

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ERIE

TOWN OF CHEEKTOWAGA, NEW YORK,

Plaintiff,

-against-

601 NY LLC, S&K HOTELS LLC,  
BHAVANI GROUP, INC. and RAPID  
RELIABLE TESTING NY LLC,

Defendants.

Index No. 810796/2023

**STIPULATION OF  
SETTLEMENT AGREEMENT**

WHEREAS a dispute arose between Plaintiff the Town of Cheektowaga, New York (the "Town"), on the one hand, and Defendants 601 NY LLC, S&K Hotels LLC, and Bhavani Group, Inc. (the "Defendant Hotels"), as well as Rapid Reliable Testing NY LLC (together with the Defendant Hotels, the "Defendants") on the other hand, regarding the Defendant Hotels' accommodation of asylees (the "Program") at three hotels located in Cheektowaga (the "Hotels");

WHEREAS on August 25, 2023, the Town commenced the above-captioned action wherein it asserted three causes of action: 1) a declaratory judgment that the Defendant Hotels require a "special use permit" pursuant to Cheektowaga Town Code § 260-47 based on an alleged new use beyond that of a hotel and an "intensification" of that use; a declaratory judgment that there has been an "intensification" in use of the Defendant Hotels requiring site plan approvals pursuant to Cheektowaga Town Code § 260-47.1(B)(1); and a temporary, preliminary, and permanent injunction;<sup>1</sup>

<sup>1</sup> The original complaint named only the Defendant Hotels as defendants. The Town has since filed an amended complaint naming Rapid Reliable Testing NY LLC as a defendant. The amended complaint pleads causes of action for: 1) a declaratory judgment that a special use permit is required; 2) a declaratory judgment for an unpermitted intensification of use; and 3) a temporary, preliminary, and permanent injunction.

**WHEREAS** the Town, concurrent to filing its complaint, moved by order to show cause for a temporary restraining order and preliminary injunction seeking, inter alia, 1) an order restraining and enjoining the Hotel Defendants from “further intensification” of the Hotels unless and until a special use permit and site plan applications are filed with the Town; 2) restraining and enjoining the Hotel Defendants from using the properties “as a shelter for non-transient guests” unless and until such use is approved by the Town; and 3) restraining and enjoining the Hotel Defendants from using the properties in violation of Cheektowaga’s Town Code and Zoning Code unless and until expressly permitted;

**WHEREAS** on August 25, 2023, the Hon. Emilio Colaiacovo, J.S.C. signed the Town’s application for a temporary restraining order pending the hearing and determination of the motion for a preliminary injunction;

**WHEREAS** the parties have appeared before Judge Colaiacovo several times since the granting of the Town’s application for a temporary restraining order and Judge Colaiacovo has scheduled an evidentiary hearing on the Town’s preliminary injunction motion for October 31, 2023 and November 1, 2023; and

**WHEREAS** the Town and the Defendants desire to settle and resolve their disputes in accordance with the terms of this Stipulation of Settlement Agreement (“Agreement”).

**NOW THEREFORE** it is hereby stipulated and agreed by and between the undersigned counsel for the parties that the above action is settled on the following terms and conditions:

1. Subject to Defendants’ compliance with the terms set forth herein, the temporary restraining order issued in this action by the Hon. Emilio Colaiacovo, J.S.C. on August 25, 2023 is vacated and this Agreement shall be presented to the Court to be “So Ordered.” This Court shall retain jurisdiction over this case.

2. Defendants shall, within three business days after execution of this Agreement, relocate the asylees currently staying at the Best Western Plus Galleria Inn & Suites Hotel on Dingens Street to the Best Western at Buffalo Airport Hotel on Genesee Street. Said relocation of asylees shall be completed by October 16, 2023. Thereafter, Defendants shall not place any asylees at the Best Western Plus Galleria Inn & Suites at 601 Dingens Street.

3. Defendants agree to work in good faith to reduce the number of single men staying at the Best Western at Buffalo Airport Hotel on Genesee Street and the Quality Inn and Suburban Studio also on Genesee Street (together the "Hotels on Genesee Street"). When single men vacate the Hotels, no new single men will be placed in either of the Hotels on Genesee Street.

4. No later than seven (7) days after completing the transition of asylees from the Best Western Plus Galleria Inn & Suites Hotel on Dingens Street to the Hotels on Genesee Street, Defendants agree to furnish the Town with a true and accurate list ("List") that contains the number of asylees occupying the Hotels on Genesee Street. Thereafter, Defendants shall provide an updated List via email to the Town Supervisor, the Town Attorney, and the Town of Cheektowaga Chief of Police, on a monthly basis, on the first day of each month.

5. Defendants have the right to continue to place families at the Hotels on Genesee Street upon asylees leaving the Hotels on Genesee Street, but under no circumstances shall exceed the maximum lawful occupancy for said premises. Newly placed asylees at the Hotels on Genesee Street, if any, shall not consist of single males.

6. Defendants agree that by December 31, 2024, all asylees shall have vacated the Hotels on Genesee Street.

7. Defendants shall not move asylees into any other hotels situated within the Town of Cheektowaga.

8. Subject to the terms of this Agreement, the Town agrees that the asylees who currently are in occupancy of the Hotels on Genesee Street and the asylees who will be transferred to or subsequently placed in the Hotels on Genesee Street shall be entitled to remain therein and in the Town of Cheektowaga until December 31, 2024.

9. Defendants shall make the Hotels available for fire and building inspections in accordance with all applicable municipal and New York State laws and regulations.

10. The action is stayed, and the parties herein may seek future relief from the Court to enforce the terms of this Agreement, or any departures therefrom, which upon full execution and entry by the Court shall have the full force and effect of a Court Order.

11. The parties shall cooperate in good faith to effectuate this Agreement.


12. The undersigned parties hereby consent to the Court's exercise of personal jurisdiction over each of them.

13. This Agreement sets forth the entire agreement and understanding among the undersigned parties, and fully supersedes any and all prior agreements or understandings among the parties pertaining to the subject matter hereof.

Dated: New York, New York  
October 10, 2023

**TOWN OF CHEEKTOWAGA, NEW YORK**


By: \_\_\_\_\_

  
Diane Benczkowski/Town Supervisor

**601 NY LLC**

By: \_\_\_\_\_

Print name/title:

 VIRU PATEL / Managing Member

**S&K HOTELS LLC**

By: \_\_\_\_\_

Print name/title:

8. Subject to the terms of this Agreement, the Town agrees that the asylees who currently are in occupancy of the Hotels on Genesee Street and the asylees who will be transferred to or subsequently placed in the Hotels on Genesee Street shall be entitled to remain therein and in the Town of Cheektowaga until December 31, 2024.

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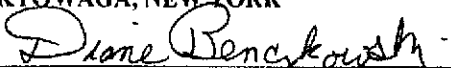
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13. This Agreement sets forth the entire agreement and understanding among the undersigned parties, and fully supersedes any and all prior agreements or understandings among the parties pertaining to the subject matter hereof.

Dated: New York, New York  
October 10, 2023

**TOWN OF CHEEKTOWAGA, NEW YORK**

By: \_\_\_\_\_

  
Diane Benczkowski/Town Supervisor

**601 NY LLC**

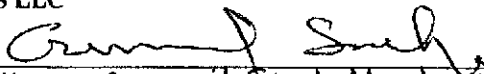
By: \_\_\_\_\_

Print name/title:

**S&K HOTELS LLC**

By: \_\_\_\_\_

Print name/title:

  
Gurmail Singh, Member

**BHAVANI GROUP, INC.**

By: R Pat

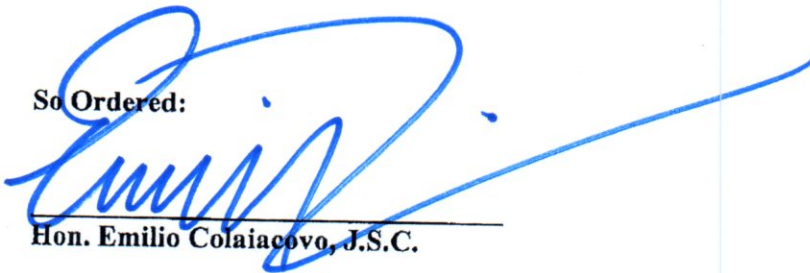
Print name/title: RAJESH KUMAR PATEL / VICE PRESIDENT

**RAPID RELIABLE TESTING NY LLC**

By: \_\_\_\_\_

Print name/title: \_\_\_\_\_

**So Ordered:**



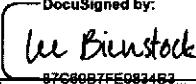
Hon. Emilio Colaiacovo, J.S.C.

OCT 1 1 2023

**BHAVANI GROUP, INC.**

By: \_\_\_\_\_  
Print name/title:

**RAPID RELIABLE TESTING NY LLC**

By:  \_\_\_\_\_  
DocuSigned by:  
87C80B7FE0934B3  
Lee Bienstock CEO  
Print name/title:

**So Ordered:**

\_\_\_\_\_  
**Hon. Emilio Colaiacovo, J.S.C.**