

Haloff J.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

8/8/14

M.K.B. O.P., L.W., M.A. MARIEME DIONGUE, M.E.  
P.E., ANNA FEDOSENKO, A.I., L.A.M., L.M., DENISE  
THOMAS, and J.Z., on their own behalf, and on behalf of  
their minor children and all others similarly situated,

05 Civ 10446 (JSR)

Plaintiffs,

**STIPULATION AND  
ORDER**

-against-

VERNA EGGLESTON, as Commissioner of the New York  
City Human Resources Administration; ROBERT DOAR,  
as Commissioner of the New York State Office of  
Temporary and Disability Assistance; and ANTONIA C.  
NOVELLO, as Commissioner of the New York State  
Department of Health

Defendants.

-----X

**WHEREAS**, by complaint filed December 13, 2005, plaintiffs commenced this lawsuit ("the Action") on behalf of themselves and others similarly situated against STEVEN BANKS, s/h/a Verna Eggleston, as Commissioner of the New York City Human Resources Administration ("City defendant"); KRISTIN M. PROUD, s/h/a, Robert Doar, as Commissioner of the New York State Office of Temporary and Disability Assistance and HOWARD A. ZUCKER, M.D., s/h/a Antonia C. Novello, as Acting Commissioner of the New York State Department of Health (collectively, "State defendants")<sup>1</sup>; and

<sup>1</sup> All defendants are public officers who have been automatically substituted as parties pursuant to Federal Rule of Civil Procedure Rule 25(d)(1) for claims originally brought against their predecessors in public office.

**WHEREAS**, by Order dated August 29, 2006, the Court certified this action as a class action pursuant to Fed. R. Civ. P. 23(b)(2) and appointed plaintiffs' counsel as class counsel ("Class Counsel") (Docket #150); and

**WHEREAS**, plaintiff class and defendants entered into a Stipulation and Order of Settlement ("Settlement") for the purpose of settling the disputes between them and to avoid further litigation, and without admitting any fault or liability (Docket #172); and

**WHEREAS**, by order filed on June 6, 2007 the Court determined that the Settlement was fair, reasonable, and adequate (Docket #171); and

**WHEREAS**, by Stipulation so ordered July 12, 2007, plaintiffs and defendants settled plaintiffs' claim for attorney's fees, costs and disbursements incurred from the beginning of time through the duration of the Court's retention of jurisdiction in accordance with the provisions of the Settlement, provided however, that the plaintiff class reserved claim(s) for attorneys' fees, costs and disbursements which may be accrued or incurred in connection with a motion as against City defendant and/or State defendants seeking an order extending the term of the Settlement based upon defendants' alleged non-compliance with its provisions or a motion as against defendants seeking an order for enforcement of and/or any and all remedies for failure to comply with the provisions of the Settlement (Docket #175); and

**WHEREAS**, the Settlement would have expired on August 15, 2011 absent an extension; and

**WHEREAS**, on June 23, 2011, plaintiffs filed a motion for an order extending the term of the Settlement against defendants (Docket #179) (the "Extension Motion"); and

**WHEREAS**, by Stipulation and Order so ordered by the Court on July 28, 2011, plaintiffs and City defendant agreed to, inter alia, extend the term of the Settlement until February 15, 2013 (Docket #197) (the "First Extension Stipulation"); and

**WHEREAS**, on September 29, 2011, the Court ordered the term of the Settlement extended until February 15, 2013 against State defendants (Docket #203); and

**WHEREAS**, State defendants appealed the Court's September 29, 2011, Order (Docket #208), and such appeal was withdrawn pursuant to a so ordered stipulation filed on June 11, 2012 (Docket #212) (the "State Appeal"); and

**WHEREAS**, by Stipulation and Order so ordered by the Court on January 3, 2013 (the "Second Extension Stipulation"), plaintiffs and defendants agreed to extend the term of the Settlement until August 15, 2013, and further agreed that plaintiffs' claims for attorney's fees, costs and disbursements accrued during said extended period would be limited to no more than the amounts named in the Second Extension Stipulation (Docket #213); and

**WHEREAS**, by Stipulation and Order so ordered by the Court on June 29, 2013 (the "Third Extension Stipulation"), plaintiffs and defendants agreed to extend the term of the Settlement until August 15, 2014, and further agreed that plaintiffs' claims for attorney's fees, costs and disbursements accrued during said extended period would be limited to no more than amounts named in the Third Extension Stipulation (Docket #214); and

**WHEREAS**, the parties now seek to resolve plaintiffs' claims for attorneys' fees, costs, disbursements, and expenses without further litigation on terms just and fair to all parties and hereby enter into this Stipulation and Order (the "Fee Stipulation");

**NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED** by and among the undersigned attorneys for plaintiffs and defendants:

**PART I: CITY FEE PAYMENT**

1. The City of New York shall pay the sum of two hundred seventeen thousand five hundred dollars (\$217,500.00) ("City Fee Payment"), to class counsel as set forth in paragraph "2" herein, and the plaintiff class hereby agrees to accept said payment in full satisfaction of all claims for attorneys' fees, costs, disbursements, and expenses, arising from, or in connection with this action for the time period through and including September 30, 2011.

2. Payment of the City Fee Payment shall be made by checks made payable to the following entities in the following amounts, and shall be mailed to the addresses shown below:

The Legal Aid Society  
\$217,500.00  
Susan Welber, Esq.  
The Legal Aid Society  
199 Water Street, 3rd Floor  
New York, New York 10038

3. City defendant will issue the City Fee Payment within ninety days from the date this Fee Stipulation is "so ordered" by the Court, or within 90 days of Plaintiffs delivery of the documents described in paragraph "4" below, whichever is later, with post-judgment interest accruing if payment is issued after that date.

4. Plaintiffs shall promptly execute and deliver to City defendants' attorneys the documents and information reasonably necessary to effectuate the City Fee Payment, which includes any requisite payment vouchers.

5. In consideration of the payment of the City Fee Payment, the plaintiffs individually and on behalf of each member of the plaintiff class, and on behalf of the respective heirs, executors, administrators, personal representatives, successors and assigns of each of themselves and each of the members of the plaintiff class hereby jointly and severally release

and forever discharge the City Defendant and the City of New York, including without limitation its past and present officials, employees, departments, agencies, representatives, directors and agents, their successors and assigns and their respective heirs, executors, administrators, personal representatives, and transferees and each of them from any and all claims for attorneys' fees, costs, disbursements, and expenses arising from or in connection with the above-captioned action through September 30, 2011, and this Fee Stipulation shall be deemed a release to that effect.

**PART II: STATE FEE PAYMENT**

6. The State of New York, on behalf of the State defendants, shall pay to Class Counsel the sum of one hundred forty seven thousand, five hundred dollars (\$147,500.00) ("State Fee Payment"), for which an I.R.S. Form 1099(s) shall be issued, in full satisfaction of : (i) any and all claims, allegations, or causes of action for attorneys' fees, costs, disbursements, and expenses in, arising from, or in connection with the Action incurred by the plaintiff class for any and all legal counsel who have at any time represented the plaintiff class in this action for the period July 13, 2007, to September 30, 2011; and (ii) any and all claims, allegations, or causes of action for attorneys' fees, costs, disbursements, and expenses in, arising from, or in connection with the Extension Motion and State Appeal incurred by the plaintiff class for any and all legal counsel who have at any time represented the plaintiff class in the Extension Motion and State Appeal.

7. Payment of the State Fee Payment shall be made by a single check, made payable to "The Legal Aid Society," and shall be mailed to "The Legal Aid Society c/o Susan Welber, Esq., 199 Water Street, 3rd Floor, New York, New York 10038."

8. Payment of the State Fee Payment is subject to the approval of all appropriate New York State officials in accordance with New York Public Officers Law § 17. In the event



such approval is denied, counsel for State defendants shall so notify Class Counsel. In the event of such disapproval, Part II of this Fee Stipulation shall be null, void, and of no further force and effect, and plaintiffs shall have 90 days from such notice within which to make a motion seeking from the State defendants fees, costs, disbursements, and expenses.

9. The plaintiff class and Class Counsel agree to execute and deliver all necessary and appropriate vouchers and other documentation requested with respect to obtaining such approval and effectuating payment.

10. In the event that the State Fee Payment has not been made by the one hundred twentieth (120th) day after receipt by the Office of the Attorney General of a "So Ordered" copy of this Stipulation, entered into the record by the Clerk of the Court, together with all other documentation required under Paragraph 8 of this Stipulation, interest on any part of the State Fee Payment not paid by the one hundred twentieth (120th) day shall accrue at the statutory rate prescribed by 28 U.S.C. § 1961, commencing on the one hundred twenty-first (121st) day.

11. The plaintiff class and Class Counsel agree that any taxes on the payments, and/or any interest or penalties on the taxes on the payments, made pursuant to Part II of this Stipulation shall be their sole and complete responsibility. The plaintiff class and Class Counsel shall have no claim, right, or cause of action against State defendants, the State of New York (including, but not limited to, any and all agencies, departments, and subdivisions thereof), or any of their officials, employees, or agents, whether in their individual or official capacities, on account of such taxes, interest, or penalties, and agree that they will defend, indemnify and hold harmless State defendants, the State of New York (including, but not limited to, any and all agencies, departments, and subdivisions thereof), and any of their officials, employees, or agents, whether

in their individual or official capacities, for the satisfaction of any such taxes, interest, or penalties.

12. The plaintiff class and Class Counsel agree that neither State defendants, the State of New York (including, but not limited to, any and all agencies, departments, and subdivisions thereof), nor any of their officials, employees, or agents, whether in their individual or official capacities, shall be responsible for any liens of any kind (including, but not limited to, any and all workers' compensation, tax, or child support liens) which may attach to the State Fee Payment made pursuant to Part II of this Stipulation. The plaintiff class and Class Counsel shall have no claim, right, or cause of action against State defendants, the State of New York (including, but not limited to, any and all agencies, departments, and subdivisions thereof), or any of their officials, employees, or agents, whether in their individual or official capacities, on account of such liens, and agree that they will defend, indemnify, and hold harmless State defendant, the State of New York (including, but not limited to, any and all agencies, departments, and subdivisions thereof), and any of their officials, employees, or agents, whether in their individual or official capacities, for the satisfaction of any such liens.

13. In consideration of the payment of the State Fee Payment, the plaintiffs individually and on behalf of each member of the plaintiff class, and on behalf of the respective heirs, executors, administrators, personal representatives, successors and assigns of each of themselves and each of the members of the class hereby jointly and severally release and forever discharge the State defendants, the State of New York (including, but not limited to, any and all agencies, departments, and subdivisions thereof), and all of their present and former principals, officers, directors, members, trustees, shareholders, affiliates, employees, agents, attorneys, insurers, subdivisions, subsidiaries, heirs, administrators, and assigns, whether in their individual

or official capacities, from any and all claims, allegations, or causes of action: (i) any and all claims, allegations, or causes of action for attorneys' fees, costs, disbursements, and expenses in, arising from, or in connection with the Action incurred by the plaintiff class for any and all legal counsel who have at any time represented the plaintiff class in this action for the period July 13, 2007, to September 30, 2011; and (ii) any and all claims, allegations, or causes of action for attorneys' fees, costs, disbursements, and expenses in, arising from, or in connection with the Extension Motion and State Appeal incurred by the plaintiff class for any and all legal counsel who have at any time represented the plaintiff class in the Extension Motion and State Appeal., and this Stipulation shall be deemed a release to that effect with the plaintiff class reserving the right to seek attorneys' fees, costs, disbursements, and expenses for work done between September 30, 2011, through August 15, 2014, apart from work done on the extension motion and the State Appeal, subject to the caps applicable to the period February 16, 2013 through August 15, 2014 as set forth in the Second Extension Stipulation and the Third Extension Stipulation.

### **PART III: GENERAL PROVISIONS**

14. Nothing contained in this Stipulation shall be deemed to be an agreement or an admission by any defendant as to the reasonableness of the number of hours spent or the particular hourly rates claimed by class counsel, or that the original fees stipulation (Docket #175) entitles the Plaintiff class to payment for attorneys' fees, costs, disbursements, and expenses for each category of work or task included in counsel's time slips submitted in connection with the application resolved by this Stipulation, or that the Plaintiff Class will be entitled to any attorney's fees, costs, disbursements, and expenses in connection with the Action in the future other than as provided in Paragraphs 5 and 13 of this Fee Stipulation, and



defendants do not waive any defenses to any future application by the Plaintiff Class for attorneys' fees, costs, disbursements, and expenses, and the limitations set forth in the Second and Third Extension Stipulations (docket #s 213 and 214) shall apply to any such application made for fees and expenses covered thereby.

15. This Fee Stipulation shall not be admissible in, nor is it related to, any other litigation or settlement negotiations outside of the above-captioned action and shall not be construed to be, an admission of any liability or wrongdoing whatsoever. Nothing contained herein shall be deemed to be an admission by City defendant or the City of New York, or State defendants or the State of New York, of liability or of the truth of any of the allegations set forth in the complaint, or that they have in any manner or way violated plaintiffs' rights, or the rights of any other person or entity, as defined in the constitutions, statutes, ordinances, rules or regulations of the United States, the State of New York, the City of New York, or any other rules, regulations or bylaws of any department or subdivision of the City of New York or of the State of New York.

16. This Fee Stipulation contains all the terms and conditions agreed upon by the parties hereto, and no oral agreement entered into at any time nor any written agreement entered into prior to the execution of this Fee Stipulation regarding the subject matter of this agreement shall be deemed to exist, or to bind the parties hereto, or to vary the terms and conditions contained herein.

17. The Parties acknowledge that this Fee Stipulation has been fully negotiated by all Parties and the Parties agree that for purposes of construction no party is deemed to be the drafter thereof.

18. If any date or period of time described in this Fee Stipulation falls or ends on a public holiday or on a weekend, the date or period of time shall be extended to the next business day.

19. Each of the undersigned represents that he or she has authority to enter into this Fee Stipulation.

20. Facsimile signatures are acceptable for execution and filing of this Fee Stipulation, and this Stipulation may be executed in one or more counterparts. All executed counterparts shall be deemed to be one and the same instrument.

Dated: New York, New York  
July 8, 2014  
*Amst*

ZACHARY W. CARTER  
Corporation Counsel for the City of New York  
Attorney for City defendant

100 Church Street, Room 2-189  
New York, N.Y. 10007  
(212) 356-0891

By: 

Andrew J. Rauchberg  
Assistant Corporation Counsel  
*arauchbe@law.nyc.gov*

ERIC T. SCHNEIDERMAN  
Attorney General of the State of New York  
Attorney for State Defendants

By: Robert L. Kraft (by William H. Bristau)  
ROBERT L. KRAFT  
Assistant Attorney General  
120 Broadway, 24th Floor  
New York, New York 10271


Tel. (212) 416-8632

THE LEGAL AID SOCIETY


Seymour W. James Jr., Attorney-in-Chief

Adriene Holder, Attorney-in-Charge Civil Practice  
Judith Goldiner, Attorney-in-Charge Civil Practice  
Law Reform Unit

Susan Welber, of Counsel  
199 Water Street, 3rd Floor  
New York, New York 10038  
Phone: 212-577-3300

By:   
Susan Welber  
*SEWelber@legal-aid.org*

Yisroel Schulman, Executive Director (YS3107)  
NEW YORK LEGAL ASSISTANCE GROUP  
Jane Greengold Stevens, of Counsel  
7 Hanover Square, 18<sup>th</sup> Floor  
New York, NY 10004  
Phone: (212) 613-5000

By:   
Jane Greengold Stevens  
*jstevens@nylag.org*

HUGHES HUBBARD & REED LLP  
Vilia B. Hayes  
One Battery Park Plaza  
New York, N.Y. 10004 1482  
Phone: (212) 837 6000

By: \_\_\_\_\_  
Vilia B. Hayes  
*hayes@hugheshubbard.com*

Tel. (212) 416-8632

THE LEGAL AID SOCIETY

Seymour W. James Jr., Attorney-in-Chief

Adriene Holder, Attorney-in-Charge Civil Practice  
Judith Goldiner, Attorney-in-Charge Civil Practice  
Law Reform Unit

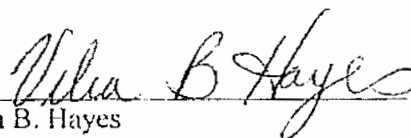
Susan Welber, of Counsel  
199 Water Street, 3rd Floor  
New York, New York 10038  
Phone: 212-577-3300

By: \_\_\_\_\_  
Susan Welber  
*SEWelber@legal-aid.org*

Yisroel Schulman, Executive Director (YS3107)  
NEW YORK LEGAL ASSISTANCE GROUP  
Jane Greengold Stevens, of Counsel  
7 Hanover Square, 18<sup>th</sup> Floor  
New York, NY 10004  
Phone: (212) 613-5000

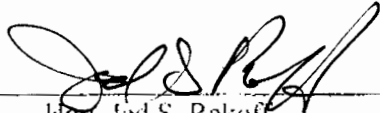
By: \_\_\_\_\_  
Jane Greengold Stevens  
*jstevens@nylag.org*

HUGHES HUBBARD & REED LLP  
Vilia B. Hayes  
One Battery Park Plaza  
New York, N.Y. 10004 1482  
Phone: (212) 837 6000

By:   
Vilia B. Hayes  
*hayes@hugheshubbard.com*

Attorneys for the plaintiffs

So ordered:

  
\_\_\_\_\_  
Hon. Jed S. Rakoff

Dated:

New York, New York

8/7/14, 2014