

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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TIMOTHY S. MANEELY, Individually and on behalf
of all others similarly situated,

CASE #01 CIV 2600(CLB)(MDF)

Plaintiffs,

-against-

**ORDER FOR PRELIMINARY
APPROVAL OF SETTLEMENT**

THE CITY OF NEWBURGH and WILLIAM BLOOM,
Chief of Police for the City of Newburgh Police Department,

Defendants.

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THE CITY OF NEWBURGH,

Third-Party Plaintiff,

-against-

UNITED NATIONAL INSURANCE COMPANY,

Third-Party Defendant.

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WHEREAS, Plaintiff commenced this action to redress the alleged deprivation, under Color of State Law, of the right of plaintiff, Timothy S. Maneely, and numerous other individuals who were strip searched prior to being placed in a holding cell at the City of Newburgh Police Department;

WHEREAS, City of Newburgh, William Bloom, and his successors (Defendants) and Plaintiffs have entered into a Settlement Agreement as set forth herein (“Settlement Agreement”) intended to resolve all litigation pending before this Court;

WHEREAS, Plaintiffs allege that Defendants maintained a policy or practice of subjecting certain non-felony arrestees placed in a holding cell to an illegal strip search;

WHEREAS, Defendants deny any and all liability arising out of Plaintiffs’ allegations;

WHEREAS, the parties described below now desire to resolve the issues raised by this

litigation, without further proceedings and without admitting any fault or liability;

WHEREAS, the Court has before it the parties' motion for preliminary approval of settlement and memorandum in support of motion for preliminary approval of settlement, together with the settlement and supporting materials;

WHEREAS, the Court is satisfied that the terms and conditions set forth in the Settlement Agreement were the result of good faith, arms' length settlement negotiations between competent and experienced counsel for both Plaintiffs and Defendants; and

NOW, THEREFORE, it is hereby stipulated and agreed, by and between the undersigned, as follows:

A. DEFINITIONS

1. The terms of the Settlement Agreement are hereby preliminarily approved, subject to further consideration thereof at the Fairness Hearing provided for below. The Court finds that said settlement is sufficiently fair and reasonable and that notice of a proposed settlement should be given as provided in this Order.

2. The "Settlement Class" for the strip search claims means non-felony arrestees who, during the class period identified in ¶ 11 below, were arrested on non-felony charges unrelated to the use or possession of drugs or weapons, and who, were strip searched prior to being placed in a holding cell.

3. The Settlement Class shall not include felony or non-felony arrestees who, at the time they were initially arrested, were charged with offense(s) related to the use or possession of drugs or weapons.

4. The Settlement Class shall not include any individual who has previously commenced any civil litigation challenging a strip search while in the City of Newburgh's Police Department's

custody during the class period and who has prevailed, settled or had his/her complaint dismissed on the merits and the parties represent that they know of no such actions.

5. The Settlement Class shall not include individuals arrested for a felony or felony parole violation(s).

6. Class Counsel means Dupée, Dupée & Monroe, P.C., 30 Matthews Street, P.O. Box 470, Goshen, New York 10924, and Robert N. Isseks, Esq., 6 North Street, Middletown, New York 10940.

7. An “Eligible Class Member” (“ECM”) means any member of the Settlement Class who does not file a valid and timely request for exclusion as provided for in ¶¶ 48 - 49 of this Agreement and whose eligibility is verified in the manner set forth in ¶¶ 35 - 47.

8. An “Opt-Out” is any member of the Settlement Class who files a timely request for exclusion as specified in ¶¶ 48 - 49.

9. The “Bar Date” is the date established by the Court by which any ECM who wishes to receive payment pursuant to the Settlement Agreement must file his/her claim form(s).

10. The “Class Notice” means notices in the form described in ¶¶ 30 - 34.

11. The “Class Period” is March 27, 1998 to August 24, 2000.

12. The “Effective Date” means the date upon which the judgment is entered by the Court and the approval of the Class Settlement becomes final and non-appealable. In the event of an appeal, the parties agree that this Settlement Agreement is stayed pending the final resolution of the appeal(s).

13. “Related Persons” means the Defendants and their predecessors, successors, or assigns, together with past, present and future public officials, employees, representatives and agents of the City of Newburgh and the City of Newburgh Police Department.

14. The “Settlement Fund” will comprise of 1.2 million dollars which will be funded by the defendants to pay the claims of the named plaintiff Timothy Maneely and all ECMs.

15. The “Balance of the Settlement Fund” shall mean all monies remaining in the Settlement Fund after payment is made to all ECMs and the named plaintiff, Timothy Maneely. The balance of the Settlement Fund shall be returned to the City of Newburgh.

B. TERMS OF SETTLEMENT

16. The Court conditionally finds that the named Plaintiff in *Maneely* is an adequate class representative for the Settlement Class.

17. The Court further finds that the Plaintiffs’ counsel, James E. Monroe, Esq. from Dupée, Dupée & Monroe, P.C. and Robert N. Isseks, Esq., are adequate Class Counsel.

18. The Court approves the Class Notice of settlement attached hereto as Exhibit “A” and the Summary Notice for Publication attached hereto as Exhibit “B”. The Court also approves the procedure for Class Notice as set forth in ¶¶ 30 through 34 of this Settlement Agreement.

19. If the Settlement Agreement is terminated or is not consummated for any reason whatsoever, the conditional class certification shall be void, the Defendants shall have reserved all their rights to oppose any and all class certification motions, to contest the adequacy of the Plaintiff as representative of any putative class, and to contest the adequacy of Class Counsel. Additionally, the named Plaintiff, and those individuals he represents, reserve all of their rights, including the right to continue the prosecution of the *Maneely* class action.

20. On the Effective Date, the above-referenced actions will be dismissed, with prejudice, and without cost, expenses or fees in excess of the amounts authorized by ¶¶ 35 - 42.

21. Defendants agree to pay ECMs who comply with the requirements set forth in this Settlement Agreement the sums of money determined by the procedures set forth herein in full satisfaction of all claims.

22. This Settlement Agreement does not and shall not be deemed to constitute any admission

by the Defendants as to the validity or accuracy of any of the allegations, assertions or claims made herein by the Plaintiffs which are expressly denied. The Agreement shall not be admissible in, nor is it related to, any other litigation or settlement negotiations.

23. The Settlement Agreement as of the Effective Date, resolves in full, all claims against the Defendants by the ECMs involving allegations of violations of their Fourth and Fourteenth Amendment Rights and other federal, state or local laws or regulations, which are based upon, or could be based upon, or arise from, having been strip searched prior to being placed in one of the City of Newburgh Police Department's holding cells. When the Settlement Agreement is final, as of the Effective Date, ECMs hereby release all such claims against the Defendants.

24. This Settlement Agreement contains all the terms and conditions agreed upon by the parties regarding the subject matter of these proceedings, and no oral agreement entered into at any time or any written agreement entered into prior to the execution of this Agreement shall be deemed to exist, or to bind the parties, or to vary the terms and conditions contained herein.

25. As of the Effective Date of this Settlement Agreement, the ECMs including the named Plaintiff, hereby waive any and all rights to pursue, initiate, prosecute or commence any action or proceedings before any Court, administrative agency or other tribunal or to file any civil complaint with regard to any strip search that occurred at the City of Newburgh Police Department from March 27, 1998 to August 24, 2000.

26. Each ECM shall be deemed to have submitted to the jurisdiction of this Court.

27. No Opt-Out or excluded class member shall participate in any monetary benefit provided by this Settlement Agreement.

28. Plaintiffs will take all necessary and appropriate steps to obtain approval of the Settlement Agreement and dismissal of this action. If the Court approves this Settlement Agreement,

and if there is an appeal from such decision or an attempt to intervene by another party, Defendants will join Plaintiffs in defense of this Agreement.

29. Pursuant to Fed. R. Civ. P. 23 the Court hereby conditionally certifies the following Settlement Class:

All individuals arrested by the City of Newburgh Police Department from March 27, 1998 to August 24, 2000 for non-felony offense(s) unrelated to the use or possession of drugs or weapons who were strip searched prior to being placed in a holding cell.

C. CLAIMS, PROCEDURES AND NOTICE

30. A Notice of Class Action Settlement and of a Fairness Hearing to approve the Settlement will be sent by First Class Mail to all potential class members. The parties will exercise their best efforts to obtain, update, and verify addresses of all potential class members. Class counsel for the Plaintiffs, will supply defendants with a computerized list of prospective ECMs, last known address, arrest date(s), and date of birth, if available. The list is to be used by the defendants to update last known addresses and for mailing notice to the class and shall not be deemed by either party as an exclusive list of all ECMs. The individuals included in Plaintiff counsel's mailing list shall be subject to verification by defendants or its agents and shall not be deemed a final list of those of ECMs eligible to receive payment from the Settlement Fund. Defendants agree to expend and assume the cost necessary to update the current addresses for those individuals included in the mailing list provided by plaintiffs' counsel. Beginning no later than April 12, 2005, defendants, at their own expense, shall cause the notices to be disseminated, substantially in the form attached as Exhibits "A" and "B" hereto, in the manner set forth in this Agreement. Such Summary Notice will be completed expeditiously pursuant to the terms of the Settlement Agreement. Class members will have ninety (90) days from the Notice Date to Opt-Out or exclude themselves and ninety (90) days from the Notice Date to file a claim. Prior to the Fairness

Hearing, Defendants' Counsel shall serve and file a sworn statement attesting to compliance with the notice provisions contained herein. The Defendants will bear the costs of sending each potential Class Member notice of Class Action Settlement and of a Fairness Hearing by First Class Mail.

31. The notice to be provided as set forth in this Settlement Agreement is hereby found to be the best means practicable to provide notice under the circumstances and, when completed, shall constitute due and sufficient notice of the proposed Settlement and the Fairness Hearing for all persons and entities affected by and/or entitled to participate in the settlement, in full compliance with the notice requirements of Fed. R. Civ. P. 23, due process, the Constitution of the United States, the laws of the State of New York and all other applicable laws. The Notices are adequate, objective, informative and provide prospective Class Members with all of the information necessary to make an informed decision regarding their participation in the Settlement and its fairness.

32. Notice will also be made by publication on four (4) week days once per week, during four (4) consecutive weeks, in the Times Herald Record. The advertisements will be at least a half page in size. The Defendants will bear the cost of this publication. In doing so, the Defendants will request that the advertisements appear as near to the front of each paper as possible and will request specifically that the advertisements not appear in the classified or legal section.

33. From the day the mailing of the Notice of Class Action Settlement through the Bar Date, Notice shall be posted prominently in both English and Spanish at the City of Newburgh City Hall and the City of Newburgh Police Department where public or legal notices regularly appear. The defendants shall also supply the City of Newburgh Clerk with sufficient copies of the Class Notice Forms, Exhibits "A" and "B", and proof of claim forms, Exhibit "C", to hand out to all members of the public who inquire or have questions concerning the class settlement. The defendants will bear the cost of this publication.

34. The aforesaid paragraph shall not limit Class Counsel from providing additional Notice at their own expense and in accordance with the rules of professional responsibility.

D. PAYMENTS

35. Each ECM who timely files a completed and executed Claim Form attached as Exhibit “C” shall receive a payment of ONE THOUSAND DOLLARS (\$1,000.00) from the Settlement Fund, with the exception of the named plaintiff, Timothy Maneely, as set forth in ¶ 53 below, in full satisfaction of all claims pertaining of an illegal strip search at the City of Newburgh Police Department. If the number of claims at one thousand dollars per person exhausts the money available for such purposes from the Settlement Fund, than every ECM will receive a pro rata share of the fund. The balance of the Settlement Fund, if any, shall be returned to the City of Newburgh.

36. ECMs who were arrested on one or more occasion and subjected to multiple strip searches at the City of Newburgh Police Department during the class period, shall be eligible to receive only one payment in full satisfaction of all claims arising out of an illegal strip search while at the City of Newburgh Police Department.

37. “Multiple Strip Searches” means that, during the class period, the ECM was arrested for a non-felony offense on more than one date and is strip searched prior to being placed in one of the City of Newburgh Police Department’s holding cells.

38. The City of Newburgh will have the right to credit any sum owed to an ECM against any unpaid city taxes, parking tickets or other fines.

39. To participate in the distribution of the \$1,000.00 payment, an ECM shall be provided by mail at his/her last known address, a Class Notice (Exhibit “A”) and Claim Form (Exhibit “C”). The ECM must submit a Claim Form to the post office box designated for this purpose in accordance with the instructions provided therein, and execute the certification contained therein in order to obtain

payment.

40. Any member of the Settlement Class who is not an opt-out as defined in ¶ 8 above, and who fails to submit a Claim Form completed in accordance with the instructions contained therein by the Bar Date or any Court-mandated extension, shall be forever barred from receiving any payment pursuant to the Settlement Agreement or otherwise in connection with the claims raised in this action. Such members of the Settlement class shall in all other respects be bound by all of the terms of the Settlement Agreement and the judgment entered herein, including but not limited to the general release of all Defendants and all claims which were the subject of this action.

41. The Defendants shall make the initial determination based on a review of their official records whether or not a person who has submitted a Claim Form is an ECM and shall deny claims by persons who are not ECMs. This review will comprise of determining that (1) the claimant was arrested for a non-felony offense(s) only and placed in a holding cell from March 27, 1998 to August 24, 2000; and (2) whether one or more of the claimant's non-felony offenses were related to the use or possession of drugs or weapons. Class Counsel shall review all denied claims and may challenge the basis of any denial. All individuals who submit a timely claim form and are denied eligibility to receive payment from the Settlement Fund, will be deemed excluded from the Class Settlement Agreement and will reserve the right to sue or continue to sue the defendants for any legal claim or issue raised by this litigation.

42. If there is a dispute as to whether a person is an ECM, the matter shall be submitted for resolution to the District Judge, who, in his discretion, may refer the matter to the Magistrate Judge. There shall be no right of appeal as to this determination. Defendants have sixty (60) days from the receipt of a Claim Form to offer a good faith denial of the claim for payment. Claim forms not denied within this time period are deemed accepted and eligible for payment.

E. GENERAL CLAIM PROCEDURES

43. The Class Notice (Exhibit “A”) and Claim Form (Exhibit “C”) and accompanying documentation shall be mailed by First Class Mail to each potential ECM at his or her last known address. Defendants shall endeavor and use their best efforts to update and revise the mailing list provided by Class Counsel in order to identify the current address of each potential ECM contained in the mailing list. An ECM’s claim shall be deemed submitted upon deposit in a post paid properly addressed wrapper in a post office or official depository of the United States Postal Service or when received by personal delivery to Class Counsel.

44. All forms must be submitted by the Bar Date unless such period is extended by Order of the Court.

45. If an ECM fails to provide information in the manner required, this failure may result in the denial of the corresponding claim.

46. ECMs who submit claims and whose mailed notice was not returned, will be paid by mail and will not be required to make a personal appearance in order to verify their identities unless good cause is shown to the Court to require a personal appearance. ECMs for whom there is no address or whose mailed notice was returned must personally appear, at a time and place to be determined by the parties hereto to verify their identities. Those ECMs whose identities are verified will receive payment by mail. Payments will not be made to agents for ECMs other than Court appointed legal representatives. ECMs who proved that they are confined in jails, prisons, hospitals or other institutions will not be required to report to any designated location.

47. ECMs who make a personal appearance as set forth in ¶ 46 must present one of the following forms of identification to establish their identity: (a) current drivers license; (b) passport or visa; (c) green card or other identification issued by the Immigration and Naturalization Service; or (d)

other photographic identification card not readily subject to forgery. Other forms of reliable identification may be considered. Defendants retain the right to request additional proof or to dispute any form of identification where it appears there is a reasonable basis to believe the form of identification is fraudulent or where the ECM is unable to produce other satisfactory documentation. In such event, notice will be provided to Class Counsel within five (5) days after discovering the basis to dispute any such form of identification. If the dispute cannot be resolved among counsel, the Court, and if the Court so designates, the Magistrate Judge, will resolve the dispute without the right to further Appellate review.

F. EXCLUSION FROM SETTLEMENT

48. Any member of the Settlement Class who wishes to be excluded (“Opt-Out”) from the Settlement Class must send a written request for exclusion to a post office box designated for this purpose in accordance with the instructions provided therein, so that it is deposited in a postage paid properly addressed wrapper, in a post office or official depository of the United States Postal Service on or before the close of the Opt-Out period. The Request for Exclusion shall fully comply with the requirements set forth in the Settlement Agreement. Members of the Settlement Class may not exclude themselves by filing a request for exclusions as a group or class, but must in each instance individually and personally execute a request for exclusion and timely transmit same to the designated post office box for this purpose.

49. Any member of the Settlement Class who does not properly and timely request exclusion from the settlement class shall be bound by all the terms and provisions of the Settlement Agreement, including but not limited to, the releases, waivers and covenants described in the Settlement Agreement, whether or not such person objected to the Settlement and whether or not such person made a claim upon, or participated in, the Settlement Fund created pursuant to this Settlement Agreement.

G. ATTORNEYS' FEES AND COSTS

50. Defendants agree to pay Attorneys' fees to Class Counsel in the sum of \$550,000.00 together with costs in the sum of \$33,670.20. The sum of \$383,670.20 will be paid to Class Counsel within thirty (30) days of the Effective Date unless appealed as set forth in ¶ 12. The Defendants will pay the remaining balance of \$200,000.00 at 4% percent interest per annum commencing thirty days from the Effective Date on or before January 10, 2006 or unless appealed as set forth in ¶ 12.

51. The Defendants shall bear all future costs incurred in the administration of the Settlement Agreement including, but not limited to, the cost of notice (mail and publication), printing of the notices described herein, and the cost of distributing the monetary awards.

52. Plaintiffs reserve the right to make an application for attorneys' fees related to any successful appeal to the Court or Magistrate.

H. PAYMENTS TO CLASS REPRESENTATIVES

53. In recognition of the risks incurred by the named Plaintiff, Timothy Maneely, the time and effort expended by the named plaintiff in assisting in the prosecution of this litigation and in bringing to bear added value, including risks assumed by the named plaintiff in foregoing his acceptance of Defendants' Rule 68 offer of \$25,000.00 and instead lending himself to the prosecution of this litigation, and the ultimate recovery, the named Plaintiff, Timothy Maneely, will receive the fixed sum of \$25,000.00. The monies paid by the Defendants to settle Mr. Maneely's claim will come directly from the Class Settlement Fund.

54. In consideration of the payment of \$25,000.00 as set forth in ¶ 53, the named Plaintiff, Timothy Maneely, agrees to the dismissal of any and all claims raised in this matter and to release the Defendants from any and all liabilities, claims, or rights of action from the beginning of time up until and including the Effective Date of this Agreement.

H. THE FAIRNESS HEARING

55. A hearing on final settlement approval (the “Fairness Hearing”) is hereby scheduled to be held before this Court on July 21, 2005 at 2:00 p.m., U.S. Courthouse, 300 Quarropas St., White Plains, NY to consider the fairness, reasonableness and adequacy of the proposed settlement, the dismissal with prejudice of the class action(s) with respect to the Defendants, and the entry of final judgment in the Class Action. Class Counsel’s application for an award of attorneys’ fees and costs shall be heard at the time of the Fairness Hearing.

56. The date and time of the Fairness Hearing shall be set forth in the Notice, but the Fairness Hearing shall be subject to adjournment by the Court without further notice to the members of the Settlement Class other than that which may be posted by the Court.

57. Any person or entity that does not elect to be excluded from the Settlement Class may, but need not, enter an appearance through his or her own attorney.

58. Any ECM who submits a claim form (Exhibit “C”) and who does not elect to be excluded from the Settlement Class may, but need not, submit comments or objections to the proposed Settlement. Any ECM who submits a claim form may object to the proposed Settlement, entry of the final Order and Judgment approving the Settlement, and Class Counsel’s application for fees and costs by filing and serving a written objection.

59. Any ECM making an objection (an “Objector”) must sign the objection personally. An objection must state why the objector opposes the proposed Settlement and provide the basis to support such position. If an objector intends to appear personally at the Fairness Hearing, the objector must give written notice of the objector’s intent to appear at the hearing.

60. Objections, along with any notices of intent to appear, must be filed no later than sixty (60) days from the Notice Date. If Counsel is appearing on behalf of more than one ECM, counsel must

identify each ECM and each ECM must have complied with the requirements of this Order. These documents must be filed with the Clerk of the Court at the following address:

United States District Court for the Southern District of New York
300 Quarropas Street
White Plains, New York 10601
Attention: J. Michael McMahon, Clerk of the Court
Re: Maneely, et al v. City of Newburgh, et al
Docket No. 01CV2600(CLB)(MDF)

61. Objections, along with any notices of intent to appear, must also be mailed to Class Counsel and counsel for Defendants at the addresses listed below:

Dupée, Dupée & Monroe, P.C.
Class Counsel for Plaintiffs
30 Matthews St., P.O. Box 470
Goshen, New York 10924
Attention: James E. Monroe, Esq.

McCabe & Mack, P.C.
Counsel for City of Newburgh
63 Washington Street, Box 509
Poughkeepsie, New York 12602-0509
Attention: David L. Posner, Esq.

Gellert & Klein, P.C.
Counsel for William Bloom
75 Washington St.
Poughkeepsie, New York 12601
Attention: James Fedorchak, Esq.

62. Only ECMs who have filed a claim form (Exhibit “C”) and who have filed and served valid and timely notices of objection shall be entitled to be heard at the Fairness Hearing. Any ECM who does not timely file and serve an objection in writing to the Settlement, entry of Final Order and Judgment or to Class Counsel’s application for fees and costs, in accordance with the procedure set forth in the Class Notice and mandated in the Order, shall be deemed to have waived any such objection by appeal, collateral attack, or otherwise.

63. Persons wishing to be heard at the Fairness Hearing are required to file written comments or objections and indicate in their written comments or objections their intentions to appear at the Fairness Hearing. ECMs need not appear at the hearing or take any other action to indicate their approval.

64. All Members of the Settlement Class who do not personally and timely request to be excluded from the Class are enjoined from proceeding against the Defendants until such time as the Court renders a final decision regarding approval of the Settlement, and, if the Settlement is approved, enters final judgment as provided in this Settlement Agreement.

IT IS SO ORDERED:

March 29, 2005
White Plains, NY

S/
HONORABLE CHARLES L. BRIEANT, U.S.D.J.