

PRELIMINARY ORDER FOR APPROVAL OF SETTLEMENT OF CLASS ACTION

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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CORINNE VARGAS, KISHA TRENT, ANNIE SMITH	:
and R.G., on behalf of themselves and all others similarly	:
situated,	:
	:
Plaintiffs,	:
	:
v.	:
	:
TOWN OF SMITHTOWN,	:
Defendant.	:
-----	x

Case No. 07-CV-5202
(JS)(WDW)

**PRELIMINARY ORDER FOR APPROVAL
OF SETTLEMENT OF CLASS ACTION**

The parties to the above-captioned matter (the "Action"), having applied for an Order determining certain matters in connection with the proposed settlement of the Action (the "Settlement"), in accordance with their Stipulation and Agreement of Settlement, dated March 4, 2009 (the "Stipulation"), and for dismissal of the Action upon the terms and conditions set forth in the Stipulation, the terms and definitions of which are incorporated herein by reference;

NOW, upon consent of the parties to the Action (collectively, the "Parties") and on behalf of the Class as defined below, after review and consideration of the Stipulation filed with the Court and the Exhibits annexed thereto, and after due deliberation,

IT IS HEREBY ORDERED this 1 day of July, 2009, that:

1. The Court preliminary approves a settlement class of all African-American and Hispanic individuals who do not live or work in Smithtown, New York and who

applied to the Smithtown Section 8 Voucher Program in 2002 or 2006 when the waitlist was opened and who subsequently were or would have been determined not eligible for the Program because they did not live or work in Smithtown.

2. A hearing (the "Settlement Hearing") shall be held on August 28, 2009 at 10:00 a.m., in the District Court for the Eastern District of New York, Long Island Courthouse, 100 Federal Plaza, Central Islip, New York 11722, to:
 1. determine whether the Settlement should be approved by the Court as fair, reasonable, adequate and in the best interests of plaintiffs in the Action ("Plaintiffs") and all members of the class (the "Class"), which is all African-American and Hispanic individuals who do not live or work in Smithtown, New York and who applied to the Smithtown Section 8 Voucher Program in 2002 or 2006 when the waitlist was opened and who subsequently were or would have been determined not eligible for the Program because they did not live or work in Smithtown; and
 2. rule on such other matters as the Court may deem appropriate.
3. The Court reserves the right to adjourn the Settlement Hearing or any adjournment thereof, including the consideration of Plaintiffs' application for attorneys' fees and reimbursement of expenses, without further notice of any kind other than oral announcement at the Settlement Hearing or any adjournment thereof.
4. The Court reserves the right to approve the Settlement at or after the Settlement Hearing with such modification as may be consented to by the Parties and without further notice to the Class.
5. The Court approves the appointment of Berdon Claims Administration LLC as Claims Administrator.

6. Within 5 days of the entry of this Order, Smithtown shall provide the Claims Administrator with its 2002 and 2006 Section 8 waitlists, including the names, addresses, and social security numbers of individuals on those waitlists.
7. The Claims Administrator shall make reasonable efforts to locate each individual who has been on the 2002 or 2006 waitlist for the Smithtown Section 8 Voucher Program and shall within 45 days of the entry of this Order cause a Notice of Pendency of Class Action, Proposed Settlement of Class Action, and Settlement Hearing (the "Notice") to be mailed by United States mail to the current address of such individuals, or, if the current address cannot be determined, the last known address of such individuals.
8. The Claims Administrator shall also provide notice to Long Island housing organizations as identified in Exhibit C to the Stipulation.
9. The form and method of the Notice specified herein: (a) is the best notice practicable; (b) shall constitute due notice of the Settlement Hearing to all entitled to receive such a notice; and (c) meets the requirements of Rule 23(e)(1) of the Federal Rules of Civil Procedure. Prior to the Settlement Hearing, counsel for the Town shall file with the Court an appropriate affidavit with respect to the joint preparation of the Notice and the provision to the Claims Administrator of the 2002 and 2006 Section 8 waitlist.
10. Any member of the Class ("Class Member") may appear at the Hearing, in person or through counsel of his, her or its choice, to show cause why (i) the Settlement should not be approved, (ii) a judgment dismissing the Action on the terms contained in the Stipulation should not be entered, or (iii) the Plaintiffs' attorneys

should not be awarded their requested attorneys' fees and expenses. No Class Member shall be heard, or be entitled to object to or otherwise contest the foregoing, unless such class member, no later than August 14, 2009, has filed with the Clerk of the Court and served on each of the following counsel:

Stacey Friedman
32nd Floor
125 Broad Street
New York, New York 10004
Tel: (212) 558-4000
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David Arntsen
Devitt Spellman Barrett, LLP
50 Route 111
Smithtown, NY 11787
(631)724-8833

a written statement of all of such Class Member's objection(s) and all of the grounds or reasons for such objection(s), including any briefs or affidavits in support of such objection(s), and a statement indicating whether such Class Member intends to appear at the Hearing, together with the following information:

1. the name, address and telephone number of the Class Member and his, her or its counsel, if any;
 2. the approximate date on which the Class Member applied for the Smithtown Section 8 Voucher Program; and
 3. the race and ethnicity of the Class Member.
1. Any Class Member who does not file and serve a timely objection in the manner provided herein shall be deemed to have waived any objection such Class Member might have had, and shall forever be barred, in these proceedings or in any other proceeding, from making any objection to or otherwise challenging the Settlement, the Stipulation or any provision thereof, the judgment dismissing the Action, the application and award of

attorneys' fees and expenses or any other proceedings herein, and shall have no right to appeal therefrom.

4. Any Class Member may opt out of the settlement by sending a letter via first-class mail, postmarked no later than August 14, to Smithtown Housing Discrimination Litigation, c/o Berdon Claims Administration LLC, P.O. Box 9014, Jericho, NY 11753-8914, stating that the Class Member wants to be excluded from the Settlement Class in *Vargas v. Smithtown*, No. 07-CV-5202 and including the following information:
 - a. Name;
 - b. Address;
 - c. Telephone number; and
 - d. Signature.
5. If the Settlement, including any amendment made in accordance with the Stipulation, does not obtain Final Approval (as defined in the Stipulation) or does not become effective for any reason whatsoever, the Settlement and any actions taken or to be taken in connection with the Settlement (including this Order and any judgment created herein) shall be terminated and shall become void and of no further force and effect. In any such event, neither the Stipulation, nor any provision contained in the Stipulation, nor any action taken pursuant thereto, shall be deemed to prejudice in any way the respective positions of the Parties. Additionally, the Parties shall be restored to their respective positions as if the Stipulation never existed, and neither the existence of the Stipulation nor its contents shall be admissible in evidence or shall be referred to for any purpose in the Action or in any other litigation or proceeding and shall not entitle any party

to recover from any other party any costs or expenses incurred in connection with the implementation of the Stipulation.

6. All proceedings in the Action, other than proceedings as may be necessary to carry out the terms and conditions of the Settlement, are hereby stayed and suspended until further order of this Court. Pending final determination of whether the Settlement should be approved, Plaintiffs and all members of the Class are barred and enjoined from commencing, instituting, prosecuting, instigating or continuing, or in any way participating in the commencement or prosecution of any action asserting any Settled Claims, either directly, individually, representatively, derivatively or in any other capacity against any of the Class, and are barred and enjoined from challenging the Settlement (other than in this Action in accordance with the procedures established by the Court).
7. The Stipulation and all negotiations, statements and proceedings in connection therewith shall not in any event be construed as, used as, or deemed to be evidence of an admission or concession by any Defendants or Plaintiffs or the Class, as defined in the Stipulation: (a) regarding the validity of the Settled Claims; or (b) of any fault, wrongdoing, omission or liability whatsoever. The Stipulation and all negotiations, statements and proceedings in connection therewith shall not be offered or received in evidence against any of the Parties, or, upon entry of this Scheduling Order, any Plaintiff or Class Member, in any civil, criminal or administrative action or proceeding in any court, administrative agency or other tribunal, other than such proceedings as may be necessary to consummate or enforce the Settlement, the releases executed pursuant thereto,

and/or the Judgment Order. Notwithstanding any of the foregoing, the Stipulation and the Exhibits hereto may be filed in any subsequent action brought against any Defendants or Plaintiffs or Class Member in order to support a defense or counterclaim by any Defendants or Released Persons of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction or any other theory of claim or issue preclusion or similar defense or counterclaim.

SO ORDERED.

Dated: JULY 1, 2009
Central Islip, New York

151 JOANNA SEYBERT
~~THE~~ HONORABLE JOANNA SEYBERT
UNITED STATES DISTRICT JUDGE