuit with the Dept. of Justice @CivilRights involving RIDOC. Read more: [link]."

**E. Objections to Entry of the Settlement Agreement**

24. A person who wishes to object to the terms of the Settlement Agreement may file a written objection in accordance with the requirements set forth in Appendix A.
  - a. Objections shall be submitted to the Claims Administrator and shall state the objector's name, mailing address, telephone number, and e-mail address, if any; set forth a specific description of the objector's basis for objecting; include copies of any documentation supporting the objection; state the name and contact information of the objector's counsel, if any; and state whether the objector wishes the opportunity to be heard in the District Court at the Fairness Hearing on the Terms of the Settlement Agreement.

- b. Objections submitted via mail must be postmarked no later than fifty (50) days before the Fairness Hearing on the Terms of the Settlement Agreement, and objections submitted via e-mail must be transmitted electronically no later than fifty (50) days before the Fairness Hearing on the Terms of the Settlement Agreement.
- 25. By no later than forty-five (45) days prior to the date set for the Fairness Hearing on the Terms of the Settlement Agreement, and on a rolling weekly basis thereafter (if necessary), the Claims Administrator shall serve upon the Parties copies of the objections it has received.
- 26. No later than ten (10) days prior to the Fairness Hearing on the Terms of the Settlement Agreement:
  - a. The United States shall file with the District Court copies of all objections received by the Claims Administrator; and
  - b. The United States and the State shall file their responses, if any, to objections timely received by the Claims Administrator in accordance with the deadlines set forth in Appendix A.

**F. Final Entry of the Settlement Agreement**

- 27. The District Court shall enter the Agreement at or after the Fairness Hearing on the Terms of the Settlement Agreement if the Court determines that the terms of this Agreement are fair, reasonable, and adequate.

**V. GENERAL INJUNCTIVE RELIEF**

**A. Injunctions**

28. Except as provided in Paragraphs 32-33 of this Agreement, the RIDOC, its officials, agents, employees, and successors, and all persons acting on behalf of or in active concert or participation with it, are enjoined from using the initial written, revised written, or video exams at issue in this case.
29. Except as provided in Paragraphs 32-33 of this Agreement, during the term of this Agreement, the RIDOC shall not administer any written exam or video exam for use in selecting correctional officers without the assent of the United States or, if the Parties cannot reach agreement, by the Court.
30. The State is enjoined from retaliating against or otherwise adversely affecting any person because he or she opposed the alleged discrimination at issue here, in any way participated in or cooperated with the investigation or litigation of the alleged discrimination at issue here, has been involved with the development or administration of this Agreement, or received relief under or otherwise benefited from this Agreement.

**B. Settlement Agreement Compliance Officer**

31. Within seven (7) days after entry of this Agreement, the State shall designate a person who shall be the person primarily responsible for facilitating the implementation of the provisions of this Agreement. This person is to report on the commitments in the Agreement to ensure that it is fully implemented, and report to the United States any complaints of discrimination on the basis of national origin and/or race arising from the State's use of the interim selection process pursuant to Paragraphs 32-33, or the State's use of new hiring procedures pursuant to Paragraphs 34-39 during the period that this Agreement is in effect.

**C. Interim Selection Process**

32. The Parties recognize that the proper development of new hiring procedures will take time, and that the State's immediate operational needs require the hiring of correctional officers before the development and implementation of new hiring procedures pursuant to Paragraphs 34-39 of this Agreement.
33. In order to address the State's immediate operational needs while mitigating the potential adverse impact that would result from the use of the written exam and the video exam that gave rise to this action, the Parties agree that the State may use, on an interim basis, and for the purpose of hiring one class of candidates for the RIDOC training academy, the revised written exam with a passing score of 70% (57 out of 82 questions), and the video exam with a passing score of 70% (290 out of 415 possible points), to be otherwise scored and used in the same manner on a rank-ordered basis as the State heretofore has used the exams.

**D. Development and Use of Lawful Selection Devices**

34. The State will adopt and use a new selection device or devices to hire correctional officers in place of the revised written exam and the video exam.
35. Subsequent to the entry of this Agreement, the State shall submit to the United States a proposal to use a new selection device or devices for hiring entry-level correctional officers in place of the revised written exam and the video exam. The new selection device(s) shall either have no statistically significant disparate impact on the basis of national origin or race, or shall have been demonstrated to be job related for the correctional officer position and consistent with business necessity in accordance with Title VII. In selecting or developing the new selection device(s), the State shall make reasonable efforts to explore the availability of selection devices that have been shown

- to reduce or eliminate disparate impact upon Hispanics and/or African Americans in processes for selecting correctional officers.
36. The proposal that the State submits pursuant to Paragraph 35 shall include all information available to the State about the development and/or validation of the proposed new selection device(s), which, for each selection device, may include: a description of the selection device and the manner in which the State intends to use it; the known or likely disparate impact upon African Americans and Hispanics of the intended use of the selection device, if any, including the known or likely disparate impact upon African Americans and Hispanics resulting from the passing scores proposed to be used by the State; all evidence of job relatedness or validity of the selection device, including all job analyses, test plans, expert reports, and validation studies, as well as data underlying such analyses, plans, reports, or studies; and any basis for a conclusion that the proposed use of the selection device (including proposed passing scores) is job related for the position and consistent with business necessity. The State's submission shall also identify any other selection devices that the State considered. For the selection device(s) the State proposes and those alternative device(s) the State considered using, the State's submission shall state any other manner of using the selection device(s) that the State considered.
37. Within ninety (90) days of receiving the proposal and information described in Paragraphs 35 and 36 from the State, the United States shall notify the State in writing whether it objects to the State's proposed use of the new selection device(s) and provide the specific reasons for the objection; otherwise, the United States will provide its assent and the State may administer the selection device(s).

38. Within thirty (30) days following the first administration of the State's new selection device(s) and before forming an eligibility list based on any such selection devices, the State shall provide the following information to the United States: a list of all applicants taking the State's new selection device(s), to include each applicant's race and sex; and data indicating each candidate's raw score(s) on the State's new selection device(s), as well as the performance of each applicant on each item of the State's new selection device(s). If the United States determines that the State's use of any such selection device does not comply with Title VII and/or this Agreement, the United States shall notify the State in writing that the United States objects to the State's continued use of the new selection device(s), and shall identify the specific reasons for any such objection.
39. If the United States objects pursuant to Paragraphs 37 or 38 to the State's use of the new selection device(s), the parties shall within sixty (60) days meet and confer to discuss the United States' objection and whether resolution is possible. If the Parties fail to reach an agreement resolving the issues raised by the United States' objection within sixty (60) days, the Parties may submit the dispute to the District Court in accordance with the dispute resolution provisions set forth in Paragraph 110 of this Agreement.

**VI. INDIVIDUAL RELIEF**

**A. Two Forms of Individual Relief**

40. The State will provide individual relief to eligible Claimants in the form of monetary relief and/or priority hiring relief, including noncompetitive retroactive seniority.

**B. Institution of the Settlement Fund**

41. No later than seven (7) business days after entry of this Agreement, the State shall propose in writing to the United States the name of a federally insured financial institution for the deposit of \$450,000 into an interest-bearing account (the “Settlement Fund”) from which monetary relief will be distributed to eligible Claimants pursuant to this Agreement. The United States shall provide a written response to the State’s proposal within seven (7) business days of its receipt, either consenting to the State’s proposed financial institution or objecting and proposing an alternative financial institution. If the Parties cannot agree on a federally insured financial institution, either party may submit the dispute to the Court for resolution upon providing the other party with seven (7) business days written notice of its intent.

**C. Notice of Entry of Settlement Agreement to Applicants**

42. Within thirty (30) days after entry of this Agreement, the Claims Administrator shall send a copy of the Notice of Entry of Settlement Agreement, Instructions for Filing a Claim to be Considered for a Monetary Award or Priority Hiring Consideration, and Interest-in-Relief Form (collectively, “Interest-in-Relief Form Documents”), in the formats set forth in Appendix B to each applicant who identified as African American or Hispanic when applying for any of the State’s selection processes for entry-level correctional officers and who failed the initial written exam, the revised written exam, or the video exam between 2000 and 2013, or who failed the written exam administered as part of the interim selection process as set forth in Paragraph 33 of this Agreement.

Such notice shall be sent by e-mail to the last-known e-mail address, if available, and via first-class U.S. mail to the last-known mailing address.

43. The Claims Administrator shall keep records of, and, if possible, shall re-send, all Interest-in-Relief Form Documents returned as undeliverable by the same procedures described in Paragraph 21.

**D. Submission of Interest-in-Relief Forms by Potentially Eligible Applicants**

44. Any applicant who wishes to be considered for an award of individual relief under this Agreement must return a completed Interest-in-Relief Form (Appendix B) to the Claims Administrator no later than seventy-five (75) days after entry of this Agreement. Any applicant who fails to return an Interest-in-Relief Form by the deadline shall be deemed to have waived any right to be considered for an award of individual relief under this Agreement, except for good cause as determined by the United States and approved by the Court if the State objects to the United States' determination.
45. The submission date of each Interest-in-Relief Form shall be the date on which the form was e-mailed to the Claims Administrator, as determined by the e-mail date stamp, or the date on which the form was mailed to the Claims Administrator, as determined by the postmark. In the event the postmark is missing or illegible, the submission date of the Interest-in-Relief Form shall be deemed to be five (5) days prior to the date the form was received by the Claims Administrator.
46. No later than ten (10) days after the deadline for submission of Interest-in-Relief Forms to the Claims Administrator (eighty-five (85) days after entry of this Agreement), the Claims Administrator shall provide to the Parties copies of all Interest-in-Relief Forms received by the Claims Administrator. Interest-in-Relief Forms received by the Claims

Administrator more than ten (10) days after the deadline for submission of claim forms will be provided to the Parties on a weekly rolling basis.

**E. Determination of Claimants' Eligibility for Individual Relief**

47. The United States and the State will confer regarding the process by which the Parties will determine whether a Claimant is eligible for individual relief under this Agreement.
48. A Claimant is eligible for monetary relief under this Agreement if: (i) the Claimant identified as African American or Hispanic when applying for any of the State's selection processes for entry-level correctional officers; (ii) between January 2000 and 2013, the Claimant failed the initial or revised written exam, or the video exam, for a test administration that resulted in an eligibility list from which appointments were made; and (iii) the Claimant met the minimum qualifications for employment that existed at the time the Claimant was disqualified by failure of the initial written, revised written, or video exam.
49. A Claimant is eligible for priority hiring relief under this Agreement if the Claimant meets the current minimum qualifications for hire as a correctional officer with the Rhode Island Department of Corrections, and either (i) satisfies the criteria in Paragraph 48; or (ii) identified as African American or Hispanic when applying for the interim selection process as described in Paragraph 33 of this Agreement, who failed the revised written exam administered as part of the interim selection process, but passed the video examination administered as part of the interim selection process, and who met the minimum qualifications for employment that existed at the time the Claimant was disqualified by failure of the written exam administered as part of the interim selection process.

**F. Monetary Relief**

50. The United States, in consultation with the State, shall determine the Claimants eligible for a monetary award under Paragraph 48. In order to be eligible for monetary relief, a Claimant need not express an interest in, or be eligible for, priority hiring relief, or accept an offer of employment in the correctional officer position in the Rhode Island Department of Corrections.
51. The United States, in consultation with the State, shall determine each eligible Claimant's monetary award from the Settlement Fund, such that awards are distributed among all eligible Claimants who sought monetary relief in a manner that is reasonable and equitable, considering when each Claimant was disqualified by the initial or revised written exam, or the video exam.

**G. Priority Hiring Relief**

52. The United States, in consultation with the State, shall determine each Claimant's eligibility to participate in the priority hiring selection process subject to Paragraph 49. Eligibility to participate in the priority hiring selection process does not ensure a Claimant will receive an offer of priority hire from the State. The State shall require any eligible Claimant seeking priority hiring relief to successfully complete the State's correctional officer screening and selection procedures that are then in effect and required of all other correctional officer applicants.

**H. Proposed Individual Relief Awards Lists**

53. No later than one hundred twenty (120) days after entry of this Agreement, the United States shall provide the State with:
- a. A Proposed Monetary Awards List that identifies all Claimants it finds eligible for monetary relief based on the Interest-in-Relief Forms received by the Claims

Administrator, as well as the amount of the award that the United States, in consultation with the State, has determined should be awarded to the Claimant;

- b. A Proposed Priority Hire Claimant List that identifies all Claimants it finds eligible to participate in the priority hiring selection process based on the Interest-in-Relief Forms received by the Claims Administrator; and
- c. A list of Claimants who it finds ineligible for individual relief, which shall include the reason for the United States' determination that a Claimant who sought monetary relief and/or priority hiring relief is not eligible for such relief.

54. No later than one hundred fifty (150) days after entry of this Agreement, the State shall notify the United States in writing if it objects to any of the United States' determinations regarding eligibility for monetary relief and/or priority hiring relief. The parties shall attempt to resolve any objections submitted by the State to the United States' determinations.

**VII. FAIRNESS HEARING ON INDIVIDUAL RELIEF**

**A. Filing of Proposed Individual Relief Awards Lists with the Court**

55. No later than one hundred eighty (180) days after entry of the Agreement, the United States shall file with the Court and serve upon the State the following Proposed Individual Relief Awards Lists:

- a. A Proposed Monetary Awards List stating, for each Claimant who timely returned an Interest-in-Relief Form and whom the United States has determined is eligible for monetary relief, the amount of monetary relief that the United States has determined should be awarded to the Claimant; and
- b. A Proposed Priority Hire Claimant List with Claimants who the United States has determined are eligible to pursue priority hiring relief.

56. The Proposed Individual Relief Awards Lists shall identify each Claimant only by Claimant ID number.

**B. Fairness Hearing on Individual Relief**

57. Upon filing the Proposed Individual Relief Awards Lists, the United States shall simultaneously move the Court to hold a Fairness Hearing on Individual Relief to allow the Court to determine whether the Proposed Monetary Relief Awards List and Proposed Priority Hire Claimant List should be approved or amended. The Court will provide the Parties with at least ninety (90) days' notice of the date and time set for the Fairness Hearing on Individual Relief.

**C. Notice of Preliminary Eligibility Determinations to Claimants**

58. No later than eighty (80) days before the date set for the Fairness Hearing on Individual Relief, the Claims Administrator shall send to each Claimant who submitted an Interest-in-Relief Form via e-mail to the last-known e-mail address, if available, and via first-class U.S. mail to the last-known mailing address the following Notice of Individual Relief Fairness Hearing Documents:

- a. A cover letter, in the format attached in Appendix C, notifying the Claimant of the determinations regarding the Claimant's eligibility for individual relief under the Settlement Agreement, the reason(s) for any determination that the Claimant is ineligible for any particular form of requested relief, and the Claimant's proposed monetary award as stated on the Proposed Monetary Awards List, if any; and

- b. A Cover Letter Regarding Individual Relief Determinations and Providing Notice of Fairness Hearing on Individual Relief, Instructions for Filing an Objection to Individual Relief, and an Objection Form, in the formats attached as Appendix C.

59. The Claims Administrator shall keep records of, and, if possible, shall re-send, all Notice of Individual Relief Fairness Hearing Documents returned as undeliverable by the same procedures described in Paragraph 21.

**D. Objecting to Individual Relief Determinations**

60. A Claimant who wishes to object to any determination regarding individual relief as set out in his or her cover letter (Appendix C) must file a written objection in accordance with the requirements set forth in Appendix C.

- a. Objections shall be submitted to the Claims Administrator and shall state the Claimant's name, Claimant ID number, mailing address, telephone number, and e-mail address, if any; set forth a specific description of the Claimant's basis for disputing the relief determinations in the Proposed Individual Relief Awards Lists; include copies of all documentation supporting the objections; state the name, mailing and e-mail addresses, and telephone number of the Claimant's counsel, if any; and state whether the Claimant wishes the opportunity to be heard in Court at the Fairness Hearing on Individual Relief.
- b. Objections submitted via mail must be postmarked no later than fifty (50) days prior to the date set for the Fairness Hearing on Individual Relief, and objections submitted via e-mail must be transmitted electronically no later than fifty (50) days prior to the date set for the Fairness Hearing on Individual Relief.

61. By no later than forty-five (45) days prior to the Fairness Hearing on Individual Relief, and on a rolling weekly basis thereafter (if necessary), the Claims Administrator shall serve upon the Parties copies of the objections it has received.

**E. Filing Objections to Individual Relief**

62. No later than ten (10) days prior to the Fairness Hearing on Individual Relief, the United States shall file with the Court copies of all objections received by the Claims Administrator. Prior to filing, the United States shall redact Claimant names, but not Claimant ID numbers.
63. No later than ten (10) days prior to the Fairness Hearing on Individual Relief, the Parties shall file their responses, if any, to all objections. In the State's filing, the State may also address its unresolved objections made pursuant to Paragraph 54 in response to the United States' eligibility determinations made pursuant to Paragraph 50, 51, and 52.
64. No later than the day of the Fairness Hearing on Individual Relief, the State shall provide the Claims Administrator with any and all withholding tax forms that the State will require Claimants to complete, as well as a protocol outlining what information must be included on the withholding tax forms for them to be considered fully executed for purposes of processing payment to the Claimants.

**F. Amendment to Preliminary Individual Relief Awards Lists**

65. At or after the Fairness Hearing on Individual Relief, the District Court shall determine which, if any, objections to the Proposed Monetary Awards List or to the Proposed Priority Hire Claimant List are well-founded. The Court shall then approve the lists as

submitted or, if the Court finds that any objections are well-founded, shall request that the Parties make any necessary adjustments to the lists consistent with such findings.

66. The Court will find that an objection to either the Proposed Monetary Awards List or the Proposed Priority Hire Candidate List, including an objection to the amount of monetary relief to be awarded to a Claimant, is well-founded only if the Court finds that the determination reflected in such list is not fair, reasonable, and adequate; or is otherwise inconsistent with the provisions of this Agreement or Title VII.

**G. Approval of Final Individual Relief Awards Lists**

67. If the Court determines that the individual relief awards are fair, reasonable, and adequate, the Court shall approve the Monetary Awards List and the Priority Hire Claimant List as final (collectively, the “Final Individual Relief Awards Lists”) at or after the Fairness Hearing on Individual Relief.

**VIII. EXECUTION OF INDIVIDUAL RELIEF**

**A. Notice of Individual Relief Awards and Acceptance and Release**

68. No later than ten (10) days after the District Court approves the Final Individual Relief Awards Lists, either at or after the Fairness Hearing on Individual Relief, the Claims Administrator shall provide notice to each Claimant determined by the Court to be entitled to such relief.
69. The Claims Administrator shall send notice to each Claimant via e-mail to the last-known e-mail address, if available, and via first-class U.S. mail to the last-known mailing address. The notice shall include:
- a. The Notice of Individual Relief Award in the form set forth in Appendix D;
  - b. An Acceptance of Individual Relief Award and Release of Claims Form in the form set forth in Appendix E. If the Claimant is eligible for priority hiring

relief, this form will include a statement of the Claimant's eligibility for such relief and a description of the noncompetitive retroactive seniority the Claimant will receive upon receipt of priority hiring relief; and

- c. Any withholding tax forms necessary for the State to comply with its withholding obligations under law and Paragraph 82 of this Agreement.

70. The Claims Administrator shall keep records of, and, if possible, shall re-send, all notice documents described in Paragraph 69 that are returned as undeliverable by the same procedures described in Paragraph 21.

**B. Deposit into the Settlement Fund**

71. No later than thirty-five (35) days before the distribution of the Individual Relief, the State shall deposit \$450,000.00 into the Settlement Fund.

72. The Settlement Fund, including any interest accrued on the amount deposited by the State, shall be used to pay the monetary awards to eligible African American and Hispanic Claimants.

**C. Acceptance of Individual Relief**

73. To receive an award of individual relief, a Claimant must return to the Claims Administrator an Acceptance of Individual Relief Award and Release of Claims Form as set forth in Appendix E of this Agreement, along with any applicable withholding tax forms, no later than forty (40) days after the Court approves the Final Individual Relief Awards List.

74. The submission date of each Acceptance of Individual Relief Award and Release of Claims Form shall be determined as described in Paragraph 45.

75. Within three (3) business days, or as soon as practicable, of the Claims Administrator's receipt of an Acceptance of Individual Relief Award and Release of Claims Form and

any applicable withholding tax forms, the Claims Administrator shall review the form(s) to determine whether it is fully executed with the information that is necessary to effectuate the Claimant's individual relief award.

- a. An Acceptance of Individual Relief Award and Release of Claims Form is fully executed if the Claimant completes all blanks that require a response as indicated by an asterisk on the form. A withholding tax form is fully executed based on whether it complies with the protocol provided to the Claims Administrator by the State pursuant to Paragraph 64.
- b. If the form is not fully executed, within three (3) business days, or as soon as practicable, the Claims Administrator shall notify the Claimant via mail, e-mail, and telephone that his/her form(s) was not fully executed.
- c. The Claims Administrator shall continue to conduct such review of all returned forms and to notify Claimants who submitted forms that were not fully executed until the deadline set forth in Paragraph 78.

76. No later than forty-five (45) days after the Court approves the Final Individual Relief Awards Lists, the Claims Administrator shall forward to the Parties copies of all Acceptance of Individual Relief Award and Release of Claims Forms and withholding tax forms it received from Claimants named in the Final Individual Relief Awards Lists.
77. No later than fifty-five (55) days after the Court approves the Final Individual Relief Awards Lists, the Claims Administrator shall provide the Parties with a list of all Claimants who submitted Acceptance of Individual Relief Award and Release of Claims Forms and withholding tax forms, identifying which Claimants submitted fully-

executed forms, as described in Paragraph 75, and which Claimants submitted forms that were not fully executed.

78. No later than seventy (70) days after the Court approves the Final Individual Relief Awards Lists, Claimants whose Acceptance of Individual Relief Award and Release of Claims Form and/or any applicable withholding tax forms were not fully executed must provide any missing information, and must return fully-executed forms. A Claimant's failure to return fully-executed forms by this deadline shall constitute a rejection of the offer of individual relief and shall release the Parties from any further obligation under the Agreement to make an award of individual relief to the Claimant. No later than three (3) business days after this deadline, the Claims Administrator shall provide the Parties with all of the returned Acceptance of Individual Relief Award and Release of Claims Forms and any applicable withholding tax forms.
79. No later than eighty (80) days after the Court approves the Final Individual Relief Awards Lists, the Claims Administrator shall provide the Parties with an updated list of all of the Claimants who submitted Acceptance of Individual Relief Award and Release of Claims Forms and any applicable withholding tax forms, identifying which Claimants submitted fully-executed forms and which Claimants submitted forms that were not fully executed.
80. No later than ninety-five (95) days after the Court approves the Final Individual Relief Awards Lists, the United States shall provide the State and the Claims Administrator with an Amended Final Monetary Awards List and an Amended Final Priority Hire Claimant List (collectively, "Amended Final Individual Relief Awards Lists"). The

Amended Final Monetary Awards List will identify for each Claimant who timely returned fully-executed Acceptance of Individual Relief Award and Release of Claims Forms along with any applicable withholding tax forms, the amount of monetary award to be paid, taking into account when each Claimant was disqualified by the initial written, revised written, or video exam. The Amended Final Priority Hire Claimant List shall identify each Claimant who is eligible to pursue priority hiring relief and who timely returned fully-executed Acceptance of Individual Relief Award and Release of Claims Forms.

**D. Issuance of Monetary Award Checks by State**

81. No later than one hundred twenty-five (125) days after entry of the Final Individual Relief Awards Lists, the Claims Administrator shall mail via certified U.S. mail (return receipt requested) a monetary award check to each Claimant listed on the Amended Final Monetary Awards List. The amount of the monetary award check shall be the amount shown for the Claimant on the Amended Final Monetary Awards List, less all appropriate taxes and other amounts withheld in accordance with Paragraph 82.
82. As directed by the State, the Claims Administrator shall withhold from each Claimant's monetary award the employee portions of all appropriate federal, state, and local income taxes; the employee's Medicare and FICA tax; and any other amounts that are required to be withheld by law. The Claims Administrator shall be responsible for remitting and reporting such employee-side withholdings to the appropriate taxing authorities.
83. The State shall be responsible for and remit to the appropriate taxing authorities the employer portion of all federal and state payroll taxes applicable on any monetary relief award paid to a Claimant, including employer contributions to Medicare and the Social

Security fund. The employer portion of such taxes shall not be deducted from any Claimant's monetary relief award, and such amounts shall not be payable from the Settlement Fund.

84. The Claims Administrator shall keep records of, and, if possible, shall re-send, all monetary award checks returned as undeliverable by the same procedures described in Paragraph 21.
85. No later than one hundred forty (140) days after entry of the Final Individual Relief Awards Lists, the Claims Administrator shall provide to the Parties a statement indicating the amount of the monetary payment made to each Claimant, the amounts withheld from each such monetary award check for taxes and other amounts required to be withheld by law, and the purpose of each such withholding.
86. No later than one hundred fifty-five (155) days after entry of the Final Individual Relief Awards Lists, the Claims Administrator shall provide to the Parties a list of all Claimants whose monetary award payments are still outstanding. The list shall identify which Claimant's checks appear to have been delivered (no returned check) but have not been cashed, and which Claimant's checks have been returned to the Claims Administrator as undeliverable. The Claims Administrator shall also provide a statement of the amount of funds remaining in the Settlement Fund.
87. No later than one hundred sixty-five (165) days after entry of the Final Individual Relief Awards Lists, the Claims Administrator shall e-mail and mail a letter to all Claimants whose monetary award payments are still outstanding to inform such Claimants that

their awards may be redistributed or otherwise reallocated if they do not accept payment by a specified date one hundred eighty (180) days after issuance of the check. The letter shall state that no further warnings regarding such distribution will be given.

88. No later than three hundred fifteen (315) days after entry of the Final Individual Relief Awards Lists, the Claims Administrator shall provide the Parties with a list of all Claimants whose monetary award checks were returned as undeliverable and/or uncashed, as well as a statement of the amount of funds remaining in the Settlement Fund.
89. No later than three hundred twenty-five (325) days after entry of the Final Individual Relief Awards Lists, the United States shall inform the State and the Claims Administrator either that the remaining funds should be reallocated among the other Claimants who are listed on the Amended Final Monetary Awards Relief List in a manner designed to preserve the relative proportions of the Claimants' shares of the Settlement Fund or, if the remaining funds are *de minimis*, consult with the State about the distribution.

**E. Priority Hiring Relief**

90. From the Claimants on the Amended Final Priority Hire Claimant List, the State shall make eighteen (18) priority hires of African American Claimants and nineteen (19) priority hires of Hispanic Claimants. Priority hiring relief includes an award of non-competitive retroactive seniority benefits corresponding with the Claimant's retroactive seniority date, including retroactive pension benefits as described in Paragraphs 102 to 105, except that priority hires who failed only the written exam administered in 2017 as part of the State's interim selection process pursuant to Paragraphs 32-33 of this Agreement, and did not previously fail the initial written, revised written, or video

exams administered from 2000-2013, shall not be eligible for retroactive pension benefits.

91. To count as a priority hire under this Agreement, the person must be a Claimant who is eligible for priority hiring relief as indicated by the Amended Final Priority Hire Claimant List and either:
  - a. Begins academy training in one of the first two (2) academy classes to begin after the Court enters the Final Individual Relief Awards Lists; or
  - b. Is a current RIDOC correctional officer or an officer hired through the interim process described above, who, prior to being hired, failed the initial written exam, the revised written exam, or the video exam between 2000 and 2013 who is credited by the State with noncompetitive retroactive seniority corresponding with the Claimant's retroactive seniority date.
92. Nothing in this Agreement shall preclude any Claimant from applying for hire or being hired into the correctional officer position under any of the State's regular selection processes. However, hire of a Claimant under one of the State's regular selection processes, whether or not the hiring predated entry of the Agreement, shall not be counted toward fulfillment of the State's priority hiring obligations under this Agreement, except pursuant to the provisions set forth in Paragraphs 91.b and 101. Hire of a Claimant under one of the State's regular selection processes shall not affect the Claimant's eligibility for monetary relief under this Agreement. The State also may not refuse to

select or hire a Claimant under one of its regular selection processes because the Claimant is eligible for individual relief under this Agreement.

93. The State's priority hiring obligation under this Agreement is satisfied upon the hiring of thirty-seven (37) priority hires as set forth in Paragraph 90, or upon the exhaustion of the Amended Final Priority Hire Claimant List.

**i. Priority Hiring Relief Awarded to Eligible Claimants Identified in Paragraph 91.a**

**a. Selection Process**

94. The State shall require any eligible Claimant seeking priority hiring relief to successfully complete the State's correctional officer screening and selection procedures that are then in effect and required of all other correctional officer applicants. The State shall make reasonable efforts as with all other applicants to accommodate Claimants in scheduling the screening and selection procedures described in this Paragraph.

95. The State shall extend to any eligible Claimant seeking priority hiring all rights, privileges, and processes, including disqualification appeals processes that the State regularly extends to applicants for correctional officer positions.

96. If the State disqualifies any Claimant listed on the Amended Final Priority Hire Claimant List based on any part of its screening and selection process before fulfilling its priority hiring obligations under the Agreement, the State shall, within ten (10) days of making such determination, send the United States written notice of its determination, the basis of its determination, and any supporting documentation. If the United States disagrees with the State's determination to disqualify any Claimant, it shall notify the

State in writing, and the Parties shall make a good faith effort to resolve the disagreement. If the Parties are unsuccessful in that regard, either Party may seek judicial resolution pursuant to the dispute resolution procedures set forth at Paragraph 110.

**b. Offer of Priority Hire**

97. The State will provide the Claimant with a written conditional offer of priority hire upon a Claimant's successful completion of the State's correctional officer screening and selection procedures that are then in effect, that are required of all other correctional officer applicants, and that precede the State's ordinary practice of extending conditional offers of hire to correctional officer applicants. The written conditional offer of priority hire will prominently indicate: (i) that the conditional offer is an offer of priority hire being made pursuant to the Agreement; (ii) that upon successful completion of the remaining correctional officer screening and selection procedures that are then in effect, as well as the successful completion of the training academy and the opening of a vacancy for an entry level correctional officer, the Claimant will enter as a correctional officer with the RIDOC, and will be entitled to noncompetitive retroactive seniority corresponding with the Claimant's retroactive seniority date as provided by this Agreement; (iii) the salary and noncompetitive retroactive seniority benefits based on his/her retroactive seniority date that the State will provide upon entry into the Rhode Island Department of Corrections; (iv) the telephone number at which the Claimant may contact the State's Settlement Agreement Compliance Officer with any questions regarding the offer of priority hire; and (v) the date that the Training Academy will

begin. On the date that such a conditional offer of priority hire is provided to a Claimant, the State shall send a copy of the conditional offer of priority hire to the United States.

98. If a Claimant (i) fails to accept the State's conditional offer of priority hire; (ii) fails to successfully complete the remaining correctional officer screening and selection procedures that are then in effect and that are required of all other correctional officer applicants; or (iii) fails to report for the training academy on the date directed by the State, except for good cause as determined by the parties, the State's obligation to provide the offer to or make a priority hire of that Claimant ceases. However, such instances shall not constitute priority hiring under Paragraph 91.a and shall not decrease the number of priority hires that the State must make under Paragraph 90.

**c. State's Reports to the United States on Claimants Hired**

99. No later than thirty (30) days after the beginning of any academy class for which conditional offers of priority hire are made, the State shall provide to the United States a written report identifying: (i) the name of each Claimant who was offered a conditional offer of a priority hire position; (ii) whether each such Claimant accepted the offer of a conditional priority hire position and entered the training academy; (iii) whether each such Claimant is still in the training academy; and (iv) whether any Claimants who were offered a conditional priority hire position did not report to the training academy on the start date identified in the State's final offer of hire, or left the training academy before graduation, as well as the reasons therefore, to the extent such reasons are known by the State.
100. No later than thirty (30) days after the completion of any academy class within which conditional priority hires attended, the State shall provide to the United States a written

report identifying those Claimants who successfully completed academy training and those who did not successfully complete academy training. For Claimants who did not successfully complete academy training, the report shall include a statement of the reason(s) that the Claimant did not complete academy training, along with all available documentation relating to such reason(s).

**ii. Priority Hiring Relief Awarded to Incumbent Correctional Officers Pursuant to Paragraph 91.b**

101. No more than fifteen (15) incumbent RIDOC correctional officers who are eligible Claimants listed on the Amended Final Priority Hire Claimant List may count toward the State's priority hiring obligation pursuant to Paragraph 90, unless, upon the State's request, the United States provides written consent permitting the State to exceed this limit. All such officers shall be credited with noncompetitive retroactive seniority corresponding with their retroactive seniority dates. The State will notify the United States in writing of any Claimants who are awarded priority hiring relief who currently serve as incumbent RIDOC correctional officers within thirty (30) days of any such award of priority hiring relief, and subsequently those hired through the interim selection process, including providing the United States with the names of the Claimants and details on the noncompetitive retroactive seniority credited to the Claimants, including salary adjustments.

**iii. Retroactive Pension Benefits**

102. The State shall make employer-side contributions to the Employees' Retirement System of Rhode Island ("ERSRI") for each priority hire in an amount to be determined once all thirty-seven (37) priority hires are made or, if there are fewer than thirty-seven

(37) Claimants on the Amended Final Priority Hire Claimant List who are not disqualified from the screening and selection process pursuant to Paragraph 96, when all such Claimants are hired.

103. The State's employer-side pension contributions to ERSRI shall not exceed a total of ninety-six (96) years of credit for all priority hires.

- a. The State shall make employer-side pension contributions to ERSRI in the following amounts, if the sum of all priority hires' years of pension credit is equal to or less than ninety-six (96): Priority hires who were disqualified by failure of the initial written, revised written, or video exam in 2000 or 2001 will receive five (5) years of pension credit; those disqualified in 2004 or 2006 will receive four (4) years of pension credit; those disqualified in 2007 or 2008 will receive three (3) years of pension credit; those disqualified in 2011 will receive two (2) years of pension credit; and those disqualified in 2013 will receive one (1) year of pension credit.
- b. If the sum of all priority hires' years of pension credit exceeds ninety-six (96), the State shall make employer-side pension contributions to ERSRI of a total value equal to ninety-six (96) years of pension credit, to be distributed among priority hires in accordance with the structure of the years of credit described in Paragraph 103.a.
- c. For those incumbent correctional officers who are awarded priority hiring relief pursuant to Paragraph 91.b, the State shall make employer-side pension contributions to ERSRI. Such Claimants shall be credited one (1) year of pension

credit for every three (3) years of time that passed between the Claimant's retroactive seniority date and the date on which the Claimant in fact started academy training. These amounts of pension credit will also count toward the ninety-six (96) years of pension credit.

- d. Priority hires who failed only the written exam administered in 2017 as part of the State's interim selection process pursuant to Paragraphs 32-33 of this Agreement, and did not previously fail the initial written, revised written, or video exams administered from 2000-2013, shall not be eligible for retroactive pension benefits.

104. At the time the State credits a priority hire with noncompetitive retroactive seniority corresponding with the Claimant's retroactive seniority date, the State shall offer to each priority hire, in writing, the opportunity to make retroactive employee-side contributions to ERSRI. A copy of the written offer shall be provided by the State to the United States and shall explain that priority hires will be permitted to make retroactive employee-side contributions to ERSRI by lump sum payment, by payroll deduction specified in an installment pursuant R. I. Gen. Laws § 36-9-47 available to all State employees, or by roll over of pre-tax dollars from a qualified plan such as a 401(k), to the extent permitted by applicable state or federal law, and subject to any terms or conditions applicable to a qualified plan such as a 401(k). The written offer will also explain that if retroactive employee-side contributions are not made within the designated time period as set forth in state law or under the pension system, the priority hire

will not be eligible for the pension credits described in Paragraphs 102 and 103 of this Agreement.

105. At the time the State credits a priority hire with noncompetitive retroactive seniority corresponding with the Claimant's retroactive seniority date, the State shall offer to each priority hire, in writing, the opportunity to create a 457(b) retirement account as with all other correctional officers. A copy of the written offer shall be provided by the State to the United States. The 457(b) retirement account offered by the State will be separate from (and in addition to) the pension plan each State employee has with ERSRI.

**IX. RECORD KEEPING AND COMPLIANCE MONITORING**

106. While this Agreement remains in effect, the State shall maintain all of the following records:
- a. All applications for the correctional officer position;
  - b. All non-privileged documents relating to the screening, evaluation, or selection of applicants for the position of correctional officer, other than documents the State is contractually obligated to return to a test developer after use thereof;
  - c. All data and documents relating to the administration of any selection device adopted or utilized pursuant to this Agreement, including those described in Paragraphs 33 and 35;
  - d. All non-privileged documents known to the State relating to written or verbal complaints made by any person or organization regarding discrimination on the basis of Hispanic national origin or African American race arising from the State's use of the interim selection process pursuant to Paragraphs 32-33, or the

State's use of new hiring procedures pursuant to Paragraphs 34-39 of this Agreement;

- e. All non-privileged documents relating to the evaluation, selection, designation, and/or employment of priority hires under this Agreement; and
- f. All other non-privileged documents relating to the State's compliance with the requirements of this Agreement, including but not limited to documents relating to the payment or award of individual relief to any Claimant under this Agreement.

- 107. Except as otherwise provided in this Agreement, the State will make available to the United States, no later than thirty (30) days after the United States so requests in writing, any non-privileged records maintained in accordance with Paragraph 106 and any additional non-privileged documents reasonably relating to any dispute arising under the Agreement. If such requests become unduly burdensome on the State, relief may be sought from the Court.
- 108. When possible, all records furnished to the United States shall be provided in a computer-readable format to be agreed upon by the Parties prior to production.
- 109. Within thirty (30) days after the United States so requests in writing, the State shall make available in Providence for interview or deposition (at the United States' option) any agent, employee, or official of the State who the United States reasonably believes has non-privileged knowledge or information necessary to verify the State's compli-

ance with the terms of this Agreement or to resolve a dispute arising under this Agreement. The State may likewise interview or depose any witness with non-privileged knowledge or information regarding the matter in dispute.

**X. DISPUTE RESOLUTION**

110. The Parties shall attempt in good faith to resolve informally any disputes that arise under this Agreement. If the Parties are unable to resolve the dispute expeditiously, either party may submit the disputed issue to the Court for resolution upon fifteen (15) days written notice to the other party, unless a different time period has been specified elsewhere in the Agreement.

**XI. DURATION OF THE SETTLEMENT AGREEMENT**

111. Provided there are no outstanding disputes being resolved pursuant to Paragraph 110, this Agreement shall be dissolved without further order of the Court upon the completion of the following:

- a. Fulfillment of the Parties' obligations regarding General Injunctive Relief set forth in Section V of this Agreement;
- b. Completion of the process regarding issuance of monetary award checks set forth in Paragraphs 81 through 89 of this Agreement; and
- c. The passage of forty-five (45) days after the date the State provides the last of the reports and statements regarding priority hiring relief required by Paragraphs 99 and 100 of the Agreement.

112. The Parties will promptly file with the Court a notification of the fulfillment of all obligations set forth under Paragraph 111 and request that this action be dismissed.

**XII. COSTS AND FEES**

113. The United States shall bear all of the costs incurred by the Claims Administrator in the implementation of the Agreement, including the cost of all notification and publication procedures described above.
114. Other than the payment of costs pursuant to Paragraph 113, each party shall bear its own costs, and other expenses incurred as a result of obligations imposed by this Agreement.
115. Each party shall bear its own costs, attorneys' fees, and other expenses incurred in this litigation.

**XIII. MISCELLANEOUS**

116. The Court shall retain jurisdiction over this Agreement for the purpose of resolving any disputes or entering any orders that may be appropriate to implement the Agreement until the obligations set forth in Paragraph 111 have been met.
117. The Parties shall, at a minimum, meet quarterly (in person or by telephone, at the option of the Parties) during the duration of the Agreement to discuss any issues relevant to implementation of the Agreement.
118. If there is any conflict between this Agreement and the requirements of any state or local law or regulation, the terms of this Agreement and Federal law shall control.
119. This Agreement constitutes the entire agreement of the Parties, and supersedes all prior agreements, representations, negotiations, and undertakings not set forth or incorporated herein.
120. Unless the United States has given express prior authorization for communication by other means, all written information and documents required to be delivered under this Agreement to the United States by the State shall be sent via overnight delivery to:

Rhode Island Department of Corrections Settlement Team  
Employment Litigation Section  
U.S. Department of Justice  
Civil Rights Division  
PHB, Room 4500  
601 D Street NW  
Washington, DC 20579

121. Unless the State has given express prior authorization for communication by other means, all written information and documents required to be delivered under this Agreement to the State by the United States shall be sent via overnight delivery to:

Rhode Island Office of the Attorney General  
Attention: United States v. Rhode Island Department of Corrections Team  
150 South Main Street  
Providence, RI 02903

122. If any provision of this Agreement is found to be unlawful, only the specific provision in question shall be affected, and the other provisions will remain in full force and effect.
123. Final entry of this Agreement constitutes the entry of final judgment within the meaning of Rule 54 of the Federal Rules of Civil Procedure as to all claims asserted in this action.

It is so ORDERED, this \_\_\_\_ day of \_\_\_\_\_, 2017.

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JUDGE WILLIAM E. SMITH  
UNITED STATES DISTRICT JUDGE

**AGREED AND CONSENTED TO BY:**

**FOR PLAINTIFF UNITED STATES OF AMERICA:**

JOHN M. GORE  
Acting Assistant Attorney General

DELORA L. KENNEBREW  
Chief

CLARE GELLER  
Deputy Chief



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Date: September 18, 2017

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Date: September 18, 2017