NOTIFY

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS

Superior Court for Suffolk County

Ronald Geddes, AC, and RAR,
on their own behalf and
on behalf of a class of similarly situated
individuals,

Plaintiffs,

v.

City of Boston; Boston Police Department; Boston Public Health Commission; Kim M. Janey, in her capacity as the Mayor of the City of Boston and individually; Gregory P. Long, in his Capacity as the Acting Commissioner of the Boston Police Department and individually; and Bisola Ojikutu, in her capacity as Executive Director of the Boston Public Health Commission and individually,

Defendants.

Notice sent
12/03/2021
K. S. P.
W. C. P. H. & D.,LLP.
A. K. J.
W.,LLP.
J. R. M.
L. S. M.
P. L. Mc.,JR. (sc)

Civil Action No. 2184CV2609
On transfer by Second Interim Order in SJ-2021-0408

SUFFOLK, ss. SUPERIOR COURT DEPT
(date) 11/30/21
FILED
ASSISTANT CLERK

DEFENDANTS' STATUS REPORT AND PROPOSED TRACKING ORDER

Now come the Defendants, City of Boston, Boston Police Department, Boston Public Health Commission, the Mayor of Boston,[1] Kim M. Janey, in her individual capacity, Gregory P. Long in his capacity as the Acting Commissioner of the Boston Police Department and individually, hereinafter ("City Defendants") and hereby provide a brief status report and proposed tracking order pursuant to Superior Court Rule I-88.

[1] On November 16, 2021, Michelle Wu was sworn as Mayor of the City of Boston but has not been substituted for former Mayor Kim Janey who remains a defendant in her individual capacity.

1. On November 5, 2021, the Plaintiffs filed their Verified Complaint and Request for Preliminary Injunction and Motion for a Temporary Restraining Order at the Massachusetts Supreme Judicial Court ("SJC").
2. Plaintiffs' Verified Complaint alleged that former Mayor Kim Janey's Executive Order and Encampment Protocol, which outlined the process and procedure for removal of encampments on public sidewalks, violated their Fourth, Eighth, and Fourteenth Amendment rights under the United States Constitution as well as their Article 26 Rights under the Massachusetts Declaration of Rights. Plaintiffs also brought a claim against the City Defendants under the Massachusetts Civil Rights Act.
3. Plaintiffs' Verified Complaint sought declaratory as well as money damages under 42 U.S.C. § 1983 and the Massachusetts Civil Rights Act.
4. On November 5, 2021, the Single Justice of the SJC issued an Interim Order setting a hearing for November 9, 2021, to hear argument on the Plaintiffs' Motion for Preliminary Injunction including whether further factual development was required to decide the legal issues.
5. On November 9, 2021, the Defendants filed an Opposition to the Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction.
6. On that same day, counsel for the parties appeared before the Single Justice of the SJC for a hearing on Plaintiffs' Motions.
7. On November 10, 2021, the Single Justice of the SJC issued a Second Interim Order remanding the case to the Superior Court to determine twelve enumerated factual questions that needed to be resolved in order for the Single Justice to decide the complaint for declaratory and injunctive relief. The Single Justice ordered the matter to be remanded for

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written findings and rulings on the twelve factual questions as well as any other factual determinations the Judge believes to be helpful in resolving the legal questions at issue to be submitted to the Court within 30 days of the final hearing. The Single Justice of the SJC also transferred the question of class certification and the motions for temporary restraining order and preliminary injunction to the Superior Court.

8. On November 15, 2021, this Court held a status conference and scheduled the Plaintiffs' Motion for Temporary Restraining Order to be heard on November 17, 2021, and the Plaintiffs' Motion for Preliminary Injunction to be heard on November 29, 2021.
9. On November 17, 2021, this Court held a hearing on Plaintiffs' Motion for a Temporary Restraining Order. After taking the matter under advisement, this Court reconvened the parties and denied the Plaintiffs' motion on the grounds that the Plaintiffs were not likely to succeed on the merits, did not face irreparable harm, and the balance of interest weighed in favor of the City of Boston.
10. On that same day, the Court collapsed the Plaintiffs' request for declaratory relief and Motion for Preliminary Injunction for trial on November 29, 2021 and ordered the parties to confer regarding the exchange of discovery in advance of the trial and submit any outstanding discovery issues to the Court by noon on November 19, 2021 to be heard at 2:00 PM that same day.
11. On November 18, 2021, counsel for the Defendants met with counsel for the Plaintiffs to discuss what Defendants believed to be a discovery conference. Defendants were prepared to produce discovery and narrow any remaining discovery issues in order to proceed with the November 29, 2021 trial.

12. Instead, Plaintiffs' counsel informed counsel for the Defendants for the first time that they intended to withdraw Plaintiffs' Motion for Preliminary Injunction—without prejudice. Based on Plaintiffs' counsels' representation, the parties did not and have not conferred regarding discovery.

13. On November 19, 2021, Plaintiffs submitted a Status Report[2] to the Court notifying the Court of their intent to withdraw their Motion for Preliminary Injunction and proposed an accelerated schedule for discovery, dispositive motions and evidentiary hearings of May 2022. The Plaintiffs offered to submit a more detailed proposed scheduling order by November 29, 2021.

14. As a result of the Plaintiffs' notification to the Court of their intent to withdraw their Motion for Preliminary Injunction, the Court cancelled the November 19, 2021, discovery hearing as well as the November 29, 2021, Preliminary Injunction and Declaratory Relief hearing.

15. The Plaintiffs have yet to serve Defendants with or file with the Court, a Motion to Withdraw their Motion for Preliminary Injunction.

16. Given that this Court denied the Plaintiffs' Motion for Temporary Restraining Order and Plaintiffs have represented to this Court that they intend to withdraw their Motion for Preliminary Injunction, all that remains on remand pursuant to the Single Justice's Second Interim Order, is a factual hearing and written determination of the twelve enumerated

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[2] Given the short notice and the characterizations made by Plaintiffs regarding their procedural pivot away from the November 29, 2021, trial, the Defendants did not join or assent to Plaintiffs' Status Report or their proposal for an accelerated schedule.

Notice sent
12/03/2021

(sc)

questions of fact as well as any other factual issues that the Court deems necessary to resolve the legal questions[3] raised in Plaintiffs' Complaint.

17. Plaintiffs have brought their case against the City of Boston, a municipality, which pursuant to Superior Court Standing Order I-88, is assigned to the Average "A" Track.[4]

18. Given that this case is no longer proceeding on an emergency schedule as there is no longer an emergency motion[5] pending that would require an almost-immediate resolution, the City Defendants propose to accelerate the Average Track as follows: two (2) months for Rule 12, 19 and 20 motions; two (2) months for Rule 15 motions; twelve months (12) months for discovery and dispositive motions.

19. Accordingly, the City Defendants propose the following tracking order deadlines:

Motions under MRCP 12, 15, 19, and 20		
Motions under MRCP 12, 19, and 20	Served by	January 5, 2022
Motions under MRCP 15	Served By	September 5, 2022
Discovery Dates and Deadlines		
All Non-expert Discovery completed		~~November~~ October 5, 2022
Opening Expert Reports Served		January 5, 2023
Responsive Expert Reports Served		March 5, 2023

Rule 16 CM scheduled October 20 @ 2:00

[3] To the extent that Defendants seek to file dispositive motions, the Defendants request guidance from this Court as to what forum such motions should be filed, i.e., whether such motions should be filed with the instant Court with the SJC.

[4] The Average "A" Track deadlines are, in relevant part, as follows:

i. Four months (120 days)
   1. Rule 12, 19, and 20 motions shall be served.
ii. Fourteen months (420 days)
   1. Rule 15 motions shall be served.
iii. Twenty-four months (720 days)
   1. All discovery requests served and non-expert depositions completed.
iv. Twenty-five months (750 days)
   1. All motions for summary judgment shall be served.

[5] At the time the Single Justice of the SJC ordered the Superior Court to make written factual findings and rulings "forthwith," there were two emergency motions pending before the SJC, i.e., a Motion for Preliminary Injunction and Motion for Temporary Restraining Order. This Court denied the Plaintiffs' Motion for TRO and the Plaintiffs' have stated that they intend to voluntarily withdraw their Motion for Preliminary Injunction.

Expert Discovery Complete	May 5, 2023
Dispositive Motions Dates and Deadlines	
All dispositive motions Served By	January 5, 2023
Class Certification Motion	
Served By	December 5, 2022

Wherefore, the City Defendants request that this Court enter an order adopting the tracking order deadlines as set forth above.

Dated: November 29, 2021

Respectfully submitted,

DEFENDANTS, CITY OF BOSTON, BOSTON POLICE DEPARTMENT, MAYOR KIM JANEY IN HER OFFICIAL AND INDIVIDUAL CAPACITY, GREGORY P. LONG IN HIS OFFICIAL CAPACITY AS THE ACTING POLICE COMMISSIONER AND IN HIS INDIVIDUAL CAPACITY

Adam Cederbaum
Corporation Counsel
By their Attorneys,

CERTIFICATE OF SERVICE
I hereby certify that on this date a true copy of the above document was served upon the attorney of record for each party by email..

11/29/2021 /s/ Lisa S. Maki
Date Lisa S. Maki

/s/ Lisa S. Maki
Lisa S. Maki BBO No. 675344
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