EXHIBIT 44

This settlement agreement (the "Agreement") is entered into as of the Effective Date (as defined below), by and between (a) the Center for Independence of the Disabled, New York; Bronx Independent Living Services; and other named Plaintiffs[1], acting on their own behalf and on behalf of the Settlement Class defined below (collectively, the "Plaintiffs"), on the one hand; and (b) The Metropolitan Transportation Authority ("MTA"), the New York City Transit Authority, Janno Lieber in his official capacity as Chair and Chief Executive Officer of the MTA, and Richard Davey in his official capacity as President of the New York City Transit Authority (together, the "Transit Defendants" and collectively with the Plaintiffs, the "Parties"), on the other, in full settlement of the following pending litigations in the United States District Court for the Southern District of New York (the "Federal Court Action") and in the Supreme Court of New York, New York County (the "State Court Action"):

a) *Center for Independence of the Disabled, New York, et al.* v. *Metropolitan Transportation Authority, et al.* No. 153765/2017 (N.Y. Sup. Ct. N.Y. Co.); and

b) *De La Rosa et al.* v. *Metropolitan Transportation Authority et al.* No. 19-cv-04406 (ER) (S.D.N.Y.) (together, the "Actions").

RECITALS

WHEREAS, on April 25, 2017, the Plaintiffs filed the State Court Action, a putative class action lawsuit in the Supreme Court of New York, New York County (No. 153765/2017), and on May 15, 2019, the Plaintiffs filed the Federal Court Action, a putative class action lawsuit in the United States District Court for the Southern District of New York (No. 19-cv-4406); the Federal Court Action was subsequently amended on August 8, 2019, February 6, 2020, and October 30, 2020;

WHEREAS, the operative complaints in the Actions assert allegations related to the accessibility of the MTA's subway stations for people whose disabilities make the use of stairs difficult or impossible and who require stair-free paths of travel in the New York City subway system;

WHEREAS, the State Court Action alleged violations of the New York City Human Rights Law, N.Y.C. Admin. Code § 8-101, *et seq.* (the "City Human Rights Law") and the Federal Court Action alleged violations of Title II of the Americans with Disabilities Act (the "ADA"), 42 U.S.C. § 12131, *et seq.*, Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, *et seq.*, as well as the City Human Rights Law;

WHEREAS, the Defendants to both Actions, including the Transit Defendants and the City of New York (together, the "Defendants"), have denied the allegations in the operative complaints in the Actions and deny any wrongdoing on the part of any of the Defendants;

[1] Brooklyn Center for Independence of the Disabled, Harlem Independent Living Center, Disabled In Action of Metropolitan New York, New York Statewide Senior Action Council, Sasha Blair Goldensohn, Dustin Jones, Jessica De La Rosa, and Jean Ryan.

WHEREAS, the Parties have agreed to settle all claims asserted against all Defendants in the Actions;

NOW THEREFORE, without any admission or concession by the Plaintiffs of any lack of merit of the Action, and without any admission or concession of any liability or wrongdoing or lack of merit in the defenses by the Defendants,

IT IS HEREBY STIPULATED AND AGREED, by and among the Parties to this Agreement, through their respective attorneys, subject to approval of the relevant Courts pursuant to Rule 23 of the Federal Rules of Civil Procedure and N.Y. CPLR 908, that all claims in the Actions shall be compromised, settled, released as described below, and dismissed with prejudice, upon and subject to the following terms and conditions:

Settlement Agreement

1. **Dismissals:** Plaintiffs agree in their individual and representative capacities, subject to approval of both of the courts where the Actions are pending, to dismiss the Actions in their entirety and with prejudice, subject to the provisions of Section 28 below, as to all Defendants, and agree to the issuance of orders of dismissal with prejudice, subject to the provisions of Section 28 below, by the courts having jurisdiction over the Actions in the forms annexed hereto as Exhibits 1 and 2.

2. **Commitment to Maximum Accessibility:** The Transit Defendants commit to maximizing the number of Accessible Stations (as defined below) in the New York City subway system pursuant to the terms of this Agreement. (This commitment is referred to in this Agreement as "Maximum Accessibility"). For purposes of this Agreement, an "Accessible Station" or "Accessible Stations" means a New York City subway station or stations that has or have one or more stair-free paths of travel and such other types of accessibility improvements that the Transit Defendants undertake to ensure compliance with the ADA when elevators or ramps are added to a subway station to create a stair-free path of travel. (Such elevators and/or ramps, together with such other types of station accessibility improvements, are referred to collectively as the "Transit Defendants' Accessibility Improvements".)

3. **Definitions:** The capitalized terms used in this Agreement shall have the definitions assigned to them. All other terms will be interpreted according to their plain and ordinary meaning. Use of the term "including" shall mean "including without limitation" whether or not so indicated.

4. **Transit Facilities Portion:** The Parties agree and acknowledge that all funding allocations, grants, contingencies and formulas contained in this Agreement, including the funding contingencies outlined in Sections 6, 9 and 10 below, refer solely to the New York City Transit portion of the MTA's Twenty Year Needs Assessments (as defined in this Agreement) and Capital Plans (the "Transit Facilities Portion").

5. **Issuance of an RFP or its Equivalent for a Minimum of 81 Stations:** The Transit Defendants will issue one or more requests for proposal ("RFPs") or their equivalent for a minimum of an additional 81 Accessible Stations with respect to the Transit Defendants' capital plans (each, a "Capital Plan") up to and including the 2020-2024 Capital Plan, subject to the funding contingencies described in Section 6 below (collectively, the "Designated Stations"). These 81 Designated Stations are in addition to the 129 stations that were already accessible or for which station accessibility contracts had already been awarded at the time of the adoption of the 2020-2024 Capital Plan. The 81 Designated Stations will include the stations that were designated to become Accessible Stations in the Transit Facilities Portion of the approved MTA 2020-2024 Capital Plan or prior Capital Plans as of February 21, 2020. The 81 Designated Stations will consist of the following:

    a) 67 Designated Stations that were contained in the approved 2020-2024 Capital Plan (two of which are "half" stations[2] that are already accessible in one direction);

    b) 4 Designated Stations that were added to the 2015-2019 Capital Plan by amendment in coordination with approval of the 2020-2024 Capital Plan; and

    c) 10 Designated Stations previously included in the 2015-2019 or 2010-2014 Capital Plans that had not been awarded by February 21, 2020 (one of which is a "half" station that is already accessible in one direction).

6. **2020-2024 Funding Contingencies:** The issuance of an RFP or its equivalent for each of the 81 Designated Stations is contingent on the Transit Defendants' receipt of funding for the MTA's 2020-2024 Capital Plan as follows:

    a) If $35.389 billion[3] or more in funding is ultimately obtained for the Transit Facilities Portion of the 2020-2024 Capital Plan (the "Transit Facilities Funding Amount"), the Transit Defendants will commit to designating no less than 14.69% of that amount to creating Accessible Stations.

    b) If the Transit Facilities Funding Amount is ultimately less than $35.389 but not less than $30 billion, the Transit Defendants will commit to designating no less than 12% of that amount to creating Accessible Stations.

    c) If the Transit Facilities Funding Amount is ultimately less than $30 billion but not less than $20 billion, the Transit Defendants will commit to designating no less than 10% of that amount to creating Accessible Stations.

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[2] A "half" station is a subway station that is accessible in one direction.

[3] The Parties acknowledge and agree that this figure is the current amount of the Transit Facilities Portion of the approved 2020-2024 Capital Plan. But, it is subject to change. The actual number could, depending on funding needs and availability, ultimately be higher or lower.

d) If the Transit Facilities Funding Amount is ultimately less than $20 billion, the Transit Defendants will engage in good-faith discussions with Plaintiffs with respect to the appropriate expenditure commitment and number of Designated Stations to be made accessible for the 2020-2024 Capital Plan, except that, whether or not such discussions result in any agreement, the Transit Defendants will continue to create Accessible Stations that have already been awarded to a contractor for construction.

e) As counsel for the Parties have discussed, it is not easy to predict exactly how many stations could be made accessible at the funding amounts below $35.389 billion because the cost of creating an Accessible Station differs considerably from station to station. The Transit Defendants need to retain flexibility in order to make accessible those stations that have the greatest impact on subway riders, including disabled riders. At the same time, the Transit Defendants agree to work with Plaintiffs with respect to the prioritization of stations to be made accessible at the lower funding levels.

f) The number of Designated Stations set forth above may be reduced or increased from time-to-time to reflect estimated or actual project costs and/or schedule impacts, including but not limited to impacts from the COVID-19 pandemic.

g) The amount of money designated by the Transit Defendants to create Accessible Stations will be deemed to include all costs directly attributable to creating an Accessible Station, including but not limited to hard and soft construction costs and regardless of whether such costs are in-house or external.

7. **Deadlines for Issuing an RFP or its Equivalent for Capital Plans through the 2020-2024 Capital Plan:** Subject to the funding and schedule contingencies above, the Transit Defendants will issue one or more RFPs or the equivalent for creating Accessible Stations at the applicable number of Designated Stations on the following timeline:

Number of RFPs Issued	Deadline
A minimum of 25% of the total number of Designated Stations	Completed
A minimum of 60% of the total number of Designated Stations	End of 2023
The remainder of the Designated Stations, subject to real estate acquisition or parkland alienation issues.	End of 2025

8. **Substitutions of Designated Stations for Capital Plans up to and Including the 2020-2024 Capital Plan:** Notwithstanding the fact that the 81 Designated Stations have

already been identified, the Transit Defendants will have the right to substitute other stations for one or more of the Designated Stations. The Transit Defendants may elect such substitutions for the following purposes, without limitation, to: (i) enhance community benefits, (ii) accelerate the implementation schedule, (iii) increase the cost-effectiveness of creating Accessible Stations in the transit facilities capital program, (iv) avoid conflicts or gain synergies with other construction work, (v) protect public safety in connection with an emergency situation or transit emergency, (vi) avoid or mitigate adversely impacting the passenger experience or service reliability offered by the Transit Defendants, and (vii) minimize interference with the Transit Defendants' facilities and/or operations. The Transit Defendants may also elect such substitutions in the event that the creation of any Accessible Station is required, by law or pursuant to Section 17(d) below, at one or more subway stations that were not among the originally Designated Stations. The Transit Defendants will consult with Plaintiffs as to the identity of any station substituted for a currently Designated Station, and will in good faith consider any comments from Plaintiffs. Notwithstanding the foregoing, the Transit Defendants will have ultimate authority to decide on any substitutions. If the Transit Defendants reject any of Plaintiffs' proposals regarding the substitution of stations, the Transit Defendants will provide Plaintiffs with an explanation as to why the Transit Defendants rejected any such proposal.

9. Beyond 2024/Subsequent Capital Plans:

a) The Transit Defendants will propose specific amounts for creating Accessible Stations for each future Capital Plan (beginning with the 2025-2029 Capital Plan, and continuing until Maximum Accessibility is achieved) (collectively, the "Subsequent Capital Plans" and each a "Subsequent Capital Plan") as identified and prioritized during the Twenty Year Needs Assessment process (as defined herein) consistent with the terms of this Agreement. The Twenty Year Needs Assessment process is a statutory requirement that is the foundation of the MTA's capital planning process (the "Twenty Year Needs Assessment" or "Assessment"). The Twenty Year Needs Assessment will be required to be updated every five years in advance of the MTA's Five Year Capital Plan—which is the MTA's proposed investments over the next five years ("Five Year Capital Plan")—with the Twenty Year Needs Assessment corresponding to the next Capital Plan due by October 1, 2023. Each update contains the MTA's planned capital expenditures for the next upcoming Five Year Capital Plan, as well as the MTA's projections for the succeeding three Five Year Capital Plans. Successive updates of the Twenty Year Needs Assessment will continue to include specific amounts for creating Accessible Stations until Maximum Accessibility is achieved, as follows:

i. The Transit Defendants commit that Plaintiffs will be included, through feedback to the Transit Defendants' Office of the Chief Accessibility Officer, in the development of each of the Twenty Year Needs Assessments that includes Subsequent Capital Plans with respect to creating Accessible Stations. The Transit Defendants will send Plaintiffs a draft of the accessibility investments portion of each Twenty Year Needs Assessment when it is available for their

review. Plaintiffs, by and through counsel, will provide feedback to the Transit Defendants within twenty-one (21) days of receipt of the draft.

ii. Each Twenty Year Needs Assessment beginning in 2023 will assume the need for funding to create Accessible Stations for each of the four Subsequent Capital Plans included in such Assessment that meets the following criteria:

1. The assumed funding need for creating Accessible Stations will comprise at least 14.69% of the total needs identified in the Twenty Year Needs Assessment for each Subsequent Capital Plan, provided that State of Good Repair and Normal Replacement funding needs (both defined herein) jointly comprise not more than 75% of the total needs for such Subsequent Capital Plan. (This may result in an assumed funding need for accessibility that is higher than the level of funding for accessibility in the 2020-2024 Capital Plan.)

    a. "State of Good Repair" and "Normal Replacement" funding refer to the amount of funding allocated to designated State of Good Repair ("SGR") and Normal Replacement ("NR") projects, which is distinct from the funding allocated to System Improvement ("SI"), Network Expansion ("NE"), and administrative projects.

    b. The following categories of the New York City Transit capital program typically constitute SGR and NR projects:

        i. Subway Cars

        ii. Buses

        iii. Passenger Stations

        iv. Track

        v. Line Equipment

        vi. Line Structures

        vii. Signals & Communication (including Communications-Based Train Control)

        viii. Traction Power

        ix. Shops & Yards

x. Depots

xi. Service Vehicles

xii. Misc./Emergency

xiii. Staten Island Railway

c. The following definitions of SGR, NR, and other project designations are representative of longstanding MTA practice:

i. State of Good Repair (SGR) projects renew assets that have surpassed their useful life, to achieve SGR;
ii. Normal Replacement (NR) projects renew assets that are nearing the end of their useful life, to preserve SGR;
iii. System Improvement (SI) projects enhance the network, providing new capabilities and a better customer experience;
iv. Network Expansion (NE) projects extend the reach of the MTA network, expanding the service offering; and
v. Administrative projects (e.g., insurance, scope development) are not assigned needs codes.

d. The designation of projects in any Capital Plan as SGR, NR, SI, NE, or Administrative will be consistent with longstanding MTA practice, as recognized by the Capital Program Review Board ("CPRB") through its approval of Capital Plans.

e. Projects to create Accessible Stations are not designated SGR or NR. Other representative examples of projects that are not designated SGR or NR include (but are not limited to) the following:

i. System expansion to provide entirely new subway lines or stations;

ii. Purchase of additional subway cars or buses to expand the total passenger capacity of the fleet;

iii. Installation of new artwork in subway stations;

iv. Construction of new passenger transfer connections between stations;

v. Installation of new customer-facing amenities, such as information screens (excluding upgrades of existing systems);

vi. Installation of new devices or new technologies to enhance safety or operations (excluding upgrades of existing systems);

vii. Deployment of cameras or other safety/security systems at new locations;

viii. Construction of new substations or other traction power upgrades for the purpose of increasing the capacity of a line; and

ix. Modifications to bus depots to support the transition to all-electric buses.

2. If SGR and NR funding needs jointly comprise more than 75% of the total needs of a Subsequent Capital Plan, then the minimum funding need for accessibility will be reduced proportionally below 14.69%, subject to Section 9(a)(ii)(3) below. Specifically, for every percentage point above 75% that is needed for SGR and NR, the minimum funding need for accessibility will be reduced by 0.59 percentage points. For example, if SGR and NR needs comprise 76% of the total needs, accessibility will comprise at least 14.10% of total needs.

3. If SGR and NR funding needs jointly comprise 86.33% or more of the total needs of a Subsequent Capital Plan, the minimum funding need for accessibility will comprise at least 8% of total needs.

iii. The Transit Defendants commit to make diligent, reasonable and good faith efforts to seek approval from the CPRB for each such Subsequent Capital Plan, bearing in mind that the approval of all Capital Plans by the CPRB and the actual commitment of funding sources in approved Capital Plans are outside of the Transit Defendants' control.

10. Subsequent Capital Plan Funding Contingencies:

a) If the Transit Defendants are unsuccessful in securing the full funding for a Subsequent Capital Plan as proposed in the Twenty Year Needs Assessment, and that Capital Plan is ultimately approved at a lower funding level than what was

proposed, then the following contingency funding provisions and percentages will apply. These provisions and percentages will apply regardless of whether a future Capital Plan covers a standard five-year period, or if it covers a shorter or longer period, though they will be adjusted by the number of years involved.

i. If the Subsequent Capital Plan Amount is less than the amount proposed in the Twenty Year Needs Assessment but is greater than or equal to the Inflation-Adjusted (as defined in Section 10(a)(v) below) value of $35.389 billion, the Transit Defendants will commit to designating no less than 14.69% of the Subsequent Capital Plan Amount to creating Accessible Stations, provided that projects designated State of Good Repair (SGR) and Normal Replacement (NR) collectively comprise not more than 75% of the Subsequent Capital Plan Amount, and:

    1. SGR and NR are defined as in Section 9, above.

    2. If SGR and NR funding needs jointly comprise more than 75% of the Subsequent Capital Plan Amount, then the minimum funding for accessibility will be reduced proportionally below 14.69% (subject to Section 9(a)(ii)(3) above). Specifically, for every percentage point above 75% that is designated for SGR and NR, the minimum funding for accessibility will be reduced by 0.59 percentage points. For example, if SGR and NR needs comprise 76% of the Subsequent Capital Plan Amount, then accessibility will comprise at least 14.10% of the Subsequent Capital Plan Amount.

    3. If SGR and NR funding needs jointly comprise 86.33% or more of the Subsequent Capital Plan Amount, then the minimum funding for accessibility will comprise at least 8% of the Subsequent Capital Plan Amount.

ii. If the ultimately obtained Subsequent Capital Plan Amount is less than the Inflation-Adjusted value of $35.389 but not less than the Inflation-Adjusted value $30 billion, the Transit Defendants will commit to designating no less than 12% of the Subsequent Capital Plan Amount to creating Accessible Stations.

iii. If the ultimately obtained Subsequent Capital Plan Amount is less than the Inflation-Adjusted value of $30 billion but not less than the Inflation-Adjusted value of $20 billion, the Transit Defendants will commit to designating no less than 10% of the Subsequent Capital Plan Amount to creating Accessible Stations.

iv. If the ultimately obtained Subsequent Capital Plan Amount is less than the Inflation-Adjusted value of $20 billion, the Transit Defendants will engage in good-faith discussions with Plaintiffs with respect to the appropriate expenditure commitment for and number of additional Accessible Stations for the Subsequent Capital Plan, although the final decision on such issues will remain with the Transit Defendants, subject to the other provisions of this Agreement.

v. For purposes of this Agreement, Inflation-Adjusted means that dollar values will be adjusted based on the ENR New York Building Cost Index (BCI) for the base year of 2020 to the first year of the relevant Subsequent Capital Plan.

vi. All Parties acknowledge that such contingency funding must take into account Transit Defendants' ability to: (i) address major critical State of Good Repair and/or Normal Replacement needs (as defined above) that were not anticipated in the most recent Twenty Year Needs Assessment (including, but not limited to, the need for repairing damage after a natural disaster or other major unplanned event), or (ii) prevent a material decline in service reliability. If the contingency funding percentages above would jeopardize the Transit Defendants' ability to address these unexpected critical need(s) or the ability to avoid such a material decline in service reliability, and hence cannot be achieved, the Transit Defendants will so notify Plaintiffs and inform them as to how the Transit Defendants will advance as many Accessible Station projects as practicable, until the unexpected critical need(s) are resolved.

11. Maximum Accessibility:

a) The Transit Defendants will publish on their website a projection at the completion of each Capital Plan (2024, 2029, and so on) an estimate of how many Accessible Stations they will be able to construct by the end of the following Capital Plan, based on the most recent published update of the Twenty Year Needs Assessment as well as their progress toward achieving Maximum Accessibility. The MTA website will continue to be updated with the completion of every additional Accessible Station.

b) Stations will be prioritized for inclusion in specific Capital Plans based on selection criteria. Such criteria will include, but not be limited to: citywide geographic coverage; transit transfer options; annual ridership volume; census tract data for senior and disabled populations and percentage of those populations in poverty; residential density of surrounding neighborhoods; and proximity to medical centers, schools, parks, business districts, cultural hubs and senior centers. The evaluation and weighting of these criteria will be performed at the Transit Defendants' sole discretion, consistent with their nondiscrimination

obligations under Title VI of the Civil Rights Act of 1964. The Transit Defendants may also consider the substitution criteria described in Section 8 above.

c) As part of reaching Maximum Accessibility as described herein, the Transit Defendants will, subject to the terms of this Agreement, make Accessible Stations of all existing stations where staircases, escalators, platforms, or mezzanines were newly constructed or altered from May 15, 2016 through the Effective Date of this Agreement. These stations will be included in the Subsequent Capital Plans included in future updates of the Twenty Year Needs Assessment, and will be prioritized for inclusion in specific Capital Plans based on the substitution criteria described in Section 8 above and the prioritization criteria described in Section 11(b) above.

d) In agreeing to achieve Maximum Accessibility under this Agreement as set forth above, the Transit Defendants agree that the intent of the Parties is ultimately to achieve as close to all stations being Accessible Stations as is practicable, recognizing that there will likely be a small number of existing stations where full stair-free paths of travel will be infeasible. The Transit Defendants agree to revisit feasibility issues during each capital planning process to account for new technologies and innovations that may make stair-free paths of travel feasible at stations which were previously deemed infeasible. Transit Defendants commit that 95% of the MTA's 364 currently inaccessible subway stations must become Accessible Stations to satisfy Maximum Accessibility as defined herein. "Infeasibility" here would not operate to reduce the minimum percentage of accessibility (95% of the MTA's 364 currently inaccessible stations) for purposes of satisfying Maximum Accessibility. The Transit Defendants commit to consider in designating stations as infeasible, factors including, but not limited to, those set forth in Sections 8 and 11(b) above.

12. **Progress in Issuing an RFP or its Equivalent:** The Transit Defendants commit to administer the contracts awarded to create Accessible Stations with the same degree of care, scrutiny, and timeliness that the Transit Defendants provide with respect to other third-party construction projects.

13. **Federal, State, and Local Accessibility Grant Funding:** The Transit Defendants will make reasonable efforts to obtain any new federal, state, and/or local grant funding that may be made available for funding the creation of Accessible Stations. If new funding, the eligibility for which is exclusively dedicated to funding Accessible Station projects, is obtained by the Transit Defendants, then the Transit Defendants will devote such new funding to such projects that will be in addition to the Accessible Station projects that are funded by the then-current Capital Plan. An example of a new funding source whose eligibility is exclusively dedicated to funding accessibility projects is the All Stations Accessibility Program in the Infrastructure Investment and Jobs Act.

14. **Privately Constructed Accessibility Projects:** Any subway stations that are made Accessible Stations by private developers at no cost to the Transit Defendants, including

any stations made accessible as part of the Zoning for Accessibility program, will not count toward the Transit Defendants' Accessible Station obligations as set forth in this Agreement.

15. **Force Majeure Contingencies:** The Transit Defendants will not be liable for a failure to perform any obligation under this Agreement, including but not limited to their obligation to issue RFPs or their equivalents, or for a delay suffered in the performance of the Transit Defendants' obligations under this Agreement, as a proximate result of (i) an act of God, (ii) the inability to obtain labor, equipment, supplies or material, (iii) unexpected delays in delivery of equipment, supplies, or materials, (iv) enemy action, terrorism, civil commotion, earthquake, flood, hurricane, extreme weather, fire or casualty, war, hostilities, invasion, insurrection, riot, mob violence, malicious mischief, or sabotage, (v) strikes, lockouts or similar labor issues, (vi) incidence of disease or other illness that reaches outbreak, epidemic, endemic and/or pandemic proportions or other like causes affecting the area in which the Accessible Station project is located and/or the labor and/or supply chain, (vii) an order or injunction from a governmental authority or a court of competent jurisdiction which prohibits or delays the performance of the work, (viii) the action or inaction of a governmental authority (other than the Transit Defendants' exercise of their rights, obligations and remedies under this Agreement) or changes in legal requirements after any RFP or its equivalent has been issued, which delays performance of the applicable work, (ix) real estate acquisition or parkland alienation issues, (x) actions needed to be undertaken to protect public safety, including actions taken in connection with an emergency situation or transit emergency, (xi) actions needed to be undertaken to respond to changes in legal requirements applicable to the Transit Defendants beyond those noted in subsections (vii) and (viii) above (e.g., statutes enacted at the federal or state level), (xii) any other cause beyond the reasonable control of the Transit Defendants which has the effect of delaying or preventing the Transit Defendants' performance of their obligations under this Agreement, or (xiii) delays caused by delays in labor or materials caused by COVID-19, or an order issued by a governmental authority with applicable jurisdiction, in response to the existence of a pandemic as defined by the Centers for Disease Control and Prevention, which order requires the Transit Defendants (or anyone acting by, through or under any of them) to take actions (or prohibits such person from taking actions) the result of which delays the performance of such obligation. For the sake of clarity, the Parties acknowledge that performance may be delayed or prevented as a result of a force majeure event only for the particular station or stations affected and only for so long as such force majeure event persists (e.g., if there is a strike that affects the construction of an elevator at a particular station, that event will only excuse performance for that station and only for so long as that strike persists). Should such events arise, the Transit Defendants will promptly notify Plaintiffs of the occurrence of the event, and engage in a meet-and-confer process with Plaintiffs, whereby the Transit Defendants will provide their views to Plaintiffs as to how such event will affect performance and the actions, if any, being taken as a result, and will consult with Plaintiffs to receive Plaintiffs' views as to the event, its effect on performance and any actions being taken by the Transit Defendants as a result. Following such meet-and-confer, the Transit Defendants will proceed as they deem appropriate, recognizing that the Plaintiffs reserve their right to challenge any actions

taken or not taken by the Transit Defendants in response to the event to the extent the Plaintiffs regard such actions or inactions as inconsistent with this Agreement. Any such disputes would be subject to the dispute resolution process set forth in Section 28 below. All obligations not affected by the above force majeure events will remain in force.

16. Timing and Milestones:

a) It is the Parties' expectation that the creation of additional Accessible Stations identified via Section 5, 6, 7, 9 and 10 above will be completed or in process by 2055, subject to the availability of funding as discussed in those Sections, the lack of any force majeure events, no significant increases (meaning increases over 150%) to the Inflation-Adjusted cost of creating an Accessible Station, and subject to any modifications to the obligations under this Agreement negotiated by the Parties pursuant to Section 23 below, if applicable, and the other provisions of this Agreement, including but not limited to Section 10(a)(vi). For purposes of this Section 16(a), the 150% increase with respect to the cost of creating an Accessible Station will be calculated using as a base the average per-station cost of creating an Accessible Station for all stations for which such work was done that were funded in the 2020-2024 Capital Program and awarded to contractors for construction (including design-build construction). For the purpose of calculating the average per-station cost of creating an Accessible Station under this Section 16(a), the cost of any improvement made when elevators or ramps are added to a subway station to create a stair-free path of travel, as described in Section 2 above that is funded out of the Transit Defendants' accessibility projects budgets will be included. The determination of whether the cost of accessibility improvement work amounts to an increase of the over 150% of Inflation-Adjusted cost will occur after RFPs have been issued for each set of milestones (described in subsection (b) below) that occur following the determination of the baseline cost.

b) It is also the Parties' expectation that the additional Accessible Stations identified via Sections 9 and 10 above (that is, not including the 81 Designated Stations under Sections 5 and 6 above for the 2020-2024 Capital Plan) will have RFPs or their equivalent issued consistent with the following schedule, again subject to the availability of funding as discussed in Sections 9 and 10 above, the lack of any force majeure events, no significant increases (meaning increases over 150%) to the Inflation-Adjusted cost of creating Accessible Stations, and subject to any modifications to the obligations under this Agreement negotiated by the Parties pursuant to Section 23 below, if applicable, and the other provisions of this Agreement, including but not limited to Section 10(a)(vi):

i. 85 additional Accessible Stations by 2035;

ii. another 90 additional Accessible Stations by 2045; and

iii. another 90 additional Accessible Stations by 2055.

c) The above schedule is dependent on the availability of sufficient funding for accessibility in the Subsequent Capital Plans that will cover the time periods up to each milestone in Section 16(b) above. In the event that the actual funding for accessibility is insufficient to achieve the number of Accessible Stations by each milestone, then the numbers of Accessible Stations due by each milestone will be reduced, and Accessible Station projects will be assigned consistent with the prioritization criteria in 11(b) above.

d) The Transit Defendants will be in compliance with the provisions of this Section 16 so long as they have issued RFPs or their equivalent for at least 75% of the numbers of stations listed in Section 16(b) above by the dates indicated in that Section, or at least 75% of the proportionally reduced numbers of stations as calculated per this Section 16(d). If the Transit Defendants fail to do so, they will be required to demonstrate that such failure was due to one or more of the factors listed in Section 16(b) above. Should the average cost of creating an Accessible Station exceed 150% as described in Section 16(a) above, the milestone obligations will remain in effect but be proportionally reduced. Any time Transit Defendants fail to meet these milestones, they will provide Plaintiffs a written explanation of the reasons why they were unable to meet these milestones. The written explanation will also propose the steps Transit Defendants intend to take to make up for the shortfall consistent with the other terms of this Agreement, including but not limited to those set forth in Sections 9(a) and 11 above regarding Maximum Accessibility.

e) The terms of this Agreement will end one year following substantial completion of the number of stations sufficient to obtain Maximum Accessibility as defined herein.

17. Renovations:

a) The Parties acknowledge and agree that, subject to sub-sections (b), (c), and (d) below, for any "Qualifying Station Project" (as defined below), the Transit Defendants will create an Accessible Station as follows:

    i. A "Qualifying Station Project" is defined as any existing station at which all station "components" rated 3 or higher on the Transit Defendants' Station Condition Survey are addressed as part of a project performed by and at the cost of the Transit Defendants where the final total cost of the station project at contract completion is Inflation-Adjusted $50 million or more.

    ii. For the avoidance of doubt, any station at which *only* "component" work is being performed will *not* trigger an obligation on behalf of the Transit Defendants to create an Accessible Station. "Component

work" means and refers to routine repairs and cosmetic changes to stations, such as replacement of tiles.

b) *Exemption for 2015-2019 Qualifying Station Projects*: For purposes of this Agreement, Plaintiffs agree this trigger will not apply to any Qualifying Station Project that is part of the 2015-2019 capital program.

c) *Exemption for Infeasibility*: The Transit Defendants will be exempt from their obligation to create an Accessible Station as part of a Qualifying Station Project if it would not be feasible to do so.

    i. For purposes of physical infeasibility pertaining to renovations under this section, "feasible" will be defined in accordance with its definition in the ADA and its implementing regulations. *See* 42 U.S.C. § 12147(a); 49 C.F.R. § 37.43; 49 C.F.R. pt. 37 App. D. *See Bronx Indep. Living Servs.* v. *Metro. Transportation Auth.*, No. 16 CIV. 5023 (ER), 2021 WL 1177740 (S.D.N.Y. Mar. 29, 2021).

    ii. If the Transit Defendants determine that it is not feasible to create a particular Accessible Station as part of a Qualifying Station Project, they will notify Plaintiffs of such determination and the reasons for such determination, and engage in a meet-and-confer process with Plaintiffs, whereby the Transit Defendants will explain the basis for their determination, consult with Plaintiffs and receive Plaintiffs' reactions to that determination. Following such a meet-and-confer, the Transit Defendants will proceed as they deem appropriate, recognizing that the Plaintiffs reserve their right to challenge any such determination to the extent they consider it to be inconsistent with this Agreement.

    iii. The exemption for infeasibility set forth in this section will not be construed to limit the definition of Maximum Accessibility under Section 11 above.

d) *Relationship to Designated Stations*: Any Qualifying Station Project that arises during the 2020-2024 Capital Plan will not increase the number of Designated Stations pursuant to Sections 5-8 above. Instead, each Qualifying Station Project will substitute for one of the Designated Stations listed above. The Transit Defendants will consult with Plaintiffs as to the identity of the Designated Station that will be substituted with a Qualifying Station Project, and will consider Plaintiffs' comments in good faith, although the Transit Defendants will maintain the ultimate authority to decide on the substitution. If the Transit Defendants reject any of Plaintiffs' proposals regarding the substitution of stations, they will explain to Plaintiffs why they have rejected the proposal. The same principles will apply in future Capital Plan periods. Nor will any Qualifying Station Project

increase the obligations of the Transit Defendants pursuant to Sections 9 and 10 above.

18. **New Stations:** The Transit Defendants agree that any newly-constructed stations will be Accessible Stations.

19. **Class Certification:** The settlement will be on behalf of a settlement class (the "Settlement Class"), which will consist of all people whose disabilities make the use of stairs difficult or impossible and who require stair-free paths of travel in the New York City subway system.

20. **Plaintiffs' Releases:** Effective upon the Effective Date of this Agreement, named Plaintiffs and all Settlement Class members irrevocably and unconditionally release, acquit, and forever discharge the Defendants, including the individually named defendants, along with any present, former, and future parents, subsidiaries, affiliates, members, successors, and assigns, as well as all present, former, and future officers, directors, trustees, managers, employees, attorneys, agents, and representatives of the foregoing entities, and any heirs, attorneys, agents, or representatives of the foregoing individuals, from any and all claims, actions, proceedings, suits, accounts, contracts, controversies, agreements, promises, judgments, rights, sanctions and demands, and causes of action of any nature whatsoever, known or unknown, whether arising under federal, state, common, or foreign law, that (a) were asserted in any of the Actions; (b) could have been asserted in any of the Actions and that relate to providing stair-free paths of travel in New York City subway stations; (c) seek as relief, in whole or in part, an order requiring the Defendants to modify any subway station to add an elevator or otherwise provide stair-free paths of travel in New York City subway stations, whether or not due to or as part of any station renovation or other alteration; or (d) otherwise seek any type of equitable, injunctive or declaratory relief requiring Defendants to provide any stair-free paths of travel in New York City subway stations, provided that nothing set forth in this provision will release any claims relating to the enforcement of this Agreement. The Parties intend this release to have the maximum effect permissible under applicable law and precedent.

21. **Defendants' Release:** Upon the Effective Date of this settlement, the Transit Defendants will release as against named Plaintiffs, and all other Settlement Class members and their respective agents, attorneys, and representatives, all claims and causes of action of every nature and description that arise out of or relate in any way to the institution, prosecution, or settlement of the claims alleged in the Actions, except for claims relating to the enforcement of the Agreement.

22. **Role of the Federal Government:** The Parties agree to use their commercially reasonable efforts to obtain the approval of the Federal Government with respect to the provisions of this Agreement. If the Federal Government nonetheless imposes burdens on the Transit Defendants more onerous than those set forth here, the Parties will renegotiate this Agreement so that the overall burdens on the Transit Defendants remain

substantially the same as those set forth in this Agreement. The term "Federal Government" as used above will include all branches, agencies and offices of the federal government, including but not limited to the FTA and the Department of Justice.

23. **Effect of Additional Legal Obligations:** The Parties acknowledge and agree that in the event that, subsequent to the date of this Agreement, as a result of any change in local, State or Federal rule (excluding rules issued by the Transit Defendants themselves), regulation, administrative order, law, or any court order, decision or judgment, whether in this matter or otherwise, or any legally binding settlement of any legal proceeding, the improvements necessary to create an Accessible Station increase or change in scope, extent, duration or in any other way that creates an additional obligation or imposes additional costs as compared to the Transit Defendants' practices with respect to the Transit Defendants' Accessibility Improvements as of the date of this Agreement, then:

    a) Any additional costs associated with any such increase or change will be paid for by the funding described in this Agreement, including but not limited to Sections 5, 6, 9 and 10 above;

    b) The Transit Defendants' milestone and other timing commitments described in this Agreement will be proportionately extended. Should such an extension be necessary, the Transit Defendants will notify and engage in a meet-and-confer process with Plaintiffs, whereby the Transit Defendants will explain the basis for the extension, consult with Plaintiffs, and receive Plaintiffs' reactions to the extension. Following such meet-and-confer, the Transit Defendants will proceed as they deem appropriate, recognizing that the Plaintiffs reserve their right to challenge any such determination to the extent they consider it to be inconsistent with this Agreement; and

    c) Nothing in Section 23 alters the obligations related to additional external funding laid out in Section 13 above.

24. **Reporting:** The Transit Defendants, by and through the Chief Accessibility Officer, will create and share with Plaintiffs progress reports every six (6) months demonstrating:

    a) The progress with timelines for creating Accessible Stations pursuant to approved Capital Plans and the Twenty Year Needs Assessment as outlined in Sections 5-10 and 16 above;

    b) The status of funding and Capital Plan requests, as well as contingency funding mechanisms triggered, made pursuant to Sections 5-10 and 16 above;

    c) Any delays discovered pursuant to Sections 7 and 16 above;

    d) Any station substitutions made pursuant to Section 8 above;

    e) Any federal, state, or local grants available pursuant to Section 13 above;

f) Any privately constructed Accessible Stations made pursuant to Section 14 above;

g) Any Qualifying Station Projects under Section 17 above; and

h) Any determinations of infeasibility made pursuant to Section 17(c)(ii) above.

25. Notice: Unless otherwise indicated in the Agreement, all notifications, communications, consultation, or information-sharing required by this Agreement will be in writing by email and overnight mail addressed as follows, unless counsel for any party notifies counsel for the other party in writing:

a) To Plaintiffs:
c/o class counsel:
Rebecca Rodgers
Disability Rights Advocates
655 Third Avenue, Fourteenth Floor
New York, NY 10017-5621

CC to class counsel:
Daniel Brown
SHEPPARD MULLIN RICHTER
& HAMPTON LLP
30 Rockefeller Plaza
New York, NY 10112-0015

b) To the Transit Defendants:
Metropolitan Transportation Authority
2 Broadway
New York, NY 10004
Quemuel Arroyo, Chief Accessibility Officer
Quemuel.arroyo@mtahq.org
Paige Graves, General Counsel
Paige.graves@mtahq.org

CC to counsel:
Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, NY 10019
Allan J. Arffa
Aarffa@paulweiss.com
Gregory F. Laufer
Glaufer@paulweiss.com

26. **Preliminary Approval, Notice to the Class, and Objections:** Within thirty (30) days of the full execution of this Agreement, Plaintiffs will (1) file the Agreement in the Federal Court Action and the State Court Action; (2) file a motion in the Federal Court Action identified above for an order preliminarily approving the settlement described herein; and (3) file a motion in the State Court Action identified above for an order preliminarily approving the settlement described herein. Such motions will also seek final approval of the Agreement in each Action following notice by Plaintiffs to the Settlement Class in each Action, providing an opportunity for any objections to be raised. No later than thirty (30) days after the court in each Action grants preliminary approval, Plaintiffs' counsel will provide appropriate notice to the Settlement Class in both of the Actions, and provide the opportunity for any objections to the settlement prior to final approval. All Parties to this Agreement agree to cooperate in attempting to obtain preliminary and final approval of the Agreement by both of the courts in the Actions.

27. **Final Approval:** This Agreement will be subject to the final approval of the courts in both of the Actions. If any of the courts in either of the Actions does not grant final approval of the Agreement or if the final approval of any such court is reversed on appeal, then, unless such decision is subject to further appeal, the Agreement will become null and void, have no further force or effect, and will not be admissible in or otherwise used for any purpose in any of the Actions or otherwise.

28. **Continuing Jurisdiction/Dispute Resolution:** In the event of any dispute with respect to this Agreement, any party will first notify the other party in writing of any perceived non-compliance with the terms of this Agreement, or any other perceived dispute related to the terms, processes, or obligations set forth in this Agreement by such other party. Unless otherwise agreed to by the Parties, with respect to any particular dispute, the Parties agree, following the notice described in the first sentence of this Section 28, to meet and confer in good faith, within fifteen (15) business days after receipt of such notification. If the meet-and-confer process does not lead to a resolution of the dispute, then, no sooner than fifteen (15) business days after providing the other Parties with written notice of an intent to terminate the meet and confer process, the Parties will initiate a mediation. Such mediation will be held pursuant to the mediation procedures of the New York Office of Judicial Arbitration and Mediation Services, Inc. ("JAMS"), using a mediator—who will be free to make recommendations if the mediator finds it appropriate—to be agreed upon at that time by the Parties from the JAMS New York Office mediator list. If the Parties fail to agree on a mediator, the New York Office of JAMS will appoint one. The Parties further agree that, in the event mediation is unsuccessful, all disputes with respect to the compliance, interpretation, and enforcement of the Agreement will be resolved by Judge Edgardo Ramos of the United States District Court for the Southern District of New York. In the event that Judge Ramos ceases to serve as a district court judge or otherwise becomes unavailable, the Parties will jointly request the Chief Judge of the United States District Court of the Southern District of New York to appoint a replacement for Judge Ramos for this matter. Once effective, this Agreement will be subject to continuing jurisdiction of the United States District Court

for the Southern District of New York (the "Court"). The Court will retain jurisdiction over this Agreement, including the power to enter orders concerning this Agreement and adjudicate any dispute or controversy between the Parties concerning the interpretation of the terms or enforcement of the Agreement, which jurisdiction will end on the Termination Date. Class counsel may petition the Court for reasonable attorneys' fees and costs in connection with dispute resolution work pursuant to this section in accordance with applicable law, provided that the Transit Defendants reserve their rights to challenge any such petition.

29. **Settlement Purposes Only:** This Agreement will not be offered, introduced, used, or considered as evidence in any judicial, administrative, or other proceeding, except to the extent necessary to obtain approval of the Agreement, or, once effective, to enforce the terms of this Agreement, and will not be filed with the Court for any other purpose.

30. **Construction:** This Agreement will be construed without regard to any presumption or other rule requiring construction against the party causing this Agreement to be drafted. In the event of any action, suit, arbitration, dispute, or proceeding affecting the terms of this Agreement, no weight will be given to any deletions or striking out of any of the terms of this Agreement contained in any draft of this Agreement and no such deletion or strike out will be entered into evidence in any such action, suit, arbitration, dispute, or proceeding, nor given any weight therein.

31. **Governing Law:** All terms of this Agreement will be governed by and interpreted according to the substantive laws of New York, without regard to New York's conflict of laws principles.

32. **Amendment or Modification:** The Agreement may be modified only by means of a superseding written agreement, signed by all of the Parties or counsel for all of the Parties.

33. **Entire Agreement:** This Agreement contains all the agreements, conditions, promises, and covenants among Plaintiffs and the Transit Defendants regarding matters set forth in it. No representations, warranties, or promises have been made or relied upon by any party hereto, other than those contained herein. This Agreement supersedes all prior or contemporaneous agreements, drafts, representations, or understandings, either written or oral, with respect to the subject matter of the present Agreement.

34. **No Admission of Liability:** This Agreement is not intended as, nor will it be construed in any way as, an admission or concession, direct or indirect, express or implied, by any of the Defendants or any person or entity currently or formerly affiliated with any Defendant, that such Defendant, person or entity has violated any laws, including but not limited to the ADA, the New York City Human Rights Laws or any other federal, state, or local anti-discrimination or other law, regulation, order, or rule, or otherwise acted in any unfair or improper manner. The Parties further agree, for sake of clarity, that if this

Agreement is not finally approved, or is otherwise nullified for any reason, the Parties will return to their positions preceding this Agreement, and the Transit Defendants and other individually named defendants to the Actions will retain all rights to defend against and challenge Plaintiffs' claims in the Actions.

35. **Severability:** The terms of this Agreement are not severable, but are interdependent and have been agreed to only as a whole by the Parties.

36. **Transit Defendants:** Whenever an action is to be taken by the Transit Defendants hereunder, the Transit Defendants may designate either one of the Transit Defendants, or an authorized representative, to take such action on behalf of the Transit Defendants.

37. **Execution Authority:** Each of the undersigned attorneys represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Agreement, subject to Court approval, and the undersigned Plaintiffs' counsel represent that they are authorized to execute this Agreement on behalf of the Plaintiffs and the Settlement Class.

38. **Effective date:** The Agreement will become effective (the "Effective Date") upon the later of:

    a) Entry of a final judgment in the Federal Court Action described above approving the settlement as a class settlement in accordance with Rule 23 of the Federal Rules of Civil Procedure and adjudging it to be fair, reasonable, and adequate; dismissing the complaints in those Actions with prejudice, on the merits, and without costs; and the expiration of ten (10) days after all appeals and/or rights to appeal from the final judgment or to apply for judicial review of the final judgment have been exhausted or permitted to expire (and the judgment having been sustained in all respects in the event any such appeal has been taken); or

    b) Entry of a final judgment in the State Court Action described above approving the settlement as a class settlement in accordance with New York Civil Practice Law and Rules 901 *et seq.* and adjudging it to be fair, reasonable, and adequate; dismissing the complaint in that Action with prejudice, on the merits, and without costs, and the expiration of ten (10) days after all appeals and/or rights to appeal from the final judgment or apply for judicial review of the final judgment have been exhausted or permitted to expire (and the judgment having been sustained in all respects in the event any such appeal has been taken).

39. **Attorneys' Fees and Costs:**

    a) Plaintiffs may apply to the applicable State or Federal Court for an award of reasonable attorneys' fees and costs to be assessed against the Transit Defendants in an amount not to exceed $4.5 million in total (meaning that the amount of fees and costs applied for in the State Court Action plus the amount

of fees and costs applied for in the Federal Court Action may not exceed $4.5 million) for all work performed by plaintiffs' attorneys or their consultants through the date of final approval of this Agreement, provided that (a) Plaintiffs must provide to the Transit Defendants and the Courts hourly billing and other records supporting such fees and costs, and (b) the Transit Defendants reserve their rights to challenge the reasonableness of such fees and costs before both Courts.

b) During the term of the Agreement, Plaintiffs may seek from the Transit Defendants reasonable fees and costs for work performed by Plaintiffs' attorneys or their consultants in connection with Plaintiffs' attorneys' work to satisfy their obligations to the Class regarding Transit Defendants' compliance with their obligations as enumerated in this Agreement ("Covered Work"), subject to the following:

   i. The reimbursable fees and costs in connection with Covered Work will be subject to a limit of 100 hours of such work in the aggregate for all attorneys and their consultants per calendar year, except to the extent that Plaintiffs provide a demonstrated good faith justification for a need for Plaintiffs' attorneys and their consultants to perform more than an aggregate of 100 hours of work in a particular year, subject to the Transit Defendants' right to challenge any such justification;

   ii. Plaintiffs must provide to the Transit Defendants hourly billing and other records supporting the number of hours and dollar amount of the fees and costs of Covered Work for which reimbursement is being sought;

   iii. The Transit Defendants reserve their rights to challenge any such request for reimbursement; and

   iv. Any disputes regarding reimbursement for Covered Work sought by Plaintiffs pursuant to this subparagraph (b) will be subject to the dispute resolution procedures set forth in Section 28 above of this Agreement.

40. Execution in Counterparts: This Agreement may be executed in counterparts by or on behalf of the Parties, and a facsimile or .pdf signature will be deemed an original for purposes of executing this Agreement.

IN WITNESS WHEREOF, the Parties hereto, through their fully authorized representatives, have agreed to this Agreement.

Dated: June 6, 2022

Center for Independence of the Disabled, New York



By: Sharon McLennon-Wier

Dated: June 3, 2022

Brooklyn Center for Independence of the Disabled



By: Joseph G. Rappaport

Dated: June 3, 2022

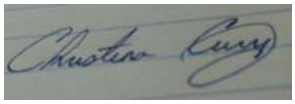
Bronx Independent Living Services



By: Brett Eisenberg

Dated: June 7, 2022

Harlem Independent Living Center



By: Christina Curry

Dated: June 3, 2022

Disabled in Action of Metropolitan New York



By: Jean Ryan

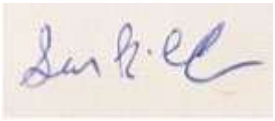
Dated: June 7, 2022

New York Statewide Senior Action Council



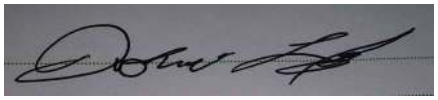
By: Maria Alvarez

Dated: June 6, 2022



Sasha Blair-Goldensohn

Dated: June 7, 2022

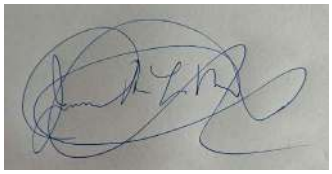


Dustin Jones

Dated: June 3, 2022



Jean Ryan



Dated: June 9, 2022

Jessica De La Rosa

Dated: June 22, 2022

Metropolitan Transportation Authority

By: 

Janno Lieber, in his Official Capacity as Chair and CEO of the Metropolitan Transportation Authority

Dated: June 22, 2022

New York City Transit Authority

By: 

Richard Davey, in his Official Capacity as President of the New York City Transit Authority

EXHIBIT 1

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

CENTER FOR INDEPENDENCE OF THE DISABLED, NEW YORK, a nonprofit organization; BROOKLYN CENTER FOR INDEPENDENCE OF THE DISABLED, a nonprofit organization; BRONX INDEPENDENT LIVING SERVICES, a nonprofit organization; HARLEM INDEPENDENT LIVING CENTER, a nonprofit organization; DISABLED IN ACTION OF METROPOLITAN NEW YORK, a nonprofit organization; NEW YORK STATEWIDE SENIOR ACTION COUNCIL, a nonprofit organization; SASHA BLAIR-GOLDENSOHN, an individual; and DUSTIN JONES, an individual, on behalf of themselves and all others similarly situated;

Plaintiffs,

-against-

METROPOLITAN TRANSPORTATION AUTHORITY, a public benefit corporation, VERONIQUE HAKIM, in her official capacity as interim executive director of the Metropolitan Transit Authority, NEW YORK CITY TRANSIT AUTHORITY, a public benefit corporation, DARRYL C. IRICK, in his official capacity as acting president of the New York City Transit Authority, and THE CITY OF NEW YORK,

Defendants.

Index No. 153765/2017

STIPULATION OF VOLUNTARY DISCONTINUANCE

IT IS HEREBY STIPULATED AND AGREED by and among the parties to this action, through their undersigned counsel, pursuant to CPLR 3217(a)(2), that this action, including all claims and counterclaims, having been settled by a separate settlement agreement (the "Agreement"), is hereby discontinued with prejudice. Attorneys' fees will be borne pursuant to Section 39 of the Agreement. No party to this action is an infant, an incompetent person for whom a committee has been appointed, or a conservatee. No person not a party has an interest in the subject matter of the action.

IT IS FURTHER STIPULATED AND AGREED that all claims brought against all parties, including but not limited to those brought against defendant City of New York, are dismissed.

IT IS FURTHER STIPULATED AND AGREED that this stipulation of voluntary discontinuance may be executed in counterparts, and facsimile or electronic signatures will be deemed originals for the purposes of filing this stipulation with the Court.

Dated: New York, New York
June __, 2022

DISABILITY RIGHTS ADVOCATES

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Torie Atkinson
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Attorneys for Plaintiffs

So Ordered:

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Counsel for Defendants Metropolitan Transportation Authority, Janno Lieber in his official capacity as Chair and CEO of the Metropolitan Transportation Authority, New York City Transit Authority, and Richard Davey in his official capacity as President of the New York City Transit Authority

CORPORATION COUNSEL OF THE CITY OF NEW YORK

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Email: mbowe@law.nyc.gov

Counsel for Defendant City of New York

EXHIBIT 2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JESSICA DE LA ROSA, JEAN RYAN, BRONX INDEPENDENT LIVING SERVICES, BROOKLYN CENTER FOR INDEPENDENCE OF THE DISABLED, CENTER FOR INDEPENDENCE OF THE DISABLED, NEW YORK, DISABLED IN ACTION OF METROPOLITAN NEW YORK, HARLEM INDEPENDENT LIVING CENTER, on behalf of themselves and all others similarly situated, Plaintiffs, v. METROPOLITAN TRANSPORTATION AUTHORITY, PATRICK FOYE, in his official capacity as chair and chief executive officer of the Metropolitan Transportation Authority, NEW YORK CITY TRANSIT AUTHORITY, SARAH FEINBERG, in her official capacity as acting President of the New York City Transit Authority, and the CITY OF NEW YORK, Defendants.	Case No. 19-cv-04406 (ER) **STIPULATION OF DISMISSAL**

IT IS HEREBY STIPULATED AND AGREED by and between the parties to this action, through their undersigned counsel, pursuant to Fed. R. Civ. P. 41(a)(1)(ii), that this action, including all claims and counterclaims, having been settled by a separate settlement agreement (the "Agreement"), is hereby dismissed with prejudice except that the Court will retain jurisdiction over this case to enforce the terms of the agreement. Attorneys' fees will be borne pursuant to Section 39 of the Agreement.

IT IS FURTHER STIPULATED AND AGREED that all claims brought against all parties, including those brought against defendant City of New York, are dismissed.

IT IS FURTHER STIPULATED AND AGREED that this stipulation of voluntary discontinuance may be executed in counterparts, and facsimile or electronic signatures will be deemed originals for the purposes of filing this stipulation with the Court.

Dated: New York, New York
June __, 2022

DISABILITY RIGHTS ADVOCATES



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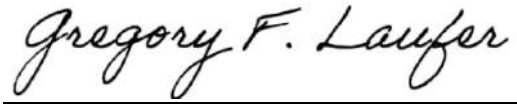
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Attorneys for Plaintiffs

So Ordered:

Hon. Edgardo Ramos

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Counsel for Defendants Metropolitan Transportation Authority, Janno Lieber in his official capacity as Chair and CEO of the Metropolitan Transportation Authority, New York City Transit Authority, and Richard Davey in his official capacity as President of the New York City Transit Authority

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Counsel for Defendant City of New York

Caution
As of: November 9, 2026 3:08 PM Z

Center for Independence of the Disabled v Metropolitan Transp. Auth.

Supreme Court of New York, Appellate Division, First Department

June 4, 2020, Decided ; June 4, 2020, Entered

153765/17, 11412

Reporter
184 A.D.3d 197 *; 125 N.Y.S.3d 697 **; 2020 N.Y. App. Div. LEXIS 3302 ***; 2020 NY Slip Op 03203 ****; 2020 WL 2954974

[**1]** Center for Independence of the Disabled et al., Respondents, v Metropolitan Transportation Authority, a Public Benefit Corporation, et al., Appellants.

Prior History: Appeal from an order of the Supreme Court, New York County (Shlomo S. Hagler, J.), entered on or about June 6, 2019. The order (1) denied the motion of defendants Metropolitan Transportation Authority, Veronique Hakim, New York City Transit Authority and Darryl C. Irick to dismiss the complaint; and (2) denied, without prejudice, the motion of defendant the City of New York to dismiss the complaint.

Core Terms

local law, disability, station, subway, subway system, preempt, preemption, transit, doctrine, public building, state law, exempt, public accommodation, transport, anti-discrimination

Headnotes/Summary

Headnotes

Limitation of Actions — Tolling — New York City Human Rights Law — Continuous Violation Doctrine

1. Plaintiffs' action under the New York City Human Rights Law (NYCHRL) challenging, as discriminatory, the New York City subway system's lack of accessibility to persons with certain disabilities was not time-barred, as the claimed failure by defendants New York City and its transit authorities to provide an accessible subway system was a continuous wrong tolling the statute of limitations under the NYCHRL. Generally, an action under the NYCHRL must be brought within three years after the discriminatory practice occurred. However, continuing acts of discrimination within the statutory period will toll the running of the statute of limitations until such time as the discrimination ends. By virtue of the NYCHRL's mandate that it "be construed liberally for the accomplishment of [its] uniquely broad and remedial" purposes (*Administrative Code of City of NY § 8-130 [a]*), the reach of the continuous violation doctrine under the NYCHRL is broader than under either federal or state law. The lack of access to the subway system, a place of public accommodation, continues every time a person seeks to use the subway system, but is prevented from doing so based upon their physical disability.

Local Laws — Preemption by State — New York City Human Rights Law — Subway System Inaccessible to Persons with Disabilities

2. Plaintiffs' action under the New York City Human Rights Law (NYCHRL) challenging, as discriminatory, the New York City subway system's lack of accessibility to persons with certain disabilities was not preempted by either *Transportation Law § 15-b* or the Public Authorities Law. Under home rule, defendant City of New York has broad policing power to act in furtherance of the welfare of its citizens, and the State has not preempted local anti-discrimination laws of general application. A local law will be preempted either where it is in direct conflict with a state statute (conflict preemption), or where the state legislature has indicated its intent to occupy the particular field (field preemption). There was no conflict preemption between *Transportation Law § 15-b* and the NYCHRL, as the Transportation Law established a baseline number of subways that must be made accessible to certain mobility impaired users; it does not set a maximum number of accessible subway stations. With respect to field preemption, the preemptive language in *Transportation Law § 15-b* only concerns local laws to the extent they are inconsistent with the Transportation Law. Such limiting language does not preempt every local law, provided the local law does not interfere with

the objectives of the Transportation Law. A review of the relevant statutes revealed that, with regard to the claim that the legislature had an implicit intent to occupy the field, the Transportation Law was never intended to be the final word on accessibility. Similarly, *Public Authorities Law § 1266 (8)* contains an express preemption provision limited to local laws that interfere with the accomplishment of defendants' transportation purposes and does not apply to preempt the application of all local laws. Compliance with the NYCHRL anti-discrimination provisions would not interfere with defendants' mandate to maintain and operate the transit system.

Courts — Justiciable Questions — Enforcement of Rights Afforded under New York City Human Rights Law

3. The issues raised in plaintiffs' action seeking a declaratory judgment that the failure by defendants New York City and its transit authorities to provide a subway system accessible to persons with certain disabilities violated the New York City Human Rights Law (NYCHRL) and judicial imposition of a remedial plan to eliminate such discrimination were justiciable, as plaintiffs sought a declaration and enforcement of services and rights afforded to them under the NYCHRL. At its core, justiciability rests on the concept of the separation of powers of the three coequal branches of government. The judicial branch may only exercise its power in a manner consistent with its judicial function, upon the proper presentation of matters of a judiciary nature. The remedial plan plaintiffs' sought was nothing more than having defendants implement a nondiscriminatory plan. A court can direct the State to prepare plans and programs to provide suitable treatment, which would also necessarily require the expenditure of funds, but not dictate the specific manner in which such plans and programs operate.

Pleading — Waiver of Defense — Argument Raised in Reply Brief

4. Defendant City of New York's motion to dismiss plaintiffs' complaint challenging, as discriminatory, the New York City subway system's lack of accessibility to persons with certain disabilities was properly denied, where defendant waived its argument that it bore no responsibility for the claimed violations and had no authority to remedy them given its leasing of the subway system to its codefendant transit authorities by raising it for the first time in its reply brief below. In any event, Supreme Court properly denied the motion in light of legal and factual issues that could not be resolved on the record developed, including the amount of control defendant City retained over the subway system's operation.

Counsel: ***[***1]*** *Paul, Weiss, Rifkind, Wharton & Garrison LLP*, New York City (*Allan Arffa*, *Gregory F. Laufer* and *Joseph P. Kolatch* of counsel), for Metropolitan Transportation Authority and others, appellants.

James E. Johnson, Corporation Counsel, New York City (*Jeremy W. Shweder*, *Richard Dearing* and *Devin Slack* of counsel), for City of New York, appellant.

Disability Rights Advocates, New York City (*Michelle Caiola*, *Torie* ***[****2]*** *Atkinson* and *Emily Seelenfreund* of counsel), and *Sheppard Mullin Richter & Hampton, LLP*, New York City (*Daniel Brown* of counsel), for respondents.

Dentons US LLP, New York City (*Sandra D. Hauser*, *Levon Golendukhin* and *Noel Y. Lee* of counsel), and *New York Lawyers for the Public Interest*, New York City (*Ruth Lowenkron* and *Christopher Schuyler* of counsel), for amici curiae.

Judges: Rolando T. Acosta, P.J., Sallie Manzanet-Daniels, Judith J. Gische, Barbara R. Kapnick, JJ. Opinion by Gische, J. All concur.

Opinion by: GISCHE

Opinion

[*199] **[**702]** **[***2]** Gische, J.

Plaintiffs bring this putative class action under the New York City Human Rights Law (NYCHRL) challenging, as discriminatory, the New York City subway system's lack of accessibility to persons with certain disabilities. Plaintiffs consist of six nonprofit disability rights organizations and three **[*200]** individuals with mobility impairments. *Administrative Code of City of NY § 8-107 (4) (a) (1) (a)* makes it an unlawful discriminatory practice for

> "any person who is the owner, franchisor, franchisee, lessor, lessee, proprietor, manager,

> superintendent, agent or employee of any place or provider of public accommodation . . .
>
> "[b]ecause of any person's actual or perceived . . . disability . . . directly or indirectly . . .
>
> "[t]o refuse, withhold from or deny to such person the full and equal enjoyment, on equal terms and conditions, of any of the accommodations, advantages, services, facilities or privileges of the place or provider of public accommodation."

The gravamen of the complaint, filed in 2017, is that nearly 80% of New York City's subway stations (360 out of 472) are not equipped with any vertical **[***3]** accessibility, other than stairs. Stair only stations cannot be utilized by persons who use wheelchairs, scooters, walkers or those with disabilities related to muscle, joint, heart or lung function. The scarcity of accessible subways makes certain locations and neighborhoods in the city unreachable for persons with these disabilities.

Defendants consist of the Metropolitan Transportation Authority (MTA), and its interim executive director, the New York City Transit Authority and its president (collectively the transit defendants) and the City of New York (CNY). Defendants are appealing the motion court's denial of their *CPLR 3211* pre-answer motion to dismiss the complaint. Defendants argue the complaint should be dismissed because it is barred by the applicable statute of limitations, otherwise barred by preemption and because the dispute is nonjusticiable. CNY seeks dismissal on the additional ground that it is not a proper party because it has no control over the subway system.

Statute of Limitations

[1] An action under the NYCHRL must be brought within three years after the discriminatory practice occurred (*Administrative Code § 8-502 [d]*). Defendants argue that the statute of limitations accrued when the subway stations were originally **[***4]** built at the turn of the last century. Under the NYCHRL, however, it has long been recognized that continuing acts of discrimination within the statutory period will toll the running **[*201]** of the statute of limitations until such time as the discrimination ends (*see Ferraro v New York City Dept. of Educ., 115 AD3d 497, 982 NYS2d 746 [1st Dept 2014]*; *Batchelor v NYNEX Telesector Resources Group, 213 AD2d 189, 623 NYS2d 235 [1st Dept 1995]*; *see also Jeudy v City of New York, 142 AD3d 821, 823, 37 NYS3d 498 [1st Dept 2016]*). We reject defendants' arguments that the discrimination alleged by plaintiffs is not a continuing violation, but is limited to the single act of original construction of the subway system. The lack of access to the subway system, a place of public accommodation, continues every time a person seeks to use the subway system, but is prevented from doing so based upon their physical disability.

While the continuous violation doctrine is also well recognized under federal and **[****3]** state discrimination laws (*see Patterson v County of Oneida, N.Y., 375 F3d 206, 220 [2d Cir 2004]*; *Bermudez v City of New York, 783 F Supp 2d 560 [SD NY 2011]*), its contours are narrower. Under federal anti-discrimination laws, the **[**703]** continuing violation doctrine "is triggered by continual unlawful acts, [and] not by continual ill effects from the original violation" (*Hamer v City of Trinidad, 924 F3d 1093, 1099 [10th Cir 2019]* [internal quotation marks omitted], *cert denied 589 US —, 140 S Ct 644 [2019]*). As this Court recognized in *Williams v New York City Hous. Auth. (61 AD3d 62, 872 NYS2d 27 [1st Dept 2009]*, *lv denied 13 NY3d 702 [2009]*), however, by virtue of the NYCHRL's mandate that it "be construed liberally for the accomplishment **[***5]** of [its] uniquely broad and remedial" purposes (*Administrative Code § 8-130 [a]*), the reach of the continuous violation doctrine under the NYCHRL is broader than under either federal or state law. A broad interpretation is consistent with a "rule that neither penalizes workers who hesitate to bring an action at the first sign of what they suspect could be discriminatory trouble nor rewards covered entities that discriminate by insulating them[selves] from challenges to their unlawful conduct that continues into the limitation period" (*Williams, 61 AD3d at 73*). Thus, defendants' claimed failure to provide an accessible subway system is a continuous wrong for purposes of tolling the statute of limitations under the NYCHRL.[1]

Defendants' attempts to distinguish and plaintiffs' attempts to embrace the reasoning of *Hamer* are misplaced. Although **[*202]** the Circuit Court in *Hamer* held that the statute of limitations did not bar a claim that sidewalks and curb cuts failed to comply with the federal Americans with Disabilities Act and

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[1] In 2019, the state legislature enacted legislation that provides effective immediately that the New York State Human Rights Law shall be "construed liberally for the accomplishment of the remedial purposes thereof, regardless of whether federal civil rights laws, including those laws with provisions worded comparably to the provisions of this article, have been so construed" (*Executive Law § 300*).

Rehabilitation Act because each day that a public provided service remained non-compliant was a new violation, the basis of the court's decision was not the continuous violation doctrine. Rather, the Circuit Court applied the **[***6]** more narrowly circumscribed repeated violations doctrine in connection with the federal anti-discrimination laws. The repeated violations doctrine treats each continuing offense during the limitation period as a new violation. Relief is limited to offenses only occurring within the limitations period. The continuous violation doctrine, as applied under the NYCHRL, is not so narrow. The additional cases relied upon by defendants are largely inapposite, because they do not concern statutory discrimination claims in which the doctrine of a continuous violation has its own jurisprudence (*e.g.* New York Yacht Club v Lehodey, 171 AD3d 487, 98 NYS3d 16 [1st Dept 2019], *lv denied 33 NY3d 914 [2019]* [building code violation for chimney height]; Henry v Bank of Am., 147 AD3d 599, 48 NYS3d 67 [1st Dept 2017] [fraud based claims for automatically enrolling the plaintiff in a credit card plan without his consent]).

Preemption

Defendants argue that this action is preempted by two separate state laws, Transportation Law § 15-b and Public Authorities Law § 1266 (8).

Municipalities generally have broad authority to adopt local laws provided that they are not inconsistent with either the State Constitution or any general state law (*see* DJL Rest. Corp. v City of New York, 96 NY2d 91, 94, 749 NE2d 186, 725 NYS2d 622 [2001]; NY Const, art IX, § 2 [c] [ii]; **[**704]** Municipal Home Rule Law § 10 [1]). It has long been recognized that under home rule, CNY has broad policing power to act in furtherance of the welfare of its citizens and that the State has not preempted local anti-discrimination **[***7]** laws of general application (*see* Matter of Levy v City Commn. on Human Rights, **[****4]** 85 NY2d 740, 651 NE2d 1264, 628 NYS2d 245 [1995]; New York State Club Assn. v City of New York, 69 NY2d 211, 219, 505 NE2d 915, 513 NYS2d 349 [1987], *affd* 487 US 1, 108 S Ct 2225, 101 L Ed 2d 1 [1988]; Patrolman's Benevolent Assn. of the City of N.Y., Inc. v City of New York, 142 AD3d 53 [1st Dept 2016], *appeal dismissed 28 NY3d 978 [2016]*). A local law will be preempted **[*203]** either where it is in direct conflict with a state statute (conflict preemption), or where the state legislature has indicated its intent to occupy the particular field (field preemption) (Garcia v New York City Dept. of Health & Mental Hygiene, 31 NY3d 601, 81 NYS3d 827, 106 NE3d 1187 [2018]; Eric M. Berman, P.C. v City of New York, 25 NY3d 684, 16 NYS3d 25, 37 NE3d 82 [2015]; DJL Rest. at 96). While these two avenues of preemption are interrelated, they present distinct and independent bases to analyze the issues implicated by the issues before us (Consolidated Edison Co. of N.Y. v Town of Red Hook, 60 NY2d 99, 456 NE2d 487, 468 NYS2d 596 [1983]).

Conflict preemption occurs when a local law prohibits what would be permissible under state law, or imposes prerequisites or additional restrictions on rights under state law that inhibit the operation of the State's general laws (*Garcia, 31 NY3d at 617*; Eric M. Berman, P.C., 25 NY3d at 690; Zakrzewska v New School, 14 NY3d 469, 480, 928 NE2d 1035, 902 NYS2d 838 [2010]). The Court of Appeals, however, cautions that reading conflict preemption principles too broadly carries with it the risk of rendering the power of local governments illusory (*Garcia at 617*). The " 'fact that both the [s]tate and local laws seek to regulate the same subject matter does not in and of itself give rise to an express conflict' " (*Garcia at 617*, quoting Jancyn Mfg. Corp. v County of Suffolk, 71 NY2d 91, 97, 518 NE2d 903, 524 NYS2d 8 [1987]). Conflict preemption is generally present only "when the State specifically permits the conduct prohibited at the local level," **[***8]** or there is some other indication that deviation from state law is prohibited (*Garcia at 617-618* [internal quotation marks omitted]). More specifically,

> "a local law regulating the same subject matter is deemed inconsistent with the State's overriding interests because it either (1) prohibits conduct which the State law, although perhaps not expressly speaking to, considers acceptable or at least does not proscribe . . . or (2) imposes additional restrictions on rights granted by State law" (Jancyn Mfg. Corp., 71 NY2d at 97).

With field preemption, the State may expressly articulate its intent to occupy a field. It may also do so by implication (*Garcia at 618*; DJL Rest. at 95). The State's intent to preempt the field may be implied from the nature of the subject matter being regulated as well as the purpose and scope of the state legislative scheme involved, including the need for statewide uniformity in a particular field or issue (*Garcia at 618*; **[**705]** People v Diack, 24 NY3d 674, 679, 3 NYS3d 296, 26 NE3d 1151 [2015]). " 'When the State has created a **[*204]** comprehensive and detailed regulatory scheme with regard to the subject matter that the local law attempts to regulate, the local interest must yield to that of the

State in regulating that field' " (*Garcia at 618*, quoting *Diack at 677*). State statutes do not necessarily preempt local laws, however, where the local laws **[***9]** only have a "tangential" impact on the State's interests. Local laws of general application—which are aimed at legitimate concerns of the local government—will not be preempted, if their enforcement only incidentally infringes on a preempted field (*DJL Rest. at 97*).

[2] We hold that *Transportation Law § 15-b* does not preempt enforcement of the NYCHRL's disability discrimination provisions. *Transportation Law § 15-b* was originally enacted in 1984 and substantially amended in 1994. Insofar as relevant here, the Transportation Law currently provides for 100 specifically designated stations to be made accessible to persons with disabilities by July 2020. This law accounts for the approximate 20% of accessible stations that were in place at the commencement of this action. It also provides for the creation of a New York City accessible transportation disabled committee, which is to assist in the development of the integrated New York City accessible transportation system as outlined in the law. The Transportation Law was originally enacted as part of a compromise of pending litigation brought by advocates for the disabled community challenging the lack of accessibility in the New York City subway system (Budget Rep on Bills, Bill Jacket, L 1984, ch 498 **[***10]** **[****5]** ; *see Eastern Paralyzed Veterans Assn. v Metropolitan Transp. Auth., 117 Misc 2d 343 [Sup Ct, NY County 1982]* [*EPVA*]). In *EPVA*, the accessibility challenges were mounted under *Public Buildings Law § 51*, which at that time required that rehabilitation of public buildings and facilities conform to the construction code applicable to facilities for the physically handicapped.[2] When the action was brought, the defendants were engaged in an effort to modernize certain subway stations. Supreme Court issued a preliminary injunction, restraining the defendants from eliminating elevators from their station modernization plans, because the plaintiffs had demonstrated a likelihood that they would succeed on the **[*205]** merits of their claims, pending a trial on the application of the Public Buildings Law to the scope of the planned work (*EPVA* at 354). Consequently, the compromise reflected in *Transportation Law § 15-b* was not just limited to defendants making commitments for accessible public transportation, rather it also included amendment of *Public Buildings Law § 51* to exempt the subway system, so that defendants' delayed construction plans could proceed. In 1984, the exemption was for eight years. In 1994, it was made a permanent exemption (*Public Buildings Law § 51*; L 1984, ch 498, *§ 3*; L 1994, ch 610, *§ 1*). *Transportation Law § 15-b (7)* expressly provides that insofar as the provisions of the law are inconsistent **[***11]** with provisions of any other general, special or **[**706]** local law, the provisions of the Transportation Law shall control. The law does not, however, prohibit the MTA from making any more than the 100 designated subway stations accessible. Other than *Public Buildings Law § 51*, the transit defendants are not expressly exempt from compliance with any specifically identified law. The discrimination laws are not referenced at all.

Transportation Law § 15-b and the NYCHRL, when compared, reveal no conflict preemption. The NYCHRL does not prohibit what the Transportation Law permits. Rather, the Transportation Law established a baseline number of subways that must be made accessible to certain mobility impaired users. It does not set a maximum number of accessible subway stations. In fact, the transit defendants themselves point out that their "aspiration" is to install elevators in many more stations than the originally designated 100 and make them accessible by 2028.[3] Thus, even if plaintiffs were to prevail in their claim that under the NYCHRL additional subway stations are required to be made accessible, there would be no conflict with *Transportation Law § 15-b*'s requirement that, at baseline, 100 such stations exist by July 2020.

With respect to field preemption, there **[***12]** is no express provision that *Transportation Law § 15-b* preempts any local law relating to issues of disability discrimination. The preemptive language in the statute only concerns local laws to the extent **[*206]** they are inconsistent with the Transportation Law. Such limiting language does not preempt every local law, provided

[2] Although the action originally included discrimination claims under the state anti-discrimination laws, by the time an injunction was issued and a subsequent compromise was reached resulting in the Transportation Law, the discrimination claims had been dismissed with only the Public Buildings Law claims remaining (***Eastern Paralyzed Veterans Assn. v Metropolitan Transp. Auth., 79 AD2d 516 [1st Dept 1980])***.

[3] As explained in the transit defendants' brief, in May 2018, the transit defendants announced their "aspirational" plan to make 50 more stations accessible in a five year period and then 130 more stations accessible in the five year period after that (Fast Forward: The Plan to Modernize New York City Transit, https://www.mta.info/sites/default/files/mtaimgs/fast_forward_the_plan_to_modernize_nyct.pdf [accessed Apr. 6, 2020]).

the local law does not **[****6]** interfere with the objectives of the Transportation Law (***see*** *Tang v New York City Tr. Auth., 55 AD3d 720, 867 NYS2d 453 [2d Dept 2008]*). The primary objectives of *Transportation Law § 15-b* were to provide an accessible public transportation system for the mobility impaired residents of New York City and to allow defendants' then delayed construction plans to go forward (Budget Rep on Bills, Bill Jacket, L 1984, ch 498). These objectives are not inconsistent with the prohibition against discrimination in providing access to places of public accommodation.[4]

Defendants argue that the history and scope of the law evidences the legislature's implicit intent to occupy the field. In this regard we are called upon to evaluate whether the state statute is a detailed and comprehensive regulatory scheme in the relevant area (*DJL Rest. at 95*). Here, it is important to the analysis that the Transportation Law and the NYCHRL address entirely different **[***13]** areas of legislative concern. *Transportation Law § 15-b* provides a specific plan, at a specific point in time, to make the New York City transit system more accessible for mobility impaired users. The Transportation Law addresses **[**707]** accessibility as a function of building law requirements. The NYCHRL, in contrast, is a comprehensive remedial anti-discrimination law of general application. It is not limited to disability discrimination claims relative to the subway system. The particular provisions relied upon by plaintiffs concern all places of public accommodation. The Court of Appeals has recognized that the State has not preempted local laws prohibiting discrimination (*see New York State Club Assn., 69 NY2d at 219*). While the Transportation Law and the NYCHRL touch upon the same area of concern, to wit accessible subway stations, each law approaches it from a different vantage point. There is nothing in the Transportation Law indicating that defendants were to be exempted from any claims of disability discrimination, or that by complying with the requirements of the Transportation Law, they would be immune for all time **[*207]** from claims that the subway system discriminates against a protected class of subway users because there are obstacles **[***14]** impeding their access to subway stations.

In advancing these arguments, defendants contend that *Transportation Law § 15-b* is a highly detailed scheme with respect to the requirements for providing accessible transportation to disabled users. The Transportation Law does not refer to discrimination claims and in fact no discrimination claims were pending before the court at the time the statute was enacted as part of a litigation compromise.[5] The law has a sunset provision in July 2020, and otherwise contains no prohibition against defendants providing more accessible subway stations. *Transportation Law § 15-b* was amended in 1994 to increase the number of accessible stations from 54 to 100. The transit defendants have plans to increase the number of accessible stations beyond that required in the Transportation Law. All of this supports a conclusion that the Transportation Law was never intended to be the final word on accessibility. The fact that the legislature expressly **[****7]** exempted defendants from the requirements of *Public Buildings Law § 51*, which had been the primary statue utilized by disability advocates for mounting their challenges, suggests that had the legislature wanted to exempt the enforcement of other laws respecting facilities used by those with **[***15]** physical disabilities, it could have expressly done so.

Defendants' claim that this action is preempted under the Public Authorities Law is likewise rejected. The Public Authorities Law established the transit defendants and sets forth the scope of their authority to act. No one disputes that the Public Authorities Law authorizes the transit defendants to acquire and operate the subway system, including the authority to construct, reconstruct, improve, maintain and operate it (*Public Authorities Law § 1201 et seq.*; *Matter of Levy v City Commn. on Human Rights, 85 NY2d 740 [1995]*, *supra*). *Public Authorities Law § 1266 (8)* contains an express preemption provision, but it is limited to local law "conflicting with this title or any rule or regulation of the [Transit Authority]." This limited statutory preemption only applies to laws that interfere with the accomplishment of the transit defendants' transportation purposes and not to preempt the application of all local laws (*Tang, 55 AD3d at 720*). Compliance with the NYCHRL anti-discrimination **[*208]** provisions will not

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[4] Defendants' reliance on *New York City Health & Hosps. Corp. v Council of City of N.Y. (303 AD2d 69, 752 NYS2d 665 [1st Dept 2003]*, *appeal withdrawn* ***1 NY3d 539 [2003])***, does not require a different result. In that case this Court applied the same required analysis under the preemption doctrine that we apply here. In reaching a different conclusion, we did so based upon the particular laws at issue. Unlike here, the challenged local law in *New York City Health & Hosps. Corp.* was not a law of general applicability.

[5] *See* n 2, *supra*, citing ***Eastern Paralyzed Veterans Assn. v Metropolitan Transp. Auth., 79 AD2d 516 (1st Dept 1980)***.

interfere with the transit defendants' mandate to maintain **[**708]** and operate the transit system (*Matter of Levy, 85 NY2d at 745*; *Tang at 720-721*; *Simmons v New York City Tr. Auth., 340 Fed Appx 24 [2d Cir 2009]*).

Justiciability

Focusing only on that aspect of plaintiffs' prayer for relief, seeking judicial imposition of a remedial plan to eliminate discrimination, defendants argue that the issues **[***16]** raised in this action are nonjusticiable. Defendants argue that any such remedy would be an intrusion into the decision making reserved for the executive branch of government to allocate resources and make policy decisions regarding the subway system. This argument is rejected.

At its core, justiciability rests on the concept of the separation of powers of the three coequal branches of government. It developed to identify which controversies are appropriate for the exercise of judicial authority, yet it has been described by the Court of Appeals as "perhaps the most significant and least comprehended limitation upon the judicial power" (*Matter of New York State Inspection, Sec. & Law Enforcement Empls., Dist. Council 82, AFSCME, AFL-CIO v Cuomo, 64 NY2d 233, 238, 475 NE2d 90, 485 NYS2d 719 [1984]*). Justiciability encompasses discrete, subsidiary concepts including, inter alia, political questions, ripeness and advisory opinions (*id.*). The judicial branch may only exercise its power in a manner consistent with its "judicial function," upon the proper presentation of matters of a "Judiciary Nature" (*id.*). Oft described as an "untidy" doctrine, we have recognized that determinations of justiciability must be made on a case-by-case basis (*Roberts v Health & Hosps. Corp., 87 AD3d 311, 322-323, 928 NYS2d 236 [1st Dept 2011]*, *lv denied 17 NY3d 717 [2011]*).

[3] By focusing only on one of the remedies that could be implicated by this action, defendants miss **[***17]** the greater import of plaintiffs' complaint. Plaintiffs seek a declaratory judgment that defendants are in violation of the NYCHRL and a permanent injunction preventing them from doing so in the future. The remedial plan they seek is nothing more than having defendants implement a nondiscriminatory plan. Where, as here, plaintiffs are seeking to enforce services and rights afforded to them under the NYCHRL, those claims are justiciable (*see Klostermann v Cuomo, 61 NY2d 525, 463 NE2d 588, 475 NYS2d 247 [1984]*). This complaint is similar to the complaint filed in *Klostermann* wherein the **[*209]** plaintiffs sought to have the court enforce their statutory right to services and housing following their discharge from state psychiatric institutions. The Court, in finding the *Klostermann* plaintiffs had presented a justiciable controversy, recognized that there was nothing inherent in the plaintiffs' attempts to seek a declaration and enforcement of their rights rendering the controversy nonjusticiable (*id.*). Similarly, plaintiffs in this case are seeking a declaration and enforcement of the rights afforded **[****8]** to them under the NYCHRL. While courts must be careful to avoid fashioning orders or judgments that go beyond any mandatory directives of the Constitution, statutes **[***18]** or regulations and which intrude upon the policy-making and discretionary decisions that are reserved to the legislative and executive branches, that limitation does not per se render a dispute nonjusticiable. We have recognized that a court can direct the State to prepare plans and programs to provide suitable treatment, which would also necessarily require the expenditure of funds, **[**709]** but not dictate the specific manner in which such plans and programs operate (*see Campaign for Fiscal Equity, Inc. v State of New York, 29 AD3d 175, 814 NYS2d 1 [1st Dept 2006]*, *mod 8 NY3d 14, 861 NE2d 50, 828 NYS2d 235 [2006]*).

CNY as a Party

[4] CNY raises a separate argument as to why this action should be dismissed as against it. While conceding that it is the owner of the subway system, it argues that it bears no responsibility for the claimed violations and has no authority to remedy them. CNY relies on the fact that it was required to and actually did lease the subway system to its codefendants. The motion court denied CNY's motion, without prejudice to renewal, following discovery. The motion to dismiss was properly denied because CNY waived that argument because it was raised for the first time in its reply brief below (*see Paulling v City Car & Limousine Servs., Inc., 155 AD3d 481, 481, 65 NYS3d 19 [1st Dept 2017]*). In any event, Supreme Court properly denied CNY's motion in light of legal and factual issues that cannot **[***19]** be resolved on the record developed. Open issues include, at a minimum, the amount of control that CNY retains over the subway system's operation. CNY does not deny that it is responsible for a portion of MTA funding and it is unclear whether it has veto power over MTA subway projects, particularly **[*210]** under circumstances when capital costs exceed the amount reserved in the lease.[6]

[6] The record only contains the original 10 year 1953 lease and

Accordingly, the order of the Supreme Court, New York County (Shlomo S. Hagler, J.), entered on or about June 6, 2019, which denied the motion of defendants Metropolitan Transportation Authority, Veronique Hakim, New York City Transit Authority and Darryl C. Irick to dismiss the complaint and denied, without prejudice, the motion of defendant City of New York to dismiss the complaint, should be affirmed, without costs.

Acosta, P.J., Manzanet-Daniels and Kapnick, JJ., concur.

Order, Supreme Court, New York County, entered on or about June 6, 2019, affirmed, without costs.

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a 1995 amendment, without term, which refers to prior amendments, supplements and renewals that are not provided.