

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

ANTHONY GONZALEZ, IGNACIO RIESCO,
PRECIOUS DANIELS, ALEXIS MATEO,
FELICIA RICKETT-SAMUELS, CHYNELL
SCOTT, VIVIAN KARGBO, SCOTTY
DESPHY, and EDWARD ZAHNLE, on behalf
of themselves and all others similarly situated,
and CEPHUS HOUSER as the Trustee for the
Trust Agreement of EVELYN HOUSER,
individually,

Plaintiffs,

v.

PENNY PRITZKER, Secretary, United States
Department of Commerce,

Defendant.

10-cv-3105 (FM)

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (the “Agreement”) is entered into by and between Anthony Gonzalez, Ignacio Riesco, Precious Daniels, Alexis Mateo, Felicia Rickett-Samuels, Chynell Scott, Vivian Kargbo, Scotty Desphy, and Edward Zahnle (collectively hereinafter “Named Plaintiffs”), on behalf of themselves and of a class of individuals they represent (“Class Members”), and seek to represent, in the above-captioned matter (the “Litigation”), and Penny Pritzker, Secretary, United States Department of Commerce (“Census” or “Defendant”) (together with the Named Plaintiffs and Class Members, the “Parties”). Cephus O. Houser, as personal representative and trustee of the revocable living trust agreement of plaintiff Evelyn Houser and representative of the interests of plaintiff Evelyn Houser (hereinafter, “Cephus Houser”) agrees to the terms of the Agreement relating to Ms. Houser’s personal interests.

I. RECITALS AND BACKGROUND

WHEREAS, a class action was filed in the United States District Court for the Southern District of New York on April 13, 2010;

WHEREAS, the Parties have engaged in substantial discovery, including dozens of depositions and the production of hundreds of thousands of pages of documents, as well as expert discovery;

WHEREAS, on September 16, 2014, Plaintiffs filed their Third Amended Complaint, which asserts disparate impact discrimination claims on behalf of African-American and Latino applicants contending that they were denied the opportunity to compete for temporary jobs for the 2010 decennial census based on an application of Census's 2010 decennial census criminal background check screening process;

WHEREAS, on October 2, 2014, Magistrate Judge Frank Maas accepted the Third Amended Complaint for filing and issued an order certifying a class, under Federal Rule of Civil Procedure ("Rule") 23(b)(2), of: (1) all African-American applicants who sought temporary employment during the 2010 Decennial Census and claim to have been harmed by Census's 30-day Letter, its Adjudication Criteria, or both; and (2) all Latino applicants who sought temporary employment during the 2010 Decennial Census and claim to have been harmed by Census's 30-day Letter, its Adjudication criteria, or both (together, "Class Members").

WHEREAS, in January 2015, the Parties engaged the services of Hunter Hughes, Esq., a mediator with experience in the mediation of complex class actions, including employment discrimination litigation (the "Mediator");

WHEREAS, after extensive consultation with the Parties, the Mediator conducted four in-person mediation sessions as well as multiple follow-up meetings separately with each Party;

WHEREAS, the Parties have reached a proposed comprehensive settlement of this action that has resulted in this Agreement;

WHEREAS, the Parties agree that a settlement of this Litigation is in the public interest;

WHEREAS, the Parties have agreed to the appointment of two well-qualified Industrial/Organizational Psychologists to develop validated procedures with regard to the hiring of temporary field employees for the 2020 decennial census, and the two Industrial/Organizational Psychologists have agreed to undertake this project;

WHEREAS, Defendant denies any and all liability or damages to anyone with respect to the alleged facts or causes of action asserted in the Litigation;

WHEREAS, without admitting or conceding any liability or damages whatsoever, Defendant has agreed to settle the Litigation on the terms and conditions set forth in this Agreement, to avoid the burden, expense, and uncertainty of continuing the Litigation;

WHEREAS, Plaintiffs' Counsel has analyzed, evaluated, and extensively litigated the merits of the claims made against Defendant in the Litigation, and the impact of this Agreement on Plaintiffs and members of the class action, and based upon Plaintiffs' Counsel's analysis and evaluation of a number of factors, and recognizing the substantial risks of continued litigation, including the possibility that the Litigation, if not settled now, might not result in any recovery whatsoever, or might result in a recovery that is less favorable and that would not occur for

several years, Plaintiffs' Counsel is satisfied that the terms and conditions of this Agreement are fair, reasonable, and adequate and that this Agreement is in the best interest of the Plaintiffs and the members of the class;

WHEREAS, the attorneys' fees that Plaintiffs' Counsel seek are based on their hourly records, summaries of which were provided to Defendant;

NOW THEREFORE, in consideration of the mutual covenants and promises set forth in this Agreement, as well as the good and valuable consideration provided for herein, the Parties hereto agree to a full and complete settlement of the Litigation on the following terms and conditions:

1. DEFINITIONS

The defined terms set forth in this Agreement have the meanings ascribed to them below.

- 1.1 30-Day Letter.** "30-day letter" means the letter sent by the Census Bureau to applicants for temporary jobs with the 2010 Decennial Census who could not be cleared for employment based on information provided by the FBI during the namecheck process, requesting that the applicant provide fingerprints or documentation of the disposition of arrests noted on the information provided by the FBI.
- 1.2 Adjudication Criteria.** "Adjudication criteria" means the criteria used to evaluate applicants in determining their suitability for temporary jobs with the 2010 Decennial Census.
- 1.3 Agreement.** "Agreement" or "Settlement" means this Settlement Agreement and Release.
- 1.4 Acceptance Period.** "Acceptance Period" means the ninety (90) day period, beginning from the date of the mailing of the Settlement Notice and Claim Form, during which a Class Member can submit a Claim Form to participate as a Group A or Group B Filer.
- 1.5 Claim Bar Date.** "Claim Bar Date" means the last day of the ninety (90) day Acceptance Period in which any Class Member may timely complete and submit a Claim Form, or one hundred and twenty (120) days from the initial mailing of the Settlement Notices, whichever is earlier.
- 1.6 Claim Form.** "Claim Form" means the Claim Form, as approved by the Court in substantially the form of the document attached to this agreement as Exhibit A, whereby a Class Member may elect to participate as a Group A or Group B Filer.
- 1.7 Class Counsel or Plaintiffs' Counsel.** "Class Counsel" or "Plaintiffs' Counsel" means Outten & Golden LLP, Center for Constitutional Rights, Community Legal Services of Philadelphia, Community Service Society of New York, the Indian Law Resource Center of Helena, Montana, LatinoJustice PRLDEF of New York, and the Lawyers' Committee for Civil Rights, of Washington, D.C.

- 1.8 Class Members.** “Class Members” are Named Plaintiffs and (1) all African-American applicants who sought temporary employment during the 2010 Decennial Census and claim to have been harmed by Census’s 30-day Letter, its Adjudication Criteria, or both; and (2) all Latino applicants who sought temporary employment during the 2010 Decennial Census and claim to have been harmed by Census’s 30-day Letter, its Adjudication Criteria, or both.
- 1.9 Class Member Release.** “Class Member Release” means the release by which each Class Member shall release Census from all claims, demands, causes of action, and liabilities, known and unknown, that he or she had, have, or may have under any legal or equitable theory, whether contractual, common-law, or statutory, and whether under federal, state, or local law, against Defendant arising from or relating to or concerning the claims and facts alleged in this Action (and the underlying complaints of discrimination filed with the U.S. Department of Commerce, Office of Civil Rights, and the Census Bureau’s Equal Employment Opportunity Office), whether under the Third Amended Complaint and/or any prior version of the Complaint filed in this Action including, without limitation, under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e, *et seq.*
- 1.10 Court or District Court.** “Court” or “District Court” means the United States District Court for the Southern District of New York, the Honorable Chief Magistrate Judge Frank Maas presiding.
- 1.11 Days.** “Days” means business days if the specified number is less than ten (10), and calendar days if the specified number is ten (10) or greater.
- 1.12 Defendant or Census.** “Defendant” or “Census” shall mean Penny Pritzker, Secretary, United States Department of Commerce, in her official capacity, or her successor, and the U.S. Census Bureau.
- 1.13 Defendant’s Counsel or Census’s Counsel.** “Defendant’s Counsel” or “Census’s Counsel” means the United States Attorney’s Office, Southern District of New York.
- 1.14 Effective Date.** “Effective Date” of the Settlement means the latest of the following dates: (a) the date sixty (60) days after the entry of an order by the District Court granting final approval to the Settlement, if there are no appeals; or (b) if there is an appeal of the Court’s decision granting final approval, the day after all appeals are finally resolved in favor of final approval.
- 1.15 Fairness Hearing.** “Fairness Hearing” means the hearing before the Court relating to the Motion for Final Approval.
- 1.16 Final Approval Order.** “Final Approval Order” means the Order entered by the Court after the Fairness Hearing, approving the terms and conditions of this Agreement.
- 1.17 Funding Date.** “Funding Date” means the date upon which Defendant transfers Fifteen Million and No/100 Dollars (\$15,000,000) to Outten & Golden LLP, as escrow agent, which date shall occur as soon as practicable after the Effective Date of this Agreement.

Defendant agrees to initiate the process to commence payment of the Settlement Fund within 5 days of the Effective Date of this Agreement.

- 1.18 Group A Filers.** “Group A Filers” means Class Members who file a Claim Form electing assistance with reviewing and, where possible, correcting the criminal history information that may appear on a background check.
- 1.19 Group B Filers.** “Group B Filers” means Class Members who file a Claim Form who wish to be employed in a temporary job with Census, including but not limited to enumerator, clerical, and enumerator supervisor positions, during the 2020 decennial census.
- 1.20 Hiring Selection Report.** “Hiring Selection Report” means the report drafted by the IOs pursuant to this Agreement.
- 1.21 IOs.** “IOs” means the Industrial/Organizational Psychologists Dr. Kathleen Lundquist and Dr. Eric Dunleavy, or their replacements (to be mutually determined by the Parties), tasked with working together as independent consultants to Census relative to the selection and hiring of temporary employees for the 2020 decennial census.
- 1.22 Mediator.** “Mediator” means Hunter Hughes, Esq., or his replacement (to be mutually determined by the Parties).
- 1.23 Litigation.** “Litigation” means the above-captioned case.
- 1.24 Named Plaintiffs.** “Named Plaintiffs” means Anthony Gonzalez; Ignacio Riesco; Precious Daniels; Alexis Mateo; Felicia Rickett-Samuels; Chynell Scott; Vivian Kargbo; Scotty Desphy; and Edward Zahnle, their representatives, heirs, administrators, executors, beneficiaries, conservators, attorneys, and assigns, and any other person who becomes a named plaintiff or is substituted for a named plaintiff.
- 1.25 Notice or Notices.** “Notice” or “Notices” means the Court–approved Notice of Proposed Settlement of Class Action Lawsuit.
- 1.26 Objector.** “Objector” means an individual who properly files an objection to this Agreement, and does not include any individual who opts out of this Agreement.
- 1.27 Opt out Statement.** “Opt out Statement” means a written signed statement that an individual Class Member has decided to opt out and not be included in this Agreement.
- 1.28 Participating Class Members.** “Participating Class Members” means those Class Members who do not submit a valid Opt out Statement.
- 1.29 Parties.** “Parties” means the Named Plaintiffs, Participating Class Members, and Census.
- 1.30 Preliminary Approval Order.** “Preliminary Approval Order” means the Order entered by the Court preliminarily approving the terms and conditions of this Agreement, and

directing the manner and timing of providing Notices to the Class Members.

- 1.31 Settlement Account.** “Settlement Account” means the account established at a federally insured financial institution acceptable to Defendant by Outten & Golden LLP, as attorneys for the class, in a segregated interest-bearing escrow account paid by Defendant. The Settlement Account will be controlled by Outten & Golden LLP subject to the terms of this Agreement and the Court’s Orders for Preliminary Approval and Final Approval. Earned Interest, if any, will become part of the Settlement Fund.
- 1.32 Records Assistance Project.** The “Records Assistance Project” means the criminal records assistance project established by Class Counsel to assist Group A Filers.
- 1.33 Release of Fees and Costs.** “Release of Fees and Costs” means the release, of the Named Plaintiffs, on behalf of the Class and each individual Class Member, to irrevocably and unconditionally release, acquit, and forever discharge any claim that they may have against Census for attorneys’ fees or costs associated with Class Counsel’s representation of Plaintiffs and the Class.
- 1.34 Scope of Work Document.** The “Scope of Work Document” means the Census Hiring Process Development Scope of Work for the IOs document, which has been agreed to by the IOs and sets forth their responsibilities. A copy of the Scope of Work document is attached as Exhibit B and is incorporated herein.
- 1.35 Service Award.** “Service Award” means Court-approved compensation awarded to Named Plaintiffs and the Estate of Evelyn Houser for their respective roles as litigants in this case.
- 1.36 Settlement Administrator.** “Settlement Administrator” means the company or individual retained by Class Counsel to distribute the Notices and Claim Forms, and to otherwise administer the settlement. If the Court’s Final Approval Order approves the terms of this Agreement, the Settlement Administrator’s fees and costs of administering the settlement shall be borne by the Settlement Fund.
- 1.37 Settlement Fund.** “Settlement Fund” means the Fifteen Million and No/100 Dollars (\$15,000,000) that Census will pay to settle this lawsuit.
- 1.38 Third Amended Complaint.** “Third Amended Complaint” means the Third Amended Class Action Complaint filed in this Litigation on September 16, 2014.

2. INITIAL PROCEDURAL ISSUES

- 2.1 Binding Agreement.** This Agreement is a binding agreement and contains all material agreed-upon terms for the Parties to seek a full and final settlement of the Litigation.
- 2.2 Retention and Responsibilities of the Settlement Administrator.** The Settlement Administrator will be responsible for distributing the Notices and Claim Forms to Class Members in accordance with the Court’s Preliminary Approval Order, maintaining a toll-free phone number and website to answer class member questions, collecting and

verifying responses, providing copies of all Claim Forms to Class Counsel and distributing Service Awards. The Settlement Administrator shall be paid by Class Counsel.

- (A) The Parties will have equal access to the Settlement Administrator. The Settlement Administrator will provide regular reports to Class Counsel, but no less frequently than every two (2) weeks, regarding the status of distributing Notices and Claim Forms to Class Members, the claims administration process, and the identity and number of Class Members who file Group A and Group B Claim Forms, and which Class Members, if any, object to and/or opt-out of the Settlement. The Settlement Administrator will make the same information available to Census upon request.
- (B) Census agrees to reasonably cooperate with the Settlement Administrator to facilitate Census's obligations in this Agreement, including to provide information to assist the Settlement Administrator in locating Class Members, as specified in Section 2.4 below.

2.3 Preliminary Approval Motion.

- (A) Following the Parties' execution of this Agreement, Class Counsel will file with the Court a Motion for Preliminary Settlement Approval, memorandum of law in support thereof, proposed Notice to Class Members, Claim Form, and Proposed Order (together the "Preliminary Approval Motion"), that is consistent with the Agreement. The Preliminary Approval Motion will seek a settlement class pursuant to Federal Rule of Civil Procedure 23(e) and 23(b)(3), with an opt out right.
- (B) The Preliminary Approval Motion also will seek the setting of date(s) for individuals to opt out of this Agreement or provide objections to this Agreement, which date will be ninety (90) days from the date Notice is transmitted to the Class Members, and for a Fairness Hearing for Final Approval of the Settlement before the Court at the earliest practicable date.
- (C) In the Preliminary Approval Motion, Class Counsel will seek to certify a Fed. R. Civ. Proc. 23(b)(3) settlement class, with an opt out right, and inform the Court of the intended process to obtain a Final Approval Order that will, among other things: (1) approve the Settlement as fair, adequate and reasonable; (2) incorporate the terms of the Release, as described herein; (3) dismiss the Litigation with prejudice; (4) award Class Counsel fees and costs; and (5) award Service Awards to Named Plaintiffs.
- (D) If the Court denies the Preliminary Approval Motion, the Parties will work together in good faith to revise the Agreement to address the Court's concerns, seek reconsideration, and/or appeal the Court's decision. Any disputes between the Parties will be submitted to the Mediator. If these efforts are ultimately unsuccessful or a settlement class is not certified, the Litigation will resume as if

no settlement had been attempted, and this Agreement will be null and void, with no force and effect.

- (E) The Parties will work together, diligently and in good faith, to expeditiously obtain a Preliminary Approval Order, Final Approval Order, and all other aspects of the settlement approval process.

2.4 Notice to Class Members

- (A) Within fourteen (14) days of the filing of the Preliminary Approval Order, Census will provide the Settlement Administrator, in electronic form, a list of all 2010 decennial census applicants who were excluded by Census's adjudication criteria, or who received Census's 30-day letter. Census will provide the following information for each such applicant, to the extent said information was originally provided by the applicant to Census and resides in Census' records: name, social security number, self-reported email addresses, last known address, and last known phone numbers. All information provided regarding potential class members will also be provided to Class Counsel. Before such information is released, the Parties will draft a protective order to be signed by the Settlement Administrator and Class Counsel and endorsed by the Court. The protective order will cover all decennial census applicants' personal identifying information protected under the Privacy Act.
- (B) Within fourteen (14) days of Census's provision of the information set forth in Section 2.4(A) to the Settlement Administrator, the Settlement Administrator will transmit via electronic mail to any potential class member for whom an e-mail address was provided, the Court approved Notice and Claim Form. For potential class members for whom Census does not produce an e-mail address and those for whom the e-mail notice is returned undeliverable, the Settlement Administrator will provide, via First Class United States Mail, postage prepaid, a postcard notifying them of the Settlement and directing them to an interactive settlement website and a toll-free number for additional information. The website and the toll-free number will be operated by the Settlement Administrator. Potential class members will be able to view the Notice and Claim Form through the website and can either submit online or print and submit via e-mail, fax or U.S. Mail. Potential class members will also be able to request a hard copy to be sent to them via First Class Mail.
- (C) The Claim Form shall require the potential class member to provide his or her name, signature, date of signing, a certification that he or she applied for a position with Census, and a certification that he or she self-identifies as African-American and/or Latino (and will include the option to provide an email address). The Claim Form will also contain a short description of what it means to be a Group A Filer and Group B Filer, an opportunity to select to be a Group A Filer or Group B Filer, and information regarding the Settlement opt out procedure discussed in Section 2.5. The Claim Form will be returnable by email, website, fax, or U.S. Mail.

- (D) All Group A and Group B filers who self-identify as African-American or Latino will automatically be designated by the Settlement Administrator as official “Class Members.” The Settlement Administrator shall exclude from Class Member Relief any individual that fails to affirmatively self-identify as African-American or Latino. Additionally, the Settlement Administrator shall have sole authority to reject any Claim Form on the basis that it contains any manner of incomplete information.
- (E) In order to be timely, Claim Forms sent by email not returned as undeliverable or mailed by the Settlement Administrator and not returned as undeliverable must be returned to the Settlement Administrator by the date which is ninety (90) days after the date they are transmitted by the Settlement Administrator, but no later than one hundred and twenty (120) days after the date of the initial transmittal of the Notices. Claim Forms will not be considered if received by fax or email or the envelope returning it to the Settlement Administrator is dated or postmarked later than that date (*i.e.*, more than ninety (90) days after the date transmitted by the Settlement Administrator, or more than one hundred and twenty (120) days after the date of the initial transmittal of the Notices). However, additional time may be provided to a potential class member who misses the Claim Bar Date if good cause, as determined by the Settlement Administrator, is demonstrated by the potential class member, provided that in no event may the additional time exceed ninety (90) additional days after the Claim Bar Date.
- (F) The Settlement Administrator will take all reasonable steps to obtain the correct address of any Class Members or potential class members for whom a Notice is returned by the post office as undeliverable and shall attempt to re-mail the Notice to the updated address. The Settlement Administrator will notify Class Counsel of any Notice sent to a Class Member or potential class member that is returned as undeliverable after the first mailing, as well as any such Notice returned as undeliverable after any subsequent mailing(s) as set forth in this Agreement. Class Members or potential class members for whom any re-mailing is sent shall have ninety (90) days from the last re-mailing to submit their Claim Form, or one hundred and twenty (120) days from the initial mailing, whichever is earlier.
- (G) All Class Members and potential class members will be deemed to have filed their Claim Forms with the Court on the date the Claim Form is returned to the Settlement Administrator.

2.5 Class Member Opt Outs.

- (A) Any Class Member who chooses to opt out of the Settlement as set forth in this Agreement must mail via First Class United States Mail, postage prepaid, a written, signed statement to the Settlement Administrator that states he or she is opting out of the Settlement, and include his or her name, address, email address(es), and telephone number(s) and state, “I opt out of the Census 2010 Decennial Applicant Settlement” (“Opt out Statement”).

- (B) The end of the time period to opt out of the Settlement (“Opt out Period”) shall be ninety (90) days after the day on which the Settlement Administrator transmits a Notice to a Class Member. Class Members whose first mailing was returned to the Settlement Administrator as undeliverable will be allowed until the earlier of (a) ninety (90) days after the re-mailing or (b) one hundred and twenty (120) days after the Settlement Administrator’s initial mailing to all Class Members to opt out. The Settlement Administrator will not attempt more than two (2) mailings of the Notice to any Class Member, and no mailing shall occur more than ninety (90) days after the first mailing to the Class Member.
- (C) The Settlement Administrator will, within ten (10) days after the last day on which it delivers the last Notice to any Class Member, notify Class Counsel and Defendant’s Counsel by email of the precise date of the end of the Opt out Period.
- (D) The Settlement Administrator will stamp the postmark date on the original of each Opt out Statement that it receives and shall send copies of each Opt out Statement to Class Counsel and Defendant’s Counsel not later than three (3) days after receipt thereof. The Settlement Administrator will also, within three (3) days of the end of the Opt out Period, file with the Clerk of Court, stamped copies of any Opt out Statements. The Settlement Administrator will, within 24 hours of the end of the Opt out Period, send a final list of all Opt out Statements to Class Counsel and Defendant’s Counsel by both email and overnight delivery. The Settlement Administrator will retain the stamped originals of all Opt out Statements and originals of all envelopes accompanying Opt out Statements in its files until such time as the Settlement Administrator is relieved of its duties and responsibilities under this Agreement.
- (E) Any Class Member who does not properly submit an Opt out Statement pursuant to this Agreement will be deemed to have accepted the Settlement and the terms of this Agreement, and will be eligible to participate as a Group A Filer or Group B Filer by filing a Claim Form, as set forth in this Agreement. Any Class Member who fails to submit a claim for relief in accordance with Section 2.4 of this Agreement or who opts out under this Section will not be entitled to Class Member Relief.

2.6 Objections to Settlement.

- (A) Class Members who wish to present objections to the proposed Settlement at the Fairness Hearing must first do so in writing. To be considered, such statement must be mailed to the Settlement Administrator via First Class United States Mail, postage prepaid, and be received by the Settlement Administrator by a date certain ninety (90) days after the Settlement Administrator mails a Notice to such Class Member. The statement must include all reasons for the objection and any reasons not included in the statement will not be considered. The statement must also include the name, address, email(s), and telephone number(s) for the Class Member making the objection. The Settlement Administrator will stamp the date received on the original and send copies of each objection to Class Counsel and

Defendant's Counsel by email and first class mail no later than three (3) days after receipt thereof. The Settlement Administrator will also file the date-stamped originals of any and all objections with the Court within three (3) days after the end of the Opt out Period.

- (B) An individual who files objections to the Settlement ("Objector") also has the right to appear at the Fairness Hearing either in person or through counsel hired by the Objector. An Objector who wishes to appear at the Fairness Hearing must state his or her intention to do so in writing in his or her written objections at the time he or she submits his or her written objections. An Objector may withdraw his or her objections at any time. No Class Member may present an objection at the Fairness Hearing based on a reason not stated in his or her written objections. A Class Member who has submitted an Opt out Statement may not submit objections to the Settlement.
- (C) The parties may file with the Court written responses to any filed objections no later than three (3) days before the Fairness Hearing.

2.7 Fairness Hearing and Motion for Final Approval and Dismissal.

- (A) At the time established by the Court via the Preliminary Approval Motion (*See* Section 2.3(A) *supra*), Plaintiffs' Counsel will file with the Court a Motion for Final Approval of Settlement, and a Proposed Order Approving the Settlement and Dismissing the Litigation with prejudice ("Final Approval Motion") that is consistent with this Agreement.
- (B) At the Fairness Hearing and in the Motion for Final Approval of Settlement, Plaintiffs' counsel will request that the Court, among other things: (1) certify the Class for purposes of settlement; (2) approve the Settlement and Agreement as fair, reasonable, adequate, and binding on all Class Members who have not timely opted out of the Settlement; (3) order the attorneys' fees and costs to be paid to Class Counsel from the Settlement Account; (4) order the dismissal with prejudice of all claims asserted or that could have been asserted in the Litigation and the claims of all Class Members who did not opt-out, subject only to an application for relief under Fed. R. Civ. P. 60(b)(1), or 60(d); (5) order entry of Final Judgment in accordance with this Agreement; and (6) retain jurisdiction as necessary for the purpose of facilitating the Settlement and other relief pursuant to this Agreement.
- (C) If the Court fails to enter a Final Approval Order in accordance with this Agreement, or if the Final Approval Order is set aside on appeal, Class Counsel and Defendant's Counsel will work together in good faith to revise the Agreement to address the Court's concerns, seek reconsideration, and/or attempt other remedial actions to correct any deficiencies in the Agreement. Any disputes between the parties will be submitted to the Mediator. If these attempts are unsuccessful, or a settlement class is not certified, the Litigation will proceed as if

no settlement had been attempted, and this Settlement will be null and void, with no force and effect.

- (D) If the Court fails to enter a Final Approval Order, and the remedial actions specified in Part C of Section 2.7 in this Agreement are not successful, the Settlement Administrator will provide notice to Class Members that the Agreement did not receive Final Approval and that, as a result, the Class Members will receive no benefit under the Agreement. The content of such notice shall be agreed to by the Named Plaintiffs' counsel and Census, and such notice shall be distributed by the Settlement Administrator.

3. SETTLEMENT TERMS

3.1 Settlement Amount.

- (A) Census agrees to pay the Settlement Fund, which is a total of Fifteen Million and No/100 Dollars (\$15,000,000), which shall fully resolve and satisfy the individualized relief through the Records Assistance Project, any claim for attorneys' fees and costs approved by the Court, any Court-approved Service Awards to Named Plaintiffs, any fees and costs associated with investing and liquidating the Settlement Fund, and the Settlement Administrator's fees and costs. Class Counsel will seek court approval up to Ten Million and No/Dollars (\$10,000,000), for the payment of attorneys' fees and costs and the Settlement Administrator's fees and costs, and costs relating to the maintenance of the Settlement Fund. Class Counsel will seek Court approval for their fees at the rates provided to Census in the schedule attached as an exhibit to the Motion for Final Approval. The Settlement Fund will be paid on the Funding Date, which is defined as meaning as soon as practicable after receipt of Final Approval.
- (B) Outten & Golden LLP shall deposit the Settlement Fund in its entirety into an FDIC insured interest-bearing account, and interest from such interest-bearing account will become part of the Settlement Fund and be held by Outten & Golden LLP in escrow.
- (C) Any uncashed Service Awards and all other amounts remaining in the Settlement Fund as of 180 days after Final Approval will be redistributed to the Records Assistance Project.
- (D) Nothing in this settlement constitutes an agreement by the United States concerning the characterization of any portion of the Settlement Amount for purposes of the Internal Revenue Code, Title 26 of the United States Code.

3.2 Programmatic Terms.

- (A) Selection. The Parties have jointly selected the IOs to work together as independent consultants to Census relative to the selection and hiring of temporary employees for the 2020 decennial census. The IOs have experience

conducting professional job analyses and validating selection criteria, including experience in the criminal background check context.

- (B) Responsibilities. The IOs will work together, in consultation with Census, to develop a recommended validated structure and selection process for the hiring of temporary employees for the various operations of the 2020 decennial census. Their recommendations will be memorialized in the Hiring Selection Report.
- (C) Scope of Work. The Parties have agreed upon the Scope of Work Document (*see* Exhibit B). The Parties have met with the IOs and have discussed various aspects of this project, and each IO has agreed through his or her affiliated corporate entity to undertake the assignment set forth in the Scope of Work Document. The IOs agree to use their best efforts to fulfill their obligations under the Scope of Work Document. Census agrees to give the IOs as much advance notice as possible with regard to scheduling issues and will make its relevant staff, employees, and outside contractors and other relevant entities or individuals available to the IOs on a timely basis. Census agrees to request that the Office of Personnel Management (“OPM”) cooperate with the IOs concerning OPM’s validation of the new test for temporary 2020 decennial census employees (“New Test”). Any recommendations by the IOs relating to improving the reliability and/or validity of the New Test will be communicated to OPM by Census.
- (D) Compensation of the IOs. Census will enter into a consulting agreement with the IOs, which provides for their respective compensation and is consistent with the Scope of Work Document and applicable Federal laws, rules, regulations, and guidance, at the latest, within fourteen (14) days of the Parties’ entering into a formal settlement agreement. The IOs will commence their assignments within fifteen (15) days after the Court enters the Final Approval Order approving the Settlement of this lawsuit, but nothing in this provision shall prevent Census from, in consultation with Named Plaintiffs’ counsel, contracting with the IOs and commencing work before the Court enters an order approving the Settlement of this lawsuit.
- (E) Dispute Resolution.
 - (1) Resolution of Differences between the IOs. The IOs are expected to work together to develop validated selection approaches and recommendations to Census for the 2020 decennial census. In the event that a material difference of opinion arises between the IOs relative to matters that are covered by the Scope of Work Document, they will promptly notify Class Counsel, Defendant’s Counsel, and the Mediator in writing of the issue. Upon notification, the Mediator shall convene a joint meeting with the IOs and Class Counsel and Defendant’s Counsel to discuss the issue(s) and to agree on a resolution. In the event that a resolution cannot be reached between the IOs on the disputed issue through the aforementioned process, Class Counsel and Defendant’s Counsel may consider submitting the disputed issue to a third IO jointly selected by the parties. Absent further

written agreement of Census, nothing in this provision shall obligate Census or any other agency of the United States to retain or pay for work performed by such a third IO.

(2) Resolution of Disputes Where Census Rejects an IO Recommendation.

(a) Census and the IOs will work together constructively to address concerns or issues. Census will inform the IOs if it intends to reject or materially modify any IO recommendation. If after consultation between Census and the IOs an impasse is reached regarding a recommendation, Class Counsel and Defendant's Counsel will jointly meet with the IOs and the Mediator to attempt to expeditiously resolve the matter.

(b) If, following such meetings, Census still does not agree with a joint recommendation of the IOs, Census and the IOs shall notify Class Counsel and the Mediator in writing. The Mediator shall then consider the Parties' respective positions and make a non-binding recommendation on resolution. Census shall promptly provide to the Mediator and Class Counsel a written response to the Mediator's recommendation.

(F) The Parties understand and agree that nothing in this Agreement precludes Class Counsel or any Class Member from taking legal action against Census for its future hiring policies and practices. However, a failure by Census to adopt any recommendation of the IOs will not constitute a breach of the Agreement.

(G) The IOs and the Mediator have agreed to serve consistent with this Agreement and understand the need for expeditious resolution of all matters covered herein. If, however, one or both of the IOs must withdraw due to illness or other reason, Census and Class Counsel agree to work together to replace said IO or IOs with a person or persons who can be brought up to speed quickly with regard to the issues to be resolved and who will work under the same terms and conditions as the original IOs. If Census and Class Counsel cannot agree on an IO, they can each make written submissions to the Mediator requesting that the Mediator select a preferred IO or IOs. Similarly, if the Mediator is forced to withdraw, Class Counsel and Defendant's Counsel will notify the court and immediately seek a replacement Mediator acceptable to Census and Class Counsel.

3.3 Class Member Relief.

(A) Records Assistance Project: Group A Filers.

(1) Scope. Class Counsel will establish the Records Assistance Project to assist Group A Filers. The Records Assistance Project will obtain computerized criminal history records information and attempt to resolve issues such as open dispositions and other discrepancies. Class Counsel intend to contract with Cornell University's School of Industrial and Labor

Relations to serve as the clearinghouse for Group A Filers. In addition, Class Counsel intend to work with Cornell University to design training and other Class Member assistance programs. The Records Assistance Project may provide additional Class Member services depending on the number of Group A Filers and Settlement Fund budget constraints, at the sole discretion of Class Counsel. The costs and expenses of the provision of these services to Group A filers shall be paid solely out of the Settlement Fund. The Agreement allocates Five Million and No/000 Dollars (\$5,000,000) to fund the Records Assistance Project and for individual relief for Class Members who select in their Claim Forms to be Group A Filers and for Individual Service Awards and the payment of Service Awards. Any unclaimed funds, including but not limited to Service Awards, will be given to the Records Assistance Project.

- (2) Coordination. Class Counsel will coordinate with relevant programs within the U.S. Department of Labor and Department of Justice providing re-entry services, to encourage opportunities to maximize the reach and benefit of the Records Assistance Project to Class Members. Coordination shall mean that Census will contact the relevant federal agencies notifying them of this Settlement and will request that whenever possible, their appropriate staff employees assist Class Counsel to support the purposes of this Settlement.

(B) Advance Notice Hiring: Group B Filers.

- (1) Scope. Census will provide Group B Filers with advance notice of its intent to hire temporary applicants. Such “early notice” shall be made before, or no later than contemporaneously with, Census’s first general announcement of 2020 decennial hiring, such that Group B Filers who provide timely and complete applications will have their applications considered for census jobs along with the first group of applicants for the 2020 decennial.
- (2) Procedure. Census will draft an “early notice” announcement directed at Group B filers and provide it to the Settlement Administrator. The Settlement Administrator will then provide the Census’s early notice announcement to all Group B Filers who have provided a valid email and/or cellular telephone address on their Claim Form. The early notice announcement will be provided via email, text message, or any other appropriate means selected by the Settlement Administrator. When hiring commences, Group B Filers who have completed the standard temporary hiring application will have their criminal history reviewed through the process adopted by Census following consultation with the IOs. Costs and expenses relative to the processing/potential hiring of Group B filers will not be paid out of the Settlement Fund. The Parties, including the Settlement Administrator, shall not be responsible for notifying any Group

B applicant that fails to provide a valid email or cellular telephone address.

- (3) Coordination. Class Counsel, Defendant's Counsel, and Census will work together to provide a meaningful Group B early notice announcement that will assist Group B Filers in pursuing temporary job opportunities for the 2020 decennial census, including but not limited to information about the criminal background check process.

3.4 Payment to Mediator for Duties Performed Pursuant to This Agreement.

- (A) Reasonable fees and costs incurred by the Mediator in performance of his duties after the Effective Date of this Agreement shall be shared equally by the Parties or their respective counsel.

3.5 Settlement Amounts Payable as Attorneys' Fees and Costs.

- (A) At the Fairness Hearing and in the Motion for Final Approval, Class Counsel will petition the Court for an award of attorneys' fees and reimbursement of actual litigation costs and expenses, to include all costs of claims administration, including claim administrator fees and costs, in an amount of no more than Ten Million and No/000 Dollars (\$10,000,000) from the Settlement Fund.
- (B) The outcome of any proceeding related to Class Counsel's application for attorneys' fees and costs shall not terminate this Agreement or otherwise affect the Court's ruling on the Motion for Final Approval. Any fees or costs sought by Class Counsel but not approved by the Court shall revert to the Settlement Fund.
- (C) The attorneys' fees and costs shall be paid from the escrow account, after the Court approves the Final Approval Order, and no later than fourteen (14) days after when Census funds the Settlement Fund.

3.6 Service Awards and Other Payments to Named Plaintiffs.

- (A) In return for services rendered to the Class Members, at the Fairness Hearing, Named Plaintiffs will apply to the Court to receive Service Awards, funds for these awards to be drawn specifically from the Five Million and No/000 Dollars (\$5,000,000) allocated for individual relief. For purposes of this provision, the Estate of Evelyn Houser shall be deemed a Named Plaintiff. The Named Plaintiffs shall seek no more than ten thousand dollars (\$10,000) each.
- (B) The outcome of the Court's ruling on the application for Service Awards will not terminate this Agreement or otherwise affect the Court's ruling on the Motion for Final Approval. Should all or part of any Service Award sought not be approved by the Court, the sum shall revert to the Settlement Fund.

4. RELEASE

4.1 Release of Claims.

- (A) *Release of Class Member Claims.* By operation of the entry of Final Approval, and except as to such rights or claims as may be created by the Settlement Agreement, each Class Member shall release Census from all claims, demands, causes of action, and liabilities, known and unknown, that they had, have, or may have under any legal or equitable theory, whether contractual, common-law, or statutory, and whether under federal, state, or local law, against Defendant arising from or relating to or concerning the hiring and employment eligibility procedures for the 2010 Decennial Census, including but not limited to, claims and facts alleged in this Action (and the underlying EEOC complaints), whether under the Third Amended Complaint and/or any prior version of the Complaint filed in this Action including, without limitation, under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e, *et seq.*
- (A) *Release of Fees and Costs.* By operation of the entry of Final Approval, and except as to such rights or claims as may be created by this Agreement, Named Plaintiffs, on behalf of the Class and each individual Class Member, irrevocably and unconditionally release, acquit, and forever discharge any claim that they may have against Census for attorneys' fees or costs associated with Class Counsel's representation of Named Plaintiffs and the Class. Named Plaintiffs further understand and agree that any fee payments approved by the Court will be the full, final, and complete payment of all attorneys' fees and costs associated with Class Counsel's representation of the Class. The Estate of Evelyn Houser shall not be entitled to any separate award of attorneys' fees and costs.

5. INTERPRETATION AND ENFORCEMENT.

- 5.1 Cooperation between the Parties; Further Acts.** Class Counsel shall use their reasonable best efforts to obtain the Court's approval of this Agreement and all of its terms. The Parties shall reasonably cooperate with each other, and each Party, upon the request of any other Party, agrees to perform such further acts and to execute and deliver such other documents as are reasonably necessary to carry out the provisions of this Agreement.
- 5.2 Entire Agreement.** This Agreement constitutes the entire agreement between the Parties with regard to the subject matter contained herein, and all prior and contemporaneous negotiations and understandings between the parties shall be deemed merged into this Agreement.
- 5.3 Binding Effect.** This Agreement shall be binding upon the Parties and, with respect to Named Plaintiffs and all Class Members, their spouses, children, representatives, heirs, administrators, executors, beneficiaries, conservators, attorneys, and assigns.
- 5.4 Arms' Length Transaction; Materiality of Terms.** The Parties have negotiated all the terms and conditions of this Agreement at arms' length. All terms and conditions of this

Agreement in the exact form set forth in this Agreement are material to this Agreement and have been relied upon by the Parties in entering into this Agreement, unless otherwise expressly stated.

- 5.5 Captions.** The captions or headings of the Sections and paragraphs of this Agreement have been inserted for convenience of reference only and shall have no effect upon the construction or interpretation of any part of this Agreement.
- 5.6 Construction.** Determination of the terms and conditions of this Agreement has been by mutual agreement of the Parties. Each Party participated jointly in the drafting of this Agreement, and therefore the terms and conditions of this Agreement are not intended to be, and shall not be, construed against any Party by virtue of draftsmanship.
- 5.7 Governing Law.** This Agreement shall in all respects be interpreted, enforced and governed by and under the laws of the United States.
- 5.8 Continuing Jurisdiction.** The Court shall retain jurisdiction over the interpretation and implementation of this Agreement as well as any and all matters arising out of, or related to, the interpretation or implementation of this Agreement and of the Settlement contemplated thereby. The Court shall not have jurisdiction or authority to modify the terms of the Agreement or to increase Defendant's payment obligations hereunder.
- 5.9 Waivers, etc. To Be in Writing.** No waiver, modification or amendment of the terms of this Agreement, whether purportedly made before or after the Court's approval of this Agreement, shall be valid or binding unless in writing, signed by or on behalf of the Named Plaintiffs and Census and then only to the extent set forth in such written waiver, modification, or amendment, subject to any required Court approval. Any failure by a Parties to insist upon the strict performance by any other Party of any of the provisions of this Agreement shall not be deemed a waiver of future performance of the same provisions or of any of the other provisions of this Agreement, and such Party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Agreement.
- 5.10 When Agreement Becomes Binding; Counterparts.** This Agreement shall become valid and binding upon its complete execution, except that it shall be without force or effect if not approved by the Court other than as to any act or obligation that is required or contemplated to occur prior to the Court's decision whether to preliminarily or finally approve the settlement. The Parties may execute this Agreement in counterparts, and execution in counterparts shall have the same force and effect as if all Parties had signed the same instrument.
- 5.11 Facsimile and Email Signatures.** Any signature made and transmitted by facsimile or email for the purpose of executing this Agreement shall be deemed an original signature for purposes of this Agreement and shall be binding upon the Party whose counsel transmits the signature page by facsimile or email.

WE AGREE TO THESE TERMS,

Dated: New York, New York
April ____, 2016

PREET BHARARA
United States Attorney for the
Southern District of New York

By: _____

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