

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X

In the Matter of the Application of,

Index No. _____/2020

DOWNTOWN NEW YORKERS INC.;
CHRISTOPHER BROWN; MEGAN KESSLER;
and DAEMON O’NEIL,

Petitioners,

VERIFIED PETITION

For Judgment Pursuant to CPLR Article 78

-against-

THE CITY OF NEW YORK; BILL DE BLASIO, in
his official capacity as Mayor of the City of New
York; THE NEW YORK CITY DEPARTMENT OF
HOMELESS SERVICES; and STEVEN BANKS, in
his official capacity as Commissioner of the New
York City Department of Homeless Services,

Respondents.

-----X

Petitioners Downtown New Yorkers Inc. (“DNY”), Christopher Brown, Megan Kessler,
and Daemon O’Neil (collectively, “Petitioners”), by and through their counsel, Cozen O’Connor,
as and for their Verified Petition against the City of New York (the “City”), Bill de Blasio, in his
official capacity as Mayor of the City of New York (the “Mayor”), the New York City Department
of Homeless Services (“DHS”), and Steven Banks, in his official capacity as Commissioner of
DHS (“Commissioner Banks”) (collectively, “Respondents”), allege as follows:

NATURE OF THE PROCEEDING

1. Petitioners bring this Article 78 special proceeding to enjoin Respondents from
moving – without any legal authority whatsoever – 235 single adult men experiencing
homelessness, who currently reside at a temporary shelter at the Lucerne Hotel on Manhattan’s
Upper West Side (the “Lucerne Hotel Shelter”), to a proposed temporary shelter at the Radisson

Hotel at 52 William Street in the Financial District (the “Radisson Hotel Shelter”) (the “Proposed Transfer”).

2. Respondents’ decision exceeds their legal authority because Respondents do not have any contract for use of the Radisson Hotel Shelter or for the provision of social services there.

3. DHS had an emergency contract with the Hotel Association of New York City, Inc. (“HANYC”) (allowing Respondents to hotels during the COVID-19 emergency to reduce capacity at any given shelter and allow for social distancing), but that contract expired on October 12, 2020.¹ Without a written contract setting forth the obligations of HANYC registered with the City Comptroller’s office, Respondents cannot operate the Radisson Hotel Shelter.

4. Nor may Respondents open the Radisson Hotel Shelter as a temporary shelter and require the Proposed Transfer even if they eventually do put such contracts in place. Their decisions were made as part of a fundamentally flawed process unrelated to the COVID-19 emergency and exceed the scope of the Mayor’s March 17 Emergency Executive Order No. 101 (“EO 101”), which suspended, *inter alia*, Chapter 13 of the City Charter and Title 9 of the Rules of the City of New York (Procurement Policy Board Rules) governing City contract procurement procedures during the COVID-19 emergency for the limited purpose of responding to the public health emergency.

5. This use of EO 101 to effectuate the Proposed Transfer is plain subterfuge and a response to protests on the Upper West Side, not to protect the public health. The Court should annul these determinations and enjoin the Proposed Transfer because they are wholly unsupported by the limited scope of EO 101.

¹ All dates referenced in this Verified Petition are in 2020, unless otherwise noted.

6. To be clear, Petitioners and their Financial District (“FiDi”) neighbors, who already support at least four homeless shelters in FiDi, are, as always, prepared to work with Respondents on a long-term solution to the City’s homeless crisis. Particularly, Petitioners are interested in helping the homeless men, women and children already residing in the numerous facilities in their neighborhood, a population that will certainly grow when evictions temporarily paused by COVID-19 emergency measures resume. Respondents course of action, however, has diminished any sense that Respondents would work with them in good faith.

7. FiDi’s current homeless shelters house and care for the homeless and other vulnerable populations. Moreover, the Radisson Hotel Shelter had operated as a temporary homeless shelter during the COVID-19 emergency for months without protest. Upon information and belief, more than 200 people lived at the Radisson Hotel Shelter during the height of the COVID-19 emergency in the Spring and Summer.

8. Petitioners oppose the Respondents’ misguided attempt to exploit the COVID-19 emergency by hastily moving forward with the Proposed Transfer to cover up for their public relations disasters, which began when they mishandled the movement of the men to the Lucerne Hotel Shelter. Upper West Side residents demanded closure of the Lucerne Hotel Shelter and other temporary shelters precisely because Respondents failed to adequately prepare for the move and failed to engage the community.

9. Facing claims by Upper West Side residents that their neighborhood was overwhelmed by a new population, and the threat of litigation, Respondents decided to move them – even though by then conditions had materially improved.

10. On September 8, the Mayor announced that Respondents would move the 235 men from the Lucerne Hotel Shelter to accredited homeless shelters that would allow for social distancing and that had available capacity.

11. Instead, two days later, Respondents surreptitiously attempted, without any warning, to move 150 families experiencing homelessness, including many people with disabilities, from the Harmonia permanent shelter in the Murray Hill neighborhood and replace them with these men. Public outcry and legal threats caused Respondents to again abruptly change course, and they tried to brush off this blunder by calling it a “communications glitch.”²

12. During this period, Respondents did not notify FiDi residents or elected representatives that they were considering the Proposed Transfer, because they weren’t.

13. Almost a month later, on late Friday afternoon, September 25, Respondents blindsided the FiDi community, the 235 men, and their own homeless services partner Project Renewal, Inc. (“Project Renewal”) by announcing the Proposed Transfer to 52 William Street.

14. Project Renewal operates the shelters that permanently house the men and currently at the Lucerne Hotel Shelter. According to Project Renewal, preparation for a new facility can take more than four weeks. Project Renewal, as recently as October 8, acknowledged that it does not have a plan for onsite medical care at the Radisson Hotel Shelter and has not yet hired enough necessary security professionals trained to engage homeless men when they are out in the community to ensure compliance with Project Renewal’s “Good Neighbor Policy.”

15. Indeed, in the normal course for a permanent shelter, an operator identifies a location, develops a proposal that is evaluated and then approved by the City, a process which

² See Exhibit 2 to the Affidavit of Kenneth K. Fisher, dated October 14, 2020 (“Fisher Aff.”) (the “Press Compendium”), Valeria Ricciulli, *What You Need to Know Now About the Upper West Side Homeless-Shelters Saga*, Curbed New York (Sept. 29, 2020) (Press Compendium, at 82.)

itself can take months, and then implementation of the proposal typically takes more than a month.

None of these preparations occurred with the Radisson Hotel Shelter.

16. The 235 men have now been living at the Lucerne Hotel Shelter for more than two months. This vulnerable population depends on stability to improve their current circumstances and to recover in some instances from alcohol and substance abuse and mental health issues that may have contributed to their current personal circumstances. As some men have stated publicly, they may be traumatized if they are forced to move for a third or fourth time since April. Project Renewal has reiterated this sentiment. The men are established at the Lucerne Hotel Shelter, where they receive health and social services that took DHS and Project Renewal weeks to fully put in place.

17. A significant portion of the Upper West Side community has also now embraced the men, and a neighborhood non-profit has raised hundreds of thousands of dollars to provide them employment and recreational activities. According to published reports and public statements by them, the men do not want to leave the Lucerne Hotel Shelter.

18. Respondents have been unwilling and, apparently, unable to respond to the FiDi community's reasonable inquires about their course of conduct.

19. DHS Administrator Joslyn Carter and Project Renewal executives appeared at virtual public meetings of Manhattan Community Board 1 ("CB1") held on October 1 and October 8. The Mayor's Manhattan Borough Director Andrew Kunkes also participated in the October 8 meeting and was called upon to explain the Proposed Transfer and who made the decision. He spoke for approximately 60 seconds and instead of offering any explanation said he would relay the community's concerns back to the Mayor to inform future policy.

20. At these meetings, Ms. Carter was unable to answer critical public health and safety questions arising from the Proposed Transfer.³

21. Ms. Carter also failed to explain the legal basis for Respondents' decisions, which she specifically, but superficially, described as "de-densification" under the Mayor's COVID-19 emergency order and also an opportunity to open a permanent shelter in FiDi in the near future. This decision was made after a purported "review" by DHS and the City Law Department.⁴

22. Respondents' post-hoc rationalization, which attempts to justify the Proposed Transfer as part of a "de-densification" strategy, was plainly not the reason for the Proposed Transfer, which arose in response to political pressure and not as part of any deliberative, evidence-based or lawful process.

23. There has been no publicly documented finding by Respondents (or anyone else) that there exists a present public health issue concerning the number of men currently housed at the Lucerne Hotel Shelter or the number of temporary shelters on the Upper West Side. This is further evidenced by Respondents' plan to transfer all of the men housed at the Lucerne Hotel Shelter to the Radisson Hotel Shelter at once, not just the number sufficient to meet public health requirements. This is not "de-densification," which the City has previously explained was its policy in the Spring to move the homeless out of congregant shelters to avoid community spread of COVID-19. There has been no suggestion whatsoever that the men are at risk of infection by virtue of living at the Lucerne Hotel Shelter or that the risk would be less if there were moved to

³ Nor could she state how much the rooms would cost the City per night.

⁴ Respondents have not yet produced any written explanation for the Proposed Transfer, including in response to recent Freedom of Information Law (FOIL) requests by the Financial District Neighborhood Association. Petitioners reserve the right to amend their Verified Petition if Respondents do eventually produce written information about this "review" and their decisions.

the Radisson Hotel Shelter. In addition, opening a new temporary hotel shelter is contrary to City policy announced by the Mayor to eliminate hotel use.

24. Without question, the Proposed Transfer is not a response to the COVID-19 emergency but could create its own health impacts. Instead, it would uproot a now-stable temporary shelter population on the Upper West Side and move it to FiDi, where the 235 men and that neighborhood will have to start over, exacerbated by the inherent problems of prematurely opening a new temporary facility without the proper services in place.

25. Respondents also directly contradict their purported rationale by explaining the Proposed Transfer as part of a parallel decision to open up a permanent shelter at the Radisson Hotel Shelter, an end-run around City's non-emergency procurement laws and facility siting procedures and policies. Opening a permanent shelter is no easy feat. Among other things, Respondents are first required to conduct a Fair Share analysis to determine if this site is even appropriate for a permanent shelter before deciding to open the Radisson Hotel Shelter as a permanent shelter after evaluating a fully developed proposal by a social service provider. Respondents concede they have not done this, or even received such a proposal. Nonetheless they apparently believe that having the option to do so at some unspecified date (lest it actually revert to regular hotel use) justifies both the move and the use of emergency procedures to accomplish it. In effect, to Respondents, these men are simply place-holders.

26. Accordingly, Respondents' determinations to implement the Proposed Transfer were made in excess of lawful authority and "in violation of lawful procedure, [were] affected by an error of law [and were] arbitrary and capricious or an abuse of discretion." CPLR § 7803(3). The Court should annul these decisions, and preliminarily and permanently enjoin the Proposed Transfer.

27. At the October 8 CB1 meeting, Ms. Carter confirmed that the Proposed Transfer will take place during the week of Monday, October 19, if not sooner. Therefore, Petitioners seek a temporary restraining order to stay the Proposed Transfer and maintain the status quo until their application for a preliminary injunction can be heard by this Court.

28. To be clear, Petitioners are not saying that this particular group of 235 men currently residing at the Lucerne Hotel Shelter is problematic. It is the City of New York itself that characterizes a shelter as a potential burden, which is why Respondents have adopted procedures to mitigate their impact, as well as a policy that every community district should have at least one shelter in order to spread the perceived burden around.

PARTIES

A. Petitioners

29. Petitioner DNY is a domestic not-for-profit corporation registered to do business in the State of New York. It was formed on October 1 by a group of citizens who reside, work, and own property in the City's FiDi neighborhood, specifically near the Radisson Hotel Shelter, and who are committed to community enhancement and preservation.

30. DNY is concerned with Respondents' disregard of the laws and regulations governing the Radisson Hotel Shelter and the Proposed Transfer, which subjects Petitioners to the risk of numerous harms, and is committed to representing the legal interests of citizens who reside, work, and own property in the affected area. DNY includes members who own property and/or reside adjacent to, across the street from, within 400 feet of, in close proximity to, and within several blocks of the proposed facility. DNY includes additional members, ranging from young families to retirees, from new renters to decades-long homeowners, who live in FiDi near the Radisson Hotel Shelter.

31. Petitioner Christopher Brown is a New York City resident who lives at 2 Water Street and less than a half mile from the Radisson Hotel Shelter. Mr. Brown has lived at this location for more than four years, and resides in a rental apartment with his partner. He lived in another rental apartment in FiDi for three years before moving to 2 Water Street.

32. Petitioner Megan Kessler is a New York City resident who lives at 20 Pine Street and within 400 feet of the Radisson Hotel Shelter. Ms. Kessler has lived at this location for more than seven years, and resides in a condominium apartment with her husband and children.

33. Petitioner Daemon O’Neil is a New York City resident who lives at 45 Wall Street and within 400 feet of the Radisson Hotel Shelter. Mr. O’Neil has lived at this location for more than 10 years.

B. Respondents

34. Respondent City is a municipal corporation organized and existing under the laws of the State of New York.

35. Respondent Mayor, Bill de Blasio, is the Mayor of the City of New York, the chief executive of the City.

36. Respondent DHS is a mayoral agency of the City responsible for enforcing and administering provisions of the City Charter and the Administrative Code as they apply to the provision of services for the homeless.

37. Respondent Commissioner Banks is the Commissioner of DHS.

C. Relevant Non-Parties

38. The Office of the New York City Comptroller, Scott M. Stringer (the “Comptroller”) is the City’s Chief Financial Officer. The Comptroller is responsible for, among other things, auditing the performance and finances of City agencies and making recommendations

regarding proposed contracts. The duties of the Comptroller are set out in Chapter 5 of the City Charter, and include certain responsibilities for review and registration of proposed contracts.

39. Project Renewal is a domestic not-for-profit corporation registered to do business in the State of New York. Project Renewal provides services for individuals experiencing homelessness in the City, including at the shelter where the 235 men permanently live, the Lucerne Hotel Shelter and, if the Proposed Transfer is allowed, at the Radisson Hotel Shelter.

JURISDICTION AND VENUE

40. The Court has jurisdiction over this matter pursuant to CPLR § 7803(3) because Respondents made decisions in excess of their lawful authority and “in violation of lawful procedure, ... affected by an error of law ... [and] arbitrary and capricious ... [and] an abuse of discretion.”

41. Venue is proper in New York County pursuant to CPLR § 506(b), because it is the County where one or more Respondents made the decisions that Petitioners seek to reverse, where the principal offices of the Respondents are located, and where the underlying circumstances are taking place.

42. Petitioner DNY has standing to bring the claims asserted here as an organization formed to represent the legal interests of immediate affected area residents, businesses and property owners. DNY and its members would be directly and adversely affected by Respondents’ derogation of the law resulting from the planned use of the Radisson Hotel Shelter as a temporary homeless shelter as contemplated by the Proposed Transfer. More specifically, DNY and its members will be harmed by the considerable risk to health and safety resulting from the unnecessary, unregulated, rushed, and premature Proposed Transfer.

43. The other Petitioners have standing because they are individuals who are located in close proximity to the Radisson Hotel Shelter, including Mrs. Kessler and Mr. O’Neil, who reside within 400 feet of the facility, and will individually be directly and adversely impacted from by same.

FACTS

A. Respondents Converted City Hotels to Temporary Shelters in Response to the COVID-19 Emergency

44. Upon information and belief, in late-March or early-April Respondents began moving individuals experiencing homelessness from congregant housing shelters to hotels as part of the City’s efforts to respond to the COVID-19 emergency because the population of the shelters was too large to maintain recommended social distancing. The Mayor announced this plan on April 11.⁵

45. One of the hotels that housed several hundred homeless individuals during this period was the Radisson Hotel Shelter at 52 William Street in FiDi.⁶

46. Upon information and belief, over 200 people experiencing homelessness lived at the Radisson Hotel Shelter during the height of the COVID-19 emergency in the spring and summer.

47. Upon information and belief, Respondents have also been using other FiDi hotels as temporary shelters, including the Hilton Garden Inn Hotel at 6 Water Street.⁷

⁵ Transcript, City of New York, Mayor de Blasio Holds Media Availability (Apr. 11, 2020) (Press Compendium, at 2.)

⁶ Community News, *Neighbors prepare to fight the expansion of a homeless shelter in Fidi*, Tribeca Citizen (Sept. 29, 2020) (Press Compendium, at 87.)

⁷ See Affidavit of Christopher Brown, dated October 13, 2020 (Brown Aff.); Affidavit of Daemon O’Neil, dated October 13, 2020 (O’Neil Aff.).

48. FiDi residents were initially surprised and concerned when they observed the Radisson Hotel Shelter and other hotels being used as temporary shelters because Respondents did not notify or engage with the community beforehand.⁸

49. Respondents have since conceded that they made their initial decisions without first consulting with communities, which, as discussed herein, violates City policy. For example, on July 30 the Mayor commented that “[w]e should always work with communities, but in a crisis environment, there's not always time to do, you know, the idealized community outreach, but any community concerns must be addressed.”⁹

50. Of course, Petitioners recognized that there was a crisis requiring immediate action in late-March and early-April as a result of the COVID-19 emergency. *FiDi residents did not object to or protest these public health measures.*¹⁰

51. Circumstances in the City, however, have improved considerably over the past few months.¹¹ The City has recognized this by partially reopening schools, gyms, and department stores, and reopening indoor dining (all subject to proper social distancing requirements).

52. Likewise, Respondents have acknowledged that their use of hotels as homeless shelters during the COVID-19 emergency is temporary. They have claimed that they plan to return the City's homeless population to permanent shelters as soon as public health conditions permit.¹²

⁸ See *id.*; Transcript, City of New York, Mayor de Blasio Holds Media Availability (July 30, 2020) (Press Compendium, at 7.)

⁹ *Id.*

¹⁰ Nor was there much outcry elsewhere in the city although the Respondents secured the use of 63 hotels.

¹¹ Based on published reports and actions by the Mayor and Governor, the very recent spike in infections is not occurring in the vicinity of the Lucerne Hotel Shelter.

¹² Transcript, City of New York, Mayor de Blasio Holds Media Availability (Sept 2, 2020) (Press Compendium, at 32.)

B. Respondents Do Not Have a Contract with the Radisson Hotel Shelter

53. Respondents do not have – and have never had – an individual contract with the Radisson Hotel Shelter, nor is the Radisson a sub-contractor to any of the Respondents.

54. Respondents had been using the Radisson Hotel Shelter and other City hotels as temporary homeless shelters under an emergency contract between DHS and HANYC during the COVID-19 emergency to reduce occupancy at homeless shelters that could not implement social distancing. HANYC billed DHS and then paid participating hotels on a per diem basis.¹³

55. The DHS-HANYC contract expired on October 12.¹⁴

56. While Respondents have announced that they intend to renew the DHS-HANYC emergency contract, they have publicly admitted that they have not yet done so or even finalized terms.¹⁵

57. In an October 7 statement DHS acknowledged:

Our COVID Hotels contract expires next week. As a result, we will need to extend our contract with HANYC to ensure we are able to provide this vital, life-saving protection and resource to our clients as we work with DOHMH on when and how it will be safe to phase out the COVID hotels and return to congregate shelters for single adults.

While precise terms of the contract extension are still being finalized, the extension will be for six months – AND we can cancel it whenever we are ready too, such as if/when we are able to end the use of specific commercial hotel relocation sites or end the use of commercial hotel temporary relocation sites writ large.

(Emphasis added.)¹⁶

¹³ Carol Tannenhauser, *Updated: 'Homeless Hotels' Booked by City for Another Six Months; 'Shelters Not Yet Safe'; Lucerne Men Will Be Moved*, West Side Rag (Oct. 7, 2020), (Press Compendium, at 91); Exhibit 5 to Fisher Aff., Checkbook NYC, Contract ID: CT107120201424350, available at https://www.checkbooknyc.com/contract_details/agid/5977576/doctype/CT1/newwindow (last visited Oct. 13, 2020).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Carol Tannenhauser, *Updated: 'Homeless Hotels' Booked by City for Another Six Months; 'Shelters Not Yet Safe'; Lucerne Men Will Be Moved*, West Side Rag (Oct. 7, 2020) (Press Compendium, at 91.)

58. Respondents cannot legally proceed with the Radisson Hotel Shelter without a written contract (whether through HANYC or otherwise) because informal relationships between the City and its vendors are invalid and unenforceable as a matter of law.

59. City contracts include numerous provisions that are essential for the public interest, including, but not limited to, representations and warranties, indemnity and insurance requirements, audit and inspection rights, as well as specific operational and reporting requirements. These provisions ensure that vendors follow the law, are not bad actors, can be held accountable by the City, and the City can be held accountable by the media and residents, and, in some instances, New York courts.

60. Without registered written contracts for both rooms and a social services provider, Respondents cannot ensure that the Radisson Hotel Shelter will be operated in the best interest of the public, the FiDi community, and the 235 men – and neither the Radisson Hotel Shelter nor Project Renewal have any legally binding or enforceable obligation to do so.

61. Respondents' decision to open the Radisson Hotel Shelter during the week of October 19, if not sooner, without any contracts between DHS and HANYC (or the Radisson Hotel Shelter) and Project Renewal, is improper and doing so will be in excess of their lawful authority.

C. The Lucerne Hotel Shelter

62. The instant dispute concerns Respondents' stated intent to move 235 single adult men who currently reside at the Lucerne Hotel at West 79th Street and Amsterdam Avenue in the City's Upper West Side neighborhood (the Lucerne Hotel Shelter) to the Radisson Hotel Shelter.

63. These men initially resided in two congregant shelters in the East Village, and many, upon information and belief, are being treated for mental health and substance and alcohol abuse issues.¹⁷

64. Petitioners learned from the October 1 and 8 CB1 meetings and press reports that over 280 men were: (i) first moved out of their permanent shelters in early-April to a temporary hotel shelter; (ii) moved again to a hotel in the City's Hell's Kitchen neighborhood in May; (iii) and moved a third time to the Lucerne Hotel Shelter on July 27. Two-hundred and thirty-five of these men still reside at the Lucerne Hotel Shelter.¹⁸

65. The July 27 move followed previous DHS placements of men from other shelters at the Upper West Side's Belnord Hotel and Hotel Belleclaire.¹⁹

66. Like in FiDi, Upper West Side residents were similarly frustrated with Respondents' lack of transparency in the spring, but did not meaningfully protest the City's emergency moves.²⁰

67. This changed, however, when Respondents moved the men into the Lucerne Hotel Shelter. Almost immediately, residents began organizing and vocally complaining about quality of life problems caused by men at the temporary facilities, including indecent exposure, public urination, catcalling, loitering, fighting, and drug use.²¹

¹⁷ Steve Cuozzo, *Hotel Lucerne on Upper West Side converts to 'temporary' homeless shelter*, New York Post (July 27, 2020) (Press Compendium, at 5); Exhibit 9 to Fisher Aff., Project Renewal's Temporary Use of the Lucerne Hotel, <https://www.projectrenewal.org/lucerne?rq=lucerne> (last visited October 13, 2020).

¹⁸ *Id.*; Exhibit 3 to Fisher Aff., Transcript of Manhattan Community Board 1: Proposed Shelter in the Financial District, Oct. 1, 2020 ("October 1 CB1 Transcript"), at 18:2-6, 135:6-10.

¹⁹ Steve Cuozzo, *Hotel Lucerne on Upper West Side converts to 'temporary' homeless shelter*, New York Post (July 27, 2020) (Press Compendium, at 4.)

²⁰ *Id.*

²¹ Daniel E. Slotnik, *What Happened When Homeless Men Moved Into a Liberal Neighborhood*, New York Times (Aug. 18, 2020) (Press Compendium, at 8.)

68. For example, Gary Kokalari, who has lived on the Upper West Side for over 30 years, told the *New York Times*: “I see a lot of people that are sort of down on their luck either high or intoxicated, and I see more of them than I normally see. People are generally concerned to go outside now. The fear is palpable.”²²

69. Dale Brown, the president of the West 79th Street Block Association, told *Gothamist*: “The first three weeks were truly a nightmare,” with “men roaming our streets, gathering at the median at 79th Street and Broadway [in groups of] 15 or more, none wearing masks, smoking, drinking, throwing garbage around and blocking the crossway.” Ms. Brown, however, has since observed that “things seem to be getting better.”²³

70. These types of complaints are also consistent with what FiDi residents have observed at the Hilton Garden Inn Hotel temporary shelter at 6 Water Street, which is also managed by Project Renewal. For example, Petitioner Christopher Brown has regularly observed groups of men loitering and using drugs in the immediate vicinity when he is out walking at night.²⁴ Petitioner Daemon O’Neil similarly has noticed men passed out on the street in the area around 6 Water Street.²⁵

71. While issues like this may be addressed if the de Blasio administration engages a community in good faith, and provides necessary support and security, Respondents exacerbated the Upper West Side and FiDi negative reaction by failing to do so.

72. Although, as discussed next, a vocal group of Upper West Side residents organized to protest Respondents’ use of hotels as temporary shelters, that community also rallied to help

²² *Id.*

²³ Caroline Lewis, *City Tells Angry Upper West Siders That Homeless Shelters Must Remain To Prevent Spread Of COVID-19*, *Gothamist* (Aug. 25, 2020) (Press Compendium, at 18.)

²⁴ Brown Aff.

²⁵ O’Neil Aff.

support the men, as a result of which conditions dramatically improved around the Lucerne Hotel Shelter over the following weeks.

73. On August 25, Project Renewal’s President and CEO Eric Rosenbaum said that “[t]he Lucerne has calmed down enormously in the four weeks since we opened, in part, because we made changes based on [the community’s] feedback.”²⁶

74. After initial challenges finding space for programming, the Lucerne Hotel Shelter finally “had full medical, social services, and security staff, and was operating mental health, vocational and other programming.” Project Renewal also removed 18 men who continually violated its “good neighborhood policy” and the local police precinct stationed a patrol car outside the Lucerne Hotel Shelter.²⁷

75. Manhattan Borough President Gale Brewer reported on the improving conditions at the October 1 CB1 meeting:

You know, Project Renewal did not have time to put excellent services into the hotel. . . . For three weeks, it was really challenging and I think that’s what upset some residents on the Upper West Side. I will tell you that Project Renewal has made great strides with excellent services in the hotel.²⁸

76. A newly formed organization, UWS Open Hearts Initiative (“UWS Open Hearts”), began campaigning to keep the temporary shelters in place, including by organizing donation drives and community events, rallies and marches, and solidarity sleep-outs in front of the Lucerne Hotel Shelter.²⁹

77. Significantly, this group has raised private money to provide employment and recreational activities for the men on the Upper West Side. At the October 1 CB1 meeting,

²⁶ Caroline Lewis, *City Tells Angry Upper West Siders That Homeless Shelters Must Remain To Prevent Spread Of COVID-19*, Gothamist (Aug. 25, 2020) (Press Compendium, at 17.)

²⁷ *Id.*

²⁸ October 1 CB1 Transcript, at 8:1-9.

²⁹ UWS Open Hearts, *Our Mission*, available at <https://www.uwsopenhearts.org/mission-statement> (last visited Oct. 13, 2020) (Press Compendium, at 93.)

Borough President Brewer reported that residents raised “between 250 and 500 thousand dollars” from “board members [who] wrote massive checks.” This money has been used to make Goddard Riverside Community Center available for “outdoor space, indoor space, and [] a six-day week program” for the men and to provide jobs through its Green Keepers Program.³⁰

78. In opposing the Proposed Transfer – not the continued use of the Lucerne Hotel Shelter as a temporary shelter – Borough President Brewer added that these programs were “no longer on the table if [the 235 men] move” out of the Upper West Side.³¹

D. Disaffected Upper West Side Residents Pressure the de Blasio Administration to Close the Lucerne Hotel Shelter

79. Notwithstanding these significant improvements, another group of vocal Upper West Side residents organized as the West Side Community Organization (“UWS Community”) and intensified their opposition to the neighborhood’s temporary shelters.

80. The group has raised funds to “retain[] professionals to support our community efforts” to evict the homeless men from Upper West Side temporary hotel shelters, for legal counsel who, on August 26, threatened the City with a lawsuit if the de Blasio administration did not respond to the group’s demands.³²

81. On September 8, the Mayor announced that the City would capitulate to the dissidents and close the Lucerne Hotel Shelter entirely.³³

³⁰ October 1 CB1 Transcript, at 8:12-25.

³¹ *Id.* at 9:1-2.

³² West Side Community Organization, Our Mission, available at <https://www.westsideco.org/mission> (last visited Oct. 13, 2020) (Press Compendium, at 94); Valeria Ricciulli, *What You Need to Know Now About the Upper West Side Homeless-Shelters Saga*, Curbed New York (Sept. 29, 2020) (Press Compendium, at 80.)

³³ *Id.*

E. The City Agrees to Close the Lucerne Hotel Shelter Without Any Plan for the 235 Men, Exacerbating the Public Health Crisis

82. Upon information and belief, Respondents did not devise the Proposed Transfer until an option they first tried to implement for the 235 men residing at the Lucerne Hotel Shelter – a move to an existing permanent shelter – created even more of an outcry.

83. At his September 9 press conference, the Mayor explained the City’s decision:

The entire idea of what we experienced in the first few months of the coronavirus was to make sure that folks who were in shelter settings where there are a lot of people, spread them out. It was only for a period of time and the notion that we were using more and more hotels which was not our policy in the least, in fact, it was the opposite of our policy, it was time to ask a question, could we safely go back? It turns out there is substantial capacity in our shelter system allowing us to do this safely. So as we all talked it through with the health care folks, with the homeless services folks, it made sense to start with these cases and keep going, get homeless folks back to the setting where they can get the historic services they were provided, do it in a healthy manner, and stop being in hotels that were against the policy that we set years ago to begin with.

(Emphasis added.)³⁴ The Mayor added that hotel shelters were always “a temporary measure, and now it’s time to start going back to what we had before.”³⁵

84. The same day, DHS spokesman Isaac McGinn told the *New York Times* that the men would be moved from the Lucerne Hotel Shelter to “shelters with private rooms that were initially designed for families but are not currently full.”³⁶

85. Despite these representations, two days later, Respondents attempted to move 150 families from the Harmonia – a permanent shelter in the Murray Hill neighborhood populated by many people with disabilities – and replace them with the men from the Lucerne Hotel Shelter.³⁷

³⁴ Transcript, City of New York, Mayor de Blasio Holds Media Availability (Sept 2, 2020) (Press Compendium, at 44.)

³⁵ (*Id.* at 43.)

³⁶ Nikita Stewart, *N.Y. Will Move Homeless Men From Liberal Neighborhood After Backlash*, *New York Times* (Sept. 9, 2020) (Press Compendium, at 39.)

³⁷ Alex Taylor, Priscilla DeGregory & Nolan Hicks, *De Blasio abruptly boots over 100 disabled people from Midtown shelter*, *New York Post* (Sept. 10, 2020) (Press Compendium, at 22.)

86. On September 10, the *New York Post* reported that “[w]ith little warning, City Hall moved more than a hundred disabled New Yorkers out of their Midtown shelter to make way for the homeless who were booted by Mayor Bill de Blasio from an Upper West Side hotel.”³⁸

87. The *Post* quoted Moises Oliveras, “44, who suffers from a host of medical issues and lived at the shelter with his wife, Maria[,] ‘[w]e’ve been living here for two years. We’ve accumulated so much stuff and they want to just bring one bag. I feel mad.’ ‘We’re human beings, man. And they treated us like garbage.’”³⁹

88. Elected representatives blasted the de Blasio administration in a statement: “We are deeply disturbed that the Mayor is caving to political pressure to move homeless New Yorkers out of temporary pandemic shelter at the Lucerne Hotel in a way that will displace 150 adult families living at the Harmonia, none of whom deserve to get caught up in this politicized process.”⁴⁰

89. The Legal Aid Society put out its own statement and threatened to file a lawsuit: “Mayor Bill de Blasio’s pathetic and shortsighted surrender to Upper West Side NIMBYism has unsurprisingly disrupted the lives of other vulnerable New Yorkers at various shelters around New York City, all in the midst of a public health crisis.”⁴¹

90. In response, the Respondents abruptly abandoned this plan and attempted to explain it away as a “communications glitch.”⁴²

F. Respondents Announce the Proposed Transfer Only After a Series of Embarrassing Bureaucratic Blunders

91. Respondents never intended or planned for the Proposed Transfer.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² Valeria Ricciulli, *What You Need to Know Now About the Upper West Side Homeless-Shelters Saga*, Curbed New York (Sept. 29, 2020) (Press Compendium, at 82.)

92. This is evidenced by the fact that Respondents did not notify FiDi residents, their elected representatives or Project Renewal about the Proposed Transfer between August 26 and September 25.⁴³

93. If Respondents had actually anticipated over the summer using the Radisson Hotel Shelter as part of a deliberative plan, they presumably would have notified the community in accordance with their homeless policy, the February 28, 2017 *Turning the Tide on Homelessness* plan (“Turning the Tide”).⁴⁴

94. Notably, City policy states: “*Even in emergencies*, the City now consistently provides more than 30 days of notice to elected representatives when plans are in place because a new shelter facility is needed.” (Emphasis added.)⁴⁵

95. Upon information and belief, Respondents did not notify FiDi elected representatives about the Proposed Transfer thirty days before the initially proposed October 5 moving date.⁴⁶

96. The Proposed Transfer is also wholly inconsistent with the Mayor’s publicly announced plan to move the Lucerne men to permanent City homeless shelters, particularly in light of the Mayor’s stated view that use of City hotels as shelters is not the City policy, “in the least.”⁴⁷

97. Respondents only announced the Proposed Transfer in a desperate attempt to recover from an embarrassing series of managerial and bureaucratic failures: capitulating to UWS

⁴³ October 1 CB1 Transcript, at 5-6, 21:5, 131:10-11.

⁴⁴ Exhibit 6 to Fisher Aff., Relevant excerpts from *Turning the Tide on Homelessness in New York City*, dated February 27, 2017.

⁴⁵ *Id.*

⁴⁶ West Sider, *Lucerne Residents Are Supposed to Move Downton, But Residents There Are Starting to Push Back Too*, West Side Rag (Sept. 28, 2020) (Press Compendium, at 46.)

⁴⁷ Transcript, City of New York, Mayor de Blasio Holds Media Availability (Sept 2, 2020) (Press Compendium, at 44.)

Community dissidents, misrepresenting that there was capacity at accredited permanent shelters, and then trying to move the Harmonia residents.

98. In a Friday afternoon news dump around five in the afternoon on September 25, Respondents first announced their latest scheme: the Proposed Transfer.⁴⁸

99. Respondents then kept FiDi residents and elected representatives in the dark about the Proposed Transfer and their reasons for proposing the same over the next six days.

G. The October 1 and 8 CB1 Meetings Create More Questions than Answers

100. On October 1 and again on October 8, DHS Administrator Joslyn Carter and executives from Project Renewal appeared at virtual meetings of CB1 attended by over 1,000 people. A representative for the men residing at the Lucerne Hotel Shelter also appeared at the October 8 meeting.⁴⁹ The Mayor's office did not send a representative to the first meeting. On October 8, Manhattan Borough Director Andrew Kunkes spoke for approximately 60 seconds but did not even attempt to explain the need for the Proposed Transfer or how the decision was made.⁵⁰

101. These meetings did little to address why and how Respondents decided on the Proposed Transfer given that the move is contrary to City policy as described by the Mayor himself, although DHS's long term plan for a future permanent shelter was revealed as an additional reason for the selection of the Radisson location.

102. According to Ms. Carter, the Proposed Transfer was purportedly the product of a "review [] done through the [City L]aw department and [] commissioner" and ordered by the Mayor,⁵¹ and the determination was made pursuant to the Mayor's emergency order.⁵²

⁴⁸ West Sider, *Lucerne Residents Will Be Moved to Wall Street Hotel, But Another Shelter is Coming*, West Side Rag (Sept. 25, 2020) (Press Compendium, at 46.)

⁴⁹ See October 1 CB1 Transcript; Exhibit 4 to Fisher Aff. Transcript of Manhattan Community Board 1: Proposed Shelter in the Financial District (2nd Meeting), Oct. 8, 2020 ("October 1 CB1 Transcript").

⁵⁰ October 8 CB1 Transcript, at 99:3-15, 99:25-100:2.

⁵¹ *Id.*, at 52:13-5.

⁵² *Id.*, at 21:6-7.

103. She offered two flawed rationales for the Proposed Transfer: (i) “de-densification” and (ii) the opportunity to open an unrelated permanent shelter at the Radisson Hotel Shelter at some undetermined future date.⁵³

104. Respondents have not yet produced any written explanation for the Proposed Transfer, including in response to October 7 and 8 FOIL requests made by Patrick Kennell of the Financial District Neighborhood Association to the Mayor’s Office, DHS, and the City Law Department. Mr. Kennell requested from each, *inter alia*, all documents and communications relating to Respondents’ “review” and “decision” discussed by Ms. Carter at the October 1 CB1 Meeting.⁵⁴

a. The “De-Densification” Post Hoc Justification

105. Ms. Carter tried to explain “de-densification” as Respondents’ effort to redistribute temporary hotel shelters more evenly among City neighborhoods.

106. But this is not “de-densification,” which the City had previously explained was its policy in the Spring to move the homeless individuals from congregant shelters to avoid community spread of COVID-19.⁵⁵

107. Indeed, this is why Respondents had already acted expeditiously in March and April to move thousands of people residing in congregant shelters into hotels in response to the COVID-19 emergency.

108. Months later, Respondents have apparently revisited their placement in the Lucerne Hotel Shelter for no known urgent public health reason.

⁵³ See October 1 CB1 Transcript, at 20-21, 26-27, 30, 45, and 52, and October 8 CB1 Transcript, at 12-15, 18-20, and 51-52, for Ms. Carter’s discussion of the “de-densification” and permanent shelter justifications for the Proposed Transfers.

⁵⁴ Exhibit 7 to Fisher Aff., FOIL Request to City Law Department, dated October 8, 2020.

⁵⁵ Caroline Lewis, *City Tells Angry Upper West Siders That Homeless Shelters Must Remain To Prevent Spread Of COVID-19*, Gothamist (Aug. 25, 2020) (Press Compendium, at 17.)

109. Ms. Carter did state that the Radisson Hotel Shelter “was being underutilized” as a COVID-19 shelter⁵⁶ and “we no longer need it for the use that we were using it for.”⁵⁷

110. There are profound logical flaws with this justification for the Proposed Transfer:

- First, there has been no finding by Respondents that there exists a public health or safety issue concerning the number of men currently housed at the Lucerne Hotel Shelter or the number of temporary shelters on the Upper West Side. Respondents are not “de-densifying” the 235 men at the Lucerne Hotel Shelter by moving all of them to another temporary shelter at once. While there could certainly be a public health and safety justification for the “de-densification” of people at a given shelter (which was the City’s policy in the Spring), there is no public health need to make this move now.
- Second, in fact, Respondents are creating a new public health and safety crisis by rushing to move a now-stable population to a start-up temporary shelter in another neighborhood. The Radisson Hotel Shelter will undoubtedly go through the same types of initial problems that the Lucerne Hotel Shelter did, to the detriment of the public, the FiDi community and the 235 men.
- Third, if the Radisson Hotel Shelter is underutilized now, then there may be no COVID-19-related emergency reason to keep using it as a temporary shelter pursuant to the emergency procurement orders. Of course Respondents, in their haste to jam through the Proposed Transfer, have not released sufficient information to assess any of their claims.
- Fourth, Respondents’ timing justification does not bear up under the facts. While they did expeditiously move the City homeless population from congregant shelters to hotels in March and April, they moved the 235 men from a hotel in the Hell’s Kitchen neighborhood to the Lucerne Hotel Shelter on July 27. The decision to move the men from this facility in October thus has no temporal relationship to the City’s March and April emergency “de-densification” of congregate shelters

111. In short, Respondents’ “de-densification” justification does not support a deliberative, evidence based determination that there is a present emergency need for the Proposed Transfer outside normal siting and contracting procedures in contravention of City policy.

⁵⁶ October 1 CB1 Transcript, at 44:8-14.

⁵⁷ October 8 CB1 Transcript, at 15:5-13.

b. The Permanent Shelter Post-Hoc Justification

112. Respondents also attempt to justify using the Radisson Hotel Shelter as a temporary shelter for single adult men now because they intend to use it as a permanent shelter for adult families sometime in the future.

113. Ms. Carter readily concedes, however, that Respondents have not even started the legally required procurement process to open a permanent shelter.⁵⁸

114. This process – which is mandated by Chapter 13 of City Charter and the Procurement Policy Board Rules – requires, *inter alia*, a detailed proposal in response to Open-Ended RFP, community notification and engagement, a Fair Share analysis, negotiation of a contract, and registration of the contract with the Comptroller's office.⁵⁹ Such are established for reasons having nothing to do with the pandemic.

115. Many of these steps, and particularly the Fair Share analysis that first considers whether a shelter is appropriate for a given location, are required before a site is designated as a permanent shelter.⁶⁰

116. Upon information and belief, there are at least four permanent homeless shelters or similar facilities in FiDi, so a Fair Share analysis very well may determine that the Radisson Hotel Shelter is not an appropriate permanent shelter site.

117. Ms. Carter made clear at the October 8 CB1 meeting that Respondents will not open the permanent shelter under the Mayor's emergency executive order.⁶¹ Respondents, however, are clearly trying to circumvent the legally required process by identifying the Radisson Hotel Shelter

⁵⁸ October 8 CB1 Transcript, at 22:7-17.

⁵⁹ Exhibit 8 to Fisher Aff., Relevant excerpts from Down and Out: How New York City Places its Homeless Shelters, dated May 2013.

⁶⁰ *Id.*

⁶¹ *See, e.g.*, October 8 CB1 Transcript, at 22:7-17.

site and building it out to accommodate the homeless population without a proposal or a Fair Share analysis.

118. By putting these measures in place now using temporary authority, Respondents are preordaining the outcome of any future procurement process. This is a patently improper use of the COVID-19 emergency order.

119. Even worse, it appears that a real motivation is simply to keep the Radisson Hotel Shelter under City control – and not returned to its use as a commercial hotel – simply so it will be available if at some time in the future if Respondents decide to use it as a permanent shelter. In other words, aside from solving the political backlash, Respondents are using the 235 men as human placeholders.

120. Therefore, Respondents' permanent shelter justification is fundamentally flawed and cannot support a deliberative, evidence based determination that there is an *emergency* need for the Proposed Transfer.

c. Respondents Have Not Yet Addressed Legitimate Health and Safety Concerns, and Have Failed to Account for Opportunities Lost on the Upper West Side

121. The October 1 and 8 CB1 meetings also make clear that the Radisson Hotel Shelter is not ready to accommodate the Proposed Transfer during the week of October 19.

122. Perhaps the most shocking revelation at the October 1 meeting was that Respondents did not even tell their partner, Project Renewal, about the Proposed Transfer before they publicly announced the decision on Friday afternoon, September 25.⁶²

⁶² October 1 CB1 Transcript, at 131:10-11.

123. Project Renewal staff did not first inspect the Radisson Hotel Shelter until Monday, September 28, and its executives, President and CEO Eric Rosenbaum and COO Jody Rudin, did not first visit until Thursday, October 1.⁶³

124. Under normal circumstances, it takes Project Renewal three to four weeks to open a shelter – which it is awarded based on a carefully prepared and reviewed proposal, and pursuant to a detailed and carefully crafted contract.⁶⁴

125. But the flip-flop on the Lucerne Hotel Shelter demonstrates that these are not normal circumstances. Mr. Rosenbaum has warned that “we’ve certainly learned our lesson that doing it when it’s too rushed means that the first few weeks you’re both setting up and trying to serve people at the same time and that results in disorder.”⁶⁵

126. At these meetings, Mr. Rosenbaum, Ms. Rudin, and Ms. Carter identified various health and safety measures that won’t be in place at the Radisson Hotel Shelter should it be allowed to open.

127. First, Project Renewal provides medical care to the men at the Lucerne Hotel Shelter in a medical van that parks in front of the hotel twice a week. This van, however, cannot safely park on the narrow William Street. As of October 8, Project Renewal was still looking for an alternative healthcare option at the Radisson Hotel Shelter.⁶⁶

128. Second, Project Renewal has not yet hired a full complement of security guards who are specially trained to engage with homeless men out in the neighborhood. As of October 8, Ms. Rudin anticipated that these guards should be “onboarded in the next few weeks.”⁶⁷

⁶³ *Id.*, at 122:7-16.

⁶⁴ *Id.*, at 122:23-25.

⁶⁵ *Id.*, at 122:2-6.

⁶⁶ October 8 CB1 Transcript, at 52:11-53:5.

⁶⁷ *Id.*, at 8:5-10.

129. Third, on October 1, Ms. Carter admitted that Respondents had not yet identified a suitable nearby location for 235 men to congregate in the dense FiDi neighborhood.⁶⁸

130. While the men certainly have every right to enjoy FiDi's public outdoor spaces, their own representative Shams DaBaron voiced concern at the October 8 CB1 meeting over this and poignantly explained that he felt the burden of explaining to the other men where they should congregate, as he recognized that having 200 men on the street around the hotel would be problematic.⁶⁹

131. Also, as previously discussed, UWS Open Hearts has raised hundreds of thousands of dollars to provide the men employment and recreational facilities on the Upper West Side. These opportunities will be lost for these men if they are forced to leave.⁷⁰

132. For Ms. Rudin, losing the UWS Open Hearts resources "does make it heartbreaking to leave" the Lucerne Hotel Shelter.⁷¹ Mr. Rosenbaum added that this is the "saddest" part about the Proposed Transfer.⁷²

133. Due to these outstanding public health and safety concerns, Petitioners and the FiDi neighborhood and the men themselves will be irreparably harmed if Respondents prematurely require the Proposed Transfer in the meantime.

d. The Proposed Transfer is Not in the Best Interest of the 235 Men

134. The October 8 CB1 Meeting made clear that the Proposed Transfer will be detrimental to the 235 men who reside at the Lucerne Hotel Shelter.

⁶⁸ October 1 CB1 Transcript, at 36:5-11, 39:17-40:4.

⁶⁹ October 8 CB1 Transcript, at 76:11-20.

⁷⁰ October 1 CB1 Transcript, at 8:10-10:3.

⁷¹ October 1 CB1 Transcript, at 113:25.

⁷² *Id.*, at 114:7-10.

135. At the meeting, the Lucerne resident, Mr. DaBaron spoke, on behalf of himself and the other men at the Lucerne Hotel Shelter; he told CB1 that the men are thriving on the Upper West Side and do not want to leave. Specifically:

Project Renewal has been great for me. I always say that they saved my life, so I'm just a testament of their ability to do good for a vulnerable population; those of us that deal with substance use disorder and mental illness. So let me say this. Many of us at the Lucerne do not wish to move. We don't want to move because we've been moved around quite a bit. And just up and moving like that, especially with such short notice, is traumatizing, to say the least.⁷³

136. He later added: "The other thing I want you to consider, all of you, is just really please think about the trauma that we are experiencing right now. The reality -- and I can't get away from this -- is that moving like this is traumatic for us."⁷⁴ He went so far as to suggest that some men might return to the streets rather than be moved again.

137. Mr. DaBaron spoke publicly again at an October 12 UWS Open Hearts press conference (available in a video on Facebook), when he put it bluntly: "I guarantee you if this move goes through lives will be lost, people will be traumatized, dehumanized, and destabilized. They might turn to substance use to cope, which could kill them."⁷⁵

138. He ended his remarks with a plea: "I say to the West Side Community Organization, Mayor Bill de Blasio, DHS and all stakeholders, if you care even a little bit about shelter residents, as you claim to, listen to one resident myself right now. Call it off. Call it off. Our lives are at stake."⁷⁶

⁷³ *Id.*, at 61:9-18.

⁷⁴ *Id.*, at 64:23-65:2.

⁷⁵ Facebook, UWS Open Hearts, *available at* <https://www.facebook.com/106776554480815/posts/144318400726630/?vh=e&extid=0> (last visited October 13, 2020).

⁷⁶ *Id.*

139. Mr. DaBaron also wrote an op-ed in *CityLimits* on October 13, where he continued with his plea to the de Blasio administration. He wrote: “After hearing that I would be kicked out of the Lucerne, I felt traumatized – dehumanized at the thought of being moved from shelter to shelter like a pawn on a chessboard during a global pandemic. The words of the mayor brought back thoughts of traumatic experiences from my past, as a young child growing up in New York City’s foster care system.” And with respect to the Mayor, he concluded: “I would imagine it’s not easy to run a city, but the mayor needs to act with compassion, not make rash decisions when lives are at stake. All we are seeing is trauma on top of trauma.”⁷⁷

140. Project Renewal has shared the same sentiment on its website:

Update as of 9/9/20: Last night we learned that our staff and clients are being moved from the Lucerne to another location. Through all of this, the health and well-being of our clients is, and has been, our number one priority. *These men, many of whom have suffered trauma and been disadvantaged all their lives, deserve better.* So do our 50 staff members who have worked around the clock to ensure clients had a smooth and successful transition. Finally, there have been numerous supporters and new friends we have made in the neighborhood. We are grateful to each of them, especially Council Member Helen Rosenthal, Borough President Gale Brewer, Assembly Member Linda Rosenthal, Mark Diller and CB7, and the many compassionate and caring residents who see our clients as humans deserving of our collective support.

(Emphasis added.)⁷⁸

H. The Court Should Enter a Preliminary Injunction While The Proceeding is Pending

141. The purpose of a preliminary injunction is to maintain the status quo until a decision can be reached on the merits of a case. Three factors govern the issuance of a preliminary

⁷⁷ Exhibit 10 to Fisher Aff. (Shams DaBaron, *Opinion: City’s Move to Vacate UWS Hotel Shelter is Adding ‘Trauma on Top of Trauma,’ Resident Says*, *CityLimits* (Oct. 13, 2020).

⁷⁸ Exhibit 9 to Fisher Aff. (Project Renewal’s Temporary Use of the Lucerne Hotel, <https://www.projectrenewal.org/lucerne?rq=lucerne> (last visited October 13, 2020).

injunction: (i) a likelihood of success on the merits; (ii) the prospect of irreparable injury in the absence of an injunction; and (iii) a balance of equities in the movant's favor. CPLR § 6301.

142. First, for each of the reasons set forth herein, Petitioners have established a likelihood of success on the merits.

143. Second, Petitioners establish irreparable harm because if preliminary injunctive relief is not granted the Proposed Transfer would have profound effects on residents in FiDi.

144. Respondents and Project Renewal had admitted that the Radisson Hotel Shelter is not yet ready to safely and productively house 235 men in FiDi. (See Section G(c), supra).

145. Petitioners have already recognized an increase in the homeless population, including at the Hilton Garden Inn Hotel at 6 Water Street that is also managed by Project Renewal. Petitioners have observed a noticeable increase in drug use, public indecency, and loitering by this population in streets and parks around the Hilton. The Proposed Transfer and moving 235 homeless men to FiDi would supplement the already-increased homeless population and put a strain on the community in a part of the neighborhood that is very densely populated with narrow streets. Petitioners are concerned that the inherent problems experienced on the Upper West Side will be replicated in FiDi with prematurely, and with no community outreach, opening a temporary shelter at 52 William Street. Rightly so, Petitioners are concerned about the safety of their families and neighbors in light of the lack of planning, community engagement and the arbitrary nature of the decision. (Brown Aff., ¶ 15; O'Neill Aff., ¶ 14; Kessler Aff., ¶ 11.)

146. The irreparable harm is made even more likely by the fact that Respondents have not entered into a written contract for use of the Radisson Hotel Shelter or with Project Renewal for this location and the process of planning the Proposed Transfer has been rushed. In failing to

follow appropriate procedures, Respondents have caused irreparable harm to the FiDi community and, by stifling their opportunity for input, has exacerbated anxiety that will not easily be forgotten.

147. Third, a balancing of the equities favors granting preliminary injunctive relief to Petitioners.

148. It would be inequitable, if not unconscionable, to allow the Proposed Transfer to go forward where an ultimate decision adverse to the Respondents on the merits would force the 235 men to move yet again, for some a third time during the COVID-19 emergency, from the Radisson Hotel Shelter.

149. For Respondents, there would be relatively little prejudice to continue to house the 235 men at the Lucerne Hotel Shelter, where the facility is prepared and has adequately adjusted to housing the population and providing essential social and medical services.

150. The prejudice on Petitioners in allowing the Proposed Transfer, however, would be significant and would render the ultimate relief in this action ineffectual.

**FIRST CAUSE OF ACTION
(CPLR § 7803(3) – Respondents Have Exceeded the
Scope of their Legal Authority (There is No Contract))**

151. Petitioners repeat and re-allege the previous paragraphs as if set forth fully herein.

152. Respondents efforts to (i) open the Radisson Hotel Shelter as a temporary homeless shelter and (ii) implement the Proposed Transfer are in excess of any legal authority.

153. Respondents cannot operate the Radisson Hotel Shelter because no written contract governs the obligations of the hotel owner or the identified shelter operator.

154. Pursuant to Sections 394(b) and 328(a) of the City Charter, any enforceable agreement with the City must be in writing, approved as to form by the Corporation Counsel, and registered with the Comptroller.⁷⁹

155. As of today, Respondents do not have a contract for the Radisson Hotel Shelter because the emergency contract between DHS and HANYC, under which the City has been using the Radisson as a temporary shelter during the COVID-19 emergency, expired on October 12.

156. While Respondents announced that they intend to renew the DHS-HANYC, they have publicly admitted that they have not yet done so or even finalized terms.

157. Upon information and belief, Respondents also do not have a contract with Project Renewal specifically for the Radisson Hotel Shelter.

158. Respondents will exceed their legal authority if they operate the Radisson Hotel Shelter as a temporary shelter and force the Proposed Transfer without a written contract setting forth the obligations of the parties and imposing them in an enforceable way.

159. Accordingly, the Court should annul and enjoin Respondents' determination to (i) open the Radisson Hotel Shelter as a temporary homeless shelter and (ii) implement the Proposed Transfer.

**SECOND CAUSE OF ACTION
(CPLR § 7803(3) – Respondents Have Exceeded the
Scope of their Legal Authority (EO 101))**

160. Petitioners repeat and re-allege the previous paragraphs as if set forth fully herein.

161. Respondents efforts to (i) open the Radisson Hotel Shelter as a temporary homeless shelter and (ii) implement the Proposed Transfer are in excess of any legal authority.

⁷⁹ Albeit, under EO 101, these procedures may be set aside to deal with emergency conditions not present here, as discussed below.

162. In particular, these determinations exceed the scope of EO 101 and therefore violate Chapter 13 of the City Charter and the Procurement Policy Board Rules.

163. EO 101 exempts City agencies from “following laws and regulations related to procurement of goods, services or construction when an agency head determines in writing that the procurement is necessary to respond to the emergency.” EO 101 also does not “preclude an agency from complying with any portions of such laws or rules to the extent that the agency head determines that compliance will not interfere with the agency’s emergency response.”

164. Respondents have exceeded the scope of EO 101 because neither the opening of a temporary shelter to secure the location for a future permanent shelter justification nor the “de-designation” justification respond to the COVID-19 emergency.

165. Thus, Respondents use of EO 101 to circumvent Chapter 13 of the City Charter and the Procurement Policy Board Rules to set the groundwork for opening a permanent shelter at the Radisson Hotel Shelter exceeds Respondents’ legal authority and is improper as a matter of law.

166. Also, relocation in the name of “de-densification” months after the men were moved from their permanent shelter is not a response to the COVID-19 emergency absent some imminent public health threat that arising in and of itself from the use of the Lucerne Hotel Shelter.

167. Accordingly, the Court should annul and enjoin Respondents’ determination to (i) open the Radisson Hotel Shelter as a temporary homeless shelter and (ii) implement the Proposed Transfer.

**THIRD CAUSE OF ACTION
(CPLR § 7803(3) – Arbitrary and Capricious Decision Making)**

168. Petitioners repeat and re-allege the previous paragraphs as if set forth fully herein.

169. Respondents efforts to (i) open the Radisson Hotel Shelter as a temporary homeless shelter and (ii) implement the Proposed Transfer were made in violation of lawful procedure, affected by an error of law, and arbitrary and capricious and an abuse of discretion.

170. Respondents did not follow any deliberative, evidence-based process in reaching these determinations. Rather, they only backed into these decisions after the fact.

171. Even if Respondents did conduct a “review” with the City Law Department, they apparently did not do so until after they decided to close the Lucerne Hotel Shelter, didn’t place the 235 men in accredited homeless shelters as promised by the Mayor, and abandoned the effort to move families from the Harmonia shelter. Therefore, any findings resulting from this “review” were manufactured to justify a preordained result.

172. Neither of Respondents’ purported justifications – (i) “de-designation” or (ii) the opportunity to open a permanent shelter at the location some day in the future – support the Proposed Transfer.

173. There are profound logical flaws with Respondents’ “de-densification” justification:

- First, there has been no finding by Respondents that there exists a public health or safety issue concerning the number of men currently housed at the Lucerne Hotel Shelter or the number of temporary shelters on the Upper West Side. Respondents are not “de-densifying” the 235 men at the Lucerne Hotel Shelter by moving all of them to another temporary shelter at once. While there could certainly be a public health and safety justification for the “de-densification” of people at a given shelter (which was the City’s policy in the Spring), there is no public health need to make this move now.
- Second, in fact, Respondents are creating a new public health and safety crisis by rushing to move a now-stable population to a start-up temporary shelter in another

neighborhood. The Radisson Hotel Shelter will undoubtedly go through the same types of initial problems that the Lucerne Hotel Shelter did, to the detriment of the public, the FiDi community and the 235 men.

- Third, if the Radisson Hotel Shelter is underutilized now, then there may be no COVID-19-related emergency reason to keep using it as a temporary shelter pursuant to the emergency procurement orders. Of course Respondents, in their haste to jam through the Proposed Transfer, have not released sufficient information to assess any of their claims.
- Fourth, Respondents' timing justification does not bear up under the facts. While they did expeditiously move the City homeless population from congregant shelters to hotels in March and April, they moved the 235 men from a hotel in the Hell's Kitchen neighborhood to the Lucerne Hotel Shelter on July 27. The decision to move the men from this facility in October thus has no temporal relationship to the City's March and April emergency "de-densification" of congregate shelters.

174. Respondents also contradict their rationale by explaining the Proposed Transfer as part of a parallel decision to open up a permanent shelter at the Radisson Hotel Shelter at some point in the future.

175. Instead, Respondents are taking advantage of the COVID-19 emergency to keep it from returning to use as a commercial hotel, just in case it wants it later.

176. Accordingly, the Court should annul and enjoin Respondents' determination to (i) open the Radisson Hotel Shelter as a temporary homeless shelter and (ii) implement the Proposed Transfer.

WHEREFORE, Petitioners respectfully request that this Court issue a judgment:

A. Declaring that Respondents are acting without lawful authority, in violation of lawful procedure, making determinations affected by errors of law, acting arbitrarily and capriciously and abusing their discretion in determining to (i) open the Radisson hotel at 52 William Street (the Radisson Hotel Shelter) as a temporary homeless shelter and (ii) transfer the 235 men currently residing at the Lucerne Hotel on West 79th Street and Amsterdam Avenue (the

Lucerne Hotel Shelter) to the proposed Radisson Hotel Shelter;

B. Annuling Respondents determinations to (i) open the Radisson Hotel Shelter as a temporary homeless shelter and (ii) transfer the 235 men currently residing at the Lucerne Hotel Shelter to the proposed Radisson Hotel Shelter;

C. Temporarily restraining, and preliminarily and permanently enjoining Respondents from (i) opening the Radisson Hotel Shelter as a temporary homeless shelter and (ii) transferring the 235 men currently residing at the Lucerne Hotel Shelter to the proposed Radisson Hotel Shelter;

D. Awarding Petitioners their costs and disbursements of this proceeding; and

E. Granting Petitioners any other further relief as this Court may deem just and proper.

Dated: New York, New York
October 14, 2020

COZEN O'CONNOR

By: /s/ Kenneth Fisher

Kenneth K. Fisher
Michael B. de Leeuw
Martin S. Bloor
Matthew L. Elkin
277 Park Avenue
New York, New York 10172
Tel: (212) 509-9400
Email: kfisher@cozen.com
mdeleeuw@cozen.com
mbloor@cozen.com
melkin@cozen.com

*Attorneys for Petitioners Downtown New Yorkers Inc.,
Christopher Brown, Megan Kessler, and Daemon O'Neil*

STATE OF NEW YORK)
)ss.:
COUNTY OF NEW YORK)

VERIFICATION

CHRISTOPHER BROWN, being duly sworn, deposes and says:

I am the Chief Operating Officer of Downtown New Yorkers Inc. I make this Verification pursuant to §§ 3020 and 3021 of the Civil Practice Law and Rules ("CPLR"). I have read the foregoing Verified Petition, brought pursuant to Article 78 of the CPLR, and I am familiar with the contents thereof. I verify that the same is true to the best of my knowledge, expect as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe them to be true based upon the information available to me, such as public statements of respondents and their representatives.

[Handwritten signature of Christopher Brown]

CHRISTOPHER BROWN

Sworn to before me this 13th day of October, 2020

[Handwritten signature of Jacqueline Santiago]
Notary Public

JURAT CERTIFICATE
This notarization is attached to a document of 1 pages concerning titled Verification
State of Florida
County of Hillsborough
Sworn to (or affirmed) and subscribed before me by means of [] physical presence or [x] online
notarization, this 13th day of October, 2020
by Christopher Brown
Notary Public: Jacqueline Santiago, Commission Number GG 115217, Expires June 15, 2021
Type of Identification Produced: eNotaryLog Doc
New York DL ID5c591bda-70f2-45f8-8bb3-8d168be80150