

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF NEW YORK

PAUL MARRIOTT, BARBARA DAVIS,  
and ANDY RIVERA, on behalf of  
themselves and on behalf of a class of  
others similarly situated, *et al.*,

Plaintiffs,

v.

THE COUNTY OF MONTGOMERY,  
*et al.*,

Defendants.

No. 03-CV-0531 (DNH/DEP)

U.S. DISTRICT COURT  
N.D. OF N.Y.  
FILED

MAY 15 2007

LAWRENCE K. BAERMAN, Clerk ]  
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**ORDER GRANTING FINAL APPROVAL OF CLASS ACTION SETTLEMENT  
AND JUDGMENT**

**THIS CASE** coming for hearing before the undersigned Judge on April 27, 2007, pursuant to this Court's Preliminary Approval Order in order for this Court to conduct a final fairness hearing to determine whether the proposed Settlement Agreement between the parties is fair, reasonable and adequate, and to address Class Counsel's application for an award of attorneys' fees and costs; and the Class Members being represented by Class Counsel and Defendants being represented by their attorneys;

**AND THE COURT** having read and considered the Settlement Agreement, the Notice Plan, Plaintiffs' Memoranda of Law and the Supplemental Affirmation submitted by Class Counsel, having received evidence and heard arguments from Class Counsel and the Defendants, and having considered the submissions by Class members, now makes the following determination:

## FINDINGS OF FACT

1. This action was commenced on April 29, 2003, as a class action.
2. After years of intensive litigation, including extensive discovery and motion practice before this Court, and including the granting of the Plaintiffs' motions for class certification, preliminary injunction, and partial summary judgment, and as a result of intensive, arm's length negotiations between Class Counsel and Defendants, the parties have reached accord with respect to a Settlement that provides substantial benefits to Settlement Class Members, in return for a release and dismissal of the claims at issue in this case against the Defendants ("Settlement Agreement"). The resulting Settlement Agreement was preliminarily approved by the Court on September 22, 2006.
3. As part of the Order Granting Preliminary Approval, this Court approved a proposed Notice Plan and Class Notice, which provided Settlement Class Members notice of the proposed settlement. The Notice Plan provided an opportunity for class members to file objections to the Settlement.
4. As of the deadline for the filing of objections, only one objection was filed. Given the size of this Settlement, and the notice plan described above, this Court finds that the low number of objections is indicative of the fairness, reasonableness and adequacy of the Settlement with the Defendants.
5. Class Counsel has filed with the Court an affidavit from JoAnn Graff, Senior Project Administrator of Rust Consulting, the Settlement Administrator, declaring that the mailing of the Court-approved notice, consistent with the Notice Plan, has been completed. The Plaintiffs have also filed with the Court affidavits from lead counsel Elmer Keach and Dong He Chang, of I

Partners, the Website Administrator, detailing the publishing of the short form notice and settlement website, consistent with the Notice Plan, has been completed.

6. The Court finds that the published notice, mailed notice and Internet posting constitute the best practicable notice of the Fairness Hearing, the proposed Settlement, Class Counsel's application for fees and expenses, and other matters set forth in the Class Notice and the Short Form Notice; and that such notice constituted valid, due and sufficient notice to all members of the Settlement Class, and complied fully with the requirements of Rule 23 of the Federal Rules of Civil Procedure, the Constitution of the United States, the laws of New York and any other applicable law.

7. Any persons who wished to be excluded from this Action were provided an opportunity to "opt out" pursuant to the Notice. No members of the Settlement Class requested exclusion from the Settlement.

8. Class Members are bound by the Settlement, the Settlement Agreement and releases contained therein, and the Final Order and Judgment, and do not have any further opportunity to opt-out of the Action.

9. Any class member who did not timely file and serve an objection in writing to the Settlement Agreement, to the entry of Final Order and Judgment, or to Plaintiffs' Class Counsel's application for fees, costs, and expenses, in accordance with the procedure set forth in the Class Notice and mandated in the Order Granting Preliminary Approval of Settlement, is deemed to have waived any such objection by appeal, collateral attack, or otherwise.

10. On the basis of all of the issues in this litigation, and the provisions of the Settlement Agreement, the Court is of the opinion that the Settlement is a fair, reasonable and adequate compromise of the claims against the Defendant in this case, pursuant to Rule 23 of the Federal

Rules of Civil Procedure. There are a number of factors which the Court has considered in affirming this Settlement, including:

11. The liability issues in this case have been vigorously contested.
12. The Court notes that for settlement purposes, this Settlement has the benefit of providing relief to Class Members now, without further litigation. This Settlement provides Class Members with substantial monetary benefits.
13. This Settlement is clearly a byproduct of hard-fought litigation between the parties, and not a result of any collusion on the part of Class Counsel or Counsel for the Defendants.
14. Class Counsel submitted to the Court and served on the Defendants their application for reasonable attorneys' fees, costs, and expenses consistent with the terms of the Settlement Agreement. This Court has considered Class Counsel's request and hereby grants the request.
15. The claims procedure established under the Settlement Agreement is fair, a simplified process, and workable. In any event, the Court will retain jurisdiction to work out any unanticipated problems.

**NOW, THEREFORE, ON THE BASIS OF THE FOREGOING FINDINGS OF FACT,  
THE COURT HEREBY MAKES THE FOLLOWING CONCLUSIONS OF LAW**

16. This Court has jurisdiction over the parties and the subject matter of this proceeding.
17. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the following Settlement Class is certified for purposes of final settlement:

All persons in the United States who have been or will be placed into the custody of the Montgomery County Jail after being charged with misdemeanors, violations, violations of probation or parole, traffic infractions or other minor crimes, or held on civil matters, and were strip searched upon their entry into the Montgomery County Jail pursuant to the policy, custom and practice of the Montgomery County Sheriff's Department and the County of Montgomery. The class period commenced on April 29, 2000 and extended until March 25, 2005. Specifically excluded from the proposed class are Defendants, and all of the respective affiliates, legal representatives, heirs, successors, employees or

assignees.

18. The Court finds that, for the purpose of this Settlement, the requirements of Rule 23 of the Federal Rules of Civil Procedure are satisfied, and that a Class Action is an appropriate method for resolving the disputes in this litigation. All the prerequisites for Class certification under Rule 23 are present. The Class members are ascertainable and too numerous to be joined. Questions of law *and* fact common to all Class members predominate over individual issues and should be determined in one proceeding with respect to all Class members. The Class Representatives' claims are typical of those of the Class. The Class action mechanism is superior to alternative means for adjudicating and resolving this action.

19. The Class Representatives Paul Marriott, Barbara Davis and Andy Rivera are entitled to and are hereby awarded payments of \$12,500, \$15,000, and \$7,500, respectively, in recognition of the efforts they undertook in connection with this lawsuit.

20. The Court grants final approval of the Settlement Agreement, as being fair, reasonable and adequate, pursuant to Rule 23 of the Federal Rules of Civil Procedure.

21. The Courts finds that the request by Class Counsel for attorneys' fees, costs and expenses is reasonable.

**NOW, THEREFORE, ON THE BASIS OF THE FOREGOING FINDINGS OF FACT AND CONCLUSIONS OF LAW, IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:**

22. The Motion for Final Approval of the Proposed Settlement is GRANTED.

23. The Class Representatives Paul Marriott, Barbara Davis and Andy Rivera are entitled to and are hereby awarded payments of \$12,500, \$15,000, and \$7,500, respectively.

24. The Class Counsel's request for attorneys' fees and expenses is granted.

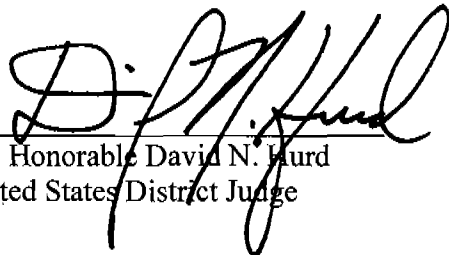
25. This Action and all claims against the Settling Defendant are hereby dismissed with prejudice, but the Court shall retain exclusive and continuing jurisdiction of the Action, all Parties, and Settlement Class Members, to interpret and enforce the terms, conditions and obligations of this Settlement Agreement.

26. All Class members who have not timely filed an opt-out request are barred and enjoined from commencing and/or prosecuting any claim or action against the Defendant. Any Class member who has not timely filed a request to exclude themselves shall be enjoined from initiating and/or proceeding as a class action in any forum.

IT IS SO ORDERED.

Dated:

May 14, 2007  
Utica, New York

  
The Honorable David N. Hurd  
United States District Judge