

2004 WL 2066605

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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 KNF. | Sept. 15, 2004.

## Opinion

### JUDGEMENT AND ORDER APPROVING THE CLASS ACTION SETTLEMENT, CERTIFYING THE AMENDED CLASS AND APPROVING ATTORNEYS FEES

KAPLAN, J.

**\*1** WHEREAS, plaintiffs commenced this action by filing a Complaint in September 1999, alleging that Defendants have discriminated against them in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 1981, 1983, 1985, the First and Fourteenth Amendments, the New York State Human Rights Law, the New York City Human Rights Law and New York common law; and

WHEREAS, by Memorandum Opinion dated August 6, 2002, this Court certified a plaintiff class defined as “all Latino and African-American individuals who have been, are, or will be employed by the NYPD as uniformed

officers, including civilians who perform the same employment functions as uniformed officers, 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”; and

WHEREAS, in or about November 2003, after completion of discovery and filing of a pre-trial order, the parties engaged in settlement negotiations, with the assistance of the Court-appointed Special Masters Kenneth Feinberg, Esq. and Peter Woodin, Esq. (the “Special Masters”) resulting in a stipulation resolving all issues raised by the plaintiffs in their complaint on the terms and conditions contained in the Stipulation and Order dated December 18, 2003 (the “Stipulation”); and

WHEREAS, on March 17, 2004, the parties 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 the Stipulation which sets forth the terms and conditions of the proposed settlement of this Class Action (the “Settlement”) and for certification of a class for remedial purposes and this Court issued an Order Establishing Settlement Procedures dated March 22, 2004 (the “Order”) which: set forth the specific procedures to be followed to implement the notice, opt-out and claims filing provisions of the Settlement; amended the initial class certification to provisionally certify a class, including a subclass, to effectuate the terms of the Settlement, defined as “all Latino and African-American individuals who have been, are, or will be employed by the 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”)” and; provided opportunity for potential class members to object to the proposed settlement; and

**\*2** WHEREAS the parties have submitted proof of compliance with the Court’s Order showing, *inter alia*, that notices were mailed to approximately 17,300 potential claimants and published in five major newspapers and that 2,191 claims were filed by 1,199 claimants with only 30 opt-outs and 5 objections; and

WHEREAS, the plaintiffs filed a Supplemental

Declaration of Richard A. Levy and Diane Paolicelli in Support of Class Action Settlement (dated September 3, 2004) and Plaintiffs' Memorandum of Law Responding to Filed Objections and in Support of the Class Action Settlement; and

WHEREAS, on September 10, 2004 the Court conducted a Fairness Hearing on notice to all Class Members, and none of the five class members who filed timely objection appeared, or voiced any comment or objection at the hearing when given the opportunity by the Court to do so; and

WHEREAS, at the Fairness Hearing the Court delineated the factual findings which support the Court's conclusion that the Settlement is fair, reasonable and adequate, in accordance with the factors applied by this Circuit in evaluating class action settlements; and

WHEREAS the City has certified that it will not seek to vacate the Settlement; and

WHEREAS the Court has also reviewed the Affirmation of Richard A. Levy and Diane Paolicelli in Support of Class Counsels' Motion for Attorneys Fees, which seeks approval of fees and costs agreed to by the City in the Stipulation and has found the stipulated fee arrangement to be fair and reasonable.

NOW THEREFORE the parties having jointly moved for a Judgment and Order Approving the Settlement of this Class Action and certifying the amended class, in accordance with the Stipulation (as conformed to the subsequent Order of March 22, 2004), to be effective thirty (30) days after final entry of judgment by this Court or issuance of a mandate from the Court of Appeals for the Second Circuit following any appeal, with the Court retaining jurisdiction over the parties and the subject matter of this action to enforce and administer the terms of the Stipulation for 27 months after the effective date it is

ORDERED, ADJUDGED AND DECREED, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, that the Settlement of this within class action as set forth in the Stipulation is fair, reasonable and adequate, and is hereby approved; and it is further

ORDERED, ADJUDGED AND DECREED, pursuant to Rules 23(b)(2) and 23(c)(1)(C) of the Federal Rules of Civil Procedures that the Class which was provisionally certified for purposes of effectuating the Settlement pursuant to his Court's Order of March 22, 2004 is hereby certified; and it is further

ORDERED, ADJUDGED AND DECREED, pursuant to Rule 23(h) of the Federal Rules of Civil Procedure, that the award of attorneys fees and costs as agreed to by the

parties and reflected in the Stipulation, is reasonable and is hereby approved; and it is further

ORDERED, ADJUDGED AND DECREED, that the plaintiffs shall have judgment incorporating all terms of the Stipulation, as conformed to the Order of March 22, 2004, including, *inter alia*, that:

\*3 (1) all changes to the disciplinary and equal employment practices and procedures of the NYPD agreed upon in the Stipulation, including, *inter alia*, all record-keeping and database requirements and redress mediation shall be implemented by the defendants within the time frames set forth in the Stipulation;

(2) within 30 days of the effective date of this order the Special Masters shall commence processing of claims for compensation pursuant to the claims procedure and may grant awards based on claims up to a maximum of \$20 million as provided in the Stipulation;

(3) awards from the \$20 million shall begin to be paid after all claims have been adjudicated by the Special Masters;

(4) payment shall be made by the City to each Claimant awarded a monetary payment under the claims procedure no later than 90 days after the execution and delivery by such claimant to defendants' counsel of all documents necessary to pay the amount awarded, as specified in paragraph 32 of the Stipulation;

(5) Defendants shall pay to class counsel within 60 days of the effective date of this order, the sum of \$4.8 Million dollars for attorneys fees and costs, payable to Levy Ratner, P.C., Special Account, which sum will be held in escrow and disbursed according to agreement among counsel;

(6) Defendants shall pay the costs and expenses of the processing of claims, including the fees of the Special Master, as provided in paragraph 29 of the Stipulation, in the time and manner requested by the Special Master or otherwise agreed to between Defendants and the Special Master; and,

(7) The Court shall retain jurisdiction of this matter to ensure compliance with the Stipulation for a period of 27 months from the implementation of the Stipulation; and it is further

ORDERED, ADJUDGED AND DECREED that the individual claims of the following named plaintiffs who have filed timely opt-out statements in compliance with the terms of this Court's Order of March 22, 2004 shall be severed from this class action to permit these plaintiffs to

pursue their individual claims: Wilfred Maldonado, Reuben Malave, Manuel Gomez, Parnell Peterson and Fernando Sanchez; and it is further

ORDERED, ADJUDGED AND DECREED, that subject to the Court's continuing jurisdiction to ensure compliance with the Stipulation, the individual and class claims raised in the Second Amended Complaint (except the individual claims of the five named plaintiffs who

have timely opted out of the settlement) are dismissed with prejudice and without costs, except as specified in the Stipulation.

IT IS SO ORDERED