

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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CYNTHIA HILL, GAIL WILLIAMS,  
DENISE INMAN, VICKIE GORDAN,  
ROLANDO LOPEZ, TAURA PATE, ELLEN  
ELLIS, and ANDREA HOLLY, individually  
and on behalf of all others similarly situated,

Plaintiffs,

- against -

THE CITY OF NEW YORK, MICHAEL R.  
BLOOMBERG, as Mayor of the City of New  
York, RAYMOND KELLY, as Police  
Commissioner, RICHARD F. NAPOLITANO,  
CHARLES F. DOWD, MICHAEL V.  
POLITO, LJUBOMIR BELUSIC, DONALD  
CHURCH, DAVID LICHENSTEIN, LOCAL  
1549, DISTRICT COUNCIL 37, AFSCME,  
AFL-CIO, and JOHN and JANE DOES 1–20  
(said names being fictitious, the persons  
intended being those who aid and abetted the  
unlawful conduct of the Named Defendants),

Defendants.

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PAMELA K. CHEN, United States District Judge:

**ORDER GRANTING PLAINTIFFS’  
MOTION FOR (1) PRELIMINARY  
APPROVAL OF CLASS ACTION  
SETTLEMENT; AND (2) APPROVAL  
AND DISTRIBUTION OF THE NOTICE  
OF SETTLEMENT**

13-CV-6147 (PKC) (JO)

Having reviewed Plaintiffs’ Notice of Motion and Motion For (1) Preliminary Approval of Class Action Settlement (the “Settlement”), and (2) Approval and Distribution of the Notice of Settlement; Plaintiffs’ Memorandum of Law in Support thereof; the Proposed Settlement Agreement (the “Settlement Agreement”) and Notice of Proposed Settlement & Fairness Hearing (“Class Notice”), along with the record in this case to date; and having conducted a Preliminary Approval hearing on January 8, 2019 and February 7, 2019; the Court now makes the following findings and ORDERS as follows:

**I. JURISDICTION**

The Court has jurisdiction over the subject matter of this case and over all parties to this case, including all members of the Settlement Classes, as defined below.

**II. NO DETERMINATION**

The Court hereby decrees that neither the Settlement Agreement, nor this Preliminary Approval Order, nor the fact of a settlement, are an admission or concession by Defendants of any liability or wrongdoing whatsoever.

**III. CLASS CERTIFICATION**

Pursuant to the Court's April 29, 2019 Memorandum and Order and May 15, 2019 Order, the Court has certified the following two classes:

Section 1981 Rule 23(b)(2) class: All individuals who are currently employed by the City of New York as Police Communications Technicians ("PCTs") or Supervisor Police Communications Technicians ("SPCTs") in the NYPD Communications Section.

Section 1981 Rule 23(b)(3) class: All individuals who are currently employed, or have been employed between November 6, 2010 and October 23, 2018, by the City of New York as Police Communications Technicians ("PCTs") or Supervisor Police Communications Technicians ("SPCTs") in the NYPD Communications Section.

**IV. APPOINTMENT OF CLASS REPRESENTATIVES AND CLASS COUNSEL**

Pursuant to the Court's April 29, 2019 Memorandum and Order, the Class Representatives are Cynthia Hill, Gail Williams, Denise Inman, Vickie Gordan, Rolando Lopez, Taura Pate, Ellen Ennis, and Andrea Holly.

Pursuant to the same April 29, 2019 Order, Class Counsel is Maduegbuna Cooper LLP.

**V. PRELIMINARY APPROVAL OF SETTLEMENT AGREEMENT**

The Court has reviewed the terms of the Settlement Agreement and Plaintiffs' description of the Settlement Agreement in their papers. The Court has also read and considered the

Declaration of Samuel O. Maduegbuna in support of preliminary approval of the Settlement Agreement. Based on review of those papers, and the record in this case to date, the Court concludes that the Settlement Agreement is the result of extensive, arms-length negotiations between the parties after they investigated the class claims and became familiar with the strengths and weaknesses of Plaintiffs' case, with the assistance of this Court. Based on that review, and the Court's review of the issues in this case, the Court concludes that the Settlement Agreement has no obvious defects and is within the range of possible settlement approval, such that notice to the Settlement Class is appropriate.

The Court hereby ORDERS that:

1. The Settlement Agreement is hereby preliminarily approved. Final approval and entry of the Settlement Agreement are subject to the hearing of any comments or objections from the Settlement Class Members.
2. Pending the determination of the fairness of the Settlement Agreement, all further litigation of this case is hereby stayed.

**VI. CONFIDENTIALITY**

The Court hereby enjoins disclosure to third parties of the documents and information discussed or exchanged during the parties' confidential settlement negotiations and mediation to any third party not specified in the parties' confidentiality agreements.

**VII. OTHER CASES ENJOINED**

Pending final approval, the Court hereby preliminarily enjoins each Settlement Class Member, including any member who makes an irrevocable election to exclude themselves from the Settlement Classes, from commencing, prosecuting or maintaining in any court other than the Court any claim, action or other proceeding that challenges or seeks review of or relief from any order, judgment, act, decision or ruling of the Court in connection with the Settlement Agreement.

The Court further enjoins any Settlement Class Member who has not, by the deadline for opting-out, made a timely, irrevocable election to exclude themselves from the Settlement Classes from commencing, prosecuting, or maintaining, either directly, representatively or in any other capacity, any claim that is subsumed within the Settlement Agreement.

Upon final approval by the Court, all Settlement Class Members who do not opt-out of the monetary relief under the Settlement Agreement, will be bound to the terms set forth in the Settlement Agreement. Individuals who do not opt-out will be deemed to have opted-in.

Settlement Class Members may not assign or transfer their rights to participate in the Settlement Agreement.

**VIII. APPROVAL OF THE FORM AND MANNER OF DISTRIBUTING CLASS NOTICE AND CLAIM FORM**

The parties have also submitted for the Court's approval a proposed Notice of Proposed Settlement & Fairness Hearing ("Class Notice") which the Court has carefully reviewed. The Court finds that:

1. The Class Notice is the best notice practicable under the circumstances and allows Settlement Class Members a full and fair opportunity to consider the Settlement Agreement. The proposed plan for distributing the Class Notice likewise is a reasonable method calculated to reach all Settlement Class Members who would be bound by the Settlement Agreement. Under this plan, Defendants will distribute the Class Notice to Settlement Class Members by first class U.S. Mail. Class Counsel will also post the Class Notice on <http://www.nyc911operatorsclass.com>. There is no additional method of distribution that would be reasonably likely to notify Settlement Class Members who may not receive notice pursuant to the proposed distribution plan.

2. The Class Notice fairly, plainly, accurately, and reasonably informs Settlement Class Members of: (1) appropriate information about the nature of this case, the Settlement

Classes, the identity of Class Counsel, and the essential terms of the Settlement Agreement, including programmatic relief provisions and the proposed plan of allocation; (2) appropriate information about Class Counsel's proposed attorneys' fees and costs and the proposed Service Awards to Settlement Class Representatives; (3) appropriate information about how to participate in this case; (4) appropriate information about the Court's procedures for final approval of the Settlement Agreement, and about Settlement Class Members' right to appear through counsel if they desire; (5) appropriate information about how to challenge or opt-out of the Settlement Agreement, if they wish to do so; and (6) appropriate instructions as to how to obtain additional information regarding this case or the Settlement Agreement.

3. The Court finds and concludes that the proposed plan for distributing the Class Notice will provide the best notice practicable, satisfies the notice requirements of Federal Rule of Civil Procedure 23(e), and satisfies all other legal and due process requirements.

The Court hereby ORDERS that:

- a. The Class Notice is approved. Non-material changes may be made as the parties deem appropriate.
- b. The manner of distributing the Notice Materials is approved.
- c. Within thirty (30) days of the date of this Preliminary Approval Order, Defendants shall send the Class Notice to Settlement Class Members, incorporating into the Notice the relevant dates and deadlines set forth in this Preliminary Approval Order, as further described in Part X below.
- d. Within twenty-one (21) days of the date of this Preliminary Approval Order, Class Counsel will post the Class Notice on <http://www.nyc911operatorsclass.com>, incorporating

into the Notice the relevant dates and deadlines set forth in this Preliminary Approval Order, as further described in Part X below.

e. For Settlement Class Members for whom the Notice Materials are returned to Defendants, Defendants will notify Plaintiffs' Counsel of the return and the reasons for the return. The parties will confer to determine whether the Notice materials can be re-sent. Defendants will maintain a record of all Settlement Class Members whose Notice Materials are returned, the reason for the return, the efforts, if any, to re-transmit the materials, and if there is no such effort, the reason(s) for not attempting re-transmission.

f. Defendants shall mail the Class Notice to each Settlement Class Member by first class U.S. mail at their last known address.

**IX. SETTLEMENT FUND**

Defendant City shall issue payment of \$1,000.00 to each of the eight Named Plaintiffs within ninety (90) days of receiving a general release and an affidavit of liens from a Named Plaintiff. Defendant City shall issue payment of \$200.00 to each Class Member, with the exception of the eight Named Plaintiffs, within ninety (90) days of receiving a general release and an affidavit of liens from a Class Member. Defendant City shall pay \$500,000.00 in legal fees and costs by delivering a check for this amount made payable to Maduegbuna Cooper LLP to its offices located at 30 Wall Street, 8<sup>th</sup> Floor, New York, New York 10005 within ninety (90) days of the Effective Date of the Settlement Agreement.

Defendant Local 1549 shall issue payment of \$32,000.00 within ninety (90) days of the Effective Date of the Settlement Agreement to an escrow account established by Local 1549 Defendant's Counsel. Local 1549 Defendant's Counsel will issue payment from this escrow account to Class Members and/or Named Plaintiffs, as directed in writing by Plaintiff's Counsel within ninety (90) days from the Effective Date of the Settlement Agreement. Defendant Local

1549 shall issue payment of \$5.00 to each Class Member, with the exception of the eight Named Plaintiffs, within ninety (90) days of receiving a general release from a Class Member. Defendant Local 1549 shall pay \$7,000.00 in legal fees and costs by delivering a check for this amount made payable to Maduegbuna Cooper LLP to its offices located at 30 Wall Street, 8<sup>th</sup> Floor, New York, New York 10005 within ninety (90) days of the Effective Date of the Settlement Agreement.

**X. PROCEDURES FOR FINAL APPROVAL OF THE SETTLEMENT AGREEMENT**

**A. Final Approval Hearing**

1. The Court hereby schedules a hearing to determine whether to grant final approval of the Settlement Agreement (including the proposed plan of allocation, programmatic relief, payment of attorneys' fees and costs, and Service Awards to Settlement Class Representatives) (the "Final Approval Hearing") for October 1, 2019 at 11:00 a.m., in Courtroom 4F North, United States District Courthouse, 225 Cadman Plaza East, Brooklyn, New York.

**B. Deadline To Opt-Out**

1. Settlement Class Members may exclude themselves, or opt-out, of the monetary relief portion of the Settlement Agreement. Any request for exclusion must be in the form of a written, signed "opt-out" statement, mailed to Class Counsel. A Settlement Class Member wishing to opt-out must sign a statement confirming that they are aware that, by opting-out, they will forego the opportunity to receive monetary relief from the Settlement Fund. To be effective, this opt-out statement must be post-marked on or before forty-five (45) days after the date the Class Notice is mailed to Settlement Class Members.

2. Class Counsel shall provide to all counsel and file with the Court all opt-out statements that are timely received and not rescinded. The Settlement Classes will not include Settlement Class Members who file and serve a timely opt-out statement, and Settlement Class Members who opt-out are not entitled to any monetary relief. With respect to each such individual,

the statute of limitations for them to assert any claim for individual relief will resume running on the postmark date of their signed, written statement that they are opting-out. In the event that a Settlement Class Member submits both an opt-out letter and Defendants' Releases, Class Counsel will contact the Settlement Class Member to ascertain their intent.

3. Settlement Class Members who elect to opt-out of the monetary relief portion of the Settlement Agreement maintain the right to comment or object to the Settlement Agreement.

**C. Deadline For Filing Comments and Objections To The Settlement Agreement**

1. Comments and objections to the Settlement Agreement must be in writing and must include a description of the basis of the comment or objection. Comments and objections must be filed with the Court and be postmarked on or before forty-five (45) days after the Class Notice is mailed to Settlement Class Members, regardless of whether a Settlement Class Member has retained an attorney to submit objections and/or appear at the Final Approval Hearing. No one may appear at the Final Approval Hearing for the purpose of commenting or objecting to the Settlement Agreement without first having filed and served their comments or objections in writing postmarked on or before forty-five (45) days after the Notice Materials are mailed to Settlement Class Members.

**D. Deadline For Submitting Claim Forms**

1. A Settlement Class Member who does not opt-out will be eligible to receive monetary relief from the Settlement Fund. To receive this relief, such a Settlement Class Member must properly and timely complete and submit Defendant City's Release Form and Affidavit of Liens and Defendant Local 1549's Release Form.

**E. Deadline For Submitting Motion Seeking Final Approval**

No later than September 24, 2019, Plaintiffs shall file a Motion for Final Approval of the Class Action Settlement and Petition for Attorneys' Fees, Costs and Service Awards to Class



Representatives (“Motions”) and all supporting documents and memoranda. These Motions will be posted on Class Counsel’s website.

**XI. NAMED PLAINTIFFS’ AND SETTLEMENT CLASS MEMBERS’ RELEASE**

If, at the Final Approval Hearing, the Court grants final approval to the Settlement Agreement, Named Plaintiffs and each individual Settlement Class Member who does not timely opt-out will release claims and be subject to the terms set forth in the Settlement Agreement, regardless of whether they receive any monetary relief from the Settlement Fund.

SO ORDERED.

*/s/ Pamela K. Chen*

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Pamela K. Chen

United States District Judge

Dated: June 17, 2019  
Brooklyn, New York