

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
MIAMI DISTRICT OFFICE
Miami Tower, 100 SE 2nd St.
Suite 1500
Miami, FL 33131

In the Matter of:)	
)	
Taronica White, et al.,)	EEOC Case No.
)	510-2012-00077X
)	
Complainant,)	Agency Case No.
)	BOP-2011-000528
vs.)	
Loretta Lynch, Attorney General,)	Administrative Judge
Department of Justice,)	Joy R. Brockman
Agency.)	
_____)	January 17, 2017

**ORDER ON MOTION FOR PRELIMINARY
APPROVAL OF SETTLEMENT**

A. Background

This case was certified as a class complaint by the undersigned on April 9, 2013. The certification was upheld by the Agency, and notice to the class members of the certification was provided at that time. The parties engaged in extensive discovery over a period of approximately two years. This included the exchange of tens of thousands of pages of documents, as well as dozens of depositions of fact witnesses, 30(b)(6) witnesses, and expert witnesses. Each side was ably represented by counsel, who worked diligently on all discovery matters even when disagreements surfaced.

The undersigned issued an Order on April 27, 2016 scheduling this case for a hearing on liability in August, 2016. On May 19, 2016, the parties both submitted Motions for Summary Judgment. Responses and replies were briefed in June, 2016. The parties submitted over 800 exhibits in support of their respective positions.

On July 6, 2016, the undersigned issued an Order on the Motions for Summary Judgment. The undersigned found 215 material facts that were not in dispute, and issued a partial finding as a matter of law in favor of the Class Complainants. Specifically, the undersigned ruled based on the undisputed facts that the Complainants demonstrated they belonged to a protected class, they were subjected to sexual harassment in the form of unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature; (3) the harassment was based on sex; and (4) the harassment affected a term or condition of employment, and/or had the purpose or effect of unreasonably interfering with their work environment and/or creating an intimidating, hostile, or offensive work environment.

In January, 2016, the parties began settlement negotiations. They met for several days of in person settlement conferences with AJ William Rodriguez. They then had numerous additional days of negotiations both in person and telephonically with attorney/mediator Elizabeth Newman. The parties came to Miami for a total of 8 days of negotiations, and also met in person in Washington, DC for an additional 6 days. Based on the good faith representation of the parties, and the progress made toward settlement, the undersigned postponed the scheduled hearing in an effort to allow the parties to vigorously work toward a mutually agreeable resolution of the complaint.

The parties reached an agreement on all terms on November 15, 2016. They sent the undersigned a copy of the executed settlement on December 6, 2016. A Motion for Preliminary Approval of the settlement was filed by the Complainants on December 23, 2016. In sum, the parties agreed to a total of up to \$20,000,000¹ for compensatory damages to class members, attorney's fees and costs, and fees and costs in connection with the settlement fund, as well as applicable taxes on any income earned by the settlement fund. The parties also agreed to an extensive and comprehensive system of programmatic relief. These include a new standing committee to address inmate sexual misconduct toward staff, a new collateral duty of facilitator to assist staff with drafting incident reports and concerns about sexual misconduct of inmates, modification to tracking and processing incident reports, training for staff on discipline rules and how to deal with sexual misconduct, and initiation by the Agency of a change in the regulations to establish a more severe inmate sexual activity toward staff offense. The Agency also agreed

¹ The parties agreed to reduce the total settlement about by \$40,000 per person for each individual below the number 350 who does not submit a claim form.

to changes to inmate clothing and monitoring that would be intended to reduce opportunity for inmate sexual misconduct toward staff, and agreed to communicate to inmates that sexual misconduct would not be permitted. Inmates with specified levels of sexual misconduct toward staff will be referred to psychology services to incorporate mental health intervention, and the Agency will inform team staff of their ability to refer inmates who have engaged in sexual misconduct toward staff for consideration for civil confinement after completion of their criminal imprisonment. In addition, the Agency agreed to modify the social climate surveys and institution character profiles concerning inmate sexual misconduct.

As to the monetary relief, the parties set up a detailed and complex system of distribution whereby the claims administrator would devise a formula to determine the amount each bona fide class member will receive, based on information obtained from a 38 page claims form submitted by each class member. The formula itself would be reviewed and approved by the undersigned prior to being implemented. The undersigned would review the Class Counsel's petition for attorney's fees and costs prior to final approval.

B. Preliminary Approval of Settlement

EEOC Regulation 29 C.F.R. § 1614.204(g)(4) provides that a settlement of a class complaint shall be approved if it is fair, adequate and reasonable to the class as a whole, and does not solely benefit the class agent. *See Complainant v. USPS*, EEOC Appeal No. 0120142423 (Nov. 13, 2014); *Grier v. USPS*, EEOC Appeal No. 0120081838 (July 1, 2008); *Turner v. Agriculture*, EEOC Appeal No. 01A53302 (May 3, 2005); *see also* MD-110 at 8-9, 8-10. Notice of the resolution must be given to the class members, with a thirty day period to object. 29 C.F.R. §1614.204(g)(4).

The Commission does not speak on ancillary procedures regarding class complaint settlement, such as preliminary approval of the settlement prior to notice. Under the Federal Rules, however, a preliminary approval requires a lower standard, and the settlement is evaluated as to whether it “discloses grounds to doubt its fairness or other obvious deficiencies such as unduly preferential treatment of class representatives or segments of the class, or excessive compensation of attorneys, and whether it appears to fall within the range of possible approval.” *Thomas v. NCO Financial Systems, Inc.* No. CIV. A. 00-5118 (July 31, 2002)(citing *In re Prudential Securities Incorporated Limited Partnerships Litigation*, 163 F.R.D. 200, 209

(S.D.N.Y. 1995); *In re Inter-Op Hip Prosthesis Limited Liability Litigation*, No. MDL No. 1401 (Aug. 31, 2001).

The undersigned has reviewed the settlement thoroughly, as well as the claims form and other documents submitted. I find there are no obvious deficiencies or grounds to doubt the fairness of the settlement. It does not unduly favor the class agents.

The agreement was reached after extensive discovery was conducted and after vigorous arms-length negotiations by the parties. The parties held numerous in person meetings over nearly a year to negotiate an agreement. The parties worked extremely hard and were dedicated and diligent in their efforts toward a resolution of the complaint. Although it is not yet known exactly how much of the monetary settlement each class member will receive, the monetary relief of \$20,000,000 averages to approximately \$40,000 average per class member (inclusive of the share of attorney's fees and costs) even taking the largest possible number of valid claims filed. This round number is a very reasonable figure for non-pecuniary compensatory damage claims. The amount each class member will receive will be based on a formula determined by a neutral third party claims administrator and approved by the undersigned. The factors going into the formula include the amount of time worked in Coleman, the harm suffered, the amount and type of harassment suffered, and the efforts to raise this with management. Amount of participation in the class complaint is a factor in the formula, but by no means the only factor.

The programmatic relief portion of the settlement agreement is impressive by any standard, and the parties are to be commended for their willingness to work on such an elaborate plan to make improvements to the Coleman prison system in mitigating inmate sexual harassment. It includes provisions that the undersigned in all likelihood could not even order if the Class prevailed in this case, such as working on a change of regulation to provide a more severe sexual activity toward staff misconduct charge for inmates. The programmatic relief portion of the agreement evinces intent to make real changes for the better at the Agency.

In addition, the release of liability is not overly broad and is limited to the claims certified in this action only. As such, preliminary approval of the settlement is granted.

C. Notice and Scheduling

The Notice to the class members was submitted for approval with the settlement. It is approved in all but one portion; the class members shall be required to submit all objections in the thirty day objection period to the parties only and not directly to the Administrative Judge.

Within 20 days of the conclusion of the thirty day objection period from the time of issuance of the Notice (no later than 50 days after issuance of the Notice), the parties shall submit all objections received to the Administrative Judge. These shall be submitted to the AJ electronically in Adobe PDF format, by e-mail or removable media². The portion of the Notice instructing the class members to send objections directly to the undersigned (page 11 of 12) shall be deleted and the Notice should be modified accordingly prior to issue.

At this time, no hearing on the fairness of the settlement will be scheduled. Should the undersigned determine upon receipt of any objections that a hearing would be necessary or beneficial, one will be scheduled at that time. If this is scheduled, it will be approximately 230-240 days following the date of this Order and any other dependent deadlines (such as submission of the request for fees) should be calculated accordingly.

The Notice as modified above shall be issued within seven business days of this Order or ten business days of information supplied by the Agency to the claims administrator, as set forth in the settlement agreement.

It is so ORDERED.


Joy R. Brockman
Administrative Judge
j.brockman-efilebox@eoc.gov
(305) 808-1772

² Transmission by e-mail is preferred but if this is not possible due to file size limitations, then removable media may be used.

CERTIFICATE OF SERVICE

For timeliness purposes, it shall be presumed that the parties received the foregoing within five (5) calendar days after the following date if it was sent *via* First Class Mail. I certify that on January 17, 2017, the foregoing was sent *via* method identified to the following:

Heidi R. Burakiewicz, Esq.
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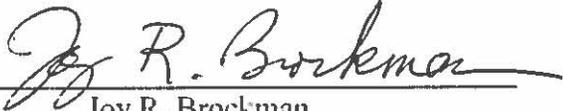
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Joy R. Brockman
Administrative Judge