

**UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 CITY OF AUSTIN, TEXAS,)
)
 Defendant.)

Civil Action No. 1:14cv533-LY

**JOINT MOTION BY THE UNITED STATES; CITY OF AUSTIN, TEXAS;
AND PROPOSED INTERVENORS FOR SUPPLEMENTAL RELIEF**

A. Introduction

Pursuant to Federal Rule of Civil Procedure 60(b)(6), the United States of America (United States); the City of Austin, Texas (City); and the International Association of Firefighters, Local 975 (AFA) (collectively, movants) jointly move this Court for an order granting supplemental relief. The requested order for supplemental relief will grant AFA certain rights to participate in discussions identified in Part III.C.6 and dispute resolution procedures identified in Part IV of the Consent Decree that this Court approved on November 7, 2014 (Consent Decree or Decree). R. 64:14-17.¹

On May 21, 2015, the Fifth Circuit issued an order dismissing without prejudice the two pending appeals filed by AFA and the ten individual Austin firefighters who sought intervention in this case in 2014 (collectively, the proposed intervenors). That order was issued in response to the movants' motion and notice that the movants had reached a settlement that would include

¹ R. __:__ refers, respectively, to the docket number and page number of the document recorded on the district court docket sheet.

this motion for supplemental relief. As a result of the Fifth Circuit's dismissal, this Court has jurisdiction to consider and grant this motion.

B. Procedural History

On June 9, 2014, the United States and City submitted to this Court a proposed Consent Decree that resolved the United States' claims against the City under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e *et seq.* (Title VII). R. 3-5. The proposed Consent Decree includes injunctive relief and individual relief to qualified claimants, and requires the City to develop a new selection procedure for entry-level firefighters that complies with Title VII. R. 64:13-14. This Court approved the Consent Decree on November 7, 2014, following a fairness hearing conducted on October 29, 2014. R. 64.

Under Part III.C.6 of the Consent Decree, the United States may review the City's proposed selection procedures before they are used to assess compliance with Title VII. R. 64:14. To ensure compliance with Title VII, the United States may also review (1) applicants' performance on the new selection procedures, and (2) the manner in which the City intends to use those selection procedures to make hiring decisions. R. 64:15-17. If the United States objects to the City's proposed procedures and/or manner of use because it does not believe either comports with Title VII, the United States and the City will seek to resolve the matter. R. 64:14-17. If the City and United States cannot agree on a resolution, either the United States or the City may seek judicial resolution through the Decree's dispute resolution procedures. R. 64:14-17, 37-38.

Prior to the October 29 fairness hearing, the proposed intervenors moved to intervene in this litigation. R. 16-17. This Court denied intervention as of right and permissive intervention, and denied the proposed intervenors' motion for reconsideration. R. 38, 44. On October 8,

2014, the proposed intervenors filed a notice of appeal of the denial of intervention. R. 45. After this Court approved the Consent Decree on November 7, 2014, the proposed intervenors also filed a notice of appeal challenging the Court's approval and entry of the Consent Decree. R. 70. Earlier this year, the proposed intervenors filed their opening brief, and the United States and the City filed their respective responsive briefs, in the Fifth Circuit.

C. Recent Negotiations And The Proposed Settlement

Beginning about February 23, 2015, the City and AFA engaged in negotiations for a new collective bargaining agreement (CBA) to replace the CBA between them that expired in September 2013. The scope of these collective bargaining negotiations has included discussions for a settlement of the issues raised by the proposed intervenors in their appeals.

The City and AFA reached a tentative agreement on terms for a new CBA on May 11, 2015. That tentative agreement has now been ratified by AFA's members and approved by the Austin City Council (City Council). The United States did not participate in the collective bargaining negotiations and is not a party to the CBA.

Outside of their collective bargaining negotiations, the City and AFA have engaged in separate negotiations with the United States for a settlement of the issues raised by appellants in their appeals. As a result of these discussions, the movants have collectively agreed on a framework for resolution. Generally, in exchange for this Court's approval of this request for supplemental relief, the proposed intervenors will agree to not reinstate their appeals with the Fifth Circuit (*United States v. City of Austin*, Nos. 14-51132 and 14-51276 (5th Cir.)).

Specifically, the proposed order for supplemental relief will give AFA the same rights to participate in the resolution of any objections raised by the United States under Parts III.C.6 and IV of the Consent Decree as the City has under these Parts with two limitations. First, any data

provided to AFA by the City or United States regarding applicants' test performance will not include personal identifying information; and second, AFA shall not have the right to appeal any order of the District Court issued under Part IV of the Consent Decree. This order shall remain in full force and effect until the expiration of the Consent Decree.

After the movants reached an agreement on the terms of a settlement and the ratification and approval process for the CBA had begun, the movants sought a stay of the appellate proceedings. On May 21, 2015, the Fifth Circuit issued an order that dismissed the two pending appeals without prejudice for 180 days. Exhibit 1. The proposed intervenors have an opportunity to seek reinstatement of the appeals should the settlement's terms not be fulfilled. Absent reinstatement or an extension of the 180-day time limit, the appeals will be deemed dismissed with prejudice. Moreover, the Court stated, "[d]ismissal was granted with the intent of divesting the Court of Appeals of jurisdiction so that the District Court can exercise its jurisdiction in effectuating the settlement." Exhibit 1 at 2.

D. The Movants' Request For Relief

Federal Rule of Civil Procedure 60(b)(6) permits a district court to grant relief from a final judgment or order for any reason other than the enumerated reasons of Rule 60(b)(1)-(5) "that justifies relief." Rule 60(b)(6) is a "catch-all provision" that affords relief under "extraordinary circumstances." *Hess v. Cockrell*, 281 F.3d 212, 216 (5th Cir. 2002). Rule 60(b)(6) is a "grand reservoir of equitable power to do justice in a particular case." *Borne v. River Parishes Hosp., LLC*, 548 F. App'x 954, 959 (5th Cir. 2013) (citation omitted). In addition, the Fifth Circuit has identified several factors to consider when evaluating a motion under Rule 60(b)(6), including a "liberal[] constru[ction] in order to achieve substantial justice" and "whether the motion [is] made within a reasonable time." *Ibid.*

Here, granting this motion will give AFA an opportunity to participate in the resolution of any objections raised by the United States under Title VII regarding the City's proposed selection procedures for entry-level firefighters. This resolution, which is requested by all of the parties and proposed intervenors, will also promote judicial economy by foregoing the reinstatement of the two previously pending appeals. Finally, granting this motion will avoid potential delays in implementing the Decree due to continuation of the appellate litigation. Accordingly, granting this motion is consistent with the purposes of Rule 60(b)(6) and the equitable powers of this Court.

The movants believe that this Court may grant the requested supplemental relief without the need for notice to individuals who filed claims for individual relief or others, or an additional fairness hearing to address this specific request.² See *Union Asset Mgmt. Holding A.G. v. Dell, Inc.*, 669 F.3d 632, 641-642 (5th Cir.) (district court did not abuse its discretion when it modified a settlement agreement's plan of allocation without providing new notice to class members or a second fairness hearing), *cert. denied sub nom., Schuleman v. Union Asset Mgmt. Holding A.G.*, 133 S. Ct. 317 (2012). Here, this supplemental relief addresses an issue raised only by the appellants when they sought to intervene, and not raised by any other persons who received notice of the October 29 fairness hearing. The appellants represent almost one-third of all individuals (11 of 38) who filed objections prior to the district court's initial fairness hearing. This supplemental relief will not affect the specific individual relief that will be afforded to qualified Claimants.

For the foregoing reasons, movants respectfully request that this Court enter the proposed order for supplemental relief.

² This request has no bearing on the Court's future consideration of individual backpay awards pursuant to Part III.F.8 of the Decree.

Date: June 5, 2015

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on June 5, 2015, I electronically filed the foregoing JOINT MOTION BY THE UNITED STATES; CITY OF AUSTIN, TEXAS; AND PROPOSED INTERVENORS FOR SUPPLEMENTAL RELIEF, including an attachment and proposed order, with the Clerk of the Court, U.S. District Court, Western District of Texas, using the CM/ECF system, which will then send a notification of electronic filing to all counsel of record who have registered to use the Court's CM/ECF system.

/s/ Shayna Bloom
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