Robert F. Varady, Esq.
N.J. Attorney I.D. # 022421977
LA CORTE, BUNDY, VARADY & KINSELLA
989 Bonnel Court
Union, New Jersey 07083
Telephone: (908) 810-0500
Facsimile: (908) 810-0513
Attorneys for Plaintiff, City of Elizabeth

CITY OF ELIZABETH,

Plaintiff,

v.

CITY OF NEW YORK; MAYOR BILL DE BLASIO, in his official capacity; COMMISSIONER STEVEN BANKS, in his official capacity,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: UNION COUNTY
DOCKET NO.: UNN-L-

Civil Action

COMPLAINT

Plaintiff, City of Elizabeth ("Elizabeth"), by way of Complaint against Defendants, City of New York ("NYC"), Mayor Bill de Blasio, and Commissioner Steven Banks, states and alleges as follows:

PARTIES

1. Elizabeth is a municipal corporation, established under the laws of the State of New Jersey, with its principal place of business located at 50 Winfield Scott Plaza, Elizabeth, N.J.

2. Defendant, NYC is a municipal corporation established under the laws of the State of New York, with its principal business address at City Hall Park, New York City, N.Y.

3. Defendant Mayor De Blasio is the Mayor of NYC, with a business address of City Hall Park, Manhattan, N.Y.

4. Commissioner Banks is the Commissioner of the Department of Social Services for NYC ("DDS") with headquarters at 150 Greenwich Street, New York, New York. DDS includes the New York City Human Resources Administration ("HRA") and the New York City Department of Homeless Services ("DHS").

JURISDICTION AND VENUE

5. This court has personal jurisdiction over the Defendants because a substantial part of the events or omissions giving rise to the claims occurred in Union County and the Defendants have substantial contacts in New Jersey related to the claims set forth in the Complaint.

6. Venue is proper in Union County because a substantial part of the events or omissions giving rise to the claims occurred in the State of New Jersey and Union County.

ALLEGATIONS COMMON TO ALL PARTIES

A. NYC's Special One-Time Assistance Program ("SOTA Program")

7. Upon information and belief, in August 2017, Defendants, through the New York City Human Resources Administration ("HRA"), enacted the SOTA Program. Defendants established the SOTA Program to address the homeless issue in New York City.

8. Upon information and belief, in order for individuals and families to be eligible for the SOTA Program, they were required to have been living in a shelter for at least 90 days and needed to be working and/or have enough income to make future rental payments based on their rent not exceeding 50% of household income, which may include employment income, Social Security income, or Social Security Disability.

9. Upon information and belief, Defendants have utilized the SOTA Program to send local homeless families to hundreds of cities across the county. In most cases, the receiving city is unaware that SOTA Program recipients are being relocated from New York City.

10. Under the SOTA Program, employees from the Department of Homeless Services ("DHS"), or contracted non-profit providers, locate prospective housing for the SOTA Program recipients.

11. Real estate brokers and landlords may also contact DHS directly about any properties they have that are available by reaching out to a housing specialist at DHS shelters or the DHS Rehousing Unit, or through an online form.

12. The SOTA Program, under the direction of Defendants Mayor De Blasio and Commissioner Banks, requires the DHS, or provider-staff and case managers, to conduct apartment reviews which includes walk-throughs of all apartments within the New York City limits, neighboring New York State communities, and local New Jersey Counties, including Union County.

13. Elizabeth is located in Union County, and therefore an apartment review must be conducted before any residents who are recipients of SOTA are placed in Elizabeth.

14. The walk-throughs of the prospective units are to be conducted by housing specialists employed by the DHS. The potential SOTA recipients must be present for such an inspection.

15. If the prospective unit is approved by the DHS and SOTA recipient, the DHS and the landlord who owns or rents the property then enter into a lease agreement.

16. Pursuant to the SOTA Program, Defendants pay landlords a full one-year's rental up front. Defendants have also in certain instances paid travel expenses, and often provided a furniture allowance.

17. Defendants, through the HRA, will also pay any applicable broker's fees, up to 15% of each annual lease to any involved broker.

18. Upon information and belief, if operated as intended, the SOTA Program required that if an apartment failed such a preliminary inspection, the landlord would be required to cure the defects observed by Defendants' inspectors in a timely manner before any SOTA funds could be received.

19. Upon information and belief, Defendants, however, failed to inspect or failed to adequately inspect the apartments where Defendants were coercing SOTA recipients to move in.

20. In fact, on December 5, 2019, the City of New York Department of Investigation ("DOI") issued a report on the subject.[1] The DOI is the City's Inspector General, with independent oversight of City government. The DOI is charged with investigating political and administrative corruption in NYC.

21. The DOI report provided that "some SOTA families placed in housing outside of New York City were living in squalor under the roofs of unscrupulous landlords who collected tens of thousands of dollars in rental payments upfront from the city to provide these subpar conditions with little risk of accountability for their actions."

22. The DOI investigation revealed that housing specialists, assigned to and required to conduct inspections of prospective units, were not properly trained to detect health and safety hazards.

23. The DOI investigation also revealed many instances where the required inspections were not conducted before placing individuals in residences outside of NYC, despite employees documenting that they had been completed.

24. Defendants failed to provide a system to adequately hold participating landlord and real estate brokers accountable for illegal and/or uninhabitable housing. Once again, the DOI determined that flaws in the design and implementation of the SOTA Program and the application paperwork associated with the program allowed unscrupulous landlords and brokers to take advantage of the

[1] See attached report of New York City's Department of Investigation, dated and published December 5, 2019, accessed at https://www1.nyc.gov/assets/doi/press-releases/2019/dec/26-SOTA_Release_and_Rpt_12.5.19.pdf

program, collecting upfront a full-years rental payments and a 15% broker's fee despite leaving tenants in dilapidated housing. On average an annual SOTA lease costs the HRA approximately $17,000.00 and an additional $2,550.00 with any applicable brokers fee.

25. Upon information and belief, after the completion of the one-year tenancy, if a tenant moved out, or was evicted for failure to pay rent, the landlord was free to accept a new SOTA recipient.

26. Upon information and belief, the SOTA Program was patterned from the failed "Advantage," or "Work Advantage" program. Advantage was a rental subsidy provided to households that lived in homeless shelters and provided up to two years of rent support on the condition that such families were working or participating in job training.

27. The Advantage program was suspended in April 2011, apparently because NYC learned that most families could not attain self-sufficiency after two years.

28. Advantage actually created a "revolving door homelessness," with an estimated 25% of families returning to the shelter system after the vouchers expired.

29. Between September 2017 and September 2019, DHS placed 5074 DHS clients' heads of households into permanent housing through the SOTA programs. 65% of SOTA placements were made outside of New York City.

B. Elizabeth SOTA Recipients

30. Upon information and belief, in Elizabeth, SOTA has placed 48 families. This places Elizabeth as the sixth highest recipient of SOTA applicants in New Jersey and twelfth highest in the nation.

31. In line with the DOI investigation, residents who were relocated to Elizabeth signed leases and agreements that are not binding in the State of New Jersey.

32. Defendants have refused to advise officials of Elizabeth of the identity of SOTA recipients that Defendants placed in Elizabeth.

33. Defendants also refuse to identify the names of the landlords and brokers it has utilized to place SOTA recipients.

34. As a consequence, by Defendants' refusal to disclose the identities of the Elizabeth placed SOTA recipients, landlords and brokers, Elizabeth was only able to identify a small portion of the 48 families placed in Elizabeth and prevented the City from determining the habitability of the units where SOTA recipients were placed.

35. Upon information and belief, SOTA recipients who were relocated to Elizabeth did not have their apartments properly inspected as per the SOTA Program requirements before a rental agreement was signed and they were moved to Elizabeth.

36. Upon information and belief, Code Enforcement Officers for the City of Elizabeth Department of Health and Human Services, Division of Housing have encountered SOTA recipients in Elizabeth who reported unsafe housing conditions.

37. Upon information and belief, a SOTA recipient was placed by the program 1020 Emma Street, Apt. 2, Elizabeth, New Jersey. This recipient complained to Elizabeth that there was no heat in his apartment. A notice was sent by the Code Enforcement Officer for the City of Elizabeth Department of Health and Human Services, Division of Housing to the owner of the property, CFLD Investment Flip Corp., located at 1055 Pipper Cove Way, Belair, Maryland which disclosed the violation and required the owner to restore heat within 24 hours.

38. Upon information and belief, Elizabeth followed up with the SOTA recipient to inquire if his complaint had been addressed. He reported that the heat had not been restored. Upon the Elizabeth Code Enforcement Officer visiting the property, it became clear that there was a blockage in the sewer

line and excess sewage had seeped into the cellar of the building, causing the furnace to go out. When the SOTA recipient tenant was informed that the notice has been sent to CFLD Investment Flip Corp., he stated that he had never spoken to the alleged owner and that his lease was with the property manager, JE Property Solutions, located at 130 Broad Street, Palisades Park, New Jersey.

39. Upon information and belief, the Code Enforcement Officer then contacted Jason McNeil, one of the principals from JE Property Solutions and informed his of the code violations. The Officer spoke to Mr. McNeil twice on the phone and met on the property. McNeil stated that he would send someone in immediately to abate the situation. After several days no one showed up. Two summonses were then issued to JE Property Solutions, one for failure to maintain a heating system and one for failure to maintain a sanitary sewer line. After the summons were issued, Mr. McNeil refused to communicate with the City Code Enforcement Officer. A few weeks later, the SOTA recipient tenant contacted the City again, stating that there was still no heat in his apartment and there was still sewage in the cellar. Furthermore, he informed Elizabeth that he was just in court as he had received an eviction notice from CFLD Investment Flip Corp., for nonpayment of rent. The SOTA recipient stated that this was not possible because as a SOTA recipient, his rent was paid for one year in advance by NYC. The court had apparently dismissed the suit when the tenant provided all the appropriate paperwork showing his participation in the program. Upon information and belief, this was the first time the Elizabeth housing officials had heard about the SOTA Program.

40. Upon information and belief, Elizabeth then contacted the attorney for the landlord, Blan Jarkasi, Esq., to compel the landlord to immediately abate the situation. The attorney confirmed that he in fact never heard of this program before and his client never applied to be a part of it. After speaking with Mr. Jarkasi, the City was able to get in contact with Sean Richway, the president of CFLD Investment Flip Corp. He stated that until my notice letter was sent to him, he had no idea that

tenants were living in his property. He had neither heard of the SOTA Program before not applied to be a part of it. Furthermore, he never received a cent of the twelve-month rent that was paid in full to JE Property Solutions by New York City on behalf of the tenant, which is what he sent the tenant an eviction notice. He stated that he would work to immediately correct the heating and sewage issues on 1020 Emma Street, which he subsequently did.

41. The duties of the Elizabeth Code Enforcement Officers are to ensure residents are living in habitable conditions, among other things, and the lack of knowledge of the placement of the tenants under the SOTA Program has limited the ability of the officers to perform their duties. It is intolerable that a property manager was able to receive thousands of dollars in advance rent payment, without the owner's knowledge, while a tenant and his family were forced to live in an apartment without heat in the dead of winter with a cellar filled with sewage for over a month.

42. The City of Elizabeth has an ordinance 15.12.680, entitled Requirements for Occupancy of Vacant Units. The ordinance states:

> No person shall occupy as owner-occupant or permit to be occupied by another any vacant dwelling unit, unless it is in good repair, clean, sanitary in habitable conditions and in full compliance with all provisions of this code and the rules and regulations adopted pursuant thereto.

43. The City of Elizabeth has an ordinance 15.12.660 entitled Supplied heat-air conditioning – times, temperatures required-Exceptions.

> A. Every owner or operator of a building who permits to be occupied any dwelling unit or rooming unit therein under an agreement, express or implied, to supply heavy, shall furnish heat adequate to maintain therein from September 15 to May 15 of the following year, a minimum inside temperature of seventy (70) degrees Fahrenheit in all habitable rooms, bathrooms, shower rooms and toilet rooms or compartments. The provisions of this section shall not apply where the failure to maintain minimum requirements is caused by a general shortage of fuel, negligent or malicious act of the occupant necessary repairs or alterations, or any cause beyond the control of the owner or occupant.

> B. Every owner or operator of a building who permits to be occupied any dwelling unit or rooming unit therein under a lease agreement written or oral to provide air conditioning shall furnish air conditioning adequate to maintain therein from May 16th to September 14th a maximum inside temperature of seventy five (75) degrees Fahrenheit in all habitable rooms, bathrooms, shower rooms or toilet rooms or compartments. In meeting the aforesaid temperature requirements, the owner shall not be responsible for cooling loss or temperature gain by the occupants leaving windows or doors open to the exterior of the building or willfully hindering the systems or by an external source not within the owner's control.

44. As a consequence of Defendants' refusal to provide the identities of Elizabeth-placed SOTA recipients and the use of unscrupulous brokers, the City is prevented from ensuring that the ordinances are enforced and SOTA recipients are provided habitable living conditions.

45. The Defendants have also refused to communicate with landlords and property owners in Elizabeth who have made inquiry to them in regard the eligibility of tenants placed in the SOTA Program, and their responsibility.

46. Upon information and belief, the HRA, DSS and DHS have refused to respond to or outright ignored questions from landlords and property owners in Elizabeth regarding SOTA recipient eligibility and misrepresentations made by brokers to said landlords and property owners regarding the qualifications of the SOTA recipients placed in their properties.

47. Finally, Elizabeth has also been precluded from offering social services to SOTA recipients in Elizabeth. The one-way transport of homeless persons who are NYC residents to Elizabeth, without adequate housing and information on how to access social services creates a public health and safety hazard as these individuals are not aware of their rights to live in safe and habitable conditions and not equipped with the knowledge of where to go for help within Elizabeth.

COUNT ONE

PUBLIC NUISANCE CLAIM

48. Elizabeth repeats and realleges all the paragraphs of the Complaint as though they were set forth herein in their entirety.

49. A public nuisance is an unreasonable interference with a right common to the general public, such as a condition dangerous to health, offensive to community moral standards, or unlawfully obstructing the public in the free use of public property.

50. Circumstances that may sustain a holding that an interference with a public right is unreasonable includes conduct which involves a significant interference with the public health, the public safety, the public peace, the public comfort or the public convenience; or conduct of a continuing nature which has produced a permanent or long-lasting effect, and the actor knows or has reason to know, has a significant effect upon the public right.

51. Defendants' conduct significantly and unlawfully interfered, and continues to significantly and unlawfully interfere, with the public health and safety, the public peace, the public comfort, and public convenience. Defendants have control over their conduct in Elizabeth and that conduct had an adverse effect on the public right. Defendants have caused a public nuisance that has significantly harmed any considerable number of Elizabeth's residents and the State of New Jersey's residents.

52. Defendants' conduct is of a continuing nature which has caused permanent and/or long-lasting effects, and the Defendants know or have reason to know, that their conduct has a significant effect on the public right.

53. Defendants knew, or should have known, based upon the failure of the two-year rental subsidy program Advantage, that a lesser term, one-year rental subsidy program (SOTA) would

likewise fail. Here, however, Defendants, knowing of the failure of Advantage, purposefully and coercively placed people outside of New York State simply to avoid future consequences of the expected failure of SOTA.

54. Defendants knew, or should have known that their operation of the SOTA Program, which coercively placed people in illegal and/or uninhabitable residences in which they would not have voluntarily chosen to live, without reasonable long-term support, creates or assists in the creation of a public nuisance in the City of Elizabeth.

55. This public nuisance is substantial and unreasonable. Defendants' actions caused and shall continue to cause an immeasurable amount of harm to Elizabeth residents, businesses and the general public by placing any number of people in critical danger of becoming homeless in a place where they lack support.

56. Defendants' actions created, and continue to create, perverse disincentives to landlords and real estate brokers who stand to gain financially by providing illegal and uninhabitable housing to residents with the expectation of no repercussions, no action by the Defendants to cure the illegal and uninhabitable housing, and with the expectation that they can evict or constructively evict such SOTA recipients after the expiration of the one-time assistance program.

57. Elizabeth has been, and continues to be, directly and proximately injured by Defendants' actions in creating a public nuisance.

58. Elizabeth suffered special injuries distinguishable from those suffered by the general public.

59. The public nuisance- i.e. the coercive conduct used to force citizens into poorly-vetted, illegal and uninhabitable housing, and the perverse disincentives stemming from the SOTA Program,

actually increase the likelihood of homelessness and extreme poverty created and perpetuated by the Defendants.

WHEREFORE, Elizabeth requests from this Court:

(a) A permanent injunction restraining Defendants from any further implementation of the SOTA Program by placing residents in Elizabeth, N.J., until such time that Elizabeth is availed of the names and locations where the SOTA recipients reside in Elizabeth;

(b) An accounting by Defendants, and any and all entities created or controlled by Defendants, to enable the identification of all persons and families relocated to Elizabeth through the SOTA program, of all landlords in Elizabeth that participated in the SOTA Program, of all brokers utilized by Defendants in placing SOTA recipients in Elizabeth, of all inspections of residences in Elizabeth that were the subject of the SOTA Program, and of all persons who returned to New York from Elizabeth after participation in the SOTA Program;

(c) Creation of a trust for the benefit of all participants in the SOTA Program that wish to remain in Elizabeth;

(d) Awarding damages;

(e) Awarding costs of suit, including reasonable attorneys' fees; and

(f) Awarding such other relief as is just and equitable.

COUNT TWO

CONSTITUTIONAL VIOLATION OF DORMANT COMMERCE CLAUSE

60. Elizabeth repeats and realleges all of the paragraphs of the Complaint as though they were set forth herein in their entirety.

61. Pursuant to the United States Constitution's Dormant Commerce Clause, discrimination against interstate commerce means a differential treatment of in-state and out-of-state economic interests that benefits the former and burdens the latter.

62. Defendant NYC's SOTA Program, a New York state run program under the direction of Defendants Mayor De Blasio and Commissioner Banks, unlawfully and differentially burdens interstate commerce occurring wholly outside the boundaries of New York State, in violation of the Dormant Commerce Clause of the United States Constitution.

63. Defendant NYC's SOTA Program, under the direction of Defendants Mayor De Blasio and Commissioner Banks, requires that the DHS, or provider-staff and case managers, conduct walkthrough inspections of leasehold properties within the City of Elizabeth, New Jersey, for SOTA recipients.

64. Defendant NYC's SOTA Program, under the direction of Defendants Mayor De Blasio and Commissioner Banks, have conducted walkthrough inspections of leasehold properties in the City of Elizabeth, New Jersey.

65. Defendant NYC's SOTA Program, provider staff and case managers, under the direction of Defendants Mayor De Blasio and Commissioner Banks, have unlawfully directly transported, coerced and/or directed, SOTA recipients to illegal apartments and uninhabitable apartments, and have unlawfully coerced SOTA recipients to sign leases for such illegal and uninhabitable apartments.

66. Defendant NYC's SOTA Program, provider staff and case managers, under the direction of Defendants Mayor De Blasio and Commissioner Banks, have ignored complaints from SOTA recipients of the illegal and uninhabitable apartments where SOTA recipients were unlawfully placed.

67. Defendant NYC's SOTA Program, provider staff and case managers, under the direction of Defendants Mayor De Blasio and Commissioner Banks, unlawfully refuse to disclose to the City the identities and locations of those SOTA recipients that the SOTA program directly placed in Elizabeth in illegal apartments and uninhabitable apartments.

68. Defendant NYC's SOTA Program violates the Dormant Commerce Clause by directly controlling commerce occurring wholly outside the boundaries of New York City and the State of New York, and thereby exceeds the inherent limits of NYC's authority and is therefore invalid regardless of whether the SOTA program's extraterritorial reach was intended by New York City's Mayor and City Council.

WHEREFORE, Elizabeth requests from this Court:

(a) A permanent injunction restraining Defendants from any further implementation of the SOTA Program by placing residents in Elizabeth, N.J., until such time that Elizabeth is availed of the names and locations where the SOTA recipients reside in Elizabeth;

(b) An accounting by Defendants, and any and all entities created or controlled by Defendants, to enable the identification of all persons and families relocated to Elizabeth through the SOTA Program, of all landlords in Elizabeth that participated in the SOTA program, of all brokers utilized by Defendants in placing SOTA recipients in Elizabeth, of all inspections of residences in Elizabeth that were the subject of the SOTA Program, and of all persons who returned to New York from Elizabeth after participation in the SOTA Program;

(c) Creation of a trust for the benefit of all participants in the SOTA Program that wish to remain in Elizabeth;

(d) Awarding damages;

(e) Awarding costs of suit, including reasonable attorneys' fees; and

(f) Awarding such other relief as is just and equitable.

DESIGNATION OF TRIAL COUNSEL

Robert F. Varady, Esq., is hereby designated as trial counsel on behalf of Plaintiff at the trial of this action.

DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial on all issues unresolved herein.

RESERVATION OF RIGHTS

Plaintiff reserves the right to file such specific amendments and/or additional claims as are applicable here and after to this action and/or as they are subsequently discovered.

CERTIFICATION PURSUANT TO R. 4:5-1

I hereby certify that the matter in controversy is not the subject of any other court action or arbitration proceeding and no such action or proceeding is contemplated. I know of no other party who should be joined in this action.

LACORTE, BUNDY, VARADY & KINSELLA

Attorneys for Plaintiff

By: _____

Robert F. Varady, Esq.

Dated: January 13, 2020