UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DAVIS, *et al.*, individually and on behalf of all others similarly situated, Plaintiffs, - vs - EASTMAN KODAK COMPANY, Defendant.	**Civil Action No. 6:04-CV-06098-CJS(F)** **MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF THE SETTLEMENT AGREEMENT**
ALSTON, *et al.*, individually and on behalf of all others similarly situated, Plaintiffs, - vs - EASTMAN KODAK COMPANY, Defendant.	**Civil Action No. 07-CV-6512** **MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF THE SETTLEMENT AGREEMENT**

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I. INTRODUCTION

Plaintiff Employees Committed for Justice ("ECJ"), an organization of African American current and former employees of Defendant Eastman Kodak Company ("Defendant" or "Kodak"), and individual Plaintiffs Courtney Davis, Cynthia Gayden, Robert Gibson, Jannie Nesmith, Noralean Pringle, Maria Scott, Victor Smith, Edna Williams, Gladys Alston, Thomas Gainey and Carrie Rice, as representatives of the proposed settlement class described herein, and Olin Singletary (estate of Olin Singletary) (collectively, the "Plaintiffs"), on behalf of themselves and all others similarly situated, through their undersigned counsel, respectfully submit this Memorandum of Law in support of their Motion for Preliminary Approval of the Settlement Agreement the parties have agreed to in the above-captioned litigation.

In these cases, Plaintiffs alleged that Kodak discriminated against African American employees in their employment, including with respect to pay, promotions, performance appraisals, initial job assignments, and layoffs, the creation of a racially hostile work environment and retaliation when African American employees complained about racial discrimination. In February 2008, the parties began settlement discussions and engaged in mediation with an experienced mediator, Eric D. Green of Resolutions, LLC (www.resolutionsllc.com), that ultimately led to the agreement reflected in the parties' Settlement Agreement (the "Settlement Agreement" or "Agreement").[1] The parties reached this Agreement only after months of negotiations and almost five years of contested litigation, which included extensive discovery.

The Court should preliminarily approve the Settlement and allow notice to be sent to the proposed class because the Settlement is "'sufficiently fair, reasonable and adequate to justify

[1] The Settlement Agreement is attached hereto as Exhibit 1 and cited throughout this Memorandum as "Agreement at ¶ __."

notice to those affected and an opportunity to be heard.'" In re NASDAQ Mkt.-Makers Antitrust Litig., MDL No. 1023, 1997 U.S. Dist. LEXIS 20835, at *24 (S.D.N.Y. Dec. 31, 1997) ("NASDAQ I") (citation omitted); see also Bonnette v. Rochester Gas & Electric Co., No. 6:07-cv-06635-MAT (J. Telesca) (February 11, 2008 Order preliminarily approving the settlement agreement) (attached hereto as Exhibit 4). The Settlement Agreement creates a settlement fund of $21,376,500.00 and ensures certain non-economic relief to class members, including programmatic relief at Kodak that will benefit all employees. The Settlement Agreement was negotiated at arm's length with the assistance of an experienced mediator by experienced counsel with all parties having the benefit of extensive discovery in this case. Given the risk, uncertainty, and expense of continued litigation through a decision on Plaintiffs' Motion for Class Certification, as well as summary judgment, trial and appeals, the proposed Settlement Agreement justifies sending notice to the proposed class members.

Accordingly, Plaintiffs respectfully request that the Court grant preliminary approval of the Settlement Agreement, direct distribution of the Notice of Class Action Settlement,[2] and approve the proposed schedule for final approval. Plaintiffs further request that in connection with the settlement process, the Court grant preliminary certification of the following proposed settlement class pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure:

> All African-American individuals employed by Kodak in the United States for at least one day between January 1, 1999 and May 18, 2006 (the "Class"), excluding interns/co-ops, individuals who were officers or executives, and excluding individuals who previously entered into individual releases (other than or in addition to TAP or ADR releases) as part of individual settlement agreements with Kodak (the "Class").[3]

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[2] The proposed Notice of Class Action Settlement is attached as Exhibit C to the Settlement Agreement.

[3] A list of all Class Members has already been ascertained and agreed to by the parties and is attached as Exhibit A to the Settlement Agreement.

Pursuant to Rule 23(g) of the Federal Rules of Civil Procedure, Plaintiffs request that the Court appoint as Class Counsel, Shanon J. Carson, Esq. of Berger & Montague, P.C., and Bruce E. Gerstein, Esq. and Jan Bartelli, Esq. of Garwin Gerstein & Fisher, LLP.[4] *See* Exhibit 4 (Order of this Court appointing Mr. Carson, Mr. Gerstein and Ms. Bartelli as Class Counsel in another race discrimination class action).

II. PROCEDURAL HISTORY AND THE SETTLEMENT NEGOTIATIONS

In the late 1990s, certain African American employees of Kodak filed charges of discrimination against Kodak with the United States Equal Employment Opportunity Commission (the "EEOC"), and the New York Division of Human Rights. On July 30, 2004, Plaintiffs in *Davis, et al. v. Eastman Kodak Company*, Civil Action No. 6:04-cv-06098, including Employees Committed for Justice (the "ECJ"), an organization of African American current and former employees of Kodak, and individual Plaintiffs Courtney Davis, Cynthia Gayden, Robert Gibson, Jannie Nesmith, Noralean Pringle, Maria Scott, Victor Smith, Edna Williams, and Olin Singletary (now deceased), filed class action allegations against Kodak in the United States District Court for the Western District of New York.

Thereafter, the parties began conducting discovery, and the parties exchanged and responded to written discovery requests, including interrogatories and requests for production. Kodak produced hundreds of thousands of pages of documents as well as human resource data, and the parties retained expert labor economists and statisticians to analyze the information provided. Collectively, the parties and third party witnesses in this case produced and reviewed 610,138 pages of documents. The Parties also took or defended fifty-six depositions that took seventy-six days to complete. The Court also permitted the parties to engage in extensive expert

[4] The resumes of Berger & Montague, P.C. and Garwin, Gerstein & Fisher LLP are attached as Exhibits 2 and 3 hereto, respectively.

discovery including depositions of all of the expert witnesses retained by both sides. On July 20, 2007, Plaintiffs served their Motion for Class Certification. On February 5, 2008, Kodak served its opposition to the Motion for Class Certification. The Court then permitted the parties to engage in extensive expert discovery including depositions of all of the expert witnesses retained by both sides. The Court is well familiar with the voluminous discovery taken with respect to the expert witnesses and the various motions to strike filed by the parties, which also remain pending with the Court.

After discovery, the parties engaged in mediation to explore possible resolution of this matter. Under the supervision of an experienced mediator, Eric D. Green of Resolutions, LLC, the Parties engaged in arms-length settlement negotiations that resulted in the agreement to settle this action as reflected in this Notice of Class Action Settlement and the underlying Settlement Agreement.

However, even after reaching an agreement on the total amount of monetary consideration set forth in the Settlement Agreement, the parties continued for months through many in-person meetings and numerous conference calls to negotiate the specific terms of the Settlement and the precise language of the supporting documentation. The parties continued these negotiations until April 17, 2009, when the parties reached agreement on the terms of the Settlement Agreement.

The Settlement Agreement also resolves all claims alleged in *Alston, et al. v. Eastman Kodak Company*, Civil Action No. 07-cv-6512, pending in the United States District Court for the Western District of New York, in which plaintiffs Gladys Alston, Thomas Gainey and Carrie Rice brought claims on behalf of themselves and all similarly situated employees who had signed a release of claims in connection with their receipt of severance benefits pursuant to a Kodak

Termination Allowance Plan ("TAP"), as well as a subclass of all African American employees, who, in addition to signing the TAP Release, also signed a release relating to their participation in the Kodak Alternative Dispute Resolution ("ADR") Peer Review Process.

The parties agree that the discovery and motion practice described in summary above and which is reflected on the Court docket permitted them to reliably assess the merits of their respective positions and to reach a fair and equitable agreement. During the settlement negotiation and mediation sessions, all parties were represented by experienced counsel, each with an understanding of the strengths and weaknesses of each party's respective claims and defenses.

Based upon their investigation, the parties and their counsel have concluded that the terms of the proposed Settlement Agreement attached as Exhibit 1 hereto are fair, reasonable, adequate, and in the best interests of the Class. In reaching this conclusion, Class Counsel have analyzed the benefits of the settlement and the risk of an unfavorable outcome, as well as the expense and length of continued proceedings necessary to prosecute this action. Kodak has agreed to these settlement terms because it wishes to avoid further costly, disruptive, and time-consuming litigation, and desires to obtain complete and final settlement of the claims of the Plaintiffs and Class Members.

III. THE SETTLEMENT TERMS

A. Monetary Consideration

The Settlement provides for monetary relief that will benefit all members of the proposed Class who do not exclude themselves from the settlement following their receipt of the Notice of Class Action Settlement. The Settlement Agreement provides for the payment of $21,376,500.00 (the "Settlement Fund"). *See* Agreement at ¶ 1.21 (definition of "Settlement

Fund"); Agreement ¶ 3.1 (describing the "Settlement Fund"). The Settlement Fund shall be distributed to the Class members who do not timely opt-out of the settlement pursuant to the terms of the Settlement Agreement, following payment of the Claims Administrator,[5] any award of attorneys' fees and expenses, and service payments to the Class Representatives, ECJ board members and Class members who submitted declarations in support of the Motion for Class Certification and consequently were subject to being deposed. Agreement ¶ 3.1.

More specifically, the Settlement Fund shall be used to pay the following. First, from the Settlement Fund, the twelve named Plaintiffs (Courtney Davis, Cynthia Gayden, Robert Gibson, Jannie Nesmith, Noralean Pringle, Maria Scott, Victor Smith, Edna Williams, Gladys Alston, Thomas Gainey, and Carrie Rice, and the estate of Olin Singletary), will each receive a service award of $75,000.00 (for a total of $900,000.00) to compensate them for their time involved in filing and prosecuting this lawsuit on behalf of the Class. Agreement ¶ 4.1 (describing service payments). In addition, ECJ Board Members Mary Dukes and Rutha Killings, and each of the following thirteen individuals who submitted declarations in support of Plaintiffs' Motion for Class Certification and were subject to being deposed (Andrew Gissendanner, Artiville Roberts, J.D. Bonham, Catherine Cliff, Abraham Cyrus, Thaddeus Drains, John Graham, Cleveland Brown, Raymond Carter, Garland Lockett, Sharon Magnolia, Deloris Monroe, and Cornell Walker), will each receive a service award in the amount of $5,000.00 to compensate them for their time and expenses on behalf of the Class (for a total of $75,000.00). Id. In addition, a total

[5] The parties have jointly selected the Philadelphia tax and accounting firm of Heffler, Radetich & Saitta LLP ("Heffler") to perform the duties of Claims Administrator. Heffler has experience administering class action settlements and has been appointed as a Claims Administrator before by this Court. *See* Exhibit 4 (Order of this Court appointing Heffler as Claims Administrator in another race discrimination class action). The Claims Administrator will mail the Notice of Class Action Settlement; respond to Class member inquiries; verify the amounts due to Class Members; distribute checks; and withhold and pay all taxes as appropriate. See Agreement at ¶ 1.5 (definition of "Claims Administrator"); Agreement at ¶¶ 3.2 – 3.5 (describing duties of the Claims Administrator); Agreement ¶¶ 8.1 – 8.8 (describing the notice provisions to be overseen by the Claims Administrator).

gross amount of $453,000.00 shall be allocated to pay ECJ members who are current or former Kodak employees a payment of up to $500.00 per person for reimbursement of their time and expenses in participating in the ECJ, with any remainder being donated directly to ECJ. Agreement ¶ 5.2 (describing payments to ECJ members).

"Courts routinely approve incentive awards to compensate named plaintiffs for the services they provided and the risks they incurred during the course of the class action litigation." Ingram v. The Coca-Cola Co., 200 F.R.D. 685, 694 (N.D. Ga. 2001) (quoting In re S. Ohio Correctional Facility, 175 F.R.D. 270, 272 (S.D. Ohio 1997)). In Coca-Cola, the court approved awards of $300,000 to each named plaintiff in recognition of the services they provided to the class by responding to discovery, participating in the mediation process, and taking the risk of stepping forward on behalf of the class. Coca-Cola, 200 F.R.D. at 694; see also Van Vranken v. Atlantic Richfield Co., 901 F. Supp. 294, 300 (N.D. Cal. 1995) (approving $50,000 participation award).

In this case, the Class Representatives, ECJ board members, Class member declarants and ECJ members performed critical and time-consuming services for the benefit of the entire Class. They initiated the case; formed, organized and maintained the Employees Committed for Justice through the entire course of this litigation; attended numerous meetings and telephone conferences; provided information concerning Kodak that their attorneys used to prosecute this case; gave numerous and lengthy interviews with counsel; were subject to being deposed; produced relevant documents; and in general, worked with Plaintiffs' Counsel to prosecute the case on behalf of the Class through the settlement negotiations.

Plaintiffs' Counsel used the information provided by the Class Representatives, ECJ board members, Class member declarants and ECJ members to understand their case and to

identify the claims of discrimination that could be alleged on a class-wide basis. These individuals spent time and effort to advance this litigation and committed time and effort to achieving the resolution of this case. For these reasons, the proposed service payments are appropriate and amply justified as part of the overall settlement in light of the above individuals' services to the Class. Defendant has agreed to these service payments as part of the settlement.

Second, Class Counsel will petition the Court for an award of attorneys' fees and costs from the Settlement Fund. Agreement ¶ 3.1(f) (describing amount of attorneys' fees and costs); Agreement ¶ 4.2 (describing procedure for Class Counsel to move for an award of reasonable attorneys' fees and costs). Specifically, Class Counsel will request an award of attorneys' fees constituting approximately 37.8% of the monetary portion of the settlement, and reimbursement of their out-of-pocket litigation expenses which are currently $1,625,945.84. Class Counsel will request the above fee which it maintains is substantially less than the actual amount that Class Counsel has billed based on the number of hours it has expended on this case and based on its normal rates.

Third, the Settlement Fund will include the cost of providing the Notice of Class Action Settlement to the Class and administering the settlement, not to exceed $140,000.00. Agreement ¶ 4.3 (describing the amount which can be paid to the Claims Administrator).

Fourth, from the Settlement Fund, a total gross amount of up to $453,000.00 shall be used to compensate the Labor Economists/Statisticians and Industrial Psychologist (collectively, the "Experts") for their future time and expenses in connection with the work described in Sections 7.2 and 7.3 of the Settlement Agreement, and to implement the programmatic relief provisions set forth in subparagraphs of Section 7 of the Settlement Agreement.

Fifth, the amount of $9,655,500.00 shall be paid to the Class members as follows:

Category A: for each Class member who signed a release of claims in connection with Kodak's TAP program, he/she shall each receive $1,000.00. There are 1,180 Settlement Class Members in this category. The total amount allocated for this group is $1,180,000.00.

Category B: for each Class member who executed an ADR release but not a TAP release, he/she shall each receive $2,250.00. There are 79 Class Members in this category. The total amount allocated for this group is $177,750.00.

Category C: for each Class Member who did not execute either a TAP or ADR release, and who worked at least six (6) months or more for Kodak, he/she shall each receive a minimum of $3,000.00 plus an amount proportionate to the number of weeks he/she worked for Kodak as reflected in Kodak's electronic records provided in this litigation. For each Class Member who did not execute either a TAP or ADR release, and who worked less than six (6) months or more for Kodak, he/she shall each receive $1,000.00. There are 1762 Class Members in Category C. The total amount allocated for this group is $8,297,750.00.

Agreement ¶ 5.1 (describing the payments set forth above to be made to Class members).

B. <u>Non-Monetary Consideration</u>

In addition to the monetary consideration described above, the Settlement Agreement also provides for certain non-monetary consideration. Specifically, pursuant to the proposed

Settlement Agreement, Kodak has agreed to be bound by the terms of the Settlement Agreement for a period of four years, (term of Settlement Agreement), and has also agreed that:

1. Kodak will continue to maintain and enforce its existing non-discrimination and anti-retaliation policies designed to assure equal employment opportunity for its employees;

2. Kodak will continue to enforce its policy of not knowingly maintaining or enacting any policy or practice that has the purpose or effect of unlawfully discriminating against any Settlement Class Member or other African American employee on the basis of race;

3. Kodak will not retaliate against any Settlement Class Member or other African American employee because he or she: (1) complained of or opposed discrimination on the basis of race at Kodak; (2) testified, furnished information or participated in any investigation, proceeding, or hearing, whether in connection with this lawsuit or any other complaint of racial discrimination at Kodak that may be asserted in the future; or (3) sought and/or received monetary and/or non-monetary relief pursuant to this Settlement;

4. Kodak will retain an Industrial Psychologist to assist it in reviewing, enhancing, developing, and/or recommending policies and practices designed to reinforce Kodak's equal opportunity employment policies and practices with regard to compensation, performance evaluations, promotions, and job assignments;

5. Kodak will retain two Labor Economists/Statisticians to study existing disparate impact analyses of practices relating to annual evaluations, pay and promotion decisions and to make recommendations to improve those analyses;

6. Kodak will develop further enhancements to its existing equal opportunity and diversity training, which may include conducting new training sessions designed to further enhance the effectiveness of Kodak's training programs. The goal of these enhancements is to

continue to ensure that all supervisors understand that it is their responsibility and obligation to report and respond to any alleged violations of Kodak's equal opportunity policies. Within one year of the settlement, Kodak will provide Class Counsel with a written summary of its efforts to expand and enhance its training programs;

7. Kodak will continue to maintain and enforce its equal opportunity complaint procedures for violations of those policies, and shall enhance its existing equal opportunity training to place even greater emphasis on its complaint procedures and every employee's obligation to identify potential violations of the Kodak's EOE policies by utilizing the complaint procedures;

8. Kodak will develop a database or spreadsheet to track all complaints of discrimination at Kodak and the resolution/status of such complaints;

9. Kodak will empower its External Diversity Advisory Panel to serve as the compliance panel for this Settlement (to ensure that the settlement agreement is followed). The ECJ will be able to recommend two individuals to work with the External Diversity Advisory Panel for this purpose; and

10. No later than thirty (30) days after the Final Approval date, Kodak will provide to each if its current employees in the United States a written communication that reflects the Company's commitment to diversity, and equal employment opportunity. At least once annually thereafter during the term of this Agreement, Kodak shall provide a similar communication to each of its then current employees in the United States. The communications will be signed and issued by the Chief Executive Officer of Kodak.

Moreover, for the four-year term of this Settlement Agreement, Kodak shall provide an annual report to Class Counsel relating to its compliance with the terms of this Settlement. See Agreement at Section VII.

IV. THE NOTICE PROGRAM IS THE BEST PRACTICAL NOTICE TO THE CLASS

Rule 23(e)(1)(B) requires that notice be given in a reasonable manner to all class members who would be bound by a proposed settlement prior to approval of the settlement. The notice process set forth in the Settlement Agreement resulted from arm's length negotiations by the parties, is the best practicable notice under the circumstances and is reasonably calculated to reach all proposed Class members. Agreement ¶¶ 8.1 – 8.8 (describing the notice program). The parties used "plain language" in drafting the Notice of Class Action Settlement in an effort to draft the text of these documents in a way to ensure that Class members will be able to easily understand the nature of the claims asserted in this case, the terms of the Settlement, and their rights to opt-out or object to the Settlement.[6]

The notice plan calls for direct mail notice to the proposed Class members. Agreement at ¶ 8.2. The list of Class members is attached as Exhibit A to the Settlement Agreement. Within ten (10) business days of the Order preliminarily approving the Settlement, Defendant has agreed to provide to the Claims Administrator a further list of all of the proposed Class members, also setting forth their last known address and telephone number, social security number (for tax purposes) and employee ID number. Agreement at ¶ 8.1. Within ten (10) business days of

[6] See Consol. Edison, Inc. v. Northeast Utils., 332 F. Supp.2d 639, 65 (S.D.N.Y. 2004) ("Due process requires that the notice to class members 'fully apprise the … members of the class of the terms of the proposed settlement and the options that are open to them in connection with [the] proceedings.'") (citation omitted). Weinberger v. Kendrick, 698 F.2d 61, 70 (2nd Cir. 1982).

receiving this list, the Claims Administrator will send to all proposed Class members by first class U.S. mail, the Notice of Class Action Settlement. Agreement at ¶ 8.2.

The Settlement also provides for procedures for the Claims Administrator to send the Notice of Class Action Settlement and Claim Form to Class members at a forwarding address, as well as to perform a standard skip trace to locate Class members for whom mail is returned to the Claims Administrator as undeliverable because the address of the recipient is no longer valid (*i.e.*, the envelope is marked "Return to Sender"). Agreement ¶¶ 8.3 – 8.8.

V. THE PROPOSED SETTLEMENT WARRANTS PRELIMINARY APPROVAL

A. Standards for Preliminary Approval

Rule 23(e) of the Federal Rules of Civil Procedure provides that before a class action may be dismissed or compromised, notice must be given in the manner directed by the court, and judicial approval must be obtained. Fed. R. Civ. P. 23(e). As a matter of public policy, courts favor the settlement of disputed claims, particularly in complex class actions, so as to encourage compromise and conserve judicial and private resources. Weinberger, 698 F.2d at 73; In re Visa Check/Mastermoney Antitrust Litig., 297 F. Supp.2d 503, 509 (E.D.N.Y. 2003), aff'd sub nom. Wal-Mart Stores, Inc. v. Visa U.S.A., Inc., 396 F.3d 96 (2nd Cir. 2005).

At the Final Fairness Hearing, the Court will be asked to make a final determination as to whether the Settlement is fair, reasonable and adequate under all of the circumstances. Here, however, Plaintiffs request only that the Court grant preliminary approval in order to authorize notifying proposed Class members of the terms of the Settlement, and of their opportunity to be heard regarding the Settlement Agreement at the hearing where final approval of the Agreement will be considered.

The test for granting preliminary approval is whether the proposed settlement is "'at least sufficiently fair, reasonable and adequate to justify notice to those affected and an opportunity to be heard.'" NASDAQ I, 1997 U.S. Dist. LEXIS 20835, at *24 (citations omitted); see also Manual for Complex Litigation § 21.632, at 321 (4th ed. 2004) ("The judge must make a preliminary determination on the fairness, reasonableness, and adequacy of the settlement terms and must direct the preparation of notice.").

The parties are now requesting that the Court take the first step in the process and grant preliminary approval of the Settlement. The Settlement clearly satisfies the standards for approval. The Settlement provides for a payment of $21,376,500.00 to the Settlement Fund, which represents a fair and reasonable cash settlement of an employment discrimination class action, as well as certain non-monetary relief that will benefit all Kodak employees. Moreover, an analysis of the following factors that the Second Circuit Court of Appeals has held are relevant for determining whether a settlement is fair, reasonable and adequate to merit final approval demonstrates that the Court should grant preliminary approval and ultimately final approval:

- the negotiations that led up to the settlement;
- the experience and views of class counsel;
- a comparison of the proposed settlement with the likely result of litigation;
- the complexity, expense and likely duration of the litigation; and
- the stage of the proceedings and the amount of discovery undertaken.

See, e.g., In re Drexel Burnham Lambert Group, Inc., 960 F.2d 285, 292 (2nd Cir. 1992); Detroit v. Grinnell Corp., 495 F.2d 448, 463 (2nd Cir. 1974).

B. An Evaluation Of The Factors Considered By The Second Circuit Demonstrates That The Settlement Is Fair, Reasonable And Adequate

1. The Settlement Is The Result Of Arm's Length Negotiations Conducted By Experienced Counsel With The Assistance Of A Mediator And Therefore Is Entitled To A Presumption Of Fairness

A class action settlement is entitled to a presumption of fairness when it is the product of extensive arm's-length negotiations. See 4 Alba Conte, Herbert B. Newberg, Newberg on Class Actions § 11.41 (4th ed. 2002). "So long as the integrity of the arm's length negotiation process is preserved ... a strong initial presumption of fairness attaches to the proposed settlement." In re NASDAQ Mkt.-Makers Antitrust Litig., 187 F.R.D. 465, 474 (S.D.N.Y. 1998) ("NASDAQ II"), see also Visa Check, 297 F. Supp.2d at 510.

Here, experienced counsel for the parties negotiated this settlement with the assistance of an experienced mediator. The arm's length settlement negotiations took place over a number of months, dealt with a myriad of complicated issues and included numerous in-person meetings and countless telephone conferences. Plaintiffs' Counsel were able to effectively and critically evaluate the case and propriety of settlement as a result of the extensive discovery that was conducted throughout this litigation. Moreover, Plaintiffs' Counsel had a firm understanding of Defendant's positions through the extensive settlement negotiations and the arguments that Defendant intended to assert in connection with further litigation and appeal.

As a result of the arm's length settlement negotiations, there can be no legitimate question that this Settlement is the result of fair and honest negotiations. Plaintiffs' Counsel, who have substantial experience in racial discrimination cases and the prosecution of complex class action litigation in general, have made a considered judgment that the Settlement is not only reasonable and adequate but a fair and equitable result for the Settlement Class. Their opinion is entitled to "great weight." NASDAQ II, 187 F.R.D. at 474 (Courts have consistently

given "'great weight' ... to the recommendations of counsel, who are most closely acquainted with the facts of the underlying litigation.").

2. The Settlement Compares Favorably With The Likely Result Of Litigation

When weighed against the risks of continued litigation, the proposed Settlement compares favorably with the results that the Class Representatives could have obtained after a decision on class certification, summary judgment, trial, and exhaustion of appeals. The $21,376,500.00 Settlement Fund created for the benefit of the Class members constitutes a significant recovery. This proposed recovery is an excellent result in light of Defendant's vigorous assertion that there is no liability to Plaintiffs and the Class for the asserted claims, and even if there was any such liability, damages would be minimal.

In this context, "[a] very large bird in the hand in this litigation is surely worth more than whatever birds are lurking in the bushes." In re Chambers Dev. Sec. Litig., 912 F. Supp. 822, 838 (W.D. Pa. 1995). As the Court stated in W. Va. v. Chas. Pfizer & Co., 314 F. Supp. 710, 743-44 (S.D.N.Y. 1970), aff'd, 440 F.2d 1079 (2nd Cir. 1971):

> It is known from past experience that no matter how confident one may be of the outcome of litigation, such confidence is often misplaced. Merely by way of example, two instances in this Court may be cited where offers of settlement were rejected by some plaintiffs and were disapproved by this Court. The trial in each case then resulted unfavorably for plaintiffs, in one case they recovered nothing and in the other they recovered less than the amount which had been offered in settlement.

Id.; see also In re Michael Milken & Assocs. Sec. Litig., 150 F.R.D. 57, 65 (S.D.N.Y. 1993) (noting that "[i]t must also be recognized that victory even at the trial stage is not a guarantee of ultimate success" and citing a case where a "multimillion dollar judgment was reversed").

3. The Complexity, Expense And Likely Duration Of The Litigation Supports Approval Of The Settlement

Employment discrimination class actions are notoriously complex and protracted. The parties' experience in this case to date has shown this to be true. There is no doubt that this race discrimination action involves complex factual and legal issues many of which would have been the subject of expert testimony at trial. A trial might well turn on close questions of evidence and fact. If not for this Settlement, the case would continue to be contested by all parties. Defendant has asserted that if not for settlement at this juncture, they are prepared to defend this case through the class certification stage, at trial and beyond, if necessary.

If a class were certified, the expense and delay of continued litigation of this complex racial discrimination class action would be substantial. Inevitably, if this case proceeded in litigation, the Court would first need to decide the pending Motion for Class Certification, after which, further discovery would proceed followed by summary judgment motions. This process would likely take additional years to complete. Further, assuming that a litigation class was certified and Plaintiffs' claims survived summary judgment, trial preparation and the trial itself would also involve a substantial amount of time and expense. A trial of this case likely would take at least several months or years, and involve numerous attorneys, witnesses, experts, and the introduction of voluminous documentary and deposition evidence, vigorously contested motions, and the expenditure of enormous amounts of judicial and counsel resources including potentially thousands of individual hearings.

Even if Plaintiffs were successful at trial, post-trial motions and appeals would be virtually assured, which would further delay the Settlement Class recovery for years. See, e.g., Maley v. Del Global Techs. Corp., 186 F. Supp.2d 358, 362 (S.D.N.Y. 2002) (approval granted where "[d]elay, not just at the trial stage but through post-trial motions and the appellate process,

would cause Class Members to wait for years for any recovery, further reducing its value"); Visa Check, 297 F. Supp.2d at 510 (fact that the class faced a long trial and the additional time it would take to exhaust all appeals "weigh[ed] heavily in favor of approving Settlements").

4. The State Of The Proceedings And The Discovery Taken In This Case Support Approval Of The Settlement

In determining whether a class action settlement is fair, reasonable and adequate, courts also consider the stage of the proceedings and the amount of discovery completed to ensure that plaintiffs have access to sufficient information to properly evaluate their case and to assess the adequacy of any settlement proposal. See Weinberger, 698 F.2d at 74; Chatelain v. Prudential-Bache Sec., 805 F. Supp. 209, 213-14 (S.D.N.Y. 1992). Here, counsel unquestionably had sufficient information to evaluate the strengths and weaknesses of the claims asserted and the propriety of settlement.

Specifically, as set forth above and reflected on the Court docket, the parties engaged in extensive discovery overseen by this Court prior to the settlement negotiations and mediation. During the discovery process, the parties exchanged voluminous amounts of information sufficient to allow them to evaluate the strengths and weaknesses of their claims and defenses, and to participate in meaningful and informed settlement discussions. Indeed, Kodak produced hundreds of thousands of pages of documents, and the parties reviewed over six hundred thousand pages of documents produced in this litigation, which included Kodak's human resource policies and equal employment opportunity policies. In addition, Kodak produced an electronic copy of its human resource database that was subsequently analyzed by Plaintiffs' statistical experts. Plaintiffs later presented the results of that investigation to Kodak and the Court through their Motion for Class Certification and exhibits. Similarly, Kodak retained its own experts to conduct statistical analyses of the same data and presented rebuttal expert reports.

The parties engaged in a thorough exchange of information upon which the parties relied throughout the settlement negotiations and mediation.

Thus, by the time the Settlement was reached, the parties had engaged in substantial discovery, and as a result, Plaintiffs' Counsel had a full understanding of the strengths and weaknesses of the Plaintiffs' individual and class claims as well as the potential difficulties they might face in obtaining a favorable jury verdict after a lengthy trial. Having sufficient information to fully evaluate the strengths and weaknesses of the Class members' claims, Plaintiffs' Counsel have settled this case on terms that are fair and reasonable to Plaintiffs and the Class.

VI. THE PROPOSED SCHEDULE OF EVENTS

In connection with the preliminary approval of the Settlement, the parties respectfully request that the Court approve a date for a Final Fairness Hearing, as well as dates for filing papers in support of the Settlement and for attorneys' fees and costs prior to such a hearing. Based on the Settlement Agreement, Plaintiffs propose the following schedule:

Deadline for Kodak to provide list of Class Member information to Claims Administrator	10 business days after the Court enters the Preliminary Approval Order
Deadline for Claims Administrator to mail the Notice of Class Action Settlement and Claim Form to Class Members	10 business days after receiving the list of Class Member information from Kodak
Deadline for Class Members to object to or opt-out of the Settlement	35 days after the Notice of Class Action Settlement is mailed by the Claims Administrator
Deadline for Class Counsel to file their Motion for an Award of Fees and Costs	June 12, 2009
Deadline for Claims Administrator to provide to all counsel a list of Class Members to whom notices were returned as undeliverable and for whom efforts to obtain an alternative address failed	At least 10 business days prior to the Final Fairness Hearing
Deadline for Plaintiffs to file their Motion for	June 24, 2009

Final Approval of the Settlement Agreement	
Deadline for Class Counsel to provide the Court with a declaration by the Claims Administrator of due diligence and proof of mailing with regard to the mailing of the Notice of Class Action Settlement and Claim Form	At least 5 days prior to the Final Fairness Hearing
Final Fairness Hearing	July 1, 2009
Deadline for Claims Administrator to provide to Class Counsel and Defendant's Counsel a declaration of payment	Within 10 days after making payment to Class Members
Deadline for Class Members to cash their settlement checks	Within one year after mailing of the settlement checks to them by the Claims Administrator

VII. CONCLUSION

Based on the foregoing, the Settlement warrants the Court's preliminary approval. Plaintiffs have submitted herewith a proposed Order Preliminarily Approving The Settlement Agreement for the Court's consideration and convenience. Defendant has reviewed and does not object to entry of this Order.

Dated: April 27, 2009

Respectfully submitted,

By: /s/

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