

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

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In the Matter of the Application of ALFREDA GATHERS,
COURTNEY POSEY, and JULIA ANELLI, on behalf
of themselves and all others similarly situated,
and COALITION FOR THE HOMELESS, WOMEN IN NEED,
and NEIGHBORS TOGETHER CORPORATION,

Petitioners,

For a Judgment Pursuant to Articles 78
and 30 of the Civil Practice Law and Rules

- against -

NEW YORK CITY DEPARTMENT OF SOCIAL SERVICES,

Respondent.

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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 ALFREDA GATHERS, COURTNEY POSEY, and JULIA ANELLI bring this case on behalf of themselves and all others similarly situated to prevent Respondent Department of Social Services' (hereinafter "DSS") termination of its long-term practice and policy of paying landlords a "Unit Hold" incentive to compensate them for the time they hold apartments vacant while DSS processes the paperwork for CityFHEPS subsidies that enable homeless clients to exit shelter. Without Unit Hold incentives, shelter residents will experience even greater difficulties in obtaining apartments in which they can use their subsidies and will spend more months in shelter at additional cost to the City, while tenants trying to obtain new housing in the face of eviction from unregulated apartments will be placed at greater risk of shelter entry. The organizational Petitioners, COALITION FOR THE HOMELESS, WOMEN IN NEED, and NEIGHBORS TOGETHER CORPORATION, will have to expend substantial additional time and resources to accomplish their mission of assisting clients in leaving shelter and obtaining stable, permanent housing.

On May 30, 2025, DSS announced that its Unit Hold incentive policy, which has been in place since at least 2017, would be abruptly terminated as of June 30, 2025, and that hold incentives would be issued only for applications filed on or before June 3 for most providers and before June 20 for DHS shelter providers. DSS therefore violated the notice and comment provisions of the City Administrative Procedure Act (CAPA), NYC Charter §§ 1041, et seq. DSS's policy change is also arbitrary and capricious since it lacked any stated rationale and will cause homeless individuals and families to spend additional months in shelter, at substantially increased costs to the City itself.

Petitioners seek an Order pursuant to Articles 78 and 3001 of the Civil Practice Law and Rules declaring DSS's proposed termination of Unit Hold incentives unlawful, and a temporary restraining order and preliminary injunction directing DSS to continue its current policy.

STATEMENT OF FACTS

New York City currently has 85,901 human beings residing in its shelters, including 31,584 children.¹ Shelter stays are traumatic, resulting in lost employment opportunities, family breakups, and impaired educational achievement for homeless children. Maintaining the shelter system currently costs the City nearly \$4 billion annually, of which \$2.5 billion is from City tax levies.² To enable shelter residents to locate permanent housing and reduce City expenditure on shelter, DSS created a variety of housing subsidy programs so that shelter residents could afford to rent apartments. In 2017, DSS created the CityFHEPS program which replaced a complex variety of earlier subsidy programs. At the same time, DSS formalized its policy of paying landlords a "Unit Hold" incentive that would induce them to not rent vacant units to non-subsidy holders while DSS processed the paperwork necessary for subsidy approval and conducted the required unit inspections.³

Even with current inducements to landlords, locating and leasing an apartment takes shelter residents many months. Landlords frequently withdraw rental offers due to delays in CityFHEPS approval, consigning shelter residents to renewed searches for scarce available units. Because shelter residents cannot seek other apartments during wait times, once they lose a unit,

¹ NYC Shelter Census, June 5, 2025, available at <https://www.nyc.gov/assets/dhs/downloads/pdf/dailyreport.pdf>

² Note on the Fiscal 2025 Executive Plan and the Fiscal 2025 Executive Capital Commitment Plan for Committee on Finance and the Committee on General Welfare, available at <https://council.nyc.gov/budget/wp-content/uploads/sites/54/2024/05/DHS-1-1.pdf>

³ DSS Policy Bulletin #17-84-OPE; DSS Policy Bulletin #2024-012.

they must re-start the housing search process completely from scratch by requesting a new voucher. Advocates who assist shelter residents with apartment searches and lease-ups attest that Unit Hold incentives often make the difference in persuading landlords to wait for the City's subsidy processing to be completed.

On May 30, 2025, DSS abruptly announced in an email to housing advocates that, for applications submitted by Homebase, APS, ACS, DYCD, or legal services providers, it would no longer pay Unit Hold fees after June 30, and that fees would be paid only on applications completed with no errors on or before June 3, 2025 with a lease commencing before July 1, 2025. For DHS shelter provider applications, fees would only be paid on applications completed with no errors before June 20, 2025. DSS did not submit its controversial rule change to the notice and comment procedures of CAPA. It did not publish its new policy in the City Register or schedule a hearing for public comment. It has also provided no explanation or reasoning for this abrupt rescission of a longstanding policy that has benefited tens of thousands of vulnerable New Yorkers seeking to exit the shelter system and which will, if left in place, continue to benefit tens of thousands more.

Although DSS now seeks to abolish its longstanding Unit Hold policy, it has not remedied the equally longstanding dysfunction and delay that has plagued the CityFHEPS rental process. As explained in the Petition and in Petitioners' affirmations, these delays require landlords to hold apartments empty for months at a time as they wait for DSS to complete its tortuous approval process. Advocates who assist shelter residents with apartment searches and lease ups attest that Unit Hold incentives often make the difference in persuading landlords to wait for the City's subsidy processing to be completed.

Under the CityFHEPS program, applicants who are found eligible for the rental subsidy are given a “shopping letter” to use in their search for an apartment in the New York City rental market. There are many administrative delays and inefficiencies in the process of securing a shopping letter. For example, while most public benefits applications can be submitted directly by the applicant via the online app AccessHRA, applications for CityFHEPS must go through an intermediary, either DHS staff, contracted shelter operator, or Homebase provider, and requires use of a separate platform called CurRent that does not easily sync with Welfare Management System (WMS), the primary platform through which public assistance benefits are administered.

Once a shopping letter is finally in hand, the applicant can begin their search for an apartment. Unfortunately, there is little support offered to apartment hunters in the process to identify an affordable unit that fits the “payment standard” detailed in the shopping letter, to navigate the pitfalls of source of income discrimination, and to finally submit an application to the landlord or broker in hopes of being approved.

After an application to rent an apartment has been approved by the landlord or broker, the process to complete the CityFHEPS rental assistance subsidy has only just begun. The process to lease-up with a CityFHEPS subsidy including pre-clearance and inspection of the unit, completion of extensive paperwork must be completed by the landlord/broker, DHS review of housing packet, multiple rejections and corrections and re-reviews, re-budgeting of the client’s public assistance case, and finally, if the client is lucky, issuance of the rent checks to the prospective landlord and to the broker, if applicable. Throughout this lengthy process, applicants who are over income for cash assistance must maintain an active “single issuance” cash assistance case. However, “single issuance” cases automatically close after thirty days and must be reopened. Closure of the “single issuance” case causes rejection of the applicant’s rental

package: the applicant must then reopen their case and resubmit the package, causing weeks or months of delay.

These lengthy procedures and unacceptable delays have become routine and systemic. The Organizational Petitioners find that landlords and brokers are weary of, and wary of, City rental subsidy programs, even though they offer guaranteed revenue, because of the lengthy administrative delays and backlog. As a result, the Unit Hold incentive has become an integral component of the CityFHEPS program. Landlords and brokers have priced-in the Unit Hold incentive as partial compensation for the uncertain number of months of delay.

As a result of the impending policy change, Petitioners and other shelter residents have already and will continue to experience even greater difficulty in locating and consummating the rental of permanent apartments, will remain in shelter longer, and undergo the numerous detrimental effects of shelter stays. The Organizational Petitioners, in turn, will be impeded in their mission to assist their clients in placing their CityFHEPS and other housing subsidies and will have to invest more of their scarce resources in conducting repeated apartment searches after offers are revoked. The City, ironically, will also be harmed by its own policy change, as it will pay for additional months of shelter that will cost many multiples of any savings it may reap from ending Unit Hold incentives.

ARGUMENT

I. RESPONDENT DSS'S TERMINATION OF ITS "UNIT HOLD" POLICY VIOLATED CAPA.

Section 1043(e) of the NYC Charter requires City agencies to provide the public an opportunity to comment on proposed rules though, inter alia, through submission of written data, views, or arguments, at a public hearing. Section 1043(b) requires agencies to publish the full text of the proposed rules in the City Record at least thirty days prior to the date set for the public

hearing or the final date for receipt of written comments, whichever is earlier. “Such published notice shall include a draft statement of the basis and purpose of the proposed rule, the statutory authority, including the particular sections and subdivisions upon which the action is based, the time and place of public hearing, if any, to be held or the reason that a public hearing will not be held, and the final date for receipt of written comments.” Copies of the full text of the proposed rule shall be transmitted to the office of the speaker of the council, the council's office of legislative documents, the corporation counsel, each council member, the chairs of all community boards, the news media and civic organizations no later than the date the proposed rule is transmitted to the City Record for publication. NYC Charter § 1043(b). Only after consideration of the relevant comments is presented may the agency adopt a final rule. NYC Charter § 1043(e).

Compliance with CAPA’s notice-and-comment procedures is no mere formality. “[T]he right to communicate views to the decision-maker before the decision is made is certainly more in harmony with the democratic process than to permit a Commissioner to change governing rules overnight without notice to the community or segment of the population affected.” *Ass’n. of Messenger Servs., Inc. v. City of New York*, 136 Misc.2d 869, 875 (N.Y. Sup. Ct. 1987); *Ousmane v. City of New York*, 7 Misc. 3d 1016(A) (Sup. Ct. N.Y. Co. 2005). Here, compliance with CAPA would have enabled organizations and individuals like the Petitioners herein to have explained the crucial importance of Unit Holds in facilitating the fraught process of transitioning shelter residents to permanent housing. Perhaps more important, such a process would have compelled DSS to articulate a rational basis for its revocation of its eight-year policy of issuing Unit Holds despite their proven utility in reducing shelter stays, and therefore, shelter costs.

Section 1041 of the City Charter defines “rule” as “any statement or communication of general applicability that (i) implements or applies law or policy, or (ii) prescribes the procedural requirements of an agency including an amendment, suspension, or repeal of any such statement or communication.” The definition excludes a “statement or communication which relates only to the internal management or personnel of an agency which does not materially affect the rights of or procedures available to the public,” or a “form, instruction, or statement or communication of general policy, which in itself has no legal effect but is merely explanatory.” NYC Charter § 1041(5).

The Court of Appeals has held that a rule under CAPA or SAPA is “a fixed, general principle to be applied by an administrative agency without regard to other facts and circumstances relevant to the regulatory scheme of the statute it administers.” *Council of City of New York v. Dep’t of Homeless Services of the City of New York*, 22 N.Y.3d 150, 154 (2013), citing, *Matter of New York City Tr. Auth. v. NYS Dep’t of Labor*, 88 N.Y.2d 225, 229 (1996). Rules are “rigid, numerical polic[ies] invariably applied across-the-board to all claimants without regard to individualized circumstances or mitigating factors.” *Council v. DHS*, 22 N.Y.2d at 154. See also, 439 E. 88 *Owners Corp. v. Tax Comm’n of City of New York*, 307 A.D.2d 203 (1st Dep’t 2003) (where “the ostensible ‘policy’ dictates a specific result in particular circumstances without regard to other circumstances relevant to the regulatory scheme” it is subject to CAPA); *DeJesus v. Roberts*, 296 A.D.2d 307, 310 (1st Dep’t 2002) (“the rulemaking process is mandated when an agency establishes precepts that remove its discretion by dictating specific results in particular circumstances.”) “An agency may not circumvent CAPA’s rulemaking requirements by giving a different label to what is in purpose or effect a rule or amendment to a rule.” *1700 York Assocs. v. Kaskel*, 182 Misc.2d 586 (Civ. Ct. N.Y. Co. 1999); *Brusco v. Div. of Hous. &*

Cnty. Renewal, 239 A.D. 210, 211, fn.1 (1st Dep't 1997) (rollback of previously unambiguously recognized norm could be violation of State Administrative Procedure Act); *Ousmane*, 7 Misc.3d 1016(A).

Here, DSS's rescission of Unit Hold incentives applies uniformly and across the board to all clients searching for apartments with housing subsidies and involves no exercise of discretion in individual cases. No "numerical policy" can be more rigid than one that reduces to zero in all cases a grant that until now had been widely available over an eight-year period.

Because DSS "undisputedly did not follow the public vetting process required by CAPA for adopting a new rule," its new policy abolishing Unit Holds is a nullity. *Lynch v. New York City Civilian Complaint Review Board*, 183 A.D.3d 512, 518 (1st Dep't 2020); *10 Apt. Assocs. v. NYS Div. of Hous. & Cnty. Renewal*, 240 A.D.2d 585, 586 (2d Dep't 1997); *Council v. DHS*, 22 N.Y.2d at 154.

II. RESPONDENT DSS'S ACTIONS WERE ARBITRARY AND CAPRICIOUS.

In an Article 78 proceeding challenging an agency's decision or action, the Court must assess whether the determination was made arbitrarily and capriciously and without a rational basis. An action is arbitrary and capricious when it is taken without a sound basis in reason or regard to the facts. C.P.L.R 7803(3), *Pell v. Bd. of Ed. of Union Free Sch. Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester Cnty.*, 34 N.Y.2d 222, 231 (1974); *Brusco*, 239 A.D.2d at 211 (1st Dep't 1997); *Block 3738 Construction Corp. v. Niblack*, 234 A.D.3d 955, 957 (2nd Dep't 2025). Blanket reductions in reimbursements without record evidence justifying the decreases have been held to be arbitrary and capricious. *New York State Ass'n of Ctys. v. Axelrod*, 78 N.Y.2d 158, 167, 577 N.E.2d 16, 21 (1991); *see also, Kelly v. Kaladjian*, 589 N.Y.S.2d 730, 734 (Sup. Ct. 1992) (DSS's new policy of imposing a 125% of poverty income limitation on Emergency

Housing Relief grants with no empirical evidence beyond the agency's desire to save money in response to budget cuts and a general sense that people with incomes above a certain amount are better able to plan for emergencies was irrational and impermissibly arbitrary). Furthermore, while an agency is at liberty to correct prior erroneous interpretations of law or to adjust or depart from previously stated policies, it must state its reason for doing so or risk reversal on grounds of arbitrariness and capriciousness. *Metropolitan Taxicab Bd. of Trade v. New York City Taxi*, 18 N.Y.3d 329, 333 (2011); *Matter of Jewish Mem. Hosp. v. Whalen*, 47 N.Y.2d 331, 343 (1979); *Klein v. Levin*, 305 A.D.2d 316, 318 (1st Dep't 2003); *Brusco*, 239 A.D. 2d at 212. The statement of reasoning must be made at the time of promulgation of the new policy. *Richardson v. Comm'r of New York City Dep't of Soc. Servs.*, 88 N.Y.2d 35, 39 (1996).

DSS's rescission of a policy it had continuously maintained for the past eight years was announced via electronic mail from the Deputy Chief Legal Affairs Officer of DSS dated May 30, 2025, and sent to a number of individuals at social and legal service providers. The email simply said that the "landlord Unit Hold for all subsidies will be ending on July 1st," and then went on to provide logistical details about the final dates by which applications had to be submitted. Nowhere in this communication is there even a hint of the rationale underlying this significant policy change.

Additionally, as noted above and below, the rescission of this policy has no rational basis. DSS issued Unit Holds since at least 2017 in order to prevent landlords from revoking apartment offers, consigning shelter residents to recommencing their housing search and substantially prolonging their shelter stays. Since the cost to the City of each additional month for even a one person household stays in the shelter system is \$4,500, which is more than double the average \$2,000 Unit Hold incentive outlay that the City is currently paying, even a brief prolongation of

the average shelter stay will entail costs that vastly outweigh any possible savings to the City by ending the Unit Holds.

For the reasons stated above, the Court should find that DSS's rescission of the Unit Hold incentive is arbitrary and capricious and without basis in fact.

III. 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 individuals and households who are seeking, or will seek, apartments with housing subsidy vouchers and would have been eligible for payment of a Unit Hold fee under DSS's existing policy.

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 (1st Dep’t 2018), aff’d, 34 N.Y.3d 116 (2019) (tenants in 11 buildings); *Stecko v. RLI Ins. Co.*, 121 A.D.3d 542 (1st Dep’t 2014) (“at least 50” employees). Here, thousands of shelter residents have been issued CityFHEPS vouchers and are actively seeking apartments in which to use their subsidies.⁴ Additional individuals and families seek to use CityFHEPS to move to new apartments, generally because they face holdover proceedings in units where they have no permanent tenancy rights. Under DSS’s policy change, none of these individuals or families will be eligible for a Unit Hold incentive to prevent the loss of a prospective apartment during the approval process.

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 DSS’s policy change was effectuated in violation of CAPA, and whether DSS’s decision to end Unit Holds was arbitrary and capricious. 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

⁴ See Mayor’s Management Report, Dep’t of Homeless Services, page 5, Table 2a, showing 2346 single adults and 2754 exited shelter with CityFHEPS subsidies in the first four months of FY 2025, available at <https://www.nyc.gov/assets/operations/downloads/pdf/pmmr2025/dhs.pdf>

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 current status of their apartment searches and the availability of units appropriate for their household sizes or other needs, these differences are irrelevant to resolution of the common legal issues, and class members’ injuries can be remedied by an order directing DSS to reinstate its Unit Hold policy.

Third, the claims or defenses of Petitioners are typical of the claims or defenses of the class – i.e., that they will be unable to obtain payment of Unit Hold fees to prevent the loss of potential apartments during the apartment approval process.

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); *Lamboy 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 Unit Hold fee 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. 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, *Varshavsky 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 currently residing in shelter, or under threat of eviction because they live in units not subject to rent regulation and will suffer substantial injury if their apartment searches are prolonged or impeded by the end of DSS’s Unit Hold policy. To the extent that Respondents will not agree to extend to the entire class any relief granted to the named Petitioners, certification of a class is therefore warranted. Accordingly, the petitioner class meets the standards of CPLR § 901(a) and should be certified pursuant to CPLR § 902.

IV. THE COURT SHOULD STAY DSS FROM TERMINATING ITS “UNIT HOLD” POLICY AND PRACTICE 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, on behalf of the proposed class, can establish each of these elements, and the Court should therefore grant a preliminary injunction. Without immediate relief, they may lose opportunities to secure permanent housing and either spend a prolonged period in shelter, or face eviction from their homes and enter shelter.

A. Petitioners are Likely To Succeed On The Merits.

As set forth in Points I – II, supra, Petitioners are likely to prevail on their claims that DSS violated CAPA in terminating its policy and practice of issuing Unit Holds, and that its actions were arbitrary and capricious.

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

The effects of homelessness on children, particularly children’s educational outcomes are severe and well documented. Homeless children are more likely to experience acute and chronic health problems, including respiratory infections, ear disorders, and gastrointestinal disorders. Additional health problems were attributed to hunger and poor nutrition among homeless children. Homeless children were also found to have greater instances of developmental delays,

likely due to disruptions in childcare and instability in shelter placements. Levels of clinical depression, anxiety, and behavior problems were also found to be higher among homeless children than their equally low income, but housed, peers. *See*, Giselle Routhier, Coalition for the Homeless, “Voiceless Victims: The Impact of Record Homelessness on Children,” September 25, 2012, available at <https://www.coalitionforthehomeless.org/wp-content/uploads/2014/06/BriefingPaper-VoicelessVictims9-25-2012.pdf>

Studies find that homeless students changed schools more frequently, repeated grades more often, and reported worse school experiences than their housed peers. Additionally, homeless children “scored approximately six percentile points worse than housed children on both reading and mathematics achievement, controlling for earlier achievement” prior to their shelter stay. *Id.*, (collecting literature).

Homeless adults also experience severely adverse health effects, with increased risk for infectious and non-infectious diseases, mental illness, alcohol and substance use disorder, diabetes, and heart and lung disease. Stress, uncertainty, and threats to safety while experiencing homelessness increase risk for mental illnesses, such as anxiety, depression, and post-traumatic stress disorder (PTSD). US Centers for Disease Control, “Health and Homelessness,” October 15, 2024, available at <https://www.cdc.gov/homelessness-and-health/about/index.html#:~:text=People%20experiencing%20homelessness%20are%20at,and%20heart%20and%20lung%20disease.>

Petitioners, and similarly situated homeless families will therefore be irreparably harmed if their shelter stays are needlessly prolonged by the unlawful termination of DSS’s Unit Hold policy.

Class members who are frantically seeking new housing before their inevitable evictions from unregulated housing units also face irreparable harm from eviction and shelter entry. Courts recognize that the threat of eviction constitutes irreparable harm sufficient to support injunctive relief. *See, Congregation Erech Shai Bais Yosef, Inc. v. Werzberger*, 189 A.D.3d 1165 (2d Dep’t 2020); *Jones v. Park Front Apartments, LLC*, 73 A.D.3d 612 (1st Dep’t 2010); *Jiggetts v. Perales*, 202 A.D.2d 341 (1st Dep’t 1994); *NRI Grp. LLC v. Crawford*, 50 Misc. 3d 1217(A) (Sup. Ct. N.Y. Co. 2016).

All members of the proposed class therefore face irreparable harm that can only be prevented by issuance of an injunction staying DSS from terminating its longstanding Unit Hold policy.

C. The Balance of the Equities Favors Petitioners.

The balance of the equities favors Petitioners. In the absence of an injunction, members of the proposed Petitioner class face eviction and entry into shelter, or prolongation of already prolonged shelter stays. In contrast, over a five-year period, DSS expended approximately \$45 million for Unit Holds for 24,000 individuals and families, or about \$2,000 per household.⁵ Such an outlay represents far less than the cost of even a single month’s additional shelter stay for a single adult – \$144 per day, or \$4500 per month.⁶ Thus, issuance of an injunction will actually compel the City to save money despite its intentions to the contrary. Furthermore, as the Court noted recently in *The Council of the City of New York v. Eric Adams*, 154909/2025 at p. 17

⁵ Thomas DiNapoli, State Comptroller, “Administration of the CityFHEPS Program for DHS Shelter Residents,” at 13, available at <https://www.osc.ny.gov/state-agencies/audits/2024/10/30/administration-cityfheps-program-department-homeless-services-shelter-residents>.

⁶ Mayor’s Management Report 2025, Dep’t of Homeless Services, p.219, Table 1b, available at <https://www.nyc.gov/assets/operations/downloads/pdf/pmmr2025/dhs.pdf>

(NYS Sup. Ct. 6/13/2025), a preliminary injunction will simply maintain the status quo and as such, the balance of the equities strongly favors Petitioners.

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); *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 by reducing shelter stays for vulnerable individuals and families, while resulting in net savings for the City treasury.

CONCLUSION

Respondent DSS’s termination of its Unit Hold policy violated the City Administrative Procedure Act and was arbitrary and capricious. The court should therefore declare the termination of Unit Hold incentive to be a nullity, and direct Respondent DSS to continue issuing Unit Hold incentives in conformance with past policy and practice. Pending a final determination on the merits of this proceeding, the court should issue a preliminary injunction staying the termination of Respondent’s policy of issuing Unit Hold incentives for apartments being processed for CityFHEPS.

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New York, NY

Respectfully submitted,



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