

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

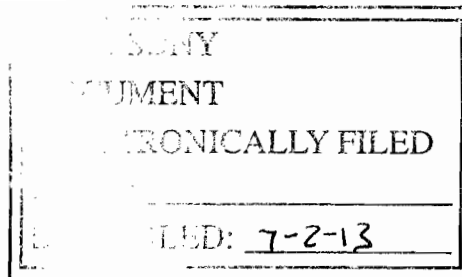
DAVID GOODMAN, *et al.*,

Plaintiffs,

-v-

CITY OF NEW YORK, *et al.*,

Defendants.



No. 10 Civ. 5236 (RJS)

ORDER CONDITIONALLY CERTIFYING THE SETTLEMENT CLASS AND SETTLEMENT SUB-CLASSES, PRELIMINARILY APPROVING THE SETTLEMENT AGREEMENT, APPROVING FORMS OF CLASS NOTICE AND SCHEDULING A FAIRNESS HEARING

On this 2nd day of July, 2013, the Court considered Plaintiffs' Unopposed Motion for Conditional Certification of the Settlement Class and Sub-Classes, Preliminary Approval of the Settlement Agreement, and Approval of the Forms of Class Notice (the "Motion"). All capitalized terms used in this Preliminary Order shall have the meaning as defined in the Settlement Agreement (the "Agreement"), which is incorporated herein by reference. After consideration of the Motion, the Agreement, and the exhibits attached thereto, as well as discussions with counsel held at a conference on June 28, 2013, this Court hereby concludes that the Motion should be **GRANTED**.

IT IS HEREBY ORDERED AND DECREED as follows:

A. Preliminary Approval of the Agreement

1. The Court has reviewed the Agreement, with all exhibits thereto, and preliminarily finds that the Agreement is reasonable, fair, just, free of collusion to the detriment of the

Settlement Class, and within the range of possible judicial approval, subject to the terms of the Agreement. The Court preliminarily approves the Agreement and specifically finds that: (i) the Agreement resulted from extensive arms-length negotiations by counsel well-versed in the legal and factual issues raised by the Litigation; and (ii) the settlement evidenced by the Agreement is sufficient to warrant Class Notice thereof to all putative Settlement Class Members, as well as a full hearing. The Court makes no finding in this Preliminary Order on the ultimate issues to be determined at the Fairness Hearing. The Court further specifically finds, on a preliminary basis, that:

a. The Agreement adequately addresses the claims of Settlement Class Members for injunctive relief;

b. The Agreement adequately addresses the claims of Settlement Sub-Class A for monetary recovery because it provides for any and all additional pension benefits owed to members of Sub-Class A as a result of recalculating their pensionable earnings during periods of Active Military Service that occurred during any time of their employment with the NYPD on or after September 11, 2001, in accordance with the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. § 4301 *et seq.* (“USERRA”); and

c. The Agreement adequately addresses the claims of Settlement Sub-Class B for monetary recovery because it provides for any and all additional pension benefits owed to members of Sub-Class B with timely claims as a result of recalculating their pensionable earnings during periods of Active Military Service that occurred during any time of their employment with the NYPD on or after September 11, 2001, in accordance with USERRA.

B. Conditional Certification of the Settlement Class and Settlement Sub-Classes

2. Solely for the purposes of settlement, and pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure, the Court provisionally finds as follows:

- a. the Members of the Settlement Class and Members of the Settlement Sub-Classes are so numerous that joinder of all Members would be impracticable;
- b. the Litigation and the Agreement raise questions of law and fact common to the claims of the Members of the Settlement Class and Members of the Settlement Sub-Classes;
- c. the claims and defenses of the Representative Plaintiffs are typical of the claims of the Settlement Class and Settlement Sub-Classes;
- d. in prosecuting the Litigation and negotiating and entering into the Agreement, the Representative Plaintiffs and their counsel have fairly and adequately protected the interests of the Settlement Class and Settlement Sub-Classes, and will fairly and adequately represent the interests of the Settlement Class and Settlement Sub-Classes in connection with the Agreement;
- e. there is no evidence that the interests of the Representative Plaintiffs and Class Members are at odds, or evidence of any potential or actual conflicts between Settlement Class Counsel and Class Members;
- f. the Settlement Class and Settlement Sub-Classes are ascertainable;
- g. the questions of law and fact common to the claims of the Members of the Settlement Class and Members of the Settlement Sub-Classes predominate over questions affecting only individual Members; and
- h. class adjudication of this case is superior to other available methods for fairly and efficiently adjudicating this controversy.

3. Accordingly, for purposes of settlement only, the Court conditionally certifies a Settlement Class of: All retired NYPD Uniformed Members of Service who performed Active Military Service on or after September 11, 2001 during their employment with the NYPD, or, if applicable, the beneficiary of a pension of a NYPD Uniformed Member of Service. Further, for purposes of settlement only, the Court conditionally certifies the following Sub-Classes:

a. Sub-Class A: All retired NYPD Uniformed Members of Service who performed Active Military Service on or after September 11, 2001 during their employment with the NYPD, and who received their First Pension Check on or after October 10, 2004 and no later than the Effective Date, or, if applicable, the beneficiary of the pension of such NYPD Uniformed Members of Service;

b. Sub-Class B: All retired NYPD Uniformed Members of Service who performed Active Military Service on or after September 11, 2001 during their employment with the NYPD, and who received their First Pension Check before October 10, 2004, or, if applicable, the beneficiary of a pension of such NYPD Uniformed Members of Service.

4. For settlement purposes only, the Court provisionally designates Plaintiffs David Goodman, Michael Doherty, and Robert Black as representatives of the Settlement Class and finds them fair and adequate representatives of the interests of the Settlement Class with claims typical of the Settlement Class. Further, Plaintiffs Goodman and Black are provisionally designated as representatives of Settlement Sub-Class A and are found to be fair and adequate representatives of Sub-Class A with claims typical of Members of Sub-Class A. Plaintiff Doherty is provisionally designated as representative of Settlement Sub-Class B and is found to be a fair and adequate representative of Sub-Class B with claims typical of Members of Sub-Class B.

5. For settlement purposes only, the Court appoints Preet Bharara, United States Attorney for the Southern District of New York, by Chief of the Civil Rights Unit and Assistant United States Attorneys Tara M. La Morte and Arastu K. Chaudhury, as Settlement Class Counsel because they meet all of the requirements of Rule 23(g) of the Federal Rules of Civil Procedure. The Court finds counsel to be experienced and skilled attorneys capable of fairly and adequately representing the interests of the Settlement Class and Settlement Sub-Classes. The

work that Representative Plaintiffs' counsel have performed both in litigating and settling this case demonstrates their skill and commitment to representing the Class's interests.

C. Form, Timing, and Dissemination of Settlement Class Notice and Appended Forms

6. The Parties have proposed a plan for giving notice to the Settlement Class Members by providing, through Defendants, the Representative Plaintiffs and Members of the Settlement Class the Class Notice and the Election to Opt Out of Settlement and Class Action form (attached to the Agreement as Exhibits 1 and 3) by first class mail to the address to which the Police Pension Fund transmits pension checks and sends pension-related correspondence. Members of Sub-Class B will also receive the Claim Certification Form for NYPD Retirees Who Received Their First Pension Check Earlier Than October 10, 2004 (attached to the Agreement as Exhibit 2). Additionally, the Parties have proposed that Settlement Class Counsel establish a specific electronic mail inquiry address, identified in the Class Notice, for the purpose of enabling Settlement Class Members to make inquiries with respect to the Agreement, obtain copies of the Class Notice and/or forms appended thereto, and respond to the Class Notice. Settlement Class Counsel is tasked to respond to inquiries of Settlement Class Members, pursuant to the electronic mail inquiry address or otherwise, as appropriate.

7. The Court approves, as to both form and content, the Class Notice (Agreement Ex. 1), the Election to Opt Out of Settlement and Class Action form (Agreement Ex. 3), and the Claim Certification Form for NYPD Retirees Who Received Their First Pension Check Earlier Than October 10, 2004 (Agreement Ex. 2), and finds that each meets the requirements of Rule 23 and due process, and constitutes adequate notice to the Settlement Class and Settlement Sub-Classes of the proposed settlement.

8. Accordingly, Defendants shall mail the Class Notice and the Election to Opt Out of Settlement and Class Action form, in the form annexed hereto as Exhibits 1 and 3, respectively,

via first class mail to the Representative Plaintiffs and all persons whom the Parties through their best efforts have been able to determine are Settlement Class Members, using the address to which the Police Pension Fund transmits pension checks and sends pension-related correspondence. Defendants shall complete mailing no later than forty-five (45) days of the date of this Preliminary Order. In addition, no later than forty-five (45) days of the date of this Preliminary Order, Defendants shall also mail the Claim Certification Form For NYPD Retirees Who Received Their First Pension Check Earlier Than October 10, 2004, in the form annexed hereto as Exhibit 2, via first class mail to Representative Plaintiffs Doherty and Black and all persons whom the Parties through their best efforts have been able to determine are Members of Settlement Sub-Class B, using the address to which the Police Pension Fund transmits pension checks and sends pension-related correspondence. Further, Settlement Class Counsel established a specified electronic mail inquiry address, identified in the Class Notice, for the purpose of enabling Settlement Class Members to obtain copies of the Class Notice and forms appended thereto, to respond to the Class Notice, and make inquiries with respect to the Agreement. It shall be the responsibility of Settlement Class Counsel to respond to inquiries of Settlement Class Members, pursuant to the electronic mail inquiry address or otherwise, as appropriate. Settlement Class Counsel shall maintain the electronic mail inquiry address until the Certifications described in section XII of the Agreement are served and filed.

9. In the event that, subsequent to the first mailing of the Class Notice and appended forms, the Class Notice and appended forms are returned to Defendants by the United States Postal Service with a forwarding address for the recipient, Defendants shall promptly re-mail the Class Notice and appended forms to the forwarding address provided, the Class Notice and appended forms shall be deemed mailed as of the date it is mailed for the second time, and Defendants will retain the forwarding address as the updated address.

10. If the Class Notice and appended forms are returned to Defendants by the United States Postal Service because the address of the recipient is no longer valid, Defendants shall make further attempts to ascertain a valid address for the recipient, using any additional contact information in Defendants' possession, including but not limited to any telephone or e-mail information, or a valid address ascertained by Settlement Class Counsel. If a valid address is ascertained, Defendants shall re-send the Class Notice and appended forms to such address within seven (7) days of receiving such information. If no additional address is ascertained, the Class Notice and appended form(s) shall be sent again to the last known address. In either event, the Class Notice and appended forms shall be deemed mailed as of the date it is mailed for the second time.

11. With respect to a Member of Sub-Class B whose address has not been deemed unknown, and who has not submitted to Defendants some form of written response to the Class Notice and appended forms by the date that is thirty (30) days before the Notice Deadline, Defendants shall send that Class Member a document (a) referencing the name of the Class Action; (b) stating that the Member received a Class Notice and appended forms in this action; (c) providing the address and contact information for Settlement Class Counsel; (d) stating the deadline to respond to the Class Notice and appended forms if the recipient desires to do so; and (e) stating that the Member can contact Defendants to receive an additional copy of the Class Notice and/or the appended forms.

12. Defendants shall send a "Cure Letter" to any Member of Sub-Class B who submits an improperly completed Claim Certification Form for NYPD Retirees Who Received Their First Pension Check Earlier Than October 10, 2004. The Cure Letter shall remind the member that he or she must submit properly completed forms and supporting documentation on a timely basis in order to be eligible for the relief provided by the Agreement for Members of Sub-Class B.

D. Class Action Settlement Procedure

13. For purposes stated and defined in the Agreement, the Court hereby sets the following dates and deadlines:

a. Deadline for mailing of Class Notice and appended forms: Friday, August 16, 2013;

b. Class Members wishing to opt out of the Agreement must submit the Election to Opt-Out of Settlement and Class Action form (Exhibit 3 hereto) to Defendants: The Opt-Out form must be postmarked no later than ninety (90) days from the date Class Notice is mailed to the Member;

c. Members of Sub-Class B who contend they are entitled to the injunctive and monetary relief set forth in section VI of the Agreement must submit a Claim Certification form for NYPD Retirees Who Received Their First Pension Check Earlier Than October 10, 2004 (Exhibit 2 hereto) and any supporting documents to Defendants. Such documents must be postmarked no later than ninety (90) days from the date Class Notice is mailed to the Member;

d. Members of the Settlement Class wishing to object to the Agreement must submit objections in accordance with paragraph 7.7 of the Agreement to Defendants. Objections and any supporting documents must be postmarked no later than thirty (30) days prior to the Fairness Hearing date.

14. The Court will hold a Fairness Hearing on January 13, 2014 at 4:30 p.m. at the United States District Court for the Southern District of New York, 40 Foley Square, New York, New York, Courtroom 905, to determine:

a. whether the Court should finally certify the Settlement Class and Settlement Sub-Classes and whether Representative Plaintiffs and Settlement Class Counsel have fairly and

adequately represented the Settlement Class and Settlement Sub-Classes such that the provisional designations of them should be finally approved;

b. whether the notification provided to the Settlement Class and Settlement Sub-Classes, including the Class Notice and the forms appended thereto, and the establishment of a specified electronic mail inquiry address for the purpose of enabling Settlement Class Members to obtain copies of the Class Notice and/or the forms appended thereto, to respond to the Class Notice, and to make inquiries concerning the Agreement, are in full compliance with the notice requirements under Rule 23 of the Federal Rules of Civil Procedure and due process;

c. whether the terms and conditions provided for in the Agreement should be finally approved by the Court as fair, reasonable, and adequate;

d. whether the Litigation should be dismissed on the merits and with prejudice, save the Court's retention of jurisdiction to enforce the Agreement; and

e. such other matters as the Court may deem necessary or appropriate.

15. Any Class Member who desires to object to final approval of the Agreement and/or the relief granted therein must file a written objection in accordance with paragraph 7.7 of the Agreement, and may appear at the Fairness Hearing either in person or through counsel and show cause, by the Objection Date (30 days prior to the Fairness Hearing date), why the Agreement should not be approved as fair, reasonable, and adequate, or why a Final Order should not be entered approving the Agreement; provided, however, that absent permission from the Court at the Fairness Hearing, in order to appear at the Fairness Hearing for purposes of arguing an objection, such Class Member must have served Defendants by first-class United States mail, his or her written objection as well as written notice to appear, so as to be postmarked by the Objection Date. Defendants shall be served at Law Department of the City of

New York, 100 Church Street, New York, New York 10007, ATTN: Goodman Class Action. A written objection should include the following:

- a. a statement of each objection asserted;
- b. a description of the basis underlying each objection;
- c. a statement of whether the objector intends to appear and argue at the Fairness Hearing, and if so, how much time the objector anticipates needing to present the objection;
- d. all exhibits and statements that the objector may offer during the Fairness Hearing; and
- e. a list of all witnesses that the objector may call to testify live during the Fairness Hearing, and a summary of their anticipated testimony.

16. Unless otherwise ordered by the Court, any Class Member who does not make his or her objection in the manner provided for in this Preliminary Order and by the Objection Date shall be deemed to have waived and be forever foreclosed and barred from asserting such objections.

17. One or both of the Parties shall file with the Clerk of the Court a memorandum in support of final approval of the settlement no later than fourteen (14) days prior to the Fairness Hearing date.

18. If the Court grants final approval of the Agreement, the Court will issue a Final Order and Judgment.

19. The Effective Date shall occur when all of the following events have taken place: the Court enters the Preliminary Order, the Court enters the Final Order and Judgment, and the time period for filing a notice of appeal of the Final Order pursuant to the Federal Rules of Appellate Procedure has expired or, if any appeal is filed, the mandate has issued following resolution of the appeal. With respect to performing recalculations of pensionable earnings and pension

benefits in accordance with the Agreement, Defendants shall first recalculate the pensionable earnings and pension benefits of the Representative Plaintiffs.

E. Miscellaneous Provisions

20. Unless and until the Court declines to enter the Final Order and a Party exhausts reconsideration or appellate review of the decision denying the Final Order, or the Parties fail to renegotiate a settlement and obtain Court approval of the renegotiated settlement, all discovery, motions, pleadings, and other activity in the Litigation affecting the Parties shall be stayed except to the extent necessary to effectuate the Agreement. Pending final determination of whether the Agreement should be finally approved and the Settlement Class and Settlement Sub-Classes finally certified, Members of the Settlement Class and Settlement Sub-Classes are hereby barred and enjoined from commencing or prosecuting any action asserting any Released Claims.

21. Non-substantive changes necessary to correct any inconsistency between the forms approved by the Court and the Agreement may be made by the mutual agreement of Settlement Class Counsel and Defendants' counsel.

22. If logistical problems arise with implementing this Preliminary Order, then the Parties shall bring such problems to the attention of this Court for resolution by subsequent order of this Court.

23. The Court hereby reserves the right:


a. to approve the Agreement, with such modifications as may be agreed to by the Parties thereto, without further notice; and

b. to adjourn the Fairness Hearing from time to time, by oral announcement at the time and date set for the Fairness Hearing, without further written notice to Settlement Class Members.

24. The parties shall abide by all terms of the Agreement.

SO ORDERED.

Dated: July 2, 2013
New York, New York



RICHARD J. SULLIVAN
UNITED STATES DISTRICT JUDGE