

To commence the 30 day statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

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IN THE MATTER OF THE APPLICATION OF THE COUNTY OF ROCKLAND, EDWIN J. DAY, IN HIS CAPACITY AS COUNTY EXECUTIVE OF THE COUNTY OF ROCKLAND, ROCKLAND COUNTY SOCIAL SERVICES DISTRICT, AND JOAN SILVESTRI, IN HER CAPACITY AS THE COMMISSIONER OF THE ROCKLAND COUNTY DEPARTMENT OF SOCIAL SERVICES,

DECISION AND ORDER

Index No.: 032065/2023

Mot. Seq. 2-6

Petitioners-Plaintiffs,

-against-

THE CITY OF NEW YORK, ERIC ADAMS, IN HIS CAPACITY AS MAYOR OF THE CITY OF NEW YORK, AND MOLLY WASOW PARK, IN HER CAPACITY AS COMMISSIONER OF THE NEW YORK CITY DEPARTMENT OF SOCIAL SERVICES, PALISADES ESTATES EOM LLC, ARMONI INN & SUITES LLC D/B/A ARMONI INN & SUITES, AND JOHNSON KIRCHNER HOLDINGS, LLC,

Respondents-Defendants,

and

NEW YORK STATE OFFICE OF TEMPORARY DISABILITY AND ASSISTANCE,

Nominal Respondent-Defendant,

For a Judgment Pursuant to Article 78 and for a Declaratory Judgment under Article 30 of the Civil Practice Law and Rules.

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ZUGIBE, J.

PRELIMINARY STATEMENT

ROCKLAND COUNTY (the “County”), County Executive EDWIN J. DAY (“Day”) and Commissioner of the County’s Department of Social Services (“DSS”) JOAN M. SILVESTRI

(“Silvestri”) (hereinafter collectively referred to as “Petitioners”) make this hybrid application pursuant to N.Y. CIV. PRAC. L&R (“CPLR”) Articles 30 and 78 as against New York City (“NYC”), NYC MAYOR ERIC ADAMS (“Mayor Adams”), Commissioner of NYC DSS MOLLY WASOW PARK (“Park”), PALISADES ESTATES EOM, LLC (“Palisades Estates”), ARMONI INN & SUITES, LLC d/b/a ARMONI INN & SUITES (“Armoni Inn”) and JOHNSON KIRCHNER HOLDINGS, LLC (“JK Holdings”) (hereinafter collectively referred to as “Respondents”) seeking a judgment declaring Respondents’ attempt to transfer approximately 340 homeless adults to Rockland County and operate the Armoni Inn, a hotel located within Rockland County, as a temporary shelter for said homeless adults, as having exceeded the scope of their legal authority, and that any decisions made by Respondents in this regard were arbitrary and capricious. Petitioners additionally seek a declaration of the respective rights of the parties under the circumstances set forth in their application. Finally, Petitioners are requesting the grant of a preliminary, and ultimately permanent, injunction restraining and enjoining the Respondents from transporting 340 homeless adults to the Armoni Inn in Rockland County, as well as prohibiting the Armoni Inn from being used as a temporary homeless shelter for adults. Petitioners named the NEW YORK STATE OFFICE OF TEMPORARY DISABILITY ASSISTANCE (“NYSOTDA”) as a nominal Respondent-Defendant in this proceeding, but there do not appear to be any specific claim for relief sought specifically as against NYSOTDA.

On May 11, 2023, after all parties were given an opportunity to be heard, this Court granted a temporary restraining order (“TRO”) prohibiting Respondents from transporting 340 homeless adults from NYC to the Armoni Inn in Rockland County. NYSCEF Docs. 24, 26. This TRO has remained in effect during the pendency of these proceedings. One primary issue that will be addressed in this Decision, therefore, is the open issue of Petitioners’ request for a preliminary injunction.

Subsequently, the NYC Respondents¹ have filed a motion to dismiss the aforementioned Petition pursuant to CPLR §3211(a)(7) and §7804(f) based on Petitioners’ failure to state a cause of action and lack of standing. The motion to dismiss is opposed by Petitioners.

In addition to the Petition and the attendant motion to dismiss, there are four (4) other motion sequences pending before the Court. The Court will address each of these pending

¹ The phrase “NYC Respondents” shall be used to refer collectively to NYC, Mayor Adams and Commissioner Park.

applications in this Decision. In connection with all of the pending applications, the Court has read and considered the papers designated by NYSCEF as document numbers 1-12, 16, 19-155, 157- 204, 215, and 218-223, and following its review of same, hereby renders the following Decision and Order:

RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

On May 5, 2023, Mayor Adams issued a press release announcing a “new, voluntary program” designed to provide “up to four months of temporary sheltering” to single, adult male asylum seekers in nearby New York counties outside of NYC. NYSCEF Doc 8. NYC advertised this program in brochures. NYSCEF Doc. 9. On May 6, 2023, the County issued Emergency Order No. 1 in response to NYC’s press release, in anticipation of the potential impact that implementation of this program could have on the residents of Rockland County.² NYSCEF Docs. 4, 5.

On May 9, 2023, Mayor Adams reached out to County Executive Day to inform him that pursuant to the program he announced in his May 5th press release, a number of adult male asylum seekers would be relocating voluntarily from NYC to certain hotels upstate, one of which was the Armoni Inn, a hotel located in Orangetown, Rockland County. NYSCEF Doc. 10.

Palisades Estates, an LLC, is presently considered the owner of the Armoni Inn hotel. NYSCEF Doc. 31. Palisades Estates holds an assignment of the ground lease from a prior owner of the hotel situated on the property at issue, Orangeburg, LLC. JK Holdings owns the land where the Armoni Inn is situated, and is the ground lessor of the property. NYSCEF Doc. 29, ¶2. Ownership of the hotel that is referred to as the Armoni Inn has apparently changed hands numerous times. JK Holdings and Palisades Estates are in a lessor-lessee relationship, however, JK Holdings contends that it has no legal relationship with the Armoni Inn. NYSCEF Doc. 29.

² By Opinion and Order of the Hon. Nelson S. Román, U.S.D.J. (S.D.N.Y.) filed on June 6, 2023, a preliminary injunction was granted prohibiting Rockland County (and other counties with similar executive orders in place) from enforcing this Executive Order. NYSCEF Doc. 77. The Opinion clearly set forth, however, that it was *not* intended to interfere with any TROs issued in the various state courts that are contending with state law questions regarding the legality of NYC’s program or the issue of whether municipalities can enforce local zoning codes against hotels housing migrants and asylum seekers. *Id.*

In response to the information Mayor Adams provided the County Executive, the County filed the instant Petition and emergency request for a TRO to restrain and enjoin NYC Respondents from transporting the asylum seekers, and the other named Respondents from accepting the asylum seekers, for the reasons enumerated in the Petition, supporting papers, and at oral argument before the undersigned on May 11, 2023. NYSCEF Docs. 1, 4, 5, 26.³

On May 11, 2023, prior to oral argument on the above application, the Court conducted a conference with all counsel, strenuously encouraging them to work together to devise a coordinated solution to the problem, as opposed to continuing to squander resources litigating. The parties at that time indicated a willingness, albeit hesitant, to spend some time prior to the next scheduled court appearance to confer.

Following the oral argument, the undersigned granted the Petitioners' request for a TRO for the reasons set forth on the record on May 11, 2023. NYSCEF Doc. 26. The Court allowed all parties a chance to submit written briefs with respect to the issues set forth in the Petition, including the request that the Court grant a preliminary injunction under the same conditions as the TRO. *Id.*

JK Holdings did not oppose the Petitioner's application for a TRO or injunction. NYSCEF Doc. 29. JK Holdings filed an Answer to the Petition generally denying any knowledge or information about the plan to transfer 340 adult male asylum seekers from NYC to the Armoni Inn and requesting dismissal of the Petition as against them. NYSCEF Doc. 30. In addition, JK Holdings asserted a cross-claim as against Palisades Estates seeking reimbursement of the costs and expenses incurred as a result of the instant litigation pursuant to the terms of the parties' lease. *Id.*

³ As mentioned during the oral argument, there was also a TRO previously issued by the Hon. Christie D'Alessio in the related zoning matter entitled *Town of Orangetown v. Armoni Inn & Suites, et. al.* [Rockland County Supreme Court Index Number 032048/2023] (the "Orangetown case"), said TRO being in place at the time of the oral argument. The TRO in the Orangetown case was narrower in scope, inasmuch as it *only* acted to prevent the Armoni Inn from accepting any asylum seekers without first having the necessary town and zoning approvals in place. That TRO was superseded by a preliminary injunction with the same restrictions, same having been issued by Judge D'Alessio in a written Decision on June 6, 2023. *See*, Index No. 032048/2023, NYSCEF Doc. 67. As of the date of this Decision and Order, the Orangetown case remains pending.

Palisades Estates filed opposition to the Petition. NYSCEF Doc. 31-33. NYSOTDA, only named as a nominal party, has submitted no written position on the issues.⁴ NYSCEF Doc. 28. NYC Respondents filed a motion to dismiss the Petition for failure to state a cause of action and lack of standing. NYSCEF Doc. 44. The arguments presented in the motion mirror, in many instances, arguments raised in Palisades Estates' opposition. The motion to dismiss is opposed by the County. The Petition and NYC's motion to dismiss are designated by NYSCEF as motion sequences 1 and 2 in this matter, respectively.

As referenced *supra*, there have been a number of other applications filed since this Court granted the initial TRO. The Court will summarize each, *infra*.

On May 26, 2023, Palisades Estates filed an emergency application with the Court seeking an injunction restraining and enjoining the County from enforcing a closure notice it had issued to the Armoni Inn on May 11, 2023. NYSCEF Doc. 66. This application is designated by NYSCEF as motion sequence 3.

Apparently, on April 30, 2023, the Armoni Inn's annual temporary residence permit had expired. NYSCEF Doc. 93. On May 5, 2023, a temporary residence inspection was performed by the County and numerous health and safety violations were observed and noted. NYSCEF Doc. 93. In addition, the County, which was on notice at this time of the proposed plan involving the transfer 340 adult male asylum seekers from NYC to the Armoni Inn, demanded copies of any documents in existence regarding that plan. The County submits that these documents were necessary to review in connection with the Armoni Inn's application for renewal of its permit as a potential change of use of the property. NYSCEF Doc. 65. Based on what Palisades Estates determined was, essentially, a constructive denial of their operating permit, they filed an emergency application with the Court.

The Court scheduled oral argument on Palisades Estates' application on May 30, 2023. NYSCEF Doc. 70. At the time of the oral argument, many of the health and safety issues had been rectified. The Court adjourned its decision with respect to Palisades Estates' application for a TRO until such time as the County's inspectors could return to the Armoni Inn and verify that the safety issues that resulted in the issuance of the closure notice were rectified. On June 1,

⁴ At the oral argument which took place on the TRO on May 11, 2023, counsel for NYSOTDA raised some of the arguments that have now also been raised by NYC Respondents and Palisades Estates in opposition, however NYSOTDA did not elaborate on its position in writing.

2023, the parties returned to Court. The parties informed the Court that although Palisades Estates had not provided the County copies of documents regarding its plan to house 340 adult male asylum seekers, all safety and health violations had been rectified. The Court granted the TRO requested by Palisades Estates, thus allowing the Armoni Inn to operate as a hotel subject to the existing TROs. NYSCEF Doc. 72. This TRO also remains in place while this application is pending. The application has been opposed by the County.

Not two weeks later, on June 8, 2023, the County filed another application as against the NYC Respondents seeking to expand the terms of the TRO the Court granted in its favor on May 11, 2023. NYSCEF Doc. 91. This application is designated by NYSCEF as motion sequence 4. The County's papers submitted in support of their application set forth a list of instances where NYC had transported buses of asylum seekers to upstate cities and counties without the consent of (or coordination with) the recipient municipality. NYSCEF Doc. 82. In addition, the County informed the Court that NYC officials had not contacted the County to discuss any potential plan for settlement or resolution of the underlying issues, as the Court had requested of the attorneys prior to the oral argument on May 11, 2023. Based on the County's concern that NYC would transport additional groups of asylum seekers to other locations in Rockland County without communicating or coordinating with Rockland County officials in advance, the County sought to broaden the terms of the TRO by prohibiting NYC from transporting any individuals currently residing in the NYC temporary shelters to any location intended to be used as a shelter located in Rockland County, including but not limited to the Armoni Inn. NYSCEF Docs. 82-90. The application was opposed by the NYC Respondents, as well as Palisades Estates. The Court granted the County's request for a broader TRO on June 8, 2023, and after yet another oral argument, set a briefing schedule with respect to the County's application. NYSCEF Doc. 91. Therefore, the issue of whether the Court will grant a preliminary injunction under the same terms and conditions as the TRO granted on June 8, 2023 will also be addressed in this Decision.

On June 30, 2023, the County, by Order to Show Cause, moved for an Order of the Court compelling the Respondents to turn over "any and all contracts or agreements between" NYC, and/or its agents, vendors or related parties, and Palisades Estates or the Armoni Inn. NYSCEF Doc. 117. This application is designated by NYSCEF as motion sequence 5. NYC Respondents and Palisades Estates strenuously objected to the County's request. In response to this application, the Court directed NYC Respondents to submit the contracts or agreements

responsive to the request solely to the Court, *in camera*, for its consideration in connection with this application.

Following the *in camera* submission of the contract, counsel for NYC Respondents notified the Court that there was, in fact, another contract between NYC and its vendor regarding the provision of temporary housing services to asylum seekers outside of NYC. NYSCEF Doc. 146. It was this counsel's position that the contract between NYC and its vendor was not responsive to the County's request, and therefore not required to be turned over pursuant to the Court's directive. The County disputed this contention, and after hearing from the parties, the Court ordered that the contract between NYC and its vendor be turned over to the Court, once again *in camera*, for its consideration in connection with the pending application. Following this Court's Order requiring the *in camera* submission of the contract between NYC and its vendor, the Court was apprised that same had been made public in a case involving similar issues pending in Onondaga Supreme Court (Index No. 5214/2023) and that as a result, there was no need to submit it to this Court *in camera*. NYSCEF Docs. 218, 221. The Court acknowledges that the contract between NYC and its vendor is now public, however, notwithstanding, the Court must still make a determination with respect to the contracts/agreements NYC Respondents submitted *in camera*, and as such, this application remains pending and will be addressed in this Decision.

The final application pending before this Court is Pryor Cashman, LLP's motion seeking to withdraw as counsel for Respondent Armoni Inn. NYSCEF Doc. 152. This application has been designated by NYSCEF as motion sequence 6. Pryor Cashman had initially submitted a letter to the Court on July 17, 2023, indicating that it had learned at some undisclosed point in time that "Armoni was associated was a past owner and/or operator of the Hotel, and has no current connection to the Hotel or Palisades [EOM]." NYSCEF Doc. 142. Therefore, by way of this letter, Pryor Cashman informed the Court that it does not represent the Armoni Inn, and requested that all of its previous submissions be deemed amended to reflect submission only on behalf of Respondent Palisades Estates. *Id.* This Court required, as per its own Part Rules, that Pryor Cashman make its request via a formal written motion. Hence, the Court now has this formal application pending before it. NYSCEF Docs. 152-155. This application is opposed by JK Holdings. NYSCEF Doc. 199. The Court will determine this application in the instant Decision.

The above summarizes the applications currently pending before this Court. The Court will address each in this Decision, beginning with NYC Respondents' motion to dismiss.

ANALYSIS

A. NYC's Motion to Dismiss – Mot. Seq. 2

NYC Respondents contend that this hybrid action/proceeding should be dismissed for two reasons: first, because the Petitioners lack standing; and second, because the Petition/Complaint fails to state a cause of action.

Standing:

NYC submits that Petitioners have not particularized any concrete injury in fact, and further, cannot establish that the County falls within the 'zones of interest' sought to be promoted or protected by the statutory provision under which the government has acted, which in this instance is the N.Y. SOC. SERV. LAW ("SSL") and other state various regulations. Therefore, NYC Respondents request that the instant Petition be dismissed. Since standing is a threshold determination, it will be considered first.

Where a defendant has made a pre-answer motion to dismiss on the ground that the plaintiff lacks the requisite standing to commence the action, "the burden is on the moving defendant to establish, prima facie, the plaintiff's lack of standing, rather than on the plaintiff to affirmatively establish its standing in order for the motion to be denied[.]" *Deutsche Bank Trust Co. Americas v. Vitellas*, 131 A.D.3d 52, 59-60, 13 N.Y.S.3d 163 (2d Dept. 2015). In order to have standing to challenge a governmental action, the party challenging the action must have suffered an "injury in fact" that "fall[s] within the zone of interests or concerns sought to be promoted or protected by the statutory provision under which the [government] has acted[.]" *Matter of Mental Hygiene Legal Serv. v. Daniels*, 33 N.Y.3d 44, 50, 98 N.Y.S.3d 504 (2019) (internal citations omitted). Standing rules should not be "heavy-handed" or be applied in "an overly restrictive manner where the result would be to completely shield a particular action from judicial review." *Matter of Ass'n for a Better Long Is., Inc. v. New York State Dep't of Envtl. Conservation*, 23 N.Y.3d 1, 6, 988 N.Y.S.2d 115 (2014) (internal citation omitted).

The Petitioners allege that they are representatives of the public located within the geographical boundaries of Rockland County, and that they, as well as members of the public, will be harmed by the "considerable risk to health and safety resulting from the unnecessary,

unregulated, rushed and premature” transfer of 340 homeless adult male asylum seekers from NYC to the Armoni Inn. NYSCEF Doc. 1, ¶¶29-30. Petitioners further aver that the proposed transfer of these individuals to the Armoni Inn not only constitutes an illegal conversion of the property to a shelter, in violation of state laws and regulations, but that it also will have “profound effects on residents” in the County, specifically by straining the County’s already limited resources. *Id.* at ¶¶36-50. The County additionally raises concerns regarding safety of residents in light of the location of the Armoni Inn and the lack of planning which went into NYC Respondents’ decision, as it is situated in close proximity to a high school, two colleges and a residential facility for senior citizens. *Id.* at ¶¶45-47. At the oral argument which took place prior to this Court’s issuance of the TRO, the County stated that the contemplated transfer of 340 individuals would result in a quadrupling of the County’s homeless population without any prior planning on the part of the two municipalities involved. NYSCEF Doc. 26.

NYC Respondents couch the County’s concerns as fear-mongering and discriminatory. NYSCEF Doc. 55. They further proffer that the alleged injuries are merely speculative and conclusory in nature, and therefore insufficient to meet the standard of “concrete harm” required to establish standing. To the extent the County has concerns about the purported strain that the transfer of 340 asylum seekers would have on its already limited resources, NYC Respondents contend that such claims are belied by certain language set forth in a NYSOTDA Administrative Directive that appears to indicate that NYC would have to bear financial responsibility for the individuals transferred to the Armoni Inn. *See*, NYSOTDA Administrative Directive: *District of Fiscal Responsibility for Homeless Placements Out of District*, 06-ADM-07 (Revised 6/2006) (hereinafter “06-ADM-07”). Finally, NYC Respondents argue that the County’s concerns do not fall within the zone of interests or concerns that the SSL and other state regulations were enacted to promote in purportedly bestowing upon NYC the authority to transfer these individuals to the Armoni Inn under the circumstances presented in this matter.

To hold that the County has no standing to challenge the applicability of, or compliance with, the law and regulations set forth submitted by NYC Respondents would be, in this Court’s opinion, far too narrow and restrictive of an interpretation of standing. The SSL requires that each public welfare district bear responsibility for the assistance and care of any person who resides or is found within their territory who is in need of public assistance and care and is unable to provide for him or herself. SSL § 62. It is without dispute that Rockland County is a

public welfare district, as is NYC. NYC Respondents argue that Administrative Directive 06-ADM-07 supports their contention that they have legal authority to place the 340 asylum seekers in Rockland County. 06-ADM-07 sets forth a procedure that apparently governs situations where homeless individuals/families are being placed outside of their social services district. Under the rationale proffered by NYC Respondents to contest the County's standing, no municipality would ever have standing to challenge a transfer of homeless individuals into its social services district that appears to have violated the procedures set forth in 06-ADM-07, or the other laws/regulations relied upon by NYC Respondents.

Further, municipalities, like individual litigants, have interests to protect. *Matter of Chestnut Ridge v. Town of Ramapo*, 45 A.D.3d 74, 92, 841 N.Y.S.2d 321 (2d Dept. 2007). The transfer of 340 homeless individuals at one time to a single hotel in Rockland County without the requisite (or, in fact, *any*) planning on the part of the municipalities will undoubtedly have an impact on the County. The health and safety concerns proffered by the County are not conjecture or speculation, but rather, a near certainty that the County needs to consider. This is not a situation where "an alleged harm is contingent on a future event which may or may not come to pass[.]" *Matter of Stop BHOD v. City of New York*, 22 Misc.3d 1136(A), 881 N.Y.S.2d 367 (Sup. Ct. Kings Cnty. 2009). All of the evidence, including statements made by NYC officials, pointed to the fact that NYC Respondents decided they were transporting these 340 individuals to the Rockland County and laid the groundwork for the conversion of the Armoni Inn to a shelter. It would defy common sense to state that this would not result in any strain on fire, police and emergency services personnel. To the extent that this transfer was clearly underway prior to this Court's issuance of the TRO, the Petitioners have standing to challenge the Respondents' actions as having been in excess, or violative, of the controlling statutes and administrative directives.

This Court determines Petitioners' asserted injuries fall within the zone of interests sought to be protected by the statutes and administrative directives alleged to have been violated. The moving Respondents have not, therefore, established Petitioners' lack of standing. This prong of their motion is accordingly denied.

Failure to State a Cause of Action:

The first three causes of action in the Petition challenge the administrative actions of NYC Respondents pursuant to CPLR 7803. NYSCEF Doc. 1. Specifically, causes of action one

and two allege that the Respondents have exceeded the scope of their legal authority in their decision to implement the proposed transfer and convert the Armoni Inn to a shelter, and also exceeded the scope of NYC's own executive order. Cause of action three alleges that the decision to use the Armoni Inn as a homeless shelter and to implement the transfer was arbitrary and capricious and an abuse of discretion. Cause of action four simply requests a declaration of the rights of the parties under the circumstances set forth in the Petition.

NYC Respondents argue that the Petition does not state a cause of action as against them insofar as NYC "has clear authority under New York Social Services Law and the regulations and directives issued thereunder by [NYSOTDA] to provide temporary assistance to individuals in Rockland County at the Armoni Hotel." NYSCEF Doc. 45, ¶6. NYC Respondents rely on SSL 62, 18 NYCRR §§ 352.3 and 492.1(f), and 06-ADM-07 as authority for this proposition. Based on the foregoing authorities, NYC Respondents argue the Petition cannot, as a matter of law, state a claim that they exceeded the scope of their legal authority or that their decision was arbitrary and capricious. This Court disagrees.

As per NYC Respondents, SSL § 62 and 62(5)(b) contemplate that a social services district may need to provide services outside of its territory. Further, NYC Respondents argue that this section of the SSL requires them to be financially responsible for the costs and expenses associated with the provision of services outside of NYC. In opposition to the motion, however, Petitioners point out that while the SSL may contemplate the provision of services to an individual or "recipient" outside of a particular social services district, the statute does not speak to the blanket transfer of 340 individuals from one district to another, with the intention of turning a hotel in another social services district into a temporary housing shelter for said individuals.

Further, NYC Respondents aver that 18 NYCRR §§ 352.3 and 492.1(f) permit local social service districts to use hotels on a temporary basis to provide housing assistance. However, 18 NYCRR § 492.1(f) sets forth that, while a commercial hotel or motel may be used as a temporary placement, the hotel or motel shall not be considered a shelter for adults, a small-capacity shelter or a shelter for adults families "so long as [it] is not used *primarily to provide shelter to recipients of temporary housing assistance.*" 18 NYCRR § 492.1(f) (emphasis supplied). In the instant matter, NYC's transfer of 340 asylum seekers to the Armoni Inn would have utilized the *entire* hotel for purposes of providing shelter to recipients of temporary housing

assistance, thus rendering the use of the Armoni Inn for the purposes intended by Respondents as seemingly impermissible. Moreover, Petitioners argue that to the extent the Armoni Inn could have been properly used as an out of district placement for these 340 individuals, the regulation relied upon by NYC Respondents required operational plans regarding security and other significant issues to be addressed in advance- and the record presently before the Court is devoid of proof that such plans were submitted as required by the regulations. *See*, 18 NYCRR §§ 352.38, 491.3.

With respect to 06-ADM-07, NYC Respondents argue this directive confirms NYC's authority to provide temporary housing assistance to asylum seekers by utilizing hotel rooms in locations outside the City. NYSCEF Doc. 47. This "Directive", however, indicates that prior to placement outside of a social services district, the individuals seeking temporary assistance must file placement applications. Further, 06-ADM-07 indicates that the placing district *must* consider the appropriateness of the prospective placement, and must develop resources needed by their homeless population. *Id.* Again, as with the above cited regulations, Petitioners argue in opposition to the motion that there is no evidence that NYC Respondents complied with this Directive. As set forth in the Petition and at the oral argument that took place on May 11, 2023, Rockland County officials indicate that absolutely no planning or coordination efforts took place between the municipalities with respect to the proposed transfer.

NYC Respondents posit that the Frequently Asked Questions ("FAQs") prepared by NYSOTDA on the issue of sheltering migrants supports their position that they acted appropriately within the scope of their legal authority in attempting to effectuate this transfer. NYSCEF Doc. 37. Specifically, NYC Respondents proffer that the NYSOTDA does not consider hotels as "shelters" under its regulations when used to temporarily shelter migrants. However, the County points out that NYSOTDA makes no such representation in its FAQ's. In fact, it specifically states the following in its FAQs:

Question: Are these hotels "shelters", as defined by the NYS Office of Temporary and Disability Assistance (OTDA)?

Answer: NYC is contracting with commercial hotels in districts outside NYC on a temporary basis to shelter migrants.

NYSCEF Doc. 37. Clearly, the FAQ's do not resolve this significant issue. The "Answer" provided does not, in fact, answer anything at all. As set forth, *supra*, NYSOTDA has not weighed in on the issue.

"On a motion pursuant to CPLR 3211(a)(7) to dismiss for failure to state a cause of action, the court must afford the pleading a liberal construction, accept all facts as alleged in the pleading to be true, accord the plaintiff the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory[.]" *Phillips v. Taco Bell Corp.*, 152 A.D.3d 806, 807, 60 N.Y.S.3d 67, 69 (2d Dept. 2017) (internal references omitted). The same holds true in a pre-answer motion to dismiss commenced pursuant to CPLR 7804(f). *In the Matter of 1300 Franklin Ave. Members, LLC v. Bd. of Trustees of Incorp. Vill. of Garden City*, 62 A.D.3d 1004, 1006, 880 N.Y.S.2d 133 (2d Dept. 2009). Bare legal conclusions, however, need not be presumed true by the Court. *See, Brown v Foster*, 73 A.D.3d 917, 900 N.Y.S.2d 432 (2d Dept. 2010). The question for the Court at this time, therefore, is not whether the Petitioners have proven their causes of action, but whether they have stated their causes of action.

Applying this standard, the Court determines that the Petitioners have sufficiently stated causes of action one through three. The allegations in the Petition, coupled with the arguments raised in the affirmation and memoranda submitted in opposition to the motion,⁵ clearly raise substantial questions of fact in response to the motion that would make dismissal at this stage inappropriate. There are enough facts presented to raise very significant questions about the legal authority of the actions taken by NYC Respondents. Further, to the extent that the Petition alleges that the decision to transport 340 adult male asylum seekers from NYC to the Armoni Inn was made with no coordination or communication with Rockland County officials, and without any prior planning to determine whether the Armoni Inn was an appropriate site location to serve as temporary shelter was arbitrary and capricious, the Court determines that the motion to dismiss cause of action four must also fail.

The Court further denies the prong of the motion seeking dismissal of the cause of action requesting a permanent injunction for the reasons set forth in more detail, *infra*.

⁵ The Court, in deciding a motion to dismiss, can consider factual submissions made in opposition to the motion. *See, Lockwood v. CBS Corp.*, -- N.Y.S.3d --, 2023 WL 5944005, at *1 (2d Dept. 2023).

B. The Preliminary Injunction(s) – Mot. Seq. 1 & 4

Since the Court has denied NYC Respondents' motion to dismiss the Petition, the Court shall now address the application for a preliminary injunction during the pendency of this proceeding. Preliminary injunctions are governed by Article 63 of the CPLR. They are intended to prevent or enjoin a party from doing something while an action is pending. A temporary restraining order, or TRO, on the other hand, effects a restraint against a party during the brief interim between the time when the application seeking the injunction is filed, and when the application for the preliminary injunction is fully submitted and decided by the Court.

The initial TRO issued by this Court in order to preserve the status quo prohibits Respondents from transporting 340 homeless adults from NYC to the Armoni Inn in Rockland County. NYSCEF Docs. 24, 26. This TRO was subsequently expanded to prohibit Respondents from transporting any individuals currently residing in the NYC temporary shelters to any location intended to be used as a shelter located in Rockland County, including but not limited to the Armoni Inn. NYSCEF Doc. 91. The Court shall now determine whether the Petitioners have established their entitlement to a preliminary injunction, and if so, the scope thereof.

It is well established that in order to prevail on a motion for a preliminary injunction, the burden falls on the moving party to establish: (1) a likelihood of success on the merits of the underlying action; (2) imminent irreparable injury in the absence of the injunction; and (3) that a balancing of the equities favors the movant's position. *Golden v. Steam Heat, Inc.*, 216 A.D.2d 440, 442, 628 N.Y.S.2d 375 (2d Dept. 1995). A movant must be able to satisfy each of these requirements with "clear and convincing evidence" *County of Suffolk v. Givens*, 106 A.D.3d 943, 967 N.Y.S.2d 387 (2d Dept. 2013) (internal citations omitted).

Likelihood of Success on the Merits:

The Court need only determine for purposes of the instant application whether the movant has demonstrated a likelihood of success on the merits such that is sufficient to meet their burden on an application for a preliminary injunction. This is not tantamount to a requirement that the movant establish conclusive proof of his or her claims. *See, Ying Fung Moy v. Hoho Umeki*, 10 A.D.3d 604, 605, 781 N.Y.S.2d 684 (2d Dept. 2004) (questions of fact or disputes in the facts do not preclude the finding of a likelihood of success and evidence in support of same need not be conclusive). Further, where the denial of an injunction would

disturb the status quo and essentially render the final judgment ineffectual, “the degree of proof required to establish the element of likelihood of success on the merits should be reduced[.]” *Congregation Erech Shai Bais Yosef, Inc. v. Werzberger*, 189 A.D.3d 1165, 1167, 138 N.Y.S.3d 542 (2d Dept. 2020).

For the reasons set forth in the Court’s analysis of NYC Respondent’s failed motion to dismiss, the Petitioners have demonstrated likelihood of success on the merits under the applicable standard. Petitioners have raised significant factual issues regarding NYC Respondents’ compliance with the very statutes and regulations NYC claims gives it the authority to take the complained-of actions. Further, denial of the injunction at this stage would render any final determination on the merits ineffectual.

Frankly, NYC’s position raises far more questions than it actually answers. The provisions of the SSL and state regulations relied upon do not, in this Court’s opinion, expressly confer upon NYC the rights it claims to possess. The substantive arguments contained in Palisades Estates’ opposition papers – after sifting through the unresponsive, repetitive, and needlessly combative arguments declaring that Rockland County has acted with “racist motivation” and outlining an alleged “campaign to harass and retaliate” against the hotel – likewise fail to offer any persuasive argument to the Court. NYSCEF Doc. 31.

Taking NYC’s and Palisades Estates’ positions to their logical conclusions – *any* social services district could transfer untold numbers of people to *any other* social services district within the state at its sole discretion, without any planning or coordination between the municipalities concerned. To this end, NYC actually urges this Court to conclude that any municipality in which the recipient social services district is located has no standing to challenge a transfer allegedly effectuated in violation of the applicable law and regulations. This argument is more than staggering – it defies common sense and would lead to an absurd result.

Irreparable Injury:

A municipality seeking a preliminary injunction to enforce compliance with its laws or regulations to protect the public interest is not required to show proof of irreparable harm; rather, it need only demonstrate a likelihood of success on the merits and that the equities weigh in its favor. *See, City of New York v. Beam Bike Corp.*, 206 A.D.3d 447, 448, 170 N.Y.S.3d 68 (1st Dept. 2022). In this matter, there are sufficiently stated allegations that indicate that NYC Respondents have acted outside the scope of their authority and in violation of certain statutes

and regulations. This is, in and of itself, sufficient to determine they need not establish other irreparable harm. In any event, however, this Court determines that Petitioners have established the possibility of irreparable harm in the absence of the injunction.

The blanket transfer of 340 homeless individuals from NYC to a makeshift shelter in Rockland County without any prior planning or coordination between the appropriate municipalities constitutes irreparable harm. The Court wholeheartedly disagrees with Palisades Estates' statement that the addition of 340 additional homeless individuals "in a county of 340,000 does not cause irreparable harm- particularly where the City is paying for 75% of them." NYSCEF Doc. 31.⁶ It is undisputed that there are absolutely no operational plans in place *with the County* with respect to law enforcement, emergency services personnel or for the provision of social services. The Armoni Inn is situated in a densely populated area near two colleges, a senior citizens residential facility and a high school. The Armoni Inn is a hotel, and though it has beds, it is not equipped to house individuals for periods of months at a time. Further, there are safety issues inherent in its use as shelter, a use for which it is not apparently zoned. It simply cannot be disputed that these concerns all impact the safety of the public and of *the asylum seekers*.

Balance of the Equities: In balancing the equities, the Court is generally required to "look at the relative prejudice to each party accruing from a grant or denial of the requested relief." *Sau Thi Ma v. Xuan T. Lien*, 198 A.D.2d 186, 187, 604 N.Y.S.2d 84 (1st Dept. 1993). However, where the party requesting an injunction that acts to "enjoin 'government action taken in the public interest pursuant to a statutory or regularly scheme,' it may succeed only by demonstrating a likelihood of success on the merits in addition to irreparable harm." *Five*

⁶ Palisades Estates' position on this entire application is distorted. Palisades Estates has used every conference before this Court as an opportunity to argue that the County of Rockland's actions are racist, assaulting, and unconstitutional, and that the rights of the asylum seekers (who they admittedly do not represent) are being trampled. However, at oral argument before this Court, counsel for Palisades Estates admitted that their client is "in 100 percent full support of having the asylum seekers residing in their hotel...[as] [t]hey have an agreement *to be paid* for the usage of their rooms. This is a *commercial transaction* that we- that my client fully supports and wants." NYSCEF Doc. 26 (emphasis supplied). Palisades Estates has a financial stake in the game. This is without dispute. *Of course* this Respondent supports the conversion of this hotel into a shelter. The arguments raised by a commercial entity seeking to profit from its agreement with NYC, in purported support of the constitutional rights of the asylum seekers, are anything but altruistic.

Borough Bicycle Club v. City of New York, 483 F.Supp.2d 351, 360 (S.D.N.Y. 2007) (internal citation omitted). Thus, even though the Court need not engage in the balancing of the equities, based on the reasons set forth *supra*, the Court determines the equities weigh in favor of the granting of the preliminary injunction.

The request for the injunction is not opposed by the landowner, JK Holdings, which is essentially an out-of-possession landlord. As per Respondent JK Holdings, they have not been contacted by any representative from NYC Respondents or Palisades Estates concerning the proposed change of use of the existing hotel into a temporary shelter. NYSCEF Doc. 29. JK Holdings indicates that should the transfer of these 340 asylum seekers to the Armoni Inn take place, the use of the hotel would appear to violate local zoning laws, a matter which is pending before Judge D'Alessio. *Id.*

Scope of the Injunction:

The Court opts to keep in place the broader preliminary injunction prohibiting NYC Respondents from transporting *any* individuals residing in the NYC temporary shelters to *any* location intended to be used as a shelter located in Rockland County, including but not limited to the Armoni Inn. NYSCEF Doc. 91. Without a preliminary injunction of this nature in place, nothing prevents NYC Respondents from unilaterally selecting other locations within Rockland County to be used as shelters without first consulting with the appropriate local officials for purposes of planning and coordination. Further, without this preliminary injunction in place, the Court has little to no faith that NYC Respondents will communicate with Rockland County officials before dropping off potentially hundreds of individuals at any location NYC Respondents deem appropriate.

The Hon. Sandra B. Sciortino, J.S.C., in granting the County of Orange a nearly identical preliminary injunction, hit the proverbial nail on the head when she noted in her Decision and Order of June 20, 2023 that the denial of the injunction would “allow the City to behave in the same manner for which it criticizes the governor of Texas. Mayor Adams, in his Executive Order, notes that ‘Texas has not provided notice to New York City,...[and] many of the buses arrive at the Port Authority Bus Terminal unannounced and unscheduled, in the early morning or

late night hours...” NYSCEF Doc. 194.⁷ Further, on October 7, 2022, Mayor Adams stated in a press release following the transfer of thousands of asylum seekers to NYC “without notice, coordination or care” that had NYC “had coordination or even just cooperation from any of the states sending buses...then maybe [NYC] could have budgeted, staffed and allocated resources for the asylum seekers...”.⁸ When conduct is wrong, the political party of the individual who bears responsibility should be of no moment.

Therefore, Petitioners’ request for a preliminary injunction during the pendency of these proceedings is granted.

C. The Hotel’s TRO- Mot. Seq. 3

As indicated *supra*, this Court granted a TRO in favor of Palisades Estates and the Armoni Inn enjoining the County from enforcing its Closure Notice to the hotel, and allowing the Armoni Inn to operate in the typical manner as a hotel, subject to any TROs in place. NYSCEF Doc. 72. The Court must now determine whether to grant the hotel’s request for a preliminary injunction under the same terms and conditions as the TRO.

In their application, Palisades Estates and the Armoni Inn contend that “in a clear and vindictive abuse of power” the County has forced the hotel to close indefinitely based solely on its intended participation in the NYC’s “program” by which, according to counsel for Palisades Estates, “hotel rooms and other essential services would be supplied on a temporary basis to a small number of refugees arriving in [NYC].” NYSCEF Doc. 63.⁹ Respondents’ papers detail the actions of the County that they contend were designed solely to harass and retaliate against the hotel as a pretext for its discrimination against, apparently, the asylum seekers. *Id.* These actions include the issuance of the Closure Notice, the inspections, and the withholding of the temporary residence operating permit. *Id.* The Court notes, however, that in the Affidavit of

⁷ The Court also notes that the preliminary injunction being Ordered in the case at bar is of the same scope and nature as that which was also Ordered by the Hon. Maria G. Rosa, J.S.C., Dutchess Supreme Court, on August 4, 2023. NYSCEF Doc. 195.

⁸ *See*, Transcript from Press Release, October 7, 2022, available on: www.nyc.gov

⁹ Curiously, in the same papers, Respondents contend that the hotel has not changed its use, and was not intending to change its use, and that it was going to continue to operate as a hotel. NYSCEF Doc. 63. This assertion has been made despite the fact that every single room in the Armoni Inn would be used for purposes of sheltering the 340 asylum seekers transported from NYC, thus leaving no hotel rooms available to the general public.

Ashok Bhatt, the operator of the hotel, same having been submitted in support of the injunction, Mr. Bhatt indicates that “[b]y chance, the Hotel’s [temporary residence] permit expired on April 30, 2023.” NYSCEF Doc. 64, ¶6.

Based on the facts as outlined in their papers, the moving Respondents request an injunction similar to the terms of the TRO and, in addition, ordering the Petitioners to issue a temporary residence permit to the Hotel. Further, Respondents seek an Order prohibiting Petitioners “cease and desist from harassing Owner and the Hotel” by “selectively enforcing” the laws. NYSCEF Doc. 63.

This application is opposed by the County. The County, while conceding that the hotel cured the various violations that were discovered during an inspection of the premises, still nonetheless refuses to extend the hotel’s annual temporary residence permit based on the hotel’s failure to produce records or documentation explaining the hotel’s operational plans. NYSCEF Doc. 93. The County points out that the Armoni Inn and NYC Respondents have publicly stated their plans to operate the hotel as a temporary housing facility or shelter, and to the extent said plans were to come to fruition, the County submits that this would violate any temporary residence permit issued. *Id.* The County also notes that the hotel (admittedly) failed to timely renew its annual permit. Although the hotel did ultimately file a late application for renewal, the County asserts that, upon inspection, health and safety violations were discovered. *Id.* Again, though all of these violations were corrected following a May 31, 2023 inspection conducted at the behest of the Court in an attempt to ensure all health and safety issues had been resolved, the County has not issued a renewal of the hotel’s permit and will not do so while the details of the hotel’s plans to operate a shelter remain undisclosed. *Id.*

The County claims that for this Court to force it to issue a temporary residence permit to the hotel, it would essentially result in the Armoni Inn receiving preferential treatment from the County. The County submits that it would not grant a permit to *any entity* that has made public its intention to conduct business in such a manner that would expressly violate the terms of the permit under which it seeks to operate. Further, the County disputes it acted with any intention to harass Respondents, but rather, was performing the duties that fall under the purview of its Health Department. NYSCEF Doc. 93.

At this time, the Court elects to reserve on this particular application. The Court will address the application with the parties at the conference scheduled *infra* in order to determine if

same can be limited based on the instant Decision, as well as to flesh out the need for potential further briefing. Since the Court has written confirmation that all health and safety violations for which the Armoni Inn was previously cited have been cured, there is no need for the County to enforce its closure notice predicated on said violations. For the time being, the TRO shall remain in effect upon the same terms and conditions as those which were set forth in the Order to Show Cause. NYSCEF Doc. 72. This will preserve the status quo until the conference can take place.

D. The County's Motion to Compel Production of Certain Documents- Mot. Seq. #5

By Order to Show Cause dated June 30, 2023, the County seeks an Order compelling Respondents to produce “any and all contracts or agreements between [NYC Respondents] (and its agents, vendors or related parties) and Palisades or the Hotel[.]” NYSCEF Doc. 126. The County bases this application on their contention that these agreements are the genesis of the instant dispute, inasmuch as the documents will establish the relationship between the parties, the amount of compensation involved, the length of time the hotel would be used for sheltering the 340 asylum seekers, and an outline of the services to be provided to the individuals while residing at the hotel. NYSCEF Doc. 118. The County disclosed its attempts at obtaining the contracts before resorting to motion practice, however, NYC Respondents and Palisades Estates have not, as of the date of this Decision, produced the documents to the County. *Id.*

To the extent that this proceeding is a hybrid proceeding, but that the crux thereof seeks relief pursuant to an Article 78 proceeding wherein discovery is not automatic, the County seeks leave of Court to pursue this discovery. NYSCEF Doc. 118. Further, the County points out that the sought-after documents are municipal contracts, and thus are a matter of public record. *Id.*

Just as adamantly as the County has sought these documents since the inception of this matter, the Respondents have opposed their production. Counsel for Palisades Estates has indicated that because there is a pending motion to dismiss that could eliminate this entire proceeding if granted, the County should not be entitled to receive discovery. NYSCEF Doc. 135. In addition, Palisades Estates points out that the contracts are essentially irrelevant in light of the TROs that prevent NYC Respondents from importing, and the Armoni Inn from exporting, asylum seekers. Palisades Estates has stated numerous times that the hotel fully intends to comply with any existing orders of the Court, and therefor, its proposed use is, as per counsel, irrelevant. *Id.*

NYC Respondents oppose the application for similar reasons. NYSCEF Doc. 136. NYC supports its motion to dismiss, and therefore posits that the Petitioners are not entitled to discovery when they have not stated claims upon which the relief they seek can be granted. Further, NYC Respondents argue that the contracts will not clarify any facts which form the basis of the Petitioner's causes of action. As the sought-after discovery is not relevant, NYC Respondents urge the Court to deny the County's request for same.

Counsel for JK Holdings has not taken a position with respect to this particular application.

The Court, in response to this application, directed that the contract at issue be submitted *in camera* for the Court to review in consideration of the argument concerning its relevance to the instant proceeding. In the meantime, a second contract between NYC and its vendor which NYC Respondents brought to the Court's attention later in these proceedings has been made public in a case involving similar issues pending in Onondaga Supreme Court (Index No.: 5214/2023). NYSCEF Doc. 218. As a result, this Court determined that there was no need to submit the second contract to this Court *in camera*. NYC Respondents have confirmed in writing that the publicly filed contract is a true and accurate copy of the original. NYSCEF Doc. 221. The Court's decision at this juncture will focus instead on the agreement that has been turned over to it for review, *in camera*, in connection with this application.

This case is a hybrid Article 78 proceeding and a plenary action. NYSCEF Doc. 1.

Disclosure in an Article 78 proceeding is only available by leave of Court. The Supreme Court has broad discretion in granting or denying discovery, "although it must balance the needs of the party seeking discovery against such opposing interests as expediency and confidentiality[.]" *Bramble v. New York City Dept. of Educ.*, 125 A.D.3d 856, 857, 4 N.Y.S.3d 238, 240 (2d Dept. 2015). Requests for discovery that are "not necessary in determining a fee award, [are] not narrowly tailored to obtaining any relevant information, and ... [will] unduly delay[] the proceeding" are properly denied. *Matter of Muser*, 206 A.D.3d 563, 564, 168 N.Y.S.3d 835 (1st Dept. 2022).

However, in addition to the causes of action asserted pursuant to Article 78, there is a cause of action set forth in the pleading seeking declaratory relief pursuant to CPLR 3001. Actions seeking declaratory relief are not considered special proceedings. Discovery in such proceedings is governed by Article 31 of the CPLR, and courts have wide discretion over

discovery issues. CPLR 3101 requires “full disclosure of all matter material and necessary in the prosecution of defense of an action, regardless of the burden of proof, by ... a party, or the officer, director, member, agent or employee of a party’ CPLR 3101(a)(1). ...[t]he words, “material and necessary,” are ... to be interpreted liberally to require disclosure, upon request, of any facts bearing on the controversy which will assist preparation for trial[.]” *Hamed v. Alas Realty Corp.*, 209 A.D.3d 628, 629, 175 N.Y.S.3d 557 (2d Dept. 2022) (internal citations omitted).

The “contract” at issue consists of two separate agreements entitled “Master Lease”, neither apparently signed or executed, between the Armoni Inn “as operated by Palisades Estates, EOM” and Rapid Reliable Testing NY, LLC d/b/a DocGo (“DocGo”). The agreements address the very substance of this proceeding- the plans being made for use of the Armoni Inn. Whether the plans for the proposed use of the Armoni Inn as laid out in the agreements exceeded the scope of NYC Respondents’ authority, or were made in an arbitrary and capricious manner, is wholly relevant to the issues before this Court in both the Article 78 petition, as well as the declaratory judgment action wherein this Court is being called upon to determine the rights and responsibilities of the parties under the circumstances presented in the Petition.

Further, as DocGo is undoubtedly acting as an agent for NYC pursuant to the contract between NYC and DocGo (NYSCEF Doc. 220), the agreements between DocGo and the hotel are a matter of public record, including the financial terms thereof. The Court sees no reason why the contract, after having been reviewed *in camera*, should be shielded from disclosure under either standard applicable in this hybrid proceeding. The Court therefore orders its production in response to the document requests served by Petitioners. Petitioners’ application is granted.

E. Pryor Cashman’s Application to be Relieved as Counsel- Mot. Seq. #6

As set forth *supra*, Pryor Cashman filed a letter on July 17, 2023 indicating that the firm had learned at some unspecified point that “Armoni was associated with a past owner and/or operator of the Hotel, and has no current connection to the Hotel or Palisades [EOM].” NYSCEF Doc. 142. Pryor Cashman advised by way of this submission that it did not represent the LLC referred to herein as the Armoni Inn and requested that all of its previous submissions be deemed amended to reflect submission on behalf of Respondent Palisades Estates, only. *Id.* The Court

required, in accordance with its Part Rules, that Pryor Cashman make its request via a formal written motion, which is now fully submitted.

In support of this motion is an affidavit from Baruch Rosenfeld, who affirms that he is a member of “Palisades Estates EOM, LLC,” the ground lessor of the property upon which the subject hotel is situated. NYSCEF Doc. 154. Rosenfeld represents that he purchased a membership interest in Palisades Estates in 2022 and, shortly thereafter, Palisades Estates engaged AIMS Orangeburg Management LLC (“AIMS Orangeburg”) to operate the Armoni Inn. *Id.* at ¶3-4. Rosenfeld states that the Armoni Inn operated the hotel prior to AIMS Orangeburg. *Id.* at ¶3. Ashkot Bhatt appears to operate AIMS Orangeburg. *Id.*¹⁰ Per Rosenfeld, the Armoni Inn has had no connection to or affiliation with the hotel since early 2022. *Id.* at ¶5.

Rosenfeld affirms that when he engaged the firm of Pryor Cashman to represent Palisades Estates, he inadvertently assumed all references to the Armoni Inn referred to the hotel in general and not any specific LLC or entity. *Id.* at ¶7. He swears, therefore, that he executed the retainer agreement on behalf of *both* Palisades Estates and the Armoni Inn. *Id.* at ¶8.¹¹ Rosenfeld realized this “error” sometime thereafter. *Id.* In support of his position that this misrepresentation was an error, Rosenfeld cites the entity’s application for a temporary residence permit with the County and the County’s inspection results, all of which refer to AIMS Orangeburg. *Id.* at ¶9-13. Given the foregoing, Pryor Cashman requests that this Court allow it to withdraw as counsel for the Armoni Inn, and substitute AIMS Orangeburg into this action in the place and stead of the Armoni Inn.¹² NYSCEF Doc. 153.

JK Holdings opposes the application. JK Holdings submits, *inter alia*, that although this motion was served upon the Armoni Inn via the Secretary of State, the Court should require a method of service more reasonably likely to reach the Armoni Inn, specifically through “direct service.” NYSCEF Doc. 199. JK Holdings insists that the extraordinarily unusual facts preceding this motion justify the relief. Further, JK Holdings argues that the Court and parties lack information sufficient to determine whether the Armoni Inn has any continuing interest in

¹⁰ Of note, Bhatt submitted statements sworn to under penalty of perjury representing that he operated the Armoni Inn without any reference to AIMS Orangeburg. NYSCEF Doc. 64, 108.

¹¹ Respondents have refused to produce this retainer agreement, advancing generally that the document is “privileged.” NYSCEF Doc. 153.

¹² Pryor Cashman represents that it is also counsel to AIMS Orangeburg. NYSCEF Doc. 153.

the hotel or Palisades Estates, or whether the Armoni Inn was involved in any goings-on that led up to the instant Petition. NYSCEF Doc. 199. The Court agrees.

Pryor Cashman's application to be relieved as counsel for the Armoni Inn is granted. Service of the motion papers was made pursuant to CPLR 311-a and LLC Law §303 through the Secretary of State on August 16, 2023. NYSCEF Doc. 158. Armoni Inn has had adequate time to oppose this application, and the entity has failed to do so. In granting this this application, the Court will grant a limited stay of these proceedings so that Armoni Inn may retain new counsel.

The Court denies, however, Pryor Cashman's request to have AIMS Orangeburg substituted as the party of interest in these proceedings. As counsel for JK Holdings highlights, the facts and circumstances preceding this application appear highly suspect, and the Court does not have sufficient information before it to determine that AIMS Orangeburg is the real party in interest. It may be the case that *both* the Armoni Inn and AIMS Orangeburg are proper parties. Therefore, to substitute one entity for the other at this stage would be, in this Court's opinion, premature. Pryor Cashman's motion is therefore granted in part and denied in part as set forth herein.

CONCLUSION

This Court can only begin to fathom what municipal leaders and government officials are dealing with in terms of the influx of individuals coming here from other countries in the hope of finding a better life. The Court further recognizes that the individuals who come here- those seeking asylum in our country- have experienced true trauma and hardship. The human elements present in this case are undeniable. It is for this very reason that the Court had hoped its attempts at a settlement early in the litigation could be achieved. The best use of government resources here is not arguing in court, but rather, working together to fashion a plan to account for the safety and well-being of everyone involved. Sadly, that proved an impossible feat.

After reviewing all of the submissions, and hearing from the parties on multiple occasions, the County has raised before this Court a number of truly significant concerns with the legality and appropriateness of the proposed transport of 340 asylum seekers from NYC to a hotel in Rockland County that NYC Respondents and those representing the hotel simply cannot overcome at this stage in the proceedings.

Now, therefore, it is hereby

ORDERED, NYC Respondents' motion to dismiss is denied; and it is further

ORDERED, Petitioners' application for a preliminary injunction is granted, as follows:

Until further Order of this Court, NYC Respondents, their agents, servants, representatives and employees are preliminarily restrained and enjoined from transporting any individuals residing in NYC temporary shelters to hotels or other facilities within Rockland County, including but not limited to the hotel referred to herein as the Armoni Inn. No bond or undertaking shall be required to secure the preliminary injunctive relief granted herein.

and it is further

ORDERED, that the TRO issued by this Court on or about June 1, 2023 in favor of Palisades Estates and the Armoni Inn enjoining the County from enforcing its Closure Notice to the hotel, and allowing the Armoni Inn to operate in the typical manner as a hotel, subject to any applicable preliminary injunctions shall remain in place until further Order of this Court; and it is further

ORDERED, the County's application seeking an Order compelling Respondents to produce any and all contracts or agreements between NYC Respondents and their agents, vendors or related parties, and Palisades Estates or the hotel (or any entity operating the hotel) in response to their demand for same is granted; and it is further

ORDERED, that Pryor Cashman's application to be relieved as counsel for the Armoni Inn is granted, and this matter (with the exception of the preliminary injunctions and TROs set forth herein) shall be stayed for a period of sixty (60) days from the date of entry of this Decision and Order for the Armoni Inn to find new counsel, taking into consideration that service upon an LLC can take time; and it is further

ORDERED, that Pryor Cashman shall serve a copy of this Decision and Order upon the Armoni Inn within ten (10) days of its entry and shall file proof of such service with this Court via NYSCEF; and it is further

ORDERED, that notwithstanding the stay, NYC Respondents shall have ten (10) days from the date of this Decision and Order to produce the documents that had previously been submitted to this Court, *in camera*, in response to Petitioners' demand for same; and it is further

ORDERED, that this matter is scheduled for an in-person conference before the undersigned on **Thursday, January 4, 2024, at 2:00 p.m.**, after the expiration of the stay, for purposes of scheduling deadlines for the submission of Respondents' answers to the Petition, as well as discovery deadlines; and it is further

ORDERED, the Clerk of the Court is directed to mark motion sequences 2, 4, 5, and 6 as disposed on the docket in accordance with the foregoing Decision.

Dated: New City, New York
October 17, 2023



Hon. Thomas E. Zugibe, J.S.C.

To: *All counsel of record with NYSCEF*