

**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Philadelphia District Office**

Doering Meyer and Ryan Gibson, Class Agents,)	EEOC No. 531-2015-00092X
)	Agency No. DOS-F-034-07
)	No. DOS-F-091-08
v.)	
)	
Antony J. Blinken, Secretary, U.S. Department of State, Agency.)	
)	

NOTICE OF RESOLUTION OF CLASS ACTION

TO:

All qualified applicants to the Foreign Service beginning on October 7, 2006, who were denied employment, or whose employment was delayed pending application for and receipt of a waiver, because the State Department deemed them not ‘Worldwide Available’ due to their disability.

FROM:

Bryan J. Schwartz, Esq., Bryan Schwartz Law, 180 Grand, Suite 1380, Oakland, California 94612; Tel. (510) 444-9300; Fax (510) 444-9301; Email: Bryan@BryanSchwartzLaw.com; Website: www.BryanSchwartzLaw.com

Gary M. Gilbert, Esq., Gilbert Employment Law, PC, 1100 Wayne Ave., Ste. 900 | Silver Spring, MD 20910; Tel. (301)608.0880; Fax (301) 608-0881; Email: gary@gelawyer.com

Yedidya “Eddie” Cohen, Attorney-Adviser, L/EMP, U.S. Department of State.

PLEASE READ THIS NOTICE CAREFULLY.

This notice is sent to you because your rights may be affected by a proposed settlement agreement.

Under the proposed settlement agreement, if given final approval by the U.S. Equal Employment Opportunity Commission (EEOC), your minimum settlement allocation is estimated to be [\$ _____].

Your settlement allocation may increase based upon certain, requested additional information you and other Class Members provide before [date – 30 days after mailing]. As described below, the additional information is designed to ascertain each Class Member’s damages to help Class Counsel to devise a fair settlement allocation.

PURPOSE OF THIS NOTICE

This notice is given pursuant to 29 C.F.R. 1614.204(g). You are being sent this notice because you have been identified by the United States Department of State (Agency) as a Class Member.

The purpose of the notice is to advise you of a proposed settlement agreement (the Settlement Agreement) between the Class Agents and the Agency, in the above-captioned class action before the EEOC. This Settlement Agreement will affect the rights of all Class Members. This Notice describes the rights you may have under the Settlement Agreement and how you may assert those rights.

RECOVERY UNDER THE PROPOSED SETTLEMENT AGREEMENT

Settlement Fund

The Settlement Agreement and its exhibits are available at <http://www.bryanschwartzlaw.com/meyersettlement>, along with other documents about this case.

The Settlement Agreement provides that the Agency will pay a total of thirty-seven million five hundred thousand dollars (\$37.5 million), which will be deposited into a Settlement Fund.

This \$37.5 million is the entire payment by the Agency to settle this case. This payment covers all damages, interest, and taxes, as well as costs, fees, and expenses incurred by the Class Counsel for the totality of the litigation. A Claims Administrator designated by Class Counsel will be solely responsible for the distribution of the funds according to methodology developed by Class Counsel described in Exhibit 3 to the Settlement Agreement.

Non-Monetary Relief

The Settlement Agreement also provides for extensive non-monetary relief.

Conditional Offer:

[1) You will receive, as part of this Settlement, a conditional offer for a career Foreign Service position. OR 2) Some Class Members will receive conditional offers of Foreign Service employment, but you are not being extended a conditional offer, because basic reason: age, etc. IF INELIGIBLE BECAUSE DID NOT PASS FOREIGN SERVICE ORAL ASSESSMENT OR RECEIVE PASSING SCORE: However, you will be provided another opportunity to pass the Foreign Service oral assessment, and if you receive a passing score, will receive a conditional offer for a career Foreign Service position.]

[If 2) If you wish to request reconsideration regarding not being extended a conditional offer, you may submit the Request for Reconsideration Regarding Conditional Offer Form, attached to the settlement as Exhibit 8, available here: <http://www.bryanschwartzlaw.com/meyersettlement/Exhibit 8>, to Class Counsel no later than date-30 days after mailing. The decision regarding whether to reconsider a determination regarding ineligibility for a Conditional Offer will be made solely by the Agency. The decision of the Agency will be final and binding.

Receipt of a conditional offer does not guarantee employment as it is an offer to be placed on the Register and is subject to contingencies including receipt of a security clearance, being found suitable for employment in the Foreign Service, and meeting a revised medical qualification

standard described in the Settlement Agreement. Subsequent placement on the Register is not a guarantee of employment either, as the Register is a rank ordered list of applicants from which the Agency selects candidates for hire. An applicant's position on the Register is dynamic and changes when applicants who have a higher score are placed on the Register. Applicants remain on the Register for a period of eighteen (18) months and their candidacy for hire terminates if they are not selected for hire within that period.

Equitable Relief – Policy Change:

Redefinition of Worldwide Availability: It has long been the Agency's policy that, absent a waiver, applicants for career Foreign Service positions receive a Class 1 medical clearance, also known as a "Worldwide Available" medical clearance, which is issued to individuals who have no identifiable medical condition that may limit their assignment abroad (3 FAM 1900; 16 FAM 200). If the EEOC approves this Settlement, the Agency will cease requiring that applicants for career Foreign Service positions receive a Class 1 medical clearance, thereby reinterpreting "Worldwide Availability." Instead, applicants for career Foreign Service positions will be required to meet a new medical qualification standard. For Generalists and Specialists, except medical specialists, they will only need to be medically cleared to serve at all designated Regional Medical Evacuation Centers. At this time, the designated Regional Medical Evacuation Centers are Bangkok, London, Pretoria, and Singapore. The new medical qualification standards applicable to medical specialists are described in the full settlement agreement.

The revised minimum medical qualification standard for career Foreign Service applicants is not analogous to a medical clearance, as currently defined by Department policy, as it will in no way limit the universe of posts at which the applicant can later expect to serve. The settlement agreement contemplates no change to the Agency's policy as of the date of execution of the Settlement Agreement, set forth in 3 FAM 2424.2, relating to Foreign Service Assignments: "Foreign Service employees are expected to serve abroad for a substantial portion of their careers in the Foreign Service. They may not serve continuously in the United States for more than eight years (by law, 22 U.S.C. § 3984) without an extension granted by the Director General." Similarly, the Settlement Agreement contemplates no change to the Agency's policy as of the date of execution of the Settlement Agreement, set forth in 3 FAH-1 H-2425.8-6(b), which provides that "an employee's first two assignments will generally be to overseas posts except as Service need dictates. GTM/CDA directs, on behalf of the DG, the first, and in most cases, the second assignments. Employees may not appeal these assignments."

Revisions to the Pre-Employment Medical Examination Process: If the Settlement Agreement receives EEOC approval, the Agency will modify its pre-employment medical examination policy and process. All career Foreign Service applicants who have received a conditional offer will still need to undergo a pre-employment medical examination. If the applicant does not have an identifiable medical condition that may limit their assignment abroad, the applicant will have satisfied the pre-employment medical requirement, will not be subject to further assessment pursuant to the medical qualification standard, and will proceed in the hiring process. If the Agency's Bureau of Medical Services (MED) determines that the applicant does have an identifiable medical condition that may limit their assignment abroad, the applicant will be subject to further assessment pursuant to the medical qualification standard discussed in the preceding section. If MED determines that the applicant meets the applicable medical qualification standard, their application will proceed in the hiring process. If MED determines

that the applicant does not meet the applicable medical qualification standard, the applicant will be referred to the Bureau of Global Talent Management, Office of Accessibility and Accommodations (GTM/OAA), to engage in an interactive process with the applicant and their medical provider in order to assess whether the applicant is able to meet the applicable medical qualification standard with a reasonable accommodation. A final determination regarding whether such an applicant can meet the applicable medical qualification standard will be made by the Director General (or their designate), in consultation with MED and GTM/OAA.

REASONS FOR THE SETTLEMENT

This litigation has been ongoing for more than 16 years. Continuing with the litigation would incur many years of additional delay, risk and increasing expenditure. The parties are vigorously at odds over liability and damages. The Settlement provides benefits and certainty to the Class now instead of prolonging the disagreement.

FURTHER INFORMATION

Further information about the Settlement Agreement and this Notice is available on the settlement website: Website: www.BryanSchwartzLaw.com/meyersettlement

Further information about the Settlement Agreement is also available from Class Counsel:

Bryan J. Schwartz, Esq., Bryan Schwartz Law, 180 Grand, Suite 1380, Oakland, California 94612; Tel. (510) 444-9300; Fax (510) 444-9301; Email: Bryan@BryanSchwartzLaw.com

Gary M. Gilbert, Esq., Gilbert Employment Law, PC, 1100 Wayne Ave., Ste. 900 | Silver Spring, MD 20910; Tel. (301)608.0880; Fax (301) 608-0881; Email: gary@gelawyer.com

Neither the Agency nor the EEOC can provide additional details.

BACKGROUND OF LITIGATION

Class Agent Doering Meyer, on behalf of herself and others similarly situated, filed an EEO complaint against the Agency in 2006, which became a formal alleged class complaint in 2007, alleging discrimination on the basis of disability. Ms. Meyer alleged that she was denied a Class 1 medical clearance based upon her disability, according to Agency policies, practices, and procedures interpreting the Worldwide Availability requirement. In 2010, after years of litigation, the EEOC certified the matter as a class action. The EEOC denied the Agency's appeal and request for reconsideration of the class certification decision in 2014 and 2015, respectively, upholding certification of the following class: All qualified applicants to the Foreign Service beginning on October 7, 2006, who were denied employment, or whose employment was delayed pending application for and receipt of a waiver, because the State Department deemed them not 'Worldwide Available' due to their disability. Thereafter, Ryan Gibson was added as a second Class Agent. Throughout litigation, the Agency denied any wrongdoing or liability. The Class and the Agency disagreed as to liability and damages, including the amount recoverable if the Class prevailed and the calculation of monetary damages. After the exchange of hundreds of thousands of documents and numerous depositions, and resolution of multiple contested motions, in 2021 the parties began discussing settlement, with the assistance of a veteran mediator,

Michael Lewis, Esq., of JAMS. After more than a year of arm's length negotiations, in December 2022, the parties finally signed the Settlement Agreement.

SUMMARY OF SETTLEMENT AGREEMENT

This Notice provides only a summary of the terms of the Settlement Agreement. While every effort has been made to ensure the accuracy of this summary, the settlement is governed by the terms set forth in the Settlement Agreement. As noted above, the Settlement Agreement and all of its exhibits are available at www.BryanSchwartzLaw.com/meyersettlement

The Agency will deposit \$37.5 million into a Settlement Fund, which the Settlement Administrator, [name], will establish as a qualified Settlement Fund under Part 468B of the Internal Revenue Code. The Settlement Administrator will administer the funds according to provisions of a distribution formula set forth in Exhibit 3 to the Settlement Agreement. The formula allocates the recovery in proportion to the injury suffered by each Class Member. The precise amount to be distributed to each Class Member is not known at this time because it will depend on the number of Class Members who submit information in support of relief and the formula calculations particular to each Class Member. However, as noted above, your minimum allocation is \$11, and you have the possibility of recovering more, depending on information you and other Class Members submit. In addition, a portion of the Settlement Fund will be allocated to the Class Agents and Class Counsel based upon their contributions made during the lengthy class action litigation – one third of the settlement amount to Class Counsel for attorneys' fees, for which they have not been compensated at all until now, during 16+ years of work; \$250,000 to Class Agent Meyer, and \$150,000 to Class Agent Gibson for their long-term efforts to represent the Class and their execution of broader, general releases; up to \$100,000 in out-of-pocket litigation costs to Class Counsel; and, up to \$50,000 for settlement administration cost to the Settlement Administrator. There will also be injunctive (non-monetary) relief, as described above.

Pursuant to the Settlement Agreement and applicable regulations, no Class Member may opt out of the Settlement Agreement. Any monetary relief that is unclaimed (e.g., if a Class Member fails to timely cash a settlement check) or rejected will be reallocated *pro rata* to the participating Class Members pursuant to the distribution formula, if feasible. Final Approval of the terms of the Settlement Agreement shall bind all Class Members, whether or not Class Members cash their checks from the Settlement Fund.

The Settlement Agreement extinguishes all Class Claims, of all Class Members and the Class Agents. Class Claims are defined in the Settlement Agreement as:

Concerning hiring at any time on or after October 7, 2006, but no later than the Effective Date; any individual or class-wide actual or potential disability discrimination claim, administrative charge, demand, grievance, complaint, right and cause of action of any kind, known or unknown, by a Class Member or the Class Agents against the Agency for monetary, injunctive or equitable relief and/or for attorney's fees, arising from any events, acts, omissions, policies, practices, procedures, conditions or occurrences, under Section 501 of the

Rehabilitation Act of 1973, 29 U.S.C. §701, *et seq.*; or any other federal, state, or local statute, regulation, rule, order, ordinance or other authority of any nature prohibiting discrimination based upon disability in employment. Class Claim refers to any claims or other causes of action described above brought in an arbitral, judicial or other forum of whatsoever kind or nature. A Class Claim, however, does not encompass a petition with the Administrative Judge that the Settlement Agreement is not fair, adequate and reasonable, or an appeal or petition of the Administrative Judge's Final Approval to the EEOC's Office of Federal Operations, within the meaning of 29 C.F.R. § 1614.204(g)(4).

Class Counsel, in coordination with the Settlement Administrator, are solely responsible for all aspects of the distribution of the monetary relief, including determining the distribution methodology set forth in Exhibit 3 to the Settlement Agreement and the determination of relief to be accorded each individual. All information provided to Class Counsel for administration and distribution of the Settlement Fund shall be treated as confidential. The confidentiality provisions in the Protective Order issued by the EEOC Administrative Judge in the case will continue to govern materials used in the mediation, negotiation, and administration of the Settlement Agreement.

The Settlement Agreement is subject to Final Approval by the EEOC Administrative Judge. The Settlement Agreement becomes effective upon the date that the EEOC Administrative Judge issues a decision approving the Settlement and all appeals have been finally determined or the time for filing appeals has expired. Once effective, the terms of the Settlement Agreement are binding on all Class Members, even those who do not cash checks from the Settlement Fund. The Settlement Administrator will notify Class Members of the EEOC Administrative Judge's Final Approval of the Settlement Agreement and provide Class Members with the payments determined by Class Counsel. No funds shall be distributed until any administrative appeals of the EEOC Administrative Judge's Final Approval to the EEOC have been fully and finally resolved or the time for such appeal has passed. Although the Claims Administrator will withhold monies for payments of FICA, income and employment taxes (if any), each individual receiving an award from the Settlement Fund shall be ultimately responsible for satisfying all personal tax obligations.

RIGHTS OF CLASS MEMBERS

Do Nothing, and Receive Monetary and Possible Non-Monetary Relief

As noted above, your settlement allocation is at least \$ [redacted]. This allocation is based upon the following information we have received from you:

[no information] OR

[offer letter, tax returns, Social Security statements, W2s, other financial documents]

[information regarding emotional distress]

If you wish to supplement the information to possibly increase your settlement allocation, you have until [date] to submit any of the following documents you did not previously submit:

[additional Social Security statements, additional W2s for 2022, offer letter]
[additional information regarding emotional distress]
[additional information regarding lack of interim earnings/failure to mitigate in particular years]

Also, as noted above, you [will/will not] receive a conditional offer. [If will not receive] You may submit the Request for Reconsideration Regarding Conditional Offer Form: <http://www.bryanschwartzlaw.com/meyersettlement/Exhibit 8>, by date-30 days after mailing.]

Object to the Settlement Agreement

If you object to any terms within the Settlement Agreement because you believe they benefit only the class agent, or are otherwise not fair, adequate, or reasonable to the Class as a whole, you must file a written petition to vacate the Settlement Agreement, postmarked no later than 30 days from the date of this notice of resolution. The petition should be sent to Administrative Judge R. Colin Power, at r.colin.power@eeoc.gov, and Chief Administrative Judge Natasha Abel, at natasha.abel@eeoc.gov, and/or to the Equal Employment Opportunity Commission, Philadelphia District Office, 801 Market Street, Suite 1000, Philadelphia, PA 19107. You must also send a copy of any objection to Lead Class Counsel: Bryan J. Schwartz, Esq., bryan@bryanschwartzlaw.com, and/or to Bryan Schwartz Law, 180 Grand, Suite 1380, Oakland, California 94612; and to Agency Counsel, Yedidya “Eddie” Cohen, Attorney-Adviser, L/EMP, U.S. Department of State, coheny@state.gov. If you do not submit your objection in a timely manner, you waive your opportunity to present such objection or otherwise appeal. Your objection must show proof that you are a Class Member, state the basis for any objection, and provide documentation to support the objection.

FAIRNESS HEARING

Pursuant to 29 C.F.R. § 1614.204(g)(4), the Administrative Judge will hold a hearing to determine the fairness, adequacy, and/or reasonableness of the Settlement Agreement on March 15, 2023 at 2 p.m., Eastern, via Microsoft Teams:

https://teams.microsoft.com/l/meetup-join/19%3ameeting_YjczOTY2OGQtZTU2MC00ZGZjLTkwZmMtZTRIOWNIYmY3YTR1%40thread.v2/0?context=%7b%22Tid%22%3a%223ba5b943-4e56-4a2f-9b91-b1f1c37d645b%22%2c%22Oid%22%3a%220251b036-7276-4a4b-bcd5-1024c6c9df96%22%7d

The Commission may change the date or time or other logistics of the hearing without further notice. If you plan to attend, you may wish to confirm the details in advance with the parties listed above. If the EEOC Administrative Judge grants final approval to this Settlement Agreement despite objections or a petition to vacate, you will only be permitted to appeal the determination of Final Approval if you filed an objection or a petition to vacate with the EEOC Administrative Judge. The EEOC Administrative Judge will determine the rights of the Class Members with respect to the matters covered by the Settlement Agreement, and all Class Members are bound by the judgment.