

**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.*

Civil Action No. 2:19-cv-20931  
(MCA)(LDW)

**ORAL ARGUMENT REQUESTED**

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**MEMORANDUM OF LAW IN OPPOSITION TO CITY OF NEWARK'S  
MOTION TO DISMISS, IN PART, CLASS ACTION COMPLAINT BY  
PLAINTIFFS-INTERVENORS**

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Plaintiffs-Intervenors Class of Affected Tenants (“Tenants”) respectfully submit this memorandum of law in opposition to City of Newark’s (“Newark”) motion to dismiss Tenants’ claims against Newark pursuant to Federal Rule of Civil Procedure 12(b)(6).

### **PRELIMINARY STATEMENT**

About a year and a half ago, Newark passed an ordinance (Municipal Code §§ 18:6-10.1 et seq. (Nov. 18, 2019)) (the “Ordinance”) functionally prohibiting Tenants (and other low-income individuals) from moving to Newark using rental subsidies provided by the City of New York’s (“NYC”) Special One-Time Assistance (“SOTA”) program. Section 18:6-10.2(f) of the Ordinance (the “**Prepaid Rent Ban**”) prohibits landlords from accepting pre-paid rent for more than one month from an agency or person providing a rental subsidy, but not from unsubsidized tenants. Thus, the Prepaid Rent Ban forces landlords to discriminate against Tenants based on their lawful source of income. Section 18:6-10.3 of the Ordinance (the “**Needy Persons Ban**”) prohibits the bringing of “needy persons” (those “in a state of poverty and need[] help in getting the necessities of food and shelter”) to Newark. In other words, Newark’s Needy Persons Ban resembles a sign that reads, “NO HOMELESS ALLOWED.”

Newark now tries to evade liability for its Ordinance’s unlawful discrimination against Tenants and infringement on Tenants’ constitutional rights by

focusing on perceived technicalities in both the New Jersey Law Against Discrimination (“NJLAD”), N.J.S.A. § 10:5-12, and right to travel doctrine emanating from the U.S. Constitution. None of Newark’s arguments have merit.

*First*, NJLAD *does* apply to Newark, as evidenced by (i) the text and definitions in the statute, (ii) court interpretations of similar statutes, (iii) this Court’s own interpretation of NJLAD, (iv) public policy, (v) legislative intent, and (vi) general statutory construction. NJLAD prohibits Newark from compelling others to discriminate against individuals based on their lawful source of income – which is exactly what the Prepaid Rent Ban and the Needy Persons Ban mandate.

*Second*, the Needy Persons Ban also violates Tenants’ constitutional right to travel. Eerily similar to the text of the unconstitutional ordinance that the Supreme Court struck down 80 years ago in *Edwards v. California*, 314 U.S. 160 (1941), the Needy Persons Ban restricts Tenants’ right to travel from state to state and places extreme penalties (to the tune of *imprisonment* and a *\$1,000 per day* fine) on those who help low-income tenants move to Newark.

Tenants have plausibly pled that not only are the Prepaid Rent Ban and the Needy Person Ban contrary to promoting inclusivity and decency, they are also unconstitutional and against New Jersey law. For these and the foregoing reasons, Newark’s motion to dismiss should be denied.

## **FACTUAL AND PROCEDURAL BACKGROUND**

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

On August 31, 2017, the NYC Human Resources Administration (“HRA”), a division of NYC’s Department of Social Services, implemented the SOTA program 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. (Compl. ¶ 14.) Specifically, HRA provided one year’s full rent up front for eligible NYC Department of Homeless Services (“DHS”) clients to move within NYC or to another city or state. (*Id.* ¶ 19.) 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.* ¶ 20.)

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.” (*Id.* ¶ 21.) In December 2019, NYC’s Department of Investigation released the results of an internal investigation into SOTA, 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. (*Id.* ¶ 22.) The investigation 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.” (*Id.* ¶ 23.)

Initially, no single, publicly accessible document set forth the text of SOTA. (*Id.* ¶ 15.) Instead, SOTA was memorialized in the form of an interactive FAQ page and in various sworn statements submitted by NYC in connection with this litigation. (*See id.* ¶¶ 16-17.)

## **II. NEWARK RESPONDS TO SOTA’S MISMANAGEMENT BY ENACTING THE ORDINANCE, WHICH FUNCTIONALLY BANS SOTA TENANTS FROM MOVING TO NEWARK.**

On November 18, 2019, Newark seemingly sought to respond to the 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. (Compl. ¶ 59 (citing Ordinance § 18:6-10.2); *see also* Lipshutz Cert., Ex. A (“many of the agencies that provide rental assistance through vouchers or other form of rent subsidy do not require inspection of the various apartments that a recipient selects and therefore allow a recipient to select substandard housing due to a housing shortage”).) However, Newark also included provisions that effectively barred SOTA participants from being placed in Newark housing, including the Prepaid Rent Ban:

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.

(Compl. ¶ 95 (quoting Ordinance § 18:6-10.2(f)); and the Needy Persons Ban:

No 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. A person who violates this sub-section shall be obligated to convey such needy person out of the City of Newark.

For the purposes of this sub-section, a needy person shall mean a person who is in a state of poverty and needs help in getting the necessities of food and shelter.

(See Compl. ¶ 63; Ordinance § 18:6-10.3.) Violations of the Ordinance are punishable by a fine of at least \$250, but no more than \$1,000, or by imprisonment for a term not exceeding 90 days or by a period of community service not to exceed 90 days. Ordinance § 18:6-10.3. Each day constitutes a separate offense. *Id.*

### **III. NEWARK FILES THIS ACTION AGAINST NYC.**

Newark filed its Verified Complaint and application for a temporary restraining order against NYC, among others, on December 1, 2019. Newark alleges two causes of action: (i) violation of the Dormant Commerce Clause, U.S. Const. art I, § 8, cl. 3; and (ii) public nuisance. (D.E. 1 ¶¶ 99-119.) On December 9, 2019, the Court ordered NYC to answer the Verified Complaint, assert its counterclaims, and move for a preliminary injunction, by December 13, 2019. (D.E. 12 ¶ 1.) The Court

also granted Newark’s request to withdraw its application for a temporary restraining order, and noted NYC’s agreement not to issue new SOTA grants to households moving to Newark until the earlier of (a) NYC’s motion for a temporary restraining order, or (b) “further voluntary agreement of the parties.” (*Id.* ¶¶ 3-4.)

NYC filed its Answer and Counterclaims and request for a temporary restraining order on December 13, 2019, alleging four counterclaims: (i) Violation of New Jersey Law Against Discrimination (“NJLAD”), N.J.S.A. § 10:5-12; (ii) Violation of Municipal Authority, N.J.S.A. § 40:48-2; (iii) Violation of the Right to Travel, U.S. Const. amend. XIV, § 1; and (iv) Excessive Fines, U.S. Const. amend. VIII. (D.E. 14 ¶¶ 52-84; D.E. 15.) On December 20, 2019, Newark moved to dismiss NYC’s counterclaims. (D.E. 22.) NYC’s counterclaims were dismissed for lack of standing by letter order dated June 22, 2020. (D.E. 64.)

#### **IV. NEWARK AMENDS THE ORDINANCE.**

On January 13, 2020, during the pendency of this action, Newark amended the Ordinance. (*See* Compl. ¶ 62; Lipshutz Cert., Ex. B.) The Amended Ordinance still provides 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,” but altered the definition of “needy person” within the Needy Persons Ban to be a person who “lacks the necessities of food and shelter,” as opposed to “needs help in getting the necessities of food and shelter.” (*See* Compl. ¶ 63; Lipshutz Cert., Ex. B

§ 18:6-10.3.) The Prepaid Rent Ban was largely struck and now states: “No Landlord shall accept pre-paid rent for more than (1) month.” (Lipshutz Cert., Ex. B § 18:6-10.2(e).)

**V. TENANTS MOVE TO INTERVENE IN THIS ACTION TO PROTECT THE INTERESTS OF INDIVIDUALS MOST AFFECTED BY SOTA AND THE ORDINANCE.**

In early 2020, Tenants moved to intervene in this action under Rule 24 to ensure that their significant interests in this litigation were appropriately represented. (*See generally* D.E. 48.) In their application, Tenants sought to intervene without a proposed pleading. Newark did not respond to the motion. (D.E. 59 at 1.)

This Court denied Tenants’ motion due to their failure to submit a proposed pleading, as required by Fed. R. Civ. P. 24(c). (*Id.* at 2.) Tenants renewed their motion per the Court’s guidance, including a proposed complaint alleging causes of action against Newark and NYC. (*See* D.E. 68.) Over Newark’s objection, Tenants were granted permission to intervene on November 5, 2020. (D.E. 86.)

**VI. NEWARK FAILS TO TIMELY RESPOND TO TENANTS’ ALLEGATIONS.**

Tenants’ filed their Complaint on November 12, 2020. (D.E. 87.) The Complaint details the experience of Eugene Samuels, which is exemplary of the prohibitory and discriminatory effect of the Ordinance. (*See generally* Compl. ¶¶ 64-74.) According to the Complaint, Mr. Samuels currently resides in a shelter in NYC and is eligible for SOTA. (*Id.* ¶¶ 64-68.) Mr. Samuels specifically sought to

move Newark under SOTA: he found an apartment in Newark, has friends in New Jersey and feels comfortable living there, and found the commute to be acceptable. (*Id.* ¶¶ 67, 69-71.) However, the Ordinance prevented him from moving to Newark. (*Id.* ¶ 72.)

Mr. Samuels seeks relief on behalf of himself and others similarly situated; that is, “[i]ndividuals who are eligible for SOTA, wish to be placed in Newark housing, and are prevented from doing so because of the Ordinance” (“Future Tenants”). (*Id.* ¶¶ 5, 85.) Mr. Samuels seeks to enjoin Newark from enforcing certain portions of the Ordinance in violation of the NJLAD and the constitutional right to travel. (*See id.* ¶¶ 90-114.)

Newark’s response to Tenant’s Complaint was originally due on December 3, 2020. Newark did not respond, seek an adjournment, or otherwise communicate with Tenants by this date. (*See* D.E. 105.) Tenants raised the issue with Newark on January 11, 2021. The following day, Newark responded, offering reasons for its delay and requesting Tenants’ “patience and just a few more days.” Tenants obliged. But Newark again did not respond to the Complaint.

After Tenants raised this issue with the Court, Newark proposed a February 19, 2021 deadline to respond to the Complaint. The Court granted Newark’s further request for an extension. (D.E. 99.) Newark again failed to meet this deadline.

On February 25, 2021, a week after Newark’s further extension to respond and *three months* after Newark’s responsive pleading was due, Tenants sought leave to file a default judgment. (D.E. 105.) Newark was granted an additional extension (D.E. 108), which it finally met by filing the instant motion to dismiss (D.E. 110).

### **LEGAL ARGUMENT**

When viewed in the light most favorable to Tenants, Counts One and Two of the Complaint satisfy the pleading standards. For the reasons set forth below, the Court should deny Newark’s motion in its entirety.

#### **I. STANDARD ON A MOTION TO DISMISS.**

On a 12(b)(6) motion to dismiss, the court must “accept all factual allegations as true, construe the complaint in the light most favorable to the plaintiff, and determine whether, under any reasonable reading of the complaint, the plaintiff may be entitled to relief.” *Phillips v. Allegheny*, 515 F.3d 224, 233 (3d Cir. 2008) (citation omitted). “To survive a motion to dismiss, the claims must be facially plausible, meaning that the pleaded facts ‘allow[] the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.’” (See D.E. 114 (Letter Order) (alteration in original) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).) However, “a complaint is not intended to be exhaustive, need not name every source of law under which a plaintiff may be harmed, and will not be penalized

for failing to invoke magic legal words.” *Rosedale & Rosehill Cemetary Ass’n v. Reading*, 2020 WL 7768457, at \*6 (D.N.J. Dec. 30, 2020).

## II. NO PRESUMPTION OF VALIDITY APPLIES TO THE ORDINANCE.

The Ordinance is not entitled to deference. (*Contra* Newark Br. at 10.) Under New Jersey law, while municipal ordinances are typically presumed valid, “[d]ifferent principles control, however, where the activity which is the subject of municipal regulation is constitutionally protected.” *Capitol Movies, Inc. v. Passaic*, 194 N.J. Super. 298, 303 (App. Div. 1984). In other words, the deferential “standard [typically afforded to municipal ordinances] *does not apply* where an ordinance infringes upon a fundamental right.” *State (Borough of Paramus) v. Malcolm Konner Chevrolet*, 226 N.J. Super. 692, 696 (Law. Div. 1988) (citing *Capitol Movies*, 194 N.J. Super. at 303) (emphasis added). In such instances, “the ordinance loses its presumption of validity and the burden of persuasion shifts from the party attacking the regulation to the party imposing the regulation.” *Id.*

Here, the Ordinance infringes on Tenants’ constitutional right to travel (*see* Compl. ¶¶ 1, 105-122), which is “fundamental” and a constitutional “right that has been firmly established and repeatedly recognized.” *See United States v. Guest*, 383 U.S. 745, 757 (1966). Therefore, the presumption of validity does not apply to Newark’s Ordinance, and it is *Newark* who bears the burden of persuading the Court that the Ordinance is lawful.

### III. TENANTS HAVE PLAUSIBLY PLED A VIOLATION OF NJLAD AGAINST NEWARK.

Tenants have plausibly pled a violation of NJLAD against Newark because the municipality, through the Ordinance, has compelled landlords to unlawfully discriminate against Tenants on the basis of their SOTA grants and has compelled municipal officials to publish a discriminatory rule against Tenants and other low-income individuals. (Compl. ¶¶ 90-104.)

#### A. NJLAD Applies to Newark.

Tenants allege that Newark violated NJLAD Section 12(e) (Compl. ¶¶ 94, 96-97), which applies to Newark, a municipality. Under the plain text NJLAD Section 12(e), “[i]t shall be . . . unlawful discrimination . . . [f]or any person, whether an *employer* or an employee or not, to aid, abet, incite, compel or coerce the doing of any of the acts forbidden under this act, or to attempt to do so.” N.J.S.A. § 10:5-12(e) (emphasis added). NJLAD defines “Employer” as “all persons as defined in [this statute] . . . ***and includes the State, any political or civil subdivision thereof, and all public officers, agencies, boards, or bodies.***” N.J.S.A. § 10:5-5(e) (emphasis added). Therefore, NJLAD Section 12(e) applies to Newark, regardless of whether municipality is included in the definition of “person.”

Additionally, even without the above, Newark is a “person” within the meaning of NJLAD. NJLAD defines “persons” as “one or more individuals, partnerships, associations, organizations, labor organizations . . . and corporations.”

N.J.S.A. § 10:5-5(a). New Jersey’s general statutory “Definitions and Rules of General Construction” also define “persons” to include “corporations,” N.J.S.A. § 1:1-2, and that definition applies to private *and public* corporations. *See, e.g., J.H. v. Mercer Cty. Youth Det. Ctr.*, 396 N.J. Super. 1, 11 (App. Div. 2007) (“[T]here is no reason why the definition of ‘person’ in the [New Jersey Rules of General Construction] as including ‘corporations,’ undifferentiated as between commercial and public corporations, should be held to mean only the former.”); *see also* N.J.S.A. § 1:1-2 (defining “municipal corporation” as a synonym for “municipality”). New Jersey courts have accordingly found that municipalities are liable as “persons” under analogous New Jersey statutes with near identical definitions of “person.” *E.g., J.H.*, 396 N.J. Super. at 11 (finding that “municipal corporations” are liable as “persons” under the Child Sexual Abuse Act, N.J.S.A. § 2A:61B-1); *Hartman v. Brigantine*, 42 N.J. Super. 247, 254-55, (App. Div. 1956) (finding that municipal corporations are liable as “persons” under the Wrongful Death Act, N.J.S.A. § 2A:31-1).

In fact, this Court has also recognized that “NJLAD prohibits discrimination by a *public entity*.” *Mack v. Morristown*, 2017 WL 2268320, at \*6 (D.N.J. May 24, 2017) (Arleo, D.J.). Therefore, (i) the text and definitions in NJLAD; (ii) court interpretations of similar statutes; (iii) this Court’s own interpretation of NJLAD; as well as (iv) public policy, legislative intent, and general statutory construction

(described below in below in Section III.C.) all indicate that the NJLAD applies to Newark, a municipality.

**B. Tenants Have Plausibly Pled a Section 12(e) Claim Against Newark, Which Incorporates Violations of Sections 12(g).**

Section 12(e) deems it unlawful for Newark to “compel . . . any of the acts forbidden” under NJLAD. N.J.S.A. § 10:5-12(e). Newark compels acts forbidden under the NJLAD via two different sections of Newark’s Ordinance: (1) the Prepaid Rent Ban, and (2) the Needy Persons Ban. (Compl. ¶¶ 90-104.)

**1. The Prepaid Rent Ban Compels Landlords to Discriminate Against Tenants on the Basis of their SOTA Rental Subsidy in Violation of Section 12(g)(1), (2), and (4).**

Newark’s Prepaid Rent Ban compels landlords to engage in forbidden acts under subsections (1), (2), and most clearly subsection (4) of NJLAD Section 12(g), by forcing landlords to refuse to rent to Tenants because they received SOTA rental subsidies, and yet allowing prepaid rent from other non-subsidized tenants.

NJLAD Section 12(g) deems it unlawful discrimination for “any person, including but not limited to, any owner, lessee, sublessee, assignee or managing agent of, or other person having the right of ownership or possession of or the right to sell, rent, lease, assign, or sublease any real property or part or portion thereof”

*(i.e., a landlord):*

- (1) To refuse 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 or mortgage payments; or

- (2) To discriminate against any person or group of persons because of . . . source of lawful income used for rental or mortgage payments in the terms, conditions or privileges of the sale, rental or lease of any real property or part or portion thereof or in the furnishing of facilities or services in connection therewith; or . . .
- (4) To refuse 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)(1), (2), (4).

Here, the Prepaid Rent Ban violates all three of these provisions – most blatantly sub section (4). Specifically, the Prepaid Rent Ban states:

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.

(Compl. ¶ 95 (quoting Ordinance § 18:6-10.2(f))). SOTA originally provided landlords a one-year, up-front rental subsidy to pay for Tenants’ rent. (Compl. ¶ 1.) Therefore, as intended, the Prepaid Rent Ban compelled landlords to refuse Tenants’ rent because it came from a SOTA grant – that is, *because of the source of Tenants’*

***lawful rent payment to be paid for the real property.*** (Compl. ¶ 96.) This is a clear violation of Section 12(g)(4).

Additionally, since the SOTA grant is also “lawful income,” (*see* Newark Br. at 12 (admitting that “[s]ource of lawful income’ includes ‘tenants receiving governmental rental assistance’” and citing *T.K. v. Landmark W.*, 353 N.J. Super. 353, 359 (Law. Div. 2001), *aff’d*, 353 N.J. Super. 223 (App. Div. 2002))), the Prepaid Rent Ban also violates subsection (1) and (2), by: (1) forcing landlords to refuse to rent to Tenants because of the “source of lawful income used for rental or mortgage payments” (Compl. ¶ 96), and by (2) discriminating against (treating differently) Tenants by allowing *other* (non-subsidized) tenants to pay one year’s prepaid rent – but not Tenants, *see id.* ¶¶ 97, 61 (quoting § 18:6-10.2(f)) (“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”). By compelling landlords to violate NJLAD Section 12(g) subsections (4), (1), and (2) via the Prepaid Rent Ban, Newark is in violation of NJLAD Section 12(e).<sup>1</sup>

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<sup>1</sup> Tenants acknowledge that the Amended Ordinance, passed during the pendency of this action, struck portions of the Prepaid Rent Ban. However, Newark has not raised a mootness challenge (likely because it would be unsuccessful under the voluntary cessation doctrine) and would bear the burden of proving one. (*See, e.g.*, D.E. 114 at 4 (letter order denying NYC’s motion to dismiss the City of Jersey City’s complaint on mootness grounds).)

**2. The Needy Persons Ban Compelled Public Officials to Publish a Discriminatory Statement Against Tenants in Violation of Section 12(g)(3).**

Newark's Needy Persons Ban also compelled its public officials to engage in conduct forbidden under subsection (3) of NJLAD Section 12(g), namely by forcing them to publish a discriminatory rule against Tenants and other low-income individuals. (Compl. ¶¶ 99-101.)

NJLAD Section 12(g) deems it unlawful discrimination for

any person . . . [t]o print, publish, circulate, issue, display. . . or cause to be printed, published, circulated, issued, displayed, . . . any statement . . . [or] publication . . . in connection with the prospective . . . rental . . . of any real property . . . which expresses, *directly or indirectly*, any . . . discrimination as to . . . source of lawful income used for rental . . . payments.

N.J.S.A. § 10:5-12(g)(3). In other words, this subsection prohibits publication of a statement (i.e., an ordinance) that directly or indirectly is discriminatory against individuals because of their source of lawful income used for rental payments.

Here, Newark compelled its municipal officers to violate subsection (3) by publishing the Needy Persons Ban, which indirectly discriminates against Tenants because of their receipt of SOTA grants. Specifically, the Needy Persons Ban provides that 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.” (Compl. ¶ 99 (quoting Ordinance § 18:6-10.3; Amended Ordinance § 18:6-10.3).) Tenants eligible for SOTA are low-wage workers and do not have the means to fully provide for themselves the necessities of shelter – that is why they are in need of SOTA grants. (Compl. ¶¶ 11, 26, 66.) This means that, upon arrival in Newark, Tenants may require more reliance on New Jersey public resources than other members of the community, whether it be a heightened reliance on public transportation or other public assistance programs. This could, under the Needy Person Ban, make Tenants a “public charge” and subject those providing the subsidy to harsh penalties like imprisonment and steep fines. This threat has functionally prohibited the operation of the SOTA program in Newark, preventing Tenants from moving to Newark. (Compl. ¶ 74.) However, under the Ordinance, individuals and organizations can freely bring *other*, better financed, prospective residents to Newark – just not Tenants. The publication of such brazen differential treatment in the Needy Person Ban therefore violates Section 12(g).

**C. Public Policy, Legislative Intent, and Rules of Construction All Support Tenants’ NJLAD Claim.**

Tenants’ argument that Newark is liable under NJLAD is also supported by the legislative intent behind NJLAD, the strong public policy of the State of New Jersey, and general rules of construction, interpretation, and application of New Jersey statutes. Newark’s argument that NJLAD does not prohibit a municipality’s

discrimination against low-income individuals in rental scenarios because such language is not explicit in NJLAD Section 12.5 (Newark Br. at 13), runs directly contrary to all of these principles.

New Jersey has a “strong public policy of protecting low-income tenants from discrimination.” *T.K. v. Landmark W.*, 353 N.J. Super. 353, 363 (Law. Div. 2001), *aff’d*, 353 N.J. Super. 223 (App. Div. 2002) (quoting *Franklin Tower One, L.L.C. v. N.M.*, 157 N.J. 602, 620 (1999)). In fact, “New Jersey has always [considered itself] in the vanguard in the fight to eradicate the cancer of unlawful discrimination of all types from our society.” *Peper v. Princeton Univ. Bd. of Trs.*, 77 N.J. 55, 80 (1978). Therefore, unsurprisingly, “[a]s remedial legislation, [NJLAD] should be construed with that high degree of liberality which comports with the preeminent social significance of its purposes and objects,” that is, “its humanitarian concerns, its remedial nature and the liberal construction accorded it.” *Andersen v. Exxon Co., U.S.A.*, 89 N.J. 483, 495 (1982) (internal quotations omitted). These “humanitarian concerns” even made it into the text of NJLAD. The Legislative Findings section explains that people suffer real “personal hardships” because of discrimination, including “economic loss; time loss; physical and emotional stress; and in some cases severe emotional trauma, illness, homelessness or other irreparable harm; . . . relocation, search and moving difficulties; anxiety caused by lack of information, uncertainty, and resultant planning difficulty; career,

education, family and social disruption; and adjustment problems, which particularly impact on those protected by this act.” N.J.S.A. § 10:5-3. Accordingly, the Supreme Court of New Jersey has specifically rejected narrow interpretations of the NJLAD, explaining that “it would be ironic indeed” to put artificial limitations on the protections afforded to individuals identified in the statute. *Andersen*, 89 N.J. at 495.

To accept Newark’s narrow reading of NJLAD would be directly contrary to these well-established New Jersey principles. Even more far afield would be approving the extreme punishments imposed by the Ordinance – imprisonment or \$1,000 per day fines for providing rental subsidies – which are clearly contrary to the “humanitarian concerns” of NJLAD.

Additionally, courts are to “look to federal anti-discrimination laws for guidance when construing NJLAD,” *Hibbert v. Bellmawr Park Mut. Hous. Corp.*, 937 F. Supp. 2d 565, 574 (D.N.J. 2013) (quoting *Chisolm v. McManimon*, 275 F.3d 315, 325 n. 9 (3d Cir. 2001)) – and federal anti-discrimination laws generally extend to municipal discrimination, including with regard to housing, *see e.g., Resident Advisory Bd. v. Rizzo*, 564 F.2d 126, 145 (3d Cir. 1977) (finding that the City of Philadelphia violated the federal Fair Housing Act, 42 U.S.C. § 3608, by denying low-income individuals access to affordable housing).

Finally, “[i]t is equally clear that under New Jersey law a municipality may not enact an ordinance which is inconsistent with [a New Jersey statute].” *Claridge*

*House One, Inc. v. Verona*, 490 F. Supp. 706, 711 (D.N.J.), *aff'd*, 633 F.2d 209 (3d Cir. 1980). Here, Newark has enacted an Ordinance which is inconsistent with both (i) the text of Sections 12(e) and 12(g) of the NJLAD, and (ii) the spirit and intent of NJLAD. Tenants have plausibly pled a claim against Newark under NJLAD.

#### **IV. TENANTS HAVE PLAUSIBLY PLED A CLAIM THAT THE ORDINANCE VIOLATES TENANTS' CONSTITUTIONAL RIGHT TO TRAVEL.**

Tenants sufficiently allege that Newark interfered with their constitutional right to travel by enacting an ordinance that restricts “needy persons” from being brought into Newark. (*See* Compl. ¶¶ 105-14.) Indeed, Newark’s Ordinance is constitutionally indistinguishable from the Ordinance struck down 80 years ago in *Edwards*, 314 U.S. 160.

The fundamental right to travel is implicit under several constitutional provisions and is one that “has been firmly established and repeatedly recognized.” *Guest*, 383 U.S. at 757-58; *see also Lutz v. York*, 899 F.2d 255 (3d Cir. 1990) (recognizing a right to travel challenge against an ordinance enacted by the City of York and outlining several constitutional foundations for the right to travel). The Supreme Court has long recognized that “that the nature of our Federal Union and our constitutional concepts of personal liberty unite to require that all citizens be free to travel throughout the length and breadth of our land uninhibited by statutes, rules, or regulations which unreasonably burden or restrict this movement.” *Shapiro v.*

*Thompson*, 394 U.S. 618, 629 (1969). Tenants’ Complaint adequately pleads that the Ordinance has done just that: unreasonably burdened or restricted Mr. Samuels, and others similarly situated, from moving to Newark. (See Compl. ¶¶ 105-14.)

In fact, Tenants’ Complaint plausibly alleges violations of the right to travel under the various iterations of the right under a number of constitutional provisions:

- ¶ 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).

Under any iteration of the right to travel, Tenants have plausibly pled a violation.

Newark’s attempts to distinguish *Edwards* are flawed. In *Edwards*, the Court struck down as unconstitutional a statute that provided: “Every person, firm or corporation, or officer or agent thereof that *brings* or *assists in bringing* into the State *any indigent person* who is not a resident of the State, *knowing him to be an indigent person*, is guilty of a misdemeanor.” *Edwards*, 314 U.S. at 165-66. Newark’s Ordinance is remarkably similar, providing: “No 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.” Ordinance § 18:6-10.3; *see also* Amended Ordinance § 18:6-10.3; (Compl. ¶ 107).

Newark argues that Ordinance “only proscribes conduct intended by third parties to alleviate the public welfare concerns of other communities by coercively transporting indigent persons into Newark” and that “usage of the terms ‘bring’ and ‘brought,’ rather than ‘assist’ or ‘aid,’ stresses the absence of consent of the indigent person being brought into Newark.” (Newark Br. at 15-16.) Yet, (i) the Ordinance does not mention “coercion” and the involuntary movement of the “needy person” is not an element of the Ordinance; (ii) the Complaint, which must be accepted as true on a motion to dismiss, makes clear that Mr. Samuels affirmatively *wants* to

move to Newark (Compl. ¶ 19), not that anyone is forcing him; and (iii) the statute in *Edwards* used both “bring” and “assist,” and the Court struck it down anyway, recognizing no difference between the terms. *See Edwards*, 314 U.S. at 173.<sup>2</sup>

Newark also argues that the Ordinance “does not deny any rights or benefits to indigent persons”<sup>3</sup> and “does not preclude any person, indigent or not, from moving to Newark” (*see Newark Br.* at 14); however, the Complaint alleges otherwise. The Complaint alleges that Mr. Samuels is in shelter and cannot, without assistance, secure his own housing (Compl. ¶¶ 11, 64-74), meaning he would likely be defined as a “needy person” under the Ordinance (“needs help in getting the necessities of . . . shelter”), would likely rely on New Jersey public accommodations upon arrival to Newark (a “public charge”), and therefore would likely be subjecting HRA to hefty fines (and potential imprisonment) for providing him a SOTA grant to move to Newark. The threat of these penalties imposed by the Ordinance has functionally prohibited Mr. Samuels (and the rest of Future Tenants) from moving to Newark. (Compl. ¶ 72.)

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<sup>2</sup> Moreover, alleviating public welfare burdens is not a legitimate basis on which to infringe upon the right to travel. *See Shapiro*, 394 U.S. at 633 (holding that “neither deterrence of indigents from migrating to the State *nor limitation of welfare benefits*” are permissible state objectives (emphasis added)).

<sup>3</sup> In fact, by preventing Mr. Samuels from moving to Newark, the Ordinance has interfered with Mr. Samuels’ right to use the public benefit of SOTA.

In short, Newark's arguments are meritless; Tenants have stated a plausible right to travel claim.

**CONCLUSION**

For the foregoing reasons, Tenants respectfully request that the Court deny Newark's motion to dismiss in its entirety.

Respectfully submitted,

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