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

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

Plaintiffs,

- against -

Index No. 450315/2021

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

Defendants.

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REPLY MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

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Plaintiffs Maoli Soriano and Shealean Smith, by and through their undersigned attorneys, respectfully submit this reply memorandum of law in further support of their motion for a preliminary injunction.

PRELIMINARY STATEMENT

The lynchpin of Defendants' opposition to Plaintiffs' motion—that they have now issued a temporary waiver of the Lawsuit Requirement until May 1, 2021 or the end of any further eviction moratorium (the "Limited Waiver")—is the epitome of "too little, too late."

The Limited Waiver does not moot Plaintiffs' request for preliminary injunctive relief. It does not grant *any* relief to Plaintiffs or thousands of families like them, whose rental arrears continued to accumulate during the period that it was legally impossible to satisfy the Lawsuit Requirement[1] and now exceed the $9,000 eligibility threshold for FHEPS. As of May 2, 2021, Plaintiffs—and the many other families they represent who are no longer eligible for FHEPS because of their accumulated arrears—will face the threat of eviction.

Moreover, the Limited Waiver is set to expire in five weeks, at which point Defendants' unlawful enforcement of the Lawsuit Requirement will resume. By the time many families learn that they are eligible for FHEPS benefits under the Limited Waiver and are able to submit an application, the Limited Waiver will have ended. At that point, those families who remain eligible for FHEPS will face an impossible choice: they can either appear in Housing Court to defend themselves in an eviction proceeding, thereby risking infection or death by COVID-19; or they can stay home and risk a default judgment of eviction. Defendants' arguments to the contrary, which hinge on the availability of virtual proceedings, ignore the fact that many

1. Capitalized terms and abbreviations not defined herein have the meaning ascribed to them in Plaintiffs' opening memorandum of law in support of its motion for class certification and a preliminary injunction.

indigent tenants do not have access to broadband Internet and Internet-enabled devices that would allow them to participate in virtual proceedings.

Defendants also argue that adjudication of this dispute would usurp their policy-making discretion and grant Plaintiffs ultimate relief in this action. That is incorrect. As in *Jiggetts v. Grinker*, it is the province of the courts to determine whether Defendants are complying with their obligation to provide an adequate shelter allowance. Plaintiffs ultimately seek a finding that enforcement of the Lawsuit Requirement during the COVID-19 pandemic is unlawful. Rather than providing Plaintiffs with that ultimate relief, a preliminary injunction would only be in effect while the Court is deciding that issue, so that Plaintiffs and all Class members can remain in their homes during the pendency of this case.

Finally, Defendants' argument that Plaintiffs are unlikely to succeed on the merits of their claims rest on a strained interpretation of the Social Services Law, under which Defendants would purportedly have a duty only to provide a shelter allowance that is "adequate" in amount and not in any other way. Neither the statute nor the case law supports such a limited reading of Defendants' obligation. A shelter allowance that a needy family cannot legally access, or cannot access without grave risks of eviction, infection, or death, is plainly not "adequate." Interpretation of the adequacy requirement does not require "specialized knowledge," and Defendants' reading of the scope of that requirement is not entitled to any deference.

Defendants' principal remaining argument—that Plaintiffs cannot maintain their claims because they failed to exhaust administrative remedies—ignores black-letter law that exhaustion is not required where it would be futile. Here, there would have been no point in requiring Plaintiffs to apply for FHEPS when they plainly could not meet the Lawsuit Requirement and then to appeal the denial of their benefits in an administrative proceeding bound by the same

Lawsuit Requirement. Nor would it be appropriate or efficient for Plaintiffs and all of the thousands of Class members to bring individual Article 78 proceedings to enforce their rights. Where, as here, the core question is a legal one that affects administrative determination for an entire class of persons, a class action for a declaratory judgment is proper.

Defendants' continued enforcement of the Lawsuit Requirement is unlawful, and the Limited Waiver does nothing to protect Plaintiffs and the Class from the irreparable harm they face now and will face when it expires. Plaintiffs are therefore entitled to a preliminary injunction.

ARGUMENT

I. OTDA'S LIMITED WAIVER DOES NOT MOOT PLAINTIFFS' CLAIMS.

Defendants contend that the Limited Waiver renders Plaintiffs' request for a preliminary injunction moot. Def. Mem. at 10-11. It does not.

First, Plaintiffs' motion requests that the Court enter a preliminary injunction to remain in effect *while the Court decides this case*, to ensure that neither Plaintiffs nor any member of the Class is irreparably harmed as a result of Defendants' enforcement of the Lawsuit Requirement during the COVID-19 pandemic. The Limited Waiver does not remotely extend through the pendency of this case. Instead, it lasts only until May 1, 2021, when the State's current eviction moratorium expires, or through the date of any further eviction moratorium tied to the COVID-19 Emergency Eviction and Foreclosure Prevention Act ("EEFPA"). There is no guarantee of any further eviction moratorium under EEFPA. It is virtually guaranteed, however, that this case will not be disposed by May 1, 2021. As of May 2, in the absence of a preliminary injunction, there will be no protection for Plaintiffs or any Class member.

Second, the Limited Waiver does not address the consequences of Defendants' refusal to waive the Lawsuit Requirement in June 2020, when NYC HRA first requested a waiver, and therefore does not afford complete relief to the named Plaintiffs. For more than a year, Plaintiffs and others similarly situated were unable to apply for FHEPS benefits because the State's eviction moratorium made it legally impossible to satisfy the Lawsuit Requirement. During that time, their rental arrears continued to accumulate. Those arrears now exceed the $9,000 threshold for FHEPS, making Plaintiffs and many others in the Class ineligible for FHEPS benefits. Soriano Reply Aff. ¶ 3; Smith Reply Aff. ¶ 3. That is a situation entirely of Defendants' own making, and the Limited Waiver does not offer any relief to those, like Plaintiffs, who will be subject to eviction proceedings on May 2, 2021 with no hope of receiving FHEPS assistance.

Third, even if the Limited Waiver addressed all of Plaintiffs' requested relief, the "voluntary cessation of allegedly illegal conduct does not . . . make the case moot." *Puerto v. Doar*, 142 AD3d 34, 43-44 (1st Dep't 2016) (quoting *United States v. W.T. Grant Co.*, 345 U.S. 629, 632 (1953)). A controversy remains where there is "a dispute over the legality of the challenged practices." *Id.* at 44. Defendants thus have the "heavy burden of persuading the court" and making it "absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur." *Friends of the Earth*, *Inc. v Laidlaw Environ. Servs. (TOC), Inc.*, 528 U.S. 167, 189 (2000).[2]

Defendants have not met their burden. To the contrary, the Limited Waiver is set to expire in approximately five weeks, at which point the Lawsuit Requirement will go back into

2. All of Defendants' cases are inapposite because they involved court-ordered or statutory relief that rendered a controversy moot—not voluntary cessation of unlawful conduct. *See* Def. Mem. at 10-11.

effect. Def. Mem. at 10-11; Maura. Aff. Exs. A & B. And, as noted above, the Limited Waiver provides no relief to a significant proportion of the Class—including named Plaintiffs—whose rental arrears have accumulated beyond the $9,000 eligibility threshold for FHEPS.

Fourth, even if the Limited Waiver did grant Plaintiffs and the Class full relief, this case would be still be justiciable because it "presents an issue that (1) is likely to recur, (2) will typically evade review and (3) is substantial and novel." *Puerto*, 142 A.D.3d at 44. Under these circumstances, a court may "reach the moot issue even though its decision has no practical effect on the parties." *Id*. Here, the controversy is likely to recur because the enforcement of the Lawsuit Requirement will resume as soon as the Limited Waiver expires. Denials of FHEPS applications typically evade review because "pro se litigants at the administrative hearing level are not equipped to raise complex legal issues at their hearings." *Id*. at 45. And this case presents a substantial and novel issue that concerns the scope of Defendants' obligations during a pandemic.

Finally, Defendants' speculation that federal relief funds or emergency "one shot deals" issued by NYC HRA could mitigate harm to Plaintiffs and the Class is without merit. *See* Def. Mem. at 11. Defendants' argument concedes that the Limited Waiver does not grant full relief. In any event, Defendants' suggestion that Plaintiffs and the Class rely on emergency federal funds ignores the fact that those funds are not yet available for distribution and may not be available before Plaintiffs and Class members are subject to eviction proceedings. Sadef Ali Kully, *The Waiting Game for Pandemic Rent Relief in New York*, Mar. 3, 2021, https://city limits.org/2021/03/ 03/the-waiting-game-for-pandemic-rent-relief-in-new-york/. Nor do Defendants acknowledge the substantial difference between FHEPS relief, which is an

entitlement and not subject to repayment, and other forms of emergency assistance like "one shot deals," many of which must be repaid. 18 NYCRR § 352.7(g)(3).

Accordingly, the Limited Waiver does not render this motion moot.

II. ABSENT A PRELIMINARY INJUNCTION, PLAINTIFFS WILL SUFFER IMMINENT, IRREPARABLE HARM.

Defendants contend that there is no longer a probability of imminent, irreparable harm to Plaintiffs because the Limited Waiver quells "any exigencies related to the lawsuit requirement." Def Mem. at 12. As discussed above, however, the Limited Waiver only extends through May 1, 2021 and does not provide any relief for individuals, like Plaintiffs, whose rental arrears have now accumulated past the $9,000 eligibility threshold for FHEPS. As a result, Plaintiffs and many Class members will be at risk of eviction in a few weeks, as soon as the eviction moratorium expires.

Even those Class members who are still eligible for FHEPS and who could apply for FHEPS benefits under the Limited Waiver remain at risk of irreparable harm because there is no guarantee that they will learn of the Limited Waiver and be able to apply for FHEPS before the Limited Waiver expires. Although Defendants issued the Limited Waiver on March 2, 2021, NYC HRA only instructed its staff to begin processing FHEPS applications under that waiver on or about March 16, 2021. In addition, Defendants have not made any effort to publicize the availability of relief under the Limited Waiver. After more than a year of NYC HRA and non-profit organizations like The Legal Aid Society telling Class members that they cannot apply for FHEPS benefits because of the Lawsuit Requirement, the few weeks that the Limited Waiver is in effect is an inadequate amount of time to inform Class members that they are now eligible for relief and for those Class members to prepare and submit those applications. The Limited

Waiver does not make any provision for Class members who would have been eligible under the waiver but are unable to submit their applications before May 1, 2021.

Defendants further argue that enforcement of the Lawsuit Requirement during the pandemic does constitute irreparable harm because (1) eviction is not imminent because Plaintiffs have not been sued; (2) Plaintiffs do not need to appear in Housing Court and risk COVID-19 exposure in order to apply for FHEPS benefits; (3) allegations of rental arrears over $9,000 are conclusory; and (4) Plaintiffs have adequate alternate relief. Def. Mem. at 12-14. Each of these contentions lacks merit.

First, the eviction moratorium is set to expire on May 1, 2021. As a result, Plaintiffs and others similarly situated face a serious risk of eviction that is only weeks away.

Second, Defendants' assertion that Class members do not need to physically appear in Housing Court in order to access FHEPS benefits is incorrect. Once an eviction proceeding is filed, a tenant cannot simply ignore it, apply for the FHEPS program, and thereby secure the right to remain in their current housing. A tenant who does not respond to a petition for eviction within 10 days risks a default judgment of eviction. N.Y.C. Housing Court, *Answering a Case*, https://www.nycourts.gov/courts/nyc/housing/answering.shtml. Given FHEPS processing times, even if a tenant files for FHEPS upon receiving a petition of eviction, that tenant may be evicted before FHEPS benefits are approved.

Defendants are also incorrect that Class members can avoid appearing in person by utilizing virtual proceedings. While Housing Court allows a tenant to answer a petition by phone, the form petition for eviction does not notify tenants of their ability to do so, and the phone system has been unreliable. (Compl. ¶ 52.) Many Class members must therefore appear

in person, either because they did not know that they could appear by phone or because they tried and were unable to get through.

Past the petition stage, many Class members will be unable to appear virtually at hearings in their eviction cases because they lack access to broadband Internet and Internet-enabled devices. Class members are indigent individuals in New York City. Approximately 30% of New York City residents do not have access to broadband Internet, and 44% of residents living below the poverty line lack such access. Scott Stringer, *Census and the City: Overcoming NYC's Digital Divide in the 2020 Census*, Office of the New York City Comptroller, July 2019, https://comptroller.nyc.gov/wp-content/uploads/documents/Census_and_The_City_Overcoming_NYC_Digital_Divide_Census.pdf at 5. Furthermore, there is nothing in the record that suggests Housing Court will remain virtual for the pendency of this litigation.

Third, Plaintiffs' assertions that their rental arrears will exceed the $9,000 eligibility threshold by the time the eviction moratorium ends is not conclusory. Plaintiffs have submitted affidavits showing that their arrears are already over that threshold. Soriano Reply Aff. ¶ 3; Smith Reply Aff. ¶ 3. Even assuming a family was not behind in rent before the start of the pandemic and first started missing payments in April 2020, any individual whose sole income was cash assistance and who would qualify for FHEPS based on the enhanced maximum rent would have rental arrears exceeding the cap by the time Defendant issued the Limited Waiver, as would any family of three or more members who qualify at the regular maximum rent.

Fourth, Defendants incorrectly suggest that Plaintiffs have adequate alternative remedies. Def. Mem. at 14. As discussed above, FHEPS is an entitlement that an applicant does not have to repay, whereas other forms of emergency relief must be repaid. (*See supra* at 5-6.) In addition, the "one shot deal" program that Defendants reference is significantly more restrictive

than FHEPS. Applicants are only entitled to "one shot deal" relief where they can show they will be able to pay full rent on their own going forward. 18 NYCRR § 352.7(g)(3)(iv). By definition, a FHEPS applicant cannot afford their rent on their own, so Class members will likely not be eligible for "one shot deal" relief.

Accordingly, Plaintiffs and the Class are likely to suffer imminent, irreparable harm in the absence of a preliminary injunction.

III. THE BALANCE OF THE EQUITIES FAVORS PLAINTIFFS.

Defendants argue that the equities favor them because (i) enjoining enforcement of the Lawsuit Requirement would "usurp" OTDA's policy-making discretion; and (ii) Plaintiffs' improperly seek "ultimate relief." Neither of Defendants' arguments actually address the equities of the situation, which are squarely in Plaintiffs' favor. Pl. Mem. at 23. In any event, neither of Defendants' arguments has merit.

First, Defendants fail to explain how requiring them to comply with their obligation under New York law to provide an "adequate" shelter allowance would usurp their policy-making discretion, nor do any of the cases they cite address that point. *See Campaign for Fiscal Equity, Inc. v. State of N.Y.*, 8 N.Y.3d 14, 28-29 (2006) (noting the higher burden of proof and increased deference to the Legislature required in cases challenging the State's budget plan); *Hearst Corp. v. Clyne*, 50 N.Y.2d 707, 713-14 (1980) (stating that the court should not consider the merits of an appeal that is moot); *Williams v. Cuomo*, Index No. 151355/2021 at (Sup Ct. Feb. 23, 2021) (finding that the State had a rational basis for amending the election law to reduce the number of signatories required for candidate's petition for public office). Contrary to Defendants' contention, it is proper for the courts to determine whether Defendants' administration of the State's shelter allowance programs complies with Defendants' statutory

and constitutional obligations. *See Jiggetts v. Grinker*, 75 N.Y.2d 411 (1990) (holding that OTDA failed to comply with its statutory duty to provide an "adequate" shelter allowance).

Defendants argue that Plaintiffs' request to enjoin enforcement of the Lawsuit Requirement during the COVID-19 pandemic "implicitly ask[s] this Court to determine when the COVID-19 pandemic ends." Def. Mem. at 15. That is incorrect. New York State is currently in a state of emergency as a result of the COVID-19 pandemic. N.Y. State Exec. Order No. 202.97. It is the State—not the Court—that will decide when that emergency ends. Defendants' enforcement of the Lawsuit Requirement at any point during the continuing COVID-19 state of emergency is unlawful.

Second, Plaintiffs' requested relief would not grant ultimate relief in this litigation. The ultimate relief that Plaintiffs seek is an injunction against enforcement of the Lawsuit Requirement through the end of the COVID-19 pandemic. The preliminary relief that Plaintiffs seek is an injunction against enforcement of the Lawsuit Requirement *while the Court decides* that ultimate issue. That injunction would maintain the status quo by ensuring that Plaintiffs and other similarly situated families can remain in their homes while this case is pending. *See Brownley v. Doar*, 811 N.Y.S.2d 894, 904 (Sup. Ct. 2006) (granting preliminary injunction against OTDA on the basis that "a preliminary injunction . . . would enable plaintiffs and their children to remain in their current homes without the immediate threat of eviction").

IV. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS OF THEIR CLAIMS.

A. Plaintiffs Are Likely to Succeed on Their Statutory Claims.

Defendants argue that Plaintiffs are unlikely to succeed on their statutory claims because the requirement under the Social Services Law that Defendants provide an "adequate" shelter

allowance is purportedly limited to the question of whether shelter allowance are adequate in amount. There is no such limitation in the statute or in case law.

Section 350(1)(a) of the Social Services Law provides that "[a]llowances shall be adequate to enable the father, mother or other relative to bring up the child properly." It does not say that allowances shall be "adequate in amount" or contain any similar language, nor does the word "adequate," by definition, apply only to amount. A shelter allowance that a needy family cannot legally access, or cannot access without serious risk of eviction, infection, or death, is not "adequate" under any definition of that term.

Jiggetts v. Grinker, 75 N.Y.2d 411 (1990), did not hold that adequacy of amount was the sole requirement under the Social Services Law, nor have courts "rejected attempts to expand . . . the concept of adequacy," as Defendants contend. Def. Mem. at 18. None of the cases that Defendants cite even address the scope of the adequacy requirement—they only hold that the adequacy requirement does not apply to recipients of Safety Net Assistance ("SNA") or Home Relief benefits, neither of which are implicated in this case.[3] *See Brownley v. Doar*, 12 N.Y.3d 33 (2009) (holding that the adequacy requirement under Section 350 of the Social Services Law is not a component of the SNA program); *McVay v. Wing*, 303 A.D.2d 727 (2d Dep't 2003) (same); *Deleo v. Kaladjian*, 215 A.D.2d 520 (2d Dep't 1995) (holding that the adequacy requirement does not apply to grants under the Home Relief program); *Gautam v. Perales*, 179 A.D.2d 509 (1st Dep't 1992) (same). Defendants do not dispute that the adequacy requirement applies to the FHEPS program. *See* Def. Mem. at 17-18.

3. Defendants' argument that SNA beneficiaries do not have standing to challenge whether Defendants have complied with the adequacy requirement (*id*.) is inapplicable here because Plaintiffs are recipients of Family Assistance benefits and therefore do have standing. Soriano Reply Aff. ¶ 2; Smith Reply Aff. ¶ 2.

Defendants are also incorrect that their interpretation of the Social Services Law is entitled to "great weight and judicial deference." *Id*. at 18. An administrative agency's interpretation of a statute is entitled to deference only where it involves "specialized knowledge and understanding of underlying operational practices or entails an evaluation of factual data and inferences to be drawn therefrom." *Leggio v. Devine*, 34 N.Y.3d 448, 460 (2020). "[W]here instead the question requires statutory analysis dependent only on an accurate apprehension of legislative intent, there is little basis to rely on any special competence or expertise of the administrative agency." *Id*. The interpretation of the adequacy requirement in the Social Services Law does not require OTDA's "specialized knowledge," and therefore OTDA's interpretation of the scope of that requirement is not entitled to deference.

With respect to Plaintiffs' claim under Section 131(1) of the Social Services Law, Defendants concede that Section 131(1) incorporates the adequacy requirement of Section 350, but argues that Plaintiffs do not have a private right of action for a violation of Section 131(1). While there is no express right of action in Section 131(1), Plaintiffs meet the test for finding an implied right of action because (i) they are members of the class for whose benefit the statute was enacted, *i.e.*, needy families within the State; (ii) recognition of a private right of action would "promote the legislative purpose" of ensuring that the State "provide[s] adequately for those unable to maintain themselves;" and (iii) a private right of action would be consistent with the legislative scheme of the Social Services Law, which imposes affirmative duties on the State to provide for indigent families. *See Henry v. Isaac*, 214 A.D.2d 188, 191-93 (2d Dep't 1995).

B. Plaintiffs Are Likely to Succeed on Their Due Process Claims.

Defendants next argue that Plaintiffs cannot succeed on their due process claims because Plaintiffs have not applied for FHEPS and challenged the denial of those benefits through

administrative processes. Def. Mem. at 20-21. That is incorrect. Maintaining a due process claim does not require Plaintiffs to engage in the futile gesture of applying for FHEPS benefits when they plainly cannot meet the Lawsuit Requirement or challenging the denial of those benefits through an administrative hearing process that is bound by the same Lawsuit Requirement. *See, e.g.*, *Arroyo v. Annucci*, 61 Misc.3d 930, 938 (Sup. Ct. 2018) ("When seeking administrative relief would be futile, or when a substantial constitutional question is in issue, exhaustion is not required. Petitioner's substantive due process claim is therefore properly before the Court despite petitioner's not having sought administrative relief."); *Fishman v. Daines*, 743 F. Supp. 2d 127, 147 (E.D.N.Y. 2010) (holding that plaintiffs could maintain a due process challenge without exhausting futile administrative remedies).

C. Plaintiffs Are Not Required To Exhaust Administrative Remedies That Would Be Futile.

Defendants argue that Plaintiffs' claims fail because they did not exhaust administrative remedies. Def. Mem. at 22. However, as noted above, "a party need not exhaust administrative remedies where to do so would be futile." *Brownley v. Doar*, 811 N.Y.S.2d 894, 904 (Sup. Ct. 2006) (finding exhaustion would be futile where State had already denied that plaintiffs qualified for rental assistance). Here, resort to administrative remedies would have been futile because Plaintiffs did not meet the Lawsuit Requirement, and an administrative hearing officer would have no ability to allow Plaintiffs to obtain FHEPS benefits absent satisfaction of the Lawsuit Requirement. Thus, an administrative hearing "would be an exercise in futility and accord inadequate relief." *Cohen v. D'Elia*, 55 A.D.2d 617, 618 (2d Dep't 1976).

In addition, a plaintiff "need not exhaust administrative remedies [where] the matter involve[s] solely an issue of law" or where resort to administrative remedies would cause a plaintiff to suffer irreparable harm. *Apex Air Freight, Inc. v. O'Cleireacain*, 210 A.D.2d 7, 8 (1st

Dep't 1994); *see also Herberg v. Perales*, 180 A.D.2d 166, 169 (1st Dep't 1992) ("[T]he instant situation does not present a substantive factual dispute between the parties. What is really involved here is purely the construction of the relevant statutory and regulatory framework, and the exhaustion of administrative remedies is not mandated.") Plaintiffs' claims here solely involve issues of law—*i.e.*, whether enforcement of the Lawsuit Requirement during the COVID-19 pandemic is consistent with Defendants' statutory and constitutional obligations—and Plaintiffs would suffer irreparable harm if forced to resort to futile administrative hearings. Accordingly, exhaustion is not required.

D. Plaintiffs Properly Brought This Litigation as a Class Action for Declaratory Judgment.

Finally, Defendants argue that the only appropriate forum for Plaintiffs' claims is an Article 78 proceeding. Def. Mem. at 22-23. That is incorrect. Plaintiffs ask the Court to determine whether enforcement of the Lawsuit Requirement during the pandemic complies with Defendants' obligation to provide an "adequate" shelter allowance. That question is appropriate for determination in an action for declaratory judgment. *See Jiggetts v. Grinker*, 75 N.Y.2d 411, 415-16 (1990). "[W]here, as here, plaintiffs have sued on behalf of a class of persons and challenge an administrative determination impacting upon the entire class, a declaratory judgment action is a proper procedural device." *Conrad v. Regan*, 155 A.D.2d 931, 932 (4th Dep't 1989); *see also Allen v. Blum*, 58 N.Y.2d 954, 956 (1983) ("[B]ecause the action seeks review of a continuing policy, a declaratory judgment class action rather than individual article 78 proceedings is proper.").[4]

4. The cases that Defendants cite are inapposite because they involved agency procedures that required "individualized application" and were therefore appropriate for determination in individual Article 78 proceedings. *Foley v. Masiello*, 38 A.D.3d 1201 (4th Dep't 2007) (challenging individualized wage freezes); *Rosenthal v. City of N.Y.*, 283 A.D.2d 156 (1st

CONCLUSION

For the foregoing reasons, Plaintiffs request that the Court enter a preliminary injunction preventing Defendants from enforcing the Lawsuit Requirement to deny FHEPS assistance to Plaintiffs and the Class.

Dated: New York, New York
March 23, 2021

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Dep't 2001) (challenging individual work assignments); *Saunders v. City of N.Y.*, 283 A.D.2d 166 (1st Dep't 2001) (same).

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 4,184 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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