

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

MASOOD SYED, individually and on behalf of all
others similarly situated,

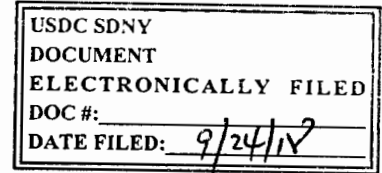
Plaintiff,

-against-

CITY OF NEW YORK,

Defendant.

No. 16-CV-4789



STIPULATION OF SETTLEMENT AND ORDER

WHEREAS, Masood Syed, individually and on behalf of all others similarly situated (“Plaintiff”), commenced this action pursuant to 42 U.S.C. § 1983; the First and Fourteenth Amendments to the United States Constitution; Title VII of the Civil Rights Act of 1964; the Constitution and Laws of the State of New York; and for violations of the New York City Human Rights Law; and

WHEREAS, Defendant denies the truth of Plaintiff’s allegations and any and all liability arising out of Plaintiff’s allegations;

WHEREAS, the Parties have executed a Stipulation of Dismissal pursuant to Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedure as to defendants New York City Police Department, William J. Bratton, Neldra M. Zeigler, James Kobel, and Rhonda O’Reilly;

WHEREAS, the Parties now desire to resolve the remaining issues raised in this litigation, without further proceedings and without admitting any fault or liability; and

WHEREAS, Plaintiff Masood Syed has authorized counsel to settle this matter on the terms set forth below.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned, as follows:

A. DEFINITIONS

1. “APR” shall mean Air Purifying Respirator.
2. “City” shall mean the City of New York.
3. “Class Counsel” shall mean Beldock Levine & Hoffman LLP, 99 Park Avenue, PH/26th Floor, New York, New York 10016.
4. “DCEEO” shall mean the Deputy Commissioner, Equal Employment Opportunity at the NYPD.
5. “Defendant” shall mean the City of New York.
6. “Effective Date” shall mean thirty (30) days after the Final Approval Date, as defined below, and shall be the date upon which this Stipulation enters into effect.
7. “EEO Employee(s)” shall mean all individuals employed by the NYPD and assigned to DCEEO.
8. “Facial Hair Religious Accommodation Request” shall, for purposes of this Stipulation, mean a Reasonable Accommodation Request for Religious Practices or Observances Form PD 469-161 and any accompanying documentation submitted by the Member of the Service to the Deputy Commissioner, Equal Employment Opportunity for purposes of requesting to religious accommodation for facial hair.
9. “Final Approval Date” shall mean the entry date of the Court’s Order granting approval of this Stipulation and Order as fair, reasonable, and adequate to the Class as a whole

after notice to Class Members with the opportunity to opt out as to incidental monetary relief, and a hearing on the fairness of the settlement (“Fairness Hearing”).

10. “Member of the Service” refers to any and all employees of the NYPD to whom the NYPD Patrol Guide 203-07(10) is applicable.

11. “NYPD” shall mean the New York City Police Department.

12. An “Opt-Out” shall mean any potential class member who files a timely Request for Exclusion Form as provided in this Stipulation.

13. “P.G.” shall mean the NYPD’s Patrol Guide.

14. “Parties” shall mean Plaintiff Masood Syed and Defendant City.

15. “Plaintiff” or “Class Representative” or “Named Plaintiff” shall mean Masood Syed.

16. “Preliminary Approval Date” shall mean the date on which the court endorses this Stipulation.

17. “December 2016 Facial Hair Policy” shall mean P.G. § 203-07 and the Operations Order No. 61, effective as of December 30, 2016.

18. “Current Facial Hair Policy” shall mean the P.G. 203-07, Operations Order No. 61, Facial Hair Religious Accommodation Request, and a Facial Hair Bulletin issued by the DCEEO in effect as of the date of this Stipulation and annexed hereto as **Exhibits 1, 2, 3, and 4**, respectively.

19. “Review Period” shall mean the eighteen (18) month period following the Effective Date of this Agreement in which the City will provide Class Counsel with, at six, 12 and 18 months following the Effective Date, a spreadsheet pertaining to religious accommodation requests to grow facial hair reflecting: (1) the reasonable accommodation number; (2) the rank and command of the requesting member; (3) the accommodation requested;

and (4) the disposition of the request. In connection with a denial of a request for religious accommodation to grow facial hair, Class Counsel may request from the NYPD during the Review Period the Facial Hair Religious Accommodation Request and any denial letters. The NYPD will consider such request on an individual basis. The Plaintiff reserves his right to seek review of any denial by the Court. Defendant shall not be required to provide a reason for denial of a request for a religious accommodation to grow facial hair during the Review Period to Class Counsel for any member of the service who had opted-out of the Settlement Class as defined in Paragraph 20, below.

20. “Settlement Class” shall mean the class of plaintiffs agreed upon by the Parties, described in Paragraph D(2), *infra*.

21. “Stipulation” shall mean this Stipulation of Settlement and Order executed by the Parties in the above-captioned action.

B. STIPULATIONS OF FACT

1. Plaintiff is a Police Officer currently assigned to the NYPD’s Office of the Deputy Commissioner of Trials.

2. Plaintiff self-identifies as a practicing Muslim who wears a beard because of his sincerely held religious beliefs.

3. On June 21, 2016, the NYPD suspended Plaintiff from duty, without pay or benefits, for failure to conform to the beard length permissible under his religious accommodation to grow facial hair.

4. Named Plaintiff filed this action on June 22, 2016. Along with the Complaint, Plaintiff filed an Order to Show Cause for Preliminary Injunction and Temporary Restraining Order. Named Plaintiff’s motion for a Preliminary Injunction and Temporary Restraining Order sought an order reinstating him to “his title, status, responsibilities, compensation, and benefits

as a Police Officer and Law Clerk in the New York City Police Department's Office of the Deputy Commissioner of Trials" and enjoining defendants from "taking any action adversely to affect" plaintiff's "employment, title, status, responsibilities, privileges, compensation and/or benefits" as a Police Officer pending the final determination in this action.

5. The Parties appeared before the Honorable P. Kevin Castel on June 22, 2016, and Judge Castel ordered a hearing on the preliminary injunction motion for July 8, 2016. Judge Castel further ordered that, "pending the hearing and determination of this Motion, Defendants are restrained, enjoined, and stayed from taking any action adversely to affect Plaintiff Syed's compensation and/or benefits as a Police Officer provided, however, that defendants need not reinstate his presently suspended responsibilities and duties."

6. Also on June 22, 2016, the NYPD reinstated Plaintiff's compensation and benefits but did not reinstate his suspended responsibilities and duties. Plaintiff remained suspended from June 21, 2016, to June 29, 2016.

7. On June 29, 2016, the NYPD advised Named Plaintiff that he was to report to NYPD Headquarters at 9:00 a.m. on June 30, 2016, in order to be restored to full duty. Named Plaintiff appeared at Headquarters and was restored, effective June 30, 2016, to full duty in his prior command in the Office of the Deputy Commissioner of Trials.

8. Upon his reinstatement, Named Plaintiff was provided with a letter confirming his reinstatement to full duty and providing that the NYPD would undertake an internal review of Patrol Guide 203-07 "Performance on Duty – Personal Appearance," Section 10, regarding the prohibition on the growth of beards and other related issues.

9. The NYPD also advised Named Plaintiff that it would review its policies and practices regarding the case-by-case assessment it performs of requests for reasonable accommodations submitted to the NYPD's Office of Equal Employment Opportunity, specific to

Patrol Guide 203-07(10), and its disciplinary procedures in connection with the enforcement of Patrol Guide 203-07(10) and the compliance with reasonable accommodations associated with that provision, including the one millimeter exception. The NYPD anticipated that its internal review would be completed in approximately one hundred twenty (120) days. During the pendency of the one hundred twenty (120) day internal review period, the NYPD agreed that Named Plaintiff would not be subject to any adverse action with regard to compliance with the existing Patrol Guide Section 203-07(10), or any existing accommodations under that provisions.

10. On December 30, 2016, the NYPD completed the internal review referenced in the above-paragraph and issued a revised Patrol Guide Section 203-07 and Operations Order No. 61, copies of which are annexed hereto as **Exhibits 1 and 2**, respectively

11. Following the issuance of revised Patrol Guide Section 203-07 and Operations Order No. 61, the NYPD issued the Facial Hair Religious Accommodation Request, a copy of which is annexed hereto as **Exhibit 3**.

C. MUTUAL AGREEMENT ON PRINCIPAL TERMS

1. The Parties agree that the Current Facial Hair Policy is detailed in **Exhibits 1, 2, 3, and 4** annexed hereto.

2. Upon request to DCEEO, a Member of the Service will be provided with the P.G. 203-07, Operations Order No. 61, a Facial Hair Religious Accommodation Request, and a Facial Hair Bulletin issued by the DCEEO (the "Current Facial Hair Policy"), annexed hereto as **Exhibits 1, 2, 3, and 4**. The Current Facial Hair Policy is posted on the NYPD's Intranet page.

3. As set forth in the Current Facial Hair Policy, when required because of a religious accommodation, a beard may be grown up to one half inch unless the applying Member of the Service requests additional length. A Member of the Service can request additional length by so stating on the Facial Hair Religious Accommodation Request. A request for additional

length will be reviewed and decided upon by the DCEEO on a case-by-case basis through an interactive process.

4. By submitting a Facial Hair Religious Accommodation Request, the Member of the Service acknowledges that, should the request be granted, the Member of the Service is ineligible to receive training on, or deploy with, an APR and therefore may not be assigned to any specialized unit within the NYPD that require use of a tight-fitting APR as one of its essential job requirements.

5. In the event that a request to grow facial hair as a religious accommodation is denied, the applying Member of the Service will be promptly informed in writing of the denial, and the reason(s) for the denial.

6. Any Member of the Service may appeal any determination made by DCEEO about which the Member feels aggrieved, including appealing the denial of a request to grow facial hair as a religious accommodation, whether such denial is in whole or in part, provided that such appeal is made within fifteen (15) days of the date of the denial. An appeal of the denial of a request made via a Facial Hair Religious Accommodation Request will be addressed to the Commanding Officer, Police Commissioner's Office.

7. A Finest Message in the form attached hereto as **Exhibit 5**, shall be distributed in the NYPD's usual and customary manner of distribution within thirty (30) days of the Effective Date of this Stipulation and shall include a reference to the documents comprising the Current Facial Hair Policy.

8. Within ninety (90) days of the Effective Date of this Stipulation, the NYPD will conduct a training of EEO Employees concerning the Current Facial Hair Policy. The NYPD has provided Class Counsel with a copy of the training materials for EEO employees who process requests for religious accommodations for Class Counsel's review and comment.

9. The NYPD will provide Class Counsel with a letter certifying that a training of EEO employees who process requests for religious accommodations will be conducted and Class Counsel will receive a letter confirming that such training has taken place within fourteen (14) days of the training.

10. The Current Facial Hair Policy shall apply to members of the Police Cadet Corps.

D. JURISDICTION, SCOPE OF STIPULATION & ORDER, AND CLASS CERTIFICATION

1. This Court has jurisdiction over the parties and the subject matter of this action. The Court shall retain jurisdiction over the parties to enforce and administer the terms of this Stipulation and Order during the period it, or any of its provisions, remain in effect as defined in this Stipulation.

2. Plaintiff and the Defendants hereby agree to certification of a Settlement Class which is defined as follows: All persons employed by the NYPD subject to the Patrol Guide 203-07(10) who, in the three years preceding the filing of this lawsuit through and including the Effective Date of this Stipulation, requested or received a religious accommodation from the NYPD to wear a beard with the exception of those individuals who opt out in accordance with the procedures set forth in Section G.

3. The Parties agree that Plaintiff Masood Syed shall serve as Class Representative of the Settlement Class. The Plaintiff and the Defendants further agree that Class Counsel shall serve as counsel to the Settlement Class.

4. To effectuate the agreement of the Plaintiff and the Defendants regarding the certification of the Settlement Class, the Plaintiff and the Defendants agree that Class Counsel will submit to the Court a motion on consent of the Defendants seeking certification of the Settlement Class at the time this Stipulation is submitted to the Court for approval.

E. INDIVIDUAL DAMAGES

1. The City will pay Named Plaintiff Masood Syed an amount agreed upon by separate stipulated agreement, which will be executed after final approval of the Stipulation.

2. The Plaintiff and City agree that the Named Plaintiff will sign and execute a General Release, Substitute W-9, and an Affidavit of No Liens. The failure of the Named Plaintiff to execute any of the aforementioned documents will result in non-payment of damages to that Named Plaintiff, but will not otherwise affect the operation of this Stipulation or the rights of any member of the Settlement Class.

F. ATTORNEYS' FEES AND COSTS

1. The City shall pay Plaintiffs' reasonable attorneys' fees and costs. Plaintiffs and Defendant agree that they will attempt to resolve the matter of reasonable attorneys' fees and costs incurred up to and including the Effective Date and for those attorneys' fees and costs that are reasonably likely to be incurred during the Review Period. Plaintiffs and Defendant further agree to attempt to resolve the matter of reasonable attorneys' fees and costs between themselves after the Final Approval Date.

2. Class Counsel represents that they are authorized to receive payment on behalf of the Plaintiffs in full satisfaction of all claims for attorney's fees, costs, and expenses, in, arising from, or in connection with this action through and including the Review Period.

3. Class Counsel will provide the City with a copy of their contemporaneous records documenting their fees and costs up to and including the Effective Date to assist the parties in attempting to resolve the amount of reasonable attorneys' fees and costs that the City will agree to pay, as well as a reasonable amount of fees and costs associated with the Review Period.

4. In the event an agreement is reached, the City shall provide Class Counsel with a separate check payable to Class Counsel in the amount agreed upon within ninety (90) days of the date the parties execute a stipulation for attorneys' fees and costs and Class Counsel executes and returns to Defendant's Counsel a Substitute W-9 form and release in connection with attorneys' and costs. Class Counsel agrees that payment shall be made by a single check made payable to Beldock Levine & Hoffman LLP, 99 Park Avenue, PH/26th Floor, New York, NY 10016.

5. In the event that the parties are unable to reach agreement as to reasonable attorneys' fees and costs, Class Counsel will submit a fee application within ninety (90) days of the Final Approval Date to which the City may respond within 30 days and Class Counsel may reply within fourteen (14) days of the City's response. The Court shall retain jurisdiction of this matter for the purposes of determining any additional application for fees and costs made by Class Counsel after the close of the Review Period.

G. PRELIMINARY APPROVAL ORDER, CLASS NOTICE, OPT OUT PROCEDURE, COURT JURISDICTION, AND TERMINATION OF THIS STIPULATION

1. As soon as practicable after the execution of this Stipulation, Class Counsel shall submit to the Court this Stipulation and a motion seeking entry of a preliminary approval order that requests, among other things, the preliminary approval of the settlement set forth in this Stipulation, the approval of the publication of a class notice and the right to object or opt out of the settlement, as described in Paragraph 2 below, and the setting of a date for the Fairness Hearing. The motion seeking entry of a preliminary approval order and the proposed class notice will be provided to defendant's counsel seven days in advance of their filing with the Court.

2. Within thirty (30) days of the Preliminary Approval of this Stipulation and Order by the United States District Court, the City will provide to Class Counsel the last known

addresses of Class Members. Within twenty-one (21) days of receipt of the Class Members' names and addresses, Class Counsel shall provide notice to the members of the Class, in the form attached hereto as **Exhibit 6** via first class mail with this Stipulation as an attachment, which shall include the right to object or opt out of the settlement. As set forth herein, the Parties agree to request that the Court schedule the Fairness Hearing at the earliest practicable time on or after seventy-five (75) days from the Preliminary Approval of this Stipulation.

3. Class Members who wish to file an objection to the settlement agreement, or to Opt-Out, shall file such objections or Opt-Out notices within forty-five (45) days from the mailing of the Class Notice, but in no event later than fourteen (14) days prior to the Fairness Hearing.

4. The District Court shall also retain jurisdiction over this action for the Review Period for the purpose of ensuring and enforcing compliance with any terms and provisions of this Stipulation.

5. At the conclusion of the Review Period, the above-captioned action shall be dismissed with prejudice and without costs, expenses, or fees in excess of the amounts authorized by the Court or agreed upon by the Parties in accordance with this Stipulation.

6. The terms of this Stipulation shall be a full, final, and complete resolution of this action. The Stipulation shall not become effective nor shall the Defendants be required to undertake any obligations in the event that the final determination of any such appeals or petitions results in a rejection of the settlement as set forth in this Stipulation or a reversal of the order dismissing the action.

H. ENFORCEMENT AND DISPUTE RESOLUTION

1. If Class Counsel believes that Defendant is not in compliance with this Stipulation, it shall notify counsel for Defendant, in writing, thirty (30) days prior to seeking the

Court's intervention regarding the alleged non-compliance.

2. The Parties agree to attempt to resolve any allegations of non-compliance through good faith negotiations without the Court's intervention.

3. If the Parties cannot resolve any allegations of non-compliance through good faith negotiations, Class Counsel may make an application to the Court seeking enforcement of a particular term of this Stipulation.

4. The Parties reserve their right to appellate review of the Court's decisions concerning compliance under the Stipulation, as governed by applicable law.

5. The provisions of this Section are the exclusive means for enforcing the terms of this Stipulation.

I. RELEASE

1. Except as otherwise provided in this Stipulation, and except any persons who have exercised a right to opt out of this Stipulation and Order, as of the Effective Date, the Stipulation resolves in full any and all claims or rights of action against the Defendant and its predecessors, successors, or assignees together with past, present, and future officials, employees, representatives, and agents of the NYPD, and the City of New York ("Released Persons"), by any Plaintiff, including all members of the Settlement Class and all Class Representatives, regarding any equitable, injunctive and/or incidental monetary relief claims arising from allegations of religious discrimination and/or retaliation pursuant to the United States Constitution, The New York State Constitution, Title VII of the Civil Rights Act of 1964, the New York State Human Rights Law and/or the New York City Human Rights Law arising from a Plaintiff's request, receipt or denial of a religious accommodation to grow facial hair for religious purposes that could have been raised in this action, including all claims for attorneys'

fees and costs, with the exception of the Named Plaintiff's individual claims for which a release will be required per Paragraph E herein.

2. With the exception of the Named Plaintiff, this Stipulation does not affect the rights of individual members of the Settlement Class to bring an action against Defendant asserting claims other than those identified in Paragraph I(1).

3. As of the Effective Date, the Named Plaintiff hereby releases and discharges the Released Parties from any and all claims, liabilities and/or causes of action which Plaintiff has or may have against any of the Released Parties based on any act, omission, event or occurrence occurring from the beginning of the world up through and including the date hereof, including, without limitation, any and all claims which were or could have been alleged by Named Plaintiff in the Action arising out of the events alleged in the complaint therein, including all claims for attorneys' fees and costs.

J. APPLICATIONS AND PARTIES BOUND

1. This Stipulation applies to, and is intended to be binding upon, the Named Plaintiff and/or members of the Settlement Class, including the Named Plaintiff, Class Counsel, Defendants, and the City's officers, agents, employees, successors, and assigns. This Stipulation is enforceable only by the Named Plaintiff and/or members of the Settlement Class, and the Defendant. The undersigned representatives of the Plaintiff and/or the Settlement Class, including the Named Plaintiff, certify that they are authorized to enter into and consent to the terms and conditions of the Stipulation and to execute and legally bind the Named Plaintiff to it. The undersigned representatives of the Defendants certify that they are authorized to enter into and consent to the terms and conditions of the Stipulation and to execute and legally bind the Defendants to it.

K. MODIFICATION OF THE SETTLEMENT STIPULATION AND ORDER

1. This Stipulation represents the entire agreement among the Parties, and no oral agreement entered into at any time nor any written agreement entered into prior to the execution of this Stipulation shall be deemed to exist, or to bind the Parties hereto, or to vary the terms and conditions contained herein, or to determine the meaning of any provisions herein. This Stipulation can be modified only on the written consent of the Named Plaintiff and the City, or upon order of the Court.

L. NOTIFICATION OF PARTIES UNDER THE SETTLEMENT STIPULATION AND ORDER

1. All notices contemplated by this Stipulation, other than notice to the Settlement Class pursuant to this Stipulation, shall be in writing and shall, unless expressly provided otherwise herein, be delivered by hand delivery and by e-mail, and shall be addressed as follows:

FOR THE PLAINTIFF CLASS

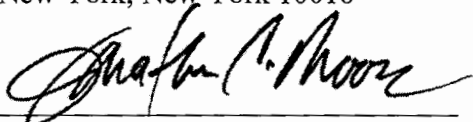
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Dated: New York, New York
January 2, 2018

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Class*

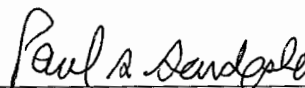
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Andrea O'Connor
Joseph Anci

Attorney for Defendants

SO ORDERED:



HON. PAUL G. GARDEPHE
UNITED STATES DISTRICT JUDGE

Sept. 21, 2018