

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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HOMELESS ADVOCACY PROJECT,
ANTHONY GREEN and JOHN KAGIAN,

Plaintiffs,

No. 16-cv-7439 (WHP)(KHP)

v.

THE CITY OF NEW YORK, NEW YORK CITY
DEPARTMENT OF HEALTH AND MENTAL
HYGIENE and MARY TRAVIS BASSETT in her
official capacity as Commissioner thereof,

**STIPULATION
AND ORDER OF
SETTLEMENT AND
DISCONTINUANCE**

Defendants.

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WHEREAS Homeless Advocacy Project (“HAP”) is a 501(c)(3) non-profit organization providing free legal services to homeless families and individuals living in Philadelphia; and

WHEREAS Anthony Green (“Green”) and John Kagian (“Kagian”) are clients of HAP; and

WHEREAS HAP, Green and Kagian (together, the “Plaintiffs”) filed a Complaint in the United States District Court for the Southern District of New York, Docket No. 16-cv-7439, alleging certain claims against the New York City Department of Health and Mental Hygiene, its Commissioner, Mary Travis Bassett, in her official capacity (together “DOHMH”), and the City of New York (collectively “Defendants”) arising under the Due Process Clause of the Fourteenth Amendment to the United States Constitution; and

WHEREAS Defendants deny any and all liability in connection with Plaintiffs’ claims; and

WHEREAS Plaintiffs and Defendants (together, the “Parties”) wish to resolve this litigation and settle all claims and causes of action that were or could have been asserted by Plaintiffs in or arising from this litigation relating to obtaining copies of birth certificates:

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and between the Parties, through their attorneys, that the above-captioned action is settled as follows:

1. As of the date on which the Court enters this Stipulation and Order of Settlement and Discontinuance (“Stipulation”), DOHMH shall have implemented a revised practice and procedure according to which:
 - a. an attorney may apply for a birth certificate on behalf of a person who is entitled to obtain the birth certificate pursuant to New York City Health Code § 207.11 and New York City Administrative Code § 17-169 (an “Attorney Application”);
 - b. a complete Attorney Application is deemed to consist of a completed New York City Birth Certificate Application Form and a completed Attorney Protocol for New York City Birth Certificates substantially identical to Exhibit A hereto (“Attorney Protocol”), together with any fees or documents that either form indicates are necessary;
 - c. section D of the Attorney Protocol is deemed to be complete if the attorney has: (i) provided a photograph of the client; (ii) checked at least one of the boxes in subsection 4; and (iii) signed and dated the affirmation; and
 - d. upon its receipt of a complete Attorney Application, DOHMH shall conduct a search of its files for a matching record for which a birth certificate is sought;

and, if a matching record is located, shall mail the requested birth certificate to the attorney.

2. DOHMH shall not modify the practice and procedure described in Paragraph 1 hereof during the term of this Court's jurisdiction of this Stipulation without providing written notice of the prospective modifications to the Executive Director of HAP at least 30 days in advance of any such modification.
3. Within ten days after the Court enters this Stipulation, Michael D. LiPuma, Esq., may mail to Louise Lippin, Esq., a new complete Attorney Application (as described in paragraph 1 hereof) on behalf of Anthony Green and a new complete Attorney Application (as described in Paragraph 1 hereof, except without a photograph) on behalf of John Kagian; and, within 10 business days after receipt of such application(s) by Ms. Lippin, DOHMH shall mail the respective birth certificate(s) to Mr. LiPuma at his law firm address, listed below.
4. After the Court enters this Stipulation, new complete Attorney Applications (as described in Paragraph 1 hereof) may be submitted to DOHMH on behalf of one or more of the individuals listed on Exhibit B hereto; and DOHMH agrees to process any such applications within 30 days after receiving them.
5. In consideration of the Defendants' actions and representations described in this Stipulation, the action captioned *Homeless Advocacy Project, Anthony Green and John Kagian v. The City of New York, New York City Department of Health and Mental Hygiene and Mary Travis Bassett*, Docket No. 16-CV-7439, is dismissed with prejudice. The Court will retain jurisdiction for a period of two years solely for the purpose of enforcing the provisions of this Stipulation.

6. The City of New York agrees to pay Plaintiffs' counsel and Plaintiffs' counsel agree to accept attorneys' fees and expenses in the amount of \$ 75,000.00 (Seventy-five Thousand Dollars) ("Fees Settlement Amount") in full satisfaction of all claims in this case for attorneys' fees, costs, and disbursements in, arising from, or in connection with this action from the beginning of time through the date of execution of this Stipulation. One check for the Fees Settlement Amount is to be made payable to Dechert I.L.P, and mailed to counsel's offices as set forth below, to the attention of Joseph Archie.
7. In consideration of the Defendants' actions and representations described in this Stipulation, HAP, Green and Kagian hereby release DOHMH, the City of New York, and their present and former members, officers, employees, agents, assigns and representatives, from all liability, claims or causes of action in, arising from, or relating to the allegations contained in the Complaint relevant to the issuance of birth certificates for Philadelphia residents which were or could have been asserted in this action through the date of this Stipulation. The released claims include, but are not limited to, claims arising under any federal, state, or local statute or law, including but not limited to all claims arising under the United States Constitution; all common law claims, all claims for any economic loss, personal injury, or compensatory or punitive damages; and all claims for attorneys' fees, expenses, or costs through the date of execution of this Stipulation.
8. HAP, Green and Kagian acknowledge that the only consideration that each has received for executing this Stipulation is that set forth in this agreement. No other promise, inducement, threat, agreement, or understanding of any kind or description


has been made with or to any of the plaintiffs to cause any of them to enter into this Stipulation. Nothing contained herein shall preclude plaintiffs from requesting copies of birth records from DOHMH.

9. Plaintiffs represent that they have each carefully reviewed and fully understand all the provisions of this Stipulation and have discussed the same with their counsel, and that each is voluntarily entering into and executing this agreement.
10. This Stipulation shall not be construed as an admission or acknowledgement of any wrongdoing or liability by Defendants. It is expressly understood that this Stipulation is predicated upon the special circumstances of this action and may not be construed to represent any policy, practice, or procedure of DOHMH or the City of New York other than as specified above.
11. Nothing contained herein shall be deemed to be an admission by DOHMH or the City of New York that they have acted unlawfully or in any way violated any of Plaintiffs' rights, or the rights of any other person or entity, as defined in the constitutions, statutes, ordinances, rules or regulations of the United States, the State of New York, or the City of New York or any other rules, regulations or bylaws of any department or subdivision of the City of New York.
12. This Stipulation contains all the terms and conditions agreed upon by the Parties, and no oral agreement entered into at any time, nor any written agreement entered into prior to the execution of this Stipulation regarding the subject matter of the instant action shall be deemed to exist, or to bind the parties hereto, or to vary the terms and conditions contained herein.

13. This Stipulation shall be construed in accordance with the laws of the State of New York.
14. This Stipulation may not be amended except by an instrument in writing signed on behalf of all the Parties to this Stipulation.
15. This Stipulation shall be deemed to have been jointly drafted and no provision herein shall be interpreted or construed for or against any party because such party drafted or requested such provision, or this Stipulation as a whole.
16. This Stipulation may be executed in any number of counterparts and each such counterpart shall be deemed to be an original. For purposes of executing this Stipulation, a document signed and transmitted by facsimile or email shall be treated as an original document and have the same binding legal effect as an original signature on an original document.

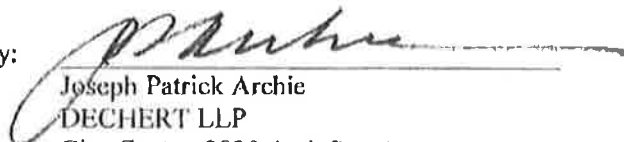
Dated: April 13 2017

By:



Marsha Cohen
Executive Director
Homeless Advocacy Project

By:



Joseph Patrick Archie
DECHERT LLP
Cira Centre, 2929 Arch Street
Philadelphia, PA 19104
215-994-2846
joseph.archie@dechert.com
jennings.durand@dechert.com

Tanner Kroeger
DECHERT LLP
1095 Avenue of the Americas
New York, NY 10036

SO ORDERED:

Dated: April 27, 2017
New York, NY



WILLIAM H. PAULEY III
U.S.D.J.

212-698-3813

tanner.kroeger@dechert.com


Counsel for Plaintiff Homeless Advocacy Project

By: 
Anthony Green

By: 
John Kagian

By: 
Michael D. LiPuma
LAW OFFICE OF MICHAEL D. LI PUMA
325 Chestnut Street – Suite 1109
Philadelphia, PA 19106
215-922-2126
mlipuma@lipumalaw.com

*Counsel for Plaintiffs
Anthony Green and John Kagian*

By: 
Louise Lippin
Assistant Corporation Counsel
ZACHARY W. CARTER
Corporation Counsel
of the City of New York
Attorney for Defendants
100 Church Street
New York, New York 10007
(212) 356-2178

Counsel for Defendants

EXHIBIT A

An attorney requesting a birth certificate on behalf of a registrant, registrant's mother or registrant's father (if named on the certificate), must complete and submit this form in addition to a Birth Certificate Application, matching a record on file, the required fee, and copies of attorney's current photo ID and proof of attorney licensure.

A. Authorization by the registrant, if 18 years of age or older, registrant's mother or registrant's father (if named on certificate):

I, _____ authorize _____
(Print name) (Print name of attorney)
to act on my behalf to obtain my/my child's birth certificate.

(Signature of registrant, registrant's mother or registrant's father) (Date)

B. Attach a copy of at least one unexpired photo identification document for the authorizing registrant, registrant's mother or registrant's father, such as:

- 1. Driver's license
- 2. Public benefit card
- 3. U.S. or foreign passport
- 4. U.S. certificate of naturalization
- 5. Military ID
- 6. Employee ID with photo
- 7. MTA reduced-fare MetroCard with photo
- 8. Student photo ID with transcript from verified institution
- 9. Inmate photo ID
- 10. State issued non-driver photo ID

C. If you cannot comply with Section B, attach a copy of at least one identification document for the authorizing registrant, registrant's mother or registrant's father, such as:

- 1. A recently expired photo ID
- 2. Social Security or Medicare card
- 3. Public benefit card
- 4. Marriage certificate or divorce decree
- 5. College, university or high school records
- 6. Recent employment pay stubs
- 7. Proof of address from government agency or utility company

D. If you cannot comply with Section B or C, complete, sign and date the following statement:

- 1. I affirm that I have asked my client to make reasonable efforts to provide any of the documents listed in sections B and C;
- 2. I affirm that my client is unable to obtain any such document;
- 3. I affirm that I have attached a photograph of my client, which was taken in my presence; and
- 4. I affirm that I assessed my client's credibility through an in-person interview and am satisfied that my client has accurately and honestly represented his/her identity based on the following (check all that apply):

<input type="checkbox"/> No problem remembering vital information	<input type="checkbox"/> Provided mailing address
<input type="checkbox"/> Provided Social Security number	<input type="checkbox"/> Provided personal cell phone or email
<input type="checkbox"/> One or more persons confirmed identity (explain)	<input type="checkbox"/> Provided expired ID or other document (explain)
<input type="checkbox"/> Provided source of income information	<input type="checkbox"/> Other _____

(Signature of attorney) (Date)

DOHMH Accept DOHMH reject Staff initials _____ Date _____

