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United States District Court; S.D. New York.

BARBARA HANDSCHU, RALPH DIGIA, ALEX MCKEIVER, SHABA OM, CURTIS M. POWELL, ABBIE HOFFMAN, MARK A. SEGAL, MICHAEL ZUMOFF, KENNETH THOMAS, ROBERT RUSCH, ANNETTE T. RUBINSTEIN, MICKEY SHERIDAN, JOE SUCHER, STEVEN FISCHLER, HOWARD BLATT, ELLIE BENZONI, on behalf of themselves and all others similarly situated,
Plaintiffs,

v.

SPECIAL SERVICES DIVISION, a/k/a Bureau of Special Services; WILLIAM H.T. SMITH; ARTHUR GRUBERT; MICHAEL WILLIS; WILLIAM KNAPP; PATRICK MURPHY; POLICE DEPARTMENT OF THE CITY OF NEW YORK; JOHN V. LINDSAY; and various unknown employees of the Police Department acting as undercover operators and informers, Defendants.

No. 71 Civ. 2203–CSH. | May 16, 1985.

Opinion

MEMORANDUM OPINION AND ORDER

HAIGHT, District Judge:

*1 This Court’s Memorandum Opinion and Order dated March 7, 1985 concluded that, with minor exceptions not requiring further litigation, the proposed settlement and accompanying guidelines were fair, reasonable and adequate. Counsel for the plaintiff class were directed to settle a further order implementing that conclusion on notice.

Counsel for plaintiff class have settled a proposed order and judgment. Counsel for defendants have proposed a counter-judgment. Certain objectors have filed opposition to the judgment proposed by the plaintiff class. This memorandum deals with those issues.

In the Court’s judgment, it is more appropriate to adopt that shorter form of order and judgment proposed by the defendants, which physically annexes copies of the stipulation of settlement and guidelines, incorporates them by reference, and thus makes them a part of the judgment. The order and judgment itself is thus required to do no more than spell out the modifications in the

stipulation of settlement which are discussed in the Court’s March 7, 1985 opinion. The approach of counsel for the plaintiff class was to scatter extracts or paraphrases from the underlying documents throughout the order and judgment. This seems to me unnecessary and even counter-productive, since it suggests to objectors the necessity of quarreling with the accuracy of the paraphrases, which in fact the National Lawyers Guild does in opposing plaintiffs’ form.

I consider it better that the stipulation of settlement and guidelines speak for themselves. To the extent that this Court’s opinion of March 7, 1985 is necessary to a full understanding of the resolution of this litigation, it also speaks for itself.

Because I adopt the defendants’ form of order and judgment, the objections of the National Lawyers Guild are moot.

The National Lawyers Guild properly recognizes that the Court’s March 7, 1985 opinion and order implicitly denied the Guild’s motion to be excluded from the class. If an explicit declaration from the Court is necessary, it is hereby

ORDERED, that the motion of the National Lawyers Guild to be excluded from the class is denied for the reasons set forth in the Court’s Memorandum Opinion and Order dated March 7, 1985.

Counsel for Richard Dhoruba Moore, an objector, have made an application that Mr. Moore be permitted to intervene in this action with respect to declaratory and injunctive relief, and that his claims then be dismissed without prejudice. Counsel for the plaintiff class apparently do not resist that application, but the defendants resist vigorously.

Mr. Moore has comparable litigation pending in this Court against federal and New York City officials. Moore v. Kelly, 75 Civ. 6203 (MJL). In this Court’s Memorandum Opinion of March 7, 1985, I considered the effect of the proposed settlement upon that pending litigation (slip op. at 51–56). I there observed that the settlement did not affect Mr. Moore’s claim for money damages, except to the extent that he claims damages ‘based solely upon the collection and/or retention of information.’ Id. at 52.

*2 Counsel for Moore now say that, in the litigation referred to, he also seeks declaratory and injunctive relief; and that they are concerned by the possible effect of this settlement upon those claims. While I leave resolution of that issue, if it arises, to the judge presiding over Moore v. Kelly, any res judicata effect that may be derived from

Handschu v. Special Services Division, Not Reported in F.Supp. (1985)

this settlement is inherent in Moore's status as a member of the certified class. I have previously denied Moore's motions to intervene and separate himself from the class, and I adhere to those rulings.

For the foregoing reasons, the Court is entering an order and judgment in the form proposed by the defendants.