

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION

UNITED STATES OF AMERICA,
Plaintiff.

v.

STATE OF NORTH CAROLINA; NORTH CAROLINA

DEPARTMENT OF CORRECTION, an Agency of the State of North Carolina;

FRANKLIN FREEMAN, in his official capacity as Secretary of the North Carolina Department of Correction;

LYNN PHILLIPS, in his official capacity as Director of the Division of Prisons, a Division of the North Carolina Department of Correction,

Defendants.

Civil Action No. 5:93-CV-763-Bol

AGREEMENT

The parties to this Agreement are plaintiff United States and defendants State of North Carolina, the North Carolina Department of Correction ("NCDOC"), Franklin Freeman, in his official capacity as Secretary of the NCDOC, and Lynn Phillips, in his official capacity as Director of the NCDOC's Division of Prisons ("DOP"). Defendants hereafter collectively are referred to as the "State".

GENERAL PROVISIONS

1. The parties, in conjunction with an Order entered in this action incorporating this Agreement and provisionally approving and entering this Agreement, hereby agree to the following in settlement of all issues raised in the United States' Complaint against the State. However, this Agreement shall not constitute an admission, adjudication or finding on the merits of the allegations made in the United States' Complaint; and the State expressly denies that it is presently, or has ever been, engaged in a pattern or practice of discrimination against women, as alleged by the United States.
2. The State shall not engage in any act or practice of discrimination against any female correctional officer of, or any female applicant or potential female applicant for employment as a correctional officer in, the NCDOC because of such individual's gender, in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e *et seq.* ("Title VII").
3. The State shall not retaliate in violation of Title VII against any person who has opposed what he or she reasonably believes to be discriminatory employment policies or practices regarding correctional officer positions at NCDOC correctional institutions housing male inmates, or because of that person's participation in or cooperation with the initiation, investigation or litigation of this action, or the administration of this Agreement.
4. Except for the provisions concerning individual relief set forth in Part VIII of this Agreement, nothing in this Agreement requires the State to grant a preference based on gender in hiring, assignment or promotion within the NCDOC, or to hire, transfer or promote unnecessary personnel. The parties, however, expressly recognize the right of the State to implement such transfers and assignments in the NCDOC as are necessary, in its view, to effectuate its obligations under this Agreement consistent with the sound and safe administration of the NCDOC, this Agreement and Title VII.

5. Remedial actions and practices required by the terms of this Agreement shall not constitute unlawful discrimination within the meaning of 42 U.S.C. 2000e-2(a).

6. In the event this Agreement or its implementation is challenged, including any action claiming entitlement to damages against any defendant arising out of the implementation of this Agreement, the State and the United States shall fully defend the lawfulness of this Agreement. If any such collateral challenge arises in State court, the State shall promptly seek to remove such action to Federal Court.

II.

DEFINITIONS

7. The following definitions shall apply to this Agreement:

- a. "Correctional Officer", as used in this Agreement, refers to the entry-level positions of Correctional Officer Trainee and Correctional Officer; and "correctional officer" or "correctional officer positions", as used in this Agreement, refers to the following NCDOC positions: Correctional Officer Trainee, Correctional Officer, Lead Correctional Officer, Sergeant, Lieutenant and Captain.
- b. "Correctional Institution", as used in this Agreement, refers to NCDOC correctional institutions, centers, and any other facilities housing male inmates.
- c. "Correctional Officer Position" or "Position", as used in this Agreement, refers to a job slot authorized by the North Carolina State Legislature for the job of correctional officer.
- d. "Promotional Correctional Officer Position" or "Promotional Position", as used in this Agreement, shall include the following positions: Lead Correctional Officer, Sergeant, Lieutenant and Captain.
- e. "Correctional Officer Post" or "Post", as used in this Agreement, refers to the job assignment of a correctional officer (including all relief posts) for each shift.
- f. "Applicant Flow", as used in this Agreement, refers to the total number of applications received by NCDOC during the posting period for a correctional officer position vacancy, regardless of whether the applicant met minimum qualifications.
- g. "Recruited Applicant", as used in this Agreement, refers to an applicant who met the posted minimum qualifications for a correctional officer position and was referred through the NCDOC's recruitment program described in Part IV of this Agreement.
- h. "Applicant Pool", as used in this Agreement, refers to those applicants within the applicant flow who meet the posted minimum qualifications for correctional officer.
- i. "Interview Pool", as used in this Agreement, refers to one subgroup of individuals selected from the applicant pool for interview consistent with Title VII.
- j. "Qualified Applicant", as used in this Agreement, refers to an applicant who met the posted minimum qualifications and is able to be certified by the North Carolina Criminal Justice Education and Training Standards Commission (hereinafter "CJTS")
- k. "Date of entry of this Agreement", as used in this Agreement, refers to the date upon which this Agreement, together with an Order incorporating this Agreement, is given final approval and entered by

the Court in this action after a fairness hearing.

III.

ORGANIZATIONAL STRUCTURE

8. To implement and fulfill the obligations imposed under this Agreement and further enhance the recruitment, hiring and promotion of females for correctional officer positions, the NCDOC will create the following organizational structure (see Exhibit 1):

a. A Special Assistant for Title VII Compliance (hereinafter referred to as the "Special Assistant") will be designated on the administrative staff of the Secretary of the NCDOC within ninety (90) days of the date of entry of this Agreement. The Special Assistant will be responsible for: (1) developing agency-wide policy for Agreement compliance; (2) serving as a liaison with the Legislature, the United States, the North Carolina Attorney General's Office (hereinafter "NCAGO") and others as necessary to assure compliance with this Decree ; (3) directing investigations related to Agreement compliance including, but not limited to the investigation of all NCDOC Personnel Office disapprovals of female candidates for correctional officer hire or promotion, as well as the investigation of all allegations of sexual harassment of female correctional officers; (4) issuing administrative directives as necessary to maintain Agreement compliance, including reversal of Personnel Office disapprovals of female candidates for correctional officer hire or promotion, where appropriate; and (5) managing overall agency compliance responsibilities, including overseeing the preparation of all reports necessary to comply with this Agreement.

b. A social Research Assistant will be designated on the administrative staff of the Secretary of the NCDOC within ninety (90) days of the date of entry of this Agreement to: develop work force demographic information reports as needed for compliance with this Agreement; oversee the computerized network support services and data banks needed for monitoring compliance; research sociological trends in North Carolina; and conduct special research projects as required.

c. A Title VII Compliance Investigator will be designated on the administrative staff of the Secretary of the NCDOC within ninety (90) days of the date of entry of this Agreement to investigate: issues affecting the employment of females as correctional officers including, but not limited to, their recruitment, hiring, assignment, promotion, discipline and termination, as well as all allegations of sexual harassment of female correctional officers; and other issues as may arise in the course of the implementation of or compliance with the terms of this Agreement.

d. A paralegal will be designated within ninety (90) days of the date of entry of this Agreement to research legal issues that arise as a result of compliance with this Agreement and provide assistance to the Assistant Secretary for Legal Affairs.

e. An Operations Manager for Title VII Compliance will be designated on the administrative staff of the DOP within one hundred twenty (120) days of the date of entry of this Agreement and will be responsible for: the day-to-day supervision and support of six (6) Field Compliance Specialists; DOP oversight of the recruitment program, interview and selection training, field audits, gathering of statistics; and assisting DOP staff, as needed, with day-to-day compliance issues, including participation when needed with recruitment efforts, applicant screening and interviews.

f. Six (6) Field Compliance Specialists, who report to the Operations Manager, will be designated in the DOP within one hundred twenty (120) days of the date of entry of this Agreement. Each Field

Compliance Specialist will be responsible for: managing recruitment in a designated geographic area; training and assisting DOP staff concerning applicant screening, interviewing and selection; auditing facilities for compliance with this Agreement; gathering statistics; and assisting with applicant interviews and complaint investigations.

g. Clerical support personnel as necessary for preparation of reports and document maintenance will be designated.

9. The NCDOC retains the discretionary right to reallocate or reorganize the positions described in Paragraph 8, supra, as well as the duties and personnel assigned to those positions. In the event the NCDOC reallocates or reorganizes personnel, which reallocation or reorganization alters the organizational structure under Paragraph 8, supra, the NCDOC shall notify the United States, by letter of the reallocation or reorganization at least thirty (30) days prior to the proposed change, detailing the change and a statement as to what impact, if any, such change may have on the State's compliance with this Agreement. Any disagreement between the parties that may arise under this Paragraph shall be resolved pursuant to the disputes provision in Paragraph 58, infra.

10. The State shall obligate sufficient monies to implement the provisions of Part III of this Agreement. To that end and consistent with the State's 1995-1997 biennium budget, the State shall obligate not less than one million three hundred thousand dollars (\$1,300,000.00) of the 1995-1997 biennium budget for such purposes, and the NCDOC shall include not less than one million three hundred thousand dollars (\$1,300,000.00) in its proposed continuation budget for the 1997-1999 biennium for such purposes.

IV.

RECRUITMENT, HIRING AND PROMOTION OF WOMEN

A. General Provisions

11. It is a purpose of this Agreement to ensure that women are not unlawfully discriminated against in hiring, promotion, assignment or other employment policies and practices of the NCDOC with respect to correctional officer positions, and that alleged past disadvantages which may have been suffered by women because of their gender with respect to such positions are remedied. As one element of this objective, the State shall continue to seek in good faith to achieve the employment of women in correctional officer positions at correctional institutions housing male inmates in numbers approximating their interest in, and ability to qualify for, such positions. Absent explanation, the parties expect that the NCDOC will attract qualified female applicants for correctional officer jobs at NCDOC correctional institutions housing male inmates in numbers that reflect their availability in the relevant labor market, that is in numbers that reflect their interest in and ability to qualify for such positions. The parties anticipate that the recruitment provisions of this Agreement (Paragraph 15a, infra.) will achieve this objective.

12. The parties recognize that increasing the number of female correctional officers at NCDOC correctional institutions housing male inmates is facilitated by a selection process free of unlawful barriers to their entry and by the use of lawful, nondiscriminatory employment procedures that are directed at the employment of qualified individuals. Absent explanation, the parties expect the NCDOC to hire women for entry-level Correctional Officer jobs at correctional institutions housing male inmates at a rate that approximates the qualified applicant rate for women for such jobs. The parties anticipate that the standardization and hiring provisions of this Agreement (Paragraphs 15b and 15c, infra) will achieve this objective.

13. The NCDOC shall actively encourage female correctional officers at each correctional institution housing male inmates to apply for promotion, and shall seek to assure that the number of female correctional officers promoted approximates the number of female correctional officers who apply and qualify for such positions. The parties anticipate that the standardization and promotion provisions of this Agreement (Paragraphs 15b and 15d, infra.) will achieve this objective.

14. The failure by the NCDOC to attain any particular female applicant flow, or hiring or promotion rate, is not by itself a violation of this Agreement, but may prompt an inquiry by the United States. B. Employment Policies and Practices

15. In order to implement Part IV A of this Agreement, the NCDOC shall adopt the following recruitment, hiring and promotions policies and practices:

a. Recruitment

(1). In order to encourage qualified females to apply for Correctional Officer positions within the DOP, the NCDOC will develop a State-wide recruitment program encompassing six (6) regional areas. See Exhibit 2. This program will consist of the following:

(a) Three times per calendar year, the NCDOC will contact in writing organizations oriented toward informing women of employment opportunities and: (i) provide a description of the correctional officer position in the DOP, including position qualifications; (ii) provide a brief statement that the NCDOC is interested in recruiting women for correctional officer positions; (iii) provide a brief statement regarding the mission of DOP and its organizational structure and employment needs and notice that State Government policy prohibits discrimination based on race, sex, color, religion, national origin, age or disability; and (iv) identify the location where a posting of current vacancies can be inspected and applications can be obtained and submitted. See Exhibit 3.

(b). Twice per calendar year, in conjunction with the quarters or semesters of each school, the NCDOC will contact in writing every North Carolina Community College and state-supported university with a criminal justice or police science curriculum and: (i) provide a description of the Correctional Officer position in the DOP, including position qualifications; (ii) provide a brief statement that the NCDOC is interested in recruiting women for correctional officer positions; (iii) provide a brief statement regarding the mission of DOP and its organizational structure and employment needs and notice that State Government policy prohibits discrimination based on race, sex, color, religion, national origin, age or disability; (iv) identify the location where a posting of current vacancies can be inspected and applications can be obtained and submitted; and (v) ask to be notified of and invited to attend any job fair sponsored at or by that college or university. See Exhibit 4.

(c). Three times per calendar year, the NCDOC will contact in writing for the purpose of identifying potential female applicants thirty-three (33) of the one hundred (100) county sheriff's departments; the Department of Transportation, Division of Motor Vehicles; the North Carolina State Bureau of Investigation; the North Carolina Highway Patrol; and the Department of Crime Control and Public Safety, Division of Alcohol Law Enforcement. For each of the law enforcement agencies contacted, the NCDOC will: (i) provide a description of the correctional Officer position in the DOP, including position qualifications; (ii) provide a brief statement that the NCDOC is interested in recruiting women for correctional officer positions; (iii) provide a brief statement regarding the mission of DOP and its organizational structure and employment needs and notice that State Government policy prohibits discrimination based on race, sex, color, religion, national origin, age or disability I and (iv) identify the location where a posting of current vacancies can be inspected and applications can be obtained and

submitted. See Exhibit 5.

(d). Twice per calendar year, the NCDOC will contact in writing local and state Employment Security Commission officials and: (i) provide a description of the Correctional Officer position in the DOP, including position qualifications; (ii) provide a brief statement that the NCDOC is interested in recruiting women for correctional officer positions; (iii) provide a brief statement regarding the mission of DOP and its organizational structure and employment needs and notice that State Government policy prohibits discrimination based on race, sex, color, religion, national origin, age or disability; and (iv) identify the location where a posting of current vacancies can be inspected and applications can be obtained and submitted. See Exhibit 6.

(e). Twice per calendar year, the NCDOC will contact in writing for the purpose of identifying potential female applicants all local Councils of Government across North Carolina and: (i) provide a description of the Correctional Officer position in the DOP, including position qualifications; (ii) provide a brief statement that the NCDOC is interested in recruiting women for correctional officer positions; (iii) provide a brief statement regarding the mission of DOP and its organizational structure and employment needs and notice that State Government policy prohibits discrimination based on race, sex, color, religion, national origin, age or disability; and (iv) identify the location where a posting of current vacancies can be inspected and applications can be obtained and submitted. See Exhibit 7.

(f). Twice per calendar year, the NCDOC will contact in writing the U.S. Department of Labor, North Carolina Veterans' Employment and Training Service Office for the purpose of identifying potential female applicants and: (i) provide a description of the Correctional Officer position in the DOP, including position qualifications; (ii) provide a brief statement that the NCDOC is interested in recruiting women for correctional officer positions; (iii) provide a brief statement regarding the mission of DOP and its organizational structure and employment needs and notice that State Government policy prohibits discrimination based on race, sex, color, religion, national origin, age or disability; and (iv) identify the location where a posting of current vacancies can be inspected and applications can be obtained and submitted. See Exhibit 8.

(g). Three times per calendar year, the NCDOC will advertise in newspapers in Greenville, Wilmington, Fayetteville, Raleigh-Durham, Winston-Salem, Greensboro, Charlotte, and Asheville. Such advertisements shall include: (i) a description of the Correctional Officer position in the DOP, including position qualifications; (ii) a brief statement that the NCDOC is interested in recruiting women for correctional officer positions; (iii) a notice that State Government policy prohibits discrimination based on race, sex, color, religion, national origin, age or disability; and (iv) the identity of the location at which a posting of current vacancies can be inspected and applications can be obtained and submitted. See Exhibit 9.

(h). Whenever any written notice of nondiscrimination is given pursuant to Paragraph 15a, such notice shall be in prominent boldface type.

(i). The DOP shall require all of its correctional institutions to accept completed job applications for Correctional Officer positions directly from job applicants whether by mail or by personal delivery. The DOP shall advise all applicants that applications need to be completed as a requirement for consideration for DOP employment. See Exhibit 10

b. Standardization

(1). The NCDOC will submit to the United States for its comments within ninety (90) days of the date

of entry of this Agreement, and implement within one hundred eighty (180) days of the such date, written, standardized posting, screening, interview and selection instruments and procedures for the hiring and promotion of correctional officers. If the NCDOC proposes to change the qualification criteria for the selection of correctional officers, the NCDOC shall, whenever possible, provide sixty (60) days' prior written notice to the United States during the life of this Agreement. Where such notice is not possible, the NCDOC shall provide such notice as soon as practicable. Should the United States have concerns as to lawfulness under Title VII of any such proposed posting, screening, interview and selection instruments or procedures for the hiring or promotion of correctional officers, or of any proposed changes thereto, the United States will notify the NCDOC of such concerns and the parties will make all reasonable attempts to address such concerns and resolve any differences as between them. Any disagreement between the parties that may arise under this Paragraph 15b(1) shall be resolved pursuant to the dispute provision in Paragraph 58, *infra*. However, the United States may make application to the Court under this Paragraph 15b(1) only if it has a reasonable belief that any such instrument or procedure for the hiring or promotion of correctional officers as proposed by the State would, if used, violate Title VII.

(2). The NCDOC's policy will require that DOP personnel responsible for screening, interviewing and selecting applicants for correctional officer positions will be trained on State and NCDOC personnel policies, which will include the application of Title VII to the selection process and the NCDOC's standardized posting, screening, interview and selection instruments and procedures. See Exhibit 11. The training will begin within one hundred eighty (180) days of the NCDOC's submission to the United States of the written standardized instruments.

(3). The NCDOC will audit each facility, pursuant to Part VII of this Agreement, to evaluate compliance with the standardized interview and selection procedures.

(4). The NCDOC's policy will require that all applicants for a vacant correctional officer position be notified in writing upon receipt of their application. This notification will advise the applicant: (i) of the minimum qualifications for the position; (ii) of the requirement that the application be fully completed, signed and dated in order to be considered; (iii) that standardized interview and selection criteria will be used to identify applicants for interview and the candidate for employment; and (iv) that the NCDOC does not discriminate on the basis of race, religion, sex, national origin, age or disability.

c. Selection of Correctional Officer Applicants

(1). To the extent practicable, Correctional Officer interview teams will be composed only of members who have completed the NCDOC's standardized screening, interview and selection training, which includes training on the application of Title VII to the selection process.

(2). Applicants for interview will be selected based on agency recruitment needs and job-related criteria consistent with Title VII.

(3). The interview team will evaluate each applicant interviewed based on the NCDOC's standardized interview and selection procedures consistent with Title VII.

(4). The interview team will make a recommendation in writing to the facility head, who either will identify a candidate for employment from among applicants interviewed and provide a written justification for that selection, or will explain in writing why the position vacancy should be re-posted.

(5). The interview team will also complete the Applicant Recruitment Placement Report (see Exhibit 12), and submit it with its recommendation to the facility head within ten (10) business days from

completion of the interview and selection recommendation.

(6). Facility heads are responsible for approving or disapproving the interview team's recommendation for Correctional Officer in writing and forwarding the final decision with all required employment documents to the NCDOC's Personnel Office. See Exhibit 13.

(7). The NCDOC's Personnel Office will conduct a technical review of the facility head's hiring decision. The purpose of this review is to ensure the presence of all required employment forms and to check for thoroughness and accuracy of documentation. Additionally, this review is to ensure the selected candidate meets all of the minimum recruitment standards as set forth by the Office of State Personnel, State Personnel Commission, and, when applicable, those standards established by the North Carolina Criminal Justice Education and Training Standards Commission ("CJTS"). Employment decisions approved as a result of this review procedure will be processed to place the new employee into the position and on the payroll. Any employment decision that is disapproved because the selected candidate does not meet the required standards will be returned to the facility head. The NCDOC's Personnel Office must also notify the Special Assistant in writing whenever a female candidate for correctional officer is disapproved and provide in writing the reason(s) for disapproval. See Exhibits 14 and 15.

(8). The Special Assistant will investigate all NCDOC Personnel Office disapprovals of female candidates for Correctional Officer and will reverse the Personnel Office's decision if necessary to maintain Agreement and Title VII compliance.

d. Selection of Applicants for Promotion to Lead Correctional Officer, Sergeant, Lieutenant and Captain

(1). The DOP shall post all correctional officer promotional position vacancies at each facility, which postings shall be audited under Part VII of this Agreement and shall contain a brief statement that women are encouraged to apply for such promotional positions.

(2). To the extent practicable, interview teams will be composed of members who have completed the NCDOC's standardized screening, interview and selection training, as well as training on the application of Title VII to the selection process.

(3). Applicants selected for interview will be identified based job-related criteria consistent with Title VII.

(4). The interview team will evaluate each applicant interviewed based on standardized interview and selection procedures consistent with Title VII.

(5). The interview team will make a recommendation in writing to the facility head, who either will identify a candidate for promotion from among applicants interviewed and provide a written justification for that selection, or will explain in writing why the position vacancy should be re-posted.

(6). The interview team will complete the Applicant Recruitment Placement Report, and submit it with its recommendation to the facility head within ten (10) business days from completion of the interview and selection recommendation.

(7). Facility heads are responsible for approving or disapproving the interview team's recommendation in writing and forwarding their decision to the Operations Manager.

(8). The Operations Manager will review promotion decisions for Lead Correctional Officer, Sergeant, Lieutenant and Captain positions to determine their impact on this Agreement and Title VII compliance, as well as agency recruitment needs. Once a review of a promotion decision is complete, the Operations Manager will forward all required employment forms to the NCDOC' 8 Personnel Office.

(9). The NCDOC's Personnel Office will conduct a technical review of promotion decisions for Lead Correctional Officer, Sergeant, Lieutenant and Captain. The purpose of this review is to ensure the selected candidate meets all of the minimum recruitment standards as set forth by the Office of State Personnel and State Personnel Commission. This review is also to ensure compliance with the Office of State Personnel and NCDOC Personnel Office salary administration policies related to salary increases for promotions. Promotional decisions approved as a result of this review procedure will be processed to place the employee into the appropriate position and to ensure processing of the salary increase through the payroll office. Any promotional decision disapproved because the selected candidate does not meet the required standards will be returned to the facility head. The NCDOC's Personnel Office must notify the Special Assistant in writing whenever any female candidate for promotion to Lead Correctional Officer, Sergeant, Lieutenant, or Captain is disapproved and provide the reasons for disapproval.

(10). The Special Assistant will investigate all NCDOC Personnel Office disapprovals of female candidates for promotion and will reverse the Personnel Office decision if necessary to maintain compliance with this Agreement and Title VII.

V.

EQUAL EMPLOYMENT OPPORTUNITIES

16. The NCDOC is committed to a policy of lawful employment practices consistent with Title VII. Accordingly, all correctional officer positions, posts, shifts and assignments in the NCDOC shall be open to women on an equal basis with men, except that the NCDOC shall not be required to assign a female correctional officer to conduct a strip search of a male inmate. However, no supervisory promotional correctional officer positions or posts at NCDOC correctional institutions housing male inmates may be designated as male-only; and not more than twenty-five percent (25%) of correctional officer positions or posts system-wide at NCDOC correctional institutions housing male inmates may be designated as male-only positions or posts, provided that such designations are consistent with Title VII. Assignment restrictions based on gender authorized by this Paragraph 16 shall not have any adverse effect on the hiring or promotion of women as correctional officers at NCDOC correctional institutions housing male inmates.

VI.

SEXUAL HARASSMENT PREVENTION PROGRAM

17. It is recognized by the State that, consistent with Title VII, the NCDOC's officials, managers and supervisors are responsible for seeking to prevent, and for taking proper measures against, any sexual harassment among the employees they supervise or with whom they work. See Exhibit 16.

VII.

AUDITS AND SANCTIONS

18. In order to ensure compliance with Parts I-VI of this Agreement, the NCDOC shall adopt the following audit and sanction policies and practices:

- a. The Field Compliance Specialists will conduct audits of the hiring of females to Correctional Officer positions and promotion of females to Lead Correctional Officer, Sergeant, Lieutenant and Captain twice per calendar year. Ten percent (10%) of all new hires and promotions in each geographic area will be randomly selected and all relevant documentation reviewed at facilities currently in operation to ensure compliance with this Agreement.
- b. The Field Compliance Specialists will audit documentation of posting, screening criteria and interview team recommendations in each geographic area to evaluate whether they are in accordance with Office of State Personnel, State Personnel Commission and NCDOC policy, and are consistent with Title VII.
- c. The Field Compliance Specialists will personally observe actual interviews for individual new hire vacancies and promotional vacancies at least once per year at each of the hiring facilities, provided that turnover allows for this level of observation.
- d. The Field Compliance Specialists will randomly select and review ten percent (10%) of all statistical reports submitted by facilities currently in operation to ensure that the information provided is accurate.
- e. The audit will note as an exception any violation regarding posting, screening, interviewing, selection or statistical reporting required by this Agreement or Office of State Personnel or NCDOC personnel policies and procedures or any aspect of the selection process found to be inconsistent with Title VII as it relates to female applicants for entry-level or promotional correctional officer positions.
- f. Documentation of all audits, statistical reviews and interview observations will be forwarded to the Operations Manager and the Special Assistant.
- g. The Special Assistant will impose sanctions on the appropriate personnel in correctional facilities where unsatisfactory audit findings occur. The purpose of the sanction will be to correct the problem which was the basis of the exception. The sanction may include the removal of hiring and promotion decision-making authority from the facility head for a period of time at the discretion of the Special Assistant. The Special Assistant will assume the responsibility for making the final hiring and promotion decisions when the authority has been removed.
- h.. The State's annual Performance Management System ("PMS") work plan for each facility head will include a key responsibility holding him or her responsible for compliance with this Agreement and with Title VII, enforcement of the NCDOC's policy prohibiting sexual harassment, and compliance with standardized employment policies and practices. Failure to meet the key responsibility will result in a less than good evaluation on this key responsibility. This will impact the overall final evaluation rating and may impact performance pay increases.
- i. Facility heads who receive within two (2) years more than one overall unsatisfactory audit, as determined by the Field Compliance Officer, Operation Manager and Special Assistant, will be subject to discipline for unacceptable performance of duties.

VIII

INDIVIDUAL REMEDIES

A. Persons Entitled to Relief

19. Those persons who are entitled to a monetary award under this Agreement shall include:

a. Any woman who: applied for a Correctional Officer, Lead Correctional Officer, Sergeant, Lieutenant or Captain position vacancy in the NCDOC at any time between December 31, 1983 and December 31, 1992; met the minimum requirements for the position at the time of application and was not hired or promoted at that time as the case may be; and the United States determines, in its sole discretion, would have been so hired or promoted at that time but for her sex; and

b. Any woman who: would have applied for a Correctional Officer, Lead Correctional Officer, Sergeant, Lieutenant or Captain position vacancy in the NCDOC at any time between December 31, 1983 and December 31, 1992 but for her reasonable belief that the NCDOC would not have hired or promoted her because of her sex; met the minimum requirements for the position at the time she would have applied; and the United States determines, in its sole discretion, would have been so hired or promoted at that time but for her sex. In determining whether a Paragraph 19b claimant is entitled to a back pay award, the United States will consider whether the claimant had a reasonable belief that the NCDOC would not have hired her because of her sex, whether she had a demonstrated interest in law enforcement or the corrections field and whether she was in the job market, among other factors it may consider.

20. Those persons who are eligible to be considered for a non-monetary award under this Agreement shall include:

a. Any woman who applied for a Correctional Officer, Lead Correctional Officer, Sergeant, Lieutenant or Captain position vacancy in the NCDOC at any time between December 31, 1983 and December 31, 1992, met the minimum requirements for the position at the time of application, and was not hired or promoted at that time as the case may be; unless the State demonstrates that she would not have been hired into or promoted to the position for which she applied for reasons other than her sex; and

b. Any woman who would have applied for a Correctional Officer, Lead Correctional Officer, Sergeant, Lieutenant or Captain position vacancy in the NCDOC at any time between December 31, 1983 and December 31, 1992 but for her reasonable belief that the NCDOC would not have hired or promoted her at that time because of her sex, and met the minimum requirements for the position at the time she would have applied; unless the State demonstrates that she would not have been hired into or promoted to such position for reasons other than her sex.

21. For purposes of Paragraphs 19 and 20, supra:

a. The minimum qualifications for the position of Correctional Officer shall be:

(i) 20 years of age;

(ii) A high school diploma or a GED equivalency; and

(iii) No criminal convictions for which an incumbent correctional officer would have been terminated.

b. The minimum qualifications for Lead Correctional Officer shall be:

(i) One (1) year of continuous service as a correctional officer;

(ii) An overall PMS rating of "meets expectations" ("ME") or better for her last annual or interim PMS rating, whichever is later; and

(iii) No disciplinary action during the last two (2) years, or while employed as a Correctional Officer,

whichever is less, for which incumbent officers would have been denied consideration for promotion.

c. The minimum qualifications for Correctional Sergeant, Correctional Lieutenant and Correctional Captain shall be:

(i) Two (2) years of continuous service in the next lowest rank;

(ii) An overall PMS rating of "meets expectations" ("ME") or better for her last annual or interim PMS rating, whichever is later; and

(iii) No disciplinary action during the last two (2) years for which incumbent officers would have been denied consideration for promotion.

The minimum age and conviction record of any claimant may be verified by the State if it wishes, provided that the State completes such verification within sixty (60) days from the date of its receipt of the United States' report under Paragraph 44, infra.

22. For the purposes of Paragraphs 19a and 20a, supra, a "position vacancy" refers to a position that was filled, within one hundred twenty (120) days after a claimant's date of application, through the hire or the promotion of a male at any NCDOC male inmate facility in any county in the State in which the claimant, at the time of the application, indicated an interest in working. For the purposes of Paragraphs 19b and 20b, supra, a "position vacancy" refers to a position that was filled through the hire or promotion of a male, within one hundred twenty (120) days of the date and at the NCDOC male inmate facility, a claimant would have applied for such a position but for her reasonable belief that the NCDOC would not have hired or promoted her because of her sex. For the purposes of this Agreement, not more than fifteen percent (15%) of all claimants entitled to relief under Paragraphs 19 and 20, supra, may be Paragraph 19b or Paragraph 20b claimants.

B. Monetary Awards

23. The State shall provide the sum of five million five hundred thousand dollars (\$5,500,000.00) (the "Settlement Fund" below) to be used to satisfy all back pay claims to be paid under this Agreement.

24. The State shall, within thirty (30) days from the date of entry of this Agreement, deposit the entire Settlement Fund with the Clerk of Court, to be invested in U.S. Treasury bills. The principal and the interest earned thereon shall be distributed pursuant to the procedure for the disbursement of back pay awarded under this Agreement.

25. The Settlement Fund, as well as all interest that accrues thereon after deposit with the Clerk of Court shall be distributed by the State at the direction, and in the sole discretion, of the United States. While the distribution of the monetary relief shall be at the direction, and in the discretion, of the United States, such discretion may not be exercised in an arbitrary or capricious manner, and such distribution shall be fair and reasonable among the members of the claimant class. Lastly, no individual back pay award may exceed forty-five thousand dollars (\$45,000.00); and no individual back pay award to any claimant may exceed thirty-three and one-third percent (33 1/3%) of the total average salaries earned by incumbent correctional officers over the claimant's back pay period as determined by the United States, except that any claimant entitled to a retroactive promotion seniority date under this Agreement shall be entitled to an award of full back pay for the loss or denial of such promotion from the retroactive promotion seniority date to the date of entry of this Agreement. See Exhibits 17A and 17B.

26. All monetary awards under this Agreement shall be paid directly by the State to the claimants. The monetary award of any claimant who dies after having been identified by the United States as qualifying for an award under Paragraph 44, *infra*, shall be paid, upon approval of the Court, to her authorized legal representative or, as appropriate, her heirs in accordance with the laws of the State of decedent's domicile.

27. The State, to the extent required by law or this Agreement, shall pay all employer contributions to the Social Security fund and the North Carolina Retirement System due on monetary awards to claimants who accept the relief provided by this Agreement. Any such employer contributions to the Social Security fund and the North Carolina Retirement System shall not be deducted from the Settlement Fund or any claimant's monetary award. The State shall withhold, to the extent required by law or this Agreement, all appropriate Federal income, FICA, and any other appropriate tax withholding or deduction from any monetary award made under this Agreement, all of which shall be deducted by the State from such monetary award and all of which, except for Social Security and North Carolina Retirement System employer contributions, shall be paid from the Settlement Fund.

28. A person entitled to monetary relief under this Agreement shall not be required to indicate a present interest in, or to accept an offer of, non-monetary relief as a condition of her receipt of a monetary award under this Agreement.

C. Priority Hiring and Promotion

29. Of those claimants described in Paragraph 20, *supra*, (except former employees of the NCDOC), up to four hundred and sixty-four (464) shall be entitled to priority hiring by the NCDOC and up to thirty-five (35) shall be entitled to priority promotion by the NCDOC, as follows:

a. For a period of time of thirty-six (36) months following the timely return of an Acceptance of Relief and Release form in accordance with Paragraph 52, *infra*, subject to the provisions of N.C. Gen. Stat. § 126-7.1 (c1), each Paragraph 20 claimant entitled to a priority hire or a priority promotion under this Agreement shall be entitled to select any vacancy throughout the State in the position to which the parties agree, or absent such agreement the Court determines, she would have filled but for her sex. Such selection by a claimant shall be made on the form provided by the State for such purpose, which form shall be forwarded to the State by first class mail addressed to: _____. Where only one claimant selects a vacant position, she shall receive an offer from the State to fill such position. Where more than one claimant selects the same vacant position, then in that event:

(1) As between a Paragraph 20a claimant (a rejected applicant) and a Paragraph 20b claimant (a deterred applicant), the Paragraph 20a claimant shall be offered the position;

(2) As between Paragraph 20a claimants, the claimant who originally had applied the earliest shall be offered the position;

(3) As between Paragraph 20b claimants, the claimant who originally would have applied the earliest shall be offered the position.

Any claimant under this Paragraph 29a who selects a vacant position, but who is not offered such position as a result of the operation of this Paragraph 29a shall, within such 36-month period, be entitled to select any other vacancies in such position throughout the State subject, again, to the operation of this Paragraph 29a. There is no limitation as to the number of vacancies in such position throughout the State that a claimant is entitled to select during such 36-month period, but a claimant may select only one

vacancy at a time until she receives notification from the State about the disposition of that vacancy. Such notification from the State shall be made in writing, and accomplished by first class mail to the claimant within fifteen (15) days from the date of closing of the vacancy posting.

b. For a period of time of eighteen (18) months and commencing eighteen (18) months after the timely return of an Acceptance of Relief and Release form in accordance with Paragraph 52, infra, the State may provide any Paragraph 20 claimant who has not obtained a priority hire or a priority promotion offer pursuant to Subparagraph 29a, supra, with a written offer to fill a vacancy in the position to which the parties agree, or absent such agreement the Court determines, she would have filled but for her sex, and:

(i) At any NCDOC institution in the county in which the claimant resides or within thirty-five (35) driving miles from the claimant's residence; or

(ii) At the NCDOC institution closest in driving miles to the claimant's residence, if there is neither any NCDOC institution in the county in which the claimant resides, nor one within thirty-five (35) driving miles from the claimant's residence.

The priority of such offers by the State to claimants residing in the same county shall be consistent with Paragraph 29a, supra.

c. Any Claimant who receives a written offer of a priority hire or a priority promotion under this Paragraph 29 shall have ten (10) days from the date of her receipt thereof if the offer is made under Paragraph 29a, supra, or twenty (20) days from the date of her receipt thereof if the offer is made under Paragraph 29b, supra, to notify the State that she accepts such offer. Such notification shall be in writing and accomplished by first class mail postmarked on or before the tenth (10th) day in the case of a Paragraph 29a offer, or the twentieth (20th) day in the case of a Paragraph 29b offer, from the date of her receipt of the State's written offer. If the claimant timely provides the State with such notification, the State shall provide her with such priority hire or promotion, as the case may be. However, if the claimant fails to accept timely this offer, the State's obligation to provide her with a priority hire or a priority promotion under this Agreement ceases.

30. In order to effectuate the provisions of Paragraph 29a, supra, the State shall provide each claimant entitled to a priority hire or a priority promotion with: (1) a road map showing the location of each operational correctional institution of the NCDOC that either currently houses male inmates or which housed male inmates at the time the claimant applied, or would have applied, for an entry-level correctional officer job or promotion; and (2) useful information about each such institution, such as its address, telephone number, security level, size of correctional staff, and number and gender of inmates at each custody level.

31. Claimants entitled to priority hiring or priority promotion by the NCDOC under this Agreement shall be considered for hire or promotion in the order of the dates of their applications or, for claimants under Paragraph 20b, supra, at the approximate time they were interested in a job. If accurate information of such dates is not available, the approximate date(s) of application as determined by the United States shall be used.

32. a. To be entitled to priority hire in the position of Correctional Officer by the NCDOC under Paragraph 29, supra, a claimant at that time:

(i) Must be able to be certified by the North Carolina Criminal Justice Education and Training Standards

Commission as required by North Carolina law;

(ii) Will be considered medically fit unless she has a condition which would cause an incumbent to be removed from a correctional officer position; and

(iii) Must have no criminal convictions for which an incumbent would be terminated from the job.

b. To be entitled to a priority promotion to the position of Lead Correctional Officer by the NCDOC under Paragraph 29, supra, a claimant must at that time:

(i) Have at least one (1) year service in the position of correctional officer;

(ii) Have no disciplinary action during the last two (2) years that would disqualify other incumbents from Promotional consideration, or within the time working as a correctional officer if the time working is less than two (2) years, whichever is greater; and

(iii) Have an overall PMS rating of "meets expectations" ("ME") or better for her then most recent annual or interim PMS rating, whichever is later.

c. To be entitled to a priority promotion to the position of Sergeant, Lieutenant or Captain by the NCDOC under Paragraph 29, supra, a claimant must at that time:

(i) Have at least two (2) years service in the next lowest rank;

(ii) Have no disciplinary action during the last two (2) years that would disqualify other incumbents from promotional consideration; and

(iii) Have an overall PMS rating of "meets expectations" ("ME") or better for her then most recent annual or interim PMS rating, whichever is later.

33. Any claimant who accepts a priority hire or a priority promotion under Paragraph 29, supra, may temporarily delay reporting for duty in that position for reasonable cause as determined by the United States, but only up to a maximum of:

a. Eight (8) weeks if offered a priority hire;

b. Six (6) weeks if offered a priority promotion at an institution in a county other than the county in which she then works; or c. One (1) week if offered a priority promotion at the institution at which she then works or at an institution in a county in which she then works.

34. Claimants entitled to priority promotion shall not be required to take any written test administered during the duration of this Agreement as a precondition for promotion to Sergeant, Lieutenant or Captain. However, once the NCDOC promotes a claimant to the position of Sergeant, Lieutenant or Captain, it may administer, within six (6) months of such promotion, a written test that is lawful and job-related in the manner it usually administers such promotional tests and may require that those claimants who are not on current eligibility lists at the time of their promotion to pass such written test as a condition for retaining the priority promotion. Between the time of promotion and the test, the NCDOC, at a minimum, shall offer the regular training and counselling usually offered to test takers to the claimant in preparation for the test.

D. Retroactive Seniority

35. Any claimant who is entitled to and accepts a priority hire under this Agreement and who further achieves permanent status in that position; any claimant who is entitled to and accepts a priority promotion under this Agreement; and any claimant who is an incumbent correctional officer in the NCDOC and who would have been hired into or promoted to her present position earlier except for her gender, shall be entitled to retroactive seniority credit in that position as of the date that she would have filled that position but for the alleged unlawful discriminatory employment practices.

36. As used in this Agreement, the term "retroactive seniority" shall mean the crediting of seniority for all purposes for which seniority is used in the NCDOC, except that retroactive seniority credit shall not affect consideration or eligibility for either promotion or time-in-grade requirements for purposes of completing any probationary period or eligibility for promotion. Additionally, such persons shall receive a salary at the same level as the salary currently received by correctional officers who were hired or promoted at the time that the claimant should have been hired or promoted. See Exhibits 18A and 18B.

E. Pension Relief

37. The State shall provide each claimant who receives a retroactive promotion seniority date pursuant to Paragraph 35, supra, with complete pension benefits as though such claimant had been promoted and begun earning the higher salary on the retroactive promotion seniority date set forth in Paragraph 36, supra, and as though the State and such claimant have contributed regularly and fully to the North Carolina Retirement System on behalf of such claimant since such claimant's retroactive promotion seniority date.

In order to fund the pension relief provided in Paragraph 37, supra, the State shall: deduct from the face amount of such claimant's promotional back pay award, and pay into the North Carolina Retirement System on her behalf, six percent (6.0%) of such award in full and complete satisfaction of such claimant's obligations to the North Carolina Retirement System for such pension relief; and pay into the North Carolina Retirement System - but from neither the Settlement Fund nor such claimant's back pay award - a sufficient sum of money to fully satisfy the requirements of the North Carolina Retirement System for such pension relief.

F. Other Charges of Gender Discrimination

38. All claimants who filed charges of gender discrimination in hiring or promotion against the State with the U. S. Equal Employment Opportunity Commission ("EEOC") or in any other forum designated as a deferral agency by the EEOC at the time the charges were processed and reached a resolution on the merits for the alleged instances of gender discrimination in hiring or promotion in the NCDOC, shall be ineligible to receive any relief under this Agreement, unless they allege a different set of facts and circumstances which have taken place since the date of that resolution.

G. Notice Requirements

39. Within thirty (30) days from the date of the entry of this Agreement, the State shall prominently post copies of the Notice of the settlement of this action on all bulletin boards for correctional officer employees, in all correctional institutions, area, regional and central NCDOC offices for a period of three (3) months. See Exhibit 19.

40. Within sixty (60) days from the date of entry of this Agreement and upon agreement of the parties

regarding the most current available information, the State shall send one written notice of the settlement of this action (see Exhibit 20) and one "Claim of Employment Discrimination" form (see Exhibit 21) by certified mail (return receipt requested) or, where relevant, by attachment to the NCDOC salary check stub, receipt acknowledged, to the last known address of: all current female custody and non-custody employees in the NCDOC; all former female NCDOC custody and non-custody employees who were employed by the NCDOC at anytime between December 31, 1983 and December 31, 1992; and all female NCDOC job applicants who applied for NCDOC correctional officer jobs at any time between December 31, 1983 and December 31, 1992, and were not hired. These mailings shall be required of the NCDOC to the extent such records currently are available from NCDOC records.

Within thirty (30) days from the date of the last mailing of the written notices and claim forms, the State shall compile and present to the United States a list of all delivered and undelivered notices, respectively. The United States shall have forty-five (45) days from the date of its receipt of such list from the State within which to provide the State with updated addresses for those claimants whose notices and claim forms were undelivered, as well as addresses for those claimants to whom the State did not send notices and/or claim forms. Within thirty (30) days from the date of its receipt of such information from the United States, the State shall send out a notice to such claimants.

41. Within sixty (60) days from the date of entry of this Agreement, the State shall publish notice of the settlement of this action (see Exhibit 22) in the Wednesday and Sunday editions of those newspapers agreed upon by the parties (see Exhibit 23) except that if a newspaper does not publish on those days, then the State shall publish on the days agreed upon by the parties. Such newspaper notice shall run for three successive weeks. The notice shall be in the form of a display advertisement and shall appear in the news section of the newspapers as far forward as possible and shall appear with headline in large, bold, display type face and shall be surrounded by a dark, continuous border. The State also shall seek, by written request to the North Carolina Association of Broadcasters, to publish notice of the settlement of this action by means of public service announcements on radio stations throughout the State. See Exhibit 24.

42. The State shall bear the cost of all mailing and publication notices required under this Agreement.

H. Claim Procedures

43. Any claimant who fails to forward a "Claim of Employment Discrimination" form to the United States within thirty (30) days from the date of the last mailing of the notice described in Paragraph 40, supra, or within thirty (30) days from the date of the last newspaper publication described in Paragraph 41, supra, whichever is later, shall be deemed to have waived any right to be considered for an award of remedial relief under this Agreement, except for reasonable cause.

44. Within one hundred fifty (150) days from the final date for filing claims, as provided in Paragraph 43, supra, the United States shall file with the Court and serve upon the State a written report setting forth: a list of those claimants who have submitted claims who the United States believes are entitled to remedial relief under this Agreement; the relief the United States believes each claimant should be awarded; the reasons there for; and the basis for its allocation of funds to each claimant. The written report of the United States shall be accompanied by copies of: the "Claim of Employment Discrimination" form of those claimants who the United States believes are entitled to remedial relief under this Agreement; and whatever supporting documents then possessed and relied upon by the United States that would be obtainable by the State through the Federal Rules of Civil Procedure.

I. Procedures for Contested Claims

45. The State shall have ninety (90) days from the date of its receipt of the report of the United States referred to in Paragraph 44, supra, to object to any non-monetary relief proposed by the United States for individual claimants under this Agreement on the ground that such claimant was not a victim of discrimination and, accordingly, is not entitled to the non-monetary relief proposed for her by the United States. The State's objections shall be set forth in a written report filed with the Court and served upon the United States within the time period allowed by this Paragraph 45. Such written report of the State shall be accompanied by copies of whatever documents then possessed and relied upon by the State that would be obtainable by the United States through the Federal Rules of Civil Procedure, that support the State's objections to relief for any claimant.

46. This Agreement contemplates that, to the extent possible, the United States and the State resolve between themselves as many claims for non-monetary relief under this Agreement as possible. To that end, this Agreement contemplates that the United States and the State be allowed - voluntarily and without the need for formal discovery requests or application to the Court - reasonable access to the other party's non-privileged records, documents and information relevant to the issue of the entitlement of claimants to non-monetary relief under this Agreement. This Agreement also contemplates that the United States and the State will attempt to provide each other with that information and documentation described in Paragraphs 44 and 45, supra, respectively, as it is prepared and prior to the deadlines established in those Paragraphs.

47. The United States and the State shall have ninety (90) days from the date of the United States' receipt of the report of the State referred to in Paragraph 45, supra, to attempt to resolve between themselves as many claims for non-monetary relief under this Agreement as possible. At the conclusion of such time period, the United States and the State shall file with the Court a joint motion for the entry of an Order: approving the parties proposed disposition of those claims for non-monetary relief as agreed upon by them, and those claims for monetary relief as determined by the United States; and resolving, after notice and a hearing, those claims for non-monetary relief that remain in dispute between the parties.

48. The Court will conduct a hearing for the purposes of reviewing those claims for non-monetary relief agreed upon by the United States and the State, resolving any claims for non-monetary relief that remain in dispute between the United States and the State, and considering any objections to the relief proposed by the United States that are submitted pursuant to this Paragraph 48. The hearing will be conducted by the Court as soon after the United States and the State have moved the Court for a resolution of disputed claims as provided in Paragraph 48, supra, as the Court's schedule allows and after: the United States, at least sixty (60) days before such hearing, notifies in writing each claimant who timely forwarded her "Claim of Employment Discrimination" form pursuant to Paragraph 43, supra, as to: the specific relief, if any, that the United States has proposed on her behalf; whether the State disputes her claim; the date, time and place of such hearing; and the opportunity to object to the relief, if any, the United States has proposed on her behalf by notifying the United States of such objection, provided that such notification shall be made by first class mail addressed to Robert N. Dempsey, Senior Trial Attorney, United States Department of Justice, Civil Rights Division, Employment Litigation Section, P.O. Box 65968, Washington, D.C. 20035-5968; and post-marked not less than twenty (20) days from her receipt of the United States' notification.

49. The United States shall file with the Court and serve upon counsel for the State a copy of any written objection it receives pursuant to Paragraph 48, supra, within fifteen (15) days from the date of its receipt of such objection; and the United States and the State, or either of them, may timely file with the Court any written reply to any such objection they, or either of them, deem appropriate.

50. The burdens of proof for the resolution by the Court of any non-monetary claim for hiring or

promotion relief under this Decree which is disputed by the State shall be those set forth by the Supreme Court for Stage II proceedings after a finding of liability in International Brotherhood of Teamsters v. United States, 431 U.S. 324 (1977).

J. Notice of Det

~ 1. The State shall send by certified mail (return receipt requested) a "Notice of Determination" form (see Exhibit 25), as well as an NC-4 form and a W-4 form if required by law, to each claimant whose claim for relief was approved or resolved by the Court pursuant to Paragraph 48, supra, within sixty (60) days from the date of entry by the Court of its Order approving or resolving such claims.

52. The Notice of Determination form shall advise each claimant as to the monetary and/or non-monetary relief to which she is entitled under the provisions of this Agreement, as well as of any deductions from this monetary award that are required by law. In the case of those claimants entitled to relief under this Agreement, the Notice of Determination form shall be accompanied by a self-addressed, stamped envelope and an "Acceptance of Relief and Release" form (see Exhibit 26) which the claimant shall use to notify the State as to whether she desires to accept the relief offered. The claimant shall have thirty (30) days from her receipt of the Notice of Determination form and Acceptance of Relief and Release form to execute and return her Acceptance of Relief and Release form in order to receive any relief under this Agreement. The State shall, within thirty (30) days from the date of the State's receipt of the claimant's Acceptance of Relief and Release form, together with any required NC-4 and W-4 forms, pay that monetary award that is due the claimant, as well as provide that non-monetary relief to which she is entitled, under Part VIII this Agreement. If the claimant notifies the State that she does not accept the relief or does not return a properly executed Acceptance of Relief and Release form within the thirty (30) day period, the State shall be released from its obligation to her under this Agreement, except for reasonable cause.

K. Final Accounting

53. a. The United States shall reallocate any monetary relief that remains undistributed for one-hundred forty (140) days after the entry by the Court of its Order pursuant to Paragraph 48, supra, in its sole discretion, subject to the provisions of Paragraph 25, supra, among those claimants whose claims were approved or resolved by the Court by such Order. At the time of such reallocation the United States shall notify the State in writing as to the additional amount of monetary relief the United States reallocated each claimant pursuant to this Paragraph 53a, and shall provide the State with a supplemental report regarding monetary relief that is consistent with Paragraph 44, supra.

b. If a non-monetary hiring claim or a non-monetary promotional claim is successfully disputed by the State pursuant to this Agreement, the monetary relief that had been allocated by the United States for such claimant shall be part of the reallocation set forth in Paragraph 53a, supra.

c. The State shall issue to each such claimant payment of such additional monetary relief within thirty (30) days from the date of its receipt of the United States' written notice of reallocation.

d. Any monetary relief that remains undistributed for sixty (60) days after said reallocation by the United States and payment by the State pursuant to this Paragraph 53, shall revert to the State.

IX RECORDS AND REPORTS

54. The State shall retain for the duration of this Agreement all NCDOC personnel records and

documents (including computer tapes) - to the extent that such are maintained in the ordinary course of business - relating to correctional officers. The United States shall have the right to inspect and copy any and all NCDOC documents and records relating to the recruitment, selection, hire, assignment and promotion of correctional officers upon reasonable notice to the State and without need for an order of the Court. The United States may inspect and copy any other NCDOC documents or records only if agreed to by the State or, absent that agreement, upon order of the Court.

55. The State shall provide to the United States, within sixty (60) days from the date of entry of this Agreement, a report setting forth, for each correctional facility covered by this Agreement, the number and gender of persons in each correctional officer position by rank as of the date of entry of this Agreement.

56. For the duration of Part IX of this Agreement, the State shall provide periodic reports as described in this Paragraph. The first reporting period shall begin sixty (60) days from the date of entry of this Agreement and end six (6) months thereafter. Reporting periods shall continue to end every six (6) months thereafter. Within thirty (30) days from the close of each reporting period, the State shall provide to the United States, in a uniform reporting form for each facility covered by this Agreement (see Exhibit 27), the following information:

- a. The number and gender of all persons applying for each entry-level and promotional correctional officer position;
- b. The number and gender of all persons hired or promoted to each correctional officer position by rank;
- c. The number and gender of all NCDOC employees who were terminated or who resigned from correctional officer positions by rank during the reporting period, including trainees;
- d. The total number and gender of all NCDOC employees in each correctional officer position by rank as of the close of the reporting period;
- e. Any changes in the qualification criteria for the selection of correctional officers for the reporting period; and
- f. The information requested on Exhibit 27 concerning gender-restricted correctional officer posts and positions.

ADDITIONAL PROVISIONS

57. Compliance with this Agreement shall satisfy, during the life of this Agreement, for purposes of the United States, the obligation of the State under Title VII as to employment opportunities for women in correctional officer positions in the NCDOC, as alleged in the United States' Complaint.

58. If the parties are unable to agree on a specific matter falling within the provisions of this Agreement, either party may move the Court for a resolution.

59. The parties shall bear their own costs and attorneys' fees in this action.

60. This Court shall retain jurisdiction of the matters covered by this Agreement for such action as may be necessary or appropriate to effectuate the purposes of this Agreement. Three (3) years from the date of entry of this Agreement, the State's obligations under Parts I-VII and IX of this Agreement shall

cease, and such Parts of this Agreement shall expire and dissolve, unless the United States, upon motion filed with the Court, upon notice to the State, shows good cause as to why such Parts of this Agreement should not expire or dissolve. Upon the State's implementation of all of the remedial relief to claimants under Part VIII of this Agreement, the State shall file with the Court, and serve upon the United States, a written certification that all remedial relief to claimants under Part VIII of this Agreement has been implemented. Such certification by the State shall set forth: the identity of each claimant who received relief under this Agreement, as well as a description of the monetary and/or non-monetary relief received; the identity of each claimant who rejected relief under this Agreement, as well as a description of the monetary and/or non-monetary relief rejected; and the amount of monetary relief, if any, that went undistributed and the reasons there for. Part VIII of this Agreement shall expire and dissolve unless, within thirty (30) days from the date of its receipt of the State's certification, the United States shows good cause as to why Part VIII of this Agreement should not expire and dissolve.

61. The State shall be entitled to the dismissal of this action upon the expiration and dissolution of all Parts of this Agreement.

APPROVED and ORDERED this day of , 1995.

UNITED STATES DISTRICT JUDGE AGREED AND CONSENTED TO:

On behalf of the United States of America:

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Assistant Attorney General
Civil Rights Division

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~n behalf of the State defendants:

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