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Attorney for Plaintiffs

A.R., <i>et al.</i>	:	Civil Action No. 151201740
	Plaintiffs	:
		:
v.	:	Class Action Complaint - Pursuant
	:	to 18 PA.C.S. § 6111, Breach of
	:	Confidentiality, Invasion of Privacy,
City of Philadelphia, <i>et al.</i>	:	and Declaratory and Injunctive
	Defendant	:
		Relief

**PLAINTIFF’S UNCONTESTED AMENDED MOTION FOR CLASS
CERTIFICATION FOR SETTLEMENT PURPOSES ONLY AND
FOR PRELIMINARY APPROVAL OF SETTLEMENT AND NOTICE PROGRAM**

The named Plaintiff in this action (the “Plaintiff” or “Representative Plaintiff”) moves, uncontested, for certification of the instant action as a class action for settlement purposes only, moves for his designation as the Representative Plaintiff, moves for designation of the undersigned counsel as class counsel, moves for preliminary approval of the settlement between the Parties, and moves for approval of the notice program, and in support thereof assert the following:

Background of the Litigation

1. On December 18, 2015, Plaintiff commenced the instant action by filing a Class Action Complaint, initially using a John Doe alias, on behalf of himself and all persons similarly situated (the “Class”) against Defendants, City of Philadelphia (the “City”), Mayor Michael A. Nutter (“Mayor Nutter”), Philadelphia Police Commissioner Charles H. Ramsey (“Commissioner Ramsey”), the Philadelphia Police Department (“PPD”), the Gun Permit Unit of

the Philadelphia Police Department (“GPU”), Detective Stuski #8015, and several unknown “Doe” entities and individuals (collectively, the “Defendants”).

2. Thereafter, on February 24, 2016, Defendants filed Preliminary Objections to the Complaint, for which, a final decision was rendered by the Court on July 5, 2017.

3. The City filed a timely Amended Answer on July 19, 2017.

4. On August 16, 2017, Defendants file a Motion for Judgment on the Pleadings, for which a final decision was rendered by the Court on February 9, 2018.

5. While the Court denied Defendants Preliminary Objections and Motion for Judgment on the Pleadings in relation to the postcards, the Court granted Defendants’ Preliminary Objections in relation to the clipboards and verbal disclosures.

6. The operative pleading in this matter is the Second Amended Class Action Complaint, which was filed on March 18, 2018, which added as Defendants, Officer Mireille Green, Officer Shamaya Mincer, Officer Mary Pawlowski, and Lieutenant Lisa King. A true and correct copy of the Second Amended Class Action Complaint is attached to the Settlement Agreement as Exhibit “A.”

Facts Alleged by Plaintiffs

7. Plaintiff alleges that the Defendants improperly disclosed, through the use of un-enveloped postcards and unprotected clipboards, confidential information (“LTCF Information”) about applicants who applied for a License to Carry Firearms (“LTCF”).

8. Plaintiff alleges that the foregoing actions of Defendants violated Pennsylvania law and, in particular, 18 Pa.C.S. 6111(i) (the “Statute”). Plaintiff alleges that under the Statute, each class member is entitled to recover \$1,000 per Settlement Class Member per Defendant, plus attorneys’ fees and expenses. The Statute states:

Confidentiality.--All information provided by the potential purchaser, transferee or applicant, including, but not limited to, the potential purchaser, transferee or applicant's name or identity, furnished by a potential purchaser or transferee under this section or any applicant for a license to carry a firearm as provided by section 6109 shall be confidential and not subject to public disclosure. In addition to any other sanction or penalty imposed by this chapter, any person, licensed dealer, State or local governmental agency or department that violates this subsection shall be liable in civil damages in the amount of \$1,000 per occurrence or three times the actual damages incurred as a result of the violation, whichever is greater, as well as reasonable attorney fees.

9. In addition, Plaintiff alleges that the Defendants maintain certain policies and procedures that violate Pennsylvania law, thereby adversely affecting the members of the Settlement Class. Therefore, Plaintiff has also asserted a claim for declaratory and injunctive relief and seek an order requiring the Defendants to modify or rescind such policies and procedures.

Description of the Settlement Class and Subclasses

10. Pursuant to Rule 1707 of the Pennsylvania Rules of Civil Procedure, Plaintiff hereby moves for certification of this action as a class action for settlement purposes only. The Settlement Class is defined as:

The 21,253 individuals whose LTCF information was potentially disclosed by Defendants on or after December 18, 2013, through the use of un-enveloped postcards, unprotected clipboards, or through verbal disclosures at the GPU, in alleged violation of 18 Pa.C.S. § 6111(i). Excluded from the Settlement Class are the council members, officers and employees of the Defendants.

The Settlement Class is comprised of two subclasses as follows:

Subclass I:

The 988 members of the Settlement Class whose LTCF Information was visible on un-enveloped postcards that were sent to those 988 individuals.

Subclass II:

The 20,265 members of the Settlement Class who potentially placed their names and other information onto LTCF application, renewal or pickup clipboards or who may have had their LTCF Information disclosed through verbal disclosures at the GPU, and who are not members of Subclass I.

Prerequisites for Class Certification

11. Pursuant to Pa.R.C.P. 1702, there are five prerequisites for the maintenance of a class action:

- (1) The class is so numerous that joinder of all members is impracticable (numerosity);
- (2) There are questions of law or fact common to the Class (commonality);
- (3) The claims or defenses of the representative parties are typical of the claims or defenses of the class (typicality);
- (4) The representative parties will fairly and adequately assert and protect the interests of the class under the criteria set forth in Rule 1709 (adequacy of representation); and
- (5) A class action provides a fair and efficient method for adjudication of the controversy under the criteria set forth in Rule 1708 (fairness and efficiency).

Decisions in favor of maintaining a class action should be liberally made. Moreover, the merits of the underlying case cannot be considered when determining whether class certification is warranted. All of the prerequisites for class certification are met here for the reasons set forth herein and in Plaintiff's Memorandum of Law.

12. With regard to numerosity under Pa.R.C.P. 1702(1), there are 21,253 members of the Settlement Class, with Subclass I having 988 members and Subclass II having 20,265 members. This is more than enough to satisfy the numerosity requirement as explained in Plaintiff's Memorandum of Law.

13. With regard to commonality under Pa.R.C.P. 1702(2), there are questions of law and fact common to the Settlement Class, as explained in Plaintiff's Memorandum of Law. Those questions include, but are not limited to, whether the Defendants disclosed and/or ordered the disclosure of the LTCF Information in violation of the Statute, whether each of the City of Philadelphia's units, departments and agencies named in the Second Amended Complaint are separately liable to the members of the Class, whether the Plaintiff and putative class are entitled to a separate award of statutory damages from each defendant named in the Second Amended Complaint, and whether any of the Defendants are entitled to immunity under the Political Subdivision Tort Claims Act.

14. With regard to typicality under Pa.R.C.P. 1702(3), there is a named Representative Plaintiff who can represent the two Subclasses, as he is a member of both subclasses. As such, there are factual and legal issues in common and the claims of the Representative Plaintiff are exactly the same as the claims of those class members in their respective Subclasses. As a result, the pursuit by the Representative Plaintiff will advance the interests of the members of the entire Class.

15. Pursuant to Pa.R.C.P. 1702(4), the Representative Plaintiff and his counsel will fairly and adequately assert and protect the interests of the Class under the criteria set forth in Rule 1709 of the Pennsylvania Rules of Civil Procedure.

(a) Pursuant to Pa.R.C.P. 1709(1), the undersigned counsel will adequately represent the interests of the Class. The experience and reputation of the undersigned counsel ensures that the representation of members of the Class will be "adequate." In particular, the undersigned previously litigated the class action of *John Doe, et al. v. City of Philadelphia, et al.*, docket number 121203785, and has substantial experience

litigating firearms law issues at the state and federal level, including in relation to issues of first impression, such as, *John Doe, et al. v. Franklin County, et al.*, 139 A.3d 296 (Cmwlth. Ct. 2016); *Michael Keyes, et al., v. Lynch, et al.*, 195 F.Supp.3d 702 (M.D. Pa. 2016) and 282 F.Supp.3d 858 (M.D. Pa. 2017); and, *Alton Franklin v. Sessions, et al.*, 291 F.Supp.3d 705 (W.D. Pa. 2017).

(b) Pursuant to Pa.R.C.P. 1709(2), there is no conflict of interest in the maintenance of this class action either between the Representative Plaintiff and absent Class members, or between Class counsel and the Class members.

(c) Pursuant to Pa.R.C.P. 1709(3), the Representative Plaintiff, through his counsel, has adequate financial resources to assure that the interests of the Class will not be harmed, especially given the fact that as part of the proposed Settlement, the City of Philadelphia will be separately paying the cost of administration of the Settlement, including preparing, mailing and managing notification of the members of the Class.

16. Pursuant to Pa.R.C.P. 1702(5), a class action will provide a fair and efficient method for adjudication of this controversy under the criteria set forth in Pa.R.C.P. 1708 of the Pennsylvania Rules of Civil Procedure.

(a) Pursuant to Rule 1708(a)(1), common questions of law or fact predominate over any questions affecting only individual members because this case only requires the Court to determine: (1) whether confidential LTCF Information was disclosed by Defendants; (2) who is liable; and (3) the amount of damages to which each Class member is entitled. Only Pennsylvania law and, in particular, Section 6111(i) will be applicable. Moreover, since members of the Class will receive a set amount of damages under the Proposed Settlement, there will not be any questions affecting only

individual members of the Class.

(b) Pursuant to Rule 1708(a)(2), the size of the Class is not so large as to present difficulties in the management of the case as a class action. Indeed, the class action device will greatly simplify the judicial management of this case as it will enable this Court to assume control over all litigation involving the claims asserted by Plaintiffs. Moreover, Courts regularly certify classes significantly larger than the Class in this matter as explained in Plaintiff's Memorandum of Law.

(c) Pursuant to Rule 1708(a)(3)(i), the prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications, including inconsistent or varying adjudications regarding confidentiality, which would confront the Defendants with incompatible standards of conduct. Moreover, separate actions would result in a waste of judicial resources due to the possible filing of more than 21,000 individual lawsuits.

(d) Pursuant to Rule 1708(a)(3)(ii), the prosecution of separate actions by individual members of the Class would create a risk of adjudications with respect to the individual members of the Class which would, as a practical matter, be dispositive of the interests of other members of the Class not parties to the adjudications and would substantially impair or impede those members' abilities to protect their interests due to the fact that an adverse ruling in individual cases regarding which individual Defendants may be liable, or whether the Defendants publicly disclosed confidential LTCF Information, could have a preclusive affect on, or precedential value in, other cases.

(e) Pursuant to Rule 1708(a)(4), to counsel's knowledge, the instant matter is the only currently pending case involving disclosure by any of the Defendants of LTCF

Information.

(f) Pursuant to Rule 1708(a)(5), the Philadelphia Court of Common Pleas is the appropriate forum for the litigation of the claims of the entire Class since the disclosure of LTCF Information was directed by the Defendants in Philadelphia and all, or nearly all, of the parties, witnesses and evidence are located in Philadelphia.

(g) Pursuant to Rule 1708(a)(6), in view of the need to take substantial discovery, including numerous depositions, and the novel nature of this litigation, the assertion of separate claims by individual Class members would be insufficient in value/amount to support and justify separate actions.

(h) Pursuant to Rule 1708(a)(7), in view of the fact that members of Subclass I will receive more than \$300 each and members of Subclass II will receive the benefit of the injunctive relief, the amount which may be recovered by individual class members will not be so small in relation to the expense and effort of administering the class action as not to justify a class action.

(i) Pursuant to Rule 1708(b)(2), the Defendants have acted on grounds generally applicable to the class with regard to the policy and procedure changes sought by Plaintiff, thereby making final equitable relief appropriate with respect to the Settlement Class.

Preliminary Approval of the Settlement

17. Under Pennsylvania law, settlements are favored in class action lawsuits. However, a class action may not be settled without a hearing and court approval. The class action approval process requires two steps, the first of which consists of a preliminary evaluation and, if appropriate, approval of the settlement followed by notice to the class members. After notifying

the class members, a final approval hearing (also called a fairness hearing) must be held where arguments for and against the settlement are heard by the Court.

18. To be preliminarily approved, a settlement must fall within a “range of reasonableness” or “range of possible approval.” Based on the analysis provided in Plaintiff’s Memorandum of Law, including analysis of the six relevant factors identified as relevant by the Pennsylvania Supreme Court, the proposed settlement as set forth in the Settlement Agreement between the Parties falls within the “range of possible approval” and should be preliminarily approved by the Court. A true and correct copy of the Settlement Agreement between the Parties, with Exhibits, is attached hereto as Exhibit “1.”

Approval of the Notice Program

19. As explained above, once the Settlement is preliminarily approved, notice of the Settlement must be provided to all Settlement Class Members.

20. According to the Pennsylvania Superior Court, such notice must present a fair recital of the subject matter and proposed terms of the proposed settlement, although it may consist of a very general description of the proposed settlement, including a summary of the monetary and other benefits that the class would receive and an estimation of the attorneys’ fees and other expenses. The notice must also inform the class members of an opportunity to be heard regarding the propriety of the proposed settlement. The notice need not provide a complete source of settlement information and it is enough that the notice contains facts sufficient to alert interested persons to the terms of the proposed settlement and also the means by which further inquiry can be made and objection recorded.

21. The Notice Program set forth in the Settlement Agreement between the parties, and the proposed Class Notices, which have been reviewed and approved by counsel for all

Parties, and true and correct copies of which are attached to the Settlement Agreement as Exhibits “D-2” and “D-2,” meet the foregoing requirements since they describe the Settlement in relatively simple terms, explain how to opt out or object to the Settlement and provides the deadline to do so, inform the Settlement Class Members of the date and purpose of the Final Approval hearing and the amount of proposed attorneys’ fees and expenses, and explains the ways in which additional information about the Settlement can be obtained, such as through the Settlement Website.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs respectfully request that this Honorable Court:

(a) Hold a Preliminary Approval Hearing regarding the foregoing as soon as practicable; and

(b) Thereafter issue the attached proposed Preliminary Approval Order:

(1) Certifying this action as a class action for settlement purposes only;


(2) Appointing Class Counsel as counsel for the Settlement Class in this action;

(3) Preliminarily approving the Settlement between the Parties (as set forth in the Settlement Agreement between the Parties) pending notification of the Settlement Class members, the opportunity by Settlement Class members to opt out or object to the proposed Settlement, and the Final Approval Hearing; and

(4) Approving the Class Notices and the Notice Program as set forth in the Settlement Agreement between the Parties.

Respectfully Submitted,

Date: July 18, 2018



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