

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DATE FILED: 1/7/13

MARK NUNEZ, et al.,

Plaintiffs

- against -

THE CITY OF NEW YORK, et al.,

Defendants.

STIPULATION AND ORDER

11-CV-5845 (LTS) (JCF)

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IT IS HEREBY STIPULATED, by and between the parties hereto, by their duly authorized counsel, that:

1. This action is certified as a class action for the plaintiff class pursuant to Fed. R. Civ. P. 23(a), (b)(1)(A), and (b)(2).

2. The plaintiff class is defined as all present and future inmates confined in jails operated by the New York City Department of Correction ("DOC" or "Department"), except for the Eric M. Taylor Center and the Elmhurst and Bellevue Prison Wards (such jails are hereafter referred as the "City Jails" and such present and future inmates are hereafter referred to as the "Class").

3. Common questions of law and fact exist in this action with respect to the Class as fully set forth in the Second Amended Complaint, including whether there exists an unconstitutional custom, pattern, practice, or policy of use of excessive force in City Jails by Department correction officers, supervisory personnel, and The City of New York; whether there has been a violation and continues to be a threat of violation of the rights of the Class under the U.S. Constitution, and laws of the United States and the State of New York; and whether an injunction and declaratory relief is necessary in order to remedy any or all of the foregoing and,

if so, the terms thereof. All such common questions are certified as class issues. Nothing in this provision, or any other provision herein, constitutes a waiver of any defense at law or equity to the merits of the individual plaintiffs' or the Class' claims.

4. The Legal Aid Society Prisoners' Rights Project, Emery Celli Brinckerhoff & Abady LLP, and Ropes & Gray LLP will fairly and adequately represent the interests of the Class and are appointed as class counsel for the Class pursuant to Fed. R. Civ. P. 23(g). Plaintiffs Rodney Bryce, Shameik Smallwood, Travis Woods, and Oscar Sanders will fairly and adequately represent the interests of the Class and are appointed as class representatives for the Class pursuant to Fed. R. Civ. P. 23(a)(4).

5. The undersigned counsel shall confer on the appropriate content and methods of dissemination of notice to the Class of this action's certification as a class action, and shall report to the Court with respect thereto and submit a proposed order and form of such notice to the Class within 30 days from the date that this Stipulation and Order is entered by the Court.

6. Defendant The City of New York and all Defendants currently or hereafter represented by The City of New York shall not move to decertify the Class or to vacate this Stipulation and Order until after the close of fact and expert discovery. Counsel for Defendant The City of New York agrees to confer with Plaintiffs' counsel before filing any motion to decertify the Class or to seek to vacate this Stipulation and Order.

7. Defendant The City of New York, and all Defendants represented by The City of New York, shall move, answer or otherwise respond to the Second Amended Complaint on or before February 1, 2013. If circumstances warrant, Defendant The City of New York and those Defendants represented by The City of New York may seek additional time to answer,

move, or otherwise respond to the Second Amended Complaint subject to the Court's approval.

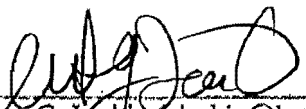
Plaintiffs reserve the right to oppose any such application.

8. This Stipulation and Order shall be binding upon the parties hereto, including their successors, agents, servants, supervisors, and employees, and all Defendants currently or hereafter represented by The City of New York and its counsel.

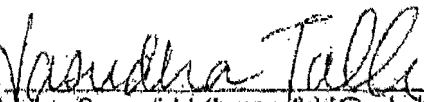
9. This Stipulation and Order may be executed in counterparts, including by signatures delivered by facsimile or scanned signatures.

Dated: January 3, 2013

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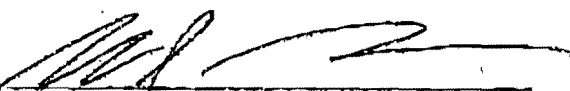
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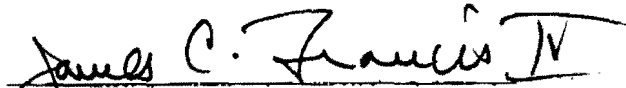
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*Counsel for Plaintiffs Rodney Brye, Shameik
Smallwood, Travis Woods, and Oscar Sanders in
their capacities as class representatives*

SO ORDERED:


Hon. James C. Francis, IV, U.S.M.J.

1/7/13