

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK**

AMERICAN APPAREL & FOOTWEAR
ASSOCIATION; HALLOWEEN INDUSTRY
ASSOCIATION; JUVENILE PRODUCTS
MANUFACTURERS ASSOCIATION, INC.;
and TOY INDUSTRY ASSOCIATION, INC.
(individually and d/b/a SAFE TO PLAY
COALITION),

Plaintiffs,

v.

COUNTY OF ALBANY, NEW YORK;
ALBANY COUNTY DEPARTMENT OF
HEALTH; DANIEL P. MCCOY, in his official
capacity as Albany County Executive; and
CHRISTINE COMPTON, in her official
capacity as Acting Commissioner, Albany
County Department of Health,

Defendants.

Civil Action No. 15-cv-461 (TJM/ATB)

JOINT MOTION TO STAY PROCEEDINGS

The parties jointly submit this motion to stay these proceedings to allow Defendants time to amend or promulgate regulations implementing Albany County's Local Law No. 1 for 2015, the subject of this litigation. In consideration of the stay, Defendants agree not to enforce Local Law No. 1 or any regulations promulgated thereunder during the time periods outlined below.

1. On January 7, 2015, Albany County Executive Daniel P. McCoy signed Local Law No. 1 for 2015, "The Toxic Free Toys Act." The law is scheduled to take effect on or about January 12, 2016.

2. On April 16, 2015, Plaintiffs filed a complaint in this Court seeking a declaration that Local Law 1 is preempted by federal law, and an injunction preventing Defendants from enforcing Local Law 1. Plaintiffs served process on Defendants on April 17, 2015.

3. Local Law 1 authorizes the Commissioner of the Albany County Department of Health, a Defendant in this litigation, “to promulgate such rules and regulation as he or she deems necessary to implement this law.” Local Law No. 1 § 6. The County Department of Health is in the process of drafting regulations to implement Local Law 1 and expects to complete them on or about November 1, 2015.

4. The parties jointly request entry of a stay of these proceedings so that Defendants have time to issue the regulations they may deem necessary or appropriate. During the pendency of a stay, Plaintiffs will not file any motion for preliminary or other relief and Defendants will not be required to file an answer to the complaint. The parties additionally request that the Court stay the initial conference scheduled for June 16, 2015, as well as the requirements for the parties to file a case management plan and to exchange initial disclosures. Dkt. No. 7. The parties believe that a stay, as outlined in paragraph 5 below, is in the interests of judicial economy.

5. To maintain the position of the parties, the parties further agree as follows:

- a. After issuing regulations to implement Local Law 1 (on or about November 1, 2015), Defendants will provide Plaintiffs’ counsel with a copy of the regulations via email at the addresses listed in the signature blocks below.
- b. Within 30 days after receiving a copy of the regulations from Defendants, Plaintiffs will inform the Court and Defendants whether Plaintiffs intend to proceed with this lawsuit. At that time, Plaintiffs may file a motion to voluntarily dismiss, or alternatively may elect to proceed with the suit by filing a motion to lift the stay, a motion for a preliminary injunction, or a motion for any other appropriate relief.
- c. Defendants will not enforce Local Law 1, the Regulations, and any subsequent regulations promulgated under Local Law 1, until 6 months

after the later of (1) a decision and order on a motion for a preliminary injunction or declaratory judgment, or such other decision and order of this Court on the federal preemption issues raised in the Complaint or, if appropriate, an amended complaint; or (2) if an appeal is taken from such order, the issuance of final mandate by the U.S. Court of Appeals for the Second Circuit. Defendants' agreement not to enforce Local Law 1 or any regulations promulgated thereunder during this time period precludes enforcement as to any person covered by the requirements of Local Law 1.

- d. If Plaintiffs elect to dismiss this lawsuit following the end of the stay, Defendants agree that it will be without prejudice.
- e. This agreement is without waiver of or prejudice to any of Plaintiffs' claims or grounds for relief. This agreement is likewise without waiver of or prejudice to any of Defendants' defenses.

WHEREFORE, the parties respectfully request that the Court enter an order staying all proceedings in this case pending issuance of regulations by Defendants on or about November 1, 2015. A proposed order has been filed concurrently with this motion.

Dated: May 14, 2015

Respectfully submitted,

ALBANY COUNTY

By: s/ Thomas Marcelle
Thomas Marcelle (102117)
Albany County Attorney
112 State Street
Albany, NY 12207
Telephone: (518) 447-7110
E-Mail: Thomas.Marcelle@albanycounty.com

LOCKER GREENBERG
& BRAININ LLP

By: s/ Frederick Locker
Frederick Locker (*pro hac vice* to be filed)
420 Fifth Avenue
New York, New York 10018
Telephone: (212) 391-5022
Facsimile: (212) 391-2035
Email: fbocker@lockerlaw.com

*Attorney for Plaintiffs Toy Industry
Association, Inc.; Halloween Industry
Association; Juvenile Products Manufacturers
Association, Inc.; and American Apparel &
Footwear Association*

ARNOLD & PORTER LLP

By: s/ Anthony D. Boccanfuso
Anthony D. Boccanfuso
399 Park Avenue
New York, New York 10022-4690
Telephone: (212) 715-1000
E-Mail: Anthony.Boccanfuso@aporter.com

and

Eric A. Rubel (*admitted pro hac vice*)
David J. Weiner (*admitted pro hac vice*)
Elisabeth S. Theodore (*admitted pro hac vice*)
555 Twelfth Street, NW
Washington, DC 20004-1206
Telephone: (202) 942-5000
Facsimile: (202) 942.5999
E-Mail: Eric.Rubel@aporter.com
David.Weiner@aporter.com
Elisabeth.Theodore@aporter.com

*Attorneys for Plaintiff Toy Industry Association,
Inc.*