



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Office of Federal Operations
P.O. Box 77960
Washington, DC 20013

Dr. Matthew Fogg a/k/a
Marcos S.,¹
Complainant,

v.

Pamela Bondi,
Attorney General,
Department of Justice
(U.S. Marshals Service), Agency.

Appeal No. 2024003880

Hearing No. 570-2016-00501X

Agency No. M-94-6376

MOTION FOR
RECONSIDERATION
OF EEOC DECISION
DATED 9/2/25

EEOC Decision By U.S. Mail Service Received By Appellant/Class Complainant

Dr. Matthew Fogg- Named Complainant/Class Agents Spokesperson received EEOC Notice of Decision dated September 2, 2025, from the Post Office on September 12, 2025 (PO stamp date), at the DC Frederick Douglass PO Station. See scanned post-dated envelope attached.

Appellant filed a petition with an EEOC Administrative Judge (AJ) to vacate the Settlement Agreement reached in Hedgepeth, et al. v. Dept. of Justice, EEOC No. 570-2016-00501X; Agency No. M-94-6376. On June 13, 2024, the AJ issued an Order Granting Final Approval of Settlement Agreement pursuant

to 29 C.F.R. § 1614.204(g)(4), which effectively denied the petition. Subsequently, Complainant filed the instant appeal, which the Commission accepts pursuant to 29 C.F.R. § 1614.401(c). For the following reasons, we AFFIRM the AJ's decision to approve the Settlement Agreement.

¹ This case has been randomly assigned a pseudonym, which will replace the Complainant's name when the decision is published to non2024003880 -parties and the 1 Commission's website.

CONTENTIONS ON APPEAL

On appeal, the Appellant/Named Complainant, Dr. Matthew Fogg, contests his removal as Class Agent, among other issues listed, and the AJ's determination that the Commission maintained jurisdiction over the class complaint. Appellant/Fogg argues that his federal court filing "De Novo" removed jurisdiction from the Commission. For other reasons stated, and due to the AJ's failure to end jurisdiction of the entire class complaint, which was partly due to unethical activity by Class Counsel, the decision was biased and erroneous, and a result of overt reprisal activity.

COMPLAINANTS (10-2-25) RECONSIDERATION CONCLUSION

Based on the EEOC record of the egregious hostile activity leading up to this Settlement, the EEOC must RECONSIDER ITS DENIAL OF THE Appellant's objections, and FIND the AJ's decision removing the Appellant/Class Agent and subsequent EEOC processing of this Class was ***ultra vires*** to include illegal retaliation defined by EEOC regulations, and further find, approving the Settlement Agreement without a "Fairness Hearing" for an estimated 10,000 claimants dating back to 1994, must be DENIED.

Relief Requested

Complainant respectfully requests that the Commission:

1. Vacate the decision removing Fogg as class agent.
2. Reinstate Fogg as the duly certified class agent and spokesperson.
3. Confirm that jurisdiction properly vested in federal court upon filing.
4. Declare invalid any class settlement without compliance with fairness hearing requirements.
5. Direct the Agency and class counsel to cease retaliatory conduct and ensure due process protections for all class members.

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- Brown v. General Services Administration, 425 U.S. 820 (1976)
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Introduction;

Pursuant to 29 C.F.R. § 1614.405(c), Appellant Dr. Matthew Fogg respectfully requests reconsideration of the Commission's decision permitting his removal as class agent and deferring resolution of the certified class complaint.

At all relevant times, Appellant Fogg was the duly certified Class Agent, Named Complainant, and later designated Class Agent Spokesperson, as confirmed by EEOC documents. After exercising his statutory right to file in federal court under 42 U.S.C. § 2000e-16(c), Fogg was retaliatorily removed as Class Agent. The EEOC's decision is contrary to law, unsupported by the record, and inconsistent with the Commission's own regulations.

Jurisdictional Statement

The EEOC Office of Federal Operations has jurisdiction to reconsider its prior decision under 29 C.F.R. § 1614.405(c), where a party demonstrates that the decision is based on a clearly erroneous interpretation of fact or law or will have a substantial impact on the policies, practices, or operations of the Agency.

Statement of Facts

- 1)** Appellant Fogg was certified as a class agent; documents confirm his role as Class Agent's Spokesperson.
- 2)** Appellant Fogg filed a federal lawsuit after exhausting administrative remedies.
- 3)** EEOC and Class Counsel Retaliatory acts followed: exclusion from meetings, prefabricated affidavit solicitation, and removal as class agent.
- 4)** The agency USMS/DOJ took inconsistent positions: first supporting federal jurisdiction, then seeking to defeat Fogg by urging a stay.
- 5)** EEOC proceeded without conducting a Fairness Hearing, denying due process to approximately 10,000 class members.
- 6)** All January 2024 Class Claimant Settlement Agreement signatures became invalid due to June 2025 Settlement agreement changes required by the new Administration's Executive Order, stripping out all previous January 2024 DEI race-related contract provisions.

EEOC ISSUES PRESENTED

Whether the AJ properly retained jurisdiction over the class complaint, removed Complainant as Class Agent, and approved a negotiated settlement agreement, amongst other issues for reconsideration originally presented by Appellant.

Appellant Issues Presented

1. Whether jurisdiction was properly vested in the federal court once Fogg, as certified class agent, filed pursuant to 42 U.S.C. § 2000e-16(c).
2. Whether the Agency's removal of Fogg as Class Agent after his filing constituted unlawful retaliation.
3. Whether the EEOC erred by allowing a class settlement to proceed without a fairness hearing as required by 29 C.F.R. § 1614.204(l)(3).
4. Whether the Agency's contradictory positions on jurisdiction as 'estoppel' — first supporting the federal court, then urging EEOC control — require reconsideration.

Appellant also presented issues in his initial EEOC appeal with exhibits for the record as follows, which, if evaluated fairly, would render any EEOC Class settlement processing as hostile and non-conforming.

The AJ made procedural and legal errors in exercising jurisdiction over the complaint, knowing it was subsequently filed in another Federal jurisdiction. Despite official documentation of hostile actions by Class Counsel/Firm that distinctly contradicted the directives of the Class Agents representing 10,000 class members, the AJ knowingly became complicit in Class Counsel's unethical activity.

Class Counsel/Firm's EEOC actions included the following:

Unauthorized Settlement Negotiations: Class Counsel negotiated a \$15 million settlement/Memorandum of Understanding (MOU) without class agents' approval, contrary to their previous directive not to agree to any settlement without class agents' explicit consent (Exhibits 1, 3, and 4). All Exhibits were previously submitted and are part of the EEOC-OFO record.

Conflict of Interest: The Firm Chair advised Class Agents of his personal relationship with President Biden, by conducting a home visit and making a substantial donation to the Biden/Harris campaign, advised Biden to pick Kamala Harris as his VP. This relationship appeared to influence the Firm's sudden devaluation of the class action settlement from \$300 million to a \$15 million MOU to include attorneys' fees.

Creating a Hostile Environment for Class Agents: The Firm Chair threatened to have Fogg removed as a Class Agent during the initial (2022) "Zoom" settlement conference meeting with all Class Agents and attorneys present, stating that if Fogg disagreed with the Firm's settlement decisions, the Firm Chair's option was to ask the EEOC AJ to specifically remove Fogg as a Class Agent ([Exhibit 1](#)).

Misleading Settlement Documents: The Firm presented incomplete and misleading settlement documents to Class Agents (March 8, 2022), signing an addendum agreement on March 20, 2023, without Class Agents' knowledge (Exhibit 5).

Exclusion from Negotiations: The Firm excluded class agents from settlement negotiations, resulting in a March 8, 2022 Memorandum of Understanding that Class Agents Spokesperson Fogg declared "*null and void*".

Programmatic Relief Negotiations: The Firm began "Programmatic Relief" (PR) negotiations by refusing the class agent's participation in all-party settlement negotiations, even after the firm's past practice of allowing the Class Agents to participate.

BACKGROUND

At the time of events giving rise to this complaint, Complainant was employed by the Agency as an Inspector, GS-13, in Arlington, Virginia. On July 12, 1994, Complainant, then proceeding pro se, filed a class complaint alleging that the Agency discriminated and **retaliated** against him and all African American Deputy U.S. Marshals based on race regarding various employment practices to include disciplinaries, promotions and training.

In 1996, an AJ declined to certify the Class, citing a lack of specific information to support the class complaint. Complainant appealed the dismissal, and the Commission's Office of Federal Operations closed the appeal based on a clerical error. Fogg v. Dept. of Justice, EEOC Appeal No. 01964601 (Oct. 24, 1997).

In April 1998 and running parallel to the 1994 Class Action filed by the EEOC Appellant/Named Complainant, the Complainant's individual Claim Fogg v Reno (2814 TPJ) in the DC U.S. District yielded a landmark Jury Verdict (Exhibit), finding the Complainant and all other Deputy U.S. Marshals were working in a racially motivated hostile environment.

Eight years later (2006), the Appellant requested to reopen the Class Complaint, alleging ongoing retaliation by the Agency (U.S. Marshals Service (USMS) and naming the U.S. Attorney General Janet Reno. The Class Complainant/Appellant alleged the Agency/USMS's dereliction of EEOC Class processing was also a form of ongoing retaliation, to include other claims listed in the Class. The EEOC agreed with the Complainant/Appellant, finding the Class process should have continued despite the Complainant's individual claims and ordered the USMS to begin processing the Class. The Commission remanded the case to the Washington Field Office for a decision on class certification, finding that the original appeal was erroneously closed. Fogg v. Dept. of Justice, EEOC Request No. 05A41062 (May 26, 2006).

In March 2007, an AJ denied class certification and dismissed the class complaint. The Agency adopted the AJ's decision, and the Complainant once again filed an appeal.

In Fogg v. Dept. of Justice, EEOC Appeal No. 0120073003 (July 11, 2012), Request to Reopen Denied in 0520120575 (Nov. 17, 2015), the Commission remanded the class complaint to the Washington Field Office, directing Class Counsel to amend the class complaint and instructing the AJ to further define the class in accordance with the Commission's decision.

The Class Council/Firm subsequently and erroneously agreed, with the Agency, to exclude retaliation claims listed in the original class Complaint without approval of the Appellant/Complainant.

Today the class is defined as follows: all current and former African American Deputy U.S. Marshals who were affected by USMS policies and practices regarding promotions through the Merit Promotion Process, Management Directed Reassignments, and Headquarters Division assignments, as well as all African American current and former Deputy U.S. Marshals, Detention Enforcement Officers, and applicants who were never employed but were

affected by USMS policies and practices for hiring and recruitment of Deputy U.S. Marshal positions from January 23, 1994, to the present.

During Discovery, all approved Class Agents, including Fogg, were required to provide Depositions for more enhanced monetary relief in this Class matter. During the Deposition, Appellant/Fogg indicated that, because of his race and the Class Complaint, retaliation for him and other Class members was ongoing in the USMS for over three decades. He stated that, separate and apart from his individual claims adjudicated erroneously (2008) in Federal Court, he had also applied for promotions while on OWCP benefits for racial stress during the Class Action period, but was denied.

Appellant Fogg further indicated that the USMS has continuously retaliated against him through the present day by interfering in numerous aspects of his former and retired livelihood, including his receipt of OWCP benefits, filing income tax returns, erroneous retirement salary, TSP contributions, and changes to his retirement credentials, among other issues.

Statement of the Case

EEOC certified a class complaint and formally designated Named Complainant Matthew Fogg as Class Agent, whom the Class Agents later appointed as designated spokesperson. Exercising his statutory right, Appellant Fogg filed a federal lawsuit after exhausting administrative remedies that appeared to be biased, which included an unprecedented 30 years.

Following his filing, class counsel excluded him from class meetings, solicited affidavits against him, and persuaded class members to remove him. Initially, the Agency/USMS/DOJ argued before the EEOC that the matter belonged in federal court. Later, the Agency reversed course and asked the federal court for a stay in favor of EEOC jurisdiction. The EEOC accepted this reversal and permitted Fogg's removal as class agent.

Settlement Agreement

On March 8, 2022, the Agency and Class/Firm Chairman Mr. David Sanford, Esq. signed a Memorandum of Understanding (MOU) in principle to resolve the case for \$15,000,000.00, which includes attorney's fees.

Immediately upon being informed by Class Counsel that an MOU had been signed, the Class Spokesperson advised Class Counsel that the MOU was **"Null and Void"** because the monetary amount was too low, given that the last negotiated settlement was in the range of 60 million. Furthermore, the Class Counsel had failed to follow the specific directions of the Class Agents not to accept a monetary agreement before discussing the amount with Class Agents.

Subsequently, Class Agents only conducted a Zoom meeting appointing Appellant/Named Complainant Dr. Matthew Fogg as Class Agents' Spokesperson. Furthermore, they directed Fogg to instruct the Class Chairman to renegotiate the monetary amount to \$ 25 million, excluding attorneys' fees.

Class Counsel Chairman rejected the Class Agents' request and called a Class Agents meeting on working toward the next phase of the Settlement negotiation known as "Programmatic relief.

From March 2022 through August 2023, the parties engaged in Programmatic settlement negotiations, although there were several instances of emails depicting disagreement between Class Counsel and the Class Spokesperson cc'd to all Class Agents regarding Class Counsel's continued unethical handling of the settlement.

On August 31, 2023, Class Counsel filed a Motion for Preliminary Approval of Proposed Class Settlement, including a copy of the Settlement Agreement and Release, without sharing this EEOC notification with Class Agents nor any of the final documents, or getting final approval from the Class Agents.

On or about September 2023, the Class Counsel alone requested that the AJ approve a preliminary Settlement Agreement; Notice of Resolution and the plan for distributing the Notice; and a date for a Fairness Hearing, again, all of which were done without any knowledge or customary meeting approval by the Class Agents.

On September 21, 2023, the AJ preliminarily approved the Settlement Agreement. The AJ explained that she saw no grounds upon which to doubt the fairness of the agreement and that no obvious deficiencies were apparent.

The AJ noted that the Settlement Agreement was the product of 18 months of negotiation by capable counsel on both sides, with the benefit of substantial discovery. The AJ stressed that, absent a settlement, the parties faced years of continued litigation, given that almost three decades had passed since the initial filing of the complaint.

On September 28th and October 10th, the Class Spokesperson, Dr. Matthew Fogg, objected via email to EEOC Administrative Judge Sharon Debbage's approval of the Preliminary Settlement Agreement submitted by the Class Counsel/Firm, informing her that Class Counsel had not consulted with Class Agents on their Preliminary Settlement presented to the AJ

On September 11th, the AJ specifically responded via email to the Class Spokesperson, stating the following: Given the timing and content of your letter, I will treat it as an objection to the Class Settlement. I will entertain

objections to the Class Settlement during the Fairness Hearing scheduled for March 20, 2023. Exhibit 1

On November 1, 2023, the Class Spokesperson officially filed an EEOC Motion serving all parties, including all Class Agents, to object to the Preliminary Settlement as outlined above. The Motion requested the removal of Class Counsel due to unethical conduct, faulty settlement negotiations, and inherent conflicts of interest with the Biden/Harris Administration on behalf of the entire class. There were no objections to the EEOC Motion.

The Appellant/Class Agents Spokesperson officially objected to the Preliminary Settlement and also filed a timely objection to the settlement pursuant to 29 C.F.R. § 1614.204(g)(4) and other violations in accordance with EEOC and FRCP.

The Appellant objected well before the deadline to object to the Settlement Agreement, which was January 11, 2024, and the deadline to submit a claim form to request payment was January 26, 2024.

Complainant submitted a claim form on January 25, 2024, under severe duress to preserve his rights due to all the concerns raised in his November 1, 2023, EEOC Motion, which had not been acted upon by the EEOC AJ.

On March 19, 2024, the night before the Fairness Hearing, the Appellant/Spokesperson filed a civil action “de novo” in federal district court, believing that, in accordance with EEOC and FRCP, he was rightfully eliminating the Commission’s jurisdiction over the Class Complaint and in accordance with the Agency/defendants’ brief dated 4-26-24.

The AJ immediately cancelled the Fairness hearing on 3/20/23, indicating that the matter was taken out of the EEOC’s jurisdiction.

On or about March 22, 2023, after direct discussions with Class Counsel, the AJ ordered a post-Federal Court (3-19-24) filing of a problematic briefing schedule for all parties, including Appellant/Fogg, to decide whether jurisdiction should stay at the EEOC or transfer to Federal Court, and additionally required Class Counsel to collect affidavits from Class Agents to determine the removal of Class/Agent Spokesperson Dr. Matthew Fogg.

The first subsequent Class Agent meeting, conducted on Zoom by Class Counsel, denied Fogg from participating, despite other Class Agents requesting his presence. Furthermore, Class Agents stated that Class Counsel presented prefabricated affidavits for signatures with language saying, “Fogg was never your Class Spokesperson.” The Class Agents refused to sign the

Affidavit, indicating that they had made Fogg the Class Agents' spokesperson and, therefore, that statement was not valid.

In accordance with the AJ's briefing schedule, Appellant Fogg submitted a brief along with the Class Counsel and the U.S. Marshals Service on behalf of the U.S. Attorney General, assessing the impact of the Federal Court Class and Individual Complaint filed with the EEOC and the Federal Court. [See Exhibit 2.](#)

On April 26th, 2025, the USMS defendants/Agency Counsel, speaking on behalf of the U.S. Attorney General, filed their brief with substantial case law in total support of the Appellant/Fogg filing the Class Complaint in the U.S. District Court for the District of Columbia. [Exhibit 3](#)

On May 13, 2024, the AJ issued an Order Retaining Jurisdiction over the Class Complaint and further granted the Class Counsel's Motion to Remove Complainant as Class Agent. Appellant Fogg viewed this activity as a premeditated act of retaliation, as determined by Class Counsel in their initial (2022) Zoom meeting, stating the same, and executed nearly two years later with the support of the EEOC AJ.

Another class member, Mr. Thomas Hedgepath, was substituted as the named Class Agent, with whom Appellant Fogg had conducted several prefederal court filing conversations stating that he planned to file the matter in federal court. All of the Class Agents that Fogg consulted never said 'do not file in Federal Court,' but were assured that the case would be resolved sooner due to the publicity in federal court, and similar to other law enforcement Class Actions.

Regarding jurisdiction, the AJ found that Complainant's filing in federal court did not encompass the same allegations as the administrative complaint.

The AJ explained that while the discretion afforded an AJ under 1614.204(d)(2) would permit dismissal of "any portion" of the complaint encompassed in the civil action, she declined to engage in piecemeal dismissals given the advanced procedural posture of the case and the fact that the Settlement Agreement was negotiated based on the operative administrative complaint.

The AJ totally disregarded the Class Agents Spokesperson's prior 11-1-23 EEOC Motion and post-federal court briefs, which indicated that most Class Agents were briefed by Class Agent Spokesperson Matthew Fogg's intention as a "Nuclear Option" to file the matter in Federal Court **if** the Class Counsel and the EEOC continued what was seen as a destructive path for monetary and programmatic relief not in the best interest of ALL (not just Class Agents alone).

It was also well known that the Class Counsel Chair, after revealing his relationship with the then Biden-Harris Administration, agreed to a reduction from \$300 million to \$15 million in the final MOU. Additionally, during the previous class discovery, the Class Counsel (without approval of the Appellant/Class Agent) withdrew the original significant claim of retaliation and further expanded the class to approximately 10,000 members.

AJ's Approval of Settlement Agreement

On June 13, 2024, the AJ granted final approval of the Settlement Agreement. In the final order approving the Settlement Agreement, the AJ specifically identified Complainant's objection as one of five filed and found that Complainant's objection was insufficient to prevent the implementation of the Settlement Agreement.

Post-Appeal Activity

On February 7, 2025, the Agency filed a motion requesting that the Commission temporarily stay the proceedings for sixty (60) days pending an evaluation of the effects of Executive Orders 14151 (*Ending Radical and Wasteful Government DEI Programs and Preferencing*) and 14173 (*Ending Illegal Discrimination and Restoring Merit-Based Opportunity*), as well as an Agency directive, on the negotiated settlement agreement (Agency Motion). On February 14, 2025, Class Agents filed an Opposition to the Agency Motion. Appellants Response:

In accordance with DC Contract law, neither Class Counsel nor the Agency can bind any Class Agent to an agreement that the Agency significantly modified under Executive Order after it was signed in January 2024.

Specifically, the Settlement Implementation Plan updated the Settlement Agreement to remove provisions including, but not limited to, the Agency's Chief Diversity Officer; Diversity, Equity, and Inclusion (DEI) analysis and training; barrier analyses; priority consideration; implicit bias training; hiring assessment validation; specific recruitment efforts and training; a hiring equitable remedy; and data collection.

On June 10, 2025, another member of the class filed a motion to intervene as a plaintiff in the civil action, which the Agency opposed.

On July 1, 2025, a United States District Court Judge denied Complainant's motion for preliminary injunction, granted the Agency's motion for a stay, and denied the additional class member's motion to intervene. Matthew Fogg v. Pamela Bondi, No. 24-CV-0792 (CRC), 2025 WL 1807763, at *1 (D.D.C. July 1, 2025).

Summary of the Argument

Jurisdiction attached upon filing; the EEOC erred in permitting post-filing actions to undermine that jurisdiction. Retaliatory removal of Appellant Fogg as class agent violates Title VII's anti-retaliation protections. No fairness hearing occurred, invalidating any class settlement under 29 C.F.R. § 1614.204(l)(3). Agency contradictions — switching positions for tactical advantage — demonstrate bad faith and are barred by judicial estoppel. The Commission must reconsider and restore Fogg as class agent to protect due process and Title VII's enforcement scheme.

A. Federal Court Jurisdiction Properly Invoked

Under 42 U.S.C. § 2000e-16(c), federal employees may file in district court after 180 days from filing an administrative complaint. In *Brown v. GSA*, 425 U.S. 820 (1976), the Supreme Court held that federal court provides the exclusive judicial remedy once administrative remedies are exhausted. Fogg filed properly; jurisdiction vested at filing. EEOC actions afterward cannot divest jurisdiction.

B. Retaliatory Removal of Fogg as Class Agent

Title VII forbids retaliation for engaging in protected activity. 42 U.S.C. § 2000e-3(a). Filing in federal court is protected. Blocking Appellant Fogg from meetings, soliciting affidavits, and removing him as class agent were retaliatory acts.

C. Failure to Conduct a Fairness Hearing Renders Settlement Invalid

EEOC regulations mandate notice and objection rights before class settlement. 29 C.F.R. § 1614.204(l)(3). No fairness hearing or notice procedure occurred. Without such safeguards, the settlement is invalid. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591 (1997).

D. Agency's Contradictory Positions Demonstrate Bad Faith

Initially, the Agency argued this case belonged in federal court, aligning with Fogg. Later, it reversed and urged EEOC jurisdiction to defeat him. Judicial estoppel prevents a party from taking inconsistent positions. *New Hampshire v. Maine*, 532 U.S. 742 (2001). The EEOC erred in accepting the Agency's later position while ignoring its earlier admission.

E. Due Process and Forum Manipulation

The Agency, AJ, and Class Counsel manipulated forums to deprive Fogg of meaningful review. Excluding him as Class Agent and then urging a stay of the Class deprived both him and the class members of due process. The EEOC's decision to allow this undermines confidence in its processes.

The government contends that Appellant/Fogg is bound by a class settlement contract, even though material terms — specifically DEI & EEO provisions — were removed without his approval as certified class agent. This position is

contrary to long-standing Supreme Court precedent, which requires fairness, adequate representation, and due process in class settlements.

1. Class Settlements Require Fairness Hearings

- In **Amchem Prods., Inc. v. Windsor, 521 U.S. 591, 620–21 (1997)**, the Supreme Court held that courts must ensure class settlements are “fair, reasonable, and adequate,” regardless of whether the parties agree.
- This principle applies equally to administrative class actions: material changes to a settlement cannot bind the class or its representative without equivalent procedural safeguards.

2. Adequate Representation is Constitutionally Required

- In **Hansberry v. Lee, 311 U.S. 32, 42–44 (1940)**, the Court ruled that absent class members cannot be bound where representation is inadequate.
- Removing DEI provisions without Appellant Fogg’s approval undermines his role as certified class agent, rendering representation inadequate.

3. Settlements Cannot Override Due Process

- In **Ortiz v. Fibreboard Corp., 527 U.S. 815 (1999)**, the Court stressed that structural protections must ensure that settlements do not coerce or silence representatives.
- The government’s unilateral stripping of contract terms without the class agent’s approval violates this requirement.

4. No Binding Effect Without Proper Procedures

- In **Matsushita Elec. v. Epstein, 516 U.S. 367 (1996)**, the Court confirmed that settlements may bar claims only if due process — including adequate representation and notice — is satisfied.
- Here, no fairness hearing or equivalent notice-and-objection procedure occurred, depriving Appellant Fogg and the class of due process.

Supreme Court precedent establishes that class settlements are binding only where (1) the certified representative consents, (2) fairness procedures are followed, and (3) class members receive due process protections. Because DEI provisions were stripped from the agreement without Appellant Fogg’s approval and without a fairness hearing, the altered settlement is not binding on him or the class.

COMPLAINANT ANALYSIS

Generally, a complaint that is the basis of a civil action decided by a United States District Court to which a complainant is a party will be dismissed. 29 C.F.R. § 1614.107(a)(3).

Here, the Appellant presented case law and evidence showing that the AJ completely ignored his official EEOC motion (dated November 1, 2023), which documented unethical violations by Class Counsel and concerns from Class Agents regarding the Class Firm's handling of this matter. This motion put the AJ and all parties on official notice of a continuous hostile environment and relationship with Class Agents during the settlement process. The AJ failed to address these critical concerns promptly and was aware that the issues could become more discordant, especially since the Class/Agents Spokesperson had notified the Class Counsel/Firm to disengage and terminate its service of this Class Complaint.

Furthermore, the AJ acknowledged emails in which the Class Agent Spokesperson objected to the Settlement. The AJ specifically stated that she would again address the Class Spokesperson's concerns at an EEOC-mandated Fairness Hearing on March 19, 2024, nearly six months later, knowing that other Class settlement procedures would also need to be addressed during that time. The AJ's failure to intervene allowed an ongoing EEOC hostile environment between Class Agents and Class Counsel to escalate during this period of class processing.

The AJ's failure to quickly address a known hostile settlement environment ultimately caused the Class Agent and Named Complainant to properly file the matter in Federal Court. A subsequent (4-26-24) Agency/USMS/DOJ brief supported this action, aiming to prevent further discord and unethical conduct involving the Class Firm.

Retaliation Claim: Removal of Fogg as Class Agent

Legal Standard

Title VII prohibits retaliation against individuals who oppose unlawful discrimination or participate in the EEO process. 42 U.S.C. § 2000e-3(a): "It shall be an unlawful employment practice for an employer to discriminate against any of his employees ... because he has opposed any practice made an unlawful employment practice ... or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter." 29 C.F.R. § 1614.101(b): "No person shall be subject to retaliation for opposing any practice made unlawful by Title VII ... or for participating in any stage of administrative or judicial proceedings under this part." To establish a retaliation claim, a plaintiff must show: (1) protected activity, (2) materially adverse action, and (3) a causal connection between the two. *Burlington Northern & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 68 (2006).

Protected Activity

Appellant/Spokesperson Fogg engaged in multiple forms of protected activity:

1. Serving as the class agent and class agent's "Spokesperson" in a class complaint certified by the EEOC under 29 C.F.R. § 1614.204. 2. Opposing settlement discussions that he believed were not in the best interest of the class. 3. Filing the complaint in federal court to protect his and the class members' rights under Title VII. Participation and opposition activities are both protected under Title VII. *Robinson v. Shell Oil Co.*, 519 U.S. 337, 346 (1997).

Adverse Action

The removal of Appellant Fogg as Class Agent by the EEOC and class counsel/firm is a materially adverse action. In *Burlington Northern*, the Supreme Court held that an action is adverse if it "well might have dissuaded a reasonable worker from making or supporting a charge of discrimination." 548 U.S. at 68.

Here, removing Appellant Fogg from his role as the recognized Class Agent Spokesperson: - Stripped him of authority to represent the class. - Undermined his credibility as the initiating complainant. - Sent a chilling message that opposition to settlement and pursuing federal litigation would result in loss of status. Such an action would unquestionably deter a reasonable person from pursuing fair EEOC settlement negotiations.

Causal Connection

The removal occurred shortly after Appellant Fogg filed the complaint in federal court and objected to the proposed settlement. Temporal proximity alone may support an inference of retaliation. *Clark County Sch. Dist. v. Breeden*, 532 U.S. 268, 273 (2001). Further, EEOC regulations confirm the importance of the class agent's role: 29 C.F.R. § 1614.204(c)(2): "The named Class Agent/Spokesperson is the individual on whose behalf the class complaint is filed." The regulations contemplate that the class agent represents the class during the administrative process. Removing the agent for engaging in protected opposition undermines the regulatory framework and the integrity of the EEO process itself.

In Summary of Retaliation:

The EEOC's removal of Appellant Fogg as class agent, following his protected activities in a hostile settlement environment of opposing settlement and filing in federal court, constitutes unlawful retaliation under Title VII, 42 U.S.C. § 2000e-3(a), 29 C.F.R. § 1614.101(b), and 29 C.F.R. § 1614.204. The action was materially adverse under *Burlington Northern*, temporally linked to his

protected activity under Breeden, and contrary to the EEOC's duty to safeguard class representation. Accordingly, it should reconsider its decision affirming this Settlement process and should find that Fogg has plausibly alleged a claim of retaliation based on his removal as class agent.

The EEOC acknowledges that the parties involved in making the settlement, as well as the AJ in approving it, considered the rights and interests of all eligible class members. That one class member does not agree with the settlement is not enough to reject the entire settlement as unfair, inadequate, or unreasonable. It is certainly understandable that the complainant wishes the Agency to correct what he believes is a grave wrongdoing, but we are not persuaded that the settlement is unfair, unreasonable, or inadequate. We urge the complainant to understand that settlement requires compromise.

Class Agent/Spokesperson Response:

Many Class Members disagree with this Settlement and would have shared their opinions if the Class Counsel/firm had not prevented the Class Agents from fulfilling their fiduciary duties to communicate with other Class members. Additionally, some of the Class Agents who submitted affidavits against the Appellant after the federal court filing stated they felt intimidated by the Class Counsel and were told that if they did not follow the Class Counsel's instructions, they would not receive a larger payout and could be removed like Fogg.

Furthermore, some of the Class Agents who submitted Affidavits against Appellant Fogg were never officially vetted or approved by the AJ as Class Agents and were not involved in the Class Settlement negotiation "Zoom" call meetings. The number of dissenting Class Members is significant, with many more in disagreement with the Settlement. The AJ and Class Counsel were aware that a fairness Hearing would have revealed this wholesale dissent from the settlement. Therefore, the EEOC finding above that the Settlement Agreement, as proposed in the Joint proposal, is fair, adequate, and reasonable, is absolutely erroneous, unfair, and complicit in fostering a hostile environment.

Final Conclusion

The Agency officially trained the Appellant as an EEO Practitioner in 1981. He has been an EEO advocate for over 40 years, practicing law in accordance with the Federal Rules of Procedure without a license in the EEOC and MSPB process. He has represented many federal employees and has won cases through full administrative trial hearings, appeals, or settlements against some of the Federal government's top attorneys.

The Appellant has served in various capacities, including as his own EEO practitioner, a class representative, a Union Shop Steward, and an employee representative in the Washington DMV, nationwide, and in Korea.

Furthermore, the Complainant successfully pursued his personal EEOC filing in 1985, which ultimately became a Title VII case filed in 1995 in the U.S. District Court in Washington, D.C. The case ultimately found him and his Black colleagues to be victims of a Racial Hostile Environment by the U.S. Marshals Service, culminating in a 1998 Landmark Jury Verdict that named his supervising agency, the U.S. Department of Justice, as culprits.

The Appellant is considered one of America's "Top Cops" with numerous distinguished awards, who has risked his life in the line of duty to help keep America safe.

This includes his heroic actions on 9/11 as a volunteer First Responder at the World Trade Center in New York City immediately after the buildings collapsed.

The Appellant comes from a family of nine siblings, born and raised on Capitol Hill in Washington, D.C. Three of his brothers served in the Air Force, Army, and Navy during the Vietnam era, and his identical twin served as a Maryland State Trooper. The appellant and his family served the country well in the line of duty.

But today, he can confidently say it was because of his race (black) in the twenty-first century that destroyed his livelihood, liberty, and pursuit of happiness; it was those who were supposed to support him, including his black colleagues, his lawyers in this matter, and the U.S. Equal Employment Opportunity Commission, who became his arch enemies.

In this matter and many other racial complaints, the EEOC aims to protect a process that has failed to address racial injustice in the American workplace, which it was supposed to fix. My 1998 federal jury verdict summed this up for most American government workplaces when it found the United States Marshals Service under the supervision of the U.S. Attorney General to be a "Racial Hostile Environment" for all its African American Deputy U.S. Marshals before and after 1991, quoted!

That verdict alone should have led to this Class matter being rectified decades ago.

Today, after 40 years of litigation, this century's persistent racial hypocrisy still occurs in America's Justice Integrity Agency, now being used as retaliation against the Complainant, even today, and supported by the EEOC agency tasked with ending it. Even his White Class Counsel firm has joined the effort to scapegoat him as a Black man who refused to accept the unacceptable.

Meanwhile, counsel also intimidated his Class Agent colleagues into accepting a settlement that would yield a much better result for the lawyers themselves. How can a person of color hope to see fairness and equity enforced in this nation when the lead law enforcement agency, much like the FBI's COINTELPRO and other programs, continues to build racial barriers against Black recovery?

This matter is fully documented at www.BigotsWithBadges.com, as a comprehensive news site dating back to 1997, where a White Marshals were shooting at pictures of Dr. Martin Luther King Jr. A white Marshal Stephen Zanolich Jr. holds up a black rubber rat before U.S. Congress that was given to him by White US Marshal colleagues because he chose not to stand by and watch homophobic racial behaviors against his black colleague.

Yes, the racism that the Appellant and others faced working inside the Justice Integrity Agency, known as the Department of Justice, has been just as violent and vicious as any street crime.

The Appellant and another U.S. Marshals Inspector, along with Zanolich Jr., all testified before Congress in 1997 about the racism in the workplace and the many dangerous challenges they faced within the U.S. Marshals Service. The Black Inspector, U.S. Marshal William 'Bill' Scott, who is shown in the picture of Zanolich holding a rubber rat, was killed following injuries from a hit-and-run car accident, which many believe was retaliation by the U.S. Marshals as a hate crime victim; the DOJ never investigated.

Appellant reported the hate crime along with several other incidents involving the US Marshals Service over the years in a letter to President Trump, cc'ing U.S. Attorney General Pam Bondi, FBI Director Kash Patel, and FBI Deputy Director Dan Bonjino—additionally, New York City Mayor Eric Adams, a former police officer and acquaintance. Kash Patel responded, suggesting that Appellant should seek legal counsel.

Just like this class that has persisted for over 30 years, the White-owned law firm representing me and 10,000 claimants is selling out the class for far less than what three decades of effort would warrant in compensation, which demonstrates that "Black Lives Don't Matter".

The Appellant is an expert in the EEOC arena and has repeatedly seen how even racism influences the EEOC process, where Black complainants get far less compensation for greater pain and suffering than White complainants. It feels like there is nowhere to turn, and this Black USMS Class clearly shows how remnants of American Black history still affect the descendants, even in the 21st century. The EEOC has always been a Trojan Horse for Black workers, and it's been an albatross around the neck of Black employees.

The impact of internal racism in law enforcement has always influenced federal agencies in determining who becomes the hunter and who becomes the hunted. As Black law enforcement officials, we were made into slave hunters, tasked with disproportionately targeting Black drug users and dealers, even though White individuals were often the primary culprits. Yes, we were hired to support the world's largest criminal industrial prison complex—used as tools of racial apartheid—by the same criminal justice system that prompted this Appellant to start his 40-year journey.

Appellant believes the Class Agents who turned against him can now claim that since the so-called DEI has been removed from this Complaint, which was initially the reason he filed it in 1994, and because the monetary amount Class Agents considered too low, they asked Appellant to direct the Firm Chair, Mr. David Sanford to renegotiate, this settlement is now even more of an insult to the Class advocacy for civil rights and a greater barrier for Black employees who will have to follow future Class pioneers against powerful Pharaohs of government.

But as GOD has directed Appellant Dr. Matthew Fogg, that he will remain firm and see GOD's Salvation!

For the EEOC Reconsideration Appellant:

Dr. Matthew F. Fogg

Dr. Matthew Fogg

Named Class Complainant/Class Agents Spokesperson

Retired Chief Deputy U.S. Marshal

October 2, 2025, Date

Certificate of Service (EEOC Reconsideration Appeal)

I hereby certify that on this 2nd day of October 2025, I served a copy of the foregoing Notice of Appeal on government counsel by [EEOC Portal].

Respectfully,

Dr. Matthew F. Fogg

Dr. Matthew Fogg

Named Class Complainant/Class Agents Spokesperson

Retired Chief Deputy U.S. Marshal

Exhibits

[Motion for Sanctions Against Class Counsel May 17, 2024](#)

[November 1, 2023, EEOC Motion Filed by Appellant/Class Agents Spokesperson](#)

9-12-25 P.O. Receipt of EEOC Appeal Decision Dated 9-2-25