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

WILLIE IVY, KIRT ROSS, ELISA DECASTRO, MINERVA PACUMIO, ASHALEY CARTER, KIMBERLY MALDONADO, and CASEY HANTEN *on behalf of themselves and all others similarly situated*, Plaintiffs, v. NEW YORK STATE OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE; and BARBARA C. GUINN, as Commissioner of the New York State Office of Temporary and Disability Assistance, Defendants.	Index No. 157051/2026

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR (I) A PRELIMINARY INJUNCTION FOR THE NAMED PLAINTIFFS AND (II) CLASS CERTIFICATION

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Plaintiffs Willie Ivy, Kirt Ross, Elisa DeCastro, Minerva Pacumio, Ashaley Carter, Kimberly Maldonado, and Casey Hanten respectfully submit this memorandum of law in support of their motion for:

(1) a preliminary injunction requiring Defendants the New York State Office of Temporary and Disability Assistance ("OTDA") and Barbara C. Guinn, as Commissioner of OTDA, to provide the named Plaintiffs with monthly shelter allowances or supplements aligned with the Fair Market Rent levels ("FMR") determined by the U.S. Department of Housing and Urban Development ("HUD");

(2) certification of a class consisting of all single adults and families with and without minor children (i) who are entitled to public assistance, including a shelter allowance; (ii) who are experiencing homelessness in shelters, on the streets, or in other public spaces in New York State or are at imminent risk of being relegated to such homelessness; and (iii) whom Defendants have excluded from entitlement to public assistance shelter supplements set in accordance with the HUD FMR (the "Class"); and

(3) certification of a subclass consisting of households with children and pregnant individuals receiving Family Assistance benefits (i) who are experiencing homelessness in shelters, on the streets, or in other public spaces in New York State or are at imminent risk of being relegated to such homelessness; and (ii) whom Defendants have excluded from entitlement to public assistance shelter supplements set in accordance with the HUD FMR (the "Family Assistance Subclass").

PRELIMINARY STATEMENT

Named Plaintiffs and their families are either homeless or at imminent risk of homelessness due to Defendants' violation of their constitutional and statutory obligations to provide aid that permits needy New Yorkers to access habitable housing. Despite significant increases in the cost

of rent, Defendants have not increased the shelter allowance for single adults *for 38 years* and have not increased it for families with children *for 23 years*. As a result, there are *no* apartments anywhere in New York State that Plaintiffs can rent with Defendants' shelter allowances.

Through HUD, the federal government annually determines and adjusts the FMR throughout New York State. N.Y. Comp. Codes R. & Regs. Tit. 18, § 352.3. The HUD FMR represents the rent levels that "must be paid in the market area to rent privately owned, existing, decent, safe and sanitary rental housing of a modest (non-luxury) nature with suitable amenities." 24 C.F.R. §§ 888.111, 888.113. Throughout the State, the HUD FMR is many multiples of Defendants' shelter allowance. In recognition of the chasm between the shelter allowance and the actual cost of habitable housing, Defendants provide a supplement to the shelter allowance up to the HUD FMR—but only to a narrow category of New Yorkers and only in extremely limited circumstances. Defendants exclude from that supplement all single adults and most families. Because of Defendants' exclusions, no Plaintiff in this case qualifies for a supplement.

Faced with the serious detrimental consequences of ending up or remaining in shelter or on the streets, named Plaintiffs turn to this Court for a preliminary injunction requiring Defendants to provide them with shelter allowances or supplements aligned with the actual cost of habitable housing.

Plaintiffs meet the standard for preliminary relief.

First, Plaintiffs are likely to succeed on the merits of their claims. Article XVII of the New York State Constitution imposes an affirmative obligation on Defendants to provide "aid, care and support" to needy New Yorkers. Defendants' shelter allowance amounts are so low that housing simply *does not exist* at those rent levels, making it *impossible* for Plaintiffs to obtain housing. And Defendants have excluded Plaintiffs from entitlement to shelter supplements aligned with the

actual cost of habitable housing. A shelter allowance that needy New Yorkers *cannot* use to obtain housing is a complete denial of aid, care, and support.

In addition, New Yorkers who receive Family Assistance benefits have a statutory entitlement to shelter allowances or supplements that are "adequate" to permit them to raise their children in a home. N.Y. Soc. Serv. Law §§ 350(1)(a), 344(2), 350-j(3); *Jiggetts v. Grinker*, 75 N.Y.2d 411 (1990). Defendants' shelter allowances plainly violate that requirement.

Second, absent a preliminary injunction, Plaintiffs will suffer imminent, irreparable harm: they will become homeless or suffer prolonged homelessness. Courts have routinely found homelessness and the risk of homelessness to constitute irreparable harm justifying preliminary injunctive relief.

Finally, the balance of the equities weighs heavily in favor of a preliminary injunction. Against the grave harm to Plaintiffs of becoming homeless or suffering prolonged homelessness, the only imposition on Defendants would be the minimal cost of providing a shelter supplement aligned with the HUD FMR to the seven named Plaintiffs—a cost significantly *lower* than the cost of housing Plaintiffs in a homeless shelter. Moreover, a preliminary injunction would serve the important public interests of ensuring that Defendants optimally utilize public assistance funds to keep individuals and families housed—rather than to pay for homeless shelters or rent arrears grants that only temporarily avert homelessness.

Regrettably, named Plaintiffs are not alone in facing homelessness due to Defendants' constitutional violations. While Plaintiffs now seek a preliminary injunction only as to themselves, to effectuate class-wide relief as this litigation proceeds, Plaintiffs also seek class certification. Class certification is appropriate because: (i) there are thousands of similarly situated New Yorkers who cannot obtain housing using Defendants' shelter allowance and who are excluded from shelter

supplements aligned with the HUD FMR; (ii) the predominant legal and factual questions in this action are common across the Class; (iii) named Plaintiffs' claims are typical of the Class; (iv) Plaintiffs and their counsel will fairly and adequately protect the interests of the Class; and (v) class certification is superior to any other method of adjudication of the issues in this action.

Accordingly, Plaintiffs respectfully request a preliminary injunction and certification of the Class and Family Assistance Subclass.

FACTUAL BACKGROUND

I. DEFENDANTS HAVE NOT UPDATED THE SHELTER ALLOWANCE IN DECADES.

Section 1 of Article XVII of the New York State Constitution states that "[t]he aid, care and support of the needy are public concerns and shall be provided by the state and by such of its subdivisions, and in such manner and by such means, as the legislature may from time to time determine." By statute and regulation, individuals and families whom the State determines to be needy must receive a monthly shelter allowance to permit them to rent private housing. N.Y. Comp. Codes R. & Regs. Tit. 18, § 352.3; N.Y. Soc. Serv. Law § 131-a(1). Defendants set the amount of the shelter allowance, which varies based on whether it is for an individual or a family, the size of the family, and the county in which they live. *Id.*

Defendants have not adjusted shelter allowance levels for households without children *in nearly forty years*. In New York City, the monthly shelter allowance is just $215 per month for a single adult. N.Y. Comp. Codes R. & Regs. Tit. 18, § 352.3. Outside of New York City, the shelter allowance for a single adult ranges from $152 in Lewis County to $309 in Suffolk County. *Id*.

For families with children, Defendants have not adjusted shelter allowance levels in *more than two decades*. In New York City, the monthly shelter allowance is just $400 for a family of

three with minor children, with similarly low levels for other household sizes. N.Y. Comp. Codes R. & Regs. Tit. 18, § 352.3. Outside of New York City, the monthly shelter allowance for a family of three ranges from $259 in Franklin County to $447 in Suffolk County. *Id.*

Meanwhile, the cost of rent in the same time period has increased dramatically. From 2005 to 2023, median rents across the State rose *85.6%*, and median New York City rents increased *101.6%*. Greenburg Affirm.[1] ¶ 8.

II. DEFENDANTS' DECADES-OLD SHELTER ALLOWANCES ARE COMPLETELY MISALIGNED WITH PRIVATE MARKET RENTS.

Throughout New York State, Defendants' shelter allowances are a fraction of the HUD FMR. The chasm between the shelter allowance and the FMR is a major driver of homelessness across the State. In New York City, the 2025 HUD FMR is $2,406 per month for a single adult and $2,780 per month for a family of three. Defendants' shelter allowances are only $215 for a single adult and $400 for a family of three. Kulakowski Affirm.[2] ¶ 32. In Erie County, the 2025 HUD FMR is $968 per month for a single adult and $1,176 for a family of three. Defendants' shelter allowance is only $169 for a single adult and $301 for a family of three. *Id.*

Habitable housing that is accessible at amounts anywhere close to Defendants' shelter allowances simply does not exist. In fact, HUD has determined that there are *no* private market units—*none*—anywhere in New York State that meet basic housing quality standards and rent for less than $509 per month. *Id.* ¶ 35. In Long Island and other high rent areas, there are *no* private market units that meet those standards and rent for less than $758 per month. *Id.* ¶ 37.

Housing market experts agree that Defendants' shelter allowances do not enable public

[1] The "Greenburg Affirm." is the Affirmation of Brad Greenburg, filed concurrently herewith.

[2] The "Kulakowski Affirm." is the Affirmation of Haley Kulakowski, filed concurrently herewith.

assistance recipients to secure private market housing anywhere in New York State. Greenburg Affirm. ¶¶ 24-25; Herbstman Affirm. ¶ 9; Kluger Affirm. ¶ 9.[3] Among other reasons, across New York, monthly property taxes alone—without even taking into account operating and maintenance expenses, debt service, or insurance—equal or exceed the amount of the shelter allowance. On a cost basis, the market simply cannot produce or operate private housing at rent levels commensurate with Defendants' shelter allowances. *See* Greenburg Affirm. ¶¶ 27-33.

III. DEFENDANTS EXCLUDE FROM ENTITLEMENT TO A SHELTER SUPPLEMENT MOST INDIVIDUALS AND FAMILIES IN NEW YORK STATE.

Although Defendants have established supplements to the shelter allowance, they exclude most New Yorkers who qualify for public assistance from those supplements. In 42 of the 57 non-New York City counties, Defendants do not provide shelter supplements to *any* families with minor children. In the remaining counties, Defendants provide a limited number of supplements, but only on a non-guaranteed, discretionary basis. Kulakowski Affirm. ¶¶ 58, 61. In 30 of the 57 non-New York City counties, Defendants do not provide shelter supplements to *any* single adults. In the other 27 counties, Defendants provide a limited number of supplements, but only on a discretionary basis and in an amount far below the HUD FMR. *Id.* ¶¶ 56, 59, 61.

Even in counties where they are available, very few shelter supplements are actually distributed. Monroe County, Putnam County, Schenectady County, and Schoharie County did not distribute *any* family supplements in December 2025. *Id.* ¶¶ 62-64. In the remaining counties, only .003% to 20% of public assistance recipients, by county, received a family supplement. *Id.* ¶ 65. Five counties—Chemung County, Greene County, Schenectady County, Ulster County, and Warren County—did not distribute *any* shelter supplements to individuals in

[3] The "Herbstman Affirm." is the Affirmation of Judith Herbstman and the "Kluger Affirm." is the Affirmation of Judy Harris Kluger, both filed concurrently herewith.

December 2025. *Id.* ¶ 66. In the remaining counties, only 1% to 24% of public assistance recipients, by county, received an individual supplement. *Id.* ¶ 67.

Moreover, Defendants have set shelter supplement amounts at a fraction of the HUD FMR, rendering the supplements effectively useless. For example, for a single adult in Nassau County, the $288 shelter allowance and the $275 maximum shelter supplement total $563—less than a third of the 2025 HUD FMR for a studio apartment in that county ($1,848). *Id.* ¶ 69. In Monroe County, the $343 shelter allowance for a family of three and the $182 shelter supplement total $525, just over a third of the 2025 HUD FMR for a two-bedroom apartment in that county ($1,427). *Id.*

Only in New York City do Defendants' shelter supplements align with the actual cost of rent. However, Defendants exclude *all* single adults and *all* families without minor children from those supplements. *Family Homelessness & Eviction Prevention Supplement (FHEPS) Fact Sheet*, N.Y.C. Dep't of Soc. Servs. (Aug. 20, 2025), https://www.nyc.gov/assets/hra/downloads/pdf/FHEPS/HRA-146r-E.pdf. Supplements are only available for New York City families with minor children who are in eviction proceedings or who were evicted within the prior 12 months. *Id*. But most families with minor children are relegated to shelters *without* eviction proceedings. Coalition for the Homeless, *State of the Homeless 2025: Nowhere to Go*, https://www.coalitionforthehomeless.org/state-of-the-homeless-2025/#drivers-of-homelessness. Thus, Defendants exclude from entitlement to a shelter supplement most New York City families with minor children.

IV. DEFENDANTS' FAILURE TO PROVIDE AID, CARE, AND SUPPORT HAS RELEGATED PLAINTIFFS TO HOMELESSNESS OR PLACED THEM AT IMMINENT RISK OF HOMELESSNESS.

After losing his job at Tesla, Plaintiff Willie Ivy was unable to keep his apartment and

ended up in a homeless shelter in Erie County. Ivy Affirm.[4] ¶¶ 1-4. Mr. Ivy, who is 59 years old, has been unable to find other employment. *Id.* ¶¶ 2, 8. If Mr. Ivy were not in a homeless shelter, he would be eligible for a monthly shelter allowance of only $169. He is not eligible for a shelter supplement because Defendants have not authorized shelter supplements in Erie County. *Id.* ¶ 7; Kulakowski Affirm. ¶ 32 & Exs. R-S. Because there are no apartments in Erie County that Mr. Ivy can rent for $169 per month, without relief from this Court, Mr. Ivy will continue to suffer from homelessness. Ivy Affirm. ¶¶ 13-14, 16, 18.

Plaintiff Kirt Ross is unable to work due to a heart condition. Ross Affirm.[5] ¶ 4. He currently resides in a rent-stabilized, one-bedroom apartment in Brooklyn that he previously shared with his mother and was able to afford only by using his mother's disability insurance. *Id.* ¶ 2. Since his mother passed away, Mr. Ross has been unable to pay his rent or find other housing that he can afford with the $215 monthly shelter allowance Defendants provide. *Id.* ¶¶ 3-9. Mr. Ross is not eligible for a shelter supplement. *Id.* ¶ 10. He is now being sued for eviction due to nonpayment of rent. Without relief from this Court, he will be evicted and become homeless. *Id.* ¶¶ 9, 15.

Plaintiff Elisa DeCastro is facing eviction from her apartment in Monroe County. DeCastro Affirm. ¶ 2.[6] After being forced to leave her job due to chronic health issues, Ms. DeCastro began receiving a shelter allowance of $257 per month, a fraction of her $1,100 monthly rent. *Id.* ¶¶ 3-6. She is now thousands of dollars in arrears and is being sued for eviction. *Id.* ¶ 6. If evicted, she would have no option but to enter the shelter system because there are no apartments

[4] The "Ivy Affirm." is the Affirmation of Willie Ivy, filed concurrently herewith.

[5] The "Ross Affirm." is the Affirmation of Kirt Ross, filed concurrently herewith.

[6] The "DeCastro Affirm." is the Affirmation of Elisa DeCastro, filed concurrently herewith.

in Monroe County that she can rent for only $257 per month. *Id.* ¶¶ 7-10.

Plaintiff Minerva Pacumio is facing eviction from the one-bedroom apartment in Queens she has shared with her two daughters for the past 13 years. Pacumio Aff.[7] ¶ 2. Ms. Pacumio's younger daughter has Down Syndrome. *Id.* ¶ 3. Since that daughter turned 18 years old, Ms. Pacumio no longer qualifies for the shelter supplement that allowed her to pay the $1,901 monthly rent on her apartment, leaving her with a shelter allowance of only $250 per month for her family of three. *Id.* ¶¶ 5-6. Ms. Pacumio is now almost $20,000 in arrears and is being sued for eviction. *Id.* ¶¶ 6-8, 10.

Plaintiff Ashaley Carter is a survivor of domestic violence who is pregnant with her first child and living in a homeless shelter. Carter Affirm. ¶¶ 1, 3-5.[8] After losing her job and leaving her abuser, Ms. Carter has no income beyond public assistance, and she cannot work due to health complications with her pregnancy. *Id.* ¶¶ 2-3, 5. If Ms. Carter were not in shelter, she would be eligible for a monthly shelter allowance of only $209, which would increase to only $214 after her child is born. *Id.* ¶ 4. There are no apartments that Ms. Carter can rent for that amount. *Id.* ¶¶ 1, 9-11. Without relief from this Court, she will be forced to remain in shelter. *Id.* ¶¶ 9-11.

Plaintiff Kimberly Maldonado has lived in a one-bedroom, rent-stabilized apartment in Brooklyn since 1993. Maldonado Affirm.[9] ¶ 2. Now 55 years old, she suffers from health problems that have prevented her from working since June 2025. *Id.* ¶ 3. She receives a shelter allowance of only $215 per month—a fraction of the $1,114.41 monthly rent on her apartment—and is not eligible for a shelter supplement. *Id.* ¶¶ 5-7, 11-12. Ms. Maldonado has been

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[7] The "Pacumio Affirm." is the Affirmation of Minerva Pacumio, filed concurrently herewith.

[8] The "Carter Affirm." is the Affirmation of Ashaley Carter, filed concurrently herewith.

[9] The "Maldonado Affirm." is the Affirmation of Kimberly Maldonado, filed concurrently herewith.

accumulating arrears for several months and is now at imminent risk of eviction proceedings and homelessness. *Id.* ¶¶ 7-8.

Plaintiff Casey Hanten is a single mother of two, expecting her third, in Broome County. Hanten Aff.[10] ¶ 1. The monthly shelter allowance for a family of three in Broome County is only $290; Defendants have not authorized any shelter supplements in Broome County. *Id.* ¶ 3; Kulakowski Affirm. ¶ 32 & Exs. R-S. Paying the $650 monthly rent on Ms. Hanten's dilapidated apartment requires her to use both her shelter allowance and most of the rest of her public assistance funds, leaving only $50 to pay for utilities, transportation, diapers, and other necessities. Hanten Affirm. ¶¶ 6-7. Ms. Hanten and her children are at imminent risk of becoming homeless because she cannot afford to continue to rent her current apartment, and there are no private market apartments in Broome County that rent for $290 per month. *Id.* ¶¶ 6-8, 10, 12.

V. THE COST OF PROVIDING SHELTER TO NEW YORKERS EXPERIENCING HOMELESSNESS FAR EXCEEDS THE COST OF PROVIDING SHELTER ALLOWANCES OR SUPPLEMENTS ALIGNED WITH THE HUD FMR.

In New York City, the monthly cost of providing beds in a homeless shelter for a single adult or a family of three is nearly *double* the cost of a shelter allowance and supplement aligned with the HUD FMR. Mayor Eric L. Adams, Mayor's Mgmt. Rep., 237 (2022), https://www.nyc.gov/assets/operations/ downloads/pdf/mmr2022/2022_mmr.pdf. The same is true outside of New York City. For example, in Orleans County, the cheapest single hotel room used in 2023 to house single adults experiencing homelessness cost $59.95 per night. Kulakowski Affirm. ¶ 75. At that rate, the monthly cost to shelter a single adult in Orleans County was more than double the 2023 HUD FMR for a studio apartment ($839). *Id.* In Orleans County, the cheapest hotel room used in 2023 to shelter a family of three cost $79.95 per night, or $2,398.50

[10] The "Hanten Affirm." is the Affirmation of Casey Hanten, filed concurrently herewith.

per month—an amount that far exceeds the 2023 HUD FMR for a two-bedroom apartment ($1,186). *Id.* ¶ 76. In Erie County, motel prices range from $85-$120 per night or between $2,550 and $3,600 per month. *Id.* ¶ 77 & Ex V. By contrast, the HUD FMR for a studio apartment in Erie County is $973 per month. *Id.*

ARGUMENT

I. THE COURT SHOULD ISSUE A PRELIMINARY INJUNCTION IN FAVOR OF THE NAMED PLAINTIFFS.

The Court should issue a preliminary injunction requiring Defendants to provide the named Plaintiffs with shelter allowances or supplements aligned with the HUD FMR because the named Plaintiffs can demonstrate (i) a likelihood of success on the merits, (ii) irreparable harm in the absence of a preliminary injunction, and (iii) a balance of equities in their favor. *See Wilder* v. *Fresenius Med. Care Holdings*, *Inc*., 175 A.D.3d 406, 409 (1st Dep't 2019).

A. Plaintiffs Are Likely to Succeed on the Merits of This Action.

To establish a likelihood of success on the merits of this action, "a prima facie showing of a reasonable probability of success is sufficient." *Barbes Rest. Inc.* v. *ASSR Suzer 218, LLC*, 140 A.D.3d 430, 431 (1st Dep't 2016); *see also Bingham* v. *Struve*, 184 A.D.2d 85, 88 (1st Dep't 1992) ("[T]he showing of a *likelihood* of success . . . must not be equated with the showing of a *certainty* of success on the merits.")

1. Plaintiffs Are Likely to Succeed on their Claims for Violation of the New York State Constitution.

Article XVII of the New York State Constitution requires that Defendants provide "aid, care and support" to needy New Yorkers. Defendants' shelter allowances, even when augmented by shelter supplements, fall so far short of the amounts necessary to access housing that they are, in effect, a systematic denial of aid, care, and support. There is *no* private, habitable housing within the State of New York available at the amounts of aid Defendants

provide. The New York housing market does not and cannot produce or operate apartments at those rent levels. *See supra* Factual Background, Section II; Greenburg Affirm. ¶ 34; Kulakowski Affirm. ¶¶ 14-32, 89.

The Constitutional requirement to provide aid, care, and support to the needy "is not a matter of legislative grace; rather, it is specifically mandated by our Constitution" and imposes "a positive duty upon the State." *Tucker v. Toia*, 43 NY2d 1, 7 (1977). The State Constitution "unequivocally prevents the Legislature from simply refusing to aid those whom it has classified as needy. Such a definite constitutional mandate cannot be ignored or easily evaded in either its letter or its spirit." *Id*. at 8. On that basis, the *Tucker* Court found that the State could not deny public assistance to individuals under the age of 21 who were unable to prove the absence of parental support. *Id.*

Close on the heels of *Tucker*, in *Matter of Bernstein v. Toia*, 43 N.Y.2d 437 (1977), the Court of Appeals upheld shelter allowances set at the 95th percentile of the actual cost of rent. In so doing, the Court noted that the State is not required to "always meet in full measure all the legitimate needs of each [public assistance] recipient," *so long as* the "over-all consequence of the method of distribution of aid to the needy . . . is reasonably expected to be in furtherance of the optimum utilization of public assistance funds." *Id.* at 449.

Together, *Tucker* and *Bernstein* establish the framework for analysis of Article XVII's mandate. Applying those standards, the Court of Appeals held that the denial of full Medicaid benefits to lawfully present aliens whom the State had determined to be needy violated Article XVII. *Matter of Aliessa v. Novello*, 96 N.Y.2d 418 (2001). Although the Court acknowledged that the State had discretion to set benefit levels, it held that the State could not exercise that discretion to effectively deprive public assistance recipients of "an entire category of otherwise

available basic necessity benefits." *Id.* at 429.

In *Brownley v. Doar*, 12 N.Y.3d 33 (2009), the Court of Appeals rejected a claim that shelter allowance benefits funded wholly by the State must equal benefits funded by both the State and federal governments. Citing the principles in *Tucker* and *Bernstein*, the Court found that the State had complied with its constitutional mandate because its method of aid distribution was "reasonably expected to be in furtherance of the optimum utilization of public assistance funds" and did not "impermissibly exclude[ ]" a group of needy persons from eligibility for benefits. *Id.* at 43-44. *Brownley*'s holding was based on the Court's factual determination that, in the context of the housing market of 2009, the State's shelter allowance program had not "wrongfully excluded a class of needy individuals from [that] program." *Id.* at 44.

Nearly 20 years later, Defendants' method of distributing the shelter allowance *cannot* be reasonably expected to further the optimum use of public assistance funds, and Defendants *have* impermissibly excluded a class of needy individuals from eligibility for shelter supplements. Since 2009, when *Brownley* was decided, median rents in New York City have nearly doubled, and vacancy rates for the lowest cost apartments have plummeted. *See* Greenburg Affirm. ¶¶ 8, 14. The shelter allowance amounts are so low that, today, there is *no housing* anywhere in the State that rents at anywhere close to those amounts. If the shelter allowance amounts were initially set at the 95% percentile of the actual cost of rent, they are no longer. They are now at the zero percentile. Supplements are not available in much of the State and are denied to individuals without children. As a result, the system churns homelessness, and the costs of placement in the homeless system far exceed what it would cost Defendants to provide a shelter allowance or supplement up to the HUD FMR. Kulakowski Affirm. ¶¶ 72-79. The human cost is even greater.

The current crisis does not present a mere question of adequacy. In 2026, shelter amounts are so low that they are a constructive denial of "aid [to] those whom [the State] has classified as needy," in violation of the State Constitution. *Tucker*, 43 N.Y.2d at 8.

Because the cost of housing homeless individuals and families is so high, the preliminary relief sought herein may not actually increase Defendants' overall expenditures. But in any event, the affirmative obligations under the State Constitution necessarily require the expenditure of State funds. For example, In *Hurrell-Haring v. State of New York*, 15 N.Y.3d 8 (2010), where there had been a widespread, systemic failure to provide needy persons with counsel, the Court of Appeals stated:

> It is, of course, possible that a remedy in this action would necessitate the appropriation of funds and perhaps, particularly in a time of scarcity, some reordering of legislative priorities. But this does not amount to an argument upon which a court might be relieved of its essential obligation to provide a remedy . . . . We have consistently held that enforcement of a clear constitutional or statutory mandate is the proper work of the courts.

Id. at 26 (collecting cases); *see also Campaign for Fiscal Equity v. State of New York*, 86 N.Y.2d 307 (2007) (holding that, to comply with the constitutional mandate that the State provide the opportunity for a sound basic education, the "constitutionally required funding for the New York City School District includes . . . additional operating funds in the amount of $1.93 billion").

As in *Hurrell Haring*—where the State gave lip service to the constitutional right to counsel while, in practice, systematically failing to provide counsel—Defendants are systemically denying Plaintiffs and the Class their constitutional right to necessary housing support by setting shelter allowances so low that they cannot be used to access habitable housing, and by excluding Plaintiffs and the Class from eligibility for shelter supplements. Accordingly, Plaintiffs are likely to succeed on their claim that Defendants are violating the State Constitution.

2. Plaintiffs are Likely to Succeed on Their Claim for Violation of the New York Social Services Law.

Thirty-six years ago, in *Jiggetts v. Grinker*, the Court of Appeals held that Section 350(1)(a) of the New York Social Services Law—which requires the State to provide allowances that are "adequate to enable [a family] to bring up [a] child properly, having regard for the physical, mental and moral well-being of such child . . . . [and to] provide for the support, maintenance and needs of one or both parents if in need, and in the home"[11]—imposed "a duty" on Defendants to provide shelter allowances "adequate" to allow parents to raise their children within a home. 75 N.Y.2d at 417; N.Y. Soc. Serv. Law § 350(1)(a). The Court further ruled that "[a] schedule establishing assistance levels so low that it forces large numbers of families with dependent children into homelessness does not meet the statutory standard." *Id.*

To effectuate the ruling in *Jiggetts*, Defendants established a procedure for creating shelter supplements on a county-by-county basis. N.Y. Comp. Codes R. & Regs. Tit. 18, § 352.3. In New York City, those supplements covered all Family Assistance households that were facing eviction or had been evicted in the previous 12 months. In 2021, Defendants raised the amount of the supplement to align with the HUD FMR. N.Y. Soc. Serv. Law § 131-bb. But even in New York City, Defendants exclude from eligibility for the supplement Family Assistance households not currently facing eviction proceedings or who were evicted more than 12 months ago. In the remaining 57 counties of the State, no supplement remotely approaches the HUD FMR, and 42 counties *entirely exclude* Family Assistance households from eligibility

[11] The Court also referred to Section 344(2) of the Social Services Law, which requires the Family Assistance program to provide "those services which may be necessary for each child in the light of the particular home conditions and his other needs," and Section 350-j(3), which mandates the provision of "[e]mergency assistance to needy families . . . when such assistance is necessary to avoid destitution or to provide them with living arrangements in a home."

for supplements. Kulakowski Affirm. ¶ 58. Defendants' exclusion of many Family Assistance households in New York City and all Family Assistance households in the rest of the State does not comply with *Jiggetts* or Defendants' statutory obligations. Plaintiffs are therefore likely to succeed on their claim that Defendants are violating the Social Services Law.

B. The Named Plaintiffs Will Suffer Irreparable Harm Absent a Preliminary Injunction.

The named Plaintiffs and their children are either experiencing or facing imminent homelessness. New York courts have repeatedly held that homelessness and the risk of homelessness constitutes serious, irreparable harm. *See, e.g.*, *Lamboy* v. *Gross*, 126 A.D.2d 265, 269-71 (1st Dep't 1987) (describing the "irreparable injury to be sustained by homeless families" if "a preliminary injunction [seeking the provision of emergency shelter] is not granted"); *Olivierre* v. *Parkchester Pres. Co.*, No. 452058/2022, 2022 WL 18456529, at *4 (Sup. Ct. July 29, 2022) ("[T]his is exactly the type of case that injunctive relief is meant for, as 'a remedy at law would be inadequate' and the brutality of homelessness is too great a risk."); *NRI Grp. LLC* v. *Crawford*, No. 159274/2014, 2016 WL 526623, at *6 (Sup. Ct. Jan. 22, 2016) ("[T]he realistic possibility of homelessness constitutes irreparable injury."). Absent a preliminary injunction, Plaintiffs and their families will either become or remain homeless.

C. The Equities Weigh in Favor of a Preliminary Injunction.

"The balancing of the equities requires the court to determine the relative prejudice to each party accruing from a grant or denial of the requested relief." *Barbes Rest.*, 140 A.D.3d at 432. The court must also "consider the enormous public interests involved." *Seitzman* v. *Hudson River Assocs.*, 126 A.D.2d 211, 214 (1st Dep't 1987).

Here, the irreparable injury that Plaintiffs will sustain absent a preliminary injunction is significantly greater than any harm Defendants would suffer. The named Plaintiffs and their

children face the grave risks of homelessness or prolonged homelessness. By contrast, Defendants spending minimal funds to comply with a constitutional mandate presents no hardship, and New York courts have entered preliminary injunctions in constitutional violation cases that require the State to expend funds pending a final determination. *See, e.g.*, *McCain v. Koch*, 117 A.D.2d 198, 211 (1st Dep't 1986), *rev'd on other grounds*, 70 N.Y.2d 109 (1987); *Jiggetts v. Grinker*, 528 N.Y.S.2d 462, 486-87 (Sup. Ct. 1988), *rev'd on other grounds*, 148 A.D.2d 1 (1st Dep't 1989). In addition, there is a significant public interest in ensuring that Defendants are optimally utilizing public funds to keep families housed. *See McCain*, 117 A.D.2d at 211.

Moreover, providing the named Plaintiffs with a shelter supplement aligned with the HUD FMR would cost the State *substantially less* than the cost to provide shelter to Plaintiffs. *See supra* Factual Background, Section V. For example, Plaintiff Willie Ivy has been placed in a motel that costs $3,300 a month. Kulakowski Affirm. ¶ 77. A supplement aligned with the HUD FMR for Erie County would cost less than a third of that amount. *Id.*

Accordingly, the named Plaintiffs are entitled to a preliminary injunction.

II. A PLAINTIFF CLASS SHOULD BE CERTIFIED.

Certification of a class is appropriate where "(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 which predominate over any 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." CPLR § 901(a); *see also City of New York v. Maul*, 59 A.D.3d 187, 189 (1st Dep't 2009), *aff'd*, 929 N.E.2d 366 (2010). These criteria "should be broadly construed," *City of New York v. Maul*, 14 N.Y.3d 499, 509 (2010), and "any 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); *see also Pludeman v. N. Leasing Sys. Inc.*, 74 A.D.3d 420, 422 (1st Dep't 2010) ("Class action certification is thus appropriate if on the surface there appears to be a cause of action which is not a sham.").

Plaintiffs' proposed Class and Family Assistance Subclass meet the requirements for certification.

A. The Proposed Class Is Sufficiently Numerous.

For purposes of class certification, "numerosity is presumed at a level of 40 members." *Borden* v. *400 E. 55th St. Assocs., L.P.*, 24 N.Y.3d 382, 399 (2014). Here, both the proposed Class and Family Assistance Subclass consist of thousands of individuals and families.[12] Thus, they are sufficiently numerous that joinder would be impracticable.

B. Questions of Law or Fact Common to the Proposed Class Predominate.

To establish commonality of legal and factual questions across a proposed class, "it is predominance, not identity or unanimity, that is the linchpin." *Maul*, 14 N.Y.3d at 514. "[C]ommonality is not merely an inquiry into whether common issues outnumber individual issues but rather whether 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. Thus, class certification is appropriate where the central legal and factual questions are common to all class members, even if there are questions of law or fact not common to the class or individual fact questions that may remain after resolution of common questions. *Id*.; *Hurrell-Harring* v. *State*, 81 A.D.3d 69, 73 (3rd Dep't 2011).

[12] According to Defendants' own data, in December 2022, an estimated 53,819 households receiving public assistance were homeless. Kulakowski Affirm. ¶ 10. In fact, the majority of households experiencing homelessness are on public assistance. *Id.*

Here, there is substantial legal and factual commonality across the Class. There are only three legal questions in this action: (1) whether Defendants' shelter allowances constitute a denial of "aid, care and support" under the New York State Constitution because no private market housing exists at levels accessible with those allowances; (2) whether Defendants' refusal to provide shelter supplements up to the HUD FMR to all needy New Yorkers is an impermissible exclusion; and (3) whether Defendants have violated the New York Social Services Law by failing to provide "adequate" shelter allowances. Those questions are identical across all Class members. Any factual differences among Class members would not affect the resolution of those predominant issues.

Moreover, litigating this matter as a class action would achieve economies of time, effort, and expense. It would also avoid compelling Class members to pursue individual claims, which would unnecessarily burden the courts and lead to multiple identical lawsuits with the potential for inconsistent decisions. Accordingly, the commonality requirement is satisfied.

C. The Claims of the Named Plaintiffs Are Typical of the Claims of the Proposed Class.

The typicality requirement is met where the claims of the named Plaintiffs "arise[] out of the same course of conduct as the class members' claims and [are] based on the same cause of action," *Pruitt*, 167 A.D.2d at 22, or "the same legal theory," *Friar v. Vanguard Holding Corp.*, 78 A.D.2d 83, 99 (2d Dep't 1980). Typicality "does not require identity of issues" and is satisfied "even if the claims asserted by class members differ from those asserted by other class members," *Pludeman*, 74 A.D.3d at 423, or if "the class representative cannot personally assert all the claims made on behalf of the class," *Pruitt*, 167 A.D.2d 14 at 22. "[M]inor differences in each individual class member's claim do not defeat typicality." *Williams* v. *Air Serv Corp.*, 121 A.D.3d 441, 442 (1st Dep't 2014).

Here, the claims of the named Plaintiffs and the proposed Class and Family Assistance Subclass arise from the same conduct and are based on the same legal theory: that Defendants have effected a complete denial of "aid, care and support" under the State Constitution and have violated the Social Services Law by providing decades-old shelter allowances aligned to rents that no longer exist anywhere in New York State and by excluding needy New Yorkers from entitlement to shelter supplements aligned with the HUD FMR. Any differences in the underlying facts of named Plaintiffs' claims do not change the claims or theories they are asserting on behalf of the Class. The typicality requirement is therefore satisfied.

D. The Named Plaintiffs and Their Counsel Will Fairly and Adequately Protect the Interests of the Proposed Class.

"The factors to be considered in determining adequacy of representation are whether any conflict exists between the representative and the class members, the representative's familiarity with the lawsuit and his or her financial resources, and the competence and experience of class counsel." *Ackerman* v. *Price Waterhouse*, 252 A.D.2d 179, 202 (1st Dep't 1998). Those factors support class certification here.

First, the named Plaintiffs and their counsel are not aware of any conflicts of interest. The named Plaintiffs' interests are aligned with those of the proposed Class because they have been similarly affected by Defendants' denial of "aid, care and support" and seek the same relief as the rest of the Class.

Second, the proposed Class representatives are familiar with the litigation, understand the relevant issues involved, and are committed to pursuing this lawsuit.

Third, proposed Class counsel are high-quality, experienced lawyers with sufficient resources to adequately pursue this litigation and represent the Class. The Legal Aid Society is the oldest and largest nonprofit legal services organization in the United States, and the attorneys

working on this case are accomplished in complex litigation and well-versed in the subject matter of this litigation. Hughes Hubbard & Reed LLP ("HHR") is a large, international law firm with significant expertise in complex litigation. Lead counsel from HHR is knowledgeable about the subject matter of this litigation and has successfully represented plaintiffs in other class action lawsuits relating to housing subsidies. Bond, Schoeneck & King, PLLC ("Bond") is a firm of approximately 300 attorneys primarily located in New York State. Lead counsel from Bond is knowledgeable about the subject matter of this litigation and has successfully represented other plaintiffs in significant litigation arising under the Social Services Law and in constitutional matters. Likewise, the Empire Justice Center has a proven track record of successfully litigating complex class action litigation and achieving impactful results for low-income New Yorkers across the State, and lead counsel is well-versed in the subject matter of this litigation.

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

The superiority requirement is met where adjudication of the issues common to the Class "would dispose of most if not all of the issues in the case." *Ackerman*, 252 A.D.2d at 202. The availability of an alternative method of adjudication "does not mean such a proceeding is superior to a class action, which, through the aggregation of many similar claims, provides an incentive to the legal profession to expend the resources necessary to fully litigate often complex cases." *Globe Surgical Supply* v. *GEICO Ins. Co.,* 59 A.D.3d 129, 146 (2d Dep't 2008).

Here, a class action is the *only* method available for adjudicating the systemic issues raised in this case. The proposed Class consists of individuals and families who rely on public assistance and lack the resources necessary to prosecute their claims in individual actions. Because the Class members are either homeless or at imminent risk of becoming homeless, their ability to bring individual suits is highly compromised. *See Tindell v. Koch*, 164 A.D.2d 689, 695 (1st Dep't

1991). Denying class certification and requiring recourse to individual proceedings would "ignore the realities of the condition of homeless, destitute families desperately seeking shelter . . . and be oppressively burdensome." *Lamboy*, 126 A.D.2d at 274. Aggregating claims among the Class will allow individual claimants to secure redress for their grievances.

Accordingly, the proposed Class and the Family Assistance Subclass should be certified.

CONCLUSION

For the foregoing reasons, Plaintiffs request that the Court issue an Order:

(1) preliminarily enjoining Defendants from failing to provide the named Plaintiffs with public assistance shelter allowances or shelter supplements set in accordance with the HUD FMR;

(2) certifying the Class and the Family Assistance Subclass; and

(3) granting such other and further relief as may be just, proper, and equitable, including but not limited to reasonable attorneys' fees and costs.

Dated: June 9, 2026
New York, New York

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, I hereby certify that the foregoing memorandum of law contains 6,931 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
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