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Times, et al v. Target Corporation

Judge Debra C. Freeman

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Times, et al v. Target Corporation

Keywords

Times et al, Target Corporation, 1:18-cv-02993, Consent Decree, disparate impact, hiring, race, African American or black, Hispanic or Latino, retail, Employment Law, Title VII

Exhibit A

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (the “Agreement”) is entered into by and between Carnella Times, Erving Smith, and the Fortune Society, Inc. (“Plaintiffs”), individually and on behalf of a class they seek to represent, and Target Corporation (“Target” or “Defendant,” together with Plaintiffs, the “Parties”).

I. RECITALS AND BACKGROUND

WHEREAS, Plaintiffs intend to file a class action in the United States District Court for the Southern District of New York, alleging that Defendant violated Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*, by using criminal history records in making hiring determinations in a manner that discriminated on the basis of race/ethnicity against African-American and Latino applicants for non-exempt positions at U.S.-based Target retail stores (“Target Stores Jobs”);

WHEREAS, the Parties have exchanged significant data and numerous documents, engaged in expert analysis, and conducted several informal discovery meetings;

WHEREAS, in July 2016, the Parties engaged the services of Professor Lynn Cohn, a mediator with experience in the mediation of complex class actions, including employment discrimination litigation (the “Mediator”);

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

WHEREAS, the Parties have reached a proposed comprehensive settlement to resolve Plaintiffs’ claims, which resulted in this Agreement;

WHEREAS, the Parties agree that a settlement of Plaintiffs’ claims is in the public interest;

WHEREAS, the Parties have agreed to a comprehensive class-based settlement, including the appointment of two well-qualified Industrial Organizational Psychologists (“IOs”) to revise and validate guidelines for the use of criminal history records in post-conditional-offer hiring decisions for Target Stores Jobs, and the two IOs have agreed to undertake this project;

WHEREAS, Defendant denies any and all liability or damages to any individual, group, or entity with respect to the alleged facts or causes of action asserted by Plaintiffs;

WHEREAS, without admitting or conceding any liability or damages whatsoever, Defendant has agreed to settle Plaintiffs’ claims on the terms and conditions set forth in this Agreement, to avoid the burden, expense, and uncertainty in litigating these claims;

WHEREAS, Plaintiffs’ Counsel has analyzed and evaluated the merits of the claims made against Defendant, and the impact of this Agreement on Plaintiffs and members of the proposed class, and based upon Plaintiffs’ Counsel’s analysis and evaluation of a number of factors, and recognizing the substantial risks of class litigation, including the possibility that if not settled now,

future litigation might not result in any recovery, or might result in a recovery that is less favorable and that would not occur for several years, as well as recognizing that many of the nonmonetary elements of this Agreement would have been difficult to achieve through litigation, Plaintiffs' Counsel is satisfied that the terms and conditions of this Agreement are fair, reasonable, and adequate and that this Agreement is in the best interest of Plaintiffs and the members of the class;

WHEREAS, the attorneys' fees that Plaintiffs' Counsel seek are based on the time and expenses they expended on this matter;

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

1. DEFINITIONS

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

- 1.1 Agreement.** "Agreement" or "Settlement" means this Settlement Agreement and Release.
- 1.2 Acceptance Period.** "Acceptance Period" means the sixty (60) day period, beginning from the date of the mailing of the Settlement Notice and Claim Form, during which a Class Member can submit a Claim Form to participate as a Group A or Group B Filer.
- 1.3 Claim Bar Date.** "Claim Bar Date" means the last day of the sixty (60) day Acceptance Period in which any Class Member may timely complete and submit a Claim Form.
- 1.4 Claim Form.** "Claim Form" means the Claim Form, as approved by the Court in substantially the form of the document attached to this agreement as Exhibit 1, whereby a Class Member may elect to participate as a Group A or Group B Filer.
- 1.5 Class Counsel or Plaintiffs' Counsel.** "Class Counsel" and "Plaintiffs' Counsel" shall mean Outten & Golden LLP ("O&G") and NAACP Legal Defense and Educational Fund, Inc. ("LDF").
- 1.6 Class Members.** The "Class Members" are defined in Exhibit 2 to this Settlement Agreement.
- 1.7 Class Member Release.** The "Class Member Release" means the release by which each Settlement Class Member shall release Target from all discrimination claims, demands, causes of action, and liabilities, known and unknown, that he or she had, have, or may have under any legal or equitable theory, whether contractual, common-law, or statutory, and whether under federal, state, or local law, against Defendant arising from or relating to or concerning the claims and facts alleged in this Litigation under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.* and parallel state and local laws, rules, regulations and ordinances. The Class Member Release does not include claims under the federal Fair Credit Reporting Act, which is the subject of a separate, unrelated settlement.

- 1.8 **Court or District Court.** “Court” or “District Court” means the United States District Court for the Southern District of New York.
- 1.9 **Days.** “Days” means business days (excluding federal holidays) if the specified number is less than ten (10), and calendar days if the specified number is ten (10) or greater.
- 1.10 **Defendant or Target.** “Defendant” or “Target” shall mean Target Corporation and its predecessors, successors, parents, subsidiaries, affiliates, current and former employees, insurers, and divisions.
- 1.11 **Defendant’s Counsel or Target’s Counsel.** “Defendant’s Counsel” or “Target’s Counsel” shall mean Nilan Johnson Lewis PA.
- 1.12 **Effective Date.** “Effective Date” of the Settlement shall mean the latest of the following dates: (a) the expiration of time for appeal of the Court Order finally approving the Settlement; or (b) if there is an appeal of the Court’s decision granting final approval, the day after all appeals are finally resolved in favor of final approval.
- 1.13 **Fairness Hearing.** “Fairness Hearing” means the hearing before the Court relating to the Motion for Final Approval.
- 1.14 **Final Approval Order.** “Final Approval Order” means the Order entered by the Court after the Fairness Hearing, approving the terms and conditions of this Agreement.
- 1.15 **Final Criteria.** The “Final Criteria” means the adjudication criteria relating to the use of criminal history records for making hiring determinations by Target for Target Stores Jobs, developed by the Parties and the IOs, which revises the Interim Criteria after a one-year study period while the Interim Criteria are in effect at Target.
- 1.16 **Funding Date.** The date on which Defendant shall transfer Three Million Seven Hundred and Forty-Two Thousand, Five Hundred and No/100 Dollars (\$3,742,500.00) to the Settlement Administrator, as escrow agent, which shall be within fourteen days of the Effective Date of this Settlement.
- 1.17 **Group A Filers.** “Group A Filers” are Settlement Class Members who file a Claim Form electing priority hiring/interviewing for Target Stores Jobs within commuting radius from Class Members’ current place of residence.
- 1.18 **Group B Filers.** “Group B Filers” are Settlement Class Members who file a Claim Form electing for a monetary award and who can reasonably demonstrate that instatement would not benefit them at the time of the implementation of the settlement and will not benefit them over the following twelve (12) month period.
- 1.19 **Interim Criteria.** The “Interim Criteria” means revised guidelines for the use of criminal history records in post-conditional-offer hiring decisions for Target Stores Jobs, developed by the IOs pursuant to this Agreement, as well as for use in identifying membership in the Settlement Class, as well as qualification to participate in priority hiring/interviewing.

- 1.20 IOs.** The “IOs” are Industrial Organizational Psychologists Dr. Kathleen Lundquist and Dr. Nancy Tippins, or their replacements (to be mutually determined by the Parties), tasked with working together as independent consultants to Target to conduct a study to revise and validate Target’s guidelines for the use of criminal history records in post-conditional-offer hiring decisions for Target Stores Jobs.
- 1.21 Mediator.** “Mediator” means Professor Lynn Cohn or her replacement (to be mutually determined by the Parties).
- 1.22 Litigation.** “Litigation” means the case to be filed by Plaintiffs concurrent with the preliminary approval briefing in the U.S. District Court for the Southern District of New York.
- 1.23 Named Plaintiffs.** “Named Plaintiffs” mean Carnella Times, Erving Smith, their representatives, heirs, administrators, executors, beneficiaries, conservators, attorneys, and assigns, the Fortune Society and any other person who becomes a named plaintiff or is substituted for a named plaintiff.
- 1.24 Notice or Notices.** “Notice” or “Notices” means the Court-approved Notice of Proposed Settlement of Class Action Lawsuit.
- 1.25 Objector.** “Objector” means an individual who properly files an objection to this Agreement, but does not include any individual who opts out of this Agreement.
- 1.26 Opt out Statement.** “Opt out Statement” is a written signed statement that an individual Class Member has decided to opt out and not be included in this Agreement.
- 1.27 Parties.** “Parties” are the Named Plaintiffs and Target.
- 1.28 Pipeline Project.** “Pipeline Project” is the program through which Target will make a one-time contribution of Six Hundred Thousand and No/100 Dollars (\$600,000.00) to assist not-for-profit organizations identified by the Parties that provide re-entry support to individuals with criminal history records to develop a pipeline of qualified applicants who have successfully completed work ready programs at such organizations.
- 1.29 Preliminary Approval Order.** “Preliminary Approval Order” means the Order entered by the Court preliminarily approving the terms and conditions of this Agreement, and directing the manner and timing of providing Notices to the Class Members.
- 1.30 Settlement Account.** “Settlement Account” means the account established by the Settlement Administrator, in a segregated interest-bearing escrow account paid by Defendant. The Settlement Account will be controlled by the Settlement Administrator subject to the terms of this Agreement and the Court’s Orders for Preliminary Approval and Final Approval. Earned Interest, if any, will become part of the Settlement Fund.
- 1.31 Settlement Class Members.** “Settlement Class Members” are Class Members who do not submit a valid Opt out Statement.

- 1.32 Release of Fees and Costs.** The “Release of Fees and Costs” shall mean the release, of the Named Plaintiffs, on behalf of the proposed class and each individual Class Member, to irrevocably and unconditionally release, acquit, and forever discharge any claim that they may have against Target for attorneys’ fees or costs associated with Class Counsel’s representation of Plaintiffs and the Class.
- 1.33 Scope of Work Document.** The “Scope of Work Document” is the Target Hiring Process Development Scope of Work document drafted by the IOs, which has been agreed to by the IOs and the Parties, and which sets forth their responsibilities and information they believe is necessary to conduct this work.
- 1.34 Service Awards.** “Service Awards” mean Court-approved compensation awarded to Named Plaintiffs for their respective roles as parties in this case.
- 1.35 Settlement Administrator.** The “Settlement Administrator” will be jointly selected and retained by the Parties, through a Request for Proposal process, to manage the Settlement Account, to distribute the Notices and Claim Forms, to distribute Service Awards and settlement payments, to distribute approved attorneys’ fees and costs awards to Class Counsel, and to otherwise administer the settlement. The Settlement Administrator’s fees and costs of administering the settlement shall be borne by Target.
- 1.36 Settlement Fund.** “Settlement Fund” means the Three Million Seven Hundred and Forty-Two Thousand, Five Hundred and No/100 Dollars (\$3,742,500.00), representing the total sum that, in addition to the cost of the Settlement Administrator and the IOs’ work, Target will pay to settle this lawsuit.
- 1.37 Target Stores Jobs.** “Target Stores Jobs” shall mean non-exempt positions at U.S.-based Target retail stores.

2. INITIAL PROCEDURAL ISSUES

- 2.1 Binding Agreement.** This Agreement is a binding agreement and contains all material agreed-upon terms for the Parties to seek a full and final settlement of the Litigation.
- 2.2 Retention and Responsibilities of the Settlement Administrator.** The Settlement Administrator will be responsible for distributing the Notices and Claim Forms to Class Members in accordance with the Court’s Preliminary Approval Order, maintaining a toll-free phone number and website to answer class member questions, collecting and verifying responses, distributing Service Awards, distributing settlement payments, and distributing approved attorneys’ fees and costs awards to Class Counsel. The Settlement Administrator shall be paid by Target.
- (A) The Parties will have equal access to the Settlement Administrator. The Settlement Administrator will provide regular reports to Class Counsel and Defendant’s Counsel, but no less frequently than every two (2) weeks, regarding the status of distributing Notices and Claim Forms to Class Members, the claims administration process, and the names and number of Class Members who file Group A and Group

B Claim Forms, and which Class Members, if any, object to and/or opt-out of the Settlement.

- (B) Target agrees to reasonably cooperate with the Settlement Administrator to facilitate Target's obligations in this Agreement, including to provide information to assist the Settlement Administrator in locating Class Members, as specified in Section 4.1 below.

2.3 Complaint and Preliminary Approval Motion.

- (A) Within thirty (30) days following the Parties' execution of this Agreement, Class Counsel will file in the United States District Court for the Southern District of New York, a class action Complaint ("Complaint") and a Motion for Preliminary Settlement Approval, memorandum of law in support thereof, proposed Notice to Class Members, Claim Form, and Proposed Order ("Preliminary Approval Motion"), which is consistent with the Agreement. Class Counsel must give Target at least ten (10) days advance written notice of the exact date upon which they intend to make that filing. The Preliminary Approval Motion will seek a settlement class pursuant to Federal Rule of Civil Procedure ("Rule") 23(e) and 23(b)(3), with an opt out right.
- (B) The Preliminary Approval Motion also will seek the setting of date(s) for individuals to opt out of this Agreement or provide objections to this Agreement, which date will be fifty (50) days from the delivery of Notice to the Class Members, and for a Fairness Hearing for Final Approval of the Settlement before the Court at the earliest practicable date.
- (C) In the Preliminary Approval Motion, Class Counsel will seek to certify a Rule 23(b)(3) settlement class, with an opt out right, and inform the Court of the intended process to obtain a Final Approval Order that will, among other things, seek to: (1) approve the Settlement as fair, adequate, and reasonable; (2) incorporate the terms of the Release, as described herein; (3) dismiss the Litigation with prejudice; (4) award Class Counsel fees and costs; and (5) award Service Awards to Named Plaintiffs.
- (D) If the Court denies the Preliminary Approval Motion, the Parties will work together in good faith to revise the Agreement to address the Court's concerns, seek reconsideration, and/or appeal the Court's decision. Any disputes between the Parties will be submitted to the Mediator. If these efforts are ultimately unsuccessful or a settlement class is not certified, the Litigation will resume as if no settlement had been attempted, and this settlement will be null and void, with no force and effect.
- (E) The Parties will work together, diligently and in good faith, to expeditiously obtain a Preliminary Approval Order, Final Approval Order, and all other aspects of the settlement approval process.

3. SETTLEMENT TERMS

3.1 Settlement Amount.

- (A) Target agrees to pay the Settlement Fund Three Million Seven Hundred and Forty-Two Thousand, Five Hundred and No/100 Dollars (\$3,742,500.00) to the Settlement Administrator, as escrow agent, within fourteen days of the Effective Date of this Settlement, which shall fully resolve and satisfy the programmatic, individualized, and organizational relief, any claim for attorneys' fees and costs approved by the Court, any Court-approved Service Awards to Named Plaintiffs. Class Counsel will seek court approval up to One Million Nine Hundred Thousand and No/100 Dollars (\$1,900,000.00), for the payment of attorneys' fees and costs and the Settlement Claims Administrator's fees and costs. Class Counsel's fee request shall include the lodestar for Greater Hartford Legal Aid, Inc. which filed Ms. Times' initial charge of discrimination against Target with the EEOC. The Settlement Fund will be paid on the Funding Date, which is defined as within fourteen (14) days of the Effective Date (defined above).
- (B) The entire costs for implementing the injunctive/programmatic relief provisions of this Agreement shall be paid by Target. This commitment includes, but is not limited to, the funding of the work of the IOs, their staff, and other experts and consultants as reasonably required.
- (C) Target shall pay the Settlement Claims Administrator's fees and costs.
- (D) The Settlement Administrator shall deposit the Settlement Fund entirely into an FDIC insured interest-bearing account, and interest from such interest-bearing account will become part of the Settlement Fund and be held by the Settlement Administrator in escrow.
- (E) Any uncashed Service Awards and all other amounts remaining in the Settlement Fund as of one hundred and eighty (180) days after Final Approval will be redistributed to the Pipeline Project. Target, with the assistance of Class Counsel, will determine the organizations that will receive a distribution of remaining funds.

3.2 Class Definition.

- (A) The Settlement Class are all African-American and Latino applicants who were denied employment from a Target Stores Job due to a final adjudication on a pre-employment background check that did not clear the applicant to proceed based on their criminal history record, from the start of the class liability period on May 11, 2006, to the date of preliminary approval of the proposed settlement, with the following exceptions:
 - (1) The Settlement Class will exclude all individuals that Target can establish were, or would have been, denied employment for reasons other than their criminal history records (*e.g.* failed drug test, SSN name-match screen, or

similar reasons). Target shall provide a list of potentially excluded Settlement Class Members to Class Counsel with an explanation for the proposed exclusion; and

- (2) The Settlement Class will exclude all individuals with convictions that would have rendered them unqualified for employment under the Interim Criteria, if those criteria had been in effect at the time of their application (as explained in Section 3.3 below).

3.3 Programmatic Terms and Injunctive Relief.

- (A) **Selection.** The Parties have jointly selected the IOs to work together as independent consultants to revise and validate Target's guidelines for the use of criminal history records in post-conditional-offer hiring decisions for Target Stores Jobs. The IOs have experience conducting professional job analyses and validating selection criteria, including experience in the criminal background check context.
- (B) **Purpose.** The IOs will work with the Parties to design, develop, and implement properly validated adjudication guidelines for the hiring of job applicants with criminal history records for Target Stores Jobs. The overarching goal of this initiative is to design, develop, and implement guidelines relating to the use of criminal history records in hiring for Target Stores Jobs that are valid and meet the standards of the Uniform Guidelines, Society for Industrial and Organizational Psychology ("SIOP") Principles, or other applicable professional standards. In the course of validating these guidelines, the IOs will consider whether alternative suitability screens relating to the use of criminal history records exist that have equal or greater validity and less potential for adverse impact.
- (C) **Access and Funding.** Target will provide the IOs with access to all relevant and accessible information, materials and individuals the IOs request to fulfill the goals of this Programmatic and Injunctive Relief.
- (D) **Scoping Phase.** The Parties will work cooperatively with the IOs to answer any questions posed as part of the scoping phase of their assignment in this matter ("Scoping Phase"). The Scoping Phase, which shall not exceed ninety (90) days, will allow the IOs to develop a detailed scope of work and budget proposal to the Parties.
- (E) **Scope of Work.** At the conclusion of the Scoping Phase, the IOs shall promptly provide a proposed Scope of Work and Budget report identifying relevant data, documents, and other information that they believe is necessary to conduct this work ("SOW").
 - (1) Included in this SOW will be a time estimate for the development of the Interim Criteria, defined below. The IOs will make every effort to build transparency and accountability into the development process. The IOs will

develop clear goals, consistent with the programmatic terms and injunctive relief herein, and a timeline for achieving those goals.

- (2) The Parties will provide comments to the IOs' proposed SOW within five (5) days from receiving it from the IOs. The IOs will review those comments, revise the SOW within 5 days of receiving the Parties' comments, and provide a second proposed SOW to the Parties for review. If the Parties do not dispute the second proposed SOW within 5 days, then the second proposed SOW will define the scope of the study and budget. Any disputes regarding the second proposed SOW will be submitted to the Mediator to make a non-binding recommendation to the Parties, provided that any such recommendation and resolution must be consistent with the terms of this agreement.

(F) **Guiding Considerations.** As part of their work to develop the "Interim Criteria" and "Final Criteria" (each described below), the IOs will be guided by the following considerations:

- (1) Developing suitability determination strategies relating to criminal history records using validation techniques as set forth in the Uniform Guidelines, SIOP Principles, and other generally accepted professional standards.
- (2) Utilizing job and job-group analyses to carefully map when, where, and how criminal history records may disqualify an applicant given the particular duties and requirements, including the work environment, of each job or job group at issue.
- (3) Developing a list of convictions that are determined to be non-job related and, therefore, not disqualifying for any particular job or job group.
- (4) Considering the job relatedness and business necessity of requiring applicants to provide complete and accurate information of their criminal histories as a condition of employment. (Class Counsel contend that this information may be difficult or impossible to provide in an acceptable form by applicants for a variety of reasons; Target contends that there are a variety of practicable and acceptable methods for applicants to provide this information.).
- (5) Developing guidelines for analyzing individualized mitigating characteristics (for example, as required by Article 23-A of the New York Correction Law) as a common national standard (consistent with the goal of creating a process that is scalable and legally defensible).
- (6) Developing mechanisms by which job applicants with criminal history records could systematically disclose mitigating characteristics to overcome hiring restrictions, such as successful completion of specific work-ready related programs or other mitigating factors.

- (7) Developing training for Target employees involved in implementing the criminal history record background check process at the corporate level.
 - (8) Creating an internal appeals process that assists job applicants in presenting evidence of rehabilitation (consistent with the goal of creating a process that is scalable and legally defensible).
 - (9) Outreach recruiting of rehabilitated offenders through the Pipeline Project as outlined in Section 3.5 below.
 - (10) Under both the Interim Criteria and Final Criteria, criminal convictions relating to serious sex offenses (i.e. child-related and violence-related) shall be subject to individualized assessment.
- (G) **Interim Criteria.** “Interim Criteria” are the adjudication guidelines designed by the IOs, applying content validation standards, for (1) hiring of job applicants with criminal history records for Target Stores Jobs prior to the implementation of the Final Criteria, including an evaluation of the job relatedness of the convictions; (2) determining membership in the Settlement Class per Section 3.2(A)(2) above, and (3) determining Settlement Class members’ qualification to participate in priority hiring/interviewing relief.
- (1) Target will provide the IOs with access to all relevant and reasonably accessible information, materials, and individuals the IOs request in order to design the Interim Criteria, including but not limited to, all relevant and reasonably accessible information relating to Target’s historical and current adjudication guidelines and practices relating to the use of pre-employment criminal history background checks in hiring for Target Stores Jobs, as well as relevant background check, Assets Protection, and human resources information system data.
 - (2) Subject to the IOs’ assessment of feasibility, the IOs will provide the Parties with their proposed Interim Criteria within one hundred and eighty (180) days after the completion of the Scoping Phase. The Interim Criteria will be developed applying content validation standards by assembling various relevant internal and external subject matter experts to create a revised set of adjudication criteria relating to the use of criminal history records for making hiring determinations for Target Stores Jobs.
 - (3) The Parties will provide comments on the IOs proposed Interim Criteria as soon as possible, but no later than thirty (30) days from the receipt of the proposed Interim Criteria from the IOs.
 - (4) The IOs will review the Parties’ comments and revise the proposed Interim Criteria as soon as possible, but no later than thirty (30) days of receipt of comments and provide their proposed Second Interim Criteria to the Parties for their review.

- (5) If the Parties do not dispute (or do not timely dispute) any criterion in the proposed Second Interim Criteria within fourteen (14) days after the completion of the process, then the proposed Second Interim Criteria will become the Interim Criteria.
 - (6) If the Parties dispute any part of the proposed Second Interim Criteria, they must submit that dispute in writing to the Mediator within fourteen (14) days. The Mediator will then consider the Parties' respective positions and make non-binding recommendations regarding resolution. The Parties shall promptly provide a written response to the Mediator's recommendations outlining the recommendations to which they agree, and which they continue to dispute.
 - (7) The IOs will submit the undisputed Interim Criteria within fourteen (14) days after the Mediator makes her non-binding recommendation and the Parties provide their written responses.
 - (8) After this process, the undisputed Interim Criteria will be used to define participation and membership in the Settlement Class. For individuals who were denied employment by Target based on "falsification" (i.e., failure to disclose complete and accurate information about their criminal histories), membership in the Settlement Class shall be based on whether they would have qualified for employment under the Interim Criteria based both on incomplete disclosures of convictions *and* on their criminal history. The Interim Criteria will also be used to determine Settlement Class Members' qualification to participate in priority hiring/interviewing relief.
 - (9) Potential class members who would be included in the Settlement Class but for an unresolved dispute regarding the Interim Criteria shall also be included in the Settlement Class, but shall be entitled to participate as Group B awards, and shall not be entitled to participate in priority hiring/interviewing as Group A awards.
 - (10) The Parties further agree that disputes that are not resolved through the criterion dispute process specified in Section 3.3(G)(6)-(7) will not reduce by more than twenty percent (20%) the number of Settlement Class members otherwise entitled to priority hiring/interviewing relief under the Second Interim Criteria.
- (H) **Final Criteria.** The IOs and the Parties and their counsel believe that following implementation of the Interim Criteria, a one-year study period will be needed to explore further refinement to Target's policies and practices relating to the use of criminal history records in hiring for Target Stores Jobs, in order to maximize their validity and minimize their potential for adverse impact.

- (1) The IOs shall continue to develop a proposed revised screening process for Target's evaluation of criminal history records of job applicants for Target Stores Jobs, including an evaluation of the job relatedness of convictions consistent with the principles described above. Among its other points, the Revised Criteria will provide specific recommendations regarding the validity of excluding applicants based on: time since conviction; the nature and severity of the conviction; falsification; the job sought; and the overall work environment.
- (2) During this study period, the IOs will continue investigation and analysis of the considerations listed in Section 3.3(G)(1)-(10).
- (3) At the end of the one-year study period, the IOs will make an in-person presentation to the Parties that will include a discussion of the work performed and recommendations for the Final Criteria. It is expected that the meeting(s) will be informal and participatory and may include follow up calls, in-person meetings, and additional work by the IOs. The IOs will work with the Parties to further revise and finalize proposed Final Criteria.
- (4) If the Parties do not dispute (or do not timely dispute) any criterion in the proposed Final Criteria within fourteen (14) days after the completion of the process, then the proposed Final Criteria will become the Final Criteria.
- (5) If the Parties dispute any part of the proposed Final Criteria, they must submit that dispute in writing to the Mediator within fourteen (14) days. The Mediator will then consider the Parties' respective positions and make non-binding recommendations regarding resolution. The Parties shall promptly provide a written response to the Mediator's recommendations outlining the recommendations to which they agree, and which they continue to dispute. In the event of a continuing impasse, Class Counsel shall be permitted to present their position (through defense counsel) in writing to Target's Chief Legal Officer, who shall provide a response to Class Counsel. The Parties agree that these communications shall be confidential. In addition, Class Counsel may request an in-person meeting with Target's Chief Legal Officer together with the IOs to resolve any remaining outstanding issues with the implementation of the terms of this Agreement.
- (6) The Parties understand and agree that Target shall not be required to implement any disputed proposed Final Criteria. The Parties further understand and agree that nothing in this Agreement contemplated herein shall preclude Class Counsel or any Class Member from taking legal action against Target for its future policies and practices relating to the use of criminal history records in hiring for Target Stores Jobs. However, Target's decision not to adopt any disputed proposed Final Criteria will not constitute a breach of this Agreement.

- (I) The Interim Criteria, Final Criteria, and any proposed versions of or revisions to those documents shall be treated as Target's business confidential information and, if submitted to the Court, shall be filed under seal.
- (J) **Reporting Responsibility.** During the period of time that the Interim Criteria and Final Criteria are being developed, the IOs will provide the Parties and the Mediator with quarterly written status reports that: (1) explain the efforts the IOs have taken and the results of those efforts (including measures of impact, where appropriate); (2) specifically identify any issues that may impede the IOs' ability to perform the work set forth herein; and (3) provide any further information requested by the Parties. The IOs will also provide end-of-year summaries of the work performed to date including, but not limited to, detailed adverse impact analyses relating to the use of criminal history records for hiring suitability determinations and statistical analyses of any implemented changes to those policies and procedures. The Parties and IOs will schedule live meetings at least once a year throughout the initial validation process (i.e., development of the Interim Criteria) and subsequent refinement validation process (i.e., development of the Final Criteria) wherein the IOs will provide a comprehensive report on the status of the project and answer any questions. In the event that the IOs or Parties request additional meetings, such meetings shall be promptly scheduled.
- (K) **Compensation of the IOs.** Target will enter into a consulting agreement with the IOs, which includes an estimate for the cost of the Scoping Phase, and which provides for their respective compensation, within fourteen (14) days of the execution of this Agreement.
- (L) **Replacement of IOs or Mediator.** The IOs and the Mediator have agreed to serve consistent with this Agreement and understand the need for expeditious resolution of all matters covered herein. If, however, one or both of the IOs must withdraw due to illness or other reason, Target and Plaintiffs agree to work together to replace an IO with a person or persons who can be brought up to speed quickly with regard to the issues to be resolved and who will work under the same terms and conditions as the original IOs. If Target and Plaintiffs cannot agree on a replacement IO, they can each make written submissions to the Mediator requesting that the Mediator select a preferred replacement IO. Similarly, if the Mediator is forced to withdraw, the Parties will notify the Court and immediately seek a replacement mediator acceptable to Target and Plaintiffs.

3.4 Class Member Relief.

- (A) **Priority Hiring/Interviewing: Group A Filers.**
 - (1) **Scope of Instatement.** Subject to the limitations outlined in Sections 3.2, 3.3(E), and 3.4(A)(2), priority hiring/interviewing will be offered to Settlement Class Members for Target Stores Jobs for which the Settlement Class Member is qualified (as per the Interim Criteria and Target's standard

requirements for experience, availability, and ability to perform the essential functions of the job, with or without reasonable accommodation) (a “Qualifying Class Member”) within a twenty (20) mile commuting radius from the applicant’s current place of residence.

(2) “Priority Hiring/Interviewing” means that:

(a) If a Target Stores Job for which the individual is qualified, other than a Team Lead or Senior Team Lead role, is available, the Qualifying Class Member will be offered the job before other applicants. If no such position is immediately available, the Qualifying Class Member will be offered the first Target Stores Job for which the individual is qualified, other than Team Lead or Senior Team Lead, that becomes available for a period of twelve (12) months from the date of the court approval of this settlement and entry of judgment.

(b) If a Team Lead or Senior Team Lead role for which the individual is qualified is available, and the Qualifying Class Member expresses an interest in interviewing for that role, the Qualifying Class Member will be offered the opportunity to interview for that role without completing the customary pre-screening interview. For individuals who interview for a Team Lead or Senior Team Lead position, Target will, prior to the interview, provide them with the same information about the position and the interview process that is provided to candidates who complete the pre-screening interview. If the Qualifying Class Member expresses an interest in a Team Lead or Senior Team Lead role but no such position is immediately available, the Qualifying Class Member will, for a period of twelve (12) months from the date of the court approval of this settlement and entry of judgment, be offered the opportunity to interview for the next Team Lead or Senior Team Lead role for which the individual is qualified that becomes available without completing the customary pre-screening interview. If the Qualifying Class Member interviews for but is not offered a Team Lead or Senior Team Lead role, he or she may continue to interview for such roles during that twelve-month period, or may choose instead to pursue another Target Stores Job in accordance with sub-paragraph “(a)”.

(3) The Parties will work together to provide a meaningful Group A notice announcement that will assist Group A Filers in pursuing job opportunities for Target Stores Jobs, including but not limited to notifying them that Target revised its process for using criminal history records in making hiring determinations, that the criminal history record that rendered them unqualified under the prior process would not disqualify them under the revised process, but that any subsequent criminal history record could still disqualify them under the revised process.

(4) Letters of Employment.

- (a) Any Qualifying Class Member who is hired pursuant to Priority Hiring/Interviewing and remains employed six (6) months after the date of initial employment will receive a document stating that:
 - (i) Target hired them with knowledge of their criminal conviction record; and
 - (ii) As of the date of the document, they remain employed with Target.
- (b) Any Qualifying Class Member who is hired pursuant to Priority Hiring/Interviewing whose employment is terminated after less than six (6) months because of a store closing, position elimination, reduction in force, or other, similar reason outside the individual's control, or because they reached the end of a period of Seasonal employment will receive a document stating that:
 - (i) Target hired them with knowledge of their criminal conviction record; and
 - (ii) Their employment was terminated due to business reasons outside of their control.
- (c) The Parties will work together to resolve potential disputes relating to the receipt of a document by a Class Member whose employment is terminated after less than six (6) month of employment with Target. Target will provide Class Counsel with personnel records pertaining to the reasons for any such termination (such as performance reviews and corrective action documents), if requested by Class Counsel and if the Class Member consents to such release.

(B) Monetary Award: Group B Filers.

- (1) **Scope.** Any Settlement Class Member who can reasonably demonstrate that instatement would not benefit them at the time of the implementation of the Agreement and will not benefit them over the following twelve (12) month period, because they are gainfully employed, retired, disabled, do not reside within twenty (20) miles of a Target store, are and will be out of the workforce due to a family medical obligation or military service obligation, or are ineligible to participate in Priority Hiring/Interviewing pursuant to Section 3.3(F)(10) or 3.4(A)(1), shall receive the option to apply for an economic benefit from Target ("Award").
- (2) The Award process shall consist of a simplified claims process to the Settlement Administrator. Settlement Class Members will be entitled to a single, pro rata award not to exceed One Thousand and No/100 Dollars (\$1,000.00).

- (3) Target's total contribution toward cash awards shall not exceed One Million, Two Hundred Thousand and No/100 Dollars (\$1,200,000.00).
- (4) If a Settlement Class Member submits a request to participate in Priority Hiring/Interviewing, but is found to be unqualified for any Target Stores Job, she or he instead will be eligible to receive an individual Award.

3.5 Organizational Relief.

- (A) Target shall make a one-time contribution of Six Hundred Thousand and No/100 Dollars (\$600,000.00) for the Pipeline Project to assist not-for-profit organizations that provide re-entry support to individuals with criminal history records, with the goal of supporting those organizations' efforts to develop a pipeline of qualified applicants who have successfully completed work ready programs at such organizations.
- (B) Target, with the assistance of Class Counsel, has identified these organizations nationwide to receive this one-time assistance. The organizations include: A New Way of Life Reentry Project; AccessAbility Career & Education Pathways; The Center for Employment Opportunities; The Fortune Society, Inc.; RS Eden Correctional Services; Community Partners in Action; and may include additional organizations to be identified by Target with the assistance of Class Counsel. The Parties will agree to a process by which these potential participant organizations will receive written information about the Pipeline Project and an invitation to submit statements of interest and other materials to assist in the selection of participant organizations. If the selected organizations decline to participate or are otherwise determined not to be eligible to participate in the Pipeline Project, Target, with the assistance of Class Counsel, will identify replacement organizations to participate in the project. Class Members shall receive notice of the selected, Target-funded work ready programs participating in the Pipeline Project. Target shall have the option to participate in the work of the Pipeline Project, but Target's obligation to participate shall be limited to its financial contribution as specified herein.

3.6 Payment to the Mediator for Duties Performed Pursuant to This Agreement. Reasonable fees and costs incurred by the Mediator in performance of her duties after the Effective Date of this Agreement shall be paid by Target. The parties also note and acknowledge that Target is responsible for and has paid all pre-settlement mediation fees and that, absent this settlement, Plaintiffs would have been responsible for half of those fees.

3.7 Attorneys' Fees and Costs Payable From the Settlement Fund.

- (A) At the Fairness Hearing and in the Motion for Final Approval, Class Counsel will petition the Court for an award of attorneys' fees and reimbursement of actual litigation costs and expenses of no more than One Million Nine Hundred Thousand and No/100 Dollars (\$1,900,000.00) from the Settlement Fund.

- (B) The outcome of any proceeding related to Class Counsel's application for attorneys' fees and costs shall not terminate this Agreement or otherwise affect the Court's ruling on the Motion for Final Approval. Any fees or costs sought by Class Counsel but not approved by the Court shall revert to the Settlement Fund.
- (C) The attorneys' fees and costs shall be paid by the Settlement Administrator from the escrow account, after the Court approves the Final Approval Order, and no later than fourteen (14) days after when Target funds the Settlement Fund.

3.8 Service Awards to Named Plaintiffs.

- (A) In return for services rendered to the Class Members, at the Fairness Hearing, Named Plaintiffs will apply to the Court to receive Service Awards. For Named Plaintiff Carnella Times and Fortune Society, Class Counsel will seek Service Awards of Twenty Thousand and No/100 Dollars (\$20,000.00) each. For Named Plaintiff Erving Smith, Class Counsel will seek a Service Award of Two Thousand, Five Hundred and No/100 Dollars (\$2,500.00).
 - (1) Service awards approved by the Court will be classified as non-wage compensation (reportable on a Form 1099).
 - (2) Named Plaintiffs Carnella Times and Erving Smith will agree to general releases of claims against Target upon acceptance of the individual payments.
- (B) The outcome of the Court's ruling on the application for Service Awards will not terminate this Agreement or otherwise affect the Court's ruling on the Motion for Final Approval. Should all or part of any Service Award sought not be approved by the Court, the sum shall revert to the Settlement Fund.

4. CLASS PROCEDURAL ISSUES

4.1 Notice to Class Members.

- (A) After the Parties have agreed on the Interim Criteria, Target will produce a list of all applicants who (1) voluntarily self-identified as "Black" or "African-American" (meaning the applicant selected "Black" or "African American" solely or in combination with other races/ethnicities) or "Latino" or "Hispanic" (meaning the applicant selected Latino or Hispanic solely or in combination with other races/ethnicities) on the employment application or who selected "prefer not to answer," or who did not complete this section of the application; and (2) were denied employment from a Target Stores Job due to a final adjudication of a pre-employment background check that did not clear the applicant to proceed based on their criminal history record, from the start of the class liability period on May 11, 2006, to the date of preliminary approval of the proposed settlement, who are eligible as Settlement Class Members based on their meeting the Interim Criteria. Target will provide the name and race/ethnicity for each such applicant to Class

Counsel and the Settlement Administrator, to the extent such information was originally provided by the applicant to Target and/or resides in Target's records. Target will also provide to the Settlement Administrator the following information for each such applicant, to the extent said information was originally provided by the applicant to Target and/or resides in Target's records: social security number, self-reported email addresses, last known address, and last known phone numbers. After receipt of the Settlement Class Members' Information from Target, the Settlement Administrator will perform a search and update using the National Change of Address Database to correct any known or identifiable address changes for Settlement Class Members.

- (B) For applicants described in Section 4.1(A) who Target determines would not have met the Interim Criteria for hiring eligibility at the time of application, Target will provide to Class Counsel the reason for and evidence of the applicant's disqualification based on the Interim Criteria. Class Counsel will have twenty (20) days from receipt of this information to challenge the determination. Upon notification of a challenge, the Parties will meet and confer in good faith in an attempt to resolve the dispute. If an agreement cannot be reached, the Parties will promptly submit the dispute to the Mediator. The Mediator will then consider the Parties' respective positions and make a non-binding recommendation regarding resolution. Any applicant whose eligibility to participate in the Settlement Class based on application of the Interim Criteria remains disputed following the Mediator's recommendation shall be included in the Settlement Class eligible for only for the individual Award (Group B Filers).
- (C) Within five (5) days of Target's provision of the information set forth in Section 4.1(A) to the Settlement Administrator, the Settlement Administrator will cause a Settlement Website to become active at an agreed to URL that will be limited to the Parties and Class Members with a claim ID. The Settlement Website shall include hyperlinks that allow access to the Complaint, this Agreement, the court-approved Notice and Claim Form, the Motion for Preliminary Approval, and the Preliminary Approval Order. Within two (2) days of any the following documents being filed, the Settlement Website will also be updated to include copies of the Plaintiffs' Motion for Attorney Fees and Costs, Plaintiffs' Service Award Payments, all notices and memoranda and exhibits submitted in support of the Motion for Final Settlement Approval, and any further Orders issued by the Court, including any Final Approval Order and Judgment. This information shall remain on the Settlement Website until the date that is (thirty) 30 days after the void date of the Settlement Class Members' checks.
- (D) Within fourteen (14) days of receipt of the Settlement Class Members' Information from Defendant, the Settlement Administrator shall cause a copy of the Notice and Claim Form as approved by the Court, to be emailed and mailed by first class mail to the Settlement Class Members. The Notice and Claim Form shall provide the URL of the Settlement Website containing the information described above. Settlement Class Members may submit a Claim Form by United States Mail, e-

mail, fax, or online through the Settlement Website. Within thirty (30) days of the close of the claims period, the Settlement Administrator shall send, by U.S. Mail and email (where available) a reminder postcard to Settlement Class Members who have not submitted a claim form as of that date to remind them of their opportunity to claim from the Settlement. The Parties agree that the Notice and Claim Form, sent by email and First Class United States Mail, constitutes the best notice practicable under the circumstances, and constitutes due and sufficient notice of the pendency of proposed Settlement and a final approval hearing to all persons entitled to notice in full compliance with due process under the United States Constitution and state law.

- (E) The Settlement Administrator shall exclude from Class Member Relief any individual who fails to affirmatively self-identify as African-American or Latino after making at least one attempt to follow-up with the Class Member to elicit the information, unless the Class Member self-identified as African American, Latino, Hispanic or any combination thereof as part of the application process to Target. Additionally, the Settlement Administrator shall have sole authority to reject any Claim Form on the basis that it contains any manner of incomplete information. Before exercising such authority to reject a Claim Form, the Settlement Administrator will notify the Parties of the decision and its basis.
- (F) In order to be timely, Claim Forms sent by email not returned as undeliverable or mailed by the Settlement Administrator must be returned to the Settlement Administrator by the date that is sixty (60) days after the date they are mailed by the Settlement Administrator. No Claim Form will be considered if it is received by fax or email or the envelope returning it to the Settlement Administrator is postmarked later than that date (i.e., more than sixty (60) days after the date mailed by the Settlement Administrator. Additional time may be provided to a potential class member who misses the Claim Bar Date if good cause, as determined by the Settlement Administrator, is demonstrated by the potential class member.
- (G) The Settlement Administrator will take all reasonable steps to obtain the correct address of any Class Members or potential class members for whom a Notice is returned by the post office as undeliverable and shall attempt to re-mail the Notice to the updated address. The Settlement Administrator will notify Class Counsel and Defendant's Counsel if any Notice sent to a Class Member or potential class member is returned as undeliverable after the first mailing, as well as if any such Notice is returned as undeliverable after any subsequent mailing(s) as set forth in this Agreement.
- (H) All Class Members and potential class members will be deemed to have filed their Claim Forms with the Court on the date the Claim Form is returned to the Settlement Administrator.

4.2 Class Member Opt Outs.

- (A) Any Class Member who chooses to opt out of the Settlement as set forth in this Agreement must mail via First Class United States Mail, postage prepaid, a written, signed statement to the Settlement Administrator that states their name, address, email address(es) and telephone number(s) and that states, "I opt out of the Target Applicant Settlement" ("Opt out Statement").
- (B) The end of the time period to opt out of the Settlement ("Opt out Period") shall be fifty (50) days after the day on which the Settlement Administrator mails a Notice to a Class Member. The Settlement Administrator will not attempt more than two (2) mailings of the Notice to any Class Member, and no mailing shall occur more than forty-five (45) days after the first mailing to the Class Member.
- (C) The Settlement Administrator will, within ten (10) days after the last day on which it delivers the last Notice to any Class Member, notify Class Counsel and Defendant's Counsel by email of the precise date of the end of the Opt out Period.
- (D) The Settlement Administrator will stamp the postmark date on the original of each Opt out Statement that it receives and shall serve copies of each Opt out Statement on Class Counsel and Defendant's Counsel not later than three (3) days after receipt thereof. The Settlement Administrator will, within twenty-four (24) hours of the end of the Opt out Period, send a final list of the names of all individuals who submitted Opt out Statements to Class Counsel and Defendant's Counsel by both email and overnight delivery. The final list will be submitted by Plaintiffs, with redaction on any personal identifying information, along with the Settlement Administrator's Declaration attached to the final settlement approval motion. The Settlement Administrator will retain the stamped originals of all Opt out Statements and originals of all envelopes accompanying Opt out Statements in its files until such time as the Settlement Administrator is relieved of its duties and responsibilities under this Agreement.
- (E) Any Class Member who does not properly submit an Opt out Statement pursuant to this Agreement will be deemed to have accepted the Settlement and the terms of this Agreement, and will be eligible to participate as a Group A Filer or Group B Filer by filing a Claim Form, as set forth in this Agreement. Any Class Member who fails to submit a claim for relief in accordance with Section 4.2 of this Agreement or who opts out under this Section will not be entitled to Class Member Relief.

4.3 Objections to Settlement.

- (A) Class Members who wish to present objections to the proposed Settlement at the Fairness Hearing must first do so in writing. To be considered, such statement must be mailed to the Settlement Administrator via First-Class United States Mail, postage prepaid, and be received by the Settlement Administrator by a date certain

fifty (50) days after the Claims Administrator mails a Notice to such Class Member. The statement must include all reasons for the objection; and any reasons not included in the statement will not be considered. The statement must also include the name, address, email(s), and telephone number(s) for the Class Member making the objection. The Settlement Administrator will stamp the date received on the original and send copies of each objection to Class Counsel and Defendant's Counsel by email and United States First Class Mail no later than three (3) days after receipt thereof. The final list will be submitted by Plaintiffs, with redaction on any personal identifying information, along with the Settlement Administrator's Declaration attached to the final settlement approval motion.

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

4.4 Fairness Hearing and Motion for Final Approval and Dismissal.

- (A) At the time established by the Court via the Preliminary Approval Motion, Plaintiffs' Counsel will file with the Court a Motion for Final Approval of Settlement, and a Proposed Order Approving the Settlement and Dismissing the Litigation with prejudice ("Final Approval Motion") that is consistent with this Agreement.
- (B) At the Fairness Hearing and in the Motion for Final Approval of Settlement, Class Counsel will request that the Court, among other things: (1) certify the Class for purposes of settlement; (2) approve the Settlement and Agreement as fair, reasonable, adequate, and binding on all Class Members who have not timely opted out of the Settlement; (3) order the attorneys' fees and costs to be paid to Class Counsel from the Settlement Account; (4) award Service Awards to Named Plaintiffs; (5) order the dismissal with prejudice of all claims asserted or that could have been asserted in the Litigation and the claims of all Class Members who did not opt-out, subject only to an application for relief under Rules 60(b)(1) or 60(d); (6) order entry of Final Judgment in accordance with this Agreement; and (7) retain jurisdiction as necessary for the purpose of facilitating the Settlement and other relief pursuant to this Agreement.

- (C) If the Court does not enter a Final Approval Order in accordance with this Agreement, or if the Final Approval Order is set aside on appeal, the Parties will work together in good faith to revise the Agreement to address the Court's concerns, seek reconsideration, and/or attempt other remedial actions to correct any deficiencies in the Agreement. Any disputes between the Parties will be submitted to the Mediator. If these attempts are unsuccessful, or the Settlement Class is not certified, the Litigation will proceed as if no settlement had been attempted, and this Settlement will be null and void, with no force and effect.
- (D) If the Court does not enter a Final Approval Order, and the remedial actions specified in this agreement are not implemented, the Settlement Administrator will provide notice to Class Members that the Agreement did not receive Final Approval and that, as a result, the Class Members will receive no benefit under the Agreement. The content of such notice shall be agreed to by the Class Counsel and Target, and such notice shall be distributed by the Settlement Administrator.

5. RELEASE

5.1 Release of Claims.

- (A) **Release of Class Member Claims.** By operation of the entry of Final Approval, and except as to such rights or claims as may be created by the Settlement Agreement, each Class Member shall release Target from all claims, demands, causes of action, and liabilities, known and unknown, that they had, have, or may have under any legal or equitable theory, against Defendant arising from or relating to or concerning their denial of a Target Stores Job based on criminal history records under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e, *et seq.* and parallel state and local laws, rules, regulations and ordinances. The Class Release will not include claims under the federal Fair Credit Reporting Act, which is the subject of a separate, unrelated settlement
- (B) **Release of Fees and Costs.** By operation of the entry of Final Approval, and except as to such rights or claims as may be created by this Agreement, Named Plaintiffs, on behalf of the Class and each individual Class Member, irrevocably and unconditionally release, acquit, and forever discharge any claim that they may have against Target for attorneys' fees or costs associated with Class Counsel's representation of Named Plaintiffs and the Class. Named Plaintiffs further understand and agree that any fee payments approved by the Court will be the full, final, and complete payment of all attorneys' fees and costs associated with Class Counsel's representation of the Class.

6. INTERPRETATION AND ENFORCEMENT

- 6.1 **Cooperation Between the Parties; Further Acts.** Plaintiffs shall use their reasonable best efforts to obtain the Court's approval of this Agreement and all of its terms. The Parties shall reasonably cooperate with each other, and each Party, upon the request of any other

Party, agrees to perform such further acts and to execute and deliver such other documents as are reasonably necessary to carry out the provisions of this Agreement.

- 6.2 **Confidentiality.** The Parties agree that this Agreement, which will be filed with the Court, is a public document. Except as set forth above in Section 3.3(I), there will be no limit on the Parties or their counsel's ability to discuss this Agreement once it is filed in Court and is in the public record, provided that statements regarding the settlement must be supportive of the Parties' Agreement, and the Parties and their counsel will make no statements suggesting Target's admission to the allegations in the Complaint.
- 6.3 **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties with regard to the subject matter contained herein, and all prior and contemporaneous negotiations and understandings between the Parties shall be deemed merged into this Agreement.
- 6.4 **Binding Effect.** This Agreement shall be binding upon the Parties and, with respect to Named Plaintiffs and all Class Members, their spouses, children, representatives, heirs, administrators, executors, beneficiaries, conservators, attorneys, and assigns.
- 6.5 **Arms' Length Transaction; Materiality of Terms.** The Parties have negotiated all the terms and conditions of this Agreement at arms' length. All terms and conditions of this Agreement in the exact form set forth in this Agreement are material to this Agreement and have been relied upon by the Parties in entering into this Agreement, unless otherwise expressly stated.
- 6.6 **Captions.** The captions or headings of the Sections and paragraphs of this Agreement have been inserted for convenience of reference only and shall have no effect upon the construction or interpretation of any part of this Agreement.
- 6.7 **Construction.** The determination of the terms and conditions of this Agreement has been by mutual agreement of the Parties. Each Party participated jointly in the drafting of this Agreement, and therefore the terms and conditions of this Agreement are not intended to be, and shall not be, construed against any Party by virtue of draftsmanship.
- 6.8 **Governing Law.** This Agreement shall in all respects be interpreted, enforced and governed by and under the laws of the State of New York without regard to its conflict of laws principles.
- 6.9 **Continuing Jurisdiction.** The Court shall retain jurisdiction over the interpretation and implementation of this Agreement as well as any and all matters arising out of, or related to, the interpretation or implementation of this Agreement and of the Settlement contemplated thereby. The Court shall not have jurisdiction or authority to modify the terms of the Agreement or to increase Defendant's payment obligations hereunder.
- 6.10 **Waivers, etc. To Be in Writing.** No waiver, modification or amendment of the terms of this Agreement, whether purportedly made before or after the Court's approval of this

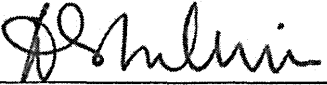
Agreement, shall be valid or binding unless in writing, signed by or on behalf of the Named Plaintiffs and Target and then only to the extent set forth in such written waiver, modification, or amendment, subject to any required Court approval. Any failure by a Parties to insist upon the strict performance by any other Party of any of the provisions of this Agreement shall not be deemed a waiver of future performance of the same provisions or of any of the other provisions of this Agreement, and such Party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Agreement.

- 6.11 When Agreement Becomes Binding; Counterparts.** This Agreement shall become valid and binding upon its complete execution, except that it shall be without force or effect if not approved by the Court other than as to any act or obligation that is required or contemplated to occur prior to the Court's decision whether to preliminarily or finally approve the settlement. The Parties may execute this Agreement in counterparts, and execution in counterparts shall have the same force and effect as if all Parties had signed the same instrument.
- 6.12 Facsimile and Email Signatures.** Any signature made and transmitted by facsimile or email for the purpose of executing this Agreement shall be deemed an original signature for purposes of this Agreement and shall be binding upon the Party whose counsel transmits the signature page by facsimile or email.

[This space intentionally left blank; signature page follows.]

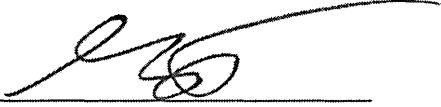
WE AGREE TO THESE TERMS:


Dated: New York, New York
March 26, 2018

By: 
NILAN JOHNSON LEWIS PA
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*Attorneys for Plaintiffs and the
Putative Settlement Class*

4835-0732-2720

Exhibit 1

CLAIM FORM

THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

CARNELLA TIMES and ERVING SMITH,
on behalf of themselves and all others
similarly situated, and
THE FORTUNE SOCIETY, INC.,

Plaintiffs,

v.

TARGET CORPORATION,

Defendant.

Case No.: 18-cv-XX

Hon. XX

You may be eligible to participate in a court approved settlement.

Please read this Claim Form carefully.

To be eligible for priority hiring or a payment from this settlement, you must submit a Claim Form via email, fax, mail or online at [www.\[insert URL\].com](http://www.[insert URL].com) to be received by the Settlement Administrator (or postmarked if mailed) no later than XX, 2018.

[FirstName] [LastName]

[Address]

[City] [State] [Zip]

Claim ID: [insert Claim ID]

Password: [Initials and generated number code]

Records of Target Corporation ("Target") indicate that you applied for and were offered an hourly, non-exempt position at a U.S. Target store sometime after May 11, 2006, that Target withdrew that offer based on your criminal history record, and that you either self-identified as African American or Latino or you did not provide any response to the voluntary self-disclosure request on race/ethnicity during the application process.

More information is contained in the accompanying Notice and at [www.\[insert URL\].com](http://www.[insert URL].com). Please read the notice carefully before completing this form.

TO MAKE A CLAIM FOLLOW THESE INSTRUCTIONS:

It is important to read and follow these instructions carefully. Failure to follow these instructions may result in your losing eligibility for benefits to which you might otherwise be entitled.

You must complete each part and sign and date the Claim Form.

This Claim Form must be submitted online at [www.\[insert URL\].com](#) or by email, fax, or mail so that it is received by the Settlement Administrator (or postmarked, if mailed) no later than XX, 2018. Claim Forms deemed late will not be accepted.

You may print and mail, deliver or fax the completed form to the Settlement Administrator at:

Times v. Target Corp.

c/o XX

XX

Email: XX

Fax: XX

If you are returning the Claim Form on-line, log on to the case website and enter your Claim ID [insert Claim ID] and password [initials and generated number code]. Then complete the form online.

PART 1: PERSONAL INFORMATION(Required)

Name (First, Middle, Last)

Email

Mobile or Home Phone

Street Address

Apartment Number

City

State

Zip Code

My preferred method of notification is:

____ Email

____ Text

____ Mail

PART 2: AFFIRMATION OF RACE/NATIONAL ORIGIN (Required)

Affirmation of Race/National Origin

By checking this box, I Affirm that I self-identify as Black/African American or as Hispanic/Latino.

PART 3: CLASS MEMBER RELIEF CHOICE (Required):

You may choose only ONE of the following Options:

GROUP A FILER:

If you wish to participate in priority hiring at a Target store for an hourly, non-exempt job that you are qualified for, choose "Group A Filer." [Please note that location eligibility will be based on the personal address that you provide on this form]

GROUP A TEAM LEAD FILER:

If you wish to participate in the priority interview process for a Team Lead or Senior Team Lead role at a Target Store that you are qualified for, choose "Group A Team Lead Filer." Please note that if you select this option and a Team Lead or Senior Team Lead role is available in your geographic area, you will automatically bypass the initial phone screen and advance to an interview, but the final hiring decision remains within Target's discretion.

OR

GROUP B FILER:

If you are not eligible for priority hiring/interviewing at a Target store (for reasons identified in the attached Notice), and wish to receive a monetary award, choose "Group B Filer."

PART 4: YOUR SIGNATURE AND CONFIRMATION OF JOINING SETTLEMENT (Required)

In order to submit a valid claim and be eligible for priority hiring/interviewing or monetary payment, you must sign and confirm your consent.

Dated: _____, 2018 Signature: _____
--

PART 5: QUESTIONS?

If you have any questions, please visit [www.\[insert URL\].com](http://www.[insert URL].com), or write or call the Settlement Administrator at Times v. Target Corp., c/o XX; Toll-Free XX.

4813-8454-6144

Exhibit 2

The Settlement Class is defined as including all applicants for employment in a non-exempt position at a U.S.-based retail Target store (“Target Stores Job”) meeting the criteria outlined below:

1. Who applied for a Target Stores Job.
2. For whom Target possesses information from the voluntary race/ethnicity self-identification portion of the application or can locate such information after reasonable search of records available to Target.
3. Who voluntarily self-identified as “Black” or “African American” (meaning the applicant selected “Black” or “African American” solely or in combination with other races/ethnicities) or “Latino” or “Hispanic” (meaning the applicant selected “Latino” or “Hispanic” solely or in combination with other races/ethnicities) on the employment application or who selected “prefer not to answer,” or who did not complete the voluntary race/ethnicity self-identification portion of the application.¹
4. Who, from the start of the class liability period on May 11, 2006, to the date of preliminary approval of the proposed settlement, were denied an employment opportunity in a Target Stores Job based on a final adjudication on a pre-employment background check that did not clear the applicant to proceed based on their criminal history record, except that:
 - a. Individuals who are shown in Target’s human resources information systems as having been hired by Target after receiving a final adjudication of not cleared to proceed on a pre-employment criminal history record check during the class liability period shall be treated as follows:²

¹ Class notice shall include an opportunity for potential class members who initially selected “prefer not to answer” to self-identify their race/ethnicity. Potential class members who do not affirmatively select “Black” or “African American” or “Latino” or “Hispanic” (either solely or in combination with another race/ethnicity) on the Notice and Claim Form shall not be included in the Settlement Class.

² The decision rules set forth in this Section 4(a)(i)-(iv) are intended to address those limited situations where an applicant for a Target Stores Job is shown in Target’s background check vendor’s database as having been “not cleared to proceed,” but is also shown in Target’s human resources information system as having been hired at or around the same time as the background check. The general intent behind these decision rules is to include in the class definition those applicants who were denied an employment opportunity as a result of a criminal history background check, and to exclude from the class definition those individuals who were not denied an employment opportunity because of a criminal history background check. The parties recognize that there may be individual cases that do not neatly fit within the decisions rules. In those cases, questions of class membership will be resolved in accordance with the preceding statement of general intent.

- i. If the individual's employment was terminated due to the pre-employment criminal history record check, he or she shall be entitled to participate in priority hiring/interviewing or the Award, as may be applicable.
 - ii. If the individual was hired more than 90 days after receiving the final adjudication of not cleared to proceed, he or she shall be entitled to participate in priority hiring/interviewing or the Award, as applicable, except that:
 1. If the individual's employment was terminated due to misconduct or due to performance reasons, he or she shall be entitled to participate in the Award only, and shall not be entitled to participate in priority hiring/interviewing.
 - iii. If the individual was hired 90 days or less after receiving a final adjudication of not cleared to proceed, then:
 1. If, from the time of his or her first day of work for Target, the individual remained employed for 90 days or fewer, he or she shall be entitled to participate in the Award only, and shall not be entitled to participate in priority hiring/interviewing.
 2. If, from the time of his or her first day of work for Target, the individual remained employed for 90 days or more, he or she shall not be included in the Settlement Class.
 - iv. If the individual is a current Target Team Member, he or she shall not be included in the Settlement Class.
5. Who would not have been denied employment for reasons other than their criminal history records (e.g. failed drug test, SSN name-match screen, or similar reasons).
6. And whose criminal history record would not have rendered them unqualified for employment under the Interim Criteria, had those criteria been in effect at the time they were denied employment.
 - a. Individuals who would be included in the Settlement Class but for an unresolved dispute regarding the Interim Criteria shall also be included in the Settlement Class, but shall be entitled to participate in the Award only, and shall not be entitled to participate in priority hiring/instatement.