

**EXHIBIT A**

**(Ct. App. Dkt. No. 89)**

E.D.N.Y. – C. Islip  
21-cv-2516  
Brown, J.

United States Court of Appeals  
FOR THE  
SECOND CIRCUIT

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At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 26<sup>th</sup> day of July, two thousand twenty-one.

Present:

Susan L. Carney,  
Richard J. Sullivan,  
William J. Nardini,  
*Circuit Judges.*

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Pantelis Chrysafis, et al.,

*Plaintiff-Appellants,*

Housing Court Answers, et al.,

*Plaintiffs,*

v.

21-1493

Lawrence K. Marks, in his official capacity as  
Chief Administrative Judge of the Courts of  
New York State, et al.,

*Defendants-Appellees.*

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Appellants move for an emergency injunction pending appeal. Upon due consideration, it is hereby ORDERED that the Appellants' motion for an injunction pending appeal is DENIED because the Appellants have failed to meet the requisite standard. *See In re World Trade Ctr. Disaster Site Litig.*, 503 F.3d 167, 170 (2d Cir. 2007); *see also Respect Maine PAC v. McKee*, 562 U.S. 996, 996 (2010).

FOR THE COURT:  
Catherine O'Hagan Wolfe, Clerk of Court

  
Catherine O'Hagan Wolfe

**EXHIBIT B**

**(Ct. App. Dkt. No. 25-6)**

# EXHIBIT P

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**To:** [nobody@nyed.uscourts.gov](mailto:nobody@nyed.uscourts.gov)  
**Subject:** Activity in Case 2:21-cv-02516-GRB-AYS Chrysafis et al v. Marks et al Order on Motion for Preliminary Injunction  
**Date:** Tuesday, June 15, 2021 12:55:43 AM

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**U.S. District Court**

**Eastern District of New York**

### **Notice of Electronic Filing**

The following transaction was entered on 6/15/2021 at 0:54 AM EDT and filed on 6/15/2021

**Case Name:** Chrysafis et al v. Marks et al

**Case Number:** [2:21-cv-02516-GRB-AYS](#)

**Filer:**

**WARNING: CASE CLOSED on 06/14/2021**

**Document Number:** No document attached

#### **Docket Text:**

**ORDER denying [76] Motion for Preliminary Injunction. For the reasons set forth in the Court's Memorandum and Order, the motion for a preliminary injunction pending appeal is denied. Ordered by Judge Gary R. Brown on 6/15/2021. (Brown, Gary)**

#### **2:21-cv-02516-GRB-AYS Notice has been electronically mailed to:**

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**2:21-cv-02516-GRB-AYS Notice will not be electronically mailed to:**

**EXHIBIT C**

**(Dist. Ct. Dkt. No. 75)**

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

-----X

PANTELIS CHRYSAFIS, BETTY COHEN,  
BRANDIE LACASSE, MUDAN SHI, FENG  
ZHOU, and RENT STABILIZATION  
ASSOCIATION OF NYC, INC.,

Plaintiffs,

- against -

**JUDGMENT**  
CV 21-2516 (GRB)(AYS)

LAWRENCE K. MARKS, in his official capacity  
as Chief Administrative Judge of the Courts of  
New York State, ADRIAN H. ANDERSON,  
in his official capacity as Sheriff of Dutchess  
County, New York, JAMES DZURENDA, in  
his official capacity as Sheriff of Nassau,  
New York JOSEPH FUCITO, in his official  
capacity as Sheriff of New York city, New  
York, MARGARET GARNETT, in her  
official capacity as Commissioner of the  
New York City Department of Investigation,  
and CAROLINE TANG-ALEJANDRO, in  
her official capacity as Director, Bureau of  
Marshals, New York City Department of  
Investigation,

Defendants.

-----X

A Memorandum and Order of Honorable Gary R. Brown, United States District Judge,  
having been filed on June 11, 2021, denying plaintiffs' Motion for a Preliminary Injunction,  
which has been consolidated with the merits of the underlying action; directing Judgment to be  
entered in favor of defendant Lawrence K. Marks; dismissing the case as to the remaining  
defendants for failure to state a claim; and directing the Clerk to enter judgment as above and  
close the case, it is

**ORDERED AND ADJUDGED** that plaintiffs Pantelis Chrysafis, Betty Cohen, Brandie LaCasse, Mudan Shi, Feng Zhou, and Rent Stabilization Association of NYC, Inc., take nothing of defendants Lawrence K. Marks, Adrian H. Anderson, James Dzurenda, Joseph Fucito, Margaret Garnett, and Caroline Tang-Alejandro; that plaintiffs' Motion for a Preliminary Injunction, which has been consolidated with the merits of the underlying action, is denied; that Judgment is entered in favor of defendant Lawrence K. Marks; that the case is dismissed as to the remaining defendants, Adrian H. Anderson, James Dzurenda, Joseph Fucito, Margaret Garnett, and Caroline Tang-Alejandro, for failure to state a claim; and that this case is closed.

Dated: June 14, 2021  
Central Islip, New York

DOUGLAS C. PALMER  
CLERK OF THE COURT  
BY: /S/ JAMES J. TORITTO  
DEPUTY CLERK

**EXHIBIT D**  
**(Dist. Ct. Dkt. No. 74)**

FILED  
CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

4:54 pm, Jun 11, 2021

U.S. DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK  
LONG ISLAND OFFICE

-----X  
PANTELIS CHRYSAFIS, BETTY COHEN,  
BRANDIE LACASSE, MUDAN SHI, FENG  
ZHOU, AND RENT STABILIZATION  
ASSOCIATION OF NYC, INC.,

MEMORANDUM  
AND ORDER  
21-cv-2516 (GRB)

Plaintiffs,

-against-

LAWRENCE K. MARKS, in his official capacity as Chief Administrative Judge of the Court of New York State, ADRIAN H. ANDERSON, in his official capacity as Sheriff of Dutchess County, New York, JAMES DZURENDA, in his official capacity as Sheriff of Nassau County, New York, JOSEPH FUCITO, in his official capacity as Sheriff of New York City, New York, MARGARET GARNETT, in her official capacity as Commissioner of the New York City Department of Investigation, and CAROLINE TANG-ALEJANDRO, in her official capacity as Director, Bureau of Marshals, New York City Department of Investigation,

Defendants.

-----X

**GARY R. BROWN, United States District Judge:**

*“Whatever may be thought of the expediency of this statute, it cannot be affirmed to be, beyond question, in palpable conflict with the Constitution.*

*Nor, in view of the methods employed to stamp out the disease of smallpox, can anyone confidently assert that the means prescribed by the state to that end has no real or substantial relation to the protection of the public health and the public safety.”*

*-Jacobson v. Massachusetts, 197 U.S. 11, 31 (1905)*

Suffering significant financial hardships from measures aimed at curbing the spread of COVID-19, five small landlords seek to preliminarily enjoin enforcement of New York State's eviction moratorium and related provisions as constitutionally infirm. Plaintiffs have satisfactorily demonstrated a risk of irreparable harm but, particularly given the State's strong interest in combatting the severe public health emergency, fail to demonstrate a likelihood of success on their constitutional challenges or equities weighing in their favor. Thus, the application for a preliminary injunction is denied. In light of the importance of the matters at issue, the Court has consolidated the merits of the action with this application, which should facilitate appellate review.

## BACKGROUND

### *A. Procedural History and the Evolving Legal Landscape*

In early 2020, "New York State enacted a slate of statutes, administrative orders, and executive orders aimed at combatting both the public health risks and economic devastation wrought by the disease." *Melendez v. City of New York*, No. 20-CV-5301 (RA), 2020 WL 7705633, at \*1 (S.D.N.Y. 2020).<sup>1</sup> The initial enactment, Executive Order ("EO") No. 202.8, entered March 20, 2020, imposed a 90-day moratorium on residential evictions. *Id.* at \*3. Then, on May 7, 2020, EO 202.28 permitted the application of security deposits toward rents due while "temporarily prohibit[ing] landlords from initiating eviction proceedings against tenants who are facing financial hardship due to the pandemic." *Elmsford Apartment Assocs., LLC v. Cuomo*,

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<sup>1</sup> The effects of the COVID-19 pandemic is a subject this Court has discussed at length. See, e.g., *United States v. Cohn*, 481 F. Supp. 3d 122, 123 (E.D.N.Y. 2020) (examining effects of COVID-19 on criminal jury trial); *Flores v. Town of Islip*, No. 18-CV-3549 (GRB), 2020 WL 5211052 at \*2 (E.D.N.Y. Sept. 1, 2020) (increased need for video conferencing as a result of the pandemic). In one case, the undersigned refused temporary injunctive relief to a stonemasonry business challenging the constitutionality of a state executive order aimed at curtailing the outbreak. *Omnistone Corp. v. Cuomo*, 485 F. Supp. 3d 365, 368 (E.D.N.Y. 2020) (denying claim predicated upon "the purported absence of post-deprivation remedies under the existing regulatory framework for enforcement of the EOs" due to the availability of Article 78 review).

469 F. Supp. 3d 148, 155 (S.D.N.Y. 2020). That order emanated from a legislative enactment empowering the Governor to “temporarily suspend any statute, local law, ordinance, or order, rules or regulations, or parts thereof, of any agency during a state disaster emergency, if compliance with such provisions would prevent, hinder, or delay action necessary to cope with the disaster or if necessary to assist or aid in coping with such disaster.” *Id.* at 156 (quoting N.Y. Exec. Law Art. 2-B § 29-a).

EO 202.28 extended the eviction moratorium through August 2020. *Id.* at 159. On June 6, 2020, the Governor issued EO 202.38, which extended certain portions of the earlier order, but did not affect the termination date set for the eviction moratorium. *Id.* The EOs did not address actions filed prior to their enactment, although “as a practical matter, there was not much that a landlord could do to prosecute an ongoing proceeding, as the New York State courts were closed.” *Id.*

On June 30, 2020, the Tenant Safe Harbor Act was enacted. 2020 N.Y. Laws ch. 127; Docket Entry (“DE” 14-6). That act prohibited courts from issuing eviction warrants or possessory judgments through the end of the “COVID-19 covered period” – defined, through a series of incorporated executive orders, as the period from March 7, 2020 until the date on which businesses were permitted to reopen and restrictions on gatherings ceased. *Id.* Under the TSJA, a tenant could “raise financial hardship during the COVID-19 covered period as a defense” in a subsequent eviction proceeding, allowing courts to consider a broad array of factors in making such a determination. *Id.*

TSJA would remain on the shelf, though, because on December 28, 2020, the Governor signed into law the COVID-19 Emergency Eviction and Foreclosure Prevention Act of 2020 (bearing the unmellifluous acronym CEEFPA). DE 1-1, Compl., Ex. A. In passing this law, the legislature clearly set forth its intent:

Stabilizing the housing situation for tenants, landlords, and homeowners is to the mutual benefit of all New Yorkers and will help the state address the pandemic, protect public health, and set the stage for recovery. It is, therefore, the intent of this legislation to avoid as many evictions and foreclosures as possible for people experiencing a financial hardship during the COVID-19 pandemic or who cannot move due to an increased risk of severe illness or death from COVID-19.

As such, it is necessary to temporarily allow people impacted by COVID-19 to remain in their homes. A limited, temporary stay is necessary to protect the public health, safety and morals of the people the Legislature represents from the dangers of the COVID-19 emergency pandemic.

2020 N.Y. Laws ch. 381, § 3. CEEFPA extended the eviction moratorium and provided more detailed procedures.<sup>2</sup> It created a “hardship declaration” – in language prescribed by statute and annexed as Exhibit A – which, when executed by a tenant, would stay any eviction proceeding (even those filed before the pandemic), prevent the filing of a new proceeding and stay the execution of any eviction warrant pending the expiration of the Act’s provisions. *Id.* Part A, §§ 5-8. The Act directs that any existing default judgment be “removed” and the matter restored to the court calendar. *Id.* § 7. With one notable exception, the statute’s provisions were set to expire on May 1, 2021. *Id.* § 13.

That exception is contained in Part A, § 11. According to that provision, the execution of a hardship declaration creates a rebuttable presumption that the tenant is experiencing such a hardship. *Id.* This presumption could be used in support of a defense that may be considered by judges hearing eviction cases. *Id.*

In response to CEEFPA, the individual plaintiffs in this case commenced an action challenging its constitutionality. *Chrysafis v. James*, No. 21-CV-998 (JS), 2021 WL 1405884 (E.D.N.Y. Apr. 14, 2021). As here, plaintiffs raised a sheaf of constitutional challenges to Part A of the statute and sought preliminary injunctive relief against the State Attorney General. *Id.* at \*11-12.

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<sup>2</sup> The comprehensive review of CEEFPA’s provisions contained in *Chrysafis v. James*, 2021 WL 1405884, at \*7-8 (E.D.N.Y. 2021) is hereby incorporated by reference.

Judge Seybert determined that the Attorney General is not responsible for enforcing the statute and dismissed the case. *Id.* at \*22.

In a bill dated April 23, 2021, and subsequently signed into law, the legislature extended the moratorium to August 31, 2021. 2021 N.Y. Laws ch. 104; DE 40-4. The express justification for this extension was as follows:

Current data demonstrates the need for continuing emergency public health measures in New York. According to the CDC, New York's current rates of COVID-19 transmission are among the highest in the nation. In its weekly data summaries, the CDC classifies transmission rates as "high" if there are 100 or more new cases per 100,000 people. As of April 15, 2021, the statewide rate in New York was 233 per 100,000 people. In its March 28, 2021 Order, the CDC stated that 37% of counties nationally had a high rate of transmission and an additional 30% had a "substantial" rate (50-99.9 cases per 100,000 people). As of April 15, 2021, CDC data show that 87% of counties in New York -- 54 of 62 counties, including all of the state's most populous counties -- had a high rate of transmission and all of the other eight counties had a substantial rate of transmission. No county in New York had a "moderate" or "low" rate.

DE 40-4 at 18. The legislature further referenced a March 28, 2021 Order from the CDC extending national restrictions on residential eviction through June 30, 2021, an Order observing "that evictions substantially contribute to COVID-19 transmission." *Id.* at 17.

In response, plaintiffs filed the instant § 1983 action, again seeking preliminary and permanent injunctive relief as against CEEFPA.<sup>3</sup> DE 1. The Court held a preliminary injunction hearing on June 1, 2021, at which two plaintiffs and an administrative officer of the Housing Court testified.

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<sup>3</sup> As the Court ruled during the hearing, plaintiff Rent Stabilization Association of NYC, Inc., a trade association representing landlords, lacks standing to bring this case. *League of Women Voters of Nassau Cty. v. Nassau Cty. Bd. of Sup'rs*, 737 F.2d 155, 160 (2d Cir. 1984) ("This Circuit has restricted organizational standing under § 1983 by interpreting the rights it secures to be personal to those purportedly injured."). Filings by the Association have been considered as *amicus* submissions. Moreover, because of their marginal involvement in this matter, the case has been stayed as against all defendants other than defendant Chief Administrative Judge Marks to avoid unnecessary costs and expenditures.

*B. Facts Established by Plaintiffs*

The five plaintiffs – Pantelis Chrysafis, Betty Cohen, Brandie LaCasse, Mudan Shi and Feng Zhou<sup>4</sup> – are landlords with modest holdings. Each has faced significant hardship as a result of the state moratorium on evictions:

*Chrysafis* bought a home in Garden City, NY in December 2015. Vekiarellis Decl., DE 13, ¶ 1. Marital separation a few months later led him to put it on the market, but after six months, he decided to rent the property to help meet the \$4,700 monthly mortgage payment and \$18,000 annual property taxes. *Id.* ¶ 2-3. His cousin located tenants – a couple with a steady pension of \$4,700 and additional income of more than \$200,000 per annum – who agreed to rent the home for \$5,000 per month. *Id.* ¶ 4. By 2019, Chrysafis decided to put the house back on the market. Upon learning this, the tenants indicated that they would no longer pay any rent. *Id.* ¶ 6. When rent was demanded of them in April 2019, the tenants produced a falsified bank statement showing that \$5,000 had been wire transferred. This was simply a ruse. *Id.*

By that autumn, the tenants were more than \$25,000 in arrears, and Chrysafis filed an eviction proceeding. *Id.* ¶ 7; DE 61-3. In February 2020, Chrysafis obtained a judgment for unpaid rent and a warrant of eviction. DE 13 ¶ 8; DE 61-5. Based on an Order to Show Cause filed by the tenant, in March 2020, the Nassau County District Court granted a short postponement, ordering that the tenant “must vacate by April 30, 2020.” DE 61-4. Due to the enactment of the EOs and CEEFPA, the tenant has never been evicted, and continues to reside in the residence rent-free. The rental arrears currently exceed \$80,000. DE 13 ¶ 15. According to the manager of the residence, at least one of the tenants has continued to work, seemingly unaffected by the pandemic. *Id.* ¶ 18.

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<sup>4</sup> Plaintiffs Mudan Shi and Feng Zhou are husband and wife and landlords on a single residential property. DE 1 at 8-9.

*Cohen*, who testified at the hearing, is a 68-year old retiree who depends on the monthly rental income of \$1,545 from a single co-op that she owns, a sum that represents 50% of her income. DE 9 ¶¶ 2-3; *see* Hearing Transcript (“Tr.”), DE 69-1, at 62. After the start of the pandemic, her tenant of more than 25 years advised that he could no longer afford to pay the rent. DE 9 ¶ 3; *see* Tr. 64. The tenant owes more than \$23,175 in arrears. DE 9 ¶ 5; *see* Tr. 74. Cohen has to pay \$630 per month in fees and maintenance and a sublet fee for the Co-op apartment. Tr. 75. Cohen has endeavored to weather these financial setbacks, in part, through an SBA loan. *Id.* ¶ 10.

*LaCasse*, who also testified at the hearing, is a single mother and military veteran, who suffers from a service-related disability that has left her immunocompromised. DE 10 ¶ 1. She owns several rental properties, including a single-family home in Rhinebeck, NY which had been rented for approximately \$2,500 per month. *Id.* ¶ 2. After advising her tenants in late 2020 of her intent to sell the property, the tenants ceased paying rent. *Id.* The tenants have inflicted significant damage to the property, and efforts to evict them have failed because of CEEFPA. *Id.* ¶¶ 3, 6.<sup>5</sup> LaCasse has some information suggesting that, despite executing the CEEFPA hardship declaration, her tenants’ financial circumstances have been unaffected by the pandemic. *Id.* ¶ 7.

*Shi* (along with her husband, co-plaintiff Zhou) own a small house in Staten Island and uses the rent from that home – currently set at \$2,400 per month – to pay rent for an apartment in which they live with their extended family. DE 11 ¶¶ 1-3. In spring of 2019, the tenant stopped paying rent for six months. *Id.* ¶¶ 4-6. As a result, Shi and Zhou filed an eviction action and obtained a judgment dated October 31, 2019, directing that a warrant of eviction issue and that

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<sup>5</sup> At the hearing, plaintiffs provided an exhibit demonstrating that LaCasse has filed an “ejectment” proceeding, which includes an order to show cause returnable in July. DE 69-1, at 44-45. It is undisputed that this proceeding ultimately will be subject to the limitations of CEEFPA. Tr. 44-55; State’s Exs. C & D; DE 66.

the tenants be removed “without stay.” *Id.* ¶ 6; DE 61-2. However, the advent of the eviction moratorium prevented execution. DE 11 ¶¶ 6, 8. Shi and Zhou asked the tenants to leave, but in response they demanded that the couple pay them, first \$10,000 and then \$6,000, to get them to agree to leave. *Id.* ¶ 7. Shi and Zhou are now owed more than \$57,000 in back rent. *Id.* ¶ 11.

Under the current legislative scheme, none of these landlords will be permitted to commence legal proceedings to attempt to recover their property until August 31, 2021. By that date, the amount of time in which each of these landlords will have not received rent while without any legal remedy will be substantial:

- Chrysafis – 28 months
- Cohen – 17 months
- LaCasse – 10 months
- Shi and Zhou – 29 months

By all accounts, once plaintiffs are permitted to file eviction proceedings, months will transpire before an eviction warrant could issue. Tr. 122-23 (typically four to six months average from the filing of notice and petition to execution of eviction warrant); *see Elmsford Apartment Assocs., LLC*, 469 F. Supp. 3d at 173 (“[I]n New York, the filing of a summary proceeding is but the first step in what often takes years to accomplish, which is the ultimate eviction of a tenant.”).

## **STANDARD OF REVIEW**

A party seeking preliminary injunctive relief must demonstrate “(1) irreparable harm absent injunctive relief; (2) either a likelihood of success on the merits,<sup>6</sup> or a serious question

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<sup>6</sup> Counsel argues that in a case seeking a “mandatory” injunction, as compared to a “prohibitory” decree which would maintain the *status quo*, plaintiffs would be required to show a “substantial” likelihood of success. *See Mastrovincenzo v. City of New York*, 435 F.3d 78, 89 (2d Cir. 2006). Reasonable minds could differ as to whether

going to the merits to make them a fair ground for trial, with a balance of hardships tipping decidedly in the plaintiff's favor; and (3) that the public's interest weighs in favor of granting an injunction." *Red Earth LLC v. United States*, 657 F.3d 138, 143 (2d Cir. 2011) (citation omitted). The Court has "wide discretion in determining whether to grant a preliminary injunction," as it is "one of the most drastic tools in the arsenal of judicial remedies." *Grand River Enter. Six Nations, Ltd. v. Pryor*, 481 F.3d 60, 66 (2d Cir. 2007) (citations omitted).

## DISCUSSION

While plaintiffs assert a bundle of constitutional challenges, only one requires extended discussion. Before reaching that issue, several threshold issues require resolution.

### *A. Abstention*

Defendant Marks argues, somewhat incongruously, that this matter should be dismissed based upon abstention principles. In asserting this defense, counsel attempts to mischaracterize the nature of the relief sought. This is not a case in which this Court is being asked "to alter the manner in which . . . proceedings are conducted." *Disability Rights New York v. New York*, 916 F.3d 129, 130–31 (2d Cir. 2019) (upholding *Younger* abstention in challenge to the Surrogate's Court Procedure Act). Nor is this a matter "in which the prospect of undue interference with state proceedings counsels against federal relief." *Sprint Commc'ns, Inc. v. Jacobs*, 571 U.S. 69, 72 (2013) (reversing lower Court's invocation of *Younger* abstention).

To be clear, there are no parallel civil or criminal proceedings into which this Court is asked to intrude that could implicate abstention concerns. *Id.* at 78. Far from asking this Court to intervene in state court proceedings, plaintiffs' chief complaint centers around the absence of

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the instant application seeks to maintain or alter the *status quo*. However, because the undersigned finds that plaintiffs satisfy neither standard, the Court need not resolve this issue.

such proceedings. Primarily, plaintiffs attack the moratorium by which the legislative and executive branches have prevented state courts from conducting proceedings. Vested with jurisdiction to hear plaintiffs' claims, the Court has "no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given." *Id.* at 77 (citation omitted).

Defendant's motion to dismiss based on abstention is denied.

#### *B. Irreparable Harm*

"A showing of irreparable harm is 'the single most important prerequisite for the issuance of a preliminary injunction.'" *Faiveley Transp. Malmo AB v. Wabtec Corp.*, 559 F.3d 110, 118 (2d Cir. 2009) (citation omitted). As the Second Circuit has held, "the alleged injury must be one incapable of being fully remedied by monetary damages." *Reuters Ltd. v. United Press Int'l, Inc.*, 903 F.2d 904, 907 (2d Cir. 1990); *cf. General Textile Printing & Processing Corp. v. Expromtorg Int'l Corp.*, 862 F. Supp. 1070, 1075 (S.D.N.Y. 1994) ("If the injury complained of may be compensated by an award of monetary damages, then an adequate remedy at law exists and no irreparable harm may be found as a matter of law.") (citation omitted)).

While the plaintiffs here could – in the main – be compensated for the damages sustained from the eviction moratorium, the analysis is a bit more complicated. Given that the tenants are unlikely to be able to pay the substantial arrears, this matter implicates the principles identified in *Brenntag Int'l Chemicals, Inc. v. Bank of India*, 175 F.3d 245 (2d Cir. 1999). *Brenntag* notes that "a perhaps more accurate description of the circumstances that constitute irreparable harm is that where, but for the grant of equitable relief, there is a substantial chance that upon final resolution of the action the parties cannot be returned to the positions they previously occupied. For this reason, courts have excepted from the general rule regarding monetary injury situations

involving obligations owed by insolvents.” *Id.* at 249–50 (citation omitted). Other courts have extended this exception to cases of “threatened insolvency.” *See Federated Strategic Income Fund v. Mechala Grp. Jamaica Ltd.*, 1999 WL 993648, at \*8 (S.D.N.Y. Nov.2, 1999). However, to obtain injunctive relief under the *Brenntag* exception, “a movant must show that the risk of insolvency is likely and imminent.” *CRP/Extell Parcel I, L.P. v. Cuomo*, 394 F. App’x 779, 782 (2d Cir. 2010). Plaintiffs have not made such a showing.

At the same time, “[t]he deprivation of an interest in real property constitutes irreparable harm.” *Tioronda, LLC. v. New York*, 386 F. Supp. 2d 342, 350 (S.D.N.Y. 2005). The evidence suggests that, in several instances, the moratorium has precluded varying uses of property, including planned sales or owner-occupancy. *See DE 13 ¶ 6* (Chrysafis’s attempt to sell house thwarted by tenants); Tr. 34-35 (LaCasse testimony reflecting intention to live in the subject premises, or sell it to obtain another home); *DE 11 ¶ 12* (Shi’s intent to move her family into subject home because they can no longer afford apartment rent). Such deprivation could well be viewed as irreparable harm. *See Brooklyn Heights Ass’n, Inc. v. Nat’l Park Serv.*, 777 F. Supp. 2d 424, 435 (E.D.N.Y. 2011) (“[I]t is well-settled that unauthorized interference with a real property interest constitutes irreparable harm as a matter of law, given that a piece of property is considered to be a unique commodity for which a monetary remedy for injury is an inherently inadequate substitute.”).

Tenants are not parties to this action, and the state actors are not subject to a money judgment in this case. “[W]here a plaintiff cannot recover damages due to sovereign immunity, monetary loss may amount to irreparable harm.” *Regeneron Pharm., Inc. v. United States Dep’t of Health & Hum. Servs.*, No. 20-CV-10488 (KMV), 2020 WL 7778037, at \*4 (S.D.N.Y. Dec. 30, 2020) (citing *United States v. New York*, 708 F.2d 92, 93 (2d Cir. 1983) (“[I]njury was

irreparable even though losses were only pecuniary because a suit in federal court against New York to recover the damages sustained by the plaintiff would be barred by the Eleventh Amendment.”)).

Finally, “[w]hen an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary.” *Mitchell v. Cuomo*, 748 F.2d 804, 806 (2d Cir. 1984). Taken together with the showing made, these principles suggest that plaintiffs have demonstrated a risk of irreparable injury sufficient to warrant further consideration of plaintiff’s application for preliminary relief.

### C. Likelihood of Success

#### 1. Due Process Violations

Plaintiffs’ most significant constitutional challenge arises from alleged procedural due process violations emanating from the moratorium. Relying on the notion that “[t]he fundamental requirement of due process is the opportunity to be heard ‘at a meaningful time and in a meaningful manner,’” *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (citation omitted), plaintiffs argue, chiefly, that their inability to file or enforce eviction proceedings until August 31, 2021 amounts to a due process violation. Plaintiffs also take aim at the procedural peculiarities of CEEFPA, which preclude the institution or enforcement of eviction proceedings based upon the execution of the hardship declaration by the tenant, a declaration immune from administrative or judicial review.<sup>7</sup>

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<sup>7</sup> CEEFPA features certain curious provisions which are not raised by plaintiffs, and are thus not subject to this decision. One such feature is the vacatur of existing court orders through legislative action. Compare CEEFPA Part A, § 7 (“If a default judgment has been awarded prior to the effective date of this act, the default judgment shall be removed and the matter restored to the court calendar . . .”) with *County of Suffolk v. Long Island Lighting Co.*, 14 F. Supp. 2d 260, 265 (1998) (“[T]he property of judgment creditors is protected from uncompensated takings by legislatures . . .”).

At first blush, the facts presented by several plaintiffs might appear to raise due process concerns. The pandemic has evolved: in 2021, several effective vaccines became available, and have been distributed free at numerous state-operated facilities for months. As of this writing, 65% adults in New York State have received at least one vaccination, and the statewide positivity rate has hit a new low.<sup>8</sup> These developments dovetail with evidence of significant financial hardship: plaintiffs have been unable to collect rent or regain control over their property for months or years and, in some instances, from circumstances that predate the pandemic. Under the statute, plaintiffs seemingly lack recourse to challenge the hardship declarations. Attempting to apply the *Mathews* factors, though, proves futile, as CEEFPA does not lend itself to review under *Mathews*.

The fundamental flaw in plaintiffs' procedural due process argument is that the treatment afforded a general legislative act differs from that for a case-specific determination. In *Bi-Metallic Inv. Co. v. State Bd. of Equalization*, the Supreme Court offered an apt explanation of this principle:

*General statutes within the state power are passed that affect the person or property of individuals, sometimes to the point of ruin, without giving them a chance to be heard.* Their rights are protected in the only way that they can be in a complex society, by their power, immediate or remote, over those who make the rule. If the result in this case had been reached, as it might have been by the state's doubling the rate of taxation, no one would suggest that the 14th Amendment was violated unless every person affected had been allowed an opportunity to raise his voice against it before the body intrusted by the state Constitution with the power. In considering this case in this court we must assume that the proper state machinery has been used, and the question is whether, if the state Constitution had declared that Denver had been undervalued as compared with the rest of the state, and had decreed that for the current year the valuation should be 40 per cent higher, the objection now urged could prevail. It appears to us that to put the question is to answer it. There must be a limit to individual argument in such matters if government is to go on.

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<sup>8</sup> Governor Cuomo Announces 7-Day Average COVID-19 Positivity Rate Continues to Drop to New Lows, COVID-19 Updates (June 1, 2021), <https://www.governor.ny.gov/news/governor-cuomo-announces-7-day-average-covid-19-positivity-rate-continues-drop-new-lows>.

239 U.S. 441, 445 (1915) (emphasis added). The Supreme Court has repeatedly reaffirmed the *Bi-Metallic* principle, as has the Second Circuit and nearly every other Circuit court.<sup>9</sup> See *E. Enterprises v. Apfel*, 524 U.S. 498, 550 (1998) (Kennedy, J., concurring in part) (“Statutes may be invalidated on due process grounds only under the most egregious of circumstances”); *United States v. Locke*, 471 U.S. 84, 108 (1985) (“In altering substantive rights through enactment of rules of general applicability, a legislature generally provides constitutionally adequate process simply by enacting the statute . . . .”); *Richmond Boro Gun Club, Inc. v. City of New York*, 97 F.3d 681, 689 (2d Cir. 1996) (“When the legislature passes a law which affects a general class of persons, those persons have all received procedural due process—the legislative process”). As the Second Circuit has explained:

Official action that is legislative in nature is not subject to the notice and hearing requirements of the due process clause. These constitutional due process requirements apply only where the official action is “designed to adjudicate disputed facts in particular cases.” “When not bounded by statutory procedural requirements, the Supreme Court has consistently been willing to assume that due process does not require any hearing or participation in ‘legislative’ decisionmaking other than that afforded by judicial review after rule promulgation.”

*Interport Pilots Agency, Inc. v. Sammis*, 14 F.3d 133, 142 (2d Cir. 1994) (citations omitted).

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<sup>9</sup> See, e.g., *Garcia-Rubiera v. Fortuno*, 665 F.3d 261, 272 (1st Cir. 2011) (contrasting legislative actions with “individual adjudications, which require more specific procedures,” as set out in, for example, *Mathews v. Eldridge*); *Rogin v. Bensalem Township*, 616 F.2d 680, 693 (3d Cir. 1980) (“To provide every person affected by legislation the various rights encompassed by procedural due process—including hearings, opportunity for confrontation and response, clear standards, an impartial arbiter, and possibly judicial review—would be inconsistent with the structure of our system of government. The act of legislating necessarily entails political trading, compromise, and ad hoc decisionmaking which, in the aggregate, produce policies that at least approximate a fair and equitable distribution of social resources and obligations.”); *County Line Joint Venture v. City of Grand Prairie, Tex.*, 839 F.2d 1142, 1144 (5th Cir. 1988); *Smith v. Jefferson Cty. Bd. of Sch. Comm’rs*, 641 F.3d 197, 217 (6th Cir. 2011); *Indiana Land Co. v. City of Greenwood*, 378 F.3d 705, 710 (7th Cir. 2004); *Collier v. City of Springdale*, 733 F.2d 1311, 1316 n.5 (8th Cir. 1984); *Halverson v. Skagit County*, 42 F.3d 1257, 1260-61 (9th Cir. 1994); *Onyx Properties LLC v. Bd. of Cty. Commissioners*, 838 F.3d 1039, 1045 (10th Cir. 2016); *75 Acres, LLC v. Miami-Dade Cty.* 338 F.3d 1288, 1294 (11th Cir. 2003) (citations omitted) (“[A]s one set of commentators has summarized, ‘When the legislature passes a law which affects a general class of persons, those persons have all received procedural due process—the legislative process.’”) (citation omitted)).

Undoubtedly, the challenged provisions of CEEFPA (and, for that matter, its predecessor EO) represent legislative, rather than adjudicative acts. Acts are adjudicative, and hence subject to due process claims, where they involve “facts about the parties and their activities, businesses, and properties,” and are “designed to adjudicate disputed facts in particular cases.” *Edelhertz v. City of Middletown*, 943 F. Supp. 2d 388, 395 (S.D.N.Y. 2012), *aff’d sub nom. Edelhertz v. City of Middletown*, New York, 714 F.3d 749 (2d Cir. 2013) (citations omitted). By contrast, legislative actions entail “the formulation of a general rule to be applied … at a subsequent time.” *Id.* (citation omitted). By these measures, CEEFPA, which governs the timing, format and litigation of eviction proceedings generally, clearly constitutes legislative action and “is not subject to the notice and hearing requirements of the due process clause.” *Interport Pilots Agency*, 14 F.3d at 142 (citing *RR Village Ass’n v. Denver Sewer Corp.*, 826 F.2d 1197, 1204–05 (2d Cir. 1987)).

Earlier challenges to eviction moratoria have been rejected for essentially the same reasons. As Justice Holmes observed:

[A] declaration by a legislature concerning public conditions that by necessity and duty it must know, is entitled at least to great respect. In this instance Congress stated a publicly notorious and almost world-wide fact. That the emergency declared by the statute did exist must be assumed, and the question is whether Congress was incompetent to meet it in the way in which it has been met by most of the civilized countries of the world.

*Block v. Hirsh*, 256 U.S. 135, 154–55 (1921) (upholding a Congressional eviction moratorium in the District of Columbia); *see also Edgar A. Levy Leasing Co. v. Siegel*, 258 U.S. 242, 246 (1922). In rejecting such a challenge, Justice Holmes emphasized that “the notion that [property rights] are exempt from the legislative modification from time to time in civilized life is contradicted . . . by . . . the police power in its proper sense, under which property rights may be cut down, and to that extent taken, without pay.” *Block*, 256 U.S. at 155. In another case, Justice Holmes upheld an eviction

moratorium<sup>10</sup> imposed by the New York legislature limited to cities with a population of more than one million because “the evil to be met was a very pressing want of shelter in certain crowded centers.” *Marcus Brown Holding Co. v. Feldman*, 256 U.S. 170, 199 (1921).

The Court renewed these principles in reviewing a Contracts Clause challenge to legislation aimed at similar effects of the Great Depression:

Whatever doubt there may have been that the protective power of the state, its police power, may be exercised—without violating the true intent of the provision of the Federal Constitution—in directly preventing the immediate and literal enforcement of contractual obligations by a temporary and conditional restraint, where vital public interests would otherwise suffer, was removed by our decisions relating to the enforcement of provisions of leases during a period of scarcity of housing.

*Home Bldg. & Loan Ass’n v. Blaisdell*, 290 U.S. 398, 440 (1934); see also *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 249, 98 S. Ct. 2716, 2725, 57 L. Ed. 2d 727 (1978) (noting that *Blaisdell* took judicial notice of “the broad and desperate emergency economic conditions of the early 1930’s”). And a half-century later, the Court reiterated that it “has consistently affirmed that States have broad power to regulate housing conditions in general and the landlord-tenant relationship in particular without paying compensation for all economic injuries that such regulation entails.”

*Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 440, (1982).

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<sup>10</sup> That moratorium arose from a nationwide housing crisis described in a separate opinion as follows:

That there was a very great shortage in dwelling house accommodations in the cities of the state to which the acts apply; that this condition was causing widespread distress; that extortion in most oppressive forms was flagrant in rent profiteering; that, for the purpose of increasing rents, legal process was being abused and eviction was being resorted to as never before; and that unreasonable and extortionate increases of rent had frequently resulted in two or more families being obliged to occupy an apartment adequate only for one family, with a consequent overcrowding, which was resulting in insanitary conditions, disease, immorality, discomfort, and widespread social discontent.

If this court were disposed, as it is not, to ignore the notorious fact that a grave social problem has arisen from the insufficient supply of dwellings in all large cities of this and other countries, resulting from the cessation of building activities, incident to the war, nevertheless, these reports and the very great respect which courts must give to the legislative declaration that an emergency existed would be amply sufficient to sustain an appropriate resort to the police power for the purpose of dealing with it in the public interest.

*Edgar A. Levy Leasing*, 258 U.S. at 246.

One cannot argue that the CEEFPA moratorium is not reasonably related to COVID crisis.

As one district court held regarding similar anti-COVID restrictions:

Plaintiff argues that the Act is not “rationally related to preventing the spread of COVID-19” because “the Act provides relief to tenants who were struggling to meet their rent obligations as far back as March 1, 2020 – before the coronavirus ravaged the United States and before any declaration of emergency in Philadelphia or Pennsylvania.” On March 6, 2020, Governor Wolf issued a Proclamation of Disaster Emergency; the City's determination that beginning relief on March 1, as opposed to March 6, for residents who have suffered a COVID-19 financial hardship is not irrational.

*HAPCO v. City of Philadelphia*, 482 F. Supp. 3d 337, 357 (E.D. Pa. 2020). These observations are fully applicable to the objections to CEEFPA and the predicate EO. It is the act of eviction, not the timing of non-payment, that increases the risk of COVID spread. Viewed through this lens, the rationale for applying legislation to pending evictions becomes clear.

Of course, the legislature’s power is not without constitutional limitation. *Block*, 256 U.S. at 156 (“[A] public exigency will justify the legislature in restricting property rights in land to a certain extent without compensation.”); cf. *Auracle Homes, LLC v. Lamont*, 478 F. Supp. 3d 199, 227 (D. Conn. 2020) (upholding similar action to combat COVID-19 because “the Executive Orders only delay Plaintiffs’ ability to initiate evictions; they do not eradicate all future opportunity for Plaintiffs to pursue evictions”). The standard, though, is very different. A legislative act of this kind may be invalidated if “clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare.” *City of Eastlake v. Forest City Enterprises, Inc.*, 426 U.S. 668, 676 (1976). “It is by now well established that legislative Acts adjusting the burdens and benefits of economic life come to the Court with a presumption of constitutionality, and that the burden is on one complaining of a due process violation to establish that the legislature has acted in an arbitrary and irrational way.” *Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1, 15 (1976). A converse conclusion dictates that the act must be upheld, irrespective of its efficacy:

Assuming that the end in view otherwise justified the means adopted by Congress, we have no concern of course with the question whether those means were the wisest,

whether they may not cost more than they come to, or will effect the result desired. It is enough that we are not warranted in saying that legislation . . . is futile or has no reasonable relation to the relief sought.

*Block*, 256 U.S. at 158.

Plaintiffs complain of the length of the moratorium. There certainly is a temporal point at which the legislative action would arise to the level of capriciousness. *See Ecogen, LLC v. Town of Italy*, 438 F. Supp. 2d 149, 161 (W.D.N.Y. 2006) (“[A] moratorium must be of reasonable duration”). Yet “[t]here is . . . no bright-line rule as to how long a moratorium can remain in effect without treading upon constitutional rights.” *Id.* at 162 (*citing Tahoe-Sierra Pres. Council, Inc. v. Tahoe Regional Planning Agency*, 535 U.S. 302, 342 (2002) (refusing to enjoin zoning moratorium which had been extended to two years)). A hundred-year moratorium would be out of bounds, while a ten-day moratorium warrants no discussion. *Compare Tahoe-Sierra*, 535 U.S. at 341 (noting that “any moratorium that lasts for more than one year should be viewed with special skepticism” while upholding 32-month development moratorium) *with ASF, Inc. v. City of Seattle*, 408 F. Supp. 2d 1102, 1108–09 (W.D. Wash. 2005) (finding 17-year moratorium on issuance of new adult entertainment licenses unconstitutional). So where does the present moratorium fall on that spectrum?

Caselaw from earlier public emergencies provides some guidance. The CEEFPA moratorium – an eight month statutory provision following about ten months of EO suspensions – is not outside the bounds of previously sanctioned moratoria. *See, e.g., Blaisdell*, 290 U.S. 398 (upholding two-and-a-half-year moratorium on foreclosure evictions); *Feldman*, 256 U.S. 170 (approving a 25-month holdover eviction moratorium); *cf. Ecogen, LLC v. Town of Italy*, 438 F. Supp. 2d 149 (refusing to enjoin two-year zoning moratorium).

The specific circumstances surrounding the most recent extension of CEEFPA in April 2021 prove illuminating. Plaintiffs bitterly object to this extension, the catalyst for this lawsuit. DE 1 ¶ 2

(“There is simply no legal, economic or health rationale for the extension of this blanket eviction moratorium.”). But the Legislature – and the world – remains in the midst of a struggle against the most deadly pandemic in a century. And while progress has been made, as noted by the Legislature in approving the extension, substantial data supported its determination. DE 40-4 at 18. Although plaintiffs argue that the extension’s implementation was less than ideal, this Court neither can nor should second-guess such determinations. Courts are equipped with microscopes, while other branches of government have binoculars. Hence, broad public policy decisions are best left to those institutions. *See Jacobson v. Commonwealth of Massachusetts*, 197 U.S. 11, 30 (1905) (“It is no part of the function of a court or a jury to determine which one of two modes was likely to be the most effective for the protection of the public against disease. That was for the legislative department to determine in the light of all the information it had or could obtain.”).

Considering all the relevant circumstances, the State’s actions fell well within the realm of reasonableness.

Finally, plaintiffs’ due process challenge to CEEFPA’s procedural treatment of the hardship declarations – both in terms of their inability to obtain substantive review of those declarations now and the rebuttable presumption adopted for subsequent proceedings – fails for largely the same reasons. “Given a constitutional substantive statute, enacted to give effect to a constitutional purpose, the states have a wide discretion as to the remedies which may be deemed necessary to achieve such a result, and it is very clear that that discretion has not been exceeded in this instance by the state of New York.” *Edgar A. Levy Leasing*, 258 U.S. at 250. In *Block v. Hirsh*, Justice Holmes wrote:

The statute is objected to on the further ground that landlords and tenants are deprived by it of a trial by jury on the right to possession of the land. If the power of the Commission established by the statute to regulate the relation is established, as we think it is, by what we have said, this objection amounts to little.

256 U.S. at 158. A court reviewing a parallel Pennsylvania statute noted:

Plaintiff argues that the Act violates the Due Process Clause because there is no way for landlords “to substantiate a claim of COVID-related financial hardship.” However, the certifications of hardship must comply with Section 1-108 of the Philadelphia Code which require certifications to be sworn to under oath and, in any event, it is not arbitrary and irrational for the City to not provide landlords with the means of challenging whether tenants have truly experienced a COVID-19 financial hardship.

*HAPCO*, 482 F. Supp. 3d at 357. Plaintiffs’ dislike of the procedures adopted – which predicate a delay of eviction proceeding upon the untested hardship declaration – does not implicate procedural due process concerns.

## *2. Miscellaneous Constitutional Challenges*

Plaintiffs’ remaining challenges are easily dispatched.

### *a. Vagueness*

Plaintiffs argue that Part A, § 5 of CEEFPA – which prescribes the language of the hardship declaration form – is impermissibly vague. A statute may be held to be impermissibly vague where it “fails to provide a person of ordinary intelligence fair notice of what is prohibited, or is so standardless that it authorizes or encourages seriously discriminatory enforcement.” *United States v. Williams*, 553 U.S. 285 (2008). In the context of criminal proceedings, Judge Raggi observed that “[c]ourts rarely invalidate a statute on its face because of alleged vagueness if the statute does not relate to a fundamental constitutional right (usually first amendment freedoms) and if the statute provides ‘minimally fair notice’ of what the statute prohibits.” *Richmond Boro Gun Club, Inc.*, 97 F.3d at 684. Plaintiffs provide little argument and no evidence demonstrating that the hardship declaration is impermissibly vague. DE 8 at 27-

28. One state court reviewing an identical CEEFPA challenge found:

the terminology used in CEEFPA consists of plain language that persons of ordinary intelligence can understand and not be forced to guess at its meaning. In context of the very real pandemic, and the fact that false declarations of hardship are punishable under the penal law, CEEFPA is not is written in a manner that permits or encourages arbitrary application.

*Lakeragh, et al. v. State of New York, et al.*, Index No. 902292-21, (N.Y. Sup. Ct. Albany Cty.

March 30, 2021); DE 29-4 at 10. The undersigned fully agrees. Plaintiffs' vagueness challenge is meritless.

*b. Right to Petition*

Plaintiffs also contend that the moratorium violates their First Amendment right to petition the courts. Judge McMahon rejected this precise argument raised in conjunction with the EO:s:

The right to petition for a redress of grievances in the form of judicial relief is protected by the First Amendment. See, e.g., *Gagliardi v. Village of Pawling*, 18 F.3d 188, 194 (2d Cir. 1994) (citing *United Mine Workers v. Ill. Bar Assoc.*, 389 U.S. 217, 222, 88 S.Ct. 353, 19 L.Ed.2d 426 (1967)). The right of access to courts is burdened when state officials take systemic action to frustrate a plaintiff or class of plaintiffs from preparing and filing lawsuits. *Christopher v. Harbury*, 536 U.S. 403, 413, 122 S.Ct. 2179, 153 L.Ed.2d 413 (2002). To prevail on a denial of access claim, the plaintiff must show “that the defendant took or was responsible for actions that hindered [a plaintiff’s] efforts to pursue a legal claim,” *Davis v. Goord*, 320 F.3d 346, 351 (2d Cir. 2003); (quoting *Lewis v. Casey*, 518 U.S. 343, 349, 351, 116 S.Ct. 2174, 135 L.Ed.2d 606 (1996) (alteration in original)). “As the Supreme Court has explained, the requirement of actual injury ‘derives ultimately from the doctrine of standing.’” *Monsky v. Moraghan*, 127 F.3d 243, 247 (2d Cir. 1997) (quoting *Lewis*, 518 U.S. at 349, 116 S.Ct. 2174).

Plaintiffs have not shown that the eviction moratorium EO 202.28 “had the actual effect of frustrating [their] effort[s] to pursue a legal claim.” *Oliva v. Town of Greece*, 630 Fed. Appx. 43, 45 (2d Cir. 2015). Although nonpayment proceedings have been suspended, Plaintiffs can still sue their tenants for arrearages through a breach of contract action in the New York Supreme Court – and the fact that is not their preferred remedy is of no moment. They will also have the opportunity to bring eviction proceedings for reason of nonpayment once the order expires, a right preserved by the portion of EO 202.28 that extends relevant statutes of limitation for the duration of court closures. Since “mere delay” to filing a lawsuit cannot form the basis of a Petition Clause violation when the plaintiff will, at some point, regain access to legal process, *Davis*, 320 F.3d at 352, the Plaintiffs’ right to collect both the monetary remedies and injunctive relief they would seek through an eviction proceeding has not been “completely foreclosed” by EO 202.28, *Sousa v. Marquez*, 702 F.3d 124, 125 (2d Cir. 2012). The eviction moratorium in EO 202.28 does not violate Plaintiffs’ First Amendment rights.

*Elmsford Apartment Assocs., LLC*, 469 F. Supp. 3d at 173–74. This analysis is fully applicable to, and dispositive of, the instant challenge to CEEFPA.

Plaintiffs' argument is further undermined by three additional considerations. First, the *Lakeragh* determination, *supra*, demonstrates that landlords had access to the state court system to challenge the legislative enactment. Second, the evidence at the hearing revealed that one named plaintiff filed an ejectment proceeding and obtained an Order to Show Cause from a state court judge. Tr. 44-55; State's Exs. C & D. Third, CEEFPA's eviction moratorium allows exceptions for nuisance violations, permitting access to the courts for certain purposes. These facts demonstrate that plaintiffs' right to petition has not been violated.

*c. Compelled Speech*

Finally, plaintiffs vigorously assert that CEEFPA's notice requirements, directing landlords to provide blank hardship declaration forms and information concerning legal services organizations to their tenants constitutes compelled speech in violation of their First Amendment rights.<sup>11</sup> In a society laden with government-mandated disclosures and warnings, from cigarette packs (which advise, as required by law, that use of the product could result in death), to mandatory disclosures (sometimes in specified font sizes) in leases, mortgages and automobile purchase agreements, one wonders how plaintiffs' rights might be impinged upon by the CEEFPA disclosures. The short answer is that they are not.

As the Second Circuit has held:

Commercial disclosure requirements are treated differently from restrictions on commercial speech because mandated disclosure of accurate, factual, commercial information does not offend the core First Amendment values of promoting efficient exchange of information or protecting individual liberty interests. Such

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<sup>11</sup> Plaintiffs attack the statute's requirement that landlords translate the declaration form for tenants that do not speak one of the languages in which the form is already provided. (The *nycourts.gov* website appears to offer the form in twenty languages, including Wolof, which is spoken in Senegal). As plaintiffs have elicited no evidence that any of their tenants require such services, this argument is not properly before the Court.

disclosure furthers, rather than hinders, the First Amendment goal of the discovery of truth and contributes to the efficiency of the “marketplace of ideas.” Protection of the robust and free flow of accurate information is the principal First Amendment justification for protecting commercial speech, and requiring disclosure of truthful information promotes that goal. In such a case, then, less exacting scrutiny is required than where truthful, nonmisleading commercial speech is restricted.

*National Elec. Mfrs. Ass'n v. Sorrell*, 272 F.3d 104, 113–14 (2d Cir. 2001). The notice at issue here clearly falls under the umbrella of commercial speech as “expression related solely to the economic interests of the speaker and its audience,” *Conn. Bar Ass'n v. United States*, 620 F.3d 81, 94 (2d Cir. 2010) (quoting *Central Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n of N.Y.*, 447 U.S. at 561). Such advisory notices “are traditionally regarded as commercial speech even if they effectively” act against the speakers’ interests. *Grocery Mfrs. Ass'n v. Sorrell*, 102 F. Supp. 3d 583, 626 (D. Vt. 2015) (citing *New York State Rest. Ass'n v. New York City Bd. of Health*, 556 F.3d 114, 131, 133 (2d Cir. 2009)). Laws, like CEEFPA, “that compel the reporting of ‘factual and uncontroversial’ information by commercial entities are scrutinized for rationality.” *New York State Rest. Ass'n v. New York City Bd. of Health*, 556 F.3d 114, 134 (2d Cir. 2009) (citation omitted); *National Elec. Mfrs. Ass'n*, 272 F.3d at 115. There is no doubt that the notice requirement here is rational; similar factual notices have been upheld for a range of purposes far less pressing than the mitigation of an ongoing pandemic. See, e.g., *New York State Rest. Ass'n*, 556 F.3d at 134-35; *National Elec. Mfrs. Ass'n*, 272 F.3d at 115-16; *Conn. Bar Ass'n*, 620 F.3d at 96-100. On the other hand, even if the Court were to apply the “strict scrutiny” standard urged by the plaintiffs,<sup>12</sup> the magnitude of the public health emergency overwhelmingly justifies this minuscule burden on plaintiffs.

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<sup>12</sup> Plaintiffs cite to *Riley v. Nat'l Fed'n of the Blind of N. Carolina, Inc.*, 487 U.S. 781 (1988) in support of this proposition. However, the disclosures at issue in *Riley* were held to necessitate a higher standard of review not on

Thus, plaintiffs have failed to establish a likelihood of success on the merits or a serious question to make them a fair ground for trial. Furthermore, in light of the continuing public health crisis,<sup>13</sup> plaintiffs cannot establish that the balance of the hardships tip decidedly in their favor, or that granting a preliminary injunction would serve the public's interest. *See Auracle Homes*, 478 F. Supp. 3d at 228 ("[G]iven the nature of this pandemic, the balance of the equities and the public interest favor denying a preliminary injunction.").

#### *D. Dismissal of Claims against Remaining Defendants*

Other than defendant Marks, the remaining defendants include several sheriffs and the New York City Department of Investigations, entities which are charged with serving eviction warrants. Several of these defendants have already started the process of filing motions to dismiss. At the hearing, on consent, the matter was stayed as to these defendants – who are largely nominal defendants – to avoid incurring unneeded litigation expenses. The only evidence of record demonstrates that these defendants have not refused any requests to serve a warrant. Tr. 56, 78. In light of the evidence and the determinations herein, plaintiffs' claims against these defendants fail. In order to speed the resolution of this significant matter, and avoid unnecessary litigation costs, consistent with the dictates of Rule 1 of the Federal Rules of Civil Procedure, the Court hereby exercises its discretion to dismiss the complaint as against these defendants under Rule 12(b)(6) of the Federal Rules of Civil Procedure.

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their own merit, but rather because they were "inextricably intertwined with otherwise fully protected speech" – in that case, "informative and perhaps persuasive speech" about charitable fundraisers' mission and purpose. *Id.* at 796. The disclosures at issue here bear no such connection; indeed, they are, at worst only "intertwined" with other commercial speech, e.g., demands for rent.

<sup>13</sup> See note 1, *supra*.

*E. Consolidation with a Determination on the Merits*

Rule 65(a)(2) of the Federal Rules of Civil Procedure provides that “[b]efore or after beginning the hearing on a motion for a preliminary injunction, the court may advance the trial on the merits and consolidate it with the hearing.” This determination is well within a court’s discretion. “Given the broad discretion accorded the district court by Rule 65(a)(2), the court’s order of consolidation will not be overturned on appeal absent a showing of substantial prejudice in the sense that a party was not allowed to present material evidence.” *Abraham Zion Corp. v. Lebow*, 761 F.2d 93, 101 (2d Cir. 1985).

In an “Order Re: Consolidation with Merits,” the Court observed that:

the preliminary injunction evidence received and argument heard by the Court could well resolve the case in its entirety, that a fuller record may not be required and that discovery would not likely advance the dispute in any meaningful way. Furthermore, given the importance of the issues at hand, as well as the time-sensitive nature of the dispute, it may be in the parties’ interest to provide finality and/or prepare the matter for appellate review as quickly as possible. Based on these observations, counsel for plaintiffs and for defendant Marks will file a letter by close of business, Monday June 7, 2021, indicating whether they consent to consolidation of the preliminary injunction hearing with the trial of the merits herein, or if they object, the basis for such objection.

Electronic Order dated June 4, 2021. In other words, the Court recognized that the preliminary injunction could constitute “the whole ballgame.” *D.L. Cromwell Invs., Inc. v. NASD Regul., Inc.*, 279 F.3d 155, 159 (2d Cir. 2002).

In response, counsel for plaintiffs agreed to consolidation on the condition that the Court accept into evidence and consider the unrebutted declarations of two plaintiffs who did not testify – which has been done in connection with this determination. DE 71. Defendant Marks’ sole concern emanates from discovery of underlying landlord-tenant records and the impact it could have on the Court’s determination of the due process issue. DE 70. As this decision finds

in favor of the defendant on the due process claims, and the landlord-tenant records would have no effect on these proceedings, the undersigned finds that consolidation is appropriate.

In connection with the hearing and preliminary injunction determination, the Court placed no limitation on the evidence or arguments made by the parties. No jury rights will be affected by the outcome, as plaintiffs are not entitled to a jury. Resolving this case on the merits will facilitate appellate review of this important and time-sensitive matter. As such, the Court exercises its discretion to consolidate the merits of this case with the preliminary injunction determination herein.

## CONCLUSION

Based on the foregoing, it is hereby Ordered that:

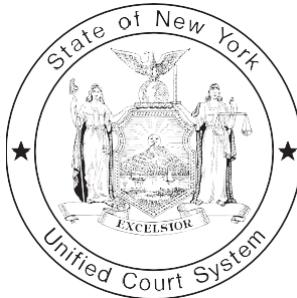
- Plaintiffs' Motion for a Preliminary Injunction, which has been consolidated with the merits of the underlying action, is denied;
- Judgment shall be entered in favor of defendant Marks; and
- The case is hereby dismissed as to the remaining defendants for failure to state a claim.

The Clerk is directed to enter judgment as above and close the case.

Dated: Central Islip, New York  
June 11, 2021

/s/ Gary R. Brown  
Gary R. Brown  
United States District Judge

[EXHIBIT A]



## NOTICE TO TENANT:

If you have lost income or had increased costs during the COVID-19 pandemic, or moving would pose a significant health risk for you or a member of your household due to an increased risk for severe illness or death from COVID-19 due to an underlying medical condition, and you sign and deliver this hardship declaration form to your landlord, you cannot be evicted until at least May 1, 2021 for nonpayment of rent or for holding over after the expiration of your lease. You may still be evicted for violating your lease by persistently and unreasonably engaging in behavior that substantially infringes on the use and enjoyment of other tenants or occupants or causes a substantial safety hazard to others.

If your landlord has provided you with this form, your landlord must also provide you with a mailing address and e-mail address to which you can return this form. If your landlord has already started an eviction proceeding against you, you can return this form to either your landlord, the court, or both at any time. You should keep a copy or picture of the signed form for your records. You will still owe any unpaid rent to your landlord. You should also keep careful track of what you have paid and any amount you still owe.

For more information about legal resources that may be available to you, go to [www.nycourts.gov/evictions/nyc/](http://www.nycourts.gov/evictions/nyc/) or call 718-557-1379 if you live in New York City or go to [www.nycourts.gov/evictions/outside-nyc/](http://www.nycourts.gov/evictions/outside-nyc/) or call a local bar association or legal services provider if you live outside of New York City. Rent relief may be available to you, and you should contact your local housing assistance office.



Index Number (if known/applicable): \_\_\_\_\_

County and Court (if known/applicable): \_\_\_\_\_

## **TENANT'S DECLARATION OF HARDSHIP DURING THE COVID-19 PANDEMIC**

I am a tenant, lawful occupant, or other person responsible for paying rent, use and occupancy, or any other financial obligation under a lease or tenancy agreement at (address of dwelling unit):  
\_\_\_\_\_

### **YOU MUST INDICATE BELOW YOUR QUALIFICATION FOR EVICTION PROTECTION BY SELECTING OPTION “A” OR “B”, OR BOTH.**

- A. I am experiencing financial hardship, and I am unable to pay my rent or other financial obligations under the lease in full or obtain alternative suitable permanent housing because of one or more of the following:
1. Significant loss of household income during the COVID-19 pandemic.
  2. Increase in necessary out-of-pocket expenses related to performing essential work or related to health impacts during the COVID-19 pandemic.
  3. Childcare responsibilities or responsibilities to care for an elderly, disabled, or sick family member during the COVID-19 pandemic have negatively affected my ability or the ability of someone in my household to obtain meaningful employment or earn income or increased my necessary out-of-pocket expenses.
  4. Moving expenses and difficulty I have securing alternative housing make it a hardship for me to relocate to another residence during the COVID-19 pandemic.

5. Other circumstances related to the COVID-19 pandemic have negatively affected my ability to obtain meaningful employment or earn income or have significantly reduced my household income or significantly increased my expenses.

To the extent that I have lost household income or had increased expenses, any public assistance, including unemployment insurance, pandemic unemployment assistance, disability insurance, or paid family leave, that I have received since the start of the COVID-19 pandemic does not fully make up for my loss of household income or increased expenses.

- B. Vacating the premises and moving into new permanent housing would pose a significant health risk because I or one or more members of my household have an increased risk for severe illness or death from COVID-19 due to being over the age of sixty-five, having a disability or having an underlying medical condition, which may include but is not limited to being immunocompromised.

I understand that I must comply with all other lawful terms under my tenancy, lease agreement or similar contract. I further understand that lawful fees, penalties or interest for not having paid rent in full or met other financial obligations as required by my tenancy, lease agreement or similar contract may still be charged or collected and may result in a monetary judgment against me. I further understand that my landlord may be able to seek eviction after May 1, 2021, and that the law may provide certain protections at that time that are separate from those available through this declaration.

Signed:

Printed name:

Date signed:

**NOTICE:** You are signing and submitting this form under penalty of law. That means it is against the law to make a statement on this form that you know is false.

**EXHIBIT E**

**(Dist. Ct. Dkt. No. 69-1)**

# EXHIBIT 1

1 UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

9  
10 TRANSCRIPT OF PRELIMINARY INJUNCTION HEARING  
BEFORE THE HONORABLE GARY R. BROWN  
UNITED STATES DISTRICT COURT JUDGE

12 APPEARANCES

13 For the Plaintiffs: RANDY M. MASTRO, ESQ.  
14 AKIVA SHAPIRO, ESQ.  
15 JESSICA BENVENISTY, ESQ.  
16 LAUREN MYERS, ESQ.  
Gibson Dunn & Crutcher LLP  
200 Park Avenue  
New York, New York 10166

17 For the Defendants: KIMBERLY ANN KINIRONS, ESQ.  
18 For Deft Marks SUSAN M. CONNOLLY, ESQ.  
19 NYS Attorney General Office  
300 Motor Parkway  
Hauppauge, New York 11788

21 For Deft Anderson KIMBERLY HUNT LEE, ESQ.  
22 McCabe & Mack LLP  
63 Washington Street  
Poughkeepsie, New York 12602

1 APPEARANCES CONT'D:

2 For the Defendants: LAUREL KRETZING, ESQ.  
 3 For Deft Dzurenda Office of Nassau County Attorney  
 4 1 West Street  
     Mineola, New York 11501

5

6 For Deft Fucito RACHEL CANE MOSTON, ESQ.  
 7 NYC Law Department  
     100 Church Street  
     New York, New York 10007

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Official Court Reporter: Paul J. Lombardi, RMR, FCRR  
 Ph. (631) 712-6106 100 Federal Plaza - Suite 1180  
 Fax (631) 712-6122 Central Islip, New York 11722

Proceedings recorded by mechanical stenography.  
 Transcript produced by CAT.  
 Paul J. Lombardi, RMR, FCRR  
 Official US District Court Reporter

3

1 THE COURT: Let's call the case if everybody is  
 2 ready.

3 THE CLERK: Calling civil case 21-2516,  
 4 Chrysafis et al. v Marks, et al.

5 Counsel please state your appearances for the  
 6 record.

7 THE COURT: For the plaintiff, go ahead. Please  
 8 state your appearances.

9 MR. MASTRO: Randy Mastro --

10 THE COURT: Wow. Wow.

11 We can't hear you at all. Mr. Mastro, you are  
 12 going to have to get closer to the mike or use a different  
 13 piece of equipment because we didn't get you at all.

14 MR. MASTRO: Your Honor, is that better?

15 THE COURT: That's better. I can see you better  
 16 too. It's perfect.

17 Go ahead.

18 MR. MASTRO: Up close and personal, your Honor.  
 19 Your Honor, Randy Mastro, Gibson Dunn &  
 20 Crutcher, for the plaintiffs along with my colleagues,  
 21 Akiva Shapiro, Jessica Benvenisty and Lauren Myers.

22 THE COURT: For the defendants. I guess go in  
 23 order of the caption.

24 MS. KINIRONS: Kimberly Kinirons from the New  
 25 York State Attorney General's office.

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1 THE COURT: Hold on. Different problem for you.

2 I'm not hearing you. The court reporter's not  
 3 going to get you at all. Can you get a little further  
 4 from the Mike?

5 It has a lot of reverb to it.

6 MS. KINIRONS: Kimberly Kinirons from the New  
 7 York State Attorney General's office on behalf of Judge  
 8 Marks.

9 THE COURT: Are you on video?

10 MS. KINIRONS: My video is not working in my  
 11 office so I jumped on my colleague's video, Lori Pack, who  
 12 is sitting with me as well.

13 THE COURT: I see Ms. Pack. I don't see you.

14 MS. KINIRONS: You actually see me and here is  
 15 Lori.

16 THE COURT: You have to stay on the video for  
 17 the court reporter because it makes it a lot easier for  
 18 them to see who is speaking.

19 Make sure if you are speaking you are on the  
 20 video.

21 MS. KINIRONS: Okay. And we have one other  
 22 person for the state.

23 THE COURT: Okay.

24 MS. CONNOLLY: Good morning, your Honor. Susan  
 25 Connolly also on behalf of Judge Marks.

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5

1 Good morning.

2 THE COURT: Good morning.

3 Going down the caption, who is next? Who's for  
 4 the Sheriff of Dutchess County?

5 MS. LEE: Good morning, your Honor. Kimberly  
 6 Hunt Lee for defendant Adrian Anderson.

7 THE COURT: And then for the Sheriff of Nassau  
 8 County.

9 MS. KRETZING: Good morning, your Honor. Laurel  
 10 Kretzing, and I'm joined by my colleague Deputy County  
 11 Attorney Ian Bergstrom.

12 THE COURT: And for the Sheriff of New York  
 13 City.

14 A lot of sheriffs here today.

15 MS. MOSTON: Good morning, your Honor. Rachel  
 16 Moston from the New York City Law Department for the  
 17 Sheriff of New York City as well as Margaret Garnett, the  
 18 Commissioner of the New York City Department of  
 19 Investigation and Caroline Tang-Alejandro also from the  
 20 New York City department of investigation.

21 I'm joined by my colleague Yungbi Jang, also  
 22 from the New York City law department. Thank you.

23 THE COURT: If you are not speaking, I'm going  
 24 to need you to mute yourselves because we are getting all  
 25 kinds of feedback here. We are at a point we could almost

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1 just agree to come in but I'd rather we see if we can get  
 2 this to work. If you are not speaking mute your mike  
 3 until you have to speak. I'll have to speak loud enough  
 4 for Paul to hear me without amplification.

5 We are here for a preliminary injunction  
 6 hearing. I have some thoughts about how we should  
 7 proceed, but let me go to plaintiffs' counsel and see if  
 8 you have thoughts as to how we should proceed because I  
 9 don't want to dominate this.

10 Now you have to undo your mike. We are not  
 11 getting anything. Mr. Mastro, we are not getting you at  
 12 all. Mr. Mastro, say something.

13 MR. MASTRO: Your Honor, Randy Mastro.

14 THE COURT: Got it.

15 Go ahead.

16 MR. MASTRO: Your Honor, I'm happy to have you  
 17 dominate. It's your courtroom and we are here as an aid  
 18 to the court.

19 But in terms of how we intended to proceed, in  
 20 light of your Honor's orders, I'm happy to make kind of an  
 21 opening statement, answer questions your Honor may have,  
 22 and then we intend to call two of our clients as  
 23 witnesses.

24 THE COURT: You plan on calling two clients, you  
 25 said?

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1 MR. MASTRO: Yes, your Honor.

2 THE COURT: And those would be your only  
 3 witnesses today, yes?

4 MR. MASTRO: Yes, your Honor.

5 We also submitted declarations from other  
 6 clients that your Honor's already aware of.

7 THE COURT: I have read them all.

8 Let me hear from counsel for Judge Marks,  
 9 please. Do you have any predilections or preferences as  
 10 to how we proceed today?

11 MS. KINIRONS: Your Honor, it's our position, as  
 12 the court is aware, these are preliminary legal arguments  
 13 which we set forth in detail in our papers. We are  
 14 prepared to go forward today.

15 We have identified potential witnesses that we  
 16 may call, should we determine that they are needed after  
 17 plaintiff rests.

18 THE COURT: We are going off the record for the  
 19 moment and I'm going to let the court reporter work with  
 20 the deputy to see if we can fix this situation.

21 We are having a lot of sound problems. Just  
 22 stand by. We are off the record.

23 (Discussion held off the record.)

24 THE COURT: Okay. We are ready to go.

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1 Counsel who is not Ms. Pack, let's go back on  
 2 the record. What is the defendant Marks' position  
 3 concerning how we should proceed?

4 MS. KINIRONS: Your Honor, it was our position,  
 5 as stated at the beginning of this case, that these are  
 6 legal issues before the court and we were prepared to  
 7 orally argue those legal issues.

8 In terms of an evidentiary hearing, it is the  
 9 plaintiffs' burden and we will respond upon them resting  
 10 as to how we will proceed. We have identified four  
 11 witnesses that we do have available and may call if we  
 12 made that decision after plaintiff rests.

13 THE COURT: Okay.

14 We have declarations from the plaintiffs, which  
 15 I think will give me a pretty good idea of what they are  
 16 going to say. They may add some color and I certainly  
 17 want to give them the opportunity to testify here. I  
 18 think that's the right thing to do.

19 You have named four witnesses but what they are  
 20 going to say is a mystery. I don't know what they are  
 21 going to say. What are your four witnesses going to say,  
 22 if called?

23 MS. KINIRONS: Yes, your Honor.

24 We have identified four witnesses and provided  
 25 the court and plaintiffs with their CVs and the papers

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1 which detail the testimony. It was our thought that since  
 2 your Honor requested an evidentiary hearing, that the  
 3 evidence would go to balancing of the equities. So we  
 4 have Dr. Craig Pollack, whose article is also attached to  
 5 our papers, who did a study relative to what occurs when  
 6 eviction moratoriums are lifted.

7 We also identified Peter -- Dr. Peter Hepburn,  
 8 who is a Ph.D. in sociology and demography. He too has  
 9 done work on eviction statistics, as well as COVID-19  
 10 prevalence, as well as vaccination rates, and, again,  
 11 thinking that this goes to balancing of the equities.

12 We identify Jessica Yager, who is a vice  
 13 president at Win, which is one of the largest, if not the  
 14 largest family shelters in New York City.

15 THE COURT: Okay.

16 MS. KINIRONS: And her testimony is obviously  
 17 about where those sheltered folks come from. Many of them  
 18 are evicted and the impact of lifting the moratorium on  
 19 the shelter city at Win in New York City.

20 Lastly is a representative from the court  
 21 system, Alia Razzaq is the chief clerk in New York City  
 22 and one of the courts that she oversees happens to be  
 23 housing court and she will be testifying to the impact of  
 24 the eviction moratoriums on the court system and what  
 25 likely would occur should the eviction moratorium be

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1 stayed at this juncture.

2 THE COURT: Okay. That's interesting.  
 3 I'm going to share with counsel some of my  
 4 preliminary thoughts about this and they are very  
 5 preliminary and I can be dissuaded from anything, but I  
 6 spent a lot of time preparing. I want to tell you that  
 7 I'm troubled principally by one question and that question  
 8 is this: in the context of plaintiffs' issue concerning  
 9 the procedural due process claim, I'm interested in the  
 10 question of a post-deprivation remedy. There are lots of  
 11 cases that talk about the propriety and the timing of  
 12 post-deprivation remedies.

13 Now, I do believe that there is authority for  
 14 the notion that post-deprivation remedies could be  
 15 suspended for a time, for some period. The question is  
 16 how long, and have we passed that time and, if we have,  
 17 what happens next. I have an interesting subquestion  
 18 about that. The plaintiffs have raised the issue, and I'd  
 19 like to hear from defendants' counsel on this, about these  
 20 hardship certifications and the presumption that would  
 21 proceed after August, which I believe the current plan is  
 22 to resume evictions in August, but that they would be  
 23 given rebuttable presumption status. But it also looks to  
 24 me that that portion of the law expires.

25 I want to ask defendants' counsel a slightly

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1 broader question, which is, assuming nothing else changes  
 2 and things proceed as they are planned by the legislation,  
 3 what happens in August? What's going to happen then?

4 MS. KINIRONS: Sorry, Judge.

5 Judge, my understanding, as you said, is that  
 6 when everything expires there is a provision within the  
 7 Tenant Safe Harbor Act that will allow tenants safe harbor  
 8 for a certain period, that is a covered period of the  
 9 Tenant Safe Harbor Act, and that's where the presumption  
 10 would apply.

11 Having said that, all of the time period that is  
 12 not covered by that would be subject to an eviction  
 13 proceeding, I mean, it would still be subject to the  
 14 eviction proceeding, but it would get the benefit of the  
 15 presumption under the Tenant Safe Harbor Act.

16 THE COURT: You think because of the Tenant Safe  
 17 Harbor Act that rebuttable presumption associated with the  
 18 hardship declaration would continue to apply in eviction  
 19 proceedings beginning in August and that housing court  
 20 judges or whoever handles those proceedings would adopt  
 21 that procedure.

22 Is that your understanding?

23 MS. KINIRONS: Judge, it's my limited  
 24 understanding, yes.

25 I have to say, I should be more firm in my

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1 response, that is my limited understanding of what occurs.

2 THE COURT: Okay.

3 MS. CONNOLLY: Your Honor, this is Susan  
 4 Connolly.

5 THE COURT: I'm sorry. Remind me who you are  
 6 representing again.

7 MS. CONNOLLY: Judge Marks.

8 THE COURT: I will let you speak because these  
 9 are complicated issues but we have to try to keep this to  
 10 one attorney per party.

11 Go ahead.

12 MS. CONNOLLY: I apologize, your Honor.

13 Ms. Kinirons is handling the testimony portion of this,  
 14 but in terms of the Tenant Safe Harbor Act, the tenants  
 15 will still have an opportunity to assert the level of  
 16 presumption based upon the hardship declaration as an  
 17 affirmative defense.

18 But the normal evidentiary burdens in that kind  
 19 of procedure -- proceedings, excuse me -- will, of course,  
 20 take place and landlords will be able to assert whatever  
 21 testimony or evidence they have against that during the  
 22 course of that proceeding, just as they would normally.

23 THE COURT: In other words, in August, under the  
 24 legislative scheme, and I don't mean that with the  
 25 negative -- the schema, the plan, we would return to a

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1 relatively normal eviction proceeding situation, with the  
 2 exception of the introduction of the hardship declaration,  
 3 the presumption associated therewith, and, I believe,  
 4 correct me if I'm wrong, your position is that housing  
 5 court judges would be empowered to consider that  
 6 presumption and consider evidence against it and so forth.

7 Is that fair?

8 MS. CONNOLLY: Under the Tenant Safe Harbor Act,  
 9 your Honor, yes.

10 THE COURT: And the Tenant Safe Harbor Act does  
 11 not expire in August, does it?

12 MS. CONNOLLY: No, it does not, your Honor.

13 THE COURT: Okay.

14 Is there an expiration date associated with the  
 15 Safe Harbor Act?

16 MS. CONNOLLY: Not that I'm aware, your Honor,  
 17 no.

18 THE COURT: Perfect.

19 MS. CONNOLLY: But the moratorium does.

20 THE COURT: I understand.

21 I wanted to know what that looks like. What do  
 22 we look like in a post-moratorium world.

23 MS. CONNOLLY: There would be a way essentially  
 24 of the housing court to handle the transition from the  
 25 moratorium time period into post moratorium normal

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1 eviction process.

2 THE COURT: Got it. Okay. Thank you.

3 Mr. Mastro, you have your hand up. I was about  
4 to give you the floor back anyway.

5 MR. MASTRO: Thank you, very much, your Honor.  
6 I just wanted to respond briefly.

7 First going to the question your Honor was just  
8 asking multiple attorneys from the state attorney  
9 general's side, your Honor, the eviction moratorium has  
10 now been extended twice. It's been in place for well over  
11 a year, now extended to the end of August. What happens  
12 at the end of August I think you just heard it is there is  
13 a tail on that dog, and that tail is the rebuttable  
14 presumption and there is also the tail on the dog that the  
15 legislature now has on two occasions extended for a period  
16 of months the eviction moratorium in its current state.

17 So you have both the issue of the legislature  
18 that has shown a predilection to do this and that it has  
19 put a tail on that dog of a rebuttable presumption. Even  
20 after the end of August, your Honor, this continues to  
21 have lasting consequences and as your Honor asked in his  
22 first question as you pointed out, the fact of the matter  
23 is that this is a moratorium that's now been in place for  
24 well over a year. It will continue through at least the  
25 end of August and at least with a rebuttable presumption.

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1 So all of these constitutional deprivations  
2 matter and your Honor knows from our client's  
3 declarations, small property owners struggling have in  
4 multiple of their cases, and you will hear direct from  
5 them, they are trying to get possession of their property  
6 back.

7 Ms. LaCasse needs to move back home. Ms. Cohen  
8 is worried about losing her property. Mr. Chrysafis has  
9 been trying to sell for over a year and had an eviction  
10 warrant before this moratorium even went into effect.  
11 Your Honor, the deprivation is there. They cannot ever be  
12 made whole post remedy, and when the eviction moratorium  
13 expires because they have lost the right to use their  
14 property and now are in the untenable situations they are  
15 in, leaving aside how difficult it is to chase tenants who  
16 already are not paying, say, check a form that says it's a  
17 hardship for them, how difficult that would be.

18 Leaving that aside, and that's a very real  
19 concern, they have had a deprivation of their property and  
20 their ability to live in their own property, to use their  
21 own property. Your Honor, that's a deprivation that  
22 requires a remedy right away.

23 I have to say one more thing, your Honor.

24 THE COURT: Yes.

25 MR. MASTRO: About the witnesses that the state

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1 has proposed to call.

2 I think it's wonderful that they say it's very  
3 clear what they are going to testify to. I think your  
4 Honor had the same reaction I did, which was in those four  
5 cases we don't have any idea what they are really going to  
6 testify to and a couple wrote papers that they are not  
7 papers, by the way. One of them, the doctor that -- the  
8 doctor did a study back in 2020 that the first week of  
9 September. The world has changed since the first week of  
10 September.

11 I respectfully submit it's totally irrelevant  
12 but what the state misses in telling you that burden is on  
13 us, as your Honor knows, the burden shifts to the state,  
14 whereas, here strict scrutiny applies to their compelled  
15 speech and petitioning, and deny --

16 THE COURT: Okay.

17 Mr. Mastro, I think I have already hinted at the  
18 fact that you sort of had my attention on the  
19 post-deprivation remedies.

20 MR. MASTRO: Yes, your Honor.

21 THE COURT: When we get to something like the  
22 First Amendment, I was looking and I would say they have  
23 to post in some instances that say fire exit, that's  
24 compelled speech, fire exit.

25 But you wouldn't argue to me well, landlords

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1 shouldn't be compelled to make that speech.

2 MR. MASTRO: Of course not, your Honor.

3 THE COURT: How is this that different?

4 MR. MASTRO: Please, your Honor, it's a world of  
5 difference.

6 There is a difference between saying fire exit,  
7 which is just a matter of fact necessary for public  
8 safety, and compelling my clients, my clients so they have  
9 to give speech that's directly against their own interests  
10 that they fundamentally disagree with, that basically  
11 instructs their tenants, they don't have to pay rent, just  
12 check the box that instructs their tenants where to go for  
13 legal counsel to make sure they don't get evicted.

14 My clients are being compelled by the state to  
15 tell renters, just check this box. This is how you don't  
16 have to pay your rent anymore, and here's lawyers you can  
17 get. I don't think I have ever seen --

18 THE COURT: Wait. We lost everyone. You guys  
19 came back. Hold on.

20 Mr. Mastro, say something.

21 MR. MASTRO: Yes, your Honor. I was in the  
22 middle of explaining --

23 THE COURT: You were actually in the middle of a  
24 really interesting point and everything went black for a  
25 minute.

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1 MR. MASTRO: Oh, really?

2 THE COURT: We are back.

3 MR. MASTRO: Your Honor, what I was saying was  
4 there is a world of difference between posting a sign that  
5 says fire exit, which is a matter of fact and done as a  
6 matter of public safety, and my small landlord clients are  
7 complaining about posting notices under the law that are  
8 advisory letters or there is a fire exit that is required  
9 under the law.

10 But, your Honor, this is fundamentally  
11 different.

12 THE COURT: Let me ask you a question and  
13 interrupt. I'm sorry to do that but we have to get  
14 through a lot of things.

15 When they sign a lease I believe there are all  
16 sorts of restrictions and counsel pointed to some of them,  
17 the size of the font, you are entitled to get your  
18 security deposit refunded or whatever. There's lots of  
19 times where regulations make your client say something  
20 that's not necessarily in their financial interest, but  
21 it's the law and it's a rule. I don't understand the  
22 compelled speech argument at all.

23 MR. MASTRO: Not the same at all, your Honor.

24 It's a fundamental difference to make an  
25 argument under the law to requiring notification of rights

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19  
1 and responsibilities or things that relate to public  
2 safety like fire exits and what's required here which is  
3 basically for me to say to my tenants as a small landlord,  
4 here's a form. Check the box and you don't have to pay  
5 rent. And, by the way, if you want to avoid eviction,  
6 here's a bunch of legal organizations, a curated list from  
7 the state for you to use.

8 I don't know of another circumstance, your  
9 Honor, ever, where I am compelled to speak so against my  
10 pecuniary interest and my legal issues where I'm telling  
11 somebody just check a box and you don't have to pay rent,  
12 by the way, here's lawyers you can get to slow things down  
13 too. I don't know of another circumstance where something  
14 like that would be permitted.

15 I suggest to your Honor that the appropriate  
16 analogies are Judge Spatt's case involving PSEG where PSEG  
17 was compelled to post notices about poles and whether  
18 there were any chemicals used on the poles and even though  
19 that had a public safety component, PSEG, being required  
20 to give that speech that may have been considered against  
21 its interests, Judge Spatt found, one, that they shouldn't  
22 have had to pay for that and they shouldn't have had to  
23 give that speech. The state, if the state had a problem  
24 with the poles or the locality, should have been the ones  
25 making the speech.

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1 And I suggest Becerra, your Honor, in Becerra  
2 the Supreme Court said three years ago said compelled  
3 speech. What was the compelled speech that California was  
4 compelling on? Basically counseling services that  
5 counseled pregnant women against abortion. The  
6 State of California was requiring those organizations to  
7 publish something that said, by the way, you can get  
8 abortions too. Here is where you can get abortions.

9 THE COURT: Mr. Mastro, are you going to  
10 represent then that the cigarette manufacturers who are  
11 forced to put a warning label that cigarettes can kill you  
12 on their package, is that a violation of First Amendment?

13 MR. MASTRO: Your Honor, again, that was a  
14 matter of public health and safety determined by the  
15 Surgeon General.

16 THE COURT: Okay.

17 So, Mr. Mastro, I'm going to let you litigate  
18 your case as you will, but I already told you you sort of  
19 had my interest on one issue and I'm telling you you don't  
20 have any interest on this issue. Put your chips where you  
21 think they are most effective.

22 MR. MASTRO: Your Honor, of course I will and I  
23 think I have explained why post-deprivation remedies do  
24 not address the core problem that multiple of my clients  
25 have and need relief now.

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21  
1 THE COURT: Wait. Wait. Wait. Hold on. Hold  
2 on.

3 If there is a deprivation of property under the  
4 due process clause, what other remedy other than a  
5 post-deprivation remedy, what else can this court even do?

6 MR. MASTRO: Your Honor, I simply meant if we  
7 have to wait until the moratorium expires under the  
8 rebuttable presumption, my clients are being denied right  
9 now, and have been for many, many months, the right to  
10 possess their own property.

11 Ms. LaCasse has no place to live. She is  
12 holding on with an ex-fiancée trying to get back into her  
13 own property with her kids that she is immunocompromised.  
14 This is a war hero who can't get back into her own  
15 property.

16 Ms. Cohen is afraid she is going to lose her  
17 property in this period because she can't afford it. You  
18 are going to hear from those clients.

19 And, your Honor, Mr. Chrysafis has wanted to  
20 sell the property for over a year and had a notice of  
21 eviction before this even began. How overbroad and unfair  
22 and irrational and uncompromised can a law be that says to  
23 somebody that had an eviction notice before this went into  
24 effect and this eviction moratorium went into effect  
25 because of COVID so it had nothing to do with the COVID

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1 noneviction, couldn't sell his property.

2 THE COURT: Okay.

3 MR. MASTRO: And post-eviction moratorium  
4 lifting can't solve the problem for any of those clients,  
5 your Honor.

6 THE COURT: Okay.

7 Since your clients are on the line, why don't we  
8 start calling witnesses and I don't know if you want to  
9 segregate them out or not. There are enough problems.

10 MR. MASTRO: Yes, your Honor.

11 My colleagues are going to do those  
12 examinations. I wanted to say one more thing before we  
13 begin. We have fundamental objections to the way the  
14 state is proceeding with I may call four witnesses and  
15 those witnesses really don't go to the core issues here.  
16 We would want to be heard, your Honor, on why each of them  
17 would be an inappropriate witness if they do call any of  
18 them.

19 THE COURT: Okay. Let's see what happens.

20 Why don't you call your first witness.

21 MR. MASTRO: Yes, your Honor. I'm turning it  
22 over to my colleague Akiva Shapiro.

23 MR. SHAPIRO: Thank you, your Honor.

24 Good morning, Ms. LaCasse. If you could turn  
25 your video on, please. We are calling as our first

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1 witness plaintiff Brandie LaCasse.

2 Do you have someone there to swear the witness  
3 in?

4 THE COURT: Yes. We can do that.

5 Would you raise your right hand, please.

6 **BRANDIE LACASSE,**

7 having been duly sworn, was examined  
8 and testified as follows:

9 THE COURT: You may proceed.

10 MR. SHAPIRO: Thank you.

11 DIRECT EXAMINATION

12 BY MR. SHAPIRO:

13 Q. Good morning, Ms. LaCasse.

14 Could you tell us a little bit about yourself,  
15 some background.

16 A. Yes.

17 I am a small property owner. I own three  
18 properties in New York. I served just under 24 years  
19 active duty in the military. I went to 60 different  
20 countries and I'm a disabled combat veteran and single  
21 mother of two kids.

22 And while I was in I developed COPD which makes  
23 me immunocompromised.

24 THE COURT: Ms. LaCasse, I'm really interested  
25 in what you have to say.

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1 So I'm going to ask you, and I know it's hard,  
2 to speak slowly because I want the court reporter to get  
3 it all.

4 THE WITNESS: Yes, sir.

5 THE COURT: Thank you.

6 BY MR. SHAPIRO:

7 Q. You mentioned COPD, that's chronic obstructive  
8 pulmonary disease, is that right?

9 A. Yes.

10 Q. Thank you for your service.

11 When did you retire from the service?

12 A. I retired from the service on March 1, 2017.

13 Q. What branch of law enforcement did you serve in?

14 A. United States Air Force.

15 Q. What was your main job when you were there?

16 A. I was a cryptographic maintenance technician.

17 Q. What does that job entail?

18 A. It entailed providing top secret communications to  
19 dignitaries, Secretary of Defense, director of the CIA,  
20 chairman of the joint chiefs, typically in and out of the  
21 hostile areas, on planes.

22 Q. And one more question on the background.

23 You had mentioned the COPD as a connected  
24 disability. How do you have that? How did you come to be  
25 disabled in that way?

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1 A. I served many tours in the desert and it was  
2 determined that the oil burning fires in the desert for  
3 the durations I was there caused COPD.

4 Q. And now that you are retired and you have returned,  
5 what do you do to make a living?  
6 A. When I retired I cashed in my Thrift Savings Plan  
7 that I had acquired while I was in the service and I  
8 invested in real estate and I bought houses.

9 And so I was a property manager and single  
10 mother.

11 Q. Just briefly, if I could turn your attention to the  
12 document that you submitted to the court that's titled  
13 Declaration of Brandie LaCasse in support of plaintiffs'  
14 application for a preliminary injunction.

15 MR. SHAPIRO: For the record, this was  
16 originally filed with the court as docket 207 and refiled  
17 over the weekend as Exhibit -- Plaintiffs' Preliminary  
18 Injunction Exhibit 28.

19 BY MR. SHAPIRO:

20 Q. Ms. LaCasse, you have that document in front of you?

21 A. I do.

22 Q. Did you provide the information contained in the  
23 document?

24 A. Yes, I did.

25 Q. To the best of your knowledge, are the contents of

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1 the declaration true and correct?

2 A. Yes.

3 MR. SHAPIRO: Your Honor, we would ask to move  
4 Ms. LaCasse's declaration into evidence.

5 We do have this short examination, but in order  
6 to move things along we don't want to have to repeat  
7 everything in the declaration.

8 THE COURT: Any objection?

9 Could you state your name, because it's not  
10 coming up on the video.

11 MS. LEE: No objection, your Honor.

12 THE COURT: Okay. Exhibit 28 is in evidence.

13 Counsel, you may continue.

14 (Whereupon, Plaintiff Exhibit 28 was received in  
15 evidence, as of this date.)

16 BY MR. SHAPIRO:

17 Q. You mentioned that you own three properties in  
18 New York.

19 A total of how many houses or units are on those  
20 properties?

21 A. There's six total rental units.

22 Q. Are they single-family homes, multifamily?

23 A. They are all single-family homes.

24 Q. Where are those properties located?

25 A. I have one property in Rhinebeck, with a

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1 single-family house on it on, 5 acres.

2 I have another one in the town of Clinton that  
3 has two residences on it, and another one in Hyde Park  
4 that has three residences on it.

5 Q. And those are all in Dutchess County?

6 A. Yes.

7 Q. When did you purchase each of those properties?

8 A. After I retired and I cashed in my Thrift Savings  
9 Plan, I purchased the properties in Hyde Park, the three  
10 houses on one property, in 2018, and it was a 203(K) loan,  
11 which was -- they needed a lot of work.

12 So I rolled those into the cost of the mortgage.

13 And then later on in 2018 I bought the house in Rhinebeck,  
14 which was a foreclosure.

15 Q. And are you responsible for managing and maintaining  
16 those properties?

17 A. Yes, I am.

18 Q. Where do you currently live?

19 A. I currently live with my ex-fiancee in Staatsburg,  
20 New York.

21 THE COURT: I'm sorry, where?

22 THE WITNESS: Staatsburg, it's a hamlet of  
23 New York.

24 THE COURT: Staatsburg. Okay.

25 Thank you.

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1 BY MR. SHAPIRO:

2 Q. What's the situation like there?

3 A. I don't -- it's not good.

4 He's been asking me to leave for a couple months  
5 and -- excuse me.

6 Q. Okay.

7 (There was a pause in the proceedings.)

8 A. He sends me nasty messages, telling me to get out.

9 MS. KINIRONS: Objection, your Honor.

10 THE COURT: Hold on. What's the basis of the  
11 objection?

12 MS. KINIRONS: Hearsay, Judge.

13 A. I have the text --

14 THE COURT: Stop.

15 I'm not going to take it for the truth of the  
16 matter contained therein, just for the fact that it  
17 happened.

18 Go ahead.

19 THE WITNESS: Do you want me to continue?

20 THE COURT: You can continue.

21 A. He wants me to leave his house. He is with somebody  
22 else. He wants her to come here.

23 And I have even listed my properties trying to  
24 sell them so I could buy another house and I have been  
25 trying to earn my house back and I can't.

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1 Q. He's been asking you to start -- asking you to pay  
2 rent on the house you are in now.

3 Correct?

4 A. Yes.

5 He sent me a text message and told me I owe him  
6 \$5,500 a month starting June 1, due the first every month.

7 Q. If I could turn your attention to the Rhinebeck  
8 property which is the focus of your declaration.

9 Tell us a little bit about that property, how  
10 you came to own that property.

11 A. Yeah.

12 I bought it in 2018 and it was a foreclosure,  
13 and it needed some foundation work and mold remediation in  
14 the basement.

15 The entire foundation had to be dug out, rubber  
16 walled in with new footing drains. So I purchased the  
17 house for \$128,000 and I had to put in, I'd say,

18 approximately \$80 to \$90,000 worth of work. The tenants  
19 that I currently have in there they are my first set of

20 tenants and I started renting to them a little over a year  
21 ago, February of 2020, as soon as I had remodeled the  
22 entire house.

23 Q. Did they pay rent on time and in full?

24 A. Yes, they did, up until -- I had spoke to them when  
25 they wanted to lease it -- when they wanted to rent it and

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1 I had told them that I'm not keeping the property because  
 2 eventually I would need to sell it to pay for my  
 3 daughter's education.

4 And they said they would be interested in buying  
 5 it. So I said okay. So after ten months I was required  
 6 to give 60-day notice. So in November of 2020 I gave them  
 7 a notice that -- might have been early December, I gave  
 8 them a notice I was not renewing their lease and that if  
 9 they wish to purchase the property let me know and they  
 10 said, okay. Everything's great.

11 And then they just stopped paying rent.

12 Q. So since they received that notice in November of  
 13 2020 have they paid rent?

14 A. They have not paid a dime, and if I send them a rent  
 15 reminder asking them for any rent, they tell me to stop  
 16 bothering them, that they are going to call the cops on  
 17 me.

18 I'm not allowed on the property. They have  
 19 damaged the majority of the things in the property. They  
 20 are laying in the back of my house. There are smashed up  
 21 bunk beds in the shed. I have gotten tickets from the  
 22 Town of Rhinebeck for trash laying around the property.  
 23 My neighbors have called me numerous times.

24 There is nothing I can do. I have attempted to  
 25 gain access to the property to get their trash off of it

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1 with the assistance of the police department, and every  
 2 time I hit a brick wall because every time I send them a  
 3 notice telling them I'm coming on the property they say  
 4 that the date doesn't work for them. That's happened  
 5 probably 11 times.

6 So the captain informed me I am just not allowed  
 7 on my property. It's a civil matter that I have to take  
 8 them to court which I can't.

9 Q. With all those issues, have you looked into whether  
 10 you would qualify for the nuisance exception under the  
 11 eviction moratorium and be able to get them out that way?

12 A. I absolutely have.

13 I have spoke with attorneys in the double  
 14 digits. I spoke with landlord-tenant attorneys. I spoke  
 15 with real estate attorneys. I spoke with criminal  
 16 attorneys. I even spoke with the Town of Poughkeepsie  
 17 judge who is an attorney and they told me I don't qualify  
 18 for the nuisance exception because it's a single-family  
 19 property and it sits on five acres and they are not  
 20 affecting anybody else as a tenant.

21 So I don't qualify for the nuisance. I tried.  
 22 I offered attorneys money and I can't. They told me I  
 23 don't qualify.

24 Q. And --

25 MS. KINIRONS: Objection, your Honor. Move to  
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1 strike.

2 The question calls for a legal conclusion and  
 3 Ms. LaCasse has a very stellar background, better than  
 4 being a lawyer, I would say, but is not a lawyer and can't  
 5 make that conclusion.

6 THE COURT: I'll allow it just for her  
 7 understanding.

8 You can continue.

9 BY MR. SHAPIRO:

10 Q. How much is the rent on that property?

11 A. It's currently \$2,600 a month.

12 The original lease said \$2,450 and it stated in  
 13 the lease if they stayed after January 31st it would go up  
 14 to \$2,600.

15 Q. And how much do they owe now in back rent?

16 A. \$17,100 on top of astronomical amounts of damage to  
 17 furniture in the house.

18 There are holes in the walls, there are knife  
 19 wounds in the door. They have already ruined the septic  
 20 once. I had somebody else come out and look at it and  
 21 they said that I probably need new leach fields, or  
 22 something to that effect, which is -- there's probably  
 23 upwards of \$35,000 in damage to the house and the  
 24 furniture that was in it.

25 Q. And before they stopped paying rent, what were you

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1 using that rental income for?

2 A. I was using it to pay for a portion of my daughter's  
 3 education and some of my bills.

4 Q. What's happened to your financial situation since the  
 5 tenants stopped paying rent?

6 A. I am pretty much broke.

7 I borrowed money from my ex-fiancee which he  
 8 wants me to return and I cannot. I do what I can to get  
 9 by. I have an additional job working for Mental Health  
 10 America as a crisis counselor, and I just recently  
 11 finished a real estate course so I can get a third job and  
 12 not spend time with my child and support my tenants.

13 Q. And that job for the crisis counselor for Mental  
 14 Health America, what does that require you to do?

15 What does that involve?

16 A. It's in person visits with veterans in crisis. A lot  
 17 of them are homeless.

18 I take them to the food bank. I get them food.  
 19 I take them to the doctor appointments, the VA, and we  
 20 have group meetings at the VFWs outside for support with  
 21 other veterans.

22 Q. Do you feel that that job is putting your health at  
 23 risk?

24 A. Absolutely.

25 Q. Why is that?

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1 A. Because I have constant contact with other  
 2 individuals and if I were to develop -- if I were to get  
 3 COVID I'm immunocompromised and I'm worried what would  
 4 happen.

5 Q. Have you tried to sell the Rhinebeck property?

6 A. Yes.

7 I actually listed it for sale by owner on Zillow  
 8 and I have gotten --

9 THE COURT: Hold on.

10 Try it now. Go ahead. Mr. Shapiro, I muted  
 11 you. Sorry.

12 MR. SHAPIRO: I'm on.

13 THE COURT: Hold on.

14 BY MR. SHAPIRO:

15 Q. I'm not sure if we got the answer about trying to  
 16 sell the property.

17 A. I have tried to sell the property.

18 I listed it for sale by owner on Zillow. Most  
 19 of the real estate agents don't want to list it because  
 20 it's not paying tenants. I have gotten calls with cash  
 21 offers that I cannot take because there are nonpaying  
 22 tenants in the house.

23 So I can't sell that property and I also listed  
 24 my other properties to try to sell them so maybe I could  
 25 sell that and find somewhere to live and it's three homes

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1 on one property and I have had two people look at it and  
 2 they said if you didn't have tenants in there I would buy  
 3 it.

4 So I can't evict them either, obviously. So I  
 5 can't seem to sell a property and buy another home right  
 6 now.

7 Q. If the tenants in the Rhinebeck property were to  
 8 leave, how would that change your situation?

9 A. I'd have a place to live that's not volatile and I  
 10 could sell it and buy another home if I needed to or I  
 11 could live there.

12 Any option is better.

13 Q. And you mentioned that you have been paying for your  
 14 daughter's education.

15 Is your daughter living with you?

16 A. Yes.

17 Q. Do you have any concerns about the situation there as  
 18 well?

19 A. I do.

20 I want to get my daughter out. I have actually  
 21 sought assistance from my county legislature, Marc  
 22 Molinaro, any assemblyman, I called Governor Cuomo's  
 23 office. I called Hudson River Housing. I called every  
 24 single person and nobody seems to be able to assist me.  
 25 Nobody can help me.

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Nobody can do anything.

2 Q. Did you -- you did commence a proceeding, a legal  
 3 proceeding against the tenants at the Rhinebeck property?  
 4 A. I did.

5 Immediately after I served them with a  
 6 nonrenewal form they told me that they are not paying rent  
 7 and they don't have to. And she also stated to me I'm a  
 8 Cuomo. You will never get me out of here.

9 So I was, like, okay. So I filed -- I mailed  
 10 them the 5-day late notice and I served them with the  
 11 14-day demand for rent that expired on December 26th and I  
 12 brought my court papers to the Town of Rhinebeck courts.

13 And I filed for an eviction and they gave me a  
 14 court date and then I served them with that paperwork.

15 Q. And what happened with that case?

16 A. I called to follow up with the Town of Rhinebeck  
 17 courts and they said -- I said I know that on December  
 18 28th -- this was in January -- I said I know on December  
 19 28th they passed a law stating that there was an eviction  
 20 or a hardship declaration had to be served.

21 I said, are the courts going to serve that  
 22 because I turned my paper in on December 26th or do you  
 23 want me to serve it?

24 MS. KINIRONS: Objection, your Honor. The legal  
 25 papers are not before this court. They haven't been

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1 supplied by plaintiff and we are again going into hearsay.  
 2 I certainly think that the legal papers are  
 3 relevant to this proceeding, and would provide a window  
 4 into what occurred here. But since we don't have those, I  
 5 would object to further hearsay testimony.

6 THE COURT: I'll allow it.

7 Go ahead.

8 A. So I called the clerk and asked her if I was going to  
 9 serve the declaration. She said she didn't know what it  
 10 was at the time and she said she would call me back.

11 And when I called back a week later she said  
 12 they dismissed my case because I did not serve the  
 13 hardship declaration, and I said that I would have served  
 14 it had I known I was required to and she said -- she said  
 15 we dismissed the case.

16 I do believe that is in my -- I think the case  
 17 dismissal might be in the paperwork.

18 THE COURT: It's okay.

19 Ms. LaCasse, don't worry about answering  
 20 objections, but try to keep the conversations to a  
 21 minimum. I just want to know what happened, not what  
 22 people told you.

23 THE WITNESS: Okay.

24 A. So my case got dismissed due to the fact that I  
 25 hadn't served the hardship declaration which I didn't

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1 think was legal because I submitted my papers on December  
 2 26th of 2020.

3 I then submitted a complaint to the Office of  
 4 Court Administration that came back and said doesn't  
 5 matter. We don't have enough information. I sent them  
 6 the information. They refused to reinstate my case.

7 I also called Brian Kavanagh, Assemblyman  
 8 Cahill's office. I called the local administrative people  
 9 in Rhinebeck. They said that the judge there is locally  
 10 elected and there is nothing that anybody could do in that  
 11 their office refuses to speak to you anyway.

12 Q. Bottom line, the case has been dismissed?

13 A. Correct.

14 THE COURT: Hold on.

15 Mr. Shapiro, you are breaking up now. Say that  
 16 again.

17 BY MR. SHAPIRO:

18 Q. The question was, bottom line the nonpayment action  
 19 has been dismissed?

20 A. Yes.

21 THE COURT: Good.

22 BY MR. SHAPIRO:

23 Q. And now after the nonpayment case was dismissed, did  
 24 your tenants file anything with the court?

25 A. Yes.

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1 They actually served me with four different  
 2 copies of the hardship declaration. They sent certified  
 3 mail, regular mail. They sent it to the court and sent it  
 4 certified again.

5 Q. Did you provide the hardship declaration to them, a  
 6 blank one?

7 A. No, I did not.

8 Q. So they got it from someone other than you?

9 They were able to get it?

10 A. Yes.

11 Q. Let's take a look at the hardship declaration that  
 12 your tenants filed.

13 MR. SHAPIRO: This is attached as Exhibit A.

14 It's in Ms. LaCasse's declaration which, again,  
 15 we previously marked as Plaintiff Exhibit 28 and moved  
 16 into evidence.

17 BY MR. SHAPIRO:

18 Q. Do you have it in front of you?

19 A. Yes, I do.

20 Q. If you turn to the second page, the last page, you  
 21 see it's dated January 26, 2021?

22 A. Yes.

23 MR. SHAPIRO: For the record, the name and  
 24 signature of that date have been redacted.

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1 BY MR. SHAPIRO:

2 Q. To your knowledge your tenants did, in fact, sign the  
 3 declaration that you have in front of you, correct?

4 A. Yes, they did, four times.

5 Q. And if you turn to the first page of the declaration,  
 6 your tenant checked off, A, I am experiencing financial  
 7 hardship and I am unable to pay my rent, or other  
 8 financial obligations under the lease in full or obtain  
 9 alternative suitable permanent housing because of one of  
 10 the following, and then they circled three, child care  
 11 responsibilities.

12 To the best of your knowledge, did anything  
 13 change? Has your child's tenant care responsibilities --

14 MS. KINIRONS: Objection, your Honor.

15 BY MR. SHAPIRO:

16 Q. -- 2021 any time since the beginning of the pandemic?

17 A. Absolutely not --

18 THE COURT: Hold on. Hold on. There is an  
 19 objection.

20 What's the objection?

21 MS. KINIRONS: Your Honor, to the extent that  
 22 Ms. LaCasse has personal observable knowledge of her  
 23 tenants' current circumstances, that would be admissible.

24 But based upon my review of the declaration it  
 25 would seem it is not personal knowledge.

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1 THE COURT: Ms. LaCasse, just tell us how you  
 2 know what you are about to tell us.

3 A. Okay.

4 When they rented the house, Carla, one of the  
 5 main tenants, Carla Charles, Carla was unemployed, and she  
 6 currently has a medical lawsuit which is actually on the  
 7 Dutchess County Clerk records that you could look up and  
 8 she told me she could not work because she had a medical  
 9 lawsuit pending which is still pending in Dutchess County  
 10 and that she would not be able to obtain employment  
 11 because it would ruin her medical lawsuit.

12 MS. KINIRONS: Objection.

13 THE COURT: What's the objection?

14 MS. KINIRONS: Again, we are going down a path  
 15 of -- again, Ms. LaCasse is -- it's a legal ruling but we  
 16 are going down a path of this one told this one --

17 THE COURT: So you are --

18 THE WITNESS: She was never employed.

19 THE COURT: Stop. Ms. LaCasse, you have to not  
 20 talk while I am talking.

21 The objection was that it's hearsay?

22 MS. KINIRONS: Judge, I anticipate that all of  
 23 this is hearsay, but certainly what she just said is  
 24 hearsay.

25 THE COURT: Counsel, your objection is

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1 understood. I think it goes to weight not admissibility.

2 I'll take it in these circumstances and decide  
3 what weight we should attribute to it later.

4 Ms. LaCasse, you can finish. Go ahead.  
5 **A. My tenant has never been employed since she's been  
6 living at my house.**

7 I am a hundred percent positive of that. She  
8 does not have employment. She never had employment. She  
9 always stayed home with her children. Her child care  
10 situation has not changed at all.

11 The only person who worked in that house was her  
12 boyfriend, Charles Frelier, who is an EMT at Northern  
13 Dutches Paramedics and another paramedic department in  
14 New Paltz.

15 THE COURT: Okay. That's enough. Next  
16 question.

17 BY MR. SHAPIRO:

18 Q. Next question which is then you see circled number  
19 four moving expenses and difficulty I have getting  
20 alternative housing make it a hardship for me to relocate  
21 to another residence during the COVID-19 pandemic.

22 Is there anything that has changed about your  
23 tenant's financial situation or employment around January  
24 of 2021 or since the beginning of the pandemic?

25 **A. Well, they have not paid \$17,100 in back rent and**

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1 **have received tens of thousands of dollars in stimulus  
2 checks.**

3 So the only thing that has changed for my  
4 tenants is that they currently should have about \$35,000  
5 sitting in the bank because they have not paid rent  
6 receiving the stimulus checks.

7 MS. KINIRONS: Objection, your Honor.

8 THE COURT: I'm sustaining the objection and  
9 striking the last answer.

10 Next question.

11 MR. SHAPIRO: I think you misunderstood my  
12 question, which is employment situation specifically, what  
13 if anything --

14 THE COURT: Counsel, I think we have enough on  
15 this.

16 I understand.

17 MR. SHAPIRO: Okay. Sure.

18 BY MR. SHAPIRO:

19 Q. Did your tenant submit any evidence in connection  
20 with the hardship declaration they submitted to support  
21 their assertion of hardship?

22 **A. Absolutely not.**

23 MS. KINIRONS: Objection to the extent she would  
24 know what they submitted to the court.

25 **A. They did not submit anything.**

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1 THE COURT: I will allow it. I think we know  
2 the answer.

3 Next question, please.

4 **A. They are not required to prove their hardship in the  
5 State of New York with this hardship declaration.**

6 THE COURT: Ms. LaCasse --

7 **A. I can't even get --**

8 THE COURT: Ms. LaCasse, we need to know what  
9 you know. The law part we can handle here.

10 Counsel, go ahead. What's next?

11 MR. SHAPIRO: Sure.

12 BY MR. SHAPIRO:

13 Q. Did you recently commence another lawsuit against  
14 your tenants?

15 **A. I did.**

16 I filed for a ejectment action through the  
17 Supreme Court with an attorney from Long Island.

18 Q. And why did you bring that suit?

19 **A. Because I need to get out of where I am and I need to  
20 do anything that I can, whether it's to get a money  
21 judgment against them so I that I could leave and go  
22 somewhere else, or obtain recovery of real property with a  
23 Supreme Court ejectment action I can file both at the same  
24 time.**

25 **Even if I can win one way or the other I can**

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1 **leave where I am at.**

2 Q. What is your understanding of the timeline for that  
3 ejectment suit to be filed?

4 **A. Well, I know it takes an extensive period of time  
5 with, you know, serving and waiting and serving and  
6 waiting. Right now I don't have a court date until July  
7 28th and I know from that date the judge still has 60 days  
8 to make a decision.**

9 **So it's a lengthy process.**

10 Q. And have the tenants answered that ejectment suit?

11 **A. Neither one have.**

12 **They were served in March. We did a 30-day wait  
13 period. They were sent a letter, the 20-day wait period  
14 and they have not responded. So we submitted for an order  
15 to show cause and a default judgment and they have not yet  
16 responded to that either.**

17 Q. Okay.

18 Despite all the issues that you have had with  
19 the tenants, have you made any efforts to work with them  
20 to apply for any government assistance that may be  
21 available to cover rent?

22 **A. I have messaged them numerous times about the rent  
23 relief programs.**

24 **I have contacted Hudson River Housing on several  
25 occasions and asked them to contact my tenants. They have**

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1 contacted my tenants which is in Hudson River Housing's  
 2 log seven different times they called them. My tenants  
 3 are refusing to apply for any rent relief funds.

4 I have reached out to --

5 MS. KINIRONS: Objection, your Honor.

6 A. My county clerk, Marc Molinaro, his people reached  
 7 out to my tenants.

8 They have refused to apply for any --

9 MS. KINIRONS: Objection, your Honor.

10 THE COURT: There is an objection?

11 MS. KINIRONS: Maybe I'm not sure of the  
 12 parameters of the evidence in this hearing, but, again, we  
 13 are talking about --

14 THE COURT: Counsel, counsel, just what's your  
 15 objection?

16 MS. KINIRONS: Hearsay, Judge.

17 THE COURT: Sustained.

18 Go ahead. Next question.

19 BY MR. SHAPIRO:

20 Q. I asked -- I want to ask you about the other  
 21 properties briefly.

22 Have you sent -- have you sent the hardship  
 23 declaration to the other tenants?

24 A. No, I have not.

25 Q. It's your understanding --

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1 What rule of evidence are you submitting her  
 2 view under? Please tell me.

3 MR. SHAPIRO: It goes to the compelled speech.

4 THE COURT: Mr. Shapiro, I have allowed a lot of  
 5 things here.

6 MR. SHAPIRO: Okay.

7 THE COURT: Just try to focus it.

8 MR. SHAPIRO: Okay.

9 THE COURT: Any more questions?

10 MR. SHAPIRO: Just two more.

11 BY MR. SHAPIRO:

12 Q. Recently have things changed with your living  
 13 situation at home?

14 A. Yes.

15 I need to leave where I'm currently staying. My  
 16 ex wants me out of the house, and I don't really have  
 17 anywhere to go and I'm trying to get my house back or sell  
 18 a house which is every time that happens I'm hitting a  
 19 road block.

20 Q. And is there anything else that you would like to  
 21 tell the court before I finish the questioning?

22 MS. KINIRONS: Objection.

23 THE COURT: Sustained.

24 If you have a question, ask it.

25 MR. SHAPIRO: I'll leave it there and reserve

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1 MR. SHAPIRO: And I'm asking the question for  
 2 Ms. LaCasse's understanding and not her legal analysis --  
 3 Q. -- but do you have an understanding of when you might  
 4 be required to send out a hardship declaration?

5 MS. KINIRONS: Objection, your Honor.

6 THE COURT: Hold on. What's the objection?

7 MS. KINIRONS: It's just not relevant. He  
 8 hasn't laid a foundation for this line of questioning.

9 THE COURT: Overruled on that ground.

10 You can answer. You can answer.

11 BY MR. SHAPIRO:

12 Q. Go ahead.

13 A. I believe I'm supposed to serve it to my tenants at  
 14 the first form of any kind of notice for eviction, whether  
 15 it's late rent.

16 I have to give it to them if I'm sending them a  
 17 certified letter saying that the rent's late or 14-day  
 18 notice or any kind of eviction forms.

19 Q. And what's your view of the requirement that you  
 20 have --

21 THE COURT: Sustained. Sustained.

22 Mr. Shapiro, you are kidding me, right? What's  
 23 her view?

24 MR. SHAPIRO: Your Honor, it --

25 THE COURT: Wait.

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1 for potential redirect, if necessary.

2 THE COURT: Okay.

3 Cross-examination.

4 CROSS-EXAMINATION

5 BY MS. KINIRONS:

6 Q. Good morning, Ms. LaCasse.

7 A. Good morning.

8 Q. Fitting the day after Memorial Day, but thank you for  
 9 your service.

10 A. Thank you.

11 Q. This ordeal with your tenants that's cost you  
 12 obviously some significant financial hardship, correct?

13 A. Financial, physical, emotional, yes.

14 Q. I was going to get to that.

15 Certainly it's been an emotional roller coaster,  
 16 correct?

17 A. Yes.

18 Q. Your housing is not your only source of income,  
 19 correct?

20 A. No.

21 Q. You get I assume a full pension from the military,  
 22 correct?

23 A. I get a retirement check from the military, yes.

24 Q. Is that a disability pension as well?

25 A. Some of it, yes.

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- 1 Q. You said earlier in your testimony that you had to  
2 get a job because of the financial hardship, right?  
3 A. Yes.  
4 Q. In your papers and in your testimony you said because  
5 of your health you are concerned about that.  
6 Is that right?  
7 A. Yes.  
8 Q. And obviously COPD is not good with Coronavirus,  
9 correct?  
10 A. Absolutely.  
11 Q. And that's your concern, is that COVID still exists  
12 and you can get sick and die, correct?  
13 A. Yes.  
14 Q. But at this instance you are doing what you have to  
15 do to make ends meet, right?  
16 A. Well, my daughter is suffering. I can't bring her to  
17 her sports.  
18 So I'm not really making ends meet right now.  
19 I'm barely getting by.  
20 Q. Okay.  
21 A. I'm not really able to function my normal life.  
22 I can't get my daughter most days. I can't  
23 bring her to travel soccer. She can't take her piano  
24 lessons. I wouldn't really say that I'm doing what I need  
25 to.

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- 1 Q. Now, when you put it on the market in April it listed  
2 at \$500,000, is that right?  
3 A. Yes.  
4 I actually got a cash offer for \$500,000.  
5 Q. And now it's down to \$465, is that correct?  
6 A. Yes, it is.  
7 Q. Now, that had been up for sale prior to you taking on  
8 these tenants, isn't that right?  
9 A. Yes.  
10 I was either going to sell it or rent it, and  
11 when they wanted to rent it I took it off the market and  
12 told them I was going to put it back on after their lease  
13 ends, yes.  
14 Q. Okay.  
15 A. Because I needed the income right away.  
16 Q. Now, earlier we were talking about -- you were  
17 talking about the holdover proceeding you filed in  
18 Rhinebeck with town court?  
19 A. It was a nonpayment case, yes.  
20 Q. The hardship declaration that's in evidence, at the  
21 top of that it refers to that case number, doesn't it?  
22 A. Yes. It does.  
23 Q. The index number and the town court number?  
24 A. Yes.  
25 Q. On that declaration they have indicated to you why it

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- 1 Q. Okay.  
2 Now, you said earlier that you have three other  
3 properties for a total of six renting units?  
4 A. I have three total properties.  
5 Q. Okay.  
6 And that's a total of six rental units, is that  
7 right?  
8 A. Yes, yes.  
9 Q. You said one was in Clinton.  
10 Is Clinton by Staatsburg?  
11 A. Yes.  
12 Q. And is that one on 9G?  
13 A. Yes.  
14 Q. Now, of those six rental units, five tenants have  
15 continued to pay you rent, is that right?  
16 A. Yes.  
17 Q. You said earlier when you purchased that home in 2018  
18 it was for \$128,000, right?  
19 A. The one in Rhinebeck, yes.  
20 Q. I'm sorry. Yes, the one in Rhinebeck, the one that's  
21 at issue here.  
22 A. Yes.  
23 Q. And you have done a lot of work to that property,  
24 correct?  
25 A. Yes, absolutely.

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- 1 is they can't move, correct?  
2 A. Yes.  
3 Q. And that form you didn't send them that form?  
4 A. No, I did not.  
5 Q. The properties you have, it's a total of three  
6 properties?  
7 A. It is three properties, yes.  
8 Q. You have mortgages on all three properties, correct?  
9 A. Yes, I do.  
10 Q. And they are up to date, correct?  
11 A. As of right now, yes.  
12 MS. KINIRONS: Your Honor, before the court,  
13 attached to a May 29th letter from Ms. Pack, are exhibits  
14 C and D which is the latest lawsuit that's currently  
15 pending.  
16 THE COURT: Okay.  
17 MS. KINIRONS: I'd ask the witness to take a  
18 look at those.  
19 Mr. Shapiro, does she have copies of those?  
20 A. Yes.  
21 Q. Ms. LaCasse, we are talking about a current court  
22 action that you have pending.  
23 If you could look at State's Exhibit C and D.  
24 Are those the papers for that court action?  
25 A. Some of them, yes.

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1 Q. Is it what appears to be the summons and complaint  
 2 and then the subsequent order to show cause that your  
 3 attorney filed on your behalf?

4 A. **Did you say Exhibits C and D? Yes, that's more for  
 the court information.**

6 **MS. KINIRONS: But Mr. Shapiro, did you give her  
 what we had provided?**

8 MR. SHAPIRO: Yes, I --

9 A. **Yes, I do have Exhibit C and D from the actual packet  
 they filed.**

11 MR. SHAPIRO: They are the same documents, yes.

12 A. **Okay, yes. I do have it.**

13 Q. Thank you.

14 That's the action that you were speaking of and  
 15 that you filed against your tenants that's currently  
 16 pending, is that right?

17 A. **Yes.**

18 Q. That's proceeding in court as we speak.

19 You have a date to return in July, correct?

20 A. **July 28th and then the judge has 60 days to make a  
 decision.**

22 Q. Okay.

23 MS. KINIRONS: At this time, I'd offer State  
 24 Exhibit C and D, the Dutchess Supreme Court action into  
 25 evidence.

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1 A. **Yes.**

2 Q. As part of that process, are you aware that you need  
 3 to obtain a court ordered warrant of eviction?

4 A. **Yes.**

5 Q. In 2020, in December of 2020 you filed a holdover  
 6 proceeding against your tenant, is that correct?

7 A. **A nonpayment.**

8 Q. But -- and that proceeding was dismissed by the  
 9 court, correct?

10 A. **Yes.**

11 Q. As part of that holdover proceeding, did you ever  
 12 receive a warrant of eviction from a court?

13 A. **No, and it was a nonpayment proceeding.**

14 Q. Okay. I'm sorry. I keep calling it a holdover.

15 As part of the nonpayment proceeding, did you  
 16 receive a warrant of eviction from the court?

17 A. **I did not.**

18 Q. At any point from December of 2020 until today, have  
 19 you ever presented a warrant of eviction to the Dutchess  
 20 County Sheriff's Office with respect to your tenants in  
 21 Rhinebeck?

22 A. **No, I have not.**

23 Q. Has the sheriff declined to serve any warrant on your  
 24 behalf?

25 A. **No, they have not.**

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1 THE COURT: Any objection?

2 MR. SHAPIRO: No objection.

3 THE COURT: Those are admitted.

4 (Whereupon, Defense Exhibits C and D were  
 5 received in evidence.)

6 MS. KINIRONS: That's all I have, Ms. LaCasse.  
 7 Thank you for your time today.

8 THE WITNESS: Thank you.

9 THE COURT: Any redirect?

10 MR. SHAPIRO: No, your Honor.

11 THE COURT: Okay.

12 Ms. LaCasse --

13 MS. LEE: Your Honor, Kimberly Hunt Lee on  
 14 behalf of Dutchess County Sheriff.

15 THE COURT: I apologize. Sorry.

16 MS. LEE: Sorry to interject. If I may ask  
 17 Ms. LaCasse a few questions.

18 THE COURT: Have at it, please.

19 CROSS-EXAMINATION

20 BY MS. LEE:

21 Q. Ms. LaCasse, have you ever evicted any tenant prior  
 22 to COVID in 2020?

23 A. **No.**

24 Q. Are you familiar with the process by which to evict a  
 25 tenant prior to COVID?

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1 Q. As part of your ownership of that property, do you  
 2 have a mortgage?

3 A. **I do.**

4 Q. Have you filed any type of hardship declaration with  
 5 respect to your mortgage?

6 A. **I have not because all they offer is a forbearance  
 7 and it's all due at the end where I'm not going to get my  
 8 rent at the end.**

9 **It can all be due from me, but not from my  
 10 tenants.**

11 Q. And --

12 A. **I have just been working a lot.**

13 Q. Have you applied for any grants or funding to replace  
 14 your income that you have not received from the rental?

15 A. **I don't qualify for any grants.**

16 Q. Have you applied for assistance from the Emergency  
 17 Rental Assistance Program?

18 A. **I have, but my tenants also have to apply, and Hudson  
 19 River Housing has reached out to them along with my city  
 20 councilman, Didi Barrett's office has --**

21 THE COURT: Hold on. Rather than tell me what  
 22 people have told you, to your knowledge they haven't  
 23 applied.

24 Is that right?

25 THE WITNESS: They have not applied but I have,  
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1 yes.  
 2 THE COURT: But you need them to apply for it to  
 3 work?  
 4 THE WITNESS: Yes.  
 5 THE COURT: Okay.  
 6 Counsel, continue.  
 7 MS. LEE: Thank you.

8 BY MS. LEE:  
 9 Q. When did you apply for that rental assistance?  
 10 A. **The day it came out, like in May.**

11 **I would have to check, but sometime in May and I**  
 12 **have contacted Hudson River Housing too. So it's on --**  
 13 **there.**

14 Q. Are you aware of the program that became effective  
 15 today for rent assistance?

16 A. **Yes, but you also need your tenants to apply as well.**  
 17 Q. Do you intend to apply for the program that became

18 effective today?

19 A. **Absolutely.**

20 Q. And that would offset some of your expenses that you  
 21 have lost from not being paid rent, is that correct?

22 A. **If my tenants applied as well.**

23 MS. LEE: I have no other questions.

24 Thank you.

25 THE COURT: Does anyone else have questions?

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1 THE COURT: All right.  
 2 **BETTY COHEN,**  
 3 having been duly sworn, was examined  
 4 and testified as follows:  
 5 THE COURT: All right.  
 6 Counsel, you may proceed, is defense counsel  
 7 ready as well?

8 MS. KINIRONS: Yes, your Honor.

9 THE COURT: I'm getting thumb's up.

10 DIRECT EXAMINATION

11 BY MS. BENVENISTY:

12 Q. Good morning, Ms. Cohen.

13 A. **Good morning.**

14 Q. Would you please tell us a bit about yourself.

15 A. **I'm 68, I'll be 69 next month.**

16 **I live alone in Brooklyn, by Kings Highway. I**  
 17 **work for Citibank--**

18 THE COURT: Ms. Cohen, you said Citibank?

19 THE WITNESS: Citibank.

20 THE COURT: Just do me a favor and keep your  
 21 voice up a little bit.

22 THE WITNESS: Okay.

23 A. **I work for Citibank for 23 years.**

24 **I moved to India and from that point -- I'm**  
 25 **nervous -- I went to Florida. I went to Florida, I took**

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1 All right.  
 2 MR. SHAPIRO: No redirect on that, your Honor.  
 3 THE COURT: Excellent.  
 4 Ms. LaCasse, thank you for your testimony. You  
 5 may step down, even though it's a very virtual thing.

6 THE WITNESS: Thank you.

7 THE COURT: Call your next witness, please.

8 MR. MASTRO: Your Honor, my colleague, Jessica  
 9 Benvenisty, we are calling Betty --

10 THE COURT: You are calling who?

11 MR. MASTRO: Ms. Cohen, the plaintiff.

12 THE COURT: Ms. Cohen. Thank you.

13 We need a two-minute break for some technical  
 14 matters.

15 Everyone take a little break and we'll be right  
 16 back.

17 (Recess.)

18 THE COURT: All right.

19 Are we ready to go? Can't hear you.

20 MS. BENVENISTY: Yes, your Honor. Can you hear  
 21 me?

22 THE COURT: That's good. That's loud. I like  
 23 that.

24 Is Ms. Cohen on the line?

25 THE WITNESS: Yes.

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1 care of my family. I collected unemployment. I did temp  
 2 jobs and in between from then until 2014 I did also have  
 3 two permanent jobs, and in 2014 I was able to collect  
 4 social security, at which point I did retire.

5 At the time I was at Citibank. With the  
 6 benefits I had at Citibank I saved enough money to put a  
 7 down payment on the rental co-op that we are talking about  
 8 today, and I was using -- I was hoping to use that for my  
 9 retirement, to supplement my social security. I was  
 10 taking care of my future.

11 Q. So today, can you please tell the court sort of the  
 12 entire universe of how you support yourself financially.

13 A. **I have social security and I was getting the rental**  
 14 **income.**

15 **I own the apartment since 1987.**

16 Q. Would you please tell us the story of why you  
 17 acquired this apartment.

18 A. **I wanted it for my -- you know, to supplement social**  
 19 **security.**

20 I wanted -- so I could have a comfortable life,  
 21 not to have to worry, just to living on social security  
 22 and to have a small pension from Citibank as well, and I  
 23 didn't want to live like that.

24 They tell you to plan for your future, plan for  
 25 retirement and I thought buying a property and being a

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1 landlady, you know, would help and would really help me  
 2 out in the late years, which it had been until the  
 3 eviction moratorium came.

4 Q. So prior to COVID approximately what percentage of  
 5 your income was from the rental property?

6 A. Oh, about 50 percent.

7 THE COURT: About what? Say that again.

8 THE WITNESS: 5-0, 50 percent.

9 THE COURT: 50 percent. Thank you.

10 BY MS. BENVENISTY:

11 Q. Do you have a tenant currently living at that  
 12 apartment?

13 A. I do.

14 Q. Do you own any other properties that you rent out to  
 15 tenants?

16 A. No. This is my only one.

17 Q. You said sort of generally speaking where you live,  
 18 but could you please elaborate?

19 A. I live -- I bought my co-op here also while I was at  
 20 Citibank. It's a studio apartment.

21 I have lived here for 30 years.

22 Q. I'd like to direct your attention to what plaintiffs  
 23 filed as Exhibit 27.

24 MS. BENVENISTY: For the record, this is the  
 25 declaration of Betty S. Cohen, plaintiffs' application for

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1 increased to \$23,175 arrears, and what would be due in  
 2 June is another \$1,545 and that would be a total of  
 3 \$24,720 of nonpaid rent since March of 2020.

4 Q. Is that when your tenant stopped paying rent?

5 A. It is.

6 Q. Prior to March 2020, had your tenant ever stopped  
 7 paying rent?

8 A. Never, never once and he's been my tenant 25 years  
 9 and he never stopped paying any.

10 He was virtually never late.

11 Q. And what did you do if anything in response to the  
 12 fact that your tenant stopped paying rent?

13 A. Well, I called him and I found that there was going  
 14 to be -- well, through Simcha Felder, he's my New York  
 15 State senator, that through his office I found there was  
 16 going to be a rent relief program in July and I started  
 17 following it in the senate.gov website and I subscribed  
 18 to, you know, learning when it was going to be available.

19 And then it took some time until it was rolled  
 20 out. I contacted my tenant and let him know. I emailed  
 21 him, I texted him, and nothing. Then the second rent  
 22 relief program came out again. I again texted him and  
 23 emailed him, called him just to the point of not harassing  
 24 him, of course, and no response, none whatsoever.

25 Initially when COVID -- when the eviction

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1 a preliminary injunction --

2 THE COURT: Are you going to offer it?

3 MS. BENVENISTY: Yes, your Honor.

4 THE COURT: Is there any objection?

5 MS. KINIRONS: No, your Honor.

6 THE COURT: It's admitted. Go ahead.

7 (Whereupon, Plaintiff Exhibit 27 was received in  
 8 evidence, as of this date.)

9 BY MS. BENVENISTY:

10 Q. Ms. Cohen, do you recognize this document as your  
 11 written declaration in this case?

12 A. I do.

13 THE COURT: Counsel, I admitted it. It's okay.

14 You can move on.

15 BY MS. BENVENISTY:

16 Q. Did you provide the information that went into this  
 17 document?

18 A. Yes, I did.

19 THE COURT: Counsel, I admitted it.

20 You can move on.

21 MS. BENVENISTY: Thank you, your Honor.

22 Q. Is there anything that you need to modify or correct  
 23 in the declaration?

24 A. Yes.

25 The amount of rent that is due, the arrears has

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1 moratorium first began I even contacted him to let him  
 2 know that I would help him if he needed help. In fact, I  
 3 tried to collect social security -- not social security --  
 4 I'm sorry -- unemployment benefits, no response. And,  
 5 again, with the rent relief program information that I was  
 6 texting, I offered my help.

7 I said, please contact me. If you need my help,  
 8 I will help you, nothing, zero.

9 Q. Ms. Cohen, how do you know that the tenant is still  
 10 living in the apartment?

11 A. Well, I called the super and he said he had seen him  
 12 around the building.

13 And then a few months later, a few weeks later I  
 14 called the police and I asked them to do a check and at  
 15 first they objected because I wasn't family, and they did.  
 16 They did do the relevance check and they told me he was  
 17 still living there, they called me and told me.

18 Q. Regarding the rent owed, the arrears and the June  
 19 rent, would you please tell us a bit about how significant  
 20 that money is to you?

21 A. Oh, God. It's everything to me.

22 It's my cushion. It's my retirement money. I  
 23 have stuff in that house, my windows have cracked  
 24 underneath, in the window frame that I plan to fix in  
 25 2020. I wanted to fix up the apartment and paint it. You

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1 know, it's old. I haven't had a paint job in years.  
 2 I had an electrical repair in 2019 that I had  
 3 been paying \$150 toward when COVID hit and I didn't get  
 4 the rent, with the agreement of the vendor, I was -- then  
 5 I went down to paying nothing, and then I just was not  
 6 comfortable after months of paying nothing. I felt I had  
 7 to show good faith and pay something because I still owed  
 8 money, and I started paying again with the agreement of  
 9 the vendor \$20 a month from \$150 to \$20 a month.

10 I would love to buy a new desk. I can't buy a  
 11 new desk because I worry about emergencies coming up. A  
 12 new desk would be \$500, \$600 and I consider it at this  
 13 point frivolous. I can't afford a new desk, that's  
 14 ridiculous.

15 My credit card is through the roof that when I  
 16 think about it I panic. I can't pay more than the minimum  
 17 and I normally would be paying more than the minimum.  
 18 It's never really been this high, and it's all because I  
 19 can't pay it down from the minimum.

20 I had to pay an eviction attorney. I had root  
 21 canal done last year and all of this is on my credit card  
 22 and I just can't get the bills down. I did treat myself  
 23 to bed linens and a vacuum cleaner.

24 Other than that, everything is on hold. I can't  
 25 do anything. I can't proceed and I try not to spend

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1 anything unnecessarily just in case an emergency comes up  
 2 like an electrical repair which cost me \$1,500 in 2019.

3 Q. Have you received any financial assistance since  
 4 COVID began?

5 A. Well, a few friends gave me a couple of hundred  
 6 dollars total, three friends.

7 I have no family. I have no one to turn to for  
 8 \$20, let alone \$600, and I have now used up the requests,  
 9 you know, like that's gone. There is nobody left to help  
 10 me. So I am on my own.

11 I did get an SBA loan for \$10,900 in September.  
 12 Up until that point, from March until September,  
 13 everything was coming out of my pocket, and that's when I  
 14 needed, really, help, and it's -- so that helps me with  
 15 that apartment. I can't use that money for personal use.  
 16 It's not what I'm supposed to use the money for.

17 It's only for use going forward for the  
 18 business.

19 Q. Did you commence a nonpayment action against your  
 20 tenant?

21 A. I did, in July.

22 I went to an attorney. I gave him a deposit and  
 23 sent on my behalf a nonpayment notice, and I know I have  
 24 all the copies of my records here on the computer, and I  
 25 know there was an affidavit filed and it was received

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1 because it has to be handed to him by a process server.  
 2 And not a call from him, not an email, not a  
 3 text, nothing. When the eviction moratorium is supposed  
 4 to end in September, October last year, I went to my  
 5 attorney. I said, okay. Maybe you can try doing the  
 6 eviction process, and he did file and I always -- I asked  
 7 my attorney, send me copies of everything, please, and I  
 8 have that too, but I see it's an e-file and there is no  
 9 file number assigned from the courts.

10 So my presumption is that it's just sitting in  
 11 the court and it's just sitting there with any other, you  
 12 know -- well, eviction requests, whatever. So it's just  
 13 sitting there stuck. Nothing's happening and I can't get  
 14 rent, and my tenant doesn't talk to me.

15 It's like he's entitled not to pay rent and I  
 16 can't sell it, and I have to pay the bills for it, but I  
 17 cannot manage it whatsoever, and, yet, if something were  
 18 to happen, there had been an electrical problem years ago.  
 19 I took care of it, whatever -- I was a good landlord to  
 20 him, and I took care of the electrical problem. If  
 21 something like that happened again and I'd be responsible  
 22 to take care of it.

23 I can't manage it but I have to pay money for  
 24 it. I have to -- my expense -- I have to pay for it. I  
 25 pay for the maintenance of it with the EIDL money I got

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1 from the SBA. I have to, you know, take care of it. I  
 2 have no control.

3 Q. And what happened in the nonpayment suit?

4 A. Nothing.

5 My hands are tied. The courts are tied. The  
 6 courts won't deal with it and it's just dead in the water  
 7 at this point. I don't know, let alone what height it is  
 8 in the desk or wherever it lies in the computer, I have no  
 9 idea. The eviction moratorium began again --

10 Q. And did your tenant file a hardship declaration form?  
 11 A. He did, he did file one.

12 Q. Let's look at Exhibit 27, the same declaration, page  
 13 ten to 11 of the PDF is Exhibit A and then becomes the  
 14 declaration.

15 A. Yes.

16 Q. Ms. Cohen, do you see that it looks like it's been  
 17 checked off box A which begins, I am experiencing  
 18 financial hardship and I am unable to pay my rent?

19 A. Yes.

20 Q. Do you see that?

21 A. Yes.

22 Q. Did the tenant submit any evidence to support this  
 23 claim of hardship?

24 A. None whatsoever.

25 Q. And based on your understanding, does the tenant have  
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Cohen - Cross/Kinirons

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1 to submit any evidence to --

2 A. **No. No.**

3 MS. KINIRONS: Objection.

4 THE COURT: Hold on.

5 Objection sustained.

6 A. **The document --**

7 THE COURT: Hold on, ma'am.

8 Objection sustained. Next question, please.

9 MS. BENVENISTY: Okay.

10 BY MS. BENVENISTY:

11 Q. What effect has the latest extension of the eviction  
12 moratorium had on your nonpayment suit?

13 A. **I am just beside myself.**

14 **I just can't proceed in my life. I have  
15 everything on hold. I worry. I worry. I go in circles,  
16 you know, figuratively, I mean. I panic.**

17 Q. What --

18 A. **I am 68 years old. I want to see this end and I want  
19 to be alive to see it end.**

20 **I never in my life would think that something  
21 like this could happen to me, to this country. I just  
22 cannot believe this.**

23 MS. KINIRONS: Respectfully, your Honor, I would  
24 object and move to strike as nonresponsive.

25 THE COURT: Sustained.

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1 THE WITNESS: Well, it --

2 THE COURT: Ma'am, that's for me, not for you.  
3 Sustained. Go ahead. Next question, please.

4 BY MS. BENVENISTY:

5 Q. If you were able to sell the apartment, how would it  
6 change your financial situation?

7 A. **I'd breathe easy. I'd have my cushion.**

8 **This is my retirement money. This is what I  
9 planned for since 1987, this is what I planned for for  
10 now.**

11 **And now everything is just gone and my hands are  
12 just tied. There is nothing I could do.**

13 MS. BENVENISTY: Thank you, so much.

14 Your Honor, I'd like to reserve the right to  
15 redirect after the defendants' questions, please.

16 THE COURT: If it's needed, yes.

17 MS. BENVENISTY: Thank you.

18 THE COURT: Cross-examination, let's start with  
19 Judge Marks, please.

20 CROSS-EXAMINATION

21 BY MS. KINIRONS:

22 Q. Good afternoon, Ms. Cohen.

23 A. **Good afternoon.**

24 Q. Ms. Cohen, your tenant has lived in that apartment, I  
25 think you said, for about 25 years, is that right?

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**Cohen - Direct/Benvenisty**

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**Cohen - Cross/Kinirons**

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1 BY MS. BENVENISTY:

2 Q. What would you do with the apartment, Ms. Cohen, if  
3 you could evict the tenant?

4 A. **I would sell it.**

5 **I'd never rent it out again. I would just sell  
6 it.**

7 Q. Have you had any interest in a potential seller?

8 A. **I was contacted by the property manager that somebody  
9 was interested and they offered about \$190,000, and I have  
10 been in touch with the property manager and they know my  
11 situation with the tenant from day one.**

12 **And the tenant -- the guy who is interested in  
13 the property said he went down --**

14 MS. KINIRONS: Objection.

15 A. **He went --**

16 MS. KINIRONS: Hearsay.

17 THE COURT: Go ahead.

18 A. **He went down -- sorry?**

19 THE COURT: Go ahead.

20 A. **He went down --**

21 THE COURT: I'm sorry.

22 Was that an objection?

23 MS. KINIRONS: Yes, your Honor. It was a  
24 hearsay objection. We are talking about with what some  
25 potential seller might have had a conversation with her.

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1 A. **Correct.**

2 Q. He was barely late with a payment?

3 A. **Not even ten times.**

4 Q. So it's fair to say you never had to bring him to  
5 court for anything before what happened now, right?

6 A. **Correct.**

7 Q. He stopped paying March 2020, is that right?

8 A. **Correct.**

9 Q. That was the beginning of this awful pandemic,  
10 correct?

11 A. **Yes.**

12 Q. And he told you he stopped paying because he wasn't  
13 getting paid from his job, correct?

14 A. **He told me he didn't get the money that was due him  
15 because of COVID began.**

16 **I -- correct.**

17 Q. You had talked about at some point you filed an  
18 action against him that didn't go anywhere, is that right?

19 A. **Correct.**

20 Q. You didn't send him the hardship declaration, right?

21 A. **Correct.**

22 **I didn't know I had to at this point. Nobody  
23 told me.**

24 Q. But he filed one with the court, correct?

25 A. **Correct.**

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- 1 Q. You don't have a mortgage on that property, right?
- 2 A. **Correct.**
- 3 Q. And you don't have a mortgage on your own home also,
- 4 correct?
- 5 A. **Correct.**
- 6 Q. At \$1,545 a month that's what he's supposed to be
- 7 paying, correct?
- 8 A. **Yes.**
- 9 Q. So up through May he owed you, I think you said,
- 10 \$23,175, is that right?
- 11 A. **Now, that's when he's in arrears.**
- 12 Q. In your declaration you said that you used that money
- 13 to cover the cost of the rental apartment and also for
- 14 your own home.
- 15 Is that right?
- 16 A. **Well, at the point of up until September, up until**
- 17 **September I was covering that out of my own money.**
- 18 Q. Okay, but --
- 19 A. **Once I got the EIDL I was paying from there.**
- 20 Q. So let's talk about before then.
- 21 When you say cover the costs of the rental
- 22 apartment, I think in your declaration you said that would
- 23 be for maintenance and --
- 24 A. **Electrical, and AllState.**
- 25 Q. Ma'am, okay.

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- 1 month?
- 2 A. **Correct.**
- 3 Q. So the costs for your apartment are about the same,
- 4 roughly \$9,100?
- 5 A. **Correct.**
- 6 Q. Annually, so you have gotten a little bit less than
- 7 \$20,000, you have gotten an SBA loan, I think you said,
- 8 for \$10,900?
- 9 A. **Yes.**
- 10 Q. And then in April of this year you got a COVID
- 11 related grant for \$10,000, correct?
- 12 A. **Yes.**
- 13 Q. So that's \$20,900 that you have gotten for COVID
- 14 assistance?
- 15 A. **For that apartment.**
- 16 Q. You said you have some generous friends who have
- 17 given you a little bit of money here and there, is that
- 18 right?
- 19 A. **About \$600.**
- 20 Q. Okay.
- 21 I believe you said earlier that you have made
- 22 some efforts to get your tenant to apply for rental
- 23 assistance?
- 24 A. **Yes.**
- 25 Q. And do you intend to apply yourself for the rental

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**Cohen - Cross/Kinirons**

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- 1 In the declaration I think you stated you also
- 2 pay a sublet fee and the maintenance, is that right?
- 3 A. **Well, it's included -- correct.**
- 4 Q. Okay.
- 5 And the maintenance for that building is a
- 6 little bit less than \$500 a month, is that right?
- 7 A. **No, it's over \$500.**
- 8 Q. What is it?
- 9 A. **\$525.**
- 10 Q. You wrote in the declaration that the sublet fee was
- 11 \$105 and change?
- 12 A. **Correct.**
- 13 Q. So for the 15 months, the maintenance and the sublet
- 14 fee would have been about \$9,100 for that rental
- 15 apartment, correct?
- 16 A. **Correct.**
- 17 Q. And you said you got a \$10,000 loan from the Small
- 18 Business Association?
- 19 A. **Yes.**
- 20 Q. Also you said that the rental income covers the cost
- 21 of your apartment.
- 22 You don't have a mortgage on your apartment,
- 23 correct?
- 24 A. **Correct.**
- 25 Q. So is your maintenance around the same, around \$500 a

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**Cohen - Cross/Moston**

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- 1 assistance program that opened today here in New York?
- 2 A. **I don't know.**
- 3 I haven't decided, and if I did, I believe I
- 4 need his -- it works together with the tenant and I do my
- 5 part and he has to, you know, fill out, like attest that
- 6 I'm providing the correct information.
- 7 Q. But at least in this program you are able to start
- 8 the process and apply, correct?
- 9 A. **Correct.**
- 10 MS. KINIRONS: I have nothing further.
- 11 THE COURT: Okay.
- 12 I won't make the same mistake twice. Does
- 13 anyone else have any questions of Ms. Cohen?
- 14 MS. MOSTON: Yes, your Honor. Rachel Moston
- 15 from the New York City Law Department.
- 16 CROSS-EXAMINATION
- 17 BY MS. MOSTON:
- 18 Q. Just a few quick questions.
- 19 You mentioned earlier you commenced a nonpayment
- 20 proceeding in July of 2020 that hasn't gone anywhere,
- 21 correct?
- 22 A. **Yes.**
- 23 Q. So it's safe to assume you have not actually obtained
- 24 a warrant of eviction from the court, correct?
- 25 A. **Oh, correct.**

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Cohen - Redirect/Benvenisty

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1 Q. So you have never approached the office of the New  
 2 York City Sheriff to execute a warrant of eviction on your  
 3 behalf, correct?

4 A. If I -- how could I do that? That's up to my  
 5 attorney.

6 THE COURT: Ma'am, just if the answer is no,  
 7 just say no.

8 BY MS. MOSTON:

9 Q. Just yes or no.

10 A. No.

11 Q. And the same with the marshals office, correct?

12 A. Correct.

13 Q. Okay.

14 MS. MOSTON: Nothing further, your Honor. Thank  
 15 you.

16 THE COURT: Anything else from anyone else?

17 MS. BENVENISTY: Your Honor, plaintiffs, if I  
 18 may.

19 THE COURT: Any other defendants? Going once?  
 20 Okay.

21 Go ahead.

22 REDIRECT EXAMINATION

23 BY MS. BENVENISTY:

24 Q. Returning to the SBA loan, Ms. Cohen, when will you  
 25 have to pay that loan back?

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1 will call someone.

2 At this juncture, and as much as this is an  
 3 evidentiary hearing, I would submit based upon papers and  
 4 evidence presented that plaintiff has failed to meet their  
 5 burden to warrant the issuance of a PI.

6 THE COURT: Let's get to that after. If there  
 7 is evidence you would like me to consider as part of your  
 8 argument, let's get that in.

9 What would you like to do? You want to take  
 10 five minutes?

11 MS. KINIRONS: Could I have five minutes, your  
 12 Honor?

13 THE COURT: You may.

14 It's Tuesday and I'm feeling generous. Five  
 15 minutes.

16 MS. KINIRONS: Thank you.

17 MR. MASTRO: Your Honor, before we break, we did  
 18 want to move into evidence the exhibits that we have  
 19 marked, even though it wasn't necessary to use them with  
 20 these two witnesses.

21 THE COURT: Any objection?

22 MS. KINIRONS: Absolutely a hundred percent.

23 THE COURT: A hundred percent.

24 MS. KINIRONS: Your 30 exhibits? What exhibits,  
 25 Mr. Mastro?

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1 A. Two years from 2020, 2022. They extended -- well,  
 2 2022.

3 Q. And can you use the money, that money for any of your  
 4 past expenses prior to your receiving the loan?

5 A. I cannot use it for my home.

6 I cannot use it for past expenses. I cannot use  
 7 it to help pay down any credit cards, no.

8 Q. Okay.

9 MS. BENVENISTY: That's all from us.

10 Thank you, so much.

11 THE COURT: All right. I think we are done.

12 Ms. Cohen, thank you.

13 Does that end plaintiffs' case?

14 MR. MASTRO: Yes, your Honor.

15 That's the only two witnesses we are calling.

16 THE COURT: Okay.

17 MR. MASTRO: We would appreciate the opportunity  
 18 to be heard.

19 THE COURT: You will have plenty of opportunity,  
 20 but let me go to defendants.

21 In light of the demonstration that's been made  
 22 so far in terms of evidence, do you have any witnesses you  
 23 want to call?

24 MS. KINIRONS: Your Honor, I'd like to confer  
 25 with Ms. Connolly for a moment. I think it is likely we

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1 MR. MASTRO: Your Honor, I'll be happy when she  
 2 takes her break to go through the specific ones we want  
 3 admitted.

4 THE COURT: Why don't you do that.

5 MR. MASTRO: They are government records. I  
 6 don't know how she could be objecting --

7 THE COURT: Counsel, really, we don't have a  
 8 jury here and I don't need a speech.

9 Put together a list of exhibits you want to put  
 10 in and let's see if she has specific objections to them.

11 Okay?

12 MR. MASTRO: Sorry, your Honor.

13 I was --

14 THE COURT: I said just put together your list  
 15 of exhibits. I don't need the speech about how can she  
 16 object. She can object to anything she wants.

17 Put together the list and when we come back in  
 18 five minutes you will tell us which ones, all right?

19 MR. MASTRO: All right.

20 THE COURT: Thank you.

21 MR. MASTRO: Great.

22 Thank you, your Honor.

23 (Recess.)

24 (Continued on the next page.)

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1 (Following a recess.)  
 2 THE COURT: All right.  
 3 Are we ready to go?  
 4 MR. MASTRO: Yes, your Honor.  
 5 MS. KINIRONS: Yes, your Honor.  
 6 THE COURT: Mr. Mastro, did you want to start  
 7 with your exhibits?  
 8 MR. MASTRO: Yes, your Honor.  
 9 Your Honor, I need to go off the video for one  
 10 second, but you will hear my audio so I can see this list.  
 11 THE COURT: Wait. I'm confused.  
 12 Your video is off now. Can you speak?  
 13 MR. MASTRO: Yes. Can you hear me, your Honor?  
 14 THE COURT: Got you. Go ahead.  
 15 MR. MASTRO: Your Honor, the exhibits that we  
 16 have submitted, Exhibit 2 is the COVID rent relief  
 17 program, Exhibits 3 and 4 are tweets from the governor's  
 18 office. Tweets issued by Governor Cuomo from his official  
 19 Twitter account where we now live in a world --  
 20 THE COURT: Counsel, if you argue this we will  
 21 be here forever.  
 22 Just list the exhibits you want to put in and I  
 23 want to hear objections if there are any.  
 24 MR. MASTRO: Exhibit 5 is the Emergency Rental  
 25 Assistance Program overview government document.

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1 Number -- frequently asked questions --  
 2 THE COURT: You broke up a little bit there  
 3 counsel. You have to stay close to the mike.  
 4 Say that again.  
 5 MR. MASTRO: Exhibit 8 is a government  
 6 publication frequently asked questions of emergency rental  
 7 assistance.  
 8 Exhibit 9, Governor Cuomo announces -- a public  
 9 announcement out of the governor's office, announcing all  
 10 New York State mask vaccination results. Your Honor, in  
 11 terms of the other exhibits that we are moving to be  
 12 admitted are all government documents, government records.  
 13 So we are moving all of these ones just  
 14 mentioned and the ones I'm about to mention.  
 15 THE COURT: Go ahead.

16 MR. MASTRO: Exhibit 10, New York State website,  
 17 Coronavirus and New York State Courts, Exhibit 13,  
 18 complaint filed in the Shi and Zhou matter, Exhibit 14,  
 19 the judgment obtained by Shi and Zhou, Exhibit 15, the  
 20 complaints referenced in the --

21 THE COURT: Hold on. In the Chrysafis  
 22 declaration there.

23 Go ahead. Sorry.

24 MR. MASTRO: 16, the order to show cause  
 25 referenced and the Chrysafis declaration and Exhibit 17 is

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1 the judgment referenced --  
 2 THE COURT: Yes.  
 3 MR. MASTRO: In the Chrysafis declaration.  
 4 Your Honor asked that we submit Exhibits 13 and  
 5 17.  
 6 THE COURT: Yes.  
 7 MR. MASTRO: All government records, court  
 8 files.  
 9 Exhibit 18 is the court government database on  
 10 evictions in 2021.  
 11 THE COURT: Okay.  
 12 MR. MASTRO: Exhibit 19, 20, 21, 22, 23 and 24  
 13 are all public releases announcements by the governor  
 14 about various aspects of lifting COVID restrictions, all  
 15 government records.  
 16 Your Honor, number 30, Exhibit 30 is updated  
 17 operating protocols effective May 24, 2021 from the  
 18 New York Office of Court Administration, and, your Honor,  
 19 under Federal Rule of Evidence 803(8), we move that all of  
 20 these records be admitted into evidence as government  
 21 records falling under that hearsay exception, Rule 803(8).  
 22 THE COURT: Counsel for defendants have  
 23 objections to any of those exhibits?  
 24 MS. KINIRONS: May I start, your Honor?  
 25 THE COURT: Go ahead.  
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1 MS. KINIRONS: Your Honor, first with respect to  
 2 Exhibits 13 through 17 --  
 3 THE COURT: Hold on. Slow down. Let me get  
 4 them.  
 5 (There was a pause in the proceedings.)  
 6 THE COURT: Okay.  
 7 Those are the ones I asked for. Go ahead.  
 8 MS. KINIRONS: Yes, your Honor.  
 9 Those are incomplete portions of the record that  
 10 you can't even tell what happened in the court proceeding  
 11 because it's not a full and complete certified copy of the  
 12 court record. If your Honor looks at the judgment, for  
 13 example, Exhibit 14, it says it's based upon a stipulation  
 14 of the parties that the respondents would move out and pay  
 15 a certain fee. It doesn't appear a warrant was ever  
 16 sought or executed and that was five months before the  
 17 pandemic began.  
 18 So I would submit that these documents, again,  
 19 are not a full and complete certified record of the court  
 20 and leave a lot of the questions unanswered.  
 21 THE COURT: Okay.  
 22 Counsel, do you have any reason to believe that  
 23 the documents, though not complete, are misleading or  
 24 false? Do you know the answer?  
 25 MS. KINIRONS: Well, no. I don't believe they  
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1 are false, your Honor.

2 But I don't believe that they tell us the full  
3 picture of what occurred in those proceedings.

4 THE COURT: Right.

5 So for these purposes I already have this  
6 declaration testimony of these witnesses saying this  
7 happened, that happened. I wanted to know a little bit  
8 more. So I asked for these. I'll say I'm going to admit  
9 13 through 17. If you find a full and complete copy that  
10 suggests something else you can submit it after and I'll  
11 take it. Okay?

12 I think it's helpful to kind of have it for  
13 dates and specifics. Okay?

14 MS. KINIRONS: Yes, your Honor.

15 (Whereupon, Plaintiff Exhibits 13 through 17  
16 were received in evidence, as of this date.)

17 THE COURT: What else?

18 MS. KINIRONS: Your Honor, with respect to the  
19 rest of the documents, certainly government records enjoy  
20 an exception to the hearsay rule.

21 I would submit that press releases and tweets  
22 and the other items that are included without putting any  
23 witness on to talk about the authenticity and maintenance  
24 of those records is inappropriate.

25 THE COURT: Okay.

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1 Wouldn't that go to weight as compared to  
2 admissibility for these purposes?

3 MS. KINIRONS: I don't know, Judge, because I  
4 think he's trying to -- certainly he can call a witness to  
5 get into current COVID rates and vaccine rates and all  
6 sorts of things that he's trying to get in through the  
7 press releases.

8 I just -- I don't believe that it is proper to  
9 simply admit the documents without any sort of testimony  
10 establishing the relevance, authenticity, et cetera.

11 THE COURT: I guess my only question is on  
12 things like this, if counsel gives me a letter and says  
13 you can find that press release at www.newyorkstate.gov at  
14 this address, we could refer to them that way too.

15 MS. KINIRONS: I mean, if we are talking for the  
16 assertion that a press release was made, yes, but then we  
17 are getting into the content of it.

18 If your Honor is inclined to take press releases  
19 from people who support the moratorium and those who  
20 don't, I'm certain that we can find some press releases  
21 that are expressing concern about the potential end of the  
22 eviction moratorium.

23 THE COURT: Yes.

24 MS. KINIRONS: And, Judge, just let me just add  
25 one more thing that I neglected to say.

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1 THE COURT: Thank you.

2 If someone can give me the complaint, I'd love  
3 to see it. Anything else from anybody else? Okay.  
4 What are we doing about witnesses for the  
5 defense?

6 MS. KINIRONS: Your Honor, we will call at least  
7 one witness, but first I would like to offer into evidence  
8 a copy of the bill extending the statute at question as  
9 well as the introduction -- the sponsor's introduction. I  
10 think that was listed as Exhibit D, but I believe we  
11 already have an Exhibit D.

12 So I would offer that as I guess Exhibit E into  
13 evidence for the state.

14 THE COURT: Where is it? I'm sorry.

15 What is it?

16 MS. KINIRONS: Your Honor, it was submitted on  
17 the 25th, along with our witness list.

18 THE COURT: Hold on.

19 I think I have that here.

20 (There was a pause in the proceedings.)

21 MS. KINIRONS: It's simply the bill and the  
22 sponsor's memorandum are the last two pages, I believe.

23 THE COURT: The 25th, let me see. I have so  
24 many papers.

25 I don't see that offhand. Was that attached to

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1 one of the declarations as well?

2 MS. KINIRONS: I know the bill itself was -- I  
3 know the bill itself was. I believe the sponsor's  
4 memorandum was not part of that, and I had requested that  
5 that be part of the exhibits at the hearing.

6 So when we submitted our letter on the 25th, it  
7 was attached to that.

8 THE COURT: Is there an objection to those  
9 items?

10 MR. MASTRO: Your Honor, there is no objection.

11 I would ask, we are in the middle of a hearing,  
12 she said she's going to call --

13 THE COURT: Hold on.

14 The exhibits? Stop. Exhibits, objection or  
15 not?

16 MR. MASTRO: I don't have an objection, your  
17 Honor.

18 THE COURT: Good. They are admitted.

19 Now what do you want?

20 (Whereupon, Defense Exhibit E was received in  
21 evidence.)

22 MR. MASTRO: Two things, your Honor.

23 I am reminded there was one other exhibit that  
24 contains an admission by a spokesperson for the Office of  
25 Court Administration. It's Exhibit 26, which is an

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1 Honor, we just heard they may call one witness. Are they  
2 going to call one, more than one?  
3 We don't even know what these witnesses are  
4 going to say.

5 THE COURT: Let me answer your question.  
6 I have no idea. Hold on. We were just doing  
7 exhibits.

8 Who's your witness, counsel?

9 MS. KINIRONS: Your Honor, I intend to call  
10 Ms. Alia Razzaq.

11 She is the Chief Clerk of the Civil Court in the  
12 City of New York. She's an OCA employee.

13 THE COURT: Great.

14 Any objection?

15 MR. MASTRO: Your Honor, I have no objection to  
16 that witness being called.

17 I want to confirm they are calling the one  
18 witness and not calling any others.

19 THE COURT: I don't know yet. We'll see. It  
20 depends on what this witness says.

21 Anyone who signs on we have to have people mute  
22 their mikes. I think that worked.

23 We'll see what happens. Let them call their  
24 witness. We have about 20 minutes before we take a lunch  
25 break, but why don't you get started with the witness.

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1 article that appeared on January 8, 2021 and it  
2 includes --

3 THE COURT: You are breaking up. We can't hear  
4 you at all.

5 That's an article from the newspaper? I think  
6 that has a little less standing than the government  
7 exhibits you put in before.

8 MR. MASTRO: Understood, your Honor.

9 But it's the admission of a representative of  
10 the Office of Court Administration that --

11 THE COURT: Counsel, counsel --

12 MR. MASTRO: Mailing --

13 THE COURT: Counsel --

14 MR. MASTRO: Of the hardship declaration --

15 THE COURT: It's a newspaper article. It's not  
16 an admission. Who knows if it was said? Maybe the  
17 reporter made it up. I have no idea.

18 So it is not sufficient. For these purposes,  
19 that, I will not admit.

20 What else?

21 MR. MASTRO: Your Honor, I just heard --

22 THE COURT: Mr. Mastro, please get closer to the  
23 mike.

24 MR. MASTRO: I'll speak up, your Honor.

25 Unaccustomed as I am to speaking so loudly, your  
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1 MS. KINIRONS: Thank you, your Honor.  
2 On behalf of Judge Marks, I would call Alia

3 Razzaq. Ms. Razzaq, are you on video somewhere? Raise  
4 your hand.

5 THE COURT: Ms. Razzaq, R-A-Z-Z-A-Q, is that  
6 right?

7 THE WITNESS: Yes, sir.

8 THE COURT: Raise your right hand.

9 **ALIA RAZZAQ,**

10 having been duly sworn, was examined  
11 and testified as follows:

12 THE COURT: All right.

13 You may proceed.

14 DIRECT EXAMINATION

15 BY MS. KINIRONS:

16 Q. Good afternoon, Ms. Razzaq.

17 A. **Good afternoon.**

18 Q. Ms. Razzaq who do you currently work for?

19 A. **The Office of Court Administration under the Civil  
Court of the City of New York.**

20 Q. Thank you.

21 Do you have a degree in relation of your work?

22 A. **Yes, I do.**

23 Q. What is your degree in?

24 A. **A bachelor of science in public administration --**

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1 THE COURT: Ms. Razzaq, we are having trouble  
 2 hearing you.

3 Can you get closer to whatever device you are  
 4 speaking into, maybe.

5 THE WITNESS: Yes.

6 Is this better?

7 THE COURT: Yes, just do me a favor and speak  
 8 slowly and clearly for us.

9 THE WITNESS: Yes, your Honor.

10 THE COURT: Counsel, you can continue.

11 BY MS. KINIRONS:

12 Q. What did you get the degree in and when?

13 A. **SUNY Empire State College in 2016.**

14 Q. Thank you.

15 And how long have you been employed by the  
 16 Office of Court Administration?

17 A. **30 years, 30 years.**

18 Q. Thank you.

19 Over the course of the years have you held  
 20 various positions?

21 A. **Yes, I have.**

22 Q. Was the first position in the civil court in New York  
 23 County as a court assistant?

24 A. **Yes.**

25 Q. Can you please tell us what divisions of the court  
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1 responsibilities were as part of the landlord-tenant  
 2 division?

3 A. **As part of the landlord-tenant division, I was a**  
 4 **window services clerk who assisted people coming in making**  
 5 **applications to the court, the majority of whom were**  
 6 **unrepresented.**

7 I served as the housing part clerk where tenants  
 8 brought actions against landlords for conditions of their  
 9 apartment in need of repair. I might have done some data  
 10 entry and I also served as a warrant clerk.

11 Q. And Ms. Razzaq, that was from July 1990 to July 1998?

12 A. **Yes.**

13 Q. Did you then become a senior court clerk?

14 A. **Yes.**

15 Q. Is that a promotion or a test?

16 A. **It's a test and the successors on the test are**  
 17 **interviewed for promotion and I did achieve a promotion.**

18 Q. Terrific.

19 Can you tell us how the responsibilities were  
 20 different as a senior court clerk?

21 A. **As a senior court clerk, the responsibilities are**  
 22 **expanded a bit where as a court assistant I did not spend**  
 23 **any time in a courtroom.**

24 **As a senior court clerk I did function in the**  
 25 **courtroom and the title allowed me to go in the courtroom,**  
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1 you were assigned to assist?

2 A. **As a -- I was assigned to the landlord and tenant**  
 3 **division of the court.**

4 Q. What type of work did you do for the landlord and  
 5 tenant division?

6 A. **I was a --**

7 THE COURT: Hold on. Ma'am, I'm sorry.

8 We are having a terrible feedback problem here.  
 9 Give us one second here.

10 (There was a pause in the proceedings.)

11 THE COURT: There is a terrible echo when you  
 12 are speaking and I don't know why.

13 Ms. Razzaq, would you happen to have a head set  
 14 you can plug in? Because it seems to be feeding back on  
 15 your end.

16 (There was a pause in the proceedings.)

17 THE COURT: Ms. Razzaq.

18 THE WITNESS: Is that better?

19 THE COURT: It seems so.

20 THE WITNESS: Okay.

21 THE COURT: I'm going to ask counsel to repeat  
 22 your last question, please.

23 MS. KINIRONS: Thank you, Judge.

24 BY MS. KINIRONS:

25 Q. Ms. Razzaq, can you tell us what your duties and  
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1 **though I still spent the majority of my time in the**  
 2 **clerk's office.**

3 Q. Did you then become in January 2001 an associate  
 4 court clerk in the landlord and tenant division?

5 A. **Yes, I did.**

6 Q. Was that in Kings County?

7 A. **Yes, that was in Kings County.**

8 Q. What were your duties and responsibilities in that  
 9 position?

10 A. **The associate court clerk position was a mid-level**  
 11 **supervisory position where I helped and assisted in the**  
 12 **operations local to the landlord-tenant division.**

13 I assigned clerks to window services, court  
 14 employees not just clerks to window services, to a warrant  
 15 department, to courtrooms and just on a day-to-day basis  
 16 ensured that with the employees that were present in the  
 17 clerk's office, that we met the needs of the court.

18 Q. You held that position until April 2004?

19 A. **Yes.**

20 Q. And was your next position as an assistant deputy  
 21 chief clerk?

22 A. **Yes.**

23 Q. And was that a promotion or a test or a little bit of  
 24 both?

25 A. **That was a promotion and appointment.**

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1       **There was no test involved.**

2   Q. What were your duties and responsibilities in that  
3 position?

4   A. **To manage the landlord-tenant clerk's office and  
5 courtrooms in the Bronx Housing Court.**

6   Q. Thank you.

7       Then what was your position after that in 2010?

8   A. **In 2010, I became first deputy chief clerk.**

9   Q. What were your duties and responsibilities in that  
10 position?

11 A. **To support the chief clerk and the managing of the  
12 day-to-day operations of the civil court of the City of  
13 New York.**

14 Q. Ms. Razzaq, when did you become the Chief Clerk for  
15 the Civil Court of the City of New York?

16 A. **June 2018.**

17 Q. Is that a promotion?

18 A. **That is a promotion.**

19 Q. Please tell us your duties and responsibilities in  
20 that position.

21 A. **I am the highest ranking nonjudicial employee in the  
22 New York City Civil Court.**

23       **I serve in a confidential capacity and am  
24 responsible for managing the court operations related to  
25 case processing, budget, personnel management and employee**

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1   **relations and also deploying of nonjudicial personnel in  
2 efforts to meet the court.**

3   Q. Thank you.

4       How many staff do you supervise?

5   A. **Overall there are 883 nonjudicial employees assigned  
6 to the civil division.**

7   Q. Which courts fall under the umbrella of the civil  
8 court of New York?

9   A. **We have seven sites in the five boroughs in New York  
10 City.**

11       **There is a Bronx civil court. There is a Kings  
12 civil court. There is a New York City civil court. Under  
13 our umbrella is a Harlem community justice center, there  
14 is a Queens civil court and there is a Richmond civil  
15 court.**

16   Q. Do those --

17       MR. MASTRO: Your Honor, I don't mean to  
18 interrupt, but it appears that the witness is reading  
19 something.

20       Her eyes are averted from looking forward and it  
21 appears like she's reading something. That's not the way  
22 to elicit testimony.

23       THE COURT: I don't know that to be true.

24       Ma'am, are you reading from something?

25       THE WITNESS: Absolutely not.

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1 A. **Yes, ma'am.**

2 Q. Can you tell us how the records are kept and  
3 maintained with regard to landlord-tenant proceedings?

4 A. **Generally in the landlord-tenant proceedings there is  
5 a paper file and information is docketed into a universal  
6 case management system.**

7       We refer to that as UCMS and recently with  
8 regard to the pandemic we have also developed and  
9 implemented the NYSEF system which is New York State  
10 Electronic Filing System.

11 Q. Is information related to eviction proceedings  
12 entered into the electronic databases?

13 A. **Yes, ma'am.**

14 Q. And are those records kept and maintained in the  
15 regular course of the clerk's office business?

16 A. **Yes, ma'am.**

17 Q. Are the people who input that information into the  
18 system under a business duty to do so accurately?

19 A. **Yes, ma'am.**

20 Q. What type of data can you cull from those electronic  
21 databases regarding an eviction proceeding?

22 A. **Generally you can gather from that data the case  
23 caption, generally to a case, the cause of action, the  
24 reason for the case being filed. In instances of a  
25 nonpayment proceeding, you will be able to capture the**

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1 amount that was originally sued for.

2 You have the parties' names and across the UCM  
 3 system as there is activity on the case you can obtain a  
 4 case summary. You will know forms that have been  
 5 submitted. You will know applications that have been  
 6 made, and when the case was disposed of.

7 Q. Prior to testifying here today were you asked to  
 8 review some data with regard to evictions in New York  
 9 City?

10 A. Yes, ma'am.

11 Q. Thank you.

12 Ms. Razzaq, can you please describe to this  
 13 large group of lawyers the eviction process in New York  
 14 City, pre-COVID.

15 So flashback to the good old days and tell us  
 16 what the eviction process was pre-COVID.

17 A. Pre-COVID with regard to eviction proceedings, a  
 18 landlord or petitioner who has -- feels they have rights  
 19 would serve a notice on a respondent or the person that  
 20 they are seeking achieving the premises from, followed by  
 21 there are certain time limitations with regard to that.

22 Once they have, that time period has passed on,  
 23 the demand that they have made it's generally that a  
 24 petition and notice of petition are filed with the court.

25 With regard to a nonpayment proceeding, there is a certain

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1 time period when the respondent is directed to file their  
 2 answer with the court, and with regard to a holdover  
 3 proceeding, the respondent is notified of returning to  
 4 court on a given date and given time.

5 With a nonpayment proceeding, the respondent is  
 6 tasked to answer. The allotted amount of time is ten  
 7 days. Over the past few hours it's changed from five days  
 8 to ten days. Once the respondent answers, the matter is  
 9 joined and scheduled to a court calendar. There are  
 10 different routes that the case can take from there.

11 A respondent that does not answer, responds to  
 12 the petition, there is a possibility that the petitioner  
 13 will seek a default judgment, a judgment simply based on  
 14 their failure to answer and a warrant for their eviction.

15 Where a case is scheduled to a calendar, the  
 16 case is generally conferred on the first court date,  
 17 unless either of the parties make an application to the  
 18 court for an adjournment, or some other application to the  
 19 court, and the matter is potentially disposed of, whether  
 20 it's dismissed, whether it's discontinued, whether it's  
 21 marked settled, whether it's marked settled with a  
 22 judgment, whether the landlord, the petitioner, is granted  
 23 possession of the premises.

24 And, following that disposition, if there is a  
 25 judgment and the order is that the petitioner take

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1 possession of the premises, it is required that a marshal  
 2 seek a warrant giving them permission to evict the  
 3 respondent from the premises. That's the nonpayment  
 4 track.

5 On a holdover track it's very similar except  
 6 that the landlord is -- or the petitioner is not generally  
 7 seeking rent; they are seeking possession of the premises.  
 8 The case can be disposed of on the same day, or it can be  
 9 adjourned. A jurist might entertain applications from the  
 10 party similarly, at the end of the proceeding, once it is  
 11 disposed of generally either by settlement,  
 12 discontinuance, dismissal and/or the judge ordering  
 13 possession, rendering an order judgment of possession to a  
 14 party, and a similar track is followed with regard to  
 15 seeking a warrant; a marshal would request a warrant of  
 16 eviction based on the judge's order and the judgment of  
 17 possession.

18 Q. Would the warrant come from the clerk's office after  
 19 a marshal seeks it?

20 A. Yes.

21 Basically a marshal requests a warrant,  
 22 including certain criteria in the case, the caption, a  
 23 description of the premises, a copy of the judgment, and  
 24 the court reviews the application and request for certain  
 25 criteria and then will issue the warrant based on that, if

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1 it meets the criteria.

2 If not, the warrant is returned to the marshal  
 3 with a note of what the defects are.

4 THE COURT: Counsel, is that a good stopping  
 5 point?

6 MS. KINIRONS: Sure.

7 THE COURT: Okay.

8 Let's take a break and we will come back at,  
 9 say, ten to 2 and continue. Thank you.

10 MS. KINIRONS: Thank you.

11 (Luncheon recess.)

12 (Continued on next page.)

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1 AFTERNOON SESSION  
2

3 THE COURT: Counsel, are we ready to continue?

4 I am getting affirmative nods.

5 MS. KINIRONS: Yes, your Honor.

6 THE COURT: Okay.

7 I'll remind the witness that you are still under  
8 oath.

9 Counsel, you may continue with the examination.

10 MS. KINIRONS: Thank you, Judge.

11 BY MS. KINIRONS:

12 Q. Ms. Razzaq, last when we left we were talking about  
13 warrants. Just have a few follow-up questions.14 Once a warrant has been issued by the clerk's  
15 office, how quickly can it be executed and somebody be out  
16 of their apartment or dwelling?17 A. There is at least 14 days that the marshal or the  
18 execution officer has to serve notice on the party.

19 And that notice is statutorily 14 days out.

20 Q. And what if any mechanism is there for the tenants to  
21 come back to court at that point?22 A. Generally once served the marshal's notice, the  
23 tenant can return to court to request a stay by filing an  
24 order to show cause application is the most common  
25 application filed by unrepresented court users.PAUL J. LOMBARDI, CERTIFIED REALTIME REPORTER  
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1 Q. So I'm going to fast forward now and go back to the  
2 bleak time of the pandemic.3 Can you tell us what effect the eviction  
4 moratorium has had on the eviction process within the New  
5 York City court system.6 A. The pandemic has completely changed the process for  
7 the evictions within New York City.8 Initially the pandemic caused the courts to  
9 reduce its operations to essential matters only for the  
10 housing court and the essential matter was a matter where  
11 a person was not in their apartment, whether they were  
12 evicted by the marshal or someone other than a marshal  
13 took possession of the premises. We refer to those  
14 proceedings as alleged illegal lockouts.15 Or there were conditions in the apartment in  
16 need of repair. The pandemic hit us in the midst of  
17 winter and there are often instances where tenants do not  
18 have heat, hot water and essential services. We consider  
19 those essential matters and those matters were scheduled.

20 Q. Any other --

21 A. I -- I'm sorry.

22 Q. Please go ahead.

23 A. I was going to say that any other matter when the  
24 courts went into essential matters only mode were  
25 initially adjourned for 45 days.PAUL J. LOMBARDI, CERTIFIED REALTIME REPORTER  
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1 Q. What if any efforts did the court system make to  
2 contact the litigants involved in ongoing eviction  
3 matters?4 A. The civil court mailed to parties in actions within  
5 civil court, including the housing court, letters telling  
6 them that their cases would be administratively adjourned  
7 and they should not report to court until they received  
8 other notice.9 Q. Did there come a point in time where the court system  
10 mailed those involved in eviction proceedings a hardship  
11 declaration?

12 A. Yes.

13 Between January -- mid-January, January 20th or  
14 so, and early February, the Office of Court Administration  
15 mailed to court users whose case had been filed January 1,  
16 2018, or sooner, to a hardship declaration.

17 Q. How many was that?

18 A. The estimated count was close to 500,000 and the  
19 actual number is 499,800, something like that.20 Q. In terms of the housing court judges during the  
21 crisis, what work were they doing?22 A. During the crisis and initially essential matters  
23 only.24 In early June we began appearing return to  
25 normal operations as best we could and they began hearingPAUL J. LOMBARDI, CERTIFIED REALTIME REPORTER  
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1 matters where both parties were represented by attorney  
2 for conferences.3 Q. In terms of the eviction matters, is the New York  
4 City Housing Court, do you handle a large volume of  
5 eviction matters?

6 A. Yes, we do.

7 Q. Can you tell us the number of petitions for an  
8 eviction that were actually pending at the time the  
9 pandemic hit?

10 A. May I look at my notes?

11 Q. If that would refresh your recollection.

12 MS. KINIRONS: Is that okay, your Honor?

13 THE COURT: It's okay with me.

14 (There was a pause in the proceedings.)

15 A. Can you repeat the question, counselor?

16 Q. Sure.

17 At the time the pandemic hit and the shutdown  
18 occurred, how many eviction matters were currently pending  
19 in the New York City court system?

20 A. That is challenging to say.

21 I want to say that we'd have to have a target  
22 date in order to give a more accurate number. For cases  
23 filed from -- I want to say in 2019, statewide or are we  
24 referring to civil court?

25 Q. Civil court, your domain.

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1 A. **My domain, in 2019 there were 185,834 landlord-tenant  
2 filings.**

3 Q. Now, did New York City -- did the court system do  
4 anything to notify these litigants that their matters were  
5 going to the --

6 THE COURT: Counsel, counselor, you broke up  
7 terribly.

8 Ask that again, please.

9 BY MS. KINIRONS:

10 Q. Sure.

11 In New York City did the court system do  
12 anything to notify litigants that their matter was going  
13 to be stayed?

14 A. **We did an initial mailing in April or May of 2020,  
15 and we -- with the assistance of OCA did the mass mailing,  
16 the larger mailing of the hardship declarations.**

17 Q. Now, in terms of who you notified about their actions  
18 being stayed, what -- who did you send those notices to in  
19 terms of what parameters were you looking at when you sent  
20 the notices that the actions were going to be stayed?

21 A. **The parties, respondents in matters by January 1,  
22 2018, through January 2021.**

23 Q. And how many people received such notices?

24 A. **In the mass, that was the 499,000 mailings.**

25 Q. Now I'm going to ask you to focus on March warrants,

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1 please.

2 Did you review the numbers for the warrants  
3 having been issued during the course of the pandemic?

4 A. **Yes.**

5 Q. So from January 1, 2020, until March 13th, 2020, at  
6 the precipice of the pandemic, how many warrants were on  
7 file just issued in 2020 alone?

8 A. **14,900 some-odd warrants.**

9 Q. And how many were added the rest of 2020?

10 A. **Not many more. I think the number went to 15,000,  
11 15,017.**

12 Q. Okay.

13 Now, did you also review the numbers for  
14 hardship declarations?

15 A. **Yes.**

16 Q. And how many hardship declarations did the court  
17 system receive from December 28, 2020 to May 18th of this  
18 year?

19 A. **More than 40,000.**

20 Q. And are those 40,000 hardship declarations related to  
21 open cases or something else?

22 A. **There are more than 35,000 related to open cases and  
23 about 7,000 that weren't linked to existing cases.**

24 Q. So, Ms. Razzaq, I'm going to ask you some questions  
25 about when the eviction moratorium should be lifted.

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1 Q. Is the court planning on taking any steps to notify  
2 those individuals upon lifting of the moratorium?

3 A. **It is likely that when the moratorium is lifted that  
4 we will have to do a subsequent mailing to our court  
5 users, notifying them similarly that we have mailed  
6 hardship declarations.**

7 We mailed notices to let the court users know  
8 that we were resuming in-person operations, will likely  
9 have to mail notices that the moratorium is lifted.

10 Q. What will happen with the pending cases at that  
11 point?

12 A. **Our pending caseload, of course, will increase.**

13 The number of courtrooms of court users visiting  
14 our court will increase.

15 Q. What role if any does the court system have with the  
16 rental assistance program that was just launched today?

17 A. **The court doesn't have a large role in the program  
18 except that it's my understanding that those who file or  
19 users that file the application for rental assistance will  
20 have a stay pending the results of their applications.**

21 Q. Now, Ms. Razzaq, are the courts 100 percent open now?

22 A. **The courts are -- have returned 100 percent of their  
23 staff.**

24 There are generally other units within the

25 building, other agencies, who are not yet returned to the  
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1 court site. It's court employees only at this point.  
 2 Q. So 100 percent of OCA employees have returned, is  
 3 that right?

4 A. Yes, counselor.

5 Q. Is that the same, at the same staffing level as  
 6 prepandemic?

7 A. No.

8 Unfortunately there's been a lot of normal  
 9 attrition and additional expedited attrition caused by the  
 10 pandemic and various circumstances in employees' lives.

11 Q. Now, are staffing operations the same as they were  
 12 prepandemic?

13 A. No.

14 Staffing operations are a bit different.

15 Q. In what way?

16 A. Well, to start, early in the pandemic we moved from  
 17 in certain instances paper filing to electronic filing.  
 18 Electronic filing takes a bit more processes for the  
 19 reviewing clerk.

20 Additionally, our units are -- generally cluster  
 21 together in one area called the clerk's office are not  
 22 operating that way anymore because we have a  
 23 responsibility to allow for social distancing in the  
 24 offices.

25 Q. In terms of the public, is the courthouse 100 percent

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1 open to the public?

2 A. The court is open to the public, yes.

3 We have mechanisms in place to -- initially  
 4 users have to be screened. There is a screening process  
 5 where a court user, or employee, anyone in the court  
 6 building is subject to temperature screening. Anyone  
 7 entering the building is subject to a COVID  
 8 self-assessment where there is a reporting necessary  
 9 regarding exposure and then, of course, there's the  
 10 magnetometers for members of the public.

11 At each of our sites we have a court employee  
 12 sitting in the lobby further screening court users and  
 13 another effort in controlling density in the building and  
 14 social distancing to see what they have come for, and if  
 15 there is a way that we can serve them from the lobby  
 16 collecting papers that are being filed, or providing  
 17 information, then we do so from the lobby.

18 Q. Unlike this virtual proceeding today, are  
 19 in-courtroom operations up and running in state court?

20 A. The majority of our court operations, the court  
 21 routine that are employed by the Office of Court  
 22 Administration are in the courtroom. The majority of  
 23 respondents, petitioners, plaintiffs and defendants are  
 24 attending virtually.

25 There are instances where we -- a court user

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1 does not have the capability of attending a virtual  
 2 proceeding, meaning they don't have the tools or resources  
 3 and they will either go into a courtroom, or there are  
 4 kiosks within the courthouses that they can sit at and  
 5 manipulate a PC on their own to attend the hearing.

6 Q. But they would be permitted in the courtroom?

7 A. Yes.

8 MS. KINIRONS: Your Honor, I meant no disrespect  
 9 by that question. I yearn for the day to be in your  
 10 courtroom.

11 THE COURT: I would say note my objection. I  
 12 think we are operating today.

13 But, go ahead.

14 BY MS. KINIRONS:

15 Q. Ms. Razzaq, what if any concerns do you have  
 16 regarding operations that you oversee in the court system  
 17 if this statute were to be stayed?

18 A. It's my opinion that if the statute was stayed, your  
 19 Honor --

20 MR. MASTRO: Your Honor, she shouldn't be  
 21 stating an opinion.

22 THE COURT: Hold on. Hold on.

23 MR. MASTRO: She is not an --

24 THE COURT: I will allow the opinion.

25 I understand your objection.

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1 A. The court would see an overwhelming number of users  
 2 coming to the court to file applications, respond to  
 3 documents they were served in large numbers.

4 Q. Why do large numbers concern you?

5 A. The large numbers concern me, as I have experienced,  
 6 larger numbers in the past, and I don't believe that we  
 7 will be able to accommodate the number of users who visit  
 8 due to social distancing requirements.

9 There is potential for lines of users standing  
 10 outside of the courthouse, which is something I'm very  
 11 familiar with, and there is potential that our staff will  
 12 not be able to accommodate on any given day the number of  
 13 visitors that make it to the courthouse.

14 Q. As for will the court system be in a different place  
 15 when the moratorium expires in August?

16 MR. MASTRO: Objection, calls for speculation.

17 THE COURT: I understand the objection.

18 Do you expect things will be different by August  
 19 and, if so, why?

20 THE WITNESS: Yes, I expect that things will be  
 21 different by August.

22 BY MS. KINIRONS:

23 Q. Why is that?

24 MR. MASTRO: Same objection.

25 THE COURT: Same ruling.

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1 Go ahead. You can answer.  
 2 A. It is my understanding that there is funding for many  
 3 of our court users, and once the rental assistance is  
 4 dispensed, that we will have lesser of a number of court  
 5 users reporting to either get a stay or respond to  
 6 documents.

7 Additionally, we hope to have additional  
 8 staffing. We are in the process of hiring now. I don't  
 9 know that we will be able to meet the demand for a number  
 10 of people coming to visit, but we will be more efficiently  
 11 staffed as well.

12 MS. KINIRONS: Thank you, Ms. Razzaq.

13 I have no further questions.

14 THE COURT: Okay.

15 Cross-examination.

16 CROSS-EXAMINATION

17 BY MR. MASTRO:

18 Q. Ms. Razzaq, let me break down some of the things you  
 19 just said.

20 The reason why you expect there to be many  
 21 matters once this moratorium is lifted is because no  
 22 matters have gone forward, landlord-tenant disputes,  
 23 during the moratorium.

24 Isn't that correct?

25 A. I can't say that no matters have gone forward because  
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1 the court is hearing cases.

2 Q. Let me be clear.

3 I believe you said in your testimony that since  
 4 March 2020 there have been approximately 100 warrants  
 5 issued during the pandemic, is that correct, since March  
 6 2020?

7 A. Can you repeat the question?

8 The number -- you broke up and I didn't hear the  
 9 number.

10 Q. I think you said there were approximately 100  
 11 warrants issued since March 2020, eviction warrants.

12 Is that correct?

13 A. Yes.

14 Q. Am I also correct that there have been no residential  
 15 eviction warrants issued since January 2021 in your  
 16 courthouse?

17 Is that correct, ma'am?

18 A. No, there have been warrants issued since January of  
 19 '21.

20 Q. Out of that hundred, how many have been issued since  
 21 January 2021?

22 A. May I look at my notes?

23 Q. Please, ma'am. Look at your notes.

24 If you need to look at your notes, please, go  
 25 ahead.

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1 (There was a pause in the proceedings.)

2 A. There were 69 warrants issued in residential  
 3 proceedings from January '21 to May 31, '21.

4 Q. You said that these are the cases that would be

5 addressed first once the moratorium was lifted.

6 Right?

7 A. I said that instances where the marshal served where  
 8 warrants are issued, yes, and the marshal served the  
 9 14-day notice will be likely the first cases that will  
 10 report to court for a stay.

11 Q. You testified that a hundred percent of OCA employees  
 12 have returned to work, right?

13 A. Yes.

14 Q. That they returned to work and you are endeavoring to  
 15 make sure everyone is safe in the courthouse.

16 Correct?

17 A. Yes.

18 Q. And a hundred percent of the employees are back to  
 19 work, then you are ready to hear cases again, right?

20 A. Well, employees don't hear cases, but the employees  
 21 are prepared to handle the employees' roles in cases, yes.

22 Q. Thank you.

23 Let me break that down then. Are you aware of  
 24 any other kind of case in your courthouse besides these  
 25 landlord-tenant disputes that has been stayed the entire

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1 time from start of COVID in early 2020, to the present,  
 2 are you aware of any other kind of case that has been  
 3 stayed?

4 MS. KINIRONS: Objection.

5 THE COURT: Is that an objection?

6 MS. KINIRONS: Objection.

7 THE COURT: What's the objection?

8 MS. KINIRONS: Relevance.

9 THE COURT: I'll allow her to answer the

10 question.

11 BY MR. MASTRO:

12 Q. Please.

13 THE COURT: If you know.

14 A. I'm not familiar, no.

15 Q. And, ma'am, are you aware, in your 30 years  
 16 experience, are you aware of any other circumstance where  
 17 under state law, a petitioner seeking relief against a  
 18 respondent for nonpayment have to serve a notice under  
 19 state law on the respondent recommending potential lawyers  
 20 and legal counsel for the respondent?

21 Are you aware of any other state law that has  
 22 ever required that of a petitioner in the courthouse?

23 MS. KINIRONS: Objection.

24 THE COURT: Sustained.

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1 BY MR. MASTRO:

2 Q. Ma'am, are you aware of any other circumstance where  
3 a petitioner seeking to collect payment was required to  
4 give the respondent a declaration they could fill out to  
5 stay the action --

6 MS. KINIRONS: Objection.

7 BY MR. MASTRO:

8 Q. Are you aware of anything like that, ma'am?

9 THE COURT: Sustained.

10 BY MR. MASTRO:

11 Q. Since the eviction moratorium has been in place  
12 related to landlord-tenant disputes for more than a year,  
13 is that something that is unique in your experience on the  
14 cases in your courthouse?

15 MS. KINIRONS: Objection.

16 THE COURT: Sustained.

17 BY MR. MASTRO:

18 Q. I'd like to go through briefly what you described as  
19 the process for these landlord-tenant disputes.

20 Would it be fair to say from filing of a notice  
21 and petition to the execution of a warrant of eviction,  
22 that that's a process that typically takes many months?

23 A. **I would say that it's individual to the cases.**

24 **However, yes. It can take months.**

25 Q. Isn't it true that on average such a case typically

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1 **petitioner and respondent have communications outside of**  
2 **the court, and in general a nonpayment petition could be**  
3 **considered satisfied once there is -- it's so many**  
4 **instances that I really can't speak to it.**

5 **There are occasions where satisfaction pieces**  
6 **are filed and there are occasions when they are not.**

7 Q. Am I correct that simply because the landlord gets a  
8 judgment of nonpayment against a tenant, that doesn't mean  
9 the landlord ever actually collects the money on that  
10 judgment, correct?

11 A. **It's possible, yes.**

12 Q. In fact, in your 30 years experience you are aware of  
13 the fact that there are many instances where landlords get  
14 a judgment of nonpayment and they are unable to collect  
15 the money from their tenant against whom they have gotten  
16 the judgment of nonpayment.

17 Correct?

18 MS. KINIRONS: Objection.

19 THE COURT: If you can answer that, go ahead.

20 BY MR. MASTRO:

21 Q. Ms. Razzaq?

22 A. **Yes.**

23 Q. Thank you.

24 Now, I just want to make sure I understood some  
25 of your testimony. You testified that starting in January

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1 takes more than six months to go from start of petition  
2 filing to actual warrant of eviction being executed?

3 A. **I would say four to six months, yes, it's possible.**

4 Q. Now, when a judgment for nonpayment is entered --

5 THE COURT: Hold on.

6 Mr. Mastro, you broke up. Ask the question  
7 again, please.

8 MR. MASTRO: Sorry.

9 BY MR. MASTRO:

10 Q. When a landlord brings a suit and obtains a judgment  
11 of nonpayment, that means the tenant owes that amount of  
12 money in the judgment, correct?

13 A. **Yes.**

14 Q. And am I also correct that when the tenant pays the  
15 judgment there is something filed with the court showing  
16 what's called a satisfaction of judgment?

17 A. **There are occasions where a satisfaction piece is**  
18 **filed, yes.**

19 Q. Again I'm asking you about the typical case where a  
20 landlord gets a judgment of nonpayment.

21 Am I correct that it's the exception that the  
22 satisfaction of judgment is later filed that the tenant  
23 actually paid the money that the tenant was adjudged to  
24 owe?

25 A. **That is challenging for me to speak on, as the**

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1 of 2021, your office was part of a mass mailing project,  
2 the Office of Court Administration, actually mailed out  
3 500,000 hardship declarations, correct?

4 A. **Yes.**

5 Q. Do you think that that was an effective way to  
6 communicate with tenants through mass mailing?

7 MS. KINIRONS: Objection.

8 THE COURT: Sustained.

9 BY MR. MASTRO:

10 Q. Yes or no?

11 THE COURT: Sustained.

12 MR. MASTRO: Your Honor, your Honor -- I'll ask  
13 another question.

14 BY MR. MASTRO:

15 Q. Based on responses to your mailing, would you  
16 consider that mailing to have been effective in reaching  
17 tenants, that mass mailing of 500,000 mailings in January  
18 of 2021, sending hardship declarations to tenants?

19 Yes or no?

20 A. **I believe -- yes.**

21 Q. Thank you.

22 Am I also correct that you have posted on Office  
23 of Court Administration's website --

24 THE COURT: Counsel, you cut out. I don't know  
25 why.

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1 MR. MASTRO: Sorry. I'll rephrase.  
 2 BY MR. MASTRO:  
 3 Q. Am I also correct that posted on the Office of Court  
 4 Administration's website as of May 2021, a message to  
 5 tenants encouraging them to file hardship declarations and  
 6 attaching a link to hardship declarations?

7 Am I correct that that is on the Office of Court  
 8 Administration's website?

9 A. **I haven't visited recently.**

10 **However, when the statute was effected, there  
 11 was information on the Office of Court Administration's  
 12 website regarding hardship declarations and the  
 13 availability of hardship declarations in several  
 14 languages. I haven't visited recently to see what's  
 15 there.**

16 Q. Do you have our exhibits in front of you, Ms. Razzaq?  
 17 A. **I have exhibits, yes.**

18 Q. Can you look at Exhibit 10, please.

19 Do you see there that's from the Office of Court  
 20 Administration, newyorkcourts.gov, correct?

21 A. **Okay.**

22 Q. Do you see it?

23 A. **Yes.**

24 **Give me a second, please.**

25 (There was a pause in the proceedings.)

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1 stay eviction proceedings?

2 A. **In some instances, yes.**

3 Q. I'm going to ask you some questions about --  
 4 THE COURT: Counsel, we can't hear you.  
 5 Mr. Mastro, do you have a head set you can use?  
 6 MR. MASTRO: Unfortunately I don't, your Honor,  
 7 but I will speak up.

8 THE COURT: Okay.

9 BY MR. MASTRO:

10 Q. Ms. Razzaq, you were not involved in any way in the  
 11 passage of CEEFPA?

12 A. **No, I was not.**

13 Q. You testified at hearings you didn't put any  
 14 statement in in support, nothing like that, right?

15 A. **No, I did not.**

16 THE COURT: Counsel, hang on.

17 BY MR. MASTRO:

18 Q. CEEFPA Part A, that is the legislation?

19 THE COURT: What is the second word you are  
 20 saying?

21 MR. MASTRO: CEEFPA Part A.

22 THE COURT: CEEFPA Part A, thank you.

23 MS. KINIRONS: Your Honor, it's C-E-E-F-P-A.

24 THE COURT: Okay. I forgot about the silent F.  
 25 Thank you.

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1 BY MR. MASTRO:

2 Q. I'm just going to ask you about the first page,  
 3 ma'am.

4 Are you ready?

5 A. **Exhibit 10 you are saying?**

6 Q. Yes.

7 The newyorkcourts.gov, Coronavirus and the New  
 8 York State courts, with a header, 5/4/2021, moratorium  
 9 extended to August 31, 2021.

10 A. **Yes.**

11 Q. You see that, ma'am?

12 A. **Yes.**

13 Q. Do you see there where it says to stay residential  
 14 eviction proceedings where a tenant, respondent or  
 15 landlord submits a hardship declaration?

16 A. **Yes.**

17 Q. You see towards the bottom of the page where there  
 18 are links to the declaration?

19 A. **Yes.**

20 Q. And followed by hardship declaration translated into  
 21 more than a dozen languages, right?

22 A. **Yes.**

23 Q. In your notices -- have such notices on the court's  
 24 website been an effective means of communicating to  
 25 tenants on the ability to file a hardship declaration to

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1 BY MR. MASTRO:

2 Q. Ms. Razzaq, you are familiar with what that  
 3 moratorium extension provides in terms of staying  
 4 landlord-tenant suits and the hardship declaration when  
 5 it's filed, correct?

6 A. **Yes.**

7 Q. If the eviction moratorium were to be lifted or  
 8 enjoined, cases that are pending would go forward,  
 9 correct?

10 A. **Yes.**

11 Q. The rules, procedures, law applicable to those cases  
 12 wouldn't change at all. Just the stay would be lifted and  
 13 the cases would go forward.

14 Right?

15 MS. KINIRONS: Objection, your Honor.

16 THE COURT: Sustained. Sustained.

17 MR. MASTRO: I'll break it down, your Honor.

18 THE COURT: Mr. Mastro, I'm going to say, I  
 19 don't know the answer to that question, but you can go  
 20 ahead and try.

21 MR. MASTRO: I'll try to break it down, your  
 22 Honor.

23 BY MR. MASTRO:

24 Q. That moratorium extension stays landlord-tenant  
 25 litigations upon the filing of a hardship declaration by a

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1 tenant, correct?

2 A. **Yes.**

3 Q. If a stay were lifted or enjoined, those  
4 landlord-tenant dispute litigations would go forward,  
5 correct?

6 MS. KINIRONS: Objection.

7 THE COURT: I think it's been asked and  
8 answered, counsel.

9 The answer is yes. You can continue. Go ahead.

10 BY MR. MASTRO:

11 Q. And the procedures and rules by which those cases  
12 would be decided wouldn't change at all. They would still  
13 exist just as they existed before the stay.

14 Correct?

15 MS. KINIRONS: Objection.

16 THE COURT: Objection sustained.

17 BY MR. MASTRO:

18 Q. Are you aware of anything else that would change  
19 about the way landlord-tenant dispute litigations would be  
20 decided if the stay were lifted, anything else that would  
21 change about the way they are decided?

22 A. **Not to the best of my knowledge.**

23 Q. Thank you.

24 Am I correct that as things now stand, once a  
25 hardship declaration is filed there is no ability for the

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1 landlord to challenge whether the declaration of hardship  
2 by the tenant is true or not?

3 MS. KINIRONS: Objection, to the extent the  
4 witness knows, but --

5 MR. MASTRO: To the extent the witness knows.  
6 I'm only asking her for her knowledge.

7 THE COURT: If you know.

8 A. **To the best of my knowledge, there are instances  
9 within the CEEFPA that a conference can be requested.**

10 **But, generally, there is a stay once the  
11 hardship declaration is in place.**

12 Q. So there's no ability for the landlord to challenge  
13 the veracity of the hardship declaration, correct?

14 A. **To the best of my knowledge, yes, correct.**

15 MR. MASTRO: One second, your Honor.  
16 (There was a pause in the proceedings.)

17 BY MR. MASTRO:

18 Q. Ms. Razzaq, am I correct that the -- withdrawn.  
19 Is it your understanding that this eviction

20 moratorium stay was enacted to address hardships of  
21 tenants experiencing during COVID?

22 MS. KINIRONS: Objection.

23 THE COURT: Sustained.

24 MR. MASTRO: I'll rephrase it.

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1 BY MR. MASTRO:

2 Q. Is it your understanding that this eviction  
3 moratorium stay was enacted to protect tenants from  
4 certain hardships suffered during COVID?

5 MS. KINIRONS: Objection.

6 THE COURT: Sustained.

7 BY MR. MASTRO:

8 Q. Am I correct that even cases that -- withdrawn.

9 Am I correct that in certain landlord-tenant  
10 cases pending prior to COVID stay --

11 MS. KINIRONS: I'm sorry.

12 BY MR. MASTRO:

13 Q. Stayed the eviction --

14 MS. KINIRONS: I'm sorry. I couldn't hear the  
15 question.

16 THE COURT: Okay.

17 BY MR. MASTRO:

18 Q. Am I correct that even cases where landlords sued  
19 tenants for nonpayment eviction before COVID are now  
20 stayed by this eviction moratorium?

21 A. **To the best of my understanding, yes.**

22 Q. In such a case -- strike that.

23 Can I refer you to Exhibit 14, please. You see  
24 that, Ms. Razzaq?

25 A. **Yes.**

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1 Q. Am I correct that that is your signature at the  
2 bottom of that document?

3 A. **Yes, it is.**

4 Q. This is a landlord-tenant judgment in favor of the  
5 landlord affording him a money judgment of \$15,600,  
6 correct?

7 A. **Yes.**

8 Q. That was awarded on October 31, 2019?

9 A. **Yes.**

10 Q. Am I correct that -- strike that.

11 So this judgment for nonpayment of rent couldn't  
12 have related to COVID because it occurred in 2019,  
13 correct?

14 A. **Likely correct, yes.**

15 Q. Am I correct that the eviction in this case was,  
16 nevertheless, stayed because of the eviction moratorium?

17 THE COURT: If you know.

18 A. **I would have to look at the case history.**

19 **I can't tell by looking at this document.**

20 Q. But you are aware of other judgments of eviction,  
21 warrants of eviction that occurred before COVID in 2019,  
22 but now are stayed because of the eviction moratorium,  
23 correct, ma'am?

24 A. **Yes.**

25 MR. MASTRO: Your Honor, can I just have one  
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1 minute to consult with my colleagues?

2 THE COURT: Absolutely.

3 MR. MASTRO: I'm going to need to go off for one  
4 second.

5 THE COURT: Go ahead.

6 MR. MASTRO: Thank you.

7 (There was a pause in the proceedings.)

8 MR. MASTRO: Thank you, your Honor.

9 I'm ready to go back on the record. Thank you  
10 for the break.

11 THE COURT: Okay.

12 MR. MASTRO: For the courtesy of consulting with  
13 my colleagues. I am almost done, your Honor. I  
14 appreciate it.

15 THE COURT: Okay.

16 BY MR. MASTRO:

17 Q. Ms. Razzaq, you mentioned earlier the rent relief  
18 programs that have been adopted.

19 Do you recall your testimony in that regard?

20 A. **Somewhat.**

21 Q. Am I correct that in order to qualify for rent relief  
22 the landlord and the tenant both need to make that  
23 application?

24 MS. KINIRONS: Objection.

25 A. **I'm --**

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1 THE COURT: Hold on.

2 If you know the answer, you can answer. Go  
3 ahead.

4 A. **I don't know the answer.**

5 **I didn't form the criteria. So I'm not really  
6 familiar with that criteria.**

7 Q. Isn't it also the case that if the tenant were to  
8 leave the property, the rent relief program isn't  
9 available to the landlord at that point, correct?

10 A. **I'm not familiar with that criteria.**

11 Q. And isn't it also the case that the relief afforded  
12 under the program only is for up to 12 months, but the  
13 eviction moratorium has now lasted for more than in excess  
14 of a year, correct?

15 MS. KINIRONS: Objection.

16 A. **It is my understanding --**

17 THE COURT: I'll allow it. Go ahead.

18 A. **It is my understanding that there is up to 12 months  
19 relief.**

20 Q. And the moratorium has lasted for much longer than 12  
21 months, correct?

22 A. **In various instances I imagine, yes.**

23 Q. The statistics you were giving today that you were  
24 reading, those are just for New York City, right?

25 A. **The number of warrants issued that I spoke to, yes,**

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1 **is for New York City.**

2 Q. Can you give me what the source of those numbers were  
3 that you were reading from?  
4 A. **Universal Case Management System database, which has  
5 an acronym of UCMS.**

6 THE COURT: Thank you.

7 THE WITNESS: You are welcome.

8 BY MR. MASTRO:

9 Q. You testified earlier about the difficulties for the  
10 court system once the moratorium is lifted.

11 You recall that testimony?

12 A. **Yes.**

13 Q. Isn't it also the case the longer the eviction  
14 moratorium lasts the greater the backlog and burden on the  
15 court system to deal with it then?

16 Isn't that true?

17 MS. KINIRONS: Objection.

18 THE COURT: I'll allow that.

19 BY MR. MASTRO:

20 Q. Yes or no, please.

21 A. **It is possible.**

22 Q. Okay.

23 Let me ask you this. Am I correct that even  
24 after the eviction moratorium is lifted, there will still  
25 be under the law a rebuttable presumption that a hardship

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1 declaration delays an eviction?

2 Isn't that correct?

3 A. **I couldn't speak to that.**

4 Q. You don't know what the law requires in that regard,  
5 is that your testimony?

6 A. **You are speaking of when the moratorium is lifted?**

7 Q. Yes.

8 It's currently scheduled to go to August 31,  
9 2021, correct, ma'am?

10 A. **Yes.**

11 Q. And even if it isn't extended a third time, even  
12 after August 31, 2021, there will still be a rebuttable  
13 presumption that the proceedings are stayed based on a  
14 hardship declaration, correct?

15 MS. KINIRONS: Objection.

16 THE COURT: Sustained.

17 Counsel, again, I don't know the answer to that.

18 MR. MASTRO: I'll rephrase it, your Honor.

19 THE COURT: Counsel, understand why I'm  
20 sustaining the objection.

21 I don't know the answer to that question. It's  
22 something that we all have to dive into the law to decide,  
23 right? So I think it's a little hard for this witness,  
24 but you can go ahead.

25 MR. MASTRO: Your Honor, this witness has vast  
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1 experience in the court system and is overseeing these  
2 cases.

3 THE COURT: Right.

4 But, counsel --

5 MR. MASTRO: She understands that there is a --

6 THE COURT: Counsel, just expect that I will be  
7 placing these questions to you and your adversaries later  
8 to see if various portions of the law, which expire at  
9 different times, how they interact.

10 It's a very complex case, and I don't think this  
11 witness, this is really within her area of expertise, but,  
12 go ahead.

13 MR. MASTRO: That's fine.

14 THE COURT: You understand the point?

15 MR. MASTRO: Yes.

16 I understand your Honor's point, and I certainly  
17 appreciate it. So I will move on.

18 BY MR. MASTRO:

19 Q. Am I correct that right now with the courthouse back  
20 at a hundred percent, as you described it, that there is  
21 the ability on the part of the judges and staff in the  
22 courthouse to hear more cases?

23 Would that be fair to say?

24 A. **That is fair to say.**

25 **Can I just add that the court is currently**

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1 BY MR. MASTRO:

2 Q. Have you ever had any discussions with Defendant  
3 Marks about why the court system was reopened at a hundred  
4 percent?

5 A. **No, I did not.**

6 Q. Did you support the decision to reopen the courthouse  
7 at a hundred percent?

8 THE COURT: Objection sustained.

9 MR. MASTRO: I'm sorry.

10 THE COURT: I sustained the objection.

11 You can move on. I sustained the objection.

12 MR. MASTRO: Your Honor, I have no further  
13 questions.

14 THE COURT: Okay.

15 Anyone else have questions for this witness?

16 MS. LEE: Your Honor, Kimberly Hunt Lee. I just  
17 have a couple.

18 THE COURT: Let's hear from the Dutchess County  
19 Sheriff's lawyer.

20 CROSS-EXAMINATION

21 BY MS. LEE:

22 Q. Ms. Razzaq, the process you described for the  
23 evictions, is that unique to New York City?

24 A. **It is my understanding, yes, that the eviction**

25 **process in New York City differs from the process for**

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1 **hearing cases?**

2 Q. I'm sorry. I didn't hear the last phrase.

3 A. **The court is currently hearing cases.**

4 Q. Yes.

5 And is it fair to say that the court has  
6 reopened at a hundred percent because the pandemic is  
7 waning and New York is doing better now in terms of its  
8 health response.

9 Is that fair to say?

10 MS. KINIRONS: Objection.

11 THE COURT: Basis?

12 MS. KINIRONS: For this witness to testify to  
13 current status and why the court made a decision to open  
14 when it did is beyond her testimony, her direct.

15 THE COURT: Sustained.

16 MR. MASTRO: Your Honor, she's a top  
17 administrator in the courthouse and she obviously knows,  
18 working directly with Defendant Marks, knows the rationale  
19 of opening the courts a hundred percent. I'm allowed to  
20 probe that.

21 If knows, she knows.

22 THE COURT: Ma'am, do you know the answer?

23 THE WITNESS: No, I do not.

24 THE COURT: Okay.

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1 **those sites outside of New York City.**

2 Q. Do you have any understanding as to how it differs?

3 A. **It seems that mainly that the city marshals are the**  
4 **execution officers for the courts in the City of New York,**  
5 **and the marshals are guided by the Department of**  
6 **Investigation and it is definitely a procedure where the**  
7 **marshal is the only person that communicates with the**  
8 **court with regard to a warrant, and it's the only person**  
9 **that can submit requests for warrants.**

10 **It's my understanding that outside of the city**  
11 **that may differ in that an attorney may request a warrant**  
12 **and the court processes it that way.**

13 Q. Now, if I understand your testimony correctly, under  
14 CEEFPA that we have been talking about, there are still  
15 certain evictions that are allowed to proceed.

16 Is that correct?

17 A. **Yes.**

18 Q. And those are cases where there is no hardship  
19 declaration, correct?

20 A. **There are cases where there is no hardship**  
21 **declarations.**

22 **There are cases where there are nuisance**  
23 **proceedings or there is a nuisance involved and it's**  
24 **conferenced before a judge that decides on the warrant.**

25 Q. Now, I assume that you have read the hardship  
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1 declaration?

2 A. Yes.

3 Q. Does the hardship declaration tell the tenants not to  
4 pay the rent?

5 A. To the best of my knowledge, no.

6 MR. MASTRO: Objection. It speaks for itself,  
7 your Honor.

8 THE COURT: What?

9 Was there an objection there?

10 MR. MASTRO: Yes. That's an objection, your  
11 Honor.

12 The document speaks for itself.

13 THE COURT: But I think you asked the same kind  
14 of questions, did you not?

15 Mr. Mastro, didn't you ask the same kinds of  
16 questions?

17 MR. MASTRO: I didn't ask her any questions  
18 about the --

19 THE COURT: Either way, I will allow it.

20 It's fine. Thank you.

21 BY MS. LEE:

22 Q. The Emergency Rental Assistance Program that became  
23 effective today, do you have any understanding of what the  
24 purpose of that is?

25 A. A broad understanding that there is funding available  
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1 to tenants who are having difficulty paying their rents.  
2 And they may submit their applications beginning  
3 today and they will be decided accordingly.

4 Q. Do you have an understanding as to who the -- if  
5 their application is approved -- do you have an  
6 understanding as to where that money would go?  
7 A. To the best of your recollection, the funds are paid  
8 directly to landlords and/or utility companies, depending  
9 on the nature of the grant.

10 MS. LEE: I have no further questions. Thank  
11 you.

12 THE WITNESS: You are welcome.

13 THE COURT: Does anyone else have questions of  
14 this witness?

15 Is there any redirect of this witness?

16 MS. KINIRONS: Yes, please.

17 THE COURT: Go ahead, briefly, please.

18 REDIRECT EXAMINATION

19 BY MS. KINIRONS:

20 Q. Ms. Razzaq, Mr. Mastro asked you to look at Exhibit  
21 14, which was a judgment on Richmond County Civil Court.

22 Do you recall that?

23 A. Yes.

24 Q. Is there any indication on that document as to  
25 whether a warrant was ever requested or issued?

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1 A. No.

2 There's no indication on the document.

3 Q. If they -- I'm sorry.

4 A. No. There's no indication on the document.

5 Q. If the warrant had been requested, would that be  
6 indicated at the bottom of that document?

7 A. Generally indicated at the bottom of the document, it  
8 would be that the warrant was issued to the marshal,  
9 generally would be written at the bottom of the document.

10 Q. Ms. Razzaq, when the statute in question went into  
11 effect, did the Office of Court Administration issue  
12 policy guidance to the courts and to the chief clerks like  
13 yourself?

14 A. Yes.

15 Q. Do you anticipate that to come as well when the  
16 statute expires?

17 A. Yes.

18 Q. Now, you said earlier on cross-examination that  
19 500,000 hardship declarations were sent out?

20 A. Yes.

21 Q. Who were those declarations sent out to?

22 A. Respondents in landlord-tenant proceedings either  
23 nonpayment or holdover statewide in instances that there  
24 is an open case, a case that was still active and matters  
25 that were disposed of based on the statute allowing a

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1 party who wishes to request that a judgment be removed to  
2 do so.

3 Q. So those hardship declarations were not just  
4 generally sent out to anybody who might be renting an  
5 apartment, were they?

6 A. No.

7 Q. Now, you talked about courtrooms being a hundred  
8 percent.

9 Is it staffing that's a hundred percent or is it  
10 operations?

11 A. It's both.

12 If I am allowed to say that a hundred percent  
13 staffing for the courts is that the employees that remain  
14 employed by the court returned to the court.

15 However, a hundred percent staffing looks  
16 different than pre-COVID. As far as our courtrooms, our  
17 courtrooms are in full operation with virtual hearings in  
18 most instances.

19 Q. Okay. Thank you.

20 I'm just wrapping up and you said earlier during  
21 cross-examination, you were asked about the number of  
22 outstanding warrants. Can you please tell us, how many  
23 outstanding warrants were there just in 2020?

24 A. In 2020, I think the language outstanding warrants --  
25 I can tell the number of warrants that were issued.

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1       **I can't really speak to what's outstanding**  
 2   **because if I'm allowed to explain, over the years a**  
 3   **warrant is issued to a marshal. A warrant is considered**  
 4   **outstanding until the marshal executes one. A marshal can**  
 5   **hold in his hand or her hand a warrant that was issued to**  
 6   **them a year ago.**

7       **However, between them and their client,**  
 8   **generally the petitioner, they don't act on it, it's still**  
 9   **considered outstanding. So I can't speak to that number.**  
 10   **That number is better given by the agency that governs the**  
     **marshals.**

12       **I can speak to the number of warrants issued.**

13   Q. I'm sorry. That's my incorrect usage of the  
 14   terminology.

15       How many warrants were issued by the court in  
 16   2020?

17   A. **In 2020, residential warrants issued was 15,017.**

18   Q. And the stay -- a stay went into effect in March of  
 19   2020, correct?

20   A. **The initial stay, yes, by, I believe, executive order**  
 21   **issued in March of 2020.**

22   Q. So now that 15,000 number from 2020 is just New York  
 23   City, correct?

24   A. **Yes.**

25   Q. So it would be fair to assume the statewide number is  
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1       Am I also correct that eviction moratorium  
 2   stayed vast, vast majority of cases where eviction  
 3   warrants would have been sought because of March  
 4   evictions?

5       MS. KINIRONS: Objection.

6       THE COURT: What's the objection?

7       MS. KINIRONS: We are asking her to conclude and  
 8   speculate about two things, what was stayed and whether a  
 9   warrant was issued. We are walking through the whole  
 10   court process.

11       We will concede we are here for the statute and  
 12   state eviction proceedings.

13       MR. MASTRO: I simply asked --

14       THE COURT: Hold on. We don't do that.

15       If the witness understands the question, you can  
 16   answer it. I don't, but if you understand it, go ahead  
 17   and answer.

18   A. **I ask that you repeat the question, counsel.**

19   Q. Am I correct that after the moratorium took effect,  
 20   the vast majority of cases seeking eviction in March were  
 21   stayed due to the hardship damages?

22       Yes or no?

23   A. **I'm unable to answer that. I apologize.**

24       THE COURT: Okay.

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1 even greater?

2 A. **Absolutely.**

3       MS. KINIRONS: I have no further redirect.

4       THE COURT: Anything else?

5       MR. MASTRO: May I briefly, very briefly?

6       THE COURT: Go ahead, very briefly.

7       MR. MASTRO: Thank you, your Honor.

8      RECROSS-EXAMINATION

9      BY MR. MASTRO:

10     Q. Ms. Razzaq, you said 1,517 warrants issued in 2020,  
 11   but you also testified that after March 2020 there were  
 12   only about a hundred of those eviction warrants issued.

13       Correct?

14   A. **Yes.**

15   Q. So that means just in the two and a half to  
 16   three-month period, first quarter of the year, there were  
 17   1,400 eviction warrants issued --

18       MS. KINIRONS: Her number was 14,000 and 15,000.  
 19   Maybe there was a connection issue.

20   BY MR. MASTRO:

21   Q. 14,900 and a hundred issued after the eviction  
 22   moratorium, correct?

23   A. **Yes.**

24   Q. Am I also correct that the eviction moratorium stayed  
 25   most cases where eviction -- strike that.

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1       BY MR. MASTRO:

2   Q. Yet, there were only a hundred such cases after March  
 3   2020, correct?

4   A. **I apologize, counsel. I'm not understanding the**  
 5   **question.**

6   Q. Well, there were a hundred such eviction notices  
 7   issued after March of 2020, the eviction moratorium went  
 8   into effect, correct?

9   A. **Yes.**

10   Q. You were asked some questions earlier, counsel asked  
 11   you what the notice of hardship declaration notice said or  
 12   didn't say to tenants.

13       Do you recall that question?

14   A. **I recall a question, yes.**

15   Q. Isn't it a fact that the hardship declaration notice  
 16   to tenants does say, quote, if you sign and deliver this  
 17   hardship declaration form to your landlord, you cannot be  
 18   evicted for nonpayment of rent?

19       Doesn't it say that, ma'am?

20   A. **I don't remember it verbatim, but it likely says**  
 21   **that.**

22   Q. Thank you.

23   MR. MASTRO: No further questions, your Honor.  
 24   THE COURT: Okay. I think we are done with this  
 25   witness.

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1 Ma'am, thank you, very much, for the help.  
 2 THE WITNESS: Thank you.  
 3 THE COURT: Are there other witnesses to be  
 4 called?  
 5 MS. KINIRONS: No. We would rest, your Honor.  
 6 THE COURT: All right.  
 7 Any of the other defendants have any witnesses?  
 8 MS. LEE: No, your Honor.  
 9 THE COURT: Everyone said no, I think, yes?  
 10 MS. LEE: Yes, your Honor.  
 11 THE COURT: Let the record reflect that all  
 12 counsel are shaking their heads in an affirmative manner.  
 13 Plaintiff rests?  
 14 MR. MASTRO: Yes, your Honor.  
 15 THE COURT: Good.  
 16 So, let's proceed with any final argument, but  
 17 before you do that I have a question. I don't understand  
 18 something that came up today and I thought I kept it here.  
 19 With regard to the first witness, she has filed a lawsuit  
 20 and has an order to show cause returnable in July. I  
 21 don't know how you all designated the exhibit other than  
 22 to say it's attached to the May 29th letter from the state  
 23 attorney general's office but it's been filed a couple of  
 24 times. So it's right at the end. It's an order to show  
 25 cause why Ms. LaCasse should not be given immediate

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1 possession of the demise real property in Rhinebeck and  
 2 it's signed by a justice of the Supreme Court.

3 Mr. Mastro, is that fatal to your argument about  
 4 procedural due process? I don't understand. I thought  
 5 from my reading of it the statute said you can't do this  
 6 but apparently it's being done.

7 What does this mean?

8 MR. MASTRO: Your Honor, the short answer, as I  
 9 believe Ms. LaCasse was explaining, was that in  
 10 desperation, even though she had been blocked in court  
 11 before by the state, a lawyer filed on her behalf  
 12 something called an ejectment proceeding.

13 That will not be heard until the end of July and  
 14 then the judge there has time to decide what to do. But,  
 15 in fact, the ejectment proceeding has already been found  
 16 in other courts in New York State, including by Justice  
 17 Masley, Commercial Division here in Manhattan, it was  
 18 covered by the eviction moratorium stay.

19 So the fact of the matter is -- and we cite that  
 20 in our papers, your Honor. So Ms. LaCasse is not holding  
 21 out hope that somehow it's not covered by the eviction  
 22 moratorium, but she's trying everything in her power to  
 23 get back into her apartment because she and her child are  
 24 basically being booted out of where they are staying now  
 25 with her ex-fiancee. She can't even go home. She's

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1 immunocompromised.

2 So, your Honor, I don't think the fact that  
 3 she's -- how do I put this, the fact she has thrown a Hail  
 4 Mary that other New York courts have already found is  
 5 covered by the eviction stay affects her right to be  
 6 seeking the relief here about the then constitutionality  
 7 of the eviction stay.

8 THE COURT: Nothing I said should be viewed as  
 9 critical of Ms. LaCasse, not at all.

10 My question is, I have what appears to be the  
 11 signature, it's right there, of a Supreme Court justice  
 12 who seems to think that on July 9th he's going to eject  
 13 the tenants. If that's true we have a different legal  
 14 challenge on our hands.

15 MR. MASTRO: Your Honor, it's an order to show  
 16 cause.

17 THE COURT: Right.

18 MR. MASTRO: So that the case will be heard.

19 The case is now scheduled to be heard at the end  
 20 of July, and the judge is not necessarily going to issue a  
 21 decision on the order to show cause. It simply expedites  
 22 the time to be heard by a judge in that case. But the  
 23 argument that the eviction moratorium stayed that case  
 24 will in all likelihood be raised in that case.

25 But, as I said, Justice Masley in the Commercial

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1 Division already ruled that it does stay such a case.

2 THE COURT: Do any of the defendants want to  
 3 argue anything to me about that order?

4 MS. CONNOLLY: Yes.

5 Your Honor, as you said there was an order to  
 6 show cause that was signed by the judge. I don't believe  
 7 any appellate court ruled on that issue. It's our  
 8 position that just like Ms. LaCasse, every other landlord  
 9 has the opportunity to sue for an order based on the  
 10 contract that they have with their tenants, as well as  
 11 pursue an ejectment claim against the tenants who are  
 12 paying.

13 THE COURT: Is it your -- is it the position of  
 14 the state, you are representing the court system, that if  
 15 someone sues for ejectment it's not covered by the  
 16 eviction moratorium?

17 MS. CONNOLLY: I don't believe that an appellate  
 18 court has ruled to that effect, your Honor, and I believe  
 19 we have taken the position in our papers that in other  
 20 proceedings may proceed on behalf of landlords, other  
 21 proceedings.

22 MR. MASTRO: Your Honor, may I please be heard  
 23 briefly on that?

24 THE COURT: Just a second. I'm trying to absorb  
 25 all of that. That's something.

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1 So is it the position of the Chief  
 2 Administrative Judge of the State of New York that by  
 3 calling it an ejectment under CPLR 601, that would not be  
 4 covered by the eviction statute? This is really  
 5 important.

6 MS. CONNOLLY: Your Honor, I would love to take  
 7 a look at the cases that Mr. Mastro was discussing, but  
 8 certainly we do not have appellate authority to that  
 9 effect.

10 THE COURT: Counsel, I'm sorry. Just give me  
 11 your name again.

12 MS. CONNOLLY: Susan Connolly.

13 THE COURT: Thank you, Ms. Connolly. I  
 14 apologize. Your name is not coming up on the system.

15 But that's a little kind of odd, right? In  
 16 other words, do you believe that this is an exception to  
 17 the eviction moratorium such that we don't have the issues  
 18 concerning whether landlords have access to the courts?

19 MS. CONNOLLY: If the actions under the RPAPL,  
 20 it would be covered under Article 7, because that is what  
 21 CEEPPA covers.

22 THE COURT: I'll hear from plaintiffs' counsel  
 23 again.

24 What do you want to say?

25 MR. MASTRO: Your Honor, I completely concur

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1 with the court.

2 We brought out with Ms. LaCasse, she had this  
 3 action pending and it was out of desperation. The fact of  
 4 the matter is I don't see how someone from the state  
 5 attorney general's office in a straight face can tell your  
 6 Honor, not answer your Honor's question directly.

7 Of course the state considers an ejectment  
 8 proceeding to be covered by the eviction moratorium law.  
 9 That's what Justice Masley found in Jacob Cram Cooperative  
 10 v Ziolkowski, 2021, Westlaw 225304.

11 THE COURT: Slow down. Give that to me again.  
 12 2021, Westlaw.

13 MR. MASTRO: 225304, that's New York Supreme  
 14 Court Commercial Division, January 22, 2021.

15 Your Honor, when my adversary for the AG's  
 16 office dodges and weaves with, oh, well, there are  
 17 exceptions, the only two exceptions they cited in the  
 18 paper were the tenant failed to file a hardship  
 19 declaration and in the extraordinary case of nuisance  
 20 which was described to your Honor earlier that doesn't  
 21 apply to Ms. LaCasse, with a one-house rental.

22 Your Honor, nothing about ejectment, it would  
 23 totally gut the statutory scheme if everybody could go  
 24 into court who is a landlord -- I wish she would say that  
 25 ejectment works because we'd be in a very different

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1 posture, but it would totally gut the statutory scheme and  
 2 the government's intent. Let's be honest, let's be honest  
 3 with you, all parties be honest with you. It's not the  
 4 intent of this legislation, the AG's office knows it, to  
 5 say that an ejectment proceeding is a third exception.

6 Thank you, your Honor.

7 THE COURT: Okay.

8 Counsel, understand, you are asking at this  
 9 moment in time for extraordinary relief, right. In some  
 10 ways the most extraordinary relief. You are asking this  
 11 court to bring a federal constitutional provision to  
 12 strike down a state legislative act. You introduced this  
 13 piece of evidence. I have to deal with it. It doesn't  
 14 make the job easier and, frankly, your job is hard to  
 15 start with.

16 MR. MASTRO: Your Honor, of course I understand  
 17 the question. Of course we have four separate clients,  
 18 each of whom has their own unique story.

19 So whatever your Honor's concerns about one as  
 20 opposed to the others, we have two individuals, two  
 21 clients here, your Honor, who sought and received in one  
 22 case a warrant of eviction before COVID even hit. Yet,  
 23 this overbroad, unconstitutional statute stays even their  
 24 rights when these have nothing to do with COVID, has  
 25 nothing to do with protecting tenants in COVID when they

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1 were already not paying or staying over their lease.

2 THE COURT: Counsel, should I draw any  
 3 inferences about the fact that you didn't call that  
 4 plaintiff, even though I sort of took an extraordinary  
 5 step by asking for more information about that plaintiff  
 6 this very weekend?

7 MR. MASTRO: Your Honor should draw no  
 8 inference.

9 We could call those witnesses, two of whom are  
 10 speaking about the American immigrant story and put in  
 11 their declaration, but at a short hearing like this, they  
 12 were individuals worried about their English language  
 13 skills and needing a translator, that's number one.  
 14 That's Mr. Shi. Then Mr. Chrysafis is overseas.

15 But, your Honor, there is no dispute about the  
 16 facts in both of their situations. No inference is to be  
 17 drawn from the fact that their accounts are unchallenged,  
 18 their court records verify these facts. So, no. I don't  
 19 think your Honor should do that, but I do want to come to  
 20 the burden that your Honor is talking about.

21 THE COURT: Okay.

22 MR. MASTRO: This is not my first rodeo with the  
 23 Cuomo administration's overly onerous regulations, even  
 24 with the pandemic. I went all the way to the Supreme  
 25 Court with the Roman Catholic Diocese which involved First

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1 Amendment rights.

2 Your Honor, as much as we respect that those  
3 early months of the pandemic to be dealt with, the Supreme  
4 Court made very clear in the Roman Catholic Diocese case  
5 said even in a pandemic the constitution cannot be put  
6 away and forgotten, unquote.

7 Your Honor, we are more than 15 months after the  
8 pandemic started. We are talking about three more months  
9 before this eviction moratorium is lifted. The courts  
10 have opened. New York has lifted mask restrictions, has  
11 opened up outdoor and indoor space and restaurants, it's  
12 opened up large event venues. We are reopening. Schools  
13 are reopening. The courts are reopening at one hundred  
14 percent. You heard it from the witness today.

15 Your Honor, talk about a due process violation,  
16 I'm sorry. We presented witnesses today, one elderly  
17 woman on social security who literally said she is so  
18 fearful now about her situation that she just really  
19 cannot make ends meet, even accessing government programs  
20 and how it keeps her up and she really can't function.

21 Ms. LaCasse, most of all, broke down in tears  
22 before your Honor, broke down in tears on the stand, did  
23 get her composure back because she is in absolute crisis  
24 and can't even petition, petition the courts in light of  
25 her circumstance. And, your Honor, talk about due

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1 process, talk about a due process violation. Her property  
2 that she needs to live in herself, she and her child, an  
3 immunocompromised military veteran during a war, a hero,  
4 being kicked out of the house and now charged rent by her  
5 ex-fiancee, she's desperate to find a place for her and  
6 her child to live. She can't even petition a court.

7 They talk about a substantive and a procedural  
8 due process violation being a problem for someone like  
9 Ms. LaCasse, the same goes for the other individuals, each  
10 of whom has their own unique story, some of whom long  
11 predate COVID that their tenants were derelict. But they  
12 can't do anything right now about this situation. As the  
13 witness just testified here the -- she said a typical  
14 proceeding from soup to nuts, start to finish, takes four  
15 to six months. What a terrible situation. What a  
16 terrible thing to do to those small property owners in our  
17 country.

18 You heard Ms. Cohen say it, she never thought  
19 something like this would happen in America and, your  
20 Honor, I submit to you this. There is no adequate remedy  
21 post the lifting of the stay. Ms. LaCasse can't get her  
22 property back right now to live in when she's basically  
23 being kicked out by her boyfriend. Mr. Chrysafis  
24 overseas, wanted to sell a year and a half ago, can't  
25 sell. We are talking about individuals who have been

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1 deprived of fundamental constitutional rights involving  
2 due process, both substantive and procedural.

3 And even if it's for a short period of time,  
4 your Honor, the Supreme Court says in Christopher v Hawley  
5 and others, they say that this is now both due process and  
6 petitioning rights under the First Amendment, it doesn't  
7 matter whether it's for a short period of time. They are  
8 losing their constitutional right. As your Honor knows,  
9 the Roman Catholic Diocese case we won in the Supreme  
10 Court, and the Aguda case, we won in the Supreme Court, it  
11 is irreparable harm to violate one's constitutional  
12 rights.

13 THE COURT: I'm sorry, counsel. Did you handle  
14 that case?

15 MR. MASTRO: Yes, your Honor.

16 THE COURT: Okay. I was wondering who the we  
17 was. Go ahead.

18 MR. MASTRO: Yes.

19 Your Honor, I'm simply pointing out that that's  
20 exactly what the Supreme Court said, and then the Second  
21 Circuit reiterated and said the violation of  
22 constitutional right, even for minimal periods, is  
23 irreparable harm. That's the Second Circuit said it's  
24 presumed when you violate a constitutional right,  
25 including First Amendment petitioning rights and, of

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1 course, we are talking due process as well.

2 And, your Honor, to me this is not -- where we  
3 are today, the burden has shifted. The burden has shifted  
4 to the state to justify how everything else is reopening,  
5 including the courts a hundred percent. They can deprive  
6 my clients of the ability to possess, use their property  
7 and derive some income out of their property.

8 Your Honor, you can see these small landlords  
9 suffering, suffering, this suffering has to end. The  
10 state made no showing whatsoever that today, when our  
11 state is basically fully reopen and your Honor has all  
12 those public records to show it, the governor's reopened,  
13 everything is reopened, no capacity restrictions, the  
14 large venues, the mask mandate is lifted, the CDC has  
15 lifted the mandates, we have vaccination today,  
16 vaccination. This isn't about, as they originally  
17 positioned this eviction moratorium, the protection of  
18 people against the pandemic. We have vaccination today,  
19 the world has changed in the last eight months.

20 Your Honor, if I may very, very briefly, what  
21 goes to the state's interest and the state cannot with a  
22 straight face say to your Honor, the public interest or in  
23 the balance of equities is in our favor because the court  
24 system will have a lot of cases. Let's be honest about  
25 it. 14,000 eviction warrants issued, 14,900 in the first

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1 three months of the year. We have only had a hundred  
 2 issued since. People who have been locked out of the  
 3 courthouse door because of this eviction moratorium and  
 4 these hardship declarations. Your Honor, they are capable  
 5 of handling thousands and thousands of cases at a time.

6 The chutzpah, you will forgive me for saying it  
 7 but it's a great New York word, the chutzpah of saying we  
 8 used to handle a quarter, 14,900 eviction warrant cases  
 9 but, my God, you would be locked out of the courthouse for  
 10 15 months, but don't reopen the door because it's going to  
 11 be a burden on us at the courthouse, that is no defense at  
 12 all. That shouldn't be credited one whit.

13 Your Honor, I have to say one more thing. I  
 14 hope your Honor will allow me because it's still clear due  
 15 process --

16 THE COURT: Counsel, be clear about something,  
 17 counsel, I haven't stopped you from saying anything.

18 Go ahead.

19 MR. MASTRO: Yes, I know.

20 But, your Honor, you will forgive me for going  
 21 back to the compelled speech issue for just a second.

22 THE COURT: Go ahead.

23 MR. MASTRO: Because I know your Honor enjoys a  
 24 spirited argument and said you would keep an open mind on  
 25 all issues.

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1 THE COURT: I do, counsel.

2 MR. MASTRO: Your Honor, the due process issues,  
 3 both substantive and procedural, this whole putting forth  
 4 a standard that our clients are blocked from the  
 5 courthouse door and can't get their property back to  
 6 possess and can't get even a nonpayment of rent, you heard  
 7 the state's witness say it, your Honor.

8 Yes, there are a lot cases where you get -- a  
 9 lot of cases that very few where you see a satisfaction of  
 10 judgment and a lot of cases where the landlord can never  
 11 get the money. What a surprise. I got a judgment against  
 12 a deadbeat tenant. I can't collect the money later. That  
 13 is not exactly hard to understand how that happens, your  
 14 Honor.

15 But, leaving that aside, we have clients here  
 16 who want possession of the property, need possession of  
 17 the property, either to live in it or to sell it, and they  
 18 can't get it because the courthouse door is closed.  
 19 That's your fundamental due process problem and your  
 20 fundamental First Amendment petitioning problem.

21 But it's also, your Honor, a compelled speech  
 22 problem, particularly this compelled speech which is so  
 23 vague that basically it allows, encourages because it says  
 24 check the box, tenant, and you will not have to --  
 25 eviction proceedings will be stayed. Doesn't even require

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1 them to say which category they fall into, although other  
 2 circumstances seems to be a catchall that makes no sense.

3 But leave that aside as a void for vagueness  
 4 factor and due process analysis where clients are being  
 5 denied their substantive and procedural rights with this  
 6 void for vagueness scheme, but they can't even challenge  
 7 the hardship declaration. The hardship declarations  
 8 themselves encourage checking a box, not being at all  
 9 clear what the alleged hardship is, with vague language  
 10 and broad language.

11 Your Honor, compelled speech question, your  
 12 Honor asked me some very good questions about other  
 13 circumstances. I just want to explain to your Honor, it's  
 14 conflating two areas of First Amendment law that really  
 15 have relatively clean separation. There is a body of  
 16 First Amendment law that says if it's commercial speech,  
 17 if it's purely factually information known to the landlord  
 18 or in the case of certain products or services, something  
 19 known to the landlord that requires some sort of warning  
 20 or notice to the public, that is considered perfectly  
 21 consistent First Amendment law. It's like Souder, which  
 22 is the one about attorney advertising. Attorneys have to  
 23 be careful what they say. You can't commit false  
 24 advertising. The government has the right to regulate it.

25 By the same token, the government has the right  
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1 to regulate when you are selling a product or engaged in  
 2 the sale of product. If you know of a hazard, a problem  
 3 with the product, you have to warn the public before you  
 4 put it out for sale. That's why the warning on the  
 5 cigarette packs happened because it was fact, a determined  
 6 fact, CDC, Surgeon General, it was an accepted fact that  
 7 cigarettes caused cancer. They had to have a warning that  
 8 if you were going to smoke, had to put the warning on  
 9 there. That's perfectly consistent of First Amendment  
 10 law.

11 But this isn't commercial speech, your Honor.  
 12 This isn't about the economic interest of the landlords.  
 13 This isn't about the landlords trying to get somebody to  
 14 rent their property. This is the antithesis of that.

15 This is requiring landlords to explain to their tenants  
 16 how they can avoid paying rent. This is so much like  
 17 Becerra, the Supreme Court case, where when they are  
 18 advising people not to get abortions, it's directly  
 19 contrary to their mission and their business to force  
 20 them, like California was doing, to tell people who come  
 21 to see them, here's where you can get an abortion. That  
 22 is the antithesis of their business interests. They  
 23 fundamentally disagree with that.

24 The landlords fundamentally disagree with this  
 25 eviction moratorium stay that they are being required to

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1 give tenants this vague message and tell them, if you  
 2 check the box you can avoid this. And even worse, your  
 3 Honor, I have never heard of a piece of legislation in my  
 4 lifetime where I am required by -- or my client is  
 5 required by statute when he or she goes in to court to  
 6 tell the adversary, here is a curated government list of  
 7 legal organizations to block me from proceeding. I'm both  
 8 required -- my clients are both required to distribute a  
 9 hardship declaration, and, at the same time, say -- that  
 10 says language that landlords wouldn't use about all you  
 11 have to do is check the box and our obligation to pay rent  
 12 is stayed, and here's lawyers you can get to slow things  
 13 down too.

14 I mean, talk about the antithesis of commercial  
 15 speech, talk about the antithesis of someone having to  
 16 make a disclosure because there is something wrong with  
 17 their product, this is the exact opposite of that. This  
 18 is compelled speech in the clearest, most unconstitutional  
 19 way. As compelled speech, it is subject to strict  
 20 scrutiny, and subject to strict scrutiny, then the  
 21 standard shifts to the government.

22 I am being compelled to give the government's  
 23 speech. My client is being compelled to give the  
 24 government speech to tenants against a financial interest,  
 25 and in that circumstance, if the government had a

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1 compelling interest and this is narrowly tailored, the  
 2 most narrowly tailored way to achieve the government's  
 3 interest, then it would survive.

4 But, your Honor, we heard from the state's one  
 5 witness. They sent out 500,000 mailings and got a very  
 6 large, tens of thousands responding with hardship  
 7 declarations.

8 THE COURT: Are you saying they are not allowed  
 9 to do that? The government can't send those out?

10 MR. MASTRO: Oh, no, your Honor.

11 I am saying they offered the proof there were  
 12 narrowly tailored alternatives to forcing my clients to be  
 13 the ones to distribute.

14 THE COURT: Counsel, one day, a long time from  
 15 now, I hope you will look back on this proceeding with the  
 16 wisdom of, hey, you remember that case I had, I introduced  
 17 the fact that people were excluded from their own homes,  
 18 but what was really outrageous was they had to give a  
 19 handout to their tenants.

20 You are putting them on the same path as though  
 21 I don't understand, and I just don't understand --

22 MR. MASTRO: Your Honor, your Honor --

23 THE COURT: The really outrageous part you were  
 24 telling me is that they had to give them this notice.

25 That's the outrageous part?

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1 MR. MASTRO: Your Honor, your Honor, I am not  
 2 suggesting that one claim rises above the others.  
 3 I started this discussion today, this argument  
 4 today explaining to you that it is heartbreaking, your  
 5 Honor, heartbreaking, to see Ms. LaCasse, military  
 6 veteran, single mother, break down on the stand. I feel  
 7 terrible that we had to put her through that.

8 But, your Honor, Ms. Cohen kept her composure  
 9 and was amazing for the 70-something --

10 THE COURT: 68, sir, she's 68.

11 MR. MASTRO: 68, I'm sorry, your Honor.

12 So, your Honor, please don't misunderstand what  
 13 I'm saying. I am saying that we should win this case for  
 14 those suffering small property owners, but I'm also  
 15 saying, your Honor, there is this additional First  
 16 Amendment claim.

17 THE COURT: Okay.

18 MR. MASTRO: And it is beyond the pale of First  
 19 Amendment law, even if it is not the same, doesn't tug at  
 20 your heartstrings the same way.

21 So when I look back at this case, I will say to  
 22 myself, I poured my guts out for Ms. LaCasse and  
 23 Ms. Cohen, Mr. Shi and Mr. Zhou, Mr. Chrysafis, because  
 24 they are suffering for too long when we have come out of  
 25 the pandemic and they need relief now and they need to be

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1 able to get their properties back. So an old woman can  
 2 sleep at night instead of worrying she is going to lose  
 3 that property because she can't keep it up, a mother being  
 4 kicked out by her ex-fiancée, she can get back in her  
 5 property so she has someplace to live.

6 THE COURT: Let me ask you a few things that  
 7 might be more helpful and I promise you I will consider  
 8 everything you have argued. I promise I will consider  
 9 everything.

10 But, I'm going to now pose to you the question  
 11 you tried to pose to a court administrator who did a fine  
 12 job on the stand today. This notion of the presumption  
 13 that goes with the hardship application should we return  
 14 to a world of eviction proceedings, where does that come  
 15 from? Because as I read the act, when it expires in  
 16 August everything expires, including that presumption  
 17 piece which is a little odd unless that comes from a  
 18 different act.

19 And if that is the case, if the legislature has  
 20 provided in that other act, and I don't know the name of  
 21 it, forgive me, is the notion that there is a presumption,  
 22 rebuttable presumption in favor of these hardship  
 23 declarations, violative of your client's rights?

24 MR. MASTRO: Your Honor, it's related  
 25 legislation and my colleagues will correct me if I'm not

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1 stating this perfectly, but, your Honor, there is related  
2 legislation called the Tenant Safe Harbor Act.

3 THE COURT: Do we have that here?

4 Is that one of the things you gave me in your  
5 binder?

6 MR. MASTRO: I don't know if the act is in the  
7 binder but I'm happy to provide the court with a copy.

8 It is referenced in the court papers, your  
9 Honor.

10 THE COURT: Okay.

11 And we think the presumption comes from there?

12 MR. MASTRO: One of my colleagues is looking it  
13 up now.

14 THE COURT: But we think the presumption comes  
15 from there, the Tenant Safe Harbor Act?

16 MR. MASTRO: Mr. Shapiro wants to jump in.

17 THE COURT: Mr. Shapiro, go.

18 MR. SHAPIRO: Yes, your Honor. Thank you,  
19 again.

20 The original -- can you hear me, your Honor?

21 THE COURT: Yes. Go ahead.

22 MR. SHAPIRO: The CEEFPA in the Part A, Section  
23 10, is where the rebuttable presumption comes from,  
24 articles of declaration shall create a rebuttable  
25 presumption.

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1 THE COURT: Right.

2 Doesn't that expire in August? Doesn't that go  
3 away in August?

4 MR. SHAPIRO: No, because the expiration of  
5 various provisions of the act separates that presumption  
6 out from the upcoming expiring provisions.

7 THE COURT: Show me that, please.

8 MR. SHAPIRO: It's provision 13 of the original  
9 acts, which is basically reenacted in the extension.

10 It's Exhibit A to our complaint.

11 THE COURT: All right.

12 MR. SHAPIRO: So Section 13 says the acts take  
13 effect immediately and section one, two, three, four,  
14 five, six, et cetera, but you notice it skips Section 11,  
15 shall expire on May 1st and the original act was extended  
16 to August 31st but that was in effect.

17 If you look at Section 11, which is the one  
18 provision of the original CEEFPA that does not expire on  
19 the expiration date, that's the rebuttable presumption.

20 It is clear from the statute that can survive.

21 THE COURT: I see.

22 They skipped 11, got it, and 11 is the  
23 presumption.

24 MR. MASTRO: There will be such proceedings,  
25 your Honor.

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1 THE COURT: Right.

2 Now, are you challenging the legitimacy of that?

3 MR. MASTRO: Your Honor, we are also saying,  
4 yes, because it creates a rebuttable presumption that  
5 still extends the moratorium for another four to six  
6 months.

7 You heard the testimony of the state's  
8 witness --

9 THE COURT: No. No. Stop. Stop. Stop.  
10 Stay with the issue. Are you challenging the  
11 constitutionality of the rebuttable presumption? Doesn't  
12 the legislature have the right if it wanted to tomorrow to  
13 change the burden of proof in those cases? It could say  
14 you have to prove beyond a reasonable doubt, or something,  
15 yes?

16 MR. MASTRO: Your Honor, we have challenged the  
17 constitutionality of CEEFPA Part A in its entirety because  
18 it is so bound together with dozens of references to these  
19 hardship declarations.

20 We also challenged the hardship declarations on  
21 the --

22 THE COURT: Mr. Mastro, I'm going to say this as  
23 a practical matter, I really mean it as a theoretical  
24 matter.

25 You are using a shotgun. I would like to buy

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19 the expiration date, that's the rebuttable presumption.

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23 presumption.

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25 your Honor.

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1 THE COURT: You are breaking up. I am losing  
2 you completely.

3 MR. MASTRO: Sorry, your Honor. I'll speak up  
4 and I'm cognizant of not yelling.

5 THE COURT: You are not yelling. It's fine.

6 MR. MASTRO: Your Honor, we have argued that the  
7 hardship declaration is void for vagueness because there  
8 are no standards.

9 If, if there were a court supervising such  
10 cases, if it were merely a rebuttable presumption, at  
11 least we would be able to get back into the courthouse.

12 THE COURT: Right.

13 MR. MASTRO: Even though that would take some  
14 time.

15 But let me just say this, your Honor, because  
16 I'm not trying to take -- I'm trying to take a sledge  
17 hammer instead of a scalpel. The problem with CEEFPA Part  
18 A is it's inextricably tied to legitimacy of the hardship  
19 declarations. As written, the hardship declaration is  
20 riddled with ambiguity. My clients are still denied due  
21 process because the tenant checks the box. The tenant --  
22 it's not clear what the standards are. The landlord  
23 doesn't even know how to defend in such a case. So, yes.  
24 Would it be an improvement to enjoin CEEFPA Part A while  
25 the courthouse doors are opening even if your Honor left

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1 the rebuttable presumption in place? Of course that would  
2 be an improvement.

3 But, your Honor, the rebuttable presumption  
4 continues then constitutionality as a matter of due  
5 process because while it allows the courthouse door to be  
6 opened, that door will effectively not be able to provide  
7 a remedy for a number of months because of the rebuttable  
8 presumption here --

9 THE COURT: But even if you remove --

10 MR. MASTRO: The burden had --

11 THE COURT: Even if you remove the rebuttable  
12 presumption it will still take months, right?

13 MR. MASTRO: Not necessarily, your Honor,  
14 because, as the last witness said, some cases move faster  
15 than others.

16 I think the way she laid out the timing, if one  
17 went to court now or if one had a pending proceeding, two  
18 of my clients, your Honor, have pending proceedings that  
19 go back to 2019 where they already have an eviction  
20 warrant or they have already won a judgment to that  
21 effect. They can get relief right away, right away, your  
22 Honor, if they are not contested, as so many of these  
23 cases are not. As our last witness admitted going through  
24 the timing it takes a relatively short period when the  
25 tenant realizes they don't have a leg to stand on.

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1 Right now the way this statute is structured it  
2 gives tenants the incentive to take advantage of these  
3 vague terms, check the box and stay ensconced and not pay  
4 rent. That's what's so fundamentally unfair. But if it's  
5 lifted it will go back to the status quo ante, same  
6 procedures. We have at least two of my clients who have  
7 an eviction warrant already or are poised for one, and if  
8 the tenants realize they no longer have any constitutional  
9 statutory shield of a hardship declaration, cases could  
10 move in a matter of weeks.

11 THE COURT: Okay.

12 MR. MASTRO: As the last witness just testified.

13 THE COURT: Okay.

14 Anything else?

15 MR. MASTRO: No, your Honor.

16 Does your Honor have any other questions? I  
17 really appreciate all the time, your Honor. This is such  
18 a hugely important case for thousands of small landlords  
19 out there who are suffering, suffering, suffering, like  
20 Brandie LaCasse and Betty Cohen are.

21 THE COURT: Thank you.

22 Who would like to go first for defendants?

23 MS. CONNOLLY: Your Honor, I certainly don't  
24 have the dramatic flare that Mr. Mastro has and I have  
25 every trust in the court to read the submissions.

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1 It's all laid out there. I don't need to  
2 belabor the points that you clearly have digested. You  
3 heard testimony today. Nothing that's been testified to  
4 by these particular plaintiffs has supported their case.  
5 To be perfectly fair, and the arguments that counsel has  
6 provided here today really don't serve to amplify their  
7 papers in this respect at all.

8 So to that extent, unless the court has  
9 particular questions, I'm happy to rest on the papers that  
10 we have submitted and look forward to filing a motion to  
11 dismiss for you shortly.

12 THE COURT: Ms. Connolly, I'm not going to let  
13 you off the hook just that easily.

14 MS. CONNOLLY: Perfectly happy to do so.

15 THE COURT: My concern, as I had stated at the  
16 beginning, is the post-deprivation remedy. In other  
17 words, when I'm entitled to some sort of post-deprivation  
18 hearing and I look at the cases and it always says  
19 promptly or briefly or shortly or for a time, a temporary  
20 delay is okay.

21 Aren't we past temporary delays at this point?

22 MS. CONNOLLY: Well, Judge, post -- all post  
23 deprivation within the context of a constitutional  
24 violation has to do with whether or not there is a  
25 meaningful opportunity to be heard.

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1 There is no drop dead date, so to speak, with  
 2 regard to when that should happen. To imply that there is  
 3 one really is a disservice to the process. I would think  
 4 it's no surprise to anyone here that eviction proceedings  
 5 take a lot of time, even absent COVID they take an  
 6 extraordinary amount of time. If we accepted the  
 7 arguments that plaintiffs have made today with regard to  
 8 procedural due process, every eviction proceeding would  
 9 violate due process. We know that that's not the case.  
 10 Matters take time in landlord-tenant court. To be  
 11 perfectly honest they take time in federal court.

12 But there is an option for seeking relief within  
 13 landlord-tenant court, but there are other options for  
 14 seeking relief in other avenues, and the mere fact that  
 15 the plaintiffs cannot pick their favorite spot does not  
 16 mean that there has been a deprivation for procedural due  
 17 process grounds.

18 THE COURT: Okay.

19 Since you know the statutes well, I'm going to  
 20 ask you this. I look at the December, I think it was,  
 21 enactment of CEEFPA in December and they said okay, until  
 22 May or May 1st, May 31st, whatever it was, a date in May  
 23 no evictions. We are going to stop and put it on pause.  
 24 I think that was the phrase.

25 MS. CONNOLLY: Right.

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1 THE COURT: And the legislature takes the time  
 2 in December to lay out the reasons, and it's twofold.  
 3 It's really interesting, it's twofold.

4 One is the mere act of evicting people could  
 5 cause the spread of the disease and I get that, right.  
 6 You are going to send teamsters into people's homes and  
 7 throw them into the street and they have to move, big  
 8 problem, right. A problem that abates over time. It's  
 9 not gone but it abates.

10 But they also say --

11 MS. CONNOLLY: But --

12 THE COURT: Well, it's abating as we speak  
 13 because half the state is vaccinated at this point.

14 MS. CONNOLLY: Right.

15 THE COURT: They also say there is the economic  
 16 hardship, all these problems that arose, right. That's  
 17 another reason we want to put this on hold until May, and  
 18 it's very nicely spelled out.

19 Then there is another statute that comes along  
 20 and says, you know that May thing, we are going to make it  
 21 August. Where does the legislature tell me why they did  
 22 that? Where do I find that reason?

23 MS. CONNOLLY: I believe Ms. Kinirons cited to  
 24 the fact that the statute has the legislative intent  
 25 attached to it, the exhibit she submitted today as I think

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1 C or D, has that legislative intent.

2 The interesting thing also --

3 THE COURT: As to the May enactment?

4 MS. CONNOLLY: Yes, as to the May enactment.

5 THE COURT: Okay. Hold on. Sorry. There is a  
 6 lot of paper here.

7 Someone please focus me to that. That was the  
 8 attachment to the May 25th letter, yes?

9 MS. CONNOLLY: Yes.

10 THE COURT: I got that. All right.

11 So that's the rationale.

12 MS. CONNOLLY: Right.

13 And obviously the legislature, as your Honor has  
 14 pointed out, can make these decisions and enact  
 15 legislation that affect how the courts run and what  
 16 presumptions can be opposed, et cetera, et cetera, in  
 17 their review of a serious and hundred-year problem that  
 18 had to be faced.

19 And, as your Honor is well aware, and financial  
 20 emergency that occurs several months before does not just  
 21 stop happening. Those effects roll out over time and they  
 22 need to be addressed in some way. And the legislature,  
 23 whose job it is to make these decisions for us, made the  
 24 decisions. This is a completely different situation from  
 25 the numerous cases that we have had to litigate regarding

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1 the executive orders of the court -- I mean, excuse me --  
 2 of the governor and this was a legislative enactment.

3 So if we have a problem with the legislative  
 4 enactment, the answer really is the electoral process, not  
 5 coming to court because you are not in agreement with  
 6 something that your legislature has now enacted.

7 THE COURT: Right.

8 But that can't be the end of it because if the  
 9 legislature in December instead of extending this to May  
 10 they extended it for 150 years, and they came in and said,  
 11 Judge, due process has to happen. We have to be heard at  
 12 some point. We can't wait 150 years.

13 You would agree with me I think the due process  
 14 clause would be implicated in a century and a half,  
 15 correct?

16 MS. CONNOLLY: Correct.

17 But the interesting thing is the initial  
 18 enactment, and I ask forgiveness of the court, I don't  
 19 have it in front of me, the initial enactment spoke to the  
 20 legislature revisiting it come May, which they did, right,  
 21 and have now imposed the extension.

22 The extension does not include that language  
 23 about revisiting the statute for a further time. I think  
 24 everybody can see we are moving forward in a positive  
 25 direction. We all hope that will continue, although what

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1 we have seen in other countries is that, you know, the  
 2 loosening of restrictions has led to spiking of COVID  
 3 again and God for bid we deal with that here, but it is a  
 4 possibility and that is also something the legislature  
 5 needed to take into account.

6 We are now talking about a matter of a couple of  
 7 months before this legislation expires when people are  
 8 still struggling to get back on their feet, not just  
 9 plaintiffs in this situation, but also, Ms. Cohen was  
 10 talking about her renter who hasn't paid, who paid her for  
 11 25 years religiously, didn't miss a payment, was rarely  
 12 late, and sounded like really the model renter. I think  
 13 it's rational to think that person might have been having  
 14 financial problems during this pandemic, as many people  
 15 have.

16 So to the extent we are talking about a couple  
 17 of months down the road before the expiration of the  
 18 statute, and given the length of time that eviction  
 19 procedures normally take in the State of New York, it does  
 20 not seem like a tremendous stretch to allow this  
 21 legislative enactment to go forward when it does not  
 22 violate constitutional rights in any way.

23 Counsel talked about First Amendment violation  
 24 of free speech principles, and equating it to an abortion  
 25 script that had to be written. I mean, your Honor at the

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1 very start of today said, you know, let's move on to  
 2 something else.

3 THE COURT: Right.

4 MS. CONNOLLY: That has never been that type of  
 5 constitutional violation that needed to be addressed by  
 6 the court.

7 THE COURT: I'm really, really only concerned or  
 8 moved at this point and I'm looking at everything and I  
 9 could change my mind, but I don't think so, but the due  
 10 process issue.

11 MS. CONNOLLY: Right.

12 THE COURT: That's my concern, and, counsel, if  
 13 anything could be easy in this case and nothing, nothing  
 14 is easy here --

15 MS. CONNOLLY: Nothing is easy.

16 THE COURT: -- if we had a landlord testify  
 17 today who said, you know, that tenant of mine checked the  
 18 box that said hardship and I'm starving and then I go on  
 19 his or her Facebook page and they are on their yacht, they  
 20 are on their yacht drinking martinis going, ah-ha, I don't  
 21 have to pay rent now, then you would say, good God, we  
 22 have to give that person the chance to go to court.

23 Because we didn't have that plaintiff today  
 24 that's not so easy or clear. But even the plaintiffs you  
 25 heard from today, don't they have the right to raise the

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1 question? Just because someone checks a box, I don't get  
 2 any rent anymore? It seems outrageous.

3 MS. CONNOLLY: Your Honor, whether they checked  
 4 the box or not would not prevent a bad tenant from  
 5 stopping their rent payments, right. That's going to  
 6 happen in the real world anyway.

7 But what the question is whether or not the  
 8 delay, supposed delay in an eviction proceeding is enough  
 9 of an imposition that it constitutes a violation of  
 10 procedural due process, and there's been nothing produced  
 11 that says that with the availability of other remedies,  
 12 with the availability of a proceeding later on down the  
 13 road, not that far away at this point, especially for the  
 14 plaintiffs who already have warrants ready to go, that is  
 15 not the type of procedural due process violation that  
 16 should be ruled by this court. There is no support for  
 17 that.

18 And nothing that the plaintiffs here today said  
 19 I think supports their position on that issue.

20 THE COURT: All right. Thank you.

21 Anything else you would like to add?

22 MS. CONNOLLY: Just stand on my papers, your  
 23 Honor.

24 THE COURT: Thank you.

25 Would any of the other counsel like to be heard?

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1 MS. LEE: Your Honor, Kimberly Hunt Lee for  
 2 Dutchess County.

3 If you have any questions certainly we would be  
 4 happy to answer them. Obviously we would take the  
 5 position and follow along with the state on everything  
 6 that has been said and argued. On behalf of the Dutchess  
 7 County Sheriff, I don't think anything has been introduced  
 8 today that implicates that the sheriff had any role in any  
 9 drafting of the legislation or any deliberations related  
 10 to it.

11 And the Dutchess County Sheriff and perhaps  
 12 others, have such a nominal role and nothing has been  
 13 testified as to any involvement. There's been no warrants  
 14 presented to them. It's hard to see how the sheriffs  
 15 contributed to any constitutional violation that the  
 16 plaintiffs alleged. Obviously we are comfortable with  
 17 proceeding with a 12(b)(6) motion.

18 And the only point I would like to add on to  
 19 what the state said in that Exhibit D that you were  
 20 provided by the state, they talk about funding that the  
 21 governor or the legislature passed in April of 2021, and  
 22 that funding goes to that Emergency Rental Assistance  
 23 Program and I think that supports the state's position  
 24 that there are programs, there are avenues, and that the  
 25 delay or the extension of CEEPPA is justified as they are

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1 trying to implement these programs so that it provides  
2 relief for landlords.

3 And whether it works as intended I suppose is  
4 another question for another day. But the intention  
5 certainly, and you heard the testimony from Ms. -- from  
6 the court witness, that the funding, if it's approved,  
7 goes directly to the landlords.

8 And in the case of Ms. LaCasse, which is the  
9 Dutchess County resident, she has a pending order to show  
10 cause which your Honor pointed out and we actually  
11 mentioned it in our brief. I did not see it in the  
12 plaintiffs' brief at all and came upon it as I was writing  
13 our brief, and found she has this open proceeding in  
14 Dutchess County Supreme Court. I don't know if the judge  
15 there will strike the complaint or direct that it be  
16 dismissed because of CEEFPA. But he certainly had the  
17 opportunity to do so when he signed the order to show  
18 cause.

19 THE COURT: Yes.

20 MS. LEE: So, with that, if the court has any  
21 questions, otherwise we would rest on our briefs.

22 THE COURT: Not of you, Ms. Hunt Lee. You did a  
23 fine job.

24 I want to go back to plaintiffs' counsel for a  
25 moment and ask this question. Why do we need the sheriffs

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1 here?

2 MR. MASTRO: Your Honor --

3 THE COURT: Hang on. Speak up louder.

4 MR. MASTRO: Your Honor, under the statute, the  
5 sheriffs and marshals have a particular prescription,  
6 mandate, are not to execute eviction warrants for hardship  
7 declarations and when they are executing eviction  
8 warrants, these are at the direction of state courts, when  
9 they are executing eviction warrants, if the tenant  
10 provides a hardship declaration, at that point they are  
11 required to forbear and bring the hardship declaration  
12 back to the court.

13 So a mark of the eviction moratorium stay  
14 scheme, they play a role in it, and they are told not to  
15 enforce CEEFPA Part A.

16 THE COURT: Okay. And I recognize you might be  
17 sensitive to the issue having the right defendants, I  
18 understand.

19 But, with that said, isn't it an unnecessary  
20 burden right now to have the sheriffs here? There is no  
21 evidence or allegations that the sheriffs didn't follow  
22 any lawful orders or, if they were orders, they didn't  
23 serve them. There is nothing of that nature.

24 Is that fair?

25 MR. MASTRO: Your Honor is right to point out --

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1 THE COURT: Speak up.

2 MR. MASTRO: Your Honor is right to point out  
3 there is some sensitivity given that the attorney general  
4 lobbied for passage of the law essentially would enforce  
5 and then said she wasn't a proper party.

6 Obviously Defendant Marks admits he's a proper  
7 party even if he has a procedural argument. There is no  
8 question the case continues whether the sheriffs and  
9 marshals are in the case anyway. But it is the case, your  
10 Honor, there is an aspect of CEEFPA Part A and the  
11 sheriffs and marshals are responsible for executing or not  
12 executing that.

13 Therefore, when it comes time for warrants of  
14 eviction, they would actually be executed, they play a  
15 role under the statute and so they need the guidance too  
16 on what they should be doing --

17 THE COURT: I understand.

18 MR. MASTRO: -- in their official capacity.

19 They are only sued in their official capacity,  
20 your Honor.

21 THE COURT: I understand.

22 Anyone else want to be heard?

23 MS. KRETZING: Your Honor, if I may.

24 I won't reiterate everything that's been said by  
25 counsel. I just want to reiterate this last point.

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1 Mr. Mastro made it clear in his correspondence with the  
2 court on this issue that the sheriffs here are sued only  
3 as state actors, not municipal actors. We don't have any  
4 liability under Section 1983. We are not alleged to have  
5 performed any acts.

6 But the point is, we don't need to be in this  
7 action. If this court, if your Honor determined that the  
8 Part A should be stayed, any directions to the sheriff  
9 would also be stayed. We don't need to be parties and we  
10 don't need to expend the time and limited municipal  
11 resources on something that really does not involve the  
12 municipality.

13 Thank you.

14 THE COURT: Good.

15 Anybody else?

16 MS. MOSTON: One last point for the city.  
17 I echo what everybody just said, with the  
18 addition of the New York City Department of Investigation  
19 and the marshals that were actually named, there were not  
20 any marshals actually named. We also agree we don't  
21 really need to be part of this case that the law has  
22 struck down, that would certainly take care of the issue.

23 THE COURT: Let me do this, because I recognize  
24 there is complexities on this.

25 Counsel for Defendant Marks, I presume you would

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1 have no objection if I said for the moment I'm going to  
 2 stay the action as to the sheriffs and the Department of  
 3 Investigation and so forth, such that they don't have to  
 4 file anything. I can decide the motions later but I don't  
 5 want to run up costs for people. I believe neither  
 6 Defendant Marks nor plaintiff would object to that.

7 Am I right?

8 MS. CONNOLLY: No, your Honor.

9 THE COURT: No for plaintiff either?

10 MS. CONNOLLY: No, Judge.

11 THE COURT: For plaintiff, no objection to that,  
 12 right?

13 I'm saying if I stay the action as to the  
 14 sheriffs. I understand you might need them here for a  
 15 complete remedy, but I don't want to run up costs for  
 16 people. Is that okay with you?

17 MR. MASTRO: Yes, your Honor.

18 THE COURT: So counsel for everyone other than  
 19 plaintiff and Defendant Marks, you can just sort of stand  
 20 by.

21 I will get to the motions, I promise, at some  
 22 point, but don't file anything. Don't run up any costs.  
 23 You don't even have to come. You are welcome to come.  
 24 Everyone is welcome to come, but we don't have to run up  
 25 costs and bills for the municipalities. So let's do that.

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1 As to the preliminary injunction, I will get to  
 2 it as soon as possible. Mr. Mastro, you have something  
 3 else?

4 MR. MASTRO: Your Honor, I promise it be brief.

5 THE COURT: Go ahead.

6 MR. MASTRO: Thank you, your Honor.

7 Your Honor, the post deprivation here --

8 THE COURT: You are breaking up.

9 MS. CONNOLLY: I apologize. I can't hear.

10 MR. MASTRO: I'll speak up.

11 On the post-deprivation hearing, the  
 12 constitutional requirement that your Honor has asked both  
 13 sides about, the law is crystal clear, Spinelli in the  
 14 Second Circuit in 2009, 579 F.3d 160, page 174, they  
 15 quote, even a brief and provisional deprivation of  
 16 property pending judgment is of constitutional importance,  
 17 quote, and it's also the Supreme Court said that the right  
 18 to, quote, possess, use and dispose of properties is a  
 19 constitutional deprivation of due process, that's Horn v  
 20 Department of Agriculture, 579 US 350, 361 to 62, 3156789.

21 Your Honor, I heard about Defendant Marks, but  
 22 the pandemic has abated and I heard it said you should  
 23 look at the introduction to the last extension in May, but  
 24 if your Honor actually reads that extension --

25 THE COURT: I will read everything. Mr. Mastro,

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1 I will read everything.

2 Go ahead.

3 MR. MASTRO: I know you will.

4 But, your Honor, I had a chance to briefly while  
 5 she was still talking, and it doesn't say anything there  
 6 about -- directly about economic hardship. It talks about  
 7 COVID and the CDC extending a moratorium through June 30  
 8 based on the national rate, the national rate.

9 In New York, by the end of May, these are  
 10 Exhibits 23 and 24, we had the lowest daily positivity  
 11 rate since COVID crisis began and the lowest seven-day  
 12 average positivity rate since COVID began. Your Honor,  
 13 there is no justification for this legislation and the  
 14 only economic hardship referred to in the statute was that  
 15 there is this rent relief. Now there's federal and state  
 16 rent relief.

17 First of all, those are programs that can only  
 18 be accessed if the tenant goes along.

19 Second of all, I believe that cuts against them.  
 20 It shows that people are -- the economic hardships have  
 21 been mitigated so people can go back to court.

22 I would just say this, your Honor, I'll close  
 23 with this, I really appreciate all the time that you have  
 24 given us today. We have posited a scenario of these small  
 25 landlords and tenants behaving a certain way. I

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1 respectfully suggest that the moving, heartbreaking  
 2 testimony of Ms. LaCasse today falls into that category of  
 3 crying out for relief.

4 Your Honor, she described that the tenants, one  
 5 has a job, still has a job. The other has children. The  
 6 child care situation hasn't changed at all during this  
 7 period of time. The one who works still works. The other  
 8 one stays home with the kids. The child care hasn't  
 9 changed at all and they are in her property where she now  
 10 needs to live with her child, immunocompromised, because  
 11 her ex-fiancée is kicking her out or charging her \$5,000  
 12 plus a month, those tenants are now causing property  
 13 damage. They are damaging the property. They are not  
 14 paying. They are damaging the property.

15 And unfortunately the nuisance exception here  
 16 doesn't apply because it's a house, and there is no other  
 17 tenants being deprived of the enjoyments of their units.

18 She can't claim an exception. Her property is being  
 19 destroyed. These people haven't suffered one whit of  
 20 economic hardship during COVID, yet they stopped paying  
 21 rent. They are abusing the system and now Ms. LaCasse is  
 22 really at her wit's end, desperate to get back into that  
 23 property. If that isn't a compelling case that says, my  
 24 God, after 15 months I deserve a hearing, I don't know  
 25 what is.

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1 Thank you, your Honor.

2 THE COURT: Okay.

3 Anything else?

4 MS. CONNOLLY: Yes, your Honor. I'm sorry to  
5 extend this out further. Just two things.

6 Number one, to give your Honor a fuller  
7 understanding and to articulate our position on the  
8 ejection question that you asked earlier, if your Honor  
9 will allow me to submit --

10 THE COURT: I already have, by the way, two  
11 cases because I have top people on it.

12 So in my hands I have the Jacob Cram Cooperative  
13 v Ziolkowski, that's Z-I-O-L-K-O-W-S-K-I, from New York  
14 County, and I even have one no one gave me here, which is  
15 Neighborhood -- NYCTL Trust v Neighborhood Youth and  
16 Family Services from it looks like the Bronx. I have two  
17 Supreme Court cases that seem to suggest that the  
18 ejection proceeding is, in fact, barred by the eviction  
19 proceedings.

20 MS. CONNOLLY: Then I'm happy to submit a letter  
21 to your Honor tomorrow that definitively states the  
22 office's position on that.

23 THE COURT: Please do that. That would be good.

24 MS. CONNOLLY: Thank you. I appreciate that  
25 opportunity, your Honor.

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1 The only other thing is counsel cited to the  
2 Spinelli case which is in his reply.

3 THE COURT: I read the Spinelli case to prepare  
4 for today.

5 MS. CONNOLLY: I have no doubt that you did,  
6 Judge. That's what I would expect from you.

7 But the Spinelli case gives us a slightly  
8 different set of facts because that raised a procedural  
9 due process problem because, number one, the woman was at  
10 issue was deprived of her livelihood completely because  
11 she was in gun sales and they took her license away.

12 And the second problem was there was no end  
13 point and there were no procedures that were articulated  
14 that would give her some idea of how to move forward to  
15 get her license back, or how long it would take, nothing  
16 of that sort.

17 That's not the situation that we have here  
18 because the procedures are articulated. We have got  
19 landlord-tenant court. Those procedures under the RPAPL  
20 are very detailed. Counsel was talking about there was no  
21 other place where such a declaration of -- that is  
22 required for a person to give to the tenant to tell them  
23 what their rights are, et cetera. Actually the RPAPL has  
24 exactly those requirements and we cite to that in our  
25 brief, your Honor. And I'm sure you are aware of it.

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1 To cite Spinelli as somehow indicative of what  
2 should happen in this case really is complete inapposite  
3 and I'll leave it at that. Thank you, very much, for your  
4 time, your Honor.

5 THE COURT: In that case I thank you, very much,  
6 for your time. Everybody did a great job.

7 We are adjourned.

8 MS. CONNOLLY: One question, your Honor.

9 Will your Honor give us a briefing schedule on  
10 motions to dismiss or we'll wait for that?

11 THE COURT: Let's wait for that.

12 I want to deal with this problem first.

13 MS. CONNOLLY: Very good, your Honor.

14 THE COURT: Be well.

15 MR. MASTRO: Thank you, so much, your Honor.  
16 I really appreciate all this time.

17 THE COURT: All right.

18 MS. BENVENISTY: Thank you.

19 MS. MOSTON: Thank you.

20 (The matter concluded.)

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**EXHIBIT F**

**(Dist. Ct. Dkt. No. 14-1)**

# EXHIBIT 1

# STATE OF NEW YORK

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9114

## IN SENATE

December 24, 2020

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Introduced by Sens. KAVANAGH, MYRIE -- read twice and ordered printed, and when printed to be committed to the Committee on Housing, Construction and Community Development

AN ACT establishing the "COVID-19 Emergency Eviction and Foreclosure Prevention Act of 2020"; in relation to eviction proceedings; and to provide for the expiration of certain provisions upon the expiration thereof (Part A); in relation to foreclosure proceedings; and providing for the expiration of certain provisions upon the expiration thereof (Subpart A); in relation to tax sales; and providing for the expiration of certain provisions upon the expiration thereof (Subpart B); to establish hardship declarations for owners of residential real property; and providing for the expiration of such provisions upon the expiration thereof (Subpart C); and to authorize every governing body of an assessing unit and local assessor to extend to the 2021 assessment roll, the renewal of the exemptions received on the 2020 assessment roll; and to provide for the expiration of such provisions upon the expiration thereof (Subpart D) (Part B)

**The People of the State of New York, represented in Senate and Assembly, do enact as follows:**

1       Section 1. This act enacts into law components of legislation relating  
2 to eviction and foreclosure protections. Each component is wholly  
3 contained within a Part identified as Parts A through B. The effective  
4 date for each particular provision contained within such Part is set  
5 forth in the last section of such Part. Any provision in any section  
6 contained within a Part, including the effective date of the Part, which  
7 makes reference to a section "of this act", when used in connection with  
8 that particular component, shall be deemed to mean and refer to the  
9 corresponding section of the Part in which it is found. Section four of  
10 this act sets forth the general effective date of this act.

11      § 2. Short title. This act shall be known and may be cited as the  
12 "COVID-19 Emergency Eviction and Foreclosure Prevention Act of 2020".

13      § 3. Legislative intent. The Legislature finds and declares all of the  
14 following:

EXPLANATION--Matter in **italics** (underscored) is new; matter in brackets  
[**-**] is old law to be omitted.

LBD17721-01-0

1 On March 7, 2020, Governor Andrew Cuomo proclaimed a state of emergency  
2 in response to the Coronavirus disease (COVID-19) pandemic. Measures  
3 necessary to contain the spread of COVID-19 have brought about widespread  
4 economic and societal disruption, placing the state of New York  
5 in unprecedented circumstances.

6 COVID-19 presents a historic threat to public health. Hundreds of  
7 thousands of residents are facing eviction or foreclosure due to necessary  
8 disease control measures that closed businesses and schools, and  
9 triggered mass-unemployment across the state. The pandemic has further  
10 interrupted court operations, the availability of counsel, the ability  
11 for parties to pay for counsel, and the ability to safely commute and  
12 enter a courtroom, settlement conference and the like.

13 Stabilizing the housing situation for tenants, landlords, and homeowners  
14 is to the mutual benefit of all New Yorkers and will help the state  
15 address the pandemic, protect public health, and set the stage for  
16 recovery. It is, therefore, the intent of this legislation to avoid as  
17 many evictions and foreclosures as possible for people experiencing a  
18 financial hardship during the COVID-19 pandemic or who cannot move due  
19 to an increased risk of severe illness or death from COVID-19.

20 As such, it is necessary to temporarily allow people impacted by  
21 COVID-19 to remain in their homes. A limited, temporary stay is necessary  
22 to protect the public health, safety and morals of the people the  
23 Legislature represents from the dangers of the COVID-19 emergency  
24 pandemic.

25 **PART A**

26 Section 1. Definitions. For the purposes of this act:  
27 1. "Eviction proceeding" means a summary proceeding to recover possession of real  
28 property under article seven of the real property actions and  
29 proceedings law relating to a residential dwelling unit or any other  
30 judicial or administrative proceeding to recover possession of real  
31 property relating to a residential dwelling unit.

32 2. "Landlord" includes a landlord, owner of a residential property and  
33 any other person with a legal right to pursue eviction, possessory  
34 action or a money judgment for rent, including arrears, owed or that  
35 becomes due during the COVID-19 covered period, as defined in section 1  
36 of chapter 127 of the laws of 2020.

37 3. "Tenant" includes a residential tenant, lawful occupant of a dwelling unit, or any other person responsible for paying rent, use and occupancy, or any other financial obligation under a residential lease or  
38 tenancy agreement, but does not include a residential tenant or lawful  
39 occupant with a seasonal use lease where such tenant has a primary residence to which to return to.

40 4. "Hardship declaration" means the following statement, or a substantially equivalent statement in the tenant's primary language, in  
41 14-point type, published by the office of court administration, whether  
42 in physical or electronic written form:

43 "NOTICE TO TENANT: If you have lost income or had increased costs  
44 during the COVID-19 pandemic, or moving would pose a significant health  
45 risk for you or a member of your household due to an increased risk for  
46 severe illness or death from COVID-19 due to an underlying medical  
47 condition, and you sign and deliver this hardship declaration form to  
48 your landlord, you cannot be evicted until at least May 1, 2021 for  
49 nonpayment of rent or for holding over after the expiration of your  
50 lease. You may still be evicted for violating your lease by persistently

1 and unreasonably engaging in behavior that substantially infringes on  
2 the use and enjoyment of other tenants or occupants or causes a substan-  
3 tial safety hazard to others.

4 If your landlord has provided you with this form, your landlord must  
5 also provide you with a mailing address and e-mail address to which you  
6 can return this form. If your landlord has already started an eviction  
7 proceeding against you, you can return this form to either your land-  
8 lord, the court, or both at any time. You should keep a copy or picture  
9 of the signed form for your records. You will still owe any unpaid rent  
10 to your landlord. You should also keep careful track of what you have  
11 paid and any amount you still owe.

12 For more information about legal resources that may be available to  
13 you, go to [www.nycourts.gov/evictions/nyc/](http://www.nycourts.gov/evictions/nyc/) or call 718-557-1379 if you  
14 live in New York City or go to [www.nycourts.gov/evictions/outside-nyc/](http://www.nycourts.gov/evictions/outside-nyc/)  
15 or call a local bar association or legal services provider if you live  
16 outside of New York City. Rent relief may be available to you, and you  
17 should contact your local housing assistance office.

18 TENANT'S DECLARATION OF HARDSHIP DURING THE COVID-19 PANDEMIC

19 I am a tenant, lawful occupant, or other person responsible for paying  
20 rent, use and occupancy, or any other financial obligation under a lease  
21 or tenancy agreement at (address of dwelling unit).

22 YOU MUST INDICATE BELOW YOUR QUALIFICATION FOR EVICTION PROTECTION BY  
23 SELECTING OPTION "A" OR "B", OR BOTH.

24 A. ( ) I am experiencing financial hardship, and I am unable to pay my  
25 rent or other financial obligations under the lease in full or obtain  
26 alternative suitable permanent housing because of one or more of the  
27 following:

28 1. Significant loss of household income during the COVID-19 pandemic.  
29 2. Increase in necessary out-of-pocket expenses related to performing  
30 essential work or related to health impacts during the COVID-19 pandem-  
31 ic.

32 3. Childcare responsibilities or responsibilities to care for an  
33 elderly, disabled, or sick family member during the COVID-19 pandemic  
34 have negatively affected my ability or the ability of someone in my  
35 household to obtain meaningful employment or earn income or increased my  
36 necessary out-of-pocket expenses.

37 4. Moving expenses and difficulty I have securing alternative housing  
38 make it a hardship for me to relocate to another residence during the  
39 COVID-19 pandemic.

40 5. Other circumstances related to the COVID-19 pandemic have negative-  
41 ly affected my ability to obtain meaningful employment or earn income or  
42 have significantly reduced my household income or significantly  
43 increased my expenses.

44 To the extent that I have lost household income or had increased  
45 expenses, any public assistance, including unemployment insurance,  
46 pandemic unemployment assistance, disability insurance, or paid family  
47 leave, that I have received since the start of the COVID-19 pandemic  
48 does not fully make up for my loss of household income or increased  
49 expenses.

50 B. ( ) Vacating the premises and moving into new permanent housing would  
51 pose a significant health risk because I or one or more members of my  
52 household have an increased risk for severe illness or death from

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4

1 COVID-19 due to being over the age of sixty-five, having a disability or  
2 having an underlying medical condition, which may include but is not  
3 limited to being immunocompromised.

4 I understand that I must comply with all other lawful terms under my  
5 tenancy, lease agreement or similar contract. I further understand that  
6 lawful fees, penalties or interest for not having paid rent in full or  
7 met other financial obligations as required by my tenancy, lease agree-  
8 ment or similar contract may still be charged or collected and may  
9 result in a monetary judgment against me. I further understand that my  
10 landlord may be able to seek eviction after May 1, 2021, and that the  
11 law may provide certain protections at that time that are separate from  
12 those available through this declaration.

13 Signed:

14 Printed name:

15 Date signed:

16 NOTICE: You are signing and submitting this form under penalty of law.  
17 That means it is against the law to make a statement on this form that  
18 you know is false."

19 § 2. Pending eviction proceedings. Any eviction proceeding pending on  
20 the effective date of this act, including eviction proceedings filed on  
21 or before March 7, 2020, or commenced within thirty days of the effec-  
22 tive date of this act shall be stayed for at least sixty days, or to  
23 such later date that the chief administrative judge shall determine is  
24 necessary to ensure that courts are prepared to conduct proceedings in  
25 compliance with this act and to give tenants an opportunity to submit  
26 the hardship declaration pursuant to this act. The court in each case  
27 shall promptly issue an order directing such stay and promptly mail the  
28 respondent a copy of the hardship declaration in English, and, to the  
29 extent practicable, the tenant's primary language, if other than  
30 English.

31 § 3. Pre-eviction notices. A landlord shall include a "Hardship Decla-  
32 ration" in 14-point type, with every written demand for rent made pursu-  
33 ant to subdivision 2 of section 711 of the real property actions and  
34 proceedings law, with any other written notice required by the lease or  
35 tenancy agreement, law or rule to be provided prior to the commencement  
36 of an eviction proceeding, and with every notice of petition served on a  
37 tenant. If the translation of the hardship declaration in the tenant's  
38 primary language is not available on the office of court adminis-  
39 tration's public website, as provided by section ten of this act, it  
40 shall be the landlord's responsibility to obtain a suitable translation  
41 of the hardship declaration in the tenant's primary language. Such  
42 notice shall also include:

43 1. a mailing address, telephone number and active email address the  
44 tenant can use to contact the landlord and return the hardship declara-  
45 tion; and

46 2. a list of all not-for-profit legal service providers actively  
47 handling housing matters in the county where the subject premises are  
48 located. Such lists shall be prepared and regularly updated, to the  
49 extent practicable, for such purpose and published on the website of the  
50 office of court administration.

51 § 4. Prohibition on initiation of eviction proceeding. If there is no  
52 pending eviction proceeding and a tenant provides a hardship declaration  
53 to the landlord or an agent of the landlord, there shall be no initi-

1 ation of an eviction proceeding against the tenant until at least May 1,  
2 2021, and in such event any specific time limit for the commencement of  
3 an eviction proceeding shall be tolled until May 1, 2021.

4 § 5. Required affidavit. 1. No court shall accept for filing any peti-  
5 tion or other filing to commence an eviction proceeding unless the peti-  
6 tioner or an agent of the petitioner files an affidavit of service,  
7 under penalty of perjury, demonstrating the manner in which the peti-  
8 tioner or the petitioner's agent served a copy of the hardship declara-  
9 tion in English and the tenant's primary language, if other than  
10 English, with any rent demand and with any other written notice required  
11 by the lease or tenancy agreement, law or rule to be provided prior to  
12 the commencement of an eviction proceeding, and an affidavit under  
13 penalty of perjury:

14 a. attesting that at the time of filing, neither the petitioner nor  
15 any agent of the petitioner has received a hardship declaration from the  
16 respondent or any other tenant or occupant of the dwelling unit that is  
17 the subject of the proceeding, or

18 b. attesting that the respondent or another tenant or occupant of the  
19 dwelling unit that is the subject of the proceeding has returned a hard-  
20 ship declaration, but the respondent is persistently and unreasonably  
21 engaging in behavior that substantially infringes on the use and enjoy-  
22 ment of other tenants or occupants or causes a substantial safety hazard  
23 to others, with a specific description of the behavior alleged.

24 2. Upon accepting a petition pursuant to article 7 of the real proper-  
25 ty actions and proceedings law, the attorney, judge or clerk of the  
26 court, as the case may be, shall determine whether a copy of the hard-  
27 ship declaration in English and the tenant's primary language, if other  
28 than English, is annexed to the served notice of petition and, if not,  
29 shall ensure that the hardship declaration is attached to such notice.  
30 Service of the notice of petition with the attached hardship declaration  
31 shall be made by personal delivery to the respondent, unless such  
32 service cannot be made with due diligence, in which case service may be  
33 made under section 735 of the real property actions and proceedings law.  
34 At the earliest possible opportunity, the court shall seek confirmation  
35 on the record or in writing from the respondent that the respondent has  
36 received the hardship declaration and that the respondent has not  
37 submitted a hardship declaration to the petitioner, an agent of the  
38 petitioner, or the court. If the court determines a respondent has not  
39 received a hardship declaration, then the court shall stay the proceed-  
40 ing for a reasonable period of time, which shall be no less than ten  
41 business days or any longer period provided by law, and provide the  
42 respondent with a copy of the hardship declaration in English and the  
43 respondent's primary language, if other than English, to ensure the  
44 respondent received and fully considered whether to submit the hardship  
45 declaration.

46 § 6. Pending proceedings. In any eviction proceeding in which an  
47 eviction warrant has not been issued, including eviction proceedings  
48 filed on or before March 7, 2020, if the tenant provides a hardship  
49 declaration to the petitioner, the court, or an agent of the petitioner  
50 or the court, the eviction proceeding shall be stayed until at least May  
51 1, 2021. If such hardship declaration is provided to the petitioner or  
52 agent, such petitioner or agent shall promptly file it with the court,  
53 advising the court in writing the index number of all relevant cases.

54 § 7. Default judgments. No court shall issue a judgment in any  
55 proceeding authorizing a warrant of eviction against a respondent who  
56 has defaulted, or authorize the enforcement of an eviction pursuant to a

1 default judgment, prior to May 1, 2021, without first holding a hearing  
2 after the effective date of this act upon motion of the petitioner. The  
3 petitioner or an agent of the petitioner shall file an affidavit attest-  
4 ing that the petitioner or the petitioner's agent has served notice of  
5 the date, time, and place of such hearing on the respondent, including a  
6 copy of such notice. If a default judgment has been awarded prior to the  
7 effective date of this act, the default judgment shall be removed and  
8 the matter restored to the court calendar upon the respondent's written  
9 or oral request to the court either before or during such hearing and an  
10 order to show cause to vacate the default judgment shall not be  
11 required.

12 § 8. Post warrant of eviction. a. (i) In any eviction proceeding in  
13 which an eviction warrant has been issued prior to the effective date of  
14 this act, but has not yet been executed as of the effective date of this  
15 act, including eviction proceedings filed on or before March 7, 2020,  
16 the court shall stay the execution of the warrant at least until the  
17 court has held a status conference with the parties. (ii) In any  
18 eviction proceeding, if the tenant provides a hardship declaration to  
19 the petitioner, the court, or an agent of the petitioner or the court,  
20 prior to the execution of the warrant, the execution shall be stayed  
21 until at least May 1, 2021. If such hardship declaration is provided to  
22 the petitioner or agent of the petitioner, such petitioner or agent  
23 shall promptly file it with the court, advising the court in writing the  
24 index number of all relevant cases.

25 b. In any eviction proceeding in which a warrant has been issued,  
26 including eviction proceedings filed on or before March 7, 2020, any  
27 warrant issued shall not be effective as against the occupants, unless,  
28 in addition to the requirements under section 749 of the real property  
29 actions and proceedings law for warrants, such warrant states:

30 (i) The tenant has not submitted the hardship declaration and the  
31 tenant was properly served with a copy of the hardship declaration  
32 pursuant to this section, listing dates the tenant was served with the  
33 hardship declaration by the petitioner and the court; or

34 (ii) The tenant is ineligible for a stay under this act because the  
35 court has found that the tenant is persistently and unreasonably engag-  
36 ing in behavior that substantially infringes on the use and enjoyment of  
37 other tenants or occupants or causes a substantial safety hazard to  
38 others, with a specific description of the behavior.

39 c. No court shall issue a warrant directed to the sheriff of the coun-  
40 ty or to any constable or marshal of the city in which the property, or  
41 a portion thereof, is situated, or, if it is not situated in a city, to  
42 any constable of any town in the county, that does not comply with the  
43 requirements of this section.

44 d. No officer to whom the warrant is directed shall execute a warrant  
45 for eviction issued that does not comply with the requirements of this  
46 section.

47 e. Unless the warrant contains the information contained in paragraph  
48 (ii) of subdivision b of this section, if any tenant delivers the  
49 hardship declaration to the officer to whom the warrant is directed, the  
50 officer shall not execute the warrant and shall return the hardship form  
51 to the court indicating the appropriate index/case number the form is  
52 associated with.

53 § 9. Sections two, four, six and paragraph (ii) of subdivision a of  
54 section eight of this act shall not apply if the tenant is persistently  
55 and unreasonably engaging in behavior that substantially infringes on

1 the use and enjoyment of other tenants or occupants or causes a substantial  
2 safety hazard to others, provided:

3 1. If an eviction proceeding is pending on the effective date of this act, but the petitioner has not previously alleged that the tenant persistently and unreasonably engaged in such behavior, the petitioner shall be required to submit a new petition with such allegations and comply with all notice and service requirements under article 7 of the real property actions and proceedings law and this act.

4 2. If the court has awarded a judgment against a respondent prior to the effective date of this act on the basis of objectionable or nuisance behavior, the court shall hold a hearing to determine whether the tenant is continuing to persist in engaging in unreasonable behavior that substantially infringes on the use and enjoyment of other tenants or occupants or causes a substantial safety hazard to others.

5 3. For the purposes of this act, a mere allegation of the behavior by the petitioner or an agent of the petitioner alleging such behavior shall not be sufficient evidence to establish that the tenant has engaged in such behavior.

6 4. If the petitioner fails to establish that the tenant persistently and unreasonably engaged in such behavior and the tenant provides or has provided a hardship declaration to the petitioner, petitioner's agent or the court, the court shall stay or continue to stay any further proceedings until at least May 1, 2021.

7 5. If the petitioner establishes that the tenant persistently and unreasonably engaged in such behavior or the tenant fails to provide a hardship declaration to the petitioner, petitioner's agent or the court, the proceeding may continue pursuant to article 7 of the real property actions and proceedings law and this act.

8 § 10. Translation of hardship declaration. The office of court administration shall translate the hardship declaration, as defined in section one of this act, into Spanish and the six most common languages in the city of New York, after Spanish, and shall post and maintain such translations and an English language copy of the hardship declaration on the website of such office beginning within fifteen days of the effective date of this act. To the extent practicable, the office of court administration shall post and maintain on its website translations into such additional languages as the chief administrative judge shall deem appropriate to ensure that tenants have an opportunity to understand and submit hardship declarations pursuant to this act.

9 § 11. Rebuttable presumption. A hardship declaration in which the tenant has selected the option indicating a financial hardship shall create a rebuttable presumption that the tenant is experiencing financial hardship, in any judicial or administrative proceeding that may be brought, for the purposes of establishing a defense under chapter 127 of the laws of 2020, an executive order of the governor or any other local or state law, order or regulation restricting the eviction of a tenant suffering from a financial hardship during or due to COVID-19 provided that the absence of a hardship declaration shall not create a presumption that a financial hardship is not present.

10 § 12. If any clause, sentence, paragraph, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid and after exhaustion of all further judicial review, the judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part of this act directly involved in the controversy in which the judgment shall have been rendered.

S. 9114

8

1       § 13. This act shall take effect immediately and sections one, two,  
2 three, four, five, six, seven, eight, nine, ten and twelve of this act  
3 shall expire May 1, 2021.

PART B

5 Section 1. This Part enacts into law components of legislation relating  
6 to mortgage foreclosure, tax foreclosure, credit discrimination and  
7 tax renewal exemption protections. Each component is wholly contained  
8 within a Subpart identified as Subparts A through D. The effective date  
9 for each particular provision contained within such Subpart is set forth  
10 in the last section of such Subpart. Any provision in any section  
11 contained within a Subpart, including the effective date of the Subpart,  
12 which makes reference to a section "of this act", when used in  
13 connection with that particular component, shall be deemed to mean and  
14 refer to the corresponding section of the Subpart in which it is found.  
15 Section three of this Part sets forth the general effective date of this  
16 Part.

17 SUBPART A

18     Section 1. Application. This section shall apply to any action to  
19 foreclose a mortgage relating to residential real property, provided the  
20 owner or mortgagor of such property is a natural person, regardless of  
21 how title is held, and owns ten or fewer dwelling units whether directly  
22 or indirectly. The ten or fewer dwelling units may be in more than one  
23 property or building as long as the total aggregate number of ten units  
24 includes the primary residence of the natural person requesting such  
25 relief and the remaining units are currently occupied by a tenant or are  
26 available for rent.

27 (a) For purposes of this act, real property shall include shares  
28 assigned to a unit in a residential cooperative.

(b) For purposes of this act, real property shall not include property that is vacant and abandoned, as defined in subdivision 2 of section 1309 of the real property actions and proceedings law, which was listed on the statewide vacant and abandoned property electronic registry, as defined in section 1310 of the real property actions and proceedings law, prior to March 7, 2020 and that remains on such registry.

35 Notwithstanding anything to the contrary, this act shall not apply to,  
36 and does not affect any mortgage loans made, insured, purchased or secu-  
37 ritized by a corporate governmental agency of the state constituted as a  
38 political subdivision and public benefit corporation, or the rights and  
39 obligations of any lender, issuer, servicer or trustee of such obli-  
40 gations.

41       § 2. Definitions. For the purposes of this act, "Hardship Declaration"  
42 means the following statement, or a substantially equivalent statement  
43 in the mortagor's primary language, in 14-point type, published by the  
44 office of court administration, whether in physical or electronic writ-  
45 ten form:

46 "NOTICE TO MORTGAGOR: If you have lost income or had increased costs  
47 during the COVID-19 pandemic, and you sign and deliver this hardship  
48 declaration form to your mortgage lender or other foreclosing party, you  
49 cannot be foreclosed on until at least May 1, 2021.

If your mortgage lender or other foreclosing party provided you with this form, the mortgage lender or other foreclosing party must also provide you with a mailing address and e-mail address to which you can

1 return this form. If you are already in foreclosure proceedings, you may  
2 return this form to the court. You should keep a copy or picture of the  
3 signed form for your records. You will still owe any unpaid mortgage  
4 payments and lawful fees to your lender. You should also keep careful  
5 track of what you have paid and any amount you still owe.

6 MORTGAGOR'S DECLARATION OF COVID-19-RELATED HARDSHIP

7 I am the mortgagor of the property at (address of dwelling unit).  
8 Including my primary residence, I own, whether directly or indirectly,  
9 ten or fewer residential dwelling units. I am experiencing financial  
10 hardship, and I am unable to pay my mortgage in full because of one or  
11 more of the following:

12 1. Significant loss of household income during the COVID-19 pandemic.  
13 2. Increase in necessary out-of-pocket expenses related to performing  
14 essential work or related to health impacts during the COVID-19 pandem-  
15 ic.

16 3. Childcare responsibilities or responsibilities to care for an  
17 elderly, disabled, or sick family member during the COVID-19 pandemic  
18 have negatively affected my ability or the ability of someone in my  
19 household to obtain meaningful employment or earn income or increased my  
20 necessary out-of-pocket expenses.

21 4. Moving expenses and difficulty I have securing alternative housing  
22 make it a hardship for me to relocate to another residence during the  
23 COVID-19 pandemic.

24 5. Other circumstances related to the COVID-19 pandemic have negative-  
25 ly affected my ability to obtain meaningful employment or earn income or  
26 have significantly reduced my household income or significantly  
27 increased my expenses.

28 6. One or more of my tenants has defaulted on a significant amount of  
29 their rent payments since March 1, 2020.

30 To the extent I have lost household income or had increased expenses,  
31 any public assistance, including unemployment insurance, pandemic unem-  
32 ployment assistance, disability insurance, or paid family leave, that I  
33 have received since the start of the COVID-19 pandemic does not fully  
34 make up for my loss of household income or increased expenses.

35 I understand that I must comply with all other lawful terms under my  
36 mortgage agreement. I further understand that lawful fees, penalties or  
37 interest for not having paid my mortgage in full as required by my mort-  
38 gage agreement may still be charged or collected and may result in a  
39 monetary judgment against me. I also understand that my mortgage lender  
40 or other foreclosing party may pursue a foreclosure action against me on  
41 or after May 1, 2021, if I do not fully repay any missed or partial  
42 payments and lawful fees.

43 Signed:

44 Printed Name:

45 Date Signed:

46 NOTICE: You are signing and submitting this form under penalty of law.  
47 That means it is against the law to make a statement on this form that  
48 you know is false."

49 § 3. Any action to foreclose a mortgage pending on the effective date  
50 of this act, including actions filed on or before March 7, 2020, or  
51 commenced within thirty days of the effective date of this act shall be  
52 stayed for at least sixty days, or to such later date that the chief  
53 administrative judge shall determine is necessary to ensure that courts  
54 are prepared to conduct proceedings in compliance with this act and to  
55 give mortgagors an opportunity to submit the hardship declaration pursu-  
56 ant to this act. The court in each case shall promptly issue an order

1 directing such stay and promptly mail the mortgagor a copy of the hard-  
2 ship declaration in English, and, to the extent practicable, the  
3 mortgagor's primary language, if other than English.

4 § 4. The foreclosing party shall include a "Hardship Declaration" in  
5 14-point type, with every notice provided to a mortgagor pursuant to  
6 sections 1303 and 1304 of the real property actions and proceedings law.  
7 If the translation of the hardship declaration in the mortgagor's prima-  
8 ry language is not available on the office of court administration's  
9 public website, as provided by section nine of this act, it shall be the  
10 foreclosing party's responsibility to obtain a suitable translation of  
11 the hardship declaration in the mortgagor's primary language. Such  
12 notice shall also include a mailing address, telephone number and active  
13 email address the mortgagor can use to contact the foreclosing party and  
14 return the hardship declaration.

15 § 5. If a mortgagor provides a hardship declaration to the foreclosing  
16 party or an agent of the foreclosing party, there shall be no initiation  
17 of an action to foreclose a mortgage against the mortgagor until at  
18 least May 1, 2021, and in such event any specific time limit for the  
19 commencement of an action to foreclose a mortgage shall be tolled until  
20 May 1, 2021.

21 § 6. No court shall accept for filing any action to foreclose a mort-  
22 gage unless the foreclosing party or an agent of the foreclosing party  
23 files an affidavit, under penalty of perjury:

24 (i) of service demonstrating the manner in which the foreclosing  
25 party's agent served a copy of the hardship declaration in English and  
26 the mortgagor's primary language, if other than English, with the  
27 notice, if any, provided to the mortgagor pursuant to sections 1303 and  
28 1304 of the real property actions and proceedings law, and

29 (ii) attesting that at the time of filing, neither the foreclosing  
30 party nor any agent of the foreclosing party has received a hardship  
31 declaration from the mortgagor.

32 At the earliest possible opportunity, the court shall seek confirma-  
33 tion on the record or in writing that the mortgagor has received a copy  
34 of the hardship declaration and that the mortgagor has not returned the  
35 hardship declaration to the foreclosing party or an agent of the fore-  
36 closing party. If the court determines a mortgagor has not received a  
37 hardship declaration, then the court shall stay the proceeding for a  
38 reasonable period of time, which shall be no less than ten business days  
39 or any longer period provided by law, to ensure the mortgagor received  
40 and fully considered whether to submit the hardship declaration.

41 § 7. In any action to foreclose a mortgage in which a judgment of sale  
42 has not been issued, including actions filed on or before March 7, 2020,  
43 if the mortgagor provides a hardship declaration to the foreclosing  
44 party, the court, or an agent of the foreclosing party or the court, the  
45 proceeding shall be stayed until at least May 1, 2021. If such hardship  
46 declaration is provided to the foreclosing party or agent of the fore-  
47 closing party, such foreclosing party or agent shall promptly file it  
48 with the court, advising the court in writing the index number of all  
49 relevant cases.

50 § 8. In any action to foreclose a mortgage in which a judgment of sale  
51 has been issued prior to the effective date of this act but has not yet  
52 been executed as of the effective date of this act, including actions  
53 filed on or before March 7, 2020, the court shall stay the execution of  
54 the judgment at least until the court has held a status conference with  
55 the parties. In any action to foreclose a mortgage, if the mortgagor  
56 provides a hardship declaration to the foreclosing party, the court, or

1 an agent of the foreclosing party or the court, prior to the execution  
2 of the judgment, the execution shall be stayed until at least May 1,  
3 2021. If such hardship declaration is provided to the foreclosing party  
4 or agent of the foreclosing party, such foreclosing party or agent shall  
5 promptly file it with the court, advising the court in writing the index  
6 number of all relevant cases.

7 § 9. The office of court administration shall translate the hardship  
8 declaration, as defined in section one of this act, into Spanish and the  
9 six most common languages in the city of New York, after Spanish, and  
10 shall post and maintain such translations and an English language copy  
11 of the hardship declaration on the website of such office beginning  
12 within fifteen days of the effective date of this act.

13 § 10. A hardship declaration shall create a rebuttable presumption  
14 that the mortgagor is suffering financial hardship, in any judicial or  
15 administrative proceeding that may be brought, for the purposes of  
16 establishing a defense under an executive order of the governor or any  
17 other local or state law, order or regulation restricting actions to  
18 foreclose a mortgage against a mortgagor suffering from a financial  
19 hardship during or due to the COVID-19 pandemic provided that the  
20 absence of a hardship declaration shall not create a presumption that a  
21 financial hardship is not present.

22 § 11. If any clause, sentence, paragraph, section or part of this act  
23 shall be adjudged by any court of competent jurisdiction to be invalid  
24 and after exhaustion of all further judicial review, the judgment shall  
25 not affect, impair or invalidate the remainder thereof, but shall be  
26 confined in its operation to the clause, sentence, paragraph, section or  
27 part of this act directly involved in the controversy in which the judg-  
28 ment shall have been rendered.

29 § 12. This act shall take effect immediately and sections one, two,  
30 three, four, five, six, seven, eight, nine and eleven of this act shall  
31 expire May 1, 2021.

32

## SUBPART B

33 Section 1. Application. This act shall apply to any action to fore-  
34 close on delinquent taxes or sell a tax lien relating to residential  
35 real property, provided the owner or mortgagor of such property is a  
36 natural person, regardless of how title is held, and owns ten or fewer  
37 dwelling units whether directly or indirectly. The ten or fewer dwelling  
38 units may be in more than one property or building as long as the total  
39 aggregate number of ten units includes the primary residence of the  
40 natural person requesting such relief and the remaining units are  
41 currently occupied by a tenant or are available for rent.

42 (a) For purposes of this act, real property shall include shares in a  
43 residential cooperative.

44 (b) For purposes of this act, real property shall not include property  
45 that is vacant and abandoned, as defined in subdivision 2 of section  
46 1309 of the real property actions and proceedings law, which was listed  
47 on the statewide vacant and abandoned property electronic registry, as  
48 defined in section 1310 of the real property actions and proceedings  
49 law, prior to March 7, 2020 and that remains on such registry.

50 § 2. Definitions. For purposes of this act: 1. "Tax lien" means an  
51 unpaid tax, special ad valorem levy, special assessment or other charge  
52 imposed upon real property by or on behalf of a municipal corporation or  
53 special district or other public or private entity which is an encum-

1 brance on real property, whether or not evidenced by a written instru-  
2 ment.

3 2. "Tax foreclosure and tax lien sale" shall mean any such tax lien  
4 sale or tax foreclosure pursuant to article 11 of the real property tax  
5 law, or any general, special or local law related to real property tax  
6 lien sales or real property tax foreclosures.

7 3. "Hardship Declaration" means the following statement, or a substan-  
8 tially equivalent statement in the owner's primary language, in 14-point  
9 type, whether in physical or electronic written form:

10 "OWNER DECLARATION OF COVID-19-RELATED HARDSHIP

11 I am the owner of the property at (address). Including my primary  
12 residence, I own, whether directly or indirectly, ten or fewer residen-  
13 tial dwelling units. I am experiencing financial hardship, and I am  
14 unable to pay my full tax bill because of one or more of the following:

15 1. Significant loss of household income during the COVID-19 pandemic.

16 2. Increase in necessary out-of-pocket expenses related to performing  
17 essential work or related to health impacts during the COVID-19 pandem-  
18 ic.

19 3. Childcare responsibilities or responsibilities to care for an  
20 elderly, disabled, or sick family member during the COVID-19 pandemic  
21 have negatively affected my ability or the ability of someone in my  
22 household to obtain meaningful employment or earn income or increased my  
23 necessary out-of-pocket expenses.

24 4. Moving expenses and difficulty I have securing alternative housing  
25 make it a hardship for me to relocate to another residence during the  
26 COVID-19 pandemic.

27 5. Other circumstances related to the COVID-19 pandemic have negative-  
28 ly affected my ability to obtain meaningful employment or earn income or  
29 have significantly reduced my household income or significantly  
30 increased my expenses.

31 6. One or more of my tenants has defaulted on a significant amount of  
32 their rent payments since March 1, 2020.

33 To the extent that I have lost household income or had increased  
34 expenses, any public assistance, including unemployment insurance,  
35 pandemic unemployment assistance, disability insurance, or paid family  
36 leave, that I have received since the start of the COVID-19 pandemic  
37 does not fully make up for my loss of household income or increased  
38 expenses.

39 I understand that lawful fees, penalties or interest for not having  
40 paid my taxes in full may still be charged or collected and may result  
41 in a foreclosure action against me on or after May 1, 2021, if I do not  
42 fully repay any missed or partial payments and fees.

43 Signed:

44 Printed Name:

45 Date Signed:

46 NOTICE: You are signing and submitting this form under penalty of law.  
47 That means it is against the law to make a statement on this form that  
48 you know is false."

49 § 3. 1. A real property owner may submit a "Hardship Declaration" to  
50 any village, town, city, school district, county, or other entity or  
51 person which conducts tax foreclosures or tax lien sales.

52 2. At least thirty days prior to the date on which a sale of a tax  
53 lien is scheduled to occur, or upon the filing of a petition of foreclo-  
54 sure of a tax lien, the enforcing officer or other person or entity  
55 conducting such tax lien sale or tax foreclosure shall notify the owner  
56 of the affected property of such owner's rights under this act and shall

1 notify the owner that a copy of the hardship declaration can be accessed  
 2 on the New York State Department of Tax and Finance's website and also  
 3 provide a link to such declaration form. For the purposes of this act,  
 4 "enforcing officer" shall have the same meaning as defined in subdivi-  
 5 sion 3 of section 1102 of the real property tax law. The New York State  
 6 Department of Tax and Finance shall publish a copy of the hardship  
 7 declaration on its website.

8 3. The submission of such a declaration, unless withdrawn by the  
 9 owner, shall act as a temporary stay applicable to all entities and  
 10 persons of all such tax lien sales and tax foreclosure actions and  
 11 proceedings against such owner for such property that have been  
 12 commenced or could have been commenced before May 1, 2021.

13 4. While such stay is in effect, no other action or proceeding shall  
 14 be commenced to recover any part of such delinquent taxes.

15 5. Any applicable statutes of limitation for the commencement of any  
 16 action or proceeding to sell a tax lien or foreclose a tax lien is  
 17 tolled until such stay has expired. The obligation to pay the balance of  
 18 such delinquent taxes is not rendered invalid, released or extinguished  
 19 by such stay.

20 6. A hardship declaration shall create a rebuttable presumption that  
 21 the owner is experiencing financial hardship, in any judicial or admin-  
 22 istrative proceeding that may be brought, for the purposes of establish-  
 23 ing a defense under an executive order of the governor or any other  
 24 local or state law, order or regulation restricting actions to sell a  
 25 tax lien or foreclose a tax lien against an owner suffering from a  
 26 financial hardship during or due to the COVID-19 pandemic, provided  
 27 that the absence of a hardship declaration shall not create a presump-  
 28 tion that a financial hardship is not present.

29 § 4. This act shall take effect immediately and sections one and two  
 30 and subdivisions one, two, three, four and five of section three shall  
 31 expire May 1, 2021.

32 SUBPART C

33 Section 1. Application. 1. This act shall apply to an owner of resi-  
 34 dential real property, provided the owner or mortgagor of such property  
 35 is a natural person, regardless of how title is held, and owns ten or  
 36 fewer dwelling units whether directly or indirectly. The ten or fewer  
 37 dwelling units may be in more than one property or building as long as  
 38 the total aggregate number of ten units includes the primary residence  
 39 of the natural person requesting such relief and the remaining units are  
 40 currently occupied by a tenant or are available for rent.

41 (a) For purposes of this act, real property shall include shares in a  
 42 residential cooperative.

43 (b) For purposes of this act, real property shall not include property  
 44 that is vacant and abandoned, as defined in subdivision 2 of section  
 45 1309 of the real property actions and proceedings law, which was listed  
 46 on the statewide vacant and abandoned property electronic registry, as  
 47 defined in section 1310 of the real property actions and proceedings  
 48 law, prior to March 7, 2020 and that remains on such registry.

49 2. Hardship declaration. For purposes of this act, "hardship declara-  
 50 tion" shall mean the following statement, or a substantially equivalent  
 51 statement in the owner or mortgagor's primary language, in 14-point  
 52 type, whether in physical or electronic written form, and the department  
 53 of financial services shall publish a copy of the hardship declaration  
 54 on its website:

1       "NOTICE TO OWNER/MORTGAGOR: If you have lost income or had increased  
2 costs due to the COVID-19 pandemic, and you sign and deliver this hard-  
3 ship declaration form to your lending institution, you cannot be  
4 discriminated against in the determination of whether credit should be  
5 extended or reported negatively to a credit reporting agency until at  
6 least May 1, 2021.

7       If a lending institution provided you with this form, the lending  
8 institution must also provide you with a mailing address and e-mail  
9 address to which you can return this form. You should keep a copy or  
10 picture of the signed form for your records.

11      OWNER/MORTGAGOR DECLARATION OF COVID-19-RELATED HARDSHIP

12      I am the OWNER/MORTGAGOR of the property at (address of dwelling  
13 unit). Including my primary residence, I own, whether directly or indi-  
14 rectly, ten or fewer residential dwelling units. I am experiencing  
15 financial hardship, and I am unable to pay my mortgage in full because  
16 of one or more of the following:

17      1. Significant loss of household income during the COVID-19 pandemic.  
18      2. Increase in necessary out-of-pocket expenses related to performing  
19 essential work or related to health impacts during the COVID-19 pandem-  
20 ic.

21      3. Childcare responsibilities or responsibilities to care for an  
22 elderly, disabled, or sick family member during the COVID-19 pandemic  
23 have negatively affected my ability or the ability of someone in my  
24 household to obtain meaningful employment or earn income or increased my  
25 necessary out-of-pocket expenses.

26      4. Moving expenses and difficulty I have securing alternative housing  
27 make it a hardship for me to relocate to another residence during the  
28 COVID-19 pandemic.

29      5. Other circumstances related to the COVID-19 pandemic have negative-  
30 ly affected my ability to obtain meaningful employment or earn income or  
31 have significantly reduced my household income or significantly  
32 increased my expenses.

33      6. One or more of my tenants has defaulted on a significant amount of  
34 their rent payments since March 1, 2020.

35      To the extent that I have lost household income or had increased  
36 expenses, any public assistance, including unemployment insurance,  
37 pandemic unemployment assistance, disability insurance, or paid family  
38 leave, that I have received since the start of the COVID-19 pandemic  
39 does not fully make up for my loss of household income or increased  
40 expenses.

41      Signed:

42      Printed Name:

43      Date Signed:

44      NOTICE: You are signing and submitting this form under penalty of law.  
45 That means it is against the law to make a statement on this form that  
46 you know is false."

47      3. Discrimination in credit decisions. Notwithstanding any law to the  
48 contrary, lending institutions shall not discriminate in the determi-  
49 nation of whether credit should be extended to any owner of residential  
50 real property as defined in subdivision one of this section because, as  
51 provided for in this act, such owner has been granted a stay of mortgage  
52 foreclosure proceedings, tax foreclosure proceedings or of tax lien  
53 sales, or that an owner of residential real property as defined in  
54 subdivision one of this section is currently in arrears and has filed a  
55 hardship declaration with such lender.

1       4. Prohibition on negative credit reporting. Notwithstanding any law  
2 to the contrary, as provided for in this act, the granting of a stay of  
3 mortgage foreclosure proceedings, tax foreclosure proceedings or tax  
4 lien sales, or that an owner of residential real property as defined in  
5 subdivision one of this section is currently in arrears and has filed a  
6 hardship declaration with their lender shall not be negatively reported  
7 to any credit reporting agency.

8       § 2. This act take effect immediately and shall expire May 1, 2021.

9

SUBPART D

10      Section 1. Notwithstanding any other provision of law, in the interest  
11 of the health and safety of the public due to the novel coronavirus,  
12 COVID-19 pandemic, every governing body of an assessing unit and local  
13 assessor shall extend to the 2021 assessment roll, the renewal of the  
14 exemptions received on the 2020 assessment roll pursuant to sections 467  
15 and 459-c of the real property tax law, relating to persons age sixty-  
16 five and older and for certain persons with disabilities and limited  
17 income, and no renewal application shall be required of any eligible  
18 recipient who received either exemption on the 2020 assessment roll in  
19 order for such eligible recipient to continue receiving such exemption  
20 at the same amount received on the 2020 assessment roll, except as here-  
21 in provided. Provided however, that the local assessor shall make avail-  
22 able renewal applications through postal mail or electronic means in  
23 order for eligible recipients to file renewal applications in the event  
24 that such eligible recipient determines his or her income has changed in  
25 a manner that would grant him or her a greater exemption than what was  
26 present on the 2020 assessment roll; and provided further that such  
27 governing body may adopt a local law or resolution which includes proce-  
28 dures by which the assessor may require a renewal application to be  
29 filed when he or she has reason to believe that an owner who qualified  
30 for the exemption on the 2020 assessment roll may have since changed his  
31 or her primary residence, added another owner to the deed, transferred  
32 the property to a new owner, or died; and provided further that no  
33 governing body of an assessing unit or local assessor may require eligi-  
34 ble recipients to appear in person to file a renewal application for any  
35 reason.

36      § 2. This act shall take effect immediately and shall expire May 1,  
37 2021. This act shall be deemed to have been in full force and effect on  
38 and after March 7, 2020.

39      § 2. Severability clause. If any clause, sentence, paragraph, subdivi-  
40 sion, section, item, subpart or part of this act shall be adjudged by  
41 any court of competent jurisdiction to be invalid, such judgment shall  
42 not affect, impair, or invalidate the remainder thereof, but shall be  
43 confined in its operation to the clause, sentence, paragraph, subdivi-  
44 sion, section, item, subpart or part thereof directly involved in the  
45 controversy in which such judgment shall have been rendered. It is here-  
46 by declared to be the intent of the legislature that this act would have  
47 been enacted even if such invalid provisions had not been included here-  
48 in.

49      § 3. This act shall take effect immediately provided, however, that  
50 the applicable effective date of Subparts A through D of this act shall  
51 be as specifically set forth in the last section of such Subparts.

52      § 4. Severability clause. If any clause, sentence, paragraph, subdivi-  
53 sion, section or part of this act shall be adjudged by any court of  
54 competent jurisdiction to be invalid, such judgment shall not affect,

1 impair, or invalidate the remainder thereof, but shall be confined in  
2 its operation to the clause, sentence, paragraph, subdivision, section  
3 or part thereof directly involved in the controversy in which such judg-  
4 ment shall have been rendered. It is hereby declared to be the intent of  
5 the legislature that this act would have been enacted even if such  
6 invalid provisions had not been included herein.

7 § 5. This act shall take effect immediately provided, however, that  
8 the applicable effective date of Parts A through B of this act shall be  
9 as specifically set forth in the last section of such Parts.

**EXHIBIT G**

**(Dist. Ct. Dkt. No. 14-2)**

# EXHIBIT 2

# STATE OF NEW YORK

7175--A

R. R. 64

2021-2022 Regular Sessions

## IN ASSEMBLY

April 23, 2021

Introduced by M. of A. DINOWITZ, EPSTEIN, L. ROSENTHAL, OTIS, BARRON -- read once and referred to the Committee on Judiciary -- reported and referred to the Committee on Rules -- ordered to a third reading -- amended on the special order of third reading, ordered reprinted as amended, retaining its place on the special order of third reading

AN ACT to amend chapter 381 of the laws of 2020 establishing the "COVID-19 Emergency Eviction and Foreclosure Prevention Act of 2020", in relation to extending the effectiveness thereof; and to amend chapter 73 of the laws of 2021 relating to establishing the "COVID-19 Emergency Protect Our Small Businesses Act of 2021", in relation to extending the effectiveness thereof

**The People of the State of New York, represented in Senate and Assembly, do enact as follows:**

1       Section 1. Subdivision 4 of section 1 of part A of chapter 381 of the  
2 laws of 2020 establishing the "COVID-19 Emergency Eviction and Foreclo-  
3 sure Prevention Act of 2020", is amended to read as follows:

4       4. "Hardship declaration" means the following statement, or a substan-  
5 tially equivalent statement in the tenant's primary language, in  
6 14-point type, published by the office of court administration, whether  
7 in physical or electronic written form:

8       "NOTICE TO TENANT: If you have lost income or had increased costs  
9 during the COVID-19 pandemic, or moving would pose a significant health  
10 risk for you or a member of your household due to an increased risk for  
11 severe illness or death from COVID-19 due to an underlying medical  
12 condition, and you sign and deliver this hardship declaration form to  
13 your landlord, you cannot be evicted until at least **[May 1] August 31**,  
14 2021 for nonpayment of rent or for holding over after the expiration of  
15 your lease. You may still be evicted for violating your lease by persis-  
16 tently and unreasonably engaging in behavior that substantially  
17 infringes on the use and enjoyment of other tenants or occupants or  
18 causes a substantial safety hazard to others.

EXPLANATION--Matter in **italics** (underscored) is new; matter in brackets  
[**-**] is old law to be omitted.

LBD11083-02-1

1 If your landlord has provided you with this form, your landlord must  
2 also provide you with a mailing address and e-mail address to which you  
3 can return this form. If your landlord has already started an eviction  
4 proceeding against you, you can return this form to either your land-  
5 lord, the court, or both at any time. You should keep a copy or picture  
6 of the signed form for your records. You will still owe any unpaid rent  
7 to your landlord. You should also keep careful track of what you have  
8 paid and any amount you still owe.

9 For more information about legal resources that may be available to  
10 you, go to [www.nycourts.gov/evictions/nyc/](http://www.nycourts.gov/evictions/nyc/) or call 718-557-1379 if you  
11 live in New York City or go to [www.nycourts.gov/evictions/outside-nyc/](http://www.nycourts.gov/evictions/outside-nyc/)  
12 or call a local bar association or legal services provider if you live  
13 outside of New York City. Rent relief may be available to you, and you  
14 should contact your local housing assistance office.

15 TENANT'S DECLARATION OF HARDSHIP DURING THE COVID-19 PANDEMIC

16 I am a tenant, lawful occupant, or other person responsible for paying  
17 rent, use and occupancy, or any other financial obligation under a lease  
18 or tenancy agreement at (address of dwelling unit).

19 YOU MUST INDICATE BELOW YOUR QUALIFICATION FOR EVICTION PROTECTION BY  
20 SELECTING OPTION "A" OR "B", OR BOTH.

21 A. ( ) I am experiencing financial hardship, and I am unable to pay my  
22 rent or other financial obligations under the lease in full or obtain  
23 alternative suitable permanent housing because of one or more of the  
24 following:

25 1. Significant loss of household income during the COVID-19 pandemic.  
26 2. Increase in necessary out-of-pocket expenses related to performing  
27 essential work or related to health impacts during the COVID-19 pandem-  
28 ic.

29 3. Childcare responsibilities or responsibilities to care for an  
30 elderly, disabled, or sick family member during the COVID-19 pandemic  
31 have negatively affected my ability or the ability of someone in my  
32 household to obtain meaningful employment or earn income or increased my  
33 necessary out-of-pocket expenses.

34 4. Moving expenses and difficulty I have securing alternative housing  
35 make it a hardship for me to relocate to another residence during the  
36 COVID-19 pandemic.

37 5. Other circumstances related to the COVID-19 pandemic have negative-  
38 ly affected my ability to obtain meaningful employment or earn income or  
39 have significantly reduced my household income or significantly  
40 increased my expenses.

41 To the extent that I have lost household income or had increased  
42 expenses, any public assistance, including unemployment insurance,  
43 pandemic unemployment assistance, disability insurance, or paid family  
44 leave, that I have received since the start of the COVID-19 pandemic  
45 does not fully make up for my loss of household income or increased  
46 expenses.

47 B. ( ) Vacating the premises and moving into new permanent housing would  
48 pose a significant health risk because I or one or more members of my  
49 household have an increased risk for severe illness or death from  
50 COVID-19 due to being over the age of sixty-five, having a disability or  
51 having an underlying medical condition, which may include but is not  
52 limited to being immunocompromised.

1 I understand that I must comply with all other lawful terms under my  
2 tenancy, lease agreement or similar contract. I further understand that  
3 lawful fees, penalties or interest for not having paid rent in full or  
4 met other financial obligations as required by my tenancy, lease agree-  
5 ment or similar contract may still be charged or collected and may  
6 result in a monetary judgment against me. I further understand that my  
7 landlord may be able to seek eviction after ~~May 1~~ August 31, 2021, and  
8 that the law may provide certain protections at that time that are sepa-  
9 rate from those available through this declaration.

10 Signed:  
11 Printed name:  
12 Date signed:

13 NOTICE: You are signing and submitting this form under penalty of law.  
14 That means it is against the law to make a statement on this form that  
15 you know is false."

16 § 2. Sections 4, 6 and 7 of part A of chapter 381 of the laws of 2020  
17 establishing the "COVID-19 Emergency Eviction and Foreclosure Prevention  
18 Act of 2020", are amended to read as follows:

19 § 4. Prohibition on initiation of eviction proceeding. If there is no  
20 pending eviction proceeding and a tenant provides a hardship declaration  
21 to the landlord or an agent of the landlord, there shall be no initi-  
22 ation of an eviction proceeding against the tenant until at least ~~May~~  
23 ~~1~~ August 31, 2021, and in such event any specific time limit for the  
24 commencement of an eviction proceeding shall be tolled until ~~May 1~~  
25 August 31, 2021.

26 § 6. Pending proceedings. In any eviction proceeding in which an  
27 eviction warrant has not been issued, including eviction proceedings  
28 filed on or before March 7, 2020, if the tenant provides a hardship  
29 declaration to the petitioner, the court, or an agent of the petitioner  
30 or the court, the eviction proceeding shall be stayed until at least  
31 ~~May 1~~ August 31, 2021. If such hardship declaration is provided to the  
32 petitioner or agent, such petitioner or agent shall promptly file it  
33 with the court, advising the court in writing the index number of all  
34 relevant cases.

35 § 7. Default judgments. No court shall issue a judgment in any  
36 proceeding authorizing a warrant of eviction against a respondent who  
37 has defaulted, or authorize the enforcement of an eviction pursuant to a  
38 default judgment, prior to ~~May 1~~ August 31, 2021, without first hold-  
39 ing a hearing after the effective date of this act upon motion of the  
40 petitioner. The petitioner or an agent of the petitioner shall file an  
41 affidavit attesting that the petitioner or the petitioner's agent has  
42 served notice of the date, time, and place of such hearing on the  
43 respondent, including a copy of such notice. If a default judgment has  
44 been awarded prior to the effective date of this act, the default judg-  
45 ment shall be removed and the matter restored to the court calendar upon  
46 the respondent's written or oral request to the court either before or  
47 during such hearing and an order to show cause to vacate the default  
48 judgment shall not be required.

49 § 3. Subdivision a of section 8 of part A of chapter 381 of the laws  
50 of 2020 establishing the "COVID-19 Emergency Eviction and Foreclosure  
51 Prevention Act of 2020", is amended to read as follows:

52 a. (i) In any eviction proceeding in which an eviction warrant has  
53 been issued prior to the effective date of this act, but has not yet  
54 been executed as of the effective date of this act, including eviction

1 proceedings filed on or before March 7, 2020, the court shall stay the  
2 execution of the warrant at least until the court has held a status  
3 conference with the parties. (ii) In any eviction proceeding, if the  
4 tenant provides a hardship declaration to the petitioner, the court, or  
5 an agent of the petitioner or the court, prior to the execution of the  
6 warrant, the execution shall be stayed until at least [May-1] August 31,  
7 2021. If such hardship declaration is provided to the petitioner or  
8 agent of the petitioner, such petitioner or agent shall promptly file it  
9 with the court, advising the court in writing the index number of all  
10 relevant cases.

11 § 4. Subdivision 4 of section 9 of part A of chapter 381 of the laws  
12 of 2020 establishing the "COVID-19 Emergency Eviction and Foreclosure  
13 Prevention Act of 2020", is amended to read as follows:

14 4. If the petitioner fails to establish that the tenant persistently  
15 and unreasonably engaged in such behavior and the tenant provides or has  
16 provided a hardship declaration to the petitioner, petitioner's agent or  
17 the court, the court shall stay or continue to stay any further  
18 proceedings until at least [May-1] August 31, 2021.

19 § 5. Section 13 of part A of chapter 381 of the laws of 2020 estab-  
20 lishing the "COVID-19 Emergency Eviction and Foreclosure Prevention Act  
21 of 2020", is amended to read as follows:

22 § 13. This act shall take effect immediately and sections one, two,  
23 three, four, five, six, seven, eight, nine, ten and twelve of this act  
24 shall expire [May-1] August 31, 2021.

25 § 6. Section 2 of subpart A of part B of chapter 381 of the laws of  
26 2020 establishing the "COVID-19 Emergency Eviction and Foreclosure  
27 Prevention Act of 2020", is amended to read as follows:

28 § 2. Definitions. For the purposes of this act, "Hardship Declaration"  
29 means the following statement, or a substantially equivalent statement  
30 in the mortagor's primary language, in 14-point type, published by the  
31 office of court administration, whether in physical or electronic writ-  
32 ten form:

33 "NOTICE TO MORTGAGOR: If you have lost income or had increased costs  
34 during the COVID-19 pandemic, and you sign and deliver this hardship  
35 declaration form to your mortgage lender or other foreclosing party, you  
36 cannot be foreclosed on until at least [May-1] August 31, 2021.

37 If your mortgage lender or other foreclosing party provided you with  
38 this form, the mortgage lender or other foreclosing party must also  
39 provide you with a mailing address and e-mail address to which you can  
40 return this form. If you are already in foreclosure proceedings, you may  
41 return this form to the court. You should keep a copy or picture of the  
42 signed form for your records. You will still owe any unpaid mortgage  
43 payments and lawful fees to your lender. You should also keep careful  
44 track of what you have paid and any amount you still owe.

45 MORTGAGOR'S DECLARATION OF COVID-19-RELATED HARDSHIP

46 I am the mortgagor of the property at (address of dwelling unit).  
47 Including my primary residence, I own, whether directly or indirectly,  
48 ten or fewer residential dwelling units. I am experiencing financial  
49 hardship, and I am unable to pay my mortgage in full because of one or  
50 more of the following:

51 1. Significant loss of household income during the COVID-19 pandemic.  
52 2. Increase in necessary out-of-pocket expenses related to performing  
53 essential work or related to health impacts during the COVID-19 pandem-  
54 ic.

55 3. Childcare responsibilities or responsibilities to care for an  
56 elderly, disabled, or sick family member during the COVID-19 pandemic

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1 have negatively affected my ability or the ability of someone in my  
2 household to obtain meaningful employment or earn income or increased my  
3 necessary out-of-pocket expenses.

4 4. Moving expenses and difficulty I have securing alternative housing  
5 make it a hardship for me to relocate to another residence during the  
6 COVID-19 pandemic.

7 5. Other circumstances related to the COVID-19 pandemic have negative-  
8 ly affected my ability to obtain meaningful employment or earn income or  
9 have significantly reduced my household income or significantly  
10 increased my expenses.

11 6. One or more of my tenants has defaulted on a significant amount of  
12 their rent payments since March 1, 2020.

13 To the extent I have lost household income or had increased expenses,  
14 any public assistance, including unemployment insurance, pandemic unem-  
15 ployment assistance, disability insurance, or paid family leave, that I  
16 have received since the start of the COVID-19 pandemic does not fully  
17 make up for my loss of household income or increased expenses.

18 I understand that I must comply with all other lawful terms under my  
19 mortgage agreement. I further understand that lawful fees, penalties or  
20 interest for not having paid my mortgage in full as required by my mort-  
21 gage agreement may still be charged or collected and may result in a  
22 monetary judgment against me. I also understand that my mortgage lender  
23 or other foreclosing party may pursue a foreclosure action against me on  
24 or after ~~May 1~~ August 31, 2021, if I do not fully repay any missed or  
25 partial payments and lawful fees.

26 Signed:

27 Printed Name:

28 Date Signed:

29 NOTICE: You are signing and submitting this form under penalty of law.  
30 That means it is against the law to make a statement on this form that  
31 you know is false."

32 § 7. Sections 5, 7, 8 and 12 of subpart A of part B of chapter 381 of  
33 the laws of 2020 establishing the "COVID-19 Emergency Eviction and Fore-  
34 closure Prevention Act of 2020", are amended to read as follows:

35 § 5. If a mortgagor provides a hardship declaration to the foreclosing  
36 party or an agent of the foreclosing party, there shall be no initiation  
37 of an action to foreclose a mortgage against the mortgagor until at  
38 least ~~May 1~~ August 31, 2021, and in such event any specific time limit  
39 for the commencement of an action to foreclose a mortgage shall be  
40 tolled until ~~May 1~~ August 31, 2021.

41 § 7. In any action to foreclose a mortgage in which a judgment of sale  
42 has not been issued, including actions filed on or before March 7, 2020,  
43 if the mortgagor provides a hardship declaration to the foreclosing  
44 party, the court, or an agent of the foreclosing party or the court, the  
45 proceeding shall be stayed until at least ~~May 1~~ August 31, 2021. If  
46 such hardship declaration is provided to the foreclosing party or agent  
47 of the foreclosing party, such foreclosing party or agent shall promptly  
48 file it with the court, advising the court in writing the index number  
49 of all relevant cases.

50 § 8. In any action to foreclose a mortgage in which a judgment of sale  
51 has been issued prior to the effective date of this act but has not yet  
52 been executed as of the effective date of this act, including actions  
53 filed on or before March 7, 2020, the court shall stay the execution of  
54 the judgment at least until the court has held a status conference with  
55 the parties. In any action to foreclose a mortgage, if the mortgagor  
56 provides a hardship declaration to the foreclosing party, the court, or

1 an agent of the foreclosing party or the court, prior to the execution  
2 of the judgment, the execution shall be stayed until at least [May 1]  
3 August 31, 2021. If such hardship declaration is provided to the fore-  
4 closing party or agent of the foreclosing party, such foreclosing party  
5 or agent shall promptly file it with the court, advising the court in  
6 writing the index number of all relevant cases.

7 § 12. This act shall take effect immediately and sections one, two,  
8 three, four, five, six, seven, eight, nine and eleven of this act shall  
9 expire [May 1] August 31, 2021.

10 § 8. Subdivision 3 of section 2 of subpart B of part B of chapter 381  
11 of the laws of 2020 establishing the "COVID-19 Emergency Eviction and  
12 Foreclosure Prevention Act of 2020", is amended to read as follows:

13 3. "Hardship Declaration" means the following statement, or a substan-  
14 tially equivalent statement in the owner's primary language, in 14-point  
15 type, whether in physical or electronic written form:

16 "OWNER DECLARATION OF COVID-19-RELATED HARDSHIP

17 I am the owner of the property at (address). Including my primary  
18 residence, I own, whether directly or indirectly, ten or fewer residen-  
19 tial dwelling units. I am experiencing financial hardship, and I am  
20 unable to pay my full tax bill because of one or more of the following:

21 1. Significant loss of household income during the COVID-19 pandemic.  
22 2. Increase in necessary out-of-pocket expenses related to performing  
23 essential work or related to health impacts during the COVID-19 pandem-  
24 ic.

25 3. Childcare responsibilities or responsibilities to care for an  
26 elderly, disabled, or sick family member during the COVID-19 pandemic  
27 have negatively affected my ability or the ability of someone in my  
28 household to obtain meaningful employment or earn income or increased my  
29 necessary out-of-pocket expenses.

30 4. Moving expenses and difficulty I have securing alternative housing  
31 make it a hardship for me to relocate to another residence during the  
32 COVID-19 pandemic.

33 5. Other circumstances related to the COVID-19 pandemic have negative-  
34 ly affected my ability to obtain meaningful employment or earn income or  
35 have significantly reduced my household income or significantly  
36 increased my expenses.

37 6. One or more of my tenants has defaulted on a significant amount of  
38 their rent payments since March 1, 2020.

39 To the extent that I have lost household income or had increased  
40 expenses, any public assistance, including unemployment insurance,  
41 pandemic unemployment assistance, disability insurance, or paid family  
42 leave, that I have received since the start of the COVID-19 pandemic  
43 does not fully make up for my loss of household income or increased  
44 expenses.

45 I understand that lawful fees, penalties or interest for not having  
46 paid my taxes in full may still be charged or collected and may result  
47 in a foreclosure action against me on or after [May 1] August 31, 2021,  
48 if I do not fully repay any missed or partial payments and fees.

49 Signed:

50 Printed Name:

51 Date Signed:

52 NOTICE: You are signing and submitting this form under penalty of law.  
53 That means it is against the law to make a statement on this form that  
54 you know is false."

1       § 9. Subdivision 3 of section 3 of subpart B of part B of chapter 381  
2 of the laws of 2020 establishing the "COVID-19 Emergency Eviction and  
3 Foreclosure Prevention Act of 2020", is amended to read as follows:

4       3. The submission of such a declaration, unless withdrawn by the  
5 owner, shall act as a temporary stay applicable to all entities and  
6 persons of all such tax lien sales and tax foreclosure actions and  
7 proceedings against such owner for such property that have been  
8 commenced or could have been commenced before [May 1] August 31, 2021.

9       § 10. Section 4 of subpart B of part B of chapter 381 of the laws of  
10 2020 establishing the "COVID-19 Emergency Eviction and Foreclosure  
11 Prevention Act of 2020", is amended to read as follows:

12      § 4. This act shall take effect immediately and sections one and two  
13 and subdivisions one, two, three, four and five of section three shall  
14 expire [May 1] August 31, 2021.

15      § 11. Subdivision 2 of section 1 of subpart C of part B of chapter 381  
16 of the laws of 2020 establishing the "COVID-19 Emergency Eviction and  
17 Foreclosure Prevention Act of 2020", is amended to read as follows:

18      2. Hardship declaration. For purposes of this act, "hardship declara-  
19 tion" shall mean the following statement, or a substantially equivalent  
20 statement in the owner or mortgagor's primary language, in 14-point  
21 type, whether in physical or electronic written form, and the department  
22 of financial services shall publish a copy of the hardship declaration  
23 on its website:

24      "NOTICE TO OWNER/MORTGAGOR: If you have lost income or had increased  
25 costs due to the COVID-19 pandemic, and you sign and deliver this hard-  
26 ship declaration form to your lending institution, you cannot be  
27 discriminated against in the determination of whether credit should be  
28 extended or reported negatively to a credit reporting agency until at  
29 least [May 1] August 31, 2021.

30      If a lending institution provided you with this form, the lending  
31 institution must also provide you with a mailing address and e-mail  
32 address to which you can return this form. You should keep a copy or  
33 picture of the signed form for your records.

34      OWNER/MORTGAGOR DECLARATION OF COVID-19-RELATED HARDSHIP

35      I am the OWNER/MORTGAGOR of the property at (address of dwelling  
36 unit). Including my primary residence, I own, whether directly or indi-  
37 rectly, ten or fewer residential dwelling units. I am experiencing  
38 financial hardship, and I am unable to pay my mortgage in full because  
39 of one or more of the following:

40      1. Significant loss of household income during the COVID-19 pandemic.  
41      2. Increase in necessary out-of-pocket expenses related to performing  
42 essential work or related to health impacts during the COVID-19 pandem-  
43 ic.

44      3. Childcare responsibilities or responsibilities to care for an  
45 elderly, disabled, or sick family member during the COVID-19 pandemic  
46 have negatively affected my ability or the ability of someone in my  
47 household to obtain meaningful employment or earn income or increased my  
48 necessary out-of-pocket expenses.

49      4. Moving expenses and difficulty I have securing alternative housing  
50 make it a hardship for me to relocate to another residence during the  
51 COVID-19 pandemic.

52      5. Other circumstances related to the COVID-19 pandemic have negative-  
53 ly affected my ability to obtain meaningful employment or earn income or  
54 have significantly reduced my household income or significantly  
55 increased my expenses.

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1       6. One or more of my tenants has defaulted on a significant amount of  
2 their rent payments since March 1, 2020.

3 To the extent that I have lost household income or had increased  
4 expenses, any public assistance, including unemployment insurance,  
5 pandemic unemployment assistance, disability insurance, or paid family  
6 leave, that I have received since the start of the COVID-19 pandemic  
7 does not fully make up for my loss of household income or increased  
8 expenses.

9    Signed:

10 Printed Name:

11 Date Signed:

12 NOTICE: You are signing and submitting this form under penalty of law.  
13 That means it is against the law to make a statement on this form that  
14 you know is false."

15       § 12. Section 2 of subpart C of part B of chapter 381 of the laws of  
16 2020 establishing the "COVID-19 Emergency Eviction and Foreclosure  
17 Prevention Act of 2020", is amended to read as follows:

18       § 2. This act take effect immediately and shall expire [May 1] August  
19 31, 2021.

20       § 13. Section 2 of subpart D of part B of chapter 381 of the laws of  
21 2020 establishing the "COVID-19 Emergency Eviction and Foreclosure

22 Prevention Act of 2020", is amended to read as follows:  
23 § 2. This act shall take effect immediately and shall expire [May 1]  
24 August 31, 2021. This act shall be deemed to have been in full force and  
25 effect on and after March 7, 2020.

§ 14. Subdivision 4 of section 1 of part A of chapter 73 of the laws of 2021 establishing the "COVID-19 Emergency Protect Our Small Businesses Act of 2021", is amended to read as follows:

29     4. "Hardship declaration" means the following statement, or a substantially equivalent statement in the language in which the commercial lease or tenancy agreement was written or negotiated, in 14-point type, published by the office of court administration, whether in physical or electronic written form:

"NOTICE TO COMMERCIAL TENANT: If you have lost significant revenue or had significantly increased necessary costs during the COVID-19 pandemic, and you sign and deliver this hardship declaration form to your landlord, you cannot be evicted until at least May 1 August 31, 2021 for nonpayment of rent or for holding over after the expiration of your lease. You may still be evicted for violating your lease by persistently and unreasonably engaging in behavior that substantially infringes on the use and enjoyment of other tenants or occupants or causes a substantial safety hazard to others.

If your landlord has provided you with this form, your landlord must also provide you with a mailing address and e-mail address to which you can return this form. If your landlord has already started an eviction proceeding against you, you can return this form to either your landlord, the court, or both at any time. You should keep a copy or picture of the signed form for your records. You will still owe any unpaid rent to your landlord. You should also keep careful track of what you have paid and any amount you still owe.

COMMERCIAL TENANT'S DECLARATION OF HARDSHIP DURING THE  
COVID-19 PANDEMIC

53 I am the owner, chief executive officer, president, or similar officer  
54 of (name of business), in which is a commercial tenant at (address of

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1 commercial unit). My business is resident in New York state, independently owned and operated, not dominant in its field, and employs fifty or fewer persons. My business is experiencing financial hardship, and is unable to pay the rent or other financial obligations under the lease in full or obtain an alternative suitable commercial property because of one or more of the following:

7 1. Significant loss of revenue during the COVID-19 pandemic.

8 2. Significant increase in necessary expenses related to providing  
9 personal protective equipment to employees or purchasing and installing  
10 other protective equipment to prevent the transmission of COVID-19 within  
11 the business.

12 3. Moving expenses and difficulty in securing an alternative commercial  
13 property make it a hardship for the business to relocate to another  
14 location during the COVID-19 pandemic.

15 To the extent the business has lost revenue or had increased expenses,  
16 any public assistance the business has received since the start of the  
17 COVID-19 pandemic does not fully make up for the business's loss of  
18 revenue or increased expenses.

19 I understand that the business must comply with all other lawful terms  
20 under its commercial tenancy, lease agreement or similar contract. I  
21 further understand that lawful fees, penalties or interest for not  
22 having paid rent in full or met other financial obligations as required  
23 by the commercial tenancy, lease agreement or similar contract may still  
24 be charged or collected and may result in a monetary judgment. I  
25 further understand that the landlord may be able to seek eviction after  
26 [May-1] August 31, 2021, and that the law may provide certain  
27 protections at that time that are separate from those available through  
28 this declaration.

29 Signed:

30 Printed name:

31 Date signed:

32 NOTICE: You are signing and submitting this form under penalty of law.  
33 That means it is against the law to make a statement on this form that  
34 you know is false."

35 § 15. Section 2 of part A of chapter 73 of the laws of 2021 establishing the "COVID-19 Emergency Protect Our Small Businesses Act of 2021", is amended to read as follows:

36 § 2. No commercial tenant shall be removed from the possession prior  
37 to [May-1] August 31, 2021, except by an eviction proceeding.

38 § 16. Section 5 of part A of chapter 73 of the laws of 2021 establishing the "COVID-19 Emergency Protect Our Small Businesses Act of 2021",  
39 is amended to read as follows:

40 § 5. Prohibition on initiation of eviction proceeding. If there is no  
41 pending eviction proceeding and a tenant provides a hardship declaration  
42 to the landlord or an agent of the landlord, there shall be no initiation of an eviction proceeding against the tenant until at least [May-1]  
43 August 31, 2021, and in such event any specific time limit for the  
44 commencement of an eviction proceeding shall be tolled until [May-1]  
45 August 31, 2021.

46 § 17. Section 7 of part A of chapter 73 of the laws of 2021 establishing the "COVID-19 Emergency Protect Our Small Businesses Act of 2021",  
47 is amended to read as follows:

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10

1       § 7. Pending proceedings. In any eviction proceeding in which an  
2 eviction warrant or judgment of possession or ejectment has not been  
3 issued, including eviction proceedings filed on or before March 7, 2020,  
4 if the tenant provides a hardship declaration to the petitioner or  
5 plaintiff, the court, or an agent of the petitioner or plaintiff or the  
6 court, the eviction proceeding shall be stayed until at least [May-1]  
7 August 31, 2021. If such hardship declaration is provided to the peti-  
8 tioner or plaintiff or agent, such petitioner or plaintiff or agent  
9 shall promptly file it with the court, advising the court in writing the  
10 index number of all relevant cases.

11       § 18. Paragraph (ii) of subdivision a of section 8 of part A of chapter  
12 73 of the laws of 2021 establishing the "COVID-19 Emergency Protect  
13 Our Small Businesses Act of 2021", is amended to read as follows:

14       (ii) In any eviction proceeding, if the tenant provides a hardship  
15 declaration to the petitioner or plaintiff, the court, or an agent of  
16 the petitioner or plaintiff or the court, prior to the execution of the  
17 warrant or judgment, the execution shall be stayed until at least [May  
18 1] August 31, 2021. If such hardship declaration is provided to the  
19 petitioner or plaintiff or agent of the petitioner or plaintiff, such  
20 petitioner or plaintiff or agent shall promptly file it with the court,  
21 advising the court in writing the index number of all relevant cases.

22       § 19. Subdivision 4 of section 9 of part A of chapter 73 of the laws  
23 of 2021 establishing the "COVID-19 Emergency Protect Our Small Busi-  
24 nesses Act of 2021", is amended to read as follows:

25       4. If the petitioner or plaintiff fails to establish that the tenant  
26 persistently and unreasonably engaged in such behavior and the tenant  
27 provides or has provided a hardship declaration to the petitioner,  
28 petitioner's or plaintiff's agent or the court, the court shall stay or  
29 continue to stay any further proceedings until at least [May-1] August  
30 31, 2021.

31       § 20. Section 13 of part A of chapter 73 of the laws of 2021 estab-  
32 lishing the "COVID-19 Emergency Protect Our Small Businesses Act of  
33 2021", is amended to read as follows:

34       § 13. This act shall take effect immediately and sections one, two,  
35 three, four, five, six, seven, eight, nine, ten and twelve of this act  
36 shall expire [May 1] August 31, 2021.

37       § 21. Section 2 of subpart A of part B of chapter 73 of the laws of  
38 2021 establishing the "COVID-19 Emergency Protect Our Small Businesses  
39 Act of 2021", is amended to read as follows:

40       § 2. Definitions. For the purposes of this act, "Hardship Declaration"  
41 means the following statement in 14-point type, published by the office  
42 of court administration, whether in physical or electronic written form:

43 "NOTICE TO COMMERCIAL MORTGAGOR: If you have lost significant revenue  
44 or had significantly increased necessary costs during the COVID-19  
45 pandemic, and you sign and deliver this hardship declaration form to  
46 your mortgage lender or other foreclosing party, you cannot be fore-  
47 closed on until at least [May-1] August 31, 2021.

48 If your mortgage lender or other foreclosing party provided you with  
49 this form, the mortgage lender or other foreclosing party must also  
50 provide you with a mailing address and e-mail address to which you can  
51 return this form. If you are already in foreclosure proceedings, you may  
52 return this form to the court. You should keep a copy or picture of the  
53 signed form for your records. You will still owe any unpaid mortgage  
54 payments and lawful fees to your lender. You should also keep careful  
55 track of what you have paid and any amount you still owe.

56 COMMERCIAL MORTGAGOR'S DECLARATION OF COVID-19-RELATED HARDSHIP

1 I am the owner, chief executive officer, president, or similar officer  
2 of (name of the business), which is the mortgagor of the property at  
3 (address of commercial unit). My business owns, whether directly or  
4 indirectly, ten or fewer commercial units. My business is resident in  
5 New York State, independently owned and operated, not dominant in its  
6 field, and employs fifty or fewer persons. My business is experiencing  
7 financial hardship and is unable to pay the mortgage in full because of  
8 one or more of the following:

9 1. Significant loss of revenue during the COVID-19 pandemic.  
10 2. Significant increase in necessary expenses related to providing  
11 personal protective equipment to employees or purchasing and installing  
12 other protective equipment to prevent the transmission of COVID-19 within  
13 the business.

14 3. Moving expenses and difficulty in securing an alternative commer-  
15 cial property make it a hardship for the business to relocate to another  
16 property during the COVID-19 pandemic.

17 4. One or more of the business's tenants has defaulted on a signif-  
18 icant amount of their rent payments since March 1, 2020.

19 To the extent that the business has lost revenue or had increased  
20 expenses, any public assistance the business has received since the  
21 start of the COVID-19 pandemic does not fully make up for the business's  
22 loss of revenue or increased expenses.

23 I understand that the business must comply with all other lawful terms  
24 under my commercial mortgage agreement. I further understand that lawful  
25 fees, penalties or interest for not having paid the mortgage in full as  
26 required by the commercial mortgage agreement may still be charged or  
27 collected and may result in a monetary judgment. I also understand that  
28 the mortgage lender or other foreclosing party may pursue a foreclosure  
29 action against the business on or after May 1 August 31, 2021, if I do  
30 not fully repay any missed or partial payments and lawful fees.

31 Signed:

32 Printed Name:

33 Date Signed:

34 NOTICE: You are signing and submitting this form under penalty of law.  
35 That means it is against the law to make a statement on this form that  
36 you know is false."

37 § 22. Section 5 of subpart A of part B of chapter 73 of the laws of  
38 2021 establishing the "COVID-19 Emergency Protect Our Small Businesses  
39 Act of 2021", is amended to read as follows:

40 § 5. If a mortgagor provides a hardship declaration to the foreclosing  
41 party or an agent of the foreclosing party, there shall be no initiation  
42 of an action to foreclose a mortgage against the mortgagor until at  
43 least May 1 August 31, 2021, and in such event any specific time limit  
44 for the commencement of an action to foreclose a mortgage shall be  
45 tolled until May 1 August 31, 2021.

46 § 23. Sections 7 and 8 of subpart A of part B of chapter 73 of the  
47 laws of 2021 establishing the "COVID-19 Emergency Protect Our Small  
48 Businesses Act of 2021", are amended to read as follows:

49 § 7. In any action to foreclose a mortgage in which a judgment of sale  
50 has not been issued, including actions filed on or before March 7, 2020,  
51 if the mortgagor provides a hardship declaration to the foreclosing  
52 party, the court, or an agent of the foreclosing party or the court, the  
53 proceeding shall be stayed until at least May 1 August 31, 2021. If  
54 such hardship declaration is provided to the foreclosing party or agent  
55 of the foreclosing party, such foreclosing party or agent shall promptly

1 file it with the court, advising the court in writing the index number  
2 of all relevant cases.

3 § 8. In any action to foreclose a mortgage in which a judgment of sale  
4 has been issued prior to the effective date of this act but has not yet  
5 been executed as of the effective date of this act, including actions  
6 filed on or before March 7, 2020, the court shall stay the execution of  
7 the judgment at least until the court has held a status conference with  
8 the parties. In any action to foreclose a mortgage, if the mortgagor  
9 provides a hardship declaration to the foreclosing party, the court, or  
10 an agent of the foreclosing party or the court, prior to the execution  
11 of the judgment, the execution shall be stayed until at least [May-1]  
12 August 31, 2021. If such hardship declaration is provided to the fore-  
13 closing party or agent of the foreclosing party, such foreclosing party  
14 or agent shall promptly file it with the court, advising the court in  
15 writing the index number of all relevant cases.

16 § 24. Section 12 of subpart A of part B of chapter 73 of the laws of  
17 2021 establishing the "COVID-19 Emergency Protect Our Small Businesses  
18 Act of 2021", is amended to read as follows:

19 § 12. This act shall take effect immediately and sections one, two,  
20 three, four, five, six, seven, eight, nine and eleven of this act shall  
21 expire [May-1] August 31, 2021.

22 § 25. Subdivision 3 of section 2 of subpart B of part B of chapter  
23 73 of the laws of 2021 establishing the "COVID-19 Emergency Protect Our  
24 Small Businesses Act of 2021", is amended to read as follows:

25 3. "Hardship Declaration" means the following statement in 14-point  
26 type, whether in physical or electronic written form:

27 "COMMERCIAL OWNER DECLARATION OF COVID-19-RELATED HARDSHIP  
28 I am the owner, chief executive officer, president, or similar officer  
29 of (name of the business), which is the owner of the commercial property  
30 at (address). My business owns, whether directly or indirectly, ten or  
31 fewer commercial units. My business is resident in New York State,  
32 independently owned and operated, not dominant in its field, and employs  
33 fifty or fewer persons. My business is experiencing financial hardship,  
34 and is unable to pay its full tax bill because of one or more of the  
35 following:

36 1. Significant loss of revenue during the COVID-19 pandemic.

37 2. Significant increase in necessary expenses related to providing  
38 personal protective equipment to employees or purchasing and installing  
39 other protective equipment to prevent the transmission of COVID-19 with-  
40 in the business.

41 3. Moving expenses and difficulty in securing an alternative commer-  
42 cial property make it a hardship for the business to relocate to another  
43 property during the COVID-19 pandemic.

44 4. One or more of the business's tenants has defaulted on a signif-  
45 icant amount of their rent payments since March 1, 2020.

46 To the extent that the business has lost revenue or had increased  
47 expenses, any public assistance that the business has received since the  
48 start of the COVID-19 pandemic does not fully make up for the loss of  
49 revenue or increased expenses.

50 I understand that lawful fees, penalties or interest for not having  
51 paid the business's taxes in full may still be charged or collected and  
52 may result in a foreclosure action against the business on or after [May  
53 1] August 31, 2021, if the business does not fully repay any missed or  
54 partial payments and fees.

55 Signed:

56 Printed Name:

1 Date Signed:

2 NOTICE: You are signing and submitting this form under penalty of law.  
3 That means it is against the law to make a statement on this form that  
4 you know is false."

5 § 26. Subdivision 3 of section 3 of subpart B of part B of chapter  
6 73 of the laws of 2021 establishing the "COVID-19 Emergency Protect Our  
7 Small Businesses Act of 2021", is amended to read as follows:

8 3. The submission of such a declaration, unless withdrawn by the  
9 owner, shall act as a temporary stay applicable to all entities and  
10 persons of all such tax lien sales and tax foreclosure actions and  
11 proceedings against such owner for such property that have been  
12 commenced or could have been commenced before [May 1] August 31, 2021.

13 § 27. Section 4 of subpart B of part B of chapter 73 of the laws of  
14 2021 establishing the "COVID-19 Emergency Protect Our Small Businesses  
15 Act of 2021", is amended to read as follows:

16 § 4. This act shall take effect immediately and sections one and two  
17 and subdivisions one, two, three, four and five of section three shall  
18 expire [May 1] August 31, 2021.

19 § 28. Subdivision 2 of section 1 of subpart C of part B of chapter 73  
20 of the laws of 2021 establishing the "COVID-19 Emergency Protect Our  
21 Small Businesses Act of 2021", is amended to read as follows:

22 2. Hardship declaration. For purposes of this act, "hardship declara-  
23 tion" shall mean the following statement in 14-point type, whether in  
24 physical or electronic written form, and the department of financial  
25 services shall publish a copy of the hardship declaration on its  
26 website:

27 "NOTICE TO COMMERCIAL OWNER/MORTGAGOR: If you have lost significant  
28 revenue or had significantly increased necessary costs due to the  
29 COVID-19 pandemic, and you sign and deliver this hardship declaration  
30 form to your lending institution, you cannot be discriminated against in  
31 the determination of whether credit should be extended or reported nega-  
32 tively to a credit reporting agency until at least [May 1] August 31,  
33 2021.

34 If a lending institution provided you with this form, the lending  
35 institution must also provide you with a mailing address and e-mail  
36 address to which you can return this form. You should keep a copy or  
37 picture of the signed form for your records.

38 COMMERCIAL OWNER/MORTGAGOR DECLARATION OF COVID-19-RELATED HARDSHIP

39 I am the owner, chief executive officer, president, or similar officer  
40 of (name of the business), which is the OWNER/MORTGAGOR of the property  
41 at (address of commercial unit). My business owns, whether directly or  
42 indirectly, ten or fewer commercial units. My business is resident in  
43 New York State, independently owned and operated, not dominant in its  
44 field, and employs fifty or fewer persons. My business is experiencing  
45 financial hardship, and is unable to pay the mortgage in full because of  
46 one or more of the following:

47 1. Significant loss of revenue during the COVID-19 pandemic.

48 2. Significant increase in necessary out-of-pocket expenses related to  
49 providing personal protective equipment to employees or purchasing and  
50 installing other protective equipment to prevent the transmission of  
51 COVID-19 within the business.

52 3. Moving expenses and difficulty in securing an alternative commer-  
53 cial property make it a hardship for the business to relocate to another  
54 commercial property during the COVID-19 pandemic.

55 4. One or more of my tenants has defaulted on a significant amount of  
56 their rent payments since March 1, 2020.

A. 7175--A

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1 To the extent that the business has lost revenue or had increased  
2 expenses, any public assistance that the business has received since the  
3 start of the COVID-19 pandemic does not fully make up for the loss of  
4 revenue or increased expenses.

5 Signed:

6 Printed Name:

7 Date Signed:

8 NOTICE: You are signing and submitting this form under penalty of law.  
9 That means it is against the law to make a statement on this form that  
10 you know is false."

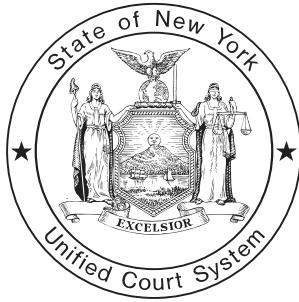
11 § 29. Section 2 of subpart C of part B of chapter 73 of the laws of  
12 2021 establishing the "COVID-19 Emergency Protect Our Small Businesses  
13 Act of 2021", is amended to read as follows:

14 § 2. This act take effect immediately and shall expire [May 1] August  
15 31, 2021.

16 § 30. This act shall take effect immediately and shall be deemed to  
17 have been in full force and effect on May 1, 2021; provided, however,  
18 that the amendments to parts A and B of chapter 381 of the laws of 2020  
19 made by this act shall not affect the expiration of such parts and shall  
20 be repealed therewith; and provided further, that the amendments to  
21 parts A and B of chapter 73 of the laws of 2021 made by this act shall  
22 not affect the expiration of such parts and shall be deemed to expire  
23 therewith.

**EXHIBIT H**  
**(Dist. Ct. Dkt. No. 14-7)**

# EXHIBIT 7

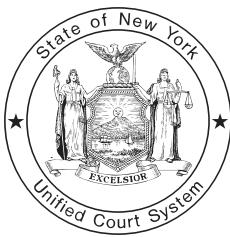


## **NOTICE TO TENANT:**

If you have lost income or had increased costs during the COVID-19 pandemic, or moving would pose a significant health risk for you or a member of your household due to an increased risk for severe illness or death from COVID-19 due to an underlying medical condition, and you sign and deliver this hardship declaration form to your landlord, you cannot be evicted until at least May 1, 2021 for nonpayment of rent or for holding over after the expiration of your lease. You may still be evicted for violating your lease by persistently and unreasonably engaging in behavior that substantially infringes on the use and enjoyment of other tenants or occupants or causes a substantial safety hazard to others.

If your landlord has provided you with this form, your landlord must also provide you with a mailing address and e-mail address to which you can return this form. If your landlord has already started an eviction proceeding against you, you can return this form to either your landlord, the court, or both at any time. You should keep a copy or picture of the signed form for your records. You will still owe any unpaid rent to your landlord. You should also keep careful track of what you have paid and any amount you still owe.

For more information about legal resources that may be available to you, go to [www.nycourts.gov/evictions/nyc/](http://www.nycourts.gov/evictions/nyc/) or call 718-557-1379 if you live in New York City or go to [www.nycourts.gov/evictions/outside-nyc/](http://www.nycourts.gov/evictions/outside-nyc/) or call a local bar association or legal services provider if you live outside of New York City. Rent relief may be available to you, and you should contact your local housing assistance office.



Index Number (if known/applicable): \_\_\_\_\_

County and Court (if known/applicable): \_\_\_\_\_

## **TENANT'S DECLARATION OF HARDSHIP DURING THE COVID-19 PANDEMIC**

I am a tenant, lawful occupant, or other person responsible for paying rent, use and occupancy, or any other financial obligation under a lease or tenancy agreement at (address of dwelling unit):  
\_\_\_\_\_  
\_\_\_\_\_

### **YOU MUST INDICATE BELOW YOUR QUALIFICATION FOR EVICTION PROTECTION BY SELECTING OPTION “A” OR “B”, OR BOTH.**

- A. I am experiencing financial hardship, and I am unable to pay my rent or other financial obligations under the lease in full or obtain alternative suitable permanent housing because of one or more of the following:
1. Significant loss of household income during the COVID-19 pandemic.
  2. Increase in necessary out-of-pocket expenses related to performing essential work or related to health impacts during the COVID-19 pandemic.
  3. Childcare responsibilities or responsibilities to care for an elderly, disabled, or sick family member during the COVID-19 pandemic have negatively affected my ability or the ability of someone in my household to obtain meaningful employment or earn income or increased my necessary out-of-pocket expenses.
  4. Moving expenses and difficulty I have securing alternative housing make it a hardship for me to relocate to another residence during the COVID-19 pandemic.

5. Other circumstances related to the COVID-19 pandemic have negatively affected my ability to obtain meaningful employment or earn income or have significantly reduced my household income or significantly increased my expenses.

To the extent that I have lost household income or had increased expenses, any public assistance, including unemployment insurance, pandemic unemployment assistance, disability insurance, or paid family leave, that I have received since the start of the COVID-19 pandemic does not fully make up for my loss of household income or increased expenses.

- B. Vacating the premises and moving into new permanent housing would pose a significant health risk because I or one or more members of my household have an increased risk for severe illness or death from COVID-19 due to being over the age of sixty-five, having a disability or having an underlying medical condition, which may include but is not limited to being immunocompromised.

I understand that I must comply with all other lawful terms under my tenancy, lease agreement or similar contract. I further understand that lawful fees, penalties or interest for not having paid rent in full or met other financial obligations as required by my tenancy, lease agreement or similar contract may still be charged or collected and may result in a monetary judgment against me. I further understand that my landlord may be able to seek eviction after May 1, 2021, and that the law may provide certain protections at that time that are separate from those available through this declaration.

Signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Date signed: \_\_\_\_\_

**NOTICE:** You are signing and submitting this form under penalty of law. That means it is against the law to make a statement on this form that you know is false.

**EXHIBIT I**  
**(Dist. Ct. Dkt. No. 9)**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----x  
PANTELIS CHRYSAFIS, BETTY COHEN, :  
BRANDIE LACASSE, MUDAN SHI, FENG :  
ZHOU, and RENT STABILIZATION :  
ASSOCIATION OF NYC, INC., :  
:  
*Plaintiffs*, :  
:  
-against- :  
:  
LAWRENCE K. MARKS, in his official :  
capacity as Chief Administrative Judge of the :  
Courts of New York State, ADRIAN H. :  
ANDERSON, in his official capacity as Sheriff :  
of Dutchess County, New York, JAMES :  
DZURENDA, in his official capacity as :  
Sheriff of Nassau County, New York, JOSEPH :  
FUCITO, in his official capacity as Sheriff of :  
New York City, New York, MARGARET :  
GARNETT, in her official capacity as :  
Commissioner of the New York City :  
Department of Investigation, and CAROLINE :  
TANG-ALEJANDRO, in her official capacity :  
as Director, Bureau of Marshals, New York :  
City Department of Investigation, :  
:  
*Defendants*. :  
:  
-----x

No. 21-cv-2516

**DECLARATION OF BETTY S. COHEN IN SUPPORT OF PLAINTIFFS'  
APPLICATION FOR A PRELIMINARY INJUNCTION**

I, Betty S. Cohen, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746,  
and state as follows:

1. I own a one-bedroom co-op apartment in Brooklyn, New York at 855 East 7th  
Street. I bought the apartment in 1987 and, since then, have rented it out to tenants. Since 2014,  
the rent from the apartment has served as a one of my principal sources of income. The current  
tenant in the apartment has lived there 1995.

2. I am 68 years old and have received Social Security since 2014. I use the income from the apartment to pay for my fixed costs in the apartment I currently live in, including my maintenance and internet costs. My tenant stopped paying rent in March 2020, and I am currently owed over \$21,000. As a result of the tenant's nonpayment, I can no longer afford my fixed costs and have had to take out a \$10,900 Small Business Administration loan from the federal government. In addition, the tenant's lease expired in December 2020 and he refused to move out. Although I filed suit against the tenant, I still cannot evict the tenant as a result of the Executive Orders and COVID-19 Emergency Eviction and Foreclosure Prevention Act of 2020 ("CEEFPA").

3. My current tenant rents the apartment for \$1,545 a month. In March 2020, the tenant told me that because of the COVID-19 pandemic, he did not get paid and could not pay rent.

4. Once the tenant stopped paying rent, I contacted my representative in Congress, as well as my state representative, for assistance. They referred me to online resources that detailed relief options for tenants. I sent the tenant links to the relevant websites and offered to help him apply for relief. I received no response.

5. Every month since the tenant stopped paying rent in March 2020, I have sent him update notices detailing the amount he owes. After the tenant stopped responding to me, I became concerned about his health. I asked the superintendent of the building if he had recently seen the tenant and asked the police to check on his apartment. He was still living there, and healthy—just refusing to pay the rent owed to me. As of today the tenant owes me approximately \$21,630, and that amount will increase to \$23,175 as of May 15. That amount is highly significant to me, as I do not have other substantial income.

6. I stayed up to date on Governor Cuomo's Executive Orders regarding the eviction moratorium during the spring and early summer of 2020. In July 2020, knowing that the moratorium was slated to end in August 2020, I contacted an attorney to commence a nonpayment suit and seek to evict the tenant. In September 2020, I filed a non-payment action. I informed the tenant that in addition to the rent owed, his lease expired on December 14, 2020 and that I would not be offering to renew it—another reason that he had to move out. But he has remained in the apartment ever since.

7. On February 4, 2021 my tenant filed a CEEFPA Declaration Form stating that he was experiencing a financial hardship, a true and correct copy of which is attached as Exhibit A. He did not sign the form with a physical signature, and the form's cover page states that it was provided to the landlord, but lists an incorrect name and address rather than my information. I will have no opportunity to contest his hardship declaration or even get clarification on which of the five financial hardship categories my tenant claims applies.

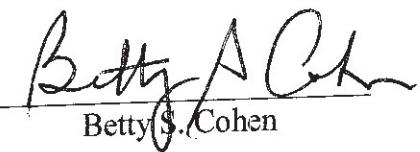
8. Despite the tenant's nonpayment, I still pay the monthly maintenance on the apartment plus a sublet fee of \$105.18. I also have fixed expenses at the home I live in, including maintenance and internet costs. I have asked a few friends to help me out and they graciously sent me a couple hundred dollars to keep me afloat during this time period.

9. As a result of CEEFPA's serious impact on me, I participated as a plaintiff in a prior lawsuit challenging CEEFPA—*Chrysafis, et al. v. James* (No. 21-cv-00998)—that was dismissed on technical grounds without reaching the merits of the claims. Those claims are now being reasserted in this case challenging CEEFPA as extended. Since bringing the earlier lawsuit, the amount of rent I am owed has only continued to rise, with no end in sight.

10. In April 2021, I received a \$10,000 grant from the Small Business Administration for use on expenses related to the co-op. While that money has temporarily helped me cover some of the costs directly associated with the property, it cannot be used for my general living expenses, unlike the rent my tenant is supposed to be paying.

11. Now that CEEFPA has been extended, I will not be able to make any progress in removing my non-paying tenant until at least August 31, 2021. If I cannot evict the tenant and rent my apartment to a tenant who will pay rent, I will no longer be able to afford my own monthly expenses, and I may lose my property altogether.

Dated: May 6, 2021  
New York, New York

  
\_\_\_\_\_  
Betty S. Cohen

# EXHIBIT A

This Hardship Declaration form was generated on 02/04/2021 to be provided to:

- Landlord: [REDACTED] via USPS Certified Mail to [REDACTED]  
BROOKLYN, NY 11230
- Housing Court, via email to KingsHardshipDeclaration@nycourts.gov

A copy was also provided to the tenant for their records.

---

Esta declaración de penuria ha sido generada el 02/04/2021 para ser entregada a:

- Dueño o manager del edificio: [REDACTED] mediante correo certificado "USPS Certified Mail" a [REDACTED], BROOKLYN, NY 11230
- Tribunal de Vivienda, mediante email a KingsHardshipDeclaration@nycourts.gov

Una copia adicional fue proporcionada al inquilino/a para sus archivos.



## NOTICE TO TENANT:

If you have lost income or had increased costs during the COVID-19 pandemic, or moving would pose a significant health risk for you or a member of your household due to an increased risk for severe illness or death from COVID-19 due to an underlying medical condition, and you sign and deliver this hardship declaration form to your landlord, you cannot be evicted until at least May 1, 2021 for nonpayment of rent or for holding over after the expiration of your lease. You may still be evicted for violating your lease by persistently and unreasonably engaging in behavior that substantially infringes on the use and enjoyment of other tenants or occupants or causes a substantial safety hazard to others.

If your landlord has provided you with this form, your landlord must also provide you with a mailing address and e-mail address to which you can return this form. If your landlord has already started an eviction proceeding against you, you can return this form to either your landlord, the court, or both at any time. You should keep a copy or picture of the signed form for your records. You will still owe any unpaid rent to your landlord. You should also keep careful track of what you have paid and any amount you still owe.

For more information about legal resources that may be available to you, go to [www.nycourts.gov/evictions/nyc/](http://www.nycourts.gov/evictions/nyc/) or call 718-557-1379 if you live in New York City or go to [www.nycourts.gov/evictions/outside-nyc/](http://www.nycourts.gov/evictions/outside-nyc/) or call a local bar association or legal services provider if you live outside of New York City. Rent relief may be available to you, and you should contact your local housing assistance office.



Index Number (if known/applicable): 30271920

County and Court (if known/applicable): Kings County Housing Court

## **TENANT'S DECLARATION OF HARDSHIP DURING THE COVID-19 PANDEMIC**

I am a tenant, lawful occupant, or other person responsible for paying rent, use and occupancy, or any other financial obligation under a lease or tenancy agreement at (address of dwelling unit):

Brooklyn, NY 11230

### **YOU MUST INDICATE BELOW YOUR QUALIFICATION FOR EVICTION PROTECTION BY SELECTING OPTION "A" OR "B", OR BOTH.**

- A. I am experiencing financial hardship, and I am unable to pay my rent or other financial obligations under the lease in full or obtain alternative suitable permanent housing because of one or more of the following:
1. Significant loss of household income during the COVID-19 pandemic.
  2. Increase in necessary out-of-pocket expenses related to performing essential work or related to health impacts during the COVID-19 pandemic.
  3. Childcare responsibilities or responsibilities to care for an elderly, disabled, or sick family member during the COVID-19 pandemic have negatively affected my ability or the ability of someone in my household to obtain meaningful employment or earn income or increased my necessary out-of-pocket expenses.
  4. Moving expenses and difficulty I have securing alternative housing make it a hardship for me to relocate to another residence during the COVID-19 pandemic.

5. Other circumstances related to the COVID-19 pandemic have negatively affected my ability to obtain meaningful employment or earn income or have significantly reduced my household income or significantly increased my expenses.

To the extent that I have lost household income or had increased expenses, any public assistance, including unemployment insurance, pandemic unemployment assistance, disability insurance, or paid family leave, that I have received since the start of the COVID-19 pandemic does not fully make up for my loss of household income or increased expenses.

- B. Vacating the premises and moving into new permanent housing would pose a significant health risk because I or one or more members of my household have an increased risk for severe illness or death from COVID-19 due to being over the age of sixty-five, having a disability or having an underlying medical condition, which may include but is not limited to being immunocompromised.

I understand that I must comply with all other lawful terms under my tenancy, lease agreement or similar contract. I further understand that lawful fees, penalties or interest for not having paid rent in full or met other financial obligations as required by my tenancy, lease agreement or similar contract may still be charged or collected and may result in a monetary judgment against me. I further understand that my landlord may be able to seek eviction after May 1, 2021, and that the law may provide certain protections at that time that are separate from those available through this declaration.

Signed: \_\_\_\_\_  
[REDACTED]

Printed name: \_\_\_\_\_  
[REDACTED]

Date signed: 02/04/2021  
\_\_\_\_\_

**NOTICE:** You are signing and submitting this form under penalty of law. That means it is against the law to make a statement on this form that you know is false.

**EXHIBIT J**

**(Dist. Ct. Dkt. No. 10)**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----x  
PANTELIS CHRYSAFIS, BETTY COHEN, :  
BRANDIE LACASSE, MUDAN SHI, FENG :  
ZHOU, and RENT STABILIZATION :  
ASSOCIATION OF NYC, INC., :  
:  
*Plaintiffs*, :  
:  
-against- :  
:  
LAWRENCE K. MARKS, in his official :  
capacity as Chief Administrative Judge of the :  
Courts of New York State, ADRIAN H. :  
ANDERSON, in his official capacity as Sheriff :  
of Dutchess County, New York, JAMES :  
DZURENDA, in his official capacity as :  
Sheriff of Nassau County, New York, JOSEPH :  
FUCITO, in his official capacity as Sheriff of :  
New York City, New York, MARGARET :  
GARNETT, in her official capacity as :  
Commissioner of the New York City :  
Department of Investigation, and CAROLINE :  
TANG-ALEJANDRO, in her official capacity :  
as Director, Bureau of Marshals, New York :  
City Department of Investigation, :  
:  
*Defendants*. :  
:  
-----x

No. 21-cv-2516

**DECLARATION OF BRANDIE LACASSE IN SUPPORT OF PLAINTIFFS'  
APPLICATION FOR A PRELIMINARY INJUNCTION**

I, Brandie LaCasse, hereby declare under penalty of perjury pursuant to 28 U.S.C.  
§ 1746, and state as follows:

1. I am a small-scale property owner and veteran. I retired from the military after more than 23 years of active-duty service. I am a single mother, and I also have a service-connected disability, which has resulted in me being immunocompromised. I own six rental units in the State of New York, all of which I personally manage.

2. In November 2020, I decided to sell one of my properties, a single-family house located at 5 Haggerty Hill Road in Rhinebeck, New York. Accordingly, I served the tenants, a man and woman couple, with a 60-day notice of nonrenewal that same month, in advance of the expiration of their lease. But after I served them with the notice, they stopped paying their \$2,450 monthly rent. They also refused to leave the property at the end of the lease. To date, they owe me approximately \$15,000 in unpaid rent.

3. Not only that, the tenants have violated numerous terms of the lease and caused extensive damage to the property during their tenancy. They damaged the house's septic system, smoked, set fires, and permitted dogs on the property in violation of the lease terms. I estimate the damages will cost at least \$15,000 to repair. In addition, the police have been called to the property numerous times to respond to various incidents.

4. Since I gave the tenants a nonrenewal notice, they have refused to permit me to even walk through the property to inspect it in advance of a potential sale. I have contacted them numerous times to attempt to schedule times to do so. But every time I contact them, they reject the times I propose or do not respond. They have occasionally threatened to call the police if I come onto the property. Because the tenants refused to pay rent or leave the property, I was forced to file a holdover proceeding on December 26, 2020. When I filed the proceeding, the tenants owed me \$2,050 in rent, and that number has only grown.

5. However, the passage of the COVID-19 Emergency Eviction and Foreclosure Prevention Act ("CEEFPA") immediately derailed my attempts to regain control of my property. Even though the latest hardship declaration requirement was not yet in effect when I filed my holdover case, the court dismissed the case because I had not served the tenants with the hardship declaration now required under the CEEFPA.

6. After my case was dismissed, the tenants filed a hardship declaration form pursuant to CEEFPA, a true and correct copy of which is attached as Exhibit A. When the tenants submitted a hardship declaration form, it barred me from resuming eviction proceedings until at least May 1. Now the State has extended that period until at least August 31.

7. Despite submitting a hardship declaration form, the tenants do not appear to be suffering financially. The male tenant has continued his pre-pandemic employment as an emergency medical technician. The female tenant, who did not work prior to the pandemic, has continued to stay at home. While the tenants' child has been out of school for long periods of time since March 2020, they paid their rent without issue until I provided them with the nonrenewal notice in November. Now they claim that childcare responsibilities are a financial burden, even though their situation has not changed and one of them stays home and does not work. In fact, my understanding is that one of the tenants recently received a large amount of money in connection with a medical malpractice dispute.

8. Despite this evidence that the tenants are not struggling financially due to the pandemic, property owners like myself have no recourse to challenge the accuracy of the completed hardship declaration forms. The result is that I am unable to evict these non-paying tenants now that they have submitted a hardship declaration form.

9. My inability to collect rent or sell my property has had significant adverse consequences. As of May 2021, I am owed a total of approximately \$15,000 in unpaid rent from the Haggerty Hill Road tenants and I have no way to make up the loss of income. I rely on the income from the property to pay its \$1,350 mortgage and to support myself.

10. Since the Haggerty Hill Road tenants stopped paying rent, I acquired another job to cover the financial losses I have suffered, despite my immunocompromised status and the

ongoing pandemic. The eviction moratorium is literally forcing me to risk my life in order to make ends meet. If I get sick as a result, the consequences could be devastating and irreversible. In the meantime, I am no longer able to spend time with my daughter because I have been forced to take this additional work. If I continue not to be able to collect rent, I may have no choice but to take yet another job, which will only increase the risk to my health and the possibility that I will get infected with COVID-19.

11. Troublingly, tenants in my other properties now also believe they can refuse to pay rent with impunity. In the past few months, tenants at a different property paid their rent late and told me that I should consider myself lucky to receive any payments at all. They have told me they do not have to pay their rent because it is impossible for me to take them to court.

12. I fear that the message that tenants do not have to pay rent will likely spread to my other properties, three of which are located on the same large lot, and more and more of my tenants will cease paying rent. That is all the more likely because I will be forced to send hardship declarations and lists of legal service providers—whose views and activities I do not endorse—to my tenants with any written demand for rent or written notice required under the relevant lease or by law.

13. Because I felt that my situation was untenable and that CEEFPA violated my constitutional rights, and because I wanted to do something to help myself and other small landlords, I participated as a plaintiff in the prior lawsuit challenging CEEFPA—*Chrysafis, et al. v. James* (No. 21-cv-00998). That suit was dismissed on property party grounds without reaching the merits of the claims, which are reasserted (against different defendants) in this lawsuit challenging CEEFPA as extended.

14. Now that CEEFPA has been extended, things have gotten even worse. While I originally wanted to sell the Haggerty Hill Road property, in February 2021 my fiancé asked me and my daughter to move out of his home, which we currently share. I attempted to get a loan so that I could find a different place to live, but a bank would not give me another mortgage because of my existing mortgages on my other properties. As an alternative, I hoped to personally move into the Haggerty Hill Road property with my daughter, since it is the only one of my properties in which the tenants' lease has expired. However, since the tenants refuse to leave, I have been forced to remain in my fiancé's home despite his requests that I find a different place to live.

15. I have been traumatized by this experience. I am trapped with a property that does not generate income even to cover its ownership costs, and I cannot live there even though I have nowhere else to go. I feel like I have no way out.

Dated: May 5, 2021  
Staatsburg New York

Brandie LaCasse

Brandie LaCasse

# EXHIBIT A



RECEIVED

JAN 26 2021

CITY OF RHINEBECK COURT

Index Number:

21010029

County and Court:

Rhinebeck Town Court (Dutchess)

## TENANT'S DECLARATION OF HARDSHIP DURING THE COVID-19 PANDEMIC

I am a tenant, lawful occupant, or other person responsible for paying rent, use and occupancy, or any other financial obligation under a lease or tenancy agreement at (address of dwelling unit):

[REDACTED] Rhinebeck N.Y. 12572

YOU MUST INDICATE BELOW YOUR QUALIFICATION FOR EVICTION PROTECTION BY SELECTING OPTION "A" OR "B", OR BOTH.

- A. I am experiencing financial hardship, and I am unable to pay my rent or other financial obligations under the lease in full or obtain alternative suitable permanent housing because of one or more of the following:
1. Significant loss of household income during the COVID-19 pandemic.
  2. Increase in necessary out-of-pocket expenses related to performing essential work or related to health impacts during the COVID-19 pandemic.
  3. Childcare responsibilities or responsibilities to care for an elderly, disabled, or sick family member during the COVID-19 pandemic have negatively affected my ability or the ability of someone in my household to obtain meaningful employment or earn income or increased my necessary out-of-pocket expenses.
  4. Moving expenses and difficulty I have securing alternative housing make it a hardship for me to relocate to another residence during the COVID-19 pandemic.



5. Other circumstances related to the COVID-19 pandemic have negatively affected my ability to obtain meaningful employment or earn income or have significantly reduced my household income or significantly increased my expenses.

To the extent that I have lost household income or had increased expenses, any public assistance, including unemployment insurance, pandemic unemployment assistance, disability insurance, or paid family leave, that I have received since the start of the COVID-19 pandemic does not fully make up for my loss of household income or increased expenses.

- B. Vacating the premises and moving into new permanent housing would pose a significant health risk because I or one or more members of my household have an increased risk for severe illness or death from COVID-19 due to being over the age of sixty-five, having a disability or having an underlying medical condition, which may include but is not limited to being immunocompromised.

I understand that I must comply with all other lawful terms under my tenancy, lease agreement or similar contract. I further understand that lawful fees, penalties or interest for not having paid rent in full or met other financial obligations as required by my tenancy, lease agreement or similar contract may still be charged or collected and may result in a monetary judgment against me. I further understand that my landlord may be able to seek eviction after May 1, 2021, and that the law may provide certain protections at that time that are separate from those available through this declaration.

Signed:

Printed name:

Date signed:

January 26, 2021

**NOTICE:** You are signing and submitting this form under penalty of law. That means it is against the law to make a statement on this form that you know is false.

**EXHIBIT K**  
**(Dist. Ct. Dkt. No. 11)**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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PANTELIS CHRYSAFIS, BETTY S. :  
COHEN, BRANDIE LACASSE, MUDAN :  
SHI, FENG ZHOU, and RENT :  
STABILIZATION ASSOCIATION OF NYC, :  
INC., :  
: *Plaintiffs,* :  
: -against- :  
: :  
LAWRENCE K. MARKS, in his official :  
capacity as Chief Administrative Judge of the :  
Courts of New York State, ADRIAN H. :  
ANDERSON, in his official capacity as Sheriff :  
of Dutchess County, New York, JAMES :  
DZURENDA, in his official capacity as :  
Sheriff of Nassau County, New York, JOSEPH :  
FUCITO, in his official capacity as Sheriff of :  
New York City, New York, MARGARET :  
GARNETT, in her official capacity as :  
Commissioner of the New York City :  
Department of Investigation, and CAROLINE :  
TANG-ALEJANDRO, in her official capacity :  
as Director, Bureau of Marshals, New York :  
City Department of Investigation, :  
: *Defendants.* :  
-----x

No. 2:21-cv-02516

**DECLARATION OF MUDAN SHI IN SUPPORT OF PLAINTIFFS'  
APPLICATION FOR A PRELIMINARY INJUNCTION**

I, Mudan Shi, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746, and state as follows:

1. I am the owner of a single family home in Staten Island, New York, located at 60 Littlefield Avenue, which I currently rent out to tenants. I am married with two kids, and I rely on the rental income from the Littlefield Avenue property to support my family, pay rent where we currently live, pay electric and gas bills, and purchase food.

2. Most recently, I rented out the Littlefield Avenue home on August 1, 2018 for a two-year lease that was supposed to end on August 1, 2020. The tenant's rent is \$2,400 a month.

3. I personally live in an apartment that I rent with my family and my mother and my husband's parents. We pay \$2,200 a month—just \$200 less than the rent I receive from the Littlefield Avenue property. Since the tenants at Littlefield Avenue stopped paying rent, I can barely afford the rent where my family now lives, where both my children are remote learning in the midst of the pandemic.

4. In April 2019, before the COVID-19 pandemic, the tenants paid half of their rent and then informed me they could not pay the other half because the husband lost his job and his car was stolen. Since then, they have not paid any rent, but I continue to pay the property taxes and water bill for the tenants, approximately \$300 a month.

5. When the tenants stopped paying rent, my family was struggling financially, too. My mother and my husband's parents moved in with my family and I began to support them financially, in addition to my two kids and my husband.

6. In October 2019, I commenced a nonpayment action against the tenants for nonpayment of rent from April 2019 through October 2019. We obtained a judgment but have not been able to enforce the judgment because of the various COVID-19 eviction stays, even though the tenants' nonpayment and the judgment predate the pandemic.

7. In the spring of 2020, I asked the tenants to move out. Since they stopped paying rent in April 2019, I could no longer afford to pay the monthly rent to my own landlord and the maintenance and utilities on the Littlefield Avenue property. The tenants asked me to pay them \$10,000 to move out. I said no. The tenants then told me they would move out if I paid them \$6,000. I was willing to give them \$6,000 once they moved out, but they wanted it before the

move, and I would not agree to that. The tenant told me that his previous landlord paid him to leave, which means this was not the first time he stopped paying rent in exchange for a payout.

8. In December 2020, New York passed the COVID-19 Emergency Eviction and Foreclosure Prevention Act of 2020 (“CEEFPA”), extending the stay of nonpayment and eviction proceedings like mine, if my tenants check a box and sign a form asserting any one of a number of vague “financial hardships” due to the pandemic. I was determined to do something to help myself and my family so I participated as a plaintiff in a prior lawsuit to challenge CEEFPA—*Chrysafis, et al. v. James*, Case No. 21-cv-00998. That suit was dismissed on property party grounds without reaching the merits of the claims, which are reasserted here against different defendants in this challenge to CEEFPA as extended.

9. Now, with the extension of CEEFPA and its stay of eviction proceedings through at least August 31, 2021, upon the tenant’s unchallengeable assertion of “hardship,” my family has become even more frustrated and burdened. The tenants have not paid rent for over a year and are living rent free in the home that I own, and as a result, my family is living in a small rental apartment and struggling to pay our rent. This is extremely unfair and is taking a significant toll on myself and my family.

10. To add insult to injury, before I can attempt to further pursue my pending nonpayment proceeding, CEEFPA requires me to provide to my tenants a copy of the government-drafted hardship form, along with a list of legal services organizations prepared by the government whose mission involves helping my tenants avoid their payment obligations and eviction.

11. As of the date of this declaration, the tenants owe me \$57,600.

12. In sum, since April 2019, my tenants have refused to pay rent and have refused to move out of the home that I worked so hard to buy for my family. My family now lives in a rental apartment with my two kids, my husband, my mother, and my husband's parents that we can no longer afford due to the fact that I am owed over \$57,600 in rent and cannot evict these tenants due to CEEFPA. On top of all of that, the government is forcing me to distribute forms and lists that I disagree with to my tenants, which will only lead to my tenants taking advantage of the vague "hardship" categories to block me from exercising my right to petition the courts for relief. I need to evict these tenants so I can move into my home with my family because we can no longer pay the rent on the house we are currently living in.

Dated: May 3, 2021  
New York, New York

Mudan Shi

Mudan Shi

**EXHIBIT L**  
**(Dist. Ct. Dkt. No. 13)**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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PANTELIS CHRYSAFIS, BETTY COHEN, :  
BRANDIE LACASSE, MUDAN SHI, FENG :  
ZHOU, and RENT STABILIZATION :  
ASSOCIATION OF NYC, INC., :  
: *Plaintiffs,* :  
: :  
: -against- :  
: :  
LAWRENCE K. MARKS, in his official :  
capacity as Chief Administrative Judge of the :  
Courts of New York State, ADRIAN H. :  
ANDERSON, in his official capacity as Sheriff : No. 21-cv-2516  
of Dutchess County, New York, JAMES :  
DZURENDA, in his official capacity as :  
Sheriff of Nassau County, New York, JOSEPH :  
FUCITO, in his official capacity as Sheriff of :  
New York City, New York, MARGARET :  
GARNETT, in her official capacity as :  
Commissioner of the New York City :  
Department of Investigation, and CAROLINE :  
TANG-ALEJANDRO, in her official capacity :  
as Director, Bureau of Marshals, New York :  
City Department of Investigation, :  
: *Defendants.* :  
-----x

**DECLARATION OF PETER VEKIARELLIS IN SUPPORT OF PLAINTIFFS'  
APPLICATION FOR A PRELIMINARY INJUNCTION**

I, Peter Vekiarellis, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746,  
and state as follows:

1. I am the authorized representative Pantelis Chrysafis, who is a Plaintiff in this  
action. I am also his cousin. Pantelis owns a single-family home in Garden City, New York  
located at 205 New Hyde Park Road. He has owned the home since December 2015.

2. After purchasing the home, Pantelis lived there for a few months, until he and his then-wife separated. Pantelis no longer wanted to live in the house, so he asked me to put it on the market for him for potential sale. Pantelis then left the country for Japan, where he currently lives and has a newborn child.

3. The house was on the market for approximately six months. Since Pantelis was carrying a mortgage on the property and has a property tax bill to pay, he decided ultimately he needed to rent it out for income. His monthly mortgage payment was approximately \$4,700 and his annual property taxes are about \$18,000, so we decided to rent the house out for \$5,000 per month, meaning Pantelis would essentially be covering his expenses with the rent.

4. I became the manager of Pantelis's property. I located tenants—a husband and wife—who seemed reputable at the time. When I did my initial diligence on the tenants, the husband told me he had a steady pension of \$4,700 and reported approximately \$200,000 in other annual income. He said that he was a former sheriff and a partner in a limousine company that had 11 limos. I also learned that his wife and grown children, all of whom live in the home, also work. I concluded that they would be able to pay the monthly rent of \$5,000.

5. For more than two years, the tenants lived in the house without any major incidents. They tended to pay rent late, however. Per the terms of the lease, they were penalized \$100 each month that they failed to pay on time.

6. Unfortunately, we started to have a serious problem with the tenants in early 2019. In or about January or February 2019, I told them that Pantelis had made the decision to try to sell the property and that we were planning to market the house that spring or summer. The husband told me that he didn't care if we put the house on the market and that he would simply not be paying rent anymore. That April, after I demanded rent that was owed to Pantelis,

one of the tenants produced what appeared to be falsified bank statements purporting to show that he wired the \$5,000 due to Pantelis, when in fact he had not.

7. In violation of their lease, the tenants did what they said they were going to do—they stopped paying rent. We were forced to hire an attorney to initiate eviction proceedings, in which we sought \$25,000 in back rent from June, July, August, September, and October 2019.

8. In October 2019, we agreed that the tenants could stay if they paid their back rent by the end of the month (which they ultimately did) and if they continued to timely pay the rent they owed going forward. However, they again failed to timely pay their rent in December 2019 and then again in January 2020, so in February 2020, Pantelis obtained a judgment against them for unpaid December 2019 and January 2020 rent, as well as a warrant of eviction, which ordered them to vacate the premises by April 1, 2020.

9. On March 10, the tenants filed an order to show cause to stay the enforcement of the warrant of eviction until April 30, 2020. I did not oppose this request because the tenants told me they had extenuating circumstances—the husband said that he was disabled and that as a result, he needed a month or two to find a suitable alternative home. I took him at his word.

10. Of course, this was all prior to the COVID-19 pandemic. At the end of March, Governor Cuomo ordered the first eviction moratorium. Since then, the tenants have taken advantage of the pandemic and the resulting executive orders and legislation to avoid their rent obligations, to my and Pantelis's immense frustration. They have continued to live in the house—without paying rent for over a year—despite the warrant of eviction issued against them prior to the pandemic.

11. The income Pantelis should be receiving from this property is essential to him. He has a one year old child to tend to, yet he has been bleeding money from the Garden City

property. Much to his embarrassment and frustration, Pantelis had to borrow money from his elderly parents for help paying his mortgage and taxes, and will have to do so again if he cannot evict the tenants soon and rent the property to people who will pay rent.

12. This ordeal has caused a tremendous amount of strife within our family and cannot continue much longer without irreparably harming our familial relationships. Pantelis has been arguing with his wife about the Garden City property for many months now, and they even almost got divorced as a direct result of his inability to collect rental income. Pantelis cannot sleep at night and now suffers from depression due to this ordeal.

13. The passage of the COVID-19 Emergency Eviction and Foreclosure Prevention Act (“CEEFPA”) at the end of December 2020 felt like the final nail in the coffin. As a result of CEEFPA, the judgment and warrant of eviction Pantelis received against the tenants a year ago—for nonpayment completely unrelated to the pandemic—were paused yet again. Suffering the effects of CEEFPA’s unconstitutionality, and determined to do something to help himself and other fellow small landlords, Pantelis participated as a plaintiff in the prior lawsuit challenging CEEFPA—*Chrysafis, et al. v. James* (No. 21-cv-00998). That suit was dismissed on technical grounds without reaching the merits of the claims.

14. Now, with the extension of CEEFPA until at least August 31, 2021, we have become even more despondent and frustrated, and are once again bringing suit. The tenant is not allowing contractors to go in and do emergency repairs, and we are concerned that the property is becoming worthless. I recently paid a significant tax bill on the property to avoid a lien. And all the while, the tenant continues to rack up thousands of dollars in water bills for the house (which has a pool in the backyard), causing Pantelis further monetary pain. The fact that

Pantelis's tenant, who told us he made \$200,000 a year, has been living for free in what was Pantelis's beautiful home for nearly a year and a half is mind-boggling.

15. As of the date of this declaration, Pantelis is out more than \$80,000 in unpaid rent. And because of the extension of CEEFPA and its "hardship declaration" form, the tenants will be able to yet again stay eviction proceedings and remain for many more months without paying a cent, causing financial hardship to Pantelis and strife within his family—unless the Court enjoins the use of the hardship declaration—simply by returning the form with a box checked for one of a variety of vague and undefined "financial hardships." The burden, moreover, will be on Pantelis to somehow prove that any assertion of hardship due to COVID-19 to be false before he can move forward with the warrant of eviction that he already obtained for nonpayment of rent that preceded and had nothing to do with the pandemic.

16. To add insult to injury, the law requires that Pantelis provide the hardship declaration form to the tenants, effectively forcing him to endorse CEEFPA (even though he is in fact totally against its eviction moratorium provisions) and effectively inviting the tenants to continue to refuse to pay rent. And it requires that Pantelis (or I, acting as his agent) provide the tenants with a list of organizations to help them continue to fight eviction, effectively endorsing those organizations.

17. If Pantelis (or I) send a hardship declaration to the tenants, I am confident that they will use the opportunity to claim hardship due to COVID, and we will have no way of challenging their assertions. At the same time, the unpaid rent will continue to accrue and Pantelis will remain on the hook for the costs associated with his property going forward.

18. To my knowledge, the tenants are not suffering hardship due to COVID and one of them has continued to work throughout the pandemic.

19. Pantelis and I are particularly frustrated that the tenants' issues are clearly not related to COVID—they first stopped paying more than two years ago and the original warrant of eviction for nonpayment was issued in February 2020—yet they continue to be relieved of payment obligations by CEEFPA. The law irrationally stays pre-COVID warrants of eviction and court proceedings. And it ignores that so many landlords are, like Pantelis, individual homeowners who rely on rental income to meet basic financial needs.

20. We are desperate for immediate relief from what we believe is a fundamentally unfair and unjustifiable law.

Dated: May 6, 2021  
\_\_\_\_\_, New York

  
Peter Vekiarellis

**EXHIBIT M**

**(Ct. App. Dkt. No. 25-6)**

# EXHIBIT Q

June 16, 2021 | 1:14 pm

## COVID-19 Updates

The COVID-19 vaccine is here. It is safe, effective and free. Walk in to get vaccinated at sites across the state. Continue to mask up and stay distant where directed.

[GET THE FACTS >](#)

 GOVERNOR  
ANDREW M. CUOMO

JUNE 15, 2021 | Albany, NY

# Governor Cuomo Announces COVID-19 Restrictions Lifted as 70% of Adult New Yorkers Have Received First Dose of COVID-19 Vaccine

**COVID-19 VACCINE** (/KI PUBLIC SAFETY (/KI HEALTH #BLOCKKEYWORDS/HEALTH)  
19-  
SAFETY)  
VACCINE)

State's COVID-19 Restrictions and New York Forward Industry Guidance Lifted Across Commercial Settings, including Retail, Food Services, Offices, Gyms and Fitness Centers, Amusement and Family Entertainment, Hair Salons, Barber Shops, Personal Care Services, Among Others

Unvaccinated Individuals Responsible for Continuing to Wear a Mask, Per Federal CDC Guidance

# Large-Scale Indoor Events Venues, Pre-K to 12 Schools, Public Transit, Homeless Shelters, Correctional Facilities, Nursing Homes and Health Care Settings Must Still Adhere to Existing COVID-19 Health Protocols Per CDC Guidelines

Governor Andrew M. Cuomo today announced that COVID-19 restrictions are lifted immediately as 70 percent of New Yorkers aged 18 or older have received the first dose of their COVID-19 vaccination series. The State's health guidance and New York Forward industry specific guidelines—including social gathering limits, capacity restrictions, social distancing, cleaning and disinfection, health screening, and contact information for tracing—are now optional for retail, food services, offices, gyms and fitness centers, amusement and family entertainment, hair salons, barber shops and personal care services, among other commercial settings.

Unvaccinated individuals continue to be responsible for wearing masks, in accordance with federal CDC [guidance](https://www.cdc.gov/coronavirus/2019-ncov/vaccines/fully-vaccinated-guidance.html) (<https://www.cdc.gov/coronavirus/2019-ncov/vaccines/fully-vaccinated-guidance.html>). Consistent with the State's [implementation](https://www.governor.ny.gov/sites/default/files/2021-05/NYS_CDCGuidance_Summary.pdf) ([https://www.governor.ny.gov/sites/default/files/2021-05/NYS\\_CDCGuidance\\_Summary.pdf](https://www.governor.ny.gov/sites/default/files/2021-05/NYS_CDCGuidance_Summary.pdf)) of the recent CDC guidance, masks are still required for unvaccinated individuals. Further, the State's health guidelines continue to be in effect for large-scale indoor event venues, pre-K to grade 12 schools, public transit, homeless shelters, correctional facilities, nursing homes, and health care settings per CDC guidelines.

[https://www.youtube.com/embed/A\\_uGmX2KKGw](https://www.youtube.com/embed/A_uGmX2KKGw)

AUDIO

PHOTOS

"What New York has done is extraordinary. Not only do we have the lowest COVID positivity rate in the United States of America, we have hit 70 percent vaccination ahead of schedule. We successfully deployed the weapon that will win the war, and New York led the nation," **Governor Cuomo said.** "We led with nurse Sandra Lindsay, who was the first at Northwell to take that vaccine and to assure people it was safe. We've gone on to do more than 20 million vaccines, more per capita than any big state in the United States of America. Congratulations to New

New Yorkers because they are the ones who did it. We're no longer just surviving—we're thriving. The state mandates that have proven right and brought us through this pandemic are relaxed as of today, effective immediately."

**White House COVID-19 Response Coordinator Jeffrey D. Zients said,** "In communities across New York, the deadly Coronavirus is in retreat thanks to the state's progress on vaccinations. New York went from being one of the hardest-hit states in the country to being one of the leading states in its effort to combat the virus because of a vaccination program that made it easy and convenient for New Yorkers to get vaccinated, state and community leaders who worked hard at the local level, and millions of New Yorkers who rolled up their sleeves to get vaccinated."



***Not only do we have the lowest COVID positivity rate in the United States of America, we have hit 70 percent vaccination ahead of schedule.***

### **Governor Andrew M. Cuomo**

The State's COVID restrictions remain in effect for large-scale indoor event venues—now defined as indoor venues that hold more than 5,000 attendees. Consistent with the State's [implementation \(\[https://www.governor.ny.gov/sites/default/files/2021-05/NYS\\\_CDCGuidance\\\_Summary.pdf\]\(https://www.governor.ny.gov/sites/default/files/2021-05/NYS\_CDCGuidance\_Summary.pdf\)\)](https://www.governor.ny.gov/sites/default/files/2021-05/NYS_CDCGuidance_Summary.pdf) of the CDC guidelines, proof of vaccination can be used to eliminate social distancing and remove masks for fully vaccinated individuals. Unvaccinated or unknown vaccination status individuals who are over the age of four must continue to present proof of a recent negative diagnostic COVID-19 test result and wear masks within the venue. However, social distancing can be reduced or eliminated between tested attendees, allowing venues to reach 100 percent capacity in all sections.

As of today, over 70 percent of adult New Yorkers have received at least the first dose of the COVID-19 vaccine and the rate of new COVID-19 cases has plummeted to the lowest levels in the nation. Given New York's progress and the diminished risk of COVID-19 within the community, the State is lifting COVID-19 restrictions effective immediately, except for the mask requirement for unvaccinated individuals and in certain settings (e.g., large-scale indoor event venues, pre-K to grade 12 schools, public transit, homeless shelters, correctional facilities, nursing homes and health care settings per CDC guidance). While New York Forward industry reopening guidance is no longer mandatory for most industries, these documents will be archived and made available as a public reference.

With the removal of the State's minimum standard for reopening, businesses are free to choose to lift all or some restrictions, continue to adhere to the State's archived guidance, or implement other health precautions for their employees and patrons. Businesses are also authorized to require masks and six feet of social distancing for employees and patrons within their establishments, regardless of vaccination status. Any mask requirements that businesses choose to implement must adhere to applicable federal and state laws and regulations, such as the Americans with Disabilities Act.

## Contact the Governor's Press Office



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