UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

CHAMBERS OF
MADELINE COX ARLEO
UNITED STATES DISTRICT JUDGE

MARTIN LUTHER KING COURTHOUSE
50 WALNUT ST. ROOM 4066
NEWARK, NJ 07101
973-297-4903

October 29, 2021

VIA ECF

LETTER ORDER

Re: City of Newark v. City of New York, et al.
Civil Action No. 19-20931

Dear Litigants:

Before the Court is (1) Defendants the City of New York's ("NYC"), Mayor Bill de Blasio's, and Commissioner Steven Bank's ("Defendants") Motion to Dismiss the Complaint of Plaintiff the City of Newark ("Newark") or Motion for Judgment on the Pleadings, ECF No. 111; and (2) Newark's Motion to Dismiss in Part the Class-Action Complaint of Plaintiffs-Intervenors Class of Affected Tenants ("Tenants"), ECF No. 110. Each Motion is opposed. ECF Nos. 115, 116. For the reasons explained below, Defendants' Motion is **GRANTED in part** and **DENIED in part** and Newark's Motion is **DENIED**.

I. BACKGROUND

A. New York's Special One-Time Assistance Program[1]

This matter arises from the Special One-Time Assistance ("SOTA") program, enacted in August 2017 by New York City's Department of Homeless Services ("DHS"). The SOTA program is designed to assist people living in New York City's homeless shelters by providing one year's rent for homes within New York City or in another state. See generally Compl. Individuals who have been living in a shelter for at least ninety days and are working and earn sufficient income to make future rental payments are eligible. Id. ¶ 11. According to the Complaint, Defendants have sent homeless families to hundreds of cities across the country, without the knowledge of most of the receiving cities. Id. ¶ 12.

The Complaint alleges that SOTA required DHS case managers to conduct walk-throughs of all apartments prior to SOTA-recipient move-in, and if the walkthroughs occurred as intended, the landlord would be required to cure any apartment defects if the apartment failed the preliminary inspection. Id. ¶¶ 14-15. Newark alleges, however, that Defendants failed to adequately inspect the apartments and failed to hold participating landlords and realtors accountable for uninhabitable housing. Id. ¶¶ 16-17.

[1] These facts are drawn from Newark's Complaint, ECF No. 1 ("Compl.").

Defendants allegedly refused to disclose the identities of all SOTA recipients placed in Newark. Id. ¶ 23.[2] However, based on direct complaints to Newark officials, Newark identified a number of SOTA recipients who were allegedly "coerced" by Defendants to move to Newark and placed in uninhabitable housing. Id. ¶¶ 22-24. The SOTA recipients reported that (1) they felt pressured to leave New York City shelters, (2) housing specialists did not assist them in looking for apartments, (3) they were given inadequate time to inspect apartments, and (4) when they contacted DHS for assistance with uninhabitable housing, they were either told there was nothing NYC could do or DHS never responded at all. See, e.g., id. ¶¶ 26, 28, 30, 39, 53, 61, 94. Newark also pled that the SOTA program resulted in the placement of shelter residents in housing units without heat, with collapsed ceilings, with roach and rodent infestations, with broken pipes and floods, and without working electricity. Id. ¶¶ 35, 60, 76, 93, 95.

B. Newark's Response to SOTA[3]

On November 18, 2019, Newark attempted to remedy the SOTA program shortcomings by enacting Municipal Code §§ 18:6-10.1 et seq. (Nov. 18, 2019) (the "Ordinance"). Int. Compl. ¶ 59. The Ordinance requires providers of rental assistance to physically inspect the rental unit "to ensure that it is free from threats to the health, safety and welfare of the tenant and is habitable." Ordinance § 18:6-10.2(A). After this inspection, a report must be filed with the Office of Inspections and Enforcement detailing, among other things, the length of the rental assistance, the names and contact information of the landlord and tenants, a copy of the application for a Certificate of Code Compliance, "a plan of action for the provision of rental assistance beyond the current tenancy so as to avoid homelessness of the tenant," and a report from the inspection of the unit. Id. § 18:6-10.2(B).

The Ordinance also restricts the ability of third parties to prepay the rent of SOTA recipients, id. § 18:6-10.2(F) (the "Prepaid Rent Ban"), or to bring a "needy person" into Newark, id. § 18:6-10.3 (the "Needy Persons Ban"). The Prepaid Rent Ban initially provided:

> No Landlord shall accept pre-paid rent for more than (1) month from an agency or person providing rental subsidy, assistance, grant or voucher. Except, a Landlord may accept pre-paid rent if it [is] solely the decision of the tenant and the tenant is paying rent without a rental subsidy, assistance, grant or voucher.

The Needy Persons Ban initially provided:

> No person shall knowingly bring, or cause to be brought, a needy person to the City of Newark for purposes of making him or her a public charge. A person who violates this sub-section shall be obligated to convey such needy person out of the City of Newark.
>
> For the purposes of this sub-section, a needy person shall mean a person who is in a state of poverty and needs help in getting the necessities of food and shelter.

---

[2] NYC states that in December 2019, it provided Newark with a full list of names and addresses of current SOTA participants. Def. Rep. 4, ECF No. 129; see also ECF No. 18.

[3] These facts are drawn from the Tenants' Intervenor Complaint, ECF No. 87 ("Int. Compl."), and a copy of Newark's Ordinance and the certified amendments thereto, ECF Nos. 110.3, 110.4.

On January 13, 2020, Newark amended certain sections of the Ordinance. ECF No. 110.4. In relevant part, section 18:6-10.2(E) of the amended Ordinance—replacing section 18:6-10.2(F) of the original Ordinance—now states that "[n]o landlord shall accept pre-paid rent for more than (1) month." In addition, Newark changed the definition of "needy person" in section 18:6-10.3 to "a person who is in a state of poverty and lacks the necessities of food and shelter" (emphasis added).

Putative class representative Eugene Samuels represents a class of alleged future tenants ("Future Tenants") who currently reside in NYC shelters, are eligible for SOTA, and wish to be placed in Newark housing, but are allegedly prevented from doing so because of the Ordinance. Int. Compl. ¶¶ 11, 72, 74, 85.

C. Procedural History

On December 2, 2019, Newark filed its Complaint against Defendants, ECF No. 1, generally alleging that Defendants "unlawfully coerced SOTA recipients to sign leases for . . . illegal and uninhabitable apartments" and "ignored complaints from SOTA recipients" once the recipients were placed. Compl. ¶¶ 104-05. Newark asserts that the SOTA program (1) violates the dormant Commerce Clause, id. ¶¶ 99-107 ("Newark Count I"); and (2) creates a public nuisance, id. ¶¶ 108-19 ("Newark Count II"). In turn, Newark asks the Court to enjoin various aspects of the SOTA program.[4] Defendants subsequently brought the instant Motion. ECF No. 111.

On November 12, 2020, the Tenants filed an Intervenor Complaint and Crossclaims against Newark and NYC.[5] ECF No. 87. The Tenants allege that, because of the Ordinance, Newark is in violation of the New Jersey Law Against Discrimination (NJLAD), N.J.S.A. § 10:5-12 ("Tenant Count I"), and the constitutional right to travel ("Tenant Count II"). Id. ¶¶ 90-114. They seek declaratory and injunctive relief to enjoin Newark from enforcing the Ordinance and to bar Newark from prohibiting Future Tenants from traveling to and living in Newark. Id. ¶¶ 5-6. Newark subsequently brought this Motion to Dismiss in part. ECF No. 110.

II. LEGAL STANDARD

A. Motion to Dismiss Under Rule 12(b)(1)

Under Rule 12(b)(1), a plaintiff bears the burden of persuading the Court that subject matter jurisdiction exists. See Kehr Packages, Inc. v. Fidelcor, Inc., 926 F.2d 1406, 1409 (3d Cir. 1991). In resolving a Rule 12(b)(1) motion, the Court first determines whether the motion presents a "facial" or "factual" attack "because that distinction determines how the pleading must be reviewed." Constitution Party of Pa. v. Aichele, 757 F.3d 347, 357 (3d Cir. 2014). A factual attack argues that "the facts of the case . . . do not support the asserted jurisdiction." Id. at 358. In reviewing a factual attack, the Court may "consider and weigh evidence outside the pleadings" to determine if it has jurisdiction. Id. (quoting Gould Elecs. Inc. v. United States, 220 F.3d 169, 178 (3d Cir. 2000)). However, when a case raises a disputed factual issue that goes both to the merits

[4] Specifically, Newark seeks (1) to enjoin further implementation of the SOTA program in Newark, (2) to secure records of all persons relocated to Newark through the SOTA program, all Newark landlords participating in SOTA, inspections of Newark apartments, rent paid to Newark landlords as part of the SOTA program, and all persons who returned to New York from Newark after participating in the SOTA program, (3) the creation of a constructive trust for the benefit of all participants in the SOTA program that wish to remain in Newark, and (4) specific performance requiring Defendants to relocate any SOTA participants wishing to return to NYC. Id. ¶¶ 107(b)-(e), 119(b)-(e).

[5] The Tenants' claims against NYC were later voluntarily dismissed without prejudice. ECF No. 121.

and jurisdiction, district courts must "demand less in the way of jurisdictional proof than would be appropriate at the trial stage." Gould Elecs., 220 F.3d at 178 (quoting Mortensen v. First Fed. Sav. And Loan Ass'n, 549 F.2d 884, 892 (3d Cir. 1977)).

Here, Defendants' Motion presents a factual attack because it argues that Newark's Complaint "challenges a defunct, discontinued version of the SOTA program and SOTA does not currently operate in Newark in any capacity," thus rendering the case moot. Def. Mem. at 11, ECF No. 111.9.

B. Motion to Dismiss Under Rule 12(b)(6) and for Judgment on the Pleadings Under Rule 12(c)

In considering a motion to dismiss under Rule 12(b)(6), a complaint will survive if it provides a sufficient factual basis such that it states a facially plausible claim for relief. Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). The facts alleged must be "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007). The Court accepts all pleaded facts as true, construes the complaint in the plaintiff's favor, and determines "whether, under any reasonable reading of the complaint, the plaintiff may be entitled to relief." Phillips v. Cnty. of Allegheny, 515 F.3d 224, 233 (3d Cir. 2008) (internal quotation marks and citation omitted).

Judgment on the pleadings under Federal Rule of Civil Procedure 12(c) is warranted if "there are no material issues of fact" and the movant "is entitled to judgment as a matter of law." Zimmerman v. Corbett, 873 F.3d 414, 417 (3d Cir. 2017) (citation omitted). The Court "must accept all of the allegations in the pleadings of the [non-moving party] as true and draw all reasonable inferences in favor of the non-moving party." Id. at 417-18. The Court assesses a Rule 12(c) motion "under the same standards that apply to a Rule 12(b)(6) motion" to dismiss. Id. at 417 (citation omitted).

III. ANALYSIS

A. Mootness of Newark' Complaint

Defendants argue that Newark's Complaint should be dismissed as moot because the allegations in the Complaint are based on outdated features of the SOTA program. The Court disagrees.

A case is moot "when it no longer presents a 'live' controversy." Hudson v. Robinson, 678 F.2d 462, 465 (3d Cir. 1982). If a defendant has discontinued the challenged conduct, "the case is moot if there is no reasonable expectation that the wrong will be repeated." Id. Defendants bear the burden of establishing that the challenged conduct will not likely be repeated when they raise a mootness challenge. See United States v. Concentrated Phosphate Exp. Ass'n, 393 U.S. 199, 203 (1968) ("The test for mootness in cases such as this is a stringent one. Mere voluntary cessation of allegedly illegal conduct does not moot a case.").

Here, Defendants argue that Newark seeks to enjoin a version of the SOTA program that is no longer operative in Newark and has no reasonable likelihood of returning. Def. Mem. at 11. Defendants assert that they have addressed all four of the problems the Complaint alleges with the SOTA program: (1) there are no more annual up-front payments to landlords that incentivize them to neglect properties because under the current version of the SOTA program landlords are paid month-to-month; (2) inadequate apartment inspections are no longer an issue because NYC

implemented a comprehensive apartment review protocol and enhanced accountability requirements for landlords and brokers; (3) allegations about Defendants' failure to respond to complaints from program participants are moot because Defendants implemented a dedicated hotline for SOTA recipients; and (4) allegations of supposedly "coercive" tactics that NYC employed against SOTA participants are both baseless and moot because SOTA recipients select their own apartments and are informed of their obligations under the program. Id. at 11-13.

Defendants also argue that there is no reasonable likelihood that they will revert to the original version of the SOTA program because many of the changes are in response to a report issued by the New York Department of Investigation, and NYC has proposed rules to codify many of those changes. Id. at 14. Defendants thus argue that Newark cannot allege any realistic prospect of future harm from the current program, and therefore it cannot "enjoin the implementation of a non-existent program." Id. at 15.

Notwithstanding, Newark alleges that DHS case managers have failed to comply with program requirements, such as conducting apartment inspections and coercing participants into inadequate housing. See, e.g., Compl. ¶¶ 15-17, 22. As this Court previously stated, a change in policy does not render moot allegations that the SOTA program is not properly administered. ECF No. 114. While acknowledging that NYC has taken steps to rectify deficiencies in the SOTA program, whether these remedial efforts sufficiently cured the deficiencies and are being properly implemented is a factual issue and should await the completion of discovery.[6]

The Court finds that Newark's claims are not moot. Defendants' Motion to Dismiss the Complaint for lack of subject matter jurisdiction is denied.

B. Newark's Failure to State a Claim

Defendants next argue that Newark has failed to state a claim for each of the two causes of action raised in the Complaint. The Court agrees with respect to the dormant Commerce Clause claim, but disagrees with respect to Newark's public nuisance claim.

a. Dormant Commerce Clause (Newark Count I)

Defendants contend that Newark has failed to allege a claim under the dormant Commerce Clause. Here, the Court agrees.

The so-called "dormant Commerce Clause . . . significantly limits the ability of States and localities to regulate or otherwise burden the flow of interstate commerce," and "is driven by a concern about economic protectionism—that is, regulatory measures designed to benefit in-state economic interests by burdening out-of-state competitors." McBurney v. Young, 569 U.S. 221, 235 (2013) (citations omitted).

A plaintiff can allege a dormant Commerce Clause violation in one of two ways. First, a state may not engage in "facial discrimination against interstate commerce," through the "differential treatment of in-state and out-of-state economic interests that benefits the former and burdens the latter." Leb. Farms Disposal, Inc. v. Cnty. of Lebanon, 538 F.3d 241, 248 (3d Cir.

[6] While NYC claims that there are currently no active SOTA recipients in Newark, see Decl. Park, ECF 111.1, Newark argues that the COVID-19 crisis has resulted in a stay of evictions in Newark, effectively masking the negative impact the SOTA program has on Newark recipients once the one-year tenancy has expired.

2008) (quoting United Haulers Ass'n v. Oneida-Herkimer Solid Waste Mgmt. Auth., 550 U.S. 330, 338 (2007)). Second, state action violates the dormant Commerce Clause if "the burden imposed on [interstate] commerce is clearly excessive in relation to the putative local benefits." Id. For example, the Supreme Court has held that a state prohibition against transporting indigent persons into that state is an unconstitutional, "protectionist" burden on interstate commerce that invites other states to adopt retaliatory measures. Edwards v. California, 314 U.S. 160, 173-76 (1941).

Here, Newark asserts only that the SOTA program "unlawfully and differentially burdens interstate commerce" occurring outside New York and violates the dormant Commerce Clause by "directly controlling commerce occurring wholly outside the boundaries of New York." Compl. ¶¶ 101, 107. Read generously, Newark appears to plead that because the SOTA program "unlawfully directly transported, coerced and/or directed SOTA recipients to illegal apartments and uninhabitable apartments," Newark has been burdened. Id. ¶¶ 100, 104. Newark fails, however, to plead the precise undue burden placed on interstate commerce or how SOTA grants amount to economic protectionism. The need to provide social services within a state is not an undue burden on interstate commerce. Edwards recognized the rights of citizens to move freely between states and teaches only that a ban on transporting indigent persons into a state violates the dormant Commerce Clause. That is not the case here. Any renewed pleading by Newark must articulate how a program that permits—and indeed encourages—interstate commerce imposes an undue burden on interstate commerce.

Therefore, Newark Count I is dismissed without prejudice. Newark may replead this claim only to the extent it can rectify the deficiencies identified in this Order.

b. Public Nuisance (Newark Count II)

"A public nuisance is an unreasonable interference with a right common to the general public." In re Lead Paint Litig., 191 N.J. 405, 425 (N.J. 2007) (quoting Restatement (Second) of Torts § 821B (1979)). To determine whether circumstances create an unreasonable interference with a public right, the Court must ask "[w]hether the conduct involves a significant interference with the public health, the public safety, the public peace, the public comfort or the public convenience." Id. Moreover, "[i]n order to state an actionable claim for public nuisance, the plaintiff must allege that the defendant to some extent controlled the nuisance to be abated" or "participate[d] to a substantial extent in carrying it on." Camden Cnty. Bd. of Chosen Freeholders v. Beretta U.S.A. Corp., 123 F. Supp. 2d 245, 265 (D.N.J. 2000), aff'd, 273 F.3d 536 (3d Cir. 2001).

Here, Newark has sufficiently alleged a public nuisance in the form of the SOTA program's interference with the public welfare of Newark. The administration of the SOTA program as alleged constitutes "a continuing course of conduct that is calculated to result in physical harm or economic loss to so many persons as to become a matter of serious concern" to the public. James v. Arms Tech., Inc., 359 N.J. Super. 291, 329 (App. Div. 2003) (citation omitted).

Defendants' arguments that the nuisance claim fails because Newark and third-party landlords, not Defendants, control the "substandard conditions" are unavailing. Newark alleges that a poorly vetted and coercive program (1) places recipients in uninhabitable housing without adequate inspection, (2) has caused the public harm and increased the risk of evictions, and

(3) places SOTA recipients in critical danger of becoming homeless with lack of support.[7] That Newark, landlords, or other third parties could have taken measures to mitigate the harm does not vitiate Defendant's culpability. Similarly, the Ordinance's requirements that Newark property owners maintain their properties and keep them up-to-code does not dispel all responsibility from Defendants. "There is no requirement that a defendant have . . . actual control over the instrumentality of the nuisance at the time and place it does harm," but rather "[c]ontributing to a public nuisance through or with the conduct of others is sufficient for liability if the defendant knew or should have known the consequences." James, 359 N.J. Super. at 332 (affirming a public nuisance claim when a city's complaint alleged that the defendants "intentionally or negligently created and fueled an illegal gun market, thereby unreasonably interfering with the public welfare").[8] Newark has adequately alleged a public nuisance claim.[9]

C. The Future Tenants' Failure to State a Claim

Newark argues that the Future Tenants have failed to state a claim for each of the causes of action—violations of NJLAD and the constitutional right to travel—raised in the Intervenor Complaint against Newark. Newark first argues that the NJLAD claim should be dismissed because the statute does not prohibit Newark from enacting ordinances that concern source of lawful income. It next argues that its Ordinance does not violate the constitutional right to travel because the Ordinance only prohibits purposeful conduct by third parties, not including public entities, seeking to coercively transport indigent persons to Newark. The Court addresses each argument in turn.

a. New Jersey Law Against Discrimination Claims (Tenant Count I)

Newark argues that the Future Tenants' NJLAD claims should be dismissed because the NJLAD does not prohibit Newark from enacting ordinances that discriminate based on source of lawful income. The Court disagrees.

Under NJLAD, "[i]t shall be an unlawful employment practice, or, as the case may be, an unlawful discrimination" "[f]or any person, whether an employer or an employee or not, to aid, abet, incite, compel or coerce the doing of any of the acts forbidden under this act, or to attempt to do so." N.J.S.A. § 10:5-12(e) ("Section 12(e)"). The Future Tenants argue that Newark has violated Section 12(e) by compelling landlords through the Prepaid Rent Ban[10] to discriminate

---

[7] The Court disagrees with Defendants' characterization that Newark alleges that homelessness and the SOTA grants themselves are a public nuisance.

[8] As explained in the Court's Letter Order denying Defendants' Motion to Dismiss Intervenor Plaintiff Jersey City's claims, Defendants' reliance on the outcome in In re Lead Paint is unpersuasive as that case is distinguishable. See In re Lead Paint, 191 N.J. at 432. There, the New Jersey Supreme Court concluded that paint manufacturers lacked the necessary control over an alleged public health nuisance to be liable under the Lead Paint Act and product liability law. A manufacturer of an allegedly hazardous product is differently situated than the administrator of an active housing program with respect to an ability to control the ongoing threat to public health it poses. See id. at 433-34.

[9] In its reply brief, Defendants request that if Newark's public nuisance claim is not dismissed entirely, the Court grant in part with respect to Newark's requests for monetary relief and specific performance. Def. Rep. at 4-5, ECF No. 129. As this argument was raised for the first time in reply and Newark has not had an opportunity to respond, the Court declines to consider it at this juncture.

[10] The Tenants also argue that the Needy Persons Bank violates NJLAD. Because the Court finds below that the Needy Persons Ban violates the federal Constitution, the Court declines to consider the Tenants' NJLAD argument as it relates to that provision of the Ordinance.

based on "source of lawful income," in violation of N.J.S.A. §§ 10:5-12(g)(1)-(4) ("Section 12(g)"). Newark counters that Section 12(e) applies only to "persons" and "employers" and maintains that, in this context, Newark is neither.

NJLAD defines "person" as "one or more individuals, partnerships, associations, organizations, labor organizations, corporations, legal representatives, trustees, trustees in bankruptcy, receivers, and fiduciaries." N.J.S.A. § 10:5-5(a). NJLAD then defines "employer" as "all persons as defined in subsection a. of this section unless otherwise specifically exempt under another section of [the NJLAD], and includes the State, any political or civil subdivision thereof, and all public officers, agencies, boards, or bodies." Id. at 10:5-5(e).

Construing NJLAD broadly,[11] the "employer" definition—which includes public entities—does not preclude a finding that public entities are also "persons" under the statute. New Jersey courts have found that public entities are "persons" under the general statutory definition given in N.J.S.A. § 1:1-2, and the Court finds no reason to deviate from that construction here. See, e.g., J.H. v. Mercer Cnty. Youth Detention Ctr., 396 N.J. Super. 1, 11 (App. Div. 2007) (stating that "a county, as a municipal corporation, is a corporation included within the definition of person contained in N.J.S.A. 1:1-2").[12] To promote New Jersey's strong public policy of protecting individuals from unlawful discrimination of all types, see Nini, 202 N.J. at 108-09, the Court finds that Newark is both a "person" and an "employer" under NJLAD, and is therefore covered by Section 12(e).

Under Section 12(g)(2), it is unlawful discrimination for any person to "discriminate against any person or group of persons because of . . . source of lawful income used for rental . . . payments in the terms, conditions or privileges of the . . . rental . . . of any real property or part or portion thereof." Similarly, under Section 12(g)(4), it is unlawful discrimination for any person to "refuse to . . . rent . . . or withhold from any person or group of persons any real property or part or portion thereof because of the . . . source of any lawful rent payment to be paid for the real property." Newark's Prepaid Rent Ban, requiring landlords to deny prepaid rent for more than one month from only those persons paying with rental subsidies or grants, clearly induces landlords to violate Section 12(g).[13] As such, the Future Tenants have plausibly alleged a Section 12(e) claim under NJLAD against Newark. See Lefkowitz v. Westlake Master Ass'n, Inc., No. 18-14862, 2019 WL 669806, at *5 (D.N.J. Feb. 19, 2019) (applying Section 12(e) in the housing discrimination context). The Court denies Newark's Motion to Dismiss Tenant Count I.

---

[11] See Nini v. Mercer Cnty. Cmty. Coll., 202 N.J. 98, 109 (2010) (stating that NJLAD should be "liberally construed" and "applied to the full extent of its facial coverage").

[12] New Jersey courts often look to federal law in construing NJLAD. See Chisolm v. McManimon, 275 F.3d 315, 332 n.9 (3d Cir. 2001). Thus, the Court notes that municipalities or municipal corporations are also "persons" under several federal statutes. See, e.g., Monell v. Dep't of Soc. Servs., 436 U.S. 658, 701 (1978) ("[A]bsent a clear statement in the legislative history supporting the conclusion that § 1 was not to apply to the official acts of a municipal corporation . . . there is no justification for excluding municipalities from the 'persons' covered by § 1."); Cook County v. United States ex rel. Chandler, 538 U.S. 119, 129 (2003) ("[N]either history nor text points to exclusion of municipalities from the class of 'persons' covered by the FCA in 1863.").

[13] Newark argues that N.J.S.A. § 10:5-12.5(a) ("Section 10:5-12.5") is the only provision that applies here because it specifically governs municipal regulation of land use and housing. Rep. Br. 3, ECF No. 123. The Court finds this argument unavailing. Construing NJLAD liberally and considering the provision in the context of the overall statutory scheme, Section 10:5-12.5(a) does not preclude a finding that a municipality compelled another person—i.e., landlords—to unlawfully discriminate in housing based on source of income.

b. Right to Travel Claims (Tenant Count II)

Newark argues that the Court should dismiss the Future Tenants' right to travel claims because the Ordinance imposes no restriction or barrier upon a person's self-determination to move to Newark, but rather only proscribes purposeful conduct by third parties seeking to coercively transport indigent persons to Newark. The Court disagrees.

In Edwards, the Supreme Court considered whether the following California statute was constitutional: "Every person, firm or corporation or officer or agent thereof that brings or assists in bringing into the State any indigent person who is not a resident of the State, knowing him to be an indigent person, is guilty of a misdemeanor." 314 U.S. at 171. The Court held that the prohibition against the "bringing" or transportation of indigent persons into a State is not within the police power of that State and constitutes an unconstitutional barrier to interstate commerce. Id. at 173.

Here, the amended Needy Persons Ban states that "[n]o person shall knowingly bring, or cause to be brought, a needy person to the City of Newark for the purpose of making him or her a public charge." Am. Ordinance § 18:6-10.3. Newark argues that the Ordinance does not deny any rights or benefits to indigent persons and that use of the terms "bring" and "brought" show that Newark is only concerned with "coercive action" that might be used to force an indigent person to travel. The Court finds these arguments unavailing. Newark's Ordinance is strikingly similar to the provision struck down in Edwards and the Court fails to recognize why it should be treated any differently. The Ordinance does not suggest any concern with "coercion" and in fact uses the same term—"bring"—that was used in the unconstitutional California provision.

The Court finds that the Future Tenants have sufficiently alleged that Newark's Needy Persons Ban is an unconstitutional barrier to the right to travel and therefore denies Newark's Motion to Dismiss Tenant Count II.

IV. CONCLUSION

For the reasons stated above, Defendants' Motion to Dismiss, ECF No. 111, is **GRANTED in part** and **DENIED in part**. Count One of the Complaint is dismissed without prejudice. Newark's Motion to Dismiss in part, ECF No. 110, is **DENIED.**

SO ORDERED.

/s/ Madeline Cox Arleo
MADELINE COX ARLEO
UNITED STATES DISTRICT JUDGE