

NATIONAL SECURITY PROJECT



June 29, 2015

VIA ECF

Hon. James Orenstein
United States Magistrate Judge
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *Raza v. City of New York*, 13 Civ. 3448 (PKC) (JO)

Dear Judge Orenstein,

On June 19, 2015, counsel for Defendants in this matter wrote to the Court on behalf of both parties, advising the Court that the parties (1) had reached a settlement in principle, and (2) would seek modification of the confidentiality order governing settlement negotiations in order to allow Plaintiffs' counsel to consult with their clients and continue the settlement process. Dkt. No. 102. Plaintiffs now write on behalf of both parties to seek modification of the parties' confidentiality agreement dated August 15, 2014 (Dkt. No. 91), which was approved and ordered by the Court on August 18, 2014.

Specifically, the parties seek to strike paragraph 4 of the Court-ordered confidentiality agreement, and replace it as follows:

4) All information disclosed during the Settlement Process, including but not limited to documents, presentations, conversations or interviews: (i) shall not be admissible to prove liability for or invalidity of a claim; and (ii) shall remain confidential, privileged, inadmissible and shall not be used in any subsequent proceeding, including as a basis for impeachment of any witness, except as set forth in this paragraph. For the purpose of furthering the Settlement Process, Raza Counsel shall be permitted to discuss fully with their clients the specific negotiated terms and proposed language of a settlement in principle referred to in the parties' June 19, 2015 letter to the Court, together with the negotiations that formed the basis of those terms and the settlement in principle. There shall be no restriction on Raza Counsel's ability to discuss with their clients any further settlement terms to be negotiated between the parties. Plaintiffs shall be bound by the confidentiality provisions set forth in this paragraph. Raza Counsel shall not disclose any other information obtained during the Settlement Process including, but not limited to, the

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information contained in the Confidential Materials disclosed or discussed during the Settlement Process.

The parties realize that facts once learned cannot be unlearned. If the Settlement Process ends unsuccessfully and litigation is resumed, all parties retain the right to continue discovery pursuant to Rule 26 *et seq.*, and to seek disclosure of all appropriate information including documents that have been seen except that no party may cite to or invoke information disclosed during the Settlement Process as a basis for seeking Rule 26 disclosures unless the request for information can be justified upon some other ground. In response to any request for disclosure under Rule 26, the parties reserve the right to invoke any objection, privilege or prior court ruling as a basis for refusing to disclose such documents or statements and for asserting the confidentiality of such documents or statements. In the event that the Settlement Process ends unsuccessfully, nothing in this paragraph shall prevent any party from seeking disclosure of documents or information under Rule 26 *et seq.* that were created or that originated before or after the unsuccessful close of the Settlement Process.

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The parties respectfully request that the Court endorse or “so order” the above modification to the parties’ confidentiality agreement so that the settlement process may proceed. We appreciate the Court’s attention to this matter.

Respectfully submitted,



Hina Shamsi
Counsel for Plaintiffs

Cc: The Honorable Pamela K. Chen (via ECF)
Defendants’ counsel (via ECF)