

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: IAS PART 9

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BARBARA JIGGETTS, et al.,	:	
Plaintiffs,	:	
-against-	:	Index No. 40582/87
CESAR PERALES, as Commissioner	:	
of the Department of Social	:	
Services, et al.,	:	
Defendants.	:	

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PLAINTIFFS' PROPOSED FINDINGS OF FACT

I. Trial of this Action

a. Procedural Background

1. On March 9, 1987, plaintiff Barbara Jiggetts filed an amended class action complaint in this action and motions for class certification and preliminary relief. The complaint named both the State Department of Social Services and the New York City Human Resources Administration as defendants. These defendants both moved to dismiss. While these motions were pending, six other public assistance recipients intervened in the action seeking stays of eviction and payment of their rent arrears as interim relief. On January 12, 1988, the Court denied defendants' motions to dismiss, granted Ms. Jiggetts' motion for preliminary relief and certified a plaintiff class. On March 9, 1988 and March 15, 1988 the Court entered two orders reflecting its January 1988 decision.

2. The City and State defendants appealed. On June 15,

1989, the Appellate Division, First Department, reversed the March 15, 1988 order of this Court, dismissed the amended complaint and overturned the class certification. 148 A.D.2d 1 (1st Dep't 1989). The Court of Appeals granted leave to appeal the dismissal of the amended complaint against the State defendant. On April 3, 1990, the Court of Appeals reversed the decision of the Appellate Division, reinstated the amended complaint and remanded the action to this Court for further proceedings. 75 N.Y.2d 411 (1990).

b. Evidence Presented at Trial

3. Trial of this action commenced on March 4, 1991 and proceeded through June 14, 1991. Plaintiffs presented 24 witnesses and the State defendant presented 14.

4. Seven witnesses testified as experts, six for plaintiffs and one for the State defendant. The only expert to be paid for his testimony was the State defendant's witness. Filer Tr. 2248. The credentials of these experts are summarized below.

5. Professor Michael Stegman testified for plaintiffs as an expert on the New York City housing market. Professor Stegman is an expert on low income housing and on housing in New York City in particular. Stegman Tr. 273-89; PX. 87-600.<sup>1</sup> Professor Stegman is Chairman of the Department of City and Regional Planning at the University of North Carolina at Chapel Hill. He served as Deputy

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<sup>1</sup> Plaintiffs' exhibits in evidence are cited to as "PX." Defendant's exhibits in evidence are cited to as "DX." For the convenience of the Court, plaintiffs have submitted a complete list of plaintiffs' exhibits with this statement of proposed findings.

Assistant Secretary for Research at the United States Department of Housing and Urban Development ("H.U.D."), where he was responsible for all research conducted and sponsored by H.U.D.. Stegman Tr. 275-76. Over the past twenty five years Professor Stegman has authored dozens of journal articles and book chapters on low income housing issues and has published nine books on housing. PX. 87-600.

6. Professor Stegman is an authority on the housing market and conditions in New York City. He has authored the past three triennial Housing and Vacancy ("H.V.S.") Reports for New York City (1981, 1984 and 1987) and has been selected to author the next such report. Stegman Tr. 278-80; Stegman Tr. 3399. He also served as a consultant on housing issues to the Mayor's Commission on the Year 2000. Stegman Tr. 278.

7. The H.V.S. is a comprehensive survey of housing in New York City which is conducted pursuant to the rent regulation laws. The data for the H.V.S. is gathered by the United States Bureau of the Census. The reports which Professor Stegman has authored have been issued by the New York City Department of Housing Preservation and Development as the official reports on the H.V.S.. Stegman Tr. 278-80. The H.V.S. is the most comprehensive study of rent levels, vacancy rates, and housing conditions in the City of New York that is regularly undertaken. The 1987 H.V.S. provides the most recent comprehensive source of data on housing in New York City and was relied on by both parties at trial. See DX. AF-1, 2, 5, 8-11.

8. Professor Emanuel Tobier also testified as an expert for

plaintiffs on the relationship between the housing market and the shelter allowance in New York City. Professor Tobier is a Professor of Economics and Planning at the Graduate School of Public Administration at New York University. Tobier Tr. 449-451. He is Chairman of the Urban Planning Program at that school. PX. 88-602.

9. Professor Tobier is an expert on housing in New York City. He has served as Chairman of the New York City Rent Guidelines Board and has written numerous articles on housing and homelessness in New York City. Tobier Tr. 452-54.

10. Dr. Anna Lou Dehavenon, a cultural anthropologist, is the project director of the Action Research Project on Hunger, Homelessness and Family Health. Dehavenon Tr. 249. She testified for plaintiffs as an expert on shelter and hunger problems of poor families in New York City. Dehavenon Tr. 268. Dr. Dehavenon holds a Ph.D. from Columbia University. PX. 86-603.

11. Dr. Dehavenon has studied low income families in New York City for the past seventeen years. Since 1979, Dr. Dehavenon has studied family food emergencies in New York City on an annual basis. Beginning in July 1986, Dr. Dehavenon has also conducted annual studies of families seeking emergency shelter in the Emergency Assistance Units ("E.A.U.s") of the Human Resources Administration ("H.R.A."). As part of this research she has interviewed hundreds of homeless families and studied the reasons for their homelessness, including their housing histories, past living arrangements, and medical histories. Each year, Dr.

Dehavenon has published a report detailing the findings of her studies. She has also authored numerous articles and papers on issues relating to homelessness and public assistance and has convened a task force on homelessness and poverty of the American Anthropological Association. Dehavenon Tr. 253-61; PX. 86-603.

12. Elizabeth Krueger testified for plaintiffs as an expert on public assistance, food stamps, and the operation of emergency food providers in New York City. Krueger Tr. 668-69. Ms. Krueger is Director of Income Support Programs for the Community Food Resource Center (CFRC), a not-for-profit organization that performs policy analysis and advocacy on nutritional issues. CFRC also operates direct feeding programs, including a soup kitchen, an entitlement clinic and two senior dinner programs that service low income and elderly New Yorkers. Krueger Tr. 599-600.

13. Ms. Krueger is responsible for monitoring the provision of food stamps and other public benefits to low income New Yorkers. She also researches and writes reports related to those programs. She has testified before Congress, the State Legislature and the City Council on these issues and is chair of the food stamp task force, a group of government officials, public interest attorneys and other advocates who are concerned with the food stamp program. Krueger Tr. 600-04.

14. Ms. Krueger holds a masters degree in public policy from the University of Chicago. She has worked on food and nutritional issues concerning the poor since 1981. Krueger Tr. 597-98.

15. Scott Auwarter testified as an expert on the availability

of low income housing in the borough of the Bronx. Mr. Auwarter is a social worker who is director of the Homeless and Relocated Family Project at the Citizen's Advice Bureau. Auwarter Tr. 616-17. The Project provides social services to approximately 1000 homeless and relocated homeless families in the Bronx each year, including assistance in obtaining housing. Auwarter Tr. 618-19.

16. Professor Randall Filer testified as an expert for the State defendant. Professor Filer is an economist at Hunter College in New York City. Prior to 1990, Professor Filer had not authored any reports or studies on housing issues in New York City or elsewhere. Instead, his work concentrated on labor and employment issues. Since 1990, Professor Filer has written one article on family homelessness in New York City and one survey of the literature on homelessness. He has recently completed a regression analysis concerning homelessness. Professor Filer has not held any governmental posts or appointments relating to housing, homelessness or poverty and has not served on any commissions, committees, or task forces on these issues. He has not taught any courses specifically devoted to housing or homelessness. DX. AE-13.

17. In rebuttal, plaintiffs presented the testimony of Dr. Victor Bach, an expert in urban policy, housing and homelessness and in analytic methods of research. Bach Tr. 3509. Dr. Bach is Director of Housing Policy and Research for the Community Service Society of New York City. In this capacity, Dr. Bach is responsible

for developing and carrying out C.S.S.'s research on housing and homelessness. He supervises a staff of five researchers. Bach Tr. 3488-89. Dr. Bach has authored and participated in studies on a broad variety of issues concerning housing in New York City, including disinvestment and abandonment, the City's stock of in rem housing, federally subsidized housing, doubling up of families, and homeless families. Bach Tr. at 3492-94.

18. Dr. Bach holds a Ph.D. from the Massachusetts Institute of Technology in Urban Studies and Planning and was an Associate Professor in the Urban Affairs and Policy Analysis Program at the New School for Social Research. He is currently an adjunct Associate Professor of Urban Planning in the Urban Planning Division of the Graduate School of Architecture, Preservation and Planning at Columbia University. In that capacity, Dr. Bach teaches a two semester course at the graduate level on analytic methods. Bach Tr. 3495; PX. 171.

## II. Structure of the Public Assistance Grant

19. In New York State, the public assistance grant provided to recipients of A.F.D.C. consists of three components: a "basic" grant, two "home energy" allowances, and a shelter allowance. Social Services Law § 131-a; Krueger Tr. 669-70; Hickey Tr. 2519, 2525-26; DX. AT-2.

20. The schedules of amounts for the basic grant and the home energy allowances are established by the Legislature in the Social Services Law and are uniform throughout the State. Social Services

Law § 131-a. The schedules of shelter allowances are promulgated by the State Department of Social Services. Each of the 58 Social Services districts has a different schedule of maximum amounts. Recipients receive a shelter allowance in the actual amount of their rent, up to the maximum, for their household size in the pertinent district. The City of New York is a single district for these purposes. 18 N.Y.C.R.R. § 352.3(a).

III. The Shelter Allowance is Not Calculated to Reflect the Cost of Housing In New York City

a. The Original Schedule of Maximum Shelter Allowances Established in 1975 was Calculated to Cover the Full Rents of 95% of all Recipients

21. Prior to 1975, the shelter portion of the public assistance grant was based on schedules individually established by each social services district. The regulations required the districts to provide an allowance schedule which "shall provide a sufficient amount for all persons to obtain housing in accordance with standards of public health in the community." 18 N.Y.C.R.R. § 352.3(a) (repealed in 1975). Exceptions to the maximum were granted at the discretion of the local commissioners. PX. 13-13, at p. 4.<sup>2</sup>

22. In practice, almost all recipients received shelter allowances which paid their full rents. Colfer Tr. 1307-08.

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<sup>2</sup> The citations to particular pages of exhibits track the page numbers in the documents that are cited to, unless they are unnumbered, in which case the citations are to the page number of the exhibit as a whole.



23. In 1975, the Commissioner of the New York State Department of Social Services promulgated amended regulations which established maximum shelter allowance schedules, varying by social services district. 18 N.Y.C.R.R. 352.3(a) (amended). The schedule was designed to meet the full rents of 95% of all recipients in each district. Colfer Tr. 1307.

24. Two schedules were established for each county, one including heat, and one without. To obtain the latter, the fuel allowance was subtracted from the heat-included schedule. PX. 15-16, p. 2. For New York City residents, the following maximum shelter allowances took effect on October 1, 1975:

	Family Size							
	1	2	3	4	5	6	7	8+
With heat	152	183	194	218	226	249	303	317
Without heat	136	160	169	186	189	209	261	273

PX. 13-13, App. A, at pp. 2, 4.

25. In New York City, the overwhelming majority of recipients receive the "with heat" allowances. PX. 19-26, at p. 2, n.1 (less than one percent receive the "without heat" amounts).

26. It was the stated belief of the Commissioner that the five percent of public assistance households whose current rent would not be paid in full under the shelter allowances schedules effective in October 1975 would be able to relocate to other housing with lower rents if they so chose. Mayor v. Toia, 419 F. Supp. 1161 (S.D.N.Y. 1976); Matter of Bernstein v. Toia, 43 N.Y.2d 437 (1977).

b. The Shelter Allowance Was Not Increased From 1975-1984

27. Between 1975 and 1984 the shelter allowance was not increased at all. Colfer Tr. 1308.

28. In 1982, the Department of Social Services developed an alternative methodology for the derivation of the shelter allowance. The alternative methodology recommended was termed the "minimum standard unit approach." PX. 13-13, at p. iii. The report regarding this alternative methodology found that the method of setting shelter allowances based on a percentile of rents paid by recipients was flawed because it was influenced by the amounts that were previously paid to recipients, and "does not reflect shelter needs or actual costs of housing." PX. 13-13, at p. 10.

29. The recommendations in the 1982 Report were not adopted. PX. 15-16, at p. 2.

c. The 1984 Increase in the Shelter Allowance Was Not Calculated to Reflect the Cost of Housing in New York City

30. In 1984, the Commissioner implemented an increase in the shelter maximum of approximately 24% for public assistance recipients in New York City. PX. 67-250. Commencing January 1, for New York City recipients, the maximum allowances for apartments including heat were:

Family Size							
1	2	3	4	5	6	7	8+
193	227	244	270	281	308	366	383

State defendant's Answer to the Intervenor Complaint of Bernadine

Niles and Rita Bell, ¶ 45; PX. 67-250.<sup>3</sup>

31. Despite the criticisms contained in the Department's 1982 Report, the schedule implemented in New York City in 1984 was based on recipient rents. The shelter allowance for a family of three was set at "the median contract rent for non-dilapidated units rented by public assistance recipients" as reflected in the 1981 Housing and Vacancy Survey, which was \$244.00. PX. 14-14, at p. 2; Welsh Tr. 1439. Rent levels for other household sizes were derived from the allowances for a family of three through use of a mathematical formula. PX. 14-14.

32. Thus, the methodology was designed to leave half of all public assistance recipients in non-dilapidated housing in New York City with rents above the shelter allowance. PX. 137-153, at p. 50 (Welsh Deposition) (median means half above and half below).<sup>4</sup> After the increase, 30% of all recipients continued to have rents in excess of the shelter allowance. PX. 137-153, at p. 61; PX. 24-34, at p. 1.

33. The Department of Social Services made no determination of any kind concerning the ability of those recipients whose rents continued to exceed the shelter allowance in 1984 to relocate to less expensive housing. Dr. James Welsh, Chief of the Bureau of Policy Analysis of the Office of Program Planning and Development

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<sup>3</sup> A set of marked pleadings was provided to the Court at trial. Tr. 1231. See C.P.L.R. § 4012.

<sup>4</sup> The Court admitted in evidence designated portions of four depositions. Citations to these depositions are to portions that have been designated. See Tr. 1174-1222.

(OPPAD) at the Department of Social Services, developed the methodology that was utilized in setting the 1984 shelter schedule. Welsh Tr. 1432-35; PX. 137-153, at pp. 36-37, 40-41; PX. 139-155, at p. 29 (Relyea Deposition). In developing the methodology for the 1984 shelter allowance schedule, neither Dr. Welsh nor anyone in his unit considered this issue. PX. 137-153, at p. 61-62. There is no evidence that suggests that this issue was considered by any other personnel at the Department.

34. Instead of undertaking a study as to the significance, if any, of the median rent of public assistance recipients in terms of apartment availability, the shelter allowance for a family of three was set at that level simply because it was a convenient round number. PX. 137-153, at p. 52.

35. Even assuming the validity of the methodology, the 1984 shelter schedule was seriously out of date at the time it was implemented -- a fact that has been acknowledged by Dr. Welsh. PX. 12-11, at p. 2 ("It should also be recalled that the 1984 schedule reflected 1980 rents, so that it lagged behind actual market conditions from the start"); 138-154, at pp. 159-60 (identifying Dr. Welsh as the author of PX. 12-11). In developing the 1984 shelter allowance schedule for New York City, the Department used data reflecting rents paid in 1981, and made no adjustment to reflect rent increases between 1981 and 1984, when the schedule was implemented. PX. 137-153, at pp. 53-54; Welsh Tr. 1697. See PX. 14-14 (1980 data use for upstate; 1981 data used for New York City).

36. Between 1981 and 1984, rents increased sharply. Median

contract rents for residents of New York City, without utilities, increased by 21.7%. PX. 74-253.

37. The method used to set the shelter allowance in 1984 was not calculated to provide public assistance recipients with a reasonable opportunity to secure housing renting within the maximum allowance, because it left tens of thousands of public assistance families with rent in excess of the shelter allowance each month without any consideration for what would become of them. See supra at ¶¶ 30-34; Stegman Tr. 341-345. Furthermore, even if the methodology is accepted as a means of estimating the cost of housing in New York City in 1981 (which it is not), rents had increased by over 20% between the time the data relied on by the Department was gathered and the date of implementation. See supra, at ¶ 36; Stegman Tr. 341-45.

38. Randall Filer's opinion that the 1984 shelter allowance schedule was set in a reasonable manner, despite his "quibbles," is not persuasive. Filer Tr. 2045-62. Dr. Filer stated that the use of the median rent of public assistance recipients was reasonable because it was based on the housing "preferences" of the "typical" public assistance family. Filer Tr. 2048. However, Dr. Filer cited no evidence that public assistance families with rents above the median had the option of moving to less expensive apartments and the evidence shows that the Department of Social Services did not consider this question. Given the extremely tight market for low income housing in New York City during the 1980s, the ability of public assistance recipients to find less expensive housing

cannot be assumed. Indeed, the evidence shows that such housing opportunities were not in fact available to recipients. Stegman Tr. 341-44, 3382-83. See also PX. 128-64, at pp. 32-35 (Department report describing bleak low-income housing market in early 1980s); PX. 71-210, at p. 69 (overall vacancy rate of 2.04% in 1984).

39. Dr. Filer made no attempt to justify the Department of Social Services' failure to update the 1981 data to reflect increases in rents. Filer Tr. 2045-62.

40. Additionally, the major advantages of the 1984 methodology cited by Dr. Welsh -- that it was based on reliable data and contained standards of housing quality -- do nothing to overcome the basic flaws discussed above. Welsh Tr. 1436. The use of accurate data, while important, is only a starting point and does not ensure the reasonableness of the method.

41. Furthermore, the standards of housing quality used in setting the allowance in New York City were not based on standards of decent housing. While the quality standards used in setting the shelter allowance upstate were designed to incorporate H.U.D. standards of quality, as used in the "Section 8" program, Welsh Tr. 1435-36, these standards were not used in New York City. Welsh Tr. 1696-97.<sup>5</sup> Instead, all "non-dilapidated" housing rented by public assistance recipients was considered in setting the allowance in New York City. Id; PX. 14-14. The term "not-dilapidated" as used in the Housing and Vacancy Survey, includes all housing, except

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<sup>5</sup> See infra, at ¶ 99, n. 13 (explanation of the "Section 8" program).

that classified as "dilapidated." PX. 71-210, at p. 159 (H.V.S. practice is to combine "sound" and "deteriorating" housing into the category of "not-dilapidated"). Because only units that are in "such poor physical condition that they pose a serious threat to health and well-being," PX. 71-210, at p. 160, are considered dilapidated, many units with serious deficiencies, are not counted as "dilapidated." Id. at p. 161 ("it would be inappropriate to judge the city's housing condition entirely on the extent of dilapidation"), Id. at pp. 164-65, n. \* (referring to possible "unreliability of dilapidation as a measure of uninhabitability"). Nondilapidated units with serious deficiencies were not excluded from the Department's calculations.

42. Conflicting evidence was presented concerning whether the Department excluded rents of recipients in public housing from its calculation of the 1984 schedule for New York City. A number of the summaries that Dr. Welsh prepared describing the methodology, including the earliest such summary, make no mention of any such exclusion. PX. 14-14; 19-26. At his deposition, Dr. Welsh stated that the description set forth in Exhibit 14-14 is accurate. PX. 137-153, at pp. 39-41. At trial, however, after plaintiffs presented evidence criticizing the inclusion of public housing in the calculation, (Stegman Tr. 344-45), Dr. Welsh testified that recipients in those units were excluded. Welsh Tr. 1579-80. See also PX. 15-16, at p. 3 (similar claim).

43. In view of the other flaws in the methodology described above, it is unnecessary for the Court to make a finding on this

issue. Regardless of whether public housing units were included or excluded from the data that the Department relied on, the methodology did not reasonably reflect the cost of housing in New York City at the time the schedule was implemented.

d. The 1988 Increase in the Shelter Allowance was Not Calculated to Provide Public Assistance Recipients with a Reasonable Opportunity to Retain or Obtain Housing in New York City

44. The shelter allowance was not raised again until January 1988. Colfer Tr. 1308-10.

45. As with the 1984 shelter allowance schedule, the Department of Social Services based the schedule on a percentile of recipient rents. The 1988 shelter schedule was based on the 65th percentile of actual rents paid by three person public assistance households as of May 1986, adjusted by an inflation factor of 6% to reflect the fact that the schedule was implemented in January 1988. A formula was used to derive amounts for other household sizes. PX. 19-26; 132-39. In New York City the schedule amounted to an average increase of approximately 13%. PX. 67-250.

46. The 1988 maximum shelter schedule for New York City households with heat included in the rent is as follows:

Family Size							
1	2	3	4	5	6	7	8+
215	250	286	312	337	349	403	421

18 N.Y.C.R.R. § 352.3. This schedule is currently in effect.

47. The 1988 schedule was finalized by the State Division of the Budget based on a proposal by Department of Social Services.



The Department of Social Services had proposed a higher schedule based on the 70th percentile of rents paid by three-person households in May 1986, adjusted by a 12% inflation factor. PX. 23-33; 139-55, at p. 64. The inflation factor was included because the data upon which the increase was based reflected 1986 rents. The 12% proposal was based on an estimate of the consumer price index for residential rents in New York City and in Buffalo. PX. 23-33, at pp. 2-3.

48. The Department of Social Services' proposal would have left 30% of all public assistance households with rents in excess of the shelter allowance. The Department never considered whether these recipients would be able to retain their housing or obtain less expensive apartments. As in 1984, Dr. James Welsh was one of the principal employees at the Department of Social Services who developed the methodology for the increase. Shapiro Tr. 1526-27, 1530; Welsh Tr. 1581-82; PX. 139-155, at pp. 39-40, 47-48. Dr. Welsh testified that he undertook no analysis of this question, participated in no discussions where it was raised, and saw no documents referring to it. PX. 138-154, at pp. 197-98. See also PX. 138-154, at pp. 175-76 (no consideration of vacancy rates).

49. In proposing an increase to the 70th percentile of recipient rents, the Department made no determination that the proposed schedule would enable building owners to cover the cost of maintaining and operating buildings. Consideration of this issue was limited to circulation of a draft report by New York City's Department of Housing Preservation and Development, which showed

that even an increase to cover the 80th percentile of rents would have only closed half of the gap between the shelter allowance and HPD's 1985 estimate of the rents necessary to permit owners to operate properly their buildings. PX. 11-9, at p. 1 ("PA shelter allowances fall woefully short of what is necessary to cover maintenance and operating costs"); 138-154, at pp. 171-72, 173 (Welsh deposition); PX. 136-152, at pp. 166-69 (Shapiro deposition).

50. In fact, no witness offered by the Department could state the reasons for seeking an allowance schedule which left 30% of the public assistance caseload with rents in excess of the new maximum. The Department was unable to produce a witness in response to a deposition notice to explain the reason for its proposal. PX. 140-156, pp. 4-6 (no party from Department of Social Services produced at deposition); Welsh Tr. 1699; PX. 139-155, at pp. 64-65 (Relyea deposition). See Shapiro Tr. 1537 (no knowledge of why 80th percentile proposal was reduced to 70th percentile).

51. The Division of the Budget rejected the Department's proposal for a shelter allowance increase in 1988 to the 70th percentile with a 12% inflation adjustment. Colfer Tr. 1319-20, 1333-34, 1405-06. Instead, the Division of the Budget included in the executive budget an increase to only the 65th percentile of recipient rents, with only a 6% inflation adjustment. PX. 19-26; 132-39; Colfer Tr. at 1405.

52. The Division of the Budget's reduction of the increase proposed by the Department of Social Services cut the magnitude of

the increase in half. The increase proposed by the Department of Social Services would have resulted in a shelter allowance for a family of three of \$328, an amount that is \$84 above the maximum that was in effect at the time. The increase approved by the Division of the Budget resulted in a maximum allowance of \$286, an amount that is \$42 above the previous maximum.<sup>6</sup>

53. The State Division of the Budget did no analysis on the impact of cutting the proposed shelter allowance increase in half on the ability of public assistance recipients with rents over shelter maximum to relocate, other than to assume that the reduction would not have a significant impact because the vacancy rate was so low anyway. Colfer Tr. 1401-02; PX. 140-156, at pp. 49-50 (Colfer deposition).

54. The State Division of the Budget did no analysis of the impact of the reduction in the proposed shelter allowance increase on homeless public assistance recipients' ability to find housing. Colfer Tr. 1402.

55. Additionally, Mr. Colfer, Principal Budget Examiner at the Division of the Budget, testified at his deposition that no analysis was performed on whether this reduction affected the ability of landlords to maintain housing stock inhabited by public

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<sup>6</sup> The amount of \$328 is stated in PX. 12-11, "Attachment I." It can also be derived from PX. 23-33, at p. 111, which states that under the Department's proposal, the total public assistance grant for a family of three in New York City would have been \$581. At the time, the nonshelter portions of the grant for a family of three totaled \$253. Social Services Law § 131-a.

assistance recipients. PX. 140-156, at pp. 49-50; Colfer Tr. 1404. At trial, Mr. Colfer contradicted his prior statement and claimed that this issue was considered and that there was "a feeling" in office discussions that the reduction would not have an effect, but that no "formal analysis" was undertaken. Colfer Tr. 1402, 1408. The testimony indicates that it is possible that this issue was talked about, but it is clear that no comprehensive study of the question was undertaken.

56. In cutting the inflation factor proposed by the Department of Social Services in half, the Division of the Budget did not rely on any measure of rent inflation that supported this reduction. PX. 140-156, at pp. 28-30 (Colfer deposition). Instead, the Division of the Budget considered such methodological issues to be only "vehicles of presentation" for the increase that it ultimately decided to approve. Id. at p. 54.

57. At trial Mr. Colfer testified that the Division of the Budget viewed an increase in the shelter allowance to the 65th percentile as reasonable, because it covered a "substantial portion" of the rent of the recipients who would continue to have rents above the shelter allowance. Colfer Tr. 1378. Mr. Colfer stated that the "possibility" that these families could increase their income through child support payments or by working might help them pay their rent. Colfer Tr. 1378-79.<sup>7</sup>

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<sup>7</sup> Additional income to public assistance families through child support is limited to a monthly amount of \$50.00. 18 N.Y.C.R.R. § 352.15. After working for a year, the Department of Social Services fully offsets recipients' earned income against the public assistance grant, so that recipients receive no

58. This possibility, however, leaves those recipients who do not receive child support payments and do not have work income with no means of paying their rent. For those individuals, Mr. Colfer stated simply that they had the "option" of looking for less expensive housing, despite his recognition of "the very low vacancy rate among low rent housing". Colfer Tr. 1378-79. As noted above, neither the Department of Social Services nor the Division of the Budget undertook any analysis of whether these families actually could find less expensive housing. See supra, at ¶¶ 48, 53-54.

59. The method used to set the shelter allowance in 1988 was not a reasonable means of estimating the cost of housing for public assistance recipients in New York City. Because it was based on the 65th percentile of recipient rents it was predicated on leaving tens of thousands of A.F.D.C. families with rents above their shelter allowances. No inquiry was made or study was done of whether these families could be expected to relocate to apartments renting within the shelter allowance or whether they would be able to pay their rents. See supra, at ¶¶ 51-56. Stegman Tr. 341-44.

60. In fact, officials in the Department of Social Services never even claimed that the 1988 shelter schedule was adequate to

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additional net income through working. 18 N.Y.C.R.R. § 352.20(c). For the first four months that a recipient works, she receives \$30 plus one third of the earned income. For the next eight months, she receives only \$30 a month of her earned income. Id. Actual expenses for child-care up to a fixed limit and \$90 for work expenses are deducted from countable gross income, 18 N.Y.C.R.R. § 352.19, but these deductions are for specific expenses related to employment, not for paying the rent.

enable recipients to obtain housing. Evidence shows that after the 1988 increase, they still did not view the allowance as adequate. In responding to a public comment on the proposed regulation containing the 1988 shelter schedule, the Department's Director of the Bureau of Income Support wrote that "[w]e agree that the new rent schedules may still be below the actual cost of housing in New York City." PX. 26-41.

61. Similarly, at the time the 1988 shelter schedule was developed, the Department considered a proposal to create a higher "Tier II" schedule for a limited number of families based on H.U.D. "Fair Market Rents."<sup>8</sup> In discussing this proposal officials conceded the inadequacy of the proposed "Tier I" -- or general shelter allowance schedule. As one Department memorandum explained, "[i]t is unlikely that the Tier I levels will encourage landlords to maintain or rehabilitate buildings or that they will allow clients to compete for housing meeting H.U.D.'s quality standards." PX. 16-19, at p. 4. At the time, the proposal for a "Tier I" schedule was higher than the schedule ultimately adopted. PX. 16-19, at p. 1 (proposal based on the 80th percentile of recipient rents).

62. Randall Filer's opinion that the method used to set the shelter allowance in 1988 was reasonable is not persuasive. Dr. Filer stated that the method was reasonable because it restored the percentage of recipients paying above the shelter allowance to the

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<sup>8</sup> For a full discussion of HUD fair market rents, see infra, at ¶¶ 121-126.

level that it had been immediately after the 1984 increase. Filer Tr. 2065-66. In fact, the 1984 shelter allowance increase covered the full rents of a greater percentage of public assistance recipients than did the 1988 increase. PX. 137-153, at p. 61; PX. 24-34, at p. 1 (after the 1984 increase, approximately 30% of public assistance recipients had rents above the shelter allowance). In any event, in view of the flaws in the 1984 methodology described above, supra, at ¶¶ 30-35, the fact that the two increases resulted in schedules that covered nearly the same percentile of recipient rents does not establish the reasonableness of the 1988 shelter schedule.

e. Since Implementation of the 1988 Shelter Allowance Schedule, the Department of Social Services has not Undertaken any Comprehensive Review of the Adequacy of the Schedule and Officials Continue to Consider the Schedule to be Inadequate

63. Even though the percentage of recipients with rents in excess of the shelter allowance has risen significantly since the 1988 increase, PX. 83-261, the State defendant has not increased the schedule of allowances.

64. Since 1987, the executive budget submitted to the Legislature has not contained any requests for appropriations based on further increases in the shelter allowance. Colfer Tr. 1406.

65. Since implementing the 1988 shelter allowance schedule the studies issued by the Department show that, to the extent it has considered the issue of whether clients can obtain housing renting within the shelter allowance, it has concluded that they cannot.

See infra.

66. Only two studies prepared by the Department since 1988 have considered the issue of whether recipients with rents in excess of the shelter schedule can relocate to less expensive housing. Both concluded that they could not. One was a report to the Legislature on the impact of the 1988 shelter allowance increase. PX. 20-27; 138-154, at p. 243-244. That report was issued in June 1989. PX. 20-27 (stamp on cover); see also PX. 36-63. It concluded that the overwhelming majority of public assistance recipients believe that they cannot find a place they would like to live in with a rent under the new shelter maximum. PX. 20-27, at p. 7; PX. 138-154, at p. 225. It made no further findings on the issue.

67. The question of whether public assistance recipients could relocate to less expensive housing was also discussed in a report to the Legislature on the issue of combining the different components of the public assistance grant, dated December 30, 1988. PX. 21-29. In that report, the Department stated that in New York City, in light of the "extremely low vacancy rate that characterizes the low income rental market," recipients have no real option of "'acting more economically' in their choice of housing." PX. 21-29, at p. 18. See Lewis Tr. 2345-46 (discussing PX. 21-29).

68. Since the completion of the two studies described above, the Department of Social Services has not performed any analysis of whether public assistance recipients with rents in excess of the



shelter allowance can relocate to less expensive housing. PX. 138-154, at pp. 243-44.

69. Additionally, officials have continued to recognize that the shelter allowance is insufficient to enable recipients to compete in the housing market. In its formal proposal to the Division of the Budget for the fiscal year 1988-89, the Department stated "[d]espite an increase in the shelter allowance, public assistance recipients have been unable to purchase quality housing and are frequently forced to pay as much as 45 percent of their monthly grant for housing that is often substandard." PX. 34-61. See PX. 39-68, at p. 5 ("Despite an increase in the shelter allowance, public assistance recipients are unable to compete for quality housing and people are forced to use more of their basic allowances to meet shelter obligations that may not be code compliant and may pose a threat to the health and safety of recipients"). The proposal recognized that even many state-assisted housing units are unaffordable to public assistance recipients. PX. 34-61, at p. 1.

70. Richard Higgins, an attorney who was Commissioner of the Division of Housing and Community Renewal from the summer of 1988 until November 1990, Higgins Tr. 2750-51, testified that during the summer and fall of 1990, he participated in discussions about the shelter allowance "brought upon by the decision of the Court of Appeals in this case." Higgins Tr. 2797.

71. Mr. Higgins stated that he considered the use of H.U.D. "fair market rents" as a shelter allowance schedule and determined

them to be inappropriate, Higgins Tr. 2797-2800, and that he communicated this view to the Commissioner of Social Services and other officials. Higgins Tr. 2802. This testimony sheds no light on the evaluation of the shelter allowance by the Department of Social Services, because there is no evidence that the Department of Social Services considered former Commissioner Higgins' evaluation in any way.<sup>9</sup>

72. Moreover, on cross-examination, Mr. Higgins admitted that his evaluation of the shelter allowance led him to recommend that the schedule be increased "modestly." Higgins Tr. 2814-15. Mr. Higgins stated that, by a "modest" increase, he meant an increase on the same order of magnitude as the 1984 or 1988 increases. Higgins Tr. 2819. He also proposed that the shelter allowance be indexed on an annual basis to reflect increases in operating costs, and that additional payments of up to \$100 a month be available in areas that are subject to rent regulation such as New York City. Higgins Tr. 2815. Thus, under Mr. Higgins' proposal, the maximum shelter allowance for a family of three in New York City may have increased to \$457 in 1990 (an increase of \$171), with further increases as time went on due to indexation.<sup>10</sup> In his evaluation, Mr. Higgins also made a number of other proposals, including

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<sup>9</sup> Mr. Higgins admitted that his evaluation was motivated by a desire to avoid an adverse judgment for the State in this litigation. Higgins Tr. 2815-16. Accordingly, Mr. Higgins' assessment of "fair market rents" can hardly be seen as an impartial study of the issue.

<sup>10</sup> This calculation assumes a 25% increase as in 1984. The equation is as follows:  $(\$286 \times 1.25) + 100 = \$457.50$

increasing funds for the construction of new low-income housing. Higgins Tr. 2818. DX. BE. None of Mr. Higgins' recommendations were adopted. Higgins Tr. 2824-25.

73. Given the fact that Mr. Higgins recommended substantial increases in the shelter allowance, his testimony cannot be cited as evidence that the State defendant relied on his evaluation to support its policy of not increasing the shelter allowance. Additionally, since not a single one of Mr. Higgins' proposals were adopted by the executive branch, it cannot be said that his evaluation was credited in any way.

74. No official of the State Department of Social Services testified regarding any study or analysis of the need for increases in the shelter allowance after 1988. Thus, the Department cannot be found to have reached a reasoned conclusion that no increase is necessary.

f. The Method of Setting the Shelter Allowance Based on a Percentile of Recipient Rents Without Determining Whether Recipients Whose Rents will Continue to Exceed the Shelter Allowance Can Pay their Rent or Relocate is Arbitrary

75. In setting the shelter allowance the Department of Social Services has pegged the schedule to particular percentiles of recipient rents. This methodology does not yield a reasonable estimate of the cost of housing in each area because it takes as a given that a certain percentage of recipients will not have their rents covered by the shelter allowance. Without considering other characteristics of the housing market, including the availability

of vacant apartments renting within the shelter schedule, it is impossible to tell whether the recipients whose rents are not fully covered by the allowance will be able to relocate to apartments renting within the schedule. Thus, unless the percentile chosen covers the rents of all recipients -- or the overwhelming majority as in 1975 -- the methodology provides no assurance that recipients will be able to find housing. Stegman Tr. 342-44; 3382-83.

76. Department of Social Services officials have recognized these flaws with the method of arbitrarily setting the shelter allowance at a percentile of recipient rents. As William Shapiro, Director of Policy Analysis and Development within the Department of Social Services' Division of Income Maintenance, Shapiro Tr. 1501, has written:

As we have argued previously, . . . . this criterion -- the percentage of clients with rent in excess of their allowances -- has no special validity. That is why we proposed a change to an external standard that would permit the shelter ceilings to rise in tandem with housing costs generally.

PX. 28-44. See PX. 8-2, at p. 4 ("Continuing to base the public assistance shelter methodology on rent as paid risks perpetuating and compounding the difficulties clients face in securing adequate shelter"); PX. 10-6, at p. 3; PX. 13-13, at p. 10.

#### IV. The Shelter Allowance does not Bear a Reasonable Relationship to the Cost of Housing in New York City

##### a. Large Numbers of A.F.D.C. Recipients in New York City have Rents in Excess of their Shelter Allowances

77. Half of all A.F.D.C. families living in private housing in New York City have rents greater than their shelter allowances. DX. U-90.

78. As of December 1990, 79,022 A.F.D.C. households in New York City had rents in excess of their shelter allowances. DX. U-90. See also PX. 84-262 (data for prior periods).

79. Many of these households have rents that are substantially above their shelter allowances. In December 1990, 39,279 A.F.D.C. households living in private housing in New York City had rents that were more than 130% of their shelter allowances. DX. U-90. For a family of three, a rent that is 130% of its shelter allowance would be \$372, or \$86 above its shelter allowance.

b. The Value of the Shelter Allowance has Eroded Substantially over Time, as Rents in New York City have Increased more than the Shelter Allowance

80. Since it was originally established in 1975, the purchasing power of the schedule of maximum shelter allowances for New York City has eroded dramatically as rent increases have far exceeded the two increases in the shelter allowance. Stegman Tr. 299-300; Filer Tr. 2229, 2232; PX. 84-287; Compare PX. 67-250 and 74-253. See also PX. 8-2; 12-11, at p. 2 ("substantial increase in residential rents is a significant factor in explaining the high percentage of public assistance cases paying rent in excess of the current shelter schedule"); 23-33, at p. 2 (formal Department of Social Services' budget submission stating that "[a]s the allowance failed to keep pace with the rising rents, more and more welfare

recipients are finding it difficult or impossible to locate or maintain decent housing"); 24-34; DX. G-37, at p. 12.

81. Since 1975 when the shelter allowance was first established, rent levels in New York City have more than doubled. The median contract rent in New York City rose by 128% from 1975 to 1987. Since 1987, the Consumer Price Index (C.P.I.) for Residential Rent has risen another 22%. PX. 74-253. Stegman Tr. 289-93. See also Filer Tr. 2229 (rent levels doubled between 1975 and 1984).

82. These increases in rents have far outstripped increases in the shelter allowance. The shelter allowance has increased by an average of only 41% since 1975, which is less than one quarter of the 177% increase in rents. Compare PX. 67-250 with PX. 74-253.<sup>11</sup>

83. The median contract rent as shown in the triennial Housing and Vacancy Survey (H.V.S.) is an appropriate way of measuring changes in rent levels in New York City. Stegman Tr. 291-92.

84. For periods in which H.V.S. data is not available, the Consumer Price Index (CPI) for residential rent is an appropriate estimate of changes in the cost of rental housing in New York City. Id. See PX. 15-16, at p. 4 (residential rent most appropriate component of CPI to measure effect of inflation on the shelter allowance). See also PX. 10-6, at p. 2; 12-11, at p. 2.

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<sup>11</sup> The 177% figure was derived by increasing the 1987 median contract rent of \$350 by 21.9% to reflect increases in the C.P.I., to yield a current estimate of the median rent of \$426.65. This sum was then divided by the 1975 median rent of \$154 to determine the percentage increase between 1975 and December 1990. This division shows that  $\$426.65/154 = 2.77$ . All data necessary for this calculation is contained in PX. 74-253.

85. The majority of A.F.D.C. recipients in New York City live in rent stabilized buildings. Tobier Tr. 463-64. Since 1975, rent increases authorized by the Rent Guidelines Board have far exceeded the increases in the shelter allowance. PX. 79-257. For example, if a public assistance recipient rented an apartment at the shelter allowance for a family of three in 1975, and lived there continuously until the present taking two year lease renewals, rent increases authorized by the Rent Guidelines Board could result in a current rent that is approximately \$100 above the shelter allowance for a family of three. Id; Tobier Tr. 466-67.

86. If the apartment discussed in ¶ 86 had changed hands, or if the tenant had selected one year leases, or if the landlord had taken a Major Capital Improvement (MCI) increase, the rent could be even higher today. PX. 80-258; Tobier Tr. 468-70.

87. Additionally, from October 1984 through September 1990, the Rent Guidelines Board authorized landlords to add surcharges to the authorized levels of increase on low rent apartments. Stegman Tr. 465; Tobier Tr. 464-65; PX. 65-201 (Orders 16-21).

88. Randall Filer's testimony that rent increases authorized by the Rent Guidelines Board are of no significance in evaluating the adequacy of the shelter allowance because owners of apartments have not taken all possible rent increases (Filer Tr. 2044-45) is not persuasive. Evidence shows that rents of rent stabilized buildings have increased at rates substantially greater than increases in the shelter allowance. Between 1978 and 1987 median rents levels for pre-1947 rent stabilized buildings, which make up

the older and less expensive portion of the rent stabilized stock, rose by 89%. PX. 70-209, at p. 66. See Stegman Tr. 3340 (describing pre-1947 buildings).

c. As the Shelter Allowance has Fallen Behind Rent Levels, the Number of Apartments Affordable to Public Assistance Recipients has Shrunk

89. As rents have increased since 1975, the number of apartments renting within the shelter allowance has shrunk considerably. This reduction is illustrated by the fact that the number of apartments renting below \$300 has dropped by two-thirds since 1975. PX. 69-251; Stegman Tr. 300-02. See also Tobier Tr. 457.

90. An apartment renting for \$300 today is comparable in terms of affordability for public assistance recipients to an apartment renting for \$200 in 1975. Compare PX. 67-250 (\$300 is 105% of \$286, the current maximum allowance for a family of three) with id. (\$200 is 103% of \$194, which was the maximum allowance for three in 1975). The number of apartments renting below \$300 is less than half of the number of apartments that rented for under \$200 in 1975. Compare PX. 69-251 (601,559 apartments), with PX. 72-212 (1,410,000 apartments).<sup>12</sup> Cf. Stegman Tr. 3369 (In 1975, 70% of apartments rented within the shelter allowance for a family of three).

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<sup>12</sup> This figure was derived by adding the numbers of apartments in the rent categories of "less than \$60" through "\$175-199" in the column marked "total renter-occupied" on PX. 72-212.



91. A substantial number of the apartments still renting below \$300 are operated by the New York City Housing Authority or have low rents because of government subsidy programs. Stegman Tr. 301-02; PX 70-209, at p. 60, n.2. See also Stegman Tr. 3317-25 (describing subsidy programs affecting low rent apartments).

92. In assessing the adequacy of the shelter allowance it is appropriate to look at the private sector of the market, and not at public or in rem housing, because the rents in public and in rem housing are administratively set so that public assistance recipients will not pay more than the shelter allowance. Thus, the rents in those apartments will be at or below the maximum allowance no matter how low the allowance is. Stegman Tr. 321-22; PX. 135-151 at pp. 93-94 (Shapiro Deposition).

93. Because of their limited supply, public housing and federal Section 8 certificates are, in practice, unavailable to the vast majority of public assistance families. The waiting list for public housing numbers in the hundreds of thousands. Moreover, since few public assistance families occupy rent controlled apartments, the vast majority are relegated to the unregulated or rent stabilized sectors of the private housing market. Intervenor Complaint of Rita Bell and Defendant's Answer ¶ 84 (admitting allegation in the complaint). Stegman Tr. 321; PX. 63-102 (more than 180,000 families on NYCHA waiting list); 128-64, at p. 35.

94. Randall Filer's testimony that there are a large number of apartments available within the shelter allowance is not credible. Filer Tr. 1806. As Professor Stegman explained, the chart relied

on by Dr. Filer, exhibit AF-1, does not show that there are a sufficient number of apartments available to public assistance recipients renting within the shelter allowance, because it includes many apartments that are occupied by other people. Filer Tr. 2106-07 (admitting that 260,000 of the 266,000 one bedroom apartments listed in DX. AF-1 were occupied); id., at 2107-08 (admitting that 280,000 of the 282,000 two bedroom apartments listed in DX. AF-1 were occupied). See Filer Tr. 2108 (admitting that apartments listed in DX. AF-1 are "not necessarily" occupied by persons defined to be in need of such apartments). The existence of low rent apartments that are occupied by other people is of no help to public assistance recipients looking for housing within the shelter allowance. Even if these apartments became vacant, many of them would rent at higher rates. Stegman Tr. 3319-20, 3324.

95. Exhibit AF-1 also misleadingly includes all one and two bedroom in rem and public housing units as "available" to public assistance recipients, on the theory that public assistance recipients living in those units have rents that are set so as not to exceed the shelter allowance. Filer Tr. 1800. In fact, the State defendant has admitted that these units are not generally available to public assistance recipients. See supra, at ¶ 94 (citing Intervenor Complaint of Rita Bell and Defendant's Answer ¶ 84).

96. Moreover, public housing and in rem units are allocated pursuant to government established rules and priorities that

effectively limit the number of public assistance families that occupy such housing. Stegman Tr. 3315-17. The New York City Housing Authority has a policy of allocating its apartments to households with a wide range of incomes. Thus, only 28 percent of tenants in public housing receive public assistance. Stegman Tr. at 3315-16.

97. According to the 1987 Housing and Vacancy Survey, only 37% of in rem tenants receive public assistance. PX. 70-209, at p. 213. The data shows that the median income of the 63% of tenants in in rem housing that do not receive public assistance is more than twice as high as the median income of the tenants in in rem housing who do receive public assistance. Stegman Tr. 3316.

98. Furthermore, many apartments counted in exhibit AF-1 as units of "private" housing available within the shelter allowance only have low rents because their occupants receive government subsidies, under programs such as "Section 8"<sup>13</sup> or the Senior Citizen Rent Increase Exemption program.<sup>14</sup> These subsidized

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<sup>13</sup> The "Section 8" program is a federal rent subsidy program which provides a limited number of certificates to families in New York City. Certificate holders may rent apartments that meet certain quality standards and are priced at or below a schedule of maximum rents, known as "fair market rents." The schedule is adjusted annually. Persons who participate in the program pay 30% of their income as rent. The remaining portion of the rent is paid by the federal government. There are approximately 44,000 tenants who participate in this program in New York City. See Stegman Tr. 325-27, 3323; Shapiro Tr. 1546-47, 1553; PX. 70-209, at pp. 84-86.

In general, the HVS reports the rents of apartments with Section 8 tenants as the amount contributed by the tenant, rather than the total rent. Stegman Tr. 3322-23; PX. 71-210 at pp. 93-95.

apartments would rent at higher levels if they became vacant. Stegman Tr. 3317-25.

99. Many other apartments included on Exhibit AF-1 are subject to rent control. When these units are vacated, landlords are permitted to raise rents to the market level. In fact, evidence shows that rents increase dramatically when rent controlled apartments are vacated and become rent stabilized. Stegman Tr. 3319-20.

d. Public Assistance Recipients Looking for Housing do not have a Reasonable Chance of Finding Apartments Renting within the Shelter Allowance in New York City

100. Vacant apartments available for rent within the shelter allowance are almost impossible to find. The vacancy rate for apartments under \$300 in 1987, which is the most recent vacancy data for apartments at different rent levels, was 0.96. PX. 73-252; Stegman Tr. 305-07, 3323-26. See PX. 21-29, at p. 18; PX. 70-209, at p. 92 (number of privately owned standard apartments renting within the shelter allowance coming on to the market in 1986 "would be minimal," and "it is highly unlikely that families

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<sup>14</sup> The Senior Citizen Rent Increase Exemption program (SCRIE) provides that certain landlords of rent regulated apartments receive tax abatements in lieu of rent increases. PX. 71-210, at pp. 118-119. The program affects eligible elderly households whose incomes are less than \$15,000 and whose rent/income ratio exceeds one third of their income. The average subsidy under the SCRIE program is about \$75 a month. Stegman. Tr. 3321-22.

receiving public assistance can secure low-rent affordable housing using just their shelter allowance for rent"); PX. 159, at p. 3.

101. A vacancy rate of 5% indicates that a housing market is functioning well and that the supply of vacant apartments is commensurate with the demand for them. Stegman Tr. at 304; PX. 128-64, at p. 33.

102. A vacancy rate of 0.96 is extremely low and indicates a lack of available housing. Stegman Tr. 306-07.; PX. 21-29, at p. 18; 159, at p. 3 (State defendant's housing demonstration program report).

103. Even by Dr. Filer's calculation, the vacancy rate for apartments renting within the shelter allowance is extremely low. Dr. Filer's exhibit of apartments that he considers to rent within the shelter allowance, DX. AF-1, shows a vacancy rate of 1.67% for one bedroom apartments and 1.02% for two bedroom apartments. His chart yields a combined vacancy rate of only 1.34%.<sup>15</sup> Furthermore, it shows a total of only 7,334 vacant units, a de minimis number in light of the fact that there are 1,250,000 one and two bedroom rental apartments in the New York City housing market.<sup>16</sup> The

<sup>15</sup> DX. AF-1 shows 7,334 vacancies out of 548,944 apartments. Additionally, Dr. Filer's chart does not show the vacancy rate of apartments affordable to households of two and four, because it counts all one bedroom apartments renting under the shelter allowance for a family of three as affordable, even though a family of two would not be able afford some of them. Similarly, it considers all two bedroom apartments renting within the shelter allowance for a family of five to be affordable, even though families of four would not be able to afford some of them. Filer Tr. 2100-03, 2253-54 (25 percent of one bedroom apartments on DX. AF-1, unaffordable to families of two; 15 percent of two bedroom apartments on DX. AF-1 unaffordable to families of four).

exhibit confirms that vacant apartments renting within the shelter allowance are almost impossible to find. As Professor Stegman concluded, looking for one of these vacant apartments is like "looking for a needle in a haystack." Stegman Tr. 3323-26; Filer Tr. 2256 (total number of units in the market).

104. The estimate of the vacancy rate for New York City as a whole of 5.2% for the last two quarters of 1990, based on the Current Population Survey, does not show that there is a reasonable supply of vacant apartments renting within the shelter allowance, because it does not show what the vacancy rate is for apartments in different price ranges. Stegman Tr. 3330-34.

105. In New York City the vacancy rate for low rent apartments has been much lower than the vacancy rate for the City as a whole. Stegman Tr. 3332; PX. 159, at p. 3. For example, the 1987 H.V.S., which contains the most recent vacancy data for apartments renting at different price levels, shows that the vacancy rate for apartments renting under \$300 was less than half the vacancy rate for the City as a whole. PX. 73-252; 21-29, at p. 18; 70-209, at p. 50 ("We can say with confidence that the vacancy rate is much higher for high-rent units than it is for low-rent units").<sup>17</sup>

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<sup>16</sup> These 7,334 vacancies include vacant units of in rem and public housing. As discussed above, these units are allocated according to certain criteria and are not available on the open market.

<sup>17</sup> Dr. Filer speculated that vacancy rates at the bottom of the housing market have increased because they tend to "move in tandem" with the market as a whole. Filer Tr. 1805. In fact, between 1984 and 1987, the vacancy rate at the lowest end of the housing market decreased, while the vacancy rate for the market as a whole increased. PX. 70-209, at p. 47, Table 3.5.

106. Because of the decline in the number of apartments renting within the shelter allowance and the extremely low vacancy rate for those apartments, families looking for apartments renting within the shelter allowance do not have a realistic chance of finding one. Stegman Tr. 306-07, 321, 3323-26; Auwarter Tr. 623-26. Tobier Tr. 459, 475-78; PX. 20-27, at p. 7; PX. 26-41 (Letter from Department of Social Services stating that after the 1988 increase schedule may still be below the actual cost of housing in New York City); 21-29, at p. 18 (official state report stating that the opportunity for public assistance recipients to "act more economically" in their choice of housing appears minimal at best); 70-209, at p. 92 & Table 4.28 (H.V.S. analysis of number of apartments available on private market within the shelter allowance in 1986); 93-509 , 94-527, 97-500, 98-506, 99-520, 100-521, 101-510, 102-522, 103-505, 104-529, 105-503, 106-531, 107-504, 108-523, 109-508, 110-525, 111-501, 112-526, 113-511, 114-530, 115-502, 116-524, 117-507, 118-528 (newspaper advertisement study).

107. Public assistance recipients looking for housing in the Bronx renting within the shelter allowance do not have a reasonable chance of finding apartments. Auwarter Tr. 623-26.

108. Scott Auwarter, an expert in the availability of low-income housing in the Bronx, directs a program that has assisted 3,000 homeless and relocated families over the past three years. Auwarter Tr. 617-19. During that time, Mr. Auwarter's program has helped 750 of these families search for apartments in the Bronx. Only 200 of these families were successful in finding apartments.

Of these 200, none of them found apartments without some form of subsidy in addition to the shelter allowance. Auwarter Tr. 619, 664.

109. Based on his experience as a project director and personally working with 250 families each year, Mr. Auwarter has concluded that "families who are on public assistance [who] have no other type of subsidy, cannot find housing, permanent housing in the Bronx." Auwarter Tr. 623-24. Mr. Auwarter explained that he has contact with 60 landlords who own buildings in poor neighborhoods who rent to public assistance recipients, but that "they won't take them with just the money that Welfare will offer. They need some other type of housing subsidy." Auwarter Tr. 625-26.

110. Mr. Auwarter testified that the "going rate" for a one bedroom apartment is around \$500 a month, and for a two-bedroom apartment the "going rate" is about \$600. Auwarter Tr. 626.

111. The Bronx is the borough with the lowest rent levels in the City of New York. PX. 70-209, at p. 67, Table 4.6.

112. Public assistance recipients do not have a reasonable chance of finding apartments renting within the shelter allowance by consulting newspaper advertisements. A study of apartment advertisements in twelve newspapers, including five major city-wide dailies, three city-wide weeklies and three local weeklies, conducted from November 1, 1990 through January 31, 1991, showed that there were no advertisements in any of these newspapers during the entire period for apartments renting within the shelter allowance in the borough of Brooklyn. PX. 93-509, 94-527, 97-500,



98-506, 99-520, 100-521, 101-510, 102-522, 103-505, 104-529, 105-503, 106-531, 107-504, 108-523, 109-508, 110-525, 111-501, 112-526, 113-511, 114-530, 115-502, 116-524, 117-507, 118-528.<sup>18</sup> See also Remy Tr. 31-32; Diaz Tr. 83; Irizarry Tr. 112 (unsuccessful efforts by recipients to find housing through newspaper advertisements).

113. The State's own survey of public assistance recipients in 1988 concluded that 81% of those with recent experience in the housing market do not believe that they can find a suitable apartment renting within the shelter allowance. PX. 20-27, at p. 7; see also DX. AH-114, at p. 11, Table 20 (finding that 55.9 % of homeless families at the Martinique Hotel and 62.2% of families at the Forbell Street Shelter were unable to rent apartments they viewed because the rent was too high).

114. Because of the overwhelming evidence discussed above in paragraphs 101-114, Randall Filer's testimony that there are a large number of vacant apartments renting within the shelter allowance is not credible. Filer Tr. 1806. Stegman Tr. 3323-26, 3330-34; PX. 70-209, at p. 92.

115. There is no evidence that any official in the Department of Social Services shares Dr. Filer's view that there are large numbers of apartments available to public assistance recipients renting within the shelter allowance. To the contrary, Department

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<sup>18</sup> While the study reviewed the overwhelming number of listings in these newspapers from November 1, 1990 through January 31, 1991, a few scattered issues were missed because of the Daily News strike and other problems with obtaining issues. See PX. 104-529 (four issues of Daily News missing); 112-526 (three issues of Apartment Weekly missing); 102-522 (one issue of Sunday New York Times missing).

of Social Services' officials have consistently recognized the lack of such housing opportunities for public assistance recipients. PX. 26-41; 20-27, at p. 7; 21-29, at p. 18; 25-40; 34-61; 39-68, at p. 55; 159, at p. 3.

e. The Shelter Allowance does not Reflect the Cost of Housing in New York City and is too Low to Enable Public Assistance Recipients to Obtain or to Retain Housing.

116. Because the shelter allowance does not meet the rent of 50% of all A.F.D.C. recipients in private housing in New York City and does not provide these families with a reasonable chance of moving to apartments renting within the shelter allowance, it does not reflect the cost of housing in New York City and is not reasonable. Stegman Tr. 320-21; 3323-26; PX. 25-40, at p. 2; 26-41; 39-68, at p. 55. See supra, at ¶¶ 77-79.

117. Both before and after the 1988 increase in the shelter allowance, State officials have recognized that the shelter allowance does not enable A.F.D.C. recipients to compete for decent housing. PX. 11-9, at p. 1 ("[e]ven our current proposal would be grossly inadequate to bring shelter allowances back into the ballpark of what is needed to give P[ublic] A[ssistance] clients a fair chance of keeping afloat in the current housing market"); 34-61 ("Despite an increase in the shelter allowance, public assistance recipients have been unable to purchase quality housing"); 24-34 ("Shelter allowances have long been inadequate to permit recipients to compete for housing"); 26-41; 39-68 at p. 55; 126-10, at p. 3; 25-40 at p. 2 ("Adequate supplies of housing

remain beyond the reach of many public assistance recipients, and the impending shelter ceiling increases will still leave a large gap between the rents demanded by the housing market and the amounts clients can afford to pay"). See also PX 8-2; 10-6, at p. 1 ("Since 1979 our clients' ability to compete for housing has been substantially compromised"); 23-33, at p. 110 ("The reality is that, particularly in New York City, there is a shortage of decent low income housing and the current shelter maxima are insufficient to purchase housing from the present supply"); 130-7.

f. Randall Filer's Testimony that Many Public Assistance Families with Rents Above the Shelter Allowance Voluntarily Moved into their Current Apartment from Less Expensive Apartments is Based on Speculation and a Definition of the Term "Voluntary" that does not Meaningfully Reflect the Options Available to Families

118. Randall Filer's testimony (Tr. 1837-39) that many A.F.D.C. families with rents in excess of the shelter allowance voluntarily chose to move into more expensive apartments when less expensive apartments were available to them is not credible for a number of reasons. First, there is now way of telling whether or not the moves that he studied were "voluntary" in any meaningful sense. For example, Dr. Filer considered a move to be "voluntary" when the family left an apartment because it could not afford the rent. Filer Tr. 1811-1813.

119. Additionally, the data that Dr. Filer used does not show whether the persons who moved were on public assistance at the time that they moved. The data also does not show what the rent was for the household's current apartment at the time of the move. Thus, the current apartment may have rented within the shelter allowance

at the time of the move, and subsequently been subject to rent increases that brought it above the shelter allowance. Filer Tr. 2116-17, 2119-20. Furthermore, the apartments that families moved out of may have rented within the shelter allowance at the time of the move, but did not necessarily rent within the shelter allowance by the time of the H.V.S.. Thus, even if these families had not moved, they still may well have had rents in excess of the shelter allowance by 1987 when the data was collected. See DX. AF-2 (category defined as "old rent was below the shelter allowance"); Filer Tr. 1824-25, 35-37.<sup>19</sup>

g. Comparison with Federal Fair Market Rent Schedules for New York City Shows How Inadequate the Shelter Allowance is to Meet Housing Costs

120. The schedule of "fair market rents" published by the United States Department of Housing and Urban Development ("H.U.D.") is a reasonable estimate of the price at which modest, decent housing is available in a reasonable supply. Stegman Tr.

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<sup>19</sup> For example, Dr. Filer would consider the following circumstance as an example of a family that "voluntarily" moved from an apartment renting within the shelter allowance into a more expensive unit: A family of three, not on public assistance lived in a studio apartment renting for \$220 that is dilapidated, crumbling and overcrowded. The family moved out because of landlord harassment and into a one bedroom apartment that rented for \$230 (an amount under the shelter allowance). The family then began to receive public assistance. At the time of the 1987 HVS, the family's rent is \$400 and the rent on the apartment that it moved out of is \$380. Clearly, this case does not support Dr. Filer's claim that public assistance recipients freely give up apartments they can afford in order to rent apartments that they cannot afford.

325-27; 56 Federal Register 49024 (Sept. 26, 1991) ("In general, the FMR for an area is the amount that would be needed to rent privately owned, decent, safe, and sanitary rental housing of a modest (non-luxury) nature"); 55 Federal Register 40044 (Oct. 1, 1990); PX. 10-6, at p. 3.

121. At the time the shelter allowance was initially adopted in 1975, it was roughly comparable to the H.U.D. schedule of fair market rents. For example, in 1976 the H.U.D. fair market rent for a two bedroom apartment in a non-elevator building was \$215, while the maximum shelter allowance for a family of four was \$218. Compare PX. 141 with PX. 67-250.

122. As rent increases outpaced increases in the shelter allowance, a widening gap developed between the H.U.D. fair market rents and the shelter allowance. In 1984 the H.U.D. fair market rent for a two bedroom apartment was \$130 greater than the shelter allowance for a family of four. By 1990, this gap had widened to \$266. PX. 81-259; Stegman Tr. 333-34; See PX. 10-6.

123. At the time of trial, the schedule of maximum shelter allowances was approximately half of H.U.D.'s schedule of fair market rents for New York City. Stegman Tr. 330-32; PX. 82-260; PX. 27-43, at p. 2 (estimating that the shelter allowance ranged from 49% of the fair market rent to 55% in 1988). On October 1, 1991, H.U.D. fair market rents increased further. 56 Fed. Reg. 49024 (Sept. 26, 1991).

124. This disparity between the shelter allowance and H.U.D. fair market rents is another indication that the shelter allowance

schedule is seriously inadequate. The shelter allowance is well below the amounts that H.U.D. estimates are required to enable families to secure decent nonluxury housing in New York City. Stegman Tr. 332-33; Tobier Tr. 529; PX. 23-33; 24-34, at pp. 1-2, 126-10, at p. 3.

125. State officials have repeatedly cited to the disparity between H.U.D. fair market rents and the shelter allowance as an indication that the shelter allowance does not reflect the market cost of decent housing. PX. 8-2, at p. 4; 10-6, at pp. 1, 3; 23-33, at pp. 1-2; 24-34, at pp. 1-2; 126-10, at p. 2.

h. Other Measures of the Cost of Securing Housing in New York City also show the Inadequacy of the Shelter Allowance

126. When the 1975 shelter allowance schedule is updated by either the rate at which rents in New York City increased, or the Rent Guidelines Board's Price Index of Operating Costs of Rent Stabilized Housing ("PIOC"), the resulting schedules are much higher than the shelter allowance. PX. 83-261; Stegman Tr. 334-39. In fact, the resulting schedules are comparable to the level of H.U.D. fair market rents. This comparability is a further indication that the rent levels of H.U.D. fair market rents provide a reliable estimate of the cost of securing housing and further illustrate the extent of the inadequacy of the current schedule of shelter allowances. Stegman Tr. 338-39.

127. Randall Filer's testimony that the schedules contained on PX. 83-261 do not provide a reasonable basis for comparison with

the shelter allowance is not persuasive. Filer Tr. 1983-1988. First, Dr. Filer stated that all three alternative schedules were based on updating the 1975 shelter allowance. Filer Tr. 1984. The first schedule, based on fair market rents, however, was not derived in any way from the 1975 shelter allowance. Stegman Tr. 335.

128. In any event, it is appropriate to consider measures based on updating of the 1975 shelter schedule because that schedule was adopted by the Department of Social Services as adequate to meet the housing needs of public assistance recipients generally and was upheld by the New York State Court of Appeals on that basis. Bernstein v. Toia, 43 N.Y.2d 437 (1977).

129. Randall Filer's testimony that the alternative schedules in PX. 83-261 are unreasonable because the percentage of the total rental stock that rents within the amounts set forth as alternative schedules is too high is unpersuasive. Filer Tr. 1984-85, 2032; DX. AF 8-11. The pertinent issue is not how many units rent within the schedule amounts, but rather whether public assistance recipients have a reasonable chance of locating and obtaining apartments within the schedule amounts. Stegman Tr. 3362-64.

130. Exhibit DX. AF-8, which shows the percentage of the total number of apartments of various sizes renting within the alternative schedules, includes many units that are not in fact available to public assistance recipients and units which would rent at much higher amounts if they became vacant. Exhibit DX. AF-8 thus grossly exaggerates the number of units that would be

available in the private unsubsidized rental market for public assistance families under the alternative schedules. Stegman Tr. 3317-24, 3362-64.

131. For example, Exhibit DX. AF-8 includes units operated by the New York City Housing Authority and in rem units. As discussed above, these units are allocated in accord with special rules and are not generally available to public assistance recipients looking for housing. See supra, at ¶ 97 (citing Stegman Tr. 3315-17).

132. Exhibit DX. AF-8 also includes many other subsidized apartments such as federally subsidized housing for the elderly and disabled and apartments for which the tenants at the time of the survey had federal "Section 8" certificates. Additionally, the chart includes apartments subject to New York City's Senior Citizen Rent Increase Exemptions (SCRIEs) and rent controlled apartments. The rents of these apartments are likely to rise sharply when the current tenant moves out. Stegman Tr. 3317-24, 3362-64. See supra, at ¶ 99, nn. 13 & 14 (describing the "Section 8" and SCRIE programs).

133. If public, in rem and subsidized housing were excluded, the percentage of apartments renting within the alternative schedules would be much lower. Stegman Tr. 3364-65. For example, only 35% of private unassisted units that met H.U.D. quality standards rented within fair market rent levels in 1987. Id.; PX. 70-209, at p. 85, Table 4.24. The figure for 1984 was comparable. Stegman Tr. 3364-65; PX. 71-210, at p. 150, Table 5-23.

134. Furthermore, the percentages listed in DX. AF-8 are



comparable to the percentages of the total rental market that has rented within the shelter allowance in the past. Stegman Tr. 3369. In 1975, approximately 70% of all apartments in the City of New York rented within the maximum shelter allowance for a family of three. Id.; PX. 72-212 (as explained supra, at ¶ 91, 1,410,000 apartments renting under \$200). In 1978, after the shelter allowance had been in effect three years, approximately 60% of all apartments in New York City rented within the shelter allowance maximums. Stegman Tr. 3369; 3415-16.

135. Randall Filer's testimony based on DX. AF 8-11 is also not persuasive because the exhibits incorporate assumptions about the space requirements of families that are different from the assumptions upon which PX. 83-261 is based. Compare PX. 82-260 with Filer Tr. 1988-89, 2028. Exhibit PX. 83-261 was based on one method of converting rents framed in terms of number of bedrooms into a schedule of allowances, while exhibits AF 8-11 are based on a different method of converting the schedule of allowances back into rents based on number of bedrooms. As a consequence, the rents used in AF 8-11, under the columns "fair market rents," are substantially above the actual fair market rents. For example, exhibits AF 8-11 use \$719 as the rent on a two bedroom apartment in the column marked fair market rents, while the fair market rent for a two bedroom apartment was in fact only \$578 at the time of trial. Compare Filer Tr. 1989 (rents for two bedroom apartment used in calculating exhibits AF 8-11 are based on allowance for five person household in PX. 83-261) with PX. 66-208 (actual 1990 fair market

rent for a two bedroom apartment).

136. Exhibits PX. 147-150 show exhibits DX. AF 8-11 as recalculated with the same assumptions about space requirements that was used in calculating PX. 83-261. Filer Tr. 2236-40. These exhibits, however, suffer from the other flaws in AF 8-11 discussed above.

137. The assumptions used in calculating PX 82-260 and 83-261, that a three person household should be considered to live in a two-bedroom apartment and a five person household in a three bedroom apartment, are reasonable. Stegman Tr. 330-32.

138. These assumptions about space were relied on by the Department of Social Services in calculating the 1984 shelter allowance schedules and were recommended by the Department in a Report to the Legislature. PX. 13-13, at p. 16; PX. 14-14, at p.1. See PX. 10-6, at p. 3 (State document converting H.U.D. fair market rents into allowances by assuming a one bedroom apartment for a single person, and an additional half-bedroom for each additional household member, so that a three person household would correspond to a two bedroom apartment); PX. 16-19, at p. 5 (State document deriving allowance schedule based on H.U.D. fair market rents by assuming that a three person case needs two bedrooms, and additional family members need half a bedroom each); PX. 11-9, app. at p. 5 (Table II) (draft HPD report using same space requirements as used in PX. 82-260 and 83-261).

i. Increases in the Cost of Operating and Maintaining Housing have also Rendered the Shelter Allowance

### Inadequate

139. The shelter allowance has not kept pace with the rising cost of operating and maintaining housing in New York City. Stegman Tr. 314-15; Tobier Tr. 459-62; PX. 76-254; 85-287. See PX. 11-9; 24-34, at p. 2 (quoting HPD "necessary rents").

140. The cost of operating and maintaining rent stabilized housing has increased by approximately 180% since 1975, while the shelter allowance has increased by an average of 41%. PX. 76-254, 67-250. See PX. 85-287.

141. Today, the shelter allowance is inadequate to enable owners to cover their total costs. Total costs include both operating and capital cost components.<sup>20</sup> Stegman Tr. 3357-58. Tobier Tr. 462-63, 471 ("widening gap between the shelter allowance and the costs of providing housing"); PX. 11-9 at p. 1 ("PA shelter allowances fall woefully short of what is necessary to cover maintenance and operating costs"); 24-34, at p. 2 (citing HPD's 1985 estimate of an operating cost of \$361 for an apartment for a family of 3). See also PX. 126-10, at p. 3 ("Even at the proposed levels, landlords have little incentive to maintain or rehabilitate buildings").

142. The fact that the shelter allowance has not kept pace with owners' cost of operating and maintaining housing is one of the reasons that public assistance recipients are much more likely

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<sup>20</sup> The operating and maintenance costs are approximately 65 to 75% of the total cost of providing housing. Capital costs include debt service and return to equity. Stegman Tr. 3358; Tobier Tr. 462-63.

to live in seriously substandard housing than the rest of the population in New York City. Stegman Tr. 315-16, 323-24; See PX. 23-33, at p. 2 (insufficient allowances lead to deterioration of the housing stock); 37-66 (same); 134 at p. 3. The failure of the shelter allowance to keep up with the rising costs of operating and maintaining housing is a factor in reducing the supply of housing available to public assistance recipients. The inadequacy of the shelter allowance contributes to the abandonment of low income housing by owners and to the diversion of low income housing to upper income groups. Tobier Tr. 457-459, 470-71; PX. 30-48, at p. 25 (increase in the shelter allowance would help preserve stock and slow abandonment). See DX. G-37, at p. 12; PX. 38-67, at p. 2 (Statement in the State Register that "[i]t is also a fact that insufficient shelter allowances . . . contribute to the reduction of suitable housing for public assistance recipients").

143. Randall Filer's testimony (Filer Tr. 1850) that there are large numbers of apartments in New York City with operating and capital costs below the shelter allowance is not persuasive. Stegman Tr. 3339-40, 3345-46.

144. Dr. Filer conceded that, according to his interpretation of a study showing owners' operating expenses for certain rent stabilized buildings, at most 15 to 20 percent of the rent stabilized stock had costs within the shelter allowance schedule. Filer Tr. 1850. Thus, at least 80 to 85 % of rent stabilized buildings had per unit costs that exceeded the shelter allowance. The data that Dr. Filer relied on to reach this conclusion

concerned operating costs in 1988. Filer Tr. 2123-24; Stegman Tr. 3336. Because operating costs have continued to rise since 1988, while the shelter allowance has remained constant, even a larger percentage of buildings would have per unit operating costs in excess of the shelter allowance today. Stegman Tr. 3358-59; PX. 76-254 (showing increases in price index of operating costs).

145. Dr. Filer's testimony concerning operating and maintenance costs was based on data filed by landlords on a form which shows the actual income and expenses of building owners. Filer Tr. 2121; Stegman Tr. 3335-36. Thus, the data shows amounts that owners spent on maintenance, not the amounts necessary to maintain a building in decent condition. Therefore, the 15 to 20 percent of rent stabilized buildings that Dr. Filer estimated had costs below the shelter allowance in 1988 may well have had serious maintenance deficiencies.

146. Even categories of buildings that Dr. Filer identified for which the average costs were below the shelter allowance in 1988, had average rents above the shelter allowance in some instances. For example, Dr. Filer testified that average operating and maintenance costs, per apartment, for pre-1947 rent stabilized buildings in Queens were approximately \$200. Filer Tr. 1847-48. The average operating cost to rent ratio for one category of these Queens buildings, pre-1947 buildings with 20-99 units, was 58.6%, which would make the average rent \$341 in 1988. Filer Tr. 2148.

147. Randall Filer's testimony that abandonment is an indication that the New York City housing market is functioning

well is not credible. Filer Tr. 1850-55. In view of the overwhelming evidence that there is an acute shortage of low income housing in New York City, the abandonment of buildings by owners cannot be viewed as beneficial. Tobier Tr. 457-459, 470-71; PX. 128-64, at pp. 32-35; 34-61, at p. 1 ("lack of decent affordable housing"); 159 at p. 3 (describing "lack of low income housing"); 63-102 ("For families of low income, affordable apartments for rent are practically nonexistent"); DX. G-37 (Statement in 1987 Department Budget Presentation that "there is currently a shortage of safe affordable housing for poor people in New York. This is particularly characteristic of urban neighborhoods, where many Welfare recipients are concentrated. And while we have some evidence that the rate of abandonment is slowing, we know that the amount of rent our clients can pay is not sufficient for most landlords to maintain current housing stock, let alone improve it").

j. Dr. Filer's Testimony that an Increase in the Shelter Allowance would only Lead to Higher Rents is not Persuasive

148. Dr. Filer testified that in his opinion an increase in the shelter allowance would cause rents in New York City to rise. Filer Tr. 2075-77. Although this opinion is not relevant to the question of whether the shelter allowance is sufficient to enable recipients to rent apartments in New York City, it is also not persuasive.

149. First, there is little evidence of a public assistance

housing submarket, in which landlords are sensitive to changes in the shelter allowance. Stegman Tr. 345-47. As the Housing Vacancy Survey shows, extremely few housing units have been continuously occupied by public assistance recipients over the course of a nine year period. PX. 70-209, at p. 75 (Table 4.14). See also PX. 71-210 at pp. 65-68 & Table 2-40.

150. In a December 1988 report to the Legislature, the Department of Social Services expressly relied on the 1984 Housing and Vacancy Survey to refute an argument that shelter allowance increases are inflationary. PX. 21-29, at p. 18. In discussing this data, which called the existence of a public assistance "submarket" within the housing market into question, the Department stated:

In summary, the inflationary effect sometimes attributable to shelter allowance increases is questionable, and an alternative view should be considered: that the rents paid by public assistance clients reflect the broader low-income housing market in which they compete for scarce housing.

Id. at p. 18.

151. Second, the housing market in New York City is regulated, thus limiting the extent of any rent increases. Stegman Tr. 345-46; PX. 64-200 (rent stabilization orders); 65-201 (same).

152. Third, the State defendant has itself concluded that past shelter allowance increases did not lead to jumps in rent levels. In fact, in its 1988 report to the Legislature, the State Department of Social Services found that "the pattern of increases

in client rents in New York City does not support the conclusion that increases in the shelter allowance caused increases in client rents." PX. 21-29, at p. 26.

153. In another report to the Legislature on the impact of the 1988 increase in the shelter allowance, the State Department of Social Services reported that of public assistance recipients surveyed in November and December of 1988, who had not moved since the January 1988 shelter allowance increase, only six to seven percent received an increase earlier than expected. PX. 20-27, at p. 2. Although the report noted that rents increased "somewhat faster" after the 1988 shelter allowance increase, it found insufficient evidence to conclude that this phenomenon was due to the shelter allowance increase or to other factors. Id. at p. 12. This report shows that even if rents did increase after the 1988 shelter allowance increase, any inflationary impact of the increase was small. See PX. 131-28, at p. 2 (Memo attaching draft report, stating "we found very little evidence that landlords were raising rents as a result of the increase.") A Department of Social Services' study of the fiscal impact of the 1984 shelter allowance increase examined the rate of increase in recipient rents and concluded that "the steadiness of the growth in average fiscal impact per case is also an indication that immediate, rapid rent increases did not occur as a result of implementing the new maxima." DX. AJ-100, at p. 173; Lewis Tr. 2287-89; See PX. 29-47 (Department memorandum stating: "A rapid round of rent increases for PA clients did not occur after the shelter allowance increase"



in 1984).

154. Fourth, even if rents were to increase following an increase in the shelter allowance, such increases would help preserve the stock of low-income housing. As discussed above, the current level of the shelter allowance makes it extremely difficult for owners to operate and maintain units renting within the shelter allowance. See supra, at ¶¶ 140-44. As Professors Stegman and Tobier explained, even if modest increases in rent did follow an increase in the shelter allowance, the additional cash flow to landlords would help keep low income housing in the market. Stegman Tr. 345-47; Tobier Tr. 470-71.

V. Inadequate Shelter Allowances Contribute to Families Becoming Homeless

155. Inadequate shelter allowances contribute significantly to homelessness among families in New York City. Inadequate shelter allowances force families to move out of or be evicted from housing they cannot afford. Those families cannot find other affordable housing and they are therefore forced to seek emergency shelter or double up in unstable situations which many cannot maintain. Families who have never had their own apartment are unable to find one they can afford and are forced to double up in crowded conditions or seek emergency shelter. Stegman Tr. 322-23; Tobier Tr. 476-78; Dehavenon Tr. 557; DX. B-108, vol. 1, at p. 9.

156. Professor Tobier explained that the number of homeless families has increased over the past ten years because,

there was a gap that had opened between the rent-paying ability of public assistance recipients and the costs of standard housing for them in the market that they were operating [in] and had widened so substantially, and the vacancy rate on housing units that were affordable to them had dropped so precipitously, that once you were out of whatever housing you had and looking for housing, you were no longer able to afford it. And therefore, you basically had to enter the emergency shelter system to find -- to be housed.

Tobier Tr. 477-78.

157. Professor Stegman testified that an

inadequate shelter allowance force[s] people to be evicted for nonpayment of rent or to move out of housing which they cannot afford to try to find housing they can afford....[O]nce in that market [they] cannot find adequate housing and are forced either to seek shelter directly or into a doubled up situation and ultimately fall out of that situation into a period of being in an emergency situation or even in a doubled up situation[,] which I defined as being homeless, that is to say without control over one's independent living units[.]

Stegman Tr. 322-323. Dr. Stegman concluded that there is "a direct link between the inadequacy of the shelter allowance and homelessness." Id.; see also Stegman Tr. 3422-23.

158. Over the course of the past decade, the Department of Social Services has repeatedly admitted that inadequate shelter allowances are a cause of homelessness. The Governor's Executive Budget for 1987-88 states that "[i]nadequate shelter ceilings also contribute to the rapidly growing homeless population and promote deterioration of the State's housing stock." PX. 37-66 at p. 361.

159. Similarly, State defendant admitted in the New York State Register (September 16, 1987) that: "It is also a fact that insufficient shelter allowances help increase the homeless population and contribute to the reduction of suitable housing for public assistance recipients." PX 38-67 at p. 20. See also PX. 8-2; PX. 127-45, at p. 4 ("Another cost [of the current shelter allowance system] is the rising number of homeless families who are in need of high cost emergency shelter"); PX. 128-64, at p. 32 (Report to the Legislature on Homelessness, 1984, Vol. 1); PX. 129-65, at p. 20 (Report to the Legislature on Homelessness, 1984, Vol. 2); see Defendant's Answer ¶ 16 (admitting that the level of public assistance is one factor which causes homelessness).

160. In the Department of Social Services' formal submission to the State Division of the Budget for the fiscal year 1987-88, it admitted that the inadequacy of the shelter allowance results in the expenditure of money on the provision of emergency shelter:

Presently the demand by PA recipients for safe affordable housing far exceeds the supply. As a direct result the number of homeless families has soared. In New York City the number of homeless families seeking emergency shelter has nearly doubled in two years. Over 90 percent of the homeless cases report eviction as the reason for being homeless. This fact lends strong support for the provision of higher shelter allowances in order to retain housing these families are forced to leave.

The irony of inflation-based homelessness is that instead of raising the shelter allowance to a realistic level and facing the direct fiscal impact of such a decision, enormous amounts of money are expended on temporary solutions designed to address housing inadequacies. The reality is that,

particularly in New York City, there is a shortage of decent low-income housing and the current shelter maxima are insufficient to purchase housing from the present supply.

PX. 23-33, at p. 2. See also PX. 35-62, at pp. 4-5.

a. Inadequate Shelter Allowances Contribute to Families Being Evicted and Becoming Homeless

161. State defendant has repeatedly admitted that inadequate shelter allowances contribute to homelessness by causing rent arrearages and evictions. In 1986, the State defendant admitted that the inadequacy of the shelter allowance in 1983 resulted in the "accumulation of arrearages leading to evictions and other housing emergencies." PX. 8-2.

162. In 1989, the Division of Income Maintenance admitted in its 1990-91 planning package that, "As of June 1989, 54% of the public assistance caseload statewide paid over the shelter maximum. Many of these cases face eviction and temporary housing with all its attendant costs." PX. 35-62, at p. 4.

163. State defendant has conceded that "eviction is one of the primary causes of homelessness." PX. 39-38, at p. 58.

164. In a 1990 report entitled The Homeless Prevention Program: Outcomes and Effectiveness, the State defendant admitted the "strong causal link between landlord eviction and homelessness." PX. 160, at p. 14. The report found that one-sixth of all shelter users are homeless as a direct result of eviction and that when indirect factors are taken into account approximately

25%-30% of family homelessness could be attributed to landlord evictions. PX. 160, at pp. 13-14.

165. Academic studies confirm State defendant's admission that inadequate shelter allowances contribute to homelessness by causing evictions. Homeless families are four times more likely than other families on public assistance to have ever been evicted. DX. B-108, vol. 2, at p. 29 & Figure 3.

166. Dr. Anna Lou Dehavenon, a cultural anthropologist who has studied the poor in New York City since 1974, see supra, at ¶¶ 10-11, testified about studies she has done interviewing families in New York City's Emergency Assistance Units ("E.A.U."s) in 1986-87, 1988-89, and 1989-90. Tr. 248-270, Tr. 541-587.

167. The E.A.U.s are after-hours welfare centers where homeless families are sent to wait for emergency shelter assignments when they have not been placed during the day. Dehavenon Tr. 255-56.

168. In each year she has done a study, Dr. Dehavenon has conducted interviews lasting on average between 30 and 45 minutes with families in the E.A.U.s in the Bronx, Brooklyn, and Manhattan one night a week over a six to eight month period. Over a third of the families present on a given night were interviewed. Dr. Dehavenon's method ensured the randomness of the sample she interviewed, making it valid to draw general conclusions from her studies about families utilizing E.A.U.s in New York City in those years. In each year, Dr. Dehavenon summarized her findings in a published report. Dehavenon Tr. 541-46.

169. Almost all homeless families seeking shelter in the E.A.U.s have had an open A.F.D.C. case in the last twelve months. Dehavenon Tr. 576-77. See DX. B-108, vol. 1, at p. 6 (only about 10% of families entering emergency housing were not previously recipients of public assistance); DX. AG-111, at p. 8 (83% of families seeking emergency shelter received public assistance within a month prior to entering the shelter system); DX. AH-114, at p. 3, Table 6 (81.6% of families in the Martinique Hotel and 79.7% of families in the Forbell Street Shelter reported that public assistance was their usual source of income).

170. Most homeless families at one time had their own apartments. Dehavenon Tr. 551-52 (68% in 1989-90, 71% in 1988-89, 69% in 1986-87); DX. B-108, vol. 1, at pp. 4, 9 (in 1988, 55% of families in the E.A.U.s had once had their own apartment for at least a year); DX. AG-111, at p. 12 (in December 1985, 56% of families in the E.A.U.s had their own apartment at some time in the previous two years).

171. For homeless families who once had their own apartments, eviction was the most important reason for losing them. Other problems with paying the rent also figured prominently. Dehavenon Tr. 551-52 (in 1989-90, 55% lost their apartment because of an eviction; in 1988-89, 46% lost their apartment through an eviction; in 1986-87, 69% lost their apartment through an eviction); DX. B-108, vol. 2, at p. 28 and table 14 (36% lost apartment due to an eviction and another 9% because of problems paying the rent or landlord harassment); DX

AG-111, at p. 14 (18.4% lost apartment due to a nonpayment eviction and another 28.9% because the rent was too high, for a total of 47.3%).

172. A report prepared for H.R.A. by Professors James Knickman and Beth Weitzman of the New York University Robert Wagner Graduate School of Public Service concluded that for families who once had their own apartment, eviction is a "very important predictor of homelessness," and that "[t]he highest risk of seeking shelter is faced by families which once had their own place to live, but lost this apartment for one reason or another." DX. B-108, vol. 1, at p. 15; id., vol. 1, at pp. 9-10. In discussing strategies to prevent homelessness, the authors of the report wrote, "[i]t is very possible that the most effective policies to prevent homelessness would focus on keeping people in apartments or houses where they were the primary tenant." id., vol. 2, at p. 27.

173. Dr. Dehavenon testified that the homeless families she had surveyed in the E.A.U.s reported "that one of the reasons that they lost apartments was because Welfare was not giving them enough money for rent." Tr. 574. Her study shows that in 1989-90, 60% of homeless families who had been evicted lost their apartments for nonpayment of rent. Dehavenon Tr. 551-52; Id. (1988-89, 52% of evictions were for nonpayment of rent; 1986-87, 35% of evictions were for nonpayment of rent).

174. The evidence presented concerning actual cases vividly shows how the inadequacy of the shelter allowance leads to the eviction of public assistance families. Each public assistance

recipient who testified was sued for nonpayment of rent and was faced with eviction because she was unable to pay her full rent with her shelter allowance. Remy Tr. 28-31; Diaz Tr. 76-84; Irizarry Tr. 109-12. See PX. 1-619, 2-620, 4-623, 5-625, 6-617, 7-618.

175. Plaintiffs in this action were sued for nonpayment of rent and had final housing court judgments entered against them. PX. 133-626 through 133-656. See PX. 121-431, 121-432, 121-433 (fair hearing decisions of plaintiffs Judith Morris, Dorothy Hughes, and Yvette Parson). See infra, at ¶¶ 382-92.

176. By March 12, 1991, H.R.A.'s records showed that 135 families were receiving preliminary relief through the informal procedure in this case. PX. 92. These families are all A.F.D.C. recipients, with rent in excess of the shelter allowance. Id. Blaustein Tr. 751-54, 774. Defendant's counsel has admitted on the record that all of the families listed on PX. 92 were sued in housing court and had final judgments entered against them. Tr. 3560-61. See infra, at ¶¶ 277-79.

177. The State defendant introduced in evidence at trial the case records of eleven of these families. These case records show how the level of the shelter allowance causes families to fall behind in rent and face eviction as a result. See infra, at ¶¶ 311-81.

178. The evidence also shows that the State defendant's policies concerning the issuance of emergency rent arrears grants to public assistance families mandates the denial of emergency



assistance when the threat of eviction stems from inability to pay rent above the shelter allowance. Thus, when a family with rent in excess of the shelter allowance tenders its full shelter allowance to the landlord but nonetheless falls into arrears because it cannot pay the "excess rent", the State defendant provides no assistance to prevent the eviction. In contrast, when a recipient of public assistance falls into arrears due to failure to tender the shelter allowance to the landlord, the State defendant's policies provide for recoupable emergency grants to forestall eviction. These policies further show how the level of the shelter allowance results in the eviction of public assistance families. DX. BI at p. 5; 18 N.Y.C.R.R. § 352.7(g)(5) (providing for "duplication" of previous shelter allowances if they have not been tendered to the landlord); 18 N.Y.C.R.R. § 352.7 (g)(4) (providing for payment of rent arrears at a rate higher than the shelter maximum for periods prior to the opening of a public assistance recipient's case); DX. BJ (memorandum on applicant rent arrears); Blaustein Tr. 766-67 (describing policy of "duplicating" past shelter allowance payments); Hickey Tr. 2558-59, 2605-06.

179. The effect of these policies on public assistance families is shown by 129 administrative "fair hearing" decisions issued by the Department of Social Services from March 20, 1990 through January 1991. In virtually all of these decisions, entered in evidence as PX. 119-300-424; 120-426-429, the Department of Social Services affirmed H.R.A.'s denial of emergency grants to families threatened with eviction because their rents exceeded

their shelter allowances. The Department also directed H.R.A. to place the names of these public assistance recipients on a list of recipients who may be eligible for relief upon the resolution of this litigation. Rather than helping these families to avoid eviction, the Department directed H.R.A. to provide emergency shelter in the event that the family is left homeless as a result. PX. 119-300-434, 120-426-429.

180. These decisions show how families fall behind in their rent because it exceeds the shelter allowance, and are threatened with eviction as a result. A few examples are illustrative. In the case of Pauline P., dated June 5, 1990, Ms. P. lived with her minor child and received A.F.D.C. benefits. Her rent was \$316.41, an amount \$66.41 in excess of her shelter allowance. Ms. P. accumulated arrears of approximately \$1,000 and was threatened with eviction. She applied for an emergency rent arrears grant, but was denied on the ground that her arrears were an accumulation of "excess rent." On appeal, the State Commissioner found that "[t]he Appellant admitted that her rent arrears are an accumulation of her rent that is in excess of her Public Assistance shelter allowance." The Commissioner concluded that

Pending the final outcome of the case of Jiggetts et al. v. Grinker, et al., there is no provision in the Department's regulations authorizing payment of the Appellant's rent arrears in excess of the maximum Public Assistance shelter allowance for a household of Appellant's size. Therefore there is no relief that the Agency could provide to the Appellant that would prevent her eviction.

PX. 119-344, at p. 4.

181. In the case of Dawn M., dated June 27, 1990, PX. 119-343,

the recipient received a shelter allowance for two persons, totalling \$250 a month, while her rent was \$371. Until October 1989, Dawn M.'s brother helped her by contributing toward the \$121 monthly deficit between the shelter allowance and her full rent. On November 1, 1989, Dawn M.'s brother lost his job and could no longer contribute to her rent payments. Dawn M. fell into arrears. PX. 119-343.

182. Dawn M. asked H.R.A. for a grant of emergency rent arrears in the amount of \$2,968. In February 1990, H.R.A. denied this request on the ground that Dawn M.'s arrears were due to "rent costs in excess of the maximum shelter allowance." Id. at p. 4.

183. On appeal, the State Commissioner, by his designee, upheld this denial. The decision noted that Dawn M.'s arrears consisted of amounts in excess of the shelter allowance and amounts for which shelter allowances had been issued but spent on household items. The decision stated that:

Pending the final outcome of the case of Jiggetts et al. v. Grinker, et al., there is no provision in the Department's Regulations authorizing payment of the Appellant's rent arrears in excess of the shelter allowance. The Agency cannot pay the rent costs of a Public Assistance recipient that exceed the maximum shelter allowance based upon household size. However the Agency must provide an appropriate shelter allowance, and it can issue advance rent allowances to duplicate previously issued shelter allowances that were not used to meet rent costs if the issuance of said advance rent allowances would prevent eviction.

Id. at p. 4.

184. The decision concluded that Dawn M. had received the appropriate maximum shelter allowance. It upheld the denial of

payment of amounts due in excess of the shelter allowance. It also upheld the denial of any advance allowances to duplicate shelter allowances previously issued, because "[a]ppellant offered no explanation as to how she will pay her future excess rent costs nor does she give any indication that the landlord would settle for partial payment of the rent arrears." "Therefore," the decision concluded, "the record does not establish the issuance of a rent advance in duplication of misapplied shelter allowances would prevent eviction in this case." Id.

185. The decision directed that Dawn M.'s name be placed on a list of A.F.D.C. cases "so that any necessary action may be taken on the Appellant's case consistent with the outcome in the case of Jiggetts, et al, v. Grinker, et al." In the meantime, H.R.A. was directed to provide Dawn M. with emergency shelter in the event that she became homeless. Id.

186. Virtually all of the 129 fair hearing decisions in evidence reach the same result as was reached in the cases of Pauline P. and Dawn M. In many of these hearing decisions, families facing eviction owed back rent that consisted solely of the portion of the rent due in excess of their shelter allowances. See e.g., PX. 119-300, 303, 307, 308, 310, 316, 319, 320, 321, 323, 324, 340, 344, 349, 353, 360, 371, 372, 373, 374, 378, 393, 394, 397, 399, 400, 405, 406, 423; PX. 120-429.

187. In some of the fair hearing decisions, the recipients did not pay the "excess rent" and also did not apply their full shelter allowances to their rent. See e.g., PX. 119-301, 330, 331, 333,

334, 338, 341, 343, 349, 352, 357, 361, 369, 381, 386, 389, 410, 414, 416, 418. As the State Commissioner pointed out in these cases, the families would have been eligible for a recoupable duplication of past shelter allowances, but for the fact that their rent was over the shelter allowance and duplication of past allowances would not have forestalled their evictions. See PX. 119-357, at p. 4. See Blaustein Tr. 766-77; Imbo Tr. 806-07 (explaining shelter allowance duplication). Accordingly, it is clear that these recipients faced eviction, and may since have been evicted, due to the inadequate level of the shelter allowance.

188. In some of the fair hearing decisions in evidence the recipients were entitled to reissuance of past shelter allowance amounts because checks had become stale-dated or were misdirected by H.R.A., or were otherwise entitled to the correction of some underpayments. But they were nevertheless denied emergency rent arrears for the portion of the rent due that exceeded their shelter allowances. See, e.g., PX. 119-311, 317, 318, 322, 335, 336, 337, 342, 345, 347, 355, 356, 364, 370, 375, 377, 380, 382, 388, 391, 421; PX. 120-426. See also PX. 120-427, at pp. 3-4 (refusing to reissue on ground that final judgment had issued in housing court severing tenancy and converting rental obligation into judgment debt).

189. The record does not show how many additional families were denied emergency rent arrears at income maintenance centers because their rent exceeded the shelter allowance, but did not pursue fruitless appeals. It does not show how many additional

families faced eviction, but, in view of the State defendant's policies, did not apply for emergency rent arrears.

b. The Inadequate Shelter Allowances Force Families to Resort to Crowded, Unstable Double-Ups Which Many Cannot Maintain

190. Although estimates vary, the doubling up of families on public assistance is a problem of substantial magnitude. DX. B-108, vol. 2, at p. 31 (finding that 19% of families on public assistance were doubled up in 1988, 12% as secondary tenants and 7% as hosts); PX. 128-64, at p. 3 (defendant's 1984 report to Legislature on homelessness stating that statewide there were 33,000 families on public assistance doubled and tripled up). See PX. 160, at p. 6 (defendant's 1990 report on the Homelessness Prevention program, stating "[i]t is widely believed that 100,000 families residing in New York City are currently living doubled up with other family members or friends."); PX. 63-102, at p. 6 (annual report of the New York City Housing Authority estimating that there were 35,000 families doubled up in NYCHA apartments alone).

191. Many families turn to doubling up after losing their own apartment. See Dehavenon Tr. 550-51 (in 1989-90, 68% of homeless families had once had their own apartment, but only 6% had slept in their own apartment the night before requesting emergency shelter, suggesting that 62% once had their own apartments, but had doubled-up prior to entering the shelter system.) Other families have never had their own apartment. See Dehavenon Tr. 551 (32% of

families requesting emergency shelter in 1990 never had own apartment, 29% in 1988-89, and 31% in 1987-88); DX B-108, vol. 1, at p. 9 (44% of families requesting emergency shelter never had own apartment for at least one year).

192. Dr. Filer's opinion that few doubled up families were doubled up as a result of an eviction because "the vast majority of public assistance recipients who are living in doubled up situations have at no time been primary tenants and therefore cannot have been evicted" (Filer Tr.1880) is not supported by the source he relied on. Dr. Filer testified that he based this assertion on the Knickman report (DX. B-108). Filer Tr. 2221-23. In fact, the Knickman report shows that while 55% of homeless families once had their own apartment for over one year (DX B-108, vol. 2, at p. 28), only 18% of homeless families slept in their own apartment the night before requesting emergency shelter (DX B-108, vol. 1, at p. 8). Thus, at least 37% of all homeless families once had their own apartment, but did not live there immediately prior to requesting emergency shelter.<sup>21</sup>

193. Doubling up "often represents an interim situation" that eventually leads to a need for emergency shelter. DX. B-108, vol. 1, at p. 40. The Knickman Report found that doubling up was the single greatest predictor of future shelter use. DX. B-108, vol. 3, at p. 33. See PX. 128-64, at p. 2 (defendant's 1984 Report to

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<sup>21</sup> This percentage is likely in fact to be higher than 37% because some of the 18% who slept in their own apartments the night before requesting emergency shelter may have had those apartments for less than a year, and thus were not included in the 55%. See DX. B-108, vol. 1, at p. 9.

the Legislature on Homelessness stating that homelessness is often the "last stage of a process that begins in a crowded unit."); DX. at B-108, vol. 1, p. 8 (71% of families were doubled up immediately prior to requesting emergency shelter); Dehavenon Tr. 550 (78% of families doubled up immediately before requesting emergency shelter in 1990; 68% in 1989).

194. The State defendant has recognized that many doubled up families are in an important sense homeless. In a 1990 report, the State defendant wrote:

There is a third component of the homeless population -- the doubled up or marginally housed component. This population consists of families who are forced to live with other families to avoid living on the street or in homeless shelters. Some definitions of homelessness exclude doubled up families or consider this population to be marginally housed. But regardless of the definition applied, it is clear that the housing status of this group is in jeopardy because it is dependent on the complaisance of the host individuals or families.

PX. 160, at p. 6. See also PX. 128-64 (distinguishing between the "technically homeless" and the "near homeless" doubled up). It is a widely held view that, due to the unstable and tenuous nature of living doubled up, many such families are properly considered homeless. Stegman Tr. 322-23; DX. B-108, vol. 2, at p. 27 ("In an important sense, homelessness is defined not by shelter use, but by not having one's own place to live"). See Auwarter Tr. 642; Cf. Filer Tr. 2230 ("definition of homelessness is to a large extent an arbitrary line drawn somewhere along a continuum of poor housing [options]").



195. Dr. Dehavenon has studied the conditions of the apartments in which families were doubled up immediately before requesting emergency shelter. Dehavenon Tr. 552-56. The apartments were horribly crowded. In 1989-1990, 96% of homeless families who came to the E.A.U.s from doubled-ups had been in apartments which were crowded, defined as more than one person per room, and 85% had been in apartments which were very crowded, defined as more than 1.5 people per room. Dehavenon Tr. 553.

196. The data collected by Professors Knickman and Weitzman also reveals that previously doubled-up families entering the emergency shelter system endured "extremely crowded living conditions" prior to entering the shelter system. See DX. B-108, vol. 2, at pp. 95-97 (89% of homeless families previously doubled up with the mother's parents and 71% of homeless families previously doubled up with others reported having lived in an apartment with four or more persons per bedroom).

197. For these families, living in double-ups was characterized by a lack of privacy and a lack of control over their living spaces. Only 30% of families coming out of double-ups to the E.A.U.s had had their own room; only 50% had their own bed. In many cases they had been unable to receive mail where they were staying and only half of them had been able to use the telephone, if there was one. Dehavenon Tr. 554. See DX. B-108, vol. 2, at pp. 25-26 (noting that lack of control is a key element of doubling up).

198. Doubling up also contributes to the disintegration of

families. Husbands and fathers are separated from their families. Mothers may have one or two of the children staying with them and another child staying in some other situation. Dehavenon Tr. 555 (double-ups are situations "where families are being split asunder.").

199. The double-ups that families live in before turning to the emergency housing system are unstable. In 1989-1990, the median length of stay in double-ups prior to entering the E.A.U.s was two months. Fifty percent of families reported having lived in two or more double-ups prior to asking for emergency shelter. Dehavenon Tr. 553-54.

200. Typically, families turn to a series of less and less viable double-ups before finally resorting to seeking emergency shelter from the City. DX. B-108, vol. 2, at p. 34 ("The pathways to homelessness generally include a period of trying less and less viable housing options outside the shelter system before coming to the E.A.U.s"). See DX. AG-111, at p. 10 (housing history of homeless families characterized by "stability at some point in the past, followed by a decline in the stability of arrangements"). In 1988, only 4% of families requesting shelter had slept the night before in the place they had stayed in the last year. DX. B-108, vol. 2, p. 33.

201. These families would not finally turn to the shelter system if the shelter allowances gave them any reasonable chance of finding their own apartment. See DX B-108, vol. 1, p. 8 ("Finding 1: Shelter Use Appears To Be A 'Last Choice' Option For Families");

infra, at ¶¶ 101-18.

202. Furthermore, given these conditions, it is clear that most families would not willingly subject themselves to the indignity and instability of living doubled up if they had other housing options available to them. See Auwarter Tr. 625 (doubled up families cannot find their own apartments renting within the shelter allowances); supra, at ¶¶ 101-18. Because the current shelter maxima make it impossible for families to find their own apartments, they are "a substantial contributing factor to families having to double up." Dehavenon Tr. 557. See Stegman Tr. 322.

203. Dr. Filer's opinion that most doubled up families are living in such arrangements voluntarily (Filer Tr. 1868-69, 1870) ignores the horrendous conditions families endure in double ups. It is also based on assumptions about family compositions which are unfounded and on baseless speculation about people's motives. The source that Dr. Filer relied on, the Housing and Vacancy Survey (H.V.S.), contains no data on why persons or families live together. Stegman Tr. 3371-72. To fill this gap, Dr. Filer imputed motives to families based solely on the composition of their households. However, the H.V.S. does not contain information that is sufficiently detailed to permit this kind of inference. See PX. 70-209, at p. 142 (H.V.S. not designed to make an accurate estimate of the number of doubled up households).

204. For example, Dr. Filer claimed to have identified "one group where there were elderly relatives of the householder who had moved in with the householder. This might typically be a parent

who could no longer maintain their own house. It seems to me that most of those people are not going to move out on their own." Filer Tr. 1870. In DX AF-5, Dr. Filer labeled this type of household as "elderly 'parent' living with child." Dr. Filer, however admitted that he had no way of knowing that the "elderly" relative in such households was a parent. All the H.V.S. data shows is that the person living with the householder is a relative at least 14 years older than the householder. Nor is it possible to conclude that the relative is truly elderly or infirm. For this purpose, Dr. Filer defined elderly as 55 years old or older. Filer Tr. 1888. He had no data about the health of household members. The assumption that all or most of these households contain infirm parents who live with their children because they can no longer live independently is unsupportable. The conclusion about the voluntariness of these living arrangements is therefore equally suspect.

205. Similarly, Dr. Filer had no way of knowing whether families he described in DX. AF-5 as "child & grandchild living with parent," and "'grandchild' living w/ grandparent" were actually related in the way described. The households described as "child & grandchild living w/ parent" in fact include all households where a householder and her child live with any other relative who is under age 18 and at least 14 years younger than the child. Filer Tr. 1888-89. The result of Dr. Filer's assumption is that a household consisting of a 54 year old woman, her 35 year old daughter, her 17 year old distant cousin and the cousin's child

would be described in DX. AF-5 as "child and grandchild living w/ parent."

206. Furthermore, the households which are labeled "'grandchild' living w/ grandparent" in fact consist of all households in which a householder lives with a relative who is not her child and who is at least 28 years younger than the householder. Filer Tr. 1889. The result of this assumption is that a household consisting of a 54 year old woman living with her 25 year old cousin and the cousin's children would be labeled as "grandchild living w/ grandparent" on DX. AF-5. The effect of assuming the closest possible family relationship is to make these situations seem more voluntary and stable than they may actually be.

207. Although it is impossible to use the data from the H.V.S. compiled in DX. AF-5 to draw meaningful conclusions about why people are doubled up, Stegman Tr. 3371-72, DX. AF-5 does show that public assistance families are much more likely than other families to be doubled up.

208. Randall Filer's testimony that public assistance recipients are only slightly more likely than the general population to be doubled up (Filer Tr. 1873-74) is based on a distortion of the data from the 1987 Housing Vacancy Survey, which he cites as his source. In DX. AF-5, Dr. Filer purported to show that 9.9% of all households and 11.7% of public assistance recipients are doubled up. See Filer Tr. 1873-74. In fact, a review of AF-5 shows that Dr. Filer's arithmetic was wrong. When

the total number of public assistance households found in the 1987 H.V.S. (232,743) is compared with the number of doubled up households on public assistance listed on AF-5 (35,489), it shows that 15.2% of public assistance households were doubled up in 1987. Stegman Tr. 3373. See PX. 70-209, at p. 21.

209. When households where the double-up consists of one unrelated, single adult living with another single adult (situations which Dr. Filer testified likely involved roommates or lovers, Filer Tr. 1870-71) are removed from consideration and correction is made for errors of arithmetic, the statistics relied upon by Dr. Filer show that public assistance recipients are almost twice as likely as other households to be doubled up. Not considering single adults living together as double ups, 14.3% (33,312 of 232,743) of households receiving public assistance and 7.6% (188,195 of 2,468,943) of non-public assistance households are doubled up. See PX. 70-209, at pp. 12, 21 (total number of households in the 1987 H.V.S. were 2,701,686; total number of households on public assistance was 232,743).<sup>22</sup>

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<sup>22</sup> The total number of non-public assistance households was calculated by subtracting the number of households receiving public assistance as set forth in the Housing Vacancy Report (PX. 70-209) from the total number of households contained in the Housing Vacancy Report. The number of non-single adult double ups receiving public assistance was calculated by subtracting rows 6 and 9 on DX. AF-5 from the total number of public assistance double-ups given on that exhibit (35,489 - 910 - 1267 = 33,312). The same calculation was made to produce a figure for all non-single adult double ups (307,185 - 38,818 - 46,860 = 221,507). Then the number of non-single adult public assistance double ups was subtracted from the total number of non-single adult double-ups to arrive at the number of non-p.a. non-single adult double ups (221,507-33,312 = 188,195).

c. Randall Filer's Opinions on the Causes of Homelessness, and on the Nature of the Conditions in the Emergency Shelter System, are Contradicted by Overwhelming Evidence, Including the Sources on Which He Relied

210. By his own admission, Randall Filer never studied or published on the issues of housing, homelessness, or public assistance prior to working on a report that was published in March 1990. Filer Tr. 1757 (first project relating to homelessness, completed a year prior to testimony). Dr. Filer's resume shows that throughout his career his publications have concentrated on issues of labor economics, in particular issues about the income of artists and sex-based wage differentials. DX. AE-13.

211. Randall Filer's opinion that homelessness among families in New York City during the 1980s and 1990s has been caused in large part by families choosing to leave viable housing situations to enter the emergency shelter system in order to obtain City apartments (Filer Tr. 1942-45, 1954-57) is not persuasive because it is contradicted by overwhelming evidence that families turn to the emergency shelter system only as a last resort after having exhausted all viable alternatives. In fact, the first "Key Finding" of the report by Professors Knickman and Weitzman upon which Dr. Filer relied (Filer Tr. 1761-62, 2173-74) is that "Shelter Use Appears To Be A 'Last Choice' Option For Families." DX. B-108, vol. 1, at p. 8. The report found that families seeking emergency shelter had "worn out their welcome at the apartments" of those to whom they had social ties and that "the housing and social problems facing potential shelter users leads to a period of reliance on friends and relatives, and shelter use occurs when

these informal networks wear down." id., vol. 1, at p. 26; see id., vol. 2, at p. 86 ("Families entering shelter do not feel that they have other options or have used up the options they had.")

212. Other sources relied on by Dr. Filer also contradict his opinion that in entering the shelter system families forego viable housing options. Thus, an H.R.A. study relied on by Dr. Filer (Filer Tr. 2180-81) concluded that:

This study was undertaken to understand the reasons for the apparent increase in the numbers of families seeking emergency shelter from H.R.A.. The study yielded little evidence that families are forsaking stable housing arrangements to become homeless in the hopes of getting an apartment.

DX. AG-111, p. 20. Compare Filer Tr. 2184 (stating that he relied on DX. AH-114) with DX. AH-114, at p. 5, Table 10 (finding that 87.5% of homeless families at the Forbell Street Shelter and 94.4% of families at the Martinique Hotel reported that they could not return to the place they had lived before entering the emergency shelter system). Compare also Filer Tr. 1760-61 (stating that he was particularly impressed by a number of studies of homelessness in New York City, including a report by the Manhattan Borough President) with 2190-93 (acknowledging that the Borough President's report contained a finding that "generally homeless families entering the shelter system have exhausted all other housing resources available to them, including doubling up with friends and relatives and renting substandard hazardous apartments").

213. Since the vast majority of families entering the shelter



system were doubled up immediately prior to seeking emergency shelter, it is helpful in assessing Dr. Filer's theories to examine the reasons that families leave those situations. Dehavenon Tr. 550 (in 1989-1990, 78% of families had been doubled up immediately before requesting emergency shelter, 15% had been sleeping in a public place). Studies show that families seeking emergency shelter were forced out of doubled up situations because they were evicted or because conditions were intolerable. Dehavenon Tr. 554-55 (reasons families left double ups included overcrowding, the primary tenant needing the space for other purposes, the primary tenant having to move, but not a desire to obtain a city apartment); DX. B-108, vol. 1, at p. 26.

214. The evidence shows that the living situations that families leave when they turn to the emergency shelter system are overcrowded, lacking in privacy, unstable, and dangerous. Dehavenon Tr. 553-55 (overcrowded, lacking in privacy, unstable); DX B-108, vol. 2, at pp. 95, 97 (overcrowded); *id.* at vol. 2, p. 97 (unstable); *id.* at vol. 1, p. 8 (unstable); Auwarter Tr. 635-36 (entering the shelter system to escape battering in the previous residence). See PX. 128-64, at pp. 37-38; supra, at ¶¶ 198-203. Dr. Filer's theory fails to consider the untenable nature of the prior housing arrangements of the vast majority of families who seek emergency shelter.

215. Furthermore, the rise in family homelessness pre-dates the allocation of City apartments to homeless families. The first programs to allocate apartments to the homeless began in 1983. By

that time there were already 2,000 families in the City's shelter system. Filer Tr. 2164-65. Thus, Dr. Filer's theory confuses cause and effect. A rise in the need for emergency shelter led to an allocation of City apartments for the homeless, rather than the other way around.

216. Dr. Filer's theory that families forego viable housing situations and voluntarily enter the emergency shelter system in order to obtain City apartments also fails to take into account the terrible conditions in the emergency shelter system. See infra, at ¶¶ 220-36.

217. On cross examination, Filer admitted that homeless families placed in "Tier I" shelters stay in congregate facilities where many families sleep in each room and share bathrooms. Filer Tr. 2196-97, 2202. He admitted that in the Forbell Street Shelter 20 families slept in each area. Tr. 2197, 2202; DX. AH-114, at p. 1 (121 families sleep in six open areas).<sup>23</sup> Dr. Filer also acknowledged that families are placed in "overnight beds" in hallways, cafeterias and offices. Tr. 2203.

218. Dr. Filer stated that families are required to remain in Tier I shelters for an average of 28 days. Filer Tr. 2461. However, Nancy Travers testified that the average length of stay in Tier I shelters is 50 days -- almost twice as long as the period

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<sup>23</sup> The average family size in the Forbell Street Shelter at the time of the 1986 HRA study was 3.3, meaning that on average 66 people slept in each area. DX. AH-114, at p. 1, Table 1. Although the Forbell Street Shelter and the Martinique Hotel are no longer used, the City continues to house homeless families in Tier I shelters and in hotels. See infra, ¶¶ 232 & 233.

claimed by Dr. Filer. Ms. Travers was in charge of monitoring the City of New York's compliance with State regulations governing conditions in emergency shelters from 1988 until February 1990. Travers Tr. 2625-26.<sup>24</sup>

219. Dr. Filer essentially ignored the many judicial findings and other evidence of the terrible conditions that homeless families endure in hotels used to provide emergency shelter. Although Dr. Filer admitted that 65% of families at the Martinique Hotel reported that their living conditions were bad or terrible, he offered no credible explanation of how his theory that families choose to subject themselves to the shelter system can be reconciled with this fact. Filer Tr. 2217-18.

220. Similarly, Dr. Filer failed to offer a credible explanation of how his theory can be reconciled with the decision of the Appellate Division First Department, in McCain v. Koch, 117 A.D.2d 198 (1st Dep't 1986). In McCain, the Appellate Division found that "plaintiffs in the present case . . . have persuasively documented the unsafe and squalid conditions prevalent in welfare hotel accommodations, conditions particularly undesirable for young children." Filer Tr. 2214.

221. Although Dr. Filer testified that he had read most of the record in McCain (Filer Tr. 1967), he had not read the Court's

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<sup>24</sup> Under either Dr. Filer's version, or that of Ms. Travers, the average length of stay in Tier I shelters exceeds the regulatory maximum of 21 days, indicating that families are forced to endure such conditions for even a longer period than the Department of Social Services considers to be permissible. 18 N.Y.C.R.R. § 900.7.

January 8, 1991 interim order. Dr. Filer's opinion gave so little weight to the conditions in the welfare hotels that the following finding from that order did not alter his opinion: "The Court is convinced that various problems attendant upon placement of families in these hotels, i.e., too few beds, lack of cribs or means of sterilizing bottles and nipples for infants, lack of desks or tables, or study places for school age children, vermin, broken door locks and windows, difficulty in obtaining nutritious meals because of the absence of private cooking facilities, and the requirement that families vacate after 28 days is so deleterious to the health, safety and welfare of these fragile families as to violate even the most minimal standards of habitability." Filer Tr. 2215-17.

222. Dr. Filer was also not familiar with a recent decision in McCain, dated March 25, 1991, finding that conditions in Tier I shelters and hotels remain horrible. Filer Tr. 2208-09, 2215. The decision of the Supreme Court, New York County, in McCain, dated March 25, 1991, found that "it is undisputed that families with children (some with tiny infants or pregnant women) have been left to sleep in the hallways, recreation areas, and cafeterias of Tier I and II shelters for more than one night" in violation of court orders and regulations. Decision dated March 25, 1991, at pp. 6-7. The Court further found that:

Families with young children sleep on canvas cots or mattresses, placed one next to the other so that there is no walking space. Cribs are unavailable. Family members have been forced to share beds in violation of 18 N.Y.C.R.R. §900.12(e)(3). Blankets, pillows, soap and towels are often unavailable.

Residents, awakened each morning are required to pack their belongings and remain in the shelter all day in anticipation of lawful placement.

Shuffling families with children between short term placements results in nutritional deprivation and exhaustion and contributes to physical ill health and emotional instability. Children cannot go to school, medical appointments are missed and special nutritional needs go unmet.

Id. at pp. 8-9.<sup>25</sup>

223. The March 25th decision also found that plaintiff homeless families:

have set forth in considerable detail the horrendous conditions to which they were subjected as a result of multiple overnight shelter placements. They have also described the extreme hardships suffered by families placed in commercial hotel units with inadequate furniture, inadequate space, numerous code violations, vermin and which lacked basic cooking facilities.

Id. at pp. 20.

224. When confronted with many of the findings of the court in McCain on cross examination, Dr. Filer's answers were vague and evasive. Dr. Filer stated that he did not know whether it was "technically true" that families in overnight beds were required to pack their belongings each day and remain in the shelter in order to get a longer term placement. Filer Tr. 2204. He said that he did not believe that it "is any longer the case" that some hotels

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<sup>25</sup> The Court may take judicial notice of the decisions in the McCain litigation, which is also pending in Supreme Court, New York County. See Schmidt v. Magnetic Head Corp., 97 A.D.2d 151, 158, n. 3 (1st Dep't 1983); Wells v. State of New York, 130 Misc.2d 113, 121 (Sup. Ct. Steuben Co. 1985), aff'd, 134 A.D.2d 874 (4th Dep't 1987); Richardson on Evidence § 30, at p. 18 (10th ed. 1973).

"do not provide the basic furniture necessary for daily living." Filer Tr. 2208. He admitted that he did not know whether the hotels provide cribs for infants. He admitted that "on occasion" hotels do not provide tables or chairs to homeless families, but stated that he had "no idea of the prevalence" of this practice. He stated that the hotels had broken locks, windows, and doors only "in rare instances."<sup>26</sup>

225. Although, by his own admission, Dr. Filer did not begin researching homelessness until several years later, he flatly denied that families were forced to sleep overnight in E.A.U.s on tables and chairs in 1985. He also erroneously stated that the Supreme Court in Lamboy had not found in 1985 that families were forced to do so. Filer Tr. 2204-06; See Lamboy v. Gross, 129 Misc.2d 564, 575 (Sup. Ct. N.Y. Co. 1985), aff'd, 126 A.D.2d 265 (1st Dep't 1987).

226. In response to cross-examination concerning the conditions in Tier I shelters and hotels, Dr. Filer did not claim that they were habitable or suitable for children. Instead, he argued that families choose to enter Tier I facilities despite the living conditions that exist in them because they need only stay in them a short time before receiving placements in Tier II shelters.

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<sup>26</sup> Dr. Filer did offer an "opinion," presumably as an economist, that families in the hotels do not have difficulty sterilizing bottles, nipples, and water for infants. Filer Tr. 2203-10. Dr. Filer never stated a basis for this "opinion," which is in direct contradiction of the January 8, 1991 interim order, and the March 25, 1991, decision in McCain. McCain v. Koch, Decision, dated March 25, 1991, at pp. 16-17; McCain v. Koch, Interim Order, dated Jan. 8, 1991, at p. 6.

Filer Tr. 2463. As noted above, Ms. Travers testified that families are forced to endure conditions in Tier I shelter for almost two months on average. Two months of living in unbearable circumstances cannot be dismissed as insignificant. Moreover, Dr. Filer did not attempt to explain why families would forego viable housing options to live in horrendous hotels, as he claims they do.<sup>27</sup>

227. In fact, families in the emergency shelter system remain there for lengthy periods, and are not eligible for placement in permanent housing for many months at a minimum. During the 1980s, families in the emergency housing system had been in the system an average of eleven months to over a year. Filer Tr. 2195-2196 (average stay in 1985 was eleven months, in 1987, over a year; in 1988, 350 days).

228. From the fall of 1985 through most of 1987 the waiting period for homeless families in the shelter system, without a pregnant woman, to obtain a placement in permanent housing was eighteen months; for families with a pregnant woman it was six months. In late 1987, the waiting period was changed to twelve months for all families. Filer Tr. 2194-95. Thus, a mother making a rational "choice" to enter the shelter system in order to obtain a City apartment would have to do so knowing that she and her children would spend a year in the City's shelter system prior to receiving such a referral.

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<sup>27</sup> The regulations impose no limit on the length of placement in hotels.

229. Dr. Filer's attempt on redirect to rely on the fact that many families are now placed in "Tier II" shelters is not persuasive. Filer Tr. 2462-63. First, many families continue to be placed in congregate shelters and hotels. See PX. 124-101, at p. 2 (652 families in hotels, 502 in "Tier I" shelters in Jan. 1991).

230. Second, the shift toward increased use of Tier II facilities is relatively recent. As recently as January 1989, 59% of homeless families were placed in hotels, while an additional 9% were placed in "Tier I" shelters. DX. AQ (Jan. 1989 Monthly Report). Thus, during most of the period of growth in family homelessness in New York City, most homeless families were not placed in Tier II shelters. Families could not, therefore, have rationally chosen to enter the shelter system expecting to be placed in Tier II shelters.

231. Moreover, Dr. Filer's testimony on redirect examination regarding Tier II shelters conflicts with his testimony on direct examination. On direct examination, Dr. Filer claimed that homeless families "preferred" hotels to other forms of shelter. Filer Tr. 1956.

232. Given the terrible conditions in the emergency shelter system for families over the past decade and the long waiting periods for placement in permanent housing, Dr. Filer's theory is incredible as an explanation for the phenomenon of family homelessness in the absence of substantial evidence that a significant number of actual families are really acting as Dr.



Filer hypothesizes they are. No such evidence was offered by the State defendant. Furthermore, there is no evidence that families entering the shelter system left stable or even tolerable housing situations. The conditions in the shelter system and long waiting period for apartments guarantee that few families would ever forego tolerable living situations in order to enter it.

233. Dr. Filer's own claim that there are thousands of apartments immediately available to be rented at rents below the shelter allowances (Filer Tr. 1806) is inconsistent with his claim that large numbers of families are voluntarily entering the shelter system and enduring its conditions and indignities for 12 months or longer to obtain apartments. Tr. 2195-96. If apartments really were available in the market at rents within the shelter allowance, families making a cost-benefit analysis, as Dr. Filer claims they do, would not enter and endure the shelter system to obtain something which is readily available in any case.<sup>28</sup>

234. Dr. Filer did not cite any evidence that the apartments provided to homeless families are so desirable that families would forego other housing options in order to obtain them. The only report or study that he admitted considering that discussed the conditions in these City apartments was a report by the Manhattan Borough President which found that "apartments offered to homeless families often suffer from inadequate or incomplete repairs. The

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<sup>28</sup> Moreover, if families did enter the shelter system in order to obtain apartments, this fact would be further evidence of the inadequacy of the shelter allowance, because it would indicate that apartments are not otherwise obtainable by families who depend on the shelter allowance.

conditions of these units is sometimes so poor that homeless families, as desperate as they are for a permanent home, are hesitant to accept apartments shown to them." Filer Tr. 2219.

235. The regression analysis performed by Dr. Filer does not support his conclusion that family homelessness is not related to level of A.F.D.C. benefits (Filer Tr. 2018-21). It used 1984 data that did not distinguish between homeless singles and homeless families. Filer Tr. 2245-46, 2367. According to the data Dr. Filer relied on, at that time homeless singles made up approximately 77% of the homeless population nationally. Filer Tr. 2367-2369. The key variable in the study is therefore essentially a measure of homelessness among singles rather than among families. Bach Tr. 3520-23. Because the causes of homelessness for singles and for families are very different and because homeless singles are not even eligible for A.F.D.C., the use of data that did not distinguish between homeless singles and families makes it impossible to draw valid conclusions about the relationship between A.F.D.C. benefits and family homelessness from the regression analysis. Bach Tr. 3520-24; Filer Tr. 2246-47 (admissions by Dr. Filer in his own paper that his study does not capture differences in proportion of homeless that are part of families in different cities); Tr. 2368-69 (admission by Dr. Filer that homelessness among singles has different causes than homelessness among families).

236. Moreover, although not mentioned by Dr. Filer on direct examination, his study did conclude that rent levels at the lowest

end of the housing market are clearly linked to homelessness. Filer Tr. 2374-75. This finding is at odds with Dr. Filer's view that housing affordability is not a significant factor in causing homelessness. Cf. Filer Tr. 1934-35 (changes in housing market does not have impact on homelessness); 1943-45 (discussing the two "primary" causes of family homelessness).

237. Dr. Filer's opinion that administrative case closings are a contributing cause of family homelessness (Filer Tr. 1943-44, 1951-52) is not inconsistent with inadequate shelter allowances also being a cause of homelessness. In fact, case closings and inadequate shelter allowances may work together in pushing families into homelessness.<sup>29</sup>

238. The graph created by Dr. Filer of the number of homeless families sheltered in the emergency shelter system in New York City (DX. AF-6 and DX. AF-6(1)) does not support his conclusion that the 1984 and 1988 shelter allowance increases had no impact on homelessness among families. Too many factors influence the number of families in the emergency shelter system to conclude anything about the impact of those modest shelter allowance increases on homelessness among families. Stegman Tr. 3370-71. For example, changes in the total number of families in the shelter system may result from changes in the rate at which families are leaving the system as well as changes in the rate at which families are entering. Thus, drops on the graph may as likely represent an

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<sup>29</sup> Dr. Filer did not think this cause of homelessness important enough to even mention in an article entitled "What Really Causes Family Homelessness." Filer Tr. 2233-34.

increase in the City's success in finding permanent placements for families as a decrease in families entering the system. Likewise, a rise on the graph may show a decrease in placements out of the system rather than an increase in entries.

239. Furthermore, a comparison of the data underlying DX. AF-6 and AF-6(1) with Dr. Filer's testimony shows that he mischaracterized the trends shown by the graph in an attempt to reconcile it with his conclusions. To support his conclusion that the 1988 shelter allowance increase had no impact on homelessness, he claimed that the graph showed that the "number of homeless families was -- statistically it was the same from the summer of 1987 through the end of 1988." In fact, there is no data in evidence showing the number of families in the shelter system for three of the four months prior to the 1988 increase in the shelter allowance. The data that there is clearly shows that the number of homeless families peaked at the beginning of 1988, remained relatively stable through July of 1988, and then declined steadily between August and December 1988. Compare Filer Tr. 1928-29 with DX. AQ.<sup>30</sup>

240. Even if it were appropriate to draw conclusions from DX. AF-6 and AF-6(1) about the impact of the 1984 and 1988 shelter allowance increases on family homelessness, those increases in the

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<sup>30</sup> H.R.A.'s Monthly Reports show that the number of families in the shelter system was 5,206 in January 1988, fluctuated slightly through June 1988 and was 5,206 again in July 1988. After July, the numbers descended each month to 4,637 in December 1988. DX. AQ (Monthly Reports for 1988). There were no Monthly Reports issued for September through November 1987.

shelter allowance were not based on reasonable estimates of the market cost of housing, see supra, at ¶¶ 31-37, 59 and no conclusion could be drawn about the impact that shelter allowances based on the cost of housing would have had. The 1984 and 1988 increases were too small to be relevant in predicting the impact on homelessness among families of an adequate shelter allowance schedule. Stegman Tr. 3376-77. See PX. 128-64, at p. 37 (1984 state report to the Legislature on homelessness stating that "the effects of the new shelter allowance are likely to be slow in appearing. Even at higher rent levels, available apartments are few, difficult to find, and very often unavailable to welfare recipients. In all probability, the new allowances will help to slow the growth of the homeless population, but will not by themselves reverse it").

241. Dr. Filer's opinions regarding the relationship between the shelter allowance and homelessness are also not persuasive in that they are based on incorrect data regarding entries into the New York City emergency shelter system and the corrected data does not support his conclusions. Dr. Filer testified that "the shelter allowance increase [in 1988] had no impact on the number of families becoming homeless in New York City" based on data for entries into the emergency shelter system contained in DX. AF-7. Filer Tr. 1939. He stated that the sources for the data contained in DX. AF-7 were the H.R.A. monthly emergency housing censuses. Filer Tr. 1936. The data used by Dr. Filer for DX. AF-7, however, did not match the data contained in the census reports.<sup>31</sup>

Furthermore, H.R.A. did not produce in response to defendant's subpoena census reports for all of the months contained in DX. AF-7. Compare DX. AF-7 with DX. AQ (September, October and November 1987 not contained in DX. AQ).

242. When confronted by the lack of census reports for all of the months contained in DX. AF-7, Dr. Filer altered his testimony and explained that his research assistant had visited H.R.A. and personally obtained a table of figures prepared by H.R.A. Filer Tr. 2386-88.

243. The State defendant later introduced an amended chart regarding entries into the shelter system, DX. AF-7(1), which was based on the data in the monthly reports, but Dr. Filer did not return to testify about the effect of the changed numbers on the opinions he had expressed. Tr. 3266-72.

244. In any event, the data on entrants into the shelter system contained in H.R.A.'s monthly reports was erroneous until March 1990. Knecht Tr. 3197-99; DiJesu Tr. 3445-49. Defendant later introduced corrected data regarding entries to the shelter system, DX. BV, but AF-7 was not further amended to reflect these corrections. Thus, the corrected data differs from both the original AF-7, and the amended version of that chart. Compare DX. BV (average number of entrants in 1989 was 828) with DX. AF-7

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<sup>31</sup> For example, the average number of entrants into the shelter system for the year 1988, as reported in the H.R.A. Monthly Reports was 872, while the number reported on AF-7 was 810. Compare DX. AQ (Jan. 946; Feb. 923; March 1053; April 848; May 862; June 935; July 948; Aug. 938; Sept. 831; Oct. 775; Nov. 762; Dec. 645) with AF-7.

(average number of entrants in 1989 listed as 813) and DX. AF-7 (1) (average number of entrants in 1989 was 782). Tr. 3153-56.

245. Prior to July 1987, H.R.A. does not have corrected data on the number of families entering the emergency shelter system. DiJesu Tr. 3447-48. For the period from July 1987 through February 1990, the corrected data is contained in DX BV. DiJesu Tr. 3448-49. Beginning with March 1990, the corrected data is contained in the C.I.S. Monthly Census Reports (DX. AQ). DiJesu Tr. 3444.

246. An analysis of the corrected data regarding entries into the emergency shelter system contained in DX. BV and DX. AQ (for the period starting with March 1990) shows that the revised data does not support Dr. Filer's opinion that the 1988 increase in the shelter allowance did not have an impact on the number of homeless families entering the emergency shelter system. The number of families entering the system was higher before the 1988 shelter allowance increase, dropped after the increase and remained lower for approximately 18 months, and then began to rise again. A table reflecting these trends is set forth below:

<u>Period</u>	<u>Avg. Number of entrants</u>
July - Dec. 1987	876
Jan. - June 1988	805
July - Dec. 1988	815
Jan. - June 1989	792
July - Dec. 1989	864
Jan. - June 1990	865
July - Dec. 1990	960

Source: DX. AQ (March 1990 - Dec. 1990); DX. BV.

VI. Families Receiving A.F.D.C. Cannot Spend The Nonshelter Portions of their Public Assistance Grants on Rent without Sacrificing other Basic Needs

247. The public assistance grant in New York City consists of three components, a shelter allowance, a basic grant, sometimes referred to as the "pre-add" allowance, and two home energy allowances. Krueger Tr. 669-670.

248. The "pre-add" allowance and the home energy allowances are set by the Legislature and are uniform throughout the State. Social Services L. § 131-a(3)(a-d).

249. The home energy allowances are provided in order to meet the costs of domestic energy needs such as lights, cooking and hot water. 18 N.Y.C.R.R. § 352.5(e)(2) (documentation that these grants have been used for intended purposes must include "proof of payment of an amount equal to or greater than the recipient's combined Home Energy Allowance and Supplemental Home Energy Allowance (HEA and SHEA) to domestic (lights, cooking, hot water) energy costs . . ."); PX. 89-30, at p. 2 (HEA and SHEA intended "to augment the amounts provided for utilities in the basic needs component").

250. Together with food stamps, the "pre-add" allowance provides recipients with basic income assistance for all expenses other than rent and energy costs. Food stamps alone are not intended to be sufficient to enable recipients to purchase an adequate diet. Instead, they are calculated based on an assumption



that in addition to food stamps, recipients will spend 30% of their countable cash income on food. Krueger Tr. 679. See, e.g., Remy Tr. 45-46; Diaz Tr. 73, 95; Irizarry Tr. 105, 136. For these purposes, countable income includes the pre-add allowance and the shelter allowance, but not the home energy allowances. Krueger Tr. 670.

251. The total value of the public assistance grant as a whole has declined drastically since the mid-1970s. In 1975 the maximum public assistance grant for a family of three in New York City was equal to 110% of the federal poverty level. By 1991, it had fallen to approximately 65%. Krueger Tr. 671. See DX. P-131, at p. 4 & Table 4 (referring to the "steady and significant decline over the past decade in the ratio of benefits to [the] poverty [level], even including the increases of the early 1980s"); G-37, at p. 11. In fact, the "pre-add" allowance has only increased by 15% since 1974. 1989 Session Laws ch. 77; DX. P-131, at p. 5 (1987 document stating that the basic grant has remained unchanged since 1974).

252. When food stamps are taken into account, the income of public assistance recipients declined from 124% of poverty level in 1975 to 85% today. Krueger Tr. 671. See DX. P-131, at Table 4.

253. The decline in the purchasing power of the nonshelter portion of the public assistance grant can be illustrated by adjusting past amounts for inflation. The basic grant was established in 1970, based on a measure of need known as the Bureau of Labor Statistics Lower Living Standard. Krueger Tr. 690-91, PX. 89-30, at pp. 2-3; 21-29, at p. 2; DX. P-131, at pp. 1-2. If the

1970 grant is adjusted for inflation, it would now be twice as high as the "pre-add" allowance is today. Krueger Tr. at 691-92.

254. The "pre-add" and home energy allowances do not provide enough money to families to enable them to use a portion of those funds for rent. Krueger Tr. 678-80. See, e.g., Remy Tr. 26; Diaz Tr. 73-74; Irizarry Tr. 108. A.F.D.C. families who are forced to attempt to pay rent over their shelter allowances with other portions of their public assistance grants must forgo basic needs. Such families are placed in ongoing crisis situations. Krueger Tr. 678-680, 699-700; Dehavenon Tr. 558. See, e.g., Diaz Tr. 81-83.

255. The inability of A.F.D.C. families to rely on the nonshelter portions of their public assistance grant to pay their rent is shown by the fact that many are forced to seek help from emergency food pantries and soup kitchens. Krueger Tr. 672-674; Dehavenon Tr. 558. See, e.g., Irizarry Tr. 107. More than half of all families seeking emergency food supplies report that they are seeking help because their public assistance money has run out. Krueger Tr. 704-705. See Krueger Tr. 673-74.

256. Many families that run out of money for food report that they have spent their food money on rent. Dehavenon Tr. 555-56. Dr. Dehavenon's studies of families experiencing food emergencies led her to conclude that:

[S]ince the early 1980's many families give up purchase of food and other necessary items in order to be able to pay excess rent and to keep a roof over their heads. I therefore find that the level of the shelter allowance is also a substantial contributor to family

food emergencies.

Dehavenon Tr. 558.

257. As Liz Krueger, Director of Income Support Programs for the Community Food Resource Council and an expert on public assistance, food stamps and the operation of emergency food providers in New York City explained:

[F]amilies with rents significantly higher than the shelter allowance are in the most sort of ongoing crisis stage. Every month, they don't have enough money to pay the rent according to what their rent level is supposed to be. If they are trying to pay their rent, they are using some of the money they are supposed to have for their food and their nonfood costs to cover the rent.

They are likely to end up, or they are most likely to end up, dependent on and needing emergency assistance, falling behind in both their food costs and their nonfood costs, and it's not just direct client work that shows this. Many, many studies have been done by government agencies, as well as other consumer organizations, showing that you can't afford to purchase all the basic needs, food and other, with the amount provided to you by your public assistance and food stamp allowance.

Krueger Tr. 679-80.

258. Emergency food providers, such as food pantries and soup kitchens, are unable to meet the full needs of families. Krueger Tr. 673-76. Demand for emergency food far outstrips the resources available to meet this need. As a result, providers of emergency food supplies are forced to turn away hungry families seeking food. Generally, they limit the amount of food they provide to a three day supply and limit the frequency with which families can return

for additional provisions. For example, the Food and Hunger Hotline, a not-for-profit organization that refers people to food pantries and soup kitchens, will not provide a referral more than once a month. Id.

259. In a 1988 report, the Bureau of Policy Analysis of the Office of Program Planning, Policy and Analysis of the State Department of Social Services ("the OPPAD Report"), recalculated the costs of the items of need provided for by the "pre-add" allowance and concluded that the cost of meeting such needs was 79% higher than the amounts provided by the "pre-add." PX. 89-30, p. 16; DX. Q-132 at pp. 1-2. Since 1988, the "pre-add" has only been increased by 15%. 1989 Session Laws ch. 77. This report is the only study by the Department of Social Services of the basic needs component since 1974. See DX. O-130 (December 1986 statement that the basic standard of need has not been re-examined since 1974); Q-132, at p. 4 ("Much of the current embarrassment surrounding the standard of need study results from the issue's [sic] having been ignored for a decade and a half").

260. The OPPAD Report, PX. 89-30, thus shows that the basic grant lags far behind the only estimate that the State defendant has made of the actual costs of the necessities that the basic grant is intended to provide for. In view of this large deficit revealed by the Report, it is clear that the basic grant contains no money that can be spent on rent without impairing the ability of families to purchase clothing, food and other necessities.

261. The Department of Social Services and its employees have

admitted that the nonshelter portions of the public assistance grant are not provided to meet rental costs. The Executive Budget for the fiscal year 1987-1988 acknowledges that when families are forced to rent apartments with rent above the shelter allowances, their ability to purchase other necessities is compromised: "If shelter allowances remain at current levels, over 60 percent of A.F.D.C. and HR recipients would be forced to use a portion of their basic needs grant to pay rent, thus eroding purchasing power and diminishing access to food, clothing and other essentials." PX. 37-66, at p. 355.

262. The executive budget for the fiscal year 1987-88 also stated that: "[B]y 1988 approximately 63 percent of the public assistance caseload would pay rents in excess of the current shelter ceilings. This would diminish the value of the total welfare grant by forcing recipients to pay a portion of their rent from allowances intended for food, clothing and other essentials". PX. 37-66, at p. 361.<sup>32</sup>

263. The fact that Department officials do not consider a portion of the basic grant as being intended for housing expenses is also shown by the fact that the OPPAD Report on valuing basic

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<sup>32</sup> See also PX. 153, at p. 2 (Department Administrative Directive stating "It has been projected that, under the current shelter allowance schedule, approximately 63 percent of the public assistance caseload would be paying shelter costs in excess of the applicable shelter ceilings by 1988. This would lessen the value of the public assistance grant by making recipients pay a portion of their shelter costs from allowances intended for other essential items"); DX. G-37, at p. 12 ("increasing number of clients are using the limited amount of money we provide for clothing and other needs to pay rent").

needs of public assistance recipients did not analyze rent costs of public assistance recipients or the adequacy of the shelter allowance. Dr. Welsh, the author of the report, testified that OPPAD did not study rent issues because the Report focussed on the basic needs grant, which is not intended to include costs for shelter. PX. 137-153, at pp. 237-38.

264. Ms. Krueger showed through use of an example how an A.F.D.C. family of three with rent \$100.00 in excess of the shelter allowance would find itself more than \$130.00 short of meeting its basic monthly needs. PX. 90-263; Krueger Tr. 692-700. Ms. Krueger's testimony in this regard is based on conservative estimates. Krueger Tr. 698-699. For instance, Ms. Krueger's example uses data derived from the current USDA Thrifty Food Plan amount, adjusted to the maximum food stamp allotment amount. Her figures do not reflect higher local food costs. Krueger Tr. 687-689.

265. Each year, the Thrifty Food Plan amount is adjusted by a small percentage to calculate the "maximum food stamp allotment amount". In 1990-1991, the maximum food stamp allotment amount was set by statute to be no more than 3% (\$8) higher than the Thrifty Food Plan amount. 7 U.S.C. § 2012(o)(11).

266. The author of the OPPAD Report, Dr. James Welsh, testified that he believed Ms. Krueger's budgeting example did not conform with the methodology of the OPPAD Report because it substituted the maximum food stamp allotment amount for the Thrifty Food Plan amount unadjusted for food stamp purposes. Welsh Tr.

1643-1644.

267. However, Dr. Welsh himself used the 1988 maximum food stamp allotment amount, rather than the Thrifty Food Plan amount throughout the OPPAD Report. PX. 89-30, at p. 9 (figures are "as determined for food stamp purposes"). Dr. Welsh further adjusted this amount by a number of factors, including a 6% increase to reflect the higher cost of food in New York State. The net effect of these adjustments are that the OPPAD Report used a figure that is higher than the Thrifty Food Plan amount in effect at that time. Krueger Tr. 687-689, 698-699; Ms. Krueger's example therefore used a more conservative methodology than did the OPPAD Report. PX. 90-263.

268. Ms. Krueger's example is also conservative because it is based on the Thrifty Food Plan which is considered by the United States Department of Agriculture to reflect the cost of food only on a short-term emergency basis. Krueger Tr. 688-690. When the State Department of Social Services established the "pre-add" in 1969, it relied on the more nutritional USDA "low-cost" food plan. Krueger Tr. 688-691. Similarly, OPPAD in its report on revaluing the basic need standard has also recommended reliance on the "low-cost" food plan. PX. 89-30, at p. 6.

269. Randall Filer testified that in his opinion the OPPAD Report on basic needs, PX. 89-30, is flawed because it used the Consumer Expenditure Survey, which he considers unreliable to derive amounts for nonfood needs. Filer Tr. 2094-96. Randall Filer, however, did not offer any other estimate of the amounts required

to meet nonfood needs. There is no reason to believe that another measure would yield significantly different results. In addition, the use of the Consumer Expenditure Survey for this purpose was expressly recommended to Commissioner Perales by Michael Dowling, then Deputy Commissioner for Income Maintenance. DX. 0-130; P-131, at p. 5 ("The Department's study will be aimed at developing a picture of the expenditures of 'typical' low-income households. The data employed will be from the most recent annual Consumer Expenditure Survey conducted by the federal Bureau of Labor Statistics"). Thus, high level officials in the State Department of Social Services have endorsed the use of the Consumer Expenditure Survey for this purpose.

270. Moreover, Ms. Krueger's testimony concerning the inability of public assistance recipients to spend their nonshelter grants on rent is substantially uncontradicted. Neither Dr. Filer nor any other witness testified that A.F.D.C. recipients are provided with funds in the nonshelter portions of their grants than can be spent on rent without sacrificing basic needs.

271. No state official testified that funds can be diverted in this manner and no study was introduced or referred to that reached such a conclusion. To the contrary, the State Department of Social Services has admitted that when shelter allowances fail to keep pace with rising rents, "public assistance funds intended for clothing, food and other basic needs must be diverted to meet shelter costs. The lack of buying power experienced by this population contributes to the substandard living conditions that



exist among the State's neediest families". PX. 23-33, at p. 2.

VII. The Plaintiffs and other Individuals Receiving Relief in this Action were all Threatened with Eviction Due to the Inadequacy of the Shelter Allowance and Have Only Managed to Avoid Eviction Because of Relief Granted in this Action

272. As of March 12, 1991, 135 families receiving A.F.D.C. had been approved for preliminary relief in this case. Blaustein Tr. 751; PX. 92.<sup>33</sup> This number increases on a daily basis. The vast majority of these families received relief pursuant to an informal procedure developed by counsel in this case. Id. Others received interim relief pursuant to order of this court. (N. Carabello, J.M. Beal, L. Green, T. Felder, P. Smith, A. Melendez, M. Artiaga, I. Rivera, D. Deas, and T. Saxby).

273. Under the informal procedure, counsel for proposed intervenors write to the Attorney General's office requesting consent to payment of ongoing rent and arrears in excess of the maximum shelter allowance for the pertinent household size. Tr. 750. All of the individuals approved for relief have active public assistance cases, Tr. 774, and all but four had ongoing rents in excess of their shelter allowances. PX. 92.<sup>34</sup> All were sued in

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<sup>33</sup> The exhibit lists 137 recipients. However, one potential intervenor, Fatima Serrano, subsequently withdrew. Tr. 2923. Additionally, counsel stipulated that one of the recipients was HIV positive and eligible for a supplemental shelter allowance under D.S.S. regulations. Tr. 2916.

<sup>34</sup> As Burton Blaustein, HRA's Deputy Director of Income Support Operations, explained, the recipients listed on PX. 92 who are not reported as having rents in excess of the shelter allowance, may well have received interim relief in this action,

housing court and have judgments entered against them. Tr. 3560-61.

274. In each instance, H.R.A. paid rent arrears as part of the preliminary relief in this case in order to forestall eviction, and in all but four cases, ongoing rent in excess of the shelter allowance has been provided. PX. 92; Tr. 755. These facts show that these 135 families were all threatened with eviction because their shelter allowances did not cover their full rents and that their evictions were averted by the preliminary relief in this case. The testimony of three of these recipients, and the case files of eleven others introduced in evidence by defendant, also confirm this conclusion.

a. Testimony by Recipients

1. Jacqueline Remy

275. Jacqueline Remy lives in Brooklyn with her three children, ages three, thirteen and sixteen. Remy Tr. 23. She has been a recipient of public assistance for four years. Id. at 23-24.

276. Ms. Remy turned to public assistance after her marriage broke up. Tr. 24. Before her marriage ended, Ms. Remy and her husband worked. Ms. Remy was a cashier in a supermarket. Tr. 52. Currently, she does not work because there is no one else to care for her children. Tr. 66-67.

277. Ms. Remy receives monthly public assistance grants totalling \$340.38 to meet her family's needs other than rent and,

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prior to an event that lowered their rents, such as receipt of a "section 8" certificate. Blaustein, Tr. 749-50, 768. See infra, at ¶¶ 330-38 (Linda Green).

prior to receiving relief in this action, she received a monthly shelter allowance of \$312. Remy Tr. 24, 26. Ms. Remy's shelter allowance is paid in the form of two-party checks.

278. Ms. Remy does not receive the full monthly allowance of \$375.70 for nonshelter needs because the Department of Social Services pays \$35.32 each month directly to Consolidated Edison for Ms. Remy's electric bill. Tr. at 26. Ms. Remy also receives \$214 in food stamps each month.

279. Ms. Remy's nonshelter grant and her food stamps provide an income of only \$4.63 per person per day, for all of her family's expenses other than rent and electricity.<sup>35</sup>

280. Ms. Remy moved into her rent stabilized apartment in 1987. Tr. 27, 36. Her rent is now \$441.90, which is \$129 in excess of the maximum shelter allowance. Id. Prior to December 1990, Ms. Remy's rent was \$413.82, which is \$101.82 in excess of the shelter allowance for a family of four.

281. If Ms. Remy paid \$129 each month to her landlord out of the nonshelter portions of her public assistance grant, she and her family would have been left with a cash income of only \$1.76 per person per day. Prior to December 1990, in order to pay the portion of her rent due above the maximum shelter allowance, Ms. Remy would have had to pay \$102 each month to her landlord out of her nonshelter income. Her family would have been left with a cash

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<sup>35</sup> This figure was determined as follows:  $\$340.38 + 214 = \$554.38$ ;  $\$554.38/30 = \$18.48$ ;  $\$18.48/4 = \$4.62$ .

income of only \$239 each month, or \$1.99 per person per day.

282. After April 1989, Ms. Remy was unable to pay this additional \$102 a month to her landlord. Tr. 26, 28. To meet her family's needs Ms. Remy spends her food stamps and an additional \$85-90 a month on food. She spends about \$34 to \$38 a month on gas, \$60 a month on transportation, \$12 for the telephone, \$40 for laundry, \$23 for toiletries, \$20 on personal care items, and \$90 on clothes. Tr. 24-25, 64-65.

283. After making these monthly expenditures, Ms. Remy has no money left over. When she incurs additional expenses, such as for school trips for her children, she must try to borrow from neighbors or from a local grocery store. Tr. 25. Ms. Remy cannot afford to take her children to the movies. Tr. 48. She buys the cheapest food that she can find and sometimes gets a ride from her sister so that she can shop in New Jersey where prices are lower. Tr. 24, 44-45.

284. Prior to receiving relief in this case, Ms. Remy paid her shelter allowance of \$312 to her landlord each month, but could not pay the additional \$102 that she owed. Tr. 27. A friend of Ms. Remy's contributed the amount due above the shelter allowance each month up until April or May 1989. Tr. 28. At that time, Ms. Remy's friend encountered personal problems and could no longer contribute toward Ms. Remy's rent. Tr. 28.

285. Because Ms. Remy could not pay the portion of her rent that exceeded her shelter allowance, she was sued for nonpayment of rent in June 1990. The nonpayment petition sought \$1,379.66. Tr.

28; PX. 1-619.

286. Ms. Remy entered into a stipulation in housing court requiring her to pay \$1,480.94 by November 26, 1990, reflecting rent due through October 1990. This amount consisted entirely of rent due in excess of Ms. Remy's shelter allowance. In return, Ms. Remy's landlord agreed to perform certain repairs. PX. 2-620.

287. Ms. Remy could not pay the \$1,480.94 in back rent that she owed. Eventually, the sum was paid as interim relief in this lawsuit. Tr. 31. But for the interim relief in this lawsuit, Ms. Remy and her three children would have been evicted because she was unable to pay the full rent and would have become homeless. As part of her interim relief in this case, Ms. Remy now receives a monthly shelter allowance of \$405.90. Tr. 24.

288. Ms. Remy has searched extensively for a less expensive apartment. She has gone door to door seeking apartments, read newspaper listings and applied for subsidized housing. All of these efforts have been unsuccessful. Tr. 31-32, 50-51.

289. The threat of eviction caused Ms. Remy to worry greatly about what would become of her and her three children. Ms. Remy had no place to go had she and her children been evicted. She vowed that she would never go to a homeless shelter because she had been in one thirteen years ago and considered shelters unfit for human habitation. Tr. 33-34.

## 2. Enid Diaz

290. Enid Diaz lives in the Bronx with her four children, two

of whom are eight years old. Her other two children are ten and fourteen years old. Diaz Tr. 70. Her family's sole income is public assistance. Tr. 71.

291. Ms. Diaz receives a monthly public assistance cash grant of \$384 to meet her family's needs other than rent. Tr. 71. Ms. Diaz also receives between \$206 and \$234 in food stamps each month. Tr. 72. Prior to receiving interim relief in this action, Ms. Diaz received a monthly shelter allowance of \$337. Tr. 71. Ms. Diaz's nonshelter public assistance grant and her food stamps (assuming a monthly amount of \$234), provide the family with only \$4.12 per person per day. Ms. Diaz's nonshelter grant is currently reduced by 10 %, or approximately \$80 a month as a recoupment for a past rent arrears grant. Tr. 98.

292. Ms. Diaz's rent is \$537.34 each month, an amount that is \$ 200 in excess of the maximum shelter allowance for a family of five. Ms. Diaz moved into her rent stabilized apartment two years ago. Tr. 74, 85. Her rent was scheduled to increase on April 1, 1991 to \$571. Tr. 74. Prior to September or October 1990, Ms. Diaz's shelter allowance was paid directly to her landlord by the Human Resources Administration. Tr. 71.

293. Ms. Diaz was unable to pay her landlord the \$200 a month by which her rent exceeded her shelter allowance. Tr. 75-76. If she had done so, her family would have been left with a monthly cash income of only \$184 for all her family's needs other than rent, or \$1.27 per person per day.

294. Ms. Diaz has no money left over from the nonshelter

portions of her public assistance grant that she can apply to the rent each month without depriving her family of basic necessities. Ms. Diaz spends between \$75 and \$100 each month for utilities, \$100 on clothing, \$16 to \$18 on haircuts for her children, \$30 for a telephone, \$30 on toiletries, \$30 on laundry, \$11.50 on transportation, and \$30 on miscellaneous expenses such as school trips. Tr. 72-73. She also spends between \$75 and \$100 each month on food, in addition to her food stamps. Id.

295. In May 1990, Ms. Diaz's landlord sued her for nonpayment of rent. PX. 4-623. A final judgment was entered in the amount of \$2,604. Tr. 80. Ms. Diaz received a \$500 abatement. Tr. 98-99.

296. In order to stave off eviction, Ms. Diaz made three payments of \$300 to her landlord, in July, October and November 1990. Tr. 81, 99. Ms. Diaz took these funds out of her bi-monthly public assistance grant of \$360, leaving her with only \$60 for her family's needs for two week periods. Id. Ms. Diaz could not meet her family's needs with these amounts. Tr. 82. She went into debt and could not pay her electricity bills. Id. at 82, 86.

297. While trying to stave off eviction, Ms. Diaz and her children suffered great anguish and depression. Tr. 84.

298. Eventually, Ms. Diaz's rent arrears were paid by the Department of Social Services as interim relief in this case. Tr. 82; PX. 92. Absent the relief in this case Ms. Diaz and her four children would have been evicted.

299. Before moving into her current apartment, Ms. Diaz looked extensively for inexpensive apartments. Her current apartment is

the least expensive one that she could find. Tr. 100-101. Since moving in, Ms. Diaz has continued to look constantly for a less expensive apartment, but has been unable to find one. Tr. 83, 85, 100. She has walked door to door and consulted newspaper listings. Tr. 83.

### 3. Mabel Irizarry

300. Mabel Irizarry and her two children, ages two and sixteen live in Manhattan. Tr. 103-04. She is a recipient of public assistance. Ms. Irizarry receives a public assistance grant of \$232 a month for non-shelter needs and \$210 in food stamps. Prior to obtaining relief in this action, Ms. Irizarry received a monthly shelter allowance of \$286. Ms. Irizarry's shelter allowance is paid directly to her landlord by the Human Resources Administration. Tr. 104-05. Because Ms. Irizarry was unable to pay her electricity bills on a number of occasions, the Human Resources Administration pays her electric bill directly. Tr. 128, 133.

301. Ms. Irizarry lives in a two bedroom apartment that rents for \$338.49, Tr. 108, an amount that is \$52.49 in excess of her shelter allowance. Ms. Irizarry has lived in her apartment for thirteen years. The apartment is rent stabilized. PX. 7-619. At the time she moved in, the rent was \$195. It has increased every two years. Tr. 108.

302. Ms. Irizarry has not been able to pay any money to her landlord other than her shelter allowance for four years. Tr. 109. Even without using portions of her nonshelter income to pay rent, Ms. Irizarry is unable to meet her family's basic needs. In



addition to her food stamps, she spends approximately \$30 each month on food, \$40 a month on diapers, \$40 a month on laundry, \$20 a month on toiletries, \$20 a month on carfare, \$30 a month on clothes, and \$7 a week on cigarettes. Tr. 106-107. She also gives her teenage son \$22 a month in spending money. Id.; Tr. 134. She cannot afford a telephone and goes to Catholic Charities for clothing for her children. Tr. 107.

303. On July 13, 1990, Ms. Irizarry's landlord sued her for nonpayment of rent. Tr. 109, PX. 6-617. Ms. Irizarry entered into a stipulation agreeing to pay \$1,719.79 in back rent. The stipulation provided that if Ms. Irizarry failed to make this payment by August 31, 1990, a warrant of eviction would be executed upon 72 hours notice. PX. 7-618. Ms. Irizarry was unable to pay this amount. Tr. 111.

304. The amount that Ms. Irizarry owed under the stipulation was eventually paid as interim relief in this case. Absent this relief, Ms. Irizarry would have been evicted and her family would have become homeless. Tr. 112-113.

305. Ms. Irizarry has looked extensively for less expensive housing, but has not been able to find a cheaper apartment. Tr. 112. She has consulted newspaper listings and real estate agents. Id.

b. Case Records Introduced by State Defendant

306. State defendant introduced in evidence portions of the public assistance case records of eleven individuals who have

received interim relief in this action.<sup>36</sup> These files are exhibits DX. BR 1, 3, 4, 6, 8, 9, 11, 12, 13, 14 and BR. 15. Tr. 3264, 3562. Although the particular circumstances of these families may vary, and some of the families may have had a number of other problems, a common thread runs throughout -- inability to pay rent because of the level of the shelter allowance, resulting in a threatened eviction that was forestalled by the interim relief in this case.<sup>37</sup>

1: Clara Saleh (DX. BR-8)

307. Clara Saleh and her daughter, Natasha, born on September 5, 1990, are recipients of A.F.D.C. Ms. Saleh's rent is \$325, an amount that is \$75 in excess of her shelter allowance. Recertification Form, January 10, 1991. Ms. Saleh was threatened with eviction due to the fact that her rent exceeded the shelter allowance. History Sheet, December 27, 1990. The evidence shows that only preliminary relief in this case prevented the eviction of Ms. Saleh and her infant.

308. Ms. Saleh was sued by her landlord for nonpayment of rent. The petition sought rent arrears in the amount of \$440, which had accrued at the rate of \$110 a month from August 1990 through November, 1990. See Petition dated November 2, 1990.

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<sup>36</sup> Three of these families are named plaintiffs in this action, Linda Green, Johnnie Mae Beal, and Roselaine Louis-Charles. The remainder received relief informally pursuant to the consent of the defendant. PX. 92.

<sup>37</sup> The citations in this section are all to documents included in exhibits DX. BR 1-15, unless another exhibit is specifically noted.

309. During the period for which arrears were sought, Ms. Saleh received a shelter allowance for a household of one. Ms. Saleh's daughter was not born until September 1990 and was not added to her public assistance budget until January 1991. See Letter of Jocelyne Martinez to Robert Schack, Jan. 4, 1991.<sup>35</sup> The arrears sought thus consisted of the amount due in excess of the \$215 shelter allowance Ms. Saleh received.

310. On December 21, 1990, a stipulation was entered in Housing Court providing that Ms. Saleh would pay \$550, which included the unpaid \$110 for December 1990. See Stipulation, December 21, 1990. To pay this amount, Ms. Saleh requested preliminary relief in this action. She sought \$410 in rent arrears consisting of "excess rent," and \$140 in retroactive benefits reflecting the addition of Natasha to the household. Letter of Jocelyne Martinez, Jan. 4, 1991. This request was approved on January 7, 1991. Letter of Robert J. Schack. See also PX. 92.

2. Vilma Mitchell (DX. BR-12)

311. Vilma Mitchell and her two children are recipients of A.F.D.C. Ms. Mitchell's rent is \$498.62, an amount that is \$212.62 in excess of the family's shelter allowance. See Recertification Sheet, Nov. 9, 1990. The evidence shows that Ms. Mitchell was in fact evicted because of her inability to pay the rent due in excess of her shelter allowance. As a result of the preliminary relief in

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<sup>35</sup> Ms. Saleh was eligible for AFDC from June 1990 forward because of her pregnancy. See Social Services Law § 131-a.6(e); 18 N.Y.C.R.R. § 352.7(k).

this action, she was restored to possession of her apartment.

312. Prior to an order entered by the Honorable Anthony Andreacchi, Civil Court, Kings County, on October 24, 1990, Ms. Mitchell's rent was \$646.25 a month. PX. 161.

313. Before receiving relief in this action, Ms. Mitchell was unable to pay her full rent. In May, 1990, her landlord commenced a nonpayment proceeding against her, seeking her eviction. The petition sought \$292.50 from December 1989 and all rent due from January 1990 through May 1990. PX. 162. On May 29, 1990 Ms. Mitchell entered into a stipulation, pro se, agreeing to a final judgment of \$3523.75, with issuance of the warrant stayed until June 19, 1990. PX. 163.

314. On October 11, 1990, Ms. Mitchell went to her income maintenance center and asked for an emergency grant to pay her arrears. Ms. Mitchell's case worker calculated that of the sum due at that time, \$3,348.75 represented "excess" rent, while \$2,860, represented rent due below the shelter maximum level. See History Sheet, Oct. 11, 1990.

315. On October 12, 1990, the case worker spoke with an agent of Ms. Mitchell's landlord. The agent stated that it was "unlikely" that the landlord would accept partial payment of the rent arrears and enter into an "excess rent payment plan." History Sheet, Oct. 12, 1990.

316. Three days later, Ms. Mitchell's case worker informed her that H.R.A. would not issue a rent arrears grant because Ms. Mitchell's proposed "excess" rent "donor" was "unacceptable."

History Sheet, Oct. 15, 1990.

317. On October 24, 1990, the income maintenance center learned that Ms. Mitchell had been evicted. History Sheet, Oct. 24, 1990. It is not clear from the record when the eviction took place.

318. On that same day, the Center was informed that Ms. Mitchell had been approved for interim relief in this case. Subsequently, all of her rent arrears were paid and she and her children were restored to possession of their apartment pursuant to the Order of the Housing Court Judge. Id.; PX. 161.

3. Estelle Betty (DX. BR-11)

319. Estelle Betty applied for public assistance on behalf of herself and her two daughters, ages 6 and 3, on December 6, 1990. See Application, dated Dec. 6, 1990. At the time, Ms. Betty was eight months pregnant. Until November, 1990, Ms. Betty had been employed. Eligibility Determination History Sheet, Dec. 13, 1990. At the time of her application, Ms. Betty's rent was \$617 a month. Ms. Betty's apartment is in Brooklyn and is subject to rent stabilization. See Lease, dated July 26, 1990. The evidence shows that absent the preliminary relief in this action, the Betty family would have been evicted.

320. At the time she applied for benefits, Ms. Betty was in arrears for the months of October, November and December 1990. Eligibility Determination History Sheet, Dec. 13, 1990. She had been unable to pay her rent because of child care and other

expenses, including carfare, groceries, and gas bills. Statement of Estelle Betty, Dec. 24, 1990.

321. Ms. Betty was sued for nonpayment of rent by her landlord. A final judgment was entered on November 27, 1990. Order to Show Cause, dated Nov. 30, 1990, in Stern v. Yarde, Civil Ct. Kings Co., Index No. 103961/90. On December 10, 1990, Ms. Betty entered into a stipulation, pro se, providing for a final judgment in the amount of \$1,848, with the execution of the warrant of eviction to be stayed until December 31, 1990. Stipulation, dated Dec. 12, 1990, entered in Stern v. Yarde, supra.

322. On December 13, 1990, Ms. Betty applied for emergency assistance. She stated that "I'm not working because I am pregnant I cannot do my duties. I'm unable to pay my rent and take care of my kids." Request for Emergency Assistance, Dec. 13, 1990.

323. On December 24, 1990, Ms. Betty's case worker noted that Ms. Betty stated that she owed three months of back rent. The caseworker told Ms. Betty to "get a donor" and that Ms. Betty replied that "she cannot get a donor." "Therefore," the caseworker noted, "we are paying rent for current month 12/90 p.a. level which is \$286 for a family of three." History Sheet, Dec. 24, 1990. These notes show that because Ms. Betty did not have a third party prepared to pay the portion of her rent in excess of the shelter allowance, her caseworker determined that she was not eligible for payment of her arrears as an applicant for public assistance. See DX. BI, at p. 9 (rent arrears above shelter allowance only payable to applicants who can show ability to pay rent in future).

Instead, the caseworker found Ms. Betty only to be eligible for payments at the shelter allowance amount as of the date of application, leaving her arrears unpaid.

324. Ms. Betty subsequently requested relief through the informal procedure in this case. Her request was approved by the defendant. PX. 92; Information and Referral Notice, March 7, 1991. A total of \$2195.50 in arrears was issued on or about March 7, 1991. PX. 92. These arrears included \$1,153.70, issued as "Code 30." Information and Referral Notice, supra. Code 30 refers to applicant rent arrears, reflecting arrears accrued before Ms. Betty received public assistance. PX. 169, at p. 221 ("Special Grant Codes"). The remainder of the arrears paid consisted of "Jiggetts" arrears, or rent due in excess of the shelter allowance in the amount of \$964.60 for the period in which Ms. Betty received public assistance (\$331.20 for December 1990 and January 1991, \$305.20 for February 1991) and \$77.20 in legal fees. Information and Referral Notice, supra. Ms. Betty currently receives a monthly shelter allowance in the amount of her full rent as interim relief in this action. PX. 92; Imbo Tr. 778, 788; History Sheet, undated.

4. Linda Green (DX. BR-15)

325. Linda Green is a recipient of A.F.D.C. who lives in Rockaway, Queens. Case File, passim. Since April 1988, Ms. Green has had a federal "Section 8" certificate which limits her contribution to the rent to an amount that is below the maximum shelter allowance. PX. 166. The remainder of the rent is paid by

the federal government. See supra, at ¶ 99, n. 13 (discussing the "Section 8" program). Prior to her receipt of a Section 8 certificate, Ms. Green was threatened with eviction and received relief in this action to prevent her and her children from losing their home.

326. Ms. Green applied for public assistance on behalf of herself and her daughter, Jamel, in November 1983. At the time Ms. Green was pregnant and her daughter, Danielle, was born the next month. Prior to receipt of public assistance, Ms. Green had worked for the Social Security Administration for approximately 10 years. Application Development Sheet, Nov. 1., 1983; Recertification Sheet, July 1986 (showing birthdate of Danielle).

327. At the time she began to receive public assistance, Ms. Green lived doubled-up with her cousin, Mathilda Cunningham, and her two children. Letter of Mathilda Cunningham, dated April 25, 1984. Ms. Green contributed \$180 a month to the total rent of the apartment. Letters of Mathilda Cunningham, dated Nov. 3, 1983; September 24, 1984; March 6, 1985; Feb. 3, 1986.<sup>36</sup>

328. In February 1986, Ms. Cunningham moved out of the apartment. The landlord agreed to give Ms. Green a lease starting on May 1, 1986, at a monthly rent of \$430. Routing Control Sheet, April 23, 1986. In approving Ms. Green's security deposit, the

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<sup>36</sup> Ms. Cunningham explained that she began to charge Ms. Green rent in August 1983 and that "now that she is pregnant and can no longer work she can no longer give me money for rent and food. I have two children Shawn and Desiree and myself to feed and cloth. I can no longer afford to let them stay with us . . . . There are five of us living in this apartment and it is very crowded." Letter of Nov. 3, 1983.



income maintenance center required her to submit a letter from a "nonlegally responsible relative" stating that he or she would pay the "excess" rent. Id.

329. In May 1986, Ms. Green took in a roommate, Gwen McCormick, who contributed \$200 a month toward the rent, leaving Ms. Green with a contribution of \$230 a month. Letters of Gwen McCormick, May 5, 1986, April 18, 1987. However, Ms. McCormick moved out of the apartment in February 1987, leaving Ms. Green to pay the full rent by herself. Id. Ms. Green's rent exceeded the monthly maximum shelter allowance for a family of three at that time (\$244), by \$186.

330. On March 31, 1987, Ms. Green's landlord presented her with a three day demand for back rent. Three Day Notice to Linda Green from Arverne Associates, dated March 31, 1987. It subsequently sued Ms. Green for nonpayment of rent. On December 7, 1987, this Court granted Ms. Green's motion to intervene and stayed her eviction pending determination of the motion for a preliminary injunction and motions to dismiss then pending. Order in Jiggetts v. Grinker, dated Dec. 7, 1987. On January 12, 1988, the Court issued a decision directing that Ms. Green's rent arrears be paid and continuing the stay of her eviction pending payment. Defendants appealed from that order. See Orders, dated March 9, 1988; March 15, 1988.

331. Ms. Green apparently brought the Court's decision to her income maintenance center to request payment of arrears. The worker contacted another H.R.A. employee who stated that Ms. Green

must pay the excess and that Ms. Green "knew when she moved in that the rent was excess, plus how will she pay the excess in the future?" The worker also noted that the "client must have some risk situation for them (DSS) to help" such as AIDS or a disability. History Sheet, March 21, 1988. (Excerpts of a copy of the Supreme Court's Decision in Jiggetts are contained in DX. BR-15).

332. On April 26, 1988, while this Court's order directing payment was still on appeal, Ms. Green, H.R.A. and Ms. Green's landlord entered into a stipulation providing that the landlord would accept a Section 8 certificate from Ms. Green as of May 1, 1988, provided that she tender \$2959 by that date. H.R.A. agreed to issue \$1,809 of this amount as a duplication of shelter allowances previously paid. Because Ms. Green owed sums in addition to the \$2,959, the stipulation provided that if Ms. Green prevailed on the pending appeals in this case, those sums would be paid pursuant to this Court's order. If, however, Ms. Green lost on appeal and this Court's order were to be vacated, Ms. Green would pay off the arrears at the rate of \$75 a month. PX. 166.

333. After the Court of Appeals decision in this case, H.R.A. issued a rent arrears payment of \$2,977 in satisfaction of the stipulation. PX. 92; History Sheet, dated June 11, 1990. Absent the stay of eviction and payment of arrears ordered by this Court, Ms. Green and her family would have been evicted from her apartment long before she received a Section 8 certificate.

5. Carmela Flores (DX. BR-13)

334. Carmela Flores is a recipient of A.F.D.C. She lives with her four children, ages 24, 21, 15, and 12. Ms. Flores receives a public assistance grant for a household of three. Recertification Form, July 2, 1991. Up until June 1990, Carmela Flores' daughter Theresa was included in Carmela Flores' public assistance budget. Since August 1990, Theresa has received a grant for a household of one. Notice of Acceptance, August 14, 1990. Theresa Flores' shelter allowance, however, is cooperatively budgeted with her mother's so that the family is treated as a single household of four for shelter allowance purposes. Budget Printout, August 14, 1990. The evidence shows that the Flores family was threatened with eviction and only the payments issued as preliminary relief in this case enabled the family to retain their apartment.

335. Ms. Flores' 24 year old son, Ricky, has not been a recipient of public assistance since October 1989. Budget Printout, August 14, 1990. <sup>37</sup>

336. The rent on the Flores' apartment is \$453.66, an amount that is \$141.66 in excess of the maximum shelter allowance for a household of four. Prior to October 1990, Ms. Flores' rent was \$430 a month. Lease dated Oct. 31, 1988. Letter of Lori Brooks, dated Sept. 26, 1990, attached to Memorandum from Jan Goldenberg to

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<sup>37</sup> Ms. Flores was sanctioned in November 1989 for a period of 60 days. The sanction was finally lifted in September 1990. During the period of the sanction, the household received a budget for two only, since neither Ricky nor Theresa Flores were recipients at that time. The monthly difference between the shelter allowance Ms. Flores was entitled to in the absence of a sanction and what she did receive was \$36.00.

L. Romasco, dated October 10, 1990.

337. Ms. Flores fell behind in her rent. On February 6, 1990, her landlord commenced an action to evict her, in the form of a holdover, alleging violations of the lease. This action was resolved by stipulation, dated August 1, 1990. The stipulation settled all of the claimed lease violations. It provided, however, that Ms. Flores was required to pay her landlord \$3,247 in back rent by September 5, 1990. The arrears included rent due from October 1, 1989 through August 31, 1990, minus \$1,483 in payments made by Ms. Flores. The stipulation provided that if this amount were not paid by the specified date, Ms. Flores' landlord could reinstate the case against her in housing court. Stipulation, dated Aug. 1, 1990, Civil Court, New York County, Index No. 57467/90.

338. On September 26, 1990, Ms. Flores, by her attorney, asked the State defendant to approve payment of her rent arrears, and to provide her with a shelter allowance in the amount of her ongoing rent as interim relief in this action. Letter of Lori Brooks. On October 2, 1990, the Attorney General's Office approved this request. Letter of Robert Schack.

339. Pursuant to this agreement, on October 13, 1990 H.R.A. paid arrears totalling \$3,991.85, consisting of \$1,973.85 in "excess" rent and the remainder as reissuance of stale or unnegotiated shelter allowance checks. History Sheet, Oct. 12, 1990. Ms. Flores currently receives a shelter allowance in the full amount of her rent. PX. 92.

6. Myriam Figueroa (DX. BR-14)

340. Myriam Figueroa and her two children, aged 11 and 4, are recipients of A.F.D.C. Budget Entry Supervisor Summary, March 26, 1991; Case Compliance-Suffix/Individual Summary, March 25, 1991. The rent on their apartment is currently \$427, an amount \$141 above the maximum shelter allowance for a family of three. Up until at least October 1990, the rent was \$400. Budget Entry Supervisor Summary Printout, September 18, 1990. The evidence shows that Ms. Figueroa and her children would have been evicted, absent the interim relief in this case.

341. Ms. Figueroa was sued by her landlord for nonpayment of rent. On May 3, 1990, a judgment for \$6,400.00 was entered against Ms. Figueroa. Stipulation entered in civil Court, Kings County, Index No. L&T 71160/90, May 3, 1990. Subsequently, Ms. Figueroa moved to set aside the judgment alleging an illegal rent overcharge. On June 21, 1990, the Civil Court issued a decision denying this motion on the ground that the Division of Housing and Community Renewal had already issued a determination on the issue. PX. 164. By stipulation, Ms. Figueroa's landlord agreed to stay execution of the warrant until September 12, 1990. DX. BR-14(b).

342. On August 21, 1990, Ms. Figueroa, by her attorney, requested that the Attorney General's office consent to payment of her arrears and full ongoing rent as interim relief in this action. Letter of Matthew Diller. The letter included a statement explaining that Ms. Figueroa owed rent from February 1989 forward. The statement explained that the judgment included the full amount

of the rent in each of the months because Ms. Figueroa had been unable to prove payment of \$286 in one month and thereafter, H.R.A. had removed Ms. Figueroa's shelter allowance from her budget. It also stated H.R.A. had agreed to pay the portions of the arrears reflecting shelter allowance that had not been issued, but would not pay the remainder of the amount due because it constituted "excess" rent. Id.

343. On August 28, 1991, the State Department of Social Services approved Ms. Figueroa's request. Letter of Robert Schack, August 28, 1991. Subsequently, the Human Resources Administration issued checks totalling \$8,000.00, consisting of \$5,434.00 in supplementary payments to correct past underpayments ("Code 9" see PX. 169), \$286 in duplication of past allowances that had been negotiated, and \$2,280 in excess rent. History Sheet, September 6, 1990; DX. BR-14(a).

7. Johnnie Mae Beal (DX. BR-1)

344. Johnnie Mae Beal and her son Edwin are recipients of A.F.D.C. Currently the rent in their rent stabilized apartment is \$293.41, an amount that is \$43.00 a month in excess of their shelter allowance. See January 9, 1991, Recertification Sheet; Stipulation entered in Civil Court, Kings County, Index No. L&T 5393/90, April 30, 1990.

345. Ms. Beal intervened in this case in June 1987. See Order, dated June 8, 1987. At the time Ms. Beal and her son were threatened with eviction because their rent exceeded the shelter

allowance maximum. Absent preliminary relief in this action, Ms. Beal and her son would have been evicted from their home.

346. At the time of intervention, Ms. Beal's rent was \$266.00, an amount that was \$39.00 in excess of the maximum shelter allowance of \$227 then in effect. Recertification Form, October 12, 1986. Ms. Beal's shelter allowance was issued in the form of two-party checks. History Sheet, Oct. 6, 1986 (referring to 2-party shelter allowance checks); see also Information and Referral Form, Jan. 7, 1987 ("client is on 2 pty rent").

347. On December 8, 1986, Ms. Beal presented her case worker with a 72 hour notice of eviction. Civil Court, Kings County, Index No. L&T 84323/86. The worker noted that Ms. Beal owed a balance of \$757.39 and referred Ms. Beal to landlord/tenant court. History Sheet, December 8, 1986. On January 6, 1987, the case worker noted that Ms. Beal owed \$756.39, which consisted entirely of rent in excess of the maximum shelter amount. Referral/Information Form, January 7, 1987.

348. On January 9, 1987, Ms. Beal's case worker requested approval to pay Ms. Beal's excess rent to enable her to avoid eviction. Information and Referral Notice, January 9, 1987. This approval was denied. History Sheet, January 13, 1987.

349. On April 14, 1987, a fair hearing was held on Ms. Beal's appeal from the denial of rent arrears to avert her eviction. The decision, dated April 23, 1987, stated that H.R.A.'s denial was reversed "only if the amount due is not in excess of the maximum appellant is due." The Income Maintenance Center determined that

no compliance action was necessary because "all amounts requested are for excessive rent." Routing Control Sheet, May 8, 1987.

350. In order to avoid eviction, Ms. Beal intervened in this action. The Court stayed her eviction and, on March 15, 1988, ordered the Department of Social Services to pay her arrears and ongoing rent. This order was stayed on appeal.<sup>38</sup>

351. In June 1990, checks totalling \$1,162.64 were issued in compliance with this Court's order, thereby averting Ms. Beal's eviction. See Letter of Matthew Diller, dated May 3, 1990, History Sheet, dated June 15, 1990; Stipulation in Empire Realty v. Beal, Civil Court Kings County, Index No. 5393/89; PX. 92. Ms. Beal currently receives a shelter allowance in the full amount of her rent. DX. BZ(1).

8. Carmelia Andujar (DX. BR-3)

352. Carmelia Andujar and her five year old daughter Angela live in a rent stabilized apartment in the Bronx. Case File, passim. Their rent is \$388.85. Renewal Lease Form (lease commenced on Oct. 15, 1989 and expires Oct. 14, 1991). Angela Andujar is a recipient of A.F.D.C. However, because of her immigration status, Carmelia Andujar, however, is not an A.F.D.C. recipient. The family's rent of \$388.85 is \$173.85 in excess of

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<sup>38</sup>. During the period that the stay was in effect, Johnnie Mae Beal's sister Deborah Beal and her sister's two young children moved in to the apartment. They lived with her approximately from May 1988 through May 1989. Had the stay of eviction not been entered, Ms. Beal would have been evicted and both families would have been without a place to live.



the \$215 monthly shelter allowance that they receive. Ms. Andujar's shelter allowance is paid in the form of two-party checks. History Sheet, Jan. 13, 1991 ("client's rent goes two party"). Absent preliminary relief in this action, Ms. Andujar and her daughter would have been evicted from their home.

353. Ms. Andujar fell behind in her rent and was threatened with eviction. Her landlord repeatedly rejected Ms. Andujar's two-party shelter allowance checks because she could not pay the full amount of the rent. A September 4, 1990, statement by Ms. Andujar's landlord stated that a nonpayment proceeding had been commenced and returned four shelter allowance checks. Letter, dated Sept. 4, 1990 Sam Wolf, Managing Agent, Meyer's Management. See History Sheet, Jan. 13, 1991 ("some of the cks was sent back to the center, because client would not pay her excess"); Request for Emergency Assistance, Dec. 28, 1989 (landlord rejects checks); History Sheet, Dec. 28, 1989 (landlord rejects five shelter allowance checks).

354. The September 4, 1990 letter stated that Ms. Andujar owed all rent due from April through September 1990, plus an additional \$252.39 from March 1990 and \$70 in legal fees for a total of \$2,266.64. Letter, dated Sept. 4, 1990, supra.

355. On November 7, 1990, Ms. Andujar entered into a stipulation of settlement with her landlord acknowledging that, after an abatement of one month's rent, she owed \$2,654.62. PX. 174. This stipulation was later amended to include rent due through January 31, 1991, so that the amount owed totalled \$3,217.32, with issuance of the warrant of eviction stayed until

February 21, 1991. PX. 173.

356. Ms. Andujar sought interim relief in this action through the informal relief procedure. Her request was approved. See PX. 92, at p. 4. On February 14, 1991, Ms. Andujar's center issued a total of \$3,606.17, to pay her rent arrears and end the threat of eviction. This sum included the stipulated amount plus an additional month's rent. History Sheet, Feb. 14, 1991.<sup>39</sup>

9. Lydia Oge (DX. BR-4)

357. Lydia Oge and her son Siaori, age four, live in a rent stabilized apartment in Brooklyn. As of February 1991, the rent on the apartment was \$473.46. Recertification Form, March 4, 1991, at p. 4; Renewal Lease, dated March 24, 1990. Prior to April 1990, the rent was \$448.86. Lease, March 25, 1988. Landlord's Verification Statement, April 30, 1990. Ms. Oge's son is a recipient of A.F.D.C. History Sheet, June 9, 1988. Ms. Oge, however, is not eligible for A.F.D.C. due to her immigration status. Fair Hearing Decision, July 25, 1990. The family's rent is \$258.46 in excess of the shelter allowance that they receive. Siaori's shelter allowance is paid directly to the landlord by H.R.A.. See Determination of Rent Restriction, Jan. 17, 1990.

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<sup>39</sup> The income maintenance center issued all rent from October 1990 through February 1991 as "duplication," because the computer screen showed that the shelter allowance checks had been cashed. This was erroneous, because even if the checks had been cashed, but not credited to the arrears covered by the judgment, the \$173.85 a month in excess rent had not previously been paid, and therefore should not have been recouped. History Sheet, Feb. 14, 1991.

Absent the preliminary relief in this action, Ms. Oge and her son would have been evicted from their home.

358. In January 1990, H.R.A. provided Ms. Oge with a rent arrears grant to resolve a pending eviction action. Civil Court, Kings County, Index No. L&T 91939/90. That grant was apparently provided as an "exception" to policy since it included payment of \$1,600.75 attributable to rent due in excess of the shelter allowance. Notice of Acceptance of Application for Emergency Housing Aid, January 5, 1990; Case Worker Notes, Jan. 5, 1990 (\$1,532.50 issued as "duplication" under "Code 40," the remainder issued as "Code 99").

359. After that payment was made, however, Ms. Oge was still unable to pay the portion of her rent due in excess of the shelter allowance and once again fell behind. In June 1990, Ms. Oge's landlord sued her in housing court for nonpayment of rent. Civil Court, Kings County, Index No. L&T 79579/90. Ms. Oge again requested a grant of emergency rent arrears to avoid eviction. This time, her request was denied. Ms. Oge appealed the denial to a fair hearing before the State Department of Social Services. See Fair Hearing Decision, July 25, 1990.

360. At the hearing, Ms. Oge testified that she had not paid any portion of the rent due in excess of the shelter allowance since January 1990 and that she had no resources to do so. In his decision, the State Commissioner noted that pending the outcome of the Jiggetts case, there is no provision in the Department's policies for payment of rent arrears in excess of the shelter

allowance. The State Commissioner, however, remanded the matter for a determination of whether all shelter allowance amounts had been paid. Id.

361. After the fair hearing decision, an income maintenance worker noted in the file that Ms. Oge stated that a third party, a Ms. Gina Paul, would help with the rent in the future. This claim was rejected, because Ms. Paul had promised to help in the past, but had not done so. The worker noted that Ms. Oge was told "the dept is unable to assist her at this time because she has no future plan in paying excess." Fair Hearing Compliance Form, August 3, 1990, at p. 3.

362. On October 17, 1990, Ms. Oge stipulated to a final judgment in housing court, granting the landlord a judgment in the amount of \$2,372.69. PX. 165. Under the stipulation, the warrant of eviction was to issue forthwith, with execution stayed for 12 days. Id.

363. Ms. Oge ultimately requested relief through the informal procedure in this case. Her request was consented to by the State defendant, and rent arrears of \$2,329.14 were paid in October 25, 1990. PX. 92. The evidence shows that without this payment, Ms. Oge and her son would have been evicted.

10. Sonia Rueda (DX. BR-9)

364. Sonia Rueda lives with her two sons in the Bronx. One of her sons, Eugenio, is disabled and receives federal Supplemental Security Income benefits (SSI). See Recertification, Nov. 16, 1989

(listing Eugenio as "handicapped"); Face to Face Recertification Determination, Nov. 2, 1989, at p. 2 (recording receipt of \$391 in SSI benefits). As a caretaker of a minor receiving SSI, Ms. Rueda is eligible for and is a recipient of A.F.D.C. 18 N.Y.C.R.R. § 369.5(2); Recertification, October 8, 1990. Federal law requires H.R.A. and the Department of Social Services to disregard SSI income in calculating eligibility for public assistance of non-SSI recipients in the household and the amount of benefits such persons are to receive. 42 U.S.C. § 602(a)(24).

365. Ms Rueda's other son, Gabriel, was 19 years old at the time of trial, and receives public assistance as a separate household. Ms. Rueda and Gabriel's shelter allowance is cooperatively budgeted so that they receive a shelter allowance for a family of two. Fair Hearing Decision of Feb. 5, 1991. Gabriel is a student at the High School of Fashion Industries. Letter of Aida Escalera, Attendance Coordinator, High School of Fashion Industries, Sept. 26, 1990. Absent interim relief in this action, Ms. Rueda and her children would have been evicted from their home.

366. Ms. Rueda's rent is \$376.64. Letter of Liz Shollenberger, dated Feb. 15, 1991. Prior to March 1991, Ms. Rueda's rent was \$360.42, an amount \$110.42 in excess of the maximum shelter allowance for family of two. Lease Renewal Form, dated July 25, 1989. Ms. Rueda fell behind in her rent and was sued by her landlord in September of 1990. Civil Court, Bronx County, Index No. L & T No. 96415/90. The petition sought \$1,921.76 in rent. Id. On October 24, 1990 Ms. Rueda stipulated

to a final judgment in the amount of \$1,057.54, with issuance of the warrant of eviction stayed through November 6, 1990. The stipulation noted that the amount due is "all excess rent." Stipulation, dated Oct. 24, 1990.

367. On November 2, 1990, Ms. Rueda asked H.R.A. for a grant of emergency rent arrears. Ms. Rueda stated that she could not afford to pay the judgment amount. Ms. Rueda's worker determined that \$210.00 of the amount due could be issued, leaving a total excess of \$847.54. History Sheet, Nov. 2, 1990; Information and Referral Notice, Nov. 2, 1990. The issuance of \$210 reflected correction of an underpayment stemming from H.R.A.'s payment of a shelter allowance of \$215 a month, rather than the \$250 to which Ms. Rueda and her son were entitled. See Letter to Sonia Rueda from H.R.A., dated February 8, 1991 (explaining the \$210 payment).

368. On November 5, 1990, Ms. Rueda's case worker noted that she had spoken with Ms. Betty Bank, another H.R.A. employee. Ms. Bank denied Ms. Rueda's request for payment of arrears. History Sheet, Nov. 5, 1990. Ms. Rueda requested a fair hearing.

369. On January 15, 1991, Ms. Rueda entered into another stipulation in Housing Court, agreeing to pay \$2,188, by January 31, 1991. Stipulation, January 15, 1991. This amount reflected the sum in the prior judgment, plus three months' rent and \$50 in legal fees. On January 16, 1990, Ms. Rueda, by her attorney, requested payment of her arrears through the informal procedure in this case. See Letter of Steven Gottlieb, dated Jan. 16, 1990.

The State defendant consented to this request on January 25, 1991. Letter of Robert Schack, January 25, 1991.

370. On February 11, 1991, H.R.A. issued checks in the amount of \$2,188 for Ms. Rueda's arrears as preliminary relief in this case. Except for \$50 in legal fees, and possibly a \$210 correction of past underpayments, this amount consisted of "excess rent."<sup>40</sup>

11. Roselaine Louis-Charles (DX. BR-6)

371. Roselaine Louis-Charles lives at 189 E. 18th Street, Apartment 6A, Brooklyn, New York. DX. BR-6, passim. Her rent is \$524.70/month. Letter from Judith Goldiner to Greg Martin dated January 16, 1991. She is a recipient of A.F.D.C. on behalf of herself and her four children, ages 12, 10, 8, and 1. Birth certificates of Peggy, Kenny, and Synthia Louis-Charles; application for Social Security card of Guy Louis-Charles; Budget Entry Supervisor Summary, March 14, 1991. Ms. Louis-Charles' actual rent is \$187.70 more than the shelter allowance for a family of five. Without preliminary relief in this case, she would have been unable to pay a housing court judgment against her and she and her children would have been evicted.

372. Ms. Louis-Charles applied for public assistance in August

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40 On February 5, 1991, Ms. Rueda received a Fair Hearing Decision directing H.R.A. to recalculate her budget. See Fair Hearing Decision, Feb. 5, 1991. In complying with this decision, H.R.A. determined that from February 1990 through February 1991, it had erroneously budgeted Ms. Rueda for a shelter allowance of \$215.00, instead of the maximum amount of \$250. Because Ms. Rueda had already received an amount partially correcting this underpayment, the center calculated the remaining difference to be \$210. Information and Referral Notice, Feb. 9, 1991.

1988. Application dated August 25, 1988. At that time, she worked as a home attendant at a wage of \$4.15/hour for four hours a day, five days a week. Letter dated August 30, 1988, from United Jewish Council, Home Attendant Service Corp. Ms. Louis-Charles continued to work until November 18, 1989. Undated letter from United Jewish Council, Home Attendant Service Corp. During this time, Ms. Louis-Charles received a public assistance supplement to her income based on a food and other standard of need of \$326.70/month, and a maximum monthly shelter allowance of \$312.00. See, e.g., Notice of Status of Application dated September 14, 1988, and Notice of Status of Application dated September 28, 1988.

373. At the time of her application for public assistance in August 1988, Ms. Louis-Charles' rent was \$469.57, \$157.57 more than the shelter allowance for a family of four. Eligibility Determination History Sheet dated August 31, 1988. Based on the presence of a roommate in her household to provide Ms. Louis-Charles with a future ability to pay her rent, H.R.A. issued her an applicant rent arrears grant to pay rent arrears Ms. Louis-Charles had accrued through September 1988, the month her application was accepted. History Sheet dated September 20, 1988.

374. Ms. Louis-Charles was subsequently sued by her landlord for non-payment of rent.<sup>41</sup> Civil Court, Kings County, Index No. L&T 116299/89. On May 26, 1989, she stipulated pro se to a housing

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<sup>41</sup> At the time this action was brought, Ms. Louis-Charles no longer had a roommate contributing to the rent. The record does not state when the roommate moved out. History Sheet, June 21, 1989.



court judgment of \$3,052.50. Stipulation dated May 26, 1989. According to that stipulation, Ms. Louis-Charles owed a balance of \$127.00 for November 1988, and \$483.00/month for December 1988-May 1989. Id. On June 15, 1989, Ms. Louis-Charles' caseworker noted that her rent arrears consisted of \$1,197.00 in excess rent and \$2,311.00 in shelter payments which could be duplicated pursuant to H.R.A. policy if Ms. Louis-Charles could produce a money order for the excess of \$1,197.00 and a letter and paystubs from a "donor" willing to pay her excess rent in the future. History Sheet, June 15, 1988.

375. On September 19, 1989, Ms. Louis-Charles entered into a new pro se stipulation with her landlord in which she agreed to pay \$5,008.50 as all rent due through September 1989. Stipulation dated September 19, 1989. On November 16, 1989, Ms. Louis-Charles' caseworker noted that Ms. Louis-Charles would not be eligible for any assistance to pay her rent arrears until she submitted a money order for \$2,052.00 in excess rent and a letter and paystubs from a donor who would agree to pay her future excess rent. History Sheet, November 16, 1989.

376. A subsequent judgment in the same case was entered on June 19, 1990, for \$8,959.80. PX. 133-629. By an order to show cause dated July 5, 1990, Ms. Louis-Charles moved to intervene in this case. That motion was granted and an order granting her preliminary relief was signed July 12, 1990. On July 30, 1990, H.R.A. issued checks to Ms. Louis-Charles' landlord totaling \$6864.00. History Sheet, July 30, 1990. This sum consisted of

duplication of Ms. Louis-Charles' shelter grants for September 1988-December 1989, totaling \$4,992.00, and reissuance of stale shelter checks for January-June 1990. See History Sheets dated July 30, June 25, May 1, March 27, and Jan. 16, 1990.<sup>42</sup> In October 1990, H.R.A. issued \$4,460.50 in checks to Ms. Louis-Charles' landlord, which included payment of her excess arrears. History Sheet, Oct. 22, 1990. Without this payment, Ms. Louis Charles could not have satisfied the housing court judgment against her and she would have been evicted.

c. Fair Hearing Decisions of Named Plaintiffs

1. Judith Morris

377. On November 18, 1988, defendant issued a fair hearing decision concerning a request by Judith Morris for emergency rent arrears. Defendant found as a fact that Ms. Morris receives a public assistance grant for herself and her four year old child. Ms. Morris' rent was \$347.86, an amount \$97.86 in excess of the maximum shelter allowance for a family of two. Ms. Morris receives her shelter allowance in the form of two party checks. Ms. Morris did not pay her landlord the difference between her shelter allowance and her actual rent for a period of nine months. She was sued by her landlord and stipulated to pay \$906.50 in rent arrears. PX. 121-431; 133-648 (petition); 133-649 (stipulation).

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<sup>42</sup>Rent issued in July for January 1990-June 1990 must have been reissuance rather than duplication because Ms. Louis-Charles' shelter allowance has been sent directly to her landlord since January 1990. Notice to Client: Determination of Rent Restriction, dated January 12, 1990.

378. On November 7, 1988, Ms. Morris asked H.R.A. for assistance in paying her rent arrears. This request was denied the same day. On appeal, the State defendant issued a decision which stated that Ms. Morris owed \$906.50, all attributable to rent due in excess of her shelter allowance. It concluded that Department regulations do not provide for payment of rent in excess of the shelter allowance schedule and affirmed the denial of Ms. Morris' request for relief. Id.

379. On January 20, 1989, this Court granted Ms. Morris' motion to intervene and directed that her arrears and ongoing rent be paid. Order, dated January 20, 1989. On August 17, 1990, arrears totalling \$5,413 were paid. PX. 92.

## 2. Yvette Parson

380. April 19, 1990, defendant issued a fair hearing decision concerning a request by Yvette Parson for emergency rent arrears. The decision found as a fact that Ms. Parson receives public assistance for herself and her 12 year old child. Ms. Parson's rent was \$354.84, an amount \$104.84 in excess of her monthly shelter allowance. Ms. Parson was sued by her landlord and stipulated to pay \$3,579.40, reflecting 10 months of rent owed. By April 1990, the amount due had risen to \$4,289.40. For eight months of the period in which arrears had accrued, H.R.A. had provided Ms. Parsons with a shelter allowance of \$250 a month, but she had not paid these amounts to her landlord. For the remaining period, H.R.A. did not provide her with any shelter allowance at all. At no time during the relevant period, did Ms. Parson pay

rent due in excess of the shelter allowance. PX. 123-433; 133-634 (petition); 133-635 (stipulation).

381. On March 19, 1990, Ms. Parson asked H.R.A. for assistance in paying her rent arrears. The agency denied this request on the ground that Ms. Parson was unable to pay that portion of the rent in excess of the shelter allowance for the arrears period and on an ongoing basis. Id.

382. On appeal, the State defendant concluded that H.R.A. should not have stopped paying Ms. Parson's shelter allowance. Of the remaining \$3,289.08 owed, defendant stated that \$2,000 consisted of amounts for which Ms. Parson had received a shelter allowance, and that she might have been eligible for a recoupable grant in this amount, had she been able to demonstrate an ability to pay the balance of the arrears due and her ongoing rent. The agency noted that Ms. Parson had stated that her brother could contribute toward the rent in the future. Nonetheless, it affirmed the denial of any assistance because Ms. Parson was unable to pay the \$1,289.08 in accumulated "excess rent" arrears. Id.

383. On June 18, 1990 this Court signed Ms. Parson's Order to Show Cause, and ordered that her eviction be stayed. It subsequently granted Ms. Parson's motion to intervene and ordered that her full arrears be paid. On July 20, 1990, H.R.A. issued checks in satisfaction of the Court's order. PX. 92.

### 3. Dorothy Hughes

384. On April 6, 1987, the State defendant issued an administrative hearing decision concerning a request by Dorothy

Hughes for an emergency rent arrears grant to avoid eviction. The decision found as a fact that Ms. Hughes and her three year old child receive an A.F.D.C. grant for two persons. It also noted that at the time, Ms. Hughes was eight months pregnant. In January 1987 Ms. Hughes requested a grant of rent arrears to prevent eviction. The request was denied by H.R.A. on the ground that the agency does not pay rent in excess of the maximum shelter allowance. At the time, Ms. Hughes' rent was \$348.52, an amount that was \$121.52 in excess of her shelter allowance. Ms. Hughes' shelter allowance is paid in the form of two-party checks. PX. 122-432.

385. Ms. Hughes was sued by her landlord for nonpayment of rent on December 24, 1986. The petition sought arrears of \$527.27, consisting of \$93.75 for November 1986 rent, \$348.52 for December 1986 rent and \$85 in fees. PX. 133-643. In January 1987, Ms. Hughes stipulated to pay \$848.29 covering rent through February 2, 1987. Toward this amount, Ms. Hughes paid \$287, consisting of two party rent checks and a money order for \$60. Thus the balance due was \$561.29. The hearing decision concluded that all arrears due consisted of rent in excess of the shelter allowance. PX. 122-432; 133-644; 133-645.

386. The hearing decision affirmed the denial of a rent arrears grant, because all of Ms. Hughes' arrears were attributable to the fact that her rent exceeded the shelter allowance. It also considered Ms. Hughes' eligibility for assistance under the Emergency Assistance to Families program ("EAF"). Ms. Hughes

argued that she was eligible for such assistance because "the progressive rent increases she has received upon renewing her lease are not within her control and that despite a diligent search she has been unable to locate cheaper accommodations." In rejecting this argument, the State defendant found that these "are not sudden unforeseen circumstances, but rather are aspects of daily urban life." Id.

387. On March 22, 1987, Ms. Hughes moved to intervene in this action. Her eviction was stayed by the Court. Order dated April 16, 1987. On January 12, 1988, the Court issued a decision granting her motion for preliminary relief. Orders were entered on March 9th and 15th, 1988, requiring payment of Ms. Hughes' arrears and ongoing rent and further staying her eviction.

Dated: New York, New York  
November 4, 1991

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