

**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**  
**Philadelphia District Office**

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Doering Meyer and Ryan Gibson,  
Class Agents,

v.

Antony J. Blinken, Secretary,  
U.S. Department of State, Agency.

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EEOC No: 531-2015-00092X

Agency No: DOS-F-034-07

No: DOS-F-091-08

**SETTLEMENT AGREEMENT**

**I. INTRODUCTION**

In the interests of avoiding the expense, delay, and inconvenience of further litigation of the issues raised in this class complaint, and in reliance on the representations, mutual promises, covenants, and obligations set out in this Settlement Agreement, and for good and valuable consideration also set out in this Settlement Agreement, the Class Agents, Doering Meyer and Ryan Gibson, on behalf of themselves and all others similarly situated, and the United States Department of State, hereby stipulate and agree as follows:

## II. GENERAL PROVISIONS

### A. Definitions

The following terms, as they are used in this Settlement Agreement and its attachments, shall have the definitions below:

1. **Administrative Judge:** R. Colin Power and/or any United States Equal Employment Opportunity Commission Administrative Judge assigned to hear this case.
2. **The Agency:** The United States Department of State.
3. **Assessment and Monitoring Period:** The five-year period, commencing on the Effective Date, during which the Agency will assess, and the Commission and Class Counsel will monitor, the impact of the policy described in Part IV(E of this Settlement Agreement.
4. **Settlement Administrator:** The firm retained pursuant to Part IV of this Settlement Agreement to assist Class Counsel in the administration and distribution of awards to be made pursuant to this Settlement Agreement.
5. **Class:** All qualified applicants to the Foreign Service beginning on October 7, 2006, who were denied employment, or whose employment was delayed pending application for and receipt of a waiver, because the State Department deemed them not 'Worldwide Available' due to their disability.
6. **Class Agents:** Doering Meyer and Ryan Gibson.
7. **Class Claim:** Concerning hiring at any time on or after October 7, 2006, but no later than the Effective Date; any individual or class-wide actual or potential disability discrimination claim, administrative charge, demand, grievance, complaint, right and cause of action of any kind, known or unknown, by a Class Member or the Class Agents against the Agency for

monetary, injunctive or equitable relief and/or for attorney's fees, arising from any events, acts, omissions, policies, practices, procedures, conditions or occurrences, under Section 501 of the Rehabilitation Act of 1973, 29 U.S.C. § 701, *et seq.*; or any other federal, state, or local statute, regulation, rule, order, ordinance or other authority of any nature prohibiting discrimination based upon disability in employment. Class Claim refers to any claims or other causes of action described above brought in an arbitral, judicial or other forum of whatsoever kind or nature. A Class Claim, however, does not encompass a petition with the Administrative Judge that the Settlement Agreement is not fair, adequate and reasonable, or an appeal or petition of the Administrative Judge's Final Approval to the EEOC's Office of Federal Operations, within the meaning of 29 C.F.R. § 1614.204(g)(4).

- 8. Class Complaint:** The formal class complaint of discrimination filed against the Agency by Doering Meyer on behalf of herself and others similarly situated on January 8, 2007 and pending before the Equal Employment Opportunity Commission (EEOC or Commission Philadelphia Field Office as Case No. EEOC No. 531-2015-00092X (formerly EEOC No. 570-2008-00018X).
- 9. Class Counsel:** Bryan Schwartz and other attorneys of the law firm of Bryan Schwartz Law, 180 Grand Ave. Suite 1380, Oakland, CA 94612 (lead Class Counsel; Gary Gilbert and other attorneys of the law firm of Gilbert Employment Law Firm (except attorneys such as former administrative judge David Norken who are excluded from participation in this matter based upon applicable ethics rules, 1100 Wayne Avenue Suite 900, Silver Spring, MD 20910 (co-counsel for the Class.
- 10. Class Member:** Any person appearing on Exhibit 1, who the parties have determined to fit within the Class. If the parties determine that an amendment to Exhibit 1 is necessary at any time, they shall meet and confer and jointly present such amendment to the Administrative Judge

for approval. The parties will also bring any disagreement regarding amendment of Exhibit 1 to the Administrative Judge for a decision.

**11. Confidential Information:** Information of any type, kind or character and in any form that has been or will be obtained by one party to this Case or its counsel or agents from the other party to this Case or its counsel or agents that is not generally known to the public. The term includes: (1 information identified as “confidential” pursuant to Administrative Judge Palmer’s February 6, 2017 Consent Protective Order, attached hereto as Exhibit 6; (2 information that is confidential pursuant to the Agreement to Mediate, attached hereto as Exhibit 7; and (3 other nonpublic data that has been or will be produced in this Case, such as information regarding the Agency’s past, present, or future employees, including but not limited to, home addresses and telephone numbers, social security numbers, medical information, and family information. Confidential Information does not include information which is generally known or available to the public, except to the extent the information is protected under the Rehabilitation Act.

**12. Conditional Offer:** An offer to be placed on the Register, subject to contingencies including receipt of a security clearance, being found suitable for employment in the Foreign Service, and meeting a revised medical qualification standard described herein in Part IV(E)(1 of this Settlement Agreement.

**13. Effective Date:** The first date after which there can no longer be timely challenges to the Settlement Agreement in any administrative or judicial forum. It shall occur only after the EEOC Administrative Judge has finally approved the Settlement Agreement and the time for any appeals of the Final Approval Order have run without an appeal being filed, or, if an appeal is filed, the final resolution of the appeals process. The Parties shall request that, in the proposed Final Approval Order, the EEOC Administrative Judge denote the specific dates or timeframes that

correspond to any available challenges or appeals in any administrative or judicial forum. The effective date is not affected by the filing of a limited appeal by Class Agents, described in Part III(E below, if any.

- 14. Final Approval:** The entry by the Administrative Judge of the Order granting final approval of this Settlement Agreement as fair, reasonable, and adequate to the Class as a whole pursuant to 29 C.F.R. § 1614.204(g).
- 15. Class Notice:** Notice summarizing the Settlement Agreement to be sent to the Class pursuant to 29 C.F.R. 1614.204(g and Part III(B of this Settlement Agreement, attached hereto as Exhibit 2.
- 16. Parties:** Class Agents (representing the Class and the Agency.
- 17. Preliminary Approval:** The entry by the Administrative Judge of an Order preliminarily approving the settlement and the terms of the Class Notice to be sent to the Class pursuant to 29 C.F.R. § 1614.204(g).
- 18. Qualified Individual:** An individual who satisfies the requisite skill, experience, education, and other job-related requirements (including security clearance and suitability determination requirements of the employment position such individual desires and, with or without reasonable accommodation, can perform the essential functions of such position.
- 19. Register:** A rank ordered list of applicants who have successfully completed all evaluations required for hiring into the Foreign Service and from which the Agency selects candidates for hire. An applicant's position on the Register is dynamic and changes when applicants who have a higher assessment score are placed on the Register. Placement on the Register does not guarantee employment. Applicants remain on the Register for a period of eighteen (18 months and their candidacy for hire terminates if they are not selected for hire within that period.

**20. Settlement Amount:** The total settlement amount to be paid by the Agency to resolve this matter is Thirty-Seven Million and Five Hundred Thousand Dollars (\$37,500,000.

**21. Settlement Fund:** The qualified settlement fund created by the payment of the total Settlement Amount by the Agency, the purpose and administration of which are governed by Part IV of this Settlement Agreement.

**22. This Case:** All proceedings relating to or arising from the Class Complaint.

**B. Jurisdiction:** The parties acknowledge that the Commission has jurisdiction over the parties and the subject matter. The Administrative Judge shall retain jurisdiction over this matter for a period of five years after the Effective Date of the Settlement Agreement for purposes of monitoring and ensuring compliance with the Settlement Agreement. **Opt Out Rights:** If this Settlement Agreement receives Final Approval, the Class Members may not “opt out” of the defined class. All Class Members will have the opportunity to object to the Settlement Agreement in accordance with the procedures set forth in the Class Notice, which is attached hereto as Exhibit 2, and 29 C.F.R. § 1614.204(g).

**D. Release/Bar of Claims:** In consideration of the promises contained herein, and the benefits provided or to be provided hereunder, Class Agents will provide a full, general release, which is attached hereto as Exhibit 5.

Except as otherwise provided for under Part IV of this Agreement, and as described in the Class Notice (Exhibit 2, the provisions of this Agreement shall resolve finally and shall hereafter forever bar any and all Class Claims of the Class, which any of them, their representatives, agents, heirs, assigns, executors, administrators, or successors, may have, may have had, or in the future may have against the Agency or the Secretary of State

in his official capacity. The Class Agent and Class Members shall further be barred from submitting evidence concerning any Class Claim in any proceeding, other than as specified under this Agreement.

**E. Denial of Liability:** The Agency expressly denies any wrongdoing or liability whatsoever. This Settlement Agreement represents the compromise of disputed claims. It reflects the parties' recognition that litigation of these claims would severely burden all concerned and require a massive commitment of time, resources, and money. The Settlement Agreement does not constitute and shall not under any circumstances be deemed to constitute, an admission by either party as to the merits, validity, or accuracy, or lack thereof, of any of the claims in this case. No ruling was ever made on the merits of the claims or allegations of the Class.

This Settlement Agreement may not be introduced or used or admitted in any other judicial, arbitral, administrative, investigative, or other proceeding of any kind or nature whatsoever as evidence of discrimination or any violation of the Rehabilitation Act, the United States Constitution, the common law of any jurisdiction, or any other federal, state or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity.

In the event that Final Approval of the Settlement Agreement is not obtained or the Settlement Agreement is deemed null and void, nothing herein shall be deemed to waive any of the Class's claims or the Agency's objections and defenses. In either event, the Settlement Agreement, and all communications in furtherance of the resolution of the Class Complaint, and all communications made or submitted in connection with the Fairness Hearing, shall not be deemed or construed to be an admission by any party of any fact, matter, or proposition.

**F. No Dual Representation:** Once this Settlement receives Final Approval from the Commission, Class Counsel agree that they shall not represent any

Class Member in any judicial or administrative forum against the Agency which arises out of, or is related to, Class Claims asserted in this Case, other than in advancing this Settlement. Furthermore, no individual attorney who has been partners with, employed by, or associated with Class Counsel, or who has performed any work on this Case for Class Counsel, may represent any Class Member regarding Class Claims in any capacity other than in the capacity of Class Counsel in this Case.

#### **G. Cooperation During Settlement Administration and**

**Maximizing Participation:** The parties agree to cooperate throughout the finalization of the Settlement Agreement and administration of the Settlement to expedite Final Approval of the Settlement Agreement. Class Counsel will seek to file for Preliminary Approval within two (2 weeks of finalizing this Settlement Agreement. Class Agents and Class Counsel shall not make any public disclosure of the Settlement prior to receiving Preliminary Approval from the Commission. Class Counsel will take all steps necessary to ensure Class Agents adhere to the restriction against any public disclosure of the Settlement until the Settlement Agreement receives Preliminary Approval. The Class Notice and the proposed approval order are to be mutually agreed upon by Class Counsel and Agency's Counsel and submitted to the Commission for Preliminary Approval.

**H. Parties' Obligation to Defend Settlement Agreement:** In the event this Settlement Agreement is challenged administratively or judicially, the Class Agents, Class Counsel and the Agency shall fully defend its lawfulness, except that the Agency will take no position as to the provisions of monetary relief or attorney's fees or as to any formula by which amounts in the Settlement Fund are allocated to individual Class Members.

**I. Confidentiality and the Return of Documents:** The February 6, 2017 Consent Protective Order, attached hereto as Exhibit 6, and the Agreement to Mediate, attached hereto as Exhibit 7, are hereby incorporated



by reference into this Settlement Agreement. Upon completion of the Assessment and Monitoring Period, Class Counsel agrees to destroy or return to the Agency all Confidential Information and all documents protected by the Privacy Act produced by the Agency, except to the extent that: (a) the Parties agree that such information was produced by the Agency in discovery in another pending action being litigated by Class Counsel; or (b) Class Counsel is required to retain such documents to comply with applicable Bar requirements regarding retention of documents. If the decision is made to destroy said documents, then Class Counsel shall notify counsel for the Agency in writing as to the method and date that such documents are destroyed. The Agency will abide by the terms of applicable federal statutes and regulations regarding document retention and/or destruction, including the Freedom of Information Act and the Federal Records Act.

**J. Approval of Settlement Agreement as Written:** It is an express condition of this Settlement Agreement that the Settlement Agreement be approved by the Administrative Judge as written. The Parties have bargained for the terms in this Settlement Agreement. Except as provided in Part VII(G), no Part or Subpart of this Settlement Agreement may be added, modified, or stricken.

**K. Nature of Agreement:** This Settlement Agreement is a contract and shall, upon Final Approval by the Administrative Judge, also constitute an order of the Administrative Judge, and all of its provisions shall be enforceable only pursuant to the terms set forth in Part VI of this Settlement Agreement regarding Enforcement.

**L. No Modification of Rehabilitation Act Requirements:** Nothing in this Settlement Agreement may be taken as modifying, waiving, excusing, or tolling either the statutory or regulatory procedures pertaining to initiating and maintaining administrative and judicial proceedings under the Rehabilitation

Act of 1973, as amended, 29 U.S.C. § 790 et seq., or the requirement to exhaust administrative remedies prior to initiating suit under those statutes.

### III. NOTICE OF RESOLUTION AND FAIRNESS HEARING

**A. Preliminary Approval:** Prior to sending the Class Notice required by 29 C.F.R. 1614.204(g), the Parties will request that the Administrative Judge review and grant Preliminary Approval of the Settlement Agreement and the Exhibits hereto.

**B. Notice to Class:** As soon as practicable after receiving Preliminary Approval, Class Counsel will send, or work in conjunction with the Settlement Administrator to send, the Class Notice attached hereto as Exhibit 2 to Class Members. Class Counsel and/or the Settlement Administrator shall provide the Class Notice to the Class by reasonable means and in a manner consistent with 29 C.F.R. § 1614.204(e), including, but not limited to, sending the Class Notice to the last known address of all Class Members and such email addresses as are in possession of Class Counsel. Class Counsel shall also make reasonable efforts to identify any necessary amendments to Exhibit 1 by, for example, publication, within ten (10) days after receiving Preliminary Approval, of the Settlement Agreement on his website, <http://www.bryanschwarzlaw.com>.

**C. Fairness Hearing:** The fairness hearing will be held pursuant to 29 C.F.R. § 1614.204(g)(4) as set by the Administrative Judge.

**D. Settlement Disbursement:** Within thirty (30) days of receiving the settlement payment from the Agency, the Settlement Administrator will send each Class Member the respective Class Member's allocation, pursuant to the distribution plan outlined in Exhibit 3, which was crafted by Class Counsel and will have been approved by the Commission at the fairness hearing. The allocation checks shall be valid for 120 days, after which time, they shall be void, and their funds returned to the common settlement fund. Within 30 days

of the reversion of funds from voided payments, the Settlement Administrator shall make a second allocation *pro rata* to those Class Members who timely cashed the first settlement checks. Second allocation checks not cashed within 120 days will be void, and such funds will return to the common settlement fund. The Settlement Administrator will make a third and final allocation *pro rata* to those Class Members who timely cashed the second allocation checks, if there are any second allocation checks not cashed within 120 days, unless the administrative cost of making the third distribution would exceed the amount remaining in the common fund. If there are any uncashed third allocation checks after 120 days, or if the balance of the second allocation remainder is less than the cost of a third allocation, then the Settlement Administrator within 30 days will disburse the remaining balance of the common fund to *cy pres* recipient, National Disability Rights Network. Class Members' waivers of claims contemplated in this Settlement are unaffected by their decision to negotiate or not the settlement payments sent to them.

**E. Class Agents Limited Appeal:** If Class Agents' proposed enhancement payments or Class Counsel's fees and costs are not approved in their entirety, Class Agents retain the right to a limited appeal to the EEOC Office of Federal Operations regarding such non-approval or partial non-approval. In this event, the Effective Date will remain unchanged, and settlement administration will proceed as to the balance of the settlement. Any portion not approved will remain in the qualified settlement fund pending the outcome of any appeal. If the appeal is successful, then the amount will be disbursed according to the appellate decision. If the appeal is unsuccessful, then the amount will be disbursed *pro rata* to Class Members who have timely cashed their settlement checks in the second settlement allocation. Costs of such additional administration will be paid from the balance in the qualified settlement fund or, if no balance exists, by Class Counsel. In no event shall any aspect of this provision regarding Class Agents' Limited Appeal result in any increased cost to the Agency. For

example, if fees and costs and enhancements are approved, except as to \$100,000, then Class Agents may file an appeal as to \$100,000, and \$100,000 of the \$37.5 million fund will remain in trust in the qualified settlement fund pending the appeal, to be distributed at the conclusion of the appeal based upon the appellate decision, with the remaining \$37.4 million distributed timely according to the distribution plan.

## **IV. RELIEF AND ADMINISTRATION**

### **A. General Provisions**

- 1. Retention of Settlement Administrator:** Class Counsel shall designate a Settlement Administrator from bids obtained from at minimum three qualified settlement administrators to administer and distribute the Settlement Fund.
- 2. Creation of the Settlement Fund:** If this Settlement Agreement is granted Final Approval, the Agency shall deliver to the Settlement Administrator, as soon as is practicable and no later than sixty (60) days after the Effective Date, at a bank to be designated by the Settlement Administrator and agreed upon by the Agency, a total of \$37,500,000. The Settlement Administrator shall provide the relevant bank routing and account information to the Agency to permit the electronic funds transfer of the settlement monies into the Settlement Fund. The Fund shall be established by the Settlement Administrator as a qualified settlement fund under Part 468B of the Internal Revenue Code.
- 3. Prior Year Funds:** Prior year funds are being used to extinguish any liability incurred during the prior years for which the funds are being used, to be paid into the qualified settlement fund administered by the Settlement Administrator. The plan of distribution of those funds will be subject to approval by the EEOC. The distribution plan, outlined in Exhibit 3, calls for Class Members receiving the funds to give 1/3 of those funds

to their attorneys (Class Counsel, subject to Commission approval, and consistent with the representation agreements of Class Agents. Additional funds will be paid by Class Members for litigation and settlement administration costs from the common fund. The net funds will be distributed to Class Members through an algorithm developed by Class Counsel and administered by the Settlement Administrator. In approving this Settlement, the EEOC will determine the fairness of the entire distribution plan.

- 4. Total Settlement Amount:** The Agency's single payment of \$37,500,000 represents the total amount that the Agency is required to pay to settle this case. This sum shall settle all of the Class Claims of the Class Agents, Class Members, and Class Counsel, including claims for lost earnings, benefits and interest; emotional distress; other non-pecuniary compensatory damages; all past and future attorneys' fees and expenses; all past and future expert fees incurred by Class Counsel; all costs, fees and expenses of whatever kind associated with administering and disbursing the Settlement Fund, including, but not limited to, the fees and expenses of any Settlement Administrator that Class Counsel may elect to retain, as well as any expert fees incurred in connection with disbursing the Settlement Fund; and all amounts that represent the Agency's share of taxes and other withholdings for FICA and Medicare.
- 5. Settlement Fund Income and Losses:** Settlement Fund income shall include interest earned by the Settlement Fund pending distribution from it. Such portions of the Settlement Fund amount that are not needed immediately for payment of fees and expenses and the disbursement of awards to Class Members may be invested by the Settlement Administrator in interest-bearing United States Treasury securities and/or securities of agencies of the United States backed by the full faith and credit of the United States. Any investment losses incurred by and any

investment gains accruing to the Fund shall be shared proportionately among the Class Members.

**6. Return of Settlement Fund Money:** If, by whatever means, the Order finally approving the Settlement Agreement does not become a final order of the Commission, or if this Settlement Agreement becomes void for any reason, the Settlement Administrator shall return the entire Settlement Amount of \$37,500,000 promptly to the Agency, less reasonable fees and costs of the Settlement Administrator. Any interest earned on the \$37,500,000 shall also be paid to the Agency. Disputes as to the continued force of the Settlement Agreement shall be governed by Part VI below. Under no other conditions shall any other part of the settlement fund be returned to the Agency.

## **B. Monetary Relief – Administration and Calculation of the Fund**

**Identification of Class Members to Receive Monetary Relief:** Class Counsel and the Agency have identified the Class Members listed in Exhibit 1 to receive monetary relief and distribution of such relief. The Agency shall have no role in, nor shall it be held liable for, determining the distribution methodology, the determination of relief to be accorded each individual, or other aspects of the monetary awards process, with the exception that the Agency shall, upon request, provide to Class Counsel and/or the Settlement Administrator: (1 last known address and other contact information for Class Members; and (2 to the extent that such a request is reasonable, other information that Class Counsel and/or the Settlement Administrator reasonably determine is necessary, for use by Class Counsel and/or the Settlement Administrator in contacting Class Members or otherwise administering the Settlement Fund.

**Enhancement for Class Agents:** The Agency takes no position regarding Class Counsel's request to provide an enhancement payment to Class Agent

Meyer of two hundred and fifty thousand dollars (\$250,000, and Class Agent Gibson of one hundred and fifty thousand dollars (\$150,000.

**Prerequisite to Distribution of Monetary Relief:** No money shall be distributed from the Settlement Fund until Class Agents Doering Meyer and Ryan Gibson have executed the release attached hereto as Exhibit 5.

**Distribution Methodology:** Monetary relief shall be distributed in accordance with the methodology set forth in Exhibit 3 and the provisions of this Settlement Agreement. Each Class Member will be provided a minimum allocation of \$5,000, with additional allocations depending upon the information submitted by the Class Member to Class Counsel. Calculation and distribution of the amount due each Class Member according to the methodology set forth in Exhibit 3 shall be the responsibility of Class Counsel, in cooperation with the Settlement Administrator. To the extent the distribution methodology conflicts with the terms of the Settlement Agreement, the Settlement Agreement shall govern.

**Tax Consequences of Monetary Relief:** Compliance with all applicable federal, state, and local tax requirements shall be the sole responsibility of the Class Agents and Class Members who receive monetary relief pursuant to this Settlement Agreement. This Settlement Agreement is executed without reliance upon any representation by the Agency or Class Agents or Class Counsel as to tax consequences, and the Class Agents and Class Members who receive monetary relief are responsible for the payment of all taxes that may be associated with the settlement payments.

Neither the Agency, Class Counsel, Class Agents, nor the Settlement Administrator make any representation nor express any opinion as to the final taxability of the payments made to the Class Agents, any other Class Members, or any other recipient. The Settlement Administrator shall be responsible for withholding and paying appropriate amounts from awards for

purposes of satisfying the employer share of employment taxes, such as FICA and Medicare.

### **C. Monetary Relief – Procedures for Responding to Class Notice with Additional Information**

The Class Notice (Exhibit 2) will contain information regarding the distribution methodology, including the type of information that Class Members may provide to Class Counsel in order to support an increased allocation. Within thirty (30) calendar days from the date of the email and/or metered date stamp of the envelope containing the Class Notice, any Class Member who wishes to respond to the Class Notice by providing additional information in support of an increased allocation must email or postmark and mail the information to the Settlement Administrator at the address set forth on the Class Notice.

### **D. Injunctive Relief – Conditional Offers of Employment**

**Identification of Class Members to Receive Conditional Offer of Employment:** Class Members, except those who are ineligible as listed in Exhibit 4, will receive, as part of this Settlement, a Conditional Offer at or shortly after the Effective Date. The Agency and Class Counsel have cooperated to determine eligibility for a Conditional Offer, based upon information supplied by the Agency. Attached in Exhibit 4 is an anonymized list of Class Members that includes information regarding whether each individual will receive a Conditional Offer and, if not, why not. The Class Notice will include information that will allow the recipient to identify the entry in Exhibit 4 that relates to the recipient so that each will know if a Conditional Offer will be extended and, if not, why not.

**Conditional Offer Does Not Guarantee Employment:** Receipt of a Conditional Offer does not guarantee employment as it is an offer to be placed on the Register and is subject to contingencies including receipt of a security clearance, being found suitable for employment with the Foreign



Service, and meeting a revised medical qualification standard described in Part IV(E)1 of this Settlement Agreement. Subsequent placement on the Register is not a guarantee of employment, either, as the Register is a rank ordered list of applicants from which the Agency selects candidates for hire. Hiring targets change from year to year based upon appropriated funding, attrition, and other factors. An applicant's position on the Register is dynamic and changes when applicants who have a higher score are placed on the Register. Applicants remain on the Register for a period of eighteen (18) months and their candidacy for hire terminates if they are not selected for hire within that period.

Reconsideration of Determination Regarding Eligibility for a Conditional Offer:

An individual who is identified as ineligible for a Conditional Offer may request reconsideration by submitting a Request for Reconsideration Regarding Conditional Offer Form, attached hereto as Exhibit 8, to Class Counsel no later than thirty (30) days after the date of issuance of the Class Notice. Class Counsel will expeditiously transmit any such request, along with all documents received in conjunction with such a request, to the Agency. The decision regarding whether to reconsider a determination regarding ineligibility for a Conditional Offer will be made solely by the Agency. The decision of the Agency will be final and binding.

## **E. Equitable Relief – Policy Change**

**1. Redefinition of Worldwide Availability:** As of the date of execution of this Settlement Agreement, the Agency requires that, absent a waiver, applicants for career Foreign Service positions receive a Class 1 medical clearance, also known as a "Worldwide Available" medical clearance, which is issued to individuals who have no identifiable medical condition that may impact their ability to serve abroad (3 FAM 1900; 16 FAM 200. No later than the Effective Date, the Agency will cease requiring that applicants for career Foreign Service positions receive a Class 1 medical

clearance (as defined on the date of execution of this Settlement Agreement, thereby reinterpreting “Worldwide Availability.” Instead, applicants for career Foreign Service positions will be required to meet the following medical qualification standard, in accordance with the procedures described in Part IV(E(2):

**a. Generalists and Specialists, except Medical Specialists:**

medically cleared to serve at all designated Regional Medical Evacuation Centers. As of the date of execution of this Settlement Agreement, the designated Regional Medical Evacuation Centers are Bangkok, London, Pretoria, and Singapore. The parties understand that the Agency may revise the list of designated Regional Medical Evacuation Centers as conditions may require.

**b. Regional Medical Officers (RMO):** medically cleared to serve at all designated Regional Medical Evacuation Centers plus—from a list of the sixteen most medically austere posts where at least one first- and second-tour RMOs has been assigned in recent years—two posts in the Bureau of African Affairs (AF, one post in the Bureau of Near Eastern Affairs (NEA, and one post in the Bureau of South and Central Asian Affairs (SCA. The determination regarding the sixteen most medically austere posts where at least one first- and second-tour RMOs has been assigned in recent years will be made solely by the Agency.

**c. Regional Medical Officer – Psychiatrist (RMO-P):** medically cleared to serve at all designated Regional Medical Evacuation Centers. In addition, medically cleared to serve in Accra, Cairo, Dakar, Istanbul, and Jakarta (collectively referred to as supplemental posts. The Agency may replace one or more of the supplemental posts should there be a material change in the Agency’s need to staff RMO-Ps at any of those locations.

- d. **Medical Provider (MP):** medically cleared to serve at all designated Regional Medical Evacuation Centers plus at one of the medically austere posts per region where at least one entry-level MP has been assigned within the last five years. The determination regarding which posts qualify as the medically austere posts at which at least one entry-level MP has been assigned in the last five years will be made solely by the Agency.
- e. **Regional Medical Laboratory Scientists (RMLS):** medically cleared to serve at all designated Regional Medical Evacuation Centers. In addition, medically cleared to serve in Abidjan, Addis Ababa, Cairo, Dakar, and Jakarta (collectively referred to as supplemental posts. The Agency may replace one or more of the supplemental posts should there be a material change in the Agency's need to staff RMLS's at any of those locations.

2. **Revisions to the Pre-Employment Medical Examination Process:** No later than the Effective Date, the Agency will modify its pre-employment medical examination policy and process as follows:

- a. **Applicants Must Undergo a Pre-Employment Medical Examination:** As required by Department policy set forth in 16 FAM 212(a, as of the date of execution of this Settlement Agreement, all career Foreign Service applicants who have received a Conditional Offer must undergo a pre-employment medical examination. The results of that examination must be documented on Form DS-1843 and be forwarded to the Agency's Bureau of Medical Services (MED for review.
- b. **Applicants with no Identifiable Medical Condition:** If, upon review of the DS-1843, MED determines that the applicant does not have an identifiable medical condition that may impact their ability to serve abroad, the applicant has satisfied the pre-employment

medical requirement and will not be subject to further assessment pursuant to the medical qualification standard set forth in Part IV(E)(1 of this Settlement Agreement. Their application will proceed in the hiring process.

- c. **Applicants with an Identifiable Medical Condition:** If, upon review of the DS-1843, MED determines that the applicant does have an identifiable medical condition that may impact their ability to serve abroad, the applicant will be subject to further assessment pursuant to the medical qualification standard set forth in Part IV(E)(1 of this Settlement Agreement. If MED determines that the applicant meets the applicable medical qualification standard, their application will proceed in the hiring process.

If MED determines that the applicant does not meets the applicable medical qualification standard without a reasonable accommodation, the applicant will be referred to the Bureau of Global Talent Management, Office of Accessibility and Accommodations (GTM/OAA, to engage in an interactive process with the applicant and their medical provider in order to assess whether the applicant is able to meet the applicable medical qualification standard with a reasonable accommodation. A final determination regarding whether the applicant can meet the applicable medical qualification standard will be made by the Director General (or their designate, in consultation with MED and GTM/OAA.

- 3. **No Change to Directed Assignment Policy for Entry-Level Career Candidates:** This Settlement Agreement contemplates no change to the Agency's policy as of the date of execution of this Settlement Agreement, set forth in 3 FAH-1 H-2425.8-6(b, which provides that "an employee's first two assignments will generally be to overseas posts except as Service need dictates. GTM/CDA directs, on behalf of the DG, the first, and in

most cases, the second assignments. Employees may not appeal these assignments.”

- 4. No Change to 8 Year Rule:** This Settlement Agreement contemplates no change to the Agency’s policy as of the date of execution of this Settlement Agreement, set forth in 3 FAM 2424.2, relating to Foreign Service Assignments: “Foreign Service employees are expected to serve abroad for a substantial portion of their careers in the Foreign Service. They may not serve continuously in the United States for more than eight years (by law, 22 U.S.C. 3984 without an extension granted by the Director General.
- 5. Periodic Assessment:** The intent of the Agency is to maintain the policy described in Part IV(E of this Settlement Agreement so long as the policy described in Part IV(E remains in compliance with law and so long as such policy allows the Agency to meet the needs of the Foreign Service. In an effort to assess the viability of the policy change proposed herein, the Agency will periodically assess the impact of the policy on the Agency’s ability to meet the needs of the Foreign Service. Should the Agency determine, during the Monitoring and Assessment Period, that modifications to the policy described in Part IV(E of this Settlement Agreement are necessary to meet the needs of the Foreign Service, it will provide Class Counsel with notice regarding any proposed modifications to the policy. The Agency and Class Counsel will cooperate to address any concerns of the Class and will endeavor to submit a jointly filed notification to the Administrative Judge regarding the Agency’s policy modification.

If, after 14 days of negotiation, the Parties are unable to agree on a policy modification, the Parties may appoint a mutually-agreed upon mediator, who is not employed by and is otherwise not under contract with the Agency or any Class member to serve as the mediator. If the Parties are unable to reach an agreement regarding the Agency’s policy modification

after 14 days of negotiation or through mediation (if pursued, the Agency will file a motion for approval of the policy modification with the Administrative Judge, indicating that the Agency's proposed modification is opposed by the Class.

## V. ASSESSMENT AND MONITORING

- A. Assessment and Monitoring Period:** Class Counsel will monitor compliance with the Settlement Agreement for five years, beginning on the Effective Date, in accordance with the procedures set forth in Part V(B).
- B. Periodic Reporting:** The Agency will provide periodic compliance reports to Class Counsel and the Administrative Judge. The first report will be provided no later than 120 days after the Effective Date. Thereafter, the Agency will submit semiannual reports through the first half of 2028.
- 1. Content of Compliance Reports:** The Agency's compliance report will summarize the Agency's efforts to implement the Settlement Agreement. The report will describe all efforts made in the implementation of the policy changes described in Part IV(E) of this Agreement. Included in each report will be information regarding the hiring status of Class Members given a Conditional Offer through the terms of this Settlement Agreement, including whether the Conditional Offers made have been accepted, whether the individuals have entered-on-duty, and if not, why not. Compliance reports will also provide the following information regarding applicants for career Foreign Service positions (other than Class Members with the Agency who are denied hire because they do not meet the revised medical qualifications standard described in Part IV(E)(1) of this Settlement Agreement: (1) MED patient identification number; (2) brief description of the basis for concluding that the individual did not meet the applicable medical qualification standard; and (3) anonymized information regarding any informal or formal

complaints of discrimination filed with the Agency's Office of Civil Rights alleging discriminatory non-hire based upon the qualification standard described in Part IV(E)(1 of this Settlement Agreement.

2. **Notification During Monitoring Period:** Through the first half of 2028, an individual whose hire is denied as a result of inability to meet the medical qualifications standard described in Part IV(E)(1 of this Settlement Agreement will receive a notification containing a copy of the Agency's current policy regarding medical qualification for career Foreign Service positions (*i.e.*, encompassing the new policies described in Part IV(E of this Agreement, information regarding how to file a complaint of discrimination with the Agency's Office of Civil Rights and the deadline for doing so.

## VI. ENFORCEMENT

Enforcement of this Settlement Agreement will be consistent with 29 C.F.R. § 1614.504, subject to the jurisdictional restriction set forth in Part II(B).

## VII. APPLICABLE CONTRACT PRINCIPLES

- A. **Counterparts:** This Settlement Agreement may be executed in several counterparts and on multiple signature pages by one or more of the undersigned and all such counterparts so executed shall together be deemed and constitute one final agreement, as if one document had been signed by all Parties hereto; and each such counterpart shall be deemed an original, binding the Parties subscribed hereto; and multiple signature pages affixed to a single copy of this Settlement Agreement shall be deemed to be a fully executed original Settlement Agreement.
- B. **Headings:** The headings in this 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 this Settlement Agreement.

**C. Computation of Time:**

1. All time periods in this Settlement Agreement that are stated in terms of days are calendar days.
2. Unless otherwise specified in this Settlement Agreement, a document shall be deemed timely if it is received, postmarked, or bears a similar verification of delivery before the expiration of the applicable period, or in the absence of a legible postmark, if it is received by mail within five days of the expiration of the applicable period.
3. The first day counted shall be the day after the event from which the time period begins to run and the last day of the period shall be included, unless the last day falls on a Saturday, Sunday, or Federal holiday, in which case the period shall be extended to include the next business day.

**D. Entire Agreement:** This Settlement Agreement, including Exhibits, comprises the full and exclusive agreement and understanding of the Parties with respect to this settlement, and supersedes all prior written or oral agreements. No representations or inducements to compromise this action have been made, other than those recited in this Settlement Agreement. This Settlement Agreement does not impose any obligations on the Parties beyond the terms and conditions stated herein. Accordingly, this Settlement Agreement shall not prevent or preclude the Agency from revising its policies or taking other personnel actions during the term of the Settlement Agreement that do not violate the requirements of the Settlement Agreement.

**E. Severability of Terms:** In the event that any covenant, condition, or other provision contained in this Agreement is held to be invalid, void, or illegal, the same shall be deemed severable from this Agreement, and the remainder of this Agreement shall remain in full force and effect.



- F. No Waiver:** The waiver by any Party of any term, condition, covenant, or representation of this 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, covenant, or representation. The failure by any Party at any time to enforce, or require performance of, any provision of this Settlement Agreement shall not operate as a waiver of or limit such party's right at a later time to enforce or require performance of such provisions or of any other provisions of this Settlement Agreement, subject to the limits of EEOC's jurisdiction.
- G. Modifications:** This Settlement Agreement, excluding the exhibits thereto, may not be amended or modified except with the express, prior written consent of the Agency and Class Counsel and the approval of the Administrative Judge. Exhibits to this Settlement Agreement may be modified with the express, prior written consent of the Agency and Class Counsel.
- H. Construction of Terms:** The Parties have cooperated in the preparation of this Settlement Agreement, and, in any construction to be made by this Agreement, ambiguity shall not be construed presumptively against either party.
- I. No Third Party Rights:** This Settlement Agreement is not intended to, and does not, create any claims for relief or third party beneficiary rights in employees of the Agency or any other person, groups or entities (except for Class Members).
- J. Governing Law:** The parties agree that the validity, construction, and enforcement of this Settlement Agreement shall be governed by federal law.
- K. Binding Agreement:** This Settlement Agreement is binding on all Parties and their successors, assigns, representatives, and trustees.

**Signed By:**

**Bryan Schwartz**

Date Signed: Dec 12, 2022

Bryan Schwartz Law

Attorneys for Class Agents

**Doering Meyer**

Date Signed: Dec 12, 2022

On behalf of herself and the Class

**Ryan Gibson**

Date Signed: Dec 12, 2022

On behalf of himself and the Class

**John R. Bass**

Date Signed: Dec 12, 2022

Department of State

Under Secretary for Management

## Exhibits

1. Class List
2. Class Notice
3. Methodology for Allocation and Distribution of Claims
4. Equitable Relief – Class Member Eligibility for Conditional Offers
5. General Release – Class Agents
6. Consent Protective Order
7. Agreement to Mediate
8. Request for Reconsideration Regarding Conditional Offer Form