

**UNITED STATES OF AMERICA  
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION  
OFFICE OF FEDERAL OPERATIONS**

**THOMAS HEDGEPEETH, et al.,**

**Class Agents,**

**v.**

**MERRICK GARLAND, ATTORNEY  
GENERAL, U.S. DEPARTMENT OF  
JUSTICE,**

**Agency.**

**EEOC NO. 570-2016-00501X  
AGENCY CASE NO. M-94-6376**

**PLAINTIFFS' RESPONSE TO MATTHEW FOGG'S APPEAL OF REMOVAL ORDER**

Class Agents, on behalf of themselves and a class of individuals they represent ("Class Members" or "Class"), file this brief in opposition to Matthew Fogg's appeal of the Administrative Judge's May 13, 2024 Order Retaining Jurisdiction Over Class Complaint and Granting Motion to Remove Matthew Fogg as Class Agent ("Removal Order").

Fogg's filing is dated June 12, 2024, and is titled, "Appeal of Decision Retaining Jurisdiction in the Underlying Complaint and Removal of Matthew Fogg as Class Agent and Spokesperson and Emergency Motion for: a Stay of the Underlying Proceedings, Recusal of the Administrative Judge and Class Law Firm Due to Fraud on the Commission, and Appointment of New Class Counsel."

The Administrative Judge did not grant final approval of the settlement agreement until June 13, 2024, one day after the date of this filing. As such, there is no doubt that Fogg's filing is an appeal to only the Administrative Judge's May 13, 2024 Removal Order.<sup>1</sup>

Class Agents oppose Fogg's filing and ask the OFO to deny Fogg's request to reinstate him as a class agent and overturn the Administrative Judge's May 13 order.<sup>2</sup> Class Agents also oppose Fogg's inflammatory requests to recuse the Administrative Judge and Class Counsel; these allegations of fraud are false and unsubstantiated.

## **I. BACKGROUND**

### **A. History of Litigation**

In 1994, Fogg filed an EEO charge against the Agency, alleging individual and class discrimination on behalf of African American USMS employees on the basis of their race, with respect to various practices related to Deputy United States Marshal ("DUSM") positions including promotions, hiring, and headquarters assignments. In October 1997, following the resolution of Fogg's individual claim, the Commission mistakenly closed the Class Charge. In 2004, Sanford Heisler Sharp was retained as Class Counsel and got the class claims reinstated. Nearly ten years after the Class Charge was closed, the Commission reopened the Class Charge in May 2006. In March 2007, the Administrative Judge assigned to the case at the time denied Class Counsel's motion for class certification and dismissed the class complaint. On April 27, 2007, the Agency adopted the Administrative Judge's denial of class certification. Five years later, on July 11, 2012, the Commission reversed that decision and certified all Class Claims. On November 17,

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<sup>1</sup> Because it was filed before final approval of the settlement, Fogg's appeal is directed only at the Administrative Law Judge's interlocutory order on jurisdiction and his removal. However, in the event that the OFO considers Fogg's current appeal as an appeal to the final approval of the settlement agreement, Class Counsel respectfully requests leave to brief that issue.

<sup>2</sup> Fogg's request for a stay of proceedings has become moot because final approval has now been granted in this case.

2015, the Commission denied the USMS's motion for reconsideration and again ordered that Class Claims be certified in their entirety. In so doing, the Commission defined the Class as follows:

African Americans who served in law enforcement or operational positions and were subjected to discrimination in recruitment, assignments, training, and promotional opportunities.

The Commission also directed Class Counsel to file an amended class charge, adding new Class Agents. Responding to this Motion to Amend, the Administrative Judge appointed additional Class Agents and defined the scope of the class in a February 24, 2017 Order. Voluminous discovery followed and on August 13, 2021, the Administrative Judge granted Class Agents' Motion to Amend the Class Charge to include specific hiring and recruitment claims. The current Class is defined as follows:

All current and former African American Deputy U.S. Marshals who were subjected to USMS policies and practices regarding promotions under the Merit Promotion Process, Management Directed Reassignments, and Headquarters Division assignments, and all African American current and former Deputy U.S. Marshals, Detention Enforcement Officers, and applicants never employed who were subjected to USMS policies and practices for hiring and recruitment of Deputy U.S. Marshal positions from January 23, 1994 to present.

Commission Order (Aug. 13, 2021); *see also* Second Am. Class Charge ¶ 48.

#### **B. History of Settlement**

On March 8, 2022, the parties agreed to a monetary settlement-in-principle of \$15 million for the Class and later, after approximately thirty additional settlement conferences, agreed on comprehensive programmatic relief. On September 21, 2023, the Commission preliminarily approved the Settlement Agreement, finding that the monetary relief included was reasonable, there were no obvious deficiencies, and that the risk of future delay counseled in favor of approval. Commission Order Granting Preliminary Approval of Settlement Agreement, Authorizing Notice,



and Scheduling Fairness Hearing (Sept. 21, 2023). During the ensuing notice period, Fogg filed an objection to the settlement.<sup>3</sup>

The Administrative Judge scheduled the Fairness Hearing to consider the fairness, adequacy, and reasonableness of the Settlement Agreement for March 20, 2024. The day before, on March 19, 2024, Fogg filed a complaint in the United States District Court for the District of Columbia (“Fogg Complaint”) and emailed the Supervisory Administrative Judge in this case purporting to remove the Commission’s jurisdiction and cancel the Fairness Hearing. Fogg made the decision to file this complaint without the approval or consent of the other Class Agents he claims to represent.<sup>4</sup> Ex. A, Motion to Remove Class Agent Decls.

The Supervisory Administrative Judge then canceled the then-upcoming Fairness Hearing to allow for briefing on the effect of Fogg’s federal court filing on the Commission’s jurisdiction over the complaint.

### **C. Removal of Fogg as Class Agent**

On March 22, 2024, Class Agents filed the Motion to Remove Matthew Fogg as Class Agent on the grounds that he was untruthful with the Commission, the U.S. District Court, Class Counsel and Members of the Class; that he pursued highly individualized relief in his federal district court filing, abandoning the hiring and lateral transfer claims included in the administrative class complaint; and that he demonstrated that he was not an adequate class representative. Class Counsel also fully briefed the issue of the Commission’s continued jurisdiction.

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<sup>3</sup> Including Fogg, there were only four objections to the Settlement Agreement out of thousands of class members. See Commission Order Granting Final Approval of Settlement Agreement at 3 (June 13, 2024) (“Final Approval Order”).

<sup>4</sup> Fogg signed his appeal to the OFO as being on behalf of “All Class Agents & Known Class Members” and referred to himself in the signature block as the “Class Agent Spokesperson.” As the attached declarations demonstrate, *see* Ex. A, Fogg did not have the consent of the other Class Agents to file the Fogg Complaint, let alone the entire class, nor did they appoint him as their spokesperson in the matter.



The Agency filed a response arguing that in a simple, non-class case, the filing of a civil action before final agency action terminates Commission proceedings. Agency's Brief in Response to the Equal Employment Opportunity Commission's Order Regarding Jurisdiction (Apr. 9, 2024). The Agency took no position on whether removal of Fogg as class agent was warranted. *Id.* at 1 n. 1. Matthew Fogg also filed a response, and Class Counsel then filed a reply. The Agency and Matthew Fogg then each filed surreplies and Class Counsel filed a sur-surreply.

On May 13, 2024, the Administrative Judge granted Class Counsel's motion to remove Matthew Fogg as a Class Agent. The Administrative Judge also ruled that the Commission retained jurisdiction over this case because: 1) the Commission's decision whether to dismiss a claim pursuant to EEOC Regulations at 29 C.F.R. §1614.107(a)(1), was discretionary, not mandatory, and 2) "the civil action Fogg filed differs in meaningful ways from the complaint before the Commission," making the dismissal of the long-pending claim unwarranted. Removal Order at 10-13. Further, the Administrative Judge removed Fogg as a class agent because he "demonstrated that he [was] no longer willing to 'fairly and adequately protect the interests of the class' in the class complaint before the Commission." *Id.* at 15.

Fogg then filed this appeal to the Office of Federal Operations dated June 12, 2024, challenging the Administrative Judge's decision to remove him as a class agent.<sup>5</sup> One day later, on June 13, 2024, the Administrative Judge granted final approval of the Settlement Agreement, finding it fair, adequate and reasonable to the class as a whole. Final Approval Order.

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<sup>5</sup> Fogg's filing presents serious procedural deficiencies, including his failure to use EEOC Form 573 in violation of 29 C.F.R. § 1614.403 (a), and his attempt to file an appeal to a decision that was not final in violation of 29 C.F.R. § 1614.401 (c). Further, despite his inclusion of a certificate of service, Fogg never served this appeal on Class Counsel. Instead, two days after it was filed, on June 14, 2024, Class Counsel was made aware of this filing by the Agency. Class Counsel is also unsure whether this appeal was properly filed with the OFO because there is no online portal for this filing. For these reasons alone, Fogg's appeal should be rejected.

## **II. The Administrative Judge Properly Retained Jurisdiction and Removed Fogg as a Class Agent**

The Office of Federal Operations reviews an Administrative Judge's legal determinations *de novo*. EEOC Management Directive 110, Chapter 9, § VI.B.4 (August 5, 2015). "On appeal the Commission will review the documents, statements, and testimony of record, including any timely and relevant submissions of the parties, and the Commission will issue its decision based on the Commission's own assessment of the record and its interpretation of the law." *Id.* § VI.A.2. "Factual determinations will be distinguished from legal determinations, and the Administrative Judge's factual determinations will be given deference" based on "a substantial evidence standard of review." *Id.* § VI.B.2; 29 C.F.R. § 1614.405(a). Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Universal Camera Corp. v. N.L.R.B.*, 340 U.S. 474, 477 (1951) (citation omitted).

### **A. The Commission Retained Jurisdiction Over the Class Complaint**

Despite Fogg filing a complaint in federal court, the Commission retained jurisdiction over the class complaint. In a class case, an "administrative judge *may* dismiss the complaint, or any portion, for any of the reasons listed in § 1614.107 or because it does not meet the prerequisites of a class complaint under § 1614.204(a)(2)." 29 C.F.R. § 1614.204(d)(2) (emphasis added). Dismissal in this case was therefore discretionary, not mandatory. *See Hunter v. Soc. Sec. Admin.*, EEOC No. 0720070053, 2012 WL 601533, at \*4 (EEOC Feb. 16, 2012) (concluding that judge did not abuse discretion in denying agency's motion to dismiss, reasoning that the "provision's language is permissive rather than mandatory: an EEOC Administrative Judge 'may' dismiss a complaint [], but is not required to do so").

In considering the facts, the Supervisory Administrative Judge, in her discretion, concluded that the Commission retained jurisdiction because the complaint Fogg filed in federal court has

important distinctions from the Second Amended Class Charge here. Fogg's civil action completely omitted hiring and lateral transfer claims, along with the promotions claims of the same Class Agents he purports to represent. No dismissal is warranted, or required, where the civil action does not address the "same matter" as the class complaint. *See Edwina W. v. Dep't of Agriculture*, EEOC No. 2021001265, 2022 WL 3153080, at \*2 (EEOC July 5, 2022) (the Commission determines its own jurisdiction based on whether the EEO charge embraces the exact same matter as the civil action).

As the Supervisory Administrative Judge reasoned when ruling to retain jurisdiction:

The filing of a civil action results in automatic termination of Commission jurisdiction only prior to a request for a hearing, or when the complaint is on appeal to the Commission. Dismissal of a class action complaint pursuant to a civil action under 29 C.F.R. 1614.204(d)(2) and 1614.107(a)(3) is at the discretion of the administrative judge. Further, dismissal pursuant to a civil action is only proper at any stage where the civil action encompasses "the same matter" as the administrative complaint. Fogg's civil action does not encompass the same allegations as the administrative complaint. It includes some allegations that are not before the Commission, and omits some allegations and claims for relief that are part of the administrative complaint.

Removal Order at 13. The Supervisory Administrative Judge's decision not to dismiss the complaint under 1614.204(d)(2) while the Settlement Agreement was pending final approval was therefore proper. *See id.*

**B. The Administrative Judge's Factual Determination that Fogg was Unfit to Represent the Class was Supported by Substantial Evidence**

The Supervisory Administrative Judge properly removed Fogg as a Class Agent because of his failure to adequately represent the Class. A Class Agent must "fairly and adequately protect the interests of the class" and their claims must be typical of the Class. 29 C.F.R. § 1614.204(a)(2);



Fed. R. Civ. Proc. 23(a)(4).<sup>6</sup> Fogg filed his civil action without consulting the more than a dozen other Class Agents – Class Agents who disagree with his decision to do so and who wanted to see the Settlement Agreement effectuated. Ex. A, Motion to Remove Class Agent Decls. Despite Fogg’s assertions that he is the designated spokesperson for the Class, the overwhelming majority of the other Class Agents submitted declarations stating that Fogg does not speak on their behalf and that they do not agree with his claims or actions. *Id.*

Fogg’s attempt to derail the final settlement of this case after thirty years was borne out of a personal dissatisfaction with the Settlement Agreement. His self-interest is evidenced by his focus in his federal district court filing on individualized relief and his neglect of his fellow Class Members’ claims. His civil action, which purports to be a class complaint, further includes a request to correct alleged errors with his 2008 individual court judgment, including errors related to his taxes, adjusting his workers compensation and retirement salary, and obtaining the reinstatement of a white Deputy United States Marshal. Fogg Compl. at ¶¶ 18, 46, 113-14. His civil action also completely omits the hiring claims of Class Agents Tracy Bryce and Jeffrey Whitehead, and the hiring/recruitment class more generally. Fogg’s civil action also fails to even mention the promotions and lateral transfer claims of Class Agents Antonio Gause, Regina Holsey, Thomas Hedgepeth, Charles Fonseca, Ivan Baptiste, Damon Adams, Dwayne Epps, Mariam Rodgers, and Kerry Sims.

As the Supervisory Administrative Judge found, Fogg’s actions demonstrated “both poor judgment and a deep lack of consideration for the Class Members he purports to represent.” Removal Order at 14. Further, “[h]is submissions before the Commission and in his district court

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<sup>6</sup> Although Rule 23 “does not technically apply to EEOC administrative proceedings, the Commission has held that the standards enunciated in FRCP 23[] should be followed.” *May v. Potter*, EEOC Appeal Nos. 01A44445 & 01A44564, 2005 WL 1130094, at \*2 (May 4, 2005).

filing include numerous false statements” and his “attempt to move the complaint to federal district court demonstrate[d] that he ha[d] no interest in vigorously prosecuting the interests of the class.” *Id.* at 15 (internal quotations omitted). The Supervisory Administrative Judge therefore properly found him unfit to serve as a class agent and removed him from that position.

Additionally, Fogg’s fantastical allegations of “fraud” by the Supervisory Administrative Judge and Class Counsel must be assessed against this backdrop. Anyone who disagrees with Fogg, including his fellow Class Agents, are subject to the same accusations. *See* Removal Order at 3, 7. The Supervisory Administrative Judge weighed Fogg’s words and actions, the declarations of other Class Agents, and the declarations of Class Counsel to find that he is not credible and that he does not speak for the Class.

### III. CONCLUSION

The Supervisory Administrative Judge correctly retained jurisdiction and removed Matthew Fogg as a class agent. The OFO should deny Fogg’s request to overturn the Administrative Judge’s order, deny his request to be reinstated as a class agent, and deny his other requests for relief.

Respectfully Submitted,

July 10, 2024

/s/ Christine Dunn  
Christine Dunn  
Saba Bireda  
Kate Mueting  
James Hannaway  
SANFORD HEISLER SHARP, LLP  
700 Pennsylvania Ave., S.E., Suite 300  
Washington, D.C. 20003  
Telephone: (202) 499-5200  
Facsimile: (202) 499-5199

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of Plaintiffs' Response to Matthew Fogg's Appeal of Removal Order will be served via electronic mail on the 12th day of July, 2024 upon the following:

Matthew Fogg  
[carcle1@aol.com](mailto:carcle1@aol.com)  
2833 Alabama Avenue  
Unit 30956  
Washington, D.C. 20020

Leah Taylor  
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/s/ Alexander Wolstenholme-Britt  
Alexander Wolstenholme-Britt



# **EXHIBIT A**

**UNITED STATES OF AMERICA  
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

**MATTHEW FOGG,**

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GENERAL, U.S. DEPARTMENT OF  
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**Agency.**

**EEOC NO. 570-2016-00501X  
AGENCY CASE NO. M94-6376**

**DECLARATION OF MARIAM THOMPSON**

I, Mariam Thompson, declare under penalty of perjury under the laws of the United States of America that the following is true and correct:

1. I am and have been a Class Agent in the Fogg v. Garland matter since 2020.
2. Matthew Fogg did not ask for my approval to remove the Class Action Complaint to the federal district court. I do not approve of the removal of the Class Action Complaint.
3. Matthew Fogg has purported to be the "Lead Class Representative" and speak on behalf of the class, including other Class Agents. Matthew Fogg does not speak for me in this matter. I do not agree with the claims or actions of Matthew Fogg.
4. The actions of Matthew Fogg have severely harmed the class. Matthew Fogg is not acting in the interests of the class by attempting to remove the complaint and disrupt the settlement at the last hour. Accordingly, Matthew Fogg is not qualified to serve as a Class Agent and should be removed.

/s/ Mariam Thompson

Mariam Thompson

March 20, 2024

Date

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AGENCY CASE NO. M94-6376**

**DECLARATION OF ZACHARY THOMAS**

I, Zachary Thomas, declare under penalty of perjury under the laws of the United States of America that the following is true and correct:

1. I am and have been a Class Agent in the Fogg v. Garland matter since 2020.
2. Matthew Fogg did not ask for my approval to remove the Class Action Complaint to the federal district court. I do not approve of the removal of the Class Action Complaint.
3. Matthew Fogg has purported to be the "Lead Class Representative" and speak on behalf of the class, including other Class Agents. Matthew Fogg does not speak for me in this matter. I do not agree with the claims or actions of Matthew Fogg.
4. The actions of Matthew Fogg have severely harmed the class. Matthew Fogg is not acting in the interests of the class by attempting to remove the complaint and disrupt the settlement at the last hour. Accordingly, Matthew Fogg is not qualified to serve as a Class Agent and should be removed.

/s/ Zachary Thomas  
Zachary Thomas

March 20, 2024  
Date



**MATTHEW FOGG,**

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**MERRICK GARLAND, ATTORNEY  
GENERAL, U.S. DEPARTMENT OF  
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**Agency.**

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**DECLARATION OF SHELDON MARTIN**

I, Sheldon Martin, declare under penalty of perjury under the laws of the United States of America that the following is true and correct:

1. I am and have been a Class Agent in the Fogg v. Garland matter since 2020.
2. Matthew Fogg did not ask for my approval to remove the Class Action Complaint to the federal district court. I do not approve of the removal of the Class Action Complaint.
3. Matthew Fogg has purported to be the "Lead Class Representative" and speak on behalf of the class, including other Class Agents. Matthew Fogg does not speak for me in this matter. I do not agree with the claims or actions of Matthew Fogg.
4. The actions of Matthew Fogg have severely harmed the class. Matthew Fogg is not acting in the interests of the class by attempting to remove the complaint and disrupt the settlement at the last hour. Accordingly, Matthew Fogg is not qualified to serve as a Class Agent and should be removed.

/s/ Sheldon Martin  
Sheldon Martin

March 20, 2024  
Date

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EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

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GENERAL, U.S. DEPARTMENT OF  
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AGENCY CASE NO. M94-6376**

**DECLARATION OF ANTONIO GAUSE**

I, Antonio Gause, declare under penalty of perjury under the laws of the United States of America that the following is true and correct:

1. I am and have been a Class Agent in the Fogg v. Garland matter since 2016.
2. Matthew Fogg did not ask for my approval to remove the Class Action Complaint to the federal district court. I do not approve of the removal of the Class Action Complaint.
3. Matthew Fogg has purported to be the "Lead Class Representative" and speak on behalf of the class, including other Class Agents. Matthew Fogg does not speak for me in this matter. I do not agree with the claims or actions of Matthew Fogg.
4. The actions of Matthew Fogg have severely harmed the class. Matthew Fogg is not acting in the interests of the class by attempting to remove the complaint and disrupt the settlement at the last hour. Accordingly, Matthew Fogg is not qualified to serve as a Class Agent and should be removed.

/s/ Antonio Gause  
Antonio Gause

March 20, 2024  
Date



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**DECLARATION OF TRACY BRYCE**

I, Tracy Bryce, declare under penalty of perjury under the laws of the United States of America that the following is true and correct:

1. I am and have been a Class Agent in the Fogg v. Garland matter since 2016.
2. Matthew Fogg called me prior to filing the Class Action Complaint in the federal district court. I did not understand what he intended to file, and he did not ask for or receive my consent to file it. In addition, when I asked if he had gotten approval from the other Class Agents, he said he did not and that he did not have time to call them. I do not approve of the removal of the Class Action Complaint.
3. Matthew Fogg has purported to be the "Lead Class Representative" and speak on behalf of the class, including other Class Agents. Matthew Fogg does not speak for me in this matter. I do not agree with the claims or actions of Matthew Fogg.
4. The actions of Matthew Fogg have severely harmed the class. Matthew Fogg is not acting in the interests of the class by attempting to remove the complaint and disrupt the settlement at the last hour. Accordingly, Matthew Fogg is not qualified to serve as a Class Agent and should be removed.

/s/ Tracy Bryce

Tracy Bryce

March 21, 2024

Date

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**DECLARATION OF THOMAS HEDGEPEETH**

I, Thomas Hedgepeth, declare under penalty of perjury under the laws of the United States of America that the following is true and correct:

1. I am and have been a Class Agent in the Fogg v. Garland matter since 2016.
2. Matthew Fogg did not ask for my approval to remove the Class Action Complaint to the federal district court. I do not approve of the removal of the Class Action Complaint.
3. Matthew Fogg has purported to be the "Lead Class Representative" and speak on behalf of the class, including other Class Agents. Matthew Fogg does not speak for me in this matter. I do not agree with the claims or actions of Matthew Fogg.
4. The actions of Matthew Fogg have severely harmed the class. Matthew Fogg is not acting in the interests of the class by attempting to remove the complaint and disrupt the settlement at the last hour. Accordingly, Matthew Fogg is not qualified to serve as a Class Agent and should be removed.

/s/ Thomas Hedgepeth  
Thomas Hedgepeth

March 20, 2024  
Date

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**DECLARATION OF REGINA HOLSEY**

I, Regina Holsey, declare under penalty of perjury under the laws of the United States of America that the following is true and correct:

1. I am and have been a Class Agent in the Fogg v. Garland matter since 2016.
2. Matthew Fogg did not ask for my approval to remove the Class Action Complaint to the federal district court. I do not approve of the removal of the Class Action Complaint.
3. Matthew Fogg has purported to be the "Lead Class Representative" and speak on behalf of the class, including other Class Agents. Matthew Fogg does not speak for me in this matter. I do not agree with the claims or actions of Matthew Fogg.
4. The actions of Matthew Fogg have severely harmed the class. Matthew Fogg is not acting in the interests of the class by attempting to remove the complaint and disrupt the settlement at the last hour. Accordingly, Matthew Fogg is not qualified to serve as a Class Agent and should be removed.

/s/ Regina Holsey  
Regina Holsey

March 20, 2024  
Date

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**DECLARATION OF CHARLES FONSECA**

I, Charles Fonseca, declare under penalty of perjury under the laws of the United States of America that the following is true and correct:

1. I am and have been a Class Agent in the Fogg v. Garland matter since 2016.
2. Matthew Fogg did not ask for my approval to remove the Class Action Complaint to the federal district court. I do not approve of the removal of the Class Action Complaint.
3. Matthew Fogg has purported to be the "Lead Class Representative" and speak on behalf of the class, including other Class Agents. Matthew Fogg does not speak for me in this matter. I do not agree with the claims or actions of Matthew Fogg.
4. The actions of Matthew Fogg have severely harmed the class. Matthew Fogg is not acting in the interests of the class by attempting to remove the complaint and disrupt the settlement at the last hour. Accordingly, Matthew Fogg is not qualified to serve as a Class Agent and should be removed.

/s/ Charles Fonseca  
Charles Fonseca

March 20, 2024  
Date



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**DECLARATION OF DWAYNE EPPS**

I, Dwayne Epps, declare under penalty of perjury under the laws of the United States of America that the following is true and correct:

1. I am and have been a Class Agent in the Fogg v. Garland matter since 2020.
2. Matthew Fogg did not ask for my approval to remove the Class Action Complaint to the federal district court. I do not approve of the removal of the Class Action Complaint.
3. Matthew Fogg has purported to be the "Lead Class Representative" and speak on behalf of the class, including other Class Agents. Matthew Fogg does not speak for me in this matter. I do not agree with the claims or actions of Matthew Fogg.
4. The actions of Matthew Fogg have severely harmed the class. Matthew Fogg is not acting in the interests of the class by attempting to remove the complaint and disrupt the settlement at the last hour. Accordingly, Matthew Fogg is not qualified to serve as a Class Agent and should be removed.

/s/ Dwayne Epps  
Dwayne Epps

March 20, 2024  
Date

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**DECLARATION OF DAMON ADAMS**

I, Damon Adams, declare under penalty of perjury under the laws of the United States of America that the following is true and correct:

1. I am and have been a Class Agent in the Fogg v. Garland matter since 2020.
2. Matthew Fogg did not ask for my approval to remove the Class Action Complaint to the federal district court. I do not approve of the removal of the Class Action Complaint.
3. Matthew Fogg has purported to be the "Lead Class Representative" and speak on behalf of the class, including other Class Agents. Matthew Fogg does not speak for me in this matter. I do not agree with the claims or actions of Matthew Fogg.
4. The actions of Matthew Fogg have severely harmed the class. Matthew Fogg is not acting in the interests of the class by attempting to remove the complaint and disrupt the settlement at the last hour. Accordingly, Matthew Fogg is not qualified to serve as a Class Agent and should be removed.

/s/ Damon Adams  
Damon Adams

March 20, 2024  
Date

**UNITED STATES OF AMERICA  
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

**MATTHEW FOGG,**

**Complainant,**

**v.**

**MERRICK GARLAND, ATTORNEY  
GENERAL, U.S. DEPARTMENT OF  
JUSTICE,**

**Agency.**

**EEOC NO. 570-2016-00501X  
AGENCY CASE NO. M94-6376**

**DECLARATION OF IVAN BAPTISTE**

I, Ivan Baptiste, declare under penalty of perjury under the laws of the United States of America that the following is true and correct:

1. I am and have been a Class Agent in the Fogg v. Garland matter since 2016.
2. Matthew Fogg did not ask for my approval to remove the Class Action Complaint to the federal district court. I do not approve of the removal of the Class Action Complaint.
3. Matthew Fogg has purported to be the "Lead Class Representative" and speak on behalf of the class, including other Class Agents. Matthew Fogg does not speak for me in this matter. I do not agree with the claims or actions of Matthew Fogg.
4. The actions of Matthew Fogg have severely harmed the class. Matthew Fogg is not acting in the interests of the class by attempting to remove the complaint and disrupt the settlement at the last hour. Accordingly, Matthew Fogg is not qualified to serve as a Class Agent and should be removed.

/s/ Ivan Baptiste  
Ivan Baptiste

March 20, 2024  
Date

**UNITED STATES OF AMERICA  
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

**MATTHEW FOGG,**

**Complainant,**

**v.**

**MERRICK GARLAND, ATTORNEY  
GENERAL, U.S. DEPARTMENT OF  
JUSTICE,**

**Agency.**

**EEOC NO. 570-2016-00501X  
AGENCY CASE NO. M94-6376**

**DECLARATION OF PAUL DARBY**

I, Paul Darby, declare under penalty of perjury under the laws of the United States of America that the following is true and correct:

1. I am and have been a Class Agent in the Fogg v. Garland matter since 2020.
2. Matthew Fogg did not ask for my approval to remove the Class Action Complaint to the federal district court. I do not approve of the removal of the Class Action Complaint.
3. Matthew Fogg has purported to be the "Lead Class Representative" and speak on behalf of the class, including other Class Agents. Matthew Fogg does not speak for me in this matter. I do not agree with the claims or actions of Matthew Fogg.
4. The actions of Matthew Fogg have severely harmed the class. Matthew Fogg is not acting in the interests of the class by attempting to remove the complaint and disrupt the settlement at the last hour. Accordingly, Matthew Fogg is not qualified to serve as a Class Agent and should be removed.

/s/ Paul Darby  
Paul Darby

March 20, 2024  
Date