

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ROSARIA CORTES LUSERO, MARIE CRUZ
GARCIA, and MICHELLE CANER, on behalf of
themselves and all others similarly situated,

Plaintiffs,

- against -

THE CITY OF NEW YORK,

Defendant.

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**STIPULATION AND ORDER
REGARDING CERTIFICATION
OF CLASS ACTION**

14 CV 9533 (VSB)

WHEREAS the plaintiffs commenced this action by filing a complaint on behalf of themselves and of a proposed class of similarly situated individuals, on or about December 3, 2014, alleging that the defendant City of New York (hereinafter “the City”) violated the plaintiffs’ rights by refusing to permit them to visit the gravesites of family members interred at Hart Island and seeking injunctive relief on behalf of the putative class;

WHEREAS the City has denied any and all liability arising out of the plaintiffs’ allegations;

WHEREAS the parties have reached a settlement that would benefit the entire class by allowing gravesite visits to Hart Island and that is now before the Court for approval; and

WHEREAS the parties agree that the proposed class satisfies the prerequisites for class certification under Rule 23(a) and Rule 23(b)(2) of the Federal Rules of Civil Procedure and that the claims alleged by the class would be most appropriately litigated or settled as a class action; and

WHEREAS the parties further agree that, in order to resolve this litigation expeditiously and without needless motion practice and to assure proper administration of the settlement, it is in the parties' joint interest that the Court certify a class pursuant to Rule 23(b)(2);

IT IS THEREFORE STIPULATED AND ORDERED:

1. A plaintiff class ("Plaintiff Class" or "Class") is hereby certified, pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure, defined as:

All parents, step-parents, children (biological or adopted), step-children, spouses, siblings, step-siblings, half-siblings, grandparents, grandchildren, uncles, aunts, nephews, nieces, first cousins, second cousins, legal guardians of deceased individuals buried on Hart Island; wards of deceased guardians buried on Hart Island; and domestic partners of deceased individuals buried on Hart Island, who wish to visit the gravesites of said deceased individuals.

2. The proposed class meets the requirements to proceed as a class action under Rule 23(a) because: (1) the number of plaintiffs is so numerous that joinder of all class members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims of the named plaintiffs are typical of those of the class; and (4) the named plaintiffs and their counsel will fairly and adequately protect the interests of the class.

3. As required by Rule 23(a)(1), the class is "so numerous that joinder of all members is impracticable." The City believes that nearly one million people are buried on Hart Island, and the proposed class of family members of those buried on Hart Island therefore readily satisfies the numerosity requirement of Rule 23.

4. As required by Rule 23(a)(2), there are questions of law or fact common to the class, including but not limited to whether the City's policy of barring gravesite visits on Hart

Island violates the plaintiffs' rights under the United States Constitution and New York Constitution.

5. As required by Rule 23(a)(3), the plaintiffs' claims are typical of those of the proposed class. The proposed class members' claims arise from the same policy and are based upon common legal arguments regarding the City's alleged liability. All members of the proposed class would benefit from the plaintiffs' action.

6. As required by Rule 23(a)(4), the plaintiffs will fairly and adequately protect the interests of the proposed class. None of the Plaintiffs has interests antagonistic to the interests of the proposed class because all proposed class members claim to have been harmed by the same alleged wrongs and all will benefit from the relief requested in this action.

7. As required by Rule 23(g)(1), the New York Civil Liberties Union Foundation shall be appointed to serve as class counsel.

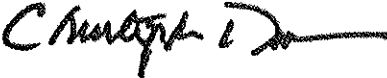
8. As required by Rule 23(g)(4), class counsel will fairly and adequately represent the interests of the proposed class. Class counsel has done extensive work in identifying and investigating the claims in this action, have experience in handling class actions and other complex litigation, have considerable knowledge of the applicable law, and have the necessary resources to commit to monitoring the settlement that the parties have submitted to the Court.

9. As required by Rule 23(b)(2), "the part[ies] opposing the class ha[ve] acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." The complaint challenges a single policy and practice barring grave site visits to Hart Island that applies to all class members similarly.

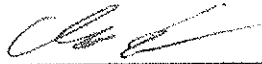
10. Nothing contained herein shall be deemed to constitute an admission by the defendants that any of their alleged actions or omissions violated the plaintiffs' or any proposed class member's rights under any federal or state law. Nothing contained herein shall be considered a binding agreement in any action other than the above-captioned action.

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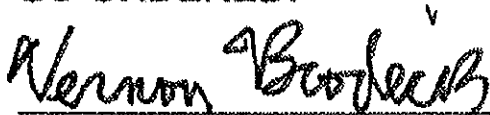
Christopher Dunn
Attorney for Plaintiffs

By: 

Omar Tuffaha
Jonathan Pines
Attorneys for Defendant

Dated: July 23, 2015
New York, N.Y.

SO ORDERED:



HON. VERNON S. BRODERICK
UNITED STATES DISTRICT JUDGE

Dated: New York, New York
Sept. 28, 2015