

# EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

## BALTIMORE DISTRICT OFFICE

Anniemarie Harrison-Gray and Beverly Hatcher,  
Class Agents,

EEOC Case No.:  
120-2003-00508X

v.

Agency Case No.:

Secretary, U.S. Department of Veterans Affairs,  
Agency.

2004-0652-2002103851

## SETTLEMENT AGREEMENT

**Anniemarie Harrison-Gray and Beverly Hatcher, on behalf of themselves and all other class members, and Charles E. Sepich, on behalf of the U.S. Department of Veterans Affairs, Richmond VA Medical Center (“Agency”), hereby agree to settle and dismiss the above-captioned administrative class action complaint on the following terms and conditions:**

### **I. Definitions**

The following terms, as used in the Settlement Agreement, shall have the meanings defined below:

#### ***A. Administrative Class Action Complaint***

The “Administrative Class Action Complaint” is the formal administrative complaint of discrimination filed with the Equal Employment Opportunity Commission (“EEOC”) by Anniemarie Harrison-Gray and Beverly Hatcher on behalf of themselves and all other class members, pending before the Baltimore District Office of the EEOC as No. 120-2003-00508X; Agency Case No. 2004-0652-2002103851, including all individual complaints of alleged discrimination based on race (Black) concerning monetary and non-monetary awards at the Hunter Holmes McGuire VA Medical Center, Richmond, Virginia.

#### ***B. African-American***

“African-American” and “Black” are used interchangeably, and for the purposes of this Settlement Agreement shall include Black aliens, lawfully able to work for the Department of Veterans Affairs, but who are not of American citizenry or descent.

#### ***C. Class Counsel***

“Class counsel” refers collectively to: Michael Kator, Cathy Harris, Jeremy Wright, Kerrie Riggs, and other attorneys of the law firm of Kator Parks & Weiser, P.L.L.C., 1200 18<sup>th</sup> St., N.W., Suite 1000, Washington, DC 20036.

#### ***D. Class Member(s)***

As defined by the Administrative Judge in his order of March 27, 2009, the class consists of all African American employees, past and present, who have worked at the McGuire facility in Richmond, Virginia at any time from January 1, 1996, while in a non-supervisory position.

#### ***E. Class Representatives, Class Agents***

The class representatives are Anniemarie Harrison-Gray and Beverly Hatcher. For the purposes of this Agreement, “class representatives” and “class agents” are interchangeable terms.

#### ***F. Preliminary Approval***

“Preliminary Approval” refers to the entry of the Administrative Judge's Order granting initial approval of the Settlement Agreement, prior to conducting a fairness hearing.

#### ***G. Final Approval***

“Final Approval” refers to the entry of an order by the Administrative Judge approving the Settlement Agreement as fair, reasonable, and adequate to the class as a whole.

#### ***H. Effective Date***

The “Effective Date” of this Agreement shall be the date after which the Administrative Judge issues a Final Approval of the provisions of this Settlement Agreement and the time for appeal has run without an appeal being filed or, if an appeal is filed, the final resolution of that appeal.

#### ***I. Hunter Holmes McGuire VA Medical Center***

For the purposes of this Settlement Agreement, the “McGuire facility,” the “Richmond VA Medical Center” or the “Hunter Holmes McGuire VA Medical Center” is the United States Department of Veterans Affairs, Hunter Holmes McGuire VA Medical Center, in Richmond, Virginia, and all components of the facility, including out-based medical offices.

### **II. Scope of the Settlement Agreement**

A. The Settlement Agreement resolves and extinguishes all claims that class members may have against the Agency alleging discrimination with regard to awards on the bases of race (Black), including any claims under disparate impact theories of recovery, disparate treatment theories of recovery, or any other theory of recovery based on allegations of race discrimination for events occurring in whole or in part between January 1, 1996 and the date of the Final Approval of the Settlement Agreement, for those periods of time in which the class member served in a non-supervisory position.

B. Excluded are claims of class members who, as of the Final Approval of the Settlement Agreement: 1) have pending in federal court complaints of race (Black) discrimination regarding awards; and/or 2) have pending before the Agency or the EEOC complaints of discrimination only on bases other than race (Black) regarding awards.

C. Upon the Final Approval of the Settlement Agreement, each class member shall be bound by the doctrines of res judicata and collateral estoppel with respect to all such claims and otherwise be unable to raise claims of race discrimination with regard to awards at the Richmond VA Medical Center in any forum based on events occurring between January 1, 1996, and the Final Approval of the Settlement Agreement.

D. The Settlement Agreement is conditioned on Final Approval by an EEOC Administrative Judge, after notice to all class members, a fairness hearing before the Administrative Judge, and consideration of any objections by class members. In the event that any class member appeals from any decision of the Administrative Judge approving the Settlement Agreement, the parties jointly will move for expedited consideration of the appeal so that a final determination of the fairness of the Settlement Agreement can be obtained as promptly as possible.

E. It is an express condition of this Settlement Agreement that the parties are bound by this Agreement, and that this Agreement be approved by the Administrative Judge as written. The parties have bargained for the terms in this Settlement Agreement. No section or subsection of this Agreement may be modified or stricken. If the Administrative Judge does not approve this Settlement Agreement as written, either party may elect to withdraw from this Settlement Agreement, which shall then be deemed null and void.

F. The Settlement Agreement will be implemented consistent with the provisions of the Federal Service Labor-Management Relations Statute, 5 U.S.C. Chapter 71, and the controlling AFGE/VA National Agreement.

G. The Agency agrees to mail notice to all class members, to the last address of record, within 10 business days of the Administrative Judge's approval of the notice concerning entitlements to relief pursuant to the Administrative Judge's Preliminary Approval of the Settlement Agreement. The proposed notice will be drafted jointly by the parties and will be approved by the Administrative Judge. The notice will include a copy of the proposed Settlement Agreement and a statement of each class member's right to challenge the fairness of the Settlement Agreement.

### **III. Non-Monetary Terms**

A. Richmond VA Medical Center employees who believe they should be recognized for high quality accomplishments or contributions, may nominate themselves for awards for which they qualify under MCM-05-24, or its successor policy. Employees may nominate themselves by completing the document attached hereto as "Exhibit A" and entitled, "Employee Self-Nomination for Incentive Award, Richmond VA Medical Center" ("Self-Nomination Document"). The Self-Nomination Document will be available electronically and in the Office of Human Resources, Richmond VA Medical Center. When completing a Self-Nomination Document, an employee shall include a description of his/her accomplishments or contributions and an explanation of their significance, as well as his/her name and telephone number. The employee shall not include suggestions for the type of award or the amount of money to be granted. Information provided in the Self-Nomination Document will be considered in determining the appropriate recommendation.

B. An employee must return the completed Self-Nomination Document to his/her first-line supervisor and place a copy of the Self-Nomination Document in the designated depository in the Human Resources Office for it to be considered. First-line supervisors will consider the Self-Nomination Document in making awards recommendations in accordance with VA awards policies and practices. The parties agree and understand that cash awards are subject to the availability of awards funds, and employees who self-nominate are not, by that act, entitled to or guaranteed an award. Supervisors who recommend an employee for an award based on an

employee's Self-Nomination Document will process the award in accordance with existing VA policy and practice, as well as applicable law and regulation. The Human Resources Office will provide to the Richmond VA Medical Center's Awards Panel copies of all bargaining unit employees' Self-Nomination Documents on a quarterly basis for review.

C. The parties agree and understand that nothing in this Settlement Agreement requires an employee of the Richmond VA Medical Center to complete a Self-Nomination Document in order to receive awards.

D. Within 30 days of the Final Approval of the Agreement, the Agency will notify Richmond VA Medical Center employees that they may nominate themselves for awards utilizing the process described above.

#### **IV. Monetary Terms**

A. The Agency will pay to class counsel the total sum of five million dollars (\$5,000,000.00), in full, complete and final satisfaction of all claims, including interest, arising out of the class agents' allegations as described in the Settlement Agreement, including attorneys fees, expert fees, costs and expenses, and further including all fees, costs and expenses of any kind incurred post-settlement. The above amount will be paid, as follows: two million dollars (\$2,000,000.00) will be paid to class counsel within 30 days of the Preliminary Approval of the Settlement Agreement; the remaining three million dollars (\$3,000,000.00) will be paid to class counsel no later than October 1, 2010, or within 30 days of the Final Approval of the Settlement Agreement, whichever is later, and subject to the terms of distribution set forth below.

B. The \$5,000,000.00 payment described in the preceding paragraph will be distributed as follows:

1. Class counsel will devise a formula for distributing the proceeds of this Settlement Agreement to the class members. The formula will be published electronically, as described in the notice to all class members. Within 30 days after the effective date of the Settlement Agreement, class counsel will distribute two million, five hundred thousand dollars (\$2,500,000.00) to class members in accordance with the distribution formula. No class member may opt out of this Settlement Agreement; however, any class member may elect not to receive the monetary relief afforded under this Settlement Agreement. Any monetary relief that is unclaimed or rejected will be reallocated to the participating class members pursuant to the distribution formula. It will be the sole responsibility of class counsel to distribute the settlement proceeds, report said amounts to the IRS and bear all costs associated with the same. Within 10 days of distribution, class counsel will report to the Agency the gross sums paid to each class member.

2. Two million, five hundred thousand dollars (\$2,500,000.00) shall be paid to class counsel as attorneys fees, expenses and costs (including, but not limited to, all fees, expenses and costs associated with appeals of the Settlement Agreement and the distribution of the proceeds to class members), related to issues raised in the above-styled case. No later than 10 days before the Fairness Hearing, class counsel will provide to the Agency an itemized attorneys fee statement and an itemized statement reflecting other fees, expenses and costs associated with the distribution. Class counsel will hold said amount in escrow pending Final Approval of the Settlement Agreement.

3. In the event that the Settlement Agreement does not, for any reason, become effective, class counsel will return to the Agency all payments received from the Agency, including interest on those payments, within 30 days of the date that the parties receive notice from the EEOC that the Settlement Agreement is not approved and/or not effective.

C. Within 30 days of the Effective Date of the Settlement Agreement, and in addition to the terms available to all class members, the Agency will pay a lump sum of \$5,000.00 to, and will process a one step pay increase for (in addition to the two class agents' regularly-scheduled step increases) each of the two class agents, Anniemarie Harrison-Gray and Beverly Hatcher. The Agency will report said amounts to the IRS as income, and the Agency makes no representation as to the taxability of these amounts.

D. With the exception of claims listed in II.B above, in consideration of monetary damages and other relief received by class agents Anniemarie Harrison-Gray and Beverly Hatcher, on behalf of themselves individually and all other class members, pursuant to the Settlement Agreement, the class agents and their heirs, administrators, successors, or assigns hereby release and forever discharge the Agency and any Department, Agency, or establishment thereof and any officers, employees, agents, or successors of any such department, Agency, or establishment, in their official and individual capacities:

1. from any and all claims and causes of action that have been or could have been asserted, in the above-captioned action or administratively, by reason of, or with respect to, or in connection with, or that arise out of, any of the matters alleged in the above-captioned action, including, without limitation, claims or causes of action that pertain or relate to, or that are based upon or challenge of, race (Black) discrimination with regard to awards at the Richmond VA Medical Center, and including awards programs, policies, plans and practices of any kind at the Richmond VA Medical Center;

2. from any and all claims and causes of action that hereafter could be asserted by reason of, or with respect to, or in connection with, or that arise out of, any of the matters alleged in the above-captioned action, including, without limitation, claims or causes of action that pertain or relate to, or that are based upon or challenge of, race (Black) discrimination with regard to awards at the Richmond VA Medical Center, and including awards programs, policies, plans, and practices of any kind at the Richmond VA Medical Center, based on facts in existence at the time of the Final Approval of the Settlement Agreement or at any time prior thereto; and,

3. upon the Effective Date of the Settlement Agreement, the class agents agree, on behalf of themselves individually and all other class members, to the dismissal with prejudice of any and all individual claims or causes of action related to allegations of race discrimination with regard to awards at the Richmond VA Medical Center that are presently pending, could have been asserted, or hereafter could be asserted based on facts in existence at the time of the Final Approval of the Settlement Agreement, in any administrative, State, or Federal forum.

E. Consistent with EEOC regulation 29 C.F.R. Section 1614.204(g)(4), this Settlement Agreement shall bind all members of the class upon the effective date of the Settlement Agreement.

F. With the exceptions noted in II.B, a class member who has a pending administrative claim, complaint (whether formal or informal), appeal, of any kind and in any forum, alleging racial discrimination concerning awards from January 1, 1996 to the Final Approval of the Settlement Agreement, allegedly occurring while they were in a non-supervisory position, shall be deemed to have withdrawn all claims and requests for relief upon the Final Approval of this Settlement Agreement. Additionally, upon the Final Approval of this Settlement Agreement, the class member shall be deemed to have withdrawn all claims and requests for relief that are based on underlying facts and issues relevant to whether, and in what amount, the class member received awards. Notwithstanding the foregoing, the parties agree and understand that this Settlement Agreement does not serve as a waiver of those portions of claims and requests for relief that are based on claims that are wholly distinct from, and unrelated to, awards.

## **V. Compliance**

A. If the class believes that the Agency has failed to comply with the terms of the Settlement Agreement, the class shall notify the Deputy Assistant Secretary for Resolution Management, Washington Field Office, in writing, of the alleged noncompliance within 30 days of when the class knew or should have known of the noncompliance. The class may request that the terms of the Settlement Agreement be specifically implemented or, alternatively, that the class complaint be reinstated for further processing from the point processing ceased. Thereafter, the class may appeal to the Equal Employment Opportunity Commission, pursuant to 29 CFR 1614.504 if the class believes that the Agency has either not fully implemented this Settlement Agreement or improperly failed to reinstate the complaint.

## **VI. Interpretation of the Settlement Agreement**

A. The Settlement Agreement does not represent an admission of liability by the Agency. The Settlement Agreement constitutes a joint effort by the parties and should not be construed against any party. The terms of the Settlement Agreement, the negotiations leading up to the Settlement Agreement, the data, documents, or information exchanged between the parties in the course of settlement negotiations of this action, may not be offered, taken, construed, or introduced as evidence of liability or as an admission or statement of wrongdoing by the Agency either in this action or in any subsequent proceeding of any nature. However, such information exchanged between the parties as part of this action may be presented to the Administrative Judge by the parties to the Settlement Agreement solely to obtain the approval of this Settlement Agreement.

B. It is an express condition of the Settlement Agreement that the class and class members be bound by the Settlement Agreement. The Settlement Agreement is binding on all parties and their successors, assigns, representatives, and trustees and shall be null, void, and of no force or effect if the Administrative Judge does not approve the Settlement Agreement, and voidable of this Agreement if the Administrative Judge does not approve the Settlement Agreement in its entirety. The Settlement Agreement may be executed in one or more counterparts and each executed copy shall be deemed an original that shall be binding upon all parties to the Settlement Agreement. The waiver by any party hereto of any term, condition, or covenant of the Settlement Agreement or the breach of any term, condition, covenant, or representation herein, in any one instance, shall not operate as or be deemed to be a waiver of the right to enforce any other term, condition, or representation, nor shall any failure by any party at any time to enforce or require performance of any provision hereof operate as a waiver of or affect in any manner such party's right at a later time to enforce or require performance of such provisions or of any provision hereof.

C. The headings in the Settlement Agreement are for the convenience of the parties only and shall not limit, expand, modify, amplify, or aid in the interpretation or construction of the Settlement Agreement.

D. The Agency shall not be obligated to carry out any term of the Settlement Agreement if any otherwise applicable current or future Federal statute or regulation precludes the Agency from complying with, or withdraw the Agency's authority to perform, that term. Should one or more terms of the Settlement Agreement subsequently be deemed unenforceable, the parties agree that the unaffected terms of this Settlement Agreement shall remain in effect. The Agency agrees to notify class counsel should any such change in law prevent the Agency from complying with any term of the Settlement Agreement.

E. In the event that changes in the law subsequent to the entry of the Settlement Agreement make any of its provisions contrary to law either as written or as applied, either party may apply to the EEOC for a modification of those provisions so that they comply with existing law.

F. This Settlement Agreement shall not serve as precedent for resolving any other complaints, grievances, appeals, or actions of any kind that may be filed.

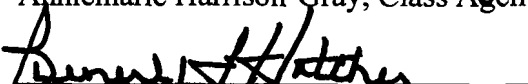
G. This Settlement Agreement constitutes the entire understanding between the parties, and there are no other terms or commitments, verbal, or written.

H. The Agency may submit this Settlement Agreement as evidence of withdrawal or waiver of any claim to be withdrawn or waived hereunder.

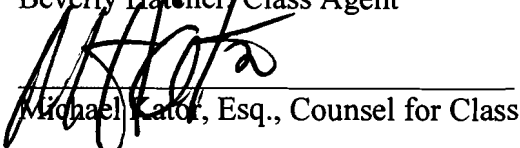
**For the Class:**

  
Anniemarie Harrison-Gray, Class Agent

Date: March 26, 2010


  
Beverly Hatcher, Class Agent

Date: 3/26/10


  
Michael Kator, Esq., Counsel for Class

Date: 3/25/10

**For the Agency:**

  
Charles Sepich, Director,  
Richmond VA Medical Center

Date: 4/21/10

  
Kathleen Keith Oddo, Agency Representative

Date: 4/22/10

EXHIBIT "A"

**Employee Self-Nomination For Incentive Award  
Richmond VA Medical Center**

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

Telephone Number: \_\_\_\_\_

Position: \_\_\_\_\_ Title: \_\_\_\_\_ Grade: \_\_\_\_\_

Organization: \_\_\_\_\_

First Line Supervisor's Name: \_\_\_\_\_

First Line Supervisor's Telephone Number: \_\_\_\_\_

Reason For Consideration With Justification (include relevant date(s) and specific details concerning special contributions or performance, and the impact or effect of the contribution or performance on the organization, mission, and patient services):

Employee Signature: \_\_\_\_\_ Date Submitted: \_\_\_\_\_

Action By First Line Supervisor:

This Self-Nomination has been reviewed and considered:   Yes     No   (circle one)

Action Recommended: \_\_\_\_\_

First Line Supervisor Signature: \_\_\_\_\_ Date: \_\_\_\_\_