

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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THE COUNCIL OF THE CITY OF NEW YORK,

Petitioner-Plaintiff,

-against-

MAYOR ERIC ADAMS, in his official capacity as Mayor  
of the City of New York,

**VERIFIED ANSWER TO  
PETITION-COMPLAINT IN  
INTERVENTION**

Respondent-Defendant.

Index No. 450563/2024

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Respondent-Defendant Mayor Eric Adams, in his official capacity as Mayor of the City of New York, by his attorney Hon. Sylvia O. Hinds-Radix, Corporation Counsel of the City of New York, alleges as follows for his verified answer to the Verified Petition-Complaint in Intervention:

1. Paragraph 1 is a conclusion of law to which no response is required, but to the extent a response is required, denies the allegations and refers to the New York Charter for its contents and import.
2. Paragraph 2 is a conclusion of law to which no response is required, but to the extent a response is required, denies the allegations and refers to the New York Charter for its contents and import.
3. Paragraph 3 is a conclusion of law to which no response is required, but to the extent a response is required, denies the allegations.
4. Paragraph 4 is a conclusion of law to which no response is required, but to the extent a response is required, denies the allegations.

5. Paragraph 5 is a statement of Petitioner's claim in this proceeding to which no response is required, but to the extent a response is required, denies the allegations, except admits that the Petition purports to state such a claim and refers thereto for its contents and import.

6. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 6.

7. Denies the allegations of Paragraph 7, except denies knowledge or information sufficient to form a belief as to whether by the year following the end of the State's eviction moratorium, City marshals evicted more than 4,400 households and more 18,000 eviction cases had been filed.

8. Denies the allegations of Paragraph 8, and states that the City's shelters are operating at or near capacity.

9. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 9, except admits that Petitioner-Plaintiff ("the Council") passed a series of four local laws ("the Local Laws") related to the City Fighting Homelessness and Eviction Prevention Supplement program ("CityFHEPS").

10. Denies the allegations of Paragraph 10, except admits that the CityFHEPS program provides social services rent supplements to eligible individuals and families that are at risk of eviction or that are residing in City shelters, and that such rental assistance supplements have been provided on behalf of thousands of eligible households.

11. Denies the allegations of Paragraph 11.

12. Admits the allegations of Paragraph 12.

13. Denies the allegations of Paragraph 13, except admits that the Council voted to override the Mayor's vetoes and the Local Laws purported to take effect on January 9, 2024.

14. Denies the allegations of Paragraph 14, except admits that the Council held public hearings at which witnesses testified in favor of changes to the CityFHEPS program.

15. Denies the allegations of Paragraph 15, except admits that the Mayor has stated he will not implement the Local Laws and that the New York City Department of Social Services ("DSS" or "City DSS") implemented rulemaking regarding work requirements.

16. Denies the allegations of Paragraph 16.

### **PARTIES**

17. Paragraph 17 is a statement of law to which no response is required, but to the extent a response is required, denies the allegations of paragraph 17, except admits that the Council is the legislative body of the City with its principal place of business at City Hall, New York County, New York 10007, and refers to the cited provisions of law for their respective contents and import.

18. Admits the allegations of Paragraph 18.

19. Paragraph 19 is a conclusion of law to which no response is required, but to the extent a response is required, admits that the Petition seeks a judgment pursuant to CPLR § 7806.

20. Paragraph 20 is a conclusion of law to which no response is required, but to the extent a response is required, admits that the Petition asserts claims based on actions that the Mayor has taken in New York County and that the Mayor's principal offices are in New York City.

21. Denies the allegations of Paragraph 21, except admits that on October 29, 2018, City DSS consolidated several preexisting rent supplement programs into the CityFHEPS program .

22. Admits the allegations of Paragraph 22.

23. Denies the allegations of Paragraph 23, and states that the CityFHEPS program provides social services rent supplements to some eligible individuals and families who are at risk of eviction or who are residing in City shelters; CityFHEPS uses a formula to determine how much a household that receives CityFHEPS must contribute to the rent; typically, a household's contribution to the rent is 30% of its income; the household pays its rent contribution directly to the landlord; the City pays the remaining portion of the rent directly to the landlord; and for households with no income other than public assistance, the shelter allowance is the household's rent contribution.

24. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 24.

25. Denies the allegations of Paragraph 25, except admits that the Council held a public hearing on September 15, 2020 at which witnesses testified regarding the CityFHEPS program.

26. Denies the allegations of Paragraph 26, except admits that various witnesses at the Council's public hearing on September 15, 2020 testified in support of raising the maximum rent levels for CityFHEPS and refers to the hearing transcript, submitted by the Council as Exhibit B, for its contents and import.

27. Denies the allegations of Paragraph 27 and refers to the hearing transcript for its contents and import.

28. Denies the allegations of Paragraph 28 and refers to the hearing transcript and/or “report[]” referenced for its contents and import.

29. Denies the allegations of Paragraph 29, except admits that the Council passed Local Law 71 of 2021 on June 27, 2021, and refers to said Local Law for its contents and import.

30. Denies the allegations of Paragraph 30, except admits that the Council passed Local Laws 157 and 170 of 2021 and Local Law 64 of 2023.

31. Denies the allegations of Paragraph 31 and refers to the cited Local Law for its contents and import.

32. Denies the allegations of Paragraph 32 and refers to the cited Local Law for its contents and import.

33. Denies the allegations of Paragraph 33 and refers to the cited Local Law for its contents and import.

34. Denies the allegations of Paragraph 34, except admits that representatives from various New York City agencies testified at hearings for Local Law 64 of 2023, Local Laws 71, 157, and 170 of 2021 and that they did not raise preemption of curtailment concerns at that time, and refers to the cited transcripts for their contents and import.

35. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 35, except admits that in 2022 and 2023, significant numbers of migrants arrived in the City, the State eviction moratorium expired, and the City’s shelters are operating at or near capacity.

36. Denies the allegations of Paragraph 36, except admits that the CityFHEPS program has eligibility requirements and refers to the cited CityFHEPS rules for their contents and import.

37. Denies the allegations of Paragraph 37, and refers to the cited CityFHEPS rules, 68 RCNY. §§ 10-03, 10-04, for their contents and import.

38. Denies the allegations of Paragraph 38 and refers to the cited CityFHEPS rules, 68 RCNY. §§ 10-03. 10-04, for their contents and import.

39. Denies the allegations of Paragraph 39, and refers to the cited CityFHEPS rules, 68 RCNY §§ 10-03. 10-04, for their contents and import.

40. Denies the allegations of Paragraph 40, except admits that the Local Laws purport to amend Section 21-145 of the New York City Administrative Code.

41. Denies the allegations of Paragraph 41 and refers to the cited Local Law for its contents and import.

42. Denies the allegations of Paragraph 42, refers to the cited Local Law for its contents and import, and states that CityFHEPS does not require households to live in shelter for a minimum of 90 days to be preliminarily assessed as eligible for or to receive a CityFHEPS rent supplement. *See generally* 68 RCNY § 10-01 *et seq.*

43. Denies the allegations of Paragraph 43, refers to the cited Local Law for its contents and import, and states that the eviction proceeding requirement for State FHEPS is currently waived by the New York State Office of Temporary and Disability Assistance (“OTDA”) and that “during such time as the eviction proceeding requirement for State FHEPS is waived by [OTDA],” an otherwise eligible household living in the community may qualify for

CityFHEPS if it was the subject of a rent demand letter and “submits to DSS a declaration of financial hardship.” 68 RCNY § 10-03.

44. Denies the allegations of Paragraph 44 and refers to the cited Local Law for its contents and import and states that to qualify for CityFHEPS a household in shelter “must have total gross income that does not exceed 200 percent of the federal poverty level (“FPL”), except that a household that consists of a sole member 18 years of age or older may have a total gross income that exceeds 200 percent of the FPL if the sole member is employed at least 35 hours per week and earning the minimum wage pursuant to NY Labor Law 652 or Part 146 of Title 12 of the New York Codes, Rules and Regulations,” 68 RCNY§ 10-04, and a household in the community “must have total gross income that does not exceed 200 percent of the FPL,” except in limited circumstances. 68 RCNY 10-03.

45. Denies the allegations of Paragraph 45 and refers to the cited Local Law for its contents and import.

46. Denies the allegations of Paragraph 46 and refers to the cited Local Law for its contents and import.

47. Denies the allegations of Paragraph 47 and refers to the cited Local Law for its contents and import.

48. Denies the allegations of Paragraph 48 and refers to the cited Local Law for its contents and import.

49. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 49, except admits that the Council held public hearings on the dates set forth therein.

50. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 50, except admits that the Council held public hearings at which numerous witnesses testified, including officials in the current administration.

51. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 51.

52. Denies the allegations of Paragraph 52 and refers to the cited hearing transcript for its contents and import.

53. Denies the allegations of Paragraph 53.

54. Denies the allegations of Paragraph 54, except admits that the cited Committee Report cites research on federal rental assistance programs and admits that properly designed rental supplement programs can have positive impacts.

55. Denies the allegations of Paragraph 55.

56. Denies the allegations of Paragraph 56, except admits that the cited statements were made, and refers to the hearing transcripts for their contents and import.

57. Denies the allegations of Paragraph 57, except admits that the cited statements were made, and refers to the hearing transcripts for their contents and import.

58. Denies the allegations of Paragraph 58, except admits that the cited statements were made, and refers to the hearing transcripts for their contents and import.

59. Denies the allegations of Paragraph 59, except admits that witnesses testified about the utility allowance, and refers to the hearing transcripts for their contents and import.

60. Denies the allegations of Paragraph 60, except admits that the quoted statements were made, and refers to the hearing transcripts for their contents and import.

61. Denies the allegations of Paragraph 61, except admits that the cited testimony was given, and refers to the hearing transcripts and/or submissions for their contents and import.

62. Denies the allegations of Paragraph 62, except admits that multiple witnesses submitted testimony regarding the purported cost savings of expanding access to rental supplements, and refers to the cited hearing transcripts and/or submissions for their contents and import.

63. Denies the allegations of Paragraph 63 and refers to the hearing transcripts for their contents and import.

64. Denies the allegations of Paragraph 64 and refers to the cited hearing transcripts for their contents and import.

65. Admits the allegations of Paragraph 65.

66. Admits the allegations of Paragraph 66.

67. Denies the allegations of Paragraph 67, and states that the Mayor transmitted his veto and statement as to each of the bills to the Council.

68. Denies the allegations of Paragraph 68 and refers to the cited veto statement for its contents and import.

69. Denies the allegations of Paragraph 69, except admits that the Mayor included the cited statements in his veto statement

70. Admits the allegations of Paragraph 70.

71. Denies the allegations of Paragraph 71, except admits the cited statements were made.

72. Denies the allegations of Paragraph 72, except admits the cited statements were made.

73. Denies the allegations of Paragraph 73, except admits that the Local Laws purport to become effective 180 days after their enactment.

74. Denies the allegations of Paragraph 74, except admits that the Mayor has stated that he does not intend to implement the Local Laws.

75. Denies the allegations of Paragraph 75, except admits that the City adopted amendments to the CityFHEPS rules on or about November 16, 2023 and refers to the Rules of the City of New York for their content and import. *See* 68 RCNY § 10-01 *et seq.*

76. Denies the allegations of Paragraph 76, except admits that the November 22, 2023 letter included the cited statements, and refers to the letter for its contents and import.

77. Denies the allegations of Paragraph 77, except admits that the December 15, 2023 letter included the cited statements, and refers to the letter for its contents and import.

78. Denies the allegations of Paragraph 78, except admits that the December 15, 2023 letter included the cited statements, and refers to the letter for its contents and import.

79. Denies the allegations of Paragraph 79 and refers to the December 15, 2023 letter, the Utility Form, and to the Rules of the City of New York for their content and import. *See* 68 R.CNY § 10-01 *et seq.*

80. Denies the allegations of Paragraph 80, except admits that the January 9, 2024 letter included the cited statements, and refers to the letter for its contents and import.

81. Denies the allegations of Paragraph 81, except admits that the January 9, 2024 letter included the cited statements, and refers to the letter for its contents and import.

82. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 82,

83. Admits the allegations of Paragraph 83.

84. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 84.

85. Denies the allegations of Paragraph 85, except admits that DSS has not implemented the Local Laws.

86. Denies the allegations of Paragraph 86, except admits that the Mayor included in his veto statement of June 23, 2023 a legal objection to the Local Laws and refers to the veto statement for its content and import.

87. Denies the allegations of Paragraph 87, except admits that the December 2023 letter raises concerns that the Local Laws are invalid and, if construed to impose a vast cost upon the City budget outside the budget adoption process, would raise significant concerns regarding the curtailment of the budgetary powers of the Mayor.

88. Denies the allegations of Paragraph 88.

89. Admits the allegations of Paragraph 89.

90. Denies the allegations of Paragraph 90.

91. Denies the allegations of Paragraph 91.

92. In response to Paragraph 92, repeats and realleges the statements made in the preceding paragraphs.

93. Paragraph 93 is a conclusion of law as to which no response is required, but do the extent a response is required, denies the allegations of Paragraph 93.

94. Paragraph 94 is a conclusion of law to which no response is required, but do the extent a response is required, denies the allegations of Paragraph 94, except admits that the Council passed the Local Laws on July 13, 2023 and that the Local Laws purported to become effective on January 9, 2024.

95. Paragraph 95 is a conclusion of law as to which no response is required, but do the extent a response is required, denies the allegations of Paragraph 95.

96. Paragraph 96 is a conclusion of law to which no response is required.

97. Denies the allegations of Paragraph 97.

98. In response to Paragraph 98, repeats and realleges the statements made in the preceding paragraphs.

99. Admits the allegations of Paragraph 99.

100. Paragraph 100 is a conclusion of law to which no response is required, but do the extent a response is required, denies the allegations of Paragraph 100.

101. Paragraph 101 is a conclusion of law to which no response is required, but do the extent a response is required, denies the allegations of Paragraph 101, except admits that the laws do not curtail budgetary powers if correctly interpreted.

102. Denies the allegations of Paragraph 102.

**RESPONDENT'S STATEMENT OF RELEVANT FACTS AND AUTHORITIES**

103. For a full recitation of the statement of relevant facts, the Affidavits of Sara Zuiderveen, Senior Advisor for Housing and Homelessness for the New York City Department of Social Services, dated March 26, 2024 ("Zuiderveen Aff.") and Andrea Reid, Deputy Commissioner for the New York City Department of Social Services, dated March 26,

2024 (“Reid Aff.”), are submitted herewith, along with exhibits, and incorporated as if fully set forth herein. A summary of the affidavits is included below.

### **The New York Social Services Law (SSL)**

104. The New York Constitution requires the State and its subdivisions to provide for the “aid, care and support of the needy.” N.Y. Const., Art. XVII, § 1. The Constitution specifies that the State Legislature shall determine the “manner” and “means” by which the State and its subdivisions provide such aid, care, and support. *Id.*

105. Following that constitutional command, the Legislature enacted the Social Services Law (“SSL”), a far-reaching law whose “comprehensive and detailed provisions” address “matters of State-wide concern.” *County of Niagara v. Shaffer*, 201 A.D.2d 786, 787 (3d Dep’t 1994). The SSL vests broad powers in the State Commissioner of Social Services, who is appointed by the Governor with the advice and consent of the Senate. SSL § 11. The Commissioner’s powers include “determin[ing]” the “policies and principles upon which public assistance, services and care shall be provided” by both the state and “local government units.” SSL § 17(a).

106. The SSL gives similarly broad powers to the State’s social services department (“State DSS”) which, with the State Commissioner at its helm, is empowered to “supervise local social services departments” including by “approv[ing] or disapprov[ing] rules, regulations and procedures made by local social services officials.” SSL § 20(3)(a).

107. State DSS works with local “social services districts” to meet the State’s constitutional and statutory obligations to provide social services to New Yorkers in need. In carrying out the obligations of State DSS, New York’s local social service districts serve as “a

part of” and “the local arm of” the State DSS. *Tormos v. Hammons*, 259 A.D.2d 434, 435 (1st Dep’t 1999).

108. Together, State DSS and the local districts, including the City social services district (as noted above, “DSS” or “City DSS”), constitute a “single State administrative agency.” *Id.* Local social services commissioners act as “agents” of State DSS. *Beaudoin v. Toia*, 45 N.Y.2d 343, 347 (1978); *Thomasel v. Perales*, 78 N.Y.2d 561, 570 (1991). This means that the “authority and responsibility” for administering social services programs is that of the local commissioners of social services, not the localities themselves. *Beaudoin*, 45 N.Y.2d at 346.

### **City DSS’s decades of experience administering services rent supplements**

109. The SSL imposes numerous legal obligations on State DSS to provide for New Yorkers’ basic needs, including shelter. Among other things, State DSS has the responsibility to provide shelter to all New Yorkers, and to provide adequate support to needy families with children so that they can remain in their homes. *See, e.g., Jiggetts v. Grinker*, 75 N.Y.2d 411 (1990) (SSL provides right to adequate shelter allowance for families with children).

110. Under the SSL, public assistance in New York is provided through a system of programs funded by a combination of federal, state, and local funds. Public assistance includes, among other components, monthly amounts for cash assistance and for a shelter allowance. SSL § 131-a(1). The amount of the State shelter allowance, like other components of public assistance, is determined through the Office of Temporary and Disability Assistance (“OTDA”) in State DSS and is set forth in OTDA regulations. 18 NYCRR § 352.3.

111. Operating as the “local arm” of State DSS, *Thomasel v. Perales*, 78 N.Y.2d 561, 570 (1991), City DSS administers all of the social services assistance programs—cash assistance, rent supplements, and many others—available to New York City residents. City

DSS has administered these programs for decades, and it has also created numerous City programs from scratch, pursuant to its delegated authority from State DSS.

112. Specifically with respect to social services rent supplements, the SSL and its regulations delegate authority to the City social services district to establish and administer its own social services rent supplement program, subject to OTDA approval. 18 NYCRR § 352.3(a)(3)(i). That regulation provides that the City social services district may, with OTDA's approval, "provide additional monthly shelter supplements to public assistance applicants and recipients who will reside in private housing, or who currently reside in private housing and are facing eviction." *Id.*

113. OTDA issued an Administrative Directive to advise local social services districts, including the City social services district, of this regulatory change and the option to provide a shelter supplement, and set forth the criteria for a local program. *Zuiderveen Aff.* ¶¶ 11-12 and Ex. A.

114. Pursuant to that delegated authority, in 2004, City DSS submitted to OTDA a proposal for a joint State-City funded local rent supplement to be called the Family Eviction Prevention Supplement Program, which was approved. *Zuiderveen Aff.* ¶ 13. That program is now known as the Family Homelessness and Eviction Prevention Supplement program ("State FHEPS"); it is administered by City DSS and is funded by both State and City funds. SSL §§ 131-bb, 153; *Zuiderveen Aff.* ¶ 13-14.

115. Over the past decade, City DSS has established and administered several other carefully-calibrated social services rent supplement programs. Some of these have been funded by a combination of State and City funds, and others with only City funds. *See, e.g.*, 68

RCNY §§ 7-01 to 7-08 (Living in Communities program); id. §§ 8-01 to 8-16 (Family Eviction Prevention, Special Exit and Prevention, and Family Exit Plan programs). Zuiderveen Aff. ¶ 15

116. In a further exercise of its state-delegated authority, City DSS consolidated several existing City-funded social services rent supplement programs into a single program, called CityFHEPS, in 2018. 68 RCNY §§ 10-01 to 10-15.

117. The CityFHEPS rules, duly promulgated by City DSS, make clear that the statutory authority to create and implement the CityFHEPS program is found in State law, specifically SSL §§ 34, 56, 61, 62, 77, and 131-a (e.g., Zuiderveen Aff. Ex. C (2018 CityFHEPS rules); NYSCEF Doc. No. 28 (Nov. 2023 amendments), at 1).

118. Those statutory provisions set forth, among other things, the powers of the State DSS Commissioner and City DSS's role in administering social services programs on State DSS's behalf. *See* SSL §§ 34, 56, 61, 62, 77, and 131-a.

119. In keeping with the State's supervisory role, City DSS worked closely with State DSS to develop the precise contours of the program, Zuiderveen Aff. at ¶ 16, in conjunction with formally establishing the CityFHEPS program by promulgating rules in accordance with the City Administrative Procedure Act. Changes to CityFHEPS must be submitted to OTDA for approval. Zuiderveen Aff. ¶¶ 15, 26; *see also* SSL §§ 20, 34, 56, 61, 62, 77, and 131-a; 18 NYCRR § 352.3(a)(3)(a).

120. In short, City DSS operates both the CityFHEPs and State FHEPS as an arm of the State, and it does so pursuant to its delegated authority as a social services district.

**The current CityFHEPS program, and the City Council's attempt to repurpose it**

121. CityFHEPS's rules set forth the criteria for program eligibility, set maximum supplement amounts, and prescribe the program's administrative details.

122. The current CityFHEPS eligibility criteria include, among others, household income, shelter history, disability status, age, and military veteran status. E.g., 68 RCNY § 10-04. A household is ineligible for CityFHEPS if its gross income is more than 200% of the federal poverty level, with certain exceptions for adults working full-time, minimum wage jobs. *See* 68 RCNY §§ 10-03(a)(1), 10-04(a)(1).

123. Households are also ineligible if they qualify for another social service rent supplement, including State FHEPS. *See* 68 RCNY §§ 10-03(a)(5), 10-04(a)(5). With certain exceptions, eligibility for New Yorkers living in a shelter is contingent upon a minimum weekly work requirement. 68 RCNY 10-04(a)(8)(A).

124. For New Yorkers who already live in permanent housing (rather than in shelter), the CityFHEPS rules have carefully targeted eligibility criteria geared toward preventing evictions, preserving New York City rent-controlled housing stock, and helping the City's most vulnerable residents such as people with disabilities and the elderly. *Zuiderveen Aff.* ¶¶ 16-19. These rules work in tandem with other public assistance programs. For example, State FHEPS supplements are available to families with children only if those families' incomes fall below the same maximum as the current CityFHEPS rules. *Id.* ¶ 29 & n.4.

125. Under the current CityFHEPS rules, a household that meets initial eligibility requirements will receive a "shopping letter," which is intended to be shown to landlords when "shopping" for a suitable apartment; the letter states that the household is potentially eligible for a CityFHEPS supplement and states the maximum rent allowed when using that supplement. *Zuiderveen Aff.* ¶ 37.

126. Once the household finds an apartment, City DSS makes a final eligibility determination based on information about the applicant and the apartment and, based

on that determination and subject to availability of funding, issues a CityFHEPS supplement in the form of direct monthly payments to the landlord. *Zuiderveen Aff.* ¶ 37.

127. Recognizing that the CityFHEPS program is “limited by the amount of available funding,” the CityFHEPS rules provide that not all eligible people will necessarily receive CityFHEPS rent supplements. 68 RCNY § 10-15(d).

128. On May 25, 2023, the Council approved Intros. No. 229, 878, 893 and 894. It subsequently enacted all of these measures on July 13, 2023 over the Mayor’s veto, as Local Laws 99, 100, 101, and 102.

129. These laws, which have been codified as amendments to Section 21-145 of the New York City Administrative Code (“N.Y.C. Admin. Code”), attempt to force City DSS to adopt different rules that, among other things, would expand CityFHEPS eligibility to include housed New Yorkers who are not in eviction proceedings and whose income exceeds the cap for other housing supplement programs, such as State FHEPS. In particular, the laws seek to force DSS to adopt new CityFHEPS rules that:

- Eliminate DSS’s ability to use shelter stay requirements as a criterion for determining applicants’ need for CityFHEPS supplements, *see* N.Y.C. Admin. Code § 21-145(b)(2);
- Increase the income eligibility cutoff substantially, from 200% of the federal poverty level (which is the cutoff for State FHEPS) to 50% of the Area Median Income, *see id.* § 21-145(a);
- Expand eligibility to households that have received a rent-demand letter, but are not in eviction proceedings, *see id.*;
- Eliminate the work requirement for certain households, creating a divergence between CityFHEPS and State FHEPS when it comes to work requirements, *see id.* § 21-145(b)(2); and
- Modify the formulas by which utility costs are incorporated into the calculation of CityFHEPS recipients’ monthly rent contributions, creating a divergence between CityFHEPS and State FHEPS maximum rent amounts

that will enable landlords to charge more for apartments rented to CityFHEPS recipients than to State FHEPS or Section 8 recipients, *see id.* § 21-145(e).

130. The new laws state that they are to be implemented by DSS via the rulemaking process (Local Law 100, § 4, reprinted at NYSCEF Doc. No. 5). City DSS has declined to undertake rulemaking to implement the four new laws because City DSS, and not the City Council, is empowered to set eligibility criteria for social services housing supplements like CityFHEPS.

### **OBJECTIONS IN POINT OF LAW AND AFFIRMATIVE DEFENSES**

#### **FIRST OBJECTION IN POINT OF LAW AND AFFIRMATIVE DEFENSE**

131. The Local Laws are invalid because they are preempted by the New York State Constitution, statutes and related regulations.

#### **SECOND OBJECTION IN POINT OF LAW AND AFFIRMATIVE DEFENSE**

132. The Local Laws, if interpreted incorrectly, are invalid as a curtailment of mayoral budgetary powers without having been approved by a public referendum, in violation of the New York City Charter.

#### **THIRD OBJECTION IN POINT OF LAW AND AFFIRMATIVE DEFENSE**

133. The Local Laws are invalid as a curtailment of mayoral powers, acting through the New York City Commissioner of Social Services, without having been approved by a public referendum, in violation of the New York City Charter.

#### **FOURTH OBJECTION IN POINT OF LAW AND AFFIRMATIVE DEFENSE**

134. Mandamus relief is unavailable because the Petitioner/Plaintiff is seeking to compel a discretionary act or acts to which it has no legal right.

**FIFTH OBJECTION IN POINT OF LAW AND AFFIRMATIVE DEFENSE**

135. Respondent/Defendant has acted reasonably and rationally, not arbitrarily or capriciously.

**SIXTH OBJECTION IN POINT OF LAW AND AFFIRMATIVE DEFENSE**

136. The Petition/Complaint fails to state a claim for which relief may be granted.

**WHEREFORE**, Respondent/Defendant demands judgment:

- (a) Dismissing the Petition/Complaint in its entirety, together with costs, disbursements, and reasonable attorney's fees;
- (b) And for such other and further relief as this Court deems just, proper, and equitable.

Dated: March 26, 2024  
New York, New York

HON. SYLVIA O. HINDS-RADIX  
*Corporation Counsel of the City of New York*

By: /s/ June R. Buch  
June R. Buch  
Doris F. Bernhardt  
New York City Law Department  
100 Church Street, 20th Floor  
New York, NY 10007  
(212) 356-2690  
(212) 356-2296  
jbuch@law.nyc.gov  
dbernar@law.nyc.gov

VERIFICATION

STATE OF NEW YORK )  
 : SS.:  
COUNTY OF NEW YORK )

DORIS BERNHARDT, being duly sworn, states that she is an Assistant Corporation Counsel in the office of Hon. Sylvia O. Hinds-Radix, Corporation Counsel of the City of New York; that Eric Adams, sued herein in his official capacity as Mayor of the City of New York, is the Respondent in the within proceeding/action; that the statements alleged in the foregoing Verified Answer are true to her knowledge, except as to the matters therein stated upon information and belief, and as to those matters she believes them to be true; and that the basis of her knowledge is the books and records of the City of New York and/or statements made to her by officers or employees thereof. This verification is not made by the Respondent because he is a public officer of the City of New York.

*Doris Bernhardt*

Sworn to before me this  
24th day of March, 2024

*Eli Hilliard Jacobson*  
NOTARY PUBLIC  
ELI HILLIARD JACOBSON  
Notary Public, State of New York  
No. 01JA6320037  
Qualified in New York County  
Commission Expires Feb. 23, 2027