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October 18, 2023

VIA EMAIL

Honorable Gerald Lebovits
New York Supreme Court Justice
New York County Supreme Court, Part 7
60 Centre Street
New York, NY 10007

Re: Callahan v. Carey, Index No. 42582/1979

Your Honor:

On behalf of Defendant City of New York (the “City”) and in accordance with the requirements of the post-judgment order entered in the above-referenced matter dated October 15, 1984 (the “1984 Order”), the City submits this letter to further support its October 3, 2023 pre-motion letter (the “Request Letter”) seeking leave to move for a modification of the August 26, 1981 Final Judgment on Consent (the “Consent Judgment”) in the above-referenced matter and to reply to Plaintiffs’ October 11, 2023 response letter (the “Response”).

Plaintiffs’ Response concedes that “[t]he logistical and financial strain recent arrivals have placed on the City Defendants is real,” yet the Response does not identify any effective means of stemming the flood of individuals into the City’s care that Plaintiffs’ would support.¹ Indeed, Plaintiffs claim that the City lacks any ability to deter migrants from seeking City-provided accommodations.² Notwithstanding the unstoppable stream of new shelter applicants Plaintiffs apparently envision, and the conceded strains on the City resulting from this indefinite influx, the Response insists that the City must continue to extend a limitless guarantee

¹ Response at 5.

² See, e.g., Response at 5 (asserting that “the City Defendants’ messages regarding the right to shelter [do not] dissuade new arrivals from coming to New York City.”).

of accommodation to single adults.³ The Response demands such a blanket guarantee despite recognizing that the City has provided services far in excess of those provided by other New York counties or other major cities in the United States.⁴ The City cannot sustain such a limitless guarantee.

Accordingly, the City respectfully submits that the Court should grant the City's request for leave to file a motion to modify the Consent Judgment.

I. PLAINTIFFS' RESPONSE IGNORES THE INDEFINITE NATURE OF THIS CRISIS.

Plaintiffs' demand that the City maintain a blanket guarantee of shelter for single adults ignores the prolonged and indeterminate nature of the present crisis. In arguing that the Consent Judgment affords the City "sufficient flexibility" to manage crises, Plaintiffs cite the City's disaster relief efforts in the wake of Superstorm Sandy, an event that elapsed over less than a week and resulted in 6,800 people seeking shelter at emergency relief sites.⁵ The challenges posed by Superstorm Sandy bear no resemblance to the strain of the *ongoing* influx of individuals into the City. Over the last eighteen months, more than 130,600 recent arrivals have sought City-provided accommodations, and the population within the City's care has swelled to over 119,600 (as of October 15, 2023). In contrast with a natural disaster like Superstorm Sandy, the City has no ability to predict when the flow of new shelter seekers will abate.

Similarly, the statistics that Plaintiffs cite regarding prior periods of elevated immigration to the City are of limited relevance to the present crisis. As a preliminary matter, the Response elides the distinction between the overall number of individuals migrating to New York and the number of migrants who arrive without any ability to work or secure their own housing. Accordingly, the overall immigration rates referenced in the Response do not support Plaintiffs' claim that the City's proposed modification would not deter individuals without personal ties to the City or the ability to support themselves upon arrival from traveling to New York.⁶ Indeed, prior periods of extensive immigration to the City have not resulted in anything approaching the current explosion of the population within the City's care. As explained in the City's July 18, 2023 letter, Plaintiffs' own statistics indicate that the City's census population never exceeded

³ As Plaintiffs acknowledge, the Consent Judgment only governs the City's obligations to provide shelter to single adults and does not implicate the City's obligations to shelter families with children. *See* Response at 2 & note 5.

⁴ Response at 2, 5-7; Response, Exhibit B.

⁵ NEW YORK CITY, HURRICANE SANDY AFTER ACTION REPORT AND RECOMMENDATIONS 16 (2013), https://www.nyc.gov/assets/em/downloads/pdf/hurricane_sandy_aar.pdf.

⁶ Plaintiffs cite statistics on immigration rates during 1907, *see* Response at 7 note 13, a period predating the advent of the federal system of immigration restrictions. *See* MILESTONES: 1921–1936, UNITED STATES DEPT. OF STATE, OFFICE OF THE HISTORIAN <https://history.state.gov/milestones/1921-1936/immigration-act#:~:text=In%201917%2C%20the%20U.S.%20Congress,way%20for%20the%201924%20Act> (last visited October 16, 2023) (noting that, "[i]n 1917, the U.S. Congress enacted the first widely restrictive immigration law").

65,000 prior to the current crisis.⁷ That prior peak represents roughly 54% of the present census population.

At the time the Consent Judgment was entered in 1981, its immediate impact, as reported, was that the City had to find an additional “125 beds right away.”⁸ Contrast that with the over 3,600 new migrants who arrived seeking shelter last week. At the time the Court entered the 1984 Order establishing the present pre-motion procedure, the census population stood at 17,618, approximately 15% of the current total.⁹ Plainly, the enormity of the influx of individuals into the City’s care and the commensurate challenges to the City warrant granting the City leave to pursue a modification of the Consent Judgment.¹⁰

II. THE PROPOSED MODIFICATION REFLECTS A REASONABLE RESPONSE TO AN UNPRECEDENTED CRISIS.

The City has “proposed a measured and appropriate modification” of the Consent Judgment that would suspend, rather than terminate, the obligations imposed by the Consent Judgment’s operative provisions during specified emergencies.¹¹ As the City explained in the Request Letter, during any suspension of the Consent Judgment, the City would remain bound by shelter obligations imposed by the State Social Services Law and its implementing regulations.¹²

Plaintiffs do not dispute the fact that the City would remain subject to the Social Services Law. Rather, Plaintiffs object strenuously to the potential ineligibility of certain groups for shelter under the Social Services Law and critique the specific language of the City’s proposed modification.¹³ Yet the Response does not suggest potential alternate language. Instead, the Response reiterates that the use of any eligibility criteria for any period that could result in a denial

⁷ *Number of Homeless People in NYC’s Main Shelter System*, COALITION FOR THE HOMELESS, <https://www.coalitionforthehomeless.org/facts-about-homelessness/> (last visited October 16, 2023).

⁸ *Pact Requires City to Shelter Homeless Men*, NEW YORK TIMES, (Aug. 27, 1981), <https://www.nytimes.com/1981/08/27/nyregion/pact-requires-city-to-shelter-homeless-men.html#:~:text=New%20York%20City%20must%20provide,commitment%20nearly%20two%20years%20ago.>

⁹ *Number of Homeless People in NYC’s Main Shelter System*, COALITION FOR THE HOMELESS, <https://www.coalitionforthehomeless.org/facts-about-homelessness/> (last visited October 16, 2023).

¹⁰ Plaintiffs also assert that the City should be denied the opportunity to seek a modification of the Consent Judgment to avoid “embolden[ing]” border state politicians who bused migrants to the City. *See* Response at 7. The City objects to any suggestion that the unconscionable weaponization of migrants against New York should prevent the City from seeking a modification of the Consent Judgment in accordance with its terms.

¹¹ State Defendants’ letter dated October 11, 2023; *see also* Request Letter at Section III.

¹² Plaintiffs’ assertion that there is “no uniform State standard” governing shelter eligibility is misleading. *See* Response at 6. While different localities may conduct shelter eligibility screening differently, all State Social Services Districts must adhere to the safety-net eligibility criteria and procedural requirements set forth in 18 N.Y.C.R.R. § 370.

¹³ Response at Sections II.1-II.2.

of City-provided accommodations to a single adult would cross “an uncrossable line[.]”¹⁴ Similarly, Plaintiffs acknowledge that the City provides more expansive services than other New York jurisdictions, Response at Section II.2, and that the City has done more than other major U.S. cities to accommodate recent migrants.¹⁵ Nevertheless, Plaintiffs oppose the City’s request for leave to pursue a modification of the Consent Judgment on the grounds that the City’s herculean efforts were not enough.¹⁶

The Court should reject Plaintiffs’ maximalist position.

III. ANY NEGOTIATED RESOLUTION REQUIRES PLAINTIFFS TO CONSIDER MEANINGFUL LIMITS ON SINGLE ADULTS’ ENTITLEMENT TO CITY-PROVIDED ACCOMMODATIONS.

While the City has sought a negotiated resolution to the present dispute with Plaintiffs, the Response provides reason to doubt that Plaintiffs will agree to the meaningful limitations on the ability of single adults to obtain City-provided accommodations the City needs. Accordingly, while the City remains willing to discuss potential resolutions with Plaintiffs, the City opposes Plaintiffs’ request to delay the commencement of motion practice with a Court-supervised mediation process with questionable prospects of success.¹⁷

For the foregoing reasons, the City respectfully reiterates its request for leave to move for the modification of the Consent Judgment set forth in Section III of the Request Letter.

Respectfully submitted,

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¹⁴ Response at 5, note 8.

¹⁵ See Response at 2; Response, Exhibit B.

¹⁶ See Response at Section II.4. Plaintiffs’ claim that the City has failed “to timely connect new arrivals to available immigration relief” ignores the over 4,000 asylum applications completed at the Asylum Help Center the City established despite having no obligation to do so. Moreover, as Plaintiffs know, the City lacked the ability to take certain steps Plaintiffs set forth in Section II.4 of the Response of its own initiative, including, *inter alia*, the use of certain sites outside the five boroughs.

¹⁷ The City acknowledges that the parties discussed the possibility of engaging in mediated settlement discussions during prior conferences in Chambers with Justice Edwards. See Response at 3. However, the City’s position at the August 26, 2023 conference was that due to the current circumstances, it was necessary to seek permission to move forward with the proposed motion practice at this time, notwithstanding the possibility of also continuing to discuss a resolution with Plaintiffs.