

Courtesy copy

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
FRANCIS O'DAY and STUART MOSKOWITZ,
individually and on behalf of
all others similarly situated,

CV 99-2844 (DRH) (ARL)

Plaintiffs,

v.

NASSAU COUNTY, NASSAU COUNTY
SHERIFF'S DEPARTMENT, DIVISION OF
CORRECTION, JOSEPH JABLONSKY,
Nassau County Sheriff, and
JANE/JOHN DOES Nos. 1-200,

Defendants.

-----X
GARDY AUGUSTIN, HEIDI KANE, MARY
KATHERINE PUGLIESE, GREGG WILLS,
STEVEN ROTH, OSCAR AVELAR, RALPH
DiLIELLO, et al, individually
and on behalf of all others
similarly situated,

CV 99-3126 (DRH) (ARL)

Plaintiffs,

v.

JOSEPH JABLONSKY, individually
and as Nassau County Sheriff,
JOHN AND JANE DOES NO. 1-100,
and COUNTY OF NASSAU, a municipal
corporation,

Defendants.

STIPULATION OF SETTLEMENT

-----X
JOHN IAFFALDANO, individually and
on behalf of all others similarly
situated,

CV 99-4238 (DRH) (ARL)

Plaintiff,

v.

THE COUNTY OF NASSAU, THE NASSAU
COUNTY SHERIFF'S DEPARTMENT,
DIVISION OF CORRECTIONS, and
JOSEPH P. JABLONSKY,
Sheriff of Nassau County,

Defendants.

-----X

IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned, attorneys for the parties in the above-captioned action, that:

- (1) Final judgment will be entered in favor of the ten individual plaintiffs in the three consolidated cases against defendants County of Nassau and Joseph Jablonsky, jointly and severally, in the aggregate amount of \$350,000 in compensatory damages for personal injury. The parties agree that they are entering into this judgment in order to settle these individual claims only, and to avoid the considerable expense that would be incurred by the continued complex and lengthy litigation of these claims. Plaintiffs have requested that the \$350,000 in damages be distributed evenly among the ten individual plaintiffs. Defendants have no objection to this distribution. The parties agree that the \$35,000 in compensatory damages received by each individual plaintiff in no way reflects a concession by defendants that the amount received is the actual value of any such claim made now or in the future. Further, even if the denial of class certification is reversed on appeal, none of these ten individual plaintiffs can increase his or her compensatory damages, nor receive any punitive damages, based on his or her injuries, but rather may only seek or receive additional compensation for attorney's fees and his or her time and effort as a class representative, subject to the limits specified in paragraphs 7 and 9 below;
-

- (2) all class claims, including attorneys' fees and costs, are expressly reserved and preserved;
 - (3) the individual plaintiffs expressly retain the right to appeal denial of class certification on behalf of the putative class;
 - (4) each individual plaintiff (a) suffered an "actual, concrete injury" and (b) will retain a "personal stake" in the outcome of the appeal of the denial of class certification, including but not limited to the sharing of attorneys' fees and costs with the putative class and compensation for time and effort expended as a class representative as specified in paragraph 7 below;
 - (5) defendants will not oppose the individual plaintiffs' appeal of denial of class certification on grounds of lack of standing or mootness arising from the settlement of these cases. Defendants retain the right to raise standing and/or mootness objections to the appeal of class certification with respect to those issues for which the existence of these grounds lies without regard to settlement of these cases;
 - (6) if the denial of class certification is reversed on appeal, the individual plaintiffs' standing in this action will relate back to the time in which class certification was initially denied;
-

- (7) if the denial of class certification is reversed on appeal, defendants will not contest the adequacy of the individual plaintiffs to continue to represent the certified class as class representatives on the basis that they have already settled their compensatory and punitive damages claims. Defendants retain the right to oppose any or all of the ten individual plaintiffs acting as a class representative on the basis of the typicality of their experience as compared with the other members of the certified class, should such a class come into existence. Absent objections to the appropriateness of any of the ten individual plaintiffs on the basis of their typicality, defendants will not oppose plaintiffs' right to (a) offer their personal circumstances in support of the class claims, (b) seek and receive any class wide equitable relief and any other appropriate relief on behalf of the certified class other than any increase in his or her individual compensatory damages, or receipt of any punitive damages, based on his or her injuries, and (c) apply for compensation for their time and efforts as class representatives in an amount not to exceed \$1,000 per class representative, with the express understanding that the individual plaintiffs may not seek any further compensation for compensatory damages, or share in any award of punitive damages awarded to the class;
- (8) if the denial of class certification is reversed on appeal, defendants will not oppose generally the intervention of class members other than the named plaintiffs as additional named class representatives, but defendants will retain the right to contest the adequacy of any such individuals to serve as additional class representatives under Fed.R.Civ.P. 23;
-

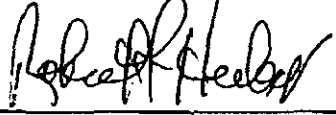
- (9) if the denial of class certification is reversed and the class action case moves forward or is settled, plaintiffs, including the individual plaintiffs, will be permitted to apply for reasonable attorneys' fees and costs for the entire litigation from its inception as prevailing parties, and such fees and costs will not be capped;
 - (10) if the denial of class certification is upheld on appeal, the individual plaintiffs will be granted a reasonable time (not less than thirty (30) days from the issuance of the mandate by the Second Circuit) to apply for reasonable attorneys' fees and costs in an aggregate amount not to exceed \$125,000;
 - (11) This Stipulation of Judgment is made subject to the approval of the Nassau County Legislature. The Nassau County Legislature may, in its sole discretion, choose to accept or reject this settlement on behalf of the County, or require a bond sale subject to its approval to effect payment. Should this settlement and/or any required bond sale be rejected by the Legislature, defendants hereby agree to restore the Actions to the calendar. Defendants also agree to take all steps necessary to present this Stipulation of Judgment to the Legislature in a timely and prompt manner;
 - (12) If denial of class certification is reversed, and the class action moves forward, the parties acknowledge that there will be additional discovery proceedings, and the pre-trial Order may be amended to include additional evidence and witnesses,
-

including expert witnesses, all subject to the approval of the Court; and

- (13) This Stipulation shall be "So Ordered" by the Court, and upon approval of this Stipulation by the Legislature a final judgment in the form annexed shall be entered by the Court pursuant to the terms and conditions of this Stipulation. Plaintiffs' time to appeal from denial of class certification shall not begin to run until the entry of final judgment.

Dated: New York, New York
May __, 2005

BELDOCK LEVINE & HOFFMAN LLP

By: 

Robert L. Herbst (8851)
Attorneys for Plaintiffs Augustin, Kane, Pugliese,
Wills, Roth, Avelar, and DiLilleo
99 Park Avenue
New York, New York 10016
(212) 490-0400

EMERY CELLI BRINCKERHOFF & ABADY LLP

By: _____
Matthew Brinckerhoff (3552)

Attorneys for Plaintiffs O'Day and Moskowitz
545 Madison Avenue
New York, New York 10022
(212) 763-5000

including expert witnesses, all subject to the approval of the Court; and

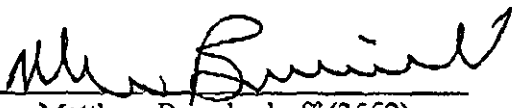
- (13) This Stipulation shall be "So Ordered" by the Court, and upon approval of this Stipulation by the Legislature a final judgment in the form annexed shall be entered by the Court pursuant to the terms and conditions of this Stipulation. Plaintiffs' time to appeal from denial of class certification shall not begin to run until the entry of final judgment.

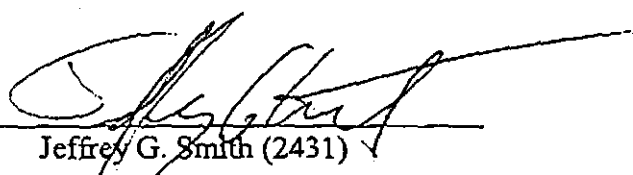
Dated: New York, New York
May __, 2005

BELDOCK LEVINE & HOFFMAN LLP

By: _____
 Robert L. Herbst (8851)
 Attorneys for Plaintiffs Augustin, Kane, Pugliese,
 Wills, Roth, Avelar, and DiLilleo
 99 Park Avenue
 New York, New York 10016
 (212) 490-0400

EMERY CELLI BRINCKERHOFF & ABADY LLP

By: 
 Matthew Brinckerhoff (3552)
 Attorneys for Plaintiffs O'Day and Moskowitz
 545 Madison Avenue
 New York, New York 10022
 (212) 763-5000

By: 
Jeffrey G. Smith (2431) ✓

Attorneys for Plaintiff Iaffaldano
270 Madison Avenue
New York, New York 10016
(212) 545-4740

COUNTY ATTORNEY OF NASSAU COUNTY

By: _____
Lorna Goodman ()

Attorneys for Defendants
One West Street
Mineola, New York 11501
(516) 571-3056

SO ORDERED:

Hon. Denis R. Hurley, U.S.D.J.

Dated: Central Islip, New York
May __, 2005

WOLF HALDENSTEIN ADLER FREEMAN & HERZ

By: _____
Jeffrey G. Smith (2431)

Attorneys for Plaintiff Iaffaldano
270 Madison Avenue
New York, New York 10016
(212) 545-4740

COUNTY ATTORNEY OF NASSAU COUNTY
LORNA B. GOODMAN

By: Bernadette K. Ford
Bernadette K. Ford (4339)
Deputy County Attorney

Attorneys for Defendants
One West Street
Mineola, New York 11501
(516) 571-6063

SO ORDERED:

Hon. Denis R. Hurley, U.S.D.J. /

Dated: Central Islip, New York
~~June~~ 2005

WRH July 5, 2005