UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------X
IN RE
NASSAU COUNTY STRIP SEARCH CASES
----------X
THIS DOCUMENT RELATES TO:
ALL ACTIONS
----------X

Master File No.
99-CV-2844 (DRH)

DEFENDANTS' MEMORANDUM OF LAW
IN OPPOSITION TO CERTIFICATION OF A DAMAGES CLASS

LORNA B. GOODMAN
Nassau County Attorney
One West Street
Mineola, New York 11501
Attorney for Defendants

Dennis J. Saffran (DS 6170)
Chief, Appeals Bureau
(516) 571-3966
Liora Ben-Sorek
Deputy Chief, Litigation Bureau
Of Counsel

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

- continued -

Authorities, continued

Statutes and Regulations

Other Authorities

Defendants submit this memorandum of law on the remanded issue of "whether to certify a class as to damages as well" as liability. *In re Nassau County Strip Search Cases*, 461 F.3d 219, 231 (2d Cir. 2006). As set forth below, now that a class has been certified on the common and conceded issue of liability (and the class members thus afforded notice of the liability judgment), the remaining issues of damages clearly do not satisfy the predominance test of Rule 23(b)(3).

Per this court's Individual Practice Rule 2.I, defendants respectfully request oral argument of this matter.

A. The Language and Logic of the Second Circuits's Decision Do *Not* Support Damages Class Certification.

As a preliminary matter, one can dispense quickly with plaintiffs' wishful suggestion that "the Court of Appeals made patent its view that certification appears to be just as appropriate . . . for damages as . . . for liability." Pls' Mem. Law at 4. Of course, when the Court of Appeals wishes to make "patent its view" on an issue of law before it, it knows how to do so expressly, as it has done here on the issue of liability class certification. On the other hand, when the Court remands an issue for reconsideration after clarifying other issues in a case, as it has done here on the issue of damages class certification, it is clear that the Court has not determined or fully considered the remanded issue. Rather, its intent is for the district court to do so *de novo* in light of the Circuit's intervening guidance. This common sense understanding of the purpose of a remand is further supported here by the very language of the Circuit's remand instructions upon which

plaintiffs rely. While the Court counseled this court to "bear in mind that '[t]here are a number of management tools available to a district court to address any individualized damages issues,' " it specifically identified "decertification after a finding of liability" as one of these tools. 461 F.3d at 231 (quoting *In re Visa Check/Mastermoney Antitrust Litigation*, 280 F.3d 124, 141 (2nd Cir. 2001), *cert. denied*, *Visa U.S.A., Inc. v. Wal-Mart Stores*, 536 U.S. 917 (2002)).

Plaintiffs are also incorrect to argue that the "principles underlying" the Circuit's liability class decision also support certification of a damages class. Pls' Mem. Law at 4. In fact, the Circuit's legal analysis points to precisely the opposite conclusion. In holding that this court should have granted partial certification under Rule 23(c)(4)(A) as to the issue of liability even if the action as a whole did not satisfy the Rule 23(b)(3) predominance test, the Court set forth the proper analysis to be followed when partial certification of a Rule 23(b)(3) class as to particular issues in a case – such as liability or damages – is sought under Rule 23(c)(4)(A). After examining the language of Rule 23(c)(4)(A)[1], the Court stated:

> As the rule's plain language and structure establish, a court must first identify the issues potentially appropriate for certification "and . . . then" apply the other provisions of the rule, *i.e.*, subsection (b)(3) and its predominance analysis.

---

[1] "When appropriate (A) an action may be brought or maintained as a class action with respect to particular issues, . . . and the provisions of this rule shall then be construed and applied accordingly." 461 F.3d at 226 (quoting Fed. R. Civ. P. 23(c)(4)(A)) (emphases added by the Court).

461 F.3d at 226 (quoting Fed. R. Civ. P. 23(c)(4)(A)).

Applying this methodology when "the issues potentially appropriate for certification" are those of liability, common questions predominate, and partial certification under Rule 23(c)(4)(A) is therefore proper, as the Court found. *See* 461 F.3d at 229-30. Just as surely, however, when, as in the present posture of this case on remand, "the issues potentially appropriate for certification" are those of damages – which this and other courts have repeatedly found to be "inherently individualized" in a strip search case (*see* Point B, *infra*) – common questions do not predominate, and partial certification is not appropriate.

This application of the Court's legal analysis to the present damages class issue is strikingly supported by the passage in its opinion immediately following its discussion of the language of Rule 23(c)(4)(A), in which it discusses the Advisory Committee Notes to the rule and cites approvingly the Advisors' contemplation of cases in which only liability will be tried on a class basis while damages will be tried in individual suits:

> [T]he Advisory Committee Notes confirm this understanding [of the language of the rule]. With respect to subsection (c)(4), the notes set forth that, "[f]or example, in a fraud or similar case the action may retain its 'class' character *only* through the adjudication of liability to the class; the members of the class may thereafter be required to come in individually and prove the amounts of their respective claims."
>
> As the notes point out, a court may employ Rule 23(c)(4) when . . . common questions predominate only as to the "particular issues" of which the provision speaks. Further, the notes illustrate that a court may properly employ this

technique to separate the issue of liability from damages.

461 F.3d at 226 (quoting Fed. R. Civ. P. 23 Advisory Committee Note to 1966 amendment on subdivision (c) (4)) (italicized emphasis added by the Court; other emphases added here).

Finally, plaintiffs' argument that the Second Circuit decision "strongly suggests determining damages on a class-wide basis," Pls' Mem. of Law at 3, is further belied by the apparent practical rationale for the decision. In holding that a liability class should be certified notwithstanding defendants' concession of liability, the Court noted that "[a]bsent class certification and its attendant class-wide notice procedures," most of those subject to the strip search policy would never know of the concession, and thus, "[a]s a practical matter" would never have the opportunity to assert their rights. 461 F.3d at 229. But this notification will be achieved by virtue of the liability class certification. After receiving this notice, those liability class members who wish to "may thereafter be required to come in individually and prove the amounts of their respective claims" in individual lawsuits, as the Advisory Committee contemplated in the note approvingly quoted by the Court. *See* p. 3 *supra*. As discussed in detail in Point B below, most of the courts that have considered the issue have found that this strikes the proper legal and policy balance in strip search cases, in which the damages are highly individualized, subjective and variable. It adheres to the predominance rule, while still allowing those liability class members most personally aggrieved by the strip search policy to claim damages, but without diverting scarce public resources to provide a windfall to those who suffered no emotional injury.

B. The Proposed Damages Class Does Not Satisfy the Predominance Test for Certification Under Fed. R. Civ. P. 23(b)(3).

A party seeking to certify a Rule 23(b)(3) class – either as to the action as a whole or as to particular issues pursuant to Rule 23(c)(4)(A) – must establish *inter alia* "that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members." Fed. R. Civ. P. 23(b)(3).

In its previous decisions repeatedly denying class certification in this case even prior to defendants' concession of liability, this court stressed that the proposed class did not satisfy this predominance test because the highly variable and inherently individualized damages suffered by the putative class plaintiffs would necessarily overshadow the common liability issues:

> [P]laintiffs' claims for damages are particularly unsuited for a class action since each individual determination turns upon numerous factual considerations. . . .
>
> . . . Since the extent of any psychological trauma or distress felt by inmates who were searched must be calculated into their damage awards, it will be necessary to inquire into the mental and physical health of each plaintiff before and after the searches were allegedly conducted. Such intimate, individual, and fact specific determinations do not lend themselves to consideration in the context of a class action suit.

Mem. Op. and Order dated Mar. 8, 2001[2] at 23-24 (quoting *Klein v. DuPage County*, 119 F.R.D. 29, 31, 32 (N.D. Ill. 1988)).

---

[2] available as *Augustin v. Jablonsky*, 2001 U.S. Dist. LEXIS 10276; cited text is at 40.

Similarly:

> [T]he court concludes for substantially the same reasons stated in the March 8 and May 23 Orders that individualized damages issues predominate over any common damages issues. . . . [T]he court anticipates individualized and highly specific mini-trials regarding damages [for] mental distress claims [which] will necessarily involve individualized inquiries into, *inter alia*, the age, gender, employment history and personal history of the putative class members. These individualized plaintiff-by-plaintiff inquiries clearly predominate over any common issues.

Mem. & Order dated Sept. 23, 2003 at 7-8. *See also* Mem. & Order dated Nov. 7, 2003 at 5-6 (after removal of liability issue from the case, "[w]hat remains . . . for adjudication are individual . . . damage issues. Under such circumstances, class questions do not 'predominate over questions affecting only individual members' "); *accord* Mem. Op. and Order on Recons. dated May 23, 2001 at 15.

While the Second Circuit's decision establishes that this did not justify denial of liability class certification (and consequent lack of notice to the class members), the reasoning still applies with full force to the present renewed motion to certify a class as to damages issues as well. Indeed, the Circuit Court's holding that the predominance test analysis must be applied only to the particular issues for which partial certification under Rule 23(c)(4)(A) is sought (*see* pp. 2 - 4 *supra*; 461 F.3d at 226-27) makes it even clearer than before that it is inappropriate to certify a damages issues class.[3]

---

[3] Plaintiffs may object that extending class certification to damages would not be partial certification under Rule 23(c)(4)(A), as was the Circuit's grant of liability class certification, as it would result in the entire action being a class action, and that therefore Rule (continued...)

The court's denial of damages class certification in the present case reflects the course that other federal courts have repeatedly said should be taken in a strip search action or other case involving highly individualized and subjective damages. Perhaps the clearest and most relevant statements of this are found in Judge McMahon's recent decisions in a triad of cases involving strip search policies in Dutchess and Orange Counties: *Franklin v. County of Dutchess*, 225 F.R.D. 487 (S.D.N.Y. 2005), *Dodge v. County of Orange*, 226 F.R.D. 177 (S.D.N.Y. 2005), and *Maneely v. City of Newburgh*, 208 F.R.D. 69 (S.D.N.Y. 2002). In each of these cases, as in the present case, plaintiffs challenged a blanket policy of strip searching pre-trial detainees upon admission to jail, without regard to individualized reasonable suspicion that they were secreting drugs, weapons or contraband, and sought to certify a Rule 23(b)(3) class of persons who had been subject to the policy.

In *Franklin*, as here, the county conceded the existence of such a blanket search policy, 225 F.R.D. at 490, 491, and like the present court Judge McMahon therefore denied either (b)(3) certification of the whole action or partial certification of the liability issue under Rule 23(c)(4)(A), concluding that "[n]ot only is there no common question that predominates, there is no common question to try." 225 F.R.D. at 492. While her holding on partial certification of a liability class has of course been superseded by the

---

[3] (...continued)
23(c)(4)(A) is not applicable. But then plaintiffs would have to establish that the action as a whole satisfies the predominance test, and the Circuit did not disturb this court's holding that it does not.

Circuit's ruling in this case, her reasons for declining to certify a class as to damages remain compelling:

> The disputed issues left to try are the inherently individualized issues of what exactly happened to a particular plaintiff, how it affected him, physically and mentally, and whether there are mitigating circumstances that bear on his entitlement to recover damages (such as the possibility that a strip search could have been conducted legally if only the DCJ personnel had bothered to make an individualized evaluation of the particular plaintiff's circumstances).

Id. at 491-92.

The relevance of *Dodge*, decided the same day as *Franklin*, may be even clearer in light of the Circuit ruling here. For there the defendant county refused to concede the existence of a blanket strip search policy, and Judge McMahon therefore granted partial (b)(3) certification pursuant to Rule 23(c)(4)(A), as the Circuit has now instructed should have been done here. However, Judge McMahon stressed that the certification was "limited to the issue of liability only," 226 F.R.D. at 181 (emphasis added) (*see also id.* at 184, 185), and that "the issue of damages, if it cannot be settled, will be litigated . . . on a case-by-case basis." *Id.* at 186.

In discussing the unsuitability of the damage claims for class treatment in a strip search case, Judge McMahon emphasized, as did this court in the present case, their inherently individualized nature:

> When we turn to damages, however, it is clear that individual issues predominate. Even if the plaintiff class members were strip searched illegally pursuant to a uniform policy, not all arriving inmates will have suffered in the same way

> or to the same extent. Some may have suffered physical damages as a result of a strip search. Some may have been severely psychologically damaged. Some, perhaps many, will not have found the experience terribly degrading. And there will undoubtedly be certain [plaintiffs] – who knows how many? – whose damages may be limited precisely because they could have been legally strip searched if [Jail] personnel had simply assessed each new arrival for factors that would render a strip search permissible under Second Circuit jurisprudence.

Id. at 182-83.

Similarly in *Maneely*, another case in which the defendants denied that they maintained a blanket policy of strip searching all arrestees without regard to individualized suspicion, and thus disputed that they were constitutionally liable, *see* 208 F.R.D. at 78-79, Judge McMahon partially certified a class only as to the liability issue of whether a blanket policy existed. *Id.* at 78. As to damages, however, she stated that "[i]f the class prevails on these [liability] issues, then individual plaintiffs can come forward to litigate, in individual suits, the issue of whether . . . they suffered damages." *Id.* at 79 (emphasis added).

Other federal courts have made this same distinction between class certification of the liability phase and the damages phase in a strip search action or other case involving highly subjective and personalized injuries. Thus, in *Tardiff v. Knox County*, 365 F.3d 1 (1st Cir. 2004), as in *Maneely* and *Dodge*, the court affirmed class certification in a strip search case only for resolution of such disputed common liability issues as whether a blanket policy existed. *Id.* at 4-5, 6-7. Beyond that, the court suggested that, as these

issues were resolved and liability established, "the more the class action might look like a bundle of individualized damage claims wholly unsuited for class resolution," with "each class member . . . testify[ing] separately as to the circumstances, emotional damage, lost wages, medical treatment, doctor bills, and so on." *Id.* at 6. "At that point," the court held, unless a settlement on damages could be reached, it would be proper for the district court to "enter a judgment of liability, leaving class members to pursue damage claims in separate law suits." *Id.* at 7 (citing, *inter alia*, *Maneely*) (emphasis added). *See also Mary Beth G. v. City of Chicago*, 723 F.2d 1263, 1267 n.2 (7th Cir. 1983) (class action challenging City's strip search policy decertified for purpose of damages determination).

The court made a similar distinction between liability and damages certification in *Allen v. Int'l Truck & Engine Corp.*, 358 F.3d 469 (7th Cir. 2004), in which plaintiffs sought to certify a class of minority employees in a Title VII action alleging pervasive racial harassment at their workplace. The Court of Appeals directed only the certification of a Rule 23 (b) (2) class for the purpose of seeking equitable relief, while noting the likelihood that the district court would find that "other issues, such as assessment of damages for each worker, must be handled individually." 358 F.3d at 472. In making this distinction between equitable relief and damages, the court noted the inherently "subjective reactions" to racial hostility, which may have "rolled off the backs of some workers," *id.*, while others "suffered great distress," *id.* at 471.

Notably, the Second Circuit made the same distinction in *Robinson v. Metro North Commuter Railroad Co.*, 267 F.3d 147, 167-69 (2nd Cir. 2001), directing partial (b) (2)

certification of the liability stage of a Title VII pattern-or-practice discrimination claim, but noting the likelihood that "the remedial stage [would] ultimately [be] resolved on a non-class basis." *Id.* at 168.

The Fifth Circuit similarly declined to certify a (b) (3) class to seek Title VII damages in *Allison v. Citgo Petroleum*, 151 F.3d 402 (5th Cir. 1998), holding that:

> The plaintiffs' claims for . . . damages must . . . focus almost entirely on facts and issues specific to individuals rather than the class as a whole: . . . how did [discrimination] affect each plaintiff emotionally and physically, at work and at home; what medical treatment did each plaintiff receive and at what expense; and so on and so on. Under such circumstances, an action conducted nominally as a class action would degenerate in practice into multiple lawsuits separately tried.

Id. at 419 (citation omitted).[4]

Even in *Carnegie v. Household Int'l*, 376 F.3d 656 (7th Cir. 2004), *cert. denied sub nom., H&R Block, Inc. v. Carnegie*, 543 U.S. 1051 (2005), a financial overcharge case in which damages were objectively calculable and varied by only about $15 between putative class members (*see id.* at 661), the court affirmed class treatment of only the liability phase of the action, stating:

> Often . . . there is a big difference from the standpoint of manageability between the liability and remedy phases of a class action. The number of class members need have no bearing on the burdensomeness of litigating a violation . . .

---

[4] In *Robinson, supra*, the Second Circuit declined to follow *Allison*'s standard for certification under Rule 23(b)(2) of an action seeking both equitable relief and damages. However, *Robinson* did not involve Rule 23(b)(3) and thus did not discuss this aspect of *Allison*.

> Whether particular members of the class were defrauded and if so what their damages were are another matter, and it may be that if and when the defendants are determined to have violated the law separate proceedings of some character will be required to determine the entitlements of the individual class members to relief.

Id. (emphasis added).

See also Mack v. Suffolk County, 191 F.R.D. 16 (D. Mass. 2000), a strip search case upon which plaintiffs rely in their Memorandum, in which the court noted that it would consider decertifying the class for the damages phase of the litigation. *Id.* at 25 & n.17. *Accord Pyke v. Cuomo*, 209 F.R.D. 33, 45-47 (N.D.N.Y. 2002) ("certify[ing] a plaintiff class for liability purposes only," and noting that "ultimately individualized proof of damages may be necessary," and that "the court may consider a decertification of the class following liability determinations").

Finally, it bears repeating, as discussed in Point A above, that the Advisory Committee notes to Rule 23 expressly contemplate cases in which certification will only last for "the adjudication of liability to the class," while in order to obtain damages the erstwhile class members will "be required to come in individually and prove the amounts of their respective claims" in individual suits. *See* p. 3 *supra*; Fed. R. Civ. P. 23 Advisory Committee Note to 1966 amendment on subdivision (c)(4).

C. Plaintiffs' Argument That Denial of Damages Class Certification Would Be at Odds with the Purposes of the Rule Is Flawed.

In the face of this case law, plaintiffs' main argument continues to be that the denial of class certification, even at the damages stage, would be at odds with the spirit of Rule 23 and the civil rights laws, given the economically "marginalized" status of many of the class members. *See* Pls' Mem. of Law at 5-7. Thus they continue to reject as naive this court's view (*see* Nov. 7, 2003 Mem. & Order at 7) that the availability of attorneys' fees and "the absence of any need for an attorney to establish liability" would provide sufficient incentive for the filing of individual damages lawsuits on behalf of those liability class members aggrieved by the strip search policy. It is noteworthy, though, that Judge McMahon reached the exact same conclusion in *Maneely* as did the court here:

> While potential plaintiffs in these individual suits may well be economically and socially marginalized persons, resolving their common [liability] claims on a class-wide basis will provide incentive for them to bring suit. If class counsel obtains a judgment that Newburgh had a blanket strip search policy, it will be *res judicata* in each individual lawsuit. Because plaintiffs who prevail in these cases – even those who recover nominal damages – may recoup attorneys' fees under 42 U.S.C. §1988, any misdemeanor or violation arrestee . . . should be able to obtain counsel.

208 F.R.D. at 79 (citing *Mid-Hudson Legal Services, Inc. v. Grand Union, Inc.*, 578 F.2d 34, 37 (2d Cir. 1978)).

In this connection, it should be noted that while plaintiffs argue that most liability class members would not pursue individual damages litigation because the "individual damages are relatively low," three pages later they envision an average damages award of

$10,000 per claimant for at least one sub-class if a damages class is certified. *Compare* Pls' Mem. of Law at 6-7 with *id.* at 10.

Finally, as to plaintiffs' argument regarding the underlying purposes of Rule 23 and the civil rights laws, however compelling these factors are, they simply cannot overcome the legal requirements of the Rule itself, such as the predominance test. A similar argument was rejected in *Lowery v. Circuit City Stores, Inc.*, 158 F.3d 742, 759 (4th Cir. 1998), a case cited by plaintiffs: "If we were to hold these factors to be the predominant considerations for certifying a civil rights class, then nearly every suit alleging a pattern or practice of discrimination would be certified for class action because these factors would exist in nearly every case."

D. The "Methods for Class-Wide Damages Adjudication" Suggested by Plaintiffs Are Unconvincing.

Plaintiffs cite only four cases in support of their contention that "[t]here are innumerable ways to adjudicate damages on a class-wide basis after certification." Pls' Mem. Law at 8. Two of these cases, *Mack v. Suffolk County*, *supra*, and *Marriot v. Montgomery County*, 03-cv-531 (N.D.N.Y. 2006), are totally irrelevant to analyzing the difficulty of class-wide damages adjudication because they involved settlement plans in which each claimant received a stipulated amount without having to establish any damages. As this court stated in previously rejecting similar models advanced by plaintiffs:

> At most, Plaintiffs have shown that the parties can consent to assign arbitrary value to such [subjective emotional] factors to efficiently administer a settlement agreement.

> The Court assumes, on a motion to certify a class that is not a "settlement class" that this action will go to trial on the merits, in which case Defendants will be entitled to put Plaintiffs to their proof of compensatory damages.

Mem. Op. and Order on Recons. dated May 23, 2001 at 16 n. 6 (emphasis in original; citations omitted).

In one of the two other cases cited by plaintiffs, *Lowery v. Circuit City Stores, Inc.*, *supra*, 158 F.3d at 754 & n. 2, both the district court and the Circuit actually rejected the method of damages adjudication offered by the plaintiffs here as a model. In fact, the district court decertified the class before the damages phase of trial after it "found the method of trying class members' claims to a series of two-week juries to be cumbersome and inefficient." *Id.* at 754. The Court of Appeals upheld this decertification, stating:

> [T]he district court had legitimate concerns that trying the suit as a class action would be unwieldy and unfair to Circuit City. First, the district court rightly questioned whether the Plaintiffs' proposed trial procedure would be an efficient or accelerated method of disposing of the claims. While holding two-week trials with separate juries on the class members' claims would have doubtlessly been more efficient and accelerated than bringing dozens of individual suits, that fact does not require the district court to certify a class action that would nevertheless be inefficient and cumbersome.

Id. at 758.

Finally, plaintiffs rely upon *Hilao v. Estate of Marcos*, 103 F.3d 767, 782-87 (9th Cir. 1996), an extraordinary suit brought in the United States courts on behalf of Filipino citizens who had suffered torture, summary execution or "disappearance" at the hands of

the Marcos dictatorship. The Ninth Circuit majority, over a vigorous dissent, affirmed the method of awarding damages to thousands of claimants based upon a small statistical sampling of claims, rather than requiring individualized proof. The majority acknowledged that the "unorthodox" methodology raised "serious" due process concerns, and could be cause for "profound disquiet," but found that it was nonetheless "justified by the extraordinarily unusual nature of this case." *Id.* at 785, 786. No such extraordinary measures or compromises with due process are required here. Unlike *Hilao*, this is not a case in which torture victims and the survivors of the executed and the "disappeared" on the other side of the world seek compensation from the estate of a deposed tyrant. This is a case in which residents of this County and its environs sustained what plaintiffs acknowledge were "mostly garden-variety emotional distress injuries," Pls' Mem. of Law at 10, for which they seek compensation in competition with others in need of public funds. Moreover, in asserting that the horrific injuries in *Hilao* "would be expected to vary more widely" than the "garden-variety" injuries here, *id.*, plaintiffs confuse severity with variance. In fact, one of the factors relied upon by the *Hilao* court in affirming the sampling methodology there was the "similarity in the injuries suffered by many of the class members." 103 F.3d at 786. By contrast, as this court and others have stressed, the major reason for denying damages class certification in a strip search case is that the far more modest emotional injuries suffered by some but by no means all of those subjected to an illegal strip search vary widely.

CONCLUSION

For the foregoing reasons, the renewed motion for damages class certification should again be denied.

Dated: Mineola, New York
February 13, 2007

Respectfully submitted,

LORNA B. GOODMAN
Nassau County Attorney
One West Street
Mineola, New York 11501
Attorney for Defendants

By:

_____
Dennis J. Saffran (DS 6170)
Chief, Appeals Bureau
(516) 571-3966

Liora Ben-Sorek
Deputy Chief, Litigation Bureau

Of Counsel

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------X
IN RE
NASSAU COUNTY STRIP SEARCH CASES
----------X
THIS DOCUMENT RELATES TO:
ALL ACTIONS
----------X

99-CV-2844 (DRH)

CERTIFICATE OF SERVICE

DENNIS J. SAFFRAN certifies pursuant to Fed.R.Civ.P. 5(d) that on the 13th day of February, 2007, he served the within DEFENDANTS' MEMORANDUM OF LAW IN OPPOSITION TO CERTIFICATION OF A DAMAGES CLASS upon:

Spencer Freedman, Esq.
Beldock Levine & Hoffman LLP
Lead Class Counsel for Plaintiffs
99 Park Avenue
New York, NY 10016

by electronic transmission to the above.

Dated: Mineola, New York
February 14, 2007

_____
Dennis J. Saffran