CAUTION: THIS DOCUMENT HAS NOT YET BEEN REVIEWED BY THE COUNTY CLERK. (See below.)

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK
---x
LIZ MARTINEZ, HEATHER SCHOONMAKER, DONNA L. TAYLOR SANDERS, MONA-LISA GARDNER, MONIQUE T. BOWDEN, MARIA MARTUCCI, EBONY DALEY, VANESSA NUNEZ and all others similarly situated,

Petitioners,

-against-

JANET DIFIORE, in her official capacity as Chief Judge of the State of New York and Chief Judicial Officer of the Unified Court System; LAWRENCE MARKS, in his official capacity as Chief Administrative Judge of the Unified Court System; CAROL SHERMAN, in her official capacity as Chief Magistrate of the New York City Family Court, and JEANETTE RUIZ, in her official capacity as Chief Administrative Judge of the New York City Family Court,

Respondents.
---x

Index No. _________

VERIFIED
ARTICLE 78 CLASS
ACTION PETITION

If our American way of life fails the child, it fails us all.
— Pearl S. Buck

There can be no keener revelation of a society's soul than the way in which it treats its children.
— Nelson Mandela, Former President of South Africa

Petitioners Liz Martinez, Heather Schoonmaker, Donna L. Taylor Sanders, Mona Lisa Gardner, Monique T. Bowden, Maria Martucci, Ebony Daley and Vanessa Nunez, as putative class representatives and in their individual capacity, by their attorneys Orrick, Herrington & Sutcliffe LLP ("Orrick") and co-counsel Sanctuary For Families, for their verified petition against Respondents Janet DiFiore, in her official capacity as Chief Judge of the State of New York and Chief Judicial Officer of the Unified Court System, Lawrence Marks, in his official capacity as Chief Administrative Judge of the Unified Court System, Carol Sherman, in her official capacity as Chief Magistrate of the New York City Family Court, and Jeanette Ruiz, in

This is a copy of a pleading filed electronically pursuant to New York State court rules (22 NYCRR §202.5-b(d)(3)(i)) which, at the time of its printout from the court system's electronic website, had not yet been reviewed and approved by the County Clerk. Because court rules (22 NYCRR §202.5[d]) authorize the County Clerk to reject filings for various reasons, readers should be aware that documents bearing this legend may not have been accepted for filing by the County Clerk.

her official capacity as Chief Administrative Judge of the New York City Family Court, allege as follows:

PRELIMINARY STATEMENT

1. Custodial parents in New York City who are not receiving child support payments from the noncustodial parents seek the assistance of the Family Court in New York City. The Family Court consistently and routinely fails to adjudicate the child support violation petitions in a timely manner. The applicable Family Court rule at issue in this class action Article 78 proceeding requires these cases to be adjudicated no later than ninety (90) days after the custodial parent files the petition, if not within sixty (60) days. Unfortunately, for custodial parents in the New York City Family Court, the vast majority of whom are low-income mothers and unrepresented by counsel, the reality is that these petitions are decided many more than three months or even years after the violation petition is filed. Child support cases are tried in piecemeal fashion rather than day-to-day, causing significant and unlawful delays. The custodial mothers sit in courtrooms for hours – sometimes all day – waiting for their cases to be called. They take the entire day off of work. When their case is finally called and they stand before a Support Magistrate, the appearance usually lasts a few minutes without any credible explanation, and often the case is adjourned for another date without good cause except at times because of court congestion that finds no excuse in the law. Hearing time is generally limited to fifteen minutes, thirty minutes or at maximum one hour when it is finally given. The weeks turn into months and often they even turn into years. The ability of custodial parents to obtain a willfulness finding with the possible sanction of incarceration –the only remedy that compels some fathers to finally make a child support payment – is illusory.

This is a copy of a pleading filed electronically pursuant to New York State court rules (22 NYCRR §202.5-b(d)(3)(i)) which, at the time of its printout from the court system's electronic website, had not yet been reviewed and approved by the County Clerk. Because court rules (22 NYCRR §202.5[d]) authorize the County Clerk to reject filings for various reasons, readers should be aware that documents bearing this legend may not have been accepted for filing by the County Clerk.

2. The total sum of child support arrears owing in New York State in 2016 in "IV-D" support cases between parents where the New York Support Collection Unit is responsible for collecting the support (all of those involving the named Petitioners) and cases involving custodial parents on public assistance was $7 billion – or, $11,640 per case with child support arrears owing. $497 million in child support arrears was paid in New York in 2016, which is a staggeringly low collection rate of approximately 7% of the sum owing.

3. Recognizing that it was violating its own rule and the Family Court Act that requires written decisions in child support violation petitions five days after a willfulness finding is made, the Family Court in New York City opened new, violation parts – dedicated courtrooms that adjudicate only violation petitions at least on certain days of the week. The first such part opened in the Bronx County Family Court in December 2016. More recently in late Spring to the Summer of 2017, a similar part was opened up in the Kings County and New York County Family Courts, and additional parts and staffing have been added more recently. That experiment has failed and has not provided any meaningful relief from the violation of the Family Court Rule that this lawsuit seeks to compel compliance with. Unfortunately, this has been the hallmark of the Family Court violation process in the City of New York for years. Instead, the new violation parts in the Family Courts in New York City, and particularly the one in Bronx County that has now been open for almost a year, has created out of whole cloth a "post-dispositional" hearing process that finds no source or authority in law.

4. The Support Magistrate in case after case – including those with child support arrears exceeding $100,000 – fails to comply with the Family Court Rule and to issue a remedy for a willfulness finding consistent with Family Court Act § 454(3). Instead, the Support Magistrate in virtually every case where a willfulness finding is issued embarks on a lawless "post-

This is a copy of a pleading filed electronically pursuant to New York State court rules (22 NYCRR §202.5-b(d)(3)(i)) which, at the time of its printout from the court system's electronic website, had not yet been reviewed and approved by the County Clerk. Because court rules (22 NYCRR §202.5[d]) authorize the County Clerk to reject filings for various reasons, readers should be aware that documents bearing this legend may not have been accepted for filing by the County Clerk.

dispositional" hearing process. That hearing process has only one purpose – to try and get the non-custodial parent to finally start paying child support in the *future*. However, that is a non-sequitur, because the point of a violation petition is to determine the remedy for the noncustodial parent's willful failure to pay child support in the *past*. *See Powers v. Powers*, 86 N.Y.2d 63, 71 (1995) (once willfulness determination has been made, the Family Court Act "explicitly allows the court a choice of probation or jail, without requiring that the court consider alternative enforcement measures"). The result is that custodial parents wait months or even more than that just for the Family Court to monitor the noncustodial parent's payment of child support pursuant to a final order of support that almost always issued years ago. The Family Court fails to issue a timely or any remedy for the noncustodial parent's willful violation of the child support order that is required by the Family Court Rule and the Family Court Act. As a result, the rights of the custodial parents and their children are blatantly violated. The noncustodial parents who fail to pay child support are also emboldened, knowing there is no real consequence for failing to pay child support.

5. The Family Court's routine violation of its own rule prevents custodial parents, commonly mothers, from being able to provide for their children. This harms families, including the vulnerable children who are the voiceless victims. It also undermines the integrity of the justice system in the New York City Family Court. In a different context, the courts in New York State have clearly criticized this long-standing and problematic practice: "We cannot overlook the dissatisfaction voiced by so many with a system which allows [child support] matters to drag on for long periods of time, thereby affecting the lives of children and the ability of individuals to get on with their lives freed from the litigation which has brought them so much

This is a copy of a pleading filed electronically pursuant to New York State court rules (22 NYCRR §202.5-b(d)(3)(i)) which, at the time of its printout from the court system's electronic website, had not yet been reviewed and approved by the County Clerk. Because court rules (22 NYCRR §202.5[d]) authorize the County Clerk to reject filings for various reasons, readers should be aware that documents bearing this legend may not have been accepted for filing by the County Clerk.

CAUTION: THIS DOCUMENT HAS NOT YET BEEN REVIEWED BY THE COUNTY CLERK. (See below.)

unhappiness and trauma." *Dutchess Cnty. Dept. of Soc. Serv. v. Mark M.*, 196 A.D.2d 196, 203 (2d Dep't 1994) (per curiam).

6. This is a class action case under Article 78 filed on behalf of custodial parents across New York City with child support violation petitions that the New York City Family Courts have consistently and routinely failed to timely adjudicate according to the Court rule that specifically requires speedy disposition of these cases. Petitioners seek an order under N.Y. C.P.L.R. § 7803(1) requiring the New York City Family Court to comply with its Rule, 22 N.Y.C.R.R. § 205.43, in all pending violation petition cases and those that will be filed in the future in the New York City Family Court. Petitioners also seek class certification under N.Y. C.P.L.R. § 902 and for Orrick to be named as class counsel.

7. The Rule at issue, required by the federal Social Security Act, *see* 42 U.S.C. § 666(a), is designed to help custodial parents collect child support payments so they can avoid, among other things, turning to public assistance. There is thus clear statutory recognition that custodial parents and their minor children who are not receiving child support are at high risk of not having their basic needs met, including food, shelter and clothing. The economic costs are borne by all of us as government is forced in many cases to provide public benefits to the custodial parents and their children because they are not receiving child support. The impacts on the subject children and custodial parents are devastating and have both short-term and long-term consequences. Parents are forced into debt, they are forced to go on public assistance, they are evicted, they are compelled to enter the shelter system, and they are required to move into crowded and unsustainable living conditions with families and friends. The children are denied access to sustenance, clothing and shelter. These are all consequences of the Family Court's

This is a copy of a pleading filed electronically pursuant to New York State court rules (22 NYCRR §202.5-b(d)(3)(i)) which, at the time of its printout from the court system's electronic website, had not yet been reviewed and approved by the County Clerk. Because court rules (22 NYCRR §202.5[d]) authorize the County Clerk to reject filings for various reasons, readers should be aware that documents bearing this legend may not have been accepted for filing by the County Clerk.

failure to enforce its own rule and decide these vitally important child support petitions swiftly, consistent with the rule of law.

8. The Family Court Act authorized the creation of Support Magistrates to decide child support petitions, including violation petitions. In virtually all child support cases, Support Magistrates are assigned to initially hear and decide violation petitions, though Family Court Judges, considered "magistrates" by the Family Court Act, are also empowered to decide these petitions *de novo*. A violation petition seeks to enforce a final child support order. Family Court Act § 454(3) specifies the remedies that are available to custodial parents who prove that a noncustodial parent has intentionally violated a child support order. Certain remedies are available in all cases where the custodial parent proves a violation of the child support order, including issuance of a monetary judgment against the noncustodial parent. And, certain remedies are available only to a custodial parent who establishes that the noncustodial parent willfully violated the child support order. This includes the remedy of incarceration for up to six months. Each of the remedies is carefully calibrated to compel the noncustodial parent to obey the child support order, pay accumulated arrears promptly, and ensure that the children's needs are met. Only a Family Court Judge can issue certain remedies for violations of Family Court child support orders, including incarceration. In those cases, the Support Magistrate makes a recommendation to the Family Court Judge for imposition of one or more of the available remedies. The Family Court Judge must either confirm or deny the Support Magistrate's recommendation, or conduct a *de novo* hearing.

9. Family Court Rule § 205.43(a) requires the Family Court to schedule a first appearance in a violation case no "more than 30 days [after] the filing of the violation or enforcement petition." Family Court Rule § 205.43(a). After service is made of the summons and petition,

This is a copy of a pleading filed electronically pursuant to New York State court rules (22 NYCRR §202.5-b(d)(3)(i)) which, at the time of its printout from the court system's electronic website, had not yet been reviewed and approved by the County Clerk. Because court rules (22 NYCRR §202.5[d]) authorize the County Clerk to reject filings for various reasons, readers should be aware that documents bearing this legend may not have been accepted for filing by the County Clerk.

the Support Magistrate assigned to the matter "must commence a hearing to determine a willful violation within 30 days of the date noticed in the summons. The hearing must be concluded within 60 days of its commencement." Family Court Rule § 205.43(b). On the scheduled hearing date on the issue of willfulness, the hearing may not be adjourned in excess of 14 days and only for three limited reasons, including "good cause." Family Court Rule § 205.43(d). If a willfulness hearing has commenced and must be continued, the adjourned date shall be within seven court days. Family Court Rule § 205.43(e). And, "[u]pon the conclusion of a willfulness hearing in a case heard by a support magistrate, the support magistrate shall issue written findings of fact within five court days." Family Court Rule § 205.43(f). The written decision must contain, among other things, a recommendation on the remedy, including incarceration, and the reasons for denying any relief. Family Court Rule § 205.43(g). Upon information and belief, each violation petition filed in the New York City Family Court requests each and every remedy set forth in Family Court Act § 454, including in subparagraph 3. This includes monitoring by the Department of Probation, posting of an undertaking to protect against future missed child support payments and/or incarceration.

10. As detailed below, the New York City Family Court violates the Rule in multiple ways, often in the same violation case. Prior to filing this Petition, and between November 10, 2015 and June 29, 2016, Petitioners' attorneys sent three requests under the New York State Freedom of Information Law to the Office of Court Administration ("OCA") to determine the New York City Family Court's compliance with Family Court Rule § 205.43 (the "Family Court Rule"). The FOIL responses reveal that OCA does not track compliance, or lack thereof, with the Family Court Rule.

This is a copy of a pleading filed electronically pursuant to New York State court rules (22 NYCRR §202.5-b(d)(3)(i)) which, at the time of its printout from the court system's electronic website, had not yet been reviewed and approved by the County Clerk. Because court rules (22 NYCRR §202.5[d]) authorize the County Clerk to reject filings for various reasons, readers should be aware that documents bearing this legend may not have been accepted for filing by the County Clerk.

11. On Wednesday, November 8, 2017, Petitioners' counsel inquired with the Record Room in the Bronx County Family Court whether the notes in the case management system for the cases of Petitioners Liz Martinez and Ebony Daley provided confirmation that the Family Court Rule is being tracked on a case-by-case basis. On Wednesday, November 29, 2017, Petitioners' counsel inquired with the Record Room in the Kings County Family Court whether the notes in the case management system for a pending case for Petitioners' counsel provided confirmation that the Family Court Rule is being tracked on a case-by-case basis. Petitioners' counsel was told that the notes for these cases fail to track compliance with Family Court Rule § 205.43.

12. Petitioners' attorneys sent a data request, dated May 3, 2016, to the Office of Court Administration, to determine the New York City Family Court's compliance with Family Court Rule § 205.43. In response, the First Deputy Chief Clerk of the New York City Family Court wrote the following:

> I have had some discussions with our Administrative Judge regarding your request for research data. The information you request will require use of programming resources from our Department of Technology since the data is not easily extracted to match your requirements. As such it will necessitate resources being pulled from other court requests and needs so we will need to ask for some further information and clarification of the request,
>
> 1. Is this information available from any other source and if so have you looked into gathering the information from that source?
> 2. Is there a hypothesis or question that you are seeking to prove or disprove in your research?
> 3. Since this will delay other projects the court is relying on the Department of Technology to complete can you describe the benefit of this research or the results of your query to the court and to the litigants the court seeks to serve?
> 4. Is there any other information you can provide regarding this study that will assist us in prioritization of resources.

13. In September 2016, the Chief Administrative Judge for the Family Court in New York City followed up on the response to the Data Request and indicated that she would reach out "to

This is a copy of a pleading filed electronically pursuant to New York State court rules (22 NYCRR §202.5-b(d)(3)(i)) which, at the time of its printout from the court system's electronic website, had not yet been reviewed and approved by the County Clerk. Because court rules (22 NYCRR §202.5[d]) authorize the County Clerk to reject filings for various reasons, readers should be aware that documents bearing this legend may not have been accepted for filing by the County Clerk.

CAUTION: THIS DOCUMENT HAS NOT YET BEEN REVIEWED BY THE COUNTY CLERK. (See below.) RECEIVED NYSCEF: 12/06/2017

schedule a follow up meeting once we better understand what DOT is able to produce and by when." Respondent Judge Ruiz never scheduled that meeting.

14. Petitioners' attorneys sent a request, dated July 5, 2017, to the Clerk of Court for the Bronx County Family Court under New York Judiciary Rule § 255 to determine compliance with the Family Court Rule. Instead of responding substantively, the Bronx County Family Court sent the request to OCA for processing, and failed to establish that it monitored compliance with the Family Court Rule. The Bronx County Family Court's response also failed to provide any assurance that it views the Court's post-dispositional hearing process as complying with the Family Court Rule. That post-dispositional hearing process is now being implemented in the Family Courts in Bronx County, New York County and Kings County. That process violates the Family Court Rule, in addition to the continuing violation of the Family Court Rule in other ways as highlighted by the cases of Petitioners Donna L. Taylor-Sanders, Liz Martinez and Maria Martucci, among many others. Accordingly, this Court should grant this Article 78 class action petition in full.

FACTUAL ALLEGATIONS

PARTIES

15. The Petitioner Class consists of all custodial parents who are currently or will be in the future petitioners in the New York City Family Court prosecuting child support violation petitions. The Petitioner Class consists of parents who filed and had their petitions processed prior to the commencement of the special violation parts in New York City, and also those who have been subject to its jurisdiction. More than one of the petitioners has an active violation petition in which the Family Court is violating its own rule.

This is a copy of a pleading filed electronically pursuant to New York State court rules (22 NYCRR §202.5-b(d)(3)(i)) which, at the time of its printout from the court system's electronic website, had not yet been reviewed and approved by the County Clerk. Because court rules (22 NYCRR §202.5[d]) authorize the County Clerk to reject filings for various reasons, readers should be aware that documents bearing this legend may not have been accepted for filing by the County Clerk.

16. Petitioner Liz Martinez ("Ms. Martinez") is a resident of Bronx County, New York. Affidavit of Liz Martinez ¶ 1. She has three children, one of whom has significant special needs. *Id.* Until recently, Ms. Martinez held a respectable job earning $15 per hour. *Id.* ¶ 3. When her job was recently downsized and eliminated, Ms. Martinez's already tenuous financial condition worsened. *Id.* The father of her three children is more than $27,750 in child support arrears and has failed to participate in a court-ordered work program. *Id.* ¶ 2. Ms. Martinez filed a violation petition on October 26, 2015. *Id.* The return date was scheduled for December 3, 2015 in violation of the Family Court Rule. *Id.*

17. That matter was then scheduled for an adjourned date of March 28, 2016 and for the father to produce certain documents relating to his earnings. *Id.* ¶ 5. Only at that time was a court-appointed attorney assigned to the father in violation of the Family Court Rule. *Id.* ¶ 6. On the next court date, May 2, 2016, the court-appointed lawyer for the father failed to appear. *Id.* The matter was adjourned for further proof of payments and for the father to produce required financial disclosure. *Id.* ¶ 7. The father failed to appear on the next adjourned date of June 15, 2016. *Id.* ¶ 8. The father failed to appear again on the further adjourned date of August 15, 2016. *Id.* ¶ 9. Over objection of Ms. Martinez's counsel, the Court failed to conduct an evidentiary hearing on August 15, 2016 despite the clear requirements of the Family Court Rule. *Id.* ¶ 10. The Support Magistrate referred the matter to a judge for issuance of a warrant based on the father's failure to appear in court again. *Id.* The Family Court Judge issued the warrant but refused to conduct a hearing to determine if an order of incarceration should issue. *Id.* ¶ 11. The father voluntarily surrendered on the warrant on September 6, 2016. *Id.* ¶ 12. At that time, the Support Magistrate reversed his written finding of willfulness, and explained that he was moving forward with a control date of September 30, 2016, in large part to give the Court-

This is a copy of a pleading filed electronically pursuant to New York State court rules (22 NYCRR §202.5-b(d)(3)(i)) which, at the time of its printout from the court system's electronic website, had not yet been reviewed and approved by the County Clerk. Because court rules (22 NYCRR §202.5[d]) authorize the County Clerk to reject filings for various reasons, readers should be aware that documents bearing this legend may not have been accepted for filing by the County Clerk.

appointed lawyer an opportunity to meet with and start representing his client, something that had not happened since the Court appointed the lawyer to represent the father on March 28, 2016. *Id.* The Family Court finally scheduled a willfulness hearing for October 21, 2016 in violation of the Family Court Rule. *Id.* ¶ 13.

18. The matter was adjourned to November 18, 2016 because the father's attorney requested another adjournment, again in violation of the Family Court Rule. *Id.* ¶ 14. The Support Magistrate conducted a hearing and recommended the father's incarceration. *Id.* ¶ 15. Because the matter arrived to the Family Court Judge after 3:00 pm that day, the Judge rescheduled the matter to December 19, 2016, and for the father to pay a purge amount, which was increased to $3,000. *Id.* The father paid less than $3,000 on December 19, 2016. *Id.* ¶ 16. Despite not paying the full purge amount, the violation petition was deemed terminated. *Id.*

19. Ms. Martinez was forced to file another violation petition on April 17, 2017, because between January 1, 2017 and the filing date, she received only one child support payment in the amount of $69.53 from the father. *Id.* ¶ 17. The child support arrears in Ms. Martinez's case exceed $27,750. *Id.* ¶ 2. Indeed, through November 2017, that was the only child support payment that the father made in this calendar year. *Id.* ¶ 17. In violation of the Family Court Rule, the first court date scheduled was for June 28, 2017, more than 70 days after the filing date of the petition. *Id.* ¶ 18. On June 28, 2017, the father requested an adjournment of the court date on the basis that he was purportedly taking some kind of certification exam. *Id.* ¶ 19. In violation of the Family Court Rule, the Court adjourned the matter to September 6, 2017. *Id.*

20. Ms. Martinez's counsel requested an adjournment of that court date for good cause because he was on trial in a pending child support violation matter. *Id.* ¶ 20. Instead of adjourning the matter for "good cause," and for no more than 14 days as the Family Court Rule

This is a copy of a pleading filed electronically pursuant to New York State court rules (22 NYCRR §202.5-b(d)(3)(i)) which, at the time of its printout from the court system's electronic website, had not yet been reviewed and approved by the County Clerk. Because court rules (22 NYCRR §202.5[d]) authorize the County Clerk to reject filings for various reasons, readers should be aware that documents bearing this legend may not have been accepted for filing by the County Clerk.

CAUTION: THIS DOCUMENT HAS NOT YET BEEN REVIEWED BY THE COUNTY CLERK. (See below.) RECEIVED NYSCEF: 12/06/2017

requires, the Court adjourned the matter to October 31, 2017. *Id.* By rescheduling notice, dated October 20, 2017, the Court adjourned the October 31, 2017 hearing date to December 6, 2017 without explanation. *Id.* ¶ 21. On December 6, 2017, the father failed to provide court-ordered financial disclosure or any job search diaries. Based solely on a couple of pay stubs that the father failed to allow Ms. Martinez to review and that supposedly revealed that the father started a new job in September 2017, at and after which time the father paid Ms. Martinez no child support, the matter was adjourned without a willfulness hearing over Ms. Martinez's counsel's objection, to February 26, 2018, more than ten months after Ms. Martinez's violation petition was filed. This is in violation of the Family Court Rule. Ms. Martinez and her three children who depend on the father's child support continue to receive nothing and no access to the court system to remedy their dire financial situation. *Id.*

21. Petitioner Heather Schoonmaker ("Ms. Schoonmaker") is a resident of Bronx County. Affidavit of Heather Schoonmaker ¶ 5. She is employed full-time by a New York State administrative agency. *Id.* ¶ 2. She is the biological mother of a nineteen-year-old son who is now in his freshman year in college. *Id.* ¶ 1. Ms. Schoonmaker has provided a warm, loving home to her son, fostering his belief in himself to overcome, among other things, Ehlers-Danlos syndrome, a genetic disability that results in him having prolonged bleeding and joint dislocations, all of which requires intensive care and monitoring. *Id.* ¶ 2. Since at least March 27, 2009, the Family Court ordered the father of Ms. Schoonmaker's son to pay her $90.00 in child support every week. *Id.* ¶ 3. The current child support arrears owed to Ms. Schoonmaker exceed $83,000. *Id.*

22. Ms. Schoonmaker filed a violation petition with the Bronx County Family Court on January 26, 2017. *Id.* ¶ 5. In large part because she was not receiving child support payments,

This is a copy of a pleading filed electronically pursuant to New York State court rules (22 NYCRR §202.5-b(d)(3)(i)) which, at the time of its printout from the court system's electronic website, had not yet been reviewed and approved by the County Clerk. Because court rules (22 NYCRR §202.5[d]) authorize the County Clerk to reject filings for various reasons, readers should be aware that documents bearing this legend may not have been accepted for filing by the County Clerk.

she was required to go on public assistance so that she could gain the benefit of a one-shot deal that the New York City Department of Human Resources offers for low-income clients who require assistance to pay back rent owed and so stave off eviction. *Id.* ¶ 4.

23. It was only more than four months later, when Ms. Schoonmaker was able to retain pro bono counsel, that she obtained a willfulness finding for the father's failure to pay her child support for years. *Id.* ¶ 6. Through Findings of Fact dated June 5, 2017, the Family Court held that the father willfully violated the final order of support, but failed to issue a remedy consistent with the Family Court Act, or explain why any such remedy would not be issued as required by the Family Court Rule. Because the father claimed that he was unemployed without offering any credible proof of same, it adjourned the matter to August 21, 2017, more than 10 weeks later (virtually the time that the Family Court is required to adjudicate a new violation petition from start to finish). *Id.* ¶ 7. Between June 5, 2017 and June 23, 2017, the father failed to comply with the June 5, 2017 order, which required him to continue to pay the court-ordered child support of $90 per week. *Id.* ¶ 8. As a result, Ms. Schoonmaker was required to file an Order to Show Cause application that requested emergency relief. *Id.* ¶ 9. By order, dated July 10, 2016, the Court ordered Respondent to pay Ms. Schoonmaker $300.00 beginning on July 14, 2017 and every two weeks thereafter through the next return date scheduled for August 21, 2017. *Id.* ¶ 10. The Court ruled that if the father failed to pay her the $300.00 per week in child support, then the Court's six month order of incarceration would go into effect. *Id.* Finally, by that date, the father finally started to pay Ms. Schoonmaker some child support though less than the Family Court had ordered on July 10, 2017. *Id.*

24. Despite the Court's July 10, 2017 order, Ms. Schoonmaker only received inconsistent child support payments from the father since the July 5, 2017 court date. *Id.* ¶ 11. The father

This is a copy of a pleading filed electronically pursuant to New York State court rules (22 NYCRR §202.5-b(d)(3)(i)) which, at the time of its printout from the court system's electronic website, had not yet been reviewed and approved by the County Clerk. Because court rules (22 NYCRR §202.5[d]) authorize the County Clerk to reject filings for various reasons, readers should be aware that documents bearing this legend may not have been accepted for filing by the County Clerk.

CAUTION: THIS DOCUMENT HAS NOT YET BEEN REVIEWED BY THE COUNTY CLERK. (See below.)

was required to pay Ms. Schoonmaker $300.00 in child support between July 14 and December 1, 2017, for a total of 11 payments totaling $3,300. *Id.* ¶ 12. Despite the father providing pay checks to the Support Magistrate and allegedly from an employer, no money has been garnished from his pay checks issued by that employer even though an income execution was issued by the Support Magistrate to that employer on August 21, 2017. *Id.* The Support Collection Unit could not identify an employer associated with the father. *Id.* This case has now been pending in the Bronx County Family Court for more than ten months since the filing of Ms. Schoonmaker's violation petition without a consequence specified in Family Court Act § 454(3) for the Family Court's determination that the father willfully failed to pay court-ordered child support. *Id.* ¶ 13.

25. Petitioner Donna L. Taylor-Sanders ("Ms. Sanders") is a resident of Bronx County, New York. She is employed full-time by New York City. Affidavit of Donna L. Taylor-Sanders ¶ 2. She has two biological children, boys who are the ages of 18 and 21. *Id.* Both of Ms. Sanders' children have disabilities – one is a Type I insulin dependent diabetic and the other one has a learning disability, he is developmentally delayed and has chronic lung disease. *Id.* Nonetheless, both are high achieving due in large measure to Ms. Sanders' long-standing emotional, social and financial support. *Id.* The current child support arrears owed to Ms. Sanders exceed $130,000. *Id.*

26. Ms. Sanders filed a violation petition against the father in February 2015. *Id.* ¶ 3. More than almost three years later, and eleven months after the special violation part in Bronx County Family Court was created, the petition only recently terminated on November 13, 2017. *Id.* The Support Magistrate issued a willfulness finding against the father on June 8, 2015. *Id.* ¶ 4. The Family Court issued a money judgment against the father on September 16, 2015, at or around which time the father represented that he held an off the book job. *Id.* ¶ 5. On December 2,

This is a copy of a pleading filed electronically pursuant to New York State court rules (22 NYCRR §202.5-b(d)(3)(i)) which, at the time of its printout from the court system's electronic website, had not yet been reviewed and approved by the County Clerk. Because court rules (22 NYCRR §202.5[d]) authorize the County Clerk to reject filings for various reasons, readers should be aware that documents bearing this legend may not have been accepted for filing by the County Clerk.

CAUTION: THIS DOCUMENT HAS NOT YET BEEN REVIEWED BY THE COUNTY CLERK. (See below.)

2015, the Family Court issued a bench warrant for the father's arrest when he failed to appear for that hearing date. *Id.* ¶ 6. The father was finally involuntarily returned on the warrant on November 7, 2016. *Id.* On December 1, 2016, the father came back to court and the Support Through Employment Program ("STEP") reported that he did not complete it, and he had no job search diary. *Id.* ¶ 7. The Family Court was not bothered. *Id.* On the adjourned date on March 20, 2017, the STEP program reported that the father was a no-show, but the Family Court granted him yet another chance. *Id.* ¶ 8. On May 8, 2017, the father reported that he was earning $300 weekly, and apparently filed a financial disclosure affidavit but none was found in the Bronx County Family Court record room. *Id.* ¶ 9. On May 10, 2017, the father came back to the Family Court without a paycheck, failing to provide proof of the representation he had made in the court just two days earlier. *Id.* The STEP program again reported that the father was a no-show, but the Family Court still gave the father another chance. *Id.* On July 13, 2017, the Family Court ordered the father's employer to appear in court through issuance of a subpoena. *Id.* ¶ 10. The employer and the father failed to appear. *Id.* Finally, on September 21, 2017, Ms. Sanders was able to have pro bono counsel by her side. *Id.* ¶ 11. The father again represented that he was working, having purportedly just started a new job the Monday before the court hearing, but offered no proof other than a business card of the alleged employer. *Id.* At last, the matter was referred to a Family Court Judge for confirmation of an order of incarceration. *Id.* The Family Court Judge adjourned the matter to October 10, 2017 for the father to appear with proof of his income. *Id.* On October 10, 2017, the father showed up more than two hours late. *Id.* ¶ 12. More than two and a half years after Ms. Sanders filed her violation petition, the Family Court issued an order of commitment, pursuant to which the father was incarcerated for thirty (30) days. *Id.* The Court issued a purge amount of $6,000. Ms. Sanders' violation

This is a copy of a pleading filed electronically pursuant to New York State court rules (22 NYCRR §202.5-b(d)(3)(i)) which, at the time of its printout from the court system's electronic website, had not yet been reviewed and approved by the County Clerk. Because court rules (22 NYCRR §202.5[d]) authorize the County Clerk to reject filings for various reasons, readers should be aware that documents bearing this legend may not have been accepted for filing by the County Clerk.

petition terminated as of November 13, 2017 after the father served a thirty (30) day jail sentence. *Id.*

27. Petitioner Mona Lisa Gardner ("Ms. Gardner") is a resident of Kings County, New York. She is the biological mother of a 19-year-old son. Affidavit of Mona Lisa Gardner ¶ 1. Ms. Gardner is a single, low-income mother who has raised a hard-working, loving, successful, smart and personable child, who graduated with honors from high school and is excelling as a freshman at a prestigious college in South Carolina. *Id.* Ms. Gardner has made every sacrifice possible for her son, including working long-hours for a not-for-profit organization in New York City. *Id.* Ms. Gardner fell into debt as a result of the noncustodial father's failure to pay child support. *Id.* ¶ 2. Ms. Gardner filed a child support violation petition with the Kings County Family Court on April 4, 2016 because the father failed to pay child support for almost a year. *Id.* ¶ 3. The father was more than $10,000 in arrears. *Id.*

28. The first hearing date on Ms. Gardner's violation petition was scheduled for May 11, 2016, more than thirty-six days after the filling of the petition, beyond the time frame that the Family Court Rule requires. *Id.* ¶ 4. On the May 11, 2016 hearing date, after Ms. Gardner's counsel could not effect service of the petition because the father was evading service, Ms. Gardner requested the Family Court to schedule the new return date within 30 days of May 11, 2016 based on the Family Court Rule. *Id.* ¶ 5. The Support Magistrate responded by saying that "I'm aware of that rule myself and I'll make a note of it but we're looking" at September 13, 2016 – more than four months later – for the return of process service date. *Id.* ¶ 6. Between June 2015 and that date, the father only made two child support payments to Ms. Gardner and thus Ms. Gardner fell further in debt and was required to borrow money to support her son. *Id.* ¶ 7. At the September 13, 2016 hearing, the Court granted the father's counsel's motion to be

This is a copy of a pleading filed electronically pursuant to New York State court rules (22 NYCRR §202.5-b(d)(3)(i)) which, at the time of its printout from the court system's electronic website, had not yet been reviewed and approved by the County Clerk. Because court rules (22 NYCRR §202.5[d]) authorize the County Clerk to reject filings for various reasons, readers should be aware that documents bearing this legend may not have been accepted for filing by the County Clerk.

relieved with respect to her client's downward modification petition, and adjourned the hearing date on Ms. Gardner's violation case to November 14, 2016, more than sixty (60) days later, in violation of the Family Court Rule. *Id.* ¶ 8.

29. Testimony was taken on November 14, 2016, but only in connection with the father's downward modification petition, not Ms. Gardner's violation petition. *Id.* ¶ 9. The hearing was not completed and adjourned to January 6, 2017. *Id.* Testimony on Ms. Gardner's violation petition was started on the January 6, 2017 hearing date. *Id.* In scheduling another adjourned date on January 6, 2017 instead of completing it then, the Support Magistrate said due to scheduling issues, "that's why these rules don't really work in practice." *Id.* The violation petition hearing was not completed until January 27, 2017, more than nine months after Ms. Gardner filed her violation petition with the Family Court. *Id.* The Support Magistrate issued a decision, dated February 10, 2017, which recommended incarceration if the father failed to pay the full amount of child support arrears – then exceeding $12,000 – by the next scheduled court date before a Family Court Judge on March 3, 2017. *Id.*

30. The Family Court Judge failed to confirm the recommendation for incarceration for several months later. Instead, the Judge held at least three hearings between March 2017 and June 2017, during which time the father was given multiple chances to pay some percentage of the purge amount that the Support Magistrate had recommended. *Id.* ¶ 10. Ultimately, the father was only required to pay less than 50% of the recommended purge amount and he still owes Ms. Gardner child support arrears today. *Id.* ¶ 11.

31. Petitioner Monique T. Bowden ("Ms. Bowden") is a resident of Bronx County, New York. Petitioner is the biological mother of a twenty one year-old-daughter, eighteen-year-old son and thirteen year-old daughter. Affidavit of Monique T. Bowden ¶ 1. Ms. Bowden is a

This is a copy of a pleading filed electronically pursuant to New York State court rules (22 NYCRR §202.5-b(d)(3)(i)) which, at the time of its printout from the court system's electronic website, had not yet been reviewed and approved by the County Clerk. Because court rules (22 NYCRR §202.5[d]) authorize the County Clerk to reject filings for various reasons, readers should be aware that documents bearing this legend may not have been accepted for filing by the County Clerk.

hard-working, single mother who has supported her children throughout their lives. *Id.* ¶¶ 1, 2. Despite her long-hours of work to provide financial support to her children, Ms. Bowden found the time to support her children emotionally, academically and financially, including identifying the best educational opportunities for them. *Id.* ¶ 2. As a consequence, Ms. Bowden was left to live pay check to pay check, and bills mounted when the two fathers of her three children fail to pay her child support. *Id.* The result of the Court system's failure to repeatedly and timely process multiple child support petitions filed against the two fathers of her children resulted in her falling into debt and suffering very significant emotional and other harm. *Id.* ¶ 3.

32. Simultaneously, Ms. Bowden had two separate violation petitions pending against two different fathers. *Id.* ¶ 4. One was filed in October 2013, the other in November 2013. *Id.* In both proceedings, the same Support Magistrate, who was subsequently elevated to Family Court Judge, flagrantly violated the Family Court Rule by granting months-long adjournments without cause, each all well beyond 60 days. *Id.* ¶¶ 5, 6. The case filed in October 2013 was only resolved in February 2016 through a written decision issued more than three months after the conclusion of the evidentiary hearing. *Id.* ¶ 7. The case filed in November 2013 was only finally resolved in August 2016. *Id.* ¶ 8. In that latter case, after issuing a thoughtful decision holding the father in willful violation of the child support order, the case stalled in violation of the Family Court Rule because, incredibly, the Family Court lost the court file. *Id.* Those arrears totaled more than $19,000. *Id.*

33. Thereafter, Ms. Bowden filed a new child support violation petition with the Bronx County Family Court, seeking to hold the father of her twelve-year-old daughter in contempt of court for failing to make payments toward the child support arrears, which exceed $10,000. *Id.* ¶ 9. The first hearing date on that latter petition was scheduled for June 2, 2016, more than 41

This is a copy of a pleading filed electronically pursuant to New York State court rules (22 NYCRR §202.5-b(d)(3)(i)) which, at the time of its printout from the court system's electronic website, had not yet been reviewed and approved by the County Clerk. Because court rules (22 NYCRR §202.5[d]) authorize the County Clerk to reject filings for various reasons, readers should be aware that documents bearing this legend may not have been accepted for filing by the County Clerk.

days after the April 22, 2016 filling date of the petition, beyond the time frame that the Family Court Rule requires. *Id.* ¶ 10. A hearing was held on July 6, 2016, at which time the father failed to contest Ms. Bowden's application that he was in willful disregard of the child support order. *Id.* ¶ 11. No written decision finding the father in willful violation of the child support order has issued to date in violation of the Family Court Rule. *Id.* As of that Court date, the father was more than $18,000 in arrears to Ms. Bowden. *Id.* The matter was adjourned until August 16, 2016 for a control date for payment of a purge amount. *Id.* ¶ 12. The Court ordered the father to pay $4,633.98 cents as a purge amount by the next court date on September 15, 2016. *Id.*

34. The father paid $725 in child support on the morning of September 15, 2016. *Id.* ¶ 13. Notwithstanding that the father was clearly flouting the authority of the Court and owed Ms. Bowden more than $3,000 of the purge amount issued the previous court date, on August 16, 2016, the father was allowed to leave the Courthouse without incident or consequence. *Id.* ¶ 14. The matter was adjourned to October 25, 2016. *Id.* At that time, the father paid far less than the $3,000 purge amount. *Id.* ¶ 15. The matter was adjourned again to November 21, 2016. *Id.* Again, the father paid less than the required purge amount. *Id.* Again, there was no consequence. *Id.* The matter was adjourned to December 21, 2016. *Id.* ¶ 16. At that time, the father failed to appear. *Id.* A warrant was issued. *Id.* The father turned himself in voluntarily and came to the Court with a modest payment. *Id.* In total, the father failed to pay the purge amount originally required by the Court to avoid jail time. *Id.*

35. The father failed to pay the required court-ordered child support in 2017, and thus recently, Ms. Bowden was forced to file yet another violation petition on or about August 24, 2017. *Id.* ¶ 17. In violation of the Family Court Rule, the first return date was not scheduled

This is a copy of a pleading filed electronically pursuant to New York State court rules (22 NYCRR §202.5-b(d)(3)(i)) which, at the time of its printout from the court system's electronic website, had not yet been reviewed and approved by the County Clerk. Because court rules (22 NYCRR §202.5[d]) authorize the County Clerk to reject filings for various reasons, readers should be aware that documents bearing this legend may not have been accepted for filing by the County Clerk.

until September 26, 2017. *Id.* ¶ 18. The Support Magistrate assigned to hear the return of process hearing date referred it to another Part, and the Part to which it was transferred adjourned the matter to November 3, 2017, again in violation of the Family Court Rule. *Id.* The matter is now scheduled for another appearance on December 15, 2017.

36. Petitioner Maria Martucci ("Ms. Martucci") is a resident of Richmond County, New York. Affidavit of Maria Martucci ¶ 3. Petitioner is the biological mother of an eighteen-year-old son. *Id.* ¶ 1. Her ex-husband is now more than $47,000 in arrears on his child support obligations, and the Family Court has yet to hold him accountable. *Id.* ¶ 2. Ms. Martucci filed a violation petition with the Staten Island Family Court on October 26, 2015. *Id.* ¶ 3. The first hearing date on that petition was scheduled for November 24, 2015. *Id.* ¶ 4.

37. During the November 24, 2015 proceeding, the court indicated that it would adjourn the hearing for a later date. *Id.* Ms. Martucci pleaded with the court, "[w]ould you please, I would appreciate it if there could be [one] at the earliest date possible. . .," to which the court responded, "I'll do the best I can, ma'am. I'm an extremely busy courtroom." *Id.* Ms. Martucci then responded "I understand. But I am also in financial duress because he has not paid anything." *Id.* Indeed, Ms. Martucci works a full time job to provide for her son. *Id.* ¶ 2. When she falls short (as she often does) she has to borrow money from friends and extended family to put food on the table and keep the lights on. *Id.*

38. In violation of the Family Court Rule, Ms. Martucci's case was subject to a lengthy adjournment and not reconvened until the following year on January 14, 2016. *Id.* ¶ 5. Ms. Martucci arrived at the January 14, 2016 hearing only be told her case would be delayed even further. *Id.* ¶ 6. The court adjourned the hearing until February 18, 2016, over a month later. *Id.* The day before the February 18, 2016 hearing, the court called and canceled for unknown

This is a copy of a pleading filed electronically pursuant to New York State court rules (22 NYCRR §202.5-b(d)(3)(i)) which, at the time of its printout from the court system's electronic website, had not yet been reviewed and approved by the County Clerk. Because court rules (22 NYCRR §202.5[d]) authorize the County Clerk to reject filings for various reasons, readers should be aware that documents bearing this legend may not have been accepted for filing by the County Clerk.

reasons. *Id.* ¶ 7. Ms. Martucci subsequently was notified by the court that her case would be adjourned until March 15, 2016 at which point it was adjourned yet again until April 19, 2016. *Id.* ¶ 8. The day before the April 19, 2016 hearing, the court called and cancelled for unknown reasons, and adjourned Ms. Martucci's case again until May 17, 2016. *Id.* ¶ 9. All of these adjournments were in violation of the Family Court Rule.

39. Ms. Martucci's case was not completed until July 26, 2016. *Id.* ¶ 10. While the father was found to be in willful violation of the child support order, the Family Court denied the remedy of incarceration. *Id.* In violation of the Family Court Rule, it failed to issue a written decision setting forth why it refused to issue an order of incarceration against the father in violation of the Family Court Rule. *Id.* ¶ 11. The Court entered a money judgment. *Id.* ¶ 12. Ms. Martucci continued to struggle to provide for her son without the support she needs. *Id.*

40. Likely emboldened by the toothless remedy of the Family Court, Ms. Martucci's former husband continued to ignore his child support obligation. *Id.* Accordingly, on September 30, 2016, Ms. Martucci filed another petition to enforce the child support provision of the Judgment of Divorce. *Id.* ¶ 13. On December 13, 2016, a private attorney appeared on the father's behalf and sought an adjournment. *Id.* ¶ 14. In violation of the Family Court Rule, the petition and a cross petition for downward modification of the child support order were marked final for a hearing and a hearing date was set for January 31, 2017. *Id.* ¶ 15. Neither the father nor his attorney appeared in court on that date. *Id.* A default willfulness finding was entered and the case was set down for a willfulness confirmation hearing before a Judge. *Id.* ¶ 16. A motion to vacate the default was filed and denied by the Support Magistrate. *Id.* An Objection to the decision denying the motion was filed. *Id.* Ms. Martucci was required to make additional court appearances on June 27, 2017 and August 2, 2017, but the Court's decision on the Objection had

This is a copy of a pleading filed electronically pursuant to New York State court rules (22 NYCRR §202.5-b(d)(3)(i)) which, at the time of its printout from the court system's electronic website, had not yet been reviewed and approved by the County Clerk. Because court rules (22 NYCRR §202.5[d]) authorize the County Clerk to reject filings for various reasons, readers should be aware that documents bearing this legend may not have been accepted for filing by the County Clerk.

not yet issued, so the case was adjourned. *Id.* ¶ 17. On August 14, 2017, the Court granted the father's Objection to the denial of his motion to vacate his default, the default willfulness order was therefore vacated, and the case was remanded back to the Support Magistrate for a hearing on the merits. *Id.* ¶ 18.

41. On August 2, 2017, the father's attorney indicated that he would be making a motion to withdraw as his counsel. *Id.* ¶ 19. Meanwhile, the same private attorney continued to represent him on other matters unrelated to Ms. Martucci. *Id.* On September 13, 2017, the parties came to the Family Court but the case was adjourned due to the Support Magistrate's unavailability for personal reasons. *Id.* ¶ 20. The parties and their attorneys were kept waiting in the waiting room for nearly two hours before being called in before a different Support Magistrate to be given an adjourn date. Ms. Martucci missed work again as a result of this appearance. *Id.* This wasted court appearance was required despite the fact that the Court had notice two days before that the Support Magistrate would not be there. *Id.* The case was adjourned to October 10, 2017, although Ms. Martucci indicated on the record that her work obligations that week made it difficult for her to appear then. *Id.* ¶ 21. On October 10, 2017, another adjournment was granted to the father for him to hire a new attorney. *Id.* ¶ 22. The adjournment was granted over Ms. Martucci's objection. *Id.* The case was adjourned for a hearing on the merits to be held on October 20, 2017. *Id.* On October 20, 2017, the father appeared without counsel and asked for an additional adjournment to obtain counsel. *Id.* ¶ 23. He admitted on the record that he had finally reached out to an attorney the day before the court appearance and had not yet retained new counsel. *Id.* The adjournment was once again granted over Ms. Martucci's objection and in violation of the Family Court Rule. *Id.* A hearing on the Violation Petition and the cross

This is a copy of a pleading filed electronically pursuant to New York State court rules (22 NYCRR §202.5-b(d)(3)(i)) which, at the time of its printout from the court system's electronic website, had not yet been reviewed and approved by the County Clerk. Because court rules (22 NYCRR §202.5[d]) authorize the County Clerk to reject filings for various reasons, readers should be aware that documents bearing this legend may not have been accepted for filing by the County Clerk.

petition for modification of a child support order was scheduled for November 28, 2017. *Id.* ¶ 24.

42. At the hearing on November 28, 2017, the father called the Family Court and asked for an adjournment because he allegedly "had the flu," although he provided no medical documentation. *Id.* Ms. Martucci asked that the father's downward modification petition be dismissed on default and for a default finding of willfulness on her violation petition as the father has repeatedly made similar misrepresentations to the Court about his alleged lawyer. *Id.* The attorney the father claimed he was hiring had left Ms. Martucci a message the day before through her lawyer advising Ms. Martucci that she was not retained and would not be representing him. *Id.* This seemed like yet another in a long string of attempts by the father to adjourn the case for no reason simply to extend the case even further. *Id.* Ms. Martucci's lawyer objected vehemently and provided the Family Court with a Memorandum of Law on how the court should proceed when someone has a history of engaging in dilatory tactics and observing how much unjustified delay has taken place in her case even before the hearing on her violation/willfulness petition had even started. *Id.* The Support Magistrate denied Ms. Martucci's applications and adjourned the case once again to December 7, 2017 for a hearing and "marked final, again." *Id.* The December 7, 2017 hearing date is more than ***fourteen months*** after Ms. Martucci filed her most recent violation petition. *Id.* ¶ 25. The father continues to violate the child support order and Ms. Martucci continues to struggle financially to support her son. *Id.*

43. Petitioner Ebony Daley ("Ms. Daley") is a resident of Bronx County, New York. Affidavit of Ebony Daley ¶ 1. Ms. Daley is a single, low-income working mother of a 3 year old daughter. *Id.* Despite earning only a modest hourly wage, Ms. Daley does her best to provide a warm, loving home for her daughter. *Id.* Ms. Daley obtained a final order of support requiring

This is a copy of a pleading filed electronically pursuant to New York State court rules (22 NYCRR §202.5-b(d)(3)(i)) which, at the time of its printout from the court system's electronic website, had not yet been reviewed and approved by the County Clerk. Because court rules (22 NYCRR §202.5[d]) authorize the County Clerk to reject filings for various reasons, readers should be aware that documents bearing this legend may not have been accepted for filing by the County Clerk.

CAUTION: THIS DOCUMENT HAS NOT YET BEEN REVIEWED BY THE COUNTY CLERK. (See below.)

the father to pay $331.53 per month in child support to her on August 10, 2015. *Id.* ¶ 2. The father is currently over $10,000 in arrears. *Id.* Ms. Daley filed a violation petition with the Family Court in Bronx County on February 3, 2017. *Id.* ¶ 3. The hearing on the violation petition was not completed until on or about April 17, 2017, more than sixty (60) days after she filed her petition. *Id.* The father failed to appear for the hearing but the Family Court took no action. *Id.* Instead of issuing a remedy for the father's intentional violation of the family court order, the Family Court scheduled a next hearing more than two months later on June 26, 2017. *Id.*

44. The father failed to appear for the hearing on June 26, 2017. *Id.* ¶ 4. Again, there was no consequence for the father. *Id.* Rather, the Family Court scheduled another hearing for July 25, 2017. The father failed to appear for that hearing too. *Id.* And, again the father faced no consequence. *Id.* The matter was adjourned again for no reason to on or about September 14, 2017. On that date, the Support Magistrate adjourned the matter for confirmation of a recommendation for the issuance of a warrant, which was issued the next day on September 15, 2017. *Id.* For all of these court dates, except the one on September 15, 2017, Ms. Daley was required to attend and miss work, and thus lose income that is critically important to both her and her daughter's financial security. *Id.*

45. After months of searching, Ms. Daley was finally able to secure a pro bono counsel in early October 2017. *Id.* ¶ 5. Her lawyer submitted a notice of appearance with the Family Court on or about October 4, 2017. *Id.*

46. On October 27, 2017, the father voluntarily returned on the warrant that was issued on September 15, 2017. *Id.* ¶ 6. Neither Ms. Daley nor her newly retained lawyer were contacted by the Court to appear on October 27, 2017. *Id.* Instead, the Family Court allowed the father to

This is a copy of a pleading filed electronically pursuant to New York State court rules (22 NYCRR §202.5-b(d)(3)(i)) which, at the time of its printout from the court system's electronic website, had not yet been reviewed and approved by the County Clerk. Because court rules (22 NYCRR §202.5[d]) authorize the County Clerk to reject filings for various reasons, readers should be aware that documents bearing this legend may not have been accepted for filing by the County Clerk.

leave the courtroom without any consequence. *Id.* The Court told the father to attend STEP but the father failed to attend. *Id.* The Court also required the father to fill out a financial disclosure affidavit and job search diary by the next court date on November 20, 2017. *Id.* Common sense and the Family Court Act dictate that the financial disclosure affidavit and job search diary were required to be submitted by the father as part of the willfulness hearing, not months later. *Id.* In any event, the father failed to submit the financial disclosure affidavit and job search diary altogether. *Id.*

47. On November 20, 2017, the father failed to appear for at least the fifth time. *Id.* ¶ 6. Ms. Daley's counsel appeared on her behalf so that she would not have to miss work. *Id.* At the November 20, 2017 hearing, the Family Court indicated that it would not again take any adverse action against the father. *Id.* Instead, a "stay-warrant" was issued, which simply put the father on notice that if he did not appear for the next court hearing scheduled for December 18, 2017, that a warrant would be issued for his arrest. *Id.* This turn of events was particularly troubling as the Family Court had found months earlier that father had intentionally violated the child support order but has continually failed to take any action. *Id.* At the November 20, 2017 hearing, the Support Magistrate told Ms. Daley's counsel that if Ms. Daley did not appear herself on the next court date of December 18, 2017, that the Support Magistrate would dismiss Ms. Daley's violation petition if the father's assigned lawyer made a motion requesting this relief. *Id.* Ms. Daley's case has now pending in the Bronx County Family Court for more than ***ten months*** since the violation petition was filed without any remedy for the father's continuing failure to pay her support. *Id.* ¶ 7.

48. Petitioner Vanessa Nunez is a single, low-income working mother of an 8 year old daughter. Affidavit of Vanessa Nunez ¶ 1. Ms. Nunez works as hard as she can but she is paid a

This is a copy of a pleading filed electronically pursuant to New York State court rules (22 NYCRR §202.5-b(d)(3)(i)) which, at the time of its printout from the court system's electronic website, had not yet been reviewed and approved by the County Clerk. Because court rules (22 NYCRR §202.5[d]) authorize the County Clerk to reject filings for various reasons, readers should be aware that documents bearing this legend may not have been accepted for filing by the County Clerk.

CAUTION: THIS DOCUMENT HAS NOT YET BEEN REVIEWED BY THE COUNTY CLERK. (See below.) RECEIVED NYSCEF: 12/06/2017

very modest hourly wage. *Id.* She does not get paid for time she does not work. *Id.* On or about October 15, 2013, Ms. Nunez obtained a final order of support requiring the father to pay $158.00 per week in child support to her. *Id.* ¶ 2. In over four years, the father has never made a single payment of child support to Ms. Nunez. *Id.* He owes Ms. Nunez more than $39,000 in child support arrears.

49. Ms. Nunez filed a child support violation petition with the Bronx County Family Court on or about October 10, 2017. *Id.* ¶ 3. This was not her first violation petition. *Id.* The Court scheduled a first court appearance in Ms. Nunez's violation case more than thirty days later, on November 17, 2017, in violation of the Family Court Rule. *Id.* Through her pro bono lawyer, she served the summons and petition on the father. *Id.* On November 17, 2017, the father failed to show up. *Id.* The Family Court went forward with a willfulness hearing and made a determination that the father intentionally violated the child support order. *Id.* However, instead of issuing Ms. Nunez relief based on the Court's finding that the father intentionally violated the family court order, the Support Magistrate sent the father a notice that indicated he would be arrested if he did not appear in court on November 30, 2017. *Id.* No further action was taken against the father, including but not limited to, the Support Magistrate issuing a recommendation for or against incarceration in the written findings of fact. *Id.* The Support Magistrate's findings of fact did not mention in any way the range of remedies that are available to the Court when it finds that the father willfully violated the support order. *Id.* This is in violation of the Family Court Rule.

50. The father appeared in Court on November 30, 2017 and requested a lawyer. *Id.* ¶ 4. The Court provided the father with a court-appointed lawyer without asking him any questions. *Id.* And, again, the Court took no meaningful action against the father to compel child support

This is a copy of a pleading filed electronically pursuant to New York State court rules (22 NYCRR §202.5-b(d)(3)(i)) which, at the time of its printout from the court system's electronic website, had not yet been reviewed and approved by the County Clerk. Because court rules (22 NYCRR §202.5[d]) authorize the County Clerk to reject filings for various reasons, readers should be aware that documents bearing this legend may not have been accepted for filing by the County Clerk.

CAUTION: THIS DOCUMENT HAS NOT YET BEEN REVIEWED BY THE COUNTY CLERK. (See below.)

payments from him. *Id.* The Court scheduled "post-dispositional review" for February 5, 2018, almost four months after Ms. Nunez filed her violation petition. *Id.* Therefore, the Family Court failed to hold the father accountable for his failure to pay Ms. Nunez child support for over five years, and gave him more than ten weeks before he even is required to come back to court. *Id.* While Ms. Nunez continues to struggle month to month to provide for her daughter, there has been no consequence for the father's failure to pay court-ordered child support and even though the Family Court already ruled that the father intentionally violated the support order in her case. *Id.*

51. Respondent Janet DiFiore is the Chief Judge of the New York State Court of Appeals, Chief Judicial Officer of the New York Courts, and Chair of the Administrative Board of the New York Courts (the "Chief Judge"), with offices at 25 Beaver Street, New York, New York. The Chief Judge is responsible for the establishment and enforcement of the administrative policies of the New York Courts, including the Family Courts in each of the five boroughs in New York City, and for the New York City Family Courts' compliance with law. The Chief Judge is sued in her official capacity.

52. Respondent Lawrence Marks is Chief Administrator and Chief Administrative Judge of the New York Courts (the "Chief Administrative Judge"), with offices at 25 Beaver Street, New York, New York. The Chief Administrator is responsible, on behalf of the Chief Judge, for supervising the administration and operation of the New York Courts. The Chief Administrative Judge is sued in his official capacity.[1]

---

[1] The Chief Judge is required by § 249 of the new York Judiciary Law to establish a system of "internal control" for the New York Courts, defined as "a process that integrates the activities, plans … systems, resources and efforts … and that is designed to provide reasonable assurance that the organization will achieve its objectives and mission. The objectives of an internal control system include … promoting the effectiveness and efficiency of operations." The Chief Judge, in turn, delegates much of his or her authority to the Chief Administrative Judge, who is responsible for the administration and operation of the New York Court System. N.Y. Jud. Law § 212. The Chief Administrative Judge has supervisory authority over all of the New York Court System's administrative activities,

This is a copy of a pleading filed electronically pursuant to New York State court rules (22 NYCRR §202.5-b(d)(3)(i)) which, at the time of its printout from the court system's electronic website, had not yet been reviewed and approved by the County Clerk. Because court rules (22 NYCRR §202.5[d]) authorize the County Clerk to reject filings for various reasons, readers should be aware that documents bearing this legend may not have been accepted for filing by the County Clerk.

CAUTION: THIS DOCUMENT HAS NOT YET BEEN REVIEWED BY THE COUNTY CLERK. (See below.)

53. Respondent Jeanette Ruiz is the Chief Administrator and Chief Administrative Judge of the New York City Family Courts (the "Chief New York City Family Court Administrative Judge"), with offices at 60 Lafayette Street, New York, New York. The Chief New York City Family Court Administrative Judge is responsible for supervising the administration and operation of the New York City Family Courts, including the Deputy Administrative Judge of the New York City Family Courts. The Chief New York City Family Court Administrative Judge is sued in her official capacity.

54. Respondent Carol Sherman is the Chief Magistrate (the "Chief Magistrate") of the New York City Family Courts with offices at 60 Lafayette Street, New York, New York. Upon information and belief, the Chief Magistrate is responsible for supervising the Support Magistrates in the Family Courts in New York City. The Chief Magistrate of the Family Court is sued in her official capacity.

55. The New York City Family Court, a part of the New York State Unified Court System, consists of one court in each of the five boroughs in New York City. The Court was established to take specific action in the lives of children and parents, including child support petitions. The court has a wide range of powers to fit the particular needs of the people who come before it. The New York City Family Court is principally managed by the Chief Administrative Judge.

The Statute of Limitations

56. This proceeding is timely commenced under the relevant statute of limitations. *See* N.Y. CPLR §§ 217, 7801.

---

including the assignment and reassignment of judges and referees and the formation of the courts. 22 N.Y. Comp. Codes R. & Regs. § 80.1.

Section 439-a(b) of the Family Court Act provides that *"the chief administrator shall assign a sufficient number of support magistrates to ensure that such expedited process shall conform to the requirements [...] set forth in federal statutes and regulations[...]."* (emphasis added).

This is a copy of a pleading filed electronically pursuant to New York State court rules (22 NYCRR §202.5-b(d)(3)(i)) which, at the time of its printout from the court system's electronic website, had not yet been reviewed and approved by the County Clerk. Because court rules (22 NYCRR §202.5[d]) authorize the County Clerk to reject filings for various reasons, readers should be aware that documents bearing this legend may not have been accepted for filing by the County Clerk.

57. Specifically, undersigned counsel had a meeting with Respondent Judges Marks and Ruiz on September 20, 2016, in which the meeting participants discussed extensively the Family Court's violation of Family Court Rule § 205.43. Kathawala Affirmation ¶ 8.

58. The Family Court created new violation parts – dedicated Support Magistrates to decide violation cases. Kathawala Affirmation ¶ 13. The first part opened in the Bronx County Family Court in December 2016, and similar parts were opened in New York County and Kings County in 2017. *Id.* Most recently, the Family Court announced that it has added second violation parts in each of these counties or dedicated more Support Magistrates' time to violation cases, recognizing that it did not initially deploy sufficient resources to comply with the Family Court Rule even though the Chief Administrative Judge is obligated to do so under Family Court Act § 439-a(b). *Id.* And, throughout the last year, instead of seeking to comply with the Family Court Rule, the violation parts in these boroughs have, where a willfulness finding is issued, embarked on an unauthorized "post-dispositional hearing process" made out of whole cloth. *Id.* ¶ 14. This post-dispositional hearing process – expressly sanctioned by the Family Court management – violates the Family Court Rule as a matter of law. An example of this is the case of Petitioner Vanessa Nunez, in which the Family Court failed to issue a remedy under N.Y. Fam. Ct. Act § 454(3) as required by the Family Court Rule, 22 N.Y.C.R.R. § 205.43(g) within five (5) days of the conclusion of the willfulness hearing, and simply adjourned the case to February 2018 for further "disposition." Affidavit of Vanessa Nunez ¶ 4.

59. Further, undersigned counsel has made consistent and repeated efforts to determine if the Family Court in New York City is tracking compliance with the Family Court Rule. Kathawala Affirmation ¶¶ 2-7. The information in our possession demonstrates that compliance with the Family Court Rule is not being tracked. *Id.* This has been confirmed in multiple requests filed

This is a copy of a pleading filed electronically pursuant to New York State court rules (22 NYCRR §202.5-b(d)(3)(i)) which, at the time of its printout from the court system's electronic website, had not yet been reviewed and approved by the County Clerk. Because court rules (22 NYCRR §202.5[d]) authorize the County Clerk to reject filings for various reasons, readers should be aware that documents bearing this legend may not have been accepted for filing by the County Clerk.

CAUTION: THIS DOCUMENT HAS NOT YET BEEN REVIEWED BY THE COUNTY CLERK. (See below.)

under the New York State Freedom of Information Law with the Office of Court Administration, data requests sent to OCA, and a request for disclosure under New York Judiciary Law § 255. *Id.* Undersigned counsel also inquired with the Record Room in one Family Court on November 8, 2017 and another Family Court on November 29, 2017 whether the notes in the case management system provide confirmation that the Family Court Rule is being tracked on a case-by-case basis. *Id.* ¶ 11. Upon information and belief, in each of Petitioners' child support violation cases, the Support Magistrate assigned to that case is not tracking compliance with the Family Court Rule. *Id.*

60. Undersigned counsel sent Judge Marks a letter, dated November 13, 2017, requesting the Family Court to yet again redress the violations of the Family Court Rule and to comply with it. *Id.* In that letter, undersigned counsel demanded that the Family Court cease the post-dispositional hearing process as currently constituted. *Id.* ¶ 12. The Family Court, through counsel, unequivocally denied lack of compliance with the Family Court Rule despite Petitioners' experiences and those of countless others. *Id.* As of the filing date of this petition, Petitioners Maria Martucci, Liz Martinez, Heather Schoonmaker, Ebony Daley and Vanessa Nunez have active cases. In one or more of these cases, Petitioners have demanded that the Family Court comply with the Family Court Rule. The Family Court has refused to comply with the Rule, highlighted by Respondent Marks' categorical denial that the Family Court Rule is being violated on a systemic basis. This necessitates the filing of this lawsuit.

Jurisdiction and Venue

61. Venue in New York State Supreme Court for the County of New York is appropriate pursuant to N.Y. C.P.L.R. § 506(b) since, upon information and belief, the New York City Family Court made the challenged decisions not to comply with the Family Court Rule in this

This is a copy of a pleading filed electronically pursuant to New York State court rules (22 NYCRR §202.5-b(d)(3)(i)) which, at the time of its printout from the court system's electronic website, had not yet been reviewed and approved by the County Clerk. Because court rules (22 NYCRR §202.5[d]) authorize the County Clerk to reject filings for various reasons, readers should be aware that documents bearing this legend may not have been accepted for filing by the County Clerk.

County, and Respondents all have offices in New York County. This Court has jurisdiction over this matter since this Petition seeks an order under N.Y. C.P.L.R. § 7803(1) compelling the New York City Family Court to comply with the Family Court Rule.

Violations of Family Court Rule § 205.43(a)

62. The New York City Family Court regularly and consistently violates Family Court Rule § 205.43(a). The Petitioners in this case all filed violation petitions with the New York City Family Court. In each case except one, the Family Court failed to schedule the first return date in the proceeding within thirty (30) days of the filing of the petition as is required by Family Court Rule § 205.43(a). The return dates on the violation petitions were scheduled between thirty-four (34) and one hundred twenty five (125) days following the filing of the petition (or the court appearance in which petitioner's counsel notified the Family Court that service was not effected). This is a clear and unmistakable violation of the Family Court Rule.

63. Upon information and belief, litigants who do not have counsel, which constitutes, upon information and belief, more than eighty (80) percent of the custodial parents who file violation petitions in the New York City Family Court, are *pro se* and thus do not have the opportunity to demand compliance with the Family Court Rule and are given return dates, like the named petitioners, far beyond thirty (30) days after the filing date of their petitions.

Violations of Family Court Rule § 205.43(b)

64. The New York City Family Court regularly and consistently violates Family Court Rule § 205.43(b). In one or more of the Petitioners' cases, their hearings were scheduled more than thirty (30) days after the return date in the petition, and in some cases, several months or even years. Further, Petitioners' violation petition cases were allowed to linger for months or years,

This is a copy of a pleading filed electronically pursuant to New York State court rules (22 NYCRR §202.5-b(d)(3)(i)) which, at the time of its printout from the court system's electronic website, had not yet been reviewed and approved by the County Clerk. Because court rules (22 NYCRR §202.5[d]) authorize the County Clerk to reject filings for various reasons, readers should be aware that documents bearing this legend may not have been accepted for filing by the County Clerk.

much longer than the 60 days within which Family Court Rule requires that a hearing be completed.

Violations of Family Court Rule § 205.43(c) & (d)

65. New York City Family Court violates sections (c) and (d) of the Family Court Rule by granting more than one adjournment to allow noncustodial parents to secure counsel and/or for a reason not authorized in the Rule. Adjournments in each of Petitioners' cases were granted without cause. For example, Ms. Martinez's pending child support petition is at least 8 months old and will be more than 10 months old on February 26, 2018 when it is next scheduled without a willfulness hearing being scheduled; Ms. Daley's is more than 10 months old. Adjournments were issued for reasons not authorized in the Family Court Rule with seeming no concern.

66. More recently, the Family Court also failed to comply with the Family Court Rule despite the creation of new violation parts purportedly dedicated to address and comply with the rule. This is evidenced by the violation petitions filed by Petitioners Liz Martinez, Heather Schoonmaker, Ebony Daley and Donna L. Taylor-Sanders, among others.

Violations of Family Court Rule § 205.43(e)

67. The New York City Family Court violates section (e) of the Family Court Rule by granting adjournments of greater than seven days after a hearing on the violation petition has commenced. This was done multiple times over months and years in Petitioners' cases.

Violations of Family Court Rule § 205.43(f)

68. The New York City Family Court violates section (f) of the Family Court Rule by regularly issuing written findings of fact more than five court days following conclusion of a willfulness hearing. Currently, the Family Court does not rule on the remedy for the father's willful violation of final Family Court orders, but instead institutes a "post-dispositional hearing"

This is a copy of a pleading filed electronically pursuant to New York State court rules (22 NYCRR §202.5-b(d)(3)(i)) which, at the time of its printout from the court system's electronic website, had not yet been reviewed and approved by the County Clerk. Because court rules (22 NYCRR §202.5[d]) authorize the County Clerk to reject filings for various reasons, readers should be aware that documents bearing this legend may not have been accepted for filing by the County Clerk.

CAUTION: THIS DOCUMENT HAS NOT YET BEEN REVIEWED BY THE COUNTY CLERK. (See below.)

process, the purpose of which is to compel future payments of child support, not to impose a remedy for the past failures to pay child support, which is the sole purpose of the violation petition.

Violations of Family Court Rule § 205.43(g)

69. The New York City Family Court violates section (g) of the Family Court Rule by failing to issue written findings that include (i) the specific facts upon which the finding of willfulness is based; (ii) the specific amount of arrears established and a money judgment for such amount; (iii) a recommendation regarding the sanctions that should be imposed, including the sanction of incarceration; and (iv) a recommendation, as appropriate, regarding a specific dollar amount to be paid or a specific plan to repay the arrears. In each of Petitioners' cases, the Family Court failed to issue written findings that included some or all of these requirements if it issued a findings of fact at all.

CLASS ALLEGATIONS

70. Petitioners bring this action on behalf of themselves and all other similarly situated persons (the "Class Members" or the "Class") as a class action pursuant to N.Y. C.P.L.R. § 901 *et seq*. The class which Petitioners seek to represent is composed of and defined as follows: All individuals residing in New York City who have a pending child support violation petition in any of the five New York City Family Courts and where the New York City Family Court has violated the Family Court Rule; and all individuals residing in New York City who will file a child support violation case in the future in the New York City Family Court.

71. Petitioners reserve the right under N.Y. C.P.L.R. § 902 to amend or modify the class description with greater specificity or division into subclasses or limitation to particular issues.

This is a copy of a pleading filed electronically pursuant to New York State court rules (22 NYCRR §202.5-b(d)(3)(i)) which, at the time of its printout from the court system's electronic website, had not yet been reviewed and approved by the County Clerk. Because court rules (22 NYCRR §202.5[d]) authorize the County Clerk to reject filings for various reasons, readers should be aware that documents bearing this legend may not have been accepted for filing by the County Clerk.

72. This action has been brought and may be maintained as a class action pursuant to N.Y. C.P.L.R. § 901 because there is a well-defined common interest of many persons, and it is impractical to bring them all before the Court.

A. Numerosity

73. The potential quantity of members of the Class as defined is so numerous that joinder of all members would be unfeasible and impractical. The disposition of their claims through this class action will benefit both the parties and this Court. The exact quantity of members of the Class is unknown to Petitioners at this time; however, it is estimated that the Class number is well in excess of two thousand (2,000) individuals. The quantity and identity of such membership is ascertainable via inspection of Respondents' records.

B. Common Questions Predominate

74. Common questions of law and fact exist as to all Class Members, and predominate over any questions that affect only individual members of the Class. The common questions of law and fact include, but are not limited to:

(1) Whether the New York City Family Court violates section (a) of the Family Court Rule by scheduling petitions that allege a willful violation or seek enforcement of an order of support for first appearances more than 30 days from the filing of the violation or enforcement petition. Family Court Rule § 205.43(a);

(2) Whether the New York City Family Court violates section (b) of the Family Court Rule by failing to "commence a hearing to determine a willful violation within 30 days of the date noticed in the summons." Family Court Rule § 205.43(b);

This is a copy of a pleading filed electronically pursuant to New York State court rules (22 NYCRR §202.5-b(d)(3)(i)) which, at the time of its printout from the court system's electronic website, had not yet been reviewed and approved by the County Clerk. Because court rules (22 NYCRR §202.5[d]) authorize the County Clerk to reject filings for various reasons, readers should be aware that documents bearing this legend may not have been accepted for filing by the County Clerk.

CAUTION: THIS DOCUMENT HAS NOT YET BEEN REVIEWED BY THE COUNTY CLERK. (See below.) RECEIVED NYSCEF: 12/06/2017

(3) Whether the New York City Family Court violates section (b) of the Family Court Rule by failing to conclude a hearing to determine a willful violation of a child support order within 60 days of its commencement. Family Court Rule § 205.43(b);

(4) Whether the New York City Family Court violates sections (c) and (d) of the Family Court Rule by granting more than one adjournment to allow Respondent to secure counsel and/or for a reason not specified in the Rule. Family Court Rule § 205.43(c) & (d);

(5) Whether the New York City Family Court violates section (e) of the Family Court Rule by granting adjournments of greater than seven days after a hearing on the violation petition has commenced. Family Court Rule § 205.43(e);

(6) Whether the New York City Family Court violates section (f) of the Family Court Rule by issuing written findings of fact more than five court days following conclusion of a willfulness hearing. Family Court Rule § 205.43(f); and

(7) Whether the New York City Family Court violates section (g) of the Family Court Rule by failing to issue written findings that include (i) the specific facts upon which the finding of willfulness is based; (ii) the specific amount of arrears established and a money judgment for such amount; (iii) a recommendation regarding the sanctions that should be imposed, including whether the sanction of incarceration is recommended; and (iv) a recommendation, as appropriate, regarding a specific dollar amount to be paid or a specific plan to repay the arrears. Family Court Rule § 205.43(g).

C. Typicality

75. The claims of Petitioners are typical of the claims of all members of the Class defined herein because all members of the Class have suffered one or more violations of the Family Court Rule in their violation petition cases and thus in each violation, the Family Court, through

This is a copy of a pleading filed electronically pursuant to New York State court rules (22 NYCRR §202.5-b(d)(3)(i)) which, at the time of its printout from the court system's electronic website, had not yet been reviewed and approved by the County Clerk. Because court rules (22 NYCRR §202.5[d]) authorize the County Clerk to reject filings for various reasons, readers should be aware that documents bearing this legend may not have been accepted for filing by the County Clerk.

the assigned Support Magistrate and/or Family Court Judge, failed to perform a duty enjoined upon it by law as alleged herein.

D. Adequacy of Representation

76. Petitioners are adequate representatives of the Class defined herein, will fairly protect the interests of the members of the Class, have no interests antagonistic to the members of the Class, and will vigorously pursue this suit via attorneys who are competent, skilled, and experienced in litigating matters of this type. Class counsel is competent and experienced in litigating large class actions.

E. Superiority

77. The nature of this action and the nature of laws available to Petitioners make the use of the class action format a particularly efficient and appropriate procedure to afford relief to Petitioners for the wrongs alleged herein. Individual joinder of all Class Members is impractical. Class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of effort and expense that numerous individual actions engender. In fact, in many if not most cases, Petitioners would be unable to prosecute individual Article 78 petitions seeking compliance with the Family Court Rule for numerous reasons, including the fact that Class Members in their individual petitions generally do not have counsel and have no right to counsel in violation cases. To redress the violations of the Family Court Rule suffered by the individual Class Members would require significant expenses and burdens of individual litigation and would make it extremely difficult or impossible for individual Class Members to redress the wrongs done to them.

This is a copy of a pleading filed electronically pursuant to New York State court rules (22 NYCRR §202.5-b(d)(3)(i)) which, at the time of its printout from the court system's electronic website, had not yet been reviewed and approved by the County Clerk. Because court rules (22 NYCRR §202.5[d]) authorize the County Clerk to reject filings for various reasons, readers should be aware that documents bearing this legend may not have been accepted for filing by the County Clerk.

CAUTION: THIS DOCUMENT HAS NOT YET BEEN REVIEWED BY THE COUNTY CLERK. (See below.)

CAUSE OF ACTION

Mandamus Action Under N.Y. C.P.L.R. § 7801 et seq. for Violations of Family Court Rule § 205.43

78. Petitioners repeat and reallege, as if set forth fully herein, the allegations contained in Paragraphs 1 through 77, hereof.

79. By reason of the foregoing, Respondents violate section (a) of the Family Court Rule by scheduling petitions that allege a willful violation or seek enforcement of an order of support for first appearances more than 30 days from the filing of the violation or enforcement petition.

80. By reason of the foregoing, Respondents violate section (b) of the Family Court Rule by failing to "commence a hearing to determine a willful violation within 30 days of the date noticed in the summons."

81. By reason of the foregoing, Respondents violate section (b) of the Family Court Rule by failing to conclude a hearing to determine a willful violation of a child support order within 60 days of its commencement.

82. By reason of the foregoing, Respondents violate sections (c) and (d) of the Family Court Rule by granting more than one adjournment to allow respondents to secure counsel and/or for a reason not specified in the Rule.

83. By reason of the foregoing, Respondents violate section (e) of the Family Court Rule by granting adjournments of greater than seven days after a hearing on the violation petition has commenced.

84. By reason of the foregoing, Respondents violate section (f) of the Family Court Rule by issuing written findings of fact more than five court days following conclusion of a willfulness hearing.

This is a copy of a pleading filed electronically pursuant to New York State court rules (22 NYCRR §202.5-b(d)(3)(i)) which, at the time of its printout from the court system's electronic website, had not yet been reviewed and approved by the County Clerk. Because court rules (22 NYCRR §202.5[d]) authorize the County Clerk to reject filings for various reasons, readers should be aware that documents bearing this legend may not have been accepted for filing by the County Clerk.

CAUTION: THIS DOCUMENT HAS NOT YET BEEN REVIEWED BY THE COUNTY CLERK. (See below.)

85. By reason of the foregoing, Respondents violate section (g) of the Family Court Rule by failing to issue written findings that include (i) the specific facts upon which the finding of willfulness is based; (ii) the specific amount of arrears established and a money judgment for such amount; (iii) a recommendation regarding the sanctions that should be imposed, including whether the sanction of incarceration is recommended; and/or (iv) a recommendation, as appropriate, regarding a specific dollar amount to be paid or a specific plan to repay the arrears.

86. The Family Court Rule does not provide for discretion in implementation of its provisions. The Family Court Support Magistrates and Judges have failed to perform a duty enjoined upon them by the Family Court Rule.

87. No prior application has been made for any of the relief sought herein.

WHEREFORE, pursuant to N.Y. C.P.L.R. § 7803(1), Petitioners request that this Court issue a judgment against Respondents:

A. Requiring them to immediately track compliance with all parts of Family Court Rule § 205.43 in all pending and future violation petition cases filed in the Family Court of New York City, including in the Petitioners' individual cases; and

B. Requiring them to immediately comply with Family Court Rule § 205.43 in all pending and future violation petition cases filed in the Family Court of New York City, including in the Petitioners' individual cases; and

C. Granting costs to cover attorney expenses and fees incurred in this proceeding. *See* N.Y. C.P.L.R. §§ 909, 7806, 8601.

This is a copy of a pleading filed electronically pursuant to New York State court rules (22 NYCRR §202.5-b(d)(3)(i)) which, at the time of its printout from the court system's electronic website, had not yet been reviewed and approved by the County Clerk. Because court rules (22 NYCRR §202.5[d]) authorize the County Clerk to reject filings for various reasons, readers should be aware that documents bearing this legend may not have been accepted for filing by the County Clerk.

CAUTION: THIS DOCUMENT HAS NOT YET BEEN REVIEWED BY THE COUNTY CLERK. (See below.)

WHEREFORE, pursuant to N.Y. C.P.L.R. § 902, Petitioners request that this Court grant class action certification to this proceeding, naming Petitioners as representatives of that class and Orrick, Herrington & Sutcliffe LLP as class counsel.

Date: New York, New York
December 6, 2017

ORRICK, HERRINGTON & SUTCLIFFE LLP

By: /S/ Rene Kathawala

John Ewald
Rene Kathawala
51 West 52nd Street
New York, New York 10019
(212) 506-5100

Of Counsel:

Sanctuary for Families
Center for Battered Women's Legal Services
30 Wall Street, 8th Floor
New York, NY 10005
(212) 349-6009

Attorneys for Petitioners, Proposed Class

This is a copy of a pleading filed electronically pursuant to New York State court rules (22 NYCRR §202.5-b(d)(3)(i)) which, at the time of its printout from the court system's electronic website, had not yet been reviewed and approved by the County Clerk. Because court rules (22 NYCRR §202.5[d]) authorize the County Clerk to reject filings for various reasons, readers should be aware that documents bearing this legend may not have been accepted for filing by the County Clerk.

ATTORNEY VERIFICATION

STATE OF NEW YORK)
ss:
COUNTY OF NEW YORK)

Rene Kathawala, an attorney duly admitted to practice before the Courts of the State of New York, affirms the following under penalties of perjury:

I am of counsel to the firm of Orrick, Herrington & Sutcliffe LLP, attorneys of record for the Petitioners, Liz Martinez, Heather Schoonmaker, Donna L. Taylor Sanders, Mona Lisa Gardner, Maria Martucci, Monique T. Bowden, Ebony Daley and Vanessa Nunez, as representatives of the putative class in the within action. That I have read the foregoing Petition and know the contents thereof. That the same is true to my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters, I believe them to be true.

I further state that the source of my information and the grounds for my belief as to all matters therein not stated upon my knowledge are my review of court records and files, my representation of Petitioners in their Family Court cases (except for Ms. Martucci), and communication, including telephone calls and meetings, with each of the Petitioners, which is in my possession, and other pertinent information relating thereto.

I further state that the reason why this Verification is made by me and not by the Petitioners is that none of the Petitioners are within the County of New York, the County wherein my firm has its office and mine is there too.

Dated: New York, New York
December 6, 2017

/S/ Rene Kathawala
Rene Kathawala

This is a copy of a pleading filed electronically pursuant to New York State court rules (22 NYCRR §202.5-b(d)(3)(i)) which, at the time of its printout from the court system's electronic website, had not yet been reviewed and approved by the County Clerk. Because court rules (22 NYCRR §202.5[d]) authorize the County Clerk to reject filings for various reasons, readers should be aware that documents bearing this legend may not have been accepted for filing by the County Clerk.