SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. KATHLEEN WATERMAN-MARSHALL** **PART** **09M**

Justice

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CHANA NEMNI,

Plaintiff,

- v -

SHEILA J. POOLE, MICHAEL P. HEIN, STEVEN BANKS

Defendant.

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INDEX NO. 158126/2020

MOTION DATE 02/04/2021, 10/17/2023

MOTION SEQ. NO. 003 004

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 92, 94, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 119, 120, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209

were read on this motion to/for ARTICLE 78 (BODY OR OFFICER).

The following e-filed documents, listed by NYSCEF document number (Motion 004) 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259

were read on this motion to/for INJUNCTION/RESTRAINING ORDER.

This matter was recently transferred to Part 9. A review of the record reveals a complicated procedural history and detailed decision by the prior jurist. It also reveals that the pending motions, and the underlying petitions in this and in a similar (and now consolidated, see below) Article 78 petition, seek virtually identical relief.

On October 18, 2023, this Court held a conference during which it advised counsel that this proceeding and the proceeding entitled *Matter of C.P. v. Poole* (NY Index No. 152447/2022) ("*Matter of C.P.*") may be sufficiently related to warrant consolidation and directed all parties show cause why the two proceedings should not be consolidated or joined (*see* NY Index No. 158126/2020 NYSCEF Doc. No. 241). Having considered all papers on the underlying petition and open motions in the instant matter ("*Matter of Nemni*") (Motion Seqs. 003 and 004), and the underlying petition and open motions in *Matter of C.P.* (Motion Seqs. 001 and 002), the Court issues the instant joint Decision and Order.

CONSOLIDATION

Consolidation rests within the discretion of the Court and is appropriate where two actions involve "a common question of law or fact" (CPLR § 602[a]); the burden is on a party resisting consolidation to show that consolidation would be prejudicial (*Vigo S. S. Corp. v.*

Marship Cop., 26 NY2d 157 [1970]). Courts are inclined to award consolidation where it promotes efficiency and judicial economy (*Amcan Holdings, Inc. v. Torys LLP*, 32 AD3d 337 [1st Dept 2006]).

The *Matter of Nemni* and the *Matter of C.P.* proceedings involve common questions of law and fact, namely challenges to City and State respondents' administrative agencies' termination of petitioners' childcare benefits. As discussed more fully below, petitioners in both actions receive childcare benefits via public benefit programs and, in both actions, petitioners challenge the termination of their benefits under nearly identical circumstances. Indeed, State respondents and petitioners consent to consolidation of these two matters (*Matter of Nemni*, NYSCEF Doc. Nos. 247 and 253). City respondents have not opposed consolidation and did not even address the issue in their responsive papers.

Consequently, the *Matter of Nemni* and the *Matter of C.P.* are hereby consolidated under NY Index No. 158126/2020. Upon consolidation, and as more fully discussed below, the Court has considered and resolved both underlying petitions (collectively, "the petition") and the open motions related thereto.

INTERVENE

In the *Matter of Nemni*, former petitioners Chana Nemni and Musia Parnas seek to intervene as petitioners (Motion Seq. 004). Former petitioner Nemni's claims were dismissed as moot upon reinstitution of her childcare benefits by respondents. The prior jurist found that no exception to the mootness doctrine applied to prevent dismissal of Nemni's claims. Thereafter, respondents again failed to continue Nemni's childcare benefits and Nemni seeks to be reinstated, via intervention, in this action. Likewise, respondents failed to continue Parnas' childcare benefits.

Where intervention promotes fairness, efficiency, and avoids multiple litigation and inconsistent judgments, it is readily granted (CPLR §§ 1012 et. seq. and 7802[d]). Intervention lies within the "sound discretion of the Court" (*Matter of White v. Incorporated Vil. Of Plandome Manor*, 190 AD2d 854 [2d Dept 1993]). Nemni and Parnas are interested persons in this litigation as they both assert the same claims as other petitioners – namely the cessation of their childcare benefits by respondents. There is no prejudice to respondents by allowing the intervention. Accordingly, the motion to intervene is granted; Nemni and Parnas are petitoners herein and the caption shall be amended accordingly.

ANONYMOUS CAPTION

That portion of motion sequence 001 in *Matter of C.P.* seeking to proceed under an anonymous caption is unopposed and, therefore, is granted. The caption shall be amended accordingly.

PETITIONS AND MOTIONS TO DISMISS

Petitioners are parents who receive childcare benefits via certain public benefit programs. They allege that respondents terminated their childcare benefits without providing adequate notice of the termination or an administrative fair hearing in violation of New York Social Services Law § 22 and 18 NYCRR § 358, among others.

Petitioners seek various forms of relief to remedy the alleged harm caused by respondents' termination of their childcare benefits, *inter alia*:

(1) class and subclass certification;

(2) injunctive relief in the form of an injunction directing the City respondents to provide petitioners with ongoing childcare services pursuant to aid-continuing directives by State respondents;

(3) declaratory relief in the form of: (a) a declaration that City respondents' failure to provide ongoing aid continuing services is a violation of the 14th Amendment to the Federal Constitution, as well as federal law and New York State law and regulations, and (b) a declaration that State respondents' failure to implement procedures to ensure compliance with aid continuing directives to City respondents is a violation of federal and New York State law and regulations; (c) a declaration that State respondent OCFS has failed to ensure State respondent OTDA and City respondents provide ongoing childcare services to petitioners and other similarly situated individuals who have received aid continuing directives and that such failure is a violation of federal and New York State law and regulations, and (d) a declaration that City respondents' have engaged in a practice of discontinuing childcare services without a written notice of discontinuance and that such practice violates federal and New York State law and regulations;

(4) damages in the form of reimbursement for childcare expenses, compensatory damages, and punitive damages; and

(5) attorney's fees and costs (*Matter of C.P. v. Poole* NYSCEF Doc. Nos. 1, 15, and 16; *Matter of Nemni* NYSCEF Doc. No. 65).

Given the volume of petitions, motions, and cross-motions – including but not limited to respondents' motions to dismiss the petition – in this now consolidated matter, and to ensure a level of readability, the Court addresses the merits of the petition under each heading below.

At the outset, as to respondents' applications for dismissal under CPLR § 3211, the petition has been liberally construed, the facts presumed to be true, and the pleading accorded the benefit of every possible favorable inference (*see e.g. Leon v. Martinez*, 84 NY2d 83 [1994]). "Under CPLR § 3211(a)(1), a dismissal is warranted only if the documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law" (*id.*; citing *Heaney v. Purdy*, 29 NY2d 157 [1971]). To the extent that the motions seek dismissal under § 3211(a)(7), the petition has likewise been afforded the benefits of liberal construction, a presumption of

truth, and any favorable inference (*id.*; *Anderson v. Edmiston & Co.*, 131 AD3d 416, 417 [1st Dept 2015]; *Askin v. Department of Educ. of City of N.Y.*, 110 AD3d 621, 622 [1st Dept 2013]). The motion must be denied if from the four corners of the pleadings "factual allegations are discerned which taken together manifest any cause of action cognizable at law" (*Polonetsky v. Better Homes Depot*, 97 NY2d 46, 54 [2001]). A complaint should not be dismissed so long as, "when the plaintiff's allegations are given the benefit of every possible inference, a cause of action exists," and a plaintiff may cure potential deficiencies in its pleading through affidavits and other evidence (*R.H. Sanbar Proj., Inc. v. Gruzen Partnership*, 148 AD2d 316, 318 [1st Dept 1989]). However, bare legal conclusions and factual allegations which are inherently incredible or contradicted by documentary evidence are not presumed to be true (*Mark Hampton, Inc. v. Bergreen*, 173 AD2d 220 [1st Dept 1991]).

CLASS CERTIFICATION

The petition and some part of the instant motions seek class certification and certification of a subclass. While class action certification is not prohibited in Article 78 proceedings, it is unnecessary where the Article 78 proceeding challenges governmental operations and any subsequent petitioner is afforded protection under the principles of stare decisis (*Jones v. Berman*, 37 NY2d 42, 57 [1975]; *De Zimm v. New York State Bd. of Parole*, 135 AD2d 66 [3d Dept 1988]). Notwithstanding, this "governmental operations" rule does not apply where small sums of damages are sought from the challenged governmental action, or where the government respondents make clear they will flout the Court's order and continue the challenged action as against any later similarly situated persons (*Graves v. Doar*, 63 AD3d 874 [2d Dept 2009]; *Eisenstark v. Anker*, 64 AD2d 924 [2d Dept 1978]; *Mitchell v. Barrios-Paoli*, 253 AD2d 281 [1st Dept 1999]). This exception to the governmental operations rule is, however, narrowly applied (*Mitchell v. Barrios-Paoli*, *supra*).

Here, class action is unnecessary. Petitioners allege that the City respondents failed to provide continuing and uninterrupted childcare assistance benefits following the issuance of an aid continuing directive by State respondents pending the outcome of petitioners' administrative fair hearings. In essence, petitioners allege a systemic policy failure by the City respondents in failing to continue childcare benefits, and by the State respondents in failing to oversee the program and ensure benefits were properly continued; this is best described as a challenge to governmental operation. Consequently, any relief awarded on the underlying Article 78 petition will adequately flow to others who are similarly situated (*Rivera v. Trimarco*, 36 NY2d 747 [1975]; *Buames v. Lavine*, 38 NY2d 296 [1975]; *see also Mitchell v. Barrios-Paoli*, 253 AD2d 281 [1st Dept 1999] [class action inappropriate in Article 78 matter involving public assistance benefits]). The petition does not seek "small sums of damages" – it seeks over $100,000 in damages – and none of the respondents have indicated that they will flout this Court's order herein. Therefore, petitioners' request for certification of a class and subclass is denied.

INJUNCTION - ESTABLISH PROCEDURES & ONGOING CHILDCARE

Petitioners seek to compel City and State respondents: to develop and implement policies, procedures, and mechanisms to ensure compliance with aid continuing directives; to properly issue appropriate written notices regarding childcare services; and to maintain, and not

change, childcare aid until after the appropriate notices are served and fair hearings are held (*see Matter of C.P.* petition at pp. 32-33 ¶¶ 5, 6, and 7; *Matter of Nemni* amended petition at pp. 47-48 ¶¶ 5, 6 and 7).

It is not the function of this Court to promulgate rules or policies; nor is it the function of this Court to direct another branch of government to do the same. While the Court is sympathetic to petitioners' position, "the law does not permit the Court to substitute its judgment for that of an administrative agency, such as respondent[s]" by creating policy (*New York State Nurses Association v. New York State Department of Health*, 2020 NY Slip Op 31588[U] [Sup. Ct. NY County, 2020] [Nervo, J.]). The position advanced by petitioners, that this Court should direct respondents to implement various policies, runs afoul of the separation of powers doctrine, and the invitation to require respondents create and implement policy is, therefore, declined (*see e.g. Larabee v. Governor of State*, 121 AD3d 162 [1st Dept 2014]; *Citizens for an Orderly Energy Policy, Inc. v. Cuomo*, 78 NY2d 398 [1991]).

To the extent that petitioners seek an injunction, either preliminarily or permanently, requiring respondents provide petitioners on-going and uninterrupted childcare services until fair hearing decisions have been rendered by State respondents, such relief is duplicative of the relief sought in the initial petition (i.e., relief pursuant to CPLR Article 78) and is granted as set forth below.

DECLARATORY JUDGMENT

Although styled as an Article 78 proceeding challenging administrative actions and inactions, the instant petition also seeks declaratory relief in the nature of a declaratory judgment finding that respondents have violated 45 CFR § 98.20, 45 CFR § 98.21, SSL § 410-w, 18 NYCRR § 358-2.2(a)(7), 18 NYCRR § 358-3.6, and the Federal Constitution.

The purpose of declaratory relief under CPLR § 3001 is to determine the parties' rights before a wrong or harm occurs, and to prevent further litigation (*Morgenthau v. Erlbaum*, 59 NY2d 143 [1983]). It "provides a declaration of rights between parties and cannot be executed upon as to compel a party to perform an act" (*Matter of Hyde Park Landing, Ltd. v. Town of Hyde Park*, 130 AD3d 730 [2d Dept 2015] [internal quotation and citation omitted]; *see also Matter of Chana Nemni v. Poole*, NY Index No. 158126/2020 NYSCEF Doc. No. 210 [Sup. Ct. NY County, 2021] [James, J.]). "[The Court] may decline to hear the [declaratory relief] matter if there are other adequate remedies available, and it must dismiss the action if there is already pending between the parties another action in which all the issues can be determined" (*Morgenthau v. Erlbaum, supra* at p.148). "[A] declaratory judgment action is not an appropriate procedural vehicle for challenging … administrative determinations, and thus the proceeding/declaratory judgment action … is properly only a proceeding pursuant to CPLR article 78" (*Matter of Potter v. Town Bd. of Town of Aurora*, 60 AD3d 1333 [4th Dept 2009]).

Here, that portion of this matter which seeks Article 78 relief addresses all issues among the parties, thus, dismissal of the declaratory relief on this basis is mandated (*Morgenthau v. Erlbaum, supra*). Furthermore, the declaratory relief sought here improperly challenges administrative determinations, which challenges must be brought under Article 78 (*Matter of*

Potter v. Town Bd. of Town of Aurora, supra.). Accordingly, that portion of the action seeking declaratory relief is dismissed.

ARTICLE 78 RELIEF

While well established, it bears repeating that the Court's function in an Article 78 proceeding challenging an agency action or inaction is limited. The Court "may not disturb an administrative action unless it finds no rational basis for the agency's action, or that that the challenged action was arbitrary and capricious" (S*tevens v. New York State Division of Criminal Justice Services*, 2023 NY Slip Op 05351 [Court of Appeals]; *see also Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222 [1974]). Mandamus to compel in an Article 78 proceeding is likewise limited to those circumstances where petitioners "have a clear legal right to the relief demanded and there must exist a corresponding nondiscretionary duty on the part of the administrative agency to grant that relief" (*Matter of Scherbyn v Wayne-Finger Lakes Bd. of Coop. Educ. Servs.*, 77 NY2d 753 [1991]). "Just as mandamus will lie only to enforce a clear legal right, prohibition may be availed of only to proscribe a clear legal wrong" (*Matter of City of Newburgh v Public Empl. Relations Bd. of State of N.Y*, 63 NY2d 793 [1984]). Where the challenge involves an agency's interpretation of a statute, varying degrees of judicial deference is afforded to the agency's judgment "depending upon the extent to which the interpretation relies upon the special competence the agency is presumed to have developed in its administration of the statute" (*Matter of Rosen v. Public Empl. Relations Bd.*, 72 NY2d 42 [1988]; *see also Lippman v. Public Empl. Relations Bd.*, 263 AD2d 891 [3d Dept 1999]).

A petitioner challenging an agency determination must ordinarily exhaust administrative remedies prior to instituting an Article 78 proceeding (*Watergate II Apts v. Buffalo Sewer Auth.*, 46 NY2d 52 [1978]). However, where an agency's action is unconstitutional, beyond its power, or the administrative remedy would be futile or cause irreparable injury, a petitioner need not exhaust their administrative remedies (*id.*). Likewise, where the right to relief is "clear," as a matter of law, and the "act commanded to be performed by law … involv[es] no exercise of discretion" a petitioner may seek Article 78 review despite failing to exhaust administrative remedies (*Matter of Hamptons Hosp. & Med. Ctr v. Moore*, 52 NY2d 88, 96 [1981]).

Here, petitioners have a clear legal right to compel respondents provide continuing childcare services until completion of petitioners' fair hearings. 18 NYCRR § 365-3.6 provides, in relevant part,

> …you have the right to aid continuing for your public assistance and medical assistance and services until the fair hearing decision is issued if you request a fair hearing before the effective date of a proposed action as contained in the notice of action.

Accordingly, as a matter of law, petitioners have a clear legal right to continuing childcare assistance pending the determination of their fair hearings and, therefore, they need not exhaust their administrative remedies. This determination does not, however, finally resolve

whether petitioners are entitled to childcare assistance, such determination abides a fair hearing before the appropriate administrative agency(ies).

Although respondents attempt to explain the agencies' procedures in implementing § 365-3.6, among others, and providing continuing aid, notably they cannot reasonably refute that petitioners are entitled to continuing aid pending their fair hearings and that such aid did not continue here. The failure of City respondents to comply with and implement State respondents' continuing aid directives can only be described as arbitrary and capricious and without basis in law.

To the extent that respondents contend that any portion of the petition is rendered moot by retroactively providing childcare benefits to certain petitioners, this Court disagrees. Where an issue raised in a petition is likely to recur or is otherwise likely to evade review, judicial review is permitted as an exception to the mootness doctrine (*see e.g. City of New York v. Maul*, 14 NY3d 499 [2010]; *see also Stevens v. New York State Division of Criminal Justice Services*, 2023 NY Slip Op 05351 [Court of Appeals] [rules related to standing should not be applied in an overly restrictive manner when doing so would shield an action from judicial review]). Public benefits, by definition, apply to all similarly situated individuals; therefore, a challenge to the policies implementing these benefits necessarily makes the issue one that is likely to recur (*id.*; *Coleman v. Daines*, 19 NY3d 1087 [2012]). Indeed, it appears from this record that city respondents have engaged in a pattern of canceling and reinstating childcare benefits, with certain petitioners having their childcare benefits repeatedly canceled and reinstated. Thus, to the extent that respondents' cross-motions seek dismissal predicated upon mootness, they are denied.

Consequently, the petitions are granted to the extent of directing respondents to continue childcare services for petitioners who timely requested that such aid continue pursuant to 18 NYCRR § 365-3.6

COMPENSATORY AND PUNITIVE DAMAGES

To the extent that petitioners seek monetary damages against the State respondents in this Article 78 proceeding, this Court is without subject matter jurisdiction over same; damages sought against the state must be filed in the Court of Claims (New York Court of Claims Act §§ 8 and 9; *Driscoll v. Delarosa*, 57 AD3d 317 [1st Dept 2008]; *Gutterman v. State*, 74 Misc.3d 365 [Court of Claims, 2021]). Furthermore, punitive damages cannot be asserted against the State (*id.*; *Sharapata v. Town of Islip*, 56 NY2d 332 [1982]). Consequently, those portions of the petition and motions seeking monetary damages as against the State respondents must fail.

As to damages sought against the City respondents, petitioners do not differentiate those damages which they seek as against City respondents from those which they seek against State respondents. Consequently, it is impossible to determine if monetary damages in any amount may be recovered as against the City respondents. Stated another way, the petition comingles damages sought against both City and State respondents and given that damages against the State may only be sought in the Court of Claims, the entirety of these claims may not be maintained, and dismissal is required.

Furthermore, the petition seeks compensatory damages in the blanket amount of $10,000 for each petitioner, irrespective of the actual damages attributable to each petitioner, in addition to unspecified actual out-of-pocket damages for each petitioner. There is no basis to issue a blanket pecuniary award per petitioner, especially where each petitioner has incurred differing damages and some petitioners may have incurred no pecuniary damages at all.

ATTORNEY'S FEES

It is well established that absent an agreement, statute, or court rule, a party may not recover attorney's fees (*Rivera v. Board of Trustees of NY Fire Dept.*, 220 AD3d 584 [1st Dept 2023]; *Matter of AG Ship Maintenance Corp. v. Lezak*, 69 NY2d 1 [1986]). The New York State Equal Access to Justice Act (EAJA), codified at CPLR § 8600 et. seq., provides for attorney's fees when a petitioner prevails in their "battle against an agency that is acting without justification." A prevailing petitioner is one who succeeds "in acquiring a substantial part of the relief sought in the lawsuit" (*New York State Clinical Laboratory Ass'n, Inc. v. Kaladjian*, 85 NY2d 346, 355 [1995]). The EAJA does not provide for attorney's fees as against non-state respondents; however, where a city agency acts as an agent of a state agency, the State may be heard to answer for a petitioner's attorney's fees attendant to a successful challenge of the city agency's actions (*Mitchell v. Bane*, 218 AD2d 537 [1st Dept 1995] [state social services agency answerable for petitioner's attorney's fees challenging city social services agency]).

Here, the City agency respondents acted as an agent of the State agency respondents. That the State agency directed the City agency to continue aid, and the City agency failed to continue such aid, does not prevent an award of attorney's fees against the State. "Local social service commissioners act on behalf of and as agents for the State. Each is a part of and the local arm of the single State administrative agency" (*Mitchell v. Bane*, 218 AD2d at 540 [internal citation and quotations omitted]). "Imposing responsibility for attorney's fees on the State takes this structure into account and avoids evasion of responsibility by bureaucratic fingerpointing and red-tape shufflings" (*id*. [internal citations omitted]).

Having determined that State respondents may bear the costs of petitioners' attorney's fees under the EAJA, the Court must next determine whether petitioners succeeded in securing a substantial portion of the relief sought in this action entitling them to attorney's fees. The crux of petitioners' petition is to compel city respondents continue their childcare aid subject to completion of fair hearings. The Court has granted that relief; accordingly, petitioners' have substantially succeeded on their petition and are entitled to attorney's fees.

It is unclear on these papers, however, the amount of attorney's fees due petitioners. Accordingly, the Court directs counsel for petitioners and respondents to submit briefing limited to the amount of attorney's fees in accordance with the briefing schedule set below.

CONCLUSION

Accordingly, for the foregoing reasons, it is hereby

ORDERED that the request of Chana Nemni and Musia Parnas to intervene as petitioners in the *Matter of Nemni v. Poole* is granted; and it is further

ORDERED that the motion by petitioners in the *Matter of C.P. v. Poole* for permission to proceed under an anonymous caption is granted without opposition; and it is further

ORDERED that the Court's motion to consolidate is granted and the above-captioned proceeding is consolidated with the proceeding entitled *Matter of C.P. v. Poole*, Index No. 152447/2022, pending in this Court; and it is further

ORDERED that the consolidation of the two proceedings shall take place under Index No. 158126/2020 and the consolidated action shall bear the following caption:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK
X----------
In the matter of the Application of Chana Nemni, Musia Parnas, Shmuel Horowitz, Chaya Belinow, Abraham Rainiz, Levi Solik, Yisroel Tevel, Shterna Tenenbaum, Yisroel Zalmanov, C.P., C.B., and L.D.,

Petitioners,

-against-

Sheila J. Poole, Michael P. Hein, Steven Banks, Davi Hansell, Daniel W. Tietz, Gary P. Jenkins, Jess Dannhell,

Respondents
X----------; and it is further

ORDERED that the pleadings in the actions are hereby consolidated and shall stand as the pleadings in the consolidated action; and it is further

ORDERED that, within 30 days from entry of this order, petitioners shall serve a copy of this order with notice of entry on the Clerk of the Court, who shall consolidate all of the documents in the now consolidated actions and shall mark his records to reflect the consolidation; and it is further

ORDERED that counsel for the petitioners shall contact the staff of the Clerk of the Court to arrange for the effectuation of the consolidation hereby directed; and it is further

ORDERED that service of this order upon the Clerk of the Court shall be made in hard-copy format if this action is a hard-copy matter or, if it is an e-filed case, shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website); and it is further

ORDERED that the consolidated petition is granted solely to the extent of: (1) directing City respondents to adhere to aid continuing directives issued by State respondents; (2) directing respondents to provide continuing aid to petitioners until fair hearing decisions have been rendered by State respondents; and (3) finding City respondents' failure to provide such continuing aid arbitrary and capricious; and it is further

ORDERED that, should the parties not reach agreement regarding the attorney's fees due to petitioners' counsel, papers (attorney affirmation and legal invoices) limited to the amount of such attorney's fees and reasonableness of same shall be filed via NYSCEF as follows:

Petitioners' papers, if any, shall be filed no later than March 1, 2024;

Respondents' papers, if any, in opposition shall be filed no later than March 22, 2024; and it is further

ORDERED that the failure to timely file papers in support of attorney's fees shall constitute waiver of said fees; and it is further

ORDERED that the failure to timely file papers in opposition to attorney's fees shall constitute consent to the fees sought and waiver of any objection to same; and it is further

ORDERED that respondents' applications to dismiss are granted consistent with this Decision and Order, to wit: petitioners' claims for (1) class and subclass certification; (2) injunctive relief; (3) declaratory relief; and (4) compensatory and punitive damages, are dismissed.

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1/18/2024
DATE

KATHLEEN WATERMAN-MARSHALL, J.S.C.

CHECK ONE:	[X]	**CASE DISPOSED**		[ ]	**NON-FINAL DISPOSITION**		
	[ ]	**GRANTED**	[ ] **DENIED**	[X]	**GRANTED IN PART**	[ ]	**OTHER**
APPLICATION:	[ ]	**SETTLE ORDER**		[ ]	**SUBMIT ORDER**		
CHECK IF APPROPRIATE:	[ ]	**INCLUDES TRANSFER/REASSIGN**		[ ]	**FIDUCIARY APPOINTMENT**	[ ]	**REFERENCE**