

NO. CV

**NYRIEL SMITH,
BY AND THROUGH HER MOTHER
AND LEGAL GUARDIAN
NICHELLE HOBBY;**

**: SUPERIOR COURT/
HOUSING SESSION**

**: JUDICIAL DISTRICT
: OF NEW HAVEN**

**MUHAWENIMANA SARA,
BY AND THROUGH HER FATHER
AND LEGAL GUARDIAN
RUKARA RUGEREZA;**

vs.

CITY OF NEW HAVEN;

**TONI HARP,
IN HER OFFICIAL CAPACITY AS
MAYOR OF THE CITY OF NEW HAVEN;**

**BYRON KENNEDY,
IN HIS OFFICIAL CAPACITY AS
DIRECTOR OF NEW HAVEN
HEALTH DEPARTMENT; AND**

**PAUL KOWALSKI,
IN HIS OFFICAL CAPACITY AS
DIRECTOR OF ENVIRONMENTAL HEALTH,
NEW HAVEN HEALTH DEPARTMENT**

: MAY 8, 2019

APPLICATION FOR PRELIMINARY INJUNCTION

Named Plaintiffs Nyriel Smith and Muhawenimana Sara hereby apply to the Court to enter a preliminary injunction to enjoin the Defendants City of New Haven, Mayor Toni Harp, Dr. Byron Kennedy, and Paul Kowalski from failing to eliminate the lead paint hazards in their rental apartments at 105 Lombard Street, Second Floor, and 187 Wolcott Street, First

Floor, respectively, and allowing them to suffer continuous significant lead poisoning beyond their already elevated blood lead levels. Named Plaintiffs seek this injunction for the reason that without such preliminary injunction in place, the Defendants' failure to conduct a proper inspection of the source of their lead poisoning and failure to ensure abatement of the lead hazards causes irreparable harm and injury to them by imposing undue risk to them of further irreversible, life-long injury. In support hereof, Named Plaintiff Nyriel Smith and Muhawenimana Sara respectfully represent as follows:

1. Plaintiff Nyriel Smith is a two year old child who has been poisoned by lead paint in the rental apartment in which she lives at 105 Lombard Street, New Haven.
2. Nyriel suffers from blood lead poisoning with an elevated blood lead level of 11 $\mu\text{g/dL}$. She already has significant development delays and intellectual disabilities on account of lead poisoning and is at imminent risk of further harm on account of her continued exposure to lead hazards.
3. The Defendants have been aware of Nyriel's blood poisoning since July 2018 but have failed to notify the family regarding Nyriel's elevated blood lead level, conduct any on site inspection of the unit, and ensure abatement of any lead hazards found as required by city and state law.
4. Plaintiff Muhawenimana Sara ("Sara") is a four year old child who has been poisoned by lead paint in the rental apartment in which she lives at 187 Wolcott Street, First Floor, New Haven.

5. Sara suffers from blood lead poisoning with an elevated blood lead level of 8 $\mu\text{g}/\text{dL}$. She already has significant development delays and intellectual disabilities on account of lead poisoning and is at imminent risk of further harm on account of her continued exposure to lead hazards.

6. The Defendants have been aware of Sara's blood poisoning since February 2018 but have failed to notify the family regarding Sara's elevated blood lead level, conduct any on site inspection of the unit, and ensure abatement of any lead hazards found as required by city and state law.

7. As forth in the Verified Complaint, Named Plaintiffs Nyriel Smith and Muhawenimana Sara are suffering irreparable harm for which there is no adequate remedy at law in that they presently have elevated blood lead levels at which there is well-known, extremely high risk of life-long neurological damage and for which the Defendants are not taking lead poisoning prevention and control measures mandated by city and state law.

8. As set forth in the Verified Complaint, Named Plaintiffs Nyriel Smith and Muhawenimana Sara have a substantial likelihood of success on the merits of their claims for relief, as the acts and omission of the Defendants violate numerous provisions of city and state law.

9. The imminent serious harm to Nyriel Smith and Muhawenimana Sara from continuing to live in apartments filled with lead poisoning hazards is great, and there is no harm to the Defendants from an order compelling compliance with city and state law.

10. For all the foregoing reasons, as well as those articulated in Named Plaintiffs' Verified Complaint, this Court should grant a preliminary injunction as follows:

- a. Enter a Preliminary Injunction as to Named Plaintiff Nyriel Smith requiring Defendants to comply with city law and conduct an immediate lead hazards inspection at 187 Wolcott Street, Second Floor, to determine all sources of lead in the interior, exterior, and soil of the premises; send an abatement order to the owner of the premises if lead hazards are found; and ensure that abatement is completed in a timely fashion, including taking over the abatement and relocating the child if necessary to protect from any lead hazards if abatement is not conducted timely, in order address the irreparable harm presently being caused to her health;
- b. Enter a Preliminary Injunction as to Named Plaintiff Muhawenimana Sara requiring Defendants to comply with city law and conduct an immediate lead hazards inspection at 105 Lombard Street, Second Floor, to determine all sources of lead in the interior, exterior, and soil of the premises; send an abatement order to the owner of the premises if lead hazards are found; and ensure that abatement is completed in a timely fashion, including taking over the abatement and relocating the child if necessary to protect from any lead

hazards if abatement is not conducted timely, in order address the irreparable harm presently being caused to her health; and

- c. Enter a Preliminary Injunction as to the Named Plaintiffs Nyriel Smith and Muhawenimana Sara requiring Defendants to comply with state law and send notices to them, ensuring that such notices provide the required articulation of laws and regulation, which includes notification that all residents of federally subsidized housing have rights to full lead hazards inspections under federal law for all children six years old or younger with EBLs of 5 $\mu\text{g}/\text{dL}$ or higher.

**THE PLAINTIFFS,
NYRIEL SMITH
MUHAWENIMANA SARA**

BY:



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ORDER

The foregoing Application for Preliminary Injunction, having been heard, is hereby GRANTED.

BY THE COURT

Judge

NO. CV

**NYRIEL SMITH,
BY AND THROUGH HER MOTHER
AND LEGAL GUARDIAN
NICHELLE HOBBY;**

**: SUPERIOR COURT/
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IN HIS OFFICAL CAPACITY AS
DIRECTOR OF ENVIRONMENTAL HEALTH,
NEW HAVEN HEALTH DEPARTMENT**

: MAY 8, 2019

CLASS ACTION COMPLAINT

ALLEGATIONS COMMON TO ALL COUNTS

1. Plaintiff Nyriel Smith is a two year old child who has been poisoned by lead paint in the rental apartment in which she lives at 105 Lombard Street, Second Floor, and about which the City of New Haven ["City"] and the Health Department of the City of New

Haven [“Health Department”] have been aware since July 2018 but have failed to ensure proper lead poisoning response and mitigation as required by city and state law.

2. Plaintiff Muhawenimana Sara (“Sara”)¹ is a four year old child who has been poisoned by lead paint in the rental apartment in which she lives at 187 Wolcott Street, First Floor, and about which the City and the Health Department have been aware since February 2018 but have failed to ensure proper lead poisoning response and mitigation as required by city and state law.

3. Pursuant to Practice Book §§ 9-7 and 9-8, Nyriel and Sara bring this action on behalf of a class of all children living in New Haven who are or will in the future be under the age of six and either presently have, or will in the future have, elevated blood lead levels [“EBLs”] in excess of 5 micrograms per deciliter ($\mu\text{g}/\text{dL}$) while at or under the age of six.

4. Defendant City of New Haven is a municipal corporation, empowered and required by state law and city ordinances to ensure the health and safety of its residents.

5. Defendant Toni Harp is the Mayor of the City of New Haven, empowered and required by state law and city ordinances to be its chief executive and administrative officer, with ultimate responsibility to ensure that the City is in compliance with all laws. Mayor Harp is sued in her official capacity.

6. Defendant Byron Kennedy is the Director of the Health Department of the City of New Haven [“Director of Health”], empowered and required by state law and city ordinances to be responsible, on behalf of the City, for lead poisoning prevention and

¹ Pursuant to custom in her native Democratic Republic of the Congo, Muhawenimana Sara does not have a first and last name. She is called “Sara” since she immigrated to the United States and will be referred to as “Sara” herein.

controls, with particular responsibilities for pediatric lead poisoning prevention and controls. Dr. Kennedy is sued in his official capacity.

7. Defendant Paul Kowalski is the Director of the Environmental Health Program of the Health Department of the City of New Haven with responsibilities under state and city law to protect all children at or under the age of six who are found to have an elevated blood lead level of 5 $\mu\text{g}/\text{dL}$ or higher. Mr. Kowalski is sued in his official capacity.

FACTS RELATING TO NAMED PLAINTIFF NYRIEL SMITH

8. Nyriel Smith lives with her mother in an apartment at 105 Lombard Street, Second Floor, in New Haven, Connecticut. The multifamily building was built prior to 1978, a time in which lead paint was legal and widely used in exterior and interior residential house painting.

9. The apartment at 105 Lombard Street has chipping and flaking paint on the exterior common area front porch railings and columns, the exterior front door and door frame, and in window frames, window sills, and door frames throughout the inside of the premises.

10. Nyriel moved into the apartment in March 2018. Her blood lead level was normal at the time.

11. The Health Department was first notified of the imminent serious health risk to Nyriel's health in July 2018 when, as a two year old, she was found to have an elevated blood lead level of 8 $\mu\text{g}/\text{dL}$.

12. Dr. Carl Baum, the Director of the Yale New Haven Children's Hospital Lead Poisoning and Regional Treatment Center ("Yale Lead Clinic"), has diagnosed Nyriel with plumbism, also known as "lead poisoning," given that her EBL is at or above 5 $\mu\text{g}/\text{dL}$.

13. The results of Nyriel's first blood draw, taken in July 2018 by a local medical laboratory, was immediately sent to the Connecticut Department of Public Health ["DPH"] because medical laboratories are required by state law to notify DPH of all children under six with EBLs at or above 5 µg/dL. See Conn. Gen. Stat. § 19a-100.

14. DPH immediately sent Nyriel's lead blood test results to the Health Department, as required by state law. See id.

15. Upon notification by DPH that Nyriel had an EBL at or above 5 µg/dL, Defendants had an obligation under city and state law to take immediate action to respond to Nyriel's blood poisoning and protect her health, beginning with conducting an inspection of her home for lead paint hazards ("lead hazards inspection"), which includes visual inspection, x-ray fluorescence analysis, and dust wipes to identify the source of the lead poisoning and sending written notice to her mother with information including actions her mother could take to mitigate lead hazards and get resources to assist Nyriel with any lead poisoning injuries already sustained.

16. The Health Department made no effort to contact the family when Nyriel first tested positive for blood lead poisoning.

17. Nyriel again tested positive for blood lead poisoning on August 27, 2018, with an EBL of 6 µg/dL.

18. This second test result was sent from the medical laboratory immediately to DPH and then immediately to the Health Department.

19. After this second lead poisoning result, pursuant to its then existing lead inspection rule to do lead inspections for all children six years old or younger with EBLs of 5 µg/dL or higher, the Health Department called the family on September 7, 2018 and

September 18, 2018 to schedule the lead hazards inspection required by city law. The Health Department did not reach the family upon either call and took no further action to reach the family to conduct the lead hazards inspection.

20. Shortly thereafter, the Health Department changed its lead hazards inspection rule, deciding to no longer conduct lead hazards inspections to identify and abate lead hazards for children six years old or younger unless the child has a first reported EBL of 20 $\mu\text{g}/\text{dL}$.

21. Nyriel tested positive for blood lead poisoning three additional times in December 2018 (11 $\mu\text{g}/\text{dL}$), January 2019 (9 $\mu\text{g}/\text{dL}$), and February 2019 (11 $\mu\text{g}/\text{dL}$)

22. On each of these three dates, the medical laboratory sent the test results immediately to DPH which then sent them immediately to the Health Department.

23. Under its new lead hazards inspection rule, the Health Department made no efforts to contact the family to conduct a lead hazards inspection in response to the three new EBLs.

24. On February 8, 2019, seven months after lead poisoning was first reported to the New Haven Health Department, Nyriel's blood lead level had reached 11 $\mu\text{g}/\text{dL}$.

25. On April 11, 2019, counsel for Nyriel contacted counsel for the Health Department to request a lead hazards inspection of the premises.

26. Counsel for the Health Department notified counsel for Nyriel that the Health Department would not schedule an inspection of the property.

27. The Health Department's failure to conduct a lead hazards inspection of Nyriel's home has caused, and will continue to cause, irreparable injury to Nyriel. She has been, and continues to be, poisoned by toxic levels of lead hazards in her home. She suffers

from significant development delays and intellectual disabilities, which emerged with regression and loss of language at the age of two when her blood lead levels first tested at above 5 µg/dL. Defendants have failed to take legally required action necessary to protect and mitigate from continued life-long neurological injury.

28. Defendants' failure to follow their state law requirements to send notice of Nyriel's elevated blood lead level to her mother and provide statutorily mandated information has also caused, and will continue to cause, irreparable injury to Nyriel because the failure means that Nyriel's mother does not have the information and resources to protect and mitigate from continued life-long injury to her child.

FACTS RELATING TO NAMED PLAINTIFF MUHAWENIMANA SARA

29. Muhawenimana Sara ("Sara") lives with her parents and three young siblings in an apartment at 187 Wolcott Street, First Floor, in New Haven, Connecticut. The multifamily building was built prior to 1978, a time in which lead paint was legal and widely used in exterior and interior residential painting.

30. The unit at 187 Wolcott Street has chipping and peeling paint on the exterior of the house, the front door of the house, the common area foyer, and on the doors, door frames, window sills, window frames, and floor boards throughout the interior of the unit, including areas in the bedrooms within reach of the small children in the family.

31. The Health Department was first notified of the imminent serious risk to Sara's health in February 2018 when then three year old Sara had an elevated venous blood lead level of 8 µg/dL.

32. Upon notification by DPH that Sara had an EBL at or above 5 µg/dL, Defendants had an obligation under city and state law to take immediate action to respond to

Sara's blood poisoning and protect her health, beginning with conducting a lead hazards inspection to identify the source of the lead poisoning and sending written notice to her parents with information including actions her parents could take to mitigate lead hazards and get resources to assist Sara with any lead poisoning injuries already sustained.

33. Pursuant to its then existing lead inspection rule to do lead inspections for all children under six with EBLs of 5 $\mu\text{g}/\text{dL}$ or higher, the Health Department sought to conduct a lead hazards inspection at that time of Sara's first elevated blood lead level. A Health Department inspector made one attempt to contact Sara's family to schedule a lead hazards inspection, an unannounced home visit. Because no one was home at the time of his visit, the inspector left a business card with a note and educational materials in English only. Prior to this visit, the inspector was in communication with the Yale Lead Clinic about the child and was aware that the family spoke Swahili.

34. The Health Department inspector closed the file on April 5, 2018 because he had not heard back from the family.

35. In June 2018, Sara tested positive for blood lead poisoning a second time, with an EBL of 10 $\mu\text{g}/\text{dL}$.

36. The Health Department inspector reopened the Health Department file but never reached out to the family by phone, mail, or home visit.

37. On October 10, 2018, Sara tested positive a third time for blood lead poisoning with an EBL of 9 $\mu\text{g}/\text{dL}$.

38. The Health Department never conducted a lead hazards inspection in response to this third confirmed EBL, notwithstanding that a local refugee resettlement agency had agreed to assist to reach and translate for the family.

39. Shortly thereafter, the Health Department changed its lead hazards inspection rule, deciding to no longer conduct lead hazards inspections to identify and abate lead hazards for children under six years of age unless the first reported EBL was 20 µg/dL or higher.

40. On January 9, 2019, the Health Department closed the file regarding Sara's lead poisoning, with a file note stating that it would not conduct an inspection at the premises.

41. Since the Health Department changed its lead inspection rule, no longer taking action to respond to children with initial EBLs below 20 µg/dL, Sara has tested positive for blood lead poisoning a fourth and fifth time, on February 8, 2019 and April 12, 2019. Each time her EBL was 10 µg/dL.

42. On April 16, 2019, counsel for Sara contacted counsel for the Health Department to request a lead hazards inspection of the premises.

43. Counsel for the Health Department notified counsel for Sara that the Health Department would not schedule an inspection of the premises.

44. The Health Department's failure to conduct a lead hazards inspection of Sara's home has caused, and will continue to cause, irreparable injury to Sara. She has been, and continues to be, poisoned by toxic levels of lead hazards in her home. She suffers from significant development delays and intellectual disabilities, which emerged with regression and loss of language at the age of three when her blood lead levels first tested at above 5 µg/dL. Defendants have failed to take legally required action necessary to protect and mitigate from continued life-long injury.

45. Defendants' failure to follow their state law requirements to send notice of Sara's elevated blood lead level to her parents and provide statutorily mandated information has also caused, and will continue to cause, irreparable injury to Sara because the failure means that Sara's parents does not have the information and resources to protect and mitigate from continued life-long injury to her child.

CLASS ALLEGATIONS

46. A class action is superior to other available methods of adjudication of the claims brought by the Named Plaintiffs on behalf of the class because joinder of all class members is impractical. See Connecticut Practice Book § 9.7(1). Nyriel and Sara represent approximately 300 children at or under the age of six with documented blood lead poisoning at or above 5 µg/dL who are entitled to protections under city and state law but for whom the Health Department will now take no action to conduct lead hazards inspections of their homes and order abatement of lead hazards found because their blood lead levels do not equal or exceed 20 µg/dL. The names and addresses of these children are known to Defendants but are not publicly available.

47. There are questions of fact and law common to all members of the class that all class members have suffered due to the Defendants' failure to comply with the requirements of city and state law. See Connecticut Practice Book § 9.7(2).

48. Nyriel's and Sara's claims are typical of the claims of the class. See Connecticut Practice Book § 9.7(3)

49. Named Plaintiffs will fairly and adequately protect the interests of the other class members if designated as class representatives by the Court. See Connecticut Practice Book § 9.7(3). The interests of Named Plaintiffs are coincident with and not antagonistic to

the interests of the class, and Named Plaintiffs have retained competent counsel with extensive relative experience.

50. Defendants have acted, or refused to act, on grounds generally applicable to the class making appropriate final injunctive relief with respect to the class as a whole. See Connecticut Practice Book § 9.7(3).

COUNT ONE: CLASS ACTION CLAIM AGAINST MAYOR HARP, THE CITY OF NEW HAVEN, BYRON KENNEDY, AND PAUL KOWALSKI FOR VIOLATION OF NEW HAVEN CITY ORDINANCE REQUIRING MANDATORY LEAD POISONING PROTECTIONS

1. Paragraphs 1 through 50 are hereby incorporated as Paragraphs 1 through 50 of Count One.

51. The City of New Haven governs under the responsibilities and obligations imposed by city ordinances, adopted by the New Haven Board of Alders, under statutory authority provided by state law regarding safe and sanitary housing, including Conn. Gen. Stat. §§7-148(c)(7)(A) and 7-148(c)(7)(H)(xv).

52. To further its role to maintain safe and healthy housing, the Board of Alders has in such capacity enacted lead poisoning prevention ordinances, enacted in New Haven Code of Ordinances. See New Haven City Ordinances §16-61 et seq.

53. New Haven General Ordinances §§§16-64, 16-65, and 16-66 require that the Director of Health and the Department of Health conduct a full lead hazards inspection of residential units, issue abatement orders to the landlord for any lead hazards founds, and ensure that all lead hazards are abated from the homes for all children with lead poisoning, with lead poisoning defined as the state standard 20 µg/dL or “any other abnormal body burden of lead as defined by the Centers for Disease Control and Prevention.”

54. Since 2012, the Centers for Disease Control and Prevention have defined an elevated blood lead level as a single blood lead test at or above the reference range value of 5 µg/dL, given that blood lead levels in excess of 5 µg/dL are associated with serious adverse, life-long health effects in young children. See <https://www.cdc.gov/nceh/lead/data/definitions.htm>. As such, the city law provides full lead inspection and abatement protections to all children six years old or younger with EBLs at or above 5 µg/dL.

55. New Haven General Ordinances §16-64 mandates that the Director of Public Health “shall issue . . . an order to eliminate the hazard” when “the presence of lead paint upon or in any premises creates a health hazard to children” and “the presence of cracked, chipped, blistered, flaking, loose or peeling paint constitutes a health hazard.”

56. The city ordinance requires that the Department of Health:

- (1) shall issue an order to property owners to eliminate the hazard when the director determines that the presence of lead paint upon any interior or exterior premises creates a health hazard to children (§16-65(a));
- (2) send such order to the owner of the premises as soon as practicable after detection of lead poisoning hazards (§16-66(a)(1));
- (3) notify residents of the premises that a lead poisoning hazard has been detected in the premises and inform residents that all children within the premises should be tested for lead poisoning (§16-66(b));
- (4) file the notice of landlord violation with the city clerk to be placed on the land records within five days of the issuance of the notice (§16-66(a)(6)); and

(5) file with the city clerk, to be placed on the land records, notice that required remedial action has been taken and that the premises are no longer in violation of city law (§16-66(a)(6)).

57. Upon receipt of the Health Department order, the landlord must:

- (1) submit a written lead abatement plan within five working days of notification of inspection results which identifies the location of lead-based paint including soil, describes how all lead-based painted surfaces will be abated, and explains how environment, health, and safety will be protected (§§16-61(e) and 16-65(c));
- (2) begin repairs within seven days from landlord receipt of violation notice (§16-66(a)(3)); and
- (3) conduct repairs that comply with methods set forth in city and state law, including removal from any surface that may be accessible to children, with removal to the base surface or covering with an approved durable material, but never repainting a surface with non-lead paint (§16-65(a)).

58. The New Haven General Ordinances expressly state that the Director of Health has a duty to take over the abatement if a landlord is not compliant with its abatement responsibilities and empowers the City to impose a lien to recoup costs incurred from taking over the abatement from a noncompliant landlord. See §16-66(e) and (g).

59. Upon notice in July 2018 that named Plaintiff Nyriel Smith's blood lead levels exceeded the city ordinance standard of 5 µg/dL, the Health Department was required to take the above-mandated action, starting with a lead hazards inspection and an order to the landlord to abate any lead hazards found.

60. Upon notice in February 2018 that named Plaintiff Muhawenimana Sara's blood levels exceeded the city ordinance standard of 5 µg/dL, the Health Department was required to take the above mandated action, starting with a lead hazards inspection and an order to the landlord to abate any lead hazards found.

61. These obligations continue through the present as both children have had repeated and continued reportings of blood lead levels above 5 µg/dL.

62. As such, the Defendants have violated the rights of Nyriel, Sara and all class members, as set forth in New Haven General Ordinances §§16-61 et seq., to have the Health Department complete a proper lead hazards inspection and undertake all mandated actions to ensure that abatement is complete.

COUNT TWO: CLASS ACTION CLAIM AGAINST MAYOR HARP FOR VIOLATION OF SEPARATION OF POWERS BY INFRINGEMENT ON THE LEGISLATIVE AUTHORITY OF THE BOARD OF ALDERS

1. Paragraphs 1 through 50 are hereby incorporated as Paragraphs 1 through 50 of Count Two.

51. The Connecticut Constitution and its governing statutes set forth that City of New Haven must have both: (1) a legislative body elected by the people to adopt, amend, and repeal ordinances; and (2) an executive officer, who does not even necessarily need to be elected by the people, with powers and duties as prescribed by the City Charter. See Constitution of the State of Connecticut, Article Tenth and Conn. Gen. Stat. § 7-193(a)(1) and (2).

52. The Charter of the City of New Haven ("Charter") establishes the authority of the distinct legislative and executive branches, with the Board of Alders as the sole

legislative body, vested with the powers to make laws to provide for the health of the City.
See New Haven City Charter, Article IV(4)(B)(12).

53. The Mayor is delineated as the chief executive and administrative officer, who has the ultimate authority to ensure that the City is in compliance with city law, but has no authority to legislate and enact new city law. See New Haven City Charter, Article III(1)(A) and (2)(A) and (2)(B).

54. For more than five years, and until recently, the Mayor ensured that the City and the Department of Health complied with the New Haven City Ordinance Article III, § 16-61 et seq., commencing full lead hazards inspections for all children age six or younger with reported EBLs of 5 µg/dL or higher and ordering and enforcing abatement of any lead hazards found.

55. The Mayor abrogated existing city law and unlawfully enacted a new law on or about November 29, 2018, in direct violation of the explicit city ordinance, whereby she either instructed or agreed to allow the Department of Health to no longer conduct full lead hazards inspections for all children age six or younger who are reported to the Health Department as having a blood lead level at or above 5 µg/dL, instead providing such inspections to children with a first reported EBL of 20 µg/dL only.

56. The Named Plaintiffs and members of the class are aggrieved by the actions of the Mayor because such actions have resulted in the loss of their rights to have their homes inspected and any necessary abatement completed to protect them from the harmful effects of such lead hazards.

57. As such, the Mayor has violated her constitutional mandate to not infringe on the legislative authority of the Board of Alders, thus violating the rights of Nyriel, Sara, and all class members.

COUNT THREE: CLASS ACTION CLAIM AGAINST THE CITY OF NEW HAVEN, BYRON KENNEDY AND PAUL KOWALSKI FOR VIOLATION OF SEPARATION OF POWERS BY INFRINGEMENT ON THE LEGISLATIVE AUTHORITY OF THE BOARD OF ALDERS

1. Paragraphs 1 through 50 are hereby incorporated as Paragraphs 1 through 50 of Count Three.

51. The City Charter enables the Board of Alders to establish administrative departments, by ordinance, as necessary to carry out and organize the functions of government. See New Haven City Charter, Article VI(1)(A).

52. The Department of Health is one such properly constituted administrative department.

53. The City Charter establishes that the Department of Health has the authority to perform duties and take such other measures for the prevention of disease and the preservation of public health as provided by the city ordinances only. See Charter Article IV(15)(C)(3).

54. For more than five years, and until recently, the City of New Haven, the Director of Health, and the Director of Environmental Health ensured that the City and the Department of Health complied with the New Haven City Ordinance Article III, § 16-61 et seq., commencing full lead hazards inspections for all children ages six and younger with reported EBLs of 5 µg/dL or higher and ordering and enforcing abatement of any lead hazards found.

55. The City of New Haven, the Director of Health, and the Director of Environmental Health abrogated existing law and unlawfully enacted a new rule, with the intended force of law, on or about November 29, 2018, in direct violation of the explicit city ordinance, whereby the Department of Health no longer conducts full lead hazards inspections for all children under the age of six who are reported to the Health Department as having a blood lead level at the CDC level of concern, instead providing lead hazards inspections to children who meet the state standard of a first reported EBLs of 20 $\mu\text{g}/\text{dL}$ only.

56. The Named Plaintiffs and members of the class are aggrieved by the actions of the City, Director of Health, and Health Department because such actions have resulted in the loss of their rights to have their homes inspected and any necessary abatement completed to protect them from the harmful effects of such lead hazards.

57. As such, the City, Dr. Kennedy, and Mr. Kowalski overstepped their regulatory authority, violating the rights of Nyriel, Sara, and all class members, when they enacted a new rule to no longer conduct lead hazard inspections for all children ages six and younger with EBLs of 5 $\mu\text{g}/\text{dL}$ or higher.

COUNT FOUR: CLASS ACTION CLAIM AGAINST MAYOR HARP, THE CITY OF NEW HAVEN, BYRON KENNEDY, AND PAUL KOWLASKI FOR DEPRIVATION OF NOTICE AND PUBLIC COMMENT AS REQUIRED BY THE CITY CHARTER

1. Paragraphs 1 through 50 are hereby incorporated as Paragraphs 1 through 50 of Count Four.

51. For more than five years, and until recently, the Defendants had a lead hazards inspection rule that complied with the city ordinances, commencing full lead hazards inspections for all children age six and younger with reported EBLs of 5 $\mu\text{g}/\text{dL}$ or higher and

ordering and enforcing abatement of any lead hazards found. See City Ordinance Article III, § 16-61 et seq.

52. To the extent to which the Defendants' decision to conduct inspections for children who have blood lead levels in accordance with the state standard of 20 µg/dL only could be construed as a modification of an existing rule within the regulatory authority of the Department of Health, the Department of Health would be required to submit such rule change to notice and public comment as required by the City Charter.

53. The Charter of the City of New Haven states that the Board of Public Health, on the recommendation of the Director of Public Health, shall have the power to adopt rules but only when such rules or regulations have been vetted through Public Notice on at least four (4) separate occasions. See New Haven City Charter, Article III(3)(I)(3).

54. The Defendants failed to provide any public notice before enacting the change in its rule regarding when it conducts lead inspections.

55. As such, to the extent that the Defendants had any power to change the action standard for lead investigations, this change violated the rights of Nyriel, Sara, and all class members to the mandatory regulatory process as set forth in the Charter of the City of New Haven.

COUNT FIVE: CLASS ACTION CLAIM AGAINST MAYOR HARP, THE CITY OF NEW HAVEN, BYRON KENNEDY, AND PAUL KOWLASKI FOR VIOLATION OF FEDERAL AND STATE CONSTITUTIONAL DUE PROCESS RIGHTS

1. Paragraphs 1 through 50 are hereby incorporated as Paragraphs 1 through 50 of Count Five.

51. The Defendants are governmental entities acting under the color of state law, which includes both state statutes, city ordinance, and municipal agency rule.

52. While acting under the color of state law, Defendants deprived the Named Plaintiffs of their procedural due process rights as set forth in the Fourteenth Amendment of United States Constitution and Article First, Section 8 of the Constitution of the State of Connecticut, actionable through 42 U.S.C. § 1983:

53. The Named Plaintiffs have a property right in lead hazards inspections of the apartments in which they live. They have legitimate claims of entitlement to the benefit of the lead hazards inspection and municipal guarantees of abatement of any lead hazards found as set forth in New Haven City Ordinance § 16-61 et seq., given that they are children under the age of six with reported EBLs of 5 µg/dL or higher.

54. The Defendants deprived Named Plaintiffs of their property rights in a lead hazards inspection when they failed to conduct such lead hazards inspections without providing the Named Plaintiffs with notice of the reason for denying them their right to such inspections and the opportunity for a hearing to challenge such denial.

55. As such, the Defendants have violated the due process rights of Nyriel, Sara, and all class members, with such violation actionable against the Defendants under 42 U.S.C. § 1983.

COUNT SIX: CLASS ACTION CLAIM AGAINST MAYOR HARP, THE CITY OF NEW HAVEN, BYRON KENNEDY, AND PAUL KOWLASKI FOR VIOLATION OF STATE LEAD POISONING PROTECTION LAWS

1. Paragraphs 1 through 50 are hereby incorporated as Paragraphs 1 through 50 of Count Six.

51. Conn. Gen. Stat. § 19a-110(d) requires that upon the initial report of a child with an EBL at or above 5 µg/dL that the Director of Health must give the parent/guardian of the child information describing the dangers of lead poisoning, precautions to reduce the risk

of lead poisoning, information about potential eligibility for services for children from birth-to-three programs, and lead abatement laws and regulations including the rights of federally subsidized tenants to lead inspections for all children with EBLs of 5 µg/dL or higher. See Conn. Gen. Stat. § 19a-110(d); see also HUD Notice PIH 2017-13 (HA); OHHLHC 2017-01, “Guidance on HUD’s Lead Safe Housing Rule Pertaining to Elevated Blood Lead Levels for the Public Housing, Housing Choice Voucher, and Project-Based Voucher Programs” (explaining that the 2017 Lead Safe Housing Rule requires lead inspections and abatement in all federally subsidized housing when a child under six has an EBL of 5 µg/dL or higher).

52. The Defendants did not provide the parents/guardians of Nyriel and Sara nor any class members with the information required by state law.

53. As such, the Defendants have violated the rights of Nyriel, Sara, and all class members to information required by state law to be provided to their parents necessary to lessen existing lead poisoning, protect from further lead poisoning, and address and deal with permanent health effects from lead poisoning.

WHEREFORE, the Named Plaintiffs, for themselves and on behalf of the class, request the following relief from the Court to:

1. Certify a class of all children living in New Haven who are, or will in the future be, under the age of 6 and either presently have, or will in the future have, elevated blood lead levels in excess of 5 µg/dL while under the age of 6.

2. Enter a Preliminary and Permanent Injunction as to Named Plaintiff Nyriel Smith requiring Defendants to comply with city law and conduct an immediate lead hazards inspection at 187 Wolcott Street, Second Floor, to determine all sources of lead in the interior, exterior, and soil of the premises; send an abatement order to the owner of the

premises if lead hazards are found; and ensure that abatement is completed in a timely fashion, including taking over the abatement and relocating the child if necessary to protect from any lead hazards if abatement is not conducted timely, in order address the irreparable harm presently being caused to her health;

3. Enter a Preliminary and Permanent Injunction as to Named Plaintiff Muhemawima Sara requiring Defendants to comply with city law and conduct an immediate lead hazards inspection at 105 Lombard Street, Second Floor, to determine all sources of lead in the interior, exterior, and soil of the premises; send an abatement order to the owner of the premises if lead hazards are found; and ensure that abatement is completed in a timely fashion, including taking over the abatement and relocating the child if necessary to protect from any lead hazards if abatement is not conducted timely, in order address the irreparable harm presently being caused to her health;

4. Enter a Preliminary and Permanent Injunction as to the members of the class requiring Defendants to comply with city law and conduct an immediate inspection at the homes of all class members with EBLs of 5 $\mu\text{g}/\text{dL}$ or higher to determine all sources of lead in the interior, exterior and soil of their apartments; send abatement order to the landlords of any apartments where lead hazards are found; and ensure that abatement is completed in a timely fashion, including taking over the abatement and relocating families if necessary to protect from any lead hazards if abatement is not conducted timely, in order address the irreparable harm presently being caused to the health of the class members;

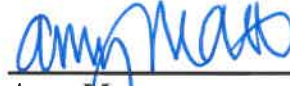
5. Enter a Preliminary and Permanent Injunction as to the Named Plaintiffs and members of the class requiring Defendants to comply with state law and send notices to all class members with EBLs of 5 $\mu\text{g}/\text{dL}$ or higher, ensuring that such notices provide the

required articulation of laws and regulation, which includes notification that all residents of federally subsidized housing, including Low Income Public Housing tenants, Section 8 Housing Choice Voucher tenants, and Section 8 Project Based Housing tenants, have rights to full lead hazards inspections under federal law for all children under six years of age with EBLs of 5 µg/dL or higher and should contact the relevant Public Housing Authority or Section 8 Contract Administrator;

6. Attorney's fees pursuant to 42 U.S.C. § 1988; and
7. Such other and further relief as justice requires.

**THE PLAINTIFFS,
NYRIEL SMITH
MUHAWENIMANA SARA**

BY:



**Amy Marx
Their Attorney
New Haven Legal Assistance
205 Orange Street
New Haven, CT 06510
203-946-4811
amarx@nhlegal.org**

NO. CV

**NYRIEL SMITH,
BY AND THROUGH HER MOTHER
AND LEGAL GUARDIAN
NICHELLE HOBBY;**

**: SUPERIOR COURT/
HOUSING SESSION**

**: JUDICIAL DISTRICT
: OF NEW HAVEN**

**MUHAWENIMANA SARA,
BY AND THROUGH HER FATHER
AND LEGAL GUARDIAN
RUKARA RUGEREZA;**

vs.

CITY OF NEW HAVEN;

**TONI HARP,
IN HER OFFICIAL CAPACITY AS
MAYOR OF THE CITY OF NEW HAVEN;**

**BYRON KENNEDY,
IN HIS OFFICIAL CAPACITY AS
DIRECTOR OF NEW HAVEN
HEALTH DEPARTMENT; AND**

**PAUL KOWALSKI,
IN HIS OFFICAL CAPACITY AS
DIRECTOR OF ENVIRONMENTAL HEALTH,
NEW HAVEN HEALTH DEPARTMENT**

: MAY 7, 2019

VERIFICATION

I, Rugara Rukereza, being duly sworn, do hereby depose and state that:


1. I am above the age of eighteen years and understand the obligation of an oath.
2. That I am father and legal guardian of Muhawenimana Sara.
3. I have been read the facts contained in the foregoing Verified Complaint for

Injunctive Relief and Application for Preliminary Injunction and that these facts are true to the best of my knowledge and belief.



Rukara Rugereza

Subscribed and sworn to this 8 day of May, 2019 at New Haven, Connecticut.



Notary Public

Commissioner of Superior Court

JVNS # 41776

NO. CV

**NYRIEL SMITH,
BY AND THROUGH HER MOTHER
AND LEGAL GUARDIAN
NICHELLE HOBBY;**

**: SUPERIOR COURT/
HOUSING SESSION**

**: JUDICIAL DISTRICT
: OF NEW HAVEN**

**MUHAWENIMANA SARA,
BY AND THROUGH HER FATHER
AND LEGAL GUARDIAN
RUKARA RUGEREZA;**

vs.

CITY OF NEW HAVEN;

**TONI HARP,
IN HER OFFICIAL CAPACITY AS
MAYOR OF THE CITY OF NEW HAVEN;**

**BYRON KENNEDY,
IN HIS OFFICIAL CAPACITY AS
DIRECTOR OF NEW HAVEN
HEALTH DEPARTMENT; AND**

**PAUL KOWALSKI,
IN HIS OFFICAL CAPACITY AS
DIRECTOR OF ENVIRONMENTAL HEALTH,
NEW HAVEN HEALTH DEPARTMENT**

: MAY 7, 2019

VERIFICATION

I, Nichelle Hobby, being duly sworn, do hereby depose and state that:

1. I am above the age of eighteen years and understand the obligation of an oath.
2. That I am mother and legal guardian of Nyriel Smith.
3. I have been read the facts contained in the foregoing Verified Complaint for

Relief and Application for Preliminary Injunction and that these facts are true to the best of my knowledge and belief.



Nichelle Hobby

Subscribed and sworn to this 7 day of May, 2019 at New Haven, Connecticut.



Notary Public

Commissioner of the Superior Court
JWS # 419776

NO. CV

**NYRIEL SMITH,
BY AND THROUGH HER MOTHER
AND LEGAL GUARDIAN
NICHELLE HOBBY;**

**: SUPERIOR COURT/
HOUSING SESSION**

**: JUDICIAL DISTRICT
: OF NEW HAVEN**

**MUHAWENIMANA SARA,
BY AND THROUGH HER FATHER
AND LEGAL GUARDIAN
RUKARA RUGEREZA;**

vs.

CITY OF NEW HAVEN;

**TONI HARP,
IN HER OFFICIAL CAPACITY AS
MAYOR OF THE CITY OF NEW HAVEN;**

**BYRON KENNEDY,
IN HIS OFFICIAL CAPACITY AS
DIRECTOR OF NEW HAVEN
HEALTH DEPARTMENT; AND**

**PAUL KOWALSKI,
IN HIS OFFICAL CAPACITY AS
DIRECTOR OF ENVIRONMENTAL HEALTH,
NEW HAVEN HEALTH DEPARTMENT**

: MAY 8, 2019

ORDER TO SHOW CAUSE

WHEREAS the foregoing Verified Complaint for Injunctive Relief and Application for Preliminary Injunction have been presented to the Court, and

WHEREAS upon application of the Named Plaintiffs Nyriel Smith and Muhawenimana Sara, it appears that an order should be issued directly to the Defendants City of New Haven, Mayor Toni Harp, Dr. Byron Kennedy, and Paul Kowalski to appear before this Court to show cause why a preliminary injunction should not issue,

NOW THEREFORE it is ordered that the Defendants CITY OF NEW HAVEN, TONI HARP, BYRON KENNEDY, AND PAUL KOWALSKI be summoned to appear before the Superior Court Housing Session, 121 Elm Street, Connecticut, on the ____ day of _____, 20____, at _____ o'clock am/pm, then and there to show cause why the preliminary injunction should not issue against them as requested in the foregoing Verified Complaint and Application for Preliminary Injunction. Service of this Order shall be made on or before _____, 2019, with due return made to this Court.

Ordered at _____, Connecticut, this ____ day of _____, 20____.

BY THE COURT

Judge/Assistant Clerk

NO. CV

**NYRIEL SMITH,
BY AND THROUGH HER MOTHER
AND LEGAL GUARDIAN
NICHELLE HOBBY;**

**: SUPERIOR COURT/
HOUSING SESSION**

**: JUDICIAL DISTRICT
: OF NEW HAVEN**

**MUHAWENIMANA SARA,
BY AND THROUGH HER FATHER
AND LEGAL GUARDIAN
RUKARA RUGEREZA;**

vs.

CITY OF NEW HAVEN;

**TONI HARP,
IN HER OFFICIAL CAPACITY AS
MAYOR OF THE CITY OF NEW HAVEN;**

**BYRON KENNEDY,
IN HIS OFFICIAL CAPACITY AS
DIRECTOR OF NEW HAVEN
HEALTH DEPARTMENT; AND**

**PAUL KOWALSKI,
IN HIS OFFICAL CAPACITY AS
DIRECTOR OF ENVIRONMENTAL HEALTH,
NEW HAVEN HEALTH DEPARTMENT**

: MAY 8, 2019

ORDER OF SERVICE

TO ANY PROPER OFFICER: BY AUTHORITY OF THE STATE OF CONNECTICUT, you are hereby commanded to give notice of the foregoing Order to Show Cause to the Defendants CITY OF NEW HAVEN, MAYOR TONI HARP, DR. BYRON KENNEDY, AND PAUL KOWALSKI by serving, in a manner provided by statute for service

of process, a true and attested copy of the foregoing Order to Show Cause, Application for Preliminary Injunction, Verified Complaint, Writ, Summons, and this Order of Service, on or before _____, 2019, and due return make.

Ordered at _____, Connecticut, this ____ day of _____, 20____.

BY THE COURT

NO. CV

**NYRIEL SMITH,
BY AND THROUGH HER MOTHER
AND LEGAL GUARDIAN
NICHELLE HOBBY;**

**: SUPERIOR COURT/
HOUSING SESSION**

**: JUDICIAL DISTRICT
: OF NEW HAVEN**

**MUHAWENIMANA SARA,
BY AND THROUGH HER FATHER
AND LEGAL GUARDIAN
RUKARA RUGEREZA;**

vs.

CITY OF NEW HAVEN;

**TONI HARP,
IN HER OFFICIAL CAPACITY AS
MAYOR OF THE CITY OF NEW HAVEN;**

**BYRON KENNEDY,
IN HIS OFFICIAL CAPACITY AS
DIRECTOR OF NEW HAVEN
HEALTH DEPARTMENT; AND**

**PAUL KOWALSKI,
IN HIS OFFICAL CAPACITY AS
DIRECTOR OF ENVIRONMENTAL HEALTH,
NEW HAVEN HEALTH DEPARTMENT**

: MAY 8, 2019

APPLICATION FOR WAIVER OF BOND

Pursuant to Conn. Gen. Stat. §52-472, the Named Plaintiffs Nyriel Smith and Muhawenimana Sara request that the Court hereby waive the requirement of a bond upon the issuance of a preliminary injunction, and in support state the following:


1. As set forth in the Verified Complaint, the imminent serious harm to Named Plaintiffs Nyriel Smith and Muhawenimana Sara from continuing to live in apartments filled with lead poisoning hazards is great, and there is no harm to the Defendants from an order compelling compliance with state and city law.

2. As set forth in the Verified Complaint, Named Plaintiffs Nyriel Smith and Muhawemina Sara have substantial likelihood of success on the merits of their claims for relief, as the acts and omission of the Defendants violate numerous provisions of city and state law.

3. The Named Plaintiffs are indigent and will be unable to provide any substantial bond.

**THE PLAINTIFFS,
NYRIEL SMITH
MUHAWENIMANA SARA**

BY:



Amy Marx

Their Attorney

New Haven Legal Assistance

205 Orange Street

New Haven, CT 06510

203-946-4811

amarx@nhlegal.org

ORDER

The court hereby waives the requirement of bond upon the issuance of a preliminary injunction in this action, pending a decision of this court on the plaintiff's complaint.

Ordered at New Haven, Connecticut, this ____ day of _____, 2019.

BY THE COURT

NO. CV

**NYRIEL SMITH,
BY AND THROUGH HER MOTHER
AND LEGAL GUARDIAN
NICHELLE HOBBY;**

**: SUPERIOR COURT/
HOUSING SESSION**

**: JUDICIAL DISTRICT
: OF NEW HAVEN**

**MUHAWENIMANA SARA,
BY AND THROUGH HER FATHER
AND LEGAL GUARDIAN
RUKARA RUGEREZA;**

vs.

CITY OF NEW HAVEN;

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IN HER OFFICIAL CAPACITY AS
MAYOR OF THE CITY OF NEW HAVEN;**

**BYRON KENNEDY,
IN HIS OFFICIAL CAPACITY AS
DIRECTOR OF NEW HAVEN
HEALTH DEPARTMENT; AND**

**PAUL KOWALSKI,
IN HIS OFFICAL CAPACITY AS
DIRECTOR OF ENVIRONMENTAL HEALTH,
NEW HAVEN HEALTH DEPARTMENT**

: MAY 8, 2019

WRIT AND SUMMONS

TO ANY PROPER OFFICER: BY AUTHORITY OF THE STATE OF
CONNECTICUT, you are hereby commanded to summon the Defendants in the above-
entitled action to appear before the Superior Court at the time and place specified in the

foregoing Order, then and there to show cause why relief should not be issued against them as requested, by serving in the manner provided by statute for the service of process a true and attested copy of the accompanying Verified Complaint, Application for Preliminary Injunction, and Order to Show Cause on or before _____, 20_____.

Issued at New Haven, Connecticut, this ____ day of _____, 20____.

HEREOF FAIL NOT BUT DUE SERVICE AND RETURN MAKE.

**THE PLAINTIFFS,
NYRIEL SMITH
MUHAWENIMANA SARA**

BY: 

**Amy Marx
Their Attorney
New Haven Legal Assistance
205 Orange Street
New Haven, CT 06510
203-946-4811
amarx@nhlegal.org**