

Other Cases

Lewis M. Steel '63 Papers

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1996

## Consent Decree

Lewis M. Steel '63

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

WALTER HOLLAND, et al.,

Plaintiffs,

v.

THE NEW JERSEY DEPARTMENT OF  
CORRECTIONS, et al.,

Defendants.

C.A. No. 93-1683 (AMW)

JAMES LUTZ,

Plaintiff,

v.

LUTHER GREGG,

Defendant.

C.A. No. 94-2391 (AMW)

UNITED STATES OF AMERICA, et al.

Plaintiffs,

v.

THE STATE OF NEW JERSEY, et al.,

Defendants.

C.A. No. 94-3087 (AMW)

UNITED STATES OF AMERICA and  
LENA HASKINS,

Plaintiffs,

v.

NEW JERSEY DEPARTMENT OF  
CORRECTIONS, et al.

Defendants.

C.A. No. 94-4724 (AMW)

CONSENT DECREE

## PROCEDURAL HISTORY

These actions come before this Court upon the filing of four separate Complaints. On April 19, 1993, six correctional officers employed by the New Jersey Department of Corrections ("NJDOC") at the Adult Diagnostic and Treatment Center ("ADTC") in Avenel, New Jersey, Richard Smitherman, Walter Holland, Oveston Cox, Walter Williams, Terry Jacobs and Brian Taylor, filed a Complaint, originally captioned Smitherman, et al. v. The New Jersey Department of Corrections, et al., C.A. No. 93-1683 (AMW), alleging a pattern and practice of race discrimination, racial harassment and retaliation against African-American correctional officers and their white supporters at the ADTC in violation of 42 U.S.C. §§ 1981, 1983, and 1985(3), the United States Constitution, the New Jersey Constitution, New Jersey State law and common law. This action is now captioned Holland, et al. v. The New Jersey Department of Corrections, et al., C.A. No. 93-1683 (AMW). Plaintiffs in C.A. No. 93-1683 are hereinafter referred to as the "Holland plaintiffs." On March 29, 1994, the Holland plaintiffs filed a First Amended and Supplemental Complaint, adding four additional plaintiffs and a number of additional individual defendants. In addition, the Holland plaintiffs added class allegations, defining the class, inter alia, as NJDOC employees who complained of racial discrimination and harassment against African-Americans in the NJDOC and NJDOC employees who suffered from retaliation for bringing such complaints.

On June 16, 1994, the Holland plaintiffs filed a Second Amended and Supplemental Complaint adding the State Law Enforcement Conference of the New Jersey State Policemen's Benevolent Association ("PBA"), the New Jersey Law Enforcement Supervisors Association, Primary Level Supervisory Law Enforcement Unit ("NJLESA"), the New Jersey Superior Officers Law Enforcement Association, Superior Officers Law Enforcement Unit ("NJSOA"), the New Jersey Superior Officers Law Enforcement Association, Captains Unit ("NJSOA Captains Unit") and the Internal Affairs Investigators Association, Internal Affairs Investigators Unit ("IAIA"), as defendants pursuant to Fed. R. Civ. P. 19(a).

Counsel for the Holland plaintiffs in C.A. No. 93-1683 are hereinafter referred to as "class counsel."

On April 4, 1994, James Lutz filed a Complaint in the New Jersey Superior Court, Essex County, against Luther Gregg, one of the Holland plaintiffs, asserting various state law claims, including malicious prosecution and abuse of process. Gregg subsequently removed the action to this Court and filed an Answer, Counterclaim, and motion to consolidate that action (C.A. No. 94-2391) with C.A. No. 93-1683. Lutz subsequently moved to remand the case back to the New Jersey Superior Court.

On June 28, 1994, the United States filed a separate action, United States v. State of New Jersey, et al., C.A. No. 94-3087 (AMW), alleging a violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e, et seq. (hereinafter "Title VII"). In

its Complaint, the United States alleges that defendants NJDOC and the Commissioner of the NJDOC ("the Commissioner"), discriminated against Sergeant Richard Smitherman by creating a racially hostile work environment at the ADTC and retaliated against Sergeant Smitherman after he complained about the discrimination in violation of Title VII. The Complaint also alleges a pattern and practice of racial harassment and retaliation at the ADTC. In its Complaint, the United States also names the State of New Jersey, the PBA, NJLESA, NJSOA, NJSOA Captains Unit, and the IAIA as defendants pursuant to Fed. R. Civ. P. 19(a).

The United States subsequently filed a motion to consolidate C.A. No. 94-3087 with C.A. No. 93-1683.

On September 14, 1994, this Court denied Lutz's motion to remand C.A. No. 94-2391 to New Jersey Superior Court and consolidated C.A. Nos. 93-1683, 94-3087, and 94-2391 for discovery and trial purposes.

On September 22, 1994, this Court granted the motion of Smitherman, through his estate, Holland, Cox, Williams, Jacobs and Taylor to intervene in C.A. No. 94-3087. In their Complaint in intervention, these plaintiffs alleged violations of Title VII based on the same conduct alleged in C.A. No. 93-1683.

On September 27, 1994, the United States filed a separate Complaint, United States v. New Jersey Department of Corrections, C.A. No. 94-4724 (AMW), alleging that the NJDOC has discriminated

against Lena Haskins, a female corrections officer employed at the ADTC, on the basis of her sex, in violation of Title VII.

On January 23, 1995, the Court granted Haskins' motion to intervene in C.A. No. 94-4724. In her Complaint in Intervention, filed on January 24, 1995, Haskins alleged violations of Title VII based on the same conduct alleged in C.A. No. 94-4724. Haskins named as defendants NJDOC, William Fauver, and Joseph Glover, a supervisory employee of the NJDOC. Haskins' Complaint contained class allegations, defining the class, inter alia, as female NJDOC employees who complained of sex discrimination and harassment.

On January 5, 1996, the Holland plaintiffs filed a Third Amended Complaint containing class allegations, defining the class, inter alia, as NJDOC employees who complained of racial discrimination and harassment against African-Americans in the NJDOC; employees who complained of sexual discrimination and harassment against women in the NJDOC, and NJDOC employees who suffered retaliation for bringing such complaints.

On November 13, 1995, the Court entered an order dismissing with prejudice C.A. No. 94-2391 (Lutz v. Gregg).

Defendants State of New Jersey, NJDOC, Fauver and all defendants represented by the Office of the Attorney General of the State of New Jersey are collectively referred to as "the State defendants." Defendants PBA, NJLESA, NJSOA, NJSOA Captains' Unit and IAIA are collectively referred to as "the Rule 19(a) defendants." Plaintiff United States, the Holland

plaintiffs, plaintiff Haskins, the State defendants, the Rule 19(a) defendants, and defendants Moran, Daukshus, and Schuster are hereinafter referred to as "the parties."

The defendants have answered denying all of the material allegations contained in the above mentioned complaints.

The parties have engaged in extensive discovery.

The parties, being desirous of appropriately settling these actions, agree to the jurisdiction of this Court over them and the subject matter of these actions. Although there is a dispute as to the material allegations contained in the above complaints, the parties, desiring to avoid protracted litigation, and without any admission of liability or wrongdoing on the part of the defendants, accept this Decree as final.

As used in this Decree, the term "date of entry of this Decree" is defined as the date on which the Court grants final approval to and enters this Consent Decree as a final order of the Court.

As used in this Decree, the term "race discrimination" is defined to include racial harassment and the term "sex discrimination" is defined to include sexual harassment.

In resolution of these actions, the parties hereby AGREE and the Court expressly APPROVES, ENTERS and ORDERS the following:

**GENERAL PROVISIONS**

1. Upon the United States', class counsel's and the State defendants' execution of this Decree, the United States, class counsel and the State defendants shall promptly file a joint

motion for preliminary approval and entry of this Decree subject to a fairness hearing to be scheduled by the Court to determine whether the terms of the Decree are fair, reasonable, equitable and otherwise lawful. In addition, simultaneously with the filing of the joint motion for preliminary approval, class counsel shall file a motion for certification of the class as defined in Paragraph 54 of the Third Amended Complaint in Holland, which the State defendants shall not oppose. At least forty-five (45) days prior to the fairness hearing, the State defendants shall send one Notice of Proposed Settlement and Fairness Hearing (as set forth as Appendix A) by certified mail (return receipt requested) to the last known address of: all current employees in the NJDOC (custody and non-custody); and all former NJDOC employees (custody and non-custody) who were employed in the NJDOC for any period of time on or after April 19, 1987. In lieu of sending the Notice to current employees in the NJDOC by certified mail, the State defendants may, at their option, deliver the Notice to such employees at their place of employment, provided, however, that a written acknowledgement of receipt of the Notice is obtained from each such employee. In addition, the State defendants shall provide notice of the proposed settlement and fairness hearing (as set forth in Appendix A) to other interested persons by means of newspaper notices. The newspapers to be used as well as the frequency, size and location of these advertisements shall be as set forth in Appendix B.



2. Any individual who is a member of any class that is certified by the Court in Holland, et al. v. New Jersey Department of Corrections, et al., C.A. No. 93-1683 (AMW), and who filed a claim, charge or complaint of employment discrimination based on race (black) or sex (female) or retaliation for having brought such a claim with the U.S. Equal Employment Opportunity Commission, the New Jersey Division on Civil Rights or a court of competent jurisdiction based on incidents occurring at any time on or after April 19, 1987 and on or before June 30, 1995, and whose claim, charge or complaint is pending as of the date of mailing of the Notice of Proposed Settlement and Fairness Hearing pursuant to Paragraph 1 of this Decree, shall be permitted to opt out of such class. Notice of this right to opt out shall be included in the Notice of Proposed Settlement and Fairness Hearing as set forth in Appendix A. Any individual wishing to opt out of the class shall so notify the class counsel or the United States in writing within thirty (30) days of receiving the Notice of Proposed Settlement and Fairness Hearing, unless good cause, to be determined exclusively by the United States and class counsel, exists.

**GENERAL INJUNCTIVE RELIEF**

3. The State defendants and their employees, consistent with their obligations under current law, shall not engage in any act or practice that has the purpose or effect of unlawfully discriminating against any employee in the NJDOC in any term or condition of employment because of such employee's race (black)

or sex (female), including, but not limited to, creating, maintaining, supporting or condoning a racially or sexually hostile work environment.

4. The State defendants and their employees, consistent with their obligations under current law, shall not retaliate against or in any respect adversely affect any person because that person has opposed alleged discriminatory or retaliatory policies or practices within the NJDOC based on race (black) or sex (female) or because of that person's participation in or cooperation with the initiation, investigation, litigation or administration of these actions or this Decree.

ISSUANCE AND DISTRIBUTION OF POLICY AGAINST DISCRIMINATION, INCLUDING HARASSMENT, AND RETALIATION

5. No later than seven (7) days after the entry of this Decree, the Commissioner or his designee shall issue and distribute to all current NJDOC employees the statement of policy and schedule of penalties attached hereto as Appendix C. For current employees who are utilizing vacation time, sick leave, administrative leave, injury leave or other types of leave during the seven (7) day period after entry of the Decree, the Commissioner or his designee shall distribute the statement of policy and schedule of penalties attached hereto as Appendix C within seven (7) days of the employee's return to duty. For all future employees, the Commissioner or his designee shall issue and distribute the statement of policy and schedule of penalties attached hereto as Appendix C within seven (7) days of hire. This policy and schedule of penalties shall become effective

seven (7) days after the entry of this Decree. The statement of policy and schedule of penalties shall be posted in a prominent, conspicuous, centrally-located place commonly used for posting notices (e.g., bulletin boards) in all NJDOC facilities and the office of the Commissioner of the NJDOC. This posting requirement of the schedule of penalties and policy statement shall survive the expiration of this Decree. The statement of policy and schedule of penalties shall be read at line-up at all NJDOC institutions at all shifts for three (3) consecutive days, commencing no later than seven (7) days after the date of entry of this Decree. The State defendants shall require each NJDOC employee to sign an acknowledgment of receipt of the statement of policy and schedule of penalties. The written acknowledgments need not be obtained on separate documents. However, such documents must contain the name, rank or title and signature of each employee who received the statement of policy and schedule of penalties.

The Commissioner also agrees to attend a Superintendents' meeting, which shall take place no later than three (3) months from the date of entry of this Decree, to advise all attendees of the terms of this Decree and of the Commissioner's personal commitment to combating racial and sexual discrimination, including harassment, and retaliation in the NJDOC. The State defendants may commence such meeting at any time subsequent to the signing of this Decree by the United States, class counsel, and the State defendants. The Commissioner's presentation shall

be videotaped and the NJDOC shall require all incumbent employees to view the videotape. The NJDOC shall show the videotape to all incumbent NJDOC employees, custody and non-custody, within six (6) months from the date of entry of this Decree. For those staff who are utilizing vacation time, sick leave, administrative leave, injury leave or other types of leave during the six (6) month period, those staff shall view the videotape within thirty (30) days of their return to duty. Each such employee shall sign a written acknowledgement documenting that the employee has seen the videotape in its entirety. The written acknowledgments need not be obtained on separate documents. However, such acknowledgments must contain the name, signature and rank of each such employee. Each individual who becomes a custody employee with the NJDOC during the life of this Decree shall view the videotaped presentation during training at the Corrections Officer Training Academy ("COTA") and shall sign a written acknowledgement as described above documenting that the individual has seen the videotape in its entirety. Each individual who becomes a non-custody employee with the NJDOC during the life of this Decree shall view the videotaped presentation during training or orientation, if any, but in no event later than thirty (30) days after employment begins and shall sign a written acknowledgement documenting that the individual has seen the videotape in its entirety.

Within ten (10) days of their compliance with the six (6) month requirement of this Paragraph, the State defendants shall

provide written notice to the United States and class counsel certifying such compliance. If the State defendants are unable to comply with the six (6) month requirement of this Paragraph concerning viewing of the videotape by incumbent employees, the State defendants shall provide written notice to the United States, class counsel, and the Court setting forth the following information:

a. a detailed description of their efforts to comply with the requirement, including:

(1) the number of custody employees who have viewed the videotape and the number of custody employees who have not yet viewed the videotape, identifying such individuals by rank (e.g., correction officer, sergeant, captain, Assistant Superintendent, Superintendent). The parties agree that defendants may comply with this requirement by providing the United States and class counsel with the signed acknowledgments described above and a report identifying the total number of custody employees in the NJDOC by rank; and

(2) the number of non-custody employees who have viewed the videotape and the number of non-custody employees who have not yet viewed the videotape;

b. the reasons for non-compliance with the six (6) month requirement; and

c. a proposed timetable for compliance.

Should the United States or class counsel object to the proposed timetable, the matter shall be handled pursuant to the

dispute resolution mechanism set forth in Paragraphs 59-62 of this Decree.

**PROCEDURES FOR HANDLING INTERNAL COMPLAINTS OF DISCRIMINATION, INCLUDING HARASSMENT, AND RETALIATION**

6. A NJDOC employee with a complaint of employment discrimination or retaliation may file a complaint with the Assistant Superintendent Liaison ("ASL") at his or her facility or the NJDOC Equal Employment Division ("EED"), located in Trenton, within thirty (30) days of the last incident of alleged discrimination. This time limitation, however, does not preclude the EED from exercising its discretion to conduct an investigation of a discrimination complaint at any time. In any event, the complaint must be in writing. A written complaint in any form will be received but if it is not on an official complaint form, the complainant will be provided with a blank complaint form and required to fill it out in order for his or her complaint to be investigated. Complaint forms will be available to all NJDOC employees at all NJDOC institutions and locations. The complaint form will be in the form attached as Appendix D hereto. Nothing herein shall be construed as precluding the complainant from pursuing his/her statutory or other legal rights or rights under any applicable collective bargaining agreement.

7. The EED shall report directly to the Commissioner's Office. The EED shall have principal responsibility for matters arising within the scope of this Decree. The Commissioner agrees to maintain the EEO/AA Office currently located at the NJDOC

central office in Trenton as the EED and to authorize EED investigators within that office, in addition to the ASLs, to have responsibility for investigations of complaints of discrimination and harassment based upon race and sex. The EED shall be staffed by a supervisor and investigators with training in equal employment opportunity issues. The Commissioner shall also contract for services of a statistical analyst to review the quarterly reports prepared by the NJDOC and the Department of Personnel ("DOP") concerning issues of disparate discipline and/or disparate training of NJDOC personnel. The EED's functions will be defined broadly to include principal responsibility for working towards the goal of eradicating all forms of illegal discrimination and retaliation within the NJDOC, heightening employee awareness to issues of diversity, analyzing statistical data with regard to the employment of African Americans and women within the NJDOC and making recommendations for establishing goals toward rectifying underrepresentation, where deemed necessary. The EED will also act as advisor to Superintendents or Administrators on issues involving employment discrimination and retaliation.

8. The complainant shall have the right to file a complaint of employment discrimination or retaliation directly with the EED. If a NJDOC employee makes a written complaint of employment discrimination or retaliation to a NJDOC supervisor or manager, or to an employee of the Internal Affairs Unit ("IA"), the person who receives the complaint will be responsible for

promptly forwarding the complaint to the ASL of the institution where the incident occurred, the ASL of the institution where the complainant is currently employed, or the EED. If the ASL is not available, the employee receiving the complaint shall promptly notify the ASL's designee at the facility where the incident occurred, the ASL's designee at the institution where the complainant is currently employed, or the EED. If the ASL or his or her designee is advised of a complaint, he/she shall promptly notify the EED of the complaint and forward a copy to the EED. If the EED is closed at the time that the complaint is received, the EED will be notified on the day when it reopens.

If the ASL receives a complaint of employment discrimination and does not forward it to the EED or fails to notify the EED as described in this Paragraph, he or she will be subject to discipline for violation of a rule, regulation, procedure, order or administrative decision pursuant to Human Resources Bulletin 84-17, as amended, paragraph E.1.

In a case where an internal affairs investigation may be required for possible serious criminal conduct, which also involves a complaint of employment discrimination or retaliation, and in the reasonable good faith judgment of the internal affairs investigator the criminal investigation would be compromised by the act of notifying the EED, internal affairs officials shall promptly notify the Commissioner or, in his absence, his Chief of Staff or designated Deputy Commissioner, for a determination as to how, when and by whom the investigation shall be conducted



pursuant to the provisions of this Paragraph. In cases in which the EED is not notified of such a complaint, the EED shall be notified of and provided with the complaint at the conclusion of the internal affairs investigation.

The EED supervisor, or his or her designee, in the conduct of his or her investigations, may request such assistance from the internal affairs unit of the NJDOC central office in Trenton. These investigators may be utilized in instances where their specific expertise is desirable, including, among others, handwriting analysis, fingerprint analysis and polygraph testing. In incidents where a complaint has been received by the EED, internal affairs investigators may be utilized where an overlap exists between internal affairs investigatory authority and EED authority. In such incidents, the portion of the investigation related to the employment discrimination shall be conducted by the EED. In such circumstances, if there is an issue as to how, when and by whom the investigation shall be conducted, the Commissioner, or in his absence, his Chief of Staff or designated Deputy Commissioner, in his discretion shall render a decision.

Nothing in this Decree shall be interpreted as requiring the disclosure or compromise of a criminal investigation within the NJDOC or disallowing a referral of a criminal investigation from the NJDOC to another State or federal agency having criminal jurisdiction.

Except where an internal affairs investigation may be required for possible serious criminal conduct which also

involves a complaint of employment discrimination where the Commissioner or his designee is to be promptly advised, if a NJDOC supervisor, manager or IA employee receives a complaint of employment discrimination and does not forward it promptly to the ASL or the EED, the person who received the complaint will be subject to discipline for violation of a rule, regulation, procedure, order or administrative decision pursuant to Human Resources Bulletin 84-17, as amended, paragraph E.1.

The Commissioner or, in his absence, his Chief of Staff or designated Deputy Commissioner, shall issue an order encompassing the requirements of this Paragraph within thirty (30) days after the date of entry of this Decree.

9. Upon receipt of a complaint of employment discrimination by the EED, the supervisor of the EED or his/her designee shall promptly notify the ASL of the institution where the incident occurred for immediate action, including remedial action or investigation, if necessary, pending the EED investigation. If the EED supervisor or his/her designee disagrees with the ASL, or with the Superintendent or Administrator who was apprised of the disagreement, concerning any issues related to remedial action pending the investigation, the EED supervisor or his/her designee shall promptly notify the Commissioner, or in his absence, his Chief of Staff or designated Deputy Commissioner, for resolution of the dispute.

10. The EED shall determine whether the ASL or the EED shall investigate a complaint as described in Paragraph 8 of this

Decree. If, however, a complainant does not want the investigation to be conducted by the ASL, an EED investigator will conduct the investigation except in extraordinary circumstances. If extraordinary circumstances exist, the decision as to who shall investigate the complaint shall lie within the discretion of the EED supervisor or, in his or her absence, the person designated to act in his or her place. If the EED supervisor assigns the ASL to conduct the investigation over the complainant's objections, the EED supervisor shall set forth the reasons for the decision in writing, and provide them to the complainant, class counsel and the United States. In incidents involving employment discrimination complaints against members of the internal affairs unit, EED investigators shall conduct the investigation.

11. Where the ASL conducts the investigation, the following procedures shall be included. The ASL shall seek to elicit from the complainant the names of individuals he or she believes can supply firsthand information regarding the matter being investigated or other material that the complainant believes may be relevant. The ASL shall notify the EED in writing of his or her preliminary findings and shall send a memorandum to the complainant summarizing the scope of the investigation and its results. In addition the memorandum to the complainant shall indicate the remedial action being recommended, contain a statement of whether or not disciplinary action should be taken and advise the complainant that he or she may contact the EED

concerning the complaint and may, among other things, comment on whether there is any other witness or material overlooked. Nothing herein shall be interpreted to require disclosure to the complainant of facts which in the reasonable judgment of the ASL would significantly compromise that investigation, or another then-pending investigation by NJDOC. Where the complainant has raised questions regarding the completeness of the investigation, the EED supervisor shall designate an EED employee to interview the complainant and order a further investigation to be conducted by EED if the EED supervisor, in his or her discretion, believes it is warranted. In exercising such discretion, the complainant's request for a further investigation shall not be unreasonably denied.

12. If, during the investigation, any NJDOC employee fails to cooperate, the investigator shall notify the supervisor of EED who shall promptly notify the Administrator or Superintendent or, in the absence of the Administrator or Superintendent, the person designated to act in his or her place, of the facility to which the non-cooperating employee is assigned for any further action deemed necessary, including an order from the Administrator or Superintendent to the individual who refuses to cooperate. If the Administrator or Superintendent fails to promptly issue an order to cooperate, the EED supervisor shall promptly notify the Commissioner or, in his absence, his Chief of Staff or designated Deputy Commissioner. If the Commissioner decides not to issue an order to cooperate, he shall set forth his reasons in writing,

which shall be made available to the United States and class counsel.

13. The United States and class counsel shall have the opportunity to review the credentials of the current designated EED investigators within thirty (30) days of the date of entry of this Decree. Moreover, if the EED supervisor or an investigator position becomes available in the EED, the United States and class counsel shall be promptly notified and have the opportunity to review the credentials of prospective supervisors and/or investigators and make recommendations to the Commissioner concerning these prospective supervisors and/or investigators prior to the appointment of any persons to fill such positions. The United States and class counsel shall also have the opportunity to make recommendations to the Commissioner concerning other NJDOC employees whom they believe would be suitable for the position of EED investigator or EED supervisor. The decision as to who should be hired as the EED investigator or supervisor shall remain in the discretion of the Commissioner.

14. The Commissioner shall forthwith order that, except for investigations requiring utilization of internal affairs investigators, as set forth in Paragraph 8, no one in the NJDOC other than EED investigators and/or ASLs will investigate any complaints of employment discrimination or retaliation unless the Commissioner has expressly authorized such an investigation. Any supervisor or IA investigator who orders or conducts such an investigation with knowledge that the complaint involves

employment discrimination or retaliation without the express authorization of the Commissioner or his designee shall be subject to discipline for violation of a rule, regulation, procedure, order or administrative decision pursuant to Human Resources Bulletin 84-17, as amended, paragraph E.1.

15. The EED shall complete investigations and issue findings on complaints of employment discrimination within forty-five (45) days of receipt of complaints. If, under exceptional circumstances, a finding cannot be issued in this time period, class counsel and the United States shall be notified promptly in writing and given an explanation of the reasons therefor.

16. For employment discrimination complaints where there is a determination that no probable cause exists to support the allegations, the determination shall be in writing, signed by the Commissioner or, in his absence, his Chief of Staff or designated Deputy Commissioner, and sent to the complainant, the Superintendent or Administrator of the institution where the alleged discrimination took place, the United States and class counsel. If class counsel and/or the United States disagree with the determination of no probable cause, the matter shall be handled through the dispute resolution mechanism set forth in Paragraphs 59-62 of this Decree.

17. For employment discrimination complaints where there is a determination that probable cause exists to believe that discrimination has occurred and a remedy is ordered that does not include disciplining an offender, the determination shall be in

writing and the remedy shall be implemented promptly by the Superintendent or Administrator, or in the absence of the Superintendent or Administrator, the person designated to act in their place, upon prior notice to the complainant, if practicable. Within twenty (20) days after receipt of the determination, the Superintendent or Administrator shall produce to the EED evidence of compliance and the EED shall notify the complainant, the United States and class counsel of said compliance. If class counsel and/or the United States disagree with the determination, the matter shall be handled through the dispute resolution mechanism set forth in Paragraphs 59-62 of this Decree.

18. If probable cause has been found concerning a complainant's allegations and if disciplinary action is to be initiated against the accused, the complainant shall receive written notice of these facts. A memorandum signed by the Commissioner or his designee shall be forwarded promptly to the Superintendent or Administrator and shall contain the charge and penalty range as described in Appendix C. The complainant shall also be notified that the prosecutor shall be appointed by the Administrator or Superintendent in consultation with the EED supervisor and that the hearing officer assigned to hear the disciplinary charge shall come from the NJDOC central office in Trenton. If a complainant raises an objection to the ASL or the EED concerning the prosecutor for the disciplinary hearing, the EED supervisor or, in his or her absence, the person designated

to act in his or her place, shall review the complainant's concerns by, among other means, interviewing the complainant, to determine whether a new prosecutor should be appointed for the disciplinary hearing. Such a request by a complainant shall not be unreasonably denied.

19. If required by law or applicable collective bargaining agreement, employees charged with employment discrimination will be given the opportunity for a hearing where there is a finding by EED that the employee should be disciplined. In any disciplinary hearing held concerning a complaint of employment discrimination, the NJDOC shall require that the hearing be recorded via audiotape. This tape shall be available to the class counsel and the United States for review, upon written request. The NJDOC shall designate a hearing officer from the NJDOC central office in Trenton to be the hearing officer. This hearing officer shall have training in equal employment opportunity issues. The Administrator or Superintendent, or in the absence of the Administrator or Superintendent, the person designated to act in their place, in consultation with the EED supervisor, or, in his or her absence, the person designated to act in his or her place, shall designate the prosecutor for the disciplinary hearing subject to the provisions of Paragraph 18 of this Decree. The prosecutor shall have available the complete investigative file concerning the complaint and will have the power to order witnesses to attend and testify. The complainant shall be given permission to take time off from work to take part



in the investigatory process, as needed by the investigators, and to attend the hearing as needed, without penalty. The witnesses shall be given permission to take time off from work to take part in the investigatory process, as needed by the investigators, and to attend the hearing as needed, subject to a request to sequester the witnesses, without penalty. The hearing officer will follow the procedures in accordance with the applicable collective bargaining agreement or appropriate Civil Service rule. After a hearing on the merits, a copy of the decision will be forwarded promptly to the Administrator or Superintendent of the facility where the incident occurred, the EED supervisor, the person charged, the United States, and class counsel. The United States, class counsel, and the complainant shall promptly receive a formal written determination from the Commissioner or, in his absence, his Chief of Staff or designated Deputy Commissioner, which shall include the results of the investigation and the hearing, including the sanction imposed. Class counsel and the United States shall also receive the exhibits utilized during the disciplinary hearing and the investigative file prepared for the prosecutor.

20. If the complainant is dissatisfied with the hearing officer's decision or with the manner in which his or her complaint was handled by NJDOC, he or she may appeal to the New Jersey Department of Personnel ("DOP"), if allowed by applicable state law, and/or notify class counsel and/or the United States. If the United States and/or class counsel are dissatisfied with

the hearing officer's decision or with the manner in which the complaint was handled by the NJDOC, the matter shall be handled through the dispute resolution mechanism set forth in Paragraphs 59-62 of this Decree except where the complainant files an appeal to the DOP, in which case class counsel and/or the United States shall await the results of the appeal before invoking the dispute resolution process.

21. (a) The statistical analyst referred to in Paragraph 7 of this Decree shall receive from the EED and from the DOP quarterly reports on hiring by race and sex from each NJDOC facility. The form of the DOP reports will remain the same as those currently prepared by the DOP.

(b) The NJDOC will develop a quarterly report regarding promotions, discipline and training. The content and format of the promotion and training portions of this report shall be agreed upon by class counsel, the United States and the State defendants within thirty (30) days of the date of entry of this Decree. This report shall contain a list of all disciplinary actions taken against any NJDOC employee for each facility during the reporting period, including the name, race and sex of the employee disciplined, the name of NJDOC facility where the employee is assigned, the specific charge under Human Resource Bulletin 84-17 or other applicable rule or regulation, and the sanction imposed. This report shall be available to class counsel and the United States but need not be disclosed to NJDOC employees.

(c) The EED statistical analyst consultant will prepare a quarterly report breaking out by race and sex, the percentage of employees receiving promotions, discipline and training at each NJDOC facility. This report shall be available to any NJDOC employee upon request. These analyses will be used by the EED investigators when analyzing complaints that fall into these categories.

For purposes of this Decree, reporting periods shall run from January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31 for each year. Within forty-five (45) days from the close of each reporting period beginning with the first full reporting period after the date of entry of this Decree, the State defendants shall provide the United States and class counsel with all quarterly reports as specified in this Paragraph.

22. The supervisor of the EED shall have regular meetings on an as needed basis but no less than quarterly, if requested, with counsel for the United States and class counsel to discuss the progress of the office and the status of particular complaints. The supervisor of the EED will also meet monthly with the Commissioner to discuss these issues. The Commissioner, the supervisor of the EED, the United States and/or class counsel may request a special meeting if they believe it is necessary or appropriate.

23. The EED shall keep written and computer records of all complaints of employment discrimination filed indicating the

names of the complainants and accused, the facility where the complaint arose, race/sex of the complainant and the person(s) accused, the date of the complaint, the nature of the complaint, the determination reached, the date of the determination, and the remedy and/or discipline implemented. These records shall be maintained and retrievable via computer program in each of the categories listed above. These records and the underlying files shall be available for inspection by the United States and class counsel, upon reasonable notice to the State defendants. NJDOC employment discrimination investigatory files which are closed as of the date of entry of this Decree and which involve complaints pre-dating 1987, may be destroyed after the name of the person accused, the complainant's name, race/sex of the complainant and the person(s) accused, the date of the complaint, the nature of the complaint, the determination reached, the date of the determination, and the remedy and/or discipline implemented have been incorporated into the NJDOC's computer files.

**PENALTIES FOR VIOLATIONS OF POLICY AGAINST HARASSMENT,  
DISCRIMINATION AND RETALIATION**

24. The NJDOC shall modify Human Resources Bulletin 84-17 to include under Personal Conduct [subsection C] a new subsection -- (c) (31) -- a charge of employment discrimination. This disciplinary charge shall have the sanctions as described in the attached Schedule of Penalties set forth in Appendix C.

**TRAINING**

25. The NJDOC shall develop a training program to ensure that supervisors and employees of the NJDOC are instructed on

what acts may constitute racial or sexual discrimination, and what acts may constitute retaliation, and the procedures for reporting and investigating claims of employment discrimination and retaliation. The training program shall also include cultural sensitivity and a diversity component. The United States and class counsel shall provide assistance in developing this training program and shall review any proposed program that is developed but final decisions on training issues shall be made by the NJDOC. If the United States and class counsel do not avail themselves of the opportunity to assist in developing this training program, all decisions made by the NJDOC in developing this training program shall lie within its discretion.

The training program shall include training for correction officer recruits at the Correctional Officer Training Academy ("COTA"); training for non-custody employees at the time of hire, ongoing training for senior corrections officers and non-custody employees; training for custody and non-custody supervisors, including Administrators and Superintendents, at the time of promotion or assumption of supervisory duties; and ongoing training for custody and non-custody supervisors, including Administrators and Superintendents. This training program shall be initiated no later than (6) months after the date of the entry of this Decree. All NJDOC employees shall sign an acknowledgment of attendance for any and all training instituted concerning employment discrimination. The written acknowledgments need not be obtained on separate documents. However, such acknowledgments

must contain the name, rank or title and signature of each such employee.

**NON-DISCRIMINATION IN ASSIGNMENTS**

26. The State defendants and their employees, consistent with their obligations under current law, shall not engage in any act or practice that has the purpose or effect of unlawfully discriminating against any employee in the NJDOC with respect to assignment to any post, position or shift on account of race (black) or sex (female). Action taken in compliance with the provisions of the settlement agreement in Czimadia v. Fauver, C.A. No. 88-786 (D.N.J.), shall not be violative of this Decree. Any complaint concerning discrimination in assignment received by the officials of any NJDOC facility shall be promptly forwarded to the EED supervisor for investigation. The EED's determination shall be handled in accordance with Paragraphs 16-18 of this Decree. Where the EED investigation concludes that an assignment was based on discrimination, the complaint shall also be forwarded to the statistical analyst for incorporation into his or her report, as described in Paragraph 21c.

**NON-DISCRIMINATION IN DISCIPLINE**

27. The State defendants and their employees, consistent with their obligations under current law, shall not engage in any act or practice that has the purpose or effect of unlawfully discriminating against any employee in the NJDOC with respect to discipline on account of race (black) or sex (female). Defendants shall not use discipline to retaliate against

employees of the NJDOC who oppose allegedly discriminatory practices. Any complaint received by the officials of any NJDOC facility concerning disparate discipline shall be promptly forwarded to the EED supervisor for investigation. The EED's determination shall be handled in accordance with Paragraphs 16-18 of this Decree. Where the EED investigation concludes that the discipline was based on discrimination, the complaint shall also be forwarded to the statistical analyst for incorporation into his or her report, as described in Paragraph 21c.

**AMENDMENT OF PERFORMANCE APPRAISAL RATING (PAR) FORMS**

28. The Commissioner shall issue a directive that notifies all NJDOC employees, including supervisors, that: (a) an employee's performance concerning equal employment opportunity issues shall be taken into account when that employee receives a PAR evaluation; and (b) if an employee is disciplined as a result of an equal employment opportunity-related issue, his or her PAR evaluation shall be adversely affected. In addition, in deciding whether a NJDOC employee shall receive any promotion, award, commendation or other performance related benefit, the State defendants shall take into account the employee's performance with regard to NJDOC's obligations under this Decree, Title VII, other applicable equal employment opportunity laws and NJDOC equal employment opportunity policy.

**PROMOTIONS**

29. a. The State defendants shall provide at least fifteen (15) days advance notice of all vacancies for the

positions of Assistant Superintendent and Internal Affairs Investigator in the following manner:

(1) by posting notice of such vacancies in a conspicuous, centrally located place commonly used for posting notices (e.g., bulletin boards) in each NJDOC facility and the NJDOC central office in Trenton.

The notice described in Subparagraph a above shall contain the following information:

- (a) a job description;
- (b) the minimum qualifications required for the position;
- (c) the application procedures;
- (d) the salary range;
- (e) the closing date for applications;
- (f) the location where the opening exists; and
- (g) the name and address of the office to which inquiries, resumes or requests for application should be sent.

b. Throughout the life of this Decree, the State defendants shall maintain all records related to the filling of the classified supervisory custody positions of sergeant, lieutenant, captain and Director of Custody Operations and the unclassified positions of Principal Internal Affairs Investigator and Internal Affairs Investigator, including, but not limited to: vacancy announcements, applications, interview notes, and records relating to an applicant's references and shall make readily



available such records upon request of the United States or class counsel. Such requests shall not be unreasonably denied.

c. The State defendants shall make available to class counsel and the United States, upon request, but in no event more than semi-annually, the following information:

(1) The number, names, race, and sex of all persons applying and/or selected for the positions specified in Subparagraph 29b, above, and the facility applied to, if applicable;

(2) Certified lists of eligible applicants for all classified supervisory positions specified in Subparagraph 29b, above; and

(3) The number, names, race, and sex of all persons holding the positions specified in Subparagraph 29b, above, for each NJDOC facility as of the end of each year for the life of this Decree.

To the extent that the information identified in Subparagraphs 29c(1) and 29c(2), above, is contained in documents within the possession of the State defendants, the State defendants need not create new reports in order to comply with the requirements of Subparagraphs 29c(1) and 29c(2). Rather, the State defendants may make readily available such documents to the United States and class counsel.

**TITLE OF MANPOWER SERGEANT**

30. The State defendants shall formally change the title of the current custody position of "manpower sergeant" to the gender-neutral title of "special assignment sergeant."

**PROCESSING OF EXTERNAL COMPLAINTS**

31. If a NJDOC employee files an employment discrimination complaint with the NJDOC and also files an administrative complaint of employment discrimination or retaliation with the U.S. Equal Employment Opportunity Commission ("EEOC"), the Division of Civil Rights of the New Jersey Department of Law and Public Safety ("NJDCR"), or other federal or state agency outside NJDOC, or a judicial complaint concerning employment discrimination or retaliation ("an external complaint"), NJDOC's defense of the external complaint shall be handled by a representative of the NJDOC outside of the EED office, or counsel for the NJDOC, or counsel for its officials. The representative of the NJDOC or counsel handling such a complaint shall notify the outside agency or court handling the external complaint that an internal EED investigation is pending and request that the external agency or court stay proceedings until the internal investigation is completed. If the outside agency or court refuses to stay such proceedings, the representative of the NJDOC or counsel shall be able to defend against the complaint.

**MONITORING, RECORD-KEEPING AND REPORTING**

32. Class counsel and/or the United States shall be permitted periodically to monitor the defendants' compliance with

this Decree for the duration of this Decree. Specific monitoring and record keeping functions are set forth in other Paragraphs of this Decree, as supplemented by this Paragraph. Class counsel and the United States agree to enter into a protective consent order for the purpose of maintaining the confidentiality of any documents provided to or reviewed by them as part of the requirements of this Decree where such documents would be protected from disclosure to a party making a request pursuant to N.J.S.A. 47:1A-1, et seq. The monitoring functions to be performed under this Decree shall be construed liberally in order to effectuate the Decree's purposes. Requests for documents and information shall not be unreasonably denied. The monitoring functions shall include, but not be limited to:

- a. Review and evaluation of complaints or inquiries submitted to the United States and/or class counsel by NJDOC employees who have filed employment discrimination complaints with the NJDOC. NJDOC officials shall cooperate with these activities, including making readily available pertinent documents requested by the United States and/or class counsel;
- b. Review and evaluation of reports submitted to them by the State defendants, including Quarterly Reports as set forth in Paragraph 21, and, if requested, the underlying documentation that support these reports;
- c. Review and evaluation of the performance of EED employees, including their work product and investigatory files; and

d. Review and evaluation of other documents relating to the subject matter of this Decree, which have been retained by the NJDOC, and are not unduly burdensome to produce.

33. For the duration of this Decree, the NJDOC and its employees shall retain all documents and records that come into their possession subsequent to the date of entry of this Decree (including computer tapes) directly relating to discipline, assignments by the Special Assignment Sergeant, training, and promotions. The NJDOC shall also retain all audiotapes of disciplinary hearings for a period of three (3) years from the date of the hearing. Upon request, and upon reasonable notice to the State defendants, the United States and class counsel may inspect and copy these documents, records and audiotapes. Such requests shall not be unreasonably denied.

34. For the duration of this Decree, the NJDOC shall also retain internal complaints of racial or sexual harassment, discrimination or retaliation filed with the EED and/or the ASLs, and received subsequent to the date of entry of this Decree. Upon request, and upon reasonable notice to the State defendants, the United States and class counsel may inspect and copy these documents. Such requests shall not be unreasonably denied.

35. For the duration of this Decree, the NJDOC and its employees shall retain all documents that come into their possession relating to charges or complaints of harassment, discrimination and retaliation filed against the NJDOC or its employees, with the United States Equal Employment Opportunity

Commission, the New Jersey Division on Civil Rights or any court of competent jurisdiction which are received subsequent to the filing of this Decree. The NJDOC shall provide to the United States and class counsel copies of such charges or complaints within thirty (30) days of receipt of such charges or complaints.

36. Any disputes concerning the monitoring functions as described in subsections (a)-(d) of Paragraph 32, and Paragraphs 33-35, shall be resolved through the dispute resolution mechanism set forth in Paragraphs 59-62 of this Decree.

#### INDIVIDUAL RELIEF

##### INJUNCTIVE RELIEF FOR NAMED PLAINTIFFS

37. Within thirty (30) days of the date of entry of this Decree, the State defendants shall provide the following injunctive relief to the following named plaintiff:

Wilhelmina Sherrod - seniority retroactive to her date of separation from the NJDOC and reinstatement to the NJDOC at Riverfront State Prison. Upon reinstatement, one of her two days off will be a Saturday or Sunday and she will be assigned to the first shift; she will receive reinstatement to full pension rights as of her date of separation from the NJDOC including, if necessary, employer contributions to the applicable pension fund.

38. The State defendants shall expunge from the personnel files of the named plaintiffs all documents, records or information of an adverse nature placed in such files on or after April 1, 1987 and contained in such files as of the date of entry of this Decree, including but not limited to, oral reprimands

reduced to writing, letters of counseling, warning letters or memoranda, written reprimands, suspensions or terminations, or other information retained for disciplinary purposes, relating to the named plaintiffs, utilizing the following procedure. Within thirty (30) days of the date of entry of this Decree, the State defendants shall make available for inspection to class counsel and the United States the personnel files of the named plaintiffs. Class counsel and the United States shall identify to the State defendants the documents to be expunged from such files and records. Any disagreement between the parties concerning the documents to be expunged shall be resolved by O. Peter Sherwood, who has served as the mediator in this matter, and whose decision shall be final. The burdens of proof for resolution of any such disagreement shall be those set forth by the Supreme Court for Stage II proceedings after a finding of liability in Int'l Brotherhood of Teamsters v. United States, 431 U.S. 324 (1977).

Any documents, records or information described above that are not contained in personnel files and are discovered after the date of entry of this Decree, with the exception of Internal Affairs documents described below, shall be subject to expungement under the standards set forth in Teamsters. Disputes regarding such documents, records or information shall be handled pursuant to the dispute resolution mechanism set forth in Paragraphs 59-62 of this Decree.

With respect to files maintained by the Internal Affairs Unit relating to the named plaintiffs, these files shall be reviewed in camera by O. Peter Sherwood, who shall determine the appropriate documents to be expunged. This decision shall be final.

#### SETTLEMENT FUND

39. Within twenty-two (22) calendar days from the date that class counsel, the United States and the State defendants sign this Decree, the State defendants shall place the sum of \$3.74 million (three million, seven hundred and forty thousand dollars), hereinafter referred to as the "Settlement Fund," into an escrow account with The Chase Manhattan Bank, N.A.

(hereinafter "Escrow Agent") provided that class counsel, the United States, the State defendants and the Escrow Agent have entered into an Escrow Agreement.

The Settlement Fund shall be used to: (a) pay monetary awards to the individual named plaintiffs; (b) pay monetary awards to other individuals who submit claims for relief pursuant to the terms of this Decree; (c) pay attorneys' fees to class counsel; (d) pay costs associated with the establishment and administration of the escrow account; and (e) pay costs associated with obtaining a legal opinion concerning tax issues, if necessary.

The monies in the Settlement Fund shall remain in the escrow account until the principal and the interest earned thereon are distributed pursuant to the procedures under this Decree. Such

monies, as well as all interest thereon, shall be used exclusively for the purposes set forth in this Decree.

All monetary awards under (a) and (b) of this Paragraph shall be paid directly by the Escrow Agent to the individual named plaintiffs and to successful claimants in accordance with the provisions of this Decree.

40. a. Within thirty (30) days after the date of entry of this Decree, class counsel shall file an application for attorneys' fees and expenses with Jeffrey L. Reiner, the Special Master appointed by the Court for this purpose. Mr. Reiner's fee shall be paid equally by class counsel and the Settlement Fund established pursuant to Paragraph 39 of this Decree. Class counsel have agreed not to seek an award of attorneys' fees and expenses in excess of \$800,000 for work performed prior to the date of entry of this Decree, unless class counsel's work in processing this Decree, from the date the Decree is signed by the State defendants, the United States and class counsel, until the date of entry of the Decree, requires outlays of time and/or expense beyond class counsel's reasonable expectation. For example, if class counsel are required to litigate to defend the Decree against objections raised by class members or any party, class counsel may apply for fees and expenses above \$800,000 to compensate them for this additional work.

b. In addition, no later than the date of filing of the written report required under Paragraph 52 of this Decree, class counsel may make a second fee application to compensate



them for work performed in connection with receiving, processing and evaluating claims submitted for monetary relief under this Decree, including, but not limited to work performed in connection with Paragraph 53 of this Decree.

c. The amount of attorneys' fees and expenses award by the Court to class counsel up to \$800,000 shall be deducted from the Settlement Fund. If class counsel apply for, and are awarded, fees and expenses above \$800,000 for performing the work described in Subparagraphs 40a and/or 40b above, the fees and expenses exceeding \$800,000 shall be deducted from the interest accrued on the Settlement Fund between the time the monies were deposited into the escrow account and the date of entry of this Decree ("the pre-approval period"). If the Settlement Fund accrues insufficient interest during the pre-approval period to cover class counsel's fees and expenses above \$800,000, the balance owed class counsel shall be deducted from the Settlement Fund, provided that under no circumstances will class counsel receive in excess of \$900,000 for fees and expenses for work performed under this Paragraph 40.

d. The State defendants agree that class counsel are entitled to their reasonable fees and costs in this action and will not oppose class counsel's applications if the State defendants believe them to be reasonable. In establishing the reasonableness of their applications, class counsel may submit applications which would justify higher fees, and the parties agree that the Court may consider this full amount in determining

the reasonableness of the amount requested. The Escrow Agent shall pay class counsel the attorneys' fees and expenses awarded by the Court within thirty (30) days of the Court's ruling on each such application.

41. Within thirty (30) days after the date of entry of this Decree, the Escrow Agent shall pay the named plaintiffs the following monetary awards out of the Settlement Fund. The parties agree that these sums represent reasonable settlements of the named plaintiffs' claims of pain and suffering and are not tied to a claim for back or future wages or for punitive damages. They are therefore mutually understood to be payments on account of personal injury. No amounts will be withheld against these sums and no W-2 forms, 1099 forms, or any other tax or income reporting forms will be issued to the named plaintiffs, the Internal Revenue Service or any other taxing authority or governmental agency with respect to such payments.

Walter Holland -- \$70,000

Oveston Cox -- \$70,000

Terry Jacobs -- \$50,000

Walter Williams -- \$40,000

Brian Taylor -- \$70,000

Lilli Smitherman, on behalf of the Estate of Richard Smitherman -  
- \$40,000

Luther Gregg -- \$50,000

Wilhelmina Sherrod -- \$112,500.

James Roberson -- \$55,000

Mildeo Raghu -- \$60,000

Lena Haskins -- \$60,000

Within thirty (30) days after the date of entry of this Decree, the Escrow Agent shall pay the following named plaintiffs the following monetary awards out of the Settlement Fund. The parties agree that these are reasonable sums in settlement of these named plaintiffs' claims of loss of income.

Brian Taylor -- \$11,040, less applicable tax deductions

Luther Gregg -- \$1,440, less applicable tax deductions

Wilhelmina Sherrod -- \$105,000, less applicable tax deductions

James Roberson -- \$14,400, less applicable tax deductions

42. Those persons other than the named plaintiffs who are entitled to be considered for a monetary award from the Settlement Fund under this Decree (hereinafter "claimants") shall include any person who:

a. is a current or former employee of the NJDOC for whom there is written or physical evidence demonstrating that the individual made a complaint to the NJDOC alleging: (1) employment discrimination based on race (black) or sex (female), including harassment, or (2) retaliation for making such a complaint, or (3) retaliation for having opposed any practice that the individual believed was an unlawful employment practice based on race (black) or sex (female), or (4) retaliation because the individual testified, assisted or participated in any manner in an investigation, proceeding or hearing on a complaint based on race (black) or sex (female) and provided that such complaint

under Subparagraphs (1) - (4) above was made on or after April 19, 1987 and on or before June 30, 1995.

As used in Subparagraph 42a, the term "employee of the NJDOC" is defined to include all custody and non-custody NJDOC employees.

As used in Subparagraph 42a, the term "complaint" is defined to mean:

• (1) a written complaint in any form, including but not limited to, a Discrimination Appeal Processing Form, a special report, a grievance, an interoffice memorandum or correspondence, or other writing which can be reasonably interpreted as evincing an attempt to communicate a complaint, grievance, concern, or allegation; or

(2) an oral complaint to a supervisor or other appropriate person who made a written record thereof, which can be reasonably interpreted as evincing an attempt to communicate a complaint, grievance, concern, or allegation.

As used in Subparagraph 42a, the term "to the NJDOC" is defined to include, but not be limited to:

- (1) the NJDOC central EEO/AA Office in Trenton;
- (2) an EEO/AA liaison at any NJDOC facility;
- (3) any NJDOC supervisory personnel; or
- (4) any agent, representative or employee of the NJDOC, New Jersey DOP, or the Office of the Governor of the State of New Jersey, whom the complaining NJDOC employee reasonably

believed was authorized to receive a complaint as defined in this Paragraph.

43. Persons who submit claims in accordance with the provisions of this Decree are eligible for monetary relief only. All determinations as to which claimants described in Paragraph 42 of this Decree shall receive a monetary award under this Decree, as well as the amount of each such monetary award, shall be made exclusively by the United States and class counsel subject to approval by the Court as set forth in Paragraph 49 of this Decree.

The parties agree that the monetary awards payable to claimants described in Paragraph 42 of this Decree represent reasonable settlements of claims of pain and suffering and are not tied to claims for back or future wages or for punitive damages. They are therefore mutually understood to be payments on account of personal injury. No amounts will be withheld against these sums and no W-2 forms, 1099 forms, or any other tax or income reporting forms will be issued to the claimants, the Internal Revenue Service or any other taxing authority or governmental agency with respect to such payments.

44. All claimants who have previously made a claim, charge or complaint of employment discrimination against the NJDOC, its employees, agents, representatives or any individual in active concert or participation with the NJDOC with the U.S. Equal Employment Opportunity Commission, the New Jersey Division on Civil Rights, or any court of competent jurisdiction, on which

there has been a decision on the merits in which res judicata applies, or on which there has been a settlement or resolution in which a waiver and release of claims was signed, shall be ineligible to receive any relief under this Decree based on the factual circumstances of the earlier claim, charge or complaint.

45. Within thirty (30) days from the date of entry of this Decree and upon agreement of the United States, class counsel and the State defendants regarding the most current mailing list based on all currently available information, the State defendants shall send one written notice of the settlement of these actions (as set forth as Appendix E) and one "Claim of Employment Discrimination" form (as set forth as Appendix F) by certified mail (return receipt requested) to the last known address of: all current employees in the NJDOC (custody and non-custody); and all former NJDOC employees (custody and non-custody) who were employed in the NJDOC for any period of time on or after April 19, 1987. In lieu of sending the notices of the settlement and claim forms to current employees in the NJDOC by certified mail, the State defendants may, at their option, deliver the notice of settlement and claim form to such employees at their place of employment, provided, however, that a written acknowledgement of receipt of the notice of settlement and claim form is obtained from each such employee. At the time of mailing or delivery, the State defendants shall provide a copy of the names and addresses of all persons to whom notices and claim

forms were sent and/or delivered to class counsel and the United States.

Within thirty (30) days from the date of the last mailing of the written notices and claim forms, the State defendants shall compile and present to counsel for the United States and class counsel a list of all delivered and undelivered notices, respectively.

46. Within thirty (30) days from the date of entry of this Decree, the State defendants shall publish notice of the settlement of these actions (as set forth as Appendix G) by means of newspaper notices. The newspapers to be used as well as the frequency, size and location of these advertisements shall be as set forth in Appendix H.

47. Any claimant who fails to postmark his or her "Claim of Employment Discrimination" form (as set forth as Appendix F) to the United States and class counsel within sixty (60) days from the date of the last mailing of the notice described in Paragraph 45 of this Decree or within sixty (60) days from the date of the last newspaper publication described in Paragraph 46 of this Decree, whichever is later, shall be deemed to have waived any right to be considered for an award of monetary relief from the Settlement Fund under this Decree, unless good cause, as determined exclusively by the United States and class counsel, exists.

48. Within two hundred and forty (240) days from the final date for filing claims, as provided in Paragraph 47 of this

Decree, the United States and class counsel shall file with the Court and serve upon the State defendants a written report setting forth: a list of those individuals who have submitted claims who the United States and class counsel believe are entitled to monetary relief under this Decree; and the monetary relief the United States and class counsel believe each claimant should be awarded. Contemporaneous with the filing of this report, the United States and class counsel shall file with the Court a motion for approval of the individual monetary awards to claimants.

49. This Court will conduct a hearing for the purposes of considering any objections by claimants regarding the individual monetary awards proposed by the United States and class counsel under this Decree. Such hearing will be conducted by the Court as soon after the United States and class counsel have moved the Court for a such a hearing as the Court's schedule allows, and after:

a. the United States and class counsel, at least sixty (60) days prior to the commencement of such hearing, notify in writing each individual who submitted a "Claim of Employment Discrimination" form in accordance with the provisions of this Decree, as to: the specific relief, if any, that the United States and class counsel have proposed on such claimant's behalf; the date, time and place of such hearing; and the opportunity to file, in accordance with Paragraph 50 of this Decree, an



objection with respect to that relief, if any, the United States and class counsel has proposed on the individual's behalf; and

b. the State defendants, at least sixty (60) days prior to the commencement of such hearing, post - in a prominent and conspicuous location used for posting notices at each NJDOC facility and the NJDOC's central office in Trenton, New Jersey, - a notice, as to: the date, time and place of such hearing; and the purpose of such hearing.

50. Any objections by claimants to the individual monetary awards pursuant to this Decree must be filed in writing with the Court and served upon counsel for the United States and class counsel at least thirty (30) days prior to the commencement of the hearing described in Paragraph 49 of this Decree.

51. The offers of monetary relief provided by this Decree shall be made in the following manner. Within thirty (30) days from the date a final judicial determination of all claims for relief under this Decree has been made, the Escrow Agent shall file with the Court and provide to the United States and class counsel a written certification as to the monetary amount of the Settlement Fund established pursuant to Paragraph 39 of this Decree, including all accrued interest, as of: (a) the date of the certification; and (b) the expected date of distribution of the monetary awards. In determining the expected date of distribution of the monetary awards, the Escrow Agent shall consult with the United States and class counsel and consider the deadlines set forth in this Decree.

Relief and Release forms referenced in this Paragraph, class counsel and the United States shall serve upon the State defendants a report identifying: (a) all claimants for whom properly executed Acceptance of Relief and Release forms were timely returned; (b) all claimants for whom properly executed Acceptance of Relief and Release forms were not timely returned; and (c) all claimants who rejected the relief offered. Any disputes concerning a claimant's compliance with the requirements of this Paragraph shall be resolved as expeditiously as possible through the dispute resolution mechanism set forth in Paragraphs 59-62 of this Decree. Within thirty (30) days after the resolution of the last disputed claim, if any, or, in the absence of any disputed claims, within thirty (30) days after the date of the report of the United States and class counsel required by this Paragraph, the United States and class counsel shall direct the Escrow Agent to pay the appropriate monetary awards to each successful claimant who has complied with the requirements of this Paragraph. In determining the specific monetary awards, the United States and class counsel shall be permitted to re-allocate both the monetary awards from those claimants who failed to comply with the requirements of this Paragraph and those monetary awards that were rejected, to the successful claimants in their pro rata share. Within thirty (30) days after such notification, the Escrow Agent shall make the appropriate payments from the Settlement Fund to the appropriate claimants.

52. Within thirty (30) days from the date of receipt of such written certification from the Escrow Agent in accordance with Paragraph 51 of this Decree, the United States and class counsel shall file with the Court and serve upon the State defendants a written report setting forth the then-accrued proportionate share of the Settlement Fund to which each successful claimant is entitled.

53. Within thirty (30) days from the date of filing and service of the report described in Paragraph 52 of this Decree, the United States shall send by certified mail (return receipt requested) a "Notice of Determination" form (as set forth in Appendix I) to each individual listed in the written report of the United States and class counsel. The Notice of Determination form shall be accompanied by a self-addressed, stamped envelope and an "Acceptance of Relief and Release" form (as set forth in Appendix J) which the individual shall use to notify class counsel as to whether the individual desires to accept the relief offered. The individual shall have thirty (30) days from his or her receipt of the Notice of Determination form and accompanying Acceptance of Relief and Release form in which to properly execute and return the Acceptance of Relief and Release form in order to receive any relief under this Decree, unless good cause, to be determined exclusively by the United States and class counsel, exists for the individual not meeting that deadline.

Fifteen (15) days after the expiration of the thirty (30) day period for return of the properly executed Acceptance of

54. The State defendants shall bear the cost of all mailing and publication notices required under Paragraphs 1, 45, and 46 of this Decree. The mailing to be done by the United States and class counsel pursuant to Subparagraph 49a of this Decree and that mailing to be done by the United States pursuant to Paragraph 53 of this Decree shall be borne by the United States.

OTHER AGREEMENTS

55. In the event this Decree is challenged, the parties shall fully defend the lawfulness of this Decree. If any such collateral challenge arises in state court, the State defendants shall promptly notify counsel for the United States and class counsel. In addition, the State defendants shall make a good faith attempt to promptly remove such action to this Court and specifically to the judge assigned to these consolidated cases.

56. With respect to the obligation of the United States and/or class counsel to enforce or to monitor compliance with this Decree, the parties may, without further order of the Court, use all means allowed under this Decree.

57. The United States and the State defendants shall bear their own costs and expenses, including attorney's fees.

57a. This Consent Decree is not intended to, nor does it, conflict with or modify any current collective bargaining agreement between the State of New Jersey and any Rule 19(a) defendant. If any party claims that any provision of this Decree or its application conflicts with or modifies these collective

bargaining agreements, the matter may be submitted to Judge Pisano for resolution by any party to this Decree.

58. The parties hereby agree that the Honorable Joel A. Pisano, United States Magistrate Judge, shall resolve disputes that may arise under this Decree in accordance with the dispute resolution mechanism set forth in Paragraphs 59-62 of this Decree. Judge Pisano shall have the authority and discretion to award the prevailing party attorneys' fees associated with the dispute resolution process. Under this Decree, the standard for determining whether a party is entitled to fees shall be the standard under applicable Title VII law. All parties agree that Judge Pisano's decision shall be a final judgment and any appeal of his decision shall be taken, pursuant to Fed. R. Civ. P. 73(c), to the Court of Appeals for the Third Circuit.

#### DISPUTE RESOLUTION MECHANISM

59. Only the United States, class counsel, and the State defendants may seek to enforce the terms of this Decree. To the extent that such enforcement action is based on the handling of an internal complaint of employment discrimination, it shall be limited to complaints based on race (black) and sex (female) or retaliation for having made such a complaint. However, evidence concerning other complaints of employment discrimination may be used in any such enforcement action. Any dispute within the scope of this Decree which, in the reasonable opinion of counsel, cannot be effectively resolved through the procedures set forth in this Decree, may be brought to the attention of Judge Pisano,

provided that prior thereto counsel have conferred and have engaged in good faith efforts to resolve it.

60. Subject to the requirements of Paragraph 59 of this Decree, where systemic problems are identified and the parties have been unable to resolve them, such issues may be brought to the attention of Judge Pisano, and any remedy ordered shall be prospective.

61. Subject to the requirements of Paragraph 59, for disputes arising under Paragraph 16, in instances where the EED's determination was erroneous as a matter of law or where a substantial or material issue of fact was omitted, the matter may be brought to the attention of Judge Pisano. The relief ordered by Judge Pisano shall be to remand for appropriate action consistent with applicable law, applicable Collective Bargaining provision(s) and this Decree.

62. In any instance where any party seeks to invoke the dispute resolution process, and a dispute arises between the parties as to whether a specific matter falls within the purview of the dispute resolution process and the authority of Judge Pisano, any party may submit the matter to Judge Pisano to determine solely whether the matter falls within the purview of the dispute resolution process and/or the authority of Judge Pisano.

#### JURISDICTION OF THE COURT

63. This Court shall retain jurisdiction of the matters covered by this Decree for a period of four (4) years from the

date of entry of this Decree for such action as may be necessary or appropriate to effectuate the purposes of this Decree. The provisions of this Decree shall be in effect for a period of four (4) years from the date of entry of this Decree, at which time all obligations under this Decree shall end.

64. Any party may seek to modify the procedures enumerated in this Decree, provided that the proposed modifications effectuate the purposes of this Decree. Requests to modify shall be subject to the dispute resolution mechanism set forth in Paragraphs 59-62 of this Decree.

#### **POSTING REQUIREMENTS**

65. Within ten (10) days after the entry of this Decree, the State defendants shall post a copy of Paragraphs 1-36 and 42-65 of this Decree and all Appendices in a prominent and conspicuous location used for posting notices at each NJDOC facility as well as the administrative offices of the Commissioner of the NJDOC. Such copies shall remain posted throughout the life of this Decree. In addition, the State defendants shall provide a copy of this Decree and Appendices, at no cost, to any NJDOC employee who so requests, and such copies shall be available at each NJDOC facility and the administrative offices of the Commissioner of the NJDOC.

#### **RELEASE OF CLAIMS**

66. To receive monetary compensation under the terms of this Decree, class members other than the named plaintiffs must execute a release and waiver, in the form attached as Appendix J,

of all rights they may have to proceed against the State of New Jersey and the NJDOC and its officials for claims related to allegations of race and/or sexual harassment, discrimination and/or retaliation based on incidents occurring on or before June 30, 1995.

67. To receive monetary compensation under the terms of this Decree, the named plaintiffs (with the exception of James Roberson) must execute a release and waiver, in the form attached as Appendix K, of all rights they may have to proceed against the State of New Jersey and the NJDOC and its officials for any claims raised or that could have properly been raised in this litigation, known or unknown, based on incidents occurring on or before January 19, 1996, except for worker's compensation claims, claims relating to pension rights, claims relating to rights under collective bargaining agreements or civil service law and claims under Allen v. Fauver, ESX-L-3302-94 (Superior Court, Essex County).

68. To receive monetary compensation under the terms of this Decree, James Roberson must execute a release and waiver, in the form attached as Appendix L, of all rights he may have to proceed against the State of New Jersey and the NJDOC and its officials for any claims raised or that could have properly been raised in this litigation, known or unknown, based on incidents occurring on or before January 19, 1996, except for worker's compensation claims, claims relating to pension rights, claims relating to rights under collective bargaining agreements or



civil service law, claims under Allen v. Fauver, ESX-L-3302-94 (Superior Court, Essex County), and allegations arising under the April 29, 1994 anti-retaliation Order entered in Holland, et al. v. New Jersey Department of Corrections, C.A. No. 93-1683 raised in class counsel's letters to the State defendants dated November 7, 1995 and November 10, 1995.

DONE AND ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 1996.

JOEL A. PISANO  
UNITED STATES MAGISTRATE JUDGE

Agreed and Consented To:

On behalf of Plaintiff United States of America:

On behalf of defendants State New Jersey, New Jersey Department of Corrections and Commissioner Fauver, in his official capacity:

DEVAL L. PATRICK  
Assistant Attorney General

DEBORAH T. PORITZ  
Attorney General for the State of New Jersey

*Robert S. Libman*  
*Leslie T. Annexstein*  
\_\_\_\_\_  
WILLIAM B. FENTON  
ROBERT S. LIBMAN  
LESLIE T. ANNEXSTEIN  
Attorneys  
U.S. Department of Justice  
Civil Rights Division  
Employment Litigation Section  
P.O. Box 65968  
Washington, D.C. 20035-5968  
(202) 514-3842


*Howard M. Coach*  
\_\_\_\_\_  
HOWARD M. COACH  
Deputy Attorney General  
State of New Jersey  
Department of Law and Public Safety  
Richard J. Hughes Justice Complex  
CN 112  
Trenton, NJ 08625  
(609) 633-3985

FAITH S. HOCHBERG  
United States Attorney  
District of New Jersey


\_\_\_\_\_  
SUSAN C. CASSELL  
Assistant United States Attorney  
District of New Jersey  
402 East State Street, Room 502  
Trenton, NJ 08608  
(609) 989-2190

*William H. Fauver*  
\_\_\_\_\_  
WILLIAM H. FAUVER  
Commissioner  
New Jersey Department of Corrections  
Whittlesey Road  
Trenton, NJ 08625-0863

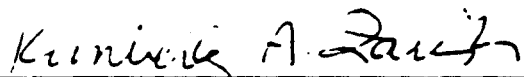
Class counsel:

  
MIRIAM F. CLARK  
LEWIS M. STEEL  
KAREN L. DOYLE  
Steel, Bellman, Ritz & Clark  
351 Broadway  
New York, NY 10013  
(212) 925-7400

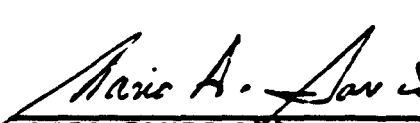
On behalf of defendant State Law Enforcement  
Conference of the New Jersey State Policemen's  
Benevolent Association, Local 105 ("PBA"):

  
ROBERT A. FAGELLA  
Zazzali, Zazzali, Fagella & Nowak  
One River Front Plaza  
Newark, NJ 07102-5410  
(201) 623-1822


On behalf of defendant New Jersey Law Enforcement  
Supervisors' Association, Primary Level Supervisory  
Law Enforcement Unit ("NJLESA"):

  
~~ROBERT W. BECKER~~ Kimberly A. Zurchish  
Reed & Scholl  
31 Highway 12  
Flemington, NJ 08822  
(908) 788-9000

On behalf of defendant New Jersey Superior  
Officers Law Enforcement Association,  
Superior Officers Law Enforcement Unit:

  
MARIO IAVICOLI  
43 Kings Highway West  
Haddonfield, NJ 08033  
(609) 429-0201

On behalf of defendant New Jersey  
Superior Officers Law Enforcement  
Association, Captains Unit:



DAVID BECKETT  
Szaferman, Lakind, Blumstein,  
Watter & Blader, P.C.  
Quakerbridge Executive Center  
Suite 104  
Groversmill Road  
Lawrenceville, N.J. 08648  
(609) 275-0400

On behalf of defendant Internal Affairs  
Investigators Association, Internal  
Affairs Investigators Unit:



~~CAROL LASKIN~~ ARNOLD H. FELDMAN  
800 Kings Highway North - Suite 405  
Cherry Hill, NJ 08034  
(609) 482-7100

APPENDIX A

NOTICE OF PROPOSED SETTLEMENT OF EMPLOYMENT  
DISCRIMINATION LAWSUIT AND FAIRNESS HEARING

- TO: 1. ALL CURRENT EMPLOYEES IN THE NEW JERSEY DEPARTMENT OF CORRECTIONS;
2. ALL FORMER EMPLOYEES OF THE NEW JERSEY DEPARTMENT OF CORRECTIONS WHO WERE EMPLOYED AS OF APRIL 19, 1987;

PLEASE READ THIS NOTICE CAREFULLY. IT MAY AFFECT YOUR RIGHTS.

On [Month, Day] 1996, the United States District Court for the District of New Jersey gave preliminary approval to a settlement agreement, called a Consent Decree, that settles several employment discrimination lawsuits brought against the State of New Jersey, the New Jersey Department of Corrections ("NJDOC"), the Commissioner of the NJDOC in his official capacity, and other defendants, that alleged a pattern or practice of employment discrimination, including racial harassment against black employees, sexual harassment against female employees and retaliation against individuals who complained about such discrimination, in violation of state and federal law, including Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, et seq. These cases are captioned Holland, et al. v. The New Jersey Department of Corrections, et al., C.A. No. 93-1683 (AMW); United States, et al. v. State of New Jersey, et al., C.A. No. 94-3087 (AMW); and United States and Haskins v. New Jersey Department of Corrections, C.A. No. 94-4724 (AMW). The Holland case is brought as a class action, the class being defined as all current or former employees of the NJDOC for whom there is written or physical evidence demonstrating that the individual made a complaint to the NJDOC alleging: (1) employment discrimination based on race (black) or sex (female), including harassment; or (2) retaliation for making such a complaint; or (3) retaliation for having opposed any practice that the individual believed was an unlawful employment practice based on race (black) or sex (female); or (4) retaliation because the individual testified, assisted or participated in any manner in an investigation, proceeding or hearing on a complaint based on race (black) or sex (female) and provided that such complaint under (1)-(4) above was made on or after April 19, 1987 and on or before June 30, 1995. Counsel for the Holland plaintiffs are referred to as "class counsel."

The defendants have denied the allegations of the complaints. However, in the interest of avoiding contested litigation and without admission of liability on behalf of the defendants, the attorneys for the United States, class counsel and the defendants have reached a settlement, called a "Consent Decree," which was given preliminary approval by the Court on [DATE], 1996. This notice is being provided pursuant to the terms of the Consent Decree.

On [DATE], 1996, the Court will hold a hearing, called a fairness hearing, to determine whether to give final approval to the Consent Decree. This hearing will take place in [address of courthouse and room number] at [time]. If the Court gives final approval to the Consent Decree, the Court will enter the Consent Decree as an Order of the Court. Thereafter, the attorneys for the parties will begin the process of identifying individuals who may be entitled to individual relief under the terms of the Consent Decree. Persons who oppose the final approval and entry of the Consent Decree by the Court have the right to file an objection.

All objections to final approval and entry of the Consent Decree must be made in writing and mailed to the Court and the following individuals at the following addresses:

Court:

Magistrate Judge Joel A. Pisano  
Martin Luther King Building & Courthouse  
50 Walnut Street  
2nd Floor, Courtroom #4  
Newark, NJ 07101

Counsel for the United States:

Robert S. Libman  
Senior Trial Attorney  
United States Department of Justice  
Civil Rights Division  
Employment Litigation Section  
P.O. Box 65968  
Washington, DC 20035-5968

Class Counsel:

Miriam Clark, Esq.  
Steel, Bellman, Ritz & Clark  
351 Broadway  
New York, NY 10013

Counsel for the State defendants:

Howard McCoach  
Deputy Attorney General  
State of New Jersey  
Department of Law and Public Safety  
Richard J. Hughes Justice Complex  
CN 112  
Trenton, NJ 08625-0080

To be considered by the Court, your objection must be received on or before [date], 1996.

In addition, any individual who is a member of any class that is certified by the Court in Holland, et al. v. New Jersey Department of Corrections, et al., C.A. No. 93-1683 (AMW), and who filed a claim, charge or complaint of employment discrimination based on race (black) or sex (female) or retaliation for having brought such a claim with the U.S. Equal Employment Opportunity Commission, the New Jersey Division on Civil Rights or a court of competent jurisdiction based on incidents occurring at any time on or after April 19, 1987 and on or before June 30, 1995, and whose claim, charge or complaint is pending as of the date of mailing of this Notice of Proposed Settlement and Fairness Hearing, shall be permitted to opt out of such class. Any individual wishing to opt out of the class shall so notify the class counsel or the United States in writing at the above addresses within thirty (30) days of receiving this Notice of Proposed Settlement and Fairness Hearing, unless good cause, to be determined exclusively by the United States and class counsel, exists.

If you would like to obtain a copy of the Consent Decree, you may do so by contacting the New Jersey Department of Corrections at (609) 292-5628.

You may also obtain a copy of the Consent Decree by contacting the United States Department of Justice at 1-800-556-1950 (press "\*" for the case "U.S. v. New Jersey Department of Corrections," and leave your name and mailing address on the recording).

APPENDIX B

NEWSPAPER NOTICES REQUIRED  
BY PARAGRAPH 1 OF THE CONSENT DECREE

1. NEWARK STAR LEDGER

1/8 page Display Ad on the Accent Page in the Sunday Paper

2. TRENTONIAN

1/8 page Retail Ad in the Main News section between pages 15 and 18 on a weekday

3. COURIER POST

1/8 page Display Ad in the Living Section on Wednesday



APPENDIX C  
STATEMENT OF POLICY REGARDING RACIAL AND SEXUAL  
DISCRIMINATION, INCLUDING HARASSMENT AND RETALIATION

DATE: Month and Day, 1996

This statement of policy sets forth the policy of the New Jersey Department of Corrections ("NJDOC") concerning racial and sexual discrimination, including harassment, and retaliation. This policy applies to all NJDOC employees.

Racial and sexual discrimination, including harassment, in the workplace is illegal and shall not be tolerated by the NJDOC. In addition, retaliation against any person who opposes what he or she reasonably believes to be unlawful racial or sexual discrimination or who cooperates in the investigation of a complaint of such discrimination is also illegal and shall not be tolerated by the NJDOC.

Commissioner Fauver and the NJDOC, its officials, agents and representatives, in recognition of their duty to combat discrimination in the workplace, are committed to the vigorous enforcement of anti-discrimination laws and policy and to prompt and fair discipline of those found to have violated this policy. Employees who engage in conduct in violation of this policy shall be subject to discipline, including suspension or dismissal as appropriate, as set forth in the attached Schedule of Penalties. The NJDOC is also committed to making whole victims of racial and sexual discrimination and retaliation.

The effectiveness of this policy requires the support and example of personnel in positions of authority. Accordingly, NJDOC officials who fail to cooperate with any investigation into allegations of discrimination, or who refuse to implement remedial measures ordered by the NJDOC or obstruct the remedial measures of other employees ordered by the NJDOC, shall be sanctioned by suspension or dismissal, as appropriate. No supervisor shall discourage any NJDOC employee from making complaints of discrimination in violation of this policy.

Each administrator and chief of custody of each NJDOC facility is responsible for the dissemination and enforcement of this policy and to ensure that this policy is given the highest priority. The Commissioner of the NJDOC, when deciding whether individual personnel should be appointed to positions of administrator and chief of custody of a NJDOC facility, or whether individual personnel should be retained in positions of administrator and chief of custody, shall take into account the success or failure of such individuals in enforcing this policy at their facilities. In addition, NJDOC officials, when deciding whether individual personnel should receive promotions or other performance-related benefits, shall take into account the compliance of such individuals with this policy.

## SCHEDULE OF PENALTIES

The following penalties apply to violations of the NJDOC policy against racial and sexual discrimination, including harassment and retaliation.

1. Corrections Officers (First Offenses): Racial or sexual discrimination, which includes harassment, involving use of language, gestures, physical contact, pictures, etc.: a minimum of five (5) days' suspension up to a maximum of termination, depending on circumstances; retaliation: a minimum of five (5) days' suspension up to a maximum of termination, depending on circumstances.
2. Corrections Officers (Second Offenses): Racial or sexual discrimination, which includes harassment, involving use of language, gestures, physical contact, pictures, etc.: a minimum of thirty (30) days' suspension up to a maximum of termination, depending on circumstances; retaliation: a minimum of thirty (30) days' suspension up to a maximum of termination, depending on circumstances.
3. Supervisory Employees (First Offenses): Racial or sexual discrimination, which includes harassment, against other supervisory employees involving use of language, gestures, physical contact, pictures, etc.: a minimum of five (5) days' suspension up to a maximum of termination, depending on circumstances; retaliation: a minimum of five (5) days' suspension up to a maximum of termination, depending on circumstances.
4. Supervisory Employees (Second Offenses): Racial or sexual discrimination, which includes harassment, against other supervisory employees involving use of language, gestures, physical contact, pictures, etc.: a minimum of thirty (30) days' suspension up to a maximum of termination, depending on circumstances; retaliation: a minimum of thirty (30) days' suspension up to a maximum of termination, depending on circumstances.
5. Supervisory Employees (First Offenses): Racial or sexual discrimination, which includes harassment, against subordinates involving the use of language, gestures, physical contact, pictures, etc. or retaliation: a minimum of ten (10) days' suspension up to a maximum of termination, depending on circumstances.
6. Supervisory Employees (Second Offenses): Racial or sexual discrimination, which includes harassment, against subordinates involving the use of language, gestures, physical contact, pictures, etc. or retaliation: a minimum of forty (40) days' suspension up to a maximum of termination, depending on circumstances.

7. Corrections Officers and Supervisory Employees  
(Third Offenses): Removal.

8. Supervisory Employees: Willfully and maliciously make a discriminatory decision or engage in a pattern of acts previously found by the EED to be discriminatory: a minimum of ten (10) days' suspension up to a maximum of termination, depending on the circumstances.

## APPENDIX D

### NEW JERSEY DEPARTMENT OF CORRECTIONS EQUAL EMPLOYMENT OPPORTUNITY COMPLAINT OF DISCRIMINATION, HARASSMENT AND/OR RETALIATION

#### THE LAW

It is the law in the State of New Jersey and the policy of the New Jersey Department of Corrections ("NJDOC") that no employee shall be discriminated against on the basis of race, creed, color, national origin, ancestry, age, sex, marital status, religion, disability or affectional or sexual orientation.

It is also the law in the State of New Jersey and the policy of the New Jersey Department of Corrections ("NJDOC") that no employee shall be retaliated against for opposing policies or practices within the NJDOC that the employee believes to be discriminatory or retaliatory, including the filing of a complaint of employment discrimination.

#### YOUR COMPLAINT(S)

If you believe that you have been the victim of employment discrimination, which includes harassment, and/or retaliation, you may complete this complaint form and file it with the NJDOC Equal Employment Division office ("EED") at the following address:

**NJDOC EED Office**  
Whittlesey Road  
CN 863  
Trenton, New Jersey, 08625  
(609) 292-5623

You may also file this complaint form with the Assistant Superintendent Liaison ("ASL") at your facility. The ASL is required to promptly notify the EED of your complaint and to forward a copy of your complaint to the EED. A list of the Assistant Superintendent Liaisons is attached. Complaints made to the EED office or the ASL must be made within 30 days of the last act of alleged discrimination (which includes harassment) or retaliation or the date on which the complainant should reasonably have known of its occurrence.

You may also file a complaint of employment discrimination with:

1. New Jersey Department of Law and Public Safety  
Division of Civil Rights ("NJDCR")

Newark

31 Clinton Street  
3rd Floor  
P.O. Box 46001  
Newark, NJ 07102  
(201) 648-2700

Atlantic City

1548 Atlantic Avenue  
2nd Floor  
Atlantic City, NJ 08404  
(609) 441-3100

Camden

101 Haddon Avenue  
Camden, NJ 08103  
(609) 757-2850

Trenton

383 W. State Street  
Trenton, NJ 08625  
(609) 292-4605

Patterson

100 Hamilton Plaza  
Patterson, NJ 07505  
(201) 977-4500

This is a state agency that handles complaints of employment discrimination against all employers statewide. The complaint must be made within 180 days of the last act of alleged discrimination (including harassment) or retaliation or the date on which the complainant should reasonably have known of its occurrence.

2. U.S. Equal Employment Opportunity Commission ("EEOC")

Newark Area Office  
60 Park Place, Room 301  
Newark, New Jersey 07102  
(201) 645-6383

OR

Philadelphia District Office  
1421 Cherry Street, 10th Floor  
Philadelphia, Pennsylvania 19102  
(215) 656-7000

This is a federal agency that handles complaints of employment discrimination nationwide. Complaint must be made within 240 or 300 days (depending on the circumstances) of the last act of alleged discrimination (which includes harassment) or retaliation.

To find out how to file a complaint with any of these agencies, you may contact them directly at the above addresses and telephone numbers.

NEW JERSEY DEPARTMENT OF CORRECTIONS  
EQUAL EMPLOYMENT OPPORTUNITY COMPLAINT  
OF DISCRIMINATION, HARASSMENT AND/OR RETALIATION

To file an internal complaint of employment discrimination with the New Jersey Department of Corrections, you must complete this form and return it to the EEO office or the Assistant Superintendent Liaison ("ASL") at your facility within thirty (30) days of the last act of alleged discrimination, (which includes harassment) or retaliation.

1. Name: \_\_\_\_\_  
Please print
2. Date: \_\_\_\_\_
3. Social Security Number: \_\_\_\_\_
4. Job Title: \_\_\_\_\_
5. Facility or Department Where Employed:  
\_\_\_\_\_
6. Home Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
7. Race \_\_\_\_\_
8. Sex \_\_\_\_\_
9. Age \_\_\_\_\_

10. Telephone Numbers:

Work: \_\_\_\_\_

Home: \_\_\_\_\_

Other Number(s) Where You Can Be Reached:

\_\_\_\_\_

11. Date of Incident(s): \_\_\_\_\_

12. Accused's name, title and location:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

13. Basis of Discrimination/Retaliation Claim (check as many as are applicable):

- \_\_\_ Race Discrimination
- \_\_\_ Racial Harassment
- \_\_\_ Sex Discrimination
- \_\_\_ Sexual Harassment
- \_\_\_ National Origin
- \_\_\_ Color
- \_\_\_ Creed
- \_\_\_ Religion
- \_\_\_ Age
- \_\_\_ Disability
- \_\_\_ Affectional or Sexual Orientation
- \_\_\_ Ancestry
- \_\_\_ Marital Status
- \_\_\_ Armed Forces Liability
- \_\_\_ Retaliation



14. Have you filed a complaint with any of the following agencies? (Check as many as are applicable)

New Jersey Department of Law and Public Safety's  
Division of Civil Rights ("NJDCR")

U.S. Equal Employment Opportunity Commission ("EEOC")

If you checked any of the above agencies, please describe the status of the complaint:

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15. Have you filed a union grievance for this incident?

Yes  No

If you answered "yes," please describe the status of the grievance:

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16. Upon receipt of your complaint, the supervisor of the EED Office will determine whether your complaint should be investigated by EED investigators or the Assistant Superintendent Liaison ("ASL") at your facility. If you have a reason for not wanting the ASL at your facility to investigate your complaint, please describe the reason(s) below:

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18. Please provide the names of individuals who may be witnesses to the alleged discrimination (which includes harassment) or retaliation or who may have information about your complaint:

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**BE SURE TO KEEP A COPY OF THIS FORM FOR YOUR FUTURE REFERENCE**

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Signature of Person Receiving Complaint: \_\_\_\_\_

Name and Title of Person Receiving Complaint: \_\_\_\_\_  
Please Print

Date Received: \_\_\_\_\_

**YOUR RIGHTS**

You have the right not to be retaliated against for making this complaint. If you believe that you are being retaliated against for making this complaint, you have the right to file a separate complaint of retaliation with the New Jersey Department of Corrections through the EED or the Assistant Superintendent Liaison ("ASL") at your facility.

Individuals who cooperate with the investigation of this complaint have the right not to be retaliated against for their cooperation. Individuals who believe that they are being retaliated against for cooperating with the investigation of a complaint of employment discrimination have the right to file a complaint of retaliation with the New Jersey Department of Corrections through the EED or the ASL at the individual's facility.

You have the right to object to the choice of investigator of your complaint. If you file a complaint with the NJDOC EED Office, the EED supervisor will decide whether your complaint will be investigated by the EED Office or by the ASL at your facility. If you do not want the ASL at your facility to investigate your complaint, contact the EED supervisor at the address on the first page of this form, and explain your reasons. If you object to your complaint being investigated by the ASL, the EED office will investigate your complaint unless extraordinary circumstances exist. If the ASL investigates your complaint even though you objected, you have the right to receive a written memorandum explaining why the ASL was assigned to conduct the investigation.

You have the right to know the status of the investigation of your complaint. If the ASL investigates your complaint, before a final decision is made you are entitled to receive a memorandum summarizing the scope of the investigation and its results, indicating the remedial action the ASL recommends. You may contact either the ASL or the EED supervisor and comment on whether you believe the ASL overlooked any witness or materials. If you request a further investigation at this point, the EED supervisor will make this determination. However, your request will not be unreasonably denied.

You have the right to take time off from work, without penalty, as needed by the investigators, to take part in the investigative process.

You are entitled to a prompt written decision on your complaint. Whether your complaint is investigated by the EED or the ASL, you are entitled to a written decision within 45 days of making your complaint. If you do not receive a decision within this time frame and you made a complaint based on race (black) or sex (female) or retaliation for having made such a complaint, you may contact the U.S. Department of Justice or class counsel at the following addresses and telephone numbers:

Robert S. Libman  
 U.S. Department of Justice  
 Civil Rights Division  
 P.O. Box 65968  
 Washington, D.C. 20035-5968  
 1-800-556-1950 (press "\*" for the case "U.S. v. New Jersey Department of Corrections," and leave your name and mailing address on the recording)

Miriam Clark  
 Steel, Bellman, Ritz & Clark  
 351 Broadway  
 New York, NY 10013  
 (212) 925-7400

You have the right to appeal to the New Jersey Department of Personnel. If you do not agree with the decision of the EED office, you may appeal that decision to the New Jersey Department of Personnel, Division of EEO/AA at the following address and telephone number:

New Jersey Department of Personnel ("DOP")  
 Division of EEO/AA  
 CN 315  
 Trenton, NJ 08625  
 (609) 777-0924

Your appeal must be in writing and filed within 20 days after your receipt of the EED office's decision. A copy of all materials you presented to the EED office must be sent along with the letter of appeal to the New Jersey Department of Personnel, Division of EEO/AA. The Division of EEO/AA will review the written record. The Director of the Division of EEO/AA will issue a determination in writing on your appeal.

You have the right to know that a remedy was promptly carried out. If the EED office finds probable cause to believe discrimination occurred, and orders a remedy which does not involve disciplining anyone, you are entitled to be notified by the EED office that the remedy was promptly carried out.

You have the right to know that disciplinary action will be pursued and the identity of the prosecutor. If the EED office finds probable cause to believe discrimination occurred, and orders a remedy which does involve disciplining an employee, you are entitled to receive written notice of this fact, and written notice concerning who will be the prosecutor at the disciplinary hearing.

You have the right to object to the choice of the prosecutor for the disciplinary hearing of the accused. If you inform the ASL or the EED office that you object to the chosen prosecutor, your request that a new prosecutor be appointed shall not be unreasonably denied.

You have the right to take time off from work, without penalty, to attend the hearing, as needed by the prosecutor.

You have the right to be notified of the outcome of the disciplinary hearing.

APPENDIX E

NOTICE OF SETTLEMENT OF EMPLOYMENT DISCRIMINATION LAWSUIT

- TO: 1. ALL CURRENT EMPLOYEES IN THE NEW JERSEY DEPARTMENT OF CORRECTIONS;
2. ALL FORMER EMPLOYEES OF THE NEW JERSEY DEPARTMENT OF CORRECTIONS WHO WERE EMPLOYED AS OF APRIL 19, 1987;

PLEASE READ THIS NOTICE CAREFULLY. IT MAY AFFECT YOUR RIGHTS.

On [Month, Day] 1996, the United States District Court for the District of New Jersey approved a settlement agreement, called a Consent Decree, that settles several employment discrimination lawsuits brought against the State of New Jersey, the New Jersey Department of Corrections ("NJDOC"), the Commissioner of the NJDOC in his official capacity, and other defendants, that alleged a pattern or practice of employment discrimination, including racial harassment against black employees, sexual harassment against female employees and retaliation against individuals who complained about such discrimination, in violation of state and federal law, including Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, et seq. These cases are captioned Holland, et al. v. The New Jersey Department of Corrections, et al., C.A. No. 93-1683 (AMW); United States, et al. v. State of New Jersey, et al., C.A. No. 94-3087 (AMW); and United States and Haskins v. New Jersey Department of Corrections, C.A. No. 94-4724 (AMW). The Holland case is brought as a class action, the class being defined as all current or former employees of the NJDOC for whom there is written or physical evidence demonstrating that the individual made a complaint to the NJDOC alleging: (1) employment discrimination based on race (black) or sex (female), including harassment; or (2) retaliation for making such a complaint; or (3) retaliation for having opposed any practice that the individual believed was an unlawful employment practice based on race (black) or sex (female); or (4) retaliation because the individual testified, assisted or participated in any manner in an investigation, proceeding or hearing on a complaint based on race (black) or sex (female) and provided that such complaint under (1)-(4) above was made on or after April 19, 1987 and on or before June 30, 1995. Counsel for the Holland plaintiffs are referred to as "class counsel."

The defendants have denied the allegations of the complaints. However, in the interest of avoiding contested litigation and without admission of liability on behalf of the defendants, the attorneys for the United States, class counsel and the defendants have reached a settlement, called a "Consent Decree," which was approved and entered by the Court on [DATE], 1996. This notice is being provided to you pursuant to the terms of the Consent Decree.

**YOU ARE RECEIVING THIS NOTICE BECAUSE YOU MAY BE ENTITLED TO RELIEF UNDER THE CONSENT DECREE. PLEASE READ THE REST OF THIS NOTICE CAREFULLY, BECAUSE IT EXPLAINS PORTIONS OF THE CONSENT DECREE. IF YOU THEN BELIEVE THAT YOU MAY BE ENTITLED TO RELIEF, FOLLOW THE INSTRUCTIONS AT THE END OF THIS NOTICE.**

Under the Consent Decree, you may qualify for relief if you are:

a current or former employee of the NJDOC for whom there is written or physical evidence demonstrating that you made a complaint to the NJDOC alleging: (1) employment discrimination based on race (black) or sex (female), including harassment; or (2) retaliation for making such a complaint; or (3) retaliation for having opposed any practice that the individual believed was an unlawful employment practice based on race (black) or sex (female); or (4) retaliation because the individual testified, assisted or participated in any manner in an investigation, proceeding or hearing on a complaint based on race (black) or sex (female) and provided that such complaint under (1)-(4) above was made on or after April 19, 1987 and on or before June 30, 1995.

**IF YOU BELIEVE YOU ARE ENTITLED TO RELIEF, YOU MUST COMPLETE AND RETURN THE ATTACHED "CLAIM OF EMPLOYMENT DISCRIMINATION" FORM BY [DATE CERTAIN TO BE SPECIFIED] TO:**

Robert S. Libman  
Senior Trial Attorney  
United States Department of Justice  
Civil Rights Division  
Employment Litigation Section  
P.O. Box 65968  
Washington, DC 20035-5968

A pre-addressed and postage pre-paid envelope is enclosed which you should use to mail your "Claim of Employment Discrimination" form.

After your claim form is filed, it will be reviewed by the attorneys for the United States and class counsel. The attorneys for the United States and class counsel will make a determination as to whether you may receive an award under the Consent Decree. After final determinations have been made, you will be notified of your individual award, if any. You are not guaranteed relief under the Consent Decree by returning your claim form.

**IF YOU FAIL TO POSTMARK YOUR CLAIM OF EMPLOYMENT DISCRIMINATION FORM TO THE UNITED STATES DEPARTMENT OF JUSTICE BY [DATE CERTAIN TO BE SPECIFIED] YOU WILL BE BARRED FROM RECEIVING ANY RELIEF UNDER THE CONSENT DECREE, UNLESS YOU CAN SHOW GOOD CAUSE FOR YOUR FAILURE TO DO SO.**



A summary of the Consent Decree will be posted prominently on a bulletin boards used for notices at all New Jersey Department of Corrections facilities. Copies of the Consent Decree are available without charge from:

New Jersey Department of Corrections  
Equal Employment Division  
Whittlesey Road  
CN 863  
Trenton, New Jersey 08625  
(609) 292-5623

If you have any questions about this notice, the Consent Decree, or the procedures for filing your claim form, you may consult with an attorney of your choice at your own expense, or you may write to the above attorney, Robert S. Libman, of the United States Department of Justice in Washington, D.C. or telephone the U.S. Department of Justice at 1-800-556-1950 (press "\*" for the case "U.S. v. New Jersey Department of Corrections"), or you may contact class counsel, Miriam Clark, at the following address:

Miriam Clark, Esq.  
Steel, Bellman, Ritz & Clark  
351 Broadway  
New York, NY 10013  
(212) 925-7400

**PLEASE BE SURE TO RETAIN A COPY OF ANY MATERIALS YOU PROVIDE TO THE UNITED STATES IN CONNECTION WITH THIS CASE, INCLUDING A COPY OF YOUR "CLAIM OF EMPLOYMENT DISCRIMINATION" FORM**

APPENDIX F

CLAIM OF EMPLOYMENT DISCRIMINATION

Holland v. New Jersey Dept. of Corrections, C.A. 93-1683  
U.S., et al. v. State of New Jersey, et al., C.A. 94-3087  
U.S. and Haskins v. New Jersey Dept. of Corrections, C.A. 94-4724

To make a claim for individual relief under the Consent Decree in the above-captioned cases, you must fill out this entire form and send it in the accompanying pre-addressed and postage pre-paid envelope to:

Robert S. Libman  
Trial Attorney  
United States Department of Justice  
Civil Rights Division  
Employment Litigation Section  
P.O. Box 65968  
Washington, DC 20035-5968

After your claim form is filed, it will be reviewed by attorneys for the United States and class counsel, and it may be filed with the Court. The attorneys for the United States and class counsel will make a determination as to whether you may receive an award under the Consent Decree. After final determinations have been made, you will be notified of your individual award, if any. You are not guaranteed relief under the Consent Decree by returning this claim form.

**YOU MUST POSTMARK THIS CLAIM FORM BY [DATE CERTAIN TO BE SPECIFIED]. IF YOU FAIL TO DO SO, YOU WILL BE BARRED FROM RECEIVING ANY RELIEF UNDER THE CONSENT DECREE UNLESS YOU CAN SHOW GOOD CAUSE FOR YOUR FAILURE TO DO SO. PLEASE BE SURE TO RETAIN A COPY OF THE CLAIM FORM AND ANY OTHER DOCUMENTS YOU ATTACH TO THE CLAIM FORM FOR YOUR RECORDS.**

CLAIM OF EMPLOYMENT DISCRIMINATION

Please type or print the information requested below:

1. Name: \_\_\_\_\_  
                    Last                    First                    Middle
2. Social Security Number: \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_
3. Home Mailing Address: \_\_\_\_\_  
Street or P.O. Box: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_
4. Home Phone: (\_\_\_\_\_) \_\_\_\_\_  
Work Phone: (\_\_\_\_\_) \_\_\_\_\_  
Daytime Phone: (\_\_\_\_\_) \_\_\_\_\_

(SHOULD YOUR NAME, ADDRESS OR PHONE NUMBER CHANGE AT ANY TIME AFTER YOU RETURN THIS CLAIM FORM AND BEFORE YOUR CLAIM IS RESOLVED, PLEASE NOTIFY THE ATTORNEY FOR THE UNITED STATES IMMEDIATELY)

5. Birth Date: \_\_\_\_\_  
                    Month                    Day                    Year
6. Provide the name, address and telephone number of an individual who will know how to reach you during the next year:  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Home Telephone Number: (\_\_\_\_\_) \_\_\_\_\_  
Work Telephone Number: (\_\_\_\_\_) \_\_\_\_\_  
Relationship to you: \_\_\_\_\_
7. Sex: (Check One)  
[ ] Female  
[ ] Male

Name \_\_\_\_\_ Soc. Sec. # \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_

8. Race: (Check one)

Black

White

Other

Please specify: \_\_\_\_\_

9. Provide the dates of your employment with the New Jersey Department of Corrections:

Starting Date: \_\_\_\_\_  
Month Day Year

Ending Date: \_\_\_\_\_  
Month Day Year

10. Are you currently employed with the New Jersey Department of Corrections?

Yes

No

If yes, please provide the following information:

a. Facility: \_\_\_\_\_

b. Position/Title: \_\_\_\_\_

c. Shift: \_\_\_\_\_

Name \_\_\_\_\_

Soc. Sec. # \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_

11. Did you make a written complaint of employment discrimination or harassment against the New Jersey Department of Corrections or any of its employees?

[ ] Yes

[ ] No

Did you make an oral complaint of employment discrimination against the New Jersey Department of Corrections or any of its employees:

[ ] Yes

[ ] No

If you answered yes to either of the above questions, please answer the following questions:

a. What was the basis of your complaint? (check all applicable boxes)

Race (black) \_\_\_\_\_

Sex (female) \_\_\_\_\_

Retaliation \_\_\_\_\_

Other \_\_\_\_\_

If you checked "other," please explain: \_\_\_\_\_

b. Please describe in detail the allegations of your complaint (you may attach additional sheets if necessary):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Name \_\_\_\_\_

Soc. Sec. # \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_

c. When did the alleged discrimination occur? Please provide the approximate date(s).

---

d. When did you complain? Please provide the approximate date(s).

---

---

e. Who did you complain to? Please provide the name and title of the person you submitted your complaint to:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

f. Name of the facility where the alleged discriminatory incident(s) occurred:

---

g. If you submitted a written complaint, in what form did you submit your complaint? Please check as many categories as apply.

Discrimination Appeal Form

Interoffice Memorandum

Special Report

Other (please describe):

---

---

Name \_\_\_\_\_

Soc. Sec. # \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_

h. If you made an oral complaint, do you know whether any written record was made?

Yes

No

If you answered "yes," please explain: \_\_\_\_\_

---

---

---

i. Was any investigation conducted regarding your complaint of employment discrimination (to the best of your knowledge)?

Yes

No

If yes, please identify the person(s) who performed the investigation and describe the results of the investigation (to the best of your knowledge):

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**PLEASE ATTACH COPIES OF ALL DOCUMENTS THAT YOU HAVE IN YOUR POSSESSION REGARDING YOUR COMPLAINT OF EMPLOYMENT DISCRIMINATION**

Name \_\_\_\_\_

Soc. Sec. # \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_

12. Did you file a complaint with the Equal Employment Opportunity Commission ("EEOC") or the New Jersey Division of Civil Rights ("NJDCR")?

Yes

No

If yes, please answer the following questions:

a. Please provide the Charge Number of your complaint:

---

b. Please provide a brief description of your allegations of employment discrimination:

---

---

---

c. Please describe the status of your complaint (for example: still under investigation; still pending with the EEOC or NJDCR; finding of no discrimination; finding of discrimination):

---

---

---

---

**PLEASE ATTACH COPIES OF YOUR EEOC AND/OR NJDCR CHARGE OF DISCRIMINATION AND ANY OTHER DOCUMENTS THAT YOU HAVE IN YOUR POSSESSION RELATING TO YOUR CHARGE(S)**

Name \_\_\_\_\_

Soc. Sec. # \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_



13. Did you file a complaint of employment discrimination in court?

Yes

No

If yes, please provide the following information:

a. The name of your case and the civil action number:

Name: \_\_\_\_\_

Civil Action No.: \_\_\_\_\_

b. Describe the status of your case:

\_\_\_\_\_  
\_\_\_\_\_

c. Has a final resolution been reached? If so, please explain (for example, the case was dismissed; the case was settled; the court found in your favor):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**PLEASE ATTACH A COPY OF YOUR COMPLAINT AND ALL DOCUMENTS THAT YOU HAVE IN YOUR POSSESSION RELATING TO YOUR COMPLAINT**

14. Are you represented by an attorney with respect to your allegations of employment discrimination?

Yes

No

If you answered "yes," please provide the name, address and telephone number of your attorney:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone Number: ( \_\_\_\_\_ ) \_\_\_\_\_

Name \_\_\_\_\_

Soc. Sec. # \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_

I, \_\_\_\_\_, understand that the information I have provided on this Claim of Employment Discrimination Form will be relied upon by the United States, class counsel and the defendants and I hereby affirm that the above information is true and correct to the best of my belief and knowledge.

\_\_\_\_\_  
Date Signature

**YOU MUST DATE AND SIGN THIS DOCUMENT PRIOR TO RETURNING IT. PLEASE MAKE A COPY OF THIS COMPLETED FORM FOR YOUR RECORDS. IN ADDITION, YOU MAY WISH TO RETURN THIS CLAIM FORM BY CERTIFIED MAIL, AT YOUR OWN EXPENSE, IN ORDER TO PRESERVE PROOF THAT YOU RETURNED THIS FORM IN A TIMELY FASHION.**

If you have questions regarding this claim form, you may consult with an attorney of your own choosing at your own expense, or you may contact the following Department of Justice attorney in Washington, D.C.:

Robert S. Libman  
Trial Attorney  
United States Department of Justice  
Civil Rights Division  
Employment Litigation Section  
P.O. Box 65968  
Washington, DC 20035-5968  
1-800-556-1950 (press "\*" for the case "U.S. v. New Jersey Department of Corrections")

You may also contact class counsel, Miriam Clark, at the following address:

Miriam Clark, Esq.  
Steel, Bellman, Ritz & Clark  
351 Broadway  
New York, NY 10013  
(212) 925-7400

Name \_\_\_\_\_

Soc. Sec. # \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_

APPENDIX G

NOTICE IN NEWSPAPER

NOTICE OF SETTLEMENT OF EMPLOYMENT DISCRIMINATION LAWSUIT

IF YOU ARE A CURRENT OR FORMER EMPLOYEE OF THE NEW JERSEY DEPARTMENT OF CORRECTIONS AND MADE A COMPLAINT OF EMPLOYMENT DISCRIMINATION AGAINST THE NEW JERSEY DEPARTMENT OF CORRECTIONS, ALLEGING DISCRIMINATION BASED ON RACE (BLACK) OR SEX (FEMALE), INCLUDING HARASSMENT, OR RETALIATION FOR MAKING SUCH A COMPLAINT, AND PROVIDED THAT YOU MADE SUCH A COMPLAINT ON OR AFTER APRIL 19, 1987 AND ON OR BEFORE JUNE 30, 1995:

PLEASE READ THE REST OF THIS NOTICE CAREFULLY. IT MAY AFFECT YOUR RIGHTS.

On [Month, Day] 1996, the United States District Court for the District of New Jersey approved a settlement agreement, called a Consent Decree, that settles several employment discrimination lawsuits brought against the State of New Jersey, the New Jersey Department of Corrections ("NJDOC"), the Commissioner of the NJDOC in his official capacity, and other defendants, that alleged a pattern or practice of employment discrimination, including racial harassment against black employees, sexual harassment against female employees and retaliation against individuals who complained about such discrimination, in violation of state and federal law, including Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.* These cases are captioned Holland, et al. v. The New Jersey Department of Corrections, et al., C.A. No. 93-1683 (AMW); United States, et al. v. State of New Jersey, et al., C.A. No. 94-3087 (AMW); and United States and Hasking v. New Jersey Department of Corrections, C.A. No. 94-4724 (AMW). The Holland case is brought as a class action, the class being defined as all current or former employees of the NJDOC for whom there is written or physical evidence demonstrating that the individual made a complaint to the NJDOC alleging: (1) employment discrimination based on race (black) or sex (female), including harassment; or (2) retaliation for making such a complaint; or (3) retaliation for having opposed any practice that the individual believed was an unlawful employment practice based on race (black) or sex (female); or (4) retaliation because the individual testified, assisted or participated in any manner in an investigation, proceeding or hearing on a complaint based on race (black) or sex (female) and provided that such complaint under (1)-(4) above was made on or after April 19, 1987 and on or before June 30, 1995. Counsel for the Holland plaintiffs are referred to as "class counsel."

The defendants have denied the allegations of the complaints. However, in the interest of avoiding contested litigation, and without admission of liability on behalf of the defendants, the attorneys for the United States, class counsel and the defendants have reached a settlement, called a "Consent Decree," which was approved and entered by the Court on [DATE], 1996. This notice is being provided pursuant to the terms of the Consent Decree.

Under the Consent Decree, you may qualify for relief if you are:

a current or former employee of the NJDOC for whom there is written or physical evidence demonstrating that you made a complaint to the NJDOC alleging: (1) employment discrimination based on race (black) or sex (female), including harassment; or (2) retaliation for making such a complaint; or (3) retaliation for having opposed any practice that the individual believed was an unlawful employment practice based on race (black) or sex (female); or (4) retaliation because the individual testified, assisted or participated in any manner in an investigation, proceeding or hearing on a complaint based on race (black) or sex (female) and provided that such complaint under (1)-(4) above was made on or after April 19, 1987 and on or before June 30, 1995.

If you believe you are entitled to relief, you must complete and return a "Claim of Employment Discrimination" form by [date certain to be specified] to the United States Department of Justice. **ALL CLAIM FORMS MUST BE POSTMARKED BY [DATE CERTAIN TO BE SPECIFIED]. IF YOU FAIL TO POSTMARK YOUR CLAIM OF EMPLOYMENT DISCRIMINATION FORM TO THE UNITED STATES DEPARTMENT OF JUSTICE BY [DATE CERTAIN TO BE SPECIFIED] YOU WILL BE BARRED FROM RECEIVING ANY RELIEF UNDER THE CONSENT DECREE, UNLESS YOU CAN SHOW GOOD CAUSE FOR YOUR FAILURE TO DO SO.**

You are not guaranteed relief under the Consent Decree by returning your claim form.

Claim forms and copies of the Consent Decree are available, at no charge, at all New Jersey Department of Corrections facilities or by contacting:

New Jersey Department of Corrections  
Equal Employment Division  
Whittlesey Road  
CN 863  
Trenton, New Jersey 08625  
(609) 292-5628

Claim forms are also available, at no charge, by contacting the United States Department of Justice attorney at the address and telephone number listed below:

Robert S. Libman  
Senior Trial Attorney  
United States Department of Justice  
Civil Rights Division  
Employment Litigation Section  
P.O. Box 65968  
Washington, DC 20035-5968  
1-800-556-1950 (press "\*" for the case "U.S. v.  
New Jersey Department of  
Corrections")

You may also contact class counsel, Miriam Clark, at the following address:

Miriam Clark, Esq.  
Steel, Bellman, Ritz & Clark  
351 Broadway  
New York, NY 10013  
(212) 925-7400

APPENDIX H

NEWSPAPER NOTICES REQUIRED  
BY PARAGRAPH 46 OF THE CONSENT DECREE

1. NEWARK STAR LEDGER

1/8 page Display Ad on the Accent Page in the Sunday Paper

2. TRENTONIAN

1/8 page Retail Ad in the Main News section between pages 15 and 18 on a weekday

3. COURIER POST

1/8 page Display Ad in the Living Section on Wednesday

APPENDIX I

NOTICE OF DETERMINATION

Holland v. The New Jersey Dept. of Corrections, C.A. No. 93-1683  
U.S., et al. v. State of New Jersey, et al., C.A. No. 94-3087  
U.S., et al. v. New Jersey Dept. of Corrections, C.A. No. 94-4724

[Name]  
[Address]  
[City, State, Zip]

Dear [            ],

Your claim for individual relief under the Consent Decree in the above-captioned cases has been processed. It has been determined that you are entitled to individual relief.

The specific relief to which you are entitled and hereby offered is:

[insert specific monetary relief to be provided]

You are entitled to this monetary relief as a result of the settlement of the above lawsuits. In order to receive this relief, however, you must properly and completely fill out, sign, have notarized, and return the accompanying acceptance of relief and release form, without any changes or deletions, in the accompanying pre-addressed and postage pre-paid envelope to the New Jersey Department of Corrections within sixty (60) days from the date of your receipt of this notice. You must check the "ACCEPT" box on the Acceptance of Relief and Release form to receive the above relief.

If you fail to postmark the envelope containing your complete, signed and notarized Acceptance of Relief and Release form to the New Jersey Department of Corrections within sixty (60) days from the date of your receipt of this notice, you will be barred from receiving relief under the Consent Decree unless you can show good cause for your failure to do so.

**PLEASE MAKE A COPY OF YOUR COMPLETED ACCEPTANCE OF RELIEF AND RELEASE FORM FOR YOUR RECORDS. IN ADDITION, YOU MAY WISE TO RETURN THE ACCEPTANCE OF RELIEF AND RELEASE FORM BY CERTIFIED MAIL, AT YOUR OWN EXPENSE, IN ORDER TO PRESERVE PROOF THAT YOU RETURNED THIS FORM IN A TIMELY FASHION.**

This letter will explain various provisions of the Acceptance of Relief and Release form. First, the form states that by receiving this money, you agree to release the State of New Jersey, the New Jersey Department of Corrections, and the other defendants from any employment discrimination claims you

may have against them based on events occurring on or before June 30, 1995.

In addition, by signing the form, you give up your right to bring any employment discrimination actions against the defendants based on race (black), sex (female), or retaliation for making such a complaint based on events occurring on or before June 30, 1995.

By signing the form you do not give up your right to complain about events which may have taken place after June 30, 1995.

The last sentence of the form states that you have carefully read and fully understand the Acceptance of Relief and Release form.

If you have filed a claim or charge against NJDOC with the Equal Employment Opportunity Commission ("EEOC"), the New Jersey Division of Civil Rights ("NJDCR"), or in court, on the basis of employment discrimination, including harassment, because of your race (black), or sex (female), or because you suffered retaliation for having made such a complaint, you may have the right to "opt out," or choose not to participate, in the monetary relief set forth in this Decree.

You have the right to "opt out" if your EEOC charge, your NJDCR charge, or your lawsuit is based on events occurring on or after April 19, 1987 and on or before June 30, 1995 and if your charge or lawsuit is still pending. If you choose to opt out, you must inform the following persons, in writing, or your decision:

Robert S. Libman  
United States Department of Justice  
Civil Rights Division  
Employment Litigation Section  
P.O. Box 65968  
Washington, D.C. 20035-5968  
1-800-556-1950 (press "\*" for the case "U.S. v. New  
Jersey Department of Corrections")

Miriam Clark, Esq.  
Steel, Bellman, Ritz & Clark  
351 Broadway  
New York, NY 10013  
(212) 925-7400

If you have any questions concerning the Consent Decree or your right to relief, you may consult with an attorney of your choice at your own expense, or you may contact either or the above attorneys.



APPENDIX J

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

WALTER HOLLAND, et al.,  
Plaintiff,

v.

NEW JERSEY DEPARTMENT OF  
CORRECTIONS, et al.,  
Defendants.

---

Civil Action No. 93-1683 (AMW)

UNITED STATES OF AMERICA,  
et al.,  
Plaintiffs,

v.

STATE OF NEW JERSEY, et al.,  
Defendants.

---

Civil Action No. 94-3087 (AMW)

UNITED STATES OF AMERICA and  
LENA HASKINS  
Plaintiffs,

v.

NEW JERSEY DEPARTMENT OF  
CORRECTIONS, ET AL.  
Defendants.

---

Civil Action No. 94-4724 (AMW)

ACCEPTANCE OF RELIEF AND RELEASE

I, \_\_\_\_\_,  
(please print name in full)

ACCEPT [ ]

DO NOT ACCEPT [ ]

(please check (x) appropriate box)

the relief offered to me pursuant to the provisions of the Consent Decree entered by the District Court on [DATE], 1996 in the above-captioned lawsuits, to wit:

[insert appropriate relief]

in full and final settlement of any and all claims raised or that could have been raised in this litigation against the State of New Jersey, the New Jersey Department of Corrections, and the other defendants in those cases and their current, former and future officials, employees and agents, related to allegations of employment discrimination based on race (black), sex (female), and/or retaliation for making such allegations based on incidents occurring on or before June 30, 1995.

This Acceptance of Relief and Release form constitutes the entire agreement between the defendants and me, without exception or exclusion.

I UNDERSTAND THAT IF I DO NOT PROPERLY AND COMPLETELY FILL OUT, SIGN, HAVE NOTARIZED AND RETURN THIS ACCEPTANCE OF RELIEF AND RELEASE FORM, WITHOUT ANY CHANGES OR DELETIONS, TO THE NEW JERSEY DEPARTMENT OF CORRECTIONS WITHIN SIXTY (60) DAYS FROM THE DATE OF MY RECEIPT OF THE NOTICE OF DETERMINATION, THAT I WILL BE BARRED FROM RECEIVING THE ABOVE RELIEF UNLESS I CAN SHOW GOOD CAUSE FOR MY FAILURE TO DO SO.

I carefully have read and I fully comprehend and understand this Acceptance of Relief and Release form. I am of lawful age and I am signing this Form of my own free act and deed.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

Signature: \_\_\_\_\_

Social Security Number: \_\_\_\_-\_\_\_\_-\_\_\_\_

Address: \_\_\_\_\_  
(street address)

\_\_\_\_\_  
(City) (State) (Zip Code)

Subscribed and sworn to before me  
this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My commission expires:  
\_\_\_\_\_

APPENDIX K  
IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

WALTER HOLLAND, <u>et al.</u> ,	)	
Plaintiff,	)	
v.	)	Civil Action No. 93-1683 (AMW)
NEW JERSEY DEPARTMENT OF	)	
CORRECTIONS, <u>et al.</u> ,	)	
Defendants.	)	
<hr/>		
UNITED STATES OF AMERICA,	)	
<u>et al.</u> ,	)	
Plaintiffs,	)	
v.	)	Civil Action No. 94-3087 (AMW)
STATE OF NEW JERSEY, <u>et al.</u> ,	)	
Defendants.	)	
<hr/>		
UNITED STATES OF AMERICA and	)	
LENA HASKINS	)	
Plaintiffs,	)	
v.	)	Civil Action No. 94-4724 (AMW)
NEW JERSEY DEPARTMENT OF	)	
CORRECTIONS, ET AL.	)	
Defendants.	)	
<hr/>		

ACCEPTANCE OF RELIEF AND RELEASE

I, \_\_\_\_\_,  
(please print name in full)

ACCEPT [ ]

DO NOT ACCEPT [ ]

(please check (x) appropriate box)

the relief offered to me pursuant to the provisions of the Consent Decree entered by the District Court on [DATE], 1996 in the above-captioned lawsuits, to wit:

[insert appropriate relief]

in full and final settlement of any and all claims raised or that could have been properly raised in this litigation, known or unknown, against the State of New Jersey, the New Jersey Department of Corrections, and the other defendants in those cases and their current, former and future officials, employees and agents, based on incidents occurring on or before January 19, 1996, except for worker's compensation claims, claims relating to pension rights, claims relating to rights under collective bargaining agreements or civil service law and claims under Allen v. Fauver, ESX-L-3302-94 (Superior Court, Essex County).

This Acceptance of Relief and Release form constitutes the entire agreement between the defendants and me, without exception or exclusion.

I UNDERSTAND THAT IF I DO NOT PROPERLY AND COMPLETELY FILL OUT, SIGN, HAVE NOTARIZED AND RETURN THIS ACCEPTANCE OF RELIEF AND RELEASE FORM, WITHOUT ANY CHANGES OR DELETIONS, TO THE NEW JERSEY DEPARTMENT OF CORRECTIONS WITHIN SIXTY (60) DAYS FROM THE DATE OF MY RECEIPT OF THE NOTICE OF DETERMINATION, THAT I WILL BE BARRED FROM RECEIVING THE ABOVE RELIEF UNLESS I CAN SHOW GOOD CAUSE FOR MY FAILURE TO DO SO.

I carefully have read and I fully comprehend and understand this Acceptance of Relief and Release form. I am of lawful age and I am signing this Form of my own free act and deed.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

Signature: \_\_\_\_\_

Social Security Number: \_\_\_\_\_-\_\_\_\_-\_\_\_\_\_

Address: \_\_\_\_\_  
(street address)

\_\_\_\_\_  
(City) (State) (Zip Code)

Subscribed and sworn to before me  
this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My commission expires:  
\_\_\_\_\_

APPENDIX L  
IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

WALTER HOLLAND, et al., )  
 )  
 Plaintiff, )  
 )  
 v. ) Civil Action No. 93-1683 (AMW)  
 )  
 NEW JERSEY DEPARTMENT OF )  
 CORRECTIONS, et al., )  
 )  
 Defendants. )

---

UNITED STATES OF AMERICA, )  
et al., )  
 )  
 Plaintiffs, )  
 )  
 v. ) Civil Action No. 94-3087 (AMW)  
 )  
 STATE OF NEW JERSEY, et al., )  
 )  
 Defendants. )

---

UNITED STATES OF AMERICA and )  
 LENA HASKINS )  
 )  
 Plaintiffs, )  
 )  
 v. ) Civil Action No. 94-4724 (AMW)  
 )  
 NEW JERSEY DEPARTMENT OF )  
 CORRECTIONS, ET AL. )  
 )  
 Defendants. )

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ACCEPTANCE OF RELIEF AND RELEASE

I, James Roberson,

ACCEPT [ ]

DO NOT ACCEPT [ ]

(please check (x) appropriate box)

the relief offered to me pursuant to the provisions of the Consent Decree entered by the District Court on [DATE], 1996 in the above-captioned lawsuits, to wit:

[insert appropriate relief]

in full and final settlement of any and all claims raised or that could have been properly raised in this litigation, known or unknown, against the State of New Jersey, the New Jersey Department of Corrections, and the other defendants in those cases and their current, former and future officials, employees and agents based on incidents occurring on or before January 19, 1996 except for worker's compensation claims, claims relating to pension rights, claims relating to rights under collective bargaining agreements or civil service law, claims under Allen v. Fauver, ESX-L-3302-94 (Superior Court, Essex County), and allegations arising under the April 29, 1994 anti-retaliation Order entered in Holland, et al. v. New Jersey Department of Corrections, C.A. No. 93-1683 raised in class counsel's letters to the State defendants dated November 7, 1995 and November 10, 1995.

This Acceptance of Relief and Release form constitutes the entire agreement between the defendants and me, without exception or exclusion.

I UNDERSTAND THAT IF I DO NOT PROPERLY AND COMPLETELY FILL OUT, SIGN, HAVE NOTARIZED AND RETURN THIS ACCEPTANCE OF RELIEF AND RELEASE FORM, WITHOUT ANY CHANGES OR DELETIONS, TO THE NEW JERSEY DEPARTMENT OF CORRECTIONS WITHIN SIXTY (60) DAYS FROM THE DATE OF MY RECEIPT OF THE NOTICE OF DETERMINATION, THAT I WILL BE BARRED FROM RECEIVING THE ABOVE RELIEF UNLESS I CAN SHOW GOOD CAUSE FOR MY FAILURE TO DO SO.