

used below, “Defendant” means Target Corporation.

II. CERTIFICATION OF SETTLEMENT CLASS

2. On May 14, 2018, the Court preliminarily certified the Settlement Class under Rule 23 of the Federal Rules of Civil Procedure (“Rule 23”). ECF No. 24. The Court now grants final certification because the requirements under Rule 23 have been met.

3. 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.*

4. Pursuant to Rule 23, the Court certifies the following Settlement Class: 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 May 11, 2006, to May 14, 2018, 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; (2) individuals are excluded if they have convictions that would have rendered them unqualified for employment under the Interim Criteria, if those criteria had been effect at the time of their application; and (3) individuals are excluded if they are current Target Team Members.

5. The Settlement Class meets all of the requirements for class certification under Rules 23(a) and (b)(2) and (b)(3). There are thousands of Settlement Class Members, satisfying the numerosity requirement. Named Plaintiffs 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 including because Plaintiffs' common contentions—that Target's Screening Process had a disparate impact on African-American and Latino applicants in violation of Title VII and is inconsistent with business necessity—predominate over any issues affecting only individual Class Members.

The Court CERTIFIES the Settlement Class under Rules 23(a) and 23(b)(3).

CONDITIONAL

III. APPROVAL OF SETTLEMENT AGREEMENT

6. Rule 23(e) requires court approval for a class action settlement to ensure that it is procedurally and substantively fair, reasonable, and adequate. Fed. R. Civ. P. 23(e).

7. The Court hereby ^{conditionally} finally approves the Settlement as set forth in the Settlement Agreement. The Court has reviewed the terms of the proposed Settlement Agreement along with its exhibits, including specifically the programmatic and class member relief, and Plaintiffs' Motions for Final Approval.

8. Based on a review of those papers and the Court's familiarity with the case, the Court concludes that the Settlement is the result of extensive, arm's-length negotiations and is in all respects, fair, reasonable, and adequate, and binding on all members of the Class who have not opted out. *See Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 116 (2d Cir. 2005); *Duling v. Gristede's Operating Corp.*, 267 F.R.D. 86, 99 (S.D.N.Y. 2010); *Capsolas v. Pasta Res., Inc.*, No. 10 Civ. 5595, 2012 WL 1656920, at *1 (S.D.N.Y. May 9, 2012). The programmatic and class member relief are significant and meaningful, especially when weighed against the risks of ongoing litigation.

9. The parties have agreed to the detailed programmatic relief as set forth in the Settlement Agreement. The parties jointly selected Industrial Organization ("I/O) 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.

10. 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 instatement 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.

11. The parties have also agreed that Six Hundred Thousand Dollars (\$600,000.00) 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.

12. Within fourteen (14) days of the Effective Date of the Settlement, Defendant will pay to Class Counsel Three Million Seven Hundred and Forty-Two Thousand, Five Hundred and No/100 Dollars (\$3,742,500.00), which shall fully resolve and satisfy the programmatic, individualized, and organizational relief, any claim for attorneys' fees and costs approved by the Court, and any Court-approved Service Awards to Named Plaintiffs.

13. 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.

14. The Effective Date is the date the Judgment has become Final. In turn, "Final" means the date the Judgment becomes final for all purposes, because either (i) no appeal has been filed and thirty (30) days have lapsed since entry of the Judgment, or (ii) 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.

15. The settlement is procedurally and substantively fair, reasonable, adequate, and is not a product of collusion. See Fed. R. Civ. P. 23(e); *Reyes v. Altamarea Group LLC*, No. 10 Civ 6451, 2011 WL 4599822, at *4 (S.D.N.Y. Aug. 16, 2011); *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 462-63 (2d Cir. 1974).

16. The assistance of an experienced mediator reinforces that the Settlement Agreement is non-collusive. See *Capsolas*, 2012 WL 1656920, at *1.

17. Having considered the strengths and weaknesses of the Plaintiffs' case versus the benefits of the Settlement; the likely complexity, length, and expense of further litigation; the limited opposition to the Settlement among the Settlement Class; the opinion of competent counsel, and the substantial amount of discovery and litigation already undertaken, the Court finds that the Settlement is fair, reasonable, and adequate, and well within the range of other settlements that have obtained final approval by federal courts

18. The Court further finds that the response of the Class Members to the Settlement Agreement supports approval of the Settlement. As of the date of this Order, no individuals have opted out of the Settlement and only one individual has objected to the Settlement.

19. The Court has considered the objection to the Settlement, and overrules it on that bases that a) the service awards are reasonable; b) the class member relief is fair, reasonable, and adequate.

20. The Court finds that the Notice effectuated was the best practicable notice under the circumstances, and was accomplished in all material respects, as set forth in the Declaration of Sara Schwermer-Sween on behalf of the Claims Administrator, Rust Consulting, Inc.

21. The Class Notices provided adequate notice of these proceedings and the terms of the Settlement Agreement to all parties entitled to such notice. The distribution of the notice fully met the requirements of Federal Rule of Civil Procedure (“Rule”) 23 and satisfied the requirements of constitutional due process and any other applicable law.

22. Outten & Golden LLP (“O&G”) and NAACP Legal Defense and Educational Fund, Inc. (“LDF”), which the Court previously appointed as Class Counsel, satisfy the requirements of Rule 23(g).

The Settlement is hereby APPROVED and incorporated herein and shall become effective according to its terms.

IV. RELEASE AND DISMISSAL OF CLAIMS WITH PREJUDICE.

23. Upon the Effective Date of the Settlement, each Settlement Class Member who has not excluded him or herself will release the Defendant 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.

V. AWARD OF ATTORNEYS’ FEES AND COSTS

24. The Court awards Class Counsel an award of \$1,900,000.00 in fees and in costs

for their efforts in support of this litigation.

25. Class Counsel engaged considerable resources in the prosecution of this case over the course of approximately four years.

26. The attorneys at O&G and LDF who prosecuted this case are experienced class action and employment lawyers with good reputations among the class action and employment bars and significant experience in litigating criminal history discrimination matters. Class Counsel are nationally recognized employment class action litigators. *See, e.g., Gonzalez v. Pritzker*, No. 10 Civ. 3105, 2016 WL 5395905, at *4 (S.D.N.Y. Sept. 20, 2016) (“Class Counsel are nationally recognized employment class action litigators Outten & Golden’s resources played a significant role in Class Counsel’s ability to pursue this litigation without compensation over the past six years.”); *Aros v. United Rentals, Inc.*, Nos. 10 Civ. 73, 11 Civ. 1281, 11 Civ. 1282, 11 Civ. 1283, 11 Civ. 1284, 11 Civ. 1285, 2012 WL 3060470, at *6 (D. Conn. July 26, 2012) (the attorneys of “Outten & Golden LLP . . . are experienced employment lawyers with good reputations among the employment law bar. They have prosecuted and favorably settled many employment law class actions.”); *Damassia v. Duane Reade, Inc.*, No. 04 Civ. 8819, No. 04 Civ. 2295, 2009 WL 5841128, at *3 (S.D.N.Y. July 27, 2009) (noting that Outten & Golden “has substantial experience prosecuting and settling employment class actions”); *Little v. Washington Metro. Area Transit Auth.*, 249 F. Supp. 3d 394, 422 (D.D.C. 2017) (finding LDF adequate class counsel in a Title VII challenge to employer’s use of criminal background checks, and noting that “class counsel are experienced in class actions and other complex litigation”).

27. Although Class Counsel had no guarantee of any compensation in pursuing this case, and has worked without compensation for over four years, they achieved substantial success in settling the claims on behalf of the class.

28. The award to Class Counsel of \$1,900,000 in less than their total loadstar as of September 22, 2019, and does not include all the work that Class Counsel has done since September 22, 2019, or will do in the future.

29. In light of the above, the award of \$1,900,000.00 in fees and costs is a reasonable award. The award shall be paid by Defendant.

VI. SERVICE AWARDS TO NAMED PLAINTIFFS

30. The Court finds that service awards of \$20,000 to Named Plaintiff Carnella Times and the Fortune Society, and a service award of ^{\$2,500}\$5,000 to Named Plaintiff Erving Smith, are reasonable.

31. Service awards are common in class action cases and serve to compensate plaintiffs for the time and effort expended in assisting the prosecution of the litigation, the risks incurred by becoming and continuing as a named plaintiff, and any other burdens sustained by the plaintiffs. *See Reyes*, 2011 WL 4599822, at *9. Here, the requested service awards are reasonable and are approved.

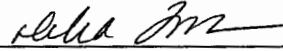
VII. ^{CONDITIONAL} FINAL APPROVAL OF SETTLEMENT (see note below)

32. Without affecting the finality of this Settlement Order and Final Judgment, the Court retains continuing jurisdiction over: (a) implementation of the Settlement Agreement and programmatic relief contemplated by the Settlement Agreement, until all acts agreed to be performed pursuant to the Settlement Agreement have been performed; and (b) all parties to this action and Settlement Class Members for the purpose of enforcing and administering the Settlement Agreement.

33. As of the Effective Date of the Settlement, the action shall automatically be dismissed with prejudice, except that the Court will retain continuing jurisdiction as set forth above.

34. The parties shall abide by all terms of the Settlement Agreement.

It is so ORDERED this 29th day of October, 2019.



Hon. Debra Freeman
United States Magistrate Judge

This final order grants certification of the settlement class, but the court's approval of the terms of the settlement agreement is conditioned on this court's being informed by counsel that, by the expiration of the opt-out period for any class members who were belatedly served with notice of the proposed settlement, no such class member stepped forward with any objections to the settlement, or expressed a desire to be heard by the court as to the settlement agreement's adequacy and fairness.

Counsel are directed to provide a written update to the court by 12/19/19, to inform the court if any such class members wish to be heard.

The Clerk of Court is directed to keep this case open, pending further order of the court.