

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

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In the Matter of the Application of
JOSHUA LARKINS and LISA LARKINS,

Petitioners,

For a Judgment Pursuant to Articles 78 and 3001
of the Civil Practice Law and Rules.

-against -

NEW YORK CITY HOUSING AUTHORITY,
JAMIE RUBIN, in his official capacity as
Chair of the New York City Housing Authority,

-and-

DIEGO BEEKMAN MUTUAL HOUSING ASSOCIATION HDFC,

Respondents.

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MEMORANDUM OF LAW IN SUPPORT OF PETITION AND MOTION FOR
PRELIMINARY INJUNCTION AND CLASS CERTIFICATION

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PRELIMINARY STATEMENT

Petitioners Joshua and Lisa Larkins bring this case on behalf of themselves and all others similarly situated to correct Respondent NYCHA's violation of State law, and its own policies, that have placed them, and potentially hundreds of other tenants with Section 8 vouchers in danger of eviction. Since December 2022, Respondent NYCHA has misapplied Section 610 of the New York Private Housing Finance Law (PHFL § 610), which allows certain rent stabilized landlords to charge their Section 8 tenants the maximum amount payable through their Section 8 subsidy, even if that amount exceeds the maximum otherwise allowed under the Rent Stabilization Law.

As explained below, PHFL § 610 was enacted in order to allow landlords of some City- and State-regulated projects to receive increased income from federal and local subsidies without placing any additional financial burden on the tenants themselves. NYCHA has acknowledged this purpose in the interpretive guidance it recently promulgated along with HPD and other agencies. However, in the case of the Larkins family, and potentially numerous other tenants, NYCHA allowed the landlord to charge illegally high rents that resulted in tenant rent shares far in excess of the 30 percent of income they had previously been paying. In the Larkins' case, their rent rose to an unaffordable 90 percent of their household income, subjecting them to the threat of eviction.

Despite its issuance of its new guidance in December, NYCHA has refused to correct Petitioners' rent share, either retroactively or prospectively, until Petitioners' landlord is persuaded to issue a revised lease with a reduced rent, something it has refused to do. Petitioners' landlord, Diego Beekman Mutual Houses, in turn, violated and continues to violate

the Rent Stabilization Law by increasing Petitioners' lease rent in an amount that far exceeds the amount permitted under PHFL § 610.

Petitioners seek an Order pursuant to Articles 78 and 3001 of the Civil Practice Law and Rules declaring that Respondent NYCHA's rent determinations for Petitioners and similarly situated tenants violates PHFL § 610, and directing NYCHA to retroactively readjust the rents of Petitioners and all class members to the 30 percent of income they were paying prior to the unlawful adjustments. Petitioners further seek a declaration, on behalf of themselves and similarly situated tenants of Diego Beekman, that their landlord is violating the Rent Stabilization Law, and an injunction that it issue them corrected leases that comply with the RSL and PHFL § 610, and adjust Petitioners' rent balance in accordance with NYCHA's retroactive rent adjustment. Finally, Petitioners Joshua and Lisa Larkins seek a preliminary injunction staying their landlord from taking any further action in their pending eviction proceeding until a final determination in this proceeding.

STATEMENT OF FACTS

The Larkins family is a household of three persons who reside at 370 Cypress Avenue, Apartment 3G, Bronx, NY 10454. The household consists of Joshua Larkins, his mother Lisa Larkins, and his adult sister Daneesha Lambert. The apartment contains four bedrooms.

The Larkins' tenancy at 370 Cypress Avenue, Apartment 3G, commenced in 2001, when Petitioner Joshua Larkins moved into the family home as a child with his grandmother Elizabeth Larkins, his two siblings, including his sister Daneesha Lambert (who also currently still lives at the residence), and his cousin – all minor children at the time. They were a household of five in total.

Prior to 2010, the Diego Beekman complex was a project-based U.S. Department of Housing and Urban Development (HUD) Section 8 complex *Diego Beekman MHA HDFC v. McNeil*, 64 Misc. 3d 1206[A] at 3 (Civ Ct, Bronx Co. 2019) (quoting testimony of Diego Beekman management). In or around 2008, the project exited the project based subsidy program and its tenants, including the Larkins family, received Section 8 vouchers. The project is subject to several regulatory agreements that provide that all apartments will be rent stabilized.

The Larkins' household composition has changed many times over the years, with all of Elizabeth Larkins' grandchildren and later great-grandchildren living in the home at one time or another. Elizabeth Larkins died in 2013. Petitioner Lisa Larkins joined the household in or around 2016. NYCHA deemed Joshua the Head of Household for the purposes of the Section 8 voucher in or around 2017 after his older brother vacated.

Because the Larkins family now consists of three persons, they are eligible for only a two-bedroom Section 8 voucher. The rent stabilized rent for the Larkins's apartment is \$2,386.85, based upon a two-year lease term beginning June 1, 2024, according to the last rent-stabilized renewal lease offered to the Larkins family. Since the legal rent for the Larkins apartment is below the Section 8 payment standard rate for a two-bedroom apartment, currently \$2,696 per month, until June 2024, NYCHA covered the rental costs that exceed 30 percent of their household income, resulting in a tenant rent share of \$542 per month. See Petition, Exhibit A.

In February 2024, however, Petitioners received from their landlord a rent stabilized renewal lease for the upcoming lease term beginning June 1, 2024, containing a notice indicating that "actual rents [could be] higher than legal and preferential rents." Although the lease indicated that the maximum stabilized rent was \$2,386.85 for the second year of a two-year lease

term, the lease indicated that instead, the rent to be charged would be \$3,789, regardless of whether they opted for one-year or two-year lease term. See, Petition, Exhibit B - 2024 Lease with Rider. The landlord thus sought to charge Petitioners rent at the four-bedroom payment standard of \$3,789, even though Petitioners qualified only for a two-bedroom standard.

The landlord submitted the fully executed lease to NYCHA with the \$3,789 rent. At that point, pursuant to PHFL § 610, NYCHA should have rejected that lease and directed Diego Beekman to reissue a new lease aligned with the maximum payment for a two-bedroom payment standard. Instead, NYCHA accepted the lease, improperly allowing the landlord to charge rent based on the *apartment size* rather the actual size of the Section 8 voucher corresponding to Petitioners' family. Under Section 8 regulations, because the lease rent far exceeded Petitioners' two-bedroom payment standard, Petitioners were required to pay the excess amount, in addition to the usual Section 8 rent share of 30 percent of their income. See, 24 CFR 982.505. Thus, where Petitioners had previously paid \$542 per month as 30 percent of household income, their rent share increased by \$1,093, raising their total rent share to \$1653, which amounted to an unaffordable *90 percent* of their income. See Petition, Exhibit C - Rent share notice.

Even after NYCHA issued its December 2024 Guidance confirming that rent increases under PHFL § 610 must not result in increases in tenant rent shares, Respondent NYCHA did nothing to correct its prior error, and insisted that *Petitioners* persuade their landlord to issue a revised lease for the correct rental permitted under PHFL § 610.

At the time of the rent increase, Petitioners were facing an eviction in proceeding in Bronx Housing Court and were seeking rental assistance to pay their arrears. Due to the June 2024 rent increase, however, they became disqualified for rental assistance because they could no longer demonstrate an ability to pay rent in the future. Petitioners' landlord has refused to

issue a revised renewal lease, and NYCHA has failed to recompute Petitioners' rent share. If this Court does not reverse NYCHA's unlawful calculation of Petitioners' rent share and their landlord's unlawful rent charges, they will be unable to satisfy their rent arrears or pay ongoing rent and will be evicted from their long-term home.

ARGUMENT

I. RESPONDENT NYCHA'S ACTIONS WERE ARBITRARY AND CAPRICIOUS AND IN VIOLATION OF STATE LAW.

A. NYCHA's Calculation Of Petitioners' Rent Violates Its Own Procedures And Policies

In December 2024, Respondent NYCHA, together with HPD, the NYC Department of Social Services, the NYC Housing Development Corporation, and NYS Division of Homes and Community Renewal (DHCR), issued guidelines to make it abundantly clear that PHFL § 610 does not and should not affect the subsidized tenant's share of the rent. See, <https://www.nyc.gov/assets/hpd/downloads/pdfs/services/PHFL-section-610-consolidated-guidance-for-owners.pdf>.

The guidelines explicitly state that the tenant's share is not to be increased:

Section 610 of the PHFL is intended to help the most financially troubled, regulated affordable housing developments in the respective housing agencies' portfolios by allowing rental subsidy programs to pay reasonable rents above the legal regulated rent, *without affecting the tenant's portion of the rent* . . .

Nothing under PHFL § 610 permits the owner to request modification of contract rents that *increases the tenant's portion of rent*.

Id., at p. 1.

The guidelines also state that:

The maximum possible rent increase is the subsidy payment standard. For units with tenant-based subsidy, the rent amount requested cannot exceed

the lesser of the payment standard for (i) the unit size payment standard or (ii) household size payment standard, pursuant to the subsidy agency's payment calculation and subject to the subsidy provider's rent reasonableness requirements.

Nothing under PHFL § 610 permits the owner to request modification of contract rents that increases the tenant's portion of rent.

Id., at p. 1 and 5.

The December guidance was issued as an interpretation of the governing statute and the rule therein is not framed as a new, prospective change in determining allowable rents under the statute. The guidance therefore establishes that NYCHA's approval of the lease offered by Petitioners' landlord and its adjustment of Petitioners' rent share to 90 percent of their income violated what it now recognizes to have been the correct reading of PHFL § 610.

It is well established that an agency's action in violation of its own rules and procedures is arbitrary and capricious. *Frick v. Bahou*, 56 N.Y.2d 777 (1982); *Lazalee v. Wegman's Food Markets, Inc.*, 40 N.Y.3d 458, 461 (2023); *Gutierrez v. Rhea*, 105 A.D.3d 481, 485 (1st Dep't 2013). NYCHA's increase of Petitioners' rent share, and its continued failure to adjust Petitioners' rent in conformance with its own written policy is therefore arbitrary and capricious and must be reversed. The Court should direct NYCHA to recompute Petitioners' rent share retroactive to the date of its illegal action.

B. NYCHA's Calculation Of Petitioners' Rent Was In Violation of Law.

Even if NYCHA were to argue that the December 2024 guidance is not applicable to the adjustment of Petitioners' rent that occurred in June 2024, its action violated the plain language of the PHFL itself. "[T]he starting point in any case of interpretation must always be the language itself, giving effect to the plain meaning thereof." *Kuzmich v. 50 Murray St. Acquisition*

LLC, 34 N.Y.3d 84, 91 (2019), citing *Majewski v. Broadalbin–Perth Cent. School Dist.*, 91 N.Y.2d 577, 583 (1998); see *Matter of Avella v. City of New York*, 29 N.Y.3d 425, 434 (2017).

Section 610 of the PHFL provides:

. . . [W]here a housing accommodation is subject to a regulatory agreement with a state or municipal agency or public benefit corporation, or a political subdivision of the state, and where a federal, state, or local program provides rental assistance for such housing accommodation, such state or municipal agency or public benefit corporation, or political subdivision of the state, may allow in such regulatory agreement the owner of such housing accommodation to charge and collect a rent for such housing accommodation **that (i) does not exceed the maximum payment standard or contract rent that the rental assistance program may provide** for such housing accommodation, but (ii) does exceed the legal regulated rent for the housing accommodation. [Emphasis added.]

Pursuant to HUD regulations, the maximum rent that the Section 8 program “may provide” is the *lesser* of either the standard for the number of bedrooms or the standard for the household size. See, 24 CFR § 982.505(c)(1). Respondent NYCHA, in Petitioners’ case, allowed the landlord to charge far more than what NYCHA was authorized to “provide” for Petitioners’ three-person household. In effect, NYCHA allowed the landlord to charge the maximum that NYCHA might pay for some hypothetical, larger family that might occupy some other four-bedroom unit, rather than the amount it was permitted to provide for *Petitioners*.

The statute, moreover, states that if a tenant’s rental subsidy ends, for any reason, the landlord can no longer charge the higher rent, and the tenant’s obligation reverts to the previous rent stabilized amount. PHFL § 610(2)(3). The statute thus contemplates that the higher rent can be charged only when there is a subsidy in place to actually pay the increased amount. The structure of the statute is designed to prevent displacement of rent stabilized families, not to accelerate it.

Even if the court were to find the language of the statute to be ambiguous, the legislative intent was plainly to allow landlords to collect additional subsidy payments from the administering agency, not to demand increased payments from the tenants themselves. When a statute is unclear, vague or open to interpretation, the Court must look to the underlying purpose of the statute and the statute's legislative history. "The legislative intent is the great and controlling principle." *Meegan v. Brown*, 16 NY 3d 395, 403 (2011). Moreover, "statutes which relate to the same subject matter must be construed together unless a contrary legislative intent is expressed." *People ex rel. McCurdy v. Warden, Westchester Cnty. Corr. Facility*, 164 A.D.3d 692, 695 (2d Dep't 2018), citing, *In re Enf't of Tax Liens ex rel. Cnty. of Orange*, 75 A.D.3d 224 (2d Dep't 2010). "The courts must 'harmonize the various provisions of related statutes and ... construe them in a way that renders them internally compatible.'" *Cnty. of Orange*, 75 A.D.3d at 234.

PHFL § 610 applies only to rent stabilized apartments in buildings subject to City or State regulatory agreements that are occupied by tenants with rental subsidies such as Section 8, FHEPS, or CityFHEPS. The goal of the legislature was to utilize subsidy program funds to increase the income stream of such affordable housing projects without increasing the rent burden on tenants which could displace them from their rent stabilized apartments.

The legislature must be assumed to have been familiar with the provisions of the Rent Stabilization Law, which it had extensively amended only three years earlier. Under Rent Stabilization, rents are not set according to family income or composition, and tenants are entitled to receive renewal leases regardless of changes in the number of occupants. Under NYCHA's policy at the time it adjusted Petitioners' rent share, however, families that decreased

in size as children grew up and moved would be displaced from their long-term homes, in violation of the purposes of the RSL.

The legislative history of Section 610 makes clear that the Legislature intended no such result, and contemplated that any increases under the statute would be paid by the applicable subsidy program, not by the tenant family. The sponsor's summary explained that the bill would "allow the owner to collect rent up to the maximum payment standard or contract rent that the program *may provide*." [emphasis added] Governor's Bill Jacket at 5, *Introducer's Memorandum in Support*, 2022 S.B. 7235, Ch. 685 [emphasis added].

The sponsor offered the following example as justification for the new law:

Supportive Housing helps formerly homeless New Yorkers, people with disabilities, and other people in need by providing critical services to support the transition to permanent stable housing. . . . [R]ental assistance for units covered by a NYC 15/15 contract increases by 2% annually, while tenants pay no more than 30% of their income. . . . NYC 15/15 units are also rent stabilized however, and under current law, the initial contract rent becomes a preferential rent that may only be increased by Rent Guidelines Board (RGB) adjustments . . . [which] . . . are not keeping pace with the 2% annual increases anticipated by the NYC 15/15 program structure, creating shortfalls in the anticipated funding for these buildings. Over time, these shortfalls will diminish the program's ability to subsidize services . . . as well as necessary maintenance and repairs, and may also put financial strain on already cash-strapped non-profits serving tenants in need of affordable and supportive housing.

This bill will address the need to *maximize the benefits of rental assistance* while the subsidies are available, *without diminishing the long-term affordability of the housing* under rent stabilization.

Governor's Bill Jacket at 6, *Introducer's Memorandum in Support*, 2022 S.B. 7235, Ch. 685 [emphasis added].

Prior to approval by the Governor, the bill was referred to various agencies that would be affected if the bill passed. The Division of the Budget presented arguments for and against the bill. In favor of the bill, the Division stated that "this would allow landlords to receive additional

income from Federal, State, and local rental assistance programs.” In opposition, they state that “having the government pay more to these landlords from rental assistance programs reduces the number of individuals and families in need that could be served by these programs.” Governor's bill jacket at 9-10. Both comments clearly indicate that the Budget Office believed that the additional rent would be paid by the agency and not the tenants.

The Office of Temporary and Disability Assistance (OTDA) which administers the Family Homelessness and Eviction Preventions Supplement (FHEPS) and the Family Rent Supplement Program (RSP), also commented. OTDA's counsel noted that the agency could cover the extra costs because those programs already

allow for rental amounts up to the fair market rents in New York City as determined by the United States Department of Housing and Urban Development, and projected program costs have been calculated to account for this maximum rent, regardless of whether the rental property is subject to a rent regulation agreement ... All other rental assistance programs administered by OTDA are limited by a maximum supplement amount, which should not be affected by this bill.

Governor's bill jacket at 13. Thus, OTDA's understanding is that the funds for the programs are already budgeted as if the agency had to pay market rate rents, not the lower rent regulated rents, so that the state already had the funds to cover the additional rents. The implication here again is that the agency, not the tenant, would be responsible for the increase.

Similar understanding of the law is expressed by the Division of Homes and Community Renewal (HCR), the New York State Association for Affordable Housing (NYSFAH) and the City of New York Mayor's office. HCR stated that it had no objection to the bill as it permits “subsidized housing projects to receive *the full value of the subsidy.*” (emphasis added) Governor's bill jacket at 15. NYSFAH supported the bill on the grounds that it allows the

landlord to collect the “full value of the voucher.” *Id.*, at 12. Mayor Eric Adams announced his approval and support because it “would allow public agencies that subsidize affordable housing projects ... to provide rental assistance to cover rents that are higher” [emphasis added]. *Id.*, at 17.

As explained in Point A, *supra*, Petitioners’ interpretation of PHFL § 610 has been confirmed by Respondent NYCHA itself in its December 2024 Guidance, issued together with HPD and DHCR. Respondent NYCHA cannot contend that the governing statute somehow changed its meaning in December 2024 when the Guidance was issued. The Guidance therefore confirms that NYCHA had been incorrectly implementing PHFL prior to December 2024, and must correct its unlawful actions.

II. RESPONDENT NYCHA’S POLICY AND PRACTICE OF APPROVING SECTION 610 RENTS ABOVE THE PAYMENT STANDARD FOR TENANTS’ HOUSEHOLD SIZE VIOLATED FEDERAL LAW.

HUD regulations prohibit NYCHA from approving rents that are not “reasonable” in comparison to “comparable unassisted units.” 24 CFR § 982.507. HUD’s Section 8 Voucher Guidebook clarifies that “in regulated localities, rents are limited to the lesser of the PHA-determined reasonable rent or the rent controlled amount unless units leased under the voucher program are exempt from local rent control under the local rent control ordinance.” Section 8 Voucher Guidebook, Section 2.4.1, available at https://www.hud.gov/sites/dfiles/PIH/documents/HCV_Guidebook_Rent%20Reasonableness_updated_Sept%202020.pdf, last visited March 13, 2025. See also, NYCHA Leased Housing Directive LHD 09-7 (“If the regulated rent (“registered rent” for rent stabilization) for new

applicant or transfer rentals is less than the GOSection8 reasonable rent, the regulated rent shall be the contract rent.”)

However, contrary to federal law, following the enactment of PHFL § 610, NYCHA, as a pattern and practice, approved rents for rent stabilized voucher holders that exceeded the lawful rent regulated amount, but did not fall within the exception provided by the PHFL. Under federal law, such rents are not considered reasonable, and its practice of approving such rents was therefore unlawful. Statutes and regulations establishing rental amounts for Section 8 and public housing tenants are enforceable under 42 USC § 1983. *Wright v. Roanoke Redevelopment & Housing Authority*, 479 U.S. 418, 429 (1987); *DeCambre v. Brookline Hous. Auth.*, 826 F.3d 1 (1st Cir. 2016); *Johnson v. Hous. Auth. of Jefferson Parish*, 442 F.3d 356 (5th Cir. 2006). Accordingly, Petitioners are entitled to an order on behalf of themselves and all similarly situated Section 8 voucher holders, directing Respondent NYCHA to conform its practices to federal law, and to retroactively correct unlawful determinations made after the enactment of PHFL § 610.

III. RESPONDENT DIEGO BEEKMAN’S ACTIONS VIOLATED THE RENT STABILIZATION LAW AND PHFL § 610.

Respondent Diego Beekman is precluded from charging its tenants more than the “legal regulated rent” permitted under the RSL, unless another statute provides an exception. Section 2525.1 of the Rent Stabilization Law provides that “it shall be unlawful, regardless of any contract, lease or other obligation heretofore or hereafter entered into, for any person to demand or receive any rent for any housing accommodation in excess of the legal regulated rent.” Section 610 of the PHFL provides a narrow exception to this rule. It states that if a rent stabilized landlord is subject to a regulatory agreement that so permits, it may charge a rent “that

(i) does not exceed the maximum payment standard or contract rent that the rental assistance program may provide for such housing accommodation, but (ii) does exceed the legal regulated rent for the housing accommodation.” As explained above, and in NYCHA’s December 2024 guidance, the phrase “maximum payment standard” in the statute means the maximum payment standard actually available to the occupant family, not the maximum available to a hypothetical larger family that might occupy an apartment of that size. By inducing Petitioners to sign a lease with a rent in excess of that permitted by Section 610, Respondent Diego Beekman failed to meet the requirements for the statutory exception to the RSL, and, in the absence of any lawful exception, its demand for \$3789 violated the Rent Stabilization Law and Code.

Petitioners are therefore entitled to a judgment declaring that Respondent Diego Beekman’s lease violates the RSL, and an injunction directing Diego Beekman to issue a corrected lease, and to revise its accounts to reflect the lawful rent for the current lease period.

IV. CLASS CERTIFICATION SHOULD BE GRANTED

Petitioners bring this action pursuant to CPLR § 901 *et seq.* on behalf of themselves and a class defined as all households that receive NYCHA-administered Section 8 subsidies and whose rent shares increased as a result of NYCHA’s approval of a renewal lease under PHFL § 610. Petitioners also seek certification of a subclass consisting of class members who reside in Diego Beekman Houses.

A. Class Certification Is Appropriate

Section 901(a) of the CPLR sets forth the criteria for class certification: (1) the class is so numerous that joinder of all members would be impracticable; (2) questions of law or fact common to the class predominate; (3) the claims or defenses of the representative parties are

typical of the class; (4) the class representatives will fairly and adequately protect the interests of the class; and (5) a class action is the superior method for adjudicating this case. The prerequisites for class certification are satisfied in this action.

New York State's class action statute is to be liberally construed and read to favor the maintenance of class actions. *Andryeyeva v. New York Health Care, Inc.*, 33 N.Y.3d 152 (2019) (“Article 9 was intended to replace New York's prior ‘restrictive’ class action rules which ‘fail(ed) to accommodate pressing needs for an effective, flexible and balanced group remedy’”); *Stewart v. Roberts*, 193 A.D.3d 121 (2021) (“[c]laims of uniform systemwide violations are particularly appropriate for class relief.”) Nonetheless, a “liberal construction” is hardly necessary here – the prerequisites for class certification are easily satisfied.

First, the proposed class is so numerous that joinder of all members would be impracticable. CPLR § 901(a). New York courts have consistently held that a class consisting of as few as fifty members meets the CPLR's numerosity requirement. *See, e.g., Borden v. 400 E. 55th St. Assocs., L.P.*, 24 N.Y.3d 382, 399 (2014) (finding groups of 53 – 500 to be sufficiently numerous, noting that “the legislature contemplated classes involving as few as 18 members”); *Maddicks v. Big City Properties, LLC*, 163 A.D.3d 501 (2018), *aff'd*, 34 N.Y.3d 116 (2019) (tenants in 11 buildings); *Stecko v. RLI Ins. Co.*, 121 A.D.3d 542 (2014) (“at least 50” employees). Here, the Diego Beekman project alone consists of 1231 apartments in which over 900 families were issued Section 8 vouchers when the buildings converted from project-based assistance in 2003. *Diego Beekman MHA HDFC v. McNeil*, 64 Misc. 3d 1206(A) at 3 (Civ Ct, Bronx County 2019). Since rent stabilized leases must be renewed at least every two years, virtually all Diego Beekman tenants will have had renewal leases processed by Respondent NYCHA since the project's regulatory agreement was amended in May 2023 to allow rent

increases under PHFL § 610. Out of these hundreds of households, it is likely that many, like the Larkins household, have lost family members over the years of their rent stabilized tenancies and therefore have Section 8 vouchers with payment standards lower than the maximum for their apartment size. All such households would have had their rents miscalculated under Respondent NYCHA's former practice. In addition, HPD and other agencies have modified rental agreements pertaining to dozens, if not hundreds of other buildings throughout the City to permit the collection of rent increases under Section 610. Any tenants in any of these buildings who pay their rents with NYCHA Section 8 vouchers were at risk of having their rents miscalculated in the same manner experienced by Petitioners.

Second, questions of law or fact common to the proposed class predominate over any questions affecting only individual members. The sole issues in this case are whether Respondents NYCHA's approval of renewal leases purportedly pursuant to PHFL § 610 based on tenants' apartment size rather than their family voucher size was arbitrary and capricious and contrary to law, and whether Respondent Diego Beekman's offer of renewal leases with rents above the families' payment standard violated PHFL § 610 and the Rent Stabilization Law. The commonality rule requires a predominance of claims, not identity of facts, among all class members. *Pludeman v. N. Leasing Sys., Inc.*, 74 A.D.3d 420, 423 (1st Dep't 2010); *Friar v. Vanguard Holding Corp.*, 78 A.D.2d 83, 98 (2d Dep't 1980). Even where there are subsidiary questions of fact or law that are not common to the entire class, certification of a class is warranted, provided those differences "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).

In the present case, common legal issues outweigh minor factual differences among the proposed class members. Although class members may differ in the amount of their lease rents

and rent shares calculated by Respondent NYCHA, these differences are irrelevant to resolution of the common legal issues, and class members' injuries can be remedied by an order directing Respondents to recalculate their lease rents and rent shares pursuant to law.

Third, the claims or defenses of Petitioners are typical of the claims or defenses of the class – *i.e.*, that Respondents miscalculated their lease rents and Section 8 rent shares based upon a misapplication of PHFL § 610, subjecting them to rent increases prohibited by statute.

Fourth, Petitioners will fairly and adequately protect the interests of the proposed class. In litigating their own claims, Petitioners will simultaneously advance the claims of the other class members. They do not have any particularized claims that differ from those of the class. Furthermore, Petitioners' attorneys are experienced in class action litigation involving housing subsidies and other public benefits.

Finally, a class action is superior to other available methods for the fair and efficient adjudication of the controversy, particularly in this action. The members of the proposed class have little or no income and are without the resources that would be necessary to raise their claims in individual actions; it would be “oppressively burdensome” to impose such an obligation upon them. *See, Tindell v. Koch*, 164 A.D.2d 689 (1st Dep’t 1991); *Lambooy v. Gross*, 126 A.D.2d 265, 274 (1st Dep’t 1987); *Brown v. Wing*, 170 Misc. 2d 554 (Sup. Ct. Monroe Cnty. 1996). Moreover, Petitioners' counsel would not have the resources to commence hundreds of individual cases to secure a rent adjustment for each class member. Class certification is therefore essential to ensure that all potential class members will be protected, and that the resources of the judicial system and all counsel will be efficiently utilized.

B. The “Governmental Operations” Doctrine Does Not Bar Certification of the Proposed Plaintiff Class.

Class certification is warranted notwithstanding the governmental operations doctrine. Respondent Diego Beekman, of course, is not a government actor and is not subject to the doctrine in the first instance. As to Respondent NYCHA, class relief is appropriate where, as here, “the condition sought to be remedied by the plaintiffs poses some immediate threat that cannot wait individual determinations.” *N.Y.C. Coalition to End Lead Poisoning v. Giuliani*, 245 A.D.2d 49 (1st Dep’t 1997). *See also, Varshavksy v. Perales*, 202 A.D.2d 155 (1st Dep’t 1994) (governmental operations doctrine did not apply where the government’s reluctance to extend temporary injunctive relief to individuals other than the named plaintiffs constituted an immediate threat); *Brad H. v. N.Y.*, 185 Misc. 2d 420, 425 (Sup. Ct. N.Y. Cnty. 2000), *aff’d*, 276 A.D.2d 440 (1st Dep’t 2000); *Goodwin v. Gleidman*, 119 Misc. 2d 538, 546 (Sup. Ct. N.Y. Cnty. 1983) (governmental operations doctrine was inapplicable where petitioners, residents of an emergency relocation shelter, faced a housing emergency and other socioeconomic difficulties impeding their ability to bring individual suit).

As explained above, Petitioners are either under threat of eviction due to the unaffordable rents approved by Respondent NYCHA, and other class members are likely also facing eviction proceedings because the rents set by NYCHA were, by definition, unaffordable. Since members of the proposed class have had their rent shares raised to a level in excess of 30 percent of their income, they are likely to have fallen behind in rent and to have been sued for arrears in housing court. To the extent that Respondents will not agree to extend to the entire class any relief granted to the individuals and withdraw pending eviction actions based on unlawful rents, certification of a class is therefore warranted. Accordingly, the plaintiff class meets the standards of CPLR § 901(a) and should be certified pursuant to CPLR § 902.

V. **THE COURT SHOULD STAY RESPONDENT DIEGO BEEKMAN FROM TAKING ACTION TO EVICT PETITIONERS DURING THE PENDENCY OF THIS PROCEEDING.**

To obtain a preliminary injunction under CPLR § 6301, the moving party must typically establish (i) a likelihood of success on the merits, (ii) irreparable injury absent the injunction, and (iii) a balancing of the equities in its favor. *Gliklad v. Cherney*, 97 A.D.3d 401 (1st Dep't 2012); *W.T. Grant Co. v. Srogi*, 52 N.Y.2d 496, 517 (1981); *McLaughlin, Piven, Vogel, Inc. v. W.J. Nolan & Co., Inc.*, 114 A.D.2d 165, 174 (2d Dep't 1986). Courts also consider whether the public interest favors issuance of a preliminary injunction. *Destiny USA Holdings, LLC v. Citigroup Glob. Markets Realty Corp.*, 69 A.D.3d 212 (4th Dep't 2009).

Here, Petitioners can establish each of these elements, and the Court should therefore grant a preliminary injunction. Without immediate relief, they may be exposed to the threat of eviction before this court rules on the merits of their claims.

A. Petitioners are Likely To Succeed On The Merits.

As set forth in Points I – III, *supra*, Petitioners are likely to prevail on their claims that both Respondent NYCHA and Respondent Diego Beekman violated federal and state law in setting Petitioners' rent at the payment standard for their apartment size, rather than their household size, causing Petitioners' rent share to soar to 90 percent of their income and placing them in danger of displacement from their long-term rent stabilized apartment.

B. Petitioners Will Be Irreparably Harmed In The Absence Of An Injunction.

Courts recognize that the threat of eviction constitutes irreparable harm sufficient to obtain injunctive relief. *See McNeill v. New York City Housing Authority*, 719 F. Supp. 233, 254 (S.D.N.Y. 1989); *Mitchell v. United States Dep't of Housing & Urban Development*, 569 F. Supp. 701, 704 (N.D.Cal.1983); *Owens v. Housing Authority of Stamford*, 394 F. Supp. 1267, 1271 (D.Conn.1975). The harms resulting from eviction are legion. *See e.g., Jiggetts v. Dowling*, N.Y.L.J., April 22, 1997, at 26, col. 2 (Sup. Ct. N.Y. Co.) (inadequate shelter allowance for high rents); *McCain v. Koch*, 117 A.D.2d 198, 211 (1st Dep't 1986) (alternative housing unsafe or unsanitary), *rev'd on other grounds*, 70 N.Y.2d 109 (1987); *Gresham v. Windrush Partners, Ltd.*, 730 F.2d 1417, 1424 (11th Cir. 1984) (disruption of friendships and other community ties), *cert. denied*, 469 U.S. 882 (1984). As the court held in *Brown v. Artery Organization, Inc.*, 654 F. Supp. 1106, 1118 (D.D.C. 1987), “[i]t is axiomatic that wrongful eviction constitutes irreparable injury.”

Here, Respondent Diego Beekman commenced a summary nonpayment proceeding against Petitioners in January 2020 which was stayed, first due to COVID, and then pending an application for ERAP funds. When the proceeding was restored to court in 2024, it could easily have been resolved through issuance of an emergency rent grant from the City Department of Social Services. However, after Respondent NYCHA unlawfully increased Petitioners' rent share to 90 percent of their income, they could no longer demonstrate an ability to pay rent in the future – a prerequisite to obtain a grant to pay rent arrears. The eviction proceeding is temporarily off calendar while the Housing Court considers Petitioners' motion to dismiss, but a decision could issue at any time. If the Housing Court does not dismiss the case, Petitioners will be left without a defense to the landlord's claims and without means to satisfy the arrears.

Petitioners therefore face the irreparable injury of eviction.

C. The Balance of the Equities Favors Petitioners.

The balance of the equities overwhelmingly favors Petitioners. In the absence of an injunction, Petitioners face the likelihood of eviction from their home of 24 years. In contrast, Respondent Diego Beekman continues to receive a monthly subsidy from NYCHA based upon Petitioners' household size, which is the maximum subsidy it is legally entitled to receive. Diego Beekman, a 1200-unit apartment complex, will not suffer unduly if it is stayed from collecting Petitioners' share of the rent until it is determined in this proceeding.

D. The Public Interest Favors Issuance Of A Preliminary Injunction.

“In ruling on a motion for a preliminary injunction, the courts must weigh the interests of the general public as well as the interests of the parties to the litigation.” *Destiny USA Holdings, LLC v. Citigroup Glob. Markets Realty Corp.*, 69 A.D.3d 212 (4th Dep't 2009), *citing*, *De Pina v. Educational Testing Serv.*, 31 A.D.2d 744, 745 (2nd Dep't 1969). *See also*, *Seitzman v. Hudson Riv. Assoc.*, 126 A.D.2d 211, 214–215 (1st Dep't 1987). Here, issuance of an injunction serves the public interest. The intent of both PHFL § 610 and the Rent Stabilization Law is to preserve affordable housing and prevent the displacement of vulnerable families. Preventing the eviction of Petitioners pending the determination of their lawful rent share clearly serves this important public interest.

CONCLUSION

Respondent NYCHA's calculation of Petitioners' Section 8 rent share based on a rent set at the payment standard for their apartment size rather than their family size violated Section 610 of the PHFL and NYCHA's own procedures. Respondent Diego Beekman's offer of a renewal lease with a rent that exceeded the maximum for Petitioners' Section 8 voucher violated PHFL § 610 and the Rent Stabilization Law. The court should direct Respondent NYCHA to retroactively recalculate Petitioners' rent share as required by law, and direct Respondent Diego Beekman to issue a corrected lease and to remove all unlawful charges from Petitioners' account. Furthermore, the court should direct Respondent NYCHA to afford similar relief to the proposed class, and Respondent Diego Beekman to provide relief to members of the subclass.

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New York, NY

Respectfully submitted,

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