

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: 10/7/2021
--

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

\_\_\_\_\_

CONEY ISLAND PREP; LESLIE-BERNARD :  
 JOSEPH; HOUSING WORKS, INC.; CHARLES :  
 KING; MARK LEVINE; and ALEXANDRA :  
 GREENBERG, :

Plaintiffs, : No. 1:20-cv-9144(VM)

-against- :

UNITED STATES DEPARTMENT OF HEALTH :  
 AND HUMAN SERVICES; XAVIER BECERRA, *in* :  
*his official capacity as Secretary of Health and Human* :  
*Services*; DAWN O’CONNELL, *in her official* :  
*capacity as Assistant Secretary of Health and Human* :  
 AND PREVENTION; DR. ROCHELLE P. :  
 WALENSKY, *in her official capacity as Director for* :  
*the Centers for Disease Control and Prevention,* :

Defendants. :

**STIPULATION OF  
DISMISSAL PURSUANT TO  
F.R.C.P. 41(a)(1)(A)(ii)**

**STIPULATION OF DISMISSAL PURSUANT TO F.R.C.P. 41(a)(1)(A)(ii)**

WHEREAS, on October 30, 2020, Coney Island Prep (“CIP”), a public charter school in Brooklyn, NY; Leslie Bernard-Joseph, CIP’s Chief Executive Officer; Housing Works, Inc. (“Housing Works”), a New York City community health organization; Charles King, Housing Works’ CEO; Mark Levine, a New York City Councilperson and Chair of the Council’s Health Committee; and Alexandra Greenberg, an officer of Right to Health Action, a national public health research and advocacy organization (collectively, “Plaintiffs”), brought this action against the above-captioned Defendants under Sections 706(1) and 706(2) of the Administrative Procedure Act, 5 U.S.C. § 706(1), 706(2); the Regulatory Flexibility Act, 5 U.S.C. §§ 601 *et seq.*; the Mandamus Act, 28 U.S.C. § 1361; and the All Writs Act, 28 U.S.C. § 1651(a);

WHEREAS, Plaintiffs alleged that Defendants—and their predecessors—violated the Pandemic and All-Hazards Preparedness and Advancing Innovation Act of 2019, Pub. L. No. 116-22, 133 Stat. 905 (2019) (the “Pandemic Preparedness Act”) and other federal public health statutes by failing timely to fulfill numerous statutory duties relating to data-collection, reporting, and public education, over a number of years and amid the ongoing public health emergency presented by the 2019 novel coronavirus (“SARS-CoV-2”) pandemic;

WHEREAS, since the initiation of this action, Defendants have delivered several of the reports that had been allegedly withheld or unperformed, including:

- a. *Health, United States*, an annual report regarding the nation’s health resources and the health of its people (pursuant to 42 U.S.C. § 242m(a)(1)), at <https://www.cdc.gov/nchs/hus/index.htm>;
- b. The National Disease Prevention Data Profile regarding the prevalence, incidence, and trends in the preventable causes of death and disability in the United States (pursuant to 42 U.S.C. § 242p), at <https://health.gov/our-work/national-health-initiatives/healthy-people>;
- c. The National Healthcare Quality and Disparities Reports regarding prevailing disparities in health care delivery as it relates to racial and socioeconomic factors (pursuant to 42 U.S.C. § 299a-1(a)(6)), at <https://www.ahrq.gov/research/findings/nhqrd/index.html>;
- d. Annual reports on federal funding to states and localities for health emergency and hospital preparedness (pursuant to 42 U.S.C. § 247d-3a(i) and 42 U.S.C. § 247d-3b(i)), at <https://www.cdc.gov/cpr/epf/index.htm> and <https://www.phe.gov/Preparedness/planning/hpp/Pages/recipient-highlights.aspx>;

- e. Material Threat Determination Report as to the threats that must be addressed by the Strategic National Stockpile of pandemic and public health emergency supplies (pursuant to 42 U.S.C. § 247d-6b(c)(2));
- f. The Federal Experts Security Advisory Panel (“FESAP”) Report concerning among other things biological agents that pose pandemic threats (pursuant to 42 U.S.C. § 262a(k)(2));
- g. The Biological Threat Detection Report, (pursuant to P.L. 116-22 § 205(c), 133 Stat. 905, 924-25);
- h. A report on the adequacy of the national blood supply (pursuant to P.L. 116-22 § 209, 133 Stat. 905, 929), at <https://www.hhs.gov/sites/default/files/hhs-adequacy-national-blood-supply-report-congress-2020.pdf>; and
- i. A report on vaccine development (pursuant to P.L. 116-22 § 606, 133 Stat. at 959), at <https://www.hhs.gov/vaccines/vaccines-national-strategic-plan/index.html>.

WHEREAS, Defendants are in the process of completing the following reports and holding the following meetings: further reports as to the purpose and adequacy of the Strategic National Stockpile (pursuant to 42 U.S.C. § 247d-6b(a)(2), 42 U.S.C. § 247d-6b(c)(2), and 42 U.S.C. § 247d-6b(c)(3)(A)-(B)); a plan for the development and acquisition of pandemic countermeasures pandemic threats (pursuant to 42 U.S.C. § 300hh-10(d)), which has not been released since 2017, and a budget based on the plan’s priorities (pursuant to 42 U.S.C. § 300hh-10(b)(7)); a report on the activities of the Office of Minority Health and racial health disparities in the nation (pursuant to 42 U.S.C. § 300u-6(f)(1)), which has not been completed or published since 2015; and a meeting

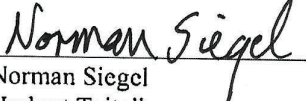
regarding the application of technologies in service of the nation's public health (pursuant to P.L. 116-22 § 605, 133 Stat. at 958-59);

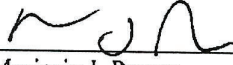
WHEREAS, Defendants are in the process of performing several duties related to their responsibility to coordinate a national "biosurveillance network," i.e. testing and tracing in a pandemic, with state and local entities and to reform or improve such a network (pursuant to 42 U.S.C. § 247d-4(b)(3); 42 U.S.C. § 247d-4(c)(5)(B); and 42 U.S.C. § 247d-4(c)(6)(A)(i)-(ii));

WHEREAS, Defendants have provided updates to Plaintiffs indicating that the remaining duties are nearly complete, awaiting clearance for release, and/or are otherwise in progress, and Plaintiffs wish to provide Defendants an opportunity to complete them outside the pendency of litigation.

NOW, THEREFORE, pursuant to F.R.C.P. 41(a)(1)(A)(ii) of the Federal Rules of Civil Procedure, it is hereby stipulated and agreed that the above-entitled action be dismissed without prejudice.

Dated: New York, New York  
10/5, 2021

  
Norman Siegel  
Herbert Teitelbaum  
Cary McClelland  
Goutam Jois  
SIEGEL TEITELBAUM & EVANS, LLP  
260 Madison Avenue, 22nd Floor  
New York, New York 10016  
Phone: (212) 455-0300  
*Attorneys for Plaintiffs*

  
Marjorie J. Peerce  
BALLARD SPAHR LLP  
1675 Broadway, 19th Floor  
New York NY 10019  
Phone: (646) 346-8039  
  
Kahlil C. Williams  
Michael R. McDonald  
BALLARD SPAHR LLP  
1735 Market Street, 51st Floor  
Philadelphia PA 19103  
Phone: (215) 665-5000  
*Attorneys for Plaintiffs*

Dated: New York, New York

Oct. 5, 2021

AUDREY STRAUSS  
United States Attorney for the  
Southern District of New York  
*Attorney for Defendants*

By:



JENNIFER JUDE  
ALLISON M. ROVNER  
Assistant United States Attorneys  
86 Chambers Street, Third Floor  
New York, New York 10007  
Tel: (212) 637-2663/2691  
Email: jennifer.jude@usdoj.gov  
allison.rovner@usdoj.gov

The stipulation of dismissal without prejudice is **APPROVED**. The Court respectfully requests that the Clerk of the Court dismiss all pending motions and close the case.

**SO ORDERED.**

10/7/2021

DATE

  
VICTOR MARRERO, U.S.D.J.