

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY
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753 EAST 226 LLC, 148 W 142, LLC, and 820 EAST
10TH ST. LLC,

Plaintiffs,

-against-

24 CV 4197 (VEC)

THE NEW YORK CITY DEPARTMENT OF
HOUSING PRESERVATION AND DEVELOPMENT
and ADOLFO CARRIÓN JR. in his official capacity as
Commissioner of THE NEW YORK CITY
DEPARTMENT OF HOUSING PRESERVATION
AND DEVELOPMENT

Defendants

And

MAKE THE ROAD NEW YORK and WE ACT FOR
ENVIRONMENTAL JUSTICE

Intervenor-Defendants.

STIPULATION OF SETTLEMENT

WHEREAS, Plaintiffs commenced this action on or about May 31, 2024, against the New York City Department of Housing Preservation and Development (“HPD”) and Adolfo Carrión Jr. (“City Defendants”), seeking, *inter alia*, a declaratory judgment that the lack of an administrative process to contest certain lead-based paint violations violates their due process rights under the Fourteenth Amendment to the United States Constitution;

WHEREAS, Plaintiffs thereafter moved for a preliminary injunction on or about July 16, 2024, seeking to enjoin City Defendants during the pendency of this action from enforcing or otherwise implementing their policies, practices, procedures, and/or rules regarding

contestation of lead-based paint readings as determined by X-ray fluorescence machines (“XRFs”);

WHEREAS, City Defendants, by their attorney, Muriel Goode-Trufant, then Acting Corporation Counsel of the City of New York, moved to dismiss the Complaint and opposed Plaintiffs’ motion for a preliminary injunction on or about September 27, 2024; and

WHEREAS, on or about October 2, 2024 Intervenor-Defendants Make the Road New York (“MRNY”) and WE ACT For Environmental Justice (“WE ACT”)(collectively, “Intervenor-Defendants”) moved to intervene as defendants in this action; and

WHEREAS, on or about November 1, 2024, Plaintiffs filed an Amended Complaint seeking substantially the same relief as the initial Complaint; and

WHEREAS, by Order dated November 8, 2024, this Court granted Intervenor-Defendants’ motions to intervene; and

WHEREAS, on or about November 8, 2024, Plaintiffs amended their initial motion for a preliminary injunction seeking substantially the same relief as the initial motion for a preliminary injunction; and

WHEREAS, on or about November 22, 2024, Defendants and Intervenor Defendants moved to dismiss the Amended Complaint and opposed Plaintiffs’ amended motion for a preliminary injunction [Dkt. Nos. 70 and 75]; and

WHEREAS, by joint letter motion dated December 5, 2024, Plaintiffs agreed to withdraw their amended motion for a preliminary injunction without prejudice; and

WHEREAS, by Order dated December 6, 2024, this court granted the dismissal of Plaintiffs’ amended motion for a preliminary injunction; and

WHEREAS, the parties now desire to settle this matter;

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

1. City Defendants agree to engage in rulemaking to allow for an administrative contestation procedure utilizing laboratory paint chip analysis where a violation was issued based upon an XRF reading showing that the lead-based paint is greater than or equal to 0.6mg/cm² (“617 Orders”) and such reading was on a surface containing a metal or ceramic substrate (“Proposed Rule”).

2. City Defendants agree to publish a Proposed Rule implementing the administrative contestation procedure described in paragraph “2” above in *The City Record* on or before June 30, 2025, and thereafter follow the rulemaking process set forth in New York City Administrative Procedure Act (“CAPA”). City Defendants shall notify Plaintiffs and Intervenor-Defendants of such Proposed Rule via email to undersigned counsel within 5 days of the publication in *The City Record*.

3. The parties agree that the rulemaking process for the Proposed Rule shall occur subject to the provisions of CAPA § 1043. Accordingly, nothing contained herein will be deemed to guarantee the actual adoption of the Proposed Rule and that until and unless the Proposed Rule is adopted, City Defendants will continue to enforce and implement their current policies, practices, procedures, and/or rules regarding contestation of lead-based paint readings.

4. Both Plaintiffs and Intervenor-Defendants will be entitled to engage in the usual CAPA comment procedure and voice any objections or support in the normal course to the Proposed Rule.

5. Before any party seeks relief from the District Court with respect to this Stipulation, counsel for that party shall provide sixty days advance notice to opposing counsel of his or her intent to seek judicial resolution of the dispute and thereafter engage in a good faith

attempt to resolve the issue(s) about which the party intends to seek relief. Should the good faith discussions fail to resolve the issue(s), counsel for the party seeking relief shall include a statement in the party's motion papers certifying, in sum and substance, that the party has conferred with opposing counsel and the sides were unable to resolve their differences.

6. The District Court shall retain jurisdiction over this case for the purpose of enforcing this Stipulation until adoption of the Proposed Rule discussed herein. In the event that the Proposed Rule is not adopted, notwithstanding any provision of this stipulation, Plaintiffs may reinstate this action and respond within fourteen days to City Defendants' and Intervenor-Defendants' motions to dismiss.

7. If the Proposed Rule is adopted, the parties shall prepare a stipulation of discontinuance with prejudice dismissing this action with each party bearing its own costs, expenses and attorneys' fees and jointly file same with the Court.

8. This Stipulation, and the settlement it represents, shall not be used by any party, and shall not be admissible in any other proceeding, litigation or settlement negotiation, except in an action or proceeding to enforce the terms of this Stipulation.

9. This Stipulation contains all the terms and conditions agreed upon by the parties, and no oral agreement entered into at any time nor any written agreement entered into prior to the execution of this Stipulation regarding the subject matter of the instant action shall be deemed to exist, or to bind the parties hereto, or to vary the terms and conditions contained herein.

10. The parties have reviewed and revised this Stipulation, and any rule of construction, by which any ambiguities are to be resolved against the drafting party, shall not be applied in the interpretation of this Stipulation.

11. This Stipulation may be executed in counterparts, and scanned and/or facsimile signatures by the undersigned shall constitute original signatures for filing with the court.

Dated: New York, New York
January 15, 2025

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Application GRANTED. This case is hereby STAYED. The parties must provide a joint update by no later than July 7, 2025, indicating whether the City Defendants have published a Proposed Rule implementing the administrative contestation procedure outlined in paragraph 1 in *The City Record*.

IT IS SO ORDERED


Hon. Valerie Caproni
United States District Judge

1/17/2025