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20 UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

21 _____)
MICHAEL BRIONEZ, *et al.*,)
22) No. C 01 3969 CW
Plaintiffs,)
23 v.) FINAL JUDGMENT
APPROVING
24 UNITED STATES DEPARTMENT OF) SETTLEMENT AGREEMENT
AGRICULTURE, *et al.*,)
25)
Defendants.)
26 _____)

27 Final Judgment Approving
Settlement Agreement
28 No. C 01 3969 CW

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20 UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
21 OAKLAND DIVISION

22 MICHAEL BRIONEZ, *et al.*,

23 Plaintiffs,

24 v.

25 UNITED STATES DEPARTMENT OF
AGRICULTURE, *et al.*,

26 Defendants.

)
) No. C 01 3969 CW
)
)

) SETTLEMENT AGREEMENT
)
)

27 Settlement Agreement
28 NO. C 01 3969 CW

1 I. INTRODUCTION AND NATURE OF THE CASE

2 This Settlement Agreement ("Settlement Agreement" or "Agreement") is entered into
3 between Plaintiffs Michael Brionez, Peggy Hernandez, Maria Hernandez and Alan Gallegos,
4 signatories to the March 30, 1990 Resolution Agreement that was the subject of an EEOC
5 complaint, EEOC Appeal # 01944100, and organizational Plaintiff Regional Hispanic Working
6 Group ("RHWG"), by their counsel, on behalf of a class of Hispanic employees ("Plaintiffs" or
7 "Class"), of the Pacific Southwest Region of the Forest Service of the United States Department
8 of Agriculture ("Region 5"), and defendant Ann M. Veneman, Secretary of the United States
9 Department of Agriculture, sued in her official capacity, and the Pacific Southwest Region,
10 Forest Service, U.S. Department of Agriculture ("Region 5") ("Defendants"), by their counsel.

11 On October 22, 2001, Plaintiffs filed this action in the United States District Court for the
12 Northern District of California, C 01-3969 CW (the "District Court"). Plaintiffs allege in their
13 complaint that Region 5 violated Title VII of the Civil Rights Act of 1964, as amended (42
14 U.S.C. §§ 2000e et seq.). See Complaint (attached as Exhibit A). Plaintiffs allege that Region
15 5's selection processes leading to hiring and promotion unlawfully discriminate against Class
16 Members in violation of Title VII. As a result, Plaintiffs allege that Hispanics are under
17 represented in Region 5's current workforce, as compared to applicable civilian labor force
18 statistics. Plaintiffs further allege that Defendants have engaged in discriminatory harassment
19 and retaliation against Class Members, including retaliation for Class Members' participation in
20 the RHWG and other civil rights activities. Plaintiffs further allege that Defendants are not in
21 compliance with a Resolution Agreement entered into between representatives of the Hispanic
22 Working Group and Region 5, Department of Agriculture on March 30, 1990. On October 14,
23 1999, the EEOC specifically held that Defendants "did make a good faith effort to meet its
24 obligations under the [Resolution Agreement]." Plaintiffs filed a motion for reconsideration of
25

1 that decision which was denied by the EEOC on October 14, 2001. The District Court has
2 certified a class as defined in Section II below.

3 In the interest of resolving this action without the need for further litigation, and without
4 any admission of liability by any party, the Parties hereby agree to the following terms on which
5 this action is to be fully and finally resolved.

6 II. DEFINITIONS AND GENERAL TERMS

7 A. Definitions

8 As used in this Agreement the following terms have the meaning specified below:

9 1. “Applicable Labor Pool” means those individuals represented by the
10 relevant civilian labor force data capturing the qualifications
11 corresponding to Region 5 job series and categories. For purposes of this
12 Agreement only, the Parties agree that the best available statistics for
13 identifying the relevant civilian labor force are EEOC Civilian Labor
14 Force Data. Specifically,

15 a. For professional series with more than 20 employees:

16 i. For each job series in the professional category with more
17 than 20 employees, Defendants shall provide the National
18 Professional Series Specific EEOC Civilian Labor Force
19 Data.

20 b. For non-professional series with 50 or more employees:

21 i. For each job series in the administrative category with 50
22 or more employees GS-13 and above, Defendants shall
23 provide the National
24

1 Administrative Series Specific EEOC Civilian Labor Force
2 Data.

3 ii. For each job series in the administrative category (GS-12
4 and below), in the technical category, in the clerical
5 category, and in the blue collar category with 50 or more
6 employees, Defendants shall provide the California Series
7 Specific EEOC Civilian Labor Force Data.

8 c. For non-professional series with fewer than 50 employees:

9 i. For all non-professional series with fewer than 50
10 employees, Defendants shall combine them in their
11 respective "ATCB" categories and provide California
12 "ATCB" EEOC Civilian Labor Force Data.

13 Defendants shall provide this information using the 1990 EEOC Civilian
14 Labor Force Data until the 2000 EEOC Civilian Labor Force Data is
15 available. See Exhibit B for each job series and/or job category in Region
16 5 and the corresponding EEOC Civilian Labor Force Data to be used for
17 the Applicable Labor Pool.

18 2. "Class" means all permanent Hispanic employees of the Forest Service,
19 Region 5 who allege that they have applied for and not been selected for a
20 Region 5 Position based on race or national origin, or have been retaliated
21 against because of their involvement in civil rights activities. The class
22 also includes former permanent Hispanic employees of the Forest Service,
23 Region 5 who have formal EEO complaints, based on non-selection
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1 because of race, national origin, or retaliation, pending on the Effective
2 Date of this Agreement.

3 3. "Class Member" or "Member of the Class" means a person who falls
4 within the definition of the Class.

5 4. "District Court" means the United States District Court for the Northern
6 District of California.

7 5. "Defendants" means Ann M. Veneman, Secretary of the United States
8 Department of Agriculture, in her official capacity, and the Pacific
9 Southwest Region, Forest Service, U.S. Department of Agriculture
10 ("Region 5").

11 6. "Effective Date" means the first date when the Agreement has become
12 final as set forth in definition 9.

13 7. "Expiration Date" means midnight, three years from the date that the
14 initial Monitor is retained pursuant to paragraph IV.F.

15 8. "External applicant" means an individual not employed by the United
16 States government who submitted an application for a Region 5 Position.

17 9. "Final Judgment" means the later of: (i) the date of final affirmance on an
18 appeal from the Judgment, the expiration of the time for the filing of a
19 petition for a writ of certiorari to review the Judgment, and, if certiorari is
20 granted, the date of final affirmance of the Judgment following review
21 pursuant to that grant; or (ii) the date of final dismissal of any appeal from
22 the Judgment or the final dismissal of any proceeding on a writ of
23 certiorari granted to review the Judgment; or (iii) if no appeal from the
24 Judgment is filed, the expiration of the time for the filing or noticing of
25

1 any appeal from the Court's Judgment approving the Agreement (i.e., sixty
2 (60) days after entry of the Judgment).

3 10. "Judgment" means the Judgment to be rendered by the District Court.

4 11. "Organizational Plaintiff" means the RHWG, which includes the RHWG
5 Executive Committee ("RHWGX"). The RHWG is comprised of
6 Hispanic employees of Region 5, and formed for the purpose of promoting
7 the civil rights of Hispanics in Region 5. The RHWG is represented by
8 one representative from each Region 5 forest and one from the Regional
9 Office; representatives are elected by the RHWG members from each
10 forest. The RHWGX is an elected body of the RHWG.

11 12. "Parties" means, collectively, Representative Plaintiffs, Plaintiff
12 signatories to the March 30, 1990 Resolution Agreement, and
13 Organizational Plaintiff, on behalf of themselves and Members of the
14 Class, and Defendants.

15 13. "Region 5 Position" means a funded vacancy that management decides to
16 fill permanently and where management has a choice regarding selection,
17 after fulfilling all of the mandatory placement requirements found in the
18 current Forest Service Merit Promotion Plan. The following are not
19 Region 5 Positions: (1) reassignments that fall under Rules 1, 3, 4, 5, 6, 7,
20 8, 9, 10, 11, and 12, as those Rules are defined in the Guide to Processing
21 Personnel Action, Chapter 14, Table 14-D (Reassignments in the
22 Competitive Service); (2) reassignments that result in the immediate
23 abolishment of the vacated position due to workforce planning; and (3)
24 accretion of duties promotions.

1 14. "Regional Forester" means the Regional Forester or Associate Regional
2 Forester for Region 5.

3 15. "Relevant Geographic Area" (1) for all clerical, technical, blue collar
4 positions as well as administrative GS-12 and below, is California, and (2)
5 for all professional positions and administrative GS-13 and above, is the
6 United States.

7 16. "Representative Plaintiffs" means the named plaintiffs in the class action:
8 Michael Brionez, Peggy Hernandez, Maria Hernandez, Alan Gallegos,
9 and organizational Plaintiff Regional Hispanic Working Group
10 ("RHWG").

11 B. General Terms

12 1. Term of Agreement. The term of this Agreement is three years, except as
13 provided below in this paragraph. This Agreement and all its provisions
14 will expire and will be without force and effect as of the Expiration Date,
15 except that (1) in the event the District Court determines, based on a
16 motion to enforce compliance with Section IV, that Defendants are in
17 breach, then the specific obligation(s) that is the subject of the motion to
18 enforce compliance shall be extended for an additional period of time
19 equal to the period bounded by the date on which the motion to enforce
20 was filed through and including the date of the District Court's order,
21 except that this additional time period shall not exceed the time period
22 equal to the period bounded by the date the motion to enforce was filed
23 through and including the Expiration Date; (2) the District Court may
24 order a one-time, one-year extension of the Term of the Agreement, as
25 provided in VII.B.8; (3) if there is a motion to enforce compliance with
26

1 Section IV pending in the District Court on the Expiration Date, then the
2 specific obligation(s) that is the subject of the motion to enforce
3 compliance shall be stayed while the motion is still pending in the District
4 Court; and, (4) this time limitation does not apply to the effect of this
5 Agreement on other claims as described in Section III below.
6

7 The Parties shall meet and confer two (2) years after the Effective Date of
8 the Agreement to determine whether an earlier termination is warranted.

9 2. Persons Covered By Agreement. The Class covered by and eligible for
10 relief under this Agreement is defined in Section II.A. pursuant to the
11 District Court's order entering this Settlement Agreement.

12 3. Non-Admission of Liability. This Agreement does not constitute an
13 admission of the merits of any position taken by any party to this
14 litigation, nor of any liability by Defendants for the violation of any law,
15 statute, regulation, or policy. Defendants expressly deny any wrongdoing
16 or liability.

17 III. EFFECT OF AGREEMENT

18 A. Mediation of Individual EEO Complaints

19 1. Subject to subparagraph 5 below, any Class Member who, at the Effective
20 Date, has a pending formal individual EEO complaint of non-selection
21 based on race or national origin, or of retaliation for participation in
22 protected activity with regard to this class complaint, will have the
23 opportunity to participate in mediation under this Agreement to resolve
24 their complaints. Section III is applicable to all class members, including
25 any and all named-plaintiffs.
26

1 2. Within thirty (30) calendar days of the Effective Date of this Agreement,
2 Defendants shall issue a mediation notice to all class members who have
3 pending formal individual EEO complaints (as described in Section
4 III.A.1) and who have not been issued a final agency decision. The
5 mediation notice will be accompanied by a mediation request form. To
6 elect mediation of an EEO complaint, a Class Member must return the
7 Mediation Form no later than (30) calendar days after receipt of the Form.
8 (The Mediation Request Form is presumptively received within five (5)
9 calendar days of mailing.) A Class Member who does not elect mediation
10 or who does not return the Mediation Request Form under section III A. 2.
11 will have his or her complaint processed under the normal EEO complaint
12 process. That Class Member will not participate in mediation under this
13 Agreement.

14 3. The mediation will be conducted by Defendants. The mediation session
15 will consist of a mediator from a local, non-USDA mediation contractor, a
16 representative(s) from the Forest Service, Region 5, and the individual
17 Class Member and/or their representative(s).

18 4. If, after the mediation process, an EEO complaint is not resolved, it will
19 be forwarded to the Region 5 Regional Office. The Region 5 Regional
20 Office will review the case to determine if any additional action will be
21 taken, and shall make recommendations to the Regional Forester. The
22 Regional Forester will make the final determination, within his/her
23 delegated authority, regarding settlement of the EEO complaint.

24 a. If the Region 5 Regional Forester determines that an additional
25 offer should be made, then the individual Class Member will

1 receive a "best and final offer" (BAFO). An individual Class
2 Member's acceptance of a BAFO must be within ten (10) calendar
3 days of his/her receipt of the BAFO letter, or the complaint will
4 continue to be processed under the normal EEO complaint process.
5 (The BAFO letter is presumptively received within five (5)
6 calendar days of mailing.)

7 b. If the Region 5 Regional Forester makes a determination that no
8 additional action will be taken, the complaint will continue to be
9 processed under the normal EEO complaint process.

10 5. Any Class Member who received a BAFO under Defendants' previous
11 backlog process and declined to accept it is not eligible to participate in
12 the mediation process set forth in this Section and will continue to have
13 his/her formal individual EEO complaint processed under applicable EEO
14 procedures.

15 6. The costs of the mediation shall be paid for by Defendants.

16 IV. DUTIES AND OBLIGATIONS

17 A. It is the intention of Defendants to undertake and continue specific measures
18 designed to eliminate any barriers to hiring, promotion, and retention of Hispanics
19 in the Region 5 workforce. Defendants shall undertake in good faith the specific
20 measures set forth in Sections V and VI of this Agreement to eliminate such
21 barriers.

22 1. Goal. It is the goal of Defendants to increase Hispanic representation in
23 the Region 5 workforce to a percentage equivalent to the percentage of
24 Hispanics in the Applicable Labor Pool in the Relevant Geographic Area.

1 2. Statement on Preferences. Nothing contained in this Agreement will
2 obligate Region 5 to create new positions, to fill any particular position, or
3 to promote, select, or assign any particular person to any particular
4 position. No provision of this Agreement is intended as, or may be
5 construed as imposing, a quota.

6 B. The Regional Forester shall incorporate the following into a Regional Forester
7 policy statement to be issued as the Parties agree:

8 "Region 5 is dedicated to the principle of equal employment opportunity for all of
9 its employees. Region 5 is an equal opportunity employer, and equal employment
10 opportunity principles are an important part of Region 5 personnel practices and
11 daily operations. Opportunities for training, career development, and
 advancement are to be equally available to everyone. Region 5 believes that its
 greatest strength is the rich diversity of its work force and is committed to treating
 all employees fairly and equitably."

12 "Region 5 is committed to maintaining a work environment where every
13 employee is free from discrimination or harassment on the basis of race, color,
14 national origin, gender, religion, age, disability, political beliefs, sexual
15 orientation, and marital or family status. The Region is committed to ensuring
 that persons who engage in civil rights related activities, including the monitoring
 and enforcement of this Agreement, may do so without fear of retaliation or
 reprisal."

16 C. Defendants will maintain a full-time Regional Recruitment Coordinator position,
17 with the primary purpose of implementing the Recruitment Program set forth in
18 Section V. The duties of the Regional Recruitment Coordinator are set forth in
19 Section V. B. Defendants shall fund such position at a level enabling the
20 Regional Recruitment Coordinator to accomplish the objectives of this
21 Agreement. In carrying out the duties of this position, the regional recruitment
22 Coordinator will engage the Directors of Human Resources and Civil Rights, the
23 Regional Forester, and other members of the Regional Leadership Team. All
24 programs, including the Recruitment Program, are the responsibility of the
25 Regional Forester.

1 D. Defendants shall make a good faith effort to maintain and fill the position of
2 Region 5 Civil Rights Director, during the term of this Agreement.

3 E. As of the Effective Date, Region 5 continues to have the authority to hire
4 externally, pursuant to demonstration project authority, without the prior approval
5 of the Office of Personnel Management (OPM). Pursuant to this authority,
6 Defendants shall advertise Region 5 positions in the following job series in the
7 Relevant Geographic Area, both government-wide and through demonstration
8 project authority, throughout the term of this Agreement:

9 All job series with 50 or more employees and job series 193, 201, 303,
10 2210, 340, 401, 460, 462, 486, 802, 810, 1001, 1101, 5716, and 5823.

11 If Region 5's authority to hire externally expires, Region 5 shall request and shall
12 in good faith seek to secure approval from OPM for external hiring authority.

13 F. Within sixty (60) days of the Effective Date of this Agreement, Region 5 shall
14 retain and fund a monitor for the purpose of monitoring the implementation of the
15 specific terms of the Agreement. The duties of the Monitor are set forth in
16 Section VI.

17 G. Defendants shall make a good faith effort to provide sufficient resources to meet
18 his obligations under this Agreement. It shall constitute an affirmative defense to
19 any enforcement action under Section VII of this Agreement that, despite good
20 faith efforts, Defendants' failure to meet their obligations under this Agreement is
21 due to the unavailability of sufficient resources.

22 V. METHODS OF IMPLEMENTATION

23 A. Outreach, Recruitment, Hiring, and Retention

24 1. The Regional Recruitment Program includes components that are
25 designed (1) to disseminate effectively information relating to
26 employment opportunities and (2) to increase the diversity of the applicant

1 pool by engaging in recruitment activities, both government-wide and
2 externally,
3 consistent with the obligations set forth in Section IV.

4 2. Region 5 will monitor all recruitment and promotion actions of Forest
5 Supervisors and Regional Office Directors and all recruitment and
6 promotion actions taken under their supervision.

7 3. Defendants shall employ the Outreach and Recruitment Procedures using
8 the Employment Outreach and Recruitment Documentation, attached as
9 Exhibit C, or, if necessary, an alternative agreed upon by the Parties, in
10 any action to fill a vacancy through competitive processes for a Region 5
11 Position. Prior to the final selection for a Region 5 Position, the selection
12 certificate and supporting paperwork will be reviewed by the unit Human
13 Resource Officer.

14 4. Defendants recruit from the Student Career Employment Program and
15 from Region 5's temporary employees, including 1039 appointments,
16 "not-to-exceed-one-year" appointments, and term appointments.

17 5. Region 5 will comply with Forest Service directives and policy on
18 workforce planning.

19 B. The Regional Recruitment Coordinator

20 1. The Regional Recruitment Coordinator's responsibilities include the
21 following:

- 22 a. coordinating outreach and recruitment;
- 23 b. being knowledgeable in Region 5's hiring practices, standards, and
24 procedures; and
- 25 c. making regular presentations (with the assistance of Region 5
26

1 representative(s)) at the Regional Leadership Forum to appraise
2 the team of the status of Region 5's outreach, recruitment, and
3 selection activity; to identify any barriers to outreach and
4 recruitment; and, to request the team's assistance when necessary
5 to accomplish the goals of his/her program.

- 6 2. The Regional Recruitment Coordinator shall have access to the following
7 information: the number of Region 5 positions at each unit; position
8 requirements including grade level, qualifications, and any other special
9 requirements; the number of resumes or other application forms submitted
10 for a particular opening; the number of applicants interviewed; the
11 number of all applicants offered the position; the race and national origin
12 of the person who accepts each employment position; and the number of
13 applications coming from persons employed by Region 5, the U.S.
14 Department of Agriculture Forest Service nationally, the U.S. Department
15 of Agriculture as a whole, any other federal agencies, and those coming
16 from external applicants. The Regional Recruitment Coordinator shall
17 have access to this information by race, national origin, and gender to the
18 extent it is provided by the applicants.

19 C. Training

- 20 1. At the first Regional Leadership Forum after the Effective Date, Region 5
21 shall provide training to all Forest Supervisors and Regional Office
22 Directors on this Agreement and on their obligations in implementing this
23 Agreement. Region 5 will discuss annually at the Regional Leadership
24 Forum Region 5's progress in achieving compliance with this Agreement.

- 1 2. All Region 5 employees will be provided EEO training in accordance with
2 Departmental policy, including training on this Agreement and on their
3 obligations in implementing this Agreement.

4 VI. MONITORING OF AGREEMENT

5 A. Monitor

- 6 1. Within 60 days of signing the Agreement, the Parties will each nominate
7 two individuals, who are not federal employees, for selection as the
8 Monitor. The Parties will then negotiate to reach agreement on the
9 selection of the Monitor. If the Parties cannot agree on the selection of the
10 Monitor, then the District Court will select the Monitor.
- 11 2. The responsibilities of the Monitor shall continue during the 3-year term
12 of this Agreement, and may or may not be extended by the Court as
13 defined under VII.B.8.
- 14 3. As a condition of employment, the Monitor shall sign an appropriate
15 confidentiality agreement and Privacy Act Protective Order.
- 16 4. The Defendant shall retain the Monitor as a contract employee. The
17 Monitor shall use existing Region 5 resources to perform his/her duties.
18 Defendants shall provide, subject to reasonable budgetary constraints,
19 reasonable funding to fulfill the duties and responsibilities of
20 the Monitor.
- 21 5. The Monitor shall have reasonable access to relevant books, data, and
22 documents, in whatever form they are maintained in the ordinary course of
23 business, and other sources of information necessary or appropriate to the
24 exercise of his/her authority.

1 progress in complying with the Agreement and, as appropriate, to develop
2 such procedures as the Parties agree are necessary to effectuate the terms
3 of this Agreement.

4 2. Representatives from the Regional Forester's Office and the RHWG shall
5 meet annually. The first annual meeting between the Regional Forester's
6 Office and the RHWG shall be held no later than one month following the
7 issuance of the first monitoring report, as described in paragraph VI.D., or
8 eight months following the Effective Date of this Agreement, whichever
9 date is earlier. The annual meeting shall not exceed two days, exclusive
10 of travel time, and shall be held in Sacramento, CA, unless the Regional
11 Forester's Office and the RHWGX agree on another location.

12 3. Approximately two months after each annual meeting, representatives
13 from the Regional Forester's Office shall meet with the RHWGX. The
14 semi-annual meeting shall not exceed one-half day, exclusive of travel
15 time, and shall be held in Vallejo, CA.

16 4. Members of the RHWG, not to exceed 19 individuals, shall be given
17 official time and reimbursement authorized under the Federal Travel
18 Regulations for attendance at the annual meeting. Members of the
19 RHWGX, not to exceed 6 individuals, shall be given official time and
20 reimbursement authorized under the Federal Travel Regulations for
21 attendance at the semi-annual meeting.

22 D. Monitoring Reports

23 1. Region 5 shall provide monitoring reports during the term of the
24 Agreement. The first monitoring report shall include information from the
25 Effective Date to 60 days after the Effective Date, and shall be sent to the
26

1 Monitor, to counsel for Plaintiffs and Defendants, and to the RHWGX
2 within 120 days of the Effective Date. Thereafter, the information
3 included in the monitoring reports shall be compiled on a semi-annual
4 fiscal year basis, and shall be submitted within 60 days of the close of the
5 reporting period and shall be sent to the Monitor, to counsel for Plaintiffs
6 and Defendants, and to the RHWGX.

7 2. Region 5 shall establish, within 60 days of the Effective Date, an
8 automated system to provide the following information in the monitoring
9 report: (1) The numbers and percentage of Hispanics and the total number
10 of permanent employees in the Region 5 workforce, by race, gender, and
11 national origin (RSNO), by forest, including the Regional Office (RO); (2)
12 The number and percentage of all Region 5 Positions filled, by RSNO, by
13 forest, including the RO; (3) The number and percentage of accretion of
14 duties promotions by RSNO, by forest, including the RO; (4) The number
15 and percentage of Hispanics and total number admitted into the Region 5
16 Student Career Employment Program during the preceding year; and (5)
17 The average grade of Hispanic employees and the average grade of all
18 employees. The monitoring report shall also include, when available, the
19 total number, status and basis of, all formal EEO complaints filed by
20 Hispanics on the basis of national origin or retaliation, as provided to
21 Region 5 by the Office of Civil Rights, U.S. Department of Agriculture.
22 Region 5 agrees to undertake all appropriate efforts to obtain this data as
23 expeditiously as possible.

24 3. Region 5 shall also establish within six months of the Effective Date an
25 automated system to provide the following information (to the extent
26

1 possible, given that Region 5 must rely upon optional self-identification)
2 in the monitoring report: the number and percentage of applicants for
3 Region 5 Positions filled by forest, and by the RO, by race, gender, and
4 national origin, who are persons employed by Region 5, the U.S.
5 Department of Agriculture as a whole, any other federal agencies, and
6 those coming from external applicants; the race, gender, and national
7 origin of those individuals who are reassigned pursuant to Rule 12 (“Rule
8 12 reassignments”), as that rule is defined in the Guide to Processing
9 Personnel Action, Chapter 14, Table 14-D (Reassignments in the
10 Competitive Service). Region 5 will also provide written guidance
11 regarding Rule 12 reassignments.

12 4. Upon request from Plaintiffs’ counsel, the Monitor may provide Plaintiffs
13 with reasonable access to documents that the Monitor deems reasonably
14 necessary to resolve disputed issues relating to the implementation of this
15 Agreement, provided that the Monitor finds the request to be reasonable
16 and the documents are relevant, not privileged, not barred by the Privacy
17 Act, and not otherwise barred from being released. Such documents may
18 include, but are not limited to the following:

- 19 a. The Forest Service Merit Promotion Plan;
- 20 b. The annual Affirmative Employment Program Plan or equivalent
21 document that outlines Region 5's affirmative employment plans;
- 22 c. Documentation concerning outreach and recruitment;
- 23 d. Published notification statements, policy statements, and notices of
24 clarification of policies, including any supplements.

1 5. Prior to submitting a document request to the Monitor as set forth in
2 paragraph VI.D.4., Plaintiffs will first make such request in writing to
3 Region 5, with a copy to their attorneys. Any disputes regarding
4 entitlement to documents shall be resolved by the Monitor as set forth in
5 paragraph VI.D.4., with appeal of the Monitor's decision to a Magistrate
6 assigned by the Court.

7 6. During the last year of this Agreement, a final monitoring report shall be
8 compiled which shall include, in addition to the information specified in
9 this section, a summary of the progress in meeting the responsibilities in
10 Section IV. The final monitoring report shall be submitted to the Monitor
11 and to counsel for both Parties, 90 days prior to the expiration of the
12 Agreement.

13 VII. ENFORCEMENT

14 A. The District Court will retain jurisdiction during the term of this Agreement for
15 the purpose of enforcing compliance with Sections IV and VIII, consistent with
16 this Section. Any references in Section IV to any other Section of this Agreement
17 are for interpretative purposes only; the District Court does not have jurisdiction
18 under this Section to enforce any provisions other than Sections IV and VIII. The
19 Parties will first attempt to resolve any claim of non-compliance of this
20 Agreement through negotiations in accordance with the procedures described
21 below. An attempt at informal resolution ("meet and confer") will be a
22 prerequisite to either party's request for relief from the District Court for non-
23 compliance with this Agreement, under the process described in this section.

24 B. If either party concludes that the other party has failed to perform its obligations
25 under this Agreement, the following process will be used by the Parties:
26

1. A party claiming failure to comply with the provisions of this Agreement at any time during its term will give written notice of the claim, in accordance with Section XI.A., and will propose a resolution of the issue. At least five (5) calendar days prior to the written notice, the party claiming non-compliance shall orally inform opposing counsel of the intended claim.
2. The responding party will have thirty-five (35) calendar days following receipt of the written claim to respond, unless this period is enlarged by agreement of the Parties.
3. If the party asserting the claim is dissatisfied with the other party's response or proposed resolution, or no response or proposed resolution is forthcoming, the party asserting the claim may submit the issue to the Monitor for his/her consideration and recommendation. The Monitor shall issue his/her tentative report and recommendation, if any, within thirty-five (35) calendar days of receipt of the claim, unless the time is extended by agreement of the Parties or by the Monitor.
4. If a party wants to object to the tentative report and recommendation of the Monitor, it must notify the other party of its intent to file an objection, it must meet and confer with the other party, and it must lodge the objection with the Monitor and the other party within twenty-one (21) calendar days of the issuance of the tentative report and recommendation. The objection shall state the factual bases for the objection and shall set forth any supporting information. The Parties may agree to extend the time for lodging an objection, and the Monitor may grant a request of a party to extend the twenty-one (21) calendar day period for filing an objection.

1 5. The Monitor shall issue his/her ruling on the objection and a final report
2 and recommendation within thirty-five (35) calendar days of the filing of
3 the objection, unless the time is extended by agreement of the Parties or by
4 the Monitor.

5 6. The parties shall be afforded a reasonable time to achieve compliance with
6 the Monitor's final report and recommendation.

7 7. If after completing the procedures set forth in this Section at paragraphs 1-
8 6, the party asserting the claim still believes compliance with Section IV
9 has not been achieved, that party may, after providing fourteen (14)
10 calendar days' written notice to opposing counsel, pursue remedies
11 consistent with this Section. Venue for such a claim will be in the District
12 Court. The Parties agree that any District Court motion for enforcement or
13 any other relief pursuant to this paragraph shall be limited to enforcement
14 of the provisions contained in Sections IV and VIII of this Agreement.

15 8. In any proceeding brought in the District Court under this Section to
16 enforce compliance with Section IV, Defendants shall not be found in
17 breach of this Agreement, and the District Court accordingly shall not
18 order further relief, if the Court finds that Defendants have substantially
19 complied with Sections IV. B-G., and Section V., or any alternative
20 methods of implementation agreed upon by the Parties, and has nonetheless
21 been unable to reach the goals of Section IV. A. If, however, the Court
22 finds that Defendants are in breach, the Court may order specific
23 enforcement of the provisions contained in Section IV.B. through G.,
24 additional remedial measures to increase Hispanic representation subject to
25 the availability of Region 5 Positions, any alternative provisions agreed

1 upon by the parties, and/or a one-time, one-year extension of the Term of
2 the Agreement. Nothing contained in this Agreement will obligate Region
3 5 to create new positions, to fill any particular position, or to promote,
4 select, or assign any particular person to any particular position. No
5 provision of this Agreement is intended as, or may be construed as
6 imposing, a quota.

7 **VIII. ATTORNEYS' FEES**

8 If the settlement is approved by the District Court, plaintiffs' counsel and class counsel
9 shall be entitled to reasonable attorneys' fees and costs under 42 U.S.C. §2000e-5(k) (as
10 appropriate), that are generated in connection with the filing of this action and the implementation
11 of this Settlement Agreement. Defendants reserve the right to challenge any and all aspects of
12 plaintiffs' counsel's and class counsel's applications for fees and costs.

13 The provision of attorneys' fees and costs in this Settlement Agreement is by agreement
14 of the parties and shall not be cited as precedent in any other case.

15 **IX. NOTICE**

16 **A. Notice Order and Settlement Hearing.**

- 17 1. Promptly after execution of this Agreement, but in no event later than ten
18 days after this Agreement is signed by counsel for all Parties (unless such
19 time is extended by written agreement), the Parties will submit this
20 Agreement (together with its Exhibits) to the Court and will jointly apply
21 for entry of an order (the "Order Notice") requesting: (a) preliminary
22 approval of the settlement set forth in this Agreement; (b) provisional
23 certification of the class for settlement purposes only, (c) approval for
24 dissemination of a Notice of Pendency ("Pendency Notice"), which shall
25 include the general terms set forth in this Agreement, to all Members of
26

1 the Class; and (d) that the Court set the date for a hearing (the "Settlement
2 Hearing") at which the Court will consider approval of the settlement. In
3 support of their application, the Parties will submit a joint statement
4 including the factual and legal basis for the relief contained in the
5 Settlement Agreement. The Parties will request that, after notice is given,
6 the Court hold the Settlement Hearing and finally approve the settlement
7 of the litigation as set forth in this Agreement.

8 2. The Parties will request that the Order Notice specifically include the
9 following provisions:

- 10 a. Preliminarily approve this Agreement and the settlement set forth
11 as being fair, just, reasonable and adequate to the Class;
- 12 b. Provisionally certify the class for settlement purposes only;
- 13 c. Approve the form of Pendency Notice for dissemination to
14 Members of the Class;
- 15 d. Direct Region 5 to disseminate the Pendency Notice on or before
16 the date specified in the Order Notice to all Members of the Class
17 and current Region 5 employees by regular mail, internal mail, or
18 electronic transmission, and by posting on the Region 5 and
19 national Forest Service websites;
- 20 e. Find that the Pendency Notice given pursuant to subparagraph
21 IX.A.1.(c). constitutes the best notice practicable under the
22 circumstances, including individual notice to all persons in the
23 Class who can be identified upon reasonable effort, and constitutes
24 valid, due and sufficient notice to all persons in the Class,
25 complying fully with the requirements of Rule 23 of the Federal
26

1 Rules of Civil Procedure, the Constitution of the United States,
2 and any other applicable law;

3 f. Schedule a Settlement Hearing to be held by the Court to
4 determine if the proposed settlement of the litigation as contained
5 in this Agreement should be approved as fair, reasonable and
6 adequate and whether the Judgment approving the settlement
7 should be entered;

8 g. Provide that at or after the Settlement Hearing, the Court will enter
9 an order regarding whether and in what amount attorneys' fees and
10 reimbursement of expenses should be awarded to Plaintiffs'
11 Counsel;

12 h. Provide that pending final determination of whether the settlement
13 contained in this Agreement should be approved, neither the
14 Representative Plaintiffs, nor any Class Member, either directly,
15 representatively, or in any other capacity will commence or
16 prosecute any action or proceeding in any court or tribunal
17 asserting any of the class claims against Region 5;

18 i. Provide that any objections to (i) the proposed settlement
19 contained in this Agreement; or (ii) entry of the Judgment
20 approving the settlement shall be heard only if, on or before a date
21 specified in the Order Notice, persons making objections file and
22 serve on all Parties notice of their intention to appear (which will
23 set forth each objection and the basis therefor) and copies of any
24 papers in support of their position as set forth in the Order Notice;
25 and

1 j. Provide that the Settlement Hearing may, from time to time and
2 without further notice to the Class, be continued or adjourned by
3 order of the District Court.

4 X. MISCELLANEOUS PROVISIONS

5 A. Notices under this Agreement. Copies of all notices required to be given to
6 Plaintiffs' Counsel or Defendants' Counsel under this Agreement shall be sent by
7 mail, postage prepaid, or by facsimile to the following (unless otherwise specified
8 in writing):

9 Denise M. Hulett, Esq.
10 Mexican American Legal Defense and Educational Fund
11 915 Cole Street, #381
12 San Francisco, CA 94117
13 (415) 504-8901 (facsimile)

14 Regional Forester
15 1323 Club Drive
16 Vallejo, CA 94592
17 (707) 562-9091 (facsimile)

18 Richard G. Lepley, Esq.
19 Department of Justice
20 Civil Division
21 Federal Programs Branch
22 P.O. Box 883
23 Room 966
24 Washington, D.C. 20044
25 (202) 616-8202 (facsimile)

26 B. Severability and Duty to Defend. Should any provision of this Agreement be
27 found by the Court to be invalid or unenforceable, then (i) the validity of other
28 provisions of this Agreement shall not be affected or impaired, and (ii) such
provisions shall be enforced to the maximum extent possible. In the event the
entry of this Agreement generates, either through intervention or separate
lawsuits, challenges to the lawfulness of any of the provisions contained in this

1 Agreement, the Parties agree to defend the provisions against such challenges. If
2 any such lawsuit is brought in state court against Defendants, they shall seek to
3 remove such action to the District Court and the Parties shall support that action.

4 C. Collateral Use of Agreement Prohibited. The Parties have entered into this
5 Agreement as a compromise measure to terminate this action and resolve all
6 issues of controversy between them. The terms of this Agreement, its substance,
7 the negotiations leading up to the Agreement, and the information exchanged by
8 the Parties in the course of those negotiations may not be offered, taken,
9 construed or introduced as evidence for any purpose, either in this action or in any
10 pending or subsequent proceeding of any nature, except that in any subsequent
11 action involving the enforcement, construction, or application of this Agreement,
12 a copy of the Agreement may be presented to verify its contents.

13 D. Responses to Changes in Law. The Parties expressly recognize that changes in
14 law occur in the area of personnel selection and personnel management. For this
15 reason, Defendants must maintain the administrative flexibility to accommodate
16 such changes. To the extent that a change in federal law or regulations or
17 Executive Orders, or judicial or administrative case law, requires modifications to
18 the implementation of this Agreement, nothing in this Agreement shall be
19 construed to limit Defendants' authority to make such modifications; provided,
20 however, that Plaintiffs do not waive their rights to challenge such modifications
21 under the enforcement procedures set out in Section VII of this Agreement to the
22 extent those modifications would change or affect the provisions set forth in
23 Section IV. Defendants agree to notify Plaintiffs of the change in law or
24 regulation and of the conforming modifications prior to their implementation.

EXHIBIT A
TO
THE SETTLEMENT AGREEMENT
IS
THE COMPLAINT FILED IN THIS ACTION

CLF DATA FOR RECRUITMENT OF HISPANICS IN REGION 5*

EEOC NATIONAL SERIES CLF DATA FOR RECRUITMENT OF HISPANICS IN PROFESSIONAL SERIES WITH 20 OR MORE EMPLOYEES

GS-0193 - ARCHEOLOGIST	3.6%
GS-0401 - GENERAL BIOLOGICAL SCIENTIST	3.2%
GS-0430 - BOTANIST	3.2%
GS-0454 - RANGELAND MGMT SPECIALIST	2.5%
GS-0460 - FORESTER	2.5%
GS-0482 - FISHERIES BIOLOGIST	3.2%
GS-0486 - WILDLIFE BIOLOGIST	3.2%
GS-0807 - LANDSCAPE ARCHITECT	5.1%
GS-0810 - CIVIL ENGINEER	3.7%
GS-1315 - HYDROLOGIST	2.4%
GS-1350 - GEOLOGIST	2.4%

EEOC NATIONAL ADMINISTRATIVE CLF DATA FOR RECRUITMENT OF HISPANICS IN ADMINISTRATIVE SERIES, GS-13 & ABOVE, WITH 50 OR MORE EMPLOYEES

GS-0340 - PROGRAM MANAGEMENT	5.2%
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EEOC CALIFORNIA SERIES SPECIFIC CLF DATA FOR RECRUITMENT OF HISPANICS IN ADMINISTRATIVE SERIES, GS-12 & BELOW AND ALL TECHNICAL, CLERICAL AND BLUE COLLAR SERIES, WITH 50 OR MORE EMPLOYEES

GS-0201 - PERSONNEL MANAGEMENT SPECIALIST - A	15.5%
GS-0303 - MISC. CLERK, GS-6 AND BELOW -C	15.7%
GS-2210 - INFORMATION TECHNOLOGY MANAGEMENT	5.8%
GS-0462 - FORESTRY TECHNICIAN - T	21.3%
GS-0802 - ENGINEERING TECHNICIAN - T	12.6%
GS-1001 - GENERAL ART & INFORMATION CLERK - C	none
GS-5716 - ENGINE EQUIPMENT OPERATOR - BC	22.4%

EEOC CALIFORNIA "ATCB" CLF DATA FOR RECRUITMENT OF HISPANICS IN ALL NON-PROFESSIONAL SERIES WITH FEWER THAN 50 EMPLOYEES, GROUPED INTO "ATCB" CATEGORIES.

ADMINISTRATIVE SERIES	11.5%
TECHNICAL SERIES	15.8%
CLERICAL SERIES	17.5%
BLUE COLLAR SERIES	32.5%

*Recruitment Civilian Labor Force (CLF) Data is not used to determine hiring goals.

EMPLOYMENT OUTREACH AND RECRUITMENT DOCUMENTATION
(Attachment to SF-52)

This form has been developed to assist managers in improving the diversity of all applicant pools. It will help identify options for filling positions using developmental opportunities, excepted authorities, multiple series/grades, student initiatives, etc., which are traditionally underutilized.

This form, completed by the Unit Outreach and Recruitment Official and reviewed by the Unit Human Resources Officer, shall be used to document recruitment efforts for all vacancies. Additional documentation may be used to supplement this form.

I. POSITION TO BE FILLED:

1. UNIT AND SUBUNIT:	2. WORKING TITLE:	3. SERIES:	4. TARGET GRADE:	5. NAME/TITLE OF RECOMMENDING OFFICIAL

II. RECRUITMENT GOALS: Unit Outreach and Recruitment Official, in collaboration with the Civil Rights Official, shall review the most recent AEPP recruitment goals for occupational series. Please place an X to the left of the appropriate recruitment group(s).

Recruitment goals by occupational series:

	1. Series =
	Non-Minority Male
	Non-Minority Female
	African American Male
	African American Female
	Hispanic Male
	Hispanic Female
	Asian Pacific American Male
	Asian Pacific American Female
	American Indian/Alaskan Native Male
	American Indian/Alaskan Native Female
	Persons with Targeted Disabilities- Male
	Persons with Targeted Disabilities- Female

