

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

ROBERT WRIGHT, et al.,                   :  
  :  
Plaintiffs,                                 :  
  :  
vs.   :  
  :  
HENRY STERN, et al.,                   :  
  :  
Defendants.                                 :

No. 01-CV-4437 (DC)

**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT  
AND FAIRNESS HEARING**

**TO: ALL AFRICAN-AMERICAN AND HISPANIC NYC PARKS DEPARTMENT  
EMPLOYEES WHO WERE EMPLOYED ON A FULL-TIME BASIS AT ANY TIME  
BETWEEN MAY 24, 1997 AND JUNE 30, 2004:**

**You are a Class Member in *Wright v. Stern*, a class action lawsuit alleging race and national origin discrimination against the New York City Department of Parks & Recreation.**

**The plaintiffs and the defendants have reached a settlement of this class action. This Notice provides important information to you as a member of the Class.**

- **Please read this Notice very carefully.**
- **The City has agreed to the payment of nearly \$12 million to Class Members who meet certain eligibility requirements established in the settlement. You may be eligible to receive money from the settlement of this lawsuit. Later in this Notice, you will be informed as to whether or not you are eligible for such an award, and if you are eligible, this Notice includes a preliminary estimate of the amount of that award.**
- **The City has also agreed to make changes in certain personnel practices at the Parks Department, including, among others, promotion and pay practices, training and employee counseling.**
- **Your legal rights may be affected by this lawsuit.**
- **You also have the right to remove yourself from (or "opt out of") this settlement.**

## **I. INTRODUCTION**

### **What Is the Settlement About?**

This lawsuit alleged race, color and national origin discrimination by New York City in its promotion and pay practices at the Parks Department as well as unlawful retaliation against Class Members who filed complaints of race, color and national origin discrimination. The named plaintiffs and class counsel have litigated this matter for more than 9 years and recently negotiated a settlement. The terms of the settlement are set forth in a proposed Stipulation and Order and are summarized below. The Court has granted preliminary approval of the settlement and will conduct a hearing on **May 12, 2008** to determine whether this settlement is fair to the Class as a whole before the Stipulation and Order becomes final and its terms can be enforced.

## **II. HISTORY OF THE CASE**

### **How Did This Case Get Started?**

Beginning in March 1999, the named plaintiffs and several other African-American and Hispanic Parks' employees filed charges of discrimination with the United States Equal Employment Opportunity Commission ("EEOC").

This lawsuit was filed on May 24, 2001. Plaintiffs alleged violations of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-5, *et seq.* ("Title VII"), the Civil Rights Act of 1866 (42 U.S.C. § 1981), the Civil Rights Act of 1871 (42 U.S.C. § 1983) and the New York State and New York City Human Rights Laws. On June 19, 2002, the United States filed its own lawsuit against the City which was settled by entry of a Consent Decree on June 8, 2005.

The Court certified a class consisting of all present and former African-American and Hispanic employees employed on a fulltime basis since May 24, 1997 in an Order dated July 7, 2003.

Pretrial preparation was extensive. Nearly one hundred depositions were taken, and tens of thousands of documents were exchanged. The parties began mediation efforts before the Hon. Kathleen A. Roberts (Ret.) in December 2006. Those efforts continued until an agreement was reached in late January 2008.

### **What about the Justice Department Lawsuit?**

The United States filed a separate lawsuit against the New York City Parks Department, and that case was settled in 2005. This lawsuit, filed by eleven named plaintiffs, is separate from the lawsuit filed by the United States.

## **III. DEFINITION OF THE CLASS AND EFFECT OF THE SETTLEMENT**

### **Who is In the Class?**

The Class is defined to include all African-American and Hispanic individuals employed on a full-time basis by the New York City Parks Department for some time between May 24, 1997 and June 30, 2004 excepting those employees excluded from the class by the Court's Order of November 7, 2003.

Parks employees who were employed on a seasonal basis are not included in the class,

and are not eligible to receive any benefits under this settlement. Only year-round employees are included in the class.

### **How Does This Settlement Affect Your Rights?**

If you choose to remain in the Class and you meet eligibility requirements for one or more of the funds created by the settlement, you will receive a payment based on the distribution formulas established in the Stipulation & Order. In order to receive any money from this settlement, you also will need to sign a release giving up any rights you may have to bring an individual lawsuit against the defendants for claims against the City of New York arising out of your employment at any time between May 24, 1997 and the date of the Court's preliminary approval of the agreement (February 26, 2008).

## **IV. WHAT CAN YOU RECEIVE AS A CLASS MEMBER?**

If you are a Class Member and you remain in this lawsuit, you may be eligible to receive money under the settlement. Three different monetary funds are created for Class Members—a promotion fund, a pay (or compensation) fund, and a retaliation fund. Specific criteria must be met in order to recover from each of these funds. Not all Class Members will receive an award under the settlement. The Stipulation & Order sets out those eligibility criteria in detail, and you can access a copy of that document at [www.naacpldf.org](http://www.naacpldf.org).

### **What are the eligibility requirements for the promotion fund?**

Briefly, in order to recover from the promotion fund, a Class Member needs to have worked at Parks for at least two years prior to June 30, 2004, and at least six months of that experience has to have been between May 24, 1997 and June 30, 2004. A Class Member cannot have received two or more wage promotions (as defined in the Stipulation & Order) and still recover a share of the promotion fund.<sup>1</sup> All persons eligible for the promotion fund will receive an equal share of the fund.

### **What are the eligibility requirements for the pay fund?**

In order to recover from the pay fund, a Class Member needs to have been shown, in the analysis conducted by plaintiffs' labor economist for use in this case, to have experienced losses in pay compared to Caucasian employees in the same job title, taking into account length of time in the job title, length of employment at Parks, and length of employment with the City. Class Members eligible for a share of this Fund will receive an amount proportionate to what their Estimated Losses are to the Total Estimated Losses of all Class Members who were shown to have losses in the pay analysis. If the analysis by plaintiffs' labor economist does not show an estimated loss for a Class Member, the Class Member is not eligible to recover a share of this Fund.

The pay analysis included only job titles that were not flat-rate titles. Flat-rate titles are those with limited or no discretion in the setting of pay rates, such as City Park Worker, Associate Park Service Worker, Park Supervisor, Principal Park Supervisor and SPMO. Pay differences experienced in flat rate job titles do not provide the basis for an award under the pay fund.

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<sup>1</sup> The lawsuit did not challenge promotions that occurred as a result of the administration of Civil Service examinations, and therefore, any promotions received as a result of a Civil Service exam are not counted in the eligibility formula.

### **What are the eligibility requirements for the retaliation fund?**

In order to recover from the retaliation fund, a Class Member needs to have filed a charge of race, national origin, or color discrimination against the NYC Parks Department, between January 1, 1997 and the Preliminary Approval Date, February 26, 2008. A Class Member may also recover if, during the same time period, the Class Member filed a charge of retaliation based upon a charge of race, national origin or color discrimination. For Class Members who filed a charge of race, national origin or color discrimination, but not a retaliation claim, they will be eligible only if they believe they experienced retaliation as a result of filing the discrimination charge.

### **What are Service Awards?**

Additionally, the Stipulation & Order provides that each of the eleven named plaintiffs will receive an award of \$50,000 in compensation for their having served as named plaintiffs in this action and for the service they have provided to the class through the pursuit of this lawsuit. This service included the plaintiffs' filing EEOC charges, assisting in the preparation of the lawsuit and the investigation of facts necessary for its prosecution, having their depositions taken on two different days, providing affidavits and other factual support concerning the Motion to Certify the Class and the Plaintiffs' Opposition to the Defendants' Motion for Summary Judgment, assisting in the lengthy mediation process, including attending mediation sessions and advising Class Counsel on various matters important to the negotiation, and the participation in numerous meetings and phone calls with Class Counsel over the course of the period from March, 1999 through November, 2007.

### **Are you eligible for an award under the Settlement?**

---The Claims Administrator will mail to each Class Member information as to whether or not they are eligible for an award, and if so, an estimate of the amount of the total award. It is anticipated that those notices will be mailed in the next 30-45 days.

### **What Do You Have to Do to Receive an Award If You Meet The Eligibility Requirements?**

If you wish to remain a Class Member, you do not need to do anything at this time. If the Court gives final approval to the settlement agreement, Class Members eligible for an award will receive a notice from the Claims Administrator that includes the Release that you will need to fill out and sign, and return to the Claims Administrator. If you do not sign the Release and return it to the Claims Administrator in a timely manner, you will not receive your award.

If you are a Class Member and you remain in the lawsuit, and the Court approves the Stipulation and Order, you will be bound by all the terms of the Stipulation and Order. This means that you will not be able to bring your own separate lawsuit or other legal proceeding regarding the claims covered in this lawsuit. The Release that you will sign in order to recover an award in this case effectively bars you from filing or continuing any lawsuits alleging race, color or national origin discrimination against the defendants that arose between May 24, 1997 and the Preliminary Approval Date of this Stipulation and Order, which is February 26, 2008, or claims of unlawful retaliation that arose during that time period. You will not be prevented from filing a lawsuit for any claims of discrimination that

arise after the Preliminary Approval Date of February 26, 2008.

**What effect, if any, will these awards have upon pension benefits?**

The back pay awards made in this case may have an effect on pension benefits for some employees and former employees. The precise effect will vary from individual to individual. Payments for compensatory damages, interest and service awards will have no effect upon pension benefits.

**V. WHAT CHANGES IN PERSONNEL PROCEDURES AND PRACTICES ARE PROVIDED IN THE SETTLEMENT?**

The City has agreed to make a number of changes to personnel practices at the Department of Parks & Recreation. Those changes include the following:

- Changes in the interview process used to fill vacancies in certain job titles;
- Reviews of the promotions made to certain job titles to determine whether African-American and Hispanic employees are promoted to those titles at rates similar to the promotion rate of Caucasian applicants;
- Reviews of pay disparities for persons holding the same job title and performing similar duties to determine whether those disparities are explained by non-discriminatory factors;
- Establishment of a training program for persons interested in becoming future managers at Parks;
- Adjustment of salaries for certain recreation titles.

**How Will the Plaintiffs Ensure that the City of New York Complies With the Settlement?**

- To ensure the City of New York's compliance with the settlement agreement, the Stipulation & Order will be adopted as an Order of the Court and enforced as such. The Court will retain oversight over certain portions of the Stipulation and Order until December 31, 2009, and other portions for a three year period beginning from the date of final Court approval of the settlement.

- The City of New York will provide Class Counsel with data about various personnel actions and other types of information that will permit Class Counsel to determine whether the City is complying with the terms of the Stipulation and Order.

**VI. WHAT HAPPENS NEXT?**

**A. What is the Fairness Hearing?**

There will be a hearing to assist the Court in determining whether the terms of the Stipulation and Order are fair to the Class as a whole and whether it should be approved by the Court. This hearing is called a "Fairness Hearing," and will be held at the United States District Courthouse, 500 Pearl Street, New York City, N.Y. 10007-1312, on **May 12, 2008** at **10:00 A.M.**, in the Courtroom 11A of U.S. District Judge Denny Chin.

## **VII. YOU HAVE THE RIGHT TO EITHER OBJECT TO THE SETTLEMENT OR TO OPT OUT OF THIS CLASS ACTION**

### **What if You Wish to Object to the Settlement?**

Any Class Member who wishes to object to the terms of this settlement must submit a written statement of any objections to the Court, with copies to counsel for both parties. (Addresses for counsel are found in the full Stipulation & Order.) This statement must be submitted on or before **May 2, 2008**. The statement must contain the Class Member's name, address, and telephone number, along with a statement of his or her objection(s) to the Stipulation & Order and the reason(s) for any objection(s), and whether the class member wishes to speak at the Fairness Hearing.

Any attorney retained by an individual Class Member (at his/her own expense) to submit objections and/or appear at the Fairness Hearing on the class member's behalf must, not later than **May 2, 2008**, identify him/herself in writing to the Court, submit in writing any objections, and (if applicable) indicate his or her desire to speak at the Fairness Hearing, with copies to counsel for both parties. Objections raised at the Fairness Hearing shall be limited to those matters addressed in timely written objections.

### **What if You Want to Get Out of This Class Action?**

Under the Stipulation and Order, you have the choice of deciding whether or not to remain in the lawsuit.

If you are a Class Member and you do not want to be a part of this lawsuit, you may exclude yourself from the lawsuit by filing a written "opt-out" statement with the Court, stating that you request not to be a part of this Class.

If you opt-out of this lawsuit:

- You will have no right to receive any money under this settlement;
- You will not be bound by the monetary settlement in this lawsuit; and
- You may bring your own individual lawsuit or other legal proceeding against the City of New York, with your own attorney and at your own expense.

If you opt out of this lawsuit and bring a separate lawsuit or other legal proceeding:

- You may lose your case and receive nothing;
- It may take several years to obtain any money or other relief, if you receive any relief at all;
- You may have to pay your own attorneys' fees and the costs of litigation;
- You may obtain less money than you can get under this settlement.

### **How do You Opt-Out?**

To opt out of this lawsuit, on a separate sheet of paper you must type or print in your

own handwriting your full name, social security number, and the following opt-out statement:

"I am a Class Member in the lawsuit of *Wright et al v. Stern, et al.* I understand that in choosing to opt out of the Class and settlement in this case, I will not be entitled to any money under the settlement. I also understand that if I file a separate lawsuit or other legal proceeding:

- I may lose my case and receive nothing;
- It may take several years to obtain any money or other relief, if I receive any relief at all;
- I may have to pay my own attorneys' fees and the costs of litigation;
- I may obtain less money than I can get under this settlement;
- I also understand that, if the Court approves the settlement, Class Members who do not opt-out may be eligible to receive a monetary payment under the settlement. I still choose to opt out and to be excluded from the settlement."

**After typing or hand-writing this statement, you must sign and date it and mail it to the Claims Administrator, P.O. Box 10847, Tallahassee, Florida 32302-2847, no later than May 2, 2008.**

**If you fail to do so within the time provided, you will not be permitted to opt-out.**

## **VIII. CLASS REPRESENTATIVES, CLASS COUNSEL AND CLAIMS ADMINISTRATOR**

### **Who Are the Class Representatives?**

The following persons are the Class Representatives: Robert Wright, Kathleen Walker, Henry Roman, Elizabeth Rogers, David Ray, Odessa Portlette, Paula Loving, Angelo Colon, Jacqueline Brown, Walter Beach III, and Carrie Anderson.

### **Who Are the Attorneys Representing the Class?**

The following attorneys are designated as counsel for the Class:

- Cynthia Rollings, Beldock Levine & Hoffman, LLP, 99 Park Ave., New York, N.Y. 10016;
- Lewis Steel, 3 Park Ave., New York, NY 10016, and
- Robert H. Stroup, NAACP Legal Defense and Educational Fund, Inc., 99 Hudson St., Suite 1600, New York, N.Y. 10013.

### **Who is Paying the Attorneys' Fees & Litigation Expenses of Class Counsel?**

You will not pay any of the attorneys' fees and expenses of the attorneys representing the class. (If you hire your own attorney to represent you concerning this settlement,

however, you will need to pay those fees and expenses). The parties have agreed to an award of \$8 million in fees, and \$999,999.79 in expenses. These amounts were negotiated after agreement was reached on all other terms of the settlement. The request for attorneys' fees was based upon the actual number of hours that plaintiffs' attorneys devoted to the case, and the request for expenses was based upon actual costs incurred during the lengthy litigation. The amounts the City has agreed to pay are compromises, with the City agreeing to pay less than the plaintiffs requested. The Court will consider the fairness of these amounts as part of its review of the fairness of the entire settlement.

### **Who Is Responsible for Administering the Settlement and Distributing Money?**

A Claims Administrator has been selected to assist in the administration and distribution of the compensatory damages and interest payable under the Stipulation & Order. The City of New York will pay the back pay amounts.

## **IX. ADDITIONAL INFORMATION**

### **Where and How Do You Get More Information About the Settlement?**

If you have any questions or need additional information about this Notice or the proposed Stipulation & Order, you may seek assistance in the following ways:

If you have procedural questions about the claims process, you may call the Claims Administrator, P.O. Box 10847, Tallahassee, Florida 32302-2847 at 1-866-854-6041.

For more information about the class action and the proposed Stipulation & Order, you may also review information available at [www.naacpldf.org](http://www.naacpldf.org).

Because you are represented by Class Counsel in this matter, City of New York employees and counsel cannot answer any questions you may have about whether or not to participate in the settlement, so you should not direct any such questions to them.

### **Where and How Can You Get A Full Copy of the Settlement?**

This Notice contains only a summary of the proposed Consent Decree. The full terms of the settlement are set forth in the Stipulation & Order with accompanying exhibits, which may be examined on-line at [www.naacpldf.org](http://www.naacpldf.org). Class Members without access to the internet may be able to review these documents on-line at locations such as the local public library.

### **What if a Class Member is No Longer Living?**

If a Class Member is no longer living, the authorized legal representative of a Class Member may obtain a recovery on behalf of the estate or heirs of the Class Member so long as the Class Member would have been eligible for an award if living. The authorized legal representative (or other representative of the heirs of the deceased Class Member if no legal representative has been appointed) should contact the Claims Administrator upon receipt of this notice to advise the Claims Administrator that the Class Member is no longer living and to receive other information about how to obtain an award. The address and phone number for the Claims Administrator is set out at the bottom of this Notice.

### **What if you were mistakenly identified as a Class Member?**

If you received this Notice by mistake, that is, you are not an African-American or



Hispanic individual employed on a full-time basis by the New York City Parks Department at some time between May 24, 1997 and June 30, 2004, please call the Claims Administrator and state that you believe you were mistakenly identified as a Class Member and the reason why you believe it was a mistake.

**What if you know someone who was a full-time employee between May 24, 1997 and June 30, 2004, but did not receive this Notice?**

If you know someone who you believe is a Class Member, but he or she did not get this Notice, please ask that person to call the Claims Administrator to provide their name and address and why they think they are a Class Member.

**X. ADDRESS CHANGES**

**How and What Can You Do to Make Sure The Claims Administrator Has Your Correct Address?**

If you change your address or telephone number before the final payout of monetary awards, you must notify the Claims Administrator of your new address or telephone number as soon as possible. Failure to keep the Claims Administrator informed of your address and telephone number may result in the loss of any monetary award you are eligible to receive. Please send new contact information to the Claims Administrator at the address listed below and include your old address, new address, new telephone number, date of birth and last four digits of your Social Security number. The address of the Claims Administrator is Claims Administrator, P.O. Box 10847, Tallahassee, Florida 32302-2847. The phone number for the Claims Administrator is 1-866-854-6041.

**BY ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK**

Dated: \_\_\_\_\_

\_\_\_\_\_  
DENNY CHIN,  
United States District Judge