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

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In the Matter of the Application of Index No. 450263/2024

MARIE VINCENT, CAROLINA TEJEDA, MARY CRONNEIT, SUSAN ACKS,

On behalf of themselves and all others similarly situated,

Petitioners,

For a Judgment Pursuant to Article 78 of The Civil Practice Law and Rules,

-against-

MAYOR ERIC ADAMS, in his official capacity as Mayor of the City of New York, and THE CITY OF NEW YORK,

Respondents.

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PETITIONERS' REPLY MEMORANDUM OF LAW

THE LEGAL AID SOCIETY
Twyla Carter, Attorney-in-Chief
Judith Goldiner, Esq., Attorney in Charge,
Civil Law Reform Unit
Edward Josephson, Supervising Attorney
Robert Desir, Staff Attorney
Alex MacDougall, Staff Attorney
49 Thomas Street
5th Floor
New York, NY 10013
Phone: (646) 581-7506
Email: rrdesir@legal-aid.org
Counsel for Petitioners

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PRELIMINARY STATEMENT

Petitioners submit this memorandum in further support of their motion for class certification, a writ of mandamus and other relief. Although Respondents assert that the CityFHEPS Reform Laws conflict with the State Social Services Law (SSL) and are therefore invalid, they point to no specific provisions of the SSL with which the City laws conflict. Instead, Respondents rely entirely upon their sweeping and unsupported claim that the SSL divests the City Council of *all* authority to legislate in the broad area of social services, leaving the City DSS Commissioner answerable solely to State DSS and not in the slightest degree to the legislature that represents the residents of the City who are affected by her actions.

To the contrary, the Council has long legislated in the field of social services, and its role in these matters is clearly found in the relevant statutory and case law. Exercising its powers under the City Charter, the Council acted to combat the grave threat that homelessness and housing insecurity pose to New York City households by overriding the Mayor's veto to pass the CityFHEPS reforms into law. This requires Respondents to take all steps necessary to ensure that the law is effectuated.

As long as Respondents fail to make the CityFHEPS benefits available to the New York City residents as the Council intended, Petitioners, and those similarly situated, remain in jeopardy of eviction and will continue in shelter.

Thus, Petitioners respectfully request that this Court issue an order directing Respondents to take all steps necessary implement the CityFHEPS Reform Laws, and to issue CityFHEPS vouchers to Petitioners and to all applicants eligible for CityFHEPS under the above-mentioned duly enacted laws.

ARGUMENT

POINT I The Reform Laws are a Proper Exercise of the City Council's Broad Powers

As set forth in Petitioners' Memorandum of Law, the Council is authorized under the City Charter to adopt local laws for the good rule and government of the city; for the order, protection and government of persons and property; for the preservation of the public health, comfort, peace and prosperity of the city and its inhabitants; and to effectuate the purposes and provisions of this charter or of the other law relating to the city. New York City Charter §§ 21, 28. Contrary to Respondents' assertion, the Council's power as the branch of government responsible for critical policy decisions is well established, as is the Mayor's duty to implement those policies. *Clark v. Cuomo*, 66 N.Y.2d 185 (1985). In asserting that the Council has no role in the area of social services, Respondents disregard the Council's explicit authority conferred by State law to provide for the "well-being of persons." N.Y. Const. Art. IX, § 2, cl. (c)(i), (c)(ii)(10); Municipal Home Rule Law § 10(1)(ii)(a)(12).

The Social Services Law, moreover, recognizes the legislature's role by qualifying New York City's officers' duty to administer public assistance and care insofar as consistent "with the laws relating to" New York City. NY Social Services Law ("SSL") §56. Contrary to Respondent's contention on page 13 of their Brief, when Section 56 was enacted in 1929, it preserved the role of local legislatures in shaping programs and policies in the area of social services. The language regarding the duty of local DSS districts to obey local laws was continued unchanged after the SSL was amended to assert State control over the local districts, clearly showing that City DSS is subject to oversight *both* by the City Council and by State DSS.

In fact, Council has long passed legislation affecting the provision of social services. In 1999, the Council amended the New York City Charter and Administrative Code to create,

within the Department of Social Services, the Department of Homeless Services charged with, among other duties, providing case management services and beds for people seeking assistance at the Emergency Assistance Unit. In 2002, the Council added §21-130 to the Administrative Code to require the city to provide emergency shelter and/or related services to victims of domestic violence in accordance with the State social services law.

In 2014, the Council added § 21-316 to require the department of homeless services to grant a presumption of eligibility for applicants to the shelter system who are exiting human resources administration domestic violence shelters. In 2017, the Council added § 26-1302 to direct the coordinator of the office of civil justice[1] to establish a program to provide access to legal services for certain individuals in certain housing court proceedings.

Most recently, in 2021, the Council amended the Administrative Code to add § 21-145 which increased maximum rental allowances to match those available under the Section 8 Housing Choice Voucher Program.[2] The Council later added §21-145.1 to credit the time certain youth spent in foster care towards the shelter stay duration requirement needed to be found eligible for rental assistance[3] and §21-145.2 to similarly credit the time a runaway youth or homeless youth spent in runaway and homeless youth services.[4] This is a mere snapshot of the Council's long history of properly exercising authority under the City Charter. This authority does not hinge upon Respondents' agreement with the Council's policy decisions.

[1] The Office of Civil Justice is part of the New York City Department of Social Services/Human Resources Administration.

[2] (L.L. 2021/071, 6/27/2021, eff. 12/24/2021; Am. L.L. 2023/099, 7/13/2023, eff. 1/9/2024; Am. L.L. 2023/100, 7/13/2023, eff. 1/9/2024; Am. L.L. 2023/101, 7/13/2023, eff. 1/9/2024; Am. L.L. 2023/102, 7/13/2023, eff. 1/9/2024)

[3] L.L. 2021/157, 12/24/2021, eff. 4/23/2022; Repealed L.L. 2023/100, 7/13/2023, eff. 1/9/2024)

[4] (L.L. 2021/170, 12/24/2021, eff. 4/23/2022; Repealed L.L. 2023/100, 7/13/2023, eff. 1/9/2024)

POINT II: The CityFHEPS Reform Laws are consistent with State Law

Respondents seek to justify their refusal to comply with duly enacted City laws on the grounds that they "conflict with State law." Although framed in the language of conflict preemption, Respondents' argument is actually based on the radical claim that the NYS Social Services Law does not allow *any* role for local legislation in the administration of *any* social services programs – an argument that is in reality one of field preemption. (*See,* Respondent's Memorandum of Law, NYSCEF Doc. No. 56 at 10). As set forth below, this argument is not supported by State law or binding precedent.

A. The Social Services Law does not demonstrate that the Legislature intended to preempt local laws concerning rental voucher programs.

The City Council has been delegated broad powers to enact local legislation consistent with state law (*see* N.Y. Const., art. IX, § 2; Municipal Home Rule Law § 10). The state preemption doctrine limits law-making powers conferred on local governments by preempting legislation that is inconsistent with state law expressly or impliedly. Express preemption derives from a specific statement in a statute preempting local laws on the same subject matter, whereas a local law will be impliedly preempted "where there is a direct conflict with a state statute (conflict preemption) or where the legislature has indicated its intent to occupy the particular field (field preemption). *Eric M. Berman, P.C. v. City of New York*, 25 N.Y.3d 684 (2015); *see also DJL Rest. Corp. v. City of New York*, 96 N.Y.2d 91 (2001); *Albany Area Bldrs. Assn. v. Town of Guilderland*, 74 N.Y.2d 372, 377 (1989).

Importantly here, "the mere fact that both the State and local governments seek to regulate the same subject matter does not, in and of itself, render the local legislation invalid on preemption grounds." *Ba Mar v. County of Rockland*, 164 A.D.2d 605 (2d Dep't 1991); *Jancyn*

Mfg. Corp. v. County of Suffolk, 71 N.Y.2d 91 (1987).

Conflict preemption prohibits local governments from adopting laws "inconsistent with" state law and invalidates local laws that are in "a head-on collision" with state law, such as when "[a] local law prohibits what a State Law explicitly allows, or when a State Law prohibits what a local law explicitly allows." *Matter of Landsdown Ent. Corp. v. New York City Dep't of Consumer Affairs*, 74 N.Y.2d 761, 764 (1989); *People v. Jesus*, 54 N.Y.2d 465 (1981).

Despite invoking conflict preemption, Respondents do not make a single argument regarding the content of the CityFHEPS reform laws. Respondents fail to identify a conflict or "head-on collision" with the Social Services Law; they do not point to a state law that disallows, prohibits or conflicts with the Reform Laws, because no such law exists. Respondents' sole argument in support of preemption is their unsupported claim that all local administrative authority is reserved to local social services commissioners who act solely as agents of the State to the exclusion of any oversight or control by local legislatures. Respondents rely on *Beaudoin v. Toia*, 45 N.Y.2d 343 (1978) to posit that, as the local arm of State DSS, City DSS cannot be directed to act by the City Council. This is misplaced because statements made in *Beaudoin* regarding "local commissioners act[ing] on behalf of and as agents for the State," were made solely in the context of holding that the county commissioner of social services lacked standing to file a lawsuit against State DSS challenging the State commissioner's decision after fair hearing. *Beaudoin* did not address whether local DSS districts may be subject to local legislation *in addition to* the directives of State DSS, where the local laws do not conflict with any specific provisions of the SSL.[5] Logically, that a county commissioner may be an "agent" of OTDA does not imply that local

[5] The other cases relied on by Respondents are even further off point. *Thomasel v. Perales*, 78 N.Y.2d 561 (1991) and Tormos v. Hammons, 259 A.D.2d 434, 687 N.Y.S.2d 336 (1st Dep't 1999) both concerned the respective liabilities of State and local DSS to pay a claimant's attorney fees. Neither concerned, in the slightest, whether local DSS districts were subject to local legislation.

governments can't legislate in the area of social services.

Moreover, none of the SSL sections Respondents cite support the conclusion that the Reform Laws are inconsistent with the SSL or that the City Council is excluded from social services policymaking. The provisions Respondents cite simply delegate authority to State DSS and its Commissioner to develop and administer social services programs. *See,* Social Services Law §17, (authorizing commissioner to "determine the policies and principles upon which public assistance, services and care shall be provided within the state"); *id*. §20(2), (authorizing State DSS to "administer all the forms of public welfare work for which the state is responsible" and "supervise all social services work, as the same may be administered by any local unit of government"); *id.* §34(3)(f), (establish regulations for administering public assistance and care within the state by the state and local governmental units;) and *id.* §61, (designating the City of New York as a city social services district). This delegation of authority does not preclude local government from engaging in policymaking. The delegation of authority to an agency is not evidence of the Legislature's "desire that its regulations should pre-empt the possibility of varying local regulations." *New York State Club Ass'n, Inc. v. City of New York*, 69 N.Y.2d 211 (1987)(citing *Consolidated Edison Co. v Town of Red Hook*, 60 N.Y.2d 99, 105 (1983).

Respondents' argument that the Social Services Law preempts all local regulation flies in the face of the clear holding of the New York Court of Appeals in *Hernandez v. Barrios-Paoli*, 93 N.Y.2d 781 (1999), which held that City DSS must obey local laws regarding the administration of social services. In *Hernandez,* the local law at issue did not "merely command DSS to follow state law" as Respondent misleadingly contends, it eliminated City DSS' eligibility verification review (EVR) requirement for clients with HIV/AIDS because it conflicted with a law enacted by the City Council. The new local law provided that all eligibility

reviews must be conducted by the City's Division of AIDS Services and Income Support (DASIS) (now HASA), replacing DSS's EVR process. City DSS was sued by a DASIS client for violating the law by continuing to require EVR. In response, City DSS did indeed raise preemption, arguing that "the City Council could not, by Local Law, abrogate State regulations mandating investigations of clients' eligibility." (*See* Intervenor-Petitioner Motion to Intervene, NYSCEF Doc. No. 37; Exhibit U, *Hernandez* Respondents' Brief at 19).

The Court rejected City DSS' argument and concluded that, even though the SSL permitted EVR, the City had to obey the local law prohibiting it. The Court ordered the Mayor and City DSS to follow City law, which the Court determined was not preempted. The Court concluded that the sections of the SSL (§§ 132, 134) that the Mayor claimed conflicted with the City law "merely provide a skeletal framework within which the Commissioner of Social Services must act," and the local law was "effectuating the intent of the State." Not only did the Court plainly recognize the City Council's legislative authority, but throughout the case, City DSS itself repeatedly recognized the City Council as a player in the "administration of its public benefits programs."[6]

As with the local law at issue in *Hernandez*, the CityFHEPS Reform Laws comport with the SSL and are consistent with City DSS' obligations under the skeletal framework provided by the SSL for the delivery of rental assistance programs to New Yorkers in need. Indeed, unlike in *Hernandez,* Respondents have not even pointed to specific sections of the SSL that allegedly conflict with the Council's CityFHEPS expansion.

[6] Exhibit U (NYSCEF Doc. No. 37) of Plaintiff-Intervenor's Motion to Intervene , *Hernandez* Respondents' Brief, pgs. 23 & 26-27, "It is the City...that must answer to the public for the administration of its public assistance programs"; "The City Council and Mayor must answer not only to those eligible for public assistance, but also to all other constituencies, and in answering to the latter they must do their best to ensure that monies allocated to the needy are spent on the truly needy and not misdirected because of fraud or error."

B. <u>Case law does not establish that the State has clearly evinced a desire to preempt the entire field of rental voucher programs.</u>

Several cases Respondents cite directly cut against their argument that the State intended State and social services commissioners to exclusively set all social services policy. *Matter of Adkins v. Board of Appeals*, 199 A.D.2d 261 (2d Dep't 1993), *DeStefano v. Emergency Housing Group*, 281 A.D.2d 449 (2d Dep't 2001) and *City of N.Y. v. Town of Blooming Grove Zoning Bd. of Appeals,* 305 A.D.2d 673 (2d Dep't 2003) all dealt with detailed provisions of law governing adult care facilities. SSL § 460 and NYCRR tit. 18, §§ 485-494 (2024). These cases recognize that, far from precluding the entire, vast arena of social services from local legislation, the State has evinced intent to occupy very specific areas. The local restrictions at issue in *Adkins*, *Blooming Grove* and *DeStefano* were all invalidated because the "regulation of adult-care facilities has been preempted by the State." *See, DeStefano* at 451 ("Since the Camp, as a shelter for homeless adults, *is comprehensively regulated by the state*, local zoning authorities are precluded from using zoning ordinances or permit requirements to control the details of shelter operations." [emphasis added]). Notably, in all of these cases, unlike in the present matter, localities sought to bar the operation of facilities specifically permitted by State law. There are no state laws or regulations equivalent or comparable to those governing adult care facilities that relate to rental subsidies. To the contrary, NYS SSL's implementing regulations empower "social services districts," of which the City of New York is one, to "provide additional monthly shelter supplements to public assistance applicants and recipients." 18 NYCRR § 352.3(a)(3). State DSS therefore makes provisions for localities, subject to State approval, to craft housing subsidies that suit their particular needs, and nothing in the SSL or its implementing regulations suggests that local legislatures are precluded from exercising their constitutional powers to shape such subsidy programs.

Respondents are left with two nonbinding cases they contend demonstrate that the Social Services Law bars local legislative policymaking. Both cases were decided by Justice Faviola Soto, and both involved local laws that directly conflicted with specific provisions of the Social Services Law. In *Mayor of N.Y. v. Council of N.Y.*, Index No. 401512/03, (Sup. Ct, N.Y. Cnty. 2004), Justice Soto invalidated Local Law 23, which sought to expand education and training opportunities for public assistance recipients. Justice Soto identified specific provisions of the local law that directly conflicted with state law: "Local Law 23 deviates from the State social services laws in several respects. The court here notes only one of the most glaring differences: State law limits post-secondary education to a maximum of two years (SSL 336-a [1]), while Local Law 23 provides that recipients should be allowed to pursue four-year programs (Admin. Code §21-703[i])." Thus, Justice Soto's further statement that the State had preempted the field of social services was pure dictum. Similarly, in *Killett-Williams v. Bloomberg*, No. 115516/01 (Sup. Ct. N.Y. Cnty. 2003), Justice Soto invalidated a law establishing a job creation program for public assistance recipients. The Court in *Killett-Williams* held specifically that the city law conflicted with Title 9-B of the SSL which set forth "a detailed scheme to pervasively regulate subsidized employment programs." To the extent that dicta in these cases suggests that the City Council is utterly prohibited from legislating in the entire field of social services, Justice Soto's opinions are squarely in conflict with the Court of Appeals' holding in *Hernandez* and must be disregarded.

Respondents therefore have failed to demonstrate that the State has clearly evinced a desire to preempt the entire field of rental subsidies thereby precluding any further local regulation. They also fail to demonstrate that the Reform Laws are inconsistent with any specific provisions of State law. The CityFHEPS Reform Laws are a valid expression of local legislative

authority and are not preempted expressly or impliedly, and this court should direct Respondents to take all steps necessary to put them into effect.

POINT III: Petitioners Are Entitled to Mandamus Relief

The Council's passage of the CityFHEPS reforms triggered Respondents' obligation to implement these laws. *Matter of New York State Health Facilities Assn. v. Axelrod*, 77 N.Y.2d 340, 349 (1991). Unless the CityFHEPS reforms conflict with State or Federal requirements, Respondents must implement eligibility criteria lawfully enacted by the City Council and seek state approval of CityFHEPS reform laws. *Hernandez* 93 N.Y.2d 781.

A. Respondents have a nondiscretionary duty to implement the CityFHEPS reforms.

Respondents incorrectly assert that mandamus is an inappropriate remedy because there may be discretion in the manner of implementation and that implementation of the CityFHEPS in that the reforms would require rule making subject to New York State DSS's Office of Temporary and Disability Assistance ("OTDA") approval. However, "'[w]hile a mandamus is an appropriate remedy to enforce the performance of a ministerial duty, it is well settled that it will not be awarded to compel an act in respect to which the officer may exercise judgment or discretion.'" *See Klostermann v. Cuomo*, 61 N.Y.2d 525, 539 (1984). Petitioners seek mandamus as the appropriate vehicle for compelling Respondents to perform their non-discretionary legal duty to implement the CityFHEPS reforms.

B. Petitioners need not exhaust administrative remedies.

Petitioners are not required to exhaust administrative remedies before seeking relief from this Court since this would be futile. While, generally, one who objects to an administrative

agency's determination, can only seek redress in a Court of law after exhausting available administrative remedies, this requirement can be bypassed where resort would be futile. *Watergate II Apts. v. Buffalo Sewer Auth*., 46 N.Y.2d 52, 57 (1978). Petitioners bring suit because Respondents have foreclosed any path to administrative relief from their unlawful refusal by indicating they would not issue CityFHEPS vouchers to households deemed eligible under the CityFHEPS reforms. (*See* Zuiderveen Affirmation, Respondent, NYSCEF Doc. No. 58 at 14-15; Commissioner Park Letter to Deputy Speaker Ayala, Petitioner Ex. S, NYSCEF Doc. No. 30). Respondents incorrectly assert that Petitioners seek a court order to move themselves to the front of the line and bypass the administrative application process for obtaining a voucher. However, Respondents have clearly indicated there is no process whereby Petitioners and those similarly situated can apply for CityFHEPS rental assistance. Anyone seeking benefits under the CityFHEPS reforms would only be denied for the same reasons. *See Friedman v. Rice*, 30 N.Y.3d 461 (2017). Petitioners' only resort is to seek relief from this Court.

C. <u>The CityFHEPS Reforms Do Not Require a Referendum.</u>

The Council's lawful passage of the CityFHEPS reform laws does not curtail any powers accorded to Respondents so as to require a referendum. Respondents baldly and incorrectly assert that laws such as the CityFHEPS reform laws that modify an existing program or require appropriations, limit its executive authority. Only a local law that abolishes, transfers or curtails any power of an elective officer must be passed by a voters' referendum. *Mayor of City of New York v. Council of City of New York*, 9 N.Y.3d 23,33 (2007). It must "impair a power conferred on the officer as part of the framework of local government." *Id*. at 33. It also does not dispense with Respondents' duty to implement laws the Council duly passes. *Subcontractors Trade Ass'n*

v. Koch, 62 N.Y.2d 422, 427(1984). In *Mayor v. Council*, the court recognized that legislative policy making can visit limitations upon the mayor's freedom to act and found that the Municipal Home Rule Law § 23(2)(f), "cannot sensibly be read to subject all local laws of this kind to a mandatory referendum." *Id.* at 32-33. The Court noted that, "as a general rule, a law that merely regulates the operations of city government, in collective bargaining or in some other area, is not a curtailment of an officer's power." *Id.* at 33. Similarly, here, the mere fact that the CityFHEPS expansion brings budgetary implications does not elevate it to an impairment upon any conferred powers that exist as part of the framework of local government. A contrary holding would divest the Council of virtually all its legislative powers and subject all of its policy decisions to referenda.

POINT IV This Court Should Certify a Class Pursuant to CPLR Section 901(a)

Petitioners have amply demonstrated that certification of a class is warranted. Respondents offer no dispute except to incorrectly assert that the proposed class lacks commonality needed for class certification because class members may have "different views" about how the CityFHEPS reforms should be implemented. Even if the differences Respondents cite actually manifest, they "do not override the common questions of law and fact." *Weinberg v. Hertz Corp.*, 116 A.D.2d 1, 6 (1986), aff'd, 69 N.Y.2d 979 (1987). A class is therefore appropriate for determining the common question of whether the Respondents must implement the CityFHEPS reforms.[7]

Respondents' claim that class certification would unnecessarily waste judicial resources, ignores that the Courts have long recognized exceptions to the government operations rule.

[7] Contrary to Respondents' assertion that attorneys' fees are unavailable, CPLR §909 provides for an award of attorneys' fees in an action maintained as a class action.

Those exceptions includes where the plaintiffs' ability to commence individual suits is highly compromised; where the condition sought to be remedied by the plaintiffs poses some immediate threat that cannot wait individual determinations, and/or where retroactive relief for the class is warranted. *See New York City Coalition to End Lead Poisoning v. Giuliani*, 245 A.D.2d 49 (1st Dep't 1997). See, e.g., *Brad H. v. City of New York*, 185 Misc. 2d 420 (Sup. Ct. N.Y. Cnty. 2000); *Tindell v. Koch*, 164 A.D.2d 689 (1st Dep't 1991); *Varshavksy v. Perales*, 202 A.D.2d 155 (1st Dep't 1994); *Goodwin v. Gleidman*, 119 Misc. 2d 538 (Sup. Ct. N.Y. Cnty. 1983).

Here, class members need expeditious relief to leave shelter or avoid eviction from their homes. The Appellate Division has recognized that foregoing necessities of life constitutes an immediate need for relief and justifies the granting of class certification. *Tindell* at 695. Further, as the plaintiffs in *Tindell* and *Brown*, Petitioners herein "consists of indigent individuals with little access to the court system, all of whom are in immediate need of relief." *Brown v. Wing*, 170 Misc. 2d 554, 560 (Sup. Ct. Monroe County 1983). Amongst the Petitioners are an 86-year-old widow with no income, a 66-year-old disabled tenant whose rent exceeds her monthly Supplemental Security income grant and a single, disabled mother whose rent exceeds her monthly Social Security Disability Insurance grant. (See Verified Petition, NYSCEF Doc. No. 6). They are all currently facing eviction in an ongoing non-payment of rent proceeding. Additionally, without a voucher, Petitioner Vincent's faced significant challenges in finding an affordable apartment. They need immediate relief from these circumstances.

Further, members of the proposed class face enormous difficulties in accessing the court system. The named Petitioners, particularly the elderly and disabled, exemplify the proposed class of indigent people who are not able to advocate for themselves. Requiring class members to pursue individual actions to obtain the benefits sought would be "oppressively burdensome."

See Tindell, 164 A.D.2d at 695, 565 N.Y.S.2d at 792 (citing *Lamboy v. Gross*, 126 A.D.2d 265, 274 (1st Dep't 1987). Accordingly, the Petitioner class meets the standards of C.P.L.R. § 901(a) and should be certified pursuant to § 902.

CONCLUSION

Respondents have failed to demonstrate that the City Council is precluded from exercising its constitutional powers to legislate in the area of social services, and, specifically, to direct the allocation of City funds to expand the CityFHEPS programs to combat eviction and homelessness. For the reasons stated above, this Court should issue an order directing Respondents to take all steps necessary to implement the CityFHEPS Reform Laws that were enacted as a valid exercise of the City Council's powers.

Dated: April 19, 2024
New York, NY

/s/ *Robert Desir*

THE LEGAL AID SOCIETY
Twyla Carter, Attorney-in-Chief
Judith Goldiner, Esq., Attorney in Charge,
Civil Law Reform Unit
Edward Josephson, Supervising Attorney
Robert Desir, Staff Attorney
Alex MacDougall, Staff Attorney
49 Thomas Street
5th Floor
New York, NY 10013
Phone: (646) 581-7506
Email: rrdesir@legal-aid.org
Counsel for Petitioners

UNIFORM CIVIL RULE 202.8-b CERTIFICATION

I hereby certify pursuant to Part 202.8-b of the Uniform Civil Rules for the Supreme Court of the State of New York, that, according to Microsoft Word count tool, this reply memorandum of law contains 4,030 words.

/s/ Robert Desir

Robert Desir