

2004 WL 574493

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United States District Court,
S.D. New York.

LATINO OFFICERS ASSOCIATION CITY OF
NEW YORK, INC., for itself and on behalf of its
members; Wilfred Maldonado; Anthony Miranda;
Manuel Nunez; Clifford Muniz; Adam Alvarez;
Charles Castro; Louis Vega; Thaddeus Gamory;
Michael Padilla; Carlos Jimenez; Jose Mercedes;
Reuben Malave; Hilda Susu; Daniel Figueroa;
Hector Ariza, Manuel Gomez, Christopher Castro,
Haydee Cartagena, Manuel Delgado; Parnell
Peterson; Fernando Sanchez and Hiram
Monserrate, individually and on behalf of a Class
of all others similarly situated, Plaintiffs,

v.

THE CITY OF NEW YORK; The New York City
Police Department; Mayor Rudolph W. Giuliani;
New York City Police Commissioner Howard Safir;
First Deputy Police Commissioner Patrick
Kelleher; Deputy Commissioner George Grasso;
Deputy Inspector Patrick Bradley; Director Joseph
Flynn; Special Prosecutor Richard Kubick; Chief
Charles V. Campisi, in their individual and official
capacities; and The Police Relief Fund, Inc.,
Defendants.

No. 99 Civ. 9568(LAK). | March 22, 2004.

Attorneys and Law Firms

Levy Ratner, P.C., New York, N.Y., for Plaintiff.

Opinion

ORDER ESTABLISHING SETTLEMENT PROCEDURES

*1 The parties having made a joint application, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, for an Order Preliminarily Approving the Settlement of the above-captioned Class Action in accordance with a Stipulation and Order dated December 18, 2003 (the "Stipulation") which sets forth the terms and conditions for a proposed settlement of this Class Action (the "Settlement"); and the Court having read and considered the Stipulation and the Declaration of Diane Paolicelli, Esq., and Richard A. Levy, Esq., dated March 16, 2004, along with the exhibits annexed thereto, and plaintiffs' Memorandum of Law in Support of Certification of the Class for Remedial Purposes, and the Declaration of Georgia Pestana, dated, March 16, 2004, and all parties

having consented to the entry of this Order; it is hereby ORDERED that:

1. The terms of the Stipulation and the Settlement provided for therein are preliminarily found to warrant further consideration thereof at the Fairness Hearing described in Paragraph 16 of this Order.

2. Pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure and this Court's Class Certification Order, dated August 6, 2002 (the "First Certification Order"), and pursuant to this Court's authority to amend its First Certification Order pursuant to Rule 23(c)(1)(C), the following Class is provisionally certified for purposes of effectuating the proposed Settlement:

"All Latino and African-American individuals who have been, are, or will be employed by the New York City Police Department ("NYPD") as members of the force, who have been or will be subjected to discrimination on the basis of race, color or national origin in the form of a hostile work environment, disparate disciplinary treatment, and retaliation for the exercise of their rights ("Class Members"); for purposes of individual claims for compensation or damages, the class shall be limited to members of the force whose claims arose between September 9, 1996 through December 31, 2003 and who meet the eligibility requirements as defined in the claims procedure set forth in the settlement agreement ("Sub-Class Members")."

3. In support of this determination, the Court reiterates its findings in the First Certification Order and further finds that: (i) the positive value of the injunctive and declaratory relief sought is predominant even though compensatory damages are also claimed; and (ii) class treatment would be efficient and manageable, thereby achieving an appreciable measure of judicial economy;

4. The Court determines that the claims by the Sub-Class Plaintiffs for compensation or damages also may be adjudicated as a class action, pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure, for the purposes of effectuating the remedial claims procedure of the proposed Settlement. In support of this determination, the Court reiterates the Rule 23(a) findings in the First Certification Order and further finds: (i) the interests of the sub-class predominate over the interest of members of

the class in individually controlling the prosecution or defense of separate actions; (ii) a class action is superior to other available methods for fair and efficient adjudication of the controversy; (iii) it would be desirable to concentrate the litigation of the claims in a single forum; and (iv) class treatment would be efficient and manageable, thereby achieving an appreciable measure of judicial economy.

***2** 5. Plaintiffs Wilfred Maldonado, Anthony Miranda, Clifford Muniz, Adam Alvarez, Charles Castro, Michael Padilla, Reuben Malave, Hector Ariza, Manuel Gomez, Christopher Castro, Parnell Peterson, and Fernando Sanchez are certified as Class Plaintiffs and Representatives for this Settlement. No other individuals who once served as named plaintiffs shall be deemed to continue as class representatives;

6. For the reasons set forth in this Court's First Certification Order, Class Counsel are approved and appointed for purposes of effectuating the Settlement;

7. Except insofar as the Class has previously been certified for purposes of liability and Class Representatives and Class Counsel appointed, the foregoing class certification is conditioned upon entry of a Final Order and Judgment approving the Stipulation and dismissing this action, subject to the Court's continued jurisdiction to enforce the settlement provisions, and such conditional certification and appointment shall automatically terminate and the above findings shall be deemed vacated, without further order of the Court and without any precedential value, in the event that the Stipulation is not finally approved by the Court.

8. Within forty-five (45) days of entry of this Order, the City of New York shall mail by First Class Mail the summary and long form Notice of Proposed Class Action Settlement and Injunction, the Claim Procedure, and the Claim Forms [the "Notice and Claim Packet"] substantially in the forms annexed as Exhibits 3 through 5 to the Declaration of Diane Paolicelli and Richard A. Levy in Support of the Joint Motion for Preliminary Approval, dated March 16, 2004 to all Class Members at their last known mailing address. Defendant City of New York will also publish the summary Notice substantially in the form annexed as Exhibit 3 to the Declaration of Diane Paolicelli and Richard Levy in the following newspapers: The Chief, The New York Daily News, The New York Post, New York Newsday and El Diario.

9. Within ten (10) days of the date of the completion of the mailing of the Notice and Claim Packet, the City of New York will serve Class Counsel with, and file with the Clerk of the Court, an affidavit attesting to the mailing of the Notice Packet and publication of the Summary Notice as provided herein.

10. The mailing and publication of the Notice to Class Members, in compliance with the provisions set forth in paragraph 8 above, is hereby found to be the best notice practicable under the circumstances, and constitutes due and sufficient notice, in full compliance with the notice requirements of Rule 23 of the Federal Rules of Civil Procedure and the requirements of due process.

11. For purposes of effectuating the Settlement, the Notice shall direct that all communications, including claims forms, opt-out notices or objections from Class Members (including any papers or briefs submitted by any Class Member in support of, or in opposition to, the fairness, reasonableness and adequacy of the Settlement) shall be sent to Kenneth R. Feinberg, Esq., and Peter Woodin, Esq. of The Feinberg Group at a Post Office Box to be determined, who were each appointed Special Master by this Court, (the "Special Master"). The Special Master shall be responsible for the receipt of all such communications in response to the Notice and Claim Packet and shall preserve and maintain any and all written communications from Class Members in response to the Notice and Claim Packet.

***3** 12. Sub-Class Members who participate in the claim procedures must complete one or more Claim Forms, as contained in the Notice and Claim Packet, which shall be signed by the Sub-Class Member under oath and before a notary public, and mail the Claim Form(s) with supporting documentation as required, post-marked no later than July 6, 2004.

13. Sub-Class Members who elect to opt-out must do so in writing post-marked no later than July 6, 2004. Elections to opt-out must be submitted to the Special Master pursuant to the procedure set forth in the Notice.

14. Within seven (7) days after the close of the opt-out period,⁴ the Special Master will provide Counsel for the parties and the Court with alphabetized, numbered lists of all Class Members who have timely submitted opt-out requests or and objections and a list of all Class Members who have registered to participate in the claims procedure. The Special Master shall also forward to Counsel for the parties and the Court for its review copies of all objections and all claims forms.

⁴ That is, by *July 13, 2004*.

15. If the NYPD/City of New York decides to exercise its option to declare the settlement null and void pursuant to paragraph 33 of the Stipulation, it must do so no later than August 20, 2004.

16. A Fairness Hearing shall be held before the undersigned at 10:15 A.M. on *Sept. 10, 2004* in the United

States District Court, Southern District of New York, 500 Pearl Street, New York, New York 10007-1312, Courtroom 1310, to consider the fairness, reasonableness or adequacy of the proposed Settlement, and whether it should be approved by the Court.

17. Any Class Member may object to the Settlement by filing written objections with the Court and serving such objections upon the Special Master, provided that the objections are filed with the Special Master no later than July 6, 2004. The objections must specify with particularity the part(s) of the Settlement objected to and the reasons for the objections. If any Class Member submits written objections as specified above and requests in writing to be heard at the hearing, that Class Member may appear personally or through an attorney. If appearing through an attorney, the attorney's name must be clearly stated on the document containing the written objections. Except by special permission of the Court, no Class Member will be permitted to object at the Fairness Hearing unless the foregoing procedure has been followed.

18. Class Counsel and the Office of the Corporation Counsel shall have until five (5) days before the Fairness Hearing to respond to any timely and proper objections or comments filed pursuant to Paragraph 16 of this Order.

19. The Court expressly reserves its right to adjourn the Fairness Hearing from time to time without further notice to any Class Members other than those who filed timely objections in accordance with Paragraph 17.

20. If the proposed Settlement is approved after the hearing and a Final Order and Judgment entered, all Members of the Sub Class are forever bound by the terms of the Stipulation and by any orders and judgments entered herein, except that any class members who file claims under the claims procedure set forth in the

Stipulation, and who fail to meet one or more of the threshold eligibility requirements applicable to that claim, *i.e.* is determined not to be a member of the Sub-Class, or any class member who opts-out, may litigate his or her individual case.

*4 21. In the event the proposed Settlement is not approved by the Court, or for any reason the parties fail to obtain entry of final judgment as described in paragraph 4 of the Stipulation, the Stipulation shall become null and void and of no further force and effect, and shall not be used or referred to for any purpose whatsoever. In such event, the Stipulation, the Claim Forms, the opt-out communications, and all negotiations and proceedings relating thereto shall be withdrawn without prejudice as to the rights of any and all parties thereto, who shall be restored to their respective positions existing as of the date of the Stipulation.

22. All reasonable costs incurred in locating, identifying and notifying Class members of the proposed Settlement, as well as administering the Settlement and claims processing shall be paid by the City of New York from the \$2 million fund pledged for this purpose. The City of New York shall disburse such funds in the time and manner as reasonably requested by the Special Master and approved by this Court, including funds for administering the receipt and processing of claims and opt-out notices.

23. The Court reserves the right to approve the Stipulation with such modifications as may be agreed to by Class Counsel and the Office of the Corporation Counsel, and without further notice to the Members of the Class.

IT IS SO ORDERED.