

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

NAKISHA BOONE, et al.,

Plaintiffs,

- VS -

CITY OF PHILADELPHIA,

Defendant.

Civil Action No. 05-CV-1851

118

FILED

MAR 03 2009

MICHAEL E. KUNDEL
Clerk

ORDER PRELIMINARILY APPROVING SETTLEMENT

WHEREAS, the Plaintiffs and Defendant have entered into a Settlement Agreement intended to resolve the litigation pending in this Court; and

WHEREAS, the Settlement Agreement, together with supporting materials, sets forth the terms and conditions for a proposed Settlement and dismissal with prejudice of these actions against the Defendant; and

WHEREAS, the Court has before it the Parties' Motion for Preliminary Approval of Settlement and Memorandum in Support of Motion for Preliminary Approval of Settlement, together with the Settlement Agreement and supporting materials; and

WHEREAS, the Court is satisfied that the terms and conditions set forth in the Settlement Agreement were the result of good faith, arm's length settlement negotiations between competent and experienced counsel for both Plaintiffs and Defendant.

IT IS HEREBY ORDERED AS FOLLOWS:

1. Capitalized terms used in this Order have the meanings assigned to them in the Settlement Agreement and this Order.
2. The terms of the Parties' Settlement Agreement are hereby conditionally approved, subject to further consideration thereof at the Final Approval Hearing provided for below. The Court finds that said Settlement is sufficiently within the range of reasonableness and that notice of the proposed Settlement should be given as provided in this Order.
3. Pursuant to Fed. R. Civ. P. 23 the Court conditionally certifies the following Settlement Class and subclasses:

Settlement Class:

All persons who were placed into the custody of the Philadelphia Prison System after being charged with misdemeanors; summary offenses; traffic infractions, civil commitments, or other minor crimes; or bench warrants and/or probation violations where the underlying charge was a misdemeanor, summary offense or other minor crime; and who were strip searched in the absence of reasonable suspicion upon their entry into the Philadelphia Prison System pursuant to the policy, custom and practice of the Philadelphia Prison System and the City of Philadelphia. The class period commences on April 21, 2003 and extends to, and includes, October 9, 2007.

Subclass I:

All persons in the Settlement Class, EXCEPT for persons who (1) were charged with certain violence, drug and/or weapons (hereinafter "VDW") related misdemeanor charges at the time of their admission, or (2) were charged with bench warrants and/or probation violations where the underlying charge was a VDW misdemeanor charge, or (3) had convictions for felonies and/or VDW misdemeanor charges predating the date of their admission.

Subclass II:

All persons in the Settlement Class who were (1) charged with VDW misdemeanor charges at the time of their admission, or (2) were charged with bench warrants and/or probation violations where the underlying charge was a VDW misdemeanor charge, or (3) had convictions for felonies and/or VDW misdemeanor charges predating the date of their admission.

4. The Court further conditionally finds that Plaintiffs Nakisha Boone and George Byrd are adequate Class Representatives for the Settlement Class.
5. The Court further finds that Plaintiffs' Counsel are adequate Class Counsel.
6. The Court approves the Class Notice of Settlement attached hereto as Exhibit A and the Summary Notice for Publication attached hereto as Exhibit B. The Court also approves the Notice Program as set forth in Section IV of the Settlement Agreement.
7. If the Settlement Agreement is terminated or not consummated for any reason whatsoever, the conditional certification of the Settlement Class shall be void, the Defendant shall have reserved all its rights to oppose any and all class certification motions, to contest the adequacy of Plaintiffs as representative of any putative class, and to contest the adequacy of Class Counsel as adequate Class Counsel. Additionally, Plaintiffs reserve all of their rights, including the right to continue with the litigation pending at the time of the Settlement should the Settlement Agreement not be consummated.

Notice to Settlement Class and Appointment of Settlement Administrator

8. Counsel for the Class ("Class Counsel") are as follows:

Daniel C. Levin, Esquire
LEVIN, FISHBEIN, SEDRAN & BERMAN
510 Walnut Street, Ste. 500
Philadelphia, PA 19106

Charles LaDuca, Esquire
Alexandra Warren, Esquire
CUNEO GILBERT & LADUCA, LLP
507 C Street NE
Washington, DC 20002

Elmer R. Keach, III, Esquire
LAW OFFICES OF ELMER ROBERT KEACH, III, PC
1040 Riverfront Center
P.O. Box 70
Amsterdam, NY 12010

Gary E. Mason, Esquire
Nicholas A. Migliaccio, Esquire
THE MASON LAW FIRM, LLP
1225 19th St, NW, Suite 500
Washington, DC 20036

Christopher G. Hayes, Esquire
The Law Office of Christopher G. Hayes
225 South Church Street
West Chester, PA 19382

Kevin T. Birley, Esquire
1601 Sansom Street, Suite 2C
Philadelphia, PA 19103

9. Beginning no later than sixty (60) days from the date of this Order Preliminarily Approving Settlement, Class Counsel shall cause to be disseminated the notices, substantially in the form attached as Exhibits A and B hereto, in the manner set forth in Section IV of the Settlement Agreement. Such Notice Program will be completed expeditiously pursuant to the terms of the Settlement Agreement. Class Members will have forty-five (45) days from the Notice Date to opt out or to object, and one-hundred twenty (120) days from the Notice Date to file claims. Prior to the Final Approval Hearing, Plaintiffs and/or the Claims Administrator shall serve and file a sworn statement attesting to compliance with the provisions of this paragraph.
10. The Class Notice to be provided as set forth in the Settlement Agreement as filed

with the Court is hereby found to be the best practicable means of providing notice under the circumstances and, when completed, shall constitute due and sufficient notice of the proposed Settlement and the Final Approval Hearing to all persons and entities affected by and/or entitled to participate in the Settlement, in full compliance with the notice requirements of Fed. R. Civ. P. 23, due process, the Constitution of the United States, the laws of Pennsylvania and all other applicable laws. The Notices are accurate, objective, informative and provide Class members with all of the information necessary to make an informed decision regarding their participation in the Settlement and its fairness.

11. Class Counsel are authorized to retain RSM McGladrey, Inc. in accordance with the terms of the Settlement Agreement and this Order.

Requests for Exclusion from the Settlement Class

12. Any member of the Settlement Class that wishes to be excluded (“opt out”) from the Settlement Class must send a written Request for Exclusion to the Claims Administrator, so that it is received by the Claims Administrator at the address indicated in the Notice on or before the close of the opt out period. The Request for Exclusion shall fully comply with the requirements set forth in the Settlement Agreement.

Members of the Settlement Class may not exclude themselves by filing Requests for Exclusion as a group or class, but must in each instance individually and personally execute a Request for Exclusion and timely transmit it to the Claims Administrator.

13. Any member of the Settlement Class who does not properly and timely request exclusion from the Settlement Class shall be bound by all the terms and provisions of the Settlement Agreement, whether or not such person objected to the Settlement and whether or not such person made a claim upon, or participated in, the Settlement Fund

pursuant to the Settlement Agreement.

The Final Approval Hearing

14. A hearing on the Settlement is hereby scheduled to be held before this Court on no later than one hundred fifty (150) days from the Notice Date, to consider the fairness, the reasonableness, and adequacy of the proposed settlement, the dismissal with prejudice of this class action with respect to the Released Parties that are Defendant herein, and the entry of final judgment in this class action. Class Counsel's application for award of attorney's fees and costs shall be heard at the time of the hearing.

15. The date and time of the hearing shall be set forth in the Notice, but the hearing shall be subject to adjournment by the Court without further notice to the members of the Settlement Class other than that which may be posted by the Court. Class Counsel will advise members of the Settlement Class of any scheduling issues by way of the Settlement Website.

16. Any person or entity that does not elect to be excluded from the Settlement Class may, but need not, enter an appearance through his or her own attorney. Settlement Class members who do not enter an appearance through their own attorneys will be represented by Class Counsel.

17. Any person who does not elect to be excluded from the Settlement Class may, but need not, submit comments or objections to the proposed Settlement. Any Class member may object to the proposed Settlement, entry of Final Order and Judgment approving the Settlement, and Class Counsel's application for fees and expenses by serving a written objection.

18. Any Class Member making the objection (an "objector") must sign the objection

personally. An objection must state why the objector objects to the proposed Settlement and provide the basis to support such position. If an objector intends to appear personally at the hearing, the objector must include with the objection a notice of the objector's intent to appear at the hearing.

19. Objections, along with any notices of intent to appear, must be filed no later than forty-five (45) days from the Notice Date. If counsel is appearing on behalf of more than one Class Member, counsel must identify each such Class Member and each Class Member must have complied with the requirements of this Order. These documents must be filed with the Clerk of the Court at the following address:

U.S. District Court for the Eastern District of Pennsylvania
Office of the Clerk of Court
James A. Byrne Federal Courthouse
601 Market Street, Room 2609
Philadelphia, PA 19106-1797

20. Objections, along with any notices of intent to appear, must also be mailed to Class Counsel and counsel for Defendant at the address listed below:

CLASS COUNSEL:

Daniel C. Levin, Esquire
Levin, Fishbein, Sedran & Berman
510 Walnut Street, Ste. 500
Philadelphia, PA 19106

DEFENSE COUNSEL:

Craig Straw, Chief Deputy City Solicitor, Civil Rights
City of Philadelphia Law Department
1515 Arch Street, 14th Floor
Philadelphia, PA 19102

21. Only Class Members who have filed and served valid and timely notices of objection shall be entitled to be heard at the Final Approval Hearing. Any Class Member

who does not timely file and serve an objection in writing to the Settlement, entry of Final Judgment, or to Class Counsel's application for fees, costs, and expenses, in accordance with the procedure set forth in the Class Notice and mandated in this Order, shall be deemed to have waived any such objection by appeal, collateral attack, or otherwise.

22. Persons wishing to be heard at the hearing are required to file written comments or objections and indicate in their written comments or objections their intention to appear at the hearing. Settlement Class Members need not appear at the hearing or take any other action to indicate their approval.

23. All members of the Settlement Class who do not personally and timely request to be excluded from the Class are enjoined from proceeding against the Defendant for the claims made in the Complaint.

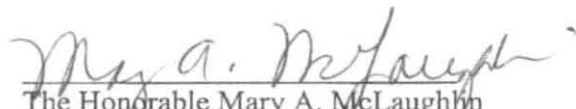
Other Provisions

24. Upon approval of the Settlement provided for in this Settlement Agreement, each and every time period and provision thereof shall be deemed incorporated herein as if expressly set forth and shall have the full force and effect of an Order of this Court.

25. All reasonable costs incurred in notifying members of the Settlement Class, as well as administering the Settlement Agreement, shall be paid as set forth in the Settlement Agreement.

IT IS SO ORDERED.

Dated: March 4, 2009


The Honorable Mary A. McLaughlin
United States District Judge

Other Orders/Judgments

2:05-cv-01851-MAM BOONE v. CITY OF PHILADELPHIA et al **CASE CLOSED on 07/25/2007**

SEALDC, SPECIAL, SUSPENSE

**United States District Court
Eastern District of Pennsylvania**

Notice of Electronic Filing

The following transaction was entered on 3/6/2009 at 10:01 AM EST and filed on 3/5/2009

Case Name: BOONE v. CITY OF PHILADELPHIA et al

Case Number: 2:05-cv-1851

Filer:

WARNING: CASE CLOSED on 07/25/2007

Document Number: 118

Docket Text:

ORDER APPROVING PRELIMINARY SETTLEMENT AS OUTLINED HEREIN.SIGNED BY HONORABLE MARY A. MCLAUGHLIN ON 3/4/09. 3/6/09 ENTERED AND COPIES EMAILED.(rf,)

2:05-cv-1851 Notice has been electronically mailed to:

CHRISTOPHER G HAYES chris@chayeslaw.com

JEFFREY M. SCOTT jscott@archerlaw.com

DANIEL C. LEVIN dlevin@lfsblaw.com, jappelbaum@lfsblaw.com

CRAIG M. STRAW craig.straw@phila.gov

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MARK MAGUIRE mark.maguire@phila.gov, craig.straw@phila.gov, michael.resnick@phila.gov

2:05-cv-1851 Notice will not be electronically mailed to:

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1001600548 [Date=3/6/2009] [FileNumber=4855827-0]
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