



**THE CITY OF NEW YORK
LAW DEPARTMENT**

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August 4, 2023

Via ECF

Hon. Leda Dunn Wettre, U.S.M.J.
United States District Court, District of New Jersey
Martin Luther King Building & U.S. Courthouse
50 Walnut Street
Newark, NJ 07101

Re: City of Newark v. City of New York et al.
Case No. 2:19-cv-20931-MCA-LDW

Dear Judge Wettre:

As counsel for the City of New York, Mayor of the City of New York, and Commissioner of the New York City Department of Social Services (collectively, “NYC”), we write to provide the Court with the enclosed copy of the executed Settlement Agreement in this action, which we respectfully request that Your Honor “so order,” in accordance with the terms of the Settlement Agreement.

Assuming that Your Honor “so orders” the Settlement Agreement, then — pursuant to paragraph 16 of the Settlement Agreement — NYC shall file with the Court the Stipulation of Dismissal, which all parties to this action have now executed, so that it may be so ordered” by Judge Arleo.

Respectfully submitted,

Anjan Mishra
Doris F. Bernhardt*
Bianca C. Isaias*

*Appearing *pro hac vice*

Attachment

SETTLEMENT AGREEMENT

This Settlement Agreement is made and entered into by and between plaintiff the City of Newark (“Newark” or “Plaintiff”) and defendants the City of New York (“NYC”), the Mayor of the City of New York, in his official capacity (“Mayor”), and the Acting Commissioner of the New York City Department of Social Services, in her official capacity (“Commissioner” and collectively with the City of New York and the Mayor, “NYC” or “Defendants”). Plaintiff and Defendants are each a “Party” and collectively are the “Parties” to this Agreement.

WHEREAS, on December 2, 2019, Plaintiff Newark filed an action in the United States District Court for the District of New Jersey styled *City of Newark v. City of New York, Mayor Bill de Blasio, in his official capacity, and Commissioner Steven Banks, in his official capacity*, Docket No. 19-cv-20931 (the “Action”) alleging that NYC, in connection with its administration of a NYC social services program known as the Special One-Time Assistance (“SOTA”) program, which provided rental assistance for housing, including in Newark, created a public nuisance and violated the dormant Commerce Clause of the United States Constitution; and

WHEREAS, on December 13, 2019, NYC filed an answer with counterclaims against Newark and concurrently moved for a preliminary injunction against Newark; and

WHEREAS, on December 20, 2019, Newark moved to dismiss NYC’s counterclaims and opposed NYC’s motion for a preliminary injunction; and

WHEREAS, on June 19, 2020, the Court issued a Letter Order denying NYC’s motion for a preliminary injunction and granting Newark’s motion to dismiss NYC’s counterclaims without prejudice; and

WHEREAS, on March 12, 2021, NYC filed against Newark a motion to dismiss for lack of subject matter jurisdiction and for judgment on the pleadings (“NYC’s Rule 12 Motion”); and

WHEREAS, on October 29, 2021, the Court issued a Letter Order granting NYC's Rule 12 Motion in part, with respect to dismissing without prejudice Newark's dormant Commerce Clause claim, denying NYC's Rule 12 Motion in part, with respect to Newark's public nuisance claim; and,

WHEREAS, the Parties, without acknowledging any fault, wrongdoing, or liability, and in order to avoid the time and expense of further litigation and move forward positively, wish to settle, compromise, and resolve their differences regarding the claims alleged in the Action as provided herein; and

NOW, THEREFORE, in consideration of the mutual covenants, promises, and conditions set forth below, the Parties agree as follows:

I. TERM OF AGREEMENT

1. The effective date ("Effective Date") of this Agreement shall be the date on which this Agreement is So-Ordered.

2. The termination date ("Termination Date") of this agreement shall be the earlier of five hundred and forty (540) days from the Effective Date or the date the SOTA program terminates, whichever is earlier.

3. All obligations under this Agreement shall end on the Termination Date, except where otherwise specified.

4. In the event the Termination Date is five hundred and forty (540) days after the Effective Date, there shall be a wind-down period ("Wind-Down Period"), which shall be the ninety (90) day period immediately following the Termination Date.

II. SOTA QUARTERLY REPORT

5. Ninety (90) days after the Effective Date, and every ninety (90) days thereafter, until the Termination Date, NYC shall provide Plaintiff with a report (hereinafter “the Quarterly SOTA Report”). NYC shall transmit the Quarterly SOTA Report to Plaintiff through a secure file transfer protocol. The Quarterly SOTA Report shall include:

- A. The number of additional SOTA households that NYC’s electronic database reports with respect to Newark, New Jersey since the prior Quarterly SOTA Report was run, measured as of a date no earlier than ten (10) days before the Quarterly Report is due, except that the first SOTA Quarterly Report shall reflect the total number of SOTA households that NYC’s electronic database reports with respect to Newark from the Effective Date to a date no earlier than ten (10) days before the first Quarterly Report is due;
- B. The address of each dwelling unit listed in the Quarterly SOTA Report (the “SOTA Addresses”);
- C. Available NYC inspection reports for each dwelling unit listed in the Quarterly SOTA Report;
- D. The name of the landlord for each dwelling unit listed in the Quarterly SOTA Report; and
- E. The name of the broker, if any, associated with each dwelling unit listed in the Quarterly SOTA Report.

6. The Quarterly SOTA Report shall not include the name of any SOTA household member or any other unique identifier, such as, without limitation, a social security number, date of birth, CARES identification number, or public assistance number, (hereinafter “Confidential Information”). To the extent any document included in the Quarterly SOTA Report includes Confidential Information, NYC shall redact the Confidential Information before providing Plaintiff with the Quarterly SOTA Report. In the event of an inadvertent inclusion of Confidential Information in the Quarterly SOTA Report, the Confidential Information shall be kept confidential by Plaintiff to the same extent as the SOTA Addresses, as set forth in paragraphs

8–15. Disclosure of Confidential Information is subject to the same restrictions and prohibitions as disclosure of the SOTA Addresses, as set forth in paragraphs 12–13. Any unauthorized disclosure of Confidential Information shall be treated in the same way as a disclosure of the SOTA Addresses, as set forth in paragraph 14.

7. In the event a Quarterly SOTA Report reflects that more than seven (7) additional SOTA households moved to dwelling units in Newark, New Jersey, the Parties shall schedule a meeting and confer between counsel for the Parties concerning the number of moves.

8. Plaintiff shall use the Quarterly SOTA Report and the information therein solely for the enforcement of this agreement and for the purposes of communicating with the designated point of contact at NYC or legal counsel for NYC concerning the SOTA program and SOTA households or household members residing in Newark, New Jersey. Plaintiff shall not communicate with or target for outreach or enforcement any person or entity solely because of information appearing in the Quarterly SOTA Report. However, nothing herein shall prevent Plaintiff from communicating with, conducting outreach to, or engaging in enforcement against any person or entity whose information appears in the Quarterly SOTA Report, as long as such activity is being pursued in the normal course of Plaintiff’s government business, as Plaintiff would with any other similarly situated person or entity. In particular, nothing herein shall preclude Newark Code Enforcement from issuing summonses and notices of violation to building owners or landlords with respect to any dwelling unit in accordance with applicable municipal or State laws, rules or ordinances, provided that any such summonses or notices of violation shall not include any information that would identify the occupant(s) of the dwelling unit as a SOTA household.

9. The Parties shall strictly maintain the confidentiality of the SOTA Addresses, including as they may appear in a Quarterly SOTA Report.

10. Access to the SOTA Addresses will be restricted by the Plaintiff to “Authorized Users” as set forth below:

- A. The Corporation Counsel of Newark and the First Assistant Corporation Counsel over litigation; and
- B. The Chief Code Enforcement Officer for the City of Newark.

11. Plaintiff shall take all reasonable measures to safeguard and keep the SOTA Addresses confidential and secure, including, but not limited to:

- A. storing the SOTA Addresses in secure, password-protected, access-restricted files;
- B. using only Plaintiff-issued or approved computers, laptops and/or mobile devices to access, process, transmit or store the SOTA Addresses;
- C. ensuring that only Authorized Users shall have access to the SOTA Addresses; and
- D. keeping any hardcopy versions of files containing the SOTA Addresses in locked areas with access restricted to Authorized Users and maintaining a record of who accesses the hardcopy files.

12. Plaintiff shall maintain the security and confidentiality of the SOTA Addresses as required by this Agreement and applicable laws, rules and regulations. Except as required by law, or as permitted under this Agreement, Plaintiff shall not, at any time, directly or indirectly, disclose, share, give, loan, sell, or otherwise grant access to the SOTA Addresses provided pursuant to this Agreement, in part or in whole, to any other person or organization.

13. The Parties shall each ensure that, pursuant to their respective freedom of information laws or regulations, including without limitation, the New Jersey Open Public Records Act, the SOTA Addresses are protected from disclosure or redacted in the event that a Party is or

the Parties are forced to comply with a request for information from a member of the public, a media organization, or any requesting entity, in accordance with all applicable laws.

14. In the event of any unauthorized disclosure of the SOTA Addresses or any of the SOTA Addresses, the Party that was the source of the disclosure (“Responsible Party”) shall promptly notify the other Party in writing of such disclosure and commence an investigation to determine the extent and circumstances of the disclosure. The Responsible Party will provide the other Party with a written incident report by email, within forty-eight (48) hours after the incident is discovered, that describes the circumstances surrounding the unauthorized disclosure; the names of the persons with knowledge of the incident; the name of the recipient of the unauthorized disclosure, if known; a list of the affected SOTA Addresses, if known; and any remedial measures taken. A breach is considered discovered on the first day on which the Responsible Party, knows or should have known of such breach. Following an unauthorized disclosure, information sharing authorized and required under this Agreement shall be suspended until the foregoing steps have been taken; the circumstances that caused or allowed the unauthorized disclosure have been addressed and remedied; and the unauthorized disclosure is resolved, provided that such suspension shall in no circumstance extend the Termination Date.

15. The confidentiality obligations set forth in this Agreement at paragraphs 8–14 shall survive the termination of this Agreement and shall continue to bind the Parties following the Termination Date or any other termination of the Agreement.

III. DISMISSAL

16. Within fifteen (15) business days of the Effective Date, NYC shall file with the Court a Stipulation of Dismissal Without Prejudice in the form attached as Exhibit A (the “Stipulation of Dismissal”) providing for the dismissal without prejudice of all claims, crossclaims

and/or counterclaims in their entirety without costs or attorneys' fees being assessed to any Party.¹ The Stipulation of Dismissal Without Prejudice shall be executed by the Parties simultaneously with this Agreement.

IV. NO ADMISSION OF LIABILITY

17. The Parties understand and hereby agree that this Agreement constitutes a compromise and settlement of the lawsuit and shall not be construed as, nor is it, an admission of liability by either Party, nor can it be used for any purpose against either Party other than to settle and compromise the lawsuit or to enforce the terms of the Agreement.

V. ADMINISTRATION OF TERMS OF AGREEMENT

18. The Parties to this Agreement shall endeavor to interpret this Agreement in good faith and shall also endeavor in good faith to resolve informally any differences regarding interpretation of and compliance with this Agreement prior to seeking judicial intervention to enforce and/or modify this Agreement.

19. Other than unauthorized disclosures, which are governed by paragraph 14, if a Party ("Party Alleging Breach") believes that the other Party ("Party in Alleged Breach") has not complied with this Agreement, then the Party Alleging Breach shall notify the Party in Alleged Breach in writing of the nature and specifics of the alleged failure(s) to comply within thirty (30) days of the Party Alleging Breach having learned of such alleged failure to comply. Such written notice shall be accompanied by copies of any documents or data relied upon for the claimed violations. The Party in Alleged Breach shall have thirty (30) days to cure. If no resolution is reached by the expiration of the thirty (30) day cure period, the Party Alleging Breach may file an

¹ As set forth in Exhibit A, the proposed class of intervenor tenants ("Tenants") are also signatories to the dismissal without prejudice.

action or motion seeking enforcement of the terms of this Agreement upon fifteen (15) days' written notice to the Party in Alleged Breach.

20. Prior to filing or commencing any suit, action or proceeding against NYC concerning, arising out of, or relating to the SOTA program, other than an action or motion to enforce the terms of this Agreement, which is governed by paragraph 19, Newark shall give NYC at least thirty (30) days written notice of such prospective suit, action or proceeding. Upon such notice, NYC's obligations under paragraphs 5-7 of this Agreement shall be suspended until such suit, action or proceeding is commenced or filed, or Newark withdraws the notice in writing. Upon the filing or commencement by Newark of any suit, action or proceeding against NYC concerning, arising out of, or relating to the SOTA program, this Agreement shall terminate, except that the confidentiality provisions of the Agreement shall remain in effect, as set forth in paragraph 15.

21. Any notice or communication required by or made pursuant to this Agreement, shall be sent by electronic mail, or by first class mail upon request, to the points of contact for the parties and their counsel at the addresses specified below.

To Newark:

Kenyatta Stewart
Gary Lipshutz
City of Newark
Department of Law
920 Broad Street, Rm 316
Newark, NJ 07102
stewartk@ci.newark.nj.us
lipshutzg@ci.newark.nj.us

To NYC:

Doris F. Bernhardt
Anjan Mishra
Senior Counsels
New York City Law Department
100 Church Street
New York, New York 10007
dbernar@law.nyc.gov
amishra@law.nyc.gov

Ann Marie Scalia, General Counsel
New York City Department of Social
Services
150 Greenwich Street, 38th Fl.,
New York, NY 10007
scaliaa@dss.nyc.gov

22. Either Party may change the above designated addressees or addresses by written notice to the other Party.

23. During the Wind-Down Period, if any, the Parties to this Agreement shall endeavor to continue to engage in good faith communication concerning the SOTA program. If either Party communicates with the other Party in writing pursuant to, and referencing this paragraph 23 of the Agreement, the other Party shall respond in writing within fifteen (15) business days.

24. During the Wind-Down Period, if any, either Party may request, upon notice to the other Party and by email to the Tenants — c/o Tenants’ counsel, Matthew M. Oliver, Lowenstein Sandler LLP, One Lowenstein Drive, Roseland, NJ 07068, MOliver@lowenstein.com — that the Court schedule a meet and confer sixty (60) days into the Wind-Down Period or on such other date as shall be convenient to the Court and the Parties. If the Court schedules such a meet and confer, counsel for the Parties shall promptly email the Tenants’ counsel to provide notice of the scheduled conference.

and
Joshua
Gold-
fein,
Legal
Aid
Society
JGoldf
ein@le
gal-
aid.org

VI. MISCELLANEOUS

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

DB
GL

26. Nothing herein shall prevent NYC from amending, modifying, or withdrawing the SOTA Rule or amending, modifying or terminating the SOTA program, except that NYC agrees not to replace the SOTA program with another substantially similar program with

the intention to avoid its obligations under this Agreement. Nothing herein shall prevent NYC from complying with any federal, state or local law, rule or regulation.

27. The Parties expressly represent and warrant that they have full legal capacity to enter into this Agreement, that they have carefully read and fully understand this Agreement, that they have had the opportunity to review this Agreement with their attorneys and that they have executed this Agreement voluntarily, without duress, coercion or undue influence.

28. The Parties to this Agreement have participated in its drafting such that any ambiguity contained therein shall not be construed for or against either Party.

29. This Agreement shall be binding upon and inure to the benefit of the Parties and each of their heirs, successors, assigns, executors and legal representatives.

30. This Agreement may be executed in any number of counterparts and each such counterpart shall be deemed to be an original. For purposes of executing this Agreement, a document signed and transmitted by facsimile or email shall be treated as an original document and have the same binding legal effect as an original signature on an original document.

31. The Court shall retain jurisdiction for the sole purpose of enforcing the terms of the Agreement until the Termination Date.

SIGNATURE PAGE TO FOLLOW

Dated: Newark, New Jersey

July 31, 2023

Kenyatta Stewart
Corporation Counsel for the City of Newark
Attorney for Plaintiff

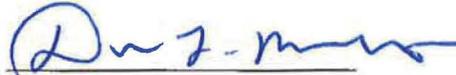


By: Kenyatta Stewart
Gary Lipshutz
City of Newark
Department of Law
920 Broad Street, Rm 316
Newark, NJ 07102

Dated: New York, New York

July 31, 2023

Hon. Sylvia O. Hinds-Radix
Corporation Counsel for the City of New
York
Attorney for Defendants



By: Doris F. Bernhardt
Anjan Mishra
Senior Counsel
New York City Law Department
100 Church Street
New York, New York 10007

So Ordered: _____

Hon. Leda Dunn Wettre
United States Magistrate Judge

EXHIBIT A

FORM OF STIPULATION OF DISMISSAL

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

----- X

CITY OF NEWARK,

Plaintiff,

vs.

CITY OF NEW YORK *et al.*,

Defendants.

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

**STIPULATION OF
VOLUNTARY DISMISSAL,
WITHOUT PREJUDICE**

----- X

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

Plaintiffs-Intervenors,

vs.

CITY OF NEWARK,

Plaintiff-Crossclaim Defendant.

----- X

IT IS HEREBY STIPULATED AND AGREED by and between the undersigned parties to the above-captioned action that all claims, crossclaims, counterclaims, if any, as against any of the other parties, are voluntarily dismissed, without prejudice and without costs or attorneys' fees as to any party, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii).

Dated: _____, 2023

KENYATTA STEWART

Corporation Counsel for the City of Newark

HON. SYLVIA O. HINDS-RADIX

Corporation Counsel for the City of New York

By: Kenyatta K. Stewart

Gary S. Lipshutz
City of Newark Department of Law
920 Broad Street, Rm 316
Newark, NJ 07102
*Attorney for Plaintiff-Crossclaim
Defendant*

By: Anjan Mishra

Doris F. Bernhardt
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New York City Law Department
100 Church Street, 20th Floor
New York, New York 10007
Attorney for Defendants

LOWENSTEIN SANDLER LLP

By: Matthew M. Oliver

Rebecca J. Ryan
One Lowenstein Drive
Roseland, NJ 07068
*Attorneys for Plaintiffs-Intervenors
Class of Affected Tenants*

SO ORDERED:

MADELINE COX ARLEO, U.S.D.J.

Date: _____