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July 8, 2022

**BY ECF**

Honorable Loretta A. Preska  
United States District Judge  
Daniel Patrick Moynihan  
United States Courthouse  
500 Pearl Street  
New York, New York 10007-1312

Re: Dave Alicea v. The City of New York, et al.,  
16 Civ. 7347 (LAP)

Your Honor:

I am an Assistant Corporation Counsel in the Office of the Honorable Sylvia O. Hinds-Radix, Corporation Counsel of the City of New York, attorney for defendant the City of New York and Correction Officer Dorothy Harrison ("Defendants") in the above-referenced matter. Defendants write to respectfully request the Court hold the deadline to submit the Joint Pretrial Order in abeyance, including the internal deadlines, for reasons stated herein. Plaintiff does not consent to this request.

By way of background, on Wednesday, June 29, 2022, the undersigned was assigned to the above-referenced matter. In the course of familiarizing myself with the case and preparing Defendants' portion of the Joint Pretrial Order, on July 1, 2022, the undersigned requested documents from the Office of the Comptroller for the City of New York. On July 5, 2022, the undersigned received these documents, which included the General Release signed by Plaintiff on February 12, 2014 related to the settlement of an incident that occurred on July 17, 2013. In the General Release, Plaintiff expressly released "the City of New York, and all past and present officers, ... employees, ..., and entities represented and/or indemnified by the City of New York...from any and all claims, causes of action, suits, ...and demands whatsoever, known or unknown, which RELEASOR had, now has or hereafter can, shall, or may have against the RELEASEES for, upon or by reason of any matter, cause or thing that occurred through the date of this Release." (General Release re: NYC Comptroller Claim No. 2013PI019830, annexed hereto as Exhibit "A"). Plaintiff was represented in that matter by the law firm of Ebanks & Sattler, LLP and resolved the matter with the Office of the Comptroller in consideration of \$4,000 and the General Release.

It is Defendants' position that the February 12, 2014 General Release unquestionably bars the instant action, which occurred on August 24, 2013. During discovery, although Plaintiff was

not specifically asked whether he had entered into any previous settlements with the Office of the Comptroller, he did not otherwise disclose this information. There is no question, however, that Plaintiff was aware of the significance of the February 12, 2014 General Release. In fact, in June 2016, approximately two months<sup>1</sup> before he filed the original complaint in this action, Plaintiff sent a letter to the Office of the Comptroller, pursuant to the Freedom of Information Law (“FOIL”), seeking a copy of the General Release he signed in connection with the resolution of his 2013 claim (NYC Comptroller Claim No. 2013PI019830). (Plaintiff’s June 16, 2016 letter to “Mr. Stringer,” annexed hereto as Exhibit “B”).

In an effort to avoid motion practice, Defendants sent the General Release to Plaintiff’s counsel, along with supplemental matter documents on July 8, 2022, and requested that they withdraw this matter. Plaintiff’s counsel has represented that they intend to discuss this issue with their client but have not yet been able to do.

Accordingly, Defendants respectfully request the Court hold the deadline to submit the Joint Pretrial Order in abeyance, including the internal deadlines, pending the resolution of the applicability of the 2014 General Release to this matter. In the event that Plaintiff does not agree to withdraw this action, with prejudice, Defendants will expeditiously submit a proposed briefing schedule for their anticipated motion.

Thank you for your consideration herein.

**SO ORDERED.**

Dated: July 8, 2022  
New York, New York

Respectfully submitted,

  
Mary K. Sherwood  
Assistant Corporation Counsel  
Special Federal Litigation Division

cc: All Counsel of Record (via ECF)



LORETTA A. PRESKA  
Senior United States District Judge

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<sup>1</sup> While Plaintiff’s Complaint was docketed on September 20, 2016, at the Pre-Motion Conference dated February 23, 2017, Plaintiff claimed that he actually filed his Complaint on August 17, 2016. (Dkt. No. 25, at 3:6–9). Thus, Plaintiff sent the FOIL request to the Office of the Comptroller only two months prior to initiating this action.