

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

CITY OF NEWARK,

Plaintiff,

v.

CITY OF NEW YORK,
MAYOR BILL DE BLASIO, in his
official capacity as Mayor of New
York City, COMMISSIONER
STEVEN BANKS, in his official
capacity,

Defendants.

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

**NOTICE OF MOTION
TO INTERVENE**

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on April 6, 2020, or as soon as counsel may be heard, the undersigned attorneys for Proposed Intervenors Class of Affected Tenants (“Tenants” or “Proposed Intervenors”) shall move before the Honorable Judge Arleo of the United States District Court for the District of New Jersey, Martin Luther King, Jr. Federal Building & U.S. Courthouse, 50 Walnut Street, Newark, New Jersey 07102, for an Order allowing Tenants to intervene in this matter pursuant to Fed. R. Civ. P. 24.

PLEASE TAKE FURTHER NOTICE that in support of this Motion, Tenants rely upon their Brief in Support of Proposed Intervenors Class of Affected

Tenants' Motion to Intervene, the Declaration of T.S., the Declaration of Shakira Jones, and the Declaration of Eugene Samuels.

PLEASE TAKE FURTHER NOTICE that a proposed form of Order is submitted herewith pursuant to Local Civil Rule 7.1(e).

Respectfully submitted,

Dated: February 27, 2020

By: s/ Matthew M. Oliver
Matthew M. Oliver
Rebecca J. Ryan
Anthony J. Cocuzza
LOWENSTEIN SANDLER LLP
One Lowenstein Drive
Roseland, New Jersey 07068
973.597.2500
moliver@lowenstein.com
rryan@lowenstein.com
acocuzza@lowenstein.com
Counsel for Proposed Intervenors
Class of Affected Tenants

Joshua Goldfein (*pro hac vice* forthcoming)
THE LEGAL AID SOCIETY
199 Water Street
New York, New York 10038
212.577.3300
jgoldfein@legal-aid.org
Co-Counsel for Proposed Intervenors
Class of Affected Tenants

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**BRIEF ON BEHALF OF PROPOSED INTERVENORS
CLASS OF AFFECTED TENANTS IN SUPPORT OF THEIR MOTION TO
INTERVENE PURSUANT TO FED. R. CIV. P. 24**

LOWENSTEIN SANDLER LLP

One Lowenstein Drive
Roseland, New Jersey 07068
973.597.2500

*Counsel for Proposed Intervenors
Class of Affected Tenants*

THE LEGAL AID SOCIETY

199 Water Street
New York, New York 10038
212.577.3300

*Co-Counsel for Proposed Intervenors
Class of Affected Tenants*

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Proposed Intervenor Class of Affected Tenants (“Tenants” or “Proposed Intervenor”) respectfully submit this memorandum of law in support of their Motion to Intervene pursuant to Fed. R. Civ. P. 24.

PRELIMINARY STATEMENT

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 Special One-Time Assistance (“SOTA”) program and Newark’s response thereto, Municipal Code §§ 18:6-10.1 *et seq.* (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 inspection process allowed some households to be placed in apartments with uninhabitable conditions. The Ordinance purports to require more accountability so households are not placed in unsafe apartments, but it also effectively prohibits SOTA participation in Newark by outlawing prepaid rental assistance for periods longer than one month.

Notably absent from this lawsuit between the cities is the voice of those directly affected by the intersection of this program and ordinance: the Tenants. Through this timely application, Tenants seek to intervene in this action to ensure that their interests are appropriately represented, as Newark’s and NYC’s interests differ from those of the intended beneficiaries.

Proposed Intervenors include: (a) SOTA-participant tenants who moved into untenable living situations in Newark due to defects in the SOTA review process that the Ordinance purports to remedy (“Past/Present Tenants”); and (b) SOTA-eligible tenants who wish to move to Newark but cannot because of conflicting terms in SOTA and the Ordinance (“Future Tenants”).

Because Tenants have significant interests in this litigation and this litigation threatens those interests, Tenants have a right to intervene under Rule 24(a). In the alternative, permissive intervention pursuant to Rule 24(b) is appropriate in this case.

The disadvantaged Tenants should not be further marginalized through a lack of representation in this matter, which has a direct impact on their basic need for housing. Accordingly, this Court should grant Tenants’ motion to intervene.

STATEMENT OF FACTS

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

On August 31, 2017, the NYC Human Resources Administration (“HRA”)¹ implemented SOTA² “to help New York families break the cycle of homelessness,” DOI Press Release at 1, by “help[ing] households with income move out of shelter and into affordable, stable, permanent homes of their own, in locations of their choosing,” Corbin Decl. ¶ 10. Specifically, under SOTA, HRA “provides one year’s full rent up front for eligible DHS clients to move within New York City . . . or to another state.” HRA FAQ; *see also* Corbin Decl. ¶¶ 11–13; DOI Report at 2. 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

¹ HRA is a division of NYC’s Department of Social Services (“DDS”). N.Y.C. Dep’t of Investigation, Press Release No. 26-2019 at 1 (Dec. 5, 2019) (hereinafter “DOI Press Release”); N.Y.C. Dep’t of Investigation, Report on The New York City Human Resources Administration’s Special One-Time Assistance Program’s Placements Outside of New York City at 2, n. 1 (Dec. 2019) (hereinafter “DOI Report”). DSS administers both HRA and NYC’s Department of Homeless Services (“DHS”). *Id.*

² It does not appear that a single, publicly accessible document sets forth SOTA. Instead, HRA’s website appears to memorialize SOTA in the form of an interactive FAQ page. *See* N.Y.C. Human Res. Admin., Rental Assistance: SOTA Frequently Asked Questions (last visited February 2, 2020), <https://www1.nyc.gov/site/hra/help/sota.page> (hereinafter “HRA FAQ”). Additionally, NYC sets forth the requirements of SOTA not by citing to a stand-alone document, but by citing to a declaration by Sheila Corbin, Executive Director of NYC’s Housing Referrals and Processing Unit within DHS, who recounts the program. *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.”)). Therefore, Tenants rely on DOI’s publications, HRA’s FAQ webpage, and Corbin’s Declaration for information about the SOTA program.

the past year if the family has no children), and (b) must earn over double the amount of future rent. *Id.*

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." DOI Press Release at 1–2; DOI Report at 23, 7–10. In December 2019, NYC's Department of Investigation ("DOI") 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-standard living conditions to some SOTA participants. DOI Press Release at 1. 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. DOI Report at 7–8. 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," *id.* at 9, and thus, "the promise of the program is not being fulfilled," *id.* at 1.

NYC claims that it has substantially improved the program since the placements described in the DOI report were made. NYC TRO Br. at 8–9. NYC

also claims that future participants will be placed in apartments that will be stable, permanent homes for their families. *Id.*

II. NEWARK RESPONDS TO SOTA'S MISMANAGEMENT BY ENACTING SOME IMPROVEMENTS, YET FUNCTIONALLY BANNING SOTA TENANTS FROM MOVING TO NEWARK.

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. Newark Municipal Code § 18:6-10.2 (Nov. 18, 2019). 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).

However, Newark also included a provision prohibiting Newark landlords from “accept[ing] pre-paid rent for more than (1) month.” *Id.* § 18:6-10.2(F). On January 13, 2020 (during the pendency of this action), Newark amended the Ordinance, but still kept this language prohibiting the pre-paid payment of more than one month’s rent. *See* Newark Municipal Code § 18:6-10.2(E) (Jan. 13, 2020) (“No

Landlord shall accept pre-paid rent for more than (1) month.”).³ Both versions of the 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” 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.

III. THE TENANTS AFFECTED BY SOTA’S MISMANAGEMENT AND NEWARK’S BAN.

Proposed Intervenor represents two classes of affected tenants: (a) SOTA-participant tenants who moved into untenable living situations in Newark due to defects in the SOTA inspection process that the Ordinance purports to remedy (“Past/Present Tenants”); and (b) SOTA-eligible tenants who wish to move to Newark but cannot because of conflicting terms in SOTA and the Ordinance (“Future Tenants”).

A. Past/Present Tenants.

Shakira Jones experienced first-hand the nonfulfillment of SOTA’s promise, as laid out in the DOI’s report. Ms. Jones was eligible for SOTA because she and her two children lived in a NYC shelter for at least 90 days and she worked as a security guard and hairdresser, earning more than double her would-be Newark SOTA apartment rent. Declaration of Shakira Jones ¶¶ 5–9, dated February 27, 2020

³ This brief will cite to the updated Ordinance, which, for Tenants’ purposes, contains immaterial changes. *See* Amended Newark Municipal Code §§ 18:6-10.1 to 18:6-10.4 (Jan. 13, 2020).

(“Jones Decl.”). Ms. Jones moved to a SOTA-approved apartment in Newark around March 2018 and experienced uninhabitable circumstances in two SOTA-approved apartments, including: (i) a lack of electricity and heat for extended periods of times; (ii) exposed wires and a minor electrical explosion; (iii) rat and mice infestation; and (iv) wall and floor erosion. *Id.* ¶¶ 14–34. Ms. Jones represents a number of similarly situated individuals who, under SOTA, moved to Newark, and experienced or are experiencing severely uninhabitable circumstances due to the lack of oversight in administration of SOTA. *See* DOI Report at 7–8.

B. Future Tenants.

On the other hand, the Ordinance effectively bars Future Tenants, like T.S.,⁴ from moving to Newark. T.S. is eligible for SOTA because she is a single adult living in an NYC shelter for 90 out of the last 365 days and works full-time for a security company earning more than double her would-be Newark SOTA apartment rent. Declaration of T.S. ¶ 3, dated February 25, 2020 (“T.S. Decl.”). T.S. wishes to take advantage of the SOTA program and move from NYC to Newark, specifically, to escape domestic violence in NYC and live closer to family and friends in Newark. *Id.* ¶ 4. The Ordinance has prevented T.S. from taking advantage of SOTA and moving to Newark to be closer to her friends and family because

⁴ Concurrently with this motion, T.S. is moving to proceed anonymously given her unique circumstances as a domestic violence survivor, described briefly herein.

SOTA only offers one year of prepaid rental assistance, and the Ordinance bars prepaid rental assistance over one month in duration. *Id.* ¶ 5.⁵

Similarly, Eugene Samuels is eligible for SOTA because he is a single adult living in an NYC shelter for 90 out of the last 365 days and works full-time as a maintenance worker earning more than double his would-be Newark SOTA apartment rent. Declaration of Eugene Samuels ¶¶ 1–2, 7–8, dated February 25, 2020 (“Samuels Decl.”). Mr. Samuels wishes to take advantage of the SOTA program and move from NYC to Newark because he has friends in New Jersey and he could easily commute to work from Newark. *Id.* ¶¶ 8–10. The Ordinance has similarly prevented Mr. Samuels from taking advantage of SOTA and moving to Newark. *Id.* ¶ 11. T.S. and Mr. Samuels represent a number of similarly situated individuals who qualify for SOTA, wish to use SOTA to move to Newark, and are unable to do so because of the Ordinance.

PROCEDURAL HISTORY

Newark filed its Verified Complaint and application for a temporary restraining order against NYC, Mayor Bill de Blasio (in his official capacity), and Commissioner Steven Banks (in his official capacity) (collectively “Defendants”) on December 1, 2019. Newark alleges two causes of action: (i) violation of the

⁵ Every day that T.S. is denied the ability to move to Newark via SOTA, she suffers irreparable harm in the form of living in fear of being located by her abuser, compounded by the increasing worry of losing her designated Newark apartment to a different tenant.

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.

Defendants filed their 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 Defendants’ counterclaims. D.E. 22. Additionally, on December 26, 2019, the City of Jersey City (“Jersey City”) moved to intervene. D.E. 28. Both of these motions are currently pending before the Court.

The parties have been engaging in settlement negotiations with oversight from the Court. *See* D.E. 17, 39, 43.

LEGAL ARGUMENT

Federal Rule of Civil Procedure 24 provides two different avenues of intervention: (a) intervention of right and (b) permissive intervention. Proposed Intervenors meet both standards.

I. PROPOSED INTERVENORS HAVE A RIGHT TO INTERVENE.

Under Fed. R. Civ. P. 24, the court *must* permit anyone to intervene who, on timely motion, “claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant’s ability to protect its interest, unless existing parties adequately represent that interest.” Fed. R. Civ. P. 24(a)(2). The Third Circuit recognizes Rule 24(a)(2) to require four elements: (1) “a timely application for leave to intervene,” (2) “a sufficient interest in the litigation,” (3) “a threat that the interest will be impaired or affected, as a practical matter, by the disposition of the action,” and (4) “inadequate representation of the prospective intervenor’s interest by existing parties to the litigation.” *Kleissler v. U.S. Forest Serv.*, 157 F.3d 964, 969 (3d Cir. 1998). Proposed Intervenors satisfy each of these criteria.

A. Proposed Intervenors’ Motion is Timely.

“A district court’s timeliness inquiry for both types of Rule 24 motions requires considering the totality of the circumstances arising from three factors: (1) the stage of the proceeding; (2) the prejudice that delay may cause the parties; and

(3) the reason for the delay.” *Wallach v. Eaton Corp.*, 837 F.3d 356, 371 (3d Cir. 2016) (internal quotations omitted). And for intervention as of right specifically, district courts maintain “a general reluctance to dispose of a motion to intervene as of right on untimeliness grounds because the would-be intervenor actually may be seriously harmed if not allowed to intervene.” *Id.* at 371–72.

This case is still in its early stages. Newark filed its Verified Complaint against Defendants less than three months ago. D.E. 1. No dispositive motions have been decided and no discovery has ensued.

Whereas NYC and Newark will suffer little prejudice if Tenants—the parties with an actual interest in the action —intervene at this time, Proposed Intervenors will be seriously harmed if they are not permitted to participate in this action. Tenants are the persons affected by NYC’s and Newark’s actions, and the persons whose rights to shelter, travel, and live free from discrimination, among other things, are directly jeopardized by this action.

Accordingly, Proposed Intervenors motion is timely.

B. Proposed Intervenors Have a Significant Interest in the Litigation and this Litigation Threatens to Impair that Interest.

As for the next two intervention as of right elements, “the claimed interest in the litigation must be one that is specific to those seeking to intervene, is capable of definition, and will be directly affected in a substantially concrete fashion by the

relief sought.” *Benjamin ex rel. Yock v. Dep’t of Pub. Welfare of Pennsylvania*, 701 F.3d 938, 951 (3d Cir. 2012) (internal quotations and alterations omitted).

First, an intervenor’s interest as an “intended beneficiary” of a “specific fund is sufficient to entitle intervention in a case affecting that fund.” *Mountain Top Condo. Ass’n v. Dave Stabbert Master Builder, Inc.*, 72 F.3d 361, 366–67 (3d Cir. 1995). In *Mountain Top Condominium*, two condominium owners whose condominiums were damaged by Hurricane Hugo sought intervention into a case filed by their condominium association against a contracting company for inadequate workmanship during reconstruction projects. *Id.* at 363–65. If the contracting company won the suit, its payment (which the condominium association withheld) would come from a shared fund that would otherwise contribute to the proposed intervenor’s condominium repairs. *Id.*

The Third Circuit found that as “intended beneficiaries” of the money held in the fund, the proposed intervenors had “a property interest . . . that is enforceable either in law or in equity.” *Id.* at 367. Thus, “while the [proposed intervenors] may not have an interest in the merits of the claims pending between [the plaintiff and defendant], they do have an interest in the property over which [the dispute concerns].” *Id.* at 368. The Third Circuit accordingly found that “[c]learly [the proposed intervenors] have an interest in being heard with respect to the disposition

of that fund[,]” and therefore the proposed intervenors had an “interest in the litigation sufficient to support intervention as of right under Rule 24(a)(2).” *Id.*

Second, a potential settlement that affects the proposed intervenors’ beneficial interest in a fund sufficiently threatens impairment of this interest. *See id.* at 368. In *Mountain Top Condominium*, the Third Circuit recognized that the resolution of the matter could result in the condominium association depleting the fund to pay the contracting company and leaving the proposed intervenors as “beneficiaries of an empty and worthless” fund. *Id.* Thus, the Third Circuit concluded that the proposed intervenors’ “interest in the fund as a practical matter may, indeed, become affected or impaired in their absence.” *Id.*

Here, Tenants likewise have “significant interests” in this litigation, and the litigation severely threatens these interests. In this litigation, Newark is asking the Court to find SOTA unconstitutional, D.E. 1 ¶ 101, and NYC is asking the Court to find the Ordinance unconstitutional, D.E. 14 ¶ 80. Either outcome threatens Tenants’ significant interests.

Future Tenants have a significant interest in the disposition of SOTA rental assistance benefits, which Newark threatens by challenging the constitutionality of SOTA. If the Court finds that SOTA is unconstitutional, Future Tenants will no longer have access to this shared fund of SOTA rental assistance benefits. Similarly, a settlement between Newark and NYC could significantly reduce the amount of

rental assistance available to Future Tenants. This result is particularly detrimental for Future Tenants like T.S., who seek to placements outside of NYC in order to escape their abusers. Future Tenants deserve inclusion in this action and any settlement negotiations to ensure that their interests, as intended beneficiaries of SOTA, are represented.

Similarly, Past/Present Tenants have a significant interest in the habitability of their homes, which NYC threatens by challenging the constitutionality of the Ordinance. If the Court finds that the Ordinance is unconstitutional, requirements like “a landlord shall cause the rental unit to be inspected annually,” Newark Municipal Code § 18:6-10.1(A), and/or “[a]n inspection shall be obtained . . . prior to a change of occupancy,” *id.* § 18:6-10.1(B), could be lost. These and other provisions in the Ordinance do in fact protect against some of the brutal conditions that Past/Present Tenants have faced, and, in some instances, are still facing. The outcome of this litigation, or settlement between the parties, could again allow Newark landlords to mistreat Past/Present Tenants and evade accountability. Past/Present Tenants have an interest in ensuring that the SOTA funds provided to Newark landlords on their behalf are used to secure habitable housing. Therefore, Past/Present Tenants likewise deserve inclusion in this action and any settlement negotiations to ensure that their interests, as intended beneficiaries of the Ordinance, are represented.

In sum, Tenants have “significant interests” in this litigation, and the litigation severely threatens these interests.

C. Proposed Intervenors’ Interests in this Litigation are Inadequately Represented.

The burden on a proposed intervenor to show that the existing parties inadequately represent his or her interest in a litigation is “minimal.” *Mountain Top Condo.*, 72 F.3d at 368. This burden is satisfied if the parties “are adverse” to the proposed intervenors, or if it is apparent from the parties’ prior conduct that they will not represent the proposed intervenor’s point of view. *Id.* at 368–69.

Again, it is apparent from Newark’s and NYC’s prior conduct that they will not adequately represent Tenants’ best interests in this proceeding. While NYC instituted SOTA “to help New York families break the cycle of homelessness,” NYC’s own DOI found that the initial administration of SOTA failed to “fulfill” its purpose, and put Tenants into apartments with terrible conditions. DOI Press Release at 1; *see also* Jones Decl. ¶¶ 14–34. Similarly, while Newark’s Ordinance in part creates more accountability for Newark landlords, the Ordinance also makes clear that Newark seeks to bar Future Tenants from exercising their right to live in Newark, as evidenced by the blatant one-month restriction on pre-paid rent nullifying SOTA, *see* Municipal Code § 18:6-10.1(E), and the provision proscribing “bring[ing] a needy person to the City of Newark,” *id.* § 18:6-10.3. Further, it was in Newark, under Newark’s existing laws, that Past/Present Tenants were mistreated:

Newark has shown that it cannot enforce its own housing standards against its own landlords. Thus, prior conduct indicates that NYC and Newark will not adequately represent Tenants' best interests in this proceeding.

Having satisfied all of the elements of intervention as of right, the Court should grant Tenants' motion to intervene pursuant to Rule 24(a).

II. AT A MINIMUM, TENANTS SHOULD BE PERMITTED TO INTERVENE.

Alternatively, if the Court finds Tenants do not meet the standards to intervene as of right, Tenants should be permitted to intervene under Fed. R. Civ. P. 24(b).

“[T]he court may permit anyone to intervene who . . . has a claim or defense that shares with the main action a common question of law or fact.” Fed. R. Civ. P. 24(b)(1)(B). “In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights.” *Id.* at 24(b)(3). In other words, “[p]ermissive intervention under Rule 24 requires (1) the motion to be timely; (2) an applicant's claim or defense and the main action have a question of law or fact in common; and (3) the intervention may not cause undue delay or prejudice to the original parties' rights.” *King v. Christie*, 981 F. Supp. 2d 296, 309 (D.N.J. 2013), *aff'd sub nom. King v. Governor of the State of New Jersey*, 767 F.3d 216 (3d Cir. 2014).

First, as set forth above, Tenants' motion is timely.

Second, Tenants’ claims and defenses also share common questions of law or fact with this action. A proposed intervenor’s claims and defenses share common questions of law or fact with the action when the action challenges a law that directly and specifically affects the proposed intervenor. *See King*, 981 F. Supp. 2d at 309. In *King*, licensed therapists and a religious organization challenged New Jersey’s ban on “Sexual Orientation Change Efforts” (“SOCE”) (more commonly known as “gay conversion therapy”) when counseling minors. *Id.* at 302. The proposed intervenor was a New Jersey civil rights organization that that “primarily advocate[ed] for lesbian, gay, bisexual, and transgender (‘LGBT’) equality within the state,” and “ha[d] over 125,000 members, including LGBT minors and their parents, some of whom, . . . might [have] be[en] subject to SOCE treatment.” *Id.* at 305. In granting permissive intervention, the court found that the proposed intervenor’s “claims or defenses share common questions of law or fact with this action,” and that “the presence of overlapping interests between [the proposed intervenor] and the State d[id] not preclude permissive intervention.” *Id.* at 309.

Here, similarly, the legality of SOTA and the Ordinance directly affect Tenants (as explained above) and Tenants’ claims and defenses regarding the legality of these authorities overlap with the parties. Tenants share an interest in adjudicating Newark’s claim against NYC that parts of SOTA may be unlawful; namely, NYC’s failure to provide proper administrative oversight. Tenants share in

NYC’s claim against Newark that parts of the Ordinance are unlawful—namely, Section 18:6-10.2(E) (proscribing pre-paid rental assistance for periods longer than one month) and Section 18:6-10.3 (proscribing “bring[ing] a needy person to the City of Newark”)—as they unlawfully discriminate against Tenants on the basis of socioeconomic status, *see* N.J.S.A. § 10:5-12, and restrict Tenants’ rights to travel, *see, e.g., Edwards v. California*, 314 U.S. 160 (1941).

Additionally, Tenants share in Newark’s interest in promoting the interests addressed by provisions of the Ordinance mandating additional accountability on the part of landlords and rental assistance providers: Sections 18:6-10.1 and 18:6-10.2 (excluding 18:6-10.2(E)). Tenants also share in NYC’s defense that that parts of SOTA are constitutional—particularly the provision affording disadvantaged, working citizens one year of rental assistance, including for apartments outside of NYC. Thus, while Tenants do not fully endorse the position of either party (both of which claim, to the extent convenient, to be advocating on behalf of Tenants), Tenants share a number of claims and defenses with the parties.

Third, Proposed Intervenors’ intervention will not cause undue delay or prejudice to the original parties’ rights. The fact that the existing parties may have to undergo additional briefing is not undue delay or prejudice. *King*, 981 F. Supp. 2d at 309. This is particularly true when the proposed intervenor provides a “helpful, alternative viewpoint from the vantage of some persons [directly affected by the law

at issue]” or who “potential[ly]” will be. *Id.* at 310 (finding that the proposed intervenor provided “a helpful, alternative viewpoint from the vantage of some persons who have undergone SOCE treatment or are potential patients of treatment that will aid the court in resolving plaintiffs’ claims fully and fairly” (citation omitted)).

Here, again, Tenants are the ones who will be directly affected by the outcome of this case, yet their voice is currently excluded from the conversation. The existing parties will not be prejudiced by inserting into this action the very parties that both SOTA and the Ordinance purportedly seek to help. This alternative viewpoint is undeniably beneficial, if not required, in justly resolving this action.

Thus, the Court alternatively should grant Tenants’ motion for permissive intervention under Rule 24(b).

III. THE COURT SHOULD PERMIT TENANTS TO INTERVENE WITHOUT A PLEADING.

This Court should permit Tenants to intervene without requiring an accompanying pleading. Although Fed. R. Civ. P. 24(c) provides that a motion to intervene “must state the grounds for intervention and be accompanied by a pleading that sets out the claim or defense for which intervention is sought,” a majority of the circuits favor “a permissive interpretation of the rule,” *see Providence Baptist Church v. Hillandale Comm., Ltd.*, 425 F.3d 309, 313–14 (6th Cir. 2005) (collecting cases). *See also Peaje Investments LLC v. García-Padilla*, 845 F.3d 505, 515 (1st

Cir. 2017) (collecting cases) (stating that several circuits “have eschewed overly technical readings of Rule 24(c)” and that finding the “denial of a motion to intervene based solely on the movant’s failure to attach a pleading, absent prejudice to any party, constitutes an abuse of discretion”); *Cnty. Vocational Sch. of Pittsburgh, Inc. v. Mildon Bus Lines, Inc.*, No. 09-1572, 2017 WL 1376298, at *3 (W.D. Pa. Apr. 17, 2017) (“[D]espite the compulsory language of [Rule 24(c)], some federal circuits have held that whether to permit a procedurally defective motion to intervene is within the sound discretion of the district court.” (quoting *United States ex rel. Frank M. Sheesley Co. v. St. Paul Fire & Marine Ins. Co.*, 239 F.R.D. 404, 408 (W.D. Pa. 2006) and citing *Retired Chi. Police Ass’n v. City of Chicago*, 7 F.3d 584, 595 (7th Cir. 1993); *Providence Baptist Church*, 425 F.3d at 313; *Beckman Indus., Inc., v. Int’l Ins. Co.*, 966 F.2d 470, 474 (9th Cir. 1992))). In particular, where “the position of the movant is apparent from other filings and where the opposing party will not be prejudiced, Rule 24(c) permits a degree of flexibility with technical requirements.” *Windsor v. United States*, 797 F. Supp. 2d 320, 325 (S.D.N.Y. 2011) (citation omitted).

Tenants’ position in this action is clear and simple: Tenants seek to benefit, as intended, from the SOTA program (including by being housed in Newark) and to ensure that the apartments in which they are placed are, in fact, stable and habitable. *See* T.S. Decl. ¶¶ 4–6; Samuels Decl. ¶¶ 9–11; Jones Decl. ¶ 35. Because both NYC

and Newark are sufficiently on notice of Proposed Intervenors' position, waiver of the pleading requirement is appropriate. *See Conn. Fine Wine & Spirits, LLC v. Harris*, No. 16-CV-1434 (JCH), 2016 WL 9967919, at *4 (D. Conn. Nov. 8, 2016) (finding "movants' failure to file a 'pleading' with their Motions is not fatal to their efforts to intervene" because the motion put the parties "sufficiently on notice as to their interests and positions in the case"); *Blesch v. Holder*, No. 12-CV-1578 CBA, 2012 WL 1965401, at *2 (E.D.N.Y. May 31, 2012) (agreeing that waiver of the pleading requirement was justified because intervenor's position on the litigation was clearly articulated in its motion papers); *Windsor*, 797 F. Supp. 2d at 326 (S.D.N.Y. 2011) (same).

Tenants seek intervention to be able to participate in Court-ordered settlement discussions. *See* D.E. 17, 39. It is crucial that Tenants have a seat at the table where Newark and NYC will be discussing their fates. Tenants' invaluable insight into the real-life application of SOTA and the Ordinance is critical to reaching a workable settlement in this action. In similar cases, where a proposed intervenor is seeking to enter in a case for a stated, narrow purpose, Courts have waived the pleading requirement. *See Cmty. Vocational Sch. of Pittsburgh, Inc.*, 2017 WL 1376298, at *3 (waiving pleading requirement where intervenor sought intervention in order to submit special interrogatories, not to file a pleading); *Utica Mut. Ins. Co. v. Munich Reinsurance Am., Inc.*, No. 6:12-cv-00196, 2017 WL 9400673, at *8 n.4 (N.D.N.Y.

Jan. 6, 2017) (waiving pleading requirement where intervenor specifically requested to intervene for the sole purpose of challenging the parties' motions to seal summary judgment submissions in its filings).

Finally, the unique hardships faced by Tenants weigh in favor of relaxing the pleading requirement in this case. Tenants, who are battling homelessness and dealing with the hazards of their substandard housing, have significantly fewer resources at their disposal. Tenants are often among the most vulnerable in NYC and Newark, having to juggle seeking aid in their domestic violence cases, securing shelter, caring for their families, and maintaining a job. All of this—in addition to a lack of faith in systems which have already failed them—can impact a Tenant's willingness or ability to seek legal assistance and to maintain a relationship with their legal advisors. Furthermore, those most in need of help may not want to come forward publicly with their personal traumas of, for example, falling through floors or their history of domestic abuse. *See* Jones Decl. ¶ 34; T.S. Decl. ¶¶ 1–2. And, because of the transitory and urgent nature of homelessness, the circumstances of potential class representatives and the proposed class of Tenants are rapidly changing. *Compare* Declaration of Shakira Jones, dated Nov. 13, 2019 (D.E. 1-3) *with* Jones Decl. Accordingly, issues idiosyncratic to this case require additional attention prior to the filing of a formal pleading. Nonetheless, if the Court so orders,

Tenants will file a formal pleading within 30 days of the being granted leave to intervene.

For these reasons, the Court should permit Tenants to intervene without filing a pleading.

CONCLUSION

For the foregoing reasons, Tenants respectfully request that the Court grant their motion to intervene pursuant to Fed. R. Civ. P. 24.

Respectfully submitted,

Dated: February 27, 2020

By: s/ Matthew M. Oliver

Matthew M. Oliver
Rebecca J. Ryan
Anthony J. Cocuzza
LOWENSTEIN SANDLER LLP
One Lowenstein Drive
Roseland, New Jersey 07068
973.597.2500
moliver@lowenstein.com
rryan@lowenstein.com
acocuzza@lowenstein.com
Counsel for Proposed Intervenors
Class of Affected Tenants

Joshua Goldfein (*pro hac vice* forthcoming)
THE LEGAL AID SOCIETY
199 Water Street
New York, New York 10038
212.577.3300
jgoldfein@legal-aid.org
Co-Counsel for Proposed Intervenors
Class of Affected Tenants

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

CITY OF NEWARK,

Plaintiff,

v.

CITY OF NEW YORK,
MAYOR BILL DE BLASIO, in his
official capacity as Mayor of New York
City, COMMISSIONER STEVEN
BANKS, in his official capacity,

Defendants.

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

DECLARATION

I, T.S., under penalty of perjury pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am a resident of the New York City shelter system and a survivor of domestic violence. I make this declaration in support of the Proposed Intervenor Class of Affected Tenants Motion to Intervene Pursuant To Fed. R. Civ. P. 24.

2. I am afraid that if I use my real name in this case, my batterer might find me and I would not be safe, so I am submitting this affidavit with just initials.

3. I have been told that I am approved for New York's "Special One-Time Assistance" program and that with this program I could move into the apartment I saw in Newark. I was told I was eligible for SOTA because I have lived in shelter for over three months out of the last year, and because I work full-time for a security

company in New York City where I earn more than double my would-be SOTA apartment rent.

4. I hoped to move to Newark so that I could feel safe because it is far away from my batterer, but Newark's new rule and its lawsuit are keeping me from doing that. I have family and friends in Newark and have spent time there and think it would be a safe place for me to live.

5. Right now, I can't afford to move into the apartment I saw in Newark with the money I saved, but with SOTA I could move there immediately and then, after the program ends, given my current hours and pay I would be able to afford the apartment on my own. I could easily commute to my job in New York from Newark on public transportation.

6. I hope to be able to move to a new apartment soon but until I have the keys in my hand I will not feel safe.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Executed on February 25, 2020.



TS

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

CITY OF NEWARK,

Plaintiff,

v.

CITY OF NEW YORK,
MAYOR BILL DE BLASIO, in his
official capacity as Mayor of New York
City, COMMISSIONER STEVEN
BANKS, in his official capacity,

Defendants.

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

**DECLARATION OF
SHAKIRA JONES**

I, SHAKIRA JONES, under penalty of perjury pursuant to 28 U.S.C. § 1746, declare as follows:

1. I moved to Newark in 2018 with New York City's Special One-Time-Assistance ("SOTA") program. Currently I reside in a shelter in New York City with my three children who are six, three, and two years old.
2. I have personal knowledge of the matters I discuss in this declaration.
3. I make this Certification in support of the Proposed Intervenor Class of Affected Tenants Motion to Intervene Pursuant To Fed. R. Civ. P. 24.
4. Before moving to Newark, I lived in a New York City homeless shelter in Jamaica, Queens.

5. I understand that shelter where I was living was operated by a contractor of the City of New York's Department of Homeless Services (the "DHS"). At that time, I had two children who were five and two years old, and I was in the final term of my pregnancy with my third child.

6. I lived there for about ten months before moving to Newark.

7. At that time, I was employed as a security guard at commercial banks in various locations in New York City.

8. I later also had a second job in New York City at a hair salon.

9. A few months after we moved into the shelter, representatives of DHS told me that I was eligible for the SOTA program. They sent me to the DHS headquarters at 33 Beaver Street in New York, New York in March 2018.

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

11. During the DHS Bus Ride, the two DHS representatives showed me and other shelter residents apartments in Newark and other cities in New Jersey. I was shown, and I went on, walkthroughs of the apartments in New Jersey with the DHS representatives. Each walkthrough lasted no more than ten minutes.

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

13. Four days after the DHS Bus Ride, I was told by DHS representatives to pick up a furniture check along with the keys to the South 12th Street Apartment, and DHS gave the rent checks directly to the landlord.

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

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

16. 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 my food to spoil. The electrical wiring was visibly exposed. There were also rats and mice in the apartment and the walls and floors were eroding.

17. I called DHS headquarters to report the problems, but they did not answer my calls nor assisted me with my living conditions.

18. I reached out to the Newark Fire Department and reported the problem with the electric heater. They came to the apartment and advised me to turn the electric heater off, and tell my landlord to fix it because it could cause a fire.

19. I notified my landlord about the issues with the apartment but he did not fix them.

20. I went to the electric utility PSE&G to ask why my electricity was not working, and PSE&G told me that my apartment was not listed in their records and that no meter was running to the third floor apartment.

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

22. Newark Code Enforcement filed a complaint against the landlord of the South 12th Street Apartment ordering the landlord to fix the conditions.

23. 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.

24. I called Newark Code Enforcement once more at the end of January 2019. In addition to being an illegally converted apartment, Newark Code Enforcement found that there was no heat, the walls and ceilings were cracked, the electrical lighting and sockets were damaged, there was an illegal fire-escape, the basement had severe plumbing issues that caused flooding, that the South 12th Street Apartment was a threat to the safety of its occupants and community, and that it was unfit for human habitation, occupancy, and use. We were ordered to vacate the apartment.

25. Having nowhere to live, the landlord paid for my stay at an Air BNB for two days. However, because I had nowhere else to go, after two days I returned to the South 12th Street Apartment.

26. I 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, the basement would flood and later freeze from the cold temperatures.

27. A few months into my lease at the South 12th Street Apartment, the babysitter I hired to watch my three children quit because there was no heat or electricity in the South 12th Street Apartment.

28. After the babysitter quit, I lost my job as a hairdresser in New York City because I needed to stay home and care for my children.

29. Sometime in February 2019, the television news station “CBS2” did a story about the “forgotten families” that were living in New Jersey after being placed there with the SOTA Program. I appeared in one of the stories. Only after CBS2 aired its stories did a DHS representative reach out to me for the first time since moving me into the South 12th Street Apartment.

30. The DHS representative told me that I qualified for additional rent assistance, and in March 2019 I found another apartment located at 1-7 Lehigh Avenue, apartment M2, Newark, New Jersey 07114 (the “Lehigh Apartment”).

31. I 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.

32. The DHS representative from the SOTA program gave the advance six-months' rent directly to my new landlord.

33. I called Newark Code Enforcement again because the Lehigh Apartment had no heat but the landlord never fixed the heat.

34. At the Lehigh Apartment, I fell through the kitchen floor and fractured my hand, and as a result, I was unable to work in the hair salon. I took a picture of the broken floor, which had been hidden by a sheet of linoleum.

35. I hope to get my security job back soon so I can move my family back to permanent housing.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

This 27th day of February 2020

By: 

Shakira Jones

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

CITY OF NEWARK,

Plaintiff,

v.

CITY OF NEW YORK,
MAYOR BILL DE BLASIO, in his
official capacity as Mayor of New York
City, COMMISSIONER STEVEN
BANKS, in his official capacity,

Defendant.

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

**DECLARATION OF
EUGENE SAMUELS**

I, EUGENE SAMUELS, under penalty of perjury pursuant to 28 U.S.C. § 1746, declare as follows:

1. I currently reside in a shelter in Manhattan in New York City.
2. I work full-time as a maintenance worker for a group home in Brooklyn. I have had this job for almost five years.
3. I have personal knowledge of the matters I discuss in this declaration.
4. I make this Certification in support of the Proposed Intervenor's Class of Affected Tenants Motion to Intervene Pursuant To Fed. R. Civ. P. 24.
5. I became homeless last year and went to ask for shelter at the New York City Department of Homeless Services ("DHS") in August 2019.
6. I do not want to live in shelter and have been trying to move out.

7. DHS staff told me I was eligible for the Special One Time Assistance (“SOTA”) rent program.

8. Shelter workers then took me to see an apartment in Newark that I liked. It was not ready for me to move in but the landlord said it would be ready soon. I was able to see another unit in the same building so I could tell the apartment would have been great for me. At last I would have my own place.

9. I have friends in New Jersey and feel comfortable living there. I looked into the commute and it would be no problem to get from Newark to my job.

10. In shelter I share a dorm with seven other people and have no privacy. I have a curfew and no kitchen so I can’t cook for myself. I like to cook for myself and not have to depend on other people to feed me.

11. I very much want to move out of shelter and get back to living my own life. I do not think Newark should be able to prevent me from doing this.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Executed on February 25th, 2020.



EUGENE SAMUELS

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

CITY OF NEWARK,

Plaintiff,

v.

CITY OF NEW YORK,
MAYOR BILL DE BLASIO, in his
official capacity as Mayor of New
York City, COMMISSIONER
STEVEN BANKS, in his official
capacity,

Defendants.

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

**[PROPOSED] ORDER
GRANTING MOTION TO
INTERVENE**

This matter having come before the Court on the motion of Proposed Intervenor Class of Affected Tenants (“Tenants”) for an Order allowing Tenants to intervene in this matter pursuant to Fed. R. Civ. P. 24, and the Court having considered the filings and arguments in support thereof and opposition thereto, and for good cause shown,

IT IS on this _____ day of _____ 2020,

ORDERED that Tenants’ Motion to Intervene is **GRANTED**; and it is further

ORDERED that Tenants may intervene without filing a pleading.

Hon. Madeline Cox Arleo, U.S.D.J.