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January 23, 2017

VIA ECF
Honorable Robert W. Sweet
United States District Judge
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: ***Stinson, et al. v. The City of New York et al.***
10 CV 4228 (RWS)

Your Honor,

We are co-lead class counsel for the Plaintiff Class in the above-referenced action. We write on behalf of all of the parties to advise the Court that the Class and Defendants have reached a proposed settlement of the litigation, and to request the Court's preliminary approval of the settlement. Specifically, the parties respectfully request that Your Honor (1) so order the enclosed Stipulation of Settlement, and (2) enter the enclosed Proposed Order Granting Preliminary Approval of the class settlement in this case.[1] In addition, it is respectfully requested that Your Honor appoint Rust Consulting as claims administrator.

It is well settled that "'[w]here the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class and falls within the

[1] The Stipulation of Settlement and the Proposed Order Granting Preliminary Approval, as well as a Proposed Notice and a Proposed Claim form, are all enclosed with this letter. (*See* Stipulation of Settlement Attached as Exhibit A; Proposed Order Granting Preliminary Approval Attached as Exhibit B; Proposed Long Form Notice Attached as Exhibit C; Proposed Short Form Notice Attached as Exhibit D; and Proposed Claim Form Attached as Exhibit E). Also accompanying this letter are the Affirmation of the Hon. John S. Martin, who served as mediator of the parties' settlement negotiations, and the Declaration of Tiffaney Janowicz, Esq., in support of the proposed plan for notice to class members. (*See* Declaration of the Hon. John S. Martin Attached as Exhibit F; and, the Declaration of Tiffaney Janowicz Attached as Exhibit G).

reasonable range of approval, preliminary approval is granted.'" *In re Currency Conversion Fee Antitrust Litig.*, 2006 WL 3247396, *5 (S.D.N.Y. 2006) (quoting *In re Nasdaq Market-Makers Antitrust Litig.*, 176 F.R.D. 99, 102 (S.D.N.Y. 1997)). Indeed, where a settlement is the "product of arm's length negotiations conducted by experienced counsel knowledgeable in complex class litigation," the settlement enjoys a "presumption of fairness." *In re Austrian and German Bank Holocaust Litig.*, 80 F. Supp. 2d 164, 173-74 (S.D.N.Y. 2000), *aff'd sub nom.*, *D'Amato v. Deutsche Bank*, 236 F.3d 78 (2d Cir. 2001); *In re Michael Milken and Assocs. Sec. Litig.*, 150 F.R.D. 57, 66 (S.D.N.Y. 1993); *Henry v. Little Mint, Inc.*, No. 12 Civ. 3996, 2014 WL 2199427, at *6 (S.D.N.Y. May 23, 2014) ("If the settlement was achieved through experienced counsel's arm's-length negotiations, absent fraud or collusion, courts should be hesitant to substitute their judgment for that of the parties who negotiated the settlement.").

Moreover, "[i]n terms of the overall fairness, adequacy, and reasonableness of the settlement, a full fairness analysis is unnecessary at this stage; preliminary approval is appropriate where a proposed settlement is merely within the range of possible approval." *Reade-Alvarez*, 237 F.R.D. 26, 34 (E.D.N.Y. 2006); *see also Yim v. Carey Limousine NY*, No. 14-cv-5883, 2016 WL 1389598, at *3 (E.D.N.Y. Apr. 7, 2016) ("In the context of a motion for preliminary approval of a class action settlement, the standards are not so stringent as those applied when the parties seek final approval."). Overall, "in contrast to final approval, [preliminary approval] 'is *at most* a determination that there is what might be termed 'probable cause' to submit the proposal to class members and hold a full-scale hearing as to its fairness.'" *Nieves v. Cmty. Choice Health Plan of Westchester, Inc.*, 2012 WL 857891, at *4 (S.D.N.Y. 2012) (quoting *Menkes v. Stolt Nielsen S.A.*, 270 F.R.D. 80, 101 (D. Conn. 2010)). For the reasons summarized herein and based on terms of the settlement specifically set forth in the attached documents, it is respectfully submitted that the standards for preliminary approval are met in this case.

Pursuant to Your Honor's Class Certification Order, the class in this case is composed of "individuals who were issued summonses that were later dismissed upon a judicial finding of facial insufficiency and who were ticketed without probable cause." *Stinson v. City of N.Y.*, 282 F.R.D. 360, 363 (S.D.N.Y. 2012).[2] Furthermore, as Your Honor is aware, over the past six (6) years, this case has been vigorously litigated by both sides, throughout every phase of the proceedings. Indeed, there have been hundreds of thousands of documents exchanged in discovery, hundreds of hours of audio visual materials reviewed, forty-four (44) depositions taken and over thirty (30) substantive motions litigated, including four separate motions on the issue of class certification alone. Thus, the parties had a very developed factual and legal record to consider when assessing the potential for settlement of the claims. Moreover, the sheer expenditure of resources in prosecuting and defending the class claims thus far, as well as the prospective resources to be expended if the case proceeded to trial, are factors strongly militating in favor of granting preliminary approval in this case. *See e.g., In re Prudential Sec. Inc. Ltd. Partnerships Litig.*, 163 F.R.D. 200, 210 (S.D.N.Y. 1995) ("Instead of the lengthy, costly, and uncertain course of further litigation, the settlement provides a significant and expeditious route to recovery for the Class.").

[2] Based on that definition, the size of this class is currently estimated to be in the range of 850,000 to 1 million individuals.

At the same time, the settlement here was the product of lengthy arms-length negotiations among highly skilled and experienced counsel. All negotiations proceeded with the involvement, by agreement of all parties, of the Hon. John S. Martin (Ret.), who served as mediator. Under Judge Martin's supervision, the parties engaged in three separate in-person mediation sessions, which included some of the highest-ranking officials at the NYPD, the Office of the Comptroller and the Office of the Corporation Counsel, as well as the full set of court-appointed co-lead counsel for the Class. Also with Judge Martin's involvement, counsel for the parties engaged in numerous follow-up teleconferences and emails regarding the potential terms of a settlement. Throughout the course of this process, the parties presented to each other detailed overviews of the case, exchanged detailed Mediation Statements that summarized evidence supporting their respective positions, and with the help and guidance of Judge Martin evaluated both the potential value of the claims and the risks for each side of proceeding to trial. Ultimately, this process yielded a proposed settlement that all sides believe is both highly significant and fair. Indeed, as mediator Judge Martin explains in his accompanying affirmation:

> "As the result of my involvement in this matter I can attest to the fact that the negotiations of this settlement were conducted at arm's length, with counsel for all parties vigorously representing their clients' interest. In my opinion, it would not have been possible for the class representatives to obtain a more favorable settlement than that which is now embodied in the proposed settlement agreement before the Court. During the course of the settlement discussions I had extensive discussions individually with each of the parties concerning the litigation risks involved, and the settlement that they reached reflected their reasonable valuation of those risks."
>
> (Ex. F).

Subject to this Court's approval, Defendant the City of New York has agreed to pay Settlement Benefits of up to seventy-five million dollars ($75,000,000.00), with up to Fifty-Six Million Five Hundred Thousand Dollars ($56,500,000.00) to be used to fund settlement payments to individual class members, service awards to the named Class representatives, and costs of notice and settlement administration, and an additional Eighteen Million Five Hundred Thousand Dollars ($18,500,000.00) to pay attorney's fees and costs.[3] The Settlement Agreement provides, subject to Court approval, that payments to individual class members shall be made on a pro rata basis, based on the number of claims made, at a rate of up to one hundred and fifty dollars ($150) per eligible summons. The Settlement Agreement provides that any funds not distributed through the claims process or used to cover attorney's fees and costs shall revert back to the City.

Furthermore, as set forth in the Settlement Agreement, the New York Police Department ("NYPD"), since this litigation commenced, has made certain significant changes to its policies, practices and procedures related to criminal summonses, and the NYPD also will be making additional changes to those policies, practices and procedures in the coming months. Among other

[3] As Judge Martin notes in his accompanying affirmation, "Plaintiffs' counsel refused to negotiate with respect to their fees until the amount of payment to the class was resolved and the general terms of non-monetary terms had been resolved in principle." (Ex. F.)

things, the policy, practice and procedure changes address the use of quotas, numerical measurements of performance, and other matters that have been the subject of the Class' injunctive relief claims in this case.

In addition, subject to Court approval, both sides recommend the appointment of Rust Consulting to serve as the claims administrator and to effectuate notice to the class. With nearly 30 years of class action settlement administration experience, Rust is among the leaders in the industry, having administered more than 5,200 class action settlements, including 2,000 in the past five years alone. Moreover, Rust has previously been approved as the claims administrator in civil rights class actions involving the City of New York. *See, e.g., Casale v. Kelly*, 08-Civ-2173 (SAS) and *Brown v. Kelly*, 05-Civ.5442 (SAS); *McBean v. City of New York*, 02 Civ. 5426 (JGK).

As more fully set forth in the accompanying declaration of Tiffaney Janowicz, Esq., while the notices were initially drafted by Co-Lead Class Counsel, Rust worked with Counsel to ensure that both notices were "written and designed to satisfy the requirements of Federal Rule of Civil Procedure 23." (Ex. G at ¶ 5). Indeed, as Ms. Janowicz declares, both notices "are adequate and typical of notices in class action cases like this." (Id.). Furthermore, Co-Lead Class Counsel worked with Rust to develop a proposed Notice Program intended to provide Class members with the best notice practicable under the circumstances.

Specifically, Rust will utilize the last known name and address information class members to send the short form notice and claim form to class members via first class mail. Prior to mailing, Rust will verify the accuracy of the address information by running it through the United States Postal Service National Change of Address and Coding Accuracy Support System. After mailing, any notices that are returned as undeliverable will go through an address trace process to locate an alternate address. In addition to sending the short form notice via direct mail, Rust proposes to publish the short form notice in El Diario La Prensa – New York City, the New York Post, AM New York, Caribbean Life News and New York Amsterdam News. Rust will also maintain a website where it will provide links to both the long and short form notices, as well as the claim form. And Rust will maintain a toll-free number "helpline" to assist in answering any questions from class members. At the conclusion of the proposed notification program, Rust will prepare a declaration that summarizes the work Rust has performed and relevant statistics related to the notice process.

Finally, it respectfully requested that this Court approve the schedule outlined in the Stipulation of Settlement and the Proposed Order. Specifically, the Notice will be mailed to Class Members within 45 days of the Preliminary Approval Order. Class Members will then have 45 days from the date the Notice is mailed to opt out of the settlement or object to it. Given this timeline, it is requested that the Court hold a Fairness Hearing on May 24 2017, or the first date thereafter that is convenient for the Court, and plaintiffs will file a Motion for Final Approval of the Class Settlement no later than 40 days prior to the Fairness Hearing date.

Based on the foregoing, it is respectfully submitted that the terms of the settlement in this case are "at least sufficiently fair, reasonable and adequate to justify notice to those affected and an opportunity to be heard." *In re Baldwin-United Corp.*, 105 F.R.D. 475, 482, 1 Fed. R. Serv. 3d 1589 (S.D.N.Y. 1984). As such, the parties request that Your Honor (1) so order the enclosed

Stipulation of Settlement, (2) enter the enclosed Proposed Order Granting Preliminary Approval of the class settlement in this case, and (3) appoint Rust Consulting as the Claims Administrator and approved the proposed notice plan so that class notice may be commenced.

Thank you for your consideration of this request.

Respectfully submitted,

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Enclosures

Via ECF

cc: Rachel Seligman Weiss, Esq.
Qiana Smith-Williams, Esq.