

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

MARK NUNEZ, ET AL.

Plaintiffs,

-against-

THE CITY OF NEW YORK, ET AL.

Defendants.

Case No. 11-cv-5845 (LTS)

**JOINT STATUS REPORT**

Pursuant to the Court's order of June 6, 2024, Dkt. 725, the Parties to the above-captioned case met and conferred in good faith to resolve outstanding disputes related to Plaintiffs' Motion for Contempt and Appointment of a Receiver (Dkt. 601, hereinafter "the Motion").

**I. Proposed Findings of Fact**

Subsequent to the July 9, 2024 status conference, the Parties continued to meet and confer by email and telephone regarding their respective objections to the proposed findings of fact documents: Plaintiffs' Proposed Findings of Fact, Defendants' Statement of Material Facts, and Plaintiffs' Supplemental Proposed Findings of Fact. The Parties were able to narrow and resolve certain disputes and objections. Attached to this status report as exhibits are:

1. Exhibit A – Plaintiffs' Proposed Findings of Fact (filed under seal)
2. Exhibit B – Plaintiffs' Proposed Findings of Fact (public)
3. Exhibit C – Defendants' Statement of Material Facts
4. Exhibit D – Plaintiffs' Supplemental Proposed Findings of Fact (filed under seal)
5. Exhibit E – Plaintiffs' Supplemental Proposed Findings of Fact (public)

These exhibits reflect agreed-upon revisions to the proposed findings of fact and identify all disputed or objected to facts and their categories. In addition, these exhibits include:

- a) With respect to the proposed findings of fact where there are accuracy disputes, the opposing party has provided a succinct response citing any evidence in the record that the party relies upon to dispute the fact.
- b) With respect to the proposed findings of fact where there is a “Legal Dispute,” each Party has set forth its position as to each legal objection.

For ease of reference, we have marked with asterisks each proposed finding of fact where there is either a dispute as to the accuracy of the fact or the opposing party has asserted a legal objection. The majority of disputes the Parties originally identified have been resolved, but a small number remain for the Court to consider.

The Defendants have withdrawn the majority of their objections that were previously included in the category of “Monitor’s Opinions or Conclusions” based on the following agreement reached between the Parties: “With respect to any proposed finding of fact that sets forth an opinion or conclusion of the Monitor, the Parties agree that the proposed finding of fact is not being presented as a legal opinion or conclusion on the ultimate legal questions to be decided by the Court on this motion. To the extent any proposed finding of fact reflects the Monitor’s opinion or conclusion with respect to whether the Defendants have complied with a provision of a Court Order, the Parties agree that the Court ultimately will decide whether any non-compliance warrants a contempt finding.”<sup>1</sup> To the extent Defendants have

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<sup>1</sup> Pursuant to the Section XX, Paragraph 18 of the Consent Judgment, “the Monitor shall evaluate the status of compliance with each substantive provision of the Agreement using the following standards: (a) Substantial Compliance, (b) Partial Compliance, and (c) Non-compliance.” These terms are defined in the Consent Judgment.



not withdrawn an objection that fell within this category, the objection is included in the attached exhibits and the Parties have set forth their respective positions.

## **II. The Defendants' Request to Submit Additional Proposed Findings of Fact and Evidence**

During the meet-and-confer process, the Parties and the Deputy Monitor discussed how best to effectuate the Court's order, at Dkt. 751, regarding Defendants' request to supplement the factual record prior to the oral argument scheduled for September 25. By August 23, the Defendants will provide the Monitor and the Plaintiffs a draft of any additional proposed findings of fact, as well as a draft declaration from Commissioner Lynelle Maginley-Liddie. Defendants have indicated that their supplemental proposed findings of fact to be provided to the Monitor and Plaintiffs on August 23 will include information that Defendants contend are updates regarding or responsive to Paragraphs 5, 24, 27, 50, 52, and 64 of Defendants' Statement of Material Facts and Paragraphs 18, 120, 133, 136, 140, 151, 157, 159, 160, 164, 170, 172, 187, 190, 194, 198, 200, 213, 241, 300, 302, 326, 327, 331, and 341 of Plaintiffs' Supplemental Proposed Findings of Fact. In advance of the oral argument scheduled in September, the Monitor has agreed to file a report with the Court that will address and provide requisite context for the topics and factual information presented in Defendants' documents, and also include any other updates the Monitor deems appropriate. The Monitoring Team is currently engaging with the Parties to develop an appropriate schedule for the September filing and will provide more details to the Court once a schedule is finalized. The Parties agree that this report, like other Monitor reports, is admissible evidence and may be considered by the Court in deciding the Motion. Defendants have already started to provide the Monitoring Team and the Plaintiffs with some of the additional factual information they intend to offer. Plaintiffs and the United States

note that, consistent with the Court's order, they reserve the right to object to Defendants' filing with the Court any declarations or supplemental proposed findings of fact that are based on evidence other than the Monitor's prior reports or the anticipated pre-oral argument Monitor's report.

We thank the Court for the opportunity to present these updates and our positions.

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