

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

OSCAR ONADIA, on behalf of himself and others
similarly situated,

Plaintiff(s),

- against -

THE CITY OF NEW YORK, *et al.*

Defendant.

Index No.: 300940/2010

**AFFIRMATION OF
MATTHEW D.
BRINCKERHOFF**

MATTHEW D. BRINCKERHOFF, an attorney duly admitted to practice before the
Courts of the State of New York, affirms the following to be true under penalties of perjury:

1. I am a partner at Emery Celli Brinckerhoff Abady Ward & Maazel LLP
("ECBAWM"), attorneys for the Plaintiff Class and the Named Plaintiff, along with Benno &
Associates, P.C.

2. I submit this affirmation in support of Plaintiffs' Motion for Preliminary Approval
(by Order to Show Cause) of the parties' class action settlement agreement (the "Settlement
Agreement" or "Settlement"), attached as Exhibit 1, as set forth in the proposed preliminary
approval order, attached as Exhibit 2.

3. There is genuine urgency for this application due to the length of time this matter
has been pending, the need to provide notice to class members, and the upcoming Court
conference scheduled for December 16, 2024.

4. My firm provided notice to Defendants of this Order to Show Cause through
counsel of record Chlarens Orsland via email sent on December 9, 2024. Mr. Orsland stated that
he did not oppose proceeding by Order to Show Cause.

5. Defendants have reviewed and approved the proposed preliminary approval order, attached as Exhibit 2.

6. Subject to Court approval, the Named Plaintiff Oscar Onadia (who has died and is, accordingly, represented by the administrator of his estate Iesha Henderson), individually and on behalf of the class of individuals he represents and the broader group he seeks to represent for settlement purposes (collectively, “Plaintiffs,” the “Class,” or “Class Members”), and Defendant City of New York (“Defendant” or the “City”) (collectively, the “Parties”) have settled this class action.

7. In order to settle Plaintiffs’ claims, Defendant has agreed to pay a maximum of \$92.5 million as a settlement fund to cover the claims by each person overdetained in the New York City Department of Corrections (“DOC”) during the class period who was the subject of a detainer issued by U.S. Immigration and Customs Enforcement. The amount of each Class Member’s settlement award is determined by an allocation formula (described below). As a general matter, after deduction of Settlement Costs, the remainder will be divided *pro rata* among Class Members who make claims. Each Class Member’s settlement award will be based on the number of days detained, with longer detention periods receiving a lower per-day rate; those subject to a potential statute of limitations defense will receive less per day than those not subject to that defense. The fund is a maximum of \$92.5 million because there is a per-day cap which would be triggered if there is a low return rate; if the cap is triggered and there is any amount not distributed to Class Members because of the cap, the remainder will revert to the City.

8. Defendant’s records reflect that during the Class Period there were 20,900 Class Members representing a total number of 166,475 days overdetained.

9. As part of the maximum \$92.5 million settlement fund, Defendant will pay for the costs for robust direct and publication/media notice and the costs of administering the claims process and issuing settlement awards. Defendant has also agreed to pay \$25,000 to Named Plaintiff Oscar Onadia as a service award, which his estate is now entitled to receive. Finally, Defendant has agreed to pay Plaintiffs' attorneys' fees and costs in an amount to be determined by the Court at the time of final approval of the Settlement Agreement.

10. Because the proposed settlement satisfies all of the criteria for preliminary approval, the Parties respectfully request that the Court:

- (i) grant preliminary approval of the Settlement Agreement, Ex. 1;
- (ii) certify the settlement class (the "Settlement Class") and appoint ECBAWM and Benno & Associates, P.C. as class counsel for the Settlement Class ("Class Counsel");
- (iii) approve Atticus ("Atticus") as the settlement administrator (the "Administrator");
- (iv) approve the form, content, and manner of notice to the Settlement Class and authorize notice to be distributed in the manner described in the Affirmation of Bryn Bridley ("Bridley Affirmation") as well as the proposed notices to Class Members and the proposed Claim Form, *see* Exhibits B-C; and
- (v) order Defendant to pay the costs of notice and administration to the Administrator pursuant to the terms and conditions set forth in the Settlement Agreement.

11. The declaration sets out those aspects of the litigation and settlement that are not readily apparent from other documents attached as exhibits to this declaration. It does not detail the full history of the case or the full settlement terms.

12. CPLR 908 specifies that the Court must approve any proposed “compromise” of a class action. “Although the statute does not define the criteria for such approval, New York’s courts have recognized that its class action statute is similar to the federal statute and have looked to federal case law for guidance.” *Fiala v. Metro. Life Ins. Co., Inc.*, 27 Misc.3d 599, 606-07 (Sup. Ct. N.Y. Cnty. 2010) (Kornreich, J.) (internal citations omitted) (collecting authorities).

13. At this stage, Plaintiffs seek only preliminary approval of the proposed settlement. “Preliminary approval . . . requires only an initial evaluation of the fairness of the proposed settlement on the basis of written submissions and an informal presentation by the settling parties.” *Clark v. Ecolab Inc.*, Nos. 07 Civ. 8623, 04 Civ. 4488, 06 Civ. 5672, 2009 WL 6615729, at *3 (S.D.N.Y. Nov. 27, 2009) (internal quotation marks omitted).

14. Preliminary approval is “at most a determination that there is what might be termed ‘probable cause’ to submit the proposal to class members and hold a full-scale hearing as to its fairness.” *In re Traffic Exec. Ass’n-E. R.Rs.*, 627 F.2d 631, 634 (2d Cir. 1980). “A proposed settlement of a class action should therefore be preliminarily approved where it appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class and falls within the range of possible approval.” *Felix v. Northstar Location Servs., LLC*, 290 F.R.D. 397, 407 (W.D.N.Y. 2013) (internal quotation marks omitted). “Fairness is determined upon review of both the terms of the settlement agreement and the negotiating process that led to such agreement.” *Frank v. Eastman Kodak Co.*, 228 F.R.D. 174, 184 (W.D.N.Y. 2005). “Absent fraud or collusion, [courts] should be hesitant to substitute [their] judgment for that of

the parties who negotiated the settlement.” *In re EVCI Career Colls. Holding Corp. Sec. Litig.*, No. 05 Civ. 10240, 2007 WL 2230177, at *4 (S.D.N.Y. July 27, 2007).

15. This Settlement is the product of over a decade of litigation, including a successful motion for class certification.

16. Named Plaintiff Oscar Onadia (“Class Representative” or “Named Plaintiff”) filed a Complaint against the City on February 1, 2010, which was later amended, alleging on behalf of himself and class of people similarly situated (collectively, “Plaintiffs”), *inter alia*, that the City of New York acting through the New York City Department of Correction (“DOC” or the “Department”) is liable under 42 U.S.C. § 1983 for unconstitutionally restraining the liberty of detainees otherwise eligible for release based on a detainer issued by U.S. Immigration and Customs Enforcement (“ICE”).

17. On January 9, 2017, the Court granted Plaintiff’s motion to certify a class defined as: “All people who were detained by the New York City Department of Correction, during the limitations period, beyond the individual’s scheduled release date, despite all other conditions for the person’s release being satisfied, and based solely on a detainer issued by U.S. Immigration and Customs Enforcement prior to December 21, 2012 that either (1) indicated that an investigation had been commenced by ICE, or (2) failed to indicate a reason for continued detention (i.e. no boxes checked on the detainer form).”

18. After the Court certified the class, the parties engaged in hard fought settlement negotiations since late 2017, assisted by the Court who held numerous in-person and remote settlement conferences with the parties.

19. The Parties agreed to settle the claims by the certified class as well as claims by a broader class of people detained by the New York City Department of Correction during the

agreed-upon limitations period, who were all held beyond the individual's scheduled release date, despite all other conditions for the person's release being satisfied, and based solely on an ICE detainer, *without* limitation as to which box was or was not checked on the detainer form (the "Settlement Class"). The Parties also agreed for purposes of settlement to use as a Class Period April 1, 1997 through December 21, 2012.

20. The City agreed to pay up to \$92.5 million to settle the claims of the Settlement Class, including administrative costs, attorneys' fees, and a service award to the Named Plaintiff (the "Class Fund"). The Parties agreed that, of the Class Fund, the Settlement Costs (defined as the portion of the fund used for administrative costs, the service award to the Named Plaintiff, and the attorneys' fees) cannot exceed 30%; and that the administrative costs cannot exceed one-third of Settlement Costs (i.e., 10% of the up to \$92.5 million Class Fund). The "Distribution Amount" will be the Class Fund after deduction of the Settlement Costs, which is the maximum amount available to distribute to Class Members who file claims. If Settlement Costs are lower than 30% of the Class Fund, any unused portion will be added to the Distribution Amount.

21. The Parties also agreed that the Settlement Class would be composed of two groups: a "Recent Group" which is defined as those within the Settlement Class who were held beyond their scheduled release date between February 1, 2007 and December 21, 2012; and a "Statute of Limitations Group" which is defined as those Settlement Class who were held beyond their scheduled release date between April 1, 1997 and January 31, 2007.

22. The City asserted an additional defense against the claims of the Statute of Limitations Group: namely, that the applicable statute of limitations barred the claims of the Statute of Limitations Group as they were detained more than three years before the filing of this action. This Court did not rule on the validity of City's legal defense.

23. The Parties agreed to the following formula for allocation of the Distribution Amount: after the \$100 per day allocation every day of overdetection is compensated a full-share for the first 30 days, then 40% of a full share for the next 30 days for everyone in the Recent Group and exactly half as much as that for the Statute of Limitations group.

24. Plaintiffs seek the appointment of Atticus as the Settlement Administrator. As detailed in the Bridley Affirmation, Atticus provides innovative and cost-effective notice campaigns and claims administration services to the legal sector. Atticus's core competencies include pre-certification mailings, class notice, claims administration including the processing of claim forms, claim validation and anti-fraud detection, data preparations and data management, accounting services, tax reporting, qualified settlement fund management, escrow services, and the calculation and distribution of funds. Since its inception, Atticus has provided administrative services in nearly 1,000 class, collective, or PAGA settlements and has disbursed approximately \$1.24 billion in settlement funds.

25. Atticus's services include locating Class Members and issuing notice, including information about the right to object or Opt Out of the settlement; distributing Claim Packets, receiving, and validating claims; establishing and administering the Qualified Settlement Fund and upon conclusion of the process, closing the Fund; calculating the amounts of awards, issuing payments to eligible Class Members, and filing and issuing all required tax forms and statements; creating a website and toll-free number to provide information about the Settlement, and responding to inquiries about the Settlement and its procedures; collecting and sharing with counsel for the Parties all objections and Opt-Out requests; and performing other tasks as directed by the Parties. The Administrator will (*i*) act as the agent of the Parties to the extent the Class Administrator is given confidential information about potential Class Members, including

names, addresses and social security numbers, (ii) use such confidential information only in connection with the administration of the proposed Settlement and (iii) take reasonable measures to maintain the security of the confidential information.

26. The Court should order the City to pay Atticus the initial costs of administration and notice so that Atticus can implement the notice program outlined in Bridley Affirmation and start administration of the settlement.

27. The task of locating and notifying Class Members is uniquely challenging because the class consists primarily of foreign nationals who may no longer be in the United States and that is combined with the passage of time since the events at issue. Accordingly, the parties agreed that robust, unique and unprecedented procedures may be required to locate and notify Class Members which may cost as much as 10% of the Class Fund and will be expended predominantly during the notice period (after the Preliminary Approval Order, but before final approval). Accordingly, the notice proposal detailed below is merely the current proposal, which will be altered as appropriate.

28. Class Members will be provided with direct notice by mail and email. Direct notice by first-class mail will consist of a cover letter with notice and a claim form (together, a "Claim Packet"). In addition to direct notice by mail, Class Members for whom the Administrator can determine an email address will be sent direct notice by email. Copies of the proposed notice documents are attached as Exhibits B-C to the Bridley Affirmation.

29. Class Members will also be provided with reminder notice by way of postcard or email.

30. Class Members will also be provided with publication notice through advertisements and announcements on broadcast media (television and radio), social media

(Facebook, Google ads), print media (am New York and community newspapers), both domestically and internationally, as further described in the Bridley Affirmation.

31. Class Members will also be provided with notice through posting of a summary notice in locations where Class Members are likely to see them, including the New York City Department of Correction's facilities (intake areas, law libraries); offices of the NYC Human Resources Administration; adult supervision offices of the NYC Department of Probation; and offices of the NYC Department of Youth and Community Development providing general immigrant services or comprehensive services for immigrant families. The City will also ensure that notice of the settlement be posted on the webpages of the Department of Correction and the Office of Immigrant Affairs.

32. Plaintiffs will also request that DOCCS post a summary notice in locations where arrestees, detainees, prisoners, or individuals on probation are likely to see them.

33. Class Members will be able to submit completed claim forms by mail or online through a website created for settlement administration. A "long form" notice to Class Members, along with a set of Frequently Asked Questions, will be posted on the Settlement Administrator's website in multiple languages. A copy of the proposed long-form notice is attached to the Bridley Affirmation as Exhibit C.

34. The timeline of the settlement administration and payment of timely and valid claims by Class Members is structured as follows:

- a. Once the Court preliminarily approves the settlement, Class Members will be given ninety (90) days from the date that Notice is mailed to file timely and valid claims, requests to be excluded ("opt-out") from the Class, or to file objections to the Settlement (i.e., the "Initial Claim Form Deadline," the

“Initial Opt-Out Deadline,” and the “Initial Objection Deadline”). If fewer than seventy-five percent (74%) of Class Members submit claim forms or opt-out prior to the Initial Opt-Out Deadline—which is highly likely—Class Members will be given an additional ninety (90) days to file claims, opt-out, or object to the settlement (i.e., the “Final Claim Form Deadline,” the “Final Opt-Out Deadline,” and the “Final Objection Deadline”).

- b. The Fairness Hearing will then be held no sooner than 45 days after the Final Claim Form Deadline (or if the Initial Claim Form Deadline is not extended, then no sooner than 45 days after the Initial Claim Form Deadline).
- c. If the Court finally approves the Settlement (the “Final Approval Order”), the Final Approval Order will become final (a) if no objector has lodged a timely objection, on the date of entry of the Final Approval Order, or (b) if an objector has lodged a timely objection, when the time for that objector to appeal has expired or, if the objector has appealed from the Final Approval Order or any portion thereof, on the date when the appeal results in the affirmance of the Court’s Final Approval Order of the Settlement.
- d. Defendant will pay the full amount of timely and valid claims to the Administrator not later than 30 days after the Final Approval Order becomes final (the “Effective Date of Payment”). The Administrator will then distribute the Class Members’ settlement awards by check.


35. Plaintiffs’ counsel will make an application seeking Court approval for attorneys’ fees and expenses at or around the time of Plaintiffs’ motion for final approval of the Settlement.

36. Named Plaintiff Oscar Onadia expressed his approval of the Settlement prior to his death. In accordance with the Settlement Agreement, Plaintiffs will request in their Motion for Final Approval that the Court approve service award for Mr. Onadia, payable to his estate, in the amount of \$25,000, in recognition of the services he rendered on behalf of the class. Those services included undergoing an examination by the City pursuant to N.Y. Civil Service Law 50(h), a subsequent deposition by the City in this proceeding, and submitting a detailed affidavit in support of class certification. Mr. Onadia also deferred resolution of his claim for 14 years to ensure that the class had a representative over the course of this proceeding and obtained class-wide recovery. Mr. Onadia died earlier this year. The parties agreed to substitute Mr. Onadia's estate, through the estate's administrator Iesha Henderson, as the Named Plaintiff and class representative; they have a filed stipulation to that effect.

37. Based on the foregoing, Plaintiffs respectfully request that the Court preliminarily approve the Settlement, authorize notice to be disseminated to the Class as set forth in the notices attached to Bridley Affirmation, and schedule a Settlement Hearing to consider whether the Settlement should be fully and finally approved on or after September 29, 2025.

38. No prior application for the relief sought in this motion by order to show cause has been made.

Dated: December 11, 2024
New York, New York



Matthew D. Brinckerhoff