

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

MARION WATERS, et al.,)	
)	
Plaintiffs,)	
v.)	CASE NO. 2:07-CV-00394-LSC
)	
COOK'S PEST CONTROL, INC.,)	
)	
Defendant.)	

**JOINT MOTION FOR PRELIMINARY APPROVAL
OF SETTLEMENT AGREEMENT**

Plaintiff Marion Waters, on behalf of himself and the class which he seeks to represent, and the Defendant Cook's Pest Control, Inc. ("Cook's"), by and through their undersigned counsel, hereby jointly move the Court for an Order:

- (1) Conditionally certifying a class for settlement purposes;
- (2) Preliminarily approving the Settlement Agreement; and
- (3) Setting a Fairness Hearing.

In support of this Motion, these parties state as follows:

1. On March 1, 2007, Plaintiff Marion Waters filed his Initial Complaint against Cook's Pest Control, Inc. ("Cooks") on behalf of himself and other African-American applicants or individuals discouraged from applying for jobs with Cook's. The Named Plaintiff alleged claims under Title VII, 42 U.S.C.

§2000e, *et seq.* and 42 U.S.C. § 1981. The Complaint alleged that the Named Plaintiff and other similarly-situated African American applicants had been denied employment despite being qualified due to intentional disparate treatment and/or application of facially neutral selection criteria which have an impermissible and unjustified impact on African-Americans.

2. Cook's answered the complaint, denied any wrongdoing, denied its actions violated any federal law, and asserted a number of affirmative defenses.

3. All parties recognized that there existed substantial uncertainty as to the outcome of the case, that if the case were to be litigated fully, it would be extremely expensive and time consuming, and that a prompt resolution of the case was in the best interests of all the parties.

4. Thus, following almost four (4) years of protracted litigation, including the production of thousands of pages of documents, as well as databases, and substantial written discovery, the parties (with the Court's approval) agreed to a stay of the litigation during which extensive mediation and settlement negotiations were conducted. Mediation of this case began on December 20, 2010 and has been ongoing.

5. The parties have agreed upon a compromise settlement of the disputed claims in this action, the terms and provisions of which are embodied in the

Settlement Agreement which terms will be converted to a Consent Decree upon final approval. The Proposed Settlement Agreement/Consent Decree has been submitted directly to the Court.

6. Without detailing all of the material terms, provisions, and conditions of the Proposed Consent Decree, the parties state that the Decree provides for conditional class certification by the Court for settlement purposes only, declaratory and injunctive relief, implementation of new hiring procedures for the positions of sales, pest control technician and termite technician, as defined in Paragraph II.D.3 of the Proposed Consent Decree (“Monitored Positions”), training for hiring managers, and monetary relief for the named Plaintiff and eligible class members, and an award of attorney’s fees and costs for Class Counsel. In return, Plaintiff and the conditional settlement class agree to provide a release to Cook’s and to the dismissal of this case with prejudice.

7. **Mediator.** The mediator in this case is Hunter R. Hughes, III, a partner at the law firm of Rogers & Hardin, LLP in Atlanta, Georgia. Mr. Hughes has been the mediator in some of the largest class actions in the nation. He also has experience serving as special master and assisting courts in determining the appropriate fees in large class actions. Mr. Hughes is also the proposed Fees Special Master in this matter. A copy of Mr. Hughes’ CV is attached as Exhibit A.

8. **Monitor.** The Decree Monitor will be James E. Coleman, Jr., a Duke University Law Professor. As Monitor, Mr. Coleman will have all powers necessary to effectuate the terms of the Consent Decree. Mr. Coleman's CV is attached as Exhibit B.

9. **Claims Administrator.** The Claims Administrator Settlement Services, Inc., of Tallahassee, Florida. Settlement Services was founded in 1992 and specializes in administering class action settlements. Its founder and president, attorney Thomas A. Warren has over 30 years experience in class action and fair employment /civil right law and has been class counsel in some of the country's largest fair employment class action cases. The Claims Administrator shall serve as the Trustee of the Settlement Fund.

10. **Class Action Status is Appropriate.** The parties have stipulated, for settlement purposes only, that the requirements of Rule 23 have been satisfied, such that it would be appropriate to conditionally certify for settlement purposes a class action under Rules 23(b)(2) and 23(b)(3). The class is so numerous that joinder is impractical. Cook's estimates that thousands of notices will be mailed to the population of unsuccessful applicants and notice will be published in newspapers in all counties in which Cook's maintains an office. The parties expect that as many as hundreds of potential class members will respond. There are

the claims of the named Plaintiff are typical of the claims of the class.

11. The proposed class representative, Marion Waters, will fairly and adequately protect the interests of the class. Waters is a 2004 graduate of the University of Alabama, with a degree in Psychology. Waters is gainfully employed and has been vigorously prosecuting this action from the beginning. Waters is willing to subordinate his interests for those of the class.

12. Class counsel are the following lawyers and law firms:

Samuel Fisher, Robert Childs and the law firm of Wiggins, Childs, Quinn and Pantazis, LLC: The law firm has a nationwide practice in complex litigation and employment class actions. Mr. Fisher has practiced employment law for thirty (30) years, is a former chairman of the Employment Section of the Alabama State Bar Association and has extensive experience as class counsel in several large employment class actions, including serving as co-counsel in *Ingram v. Coca Cola* (NDGA, 2000), resulting in the largest settlement of an employment class action in the history of Title VII litigation at the time.

Thomas F. Campbell, Raymond L. Bronner and the Campbell Law, PC firm: The law firm has a nationwide practice in complex and class action cases, is rated a Tier 2 "Best Law Firm" by U.S. News and World Reports for 2012 for Labor and Employment Law Litigation. Mr. Campbell has twenty-three years

PC firm: The law firm has a nationwide practice in complex and class action cases, is rated a Tier 2 “Best Law Firm” by U.S. News and World Reports for 2012 for Labor and Employment Law Litigation. Mr. Campbell has twenty-three years experience in the field of labor and employment law including serving as counsel in numerous noteworthy disparate impact employment discrimination cases. He was a founding partner of the Birmingham office of Ogletree Deakins, Nash, Smoak and Stewart, P.C. Mr. Campbell is included in the “Best Lawyer” publication for 2011 and 2012 for Commercial Litigation and has retained an “AV” rating by Martindale-Hubbell for over a decade.

Sam Hill of the Law Offices of Sam Hill, LLC: Mr. Hill has a nationwide complex and class action practice including employment law litigation. Most recently, he successfully represented the tax payers of Jefferson County in a long-running dispute over occupational taxes.

13. The Proposed Consent Decree is conditioned upon the entry of a Preliminary Approval Order that is agreeable to the Plaintiff and Cook’s. A proposed Preliminary Approval Order, which the parties agree is satisfactory, is attached as Exhibit C.

WHEREFORE, the parties move the Court for the entry of an Order:

- (1) Conditionally certifying a class for settlement purposes;

Respectfully Submitted,

/s/ Samuel Fisher

Robert Childs

Samuel Fisher

Attorneys for Plaintiffs

Wiggins, Childs, Quinn & Pantazis, LLC

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/s/ Thomas F. Campbell

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/s/ Mac B. Greaves

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EXHIBIT A

ROGERS & HARDIN



Hunter R. Hughes
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RESUME OF HUNTER R. HUGHES

Hunter R. Hughes is a Partner in the Atlanta firm of Rogers & Hardin, LLP practicing primarily in the area of employment law. He received his B.A. and J.D. degrees from the University of Virginia.

Mr. Hughes has successfully served as lead trial counsel in numerous employment and other cases, including nationwide class actions and mass employment litigation. He has been lead counsel in arbitrations as well as numerous proceedings before state and federal agencies. The "National Law Journal" has recognized him as "Among the Nation's Best Litigators in Employment [Law]." He has successfully served as the mediator in numerous employment class actions, including the Publix class action, Home Depot, and The Coca-Cola Company class actions, as well as the Burlington Northern genetic testing litigation. He also served as the mediator in the recent class and collective actions involving Boeing Aircraft Company, Abercrombie & Fitch, Xerox Corporation, and Cracker Barrel.

Mr. Hughes is the author of Chapter 20, "Settlements of Litigation," *EEOC Litigation and Charge Resolution*, Donald R. Livingston, BNA, 2005; Chapter 8, "Promotions," *Age Discrimination in Employment Law*, Lindemann and Kadue, BNA, 2003; Chapter 26, "Mediating Class Actions: How Mediators Operate and What They Want," *How ADR Works*, ABA Section of Labor and Employment Law, Norman Brand, BNA Books, 2002; and "ADR in Employment Law," *Class Actions in Arbitrations*, A Treatise Project of the American Bar Association Labor and Employment Law Section, BNA, 2002. Mr. Hughes is also the author of "Sitting At The Head Of The Table: How To Be An Effective Labor And Employment Mediator And Arbitrator," *The Practical Lawyer*, December, 2005; and "Counseling the Whistleblower (Parts I and II)", *The Practical Lawyer*, Volume 38, Numbers 4-5, June-July, 1992. Co-Author: Chapter 21, "Special Litigation Issues: Complainant's Litigation Strategy", *Sexual Harassment in Employment Law*, Lindeman and Kadue, 1992; Chapter 29, "Election and Exhaustion of Remedies", *Employment Discrimination Law*, 3rd Edition, Five Year Cumulative Supplement, Schlei and Grossman; Chapter 28, "Injunctive and Affirmative Relief", *Sexual Harassment in Employment Law Supplement*, Lindeman and Kadue, 1994; and co-author: "Employment Surveys in Employment Litigation," *Employment Relations Law Journal* 42, 1983. Mr. Hughes was Vice Chairman, EEO Committee of Administrative Section of the

ROGERS & HARDIN

Resume of Hunter R. Hughes
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American Bar Association, 1981-83, Chairman, 1983-84; and was President, Corporate Council Section, Atlanta Bar Association, 1981-82. He has served as Management Co-Chairman of the Program and Membership Divisions of the EEO Committee of the ABA Labor and Employment Section and on the Advisory Board of the National Employment Law Institute. He was also the Program Chairman of The American Employment Law Council, 1999-2000, and is a Fellow both in the American College of Employment Lawyers and the American College of Civil Trial Mediators.

He also has been a speaker throughout the country at scores of employment seminars on numerous topics, including trial practice, alternate dispute resolution, settlement strategies, damages, and a wide range of substantive employment matters.

Mr. Hughes has handled litigation throughout the nation and is admitted to practice in the Northern, Middle, and Southern Districts of Georgia, the Fifth, Sixth, Eighth, Ninth, and Eleventh Circuit Courts of Appeal and the United States Supreme Court.

Member: Who's Who in America
 Who's Who Legal
 Georgia Arbitrators Forum
 American Arbitration Association Commercial Panel

EXHIBIT B



JAMES E. COLEMAN, JR.
ASSOCIATE DEAN FOR SPECIAL PROJECTS AND PRIORITIES
AND JOHN S. BRADWAY PROFESSOR OF THE PRACTICE OF LAW
DUKE UNIVERSITY SCHOOL OF LAW
SCIENCE DRIVE AND TOWERVIEW ROAD
BOX 90360 • DURHAM, NC 27708-0360
919-613-7057 • FACSIMILE 919-666-0996
JCOLEMAN@LAW.DUKE.EDU

EXPERIENCE

John S. Bradway Professor of the Practice of Law, Duke University School of Law and Associate Dean for Special Projects and Priorities, Durham, North Carolina, July 1996-present; Professor of Law, July 1991-August 1993. Courses: criminal law, co-director of the Duke Wrongful Convictions Clinic and the Duke Appellate Litigation Clinic. Distinguished Teacher (1993). Senior Associate Dean for Academic Affairs (2001-2005)

Wilmer, Cutler & Pickering, Washington, D.C. **Partner**, 1993-1996; 1982-1991; **Associate**, 1981-1982, 1978-1980. Litigated a wide range of cases including criminal (capital post-conviction), civil commercial, natural gas regulatory, administrative, employment discrimination, and various civil rights actions. Mediated large employment discrimination class actions involving both government employers and private employers. Appeared as trial and appellate counsel in numerous state and federal courts, and as counsel of record in the United States Supreme Court. NAACP Legal Defense and Education Fund Pro Bono Award for contribution to enforcement of civil rights laws.

Deputy General Counsel, United States Department of Education, Washington, D.C., 1980-1981. Responsible for providing legal advice on civil rights, rights of the disabled, and business and administrative law issues.

Chief Counsel, United States House of Representatives Committee on Standards of Official Conduct, Washington, D.C., 1978. Together with special counsel, directed the Committee's investigation of two Members of Congress from Pennsylvania.

Assistant General Counsel, Legal Services Corporation, Washington, D.C., 1976-1978.

Associate, Kaye, Scholer, Fierman, Hays & Handler, New York, New York, 1975-1976.

Law Clerk, United States District Judge Damon J. Keith (E.D. Michigan), 1974-1975. Judge Keith recently took senior status on the U.S. Court of Appeals for the Sixth Circuit.

EDUCATION

Columbia University School of Law, *Juris Doctor*, 1974. Harlan Fiske Stone Scholar; Charles Bathgate Beck Award.

Harvard College, Bachelor of Arts, 1970.

EXHIBIT C

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
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 Plaintiffs,)
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 Defendant.)

[PROPOSED]
ORDER GRANTING PRELIMINARY APPROVAL
OF SETTLEMENT AGREEMENT

Now before the Court is the parties' Joint Motion for Preliminary Approval of Settlement Agreement. For good cause show, the Motion is hereby **GRANTED**. The Proposed Settlement Agreement is approved, pending a fairness hearing and the Class, as defined in the Proposed Settlement Agreement is conditionally certified for settlement purposes. The Fairness hearing is scheduled for _____ at _____.

DONE this the _____ day of _____, 2011.

L. SCOTT COOGLER
UNITED STATES DISTRICT JUDGE