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

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Maoli Soriano and Shealean Smith, on their own behalf and on behalf of all others similarly situated,

Plaintiffs,

- against -

SUMMONS

New York State Office of Temporary and Disability Assistance; Michael P. Hein, as Commissioner of the New York State Office of Temporary and Disability Assistance,

Index No. _____/____

Defendants.

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TO THE ABOVE-NAMED DEFENDANTS:

PLEASE TAKE NOTICE THAT YOU ARE HEREBY SUMMONED to answer the Complaint of Plaintiffs Maoli Soriano and Shealean Smith in this action, on their own behalf and on behalf of all others similarly situated, and to serve a copy of your answer upon the undersigned attorneys for Plaintiffs within 20 days after service upon you of this Summons and Complaint, exclusive of the day of service, or within 30 days, if service is made upon you in any manner other than personal delivery. In the event of your failure to answer the Complaint within the time limits described above, judgment will be taken against you by default for the relief demanded in the Complaint.

Dated: New York, New York
February 8, 2021

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

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Maoli Soriano and Shealean Smith, on their own behalf and on behalf of all others similarly situated,

Plaintiffs,

- against -

VERIFIED COMPLAINT

New York State Office of Temporary and Disability Assistance; Michael P. Hein, as Commissioner of the New York State Office of Temporary and Disability Assistance,

Index No. _____/____

Defendants.

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Plaintiffs Maoli Soriano and Shealean Smith, by and through their undersigned attorneys, The Legal Aid Society and Hughes Hubbard & Reed LLP, bring this Class Action Complaint on their own behalf and on behalf of similarly situated individuals against the New York State Office of Temporary and Disability Assistance ("OTDA") and the Commissioner of OTDA, Michael P. Hein (collectively, "Defendants"), and in support thereof allege the following:

PRELIMINARY STATEMENT

1. As a result of the COVID-19 pandemic, New York City has suffered more than 569,000 infections, 26,500 deaths, and the loss of tens of thousands of jobs. Now, with COVID-19 infection rates once again on the rise, unemployment rates at historic highs, and time-limited eviction moratoriums expiring, New York City faces an avalanche of evictions and a homelessness crisis unlike any it has ever seen. In the midst of this unprecedented public health and economic emergency, Defendants have failed to comply with their legal duties to provide

access to housing subsidies necessary to protect the most vulnerable New York City families from losing their homes.

2. The New York Social Services Law requires Defendants to provide adequate housing subsidies to needy families with minor children. New York City and five counties across the State have special rental assistance programs to meet that requirement. For families in New York City, Defendants provide both a statewide "shelter allowance" and a "shelter supplement" through a program known as the Family Homelessness and Eviction Prevention Supplement ("FHEPS"). While the New York City Department of Social Services ("NYC DSS") administers the FHEPS program, Defendants have ultimate responsibility for overseeing and approving any amendments to that program.

3. FHEPS assistance is critical for many low-income families in New York City, where rent is the highest in the State. Under New York State's basic shelter allowance program, a family of four with minor children in which all members of the family receive cash assistance would receive only $450 per month for rent—an amount that, on its own, is only a fraction of typical monthly rent in New York City. With FHEPS, that same family could receive up to $1,323 per month. Thus, FHEPS assistance is essential to preventing eviction in New York City's notoriously expensive housing market.

4. In order to qualify for FHEPS assistance, a family in New York City must be able to show, among other things, that their landlord has sued to evict them (the "Lawsuit Requirement"). In other words, a family cannot receive a FHEPS subsidy unless and until they are in eviction proceedings in New York City Housing Court. The FHEPS program is unique in this requirement: none of the other special rental assistance programs for families with minor children elsewhere in the State have a Lawsuit Requirement.

5. In response to the COVID-19 pandemic, throughout the spring and early summer of 2020, New York State instituted a series of temporary and limited moratoriums on new evictions. In light of these moratoriums and the ongoing pandemic, in June 2020, both The Legal Aid Society of New York and NYC DSS requested that Defendants temporarily waive the Lawsuit Requirement to allow families to receive FHEPS subsidies while Housing Courts remained closed or while eviction moratoriums were in place. Such a waiver would also have the benefit of allowing the State to avoid a flood of new eviction filings and potentially deadly overcrowding at Housing Court facilities once those courts reopened. Defendants summarily denied those requests.

6. In late summer 2020, the New York State Office of Court Administration issued a temporary stay on eviction proceedings that lasted into mid-October 2020. After the expiration of that temporary stay, New York State tenants were protected only by a partial eviction moratorium instituted by the Centers for Disease Control and Prevention ("CDC"), which was set to expire on December 31, 2020. Given the imminent expiration of this last remaining eviction moratorium, on November 5, 2020, The Legal Aid Society of New York again wrote to Defendants, again requesting that Defendants waive the Lawsuit Requirement to comply with OTDA's statutory and constitutional obligations and to avoid putting needy families at risk. Defendants did not respond.

7. On December 28, 2020, New York State enacted the COVID-19 Emergency Eviction and Foreclosure Prevention Act ("EEFPA"). The EEFPA creates a blanket 60-day moratorium on the filing of new eviction proceedings based on nonpayment of rent and, where a tenant submits a hardship declaration, further prohibits such evictions through May 1, 2021.

8. As a result of the COVID-19 pandemic, there are now tens of thousands more New York City families receiving public assistance than there were before the pandemic began. Many of those families are in desperate need of rental assistance and are eligible for FHEPS but for the Lawsuit Requirement. Because of the EEFPA, enforcement of the Lawsuit Requirement makes it legally impossible for families who need FHEPS to qualify for FHEPS assistance. No new FHEPS applicants are able to satisfy the Lawsuit Requirement because the law currently prohibits the filing of any new eviction proceedings based on nonpayment of rent.

9. Even worse, by the time eviction proceedings resume statewide, Defendants' refusal to waive the Lawsuit Requirement will have resulted in many needy families becoming ineligible for FHEPS. A family is not eligible to receive FHEPS assistance if its rental arrears are in excess of $9,000. While Defendants insist on a Lawsuit Requirement that no family in need of FHEPS assistance can satisfy, the rental arrears of those families continue to accumulate—in many cases, beyond the $9,000 limit for FHEPS. By the time the current moratoriums expire, Defendants will have ensured that the families in greatest need of FHEPS subsidies are ineligible for those subsidies.

10. At the same time, Defendants will force the families whose rental arrears over the course of the pandemic have not exceeded the $9,000 maximum into an impossible choice: in order to access FHEPS subsidies, they can either appear in Housing Court to defend themselves in an eviction proceeding, thereby exposing themselves to the risk of infection or death by COVID-19; or they can protect their health and safety by not appearing in Housing Court and thereby risk a default judgment of eviction. Even if families apply for the FHEPS program shortly after receiving notice that they are in eviction proceedings, *pro se* tenants who receive

default judgments of eviction will likely be evicted before they can get approval for FHEPS assistance.

11. COVID-19 is a highly contagious disease that spreads through the air. The overcrowded and poorly ventilated courtrooms and hallways of Housing Court, through which hundreds of litigants pass each day, present precisely the type of enclosed, indoor environment where the risk of COVID-19 transmission is highest. That risk is compounded for low-income individuals who must take public transportation to travel to and from Housing Court, and it is especially dangerous for tenants in the Black and Hispanic communities, which have suffered the highest infection and mortality rates in New York City, and for the elderly and those with pre-existing health conditions. A tenant who is sued for eviction generally appears in Housing Court at least three times: once to answer the petition for eviction, again for the first hearing on the petition, and at least one more time for the next hearing, by which point the tenant may have received FHEPS assistance and can request dismissal of the case. As the pandemic rages on and infection rates continue to rise across the City, each of those appearances at Housing Court puts families who need FHEPS assistance at serious risk of contracting and spreading COVID-19.

12. Defendants' continued enforcement of the Lawsuit Requirement is unlawful. FHEPS—a program required by statute—is currently completely inaccessible to new applicants. For many families, due to their accumulating arrears, it will remain that way indefinitely. For others, the program will only become accessible if the applicant risks their family's health and safety. Any of these outcomes is wholly unacceptable. In the midst of the most devastating pandemic in more than a century, ensuring safe access to necessary housing subsidies for New York City families with children is more crucial than ever. Accordingly, Plaintiffs seek

declaratory and injunctive relief against Defendants for their enforcement of the Lawsuit Requirement during the COVID-19 pandemic.

PARTIES

13. Plaintiff Maoli Soriano resides in a one bedroom apartment in the Bronx with a monthly rent of $1,563.13. Ms. Soriano has two minor children who live with her, ages five years old and 20 months old, one of whom is disabled. Ms. Soriano and her children receive cash assistance from New York State and New York City. Ms. Soriano is immunocompromised due to a blood condition and has not been able to return to work because her condition makes her more susceptible to contracting COVID-19 and to suffering serious complications as a result of that virus. The CDC currently lists "immunocompromised state" as an underlying medical condition that puts an individual "at increased risk of severe illness from the virus that causes COVID-19."[1] Ms. Soriano would be eligible for FHEPS, but she cannot apply for the program because she has not been sued by her landlord in Housing Court.

14. Plaintiff Shealean Smith resides in a studio apartment in the Bronx with a monthly rent amount of $917.42. Ms. Smith has one minor child, age 16 months old, who lives with her. Ms. Smith and her son receive cash assistance from New York State and New York City. As a result of the COVID-19 pandemic, Ms. Smith has not been able to return to work since the birth of her child. Ms. Smith has hypertension and/or high blood pressure and obesity, which the CDC lists among underlying medical conditions that put an individual "at increased risk of severe illness from the virus that causes COVID-19."[2] Ms. Smith would be eligible for

[1] Centers for Disease Control and Prevention, COVID-19: People with Certain Medical Conditions, https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html (last visited Feb. 4, 2021).

[2] *Id.*

FHEPS, but she cannot apply for the program because she has not been sued by her landlord in Housing Court.

15. Defendant OTDA is a New York State government agency responsible for supervising programs that provide public assistance and support to eligible families and individuals in New York State. OTDA has the sole authority to approve the FHEPS plan submitted by NYC DSS and to grant any waiver of the lawsuit requirement for FHEPS eligibility. OTDA maintains an office at 317 Malcolm X Blvd, New York, NY 10027.

16. Defendant Michael P. Hein is the Commissioner of OTDA. Mr. Hein maintains an office at 317 Malcolm X Boulevard, New York, NY 10027.

JURISDICTION AND VENUE

17. This Court has jurisdiction over this action because it is brought pursuant to Article 30 of the New York Civil Practice Law and Rules.

18. Venue properly lies in New York County pursuant to CPLR § 504(3).

19. The named Plaintiffs in this action and all others similarly situated are individuals in New York City who have minor children and receive public assistance, and who would otherwise be eligible for benefits under the FHEPS program but for the fact that their landlords have not sued them for eviction in Housing Court.

20. The FHEPS program, as approved by Defendants, operates only in New York City, and Defendants maintain an office in New York County. Accordingly, the acts and omissions giving rise to this Complaint occurred in New York County.

STATEMENT OF FACTS

I. SHELTER ALLOWANCE IN NEW YORK STATE

21. New York law imposes an affirmative duty on New York State to provide for low-income New Yorkers. The New York Constitution provides that "[t]he aid, care and support

of the needy are public concerns and shall be provided by the state and by such of its subdivisions, and in such manner and by such means, as the legislature may from time to time determine." N.Y. Constitution, Art. 17. Section 131(1) of the Social Services Law reflects this Constitutional requirement and states that "[i]t shall be the duty of social services officials, insofar as funds are available for that purpose, to provide adequately for those unable to maintain themselves, in accordance with the requirements of this article and other provisions of this chapter."

22. With respect to low-income families with children, Section 350(1)(a) of the Social Services Law provides that "[a]llowances shall be adequate to enable the father, mother or other relative to bring up the child properly, having regard for the physical, mental and moral well-being of such child."

23. In *Jiggetts v. Grinker*, New York City plaintiffs challenged the adequacy of the shelter allowance, and the Court of Appeals held that Section 350(1)(a) "imposes a statutory duty on the State Commissioner of Social Services to establish shelter allowances that bear a reasonable relation to the cost of housing."[3] The case was remanded and, after trial, judgment was entered and later affirmed against the Commissioner for failing to discharge his statutory duty to provide adequate shelter allowances.[4]

24. In 2003, OTDA responded by issuing new statewide housing allowances and authorizing local social services districts to provide "an additional monthly shelter supplement to families with children who are public assistance applicants or recipients and who will reside in

[3] *Jiggetts v. Grinker*, 75 N.Y.2d 411, 415 (1990).

[4] *Jiggetts v. Dowling*, 261 A.D.2d 144 (1st Dep't 1999).

private housing."[5] OTDA subsequently issued an administrative directive requiring local social services districts to apply to OTDA for approval of any shelter supplement program and any amendment to a shelter supplement program.[6] On December 7, 2004, the City of New York applied for OTDA approval of FHEPS's predecessor program, the Family Eviction Prevention Supplement ("FEPS"). Two days later, OTDA approved that program.

25. The FEPS program has been modified several times since its inception. In 2017, OTDA approved the FHEPS program, which modified FEPS by increasing the supplement amount permitted under the program and expanding eligibility to survivors of domestic violence.

26. OTDA has approved family shelter supplement programs in five other counties: Westchester, Nassau, Suffolk, Monroe, and Orange.

II. THE FHEPS PROGRAM

27. FHEPS is a shelter supplement program that provides rent subsidies to low-income New York City families with children who receive cash assistance and have been evicted or are facing eviction, who have lost their housing or ability to pay for housing due to domestic violence, or who have lost their housing because of health or safety issues.[7] FHEPS was developed to prevent at-risk families, and particularly minor children, from entering into the shelter system.

28. To be eligible for FHEPS, a family must show that: (a) at least one minor child lives in the household; (b) at least one family member in the household receives public

[5] 18 N.Y.C.R.R. § 352.3(a)(3)(i) (2003).

[6] N.Y. OTDA Admin. Directive 03 ADM 7, at 9.

[7] New York City Human Resources Administration, Rental Assistance: FHEPS, available at: https://www1.nyc.gov/site/hra/help/fheps.page (last visited Jan. 25, 2021).

assistance; (c) the family has a lease for at least one year or an apartment subject to rent regulation; (d) the family's rent arrears are at or below $9,000; (e) the family has no other means to pay those arrears; and (f) the applicant has been sued for eviction in Housing Court for failure to pay rent.[8]

29. There are limited exceptions to the Lawsuit Requirement. Specifically, the Lawsuit Requirement is waived where: (a) the family's home is subject to a foreclosure action; (b) the family's home is subject to a vacate order based on health or safety concerns; (c) a City agency has determined that the family must leave their home due to health or safety concerns; or (d) a City agency has determined that the family must stay in their home in light of health or safety concerns and FHEPS assistance is necessary in order for the family to stay.[9] If none of those exceptions apply, a family cannot receive FHEPS assistance unless they have been sued for eviction in Housing Court.[10]

30. None of the family shelter supplement programs that OTDA oversees outside of New York City has a Lawsuit Requirement. Though the specific eligibility criteria for those programs vary, the threat of eviction—which, depending on the program, can be established by anything ranging from verbal confirmation to a formal letter from the applicant's landlord—is sufficient.

[8] FHEPS Plan – Part A, attached hereto as Exhibit 1, at 1-2.

[9] *Id*. at 1.

[10] *Id*. OTDA does not impose a Lawsuit Requirement for one-time (as opposed to ongoing) rental assistance administered through NYC DSS.

III. THE COVID-19 PANDEMIC

31. The world is currently navigating the deadliest pandemic in more than a century as a result of the rapid spread of COVID-19, a disease caused by the novel coronavirus SARS-CoV-2. The United States has suffered more than any other country, reporting more than 25 million cases of COVID-19 since February 2020 and more than 455,000 deaths.[11] In December 2020, there were 6.8 million new infections reported in the United States.[12] The nationwide death toll is currently averaging more than 3,000 deaths per day.[13]

32. Cases of COVID-19 continue to mount because the novel coronavirus is highly contagious. In July 2020, the medical community recognized that the virus spreads primarily through microscopic droplets called aerosols that enter into the air whenever an infected person breathes, talks, sneezes, or coughs. Contaminated aerosols one-tenth the width of a human hair can remain in the air for hours, potentially infecting any person who comes into contact with those aerosols.[14] In July 2020, Dr. Anthony Fauci, the Director of the National Institute of Allergy and Infectious Diseases, commented that he had "never seen a single virus" like COVID-19, which "may [now] be mutating to become more transmissible."[15]

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[11] *Coronavirus Resource Center*, Johns Hopkins University of Medicine, Feb. 5, 2021, https://coronavirus.jhu.edu/.

[12] *Id*.

[13] *Coronavirus in the U.S.: Latest Map and Case Count*, The New York Times, Jan. 25, 2021, https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html.

[14] Byron Erath, *Aerosols May Play a Larger Role in COVID-19 Transmission Than Previously Thought*, PBS, July 9, 2020, https://www.pbs.org/newshour/health/aerosols-may-play-a-larger-role-in-covid-19-transmission-than-previously-thought.

[15] Quentin Fottrell, *Fauci says that in his 40 years of dealing with viral outbreaks, he's never seen anything like COVID-19*, MarketWatch, July 12, 2020,

33. Indeed, over the last few months, the virus has mutated to become more transmissible and more deadly. A strain of the virus that originated in the United Kingdom is estimated to be between 30% and 70% more transmissible than the original virus, and as much as 30% more lethal.[16] The United Kingdom strain of the virus has already arrived in New York City,[17] and federal officials have warned that the United Kingdom strain could become the dominant source of COVID-19 infection in the United States as soon as March 2021.[18]

34. COVID-19 is most deadly in older individuals and those with underlying health conditions, such as Plaintiffs Soriano and Smith.[19] For that reason, the CDC recommends that individuals over 60 years old stay at home as much as possible—especially if they also have underlying health conditions.[20]

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https://www.marketwatch.com/story/fauci-says-covid-19-has-one-characteristic-hes-never-seen-before-ive-been-dealing-with-viral-outbreaks-for-the-last-40-years-2020-06-23.

[16] Jeremy Kahn, *Highly transmissible U.K. virus strain is also 30% more lethal, Boris Johnson warns*, The Guardian, Jan. 22, 2021, https://fortune.com/2021/01/22/uk-virus-strain-more-lethal/.

[17] Michael Gartland, *First two cases of U.K. strain of COVID identified in NYC: officials*, New York Daily News, Jan. 13, 2021, https://www.nydailynews.com/coronavirus/ny-covid-vaccines-uk-strain-yankees-de-blasio-20210113-gj6v3jbqszdgrg5yskjwsd4vyq-story.html.

[18] Apoorva Mandavilli & Roni Caryn Rabin, *C.D.C. Warns the New Virus Variant Could Fuel Huge Spikes in Covid-19 Cases*, New York Times, Jan. 26, 2021, https://www.nytimes.com/2021/01/15/health/covid-cdc-variant.html.

[19] Centers for Disease Control and Prevention, *People at Increased Risk*, updated Jan. 4, 2021, https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/index.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fneed-extra-precautions%2Fpeople-at-increased-risk.html.

[20] Elizabeth Cohen, *New CDC guidance says older adults should 'stay at home as much as possible' due to coronavirus*, Mar. 6, 2020, https://www.cnn.com/2020/03/06/health/coronavirus-older-people-social-distancing/index.html.

35. Individuals infected with COVID-19 can spread the disease to others even if they are not showing any symptoms.[21] According to recent estimates by the CDC, 40% of COVID-19 infections are asymptomatic,[22] meaning that an infected person can spread the coronavirus without even knowing they are sick. For that reason, temperature checks and other health screenings based on detection of symptoms are not reliable ways to protect individuals from infection. Instead, doctors recommend that everyone act as though they are carrying the virus and those around them are carrying the virus.[23]

36. COVID-19 has no cure and no proven treatment. Humans have no immunity to the novel coronavirus, except possibly that provided by current exposure—though even this possibility seems increasingly unlikely, as recent studies suggest that individuals who have recovered from COVID-19 may become re-infected after some period of time.[24] Because COVID-19 transmits most easily in gatherings and crowds, a key tool in minimizing exposure to

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[21] Coronavirus Disease 2019 (COVID-19), Symptoms and Causes, Mayo Clinic, https://www.mayoclinic.org/diseases-conditions/coronavirus/symptoms-causes/syc-20479963 (last visited Feb. 4, 2021).

[22] *Pandemic Planning Scenarios*, Centers for Disease Control and Prevention, updated Sept. 10, 2020, https://www.cdc.gov/coronavirus/2019-ncov/hcp/planning-scenarios.html.

[23] *Dr. Gupta's advice: Act as if you might be carrying the virus,* CNN, https://www.cnn.com/videos/health/2020/03/18/gupta-act-like-you-have-the-coronavirus-sot-vpx.cnn (last visited Feb. 4, 2021).

[24] Jacqueline Howard, *Covid-19 immunity from antibodies may last only months, UK study suggests*, July 13, 2020, https://www.cnn.com/2020/07/13/health/covid-immunity-antibody-response-uk-study-wellness/index.html; Apoorva Mandavilli, *First Documented Coronavirus Reinfection Reported in Hong Kong*, The New York Times, Aug. 24, 2020, https://www.nytimes.com/2020/08/24/health/coronavirus-reinfection.html; *COVID-19 Live Updates: A Nevada lab confirmed the first coronavirus reinfection in the U.S., a case that included severe symptoms*, The New York Times, Aug. 31, 2020, https://www.nytimes.com/2020/08/28/world/covid-19-coronavirus.html#link-332d7209.

the virus is social distancing—staying at least six feet away from others in order to reduce exposure to contaminated aerosols. However, even social distancing cannot eliminate the risk of contracting COVID-19 because contaminated aerosols can remain suspended in air for hours, long after the infected person who expelled them has moved away. On August 3, 2020, the Director General of the World Health Organization warned that "there's no silver bullet" to combat COVID-19.[25]

37. In December 2020, the U.S. Food and Drug Administration ("FDA") approved two COVID-19 vaccines for emergency use.[26] However, due to the limited available supply of those vaccines, there is no timeline for vaccinating the general public.[27] Staying home remains the best way to stay safe.

A. Public Health Impact in New York City

38. New York City has been widely described as the global epicenter of the COVID-19 outbreak. The City has experienced a higher number of deaths than any other region in the United States, reporting more than 26,500 deaths since March 2020.[28] Of the top ten counties

[25] Laurel Wamsley, *WHO Chief Warns 'There Might Never Be" A Silver Bullet For Coronavirus*, NPR, Aug. 3, 2020, https://www.npr.org/sections/coronavirus-live-updates/2020/08/03/898619556/who-chief-warns-there-might-never-be-a-silver-bullet-for-coronavirus.

[26] *COVID-19 Vaccines*, U.S. Food and Drug Administration, https://www.fda.gov/emergency-preparedness-and-response/coronavirus-disease-2019-covid-19/covid-19-vaccines#authorized-vaccines (last visited Feb. 4, 2021).

[27] *Frequently Asked Questions about Vaccination*, Centers for Disease Control and Prevention, https://www.cdc.gov/coronavirus/2019-ncov/vaccines/faq.html.

[28] *Coronavirus in the U.S.: Latest Map and Case Count*, The New York Times, Jan. 25, 2021, https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html.

with the highest number of deaths across the United States, four of them are in New York City.[29] Worldwide, nearly 2.1 million people have died from complications related to COVID-19, but New York City has lost more lives to COVID-19 than all but sixteen countries.[30]

39. COVID-19 has disproportionately wreaked havoc on African-American and Latinx communities within New York City. New York City Department of Health data indicates that neighborhoods with high concentrations of African-American and Latinx tenants have suffered much higher death rates than other neighborhoods.[31] Of the ten zip codes with the highest death rates, eight have populations that are predominantly Black or Hispanic. Nearly 34% of COVID-19 deaths in New York City are Latinx residents, and another 28% are African-American residents.[32] Approximately one out of every 200 residents in the hardest-hit New York City neighborhoods has died from COVID-19.[33] Consistent with this data, the CDC has

[29] *COVID-19 United States Cases by County*, Johns Hopkins University of Medicine, updated Feb. 2, 2021, https://coronavirus.jhu.edu/us-map.

[30] *Covid World Map: Tracking the Global Outbreak*, The New York Times, https://www.nytimes.com/interactive/2020/world/coronavirus-maps.html?pageType=LegacyCollection&collectionName=Maps+and+Trackers&label=Maps+and+Trackers&module=hub_Band&region=inline&template=storyline_band_recirc (last visited Feb. 4, 2021).

[31] *NYSDOH COVID-19 Tracker*, New York State Department of Health, https://covid19tracker.health.ny.gov/views/NYS-COVID19-Tracker/NYSDOHCOVID-19Tracker-Fatalities?%3Aembed=yes&%3Atoolbar=no&%3Atabs=n (last visited Feb. 5, 2021).

[32] *Id*.; *see also* Gina Kolata, *Social Inequities Explain Racial Gaps in Pandemic, Studies Find*, The New York Times, Dec. 9, 2020, https://www.nytimes.com/2020/12/09/health/coronavirus-black-hispanic.html.

[33] *COVID-19: Data*, New York City Department of Health, https://www1.nyc.gov/site/doh/covid/covid-19-data.page (last visited Feb. 4, 2021).

identified people belonging to racial and ethnic minorities as having an increased vulnerability to COVID-19.[34]

40. On March 7, 2020, New York State Governor Andrew Cuomo declared a statewide emergency due to the spread of COVID-19.[35] On March 13, 2020, New York City Mayor Bill de Blasio followed suit with a declaration of a citywide state of emergency.[36] On March 20, 2020, Governor Cuomo issued an executive order that mandated the closure of all non-essential businesses statewide, banned any non-essential gatherings, mandated that individuals outside their home practice social distancing, and limited the use of public transportation except when "absolutely necessary" (the "PAUSE Order").[37]

41. During March and April 2020, the number of COVID-19 cases and deaths rose exponentially. In the ensuing summer months, as a result of restrictions on businesses and gatherings, as well as other public health mandates, New York City's COVID-19 infection and mortality rates began to decline. In response to those declining rates, Governor Cuomo developed and implemented a phased reopening plan for New York titled "New York Forward," under which businesses and government offices would be permitted to reopen slowly on a

[34] *See Health Equity Considerations & Racial & Ethnic Minority Groups*, Centers for Disease Control and Prevention, July 24, 2020, https://www.cdc.gov/coronavirus/2019-ncov/community/health-equity/race-ethnicity.html.

[35] N.Y. State Exec. Order No. 202.

[36] *Mayor de Blasio Issues State of Emergency*, The Official Website of the City of New York, March 13, 2020, https://www1.nyc.gov/office-of-the-mayor/news/138-20/mayor-de-blasio-issues-state-emergency.

[37] N.Y. State Exec. Order No. 202.8, "New York State on PAUSE (Policies Assure Uniform Safety for Everyone)."

regional basis, based on each region's ability to hit certain public health metrics.[38] On July 20, 2020, New York City moved into a modified "Phase IV" reopening.[39]

42. Unfortunately, after several months of steady decline in its COVID-19 infection and mortality rates, New York City is currently experiencing a surge in COVID-19 cases and hospitalizations. In late fall 2020, Governor Cuomo instituted a "Micro-Cluster Strategy" that identified infection clusters and categorized the clusters and areas around them into color-coded zones with corresponding levels of restriction based on severity.[40] In order to manage the spread of COVID-19, Governor Cuomo indicated that New York's infection rate must stay below 1%.[41] At the time the restrictions were announced, the City's seven-day positivity rate ranged from 1.56 to 1.75 percent, with certain neighborhoods in Brooklyn and Queens suffering daily positivity rates higher than 8%.[42] The Micro-Cluster Strategy did not stem the rising tide of infections in New York City. By mid-January 2021, the weekly average positivity rate in the

[38] *New York Forward: Metrics to Guide Reopening New York,* New York State, https://forward.ny.gov/metrics-guide-reopening-new-york (last visited Feb. 4, 2021).

[39] Mihir Zaveri, *New York City's Phase 4, Explained*, THE NEW YORK TIMES, July 20, 2020, https://www.nytimes.com/2020/07/20/nyregion/nyc-phase-4-reopening-coronavirus.html.

[40] *New York Forward: Micro-Cluster Strategy*, New York State, https://forward.ny.gov/micro-cluster-strategy (last visited Feb. 4, 2021).

[41] @NYGovCuomo, Twitter, Apr. 26, 2020, https://twitter.com/NYGovCuomo/status/1254448716188135424.

[42] J. David Goodman, *How Will We Know a 2nd Virus Wave Has Arrived in N.Y.C.?*, The New York Times, updated Oct. 29, 2020, https://www.nytimes.com/2020/10/08/nyregion/nyc-coronavirus-second-wave.html.

city was more than 9%, with 54 zip codes reporting rates over 10%.[43] The Bronx and Queens Housing Courts are located in zip codes with positivity rates over 10%.[44]

B. Economic Impact in New York City

43. In addition to widespread illness and death, the COVID-19 pandemic has also resulted in severe and widespread unemployment and loss of income. Following the closure of non-essential businesses under the PAUSE Order, thousands of New York City residents lost their jobs. In April 2020, New York City lost 21.8% of its private sector jobs, particularly in arts and leisure, where jobs dropped by 72%.[45] Between March 2020 and June 2020, New York City's unemployment rate skyrocketed from 4.1% to 20.4%.[46] Even as the City transitioned into a Phase 4 reopening, efforts to contain rising infection rates continued to depress the job market, with unemployment rates in December 2020 remaining over 11%.[47] New Yorkers now face the worst job market since the Great Depression.

44. Without adequate assistance from the state or federal government, New York City residents have increasingly turned to cash assistance benefits. Prior to the pandemic, New York

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[43] *COVID-19: Data*, New York City Department of Health, https://www1.nyc.gov/site/doh/covid/covid-19-data.page (last visited Feb. 4, 2021); Sharon Otterman, *54 ZIP Codes in New York City Have Positive Test Rates Over 10%*, The New York Times, Jan. 22, 2021, https://www.nytimes.com/2021/01/22/nyregion/nyc-coronavirus-zip-codes.html.

[44] *COVID-19: Data*, New York City Department of Health, https://www1.nyc.gov/site/doh/covid/covid-19-data.page (last visited Feb. 4, 2021).

[45] *Labor Statistics for the New York Region*, NYS Department of Labor, https://www.labor.ny.gov/stats/nyc/.

[46] *Id*.

[47] *Id*.

City had the lowest rate of residents receiving cash assistance in nearly 60 years—approximately 325,000 residents as of March 2020.[48] That number increased by 7,300 in April and by an additional 30,500 in May, which represented the largest monthly increase in cash assistance recipients in over half a century.[49] NYC DSS reported an additional 15,500 recipients for June 2020, 9,000 for July, and 3,000 for August.[50] By the end of November 2020, more than 380,000 New Yorkers were receiving cash assistance.[51] Those numbers include families who may be eligible for FHEPS.

IV. DEFENDANTS' REFUSAL TO WAIVE THE LAWSUIT REQUIREMENT

45. On June 2, 2020, The Legal Aid Society wrote a letter to Commissioner Hein, raising concerns about the increasing risk of eviction and homelessness faced by New York City families due to COVID-19's dual impacts on the economy and public health.[52] In that letter, The Legal Aid Society recommended several measures that New York State should adopt to prevent a looming crisis. One of those measures was to temporarily waive the Lawsuit Requirement for

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[48] *Have NYC's cash assistance rolls grown following the pandemic-related rise in unemployment?*, Independent Budget Office of the City of New York (July 9, 2020), https://ibo.nyc.ny.us/cgi-park2/2020/07/have-nycs-cash-assistance-rolls-grown-following-the-pandemic-related-rise-in-unemployment/.

[49] *Id*.

[50] *June HRA Monthly Fact Sheet*, NYC Human Resources Administration, https://www1.nyc.gov/assets/hra/downloads/pdf/facts/hra_facts/2020/hra_facts_2020_06.pdf; *July HRA Monthly Fact Sheet*, NYC Human Resources Administration, https://www1.nyc.gov/assets/hra/downloads/pdf/facts/hra_facts/2020/hra_facts_2020_07.pdf; *August HRA Monthly Fact Sheet*, NYC Human Resources Administration, https://www1.nyc.gov/assets/hra/downloads/pdf/facts/hra_facts/2020/hra_facts_2020_08.pdf.

[51] *November HRA Monthly Fact Sheet*, NYC Human Resources Administration, https://www1.nyc.gov/assets/hra/downloads/pdf/facts/hra_facts/2020/hra_facts_2020_11.pdf.

[52] June 2, 2020 Letter from The Legal Aid Society to OTDA, attached hereto as Exhibit 2.

FHEPS eligibility and allow families to substitute written rent demands from their landlords for the existing requirement that they be subject to an eviction proceeding in Housing Court. The Legal Aid Society noted that eliminating the Lawsuit Requirement would not only prevent eviction and homelessness, but also protect public health by keeping as many people as possible out of New York City courtrooms.

46. On June 19, 2020, NYC DSS formally requested that OTDA temporarily waive the Lawsuit Requirement to allow NYC DSS to approve FHEPS assistance for families who had received a written rent demand from their landlords, but had not been sued in Housing Court.[53] NYC DSS reasoned that, as courtrooms began to reopen to a flood of new eviction filings, waiving the Lawsuit Requirement would not only save the cost and time of litigating cases in Housing Court, but would also reduce crowding in Housing Court and prevent the spread of COVID-19.[54]

47. On July 9, 2020, OTDA denied NYC DSS's request for a waiver.[55] As a result, families who need FHEPS assistance to avoid eviction or homelessness must still demonstrate that they have been sued in Housing Court in order to be eligible for FHEPS.

A. Eviction Proceedings in Housing Court

48. Pursuant to the EEFPA, landlords are prohibited from commencing eviction proceedings against tenants for nonpayment of rent through at least February 26, 2021.[56] Where

[53] June 19, 2020 Letter from NYC DSS to OTDA, attached hereto as Exhibit 3.

[54] *Id*.

[55] July 9, 2020 Letter from OTDA to NYC DSS, attached hereto as Exhibit 4.

[56] EEFPA § 2.

a tenant submits a hardship declaration, EEFPA prohibits commencement of an eviction proceeding based on nonpayment of rent through May 1, 2021.[57]

49. Because EEFPA prevents the filing of new eviction proceedings based on nonpayment of rent, it is currently impossible for any family in need of FHEPS assistance to satisfy the Lawsuit Requirement. Once landlords are able to file new eviction proceedings, many families who would have been eligible for FHEPS but for the Lawsuit Requirement will have become ineligible for assistance because they will have amassed arrears in excess of the $9,000 program maximum while waiting for eviction moratoriums to expire. Thousands of other families will need to put their health and public health at risk to appear in person in Housing Court to defend themselves in eviction proceedings.

50. After the expiration of the current eviction moratoriums, maintaining the Lawsuit Requirement is likely to result in families seeking FHEPS assistance having to appear in person in Housing Court multiple times: first, to answer a notice of petition served by their landlord and then again for successive hearing dates.

51. A landlord may institute an eviction proceeding if a tenant fails to pay rent arrears within 14 days of receiving a written rent demand.[58] At the start of an eviction proceeding, the tenant will receive a notice of petition and petition for eviction. The notice of petition instructs

[57] *Id*. § 4.

[58] Real Property Actions and Proceedings Law § 711(2). The rent demand is a document prepared by the landlord that gives a detailed breakdown of the amount of rent owed and the months for which that rent is owed. *Dendy v. McAlpine*, 27 Misc. 3d 138(A), 911 N.Y.S.2d 691 (Sup. Ct. 2010); *see also Zenila Realty Corp. v. Masterandrea*, 472 N.Y.S.2d 980, 984-85, 987 (Civ. Ct. 1984); *Schwartz v. Weiss-Newell*, 87 Misc.2d 558, 561 (Civ. Ct., 1976). The rent demand notice also alerts the tenant that the landlord will begin an eviction proceeding if the tenant does not pay the outstanding rent amount.

the tenant to go in person to Housing Court within 10 days to provide a written or oral answer to the petition.[59]

52. On August 12, 2020, the Office of Court Administration entered Administrative Order 160A/20, which requires landlords to provide a new notice with the petition that informs tenants that they may have additional time to answer the petition and provides phone numbers that tenants can call for further information. However, the new notice does not indicate that a tenant does not need to go to Housing Court.[60] Further, while the Office of Court Administration has published on its website phone numbers to use for answering petitions,[61] this system has been unreliable.

53. When a tenant appears in Housing Court to answer a petition, the tenant is given a specific date to come back for a hearing. On that hearing date, the Housing Court generally grants tenants an adjournment to obtain counsel or seek assistance from a legal services provider. At the next scheduled hearing date, if the tenant has successfully applied for FHEPS assistance, the Court may dismiss the eviction proceeding because the tenant is now able to pay rent. By that point, the tenant will have already appeared in person in Housing Court three times.

54. Although Housing Court currently permits non-trial proceedings to take place virtually, most *pro se* tenants do not have access to the technology necessary to participate in

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[59] *See Notice of Nonpayment Petition Form*, NY Courts, https://www.nycourts.gov/courts/nyc/housing/pdfs/notificationforms/Nonpayment-English.pdf (last visited Feb. 4, 2021).

[60] *See* Memorandum from Lawrence K. Marks, Chief Administrative Judge of the Court, State of New York Unified Court System, to Hon. George J. Silver and Hon. Vito C. Caruso (Aug. 12, 20202), https://www.nycourts.gov/whatsnew/pdf/Rev_Ev_8_12.pdf.

[61] *See Answering Petitions*, NY Courts, https://www.nycourts.gov/courts/nyc/civil/corona/evictions.shtml (last visited Feb. 4, 2021).

virtual proceedings, which require the tenant to have access to broadband Internet as well as a computer or smart device. Approximately 2.2 million New York City residents, or roughly 30% of the City, lack access to broadband Internet.[62] That number is even higher for poor New Yorkers: approximately 44% of New York City residents who live below the poverty line do not have broadband Internet access.[63] Moreover, even those families that have access to an Internet-enabled computer or smart device may not be able to use it to attend virtual Housing Court proceedings because a child in the family may need to use that device for remote schooling. As a result, many *pro se* tenants, representing the most vulnerable populations in the City, will have no choice but to continue to appear in Housing Court in person.

B. The Risk of COVID-19 in Housing Court

55. The COVID-19 pandemic has had an enormous impact on Housing Court operations. On March 20, 2020, Governor Cuomo issued an executive order halting all evictions and foreclosures.[64] In the same executive order, Governor Cuomo limited court operations to essential matters and tolled time limits for the commencement, filing, or service of any legal action, notice, motion, or other process or proceeding.[65] On May 7, 2020, Governor Cuomo extended the statewide ban on evictions and foreclosures against any individual eligible for

[62] Scott Stringer, *Census and the City: Overcoming NYC's Digital Divide in the 2020 Census*, Office of the New York City Comptroller, July 2019, https://comptroller.nyc.gov/wp-content/uploads/documents/Census_and_The_City_Overcoming_NYC_Digital_Divide_Census.pdf.

[63] *Id*.

[64] N.Y. State Exec. Order No. 202.8.

[65] *Id.*

unemployment benefits or otherwise facing financial hardship due to the COVID-19 pandemic through August 20, 2020.[66]

56. After the expiration of the partial moratorium on evictions and foreclosures, the New York State Office of Court Administration was faced with a potential torrent of in-person new case filings, applications for orders to show cause to avoid eviction, and other motions to move already-filed eviction cases forward. Unprepared to deal with the potential public health implications of hearing these cases in person, the Office of Court Administration transitioned most operations from in-person to virtual, prioritized cases that were already pending prior to the pandemic, and stayed evictions through September 30, 2020.[67] On October 5, 2020, Governor Cuomo issued another executive order, again tolling time limits for the commencement, filing, or service of legal papers through November 3, 2020.[68] That executive order indicated that there would be no further extensions.[69] As of October 14, 2020, the Office of Court Administration permitted all eviction proceedings statewide to resume.

57. As noted above, on December 28, 2020, New York State enacted EEFPA, which created a blanket moratorium on the filing of new eviction proceedings based on nonpayment of

[66] N.Y. State Exec. Order No. 202.28.

[67] OCA Administrative Order 160A/20.

[68] N.Y. State Exec. Order No. 202.67.

[69] *Id*. On September 4, 2020, the CDC issued an order entitled "Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19," which created a partial moratorium on certain nonpayment evictions where the tenant is experiencing financial hardship through December 31, 2020. 85 FR 55292, https://www.federalregister.gov/documents/2020/09/04/2020-19654/temporary-halt-in-residential-evictions-to-prevent-the-further-spread-of-covid-19.

rent through at least February 26, 2021 and prohibits nonpayment eviction proceedings against tenants who file a hardship declaration through May 1, 2021.[70]

58. Preparation for the reopening of Housing Court across New York City is now underway.[71] There are grave concerns, however, about the safety of resuming in-person operations at Housing Court facilities. New York City Housing Court is busy, loud, and overcrowded. In 2019 alone, 156,062 new Housing Court petitions were filed and answered across the five boroughs.[72] Each case generally has multiple court dates. Cases are heard in a limited number of courtrooms, which quickly fill to capacity. Crowded hallways outside of those courtrooms serve as overflow space where litigants wait for their case to be heard while negotiations occur in every available space. Tenants who appear in Court rarely appear on their own and often bring children, spouses, friends for support, or witnesses for their cases. As a result, the number of people entering the Housing Court each day can easily reach a number many multiples of the number of cases on the schedule for that day. It is unclear whether and to what extent adequate social distancing can be practiced in Housing Court.

59. Moreover, the use of recycled air in Housing Court in Brooklyn and the Bronx, as well as potentially outdated ventilation systems in all courthouses, increases the risk of spreading COVID-19.[73] Although the City has installed new, more efficient MERV-13 air filters in the

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[70] EEFPA §§ 2, 4.

[71] Emma Whitford, *NYC Laywers Urge Housing, Civil Court to Delay Reopening*, Law360, June 10, 2020, https://www.law360.com/articles/1281138.

[72] *See* New York City Housing Court: Court Statistics 2019, https://www.nycourts.gov/courts/nyc/housing/statistics.shtml (last visited Feb. 4, 2021).

[73] Emma Whitford, *NYC Laywers Urge Housing, Civil Court to Delay Reopening,* LAW360 (June 10, 2020), https://www.law360.com/articles/1281138; Apoorva Mandavilli, *The Coronavirus*

courthouses,[74] they do not guarantee complete capture of aerosols.[75] Furthermore, improved air filters constitute only one piece of a comprehensive set of safety recommendations regarding air circulation, which include increasing outdoor air ventilation, eliminating recirculation, keeping systems running constantly, and considering portable room air cleaners with HEPA filters and ultraviolet germicidal irradiation.[76]

60. Furthermore, even advanced air filtration systems cannot guard against the virus's primary mode of transmission—contact with an infected person.[77] In healthcare facilities with state-of-the-art filtration systems, healthcare workers must still wear N-95 respirators to prevent viral spread.[78] As the CDC has recognized, there is a serious risk of COVID-19 infection for any person who is within six feet of an infected person for 15 minutes or more, indoors or outdoors, even if the infected person is pre-symptomatic or asymptomatic and even if both people are

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Can Be Airborne Indoors, W.H.O. Says, The New York Times, July 9, 2020, https://www.nytimes.com/2020/07/09/health/virus-aerosols-who.html.

[74] Rebecca Baird-Remba, Can NYC Reopen Its Housing Courts Safely?, Commercial Observer, Aug. 3, 2020, https://commercialobserver.com/2020/08/can-nyc-reopen-its-housing-courts-safely/.

[75] *What is a MERV Rating?*, United States Environmental Protection Agency, https://www.epa.gov/indoor-air-quality-iaq/what-merv-rating-1 (last visited Feb. 4, 2021).

[76] *Recommendations and Reports as of August 11th, 2020 OCA Court Tours*, CrowdRx, attached hereto as Exhibit 5.

[77] *Ways COVID-19 Spreads*, Centers for Disease Control and Prevention, updated Oct. 28, 2020, https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html.

[78] Apoorva Mandavilli, *Medical Workers Should Use Respirator Masks, Not Surgical Masks*, The New York Times, Updated June 26, 2020, https://www.nytimes.com/2020/06/01/health/masks-surgical-N95-coronavirus.html.

wearing masks.[79] New evidence cited by the Centers for Disease Control and Prevention indicates that the virus can spread beyond six feet indoors.[80] For those reasons, the risk of transmission in courtrooms is elevated even if litigants wear masks and observe proper social distancing.

61. That risk is compounded for tenants forced to appear in Housing Court. Black and Hispanic individuals and families in New York City are nearly twice as likely to be threatened with eviction, with eviction filing rates being highest in lower-income Black and Hispanic communities.[81] Between 2017 and 2019, tenants living in primarily Black zip codes were three times more likely to be facing eviction than tenants living in primarily white zip codes.[82] As detailed above, those same communities have also suffered the highest rates of infection and death from COVID-19.

62. In addition, families who qualify for FHEPS are low-income and will most often travel to Housing Court by public transportation, taking a combination of subways and buses. For example, a tenant who lives in Far Rockaway, Queens may have to take multiple buses and multiple subways, traveling for over an hour to appear in Housing Court, and then must make the same journey home. Remote schooling and unpredictable school closures also mean that many

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[79] *Community-Related Exposure*, Centers for Disease Control and Prevention, Updated October 21, 2020, https://www.cdc.gov/coronavirus/2019-ncov/php/public-health-recommendations.html.

[80] Apoorva Mandavilli, *The Coronavirus May Be Adrift in Indoor Air, C.D.C. Acknowledges*, The New York Times, October 5, 2020, https://www.nytimes.com/2020/10/05/health/cdc-coronavirus-airborne-indoor-air.html.

[81] *See* https://www.cssny.org/news/entry/race-evictions-new-york-city#f3; NYU Furman Center, State of New York City's Housing and Neighborhoods in 2019, *Focus on Eviction Filings* (June 16, 2020), https://furmancenter.org/stateofthecity/view/eviction-filings.

[82] *See* Oksana Mironova, *Race and Evictions in New York City*, Community Service Society, June 22, 2020, https://www.cssny.org/news/entry/race-evictions-new-york-city#f3.

litigants will have to bring their children with them on public transportation and into Housing Court in order to comply with a notice of petition. Low-income households in New York City are typically multi-generational, and apartments are small; thus, if someone in the family is infected, they are unlikely to be able to isolate effectively from the rest of their family to prevent further spread of the virus.

63. Requiring families who need FHEPS assistance to appear in Housing Court means forcing New York City's most vulnerable communities to put themselves at even higher risk of illness or death from COVID-19. The only alternative—not appearing in Housing Court to contest an eviction proceeding and risking a default judgment of eviction—is just as dire. In many cases, a default judgment of eviction would result in a low-income family being evicted from their home before they could be approved for FHEPS assistance. In the middle of the pandemic, becoming homeless carries with it not only the extraordinary hardship, particularly during the winter months and when minor children are involved, of suddenly being without shelter in New York City, but also the increased risk of contracting COVID-19 due to overcrowded and other unsafe conditions at homeless shelters.[83] For homeless New Yorkers, the mortality rate for COVID-19 is also significantly higher than for the general population: homeless New York City residents are nearly 80 percent more likely to die from COVID-19.[84]

[83] Centers for Disease Control and Prevention, Federal Register Notice: Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19, 86 FR 8020, https://www.federalregister.gov/documents/2021/02/03/2021-02243/temporary-halt-in-residential-evictions-to-prevent-the-further-spread-of-covid-19.

[84] *Age-Adjusted Mortality Rate for Sheltered Homeless New Yorkers,* Coalition for the Homeless, https://www.coalitionforthehomeless.org/age-adjusted-mortality-rate-for-sheltered-homeless-new-yorkers/ (last visited Feb. 4, 2021).

64. Thus, Defendants' refusal to waive the Lawsuit Requirement during this unprecedented time in our history violates Defendants' statutory obligation to aid and care for New York City's low-income families.

CLASS ALLEGATIONS

65. Plaintiffs bring this action on behalf of a class of all individuals in New York City with minor children in their households who are eligible for cash assistance and who are seeking or have sought to apply for FHEPS benefits and have been unable to do so because of the Lawsuit Requirement (the "Class").

66. The Class satisfies the numerosity, commonality, typicality, adequacy, and superiority requirements of CPLR § 901 for maintaining a class action.

67. The Class is so numerous that joinder of all members is impracticable. Upon information and belief, thousands of families apply or seek to apply for FHEPS each month. Because accessing FHEPS is difficult, the identity of many class members is unknown to Plaintiffs and, therefore, joinder is impracticable.

68. There are numerous questions of fact and law common to the Class. The claims in this action are that Defendants' refusal to waive the Lawsuit Requirement during the COVID-19 pandemic unlawfully restricts the ability of otherwise eligible families to obtain FHEPS benefits. The factual and legal determinations necessary to resolve that dispute are common to the Class.

69. The individual Plaintiffs' claims are typical of the claims of the Class. The named Plaintiffs qualify for FHEPS absent the Lawsuit Requirement and have been deterred or prevented from applying for FHEPS because of that requirement.

70. Declaratory and injunctive relief are appropriate with respect to the Class as a whole because the actions of Defendants that Plaintiffs seeks to enjoin are applicable to the entire Class.

71. The named Plaintiffs and the proposed Class are represented by attorneys at The Legal Aid Society and Hughes Hubbard & Reed LLP who have experience with class action litigations and will adequately represent the Class.

72. A class action is superior to other available methods for a fair and efficient adjudication of this matter because the prosecution of separate actions by individual Class members would unduly burden the Court and create the possibility of conflicting decisions.

FIRST CAUSE OF ACTION

(Violation of Social Services Law § 350)

73. Plaintiffs repeat and re-allege the allegations contained in paragraphs 1-72 as if fully set forth herein.

74. Defendants' refusal to waive the Lawsuit Requirement for the FHEPS program violates Section 350 of the New York Social Services Law. Section 350 states that Defendants must provide to needy families with children allowances that are "adequate to enable the father, mother or other relative to bring up the child properly, having regard for the physical, mental and moral well-being of such child."

75. Defendants are currently flouting their obligation under that law by imposing a Lawsuit Requirement at a time when landlords are barred from filing new eviction lawsuits against tenants. Defendants' actions make FHEPS assistance entirely inaccessible to new applicants during the pendency of current eviction moratoriums and ensure that many needy families will no longer be eligible for FHEPS when eviction proceedings resume because their

rental arrears will have accumulated beyond the maximum limit allowed under that program. Moreover, once eviction filings resume, Defendants' insistence on enforcing the Lawsuit Requirement will require those families who remain eligible for FHEPS subsidies to expose themselves either to the serious risk of contracting COVID-19 while in Housing Court or the serious risk of eviction pursuant to a default judgment before their FHEPS application is approved. Running out the clock so that FHEPS benefits are not available to families accumulating significant arrears, and forcing other families to choose between the risk of contracting a serious disease and the risk of eviction in order to access FHEPS benefits is not consistent with Defendants' statutory obligations to provide an "adequate" shelter allowance. A shelter allowance that is inaccessible without the risk of bodily harm or death is necessarily inadequate.

76. In addition, Defendants' refusal to waive the Lawsuit Requirement during the COVID-19 pandemic violates Section 350 of the Social Services Law because Defendants' actions demonstrate no regard for the physical well-being of children who have to go to Housing Court with their parents because of school closures or remote learning schedules, or who may otherwise be exposed to COVID-19 by virtue of their parents having to appear in Housing Court.

SECOND CAUSE OF ACTION

(Violation of Social Services Law § 131)

77. Plaintiffs repeat and reallege the allegations contained in paragraphs 1-76 as if fully set forth herein.

78. Defendants' refusal to waive the Lawsuit Requirement for the FHEPS program violates Section 131 of the New York Social Services Law. Section 131 dictates that: "It shall be the duty of social services officials, insofar as funds are available for that purpose, to provide

adequately for those unable to maintain themselves, in accordance with the requirements of this article and other provisions of this chapter."

79. Defendants' imposition of a Lawsuit Requirement that is impossible to satisfy is unlawful because it conflicts with their duty to provide for those unable to maintain themselves. Defendants' actions also violate their legal obligations by ensuring that many needy families will no longer be eligible for FHEPS when eviction filings do resume. In addition, Defendants' insistence that needy New York City families expose themselves either to the serious risk of contracting COVID-19 while in Housing Court or the equally serious risk of a default judgment of eviction in order to access FHEPS benefits is not consistent with Defendants' statutory obligations "to provide adequately for those unable to maintain themselves." A shelter allowance that is inaccessible without the risk of bodily harm or death is necessarily inadequate.

THIRD CAUSE OF ACTION

(Due Process Violations)

80. Plaintiffs repeat and reallege the allegations contained in paragraphs 1-79 as if fully set forth herein.

81. Defendants' policy and practice of denying eligible families the right to apply for and obtain FHEPS benefits unless they are "subject to an eviction proceeding" violates Plaintiffs' due process rights because, while Housing Court was closed and/or while their landlords were barred from filing an eviction proceeding, Plaintiffs were denied an opportunity to be heard with regard to their right to FHEPS benefits.

82. Defendants' policy and practice of denying eligible families the right to apply for and obtain FHEPS benefits unless they are "subject to an eviction proceeding" would also violate Plaintiffs' due process rights when Housing Court reopens. Plaintiffs are being constructively

denied an opportunity to be heard with regard to their right to FHEPS benefits because participating in the required eviction proceeding would require Plaintiffs to risk their health and safety.

83. Pursuant to 18 N.Y.C.R.R. § 352.3, Administrative Directive 03 ADM 7, the FEPS Approval Letter, New York City Human Resources Administration Policy Directive #12-13-ELI, and New York City Human Resources Administration Policy Directive #17-26-ELI, the right to FHEPS benefits is protected by the Due Process Clauses of the Constitutions of the United States and the State of New York.

84. Defendants' policies and practices of limiting the ability of families to apply for and obtain FHEPS benefits by requiring that they be "subject to an eviction proceeding" deprives Plaintiffs of their property rights in violation of Article I, Section 6 of the New York State Constitution and the Due Process Clause of the Fourteenth Amendment to the United States Constitution, for which a cause of action is created pursuant to 42 U.S.C. § 1983.

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment:

a) Declaring that Defendants have violated Sections 131 and 350 of the New York Social Services Law by only providing a shelter allowance that, due to the Lawsuit Requirement, is incapable of being obtained or safely obtained during the COVID-19 pandemic and is therefore inadequate;

b) Declaring that Defendants have violated Section 350 of the New York Social Services Law by only providing a shelter allowance that, due to the Lawsuit Requirement, has no regard for the physical well-being of the children of needy families during the COVID-19 pandemic;

c) Declaring, pursuant to CPLR § 3001, that Defendants' policy and practice of denying otherwise eligible families access to FHEPS benefits violates Article 17 of the New York State Constitution, Sections 131(1) and 131(3) of the New York Social Services Law, and Plaintiffs' due process rights under Article I, Section 6 of the New York State Constitution, the Due Process Clause of the Fourteenth Amendment to the United States Constitution, and 42 U.S.C. § 1983;

d) Enjoining Defendants from denying eligible families access to FHEPS benefits by enforcing the lawsuit requirement for at least the duration of the COVID-19 pandemic;

e) Preliminarily enjoining Defendants from denying eligible families access to FHEPS benefits by directing Defendants to allow Plaintiffs to apply for the FHEPS program;

f) Awarding Plaintiffs reasonable attorneys' fees and costs in an amount to be determined, as provided by the New York State Equal Access to Justice Act, C.P.L.R. §§ 8600 *et seq.*; and

g) For such other and further relief as may be just and equitable.

Dated: New York, New York
February 8, 2021

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ATTORNEY VERIFICATION

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

LILIA I. TOSON, an attorney duly admitted to practice in the courts of this State, hereby affirms as follows under penalty of perjury:

I am a Supervising Attorney, Civil Law Reform at The Legal Aid Society, 199 Water Street, 3rd Floor, New York, NY 10038. I am counsel for Plaintiffs Maoli Soriano, Shealean Smith, and the proposed class in this action. I make this verification pursuant to CPLR § 2020(d)(3) because Plaintiffs are not located within the County of New York, where the offices of The Legal Aid Society are located.

I have read the foregoing Verified Complaint and know the contents thereof. I hereby affirm under penalty of perjury that the matters set forth in the Verified Complaint are true and correct to the best of my knowledge, except for those allegations made upon information and belief, and as to those allegations, I believe them to be true. The source of my knowledge and information with respect to the matters alleged in the Verified Complaint is my review of the documents cited therein and consultation with Plaintiffs.

LILIA I. TOSON