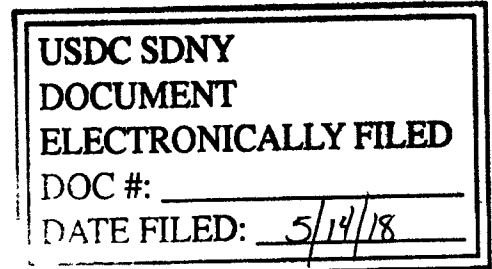


IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

CARNELLA TIMES and ERVING SMITH, :
on behalf of themselves and all others :
similarly situated, and :
THE FORTUNE SOCIETY, INC., :
 :
Plaintiffs, :
 :
-against- :
 :
TARGET CORPORATION, :
 :
Defendant. :

CIVIL ACTION NO.
18cv02993 (DF)



~~PROPOSED~~ ORDER GRANTING PLAINTIFFS' UNOPPOSED
MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT,
CONDITIONAL CERTIFICATION OF SETTLEMENT CLASS,
APPOINTMENT OF CLASS COUNSEL, AND
APPROVAL OF PLAINTIFFS' PROPOSED NOTICE OF SETTLEMENT

Having reviewed Plaintiffs' Notice of Motion and Motion For: (1) Preliminary Approval of Class Action Settlement; (2) Provisional Certification of Settlement Classes; (3) Approval and Distribution of Notice of Settlement; and (4) Appointment of Plaintiffs' counsel as Class Counsel; Plaintiffs' Memorandum of Law in Support thereof, and the proposed Settlement Agreement, along with the files and records of this case, the Court now FINDS, CONCLUDES, and ORDERS as follows:

I. JURISDICTION

This Court has jurisdiction over the subject matter of the litigation and over all parties to this litigation, including all members of the Settlement Class, as defined below. As used below, "Defendant" means Target Corporation.

II. NO DETERMINATION

This Court hereby decrees that neither the Settlement Agreement, nor this Preliminary Approval Order, nor the fact of a settlement, are an admission or concession by Defendant of any liability or wrongdoing.

III. CERTIFICATION OF SETTLEMENT CLASS

1. Plaintiffs allege that Defendant's criminal background screening process unlawfully disqualified African-American and Latino applicants for Target hourly jobs based on their race and national origin in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.*

2. For settlement purposes only, the parties have proposed conditional certification of the following settlement class for purposes of the programmatic and class member relief provided in the Settlement Agreement, a nationwide class certified under Federal Rules of Civil Procedure 23(a) and 23(b)(3) comprised of 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 [date of preliminary approval of settlement], except: (1) individuals are excluded if Target can establish they were, or would have been, denied employment for reasons other than their criminal history records; and (2) individuals are excluded if they have convictions that would have rendered them unqualified for employment under the revised criteria determined by the expert Industrial Organizational Psychologists (the "Settlement Class").

The Court hereby FINDS and CONCLUDES that, for purposes of this settlement, the Settlement Class set forth above satisfies all of the requirements for certification under Rule 23(a) and Rule 23(b)(3). There are thousands of Settlement Class Members, satisfying the

numerosity requirement. Named Plaintiffs Times and Smith are typical and adequate representatives of the Settlement Class they seek to represent because their interests are co-extensive with those of Settlement Class Members and they have retained experienced counsel to represent them. Plaintiffs raise common questions, and the Settlement Class satisfies the predominance and superiority requirements for certification under Rule 23(b)(3) for settlement class purposes. The Court **CONDITIONALLY CERTIFIES** the Settlement Class under Rules 23(a) and 23(b)(3).

IV. PRELIMINARY APPROVAL OF SETTLEMENT AGREEMENT

The Court has reviewed the proposed Settlement Agreement and Release (“Settlement Agreement”), attached as Exhibit A to the Miazad Declaration (Miazad Decl.), Plaintiffs’ unopposed Motion for Preliminary Approval, and the Miazad Declaration, which describes Class Counsel’s legal and factual investigation, and the settlement process.

1. Based on review of those papers, the Court concludes that the proposed Settlement Agreement was reached after Class Counsel thoroughly investigated the claims and defenses and became familiar with the strengths and weaknesses of Plaintiffs’ case and was a result of extensive, arm’s length negotiations between counsel well-versed in the prosecution of complex employment class actions. *See Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 116 (2d Cir. 2005). The Court concludes that the proposed Settlement Agreement is within the range of possible settlement approval, such that notice to the Settlement Class is appropriate. *See City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 463 (2d Cir. 1974), *abrogated on other grounds by Goldberg v. Integrated Res., Inc.*, 209 F.3d 43 (2d Cir. 2000); *In re Traffic Exec. Ass’n*, 627 F.2d 631, 634 (2d Cir. 1980).

2. The assistance of an experienced mediator reinforces that the Settlement Agreement is non-collusive. *See Capsolas v. Pasta Res., Inc.*, No. 10 Civ. 5595, 2012 WL

1656920, at *1 (S.D.N.Y. May 9, 2012).

3. Having conducted an initial evaluation of the fairness of the proposed settlement on the basis of the Motion for Preliminary Approval, the supporting declarations, and its attached documents, the Court finds that there is “probable cause to submit the [settlement] to class members” and will “hold a full-scale hearing as to its fairness.” *In re Traffic Exec. Ass’n*, 627 F.2d at 634 (internal quotations omitted).

It is therefore ORDERED:

That the Settlement Agreement is hereby PRELIMINARILY APPROVED. Final approval and entry of the Settlement Agreement is subject to a final hearing of any objections of members of the class to the proposed Settlement Agreement.

V. APPROVAL OF THE FORM AND MANNER OF DISTRIBUTING CLASS NOTICE AND CLAIM FORM

The parties have also submitted for this Court’s approval a proposed Notice of Class Action Settlement and Claim Form (“Notice and Claim Form”) attached as Exhibit B to the Miazad Declaration, which the Court has carefully reviewed. The Court FINDS and CONCLUDES as follows:

1. The proposed Notice and Claim Form is the best notice practicable under the circumstances and allows Settlement Class Members a full and fair opportunity to consider the proposed settlement. The proposed plan for distributing the Notice and Claim Form likewise is a reasonable method calculated to reach all members of the Settlement Class who would be bound by the settlement. There is no additional method of distribution that would be reasonably likely to notify Settlement Class Members who may not receive notice pursuant to the proposed distribution plan.

2. The Notice and Claim Form fairly, plainly, accurately, and reasonably informs

Settlement Class Members of: (1) appropriate information about the nature of this litigation, the Settlement Class, the identity of Class Counsel, and the essential terms of the Settlement Agreement, including programmatic, class member, and organizational relief; (2) appropriate information about Class Counsel's forthcoming application for attorneys' fees, the proposed Service Awards to the Class Representatives and other payments that will be deducted from the Settlement Fund; (3) appropriate information about how to participate in the settlement; (4) appropriate information about this Court's procedures for final approval of the Settlement Agreement, and about Settlement Class Members' right to appear through counsel if they desire; (5) appropriate information about how to challenge or opt out of the settlement, if they wish to do so; and (6) appropriate instructions as to how to obtain additional information regarding this litigation or the Settlement Agreement.

3. Specifically, the Notice and Claim Form explains: (1) the programmatic relief that reforms Defendant's criminal history screening process; (2) the individual relief process for Settlement Class Members to either obtain employment at Target stores through a priority hiring/interviewing process or a monetary award in lieu of employment; and (3) the organizational relief to not-for-profit organizations 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. The Notice and Claim Form will also provide specific information regarding the date, time, and place of the final approval hearing and how to object to or exclude oneself from the settlement. This information is adequate to put Class Members on notice of the proposed settlement and is well within the requirements of Rule 23(c)(2)(B).

4. The Court finds and concludes that the proposed plan for distributing the Notice and Claim Form will provide the best notice practicable, satisfies the notice requirements of Rule

23(e), and satisfies all other legal and due process requirements.

5. Accordingly, the Court hereby ORDERS as follows:

- a. The form of the Notice and Claim Form is approved. Non-material changes may be made as the parties deem appropriate.
- b. The manner for distributing the Notice and Claim Form is approved.
- c. Promptly following the entry of this Order, as outlined in the Settlement Agreement, the Industrial Organizational Psychologists (I/Os) that the parties have jointly selected will begin working 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.
- d. After the parties and I/Os have finalized the interim criteria for the adjudication guidelines that reform Defendant's criminal background check process, Defendant shall provide the settlement administrator with the names, social security numbers, self-reported email addresses, last known addresses, and last known phone numbers of each Settlement Class Member. After receipt of the Settlement Class Members' information from Defendant, 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.
- e. Promptly following receipt of Settlement Class Members' information, the settlement administrator shall prepare final versions of the Notice and Claim Form, incorporating into the Notice and Claim Form the relevant dates and deadlines set forth in this Order.
- f. Within five (5) days of Defendant's provision of the Settlement Class Members' information 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, the Settlement Agreement, the Notice and Claim Form, the Motion for Preliminary Approval, and the Preliminary Approval Order.

g. Within fourteen (14) business days of Defendant's provision of the Settlement Class Members' contact information set forth above, the settlement administrator shall mail and email the Notice and Claim Form to each Settlement Class Member for whom addresses were provided by the Settlement Class Member. Settlement Class Members will be able to view the Notice and Claim Form through the website and may submit a Claim Form by United States Mail, e-mail, fax, or online through the Settlement Website.

h. The settlement administrator will take all reasonable steps to obtain the correct address of any Settlement Class Members for whom a Notice and Claim Form 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 and Claim Form sent to a Settlement 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).

i. 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.

j. The settlement administrator shall take all other actions in furtherance of claims administration as are specified in the Settlement Agreement.

VI. PROCEDURES FOR FINAL APPROVAL OF THE SETTLEMENT

A. Final Approval Hearing

1. The Court will schedule a hearing to determine whether to grant final certification of the Settlement Class, and final approval of the Settlement Agreement (including the proposed plan of programmatic, class member, and organizational relief, payment of attorneys' fees and costs, and Service Awards to the Named Plaintiffs) (the "Final Approval Hearing") after the Parties submit an update to the Court, within 60 days of this Order, on the status of the IO expert work.

B. Deadline to Request Exclusion from the Settlement

1. Settlement Class Members may exclude themselves, or opt out, of the settlement. Any request for exclusion must be in the form of a written, signed statement that states, "I opt out of the Target Applicant Settlement." To be effective, this opt-out statement must be received on or before fifty (50) days after the date the Notice and Claim Form is mailed to Settlement Class Members.

2. The settlement administrator shall provide to all counsel and file with the Court all opt-out statements that are timely received and not rescinded. The Settlement Class will not include those individuals who file and serve a timely opt-out statement, and individuals who opt out are not entitled to any class member relief under the Settlement Agreement.

3. Any Settlement Class Member who does not properly submit an opt-out statement will be deemed to have accepted the settlement and its terms, and will be eligible to participate in the class member relief.

C. Deadline for Filing Objections to Settlement

1. Any Settlement Class Member who has not opted out of the Settlement Class and wishes to object to the fairness, reasonableness, or adequacy of the Settlement Agreement must

do so in writing. Settlement Class Member objections must be mailed to the settlement administrator and include a detailed description of the basis of the objection. The settlement administrator will stamp the date received on the original and send copies to Class Counsel and Defendant's Counsel within three (3) days after receipt thereof. The settlement administrator must file the date-stamped originals of all Objections with the Court no later than three (3) days before the Fairness Hearing. No one may appear at the Final Approval Hearing for the purpose of objecting to the Settlement Agreement without first having filed and served an objection(s) in writing postmarked on or before fifty (50) days after the Notice was mailed to Settlement Class Members.

D. Deadline for Submitting Claims Forms

1. A Settlement Class Member who does not opt out will be eligible to participate in the class member relief of either priority hiring/interviewing or monetary award, as outlined in the Settlement Agreement. A Settlement Class Member must properly and timely complete and submit a Claim Form to the settlement administrator in accordance with the terms of the Settlement Agreement. To be effective, Settlement Class Members, including the Named Plaintiffs, must submit a Claim Form postmarked no later than sixty (60) days after the date it was mailed by the settlement administrator (the "Claim Bar Date").

2. Additional time may be provided to a Settlement Class Member who misses the Claim Bar Date, if good cause, as determined by the settlement administrator, is demonstrated by the Settlement Class Member.

E. Settlement Fund and Programmatic and Class Member Relief

1. Defendant will transfer Three Million Seven Hundred and Forty-Two Thousand, Five Hundred and No/100 Dollars (\$3,742,500.00) to the Settlement Fund within fourteen days

of the effective date of the settlement (which is defined as the later of: (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). This amount shall be placed into an interest-bearing escrow account established by the settlement administrator, as escrow agent.

2. The parties have agreed to the detailed programmatic relief as set forth in the Settlement Agreement. The parties have jointly selected IO experts as independent consultants to work with the parties to design, develop, and implement properly validated adjudication 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 I/Os 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.

3. The parties have also agreed to individualized class member relief, as set forth in the Settlement Agreement. Defendant will engage in priority hiring/interviewing of Settlement Class Members for hourly, non-exempt jobs for which they are qualified, but were denied based on Target's screening process. By the terms of the priority hiring of the settlement, qualified Settlement Class Members will be offered available Target store positions before other applicants. Additionally, Settlement Class Members who are qualified for a supervisory role will be given an opportunity to interview for those positions without completing the customary pre-screening interview. Settlement Class Members who are hired pursuant to the priority hiring process, but are terminated less than six months for reasons outside of their control, will receive

a letter of employment that states that Target hired them with knowledge of their criminal background record, and that their employment was terminated due to business reasons. For Settlement Class Members who can reasonably demonstrate that reinstatement would not benefit them at the time of the implementation of the Settlement Agreement and will not benefit them over the following 12-month period for reasons articulated in the Settlement Agreement, Target has agreed to individual monetary awards not to exceed One Thousand Dollars (\$1,000.00). The settlement administrator will oversee a simplified claims process. Settlement Class Members will be entitled to a single, pro rata award based on number of participants. Defendant's total contribution toward cash awards will not exceed One Million Two Hundred Thousand Dollars (\$1,200,000.00) of the Settlement Fund.

4. The parties have also agreed that Six Hundred Thousand Dollars (\$600,000.00) of the Settlement Fund will be granted to 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 (the "Pipeline Project"). These 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. Settlement Class Members will receive notice of the selected work ready programs participating in the Pipeline Project.

5. The Settlement Fund constitutes the total settlement cash outlay by Defendant in connection with the resolution of this Action. No other money shall be separately paid by Defendant in connection with this settlement, except certain implementation costs of the programmatic relief, such as the I/Os' compensation, as outlined in the Settlement Agreement. The Settlement Fund is inclusive of payment for: (a) all amounts paid to satisfy the class member

and organizational relief; (b) all amounts paid to Named Plaintiffs for Court-Approved Service Awards; (c) all attorneys' fees and costs awarded by the Court, including those in connection with securing Court Approval of the settlement and the claims process and the monitoring by Class Counsel of the Settlement Agreement; and (d) all costs in connection with the Settlement Fund including, but not limited to, those related to investing and liquidating the Settlement Fund. The Settlement Fund does not include the costs of the programmatic relief which costs will be borne by Defendant directly. Defendant shall pay the Settlement Administrator's fees and costs.

F. Deadline for Submitting Motion Seeking Final Approval

No later than fourteen (14) days before the Final Approval Hearing, Plaintiffs shall file a Motion for Final Approval of the Class Action Settlement and Petition for Attorneys' Fees, Costs and Service Awards to Class Representatives ("Motions"). These documents will be posted on Settlement Website.

VII. NAMED PLAINTIFFS' AND SETTLEMENT CLASS MEMBERS' RELEASE

If, at the Final Approval Hearing, this Court grants Final Approval of the settlement and Settlement Agreement, Named Plaintiffs and each individual Settlement Class Member who do not timely opt out will release claims, as set forth in the Settlement Agreement, by operation of this Court's entry of the Judgment and Final Approval Order, regardless of whether the Settlement Class Member has submitted a Claim Form.

It is so ORDERED this 14th day of May, 2018.



United States District Judge

Debra Freeman
United States Magistrate Judge
Southern District of New York