SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

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STEPHANIE DICAPUA, et al,

Petitioners,

Index No.: 85035/2023

Hon. Ralph J. Porzio

-against-

CITY OF NEW YORK, et al.

Respondents.

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PETITIONERS' MEMORANDUM OF LAW IN SUPPORT OF CLASS CERTIFICATION

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PRELIMINARY STATEMENT

Petitioners submit this Memorandum of Law in support of their motion for class certification and for related relief. In this action, instituted against Defendants New York State City (the "City"), and the New York City Department of Education ("DOE") (collectively, "Respondents"), Petitioners challenge as unlawful Respondents' religious accommodation policies used to implement the Covid-19 vaccine mandate. Pursuant to Article 9 of the CPLR, named petitioners seek to represent a class consisting of all DOE contractors or employees who sought but were denied reasonable religious accommodation to the Covid-19 Mandate. Petitioners bring this class action seeking declaratory and injunctive relief, monetary refunds, and other appropriate relief on behalf of themselves and as class representatives for all others similarly situated.

As explained below, this action readily satisfies the standards under CPLR §§ 901 and 902 for class certification. In particular: (1) the class, believed to consist of thousands of current or former DOE employees and contractors, is so numerous that joinder of all members is impracticable; (2) the claims of Petitioner and the Class involve questions of law and fact common to the class which predominate over any questions affecting only individual members, more particularly, a facial challenge to Respondents' religious accommodation policies and practices, which predominates over any individualized claims or facts; (3) Petitioners claims are typical of those of class members; (4) Petitioners will fairly and adequately protect the interests of the class; and (5) given the size of the class and the narrow legal and factual issues, a

class action is manifestly superior to any other available method of adjudication. In addition, it would be impractical and inefficient for each class member to bring its claim individually.

As Respondents' religious accommodation denials were all infected by the same errors of law, and the autogenerated, vague, and conclusory denials are all arbitrary and capricious under the governing standards, Article 78 relief should be determined on a class-wide, rather than individual basis. Accordingly, the issue of class certification, at least for purposes of this Special Proceeding, should be addressed at the same time, if not prior to, determination of Petitioner's Article 78 relief.

For the foregoing reasons, and for the reasons set forth more fully below, Plaintiff's motion for class certification should be granted in all respects.

STATEMENT OF THE CASE

The facts of this case are set forth in Petitioners' Verified Amended Hybrid Petition [NYSCEF No. 40], incorporated herein, and as reflected in the attached Memorandum of Law, supporting the Article 78 relief sought, which is also incorporated by reference as if fully set forth herein.

LEGAL ARGUMENT

I. THIS ACTION SHOULD BE CERTIFIED AS A CLASS ACTION

A. The Applicable Standard to Be Applied

Article 9 of the CPLR is modeled on *Rule 23 of the Federal Rules of Civil Procedure*, the policy of which "is to favor the maintenance of class actions and for a

liberal interpretation." *Brandon v. Chefetz*, 106 A.D.2d 162, 168 (1st Dept. 1985). Appellate courts in this state have repeatedly held that the class action statute should be liberally construed. *Matter of Colt Indus. Shareholder Litig.*, 155 A.D.2d 154, 158-159 (1 Dept. 1990) *modified on other grounds*, 77 N.Y.2d 185 (1991). As the Second Department stated in *Friar v. Vanguard Holding Corp.*, 78 A.D.2d 83, 91 (2d Dept. 1980):

> [The] criteria [for class certification] should be broadly construed not only because of the general command for liberal construction of all CPLR sections (see CPLR 104), but also because it is apparent that the Legislature intended article 9 to be a liberal substitute for the narrow class action legislation which preceded it.

Thus, "any error, if there is to be one, should be ... in favor of allowing the class action." *Pruitt v. Rockefeller Properties, Inc.*, 167 A.D.2d 14, 21 (1 Dept. 1991), citing *Esplin v. Hirschi*, 402 F.2d 94, 101 Cir. 1968).

"[A] class should be permitted to go forward if it would clear up a goodly proportion of what appears to be the overall dispute." *Friar v. Vanguard Holding Corp.*, 78 A.D.2d at 94. In cases where, as here, a class action "may, as a practical matter, be the only available method for the determination of the issues raised," *King v. Club Med, Inc.*, 76 A.D.2d 123, 128 (1A(r) Dept. 1980), it is particularly appropriate to class certification. As the class is large and each class member's stake in the litigation is relatively small, it would be impractical and inefficient for individual class members to prosecute separate actions, not just for the individuals involved, but for the courts as well. This is particularly true in cases, such as this, where "(T)he number of individuals involved is too large, and the possibility of effective

communication between them too remote, to make practicable the traditional joinder of action." *Weinberg v. Hertz Corp.*, 116 A.D.2d 1, 5 (1" Dept. 1986), aff d, 69 NY2d 979 (1987).

Since the class action procedure serves the salutary purpose of permitting numerous employees to band together to address a common wrong, and since a class can always be decertified or revised, "the interests of justice require that, where the case is doubtful, the benefit of any doubt should be given to allowing the class action." *Brandon v. Chefetz*, 106 A.D.2d at 168; *Friar v. Vanguard Holding Corp.*, 78 A.D.2d at 91.

Moreover, on a motion for class action certification, inquiry on the merits is limited to a determination as to whether, on the surface, there appears to be a cause of action which is not a sham. *Super Glue Corp. v. Avis Rent A Car System, Inc.*, 132 A.D.2d 604, 607 (2d Dept. 1987); *Brandon v. Chefetz*, 106 A.D.2d at 168.

When evaluated under the standards set forth above, this action easily satisfies the prerequisites for class certification.

B. Petitioners Satisfy the Prerequisites of CPLR §901

The prerequisites for class certification are set forth in CPLR 901, which states:

> One or more members of a class may sue or be sued as representative parties on behalf of all if:
>
> 1. the class is so numerous that joinder of all members, whether otherwise required or permitted, is impracticable;

2. there are questions of law or fact common to the class which predominate over any questions affecting only individual members;

3. the claims or defenses of the representative parties are typical of the claims or defenses of the class;

4. the representative parties will fairly and adequately protect the interests of the class; and

5. a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

Plaintiff satisfies each of the above prerequisites.

1. Numerosity and Impracticability of Joinder

There is no mechanical test to determine whether the numerosity requirement has been met; the court is to consider the particular circumstances of each case and the reasonable inferences and common-sense assumptions from the facts before it. *Friar v. Vanguard Holding Corp.*, 78 A.D.2d at 96. However, both federal and New York state courts typically presume that numerosity is satisfied where the proposed class contains 40 members or more. See, e.g., *Consolidated Rail Corp. v. Town of Hyde Park*, 47 F.3d 473, 483 (2d Cir.), *cert denied*, (515 US 1122 [1995]) ("[N]umerosity is presumed at a level of 40 members"); *Lee v. ABC Carpet & Home*, 236 F.R.D. 193, 203 (S.D.N.Y.2006). (certifying class of 44); *Dornberger v. Metropolitan Life Ins. Co.*, 182 F.R.D. 72, 77 (S.D N.Y.1998) ("[T]he threshold for impracticability of joinder seems to be around forty"); *Gonzalez v. Nicholas Zito Racing Stable, Inc.*, 2008 WL 941643 at *5 (E.D.N.Y.2008); *Hoerger v. Board of Educ. of Great Neck Union Free School Dist.*, 98 A.D.2d 274 (2d Dept. 1983) (class of 44 members certified); *Galdamez v*

Biordi Constr. Co., 2006 NY Slip Op 511969 [2006] [U], (13 Misc 3d 1224[A], 2006 WL 2969651, at *2 [Sup Ct N.Y. County 2006], *affd* 50 AD3d 357 [1st Dept. 2008])).

In this case, respondent DOE denied thousands of employees reasonable accommodation to the Covid-19 vaccine mandate. In related federal court suits, DOE asserted that about 7,000 employees originally applied for accommodation under the Stricken Standards. Out of these, every single applicant was originally denied, though the DOE asserts that approximately 162 were ultimately "accommodated" after arbitration appeals. Many other employees did not originally apply, since the religious accommodation policies were facially discriminatory, and they felt it would be futile to do so. However, after the Second Circuit struck down the original policies in November 2021, and a new "Citywide Panel" was convened to give fresh consideration, with the promise that this time it would be under lawful standards, more DOE employees came forward and alerted the DOE that they had religious objections to the Mandate and wanted their applications for accommodation to be considered. Upon information and belief, only one application was granted by the Citywide Panel.

In sum, the total number of employees who applied for religious accommodation is well over 40, and certainly meets the numerosity requirement.

2. Commonality

CPLR 901(a)(2) requires that there be questions of law or fact common to the class which predominate over any questions affecting only individual class members.

This standard requires "predominance, not identity or unanimity, among class members." *Friar v. Vanguard Holding Corp.*, 78 A.D.2d at 98(acknowledging that the differences in the manner in which the defendant obtained money from potential class members does not mean that individual questions predominate over common questions); see also *Branch v. Crabtree*, 197 A.D.2d 557 (2d Dept. 1993) (predominance of questions of fact or law over questions affecting only individual members is the test, not a nice inspection of the claims of each individual member); *Freeman v. Great Lakes Energy Partners*, LLC, 12 A.D.3d 1170 (4th Dept. 2004) ("common questions of law and fact" means similar, though not identical, claims). "The statute clearly envisions authorization of class actions even where there are subsidiary questions of law or fact not common to the class." *Weinberg v. Hertz Corp.*, 116 A.D.2d at 6.

At this point, even Respondents acknowledge that the Stricken Standards they employed to deny the initial 7,000 employees accommodation are "constitutionally suspect" and likely unlawful. As more fully argued in the memorandum of law submitted concurrently to support the Article 78 relief, all of those determinations are affected by errors of law, and must be reversed, *nunc pro tunc*. Individual issues of fact do not predominate in this analysis, especially since the DOE summarily denied every single applicant with the same autogenerated email, which was not customized to any employee's application. This Court has already found that autogenerated email to be deficient as a matter of law, as well as arbitrary and

capricious. *LaBarbera v. N.Y.C. Dep't of Ed.*, Inde No. 85001/2023 (Sup Ct Richmond Cty, April 4, 2023).

Moreover, the Citywide Panel determinations are just as deficient, as recognized by dozens of decisions from this Court and many other New York Courts. For example, the Supreme Court, Queens County, recently granted a firefighter's Article 78 petition challenging his Citywide Panel denial, holding that "[t]he denial of the appeal contains no analysis or reasoning, no discussion of [petitioner's] assertions and contains no reference or mention of anything particular or specific to [petitioner's] religious exemption request." *Finley v. The City of New York and FDNY,* Index no. 717617/2022 (Sup Ct Queens, Oct 27, 2022).

And, this defect is global, common to all the Citywide Panel's denials. *See, e.g., Loiacono v. the Bd of Educ. of the City of New York, et al,* Index no. 154875/2022 (Sup Ct New York Cty, July 11, 2022 at *4) (PULL LANGUAGE).; *Rivicci v. FDNY and NYC,* Index No. 85131/2022, NYSCEF Doc. No. 54, 10/05/2022, at p. 5-6; See also *Curatolo v. FDNY & NYC, Index No.* 85219/2022, Doc. No. 38, 12/13/22 (denying request for religious exemption was "arbitrary and capricious because the reasons given for the denial were vague and conclusory"); *Deletto v. Eric Adams, et. al.*, Index No. 156459/2022, Doc. No. 23, 9/13/2022 ("three bases were cited [by NYPD], these general reasons, standing alone, are simply too conclusory" and Does Not Meet Criteria "Citywide Panel determination failed to cite any reason whatsoever for denial"); *Anderson v. Eric Adams*, et. al., Index No. 156824/2022, Doc. No. 32, 10/21/22 ("three reasons cited [by NYPD] are conclusory and vague"); *Brousseau v. NYPD &*

NYC, Index No. 157739/2022, Doc. No. 34, 11/1/22 ("respondents issued a blanket denial with no explanation," "three reasons cited [by NYPD] are conclusory and vague", and "Does Not Meet Criteria" determination by Citywide Panel "is completely lacking any reasoning"); *Stewart v. NYPD & NYC*, Index No. 157928/2022, Doc. No. 25, 11/9/22 ("bland and conclusory assertion [Does Not Meet Criteria] does not justify terminating someone's employment"); *Cano v. NYC*, et. al., Index No. 156355/2022, Doc. No. 39, 9/15/22 ("arbitrary and capricious" to terminate "without giving petitioner adequate reason for such decision at the appeals level"); *Grullon v. NYC, NYPD, and PBA*, Index No. 156934/2022, Doc. No. 31, 10/08/22 ("'Does Not Meet Criteria' was arbitrary and capricious for failing to provide a reason for such determination and failing to set forth the criteria that Petitioner failed to meet"); *Schimenti v. City of New York*, et al, Index No. 85075, NYSCEF Doc. No. 80, 12/16/22 ("the reason given for the denial were vague and conclusory and no rationale was provided"); *Leonard Moscatelli v. NYPD & NYC*, Index No. 157990/2022, NYSCEF Doc. No. 157990/2022, 12/23/22 ("determination is a prime example of a determination that sets forth only the most perfunctory discussion of reasons for administrative action."); *Schiefer v. Bd. Of Educ. Of the City of New York, et al,* Index no. 155983/2022 (DOE's assertion of undue hardship without explanation was arbitrary and capricious).

At this point, it would be a waste of judicial and petitioner resources to continue to bring these cases one at a time. Ultimately, there are no issues that

require factual determination before the statutory and constitutional issues may be reached, and certification of a class is the most efficient way to proceed.

3. Typicality

CPLR 901(a)(3) requires that the claims asserted by Petitioners seeking to represent the class, as well as any defenses to those claims, be typical of the claims made by and the defenses asserted against the class members. If it is shown that a Petitioner's claims derive "from the same practice or course of conduct that gave rise to the remaining claims of other class members and is based upon the same legal theory ... [the typicality] requirement is satisfied" *Friar v. Vanguard Holding Corp* at 99; see also *Ackerman v. Price Waterhouse*, 252 A.D.2d 179, 201 (1st Dept. 1998); ((*Freeman v Great Lakes Energy Partners, L.L.C.*, 12 AD3d 1170 [4th Dept. 2004]).

Typicality does not require identity of issues and the typicality requirement is met even if the claims asserted by class members differ from those asserted by other class members *Pruitt v. Rockefeller Center Props.*, 167 A.D.2d at 22; *Super Glue Corp. v. Avis Rent A Car Sys.*, Inc., 132 A.D.2d at 607.

Petitioners claims clearly satisfy the typicality requirement. They are virtually indistinguishable from those assertible by any other class member. Each class member's claim derives from the same practice and course of conduct. More specifically: (1) each claim implicates the same set of facts, namely the imposition of unlawful religious accommodation policies in implementing the Mandate; (2) each claim implicates the same legal theory, namely, that the denials of reasonable

accommodation from the Mandate were affected by an error of law, arbitrary and capricious, an abuse of discretion, and issued in violation of the New York State Human Rights Law, the New York City Human Rights Law, and the New York Constitution; and (3) each class member would be entitled to damages in the amount determined by the Court for back pay, pain and suffering and attorneys' fees.

4. Adequacy of Representation

CPLR 901(a)(4) provides that the Plaintiffs must be able to "fairly and adequately protect the interests of the class." A class representative acts as a fiduciary with respect to the interests of other class members. *City of Rochester v. Chiarella*, 65 N.Y.2d 92, 100-101 (1985); ((*Connolly v Universal Am. Fin. Corp.*, 21 Misc 3d 1109[A], 2008 NY Slip Op. 52018(U), 2008 WL 4514098, at *4 [2008] [Sup.Ct. Westchester Co. Oct. 8, 2008]). The responsibility of a class representative includes the duty to act affirmatively to secure the rights of class members and to oppose adverse interests asserted by others (d.).

In determining whether a named plaintiff is a suitable class representative, the court may consider: (1) whether a conflict of interest exists between the representative and the class members; (2) the representative's background and personal character, as well as his or her familiarity with the lawsuit, to determine the ability to assist counsel in its prosecution; (3) the competence, experience and vigor of the representative's attorneys; and (4) the financial resources available to prosecute the action. *Pruitt v. Rockefeller Cir. Prop.,* Inc., 167 A.D.2d at 24; *Connolly v. Universal Am. Fin. Corp.*, at *4. Petitioners clearly satisfy these criteria.

First, Petitioners have no conflict of interest with any other member of the class. On the contrary, their interests in remedying the religious discrimination perpetuated by Defendants and ensuring that they and their similarly situated colleagues are made whole is directly aligned with the interests of the Class. The Representative Petitioners and their counsel have also demonstrated that they will vigorously prosecute this action on behalf of the Class. They have aggressively advanced their claims in federal court, for example, litigating three motions and appeals for preliminary injunction, and securing a reversal of the district court's initial denial of preliminary injunctive relief on appeal. They have also made applications to the United States Supreme Court when necessary, and currently continue to litigate the federal claims in the Second Circuit Court of Appeals. Moreover, when the district court declined supplemental jurisdiction over the state law claims in 2022, Petitioners were able to organize this lawsuit to ensure that the state law claims were adequately pressed on behalf of the class.

Second, as discussed in the Affirmations of Michael H. Sussman, Esq. and Sujata S. Gibson, Esq. both sworn to on April 7, 2023 and submitted herewith, Petitioners are represented by capable and experienced counsel. Ms. Gibson has over fifteen years' experience litigating complex matters and class/representative and impact litigation in New York. She is a prominent civil rights attorney and teaches at Cornell Law School part time in the area of movement law and civil rights. Mr. Sussman has nearly forty-five years' experience in complex litigation, and extensive experience litigating class action lawsuits. He was lead counsel for a class of 40,000

individuals aggrieved by housing and school segregation in Yonkers, New York. *United States. v. Yonkers Bd. of Educ.*, 837 F.2d 1181 (2d Cir. 1987). He also successfully represented a class of more than 4,700 state employees who complained of discriminatory promotion test protocols as well as a class of hundreds subjected to discrimination based on disability status. *Simpson v. New York State Department of Civil Service*, No. 03 Civ. 9433 (LAP) (S.D.N.Y. Sep. 30, 2004); see also *Romano v. SLS Residential Inc.*, 246 F.R.D. 432 (S.D.N.Y. 2007) (Sussman represented class of disabled plaintiffs through settlement of the case in 2012). The skills and expertise of counsel complement each other, and reflect that counsel are capable to face any challenge presented by this litigation.

Finally, Petitioners and their counsel have the financial resources necessary for the vigorous prosecution of the class's claims. Given the common interests and goals of the class representative named here and the proposed class members, and the broad experience of counsel, Plaintiff will more than adequately represent all the members of the class consistent with CPLR § 901(a)(4).

5. Superiority

CPLR § 901(a)(5) provides that one of the prerequisites for class action status is a finding that a class action is superior to other methods for the fair and efficient adjudication of the controversy. Adjudication of this case as a class action is clearly the superior method of resolving the claims of the numerous putative class members who have been injured by Respondents' unlawful religious accommodation policies. New York recognizes that a class action is a superior method of adjudication where,

as here, the case presents potentially thousands of claimants with individual claims too small to justify the expense of litigation in thousands of individual lawsuits. Where the class members' claims "derive from the same practice or conduct by defendant," and there are a "large number of potential claimants [with] close similarity of their claims ... and [a] relatively small potential recovery, a class action is not only the superior method for the fair and efficient adjudication of the controversy,... but the only economically viable means of pursuing redress." *Jim & Phil's Family Pharmacy. Ltd. v. Aetna U.S, Healthcare. Inc.*, 271 A.D.2d 281, 282 (1st Dep't 2000); *Weinberg v. Hertz,* 116 A.D.2d at 7 (holding that class action was superior to other viable methods of adjudication, and citing cases to the same effect where the individual claims involved small dollar amounts).

This case meets these standards and class certification will serve the interests of Petitioners, the public and judiciary. It is inefficient and wasteful to tie the courts up with thousands of separate litigations, each requiring separate fee awards and overlapping proceedings, when all of the DOE accommodation claims can be handled together in one action. *See, e.g., Ansournana v. Gristedes Operating Corp.*, 201 F.R.D. 81,89 (S.D.N.Y. 2001) ("the volume of actions brought by individual plaintiffs...demonstrates the need for a class action in these circumstances. Otherwise, the Court risks the present stream of individual actions growing into an unmanageable flood."

C. Petitioners Satisfy the Prerequisites of CPLR §902

In determining whether to certify a class action, the Court should also evaluate the factors identified in CPLR §902. Those factors are: 1) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (2) the impracticality or inefficiency of prosecuting or defending separate actions; (3) the existence of other litigation regarding the same controversy; (4) the desirability of the proposed class forum; and (5) the difficulties likely to be encountered by management of a class action. *Emilio v. Robison Oil Corp.*, 63 A.D.3d 667, 668 (2d Dept. 2009). This action satisfies each of the criterion set forth above.

1. **Individual Control**

To the extent that any class member wishes to prosecute their own case, they are free to opt out to do so. However, certifying the class will allow thousands who do not have the resources to retain attorneys the chance to get relief.

2. **Impracticality**

The costs of maintaining separate actions are prohibitive for most potential class members, and obtaining counsel individually would likely prove difficult because the attorneys handling these cases are already overloaded with these cases, not just for DOE employees, but also other New York City employees who were impacted by the unlawful religious accommodation policies. Moreover, since the City has been appealing every case, it could be years until any of the attorneys get paid their attorney's fees. If thousands of DOE employees need to retain individual attorneys, it is unlikely that they will find enough attorneys willing to take the case on contingency, who have the resources to tie up their practices for years of litigation,

and can handle thousands of cases all at once (keeping in mind the short statute of limitations governing the Article 78 relief). Petitioners' counsel here have shown they are willing and able to do so, in order to help these employees collectively seek justice.

3. Other Litigation

Petitioners are aware of many other similar lawsuits filed by DOE employees in state and federal court. But these are not a barrier to class certification. In fact, the "the volume of actions brought by individual plaintiffs . . . demonstrates the need for a class action in these circumstances. Otherwise, the Court risks the present stream of individual actions growing into an unmanageable flood." ((*See e.g. In re Petrobras Sec. Litig.*, 312 FRD 354, 363 [S.D.N.Y. 2016]). Most importantly, class certification will create a single forum to resolve the state law claims of religious discrimination for both Petitioners and the Class. Accordingly, such certification will serve the goals of judicial economy and reduce the possibility of a vast array of other cases. *See Ansournana*, 201 F.R.D. 81 at 89.

4. Desirability of Forum

Richmond County is an appropriate forum. Some Petitioners are located here, the material events and acts alleged in the Amended Petition occurred here, and Respondents have appeared here in this and other cases challenging the Citywide Panel determinations. Further, it is a desirable and efficient procedure to concentrate all of the claims in one forum. If this suit is not certified, each member of the class will be required to bring a separate action throughout the various counties where

they worked. A single class action, supervised by this Court, will permit a fair and consistent, as well as efficient, adjudication of the issues.

5. The Difficulties Likely to Be Encountered

No substantial difficulties are likely to be encountered in the management of this class. Much, if not most, of the liability portion of this case consists purely of legal and facial sufficiency issues. Once liability is established, the fashioning of legal and equitable relief will be relatively straightforward, particularly in the Special Proceeding, where damages are incidental, and include concrete calculations such as back pay, which can be easily calculated and determined without extensive individualized fact findings.

In light of the foregoing considerations, class certification is clearly warranted and authorized pursuant to CPLR § 902. As all of the standards set forth in CPLR§§ 901 and 902 favor certification, the Court should grant Plaintiff's motion for class certification.

II. DEFENDANTS SHOULD BE REQUIRED TO PRODUCE THE NAMES AND ADDRESSES OF CLASS MEMBERS

Plaintiffs hereby move for or an order requiring defendants to disclose the names, last known addresses, mailing addresses, alternate addresses, email addresses, telephone numbers, date(s) of application or notification of need for a religious accommodation to the vaccine mandate, date(s) of denial, or if no denial was issued, compliance or termination, and any other identifying information of all potential Petitioners to the collective action so that Plaintiffs may send them the

proposed notice and any other required forms. "Numerous courts have found that discovery of such information is appropriate." ((*Weng Long Liu v Rong Sing. Inc.*, No. 12-CV-7136 (TPG), 2014 WL 1244676, at *3 [S. D N.Y. Mar. 26, 2014]); ((*Schreibman v Linn*, 69 AD2d 800, 800 [1st Dept. 1979]); *Chab v. Darden Restaurants*, Inc., No. 11 Civ. 8345(NRB), 2013 WL 5308004 at *17 (S.D.N.Y. Sept. 20, 2013), citing *Raniere v. Citigroup Inc.*, 827 F Supp. 2d 294, 327 (S.D.N.Y. 2011).

In addition, CPLR 3101 mandates the "full disclosure of all evidence material and necessary in the prosecution . . . of an action." Given that Petitioners require this information as material and necessary to assist in the prosecution of their class action, such a request is likewise appropriate in this case.

CONCLUSION

For all of the reasons set forth above, Plaintiff's motion for class certification and class discovery should be granted in all respects.

Respectfully Submitted,

Dated: April 7, 2023,
Ithaca, New York

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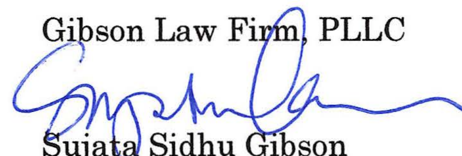
CERTIFICATION PURSUANT TO 22 NYCRR § 202.8-b

I, Sujata Gibson, an attorney duly admitted to practice law before the courts of the State of New York, hereby certify that this Memorandum of Law complies with the word count limit set forth 22 NYCRR, § 202.8-b, because it contains 4,533 words, excluding the parts exempted by § 202.8-b(b). In preparing this certification, I have relied on the word count of the word-processing system used to prepare this affidavit.

Dated: April 7, 2023,
Ithaca, New York

Gibson Law Firm, PLLC



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