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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

CLASS OF AFFECTED TENANTS, on behalf of themselves and all others similarly situated,

Plaintiffs-Intervenors,

v.

CITY OF NEWARK,

Plaintiff-Crossclaim Defendant,

CITY OF JERSEY CITY,

Plaintiff-Intervenor,

v.

CITY OF NEW YORK,

Defendant.

Case No. 2:19-cv-20931-MCA-LDW

CLASS ACTION COMPLAINT AND CROSSCLAIMS FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. In this action, the City of Newark ("Newark") and the City of New York ("NYC") ask this Court to consider the legality of both NYC's implementation and administration of its Special One-Time Assistance ("SOTA") program and Newark's response thereto, Municipal Code §§ 18:6-10.1 et seq. (Nov. 18, 2019) (the "Ordinance"). Generally, SOTA provides homeless NYC shelter residents up to one year of rental assistance that can be used in NYC or other jurisdictions, including in Newark. At the start of the program, a flawed or absent quality control process allowed some households to be placed in apartments with uninhabitable conditions. The Ordinance purports to require more accountability so that households are not placed in unsafe apartments, but it also obstructs the right to travel by effectively prohibiting SOTA participation in Newark in that it outlaws prepaid rental assistance for periods longer than one month.

2. Notably absent from this lawsuit between the cities is the voice of those directly affected by SOTA and the Ordinance: the tenants. The Class of Affected Tenants ("Tenants" or "Intervenors") seek to ensure that these tenants' interests are appropriately represented.

3. Tenants include: (a) SOTA-participant tenants who moved into untenable living situations outside New York due to defects in the SOTA apartment review process that the Ordinance purports to remedy ("Past/Present

Tenants" or "Plaintiff Intervenors"); and (b) SOTA-eligible tenants who wish to move to Newark but cannot because of conflicting terms in SOTA and the Ordinance ("Future Tenants" or "Crossclaimant Intervenors").

4. Shakira Jones, on behalf of herself and all others similarly situated, represents Past/Present Tenants, who seek to intervene in this action to enjoin and ensure the correction of NYC's improper review of SOTA apartments in violation of the Dormant Commerce Clause and the protection against state-created danger in the Due Process Clause.

5. Eugene Samuels, on behalf of himself and all others similarly situated, represents the Future Tenants, who seek to intervene in this action to enjoin Newark from enforcing the Ordinance in violation of the New Jersey Law Against Discrimination and the constitutional right to travel.

6. Tenants seek declaratory and injunctive relief to bar Newark from prohibiting Future Tenants from traveling to and living in Newark, and to ensure that Past/Present Tenants are placed in safe housing through SOTA.

JURISDICTION AND VENUE

7. This Court has federal question jurisdiction under 28 U.S.C. § 1331 because this action arises under the Constitution of the United States, such as 42 U.S.C. § 1983 and 42 U.S.C. § 3604.

8. The Court has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

9. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claims occurred in this district.

PARTIES

10. Past/Present Tenants (Plaintiff Intervenors) are represented by Shakira Jones, who twice moved to Newark via SOTA and experienced severely uninhabitable living conditions caused in part by NYC's inadequate oversight and execution of SOTA. Ms. Jones currently resides in a shelter in New York City.

11. Future Tenants (Crossclaimant Intervenors) are represented by Eugene Samuels, who wishes to move to Newark via SOTA, but is prohibited from doing so by Newark's Ordinance. Mr. Samuels currently resides in a shelter in New York City.

12. NYC (Defendant) is a municipal corporation, established under the laws of New York, with its principal business address at City Hall Park, New York, New York.

13. Newark (Plaintiff-Crossclaim Defendant) is a municipal corporation, established under the laws of New Jersey, with its principal business address located at 920 Broad Street, Newark.

FACTS RELEVANT TO ALL COUNTS

I. NYC IMPLEMENTS SOTA TO HELP NYC RESIDENTS BREAK THE CYCLE OF HOMELESSNESS, BUT SOTA FAILS TO MEET ITS NOBLE GOALS.

14. On August 31, 2017, the NYC Human Resources Administration ("HRA"), a division of NYC's Department of Social Services, implemented SOTA as a rental assistance program "to help households with income move out of shelter and into affordable, stable, permanent homes of their own, in locations of their choosing." Declaration of Sheila Corbin (D.E. 23-1) ¶ 10 (hereinafter "Corbin Decl. 2").

15. Upon information and belief, no single, publicly accessible document sets forth the text of SOTA.

16. Instead, HRA's website memorializes SOTA in the form of an interactive FAQ page. *See* N.Y.C. Human Res. Admin., Rental Assistance: SOTA Frequently Asked Questions (last visited Nov. 11, 2020), https://www1.nyc.gov/site/hra/help/sota.page.

17. Additionally, NYC sets forth the requirements of SOTA by citing to various declarations by Sheila Corbin, Executive Director of NYC's Housing Referrals and Processing Unit within City of New York's Department of Homeless Services (the "DHS"), who recounts different iterations of the program at different points in time. *See* Counterclaimant City of New York's Brief in Support of its

Motion for a Temporary Restraining Order (D.E. 16) at 4-9 (hereinafter "NYC TRO Br.") (citing Declaration of Sheila Corbin (D.E. 15-4) (hereinafter "Corbin Decl. 1"); Defendant City of New York's Memorandum of Law in Opposition to City of Newark's Motion for Preliminary Injunction (D.E. 24) at 3-9 (citing Corbin Decl. 2); Defendant City of New York's Supplemental Letter in Further Support of its Motion for a Temporary Restraining Order and in Further Opposition to City of Newark's Motion for Preliminary Injunction (D.E. 35) (hereinafter "NYC Supp. Ltr.") (citing Supplemental Declaration of Sheila Corbin (D.E. 35-1) (hereinafter "Corbin Decl. 3").

18. In every iteration of the SOTA program, it has provided rental assistance to working people to enable them to move out of shelter and into permanent housing so that they may resume their lives in the community.

19. At initiation of this lawsuit, under SOTA, HRA "provide[d] *one year's full rent up front* for eligible DHS clients to move within New York City . . . or to another state." Corbin Decl. 1 ¶¶ 11–13 (emphasis added).

20. To be an "eligible DHS client" (and therefore qualify for this rental assistance), the individual or family (a) must have lived in a NYC shelter for at least 90 days (within the past year if the family had no children), and (b) must earn more than double the amount of future rent. *Id.*

21. Despite SOTA's objective to help relocate homeless households to permanent housing, many of the initial housing placements provided under this program were anything but "stable" and "permanent."

22. In December 2019, NYC's Department of Investigation ("DOI") released the results of an internal investigation into SOTA (the "DOI Investigation"), finding that "a lack of proper oversight and poorly designed paperwork" allowed "unscrupulous landlords" to "collect[] tens of thousands of dollars in rental payments upfront" while providing sub-substandard living conditions to some SOTA participants.

23. Specifically, the DOI Investigation uncovered that certain SOTA placements made during 2019 suffered from: (a) a lack of heat (in one instance resulting in inside temperatures of 46.2 degrees); (b) defective machinery; (c) insect and vermin infestations; (d) malfunctioning electrical systems; and/or (e) other miscellaneous code violations. The DOI concluded that HRA did not have appropriate "processes in place to hold landlords accountable for misrepresenting the condition and habitability of their properties," and thus, "the promise of the program is not being fulfilled."

24. As of November 10, 2020, there were 53,926 people in DHS shelter, including 10,224 families with children; 2,043 families with no minor children; and 18,114 single adults. Upon information and belief, approximately one-third of

households in shelter include at least one member who is employed. Thus, there are potentially thousands of homeless households who may be SOTA-eligible currently residing in DHS shelter.

II. MS. JONES' EXPERIENCES EXEMPLIFY THE SHORTCOMINGS OF SOTA AND ARE REPRESENTATIVE OF SITUATIONS FACED BY PAST/PRESENT TENANTS.

25. Ms. Jones moved to Newark in 2018 via SOTA, and experienced circumstances similar to those described in the DOI Investigation and report.

26. Before moving to Newark, Ms. Jones lived in a New York City homeless shelter operated by a DHS contractor in Jamaica, Queens for approximately ten months.

27. At that time, Ms. Jones had two children who were five and two years old, and was in the final term of her pregnancy with her third child. Ms. Jones was employed as a security guard at commercial banks in various locations in New York City. She later also had a second job in New York City at a hair salon.

28. A few months after Ms. Jones and her family moved into shelter, representatives of DHS told her that she was eligible for SOTA, as she had lived in shelter for at least 90 days and earned more than double her would-be SOTA apartment rent.

29. The DHS representatives sent Ms. Jones to the DHS headquarters at 33 Beaver Street in New York, New York in March 2018.

30. Upon arrival at DHS, two DHS representatives took her and other shelter residents on a bus to view apartments in New Jersey (the "DHS Bus Ride").

31. During the DHS Bus Ride, the two DHS representatives showed Ms. Jones and other shelter residents apartments in Newark and other cities in New Jersey.

32. Ms. Jones was shown, and went on walkthroughs of, the apartments in New Jersey with the DHS representatives.

33. Each walkthrough lasted no more than ten minutes.

34. During the DHS Bus Ride, Ms. Jones chose an apartment located at 768 South 12th Street, Newark, New Jersey (the "South 12th Street Apartment").

35. Four days after the DHS Bus Ride, a DHS representative told Ms. Jones to pick up a furniture check along with the keys to the South 12th Street Apartment, and DHS gave Ms. Jones' rent checks directly to her landlord.

36. About one week after the DHS Bus Ride, Ms. Jones moved into the South 12th Street Apartment. The DHS representatives moved all of her belongings and her family there, and dropped off five air-beds.

37. Ms. Jones lived on the third floor of the South 12th Street Apartment which was in an attic. There were two other apartments in the building.

38. Shortly after living at the South 12th Street Apartment, the lights stopped working, the electric heater began to spark and smoke and the electricity in

the apartment would short circuit, which would cause the refrigerator to turn off and her food to spoil. The electrical wiring was visibly exposed. There were rats and mice in the apartment and the walls and floors were eroding.

39. Ms. Jones called DHS headquarters to report the problems, but they did not answer her calls nor assist her with her living conditions.

40. Ms. Jones reached out to the Newark Fire Department and reported the problem with the electric heater. The Fire Department came to the apartment and advised Ms. Jones to turn the electric heater off, and tell her landlord to fix it because it could cause a fire. Ms. Jones thus notified her landlord about the issues with the apartment, but he did not fix them.

41. Ms. Jones went to the electric utility PSE&G to ask why her electricity was not working, and PSE&G told her that her apartment was not listed in their records and that no meter was running to the third floor apartment.

42. Sometime in October 2018, Ms. Jones called Newark Code Enforcement, who, after an inspection, advised her that the South 12th Street house was legally only a two-family dwelling and her apartment had been illegally converted into an apartment.

43. Newark Code Enforcement filed a complaint against the landlord of the South 12th Street Apartment, ordering the landlord to fix the conditions. After Newark Code Enforcement filed the complaint, the landlord fixed some of the issues

in the South 12th Street Apartment temporarily but most of the problems were not properly fixed and they resumed.

44. Ms. Jones called Newark Code Enforcement once more at the end of January 2019. In addition to being an illegally converted apartment, Newark Code Enforcement found (i) that there was no heat, (ii) that the walls and ceilings were cracked, (ii) that the electrical lighting and sockets were damaged, (iv) that there was an illegal fire-escape, (v) that the basement had severe plumbing issues that caused flooding, (vi) that the South 12th Street Apartment was a threat to the safety of its occupants and community, and (vii) that the South 12th Street Apartment was unfit for human habitation, occupancy, and use by Ms. Jones.

45. Accordingly, Newark Code Enforcement ordered Ms. Jones and her family to vacate the South 12th Street Apartment.

46. The landlord paid for Ms. Jones and her family stay at an apartment secured through Airbnb for two days. However, because she had nowhere else to go, after two days Ms. Jones returned to the South 12th Street Apartment with her family.

47. Ms. Jones ultimately stayed at the South 12th Street Apartment for thirteen months, including the entire twelve-month period lease that the SOTA Program paid the landlord. During that time, the heat would sometimes work, and the basement would flood and later freeze from the cold temperatures.

48. A few months into her lease at the South 12th Street Apartment, the babysitter Ms. Jones hired to watch her three children quit because there was no heat or electricity in the South 12th Street Apartment. After the babysitter quit, Ms. Jones lost her job as a hairdresser in New York City because she needed to stay home and care for her children.

49. Sometime in February 2019, the television news station "CBS2" ran a story about the "forgotten families" that were living in New Jersey after being placed there with the SOTA Program. Ms. Jones appeared in one of the stories. After CBS2 aired its stories, a DHS representative reached out to her for the first time since moving into the South 12th Street Apartment.

50. The DHS representative told Ms. Jones that she qualified for additional rent assistance, and in March 2019, Ms. Jones found another apartment located at 1-7 Lehigh Avenue, Apartment M2, Newark, New Jersey 07114 (the "Lehigh Apartment").

51. Ms. Jones moved into the Lehigh Apartment and noticed similar issues in this apartment: it had no heat, there were cracks in the walls and ceilings, and the electric sockets were damaged and exposed.

52. The DHS representative from the SOTA program gave the advance six-months' rent directly to Ms. Jones' new landlord.

53. Ms. Jones called Newark Code Enforcement again because the Lehigh Apartment had no heat, but the landlord never fixed the heat.

54. At the Lehigh Apartment, Ms. Jones fell through the kitchen floor and fractured her hand.

55. As a result, Ms. Jones was unable to find other work.

56. Ms. Jones took a picture of the broken floor, which had been hidden by a sheet of linoleum.

57. Ms. Jones now resides in a shelter in New York City with her three children who are six, three, and two years old. She hopes to get her security job back soon so she can move my family back to permanent housing.

58. Ms. Jones represents a number of similarly situated individuals who, under SOTA, moved outside of New York, and experienced or are experiencing severely uninhabitable circumstances due to NYC's lack of oversight in the administration of SOTA.

III. NEWARK RESPONDS TO SOTA'S MISMANAGEMENT BY ENACTING THE ORDINANCE, WHICH FUNCTIONALLY BANS SOTA TENANTS FROM MOVING TO NEWARK.

59. On November 18, 2019, Newark seemingly sought to remedy these shortcomings in SOTA by enacting the Ordinance, which placed additional requirements on providers of rental assistance to ensure habitable living conditions for SOTA participants in Newark. Ordinance § 18:6-10.2.

60. For example, Newark required providers of rental assistance to, among other things, (i) physically "inspect the rental unit," (ii) obtain a "copy of the application for the Certificate of Code Compliance," and (iii) provide Newark "a plan of action for the provision of rental assistance beyond the current tenancy so as to avoid homelessness of the tenant." *Id.* § 18:6-10.2(a)–(b).

61. However, Newark also included a provision mandating the following:

> No Landlord shall accept pre-paid rent for more than (1) month from an agency or person providing rental subsidy, assistance, grant or voucher. Except, a Landlord may accept pre-paid rent if it solely [is] the decision of the tenant and the tenant is paying rent without a rental subsidy, assistance, grant or voucher.

Id. § 18:6-10.2(f).

62. On January 13, 2020, during the pendency of this action, Newark then amended this section of the Ordinance, requiring only that "[n]o landlord shall accept pre-paid rent for more than (1) month." Newark Municipal Code § 18:6-10.2(e) (Jan. 13, 2020) (the "Amended Ordinance").

63. Both the Ordinance and the Amended Ordinance also provide that "[n]o person shall knowingly bring, or cause to be brought, a needy person to the City of Newark for purposes of making him or her a public charge" and defining "needy person" as "a person who is in a state of poverty" and who does not have "the necessities of food and shelter." *Id.* § 18:6-10.3; Ordinance § 18:6-10.

IV. MR. SAMUELS' EXPERIENCE EXEMPLIFIES THE PROHIBITORY EFFECT OF THE ORDINANCE AND IS REPRESENTATIVE OF SITUATIONS FACED BY FUTURE TENANTS SEEKING TO USE SOTA TO MOVE TO NEWARK.

64. Mr. Samuels currently resides in a shelter in Manhattan in New York City.

65. Mr. Samuels works full-time as a case worker at a group home in Brooklyn. Mr. Samuels has worked there for five years.

66. Mr. Samuels became homeless last year and went to ask for help at DHS in August 2019.

67. Mr. Samuels does not want to live in shelter and has been trying to move out to Newark under SOTA.

68. DHS staff told Mr. Samuels he was eligible for the SOTA rent program, because he is a single adult living in an NYC shelter for 90 out of the last 365 days and works full-time earning more than double his would-be SOTA apartment rent.

69. Shelter workers then took Mr. Samuels to see an apartment in Newark. Mr. Samuels liked the apartment. The apartment was not ready for him to move in, but the landlord said it would be ready soon. Mr. Samuels visited another unit in the same building so he could tell the apartment would have been great for him.

70. Mr. Samuels has friends in New Jersey and feels comfortable living there.

71. Mr. Samuels researched the commute to his job and found that it would be acceptable.

72. The Ordinance has prevented Mr. Samuels from moving to Newark.

73. In shelter, Mr. Samuels shared a dorm with seven other people prior to the COVID-19 pandemic, and now shares a room with one other person. He thus has no privacy. He has a curfew and no kitchen so he cannot cook for himself. Mr. Samuels very much wants to move out of shelter and to the apartment in Newark.

74. Mr. Samuels represents a number of similarly situated individuals who qualify for SOTA, wish to use SOTA to move to Newark, but are prevented from doing so because of the Ordinance.

V. NYC MAKES AD HOC AMENDMENTS TO THE SOTA PROGRAM DURING THE PENDENCY OF THIS LITIGATION.

75. NYC claims that it has substantially improved the program since the placements described in the DOI report. NYC TRO Br. at 8–9 (citing Corbin Decl. 2 ¶¶ 24, 44-48).

76. For example, NYC created a "guidance document and a regimen for continuous training" for individuals conducting SOTA apartment reviews. *Id.* at 8 (citing Corbin Decl. 2, Ex. 5).

77. NYC also claims that it is "taking steps to establish a hotline for SOTA clients who want or need help after they have moved out of shelter and into permanent homes outside of NYC." *Id.* at 9 (citing Corbin Decl. 2 ¶ 48).

78. Finally, NYC claims that as of February 2020, SOTA rental payments will not be made via a one-time up-front payment, but instead "stagger[ed] . . . throughout the year . . . on a monthly basis." NYC Supp. Ltr. (citing Corbin Decl. 3).

79. While these amendments to SOTA appear to improve the program, there is no published document to show that these changes have in fact been implemented and have in fact been effective in remedying SOTA's shortcomings.

80. Given the ad hoc nature of NYC's procedure in amending and implementing the SOTA program, there appears to be nothing preventing NYC from reversing these changes after disposal of this action. Therefore, judicial action is still required.

CLASS ACTION ALLEGATIONS

81. Pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(2), Intervenors bring this action on behalf of themselves and all others who are similarly situated.

I. CLASS OF PAST/PRESENT TENANTS

82. Past/Present Tenants seek to represent the following class:

> Individuals who are currently placed in, or were placed in, unsafe or uninhabitable housing outside of New York pursuant to SOTA.

83. A class action is proper under Rule 23(a) because:

(1) The class is so numerous that joinder of all members is impracticable. According to a report from the DOI, between September 2017 and September 2019, DHS placed 5,074 single adults or families into permanent housing via SOTA. Of these placements, approximately 35% were made in New York City and approximately 65% outside New York City. Within the set of placements made outside New York City, approximately 87% were placements in other states. Of those placed in housing, it is unknown how many experienced unsafe or inhabitable housing.

(2) There are questions of law or fact common to the class. The Past/Present Tenants all are suffering or have suffered from being placed in unsafe or uninhabitable housing via NYC's lapse in administrative oversight. Questions of law common to members of the Proposed Class include whether NYC's failure to appropriately review the quality of the SOTA-approved apartments violates the Dormant Commerce Clause and/or constitutes a state-created danger in violation of the Due Process Clause.

(3) The claims or defenses of the representative parties are typical of the claims or defenses of the class. Ms. Jones asserts Dormant Commerce Clause and state-created danger Due Process

Clause claims, which are also the central claims of the Past/Present Tenants class members. The claims in this suit for injunctive relief to ensure greater administrative oversight and ongoing support are typical to all Tenants.

(4) The representative party will fairly and adequately protect the interests of the class. There are no conflicts between Ms. Jones' claims and those of the class, and the class representative is able to rely on pro bono class counsel with the expertise and resources to prosecute their claims. Tenants will still be free to pursue individualized damages claims against their individual landlords, non-parties to this action.

84. The Proposed Class also satisfies Federal Rule of Civil Procedure 23(b)(2) because NYC has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief and corresponding declaratory relief are appropriate respecting the class as a whole. NYC previously implemented its SOTA Program without appropriately vetting the housing, resulting in severely uninhabitable placements for some of NYC's most vulnerable citizens. A declaratory judgment holding that administration of SOTA must include appropriate oversight would remedy the problem for all members of the Proposed Class in one stroke.

II. CLASS OF FUTURE TENANTS

85. Future Tenants seek to represent the following class:

> Individuals who are eligible for SOTA, wish to be placed in Newark housing, and are prevented from doing so because of the Ordinance.

86. A class action is proper under Rule 23(a) because:

(1) The class is so numerous that joinder of all members is impracticable. As of November, 10, 2020, there were 53,926 people in DHS shelter, including 10,224 families with children; 2,043 families with no minor children; and 18,114 single adults. Upon information and belief, approximately one-third of households in shelter include at least one member who is employed. Thus, there are potentially thousands of homeless households who may be SOTA-eligible currently residing in DHS shelter.

(2) There are questions of law or fact common to the class. The Future Tenants all are experiencing a restriction on their movement to Newark solely on the basis of their socioeconomic status. Questions of law common to members of the Proposed Class include whether Newark's Ordinance violates the constitutional right to travel and/or New Jersey's Law Against Discrimination.

(3) The claims or defenses of the representative parties are typical of the claims or defenses of the class. Mr. Samuels claims that he is being prohibited from moving to Newark because of the unconstitutional and/or illegal Ordinance, which is also the central

claim of the Future Tenants class members. The claims in this suit for injunctive relief to allow Future Tenants to use SOTA to move to Newark are typical of all Future Tenants.

(4) The representative party will fairly and adequately protect the interests of the class. There are no conflicts between the Mr. Samuels' claims and those of the class, and the class representative is able to rely on pro bono class counsel with the expertise and resources to prosecute the class claims.

87. The Proposed Class also satisfies Federal Rule of Civil Procedure 23(b)(2) because Newark has acted or refused to act on grounds that apply generally to the Future Tenant class, so that final injunctive relief and corresponding declaratory relief are appropriate respecting the class as a whole. Newark implemented the Ordinance to deny SOTA-eligible individuals from moving into Newark. A declaratory judgment holding that the Ordinance is unconstitutional, together with an injunction preventing Newark from any further actions aimed to prevent SOTA-eligible individuals from moving to Newark, would remedy the problem for all members of the Proposed Future Tenants Class in one stroke.

III. CLASS COUNSEL

88. The Proposed Classes are represented by pro bono counsel from Lowenstein Sandler with extensive experience litigating class action lawsuits and other complex cases in federal court, including civil rights cases.

89. The Proposed Classes are also represented by counsel from The Legal Aid Society, who have extensive experience representing homeless individuals and tenants and litigating class actions in federal and state courts.

CLAIMS FOR RELIEF

COUNT ONE
(AGAINST NEWARK)
VIOLATION OF NEW JERSEY LAW AGAINST DISCRIMINATION, N.J.S.A. § 10:5-12

90. Tenants repeat and incorporate by reference each and every allegation contained in the preceding paragraphs as if fully set forth here.

91. Section 10:5-12(g)(1) of New Jersey Law Against Discrimination ("NJLAD") prohibits "any person, including but not limited to, any owner, lessee, . . . or other person having the right . . . to sell, rent, lease, assign, or sublease any real property" from "refus[ing] to sell, rent, lease, assign, or sublease or otherwise to deny to or withhold from any person or group of persons any real property or part or portion thereof because of . . . source of lawful income used for rental [] payments." N.J.S.A. § 10:5-12(g)(1).

92. Similarly, 10:5-12(g)(4) of NJLAD prohibits "any person, including but not limited to, any owner, lessee, . . . or other person having the right . . . to sell, rent, lease, assign, or sublease any real property" from

> refus[ing] to sell, rent, lease, assign, or sublease or otherwise to deny to or withhold from any person or group

> of persons any real property or part or portion thereof because of the source of any lawful income received by the person or the source of any lawful rent payment to be paid for the real property.

N.J.S.A. § 10:5-12(g)(4).

93. Additionally, Section 10:5-12(g)(2) of NJLAD prohibits "any person, including but not limited to, any owner, lessee, . . . or other person having the right . . . to sell, rent, lease, assign, or sublease any real property" from "discriminat[ing] against any person or group of persons because of . . . source of lawful income used for rental or mortgage payments[.]" N.J.S.A. § 10:5-12(g)(2).

94. Section 10:5-12(e) of NJLAD also prohibits "compel[ling] [another] . . . [to] do[] of any of the acts forbidden under this act." N.J.S.A. § 10:5-12(g)(1).

95. Section 18:6-10.2(f) of the Ordinance, as of the filing of this action, mandated the following:

> No Landlord shall accept pre-paid rent for more than (1) month from an agency or person providing rental subsidy, assistance, grant or voucher. Except, a Landlord may accept pre-paid rent if it solely [is] the decision of the tenant and the tenant is paying rent without a rental subsidy, assistance, grant or voucher.

Ordinance § 18:6-10.2(f).

96. By prohibiting landlords from accepting over one month of pre-paid rent from an agency providing rental assistance, Section 18:6-10.2(f) of the Ordinance compelled landlords to refuse rent from Future Tenants because of the

source of the lawful income used for rental payments, in clear violation of Sections 10:5-12(g)(1), 10:5-12(g)(4), and 10:5-12(e) of NJLAD.

97. Additionally, by prohibiting landlords from accepting over one month of pre-paid rent only from those on rental assistance, but not from those without rental assistance, Section 18:6-10.2(f) of the Ordinance compelled landlords to discriminate against Future Tenants because of the source of the lawful income used for rental payments, in clear violation of Sections 10:5-12(g)(2) and 10:5-12(e) of NJLAD.

98. Newark amended Section 18:6-10.2(f) of the Ordinance on January 13, 2020, during the pendency of this action, so that it now only reads "No Landlord shall accept pre-paid rent for more than (1) month." Amended Ordinance § 18:6-10.2(e). However, this does not moot Future Tenants' claim for Newark's violations of Sections 10:5-12(g)(1), 10:5-12(g)(2), 10:5-12(g)(4), and 10:5-12(e) of NJLAD because such conduct is capable of repetition, yet evading review. Without a ruling from this Court deeming Section 18:6-10.2(f) Ordinance in violation of NJLAD, Newark could again change the Amended Ordinance to replace the original language after this action concludes, and evade judicial review of this conduct.

99. Finally, Section 10:5-12(g)(3) of NJLAD prohibits the following:

> print[ing], publish[ing], . . . [or] issue[ing], . . . or caus[ing] to be printed, published, . . . [or] issued, . . . any statement,

> . . . or [] mak[ing] any . . . inquiry in connection with the prospective . . . rental [or] lease . . . of any real property . . . which expresses, directly or indirectly, any limitation, specification or discrimination as to . . . [the] source of lawful income used for rental or mortgage payments.

N.J.S.A. § 10:5-12(g)(2).

100. Both the Ordinance and the Amended Ordinance provide that "[n]o person shall knowingly bring, or cause to be brought, a needy person to the City of Newark for purposes of making him or her a public charge" and defining "needy person" as "a person who is in a state of poverty" and who does not have "the necessities of food and shelter." Ordinance § 18:6-10.3; Amended Ordinance § 18:6-10.3.

101. By issuing this ban on bringing those in need of rental assistance to Newark, Section 18:6-10.3 of the Ordinance and Amended Ordinance directly, or at a minimum indirectly, expresses a limitation on, and/or discrimination against, Future Tenants who need rental assistance to afford the necessity of shelter, in violation of Section 10:5-12(g)(3) of NJLAD.

102. Newark's formal enactment of these sections in the Ordinance and Amended Ordinance constitute official policies and/or customs of Newark, a municipality.

103. These sections of the Ordinance and the Amended Ordinance infringe on Tenant's rights secured by laws of the State of New Jersey, and therefore Tenants are entitled to seek relief pursuant to N.J.S.A. § 10:6-2.

104. Accordingly, Future Tenants are entitled to: (i) a declaratory judgment finding Newark Municipal Code Section 18:6-10.2(f) (Nov. 18, 2019) in violation of NJLAD Sections 10:5-12(g)(1), 10:5-12(g)(2), 10:5-12(g)(4), and 10:5-12(e); (ii) a declaratory judgment finding Newark Municipal Code Section 18:6-10.3 (Nov. 18, 2019) and Newark Municipal Code Section 18:6-10.3 (Jan. 13, 2020) in violation of NJLAD Section 10:5-12(g)(3); and (iii) an order enjoining further enforcement of these provisions.

COUNT TWO
(AGAINST NEWARK)
VIOLATION OF RIGHT TO TRAVEL,
U.S. CONST. ART. I, § 8, ART. IV § 2, & AMEND. XIV, § 1

105. Tenants repeat and incorporate by reference each and every allegation contained in the preceding paragraphs as if fully set forth here.

106. Courts have found that various portions of the United States Constitution protect a citizen's right to travel between states, including (i) the Dormant Commerce Clause of U.S. Const. art. I, § 8; (ii) the Privileges and Immunities Clause of U.S. Const. art. IV, § 2; (iii) the Privileges and Immunities Clause of U.S. Const. amend. XIV, § 1; (iv) the Equal Protection Clause of U.S.

Const. amend. XIV, § 1; and (v) the Due Process Clause of U.S. Const. amend. XIV, § 1. *See Lutz v. City of York, Pa.*, 899 F.2d 255, 258-68 (3d Cir. 1990).

107. Section 18:6-10.3 of both the Ordinance and the Amended Ordinance state that "[n]o person shall knowingly bring, or cause to be brought, a needy person to the City of Newark for the purpose of making him or her a public charge." This section then defines "needy person" as "a person who is in a state of poverty" and does not have "the necessities of food and shelter." Ordinance § 18:6-10.3; Amended Ordinance § 18:6-10.3.

108. Newark's formal enactment of Section 18:6-10.3 constitutes the official policies and/or customs of Newark, a municipality.

109. The "express purpose and inevitable effect" of Section 18:6-10.3 of the Ordinance and the Amended Ordinance is "to prohibit the transportation of indigent persons across the [Newark] border," in violation of Future Tenants' Right to Travel protected by the Dormant Commerce Clause of U.S. Const. art. I, § 8. *See Edwards v. People of State of California*, 314 U.S. 160, 174 (1941).

110. Section 18:6-10.3 of the Ordinance and the Amended Ordinance fails to "insure to a citizen of [New York] who ventures into [Newark, New Jersey] the same privileges which the citizens of [New Jersey] enjoy" in violation of Future Tenants' Right to Travel protected by the Privileges and Immunities Clause of U.S. Const. art. IV, § 2. *See Toomer v. Witsell*, 334 U.S. 385, 395 (1948).

111. Section 18:6-10.3 of the Ordinance and the Amended Ordinance prohibits New York citizens' "free access" to Newark, New Jersey, in violation of Future Tenants' Right to Travel protected by the Privileges and Immunities Clause of U.S. Const. amend. XIV, § 1. *See Crandall v. State of Nevada*, 73 U.S. 35, 44 (1867).

112. Section 18:6-10.3 of the Ordinance and the Amended Ordinance infringes on "the fundamental right of interstate movement" without "compelling state interests," in violation of Future Tenants' Right to Travel protected by the Equal Protection Clause of U.S. Const. amend. XIV, § 1. *See Shapiro v. Thompson*, 394 U.S. 618, 638 (1969).

113. Section 18:6-10.3 of the Ordinance and the Amended Ordinance infringes on Future Tenants' constitutional rights, and therefore Future Tenants are entitled to seek relief pursuant to 42 U.S.C. § 1983.

114. Accordingly, Future Tenants are entitled to: (i) a declaratory judgment declaring Section 18:6-10.3 of the Ordinance and the Amended Ordinance unconstitutional, and (ii) an order enjoining Newark from further enforcement of Section 18:6-10.3 of the Ordinance and the Amended Ordinance.

COUNT THREE
(AGAINST NYC)
VIOLATION OF THE DORMANT COMMERCE CLAUSE,
U.S. CONST. ART. I, § 8

115. Tenants repeat and incorporate by reference each and every allegation contained in the preceding paragraphs as if fully set forth here.

116. The Supreme Court recognizes that the Commerce Clause, U.S. Const. art. I, § 8, cl. 3, also embodies a Dormant Commerce Clause, that prohibits state regulations from discriminating against interstate commerce and/or imposing undue burdens on interstate commerce. *See South Dakota v. Wayfair*, *Inc.*, 138 S. Ct. 2080, 2091 (2018).

117. The Supreme Court recognizes that the transportation of persons is "commerce" within the purview of the Dormant Commerce Clause. *See Edwards v. California*, 314 U.S. 160, 177 (1941).

118. Under the Dormant Commerce Clause, it is a "well-established rule that . . . a nondiscriminatory regulation that 'regulates even-handedly to effectuate a legitimate local public interest,' is nevertheless unconstitutional if 'the burden imposed on interstate commerce is clearly excessive in relation to the putative local benefits.'" *Selevan v. N.Y. Thruway Auth.*, 584 F.3d 82, 95 (2d Cir. 2009) (quoting *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970)).

119. Here, SOTA involves the provision of rental assistance across state lines (outside of New York), and therefore fits within the meaning of "commerce" governed by the Dormant Commerce Clause.

120. While SOTA is a nondiscriminatory regulation that seeks to even-handedly help NYC shelter residents find and afford permanent housing, the initial administration of SOTA failed to appropriately confirm that the SOTA apartments met basic housing quality standards, resulting in Past/Present Tenants moving into uninhabitable and unsustainable housing situations (detailed in the DOI Investigation and Ms. Jones' experiences), causing a drain on New Jersey resources to remedy these issues.

121. The initial administration of SOTA imposed an excessive burden on interstate commerce in violation of the Dormant Commerce Clause, and therefore Past/Present Tenants are entitled to seek relief pursuant to 42 U.S.C. § 1983.

122. Accordingly, Past/Present Tenants are entitled to: (i) a declaratory judgment declaring that NYC's initial SOTA apartment review process was ineffective, and (ii) an order requiring NYC to enact and adhere to minimum quality control standards before approving SOTA apartments.

COUNT FOUR
(AGAINST NYC)
STATE-CREATED DANGER
IN VIOLATION OF THE DUE PROCESS CLAUSE,
U.S. CONST. AMEND. XIV, § 1

123. Tenants repeat and incorporate by reference each and every allegation contained in the preceding paragraphs as if fully set forth here.

124. The Due Process Clause of the Fourteenth Amendment, U.S. Const. Amend. XIV, § 1, provides that "[n]o State shall . . . deprive any person of life, liberty, or property, without due process of law."

125. While the Due Process Clause generally does not impose an affirmative obligation on the state to protect its citizens, an exception exists when a state actor's conduct exposes an individual to a "state-created danger." *Kedra v. Schroeter*, 876 F.3d 424, 436 (3d Cir. 2017).

126. A "state-created danger" claim consists of four elements: (1) "the harm caused was foreseeable and fairly direct;" (2) "the state official acted with a degree of culpability that shocks the conscience;" (3) "the state and the plaintiff had a relationship such that the plaintiff was a foreseeable victim of the defendant's acts;" and (4) "the official affirmatively used his authority in a way that created a danger to the citizen or that rendered the citizen more vulnerable to danger than had he never acted." *Id.* (internal quotations omitted).

127. The second element ("shocks the conscience") consists of three different levels of culpability, depending on the circumstances: (a) in "hyperpressurized environments requiring a snap judgment;" the state actor must "actually intend to cause harm;" (b) in "situations in which the state actor is required to act in a matter of hours or minutes," the state actor must "disregard a great risk of serious harm;" and (c) in situations "where the actor has time to make an unhurried judgment," "a plaintiff need only allege facts supporting an inference that the official acted with a mental state of deliberate indifference." *Id.*

128. Here, NYC harmed Past/Present Tenants via a "state-created danger" by exhibiting deliberate indifference in its failure to confirm the quality of SOTA apartments, evidenced by the DOI Investigation and Ms. Jones' experiences (namely, falling through her kitchen floor).

129. First, the harm caused to Past/Present Tenants was foreseeable and direct. Ms. Jones' harm from falling through her kitchen floor and harm in enduring extended periods of time with no heat and a vermin infestation is a direct and foreseeable result of an improper apartment review process. The same is true for all Past/Present Tenants placed in uninhabitable apartments due to NYC's improper apartment quality verification process when initially administering SOTA.

130. Second, the NYC state actors conducting the SOTA apartment quality control acted with deliberate indifference. The circumstances allowed them to make

an unhurried judgment. However, they acted with deliberate indifference in confirming the quality of these apartments, evidenced by the egregious conditions they overlooked, such as the makeshift flooring repairs that caused Ms. Jones to fall through her kitchen floor. In fact, even if these NYC agents were expected to complete their SOTA apartment reviews by making best efforts to conduct due diligence remotely, their failure to uncover such egregious habitability issues as those experienced by Ms. Jones exhibits a disregard of great risk of serious harm.

131. Third, NYC and the Past/Present Tenants had a relationship such that the Past/Present Tenants were foreseeable victims of NYC's acts. The Past/Present Tenants were participants in NYC's SOTA program, and fully dependent on NYC to adequately perform the duties promised by the program, such as apartment quality verification. Further, Past/Present Tenants did not have the financial means to hire an outside professional to conduct and independent inspection of these apartments.

132. Fourth, the SOTA administrators conducting the initial apartment review affirmatively used their authority in a way that created a danger to the Past/Present Tenants. The SOTA administrators' rubber-stamp approval of uninhabitable apartments forced Past/Present Tenants to live with vermin, without heat, with dangerous electrical issues, with decrepit walls and/or floors, and/or in otherwise generally dangerous conditions that society has deemed uninhabitable. Since the NYC shelter system maintains better conditions than those described

above in the DOI Investigation and Ms. Jones' experiences, the initial SOTA apartment reviewers placed Past/Present Tenants in a more vulnerable position than if DHS had never acted at all, leaving Past/Present Tenants in the NYC shelter system.

133. The initial administration of SOTA constituted a state-created danger in violation of the Due Process Clause, and therefore Past/Present Tenants are entitled to seek relief pursuant to 42 U.S.C. § 1983.

134. Accordingly, Past/Present Tenants are entitled to: (i) a declaratory judgment declaring that NYC's ineffective SOTA apartment review process was unconstitutional, and (ii) an order requiring NYC to enact and adhere to minimum inspection standards before approving SOTA apartments.

PRAYER FOR RELIEF

WHEREFORE, Tenants pray that this Court grant the following relief:

1. Permit this case to proceed as a class action and certify the classes as defined here and in the accompanying motion for class certification;

2. Declare that Newark's Ordinance and Amended Ordinance violates (1) NJLAD by unlawfully discriminating against individuals on the basis of their lawful income, and/or (2) the U.S. Constitution as it unlawfully infringes the right to travel;

3. Declare that NYC's initial administration of SOTA in failing to appropriately confirm the quality of SOTA apartments (1) violated the Dormant Commerce Clause by excessively burdening interstate commerce, and (2)

constituted a state-created danger in violation of the Due Process Clause by actively placing individuals into uninhabitable, dangerous living conditions;

4. Preliminarily and permanently enjoin Newark from any further actions aimed to prevent SOTA-eligible individuals from moving to Newark;

5. Preliminarily and permanently enjoin NYC from placing homeless New Yorkers in unsafe and uninhabitable housing pursuant to SOTA, and require NYC to establish and adhere to minimum SOTA apartment inspection guidelines; and

6. Grant any other and further relief that this Court may deem just and proper.

Dated: November 12, 2020

s/ Matthew Oliver

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CERTIFICATION UNDER L. Civ. R. 11.2

I certify that the matter in controversy is not the subject of any other action pending in any court or of any pending arbitration or administrative proceeding.

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