

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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TRANSPORT WORKERS UNION OF GREATER NEW YORK, AFL-CIO, LOCAL 100, as the Representative of Bus Drivers Employed by the New York City Transit Authority, Manhattan and Bronx Surface Transit Operating System, and MTA Bus Company; and KATHRINE ANGOTTI, JENNINE GREGORY, WILLIAM GONZALEZ, ANGELO CRISPIN, RAYMOND VEGA, and CHRISTOPHER MAGWOOD,

15 CV 2225 (BMC)

Plaintiffs,

-against-

BILL DE BLASIO, as MAYOR OF THE CITY OF NEW YORK; and THE CITY OF NEW YORK,

Defendants.
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**STIPULATED ORDER OF SETTLEMENT, WITHDRAWAL
AND DISCONTINUANCE**

WHEREAS, on March 26, 2014, New York City Council Members Mark S. Weprin, Ydanis A. Rodriguez, and Mark Levine introduced Council Int. No. 238-2014 ("Council Int. No. 238") to amend Title 19, Chapter 1, Subchapter 3 of the New York City Administrative Code ("Administrative Code") by adding a new section 19-190 entitled "Right of Way";

WHEREAS, the bill proposed penalties for motorists who interfere with the right of way of pedestrians or bicyclists;

WHEREAS, on or about April 30, 2014, Council Int. No. 238 was amended and became Council Int. No. 238-A;

WHEREAS, on May 29, 2014, by a vote of 49 to 0, the New York City Council passed Council Int. No. 238-A;

WHEREAS, on June 23, 2014, Mayor Bill de Blasio signed Council Int. No. 238-A into law, whereupon it became Local Law 29 of 2014 (“Local Law 29”);

WHEREAS, Local Law 29 became effective on August 23, 2014;

WHEREAS, Local Law 29 is codified at Section 19-190 of the Administrative Code;

WHEREAS, Section 19-190(a) of the Administrative Code provides, in relevant part, as follows: “[A]ny driver of a motor vehicle who fails to yield to a pedestrian or person riding a bicycle when such pedestrian or person has the right of way shall be guilty of a traffic infraction, which shall be punishable by a fine of not more than fifty dollars or imprisonment for not more than fifteen days or both such fine and imprisonment”;

WHEREAS, Section 19-190(b) of the Administrative Code provides, in relevant part, as follows: “[A]ny driver of a motor vehicle who violates subdivision a of this section and whose motor vehicle causes contact with a pedestrian or person riding a bicycle and thereby causes physical injury, shall be guilty of a misdemeanor, which shall be punishable by a fine of not more than two hundred fifty dollars, or imprisonment for not more than thirty days or both such fine and imprisonment”;

WHEREAS, Section 19-190(c) of the Administrative Code states as follows: “It shall not be a violation of this section if the failure to yield and/or physical injury was not caused by the driver’s failure to exercise due care”;

WHEREAS, plaintiffs commenced this action on or about April 20, 2015, seeking a declaratory judgment that Local Law 29 violates the Fifth and Fourteenth Amendments to the United States Constitution and a permanent injunction preventing defendants from enforcing Local Law 29;

WHEREAS, the parties now desire to settle this matter without discovery or motion practice; and

IT IS HEREBY STIPULATED AND AGREED by and between the undersigned as follows:

1. Plaintiffs withdraw all class action allegations contained in the Complaint, and the caption is amended as set forth above.

2. The remainder of this action is hereby dismissed with prejudice, each party to bear its own costs and attorneys' fees.

3. Plaintiffs agree not to file any other lawsuit alleging the facial invalidity of any section of Local Law 29.

4. Nothing contained in the above paragraph shall be construed to prevent Plaintiffs from filing a lawsuit alleging that the City of New York's enforcement of Local Law 29, as applied to them, violated their constitutional rights.

5. The failure of a driver of a motor vehicle to yield to a pedestrian or bicyclist when such pedestrian or bicyclist has the right of way shall not give rise to strict liability under either Administrative Code Section 19-190(a) or Administrative Code Section 19-190(b) because the "failure to exercise due care" language contained in Section 19-190(c) of the Administrative Code is a required element of both Section 19-190(a) of the Administrative Code and Section 19-190(b) of the Administrative Code.

6. The phrase "due care" shall have the meaning ascribed to it by case law and common usage. "Due care" connotes a standard of reasonableness under the circumstances. "Due care" is that care which is exercised by reasonably prudent drivers.

7. Within forty-five days of the date that this Stipulation is so Ordered, the New York City Police Department shall cause a Finest Message containing, in sum and substance, the information in paragraphs "5" and "6" above, to be distributed to all commands.

8. This agreement is not to be construed as an admission that Local Law 29 is unconstitutional or otherwise invalid or unenforceable for any reason or that the City of New York, Mayor Bill de Blasio, or any departments, officials, employees, representatives and agents of the City, past and present, in their individual or official capacities, violated Plaintiffs' constitutional rights, violated an applicable rule or regulation, or are in any way liable on Plaintiffs' claims or responsible for any alleged injuries.

9. This agreement, and the settlement it represents, shall not be used by any party, and shall not be admissible in any other proceeding, litigation or settlement negotiation except in an action or proceeding to enforce the terms of this agreement.

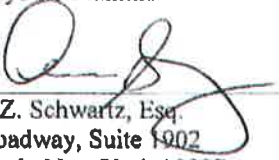
10. This Stipulation contains all the terms and conditions agreed upon by the parties, and no oral agreement entered into at any time nor any written agreement entered into prior to the execution of this Stipulation regarding the subject matter of the instant action shall be deemed to exist, or to bind the parties hereto, or to vary the terms and conditions contained herein.

11. The parties have reviewed and revised this Stipulation, and any rule of construction, by which any ambiguities are to be resolved against the drafting party, shall not be applied in the interpretation of this Stipulation.

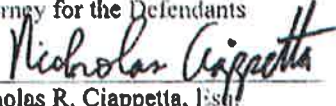
12. This Stipulation may be executed in counterparts, and facsimile execution of this Stipulation by the undersigned shall constitute original signatures for filing with the court.

Dated: New York, New York
August 28, 2015

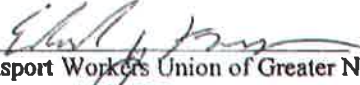
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JOHN SAMUELSEN

By: 
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8/31/15
IT IS SO ORDERED
Digitally signed by Brian M. Cogan
The Honorable Brian M. Cogan