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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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BARBARA HANDSCHU, RALPH DiGIA, ALEX
MCKEIVER, SHABA OM, CURTIS M. POWELL,
ABBIE HOFFMAN, MARK A. SEGAL, MICHAEL
ZUMOFF, KENNETH THOMAS, ROBERT RUSCH,
ANNETTE T. RUBINSTEIN, MICKEY SHERIDAN, JOE
SUCHER, STEVEN FISCHLER, HOWARD BLATT,
ELLIE BENZONI, on behalf of themselves and all others
similarly situated,

71 Civ. 2203 (CSH)

Plaintiffs,

- against -

SPECIAL SERVICES DIVISION, a/k/a Bureau of Special
Services; WILLIAM H.T. SMITH; ARTHUR GRUBERT;
MICHAEL WILLIS; WILLIAM KNAPP; PATRICK
MURPHY; POLICE DEPARTMENT OF THE CITY OF
NEW YORK; JOHN V. LINDSAY; and various unknown
employees of the Police Department acting as undercover
operators and informers,

Defendants.

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STIPULATION OF SETTLEMENT AND ORDER

9
WHEREAS, in 1979, the Court certified a class in this case (“The Plaintiff
Class”) defined as follows:

“All individuals resident in the City of New York, and all other persons who are
physically present in the City of New York, and all organizations located or
operating in the City of New York, who engage in or have engaged in lawful
political, religious, educational, or social activities and who, as a result of these
activities have, been, are now or hereafter may be subjected to or threatened by

infiltration, physical and verbal coercion, photographic, electronic and physical surveillance, provocation of violence, recruitment to act as police informers and dossier collection and dissemination by defendants and their agents.”

605 F. Supp. 1384, 1418 (S.D.N.Y. 1985), (*Handschu II*); and

WHEREAS, the defendants in this case (“Defendants”) include the incumbent successors to the governmental officials named in the caption in their official capacity; and

WHEREAS, in 1985, the Court approved a settlement and entered a consent decree incorporating Guidelines governing the investigation of political activity by the New York City Police Department (“The Handschu Guidelines”) 605 F. Supp. 1384 (S.D.N.Y. 1985); and

WHEREAS, in 2003, the Court approved Defendants’ motion for modifications to the Handschu Guidelines and subsequently incorporated in the Consent Decree, as set forth in a Second Revised Order and Judgment, the modified guidelines governing investigation of political activity by the New York City Police Department (“The Modified Handschu Guidelines”), 288 F.Supp.2d 411, 419-420 (S.D.N.Y. 2003) (*Handschu V*)¹; and

WHEREAS, in 2007, the Court held that counsel for the Plaintiff Class (“Class Counsel”) are entitled to seek judicial relief when they can demonstrate that the NYPD systematically and repeatedly violated the Modified Handschu Guidelines to a degree sufficient to show an NYPD policy to act in such a fashion or when the NYPD adopts a policy that violates the Modified Handschu Guidelines. 2007 U.S. Dist. LEXIS 43176, *67-69 (S.D.N.Y. June 13, 2007), 2007 WL 1711775 (S.D.N.Y. June 13, 2007), *12, *20 (*Handschu VIII*); and

¹ This Court has noted “...the ‘Modified Handschu Guidelines’ consist of the appendices to *Handschu IV* [273 F.Supp.2d 327, 349-50] and *Handschu V* [288 F.Supp.2d 411, 420-431], read together.” 2006 U.S. Dist. LEXIS 41940 at *4, 2006 WL 1716919 at 1 (*Handschu VI*).

WHEREAS, on November 3, 2011, Class Counsel brought a Motion for preservation of records and to take discovery concerning media reports that the New York City Police Department (“NYPD”) had engaged in investigations of political activity by Muslim Class members that did not comply with the Modified Handschu Guidelines (the “Discovery Motion”); and

WHEREAS, in 2012 after the motion to preserve records and take discovery was made, Defendants agreed to preserve documents and provide Class Counsel limited voluntary discovery; and

WHEREAS, on April 2, 2013, Class Counsel brought a Motion For Injunctive Relief and Appointment of a Monitor, alleging that the NYPD had a policy or practice that violated the Modified Handschu Guidelines in that the NYPD conducts investigations of individuals and organizations associated with the Muslim religion solely on the basis of religion, and without a factual predicate (the “Handschu Motion”); and

WHEREAS, Defendants have denied any and all liability arising out of the Handschu Motion as defined above; and

WHEREAS, the Court ruled on January 30, 2014 that the Handschu Motion presented issues worthy of further litigation which entitled Class Counsel to further discovery in aid of their claims (2014 U.S. Dist. LEXIS 13655, *13, 2014 WL 407103, *4); and

WHEREAS, the Court further ruled that the best evidence as to whether a particular investigation was commenced in compliance with the Modified Handschu Guidelines was the “Investigative Statement” (the written document that identifies the subject of an Intelligence Bureau Investigation and sets forth the facts on which a request for the subject’s investigation is predicated); and

WHEREAS, following the January 30, 2014 ruling of the Court, the Parties agreed that a certain set of Investigative Statements would be made available to Class Counsel subject to a strict protective order; and

WHEREAS, on June 18, 2013, the plaintiffs in the action entitled *Raza, et al. v. City of NY, et al.*, 13 CV 3448 (PKC) (JO) (“The Raza Action”) filed a complaint in the United States District Court for the Eastern District of New York, alleging that Defendants have violated, and continue to violate the First and Fourteenth Amendment rights of the *Raza* plaintiffs in that the NYPD’s Intelligence Bureau has a policy or practice of investigating individuals and conducting surveillance unlawfully on the basis of religion; and

WHEREAS, the parties in *Raza* have engaged in discovery subject to a strict protective order during which certain Investigative Statements were made available to the *Raza* plaintiffs’ counsel; and

WHEREAS, beginning in August 2014, the Parties in both the *Handschu* and *Raza* matters entered into a Joint Settlement Process during which there was a stay of the *Raza* litigation and Handschu Motion, with the Joint Settlement Process taking place under a strict confidentiality agreement; and

WHEREAS, as part of the Joint Settlement Process, Class Counsel and the attorneys for the *Raza* plaintiffs reviewed additional Investigative Statements subject to a strict confidentiality agreement; and

WHEREAS, during the Joint Settlement Process, the attorneys for the parties have met in person or through teleconferences over 20 times during which both sides, subject to a strict protective order, have made presentations about various topics and issues central to the cases; have discussed certain Investigative Statements that had been made available to Class

Counsel and to *Raza* counsel; have discussed the parties' respective settlement positions; and had arrived at a settlement; and

WHEREAS, on January 7, 2016, the Parties and the parties in *Raza* each filed proposed settlement agreements in their respective cases; and

WHEREAS, on October 28, 2016, following a three-day fairness hearing on the proposed modifications to the Handschu Guidelines, the Court declined to approve the proposal, explaining that the parties should give consideration to agreeing upon three additional points whereupon, "[i]f such an agreement is reached, the Court will approve it as fair and reasonable." *See Handschu v. Special Servs. Div.*, 71-cv-2203 (CSH), 2016 WL 7048839, at *19-20 (S.D.N.Y. Oct. 28, 2016); and

WHEREAS, after extensive negotiations, the Parties and the parties in *Raza* jointly reached agreement on terms addressing the considerations identified by the Court, which terms are set forth in the "Revised Handschu Guidelines," attached hereto as Exhibit A; and

WHEREAS, on March 13, 2017, the Court approved the Revised Handschu Guidelines in an opinion attached hereto as Exhibit B; and

WHEREAS, the negotiations have resulted in this Stipulation, which, as now approved by the Court, settles the claims in the Handschu Motion in the manner and upon the terms set forth below; and

WHEREAS, the Defendants represent that they do not, have not, and will not rely upon the Radicalization in the West report to open or extend investigations; and

WHEREAS, the Parties agree that the NYPD must fulfill its responsibility to preserve public safety and security; and

WHEREAS, Defendants are committed to mitigating the potential impact that the investigation of potential unlawful conduct may have on the lawful political or religious activity of individuals, groups, or organizations, and the potential effect on persons who, although not a target of the investigation, are affected by or subject to the NYPD's investigative techniques;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned, as follows:

1. It is the policy of the NYPD that investigations involving political activity conform to the guarantees of the U.S. and New York state constitutions, including the U.S. Constitution's guarantee of equal protection. It is also the policy of the NYPD that care be exercised in the conduct of those investigations so as to protect constitutional rights, including the right to be free from investigation in which race, religion, or ethnicity is a substantial or motivating factor.

2. Defendants will remove the "Radicalization in the West" report from the NYPD website.

3. The Guidelines for Investigations Involving Political Activity set forth as Appendix A to the Second Revised Order and Judgment dated August 6, 2003 (288 F.Supp.2d at 420-431) shall be and are revised as shown in Exhibit A annexed hereto pursuant to the Court's opinion dated March 13, 2017 attached hereto as Exhibit B.

4. Upon the order of this Court approving this Stipulation of Settlement, the Revised Handschu Guidelines shall thereafter consist of (i) Appendix A to *Handschu* IV (set forth in 273 F.Supp.2d at 349-351); and (ii) Exhibit A annexed hereto, which wholly replaces

and supersedes Appendix A to the Second Revised Order and Judgment dated August 6, 2003 (set forth in 288 F.Supp.2d at 420-431).

5. This Stipulation and Order does not create any additional rights of enforcement, or forms of relief available, for alleged violations of the Revised Handschu Guidelines. The Court's prior orders continue to govern the circumstances under which relief is available.

6. Counsel for the Parties enter into this Stipulation after good faith negotiations for the purpose of settling all issues and claims raised or made by the parties in the Handschu Motion, or which were known to Class Counsel prior to the date of this Stipulation, to avoid the burden of further litigation, and to promote lawful and nondiscriminatory activities of the Intelligence Bureau of the New York Police Department to preserve public safety and security.

7. Defendants deny any and all liability and deny that they had or have a policy, or engaged in or currently engage in a pattern or practice of conduct, that deprived any persons, including the Plaintiff Class and the plaintiffs in *Raza*, of rights protected by the Constitution and laws of the United States.

8. Defendants deny any and all liability and deny that they had or have a policy, or engaged in or currently engage in a pattern or practice of conduct, that violated the Modified Handschu Guidelines.

9. This Stipulation does not, and shall not be deemed to, constitute an admission by Defendants as to the validity or accuracy of any of the allegations, assertions or claims made in the Handschu Motion or the Discovery Motion. This Stipulation does not

constitute an admission, adjudication, or finding on the merits of the Handschu Motion or the Discovery Motion.

10. This Stipulation shall not be admissible in, nor is it related to any other litigation or settlement negotiations, except for the *Raza* litigation and except to enforce the terms of this agreement.

11. Upon approval by the Court, this Stipulation and Order, as of its effective date, resolves in full any and all claims or rights of action against the Defendants and their predecessors, successors, or assignees, together with past, present, and future officials, employees, representatives, and agents of the Defendants, the NYPD, and the City of New York, with respect to matters set forth in the Handschu Motion or the Discovery Motion and any other alleged violation of the Modified Handschu Guidelines known to Class Counsel as of the date of this Stipulation including, but not limited to, issues and claims arising out of the activities of the Citywide Debriefing Unit of the Intelligence Bureau as set forth in a letter by Class Counsel dated June 4, 2014, debriefings conducted by the Detective Bureau as set forth in a letter by Class Counsel dated May 11, 2015, the issues raised in Class Counsel's letter dated November 6, 2015, and concerns raised regarding the NYPD's policing of the protests at Grand Central Station between December 2014 and mid-January 2015.

12. The City of New York hereby agrees to pay Plaintiffs' Counsel the sum of \$361,730.26 in full satisfaction of all claims for costs, expenses and attorneys' fees.

13. Class Counsel hereby agree and represent that no other claims for attorneys' fees, costs or expenses arising out of the Handschu Motion or the Discovery Motion shall be made by or on behalf of Class Counsel against Defendants in any application for attorneys' fees, costs or expenses at any time, and Class Counsel shall release and discharge

Defendants for all claims for attorneys' fees, costs, and expenses arising out of the Handschu Motion or the Discovery Motion.

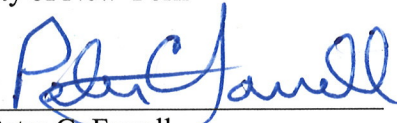
14. Class Counsel shall each execute and deliver to defendants' attorneys all documents necessary to effect this settlement, including, without limitation, General Releases based on the terms of paragraph 13, and plaintiffs' attorneys shall also execute and deliver W-9's.

15. The sole authority to allege that the NYPD has violated the Revised Handschu Guidelines remains with Class Counsel, and nothing in this Stipulation shall be construed to mean otherwise. The sole Court empowered to hear a complaint that there has been a violation of the Revised Handschu Guidelines remains the presiding Judge of the *Handschu* litigation in the United States District Court for the Southern District of New York (the "Handschu Court"), and the parties reserve their right to appeal from any determination made by that court.


16. Upon approval of this Stipulation by this Court, the Handschu Motion is dismissed against Defendants with prejudice.

Dated: New York, New York
March 23, 2017

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SO ORDERED:

March 27, 2017


UNITED STATES DISTRICT JUDGE
CHARLES S. HAIGHT, JR.