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

MICHEL TOLIVER, JATNNA AQUINO, TABITHA DANIEL, NAKISHA RIEARA, & TARIN RIVERA, on their own and on behalf of all others similarly situated,

Petitioners,

-against-

NEW YORK CITY DEPARTMENT OF SOCIAL SERVICES & MOLLY WASOW, as Acting Commissioner of the New York City Department of Social Services & the CITY OF NEW YORK,

Respondents.

Index No. 450926/2023

IAS Part 11
Hon. Lyle E. Frank

MEMORANDUM OF LAW IN SUPPORT OF PETITIONERS' MOTION FOR ENTRY OF AN ORDER PRELIMINARILY APPROVING THE PROPOSED SETTLEMENT, CONDITIONALLY CERTIFYING THE PROPOSED CLASS, AND APPROVING THE PROPOSED NOTICE PROGRAM

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Petitioners Michel Toliver, Jatnna Aquino, Tabitha Daniel, Nakisha Rieara, and Tarin Rivera, by their undersigned counsel, and upon the Notice of Motion and Affirmation of Fara Tabatabai submitted herewith, respectfully submit this Memorandum of Law in support of their motion, upon consent of Respondents, for entry of an order preliminarily approving the proposed settlement of the action, conditionally certifying the proposed class, and approving the form and method of notice to potential class members.

PRELIMINARY STATEMENT

This litigation is a putative class action against Respondents New York City Department of Social Services ("DSS"), Molly Wasow as Acting Commissioner of DSS, and the City of New York, seeking to prevent Respondents from unlawfully terminating rental subsidies for New York City families under the Family Homelessness and Eviction Prevention Supplement program ("FHEPS") and the City Fighting Homelessness and Eviction Prevention Supplement program ("CityFHEPS").

Both FHEPS and CityFHEPS provide crucial assistance to low-income families residing in New York City, who would not be able to afford housing without those subsidies. In this action, Petitioners allege that Respondents, as a pattern and practice, failed to follow their own procedures regarding annual continuation or renewal of FHEPS and CityFHEPS subsidies, resulting in families that qualified for continued subsidies arbitrarily losing their benefits, often without clear or adequate notice, and without any information on how to seek restoration of those benefits. Families who cannot secure restoration of their benefits are unable to pay their rent and risk eviction or homelessness.

Shortly after initiating this action, Petitioners and Respondents began discussing a potential settlement. After months of vigorous negotiations, the parties have now entered into a Stipulation and [Proposed] Order of Settlement (the "Stipulation"). If approved by the Court, the

proposed settlement would resolve this litigation and deliver substantial benefits to needy New York City families. Most importantly, the proposed settlement will result in Respondents reviewing all terminations of FHEPS and CityFHEPS benefits over the past two years and correcting any improper terminations, as well as systematically reforming their procedures for continuance or renewal of FHEPS and CityFHEPS benefits to ensure that families that are eligible for those benefits continue to receive them. The effect of the proposed settlement will be to save many New York City families from losing their benefits arbitrarily and avoid the risk of eviction or homelessness for those families.

Petitioners respectfully submit that the proposed settlement is fair, reasonable, and adequate, particularly in light of the risks and obstacles if they were to litigate this action through trial and to final judgment. Petitioners further submit that the proposed class, as stipulated, is proper under New York law and merits certification. Accordingly, with the consent of Respondents, Petitioners respectfully request that the Court enter the [Proposed] Order Preliminarily Approving the Proposed Settlement, Conditionally Certifying the Proposed Class, and Approving the Proposed Notice Program, as attached as Exhibit 1 to the Affirmation of Fara Tabatabai.

FACTUAL BACKGROUND

FHEPS is a shelter supplement program that, pursuant to State regulation, provides rent subsidies to low-income New York City families with children who receive cash assistance and have been evicted or are facing eviction, have lost their housing or ability to pay for housing due to domestic violence, or have lost their housing because of health or safety issues. Verified Petition, Dkt. 1 ("Petition") ¶ 39. FHEPS was developed to prevent at-risk families, and particularly minor children, from entering the shelter system, and to enable families already in shelter to find alternative housing. *Id.* FHEPS families do not need to renew or recertify their eligibility for

FHEPS benefits each year; however, they do need to recertify their cash assistance case annually to demonstrate that they remain eligible for FHEPS benefits. *Id.* ¶ 42.

Respondents established CityFHEPS in 2018 to provide additional rental assistance to households in or at risk of entering New York City shelters. *Id.* ¶ 18. Under CityFHEPS Rule 10-8, a household receiving CityFHEPS rental assistance may receive four annual renewals of their CityFHEPS benefits if they continue to meet eligibility criteria. *Id.* ¶ 23. To renew CityFHEPS benefits, a household must submit a renewal application within 30 days of receiving an annual notice of renewal from DSS. *Id.* ¶ 25.

On April 12, 2023, Petitioners commenced this action on behalf of themselves and a putative class of similarly situated individuals, alleging that Respondents, as a pattern and practice: (i) routinely and arbitrarily terminated FHEPS benefits for households who recertified for cash assistance and therefore qualified for continued subsidies; and (ii) routinely failed to timely process CityFHEPS renewal applications and unlawfully terminated CityFHEPS benefits during the annual renewal process, despite receiving timely renewal submissions. *Id.* ¶ 3. Petitioners sought a declaratory judgment that Respondents' conduct violated CityFHEPS Rule 10-8; New York Social Services Law §§ 131 and 350 and their implementing regulations, plans and procedures; and State and federal due process guarantees. *Id.* ¶¶ 114-127.

On November 15, 2023, after months of vigorous negotiation, Petitioners and Respondents reached a settlement of this matter in principle.

PRINCIPAL TERMS OF THE PROPOSED SETTLEMENT

The principal terms of the proposed settlement, as reflected in the Stipulation, are as follows:

First, Respondents will agree to evaluate and correct improper terminations of FHEPS or CityFHEPS benefits. In particular:

(a) Respondents will designate a unit in the Family Independence Administration to review FHEPS terminations that occurred during the annual cash assistance recertification process. That unit will review each case from March 2021 through the end of the Stipulation Period[1] to evaluate whether the termination was correct. If the termination was incorrect and the household continues to be eligible for FHEPS benefits, Respondents will reinstate those benefits, retroactive to the date of the improper termination. Tabatabai Aff. Ex. 2 (Stipulation) ¶¶ 19-21.

(b) For any FHEPS household that, between April 2020 and the Effective Date of the Stipulation, received a shelter allowance and FHEPS subsidy in an amount less than the full amount of their rent, and for whom the full amount of their rent was within FHEPS maximum rent limits, Respondents will process an upward modification of the household's FHEPS subsidy upon request, retroactive to the change in rent. *Id*. ¶ 26.

(c) Respondents will designate two New York City Human Resources Administration ("NYC HRA") staff – one for FHEPS and one for CityFHEPS – to evaluate and correct individual cases for class members identified by class counsel. *Id*. ¶ 17.

(d) Respondents will do a one-time mailing to all families who previously received CityFHEPS subsidies; did not renew those subsidies in 2021, 2022, and 2023; and have active Public Assistance or Social Security Disability Insurance cases. The mailing will explain that those families have 90 days from the mailing date of the letter to submit an application for renewal of their CityFHEPS benefits. Respondents will process all renewal applications within 90 days, reinstate each household's CityFHEPS subsidy, and issue any erroneously terminated subsidy payments retroactive to the date of termination. *Id*. ¶ 39.

Second, Respondents will modify their systems and procedures to avoid improper terminations in the future and to provide adequate notice and instructions to families regarding renewals, restorations, and modifications of FHEPS and CityFHEPS benefits. In particular:

(a) Respondents will implement a new procedure for processing FHEPS applications, restorations, and modifications submitted in person at Benefit Access Centers or online via the Access HRA web portal. Respondents will train all NYC HRA case workers on the new procedures and will provide copies of all training material to class counsel. *Id*. ¶¶ 28-29.

1. The "Stipulation Period" is defined as 18 months from the "Effective Date" of the Stipulation. Tabatabai Aff. Ex. 2 (Stipulation) ¶ 15. The "Effective Date" is defined as the date on which the Stipulation, having been approved and "so ordered" by the Court, is filed with the Clerk of Court for the Supreme Court of the State of New York, New York County. *Id*. ¶ 5.

(b) Respondents will change NYC HRA's case management system to include an on-screen notification that will appear to NYC HRA case workers during the recertification process for any family that received FHEPS in the 12-month period prior to recertification. The pop-up window will alert the NYC HRA case worker that the family previously received a FHEPS subsidy and will expressly ask the case worker to confirm that they want to remove the FHEPS subsidy from the family's cash assistance budget. If the case worker confirms that they want to remove the FHEPS subsidy, the case worker will be required to provide a reason for the removal. *Id*. ¶ 18.

(c) Respondents will post instructions on its website, on the Access HRA portal, at all Benefit Access Centers, at all Homebase locations, and in all NYC HRA housing court offices on how a family can apply for, restore, or modify FHEPS benefits. *Id*. ¶¶ 25, 30.

(d) Respondents will adopt the notice approved by the New York State Office of Disability and Temporary Assistance ("OTDA") to alert FHEPS families to any change in their subsidy amount and provide a reason for the change. *Id*. ¶ 31.

(e) If a household's only source of income is cash assistance and the household does not submit a renewal application for CityFHEPS on or before the 60th day prior to the termination of their CityFHEPS subsidy, Respondents will process an automatic renewal of the subsidy and provide the household with a CityFHEPS renewal approval notice. *Id*. ¶ 33.

(f) Respondents will set a processing goal for all CityFHEPS renewals of 30 days following receipt of a complete renewal application and will designate sufficient staff to process the number of renewals needed each month. *Id*. ¶ 34.

(g) Respondents will record receipt of all CityFHEPS renewal applications within 72 business hours of receipt of each application, and NYC HRA will record the date the renewal is processed. Respondents will provide CityFHEPS recipients with receipts for all CityFHEPS renewal applications submitted by mail. *Id*. ¶¶ 37-38.

(h) Respondents will post on the NYC HRA website and Access HRA web portal, at all Benefits Access Centers, at all Homebase locations in New York City, and at all NYC HRA housing court offices information and instructions on how to apply for, renew, or modify CityFHEPS benefits. *Id*. ¶¶ 46-47.

Third, Respondents will provide assurances and data regarding their compliance with the Stipulation. Specifically:

(a) For the period from April 2023 through the end of the Stipulation Period, Respondents will provide monthly reports to class counsel indicating the number of cases involving termination of FHEPS benefits during the prior month. Respondents will also create two "look back" reports covering the period from

March 2021 to February 2022 and March 2022 to March 2023, respectively, showing the number of cases where FHEPS benefits were terminated. Both the monthly reports and the look back reports will contain specified compliance data demonstrating how any erroneous terminations identified in the reports have been corrected. *Id.* ¶¶ 19-24.

(b) To verify Respondents' compliance with their 30-day goal for processing CityFHEPS renewal applications, Respondents will provide class counsel with monthly reports showing the percentage of renewal applications processed that were fully submitted at least 30 days prior to the end of the renewal period. *Id.* ¶ 34.

(c) As of the Effective Date, Respondents will represent that DSS has processed all complete CityFHEPS renewal applications within 30 days of submission. *Id.* ¶ 32.[2]

ARGUMENT

I. THE PROPOSED CLASS SATISFIES THE REQUIREMENTS OF ARTICLE 9 OF THE CPLR AND SHOULD BE CERTIFIED.

Pursuant to Article 9 of the CPLR, the parties have stipulated to certification of a class consisting of all individuals residing in New York City who were or are eligible for a CityFHEPS or FHEPS rental subsidy from April 15, 2020 through the Stipulation Period (the "Class"). Tabatabai Aff. Ex. 2 (Stipulation) ¶ 16.

CPLR § 901 sets out five prerequisites to class certification: (1) the class is so numerous that joinder of all members, whether otherwise required or permitted, is impracticable; (2) there are questions of law or fact common to the class that predominate over questions affecting only individual members; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; (4) the representative parties will fairly and adequately protect the interests of the class; and (5) a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

2. One provision of the Stipulation remains subject to further negotiation between the parties. That provision relates to the amount of attorneys' fees that the City of New York, on behalf of NYC HRA, will pay to class counsel in full satisfaction of all claims in this action. *Id.* ¶ 51.

The determination of whether to certify a proposed class rests within the sound discretion of the trial court. *Corsello v. Verizon N.Y., Inc.*, 18 N.Y.3d 777, 791 (2012); *Pludeman v. N. Leasing Sys., Inc.*, 74 A.D.3d 420, 422 (1st Dep't 2010). In making that determination, "New York's statutory class certification provisions are to be liberally construed." *Andryeyeva v. N.Y. Health Care, Inc.*, 33 N.Y.3d 152, 183 (2019). "[A]ny error, if there is to be one, should be . . . in favor of allowing the class action." *Pruitt v. Rockefeller Ctr. Props., Inc.*, 167 A.D.2d 14, 21 (1st Dep't 1991) (internal quotation marks and citation omitted); *Hurrell-Harring v. State of New York*, 81 A.D.3d 69, 72 (3d Dep't 2011) (internal quotation marks and citation omitted). Where, as here, "plaintiffs' allegations suggest a policy or practice of unlawful action," such claims are "ripe for class treatment." *Andryeyeva*, 33 N.Y.3d at 184.[3]

Each of the five prerequisites set out in CPLR § 901 are satisfied here, and Respondents consent to certification of the Class for settlement purposes. Accordingly, the Court should certify the Class.

A. The Class is So Numerous That Joinder of All Members Would Be Impracticable.

For purposes of class certification, "numerosity is presumed at a level of 40 members." *Borden v. 400 E. 55th St. Assoc., L.P.*, 24 N.Y.3d 382, 399 (2014) (quoting *Consol. Rail Corp. v. Town of Hyde Park*, 47 F.3d 473, 483 (2d Cir. 1995)). Here, the Class consists of thousands of members. Thus, the Class is sufficiently numerous that joinder would be impracticable.

3. The fact that Petitioners brought this case as a combined declaratory judgment action and Article 78 proceeding does not alter the analysis. Courts routinely grant class certification in similar cases. *See, e.g.*, *Kuppersmith v. Dowling*, 93 N.Y.2d 90, 95 (1999) (noting that action challenging administration and implementation of State and City home care program was brought as a combined declaratory judgment action and Article 78 proceeding and that class certification was granted); *In re Stewart v. Roberts*, 193 A.D.3d 121, 123-25 (3d Dep't 2021) (upholding grant of class certification in combined declaratory judgment action and Article 78 proceeding challenging OTDA denial of at least 50 households' applications for public assistance).

B. There are Questions of Law and Fact Common to All Class Members.

To establish commonality of legal and factual questions across a proposed class, "it is predominance, not identity or unanimity, that is the linchpin." *Hurrell-Harring*, 81 A.D.3d at 73 (internal quotation marks and citation omitted); *see also, e.g.*, *Stecko v. RLI Ins. Co.*, 121 A.D.3d 542, 543 (1st Dep't 2014) (holding that the commonality requirement was satisfied where all class members alleged that defendant employer failed to pay the required prevailing wage and supplemental benefits they were owed); *Borden*, 105 A.D.3d at 630-31 ("The issues of when defendant received J-51 tax benefits, whether defendant deregulated apartments while receiving those benefits, which tenants resided in those apartments during those time periods, and whether defendant wrongfully charged market rents while accepting J-51 benefits are common issues that 'predominate'.").

Thus, a class action is appropriate where the central legal and factual questions are common to all members of a Class, even if there are additional factual or legal questions that need to be resolved with respect to particular members. *Hurrell-Harring*, 81 A.D.3d at 73; *see also City of New York v. Maul*, 14 N.Y.3d 499, 514 (2010) ("[T]he fact that questions peculiar to each individual may remain after resolution of the common questions is not fatal to the class action."). In addition, commonality is typically present where "the use of a class action would achieve economies of time, effort, and expense, and promote uniformity of decision as to persons similarly situated." *Pludeman*, 74 A.D.3d at 423.

Here, there is substantial legal and factual commonality across the Class. The central legal question in this case is whether Respondents' termination of housing subsidy benefits for families who qualified for continuation of those benefits was unlawful. Those questions are identical across the claims of all Class members. Likewise, the key factual questions in this case concern Respondents' procedures and practices with respect to termination of FHEPS and

CityFHEPS benefits for families that qualified for continuance or renewal of those benefits—questions that are the same across the Class. Any minor factual differences among Class members do not have any effect on the predominant legal or factual issues in this case that would determine liability. *See Deluca v. Tonawanda Coke Corp.*, 134 A.D.3d 1534, 1536 (4th Dep't 2015) ("Although the individual class members may have sustained differing amounts of damages . . . that fact will not prevent the suit from going forward as a class action if the important legal or factual issues involving liability are common to the class."); *Maul*, 14 N.Y.3d at 504, 513-14 (affirming a class certification order even though a determination regarding appropriate placements in New York City's foster care system would require an individualized inquiry into each developmentally disabled person's special needs).

Given the high degree of commonality across the claims in the Class, litigating this matter as a class action would be the most efficient use of judicial and party resources. Requiring Class members to pursue individual claims would lead to multiple identical or near-identical lawsuits against Respondents, which would unnecessarily burden the courts and could result in inconsistent judgments. Accordingly, the commonality requirement is satisfied.

C. The Claims of the Representative Parties are Typical of the Claims of the Class.

To establish typicality, the claims of the named representatives of the Class and other Class members must arise from the same wrongful course of conduct and be based on the same legal theories. *See Pludeman*, 74 A.D.3d at 424; *Hurrell-Harring*, 81 A.D.3d at 73. "[T]hat the underlying facts of each individual plaintiff's claim vary . . . does not preclude class certification." *Borden*, 105 A.D.3d at 631; *see also Williams v. Air Serv. Corp.*, 121 A.D.3d 441, 442 (1st Dep't 2014) ("[T]he minor differences in each individual class member's claim do not

defeat typicality."); *Pludeman*, 74 A.D.3d at 423 (typicality does not require "identity of issues").

In this action, the claims of the representative parties and the rest of the Class all arise from the same conduct: Respondents' arbitrary termination of FHEPS or CityFHEPS benefits, despite Petitioners continuing to qualify for those benefits, and/or Respondents' failure to timely process applications for renewal or modification of those benefits. Petitioners' allegations that Respondents' conduct violates Respondents' own rules, as well as section 350 of the New York Social Services Law and State and federal due process guarantees, are the same across the Class. Any slight differences in the underlying facts of the Class representatives' claims do not change the legal claims they are bringing or the legal theories they are asserting on behalf of the Class. The typicality requirement for class certification is therefore satisfied.

D. Plaintiffs and Their Counsel Will Fairly and Adequately Represent the Interests of the Class.

"The three essential factors to consider in determining adequacy of representation are potential conflicts of interest between the representative and the class members, personal characteristics of the proposed class representative (*e.g.*, familiarity with the lawsuit and his or her financial resources), and the quality of the class counsel." *Cooper v. Sleepy's, LLC*, 120 A.D.3d 742, 743-44 (2d Dep't 2014) (internal citation omitted); *see also Dabrowski v. Abax Inc.*, 84 A.D.3d 633, 634-35 (1st Dep't 2011); *Hurrell-Harring*, 81 A.D.3d at 73-74.

Here, those factors support certification of the Class. First, the parties in this case are not aware of any conflicts of interest. Second, the proposed Class representatives are familiar with the lawsuit, committed to pursuing it, and have an adequate understanding of the issues in the case. Third, Class counsel are high-quality, experienced lawyers at Hughes Hubbard & Reed LLP and The Legal Aid Society. Hughes Hubbard & Reed is a large, international law firm with

significant expertise in complex litigation, and counsel in this matter has previously and successfully represented recipients of cash assistance in cases against New York State and New York City related to FHEPS and CityFHEPS benefits. The Legal Aid Society is the oldest and largest not-for-profit legal services organization in the United States, and the attorneys working on this case are well-versed in the subject matter of this litigation and accomplished in representing recipients of cash assistance in New York City.

E. Class Action Adjudication of the Claims is Superior to All Other Available Methods of Adjudication.

A class action is the most efficient and appropriate means of adjudicating the issues in this case. Cases, such as this one, in which claimants seek to remedy widespread, systematic failures are most commonly and properly litigated as class actions. *See Andryeyeva*, 33 N.Y.3d at 184 (claims that allege "a policy or practice of unlawful action" are "ripe for class treatment"). That is for good reason: pursuing multiple individual lawsuits for systematic failures could result in inconsistent judgments, which would create uncertainty and require expensive court resolution. Here, Petitioners are seeking systematic correction of Respondents' improper termination of FHEPS and CityFHEPS benefits and systematic reform of Respondents' procedures for continuance and renewal of those benefits. That relief will affect thousands of Class members. Thus, litigating this case as a class action would be superior to all other methods of adjudication, and the Court should certify this action as a class action.

II. THE COURT SHOULD APPROVE THE PROPOSED SETTLEMENT.

CPLR § 908 requires the parties to any settlement of a class action to submit the proposed settlement to the Court to assess whether it is fair, reasonable, and adequate. *Fiala v Metro. Life Ins. Co.*, 899 N.Y.S. 2d 531, 537-38 (Sup. Ct. 2010). In evaluating a proposed settlement, courts consider a number of non-exhaustive factors, including the risks of ongoing litigation and

likelihood of the plaintiffs' ultimate success; the nature of the bargaining, including whether it was conducted in good faith; the degree of support for the settlement from the parties themselves; and, in cases raising questions of public policy, the impact of this settlement on the public interest. *See In re Colt Indus. S'holder Litig.*, 155 A.D.2d 154, 160 (1st Dept. 1990), *aff'd as modified*, 77 N.Y.2d 185 (1991); *Rosenfeld v. Bear Stearns & Co.*, 237 A.D.2d 199, 199-200 (1st Dep't 1997); *Klurfeld v. Equity Enters., Inc.*, 79 A.D.2d 124, 133 (2d Dep't 1981); *State of New York v. Philip Morris, Inc.*, 686 N.Y.S.2d 564, 566 (Sup. Ct. 1998). The presence or absence of any particular factor is not determinative; courts instead look at the "totality of the circumstances" to decide whether the proposed settlement is in the best interests of the class. *Alix v. Wal-Mart Stores, Inc.*, No. No. 7121-01, 2010 N.Y. Misc. LEXIS 1402, at *117-18 (Sup. Ct. May 26, 2010) (citing *Klurfeld* and *Philip Morris*).

Application of these factors to this case overwhelmingly supports approval of the proposed settlement. The proposed settlement confers substantial benefits on the members of the Class by correcting improper terminations of Class members' FHEPS and CityFHEPS benefits and by reforming Respondents' procedures to ensure that arbitrary termination of those benefits does not occur in the future. The proposed settlement would ensure continued benefits for thousands of Class members.

While Petitioners are confident that they could establish at trial that Respondents' arbitration termination of FHEPS and CityFHEPS benefits for families who qualified for continued benefits was unlawful, litigating this case to a final, non-appealable resolution could take years. In the interim, Class members could be evicted or become homeless because the termination of their benefits leaves them without sufficient funds to cover their rent. By contrast, a settlement will ensure that thousands of Class members receive rental assistance benefits for as

long as they are eligible for them. A settlement would also conserve judicial and party resources, eliminate the uncertainty inherent in this lawsuit, and create a framework for future legal compliance.

The proposed settlement is the result of months of negotiation and analysis on the part of Petitioners' counsel to ensure that the best interests of Petitioners and the Class are reflected in the terms of the proposed settlement. The parties fully support the proposed settlement, and Petitioners' counsel recommends preliminary approval of the settlement based upon their experience, intimate knowledge of the strengths and weaknesses of the case, understanding of the likely recovery at trial and on appeal, and all other relevant considerations.

III. THE PROPOSED NOTICE TO THE CLASS IS APPROPRIATE.

The CPLR does not contain specific requirements for a notice of a class settlement. In the absence of such guidance, New York courts follow the federal standard, which requires that the notice "fairly apprise the prospective members of the class of the terms of the proposed settlement and of the options that are open to them in connection with the proceedings." *In re Colt Indus.*, 155 A.D.2d at 160-61 (citing *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F. 3d 96, 114 (2d Cir. 2005)). Applying that standard, the First Department has held that a court properly exercises its discretion under Article 9 of the CPLR by "approving for publication a notice, which, at a minimum, informs all class members of the pending class action . . . , the composition of the class, the issues between the parties, the terms of the proposed settlement, how a class member may object, the time period within which such objection, if any, must be made, and the date on which the trial court will hold a hearing, at which same will consider the fairness of the proposed settlement." *Id.* at 160.

The proposed notice, in the form attached as Exhibit 3 to the Affirmation of Fara Tabatabai (the "Notice"), contains the requisite information. It describes the nature of the

litigation, sets forth the definition of the Class, states the claims alleged and issues involved, describes Class rights under Article 9 of the CPLR and the settlement, and advises the Class how they may object to the Settlement. If the Court approves the Notice and sets a date for the fairness hearing, the Notice will include the date, time, and place of the fairness hearing.

The proposed notice plan is designed to ensure that all members of the Class receive notice of the proposed settlement. The agencies and offices at which the Notice will be posted are those who work most closely and interact most frequently with members of the prospective class. Petitioners will also distribute the Notice to additional programs, organizations, and individuals that work closely with members of the prospective class. Specifically:

- Respondents, at their expense, will cause the Notice to be posted (i) on its website, (ii) on the Access HRA portal, (iii) at all Benefit Access Centers, (iv) at all Homebase locations, and (v) in all NYC HRA housing court offices and will ensure the Notice remains posted for 30 days thereafter (the "Notice Period").

- Petitioners, at their expense, will cause the Notice to be posted throughout the Notice Period (i) on the website for The Legal Aid Society of New York, and (ii) in the waiting rooms or reception areas of each main borough office of the Civil Practice of The Legal Aid Society in New York City, as well as The Legal Aid Society's central office.

- Petitioners, at their expense, will electronically distribute the Notice to legal services programs, community-based organizations, elected officials, and housing court judges and request that these organizations and individuals post copies of the Notice.

- Petitioners, at their expense, will set up a dedicated phone number for Class members to call to obtain information related to the proposed settlement.

For all of the above reasons, the proposed notice satisfies all of the requirements of New York law.

CONCLUSION

For the foregoing reasons, Petitioners respectfully request that the Court enter the proposed Order preliminarily approving the proposed settlement of the action, certifying the proposed Class, and approving the form and method of notice to Class members.

Dated: New York, New York
March 5, 2024

By: */s/ Fara Tabatabai*

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CERTIFICATION OF WORD COUNT

Pursuant to Rule 202.8-b of the Uniform Civil Rules for the Supreme Court and the County Court of New York, I hereby certify that the foregoing memorandum of law contains 4,765 words, exclusive of the caption, table of contents, table of authorities, and signature block, and therefore complies with the word count limit under Rule 202.8-b.

/s/ Fara Tabatabai
Fara Tabatabai