SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

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IN THE MATTER OF THE APPLICATION OF

ARGENTINE LEASING LIMITED PARTNERSHIP, AUBURN LEASING LIMITED LIABILITY COMPANY, BIRCH LEASING LIMITED PARTNERSHIP, BUCKNELL REALTY LIMITED PARTNERSHIP, CANADA LEASING LIMITED LIABILITY COMPANY, CEYLON LEASING LIMITED PARTNERSHIP, COLUMBIA LEASING LIMITED PARTNERSHIP, COPENHAGEN LEASING LIMITED PARTNERSHIP, LA FRANCE LEASING LIMITED PARTNERSHIP, LONDON LEASING LIMITED PARTNERSHIP, ROME REALTY LEASING LIMITED PARTNERSHIP, SYDNEY LEASING LIMTED PARTNERSHIP, TOWN LEASING LIMITED LIABILITY COMPANY, UESS LEASING LIMITED LIABILITY COMPANY, WASHINGTON LEASING LIMITED PARTNERSHIP, and WELLINGTON LEASING LIMITED PARTNERSHIP,

PETITIONERS,

FOR A JUDGMENT PURSUANT TO ARTICLE 78 OF THE CIVIL PRACTICE LAW AND RULES

-against-

OFFICE OF COURT ADMINISTRATION, THE CIVIL COURT OF CITY OF NEW YORK, HON. JOSEPH A. ZAYAS, in his capacity of Chief Administrator, BIRDENA FRYE, in her capacity as Clerk of Queens County, ALIA RAZZAQ, in her capacity of Chief Clerk of the Civil Court of the City of New York, and HON. CAROLYN WALKER-DIALLO, in her capacity as Administrative Judge of the Civil Court of the City of New York,

RESPONDENTS.

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Index No. 703941/2024

NOTICE OF PETITION

PLEASE TAKE NOTICE, that upon the annexed Petition of ARGENTINE LEASING LIMITED PARTNERSHIP, AUBURN LEASING LIMITED LIABILITY COMPANY, BIRCH LEASING LIMITED PARTNERSHIP, BUCKNELL REALTY LIMITED PARTNERSHIP, CANADA LEASING LIMITED LIABILITY COMPANY, CEYLON LEASING LIMITED

PARTNERSHIP, COLUMBIA LEASING LIMITED PARTNERSHIP, COPENHAGEN LEASING LIMITED PARTNERSHIP, LA FRANCE LEASING LIMITED PARTNERSHIP, LONDON LEASING LIMITED PARTNERSHIP, ROME REALTY LEASING LIMITED PARTNERSHIP, SYDNEY LEASING LIMTED PARTNERSHIP, TOWN LEASING LIMITED LIABILITY COMPANY, UESS LEASING LIMITED LIABILITY COMPANY, WASHINGTON LEASING LIMITED PARTNERSHIP, and WELLINGTON LEASING LIMITED PARTNERSHIP (the "**Petitioners**"), duly verified the 21st day of February 2024, upon the exhibits annexed hereto, and upon all the other facts and proceedings herein, the undersigned will move this the Supreme Court of the State of New York at the Courthouse located at 88-11 Sutphin Boulevard, Jamaica, New York 11435, Room ___ thereof on the **8th** day of **April, 2024** ~~**20th** day of **March, 2024**~~ at **9:30 o'clock** in the forenoon of that day, or as soon thereafter as counsel can be heard for a judgment pursuant to Article 78 of the Civil Practice Law and Rules, (a) issuing writs of mandamus compelling respondents to (i) fix trial dates for summary proceedings based upon non-payment ("**Non-Pay Proceedings**") within three (3) to eight (8) days after issue is joined in accordance with RPAPL § 732; (ii) grant adjournments of return dates of petitions in summary proceedings ("**Petitions**") only upon the request of a party and, upon granting such adjournments, appropriately attribute the cause of such adjournment to the party making the application therefor, in accordance with RPAPL § 745(1); and (iii) issue warrants of eviction ("**Warrants**") immediately or as expediently as possible following the granting of judgment in favor of petitioner in summary proceedings in accordance with RPAPL § 749; and (b) issuing writs of prohibition prohibiting respondents from (i) fixing trial dates in Non-Pay Proceedings later than eight (8) days after issue is joined in contravention to RPAPL § 732; (ii) granting adjournments of return dates of Petitions administratively, *sua sponte*, or in any circumstances other than at the request of a party, and failing

to attribute the impetus of such adjournment to a party in contravention to RPAPL § 745(1); and (iii) in any way conditioning the issuance of Warrants on the submission of any documents or undertaking of any actions not set forth as a condition precedent for the issuance of such Warrants in Article 7 of the RPAPL in contravention to RPAPL § 749; and for such other, further and different relief that this Court may deem just and proper.

PLEASE TAKE FURTHER NOTICE that pursuant to the provisions of Section 7804 of the Civil Practice Law and Rules, the respondents are required to serve upon the Petitioners' attorneys, and file with the Clerk of the Court, a verified answer to this petition at least five days prior to the return day hereof.

Dated: New York, New York
February 21, 2024

KUCKER MARINO WINIARSKY AND BITTENS, LLP

By: _____

Eric R. McAvey, Esq.
Nativ Winiarsky, Esq.
Craig Gambardella, Esq.
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New York, New York 10017
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Attorneys for Petitioners

RESPONDENTS:

OFFICE OF COURT ADMINISTRATION
25 Beaver St # 8
New York, New York 10004

HON. JOSEPH A. ZAYAS
Chief Administrator
Office of Court Administration
25 Beaver St # 8
New York, New York 10004

CIVIL COURT OF THE CITY OF NEW YORK
89-17 Sutphin Blvd
Queens, NY 11435

HON. CAROLYN WALKER-DIALLO,
Administrative Judge
Civil Court of the City of New York
111 Centre Street, Room 838
New York, NY 10013

ALIA RAZZAQ
Chief Clerk
Civil Court of the City of New York
111 Centre Street, Room 838
New York, NY 10013

BIRDENA FRYE
Clerk of Queens County
Civil Court of the City of New York
89-17 Sutphin Blvd
Queens, New York 11435

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

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IN THE MATTER OF THE APPLICATION OF

Index No. 703941/2024

ARGENTINE LEASING LIMITED PARTNERSHIP, AUBURN LEASING LIMITED LIABILITY COMPANY, BIRCH LEASING LIMITED PARTNERSHIP, BUCKNELL REALTY LIMITED PARTNERSHIP, CANADA LEASING LIMITED LIABILITY COMPANY, CEYLON LEASING LIMITED PARTNERSHIP, COLUMBIA LEASING LIMITED PARTNERSHIP, COPENHAGEN LEASING LIMITED PARTNERSHIP, LA FRANCE LEASING LIMITED PARTNERSHIP, LONDON LEASING LIMITED PARTNERSHIP, ROME REALTY LEASING LIMITED PARTNERSHIP, SYDNEY LEASING LIMTED PARTNERSHIP, TOWN LEASING LIMITED LIABILITY COMPANY, UESS LEASING LIMITED LIABILITY COMPANY, WASHINGTON LEASING LIMITED PARTNERSHIP, and WELLINGTON LEASING LIMITED PARTNERSHIP,

VERIFIED PETITION

PETITIONERS,

FOR A JUDGMENT PURSUANT TO ARTICLE 78 OF THE CIVIL PRACTICE LAW AND RULES

-against-

OFFICE OF COURT ADMINISTRATION, THE CIVIL COURT OF CITY OF NEW YORK, HON. JOSEPH A. ZAYAS, in his capacity of Chief Administrator, BIRDENA FRYE, in her capacity as Clerk of Queens County, ALIA RAZZAQ, in her capacity of Chief Clerk of the Civil Court of the City of New York, and HON. CAROLYN WALKER-DIALLO, in her capacity as Administrative Judge of the Civil Court of the City of New York,

RESPONDENTS.

----------X

Petitioners ARGENTINE LEASING LIMITED PARTNERSHIP, AUBURN LEASING LIMITED LIABILITY COMPANY, BIRCH LEASING LIMITED PARTNERSHIP, BUCKNELL REALTY LIMITED PARTNERSHIP, CANADA LEASING LIMITED LIABILITY COMPANY, CEYLON LEASING LIMITED PARTNERSHIP, COLUMBIA

LEASING LIMITED PARTNERSHIP, COPENHAGEN LEASING LIMITED PARTNERSHIP, LA FRANCE LEASING LIMITED PARTNERSHIP, LONDON LEASING LIMITED PARTNERSHIP, ROME REALTY LEASING LIMITED PARTNERSHIP, SYDNEY LEASING LIMTED PARTNERSHIP, TOWN LEASING LIMITED LIABILITY COMPANY, UESS LEASING LIMITED LIABILITY COMPANY, WASHINGTON LEASING LIMITED PARTNERSHIP, and WELLINGTON LEASING LIMITED PARTNERSHIP (the "**Petitioners**"), by their attorneys **KUCKER MARINO WINIARSKY AND BITTENS, LLP** for their Petition against Respondents the Office of Court Administration ("**OCA**"), the HON. JOSEPH A. ZAYAS ("**Chief Administrator**"), in his capacity as Chief Administrator, the Civil Court of the City of New York ("**Civil Court**"), BIRDENA FRYE, in her capacity as the Queens County clerk of the Civil Court of the City of New York (the "**Queens Clerk**"), ALIA RAZZAQ, in her capacity of Chief Clerk of the Civil Court of the City of New York ("**Chief Clerk**") (the Queens Clerk and Chief Clerk are collectively referred to herein as the "**Clerk**"), and the HON. CAROLYN WALKER-DIALLO, in her capacity as Administrative Judge of the Civil Court of the City of New York ("**Administrative Judge**") (collectively, "**Respondents**"), allege as follows:

INTRODUCTION

1. Petitioners bring this proceeding to compel Respondents to abide by the statutory authority they are tasked to administer with respect to summary proceedings and, in doing so, fulfill the historied purposes thereof.

2. Specifically, as explained further herein, Article 7 of the Real Property Actions and Proceedings Law ("**RPAPL**") mandates a certain procedure for both litigants and the courts in order to adjudicate housing disputes efficiently and judiciously. In failing to honor these statutory obligations, Defendants have not only undercut the very purposes of summary proceedings but

have contrastingly rendered them reminiscent of bygone common-law ejectment actions which summary proceedings were designed to replace.

3. Therefore, Petitioners bring the instant proceeding pursuant to Article 78 of the Civil Practice Law and Rules ("**CPLR**") seeking an order (a) issuing writs of mandamus compelling respondents to (i) fix trial dates for summary proceedings based upon non-payment ("**Non-Pay Proceedings**") within three (3) to eight (8) days after issue is joined in accordance with RPAPL § 732; (ii) grant adjournments of return dates of petitions in summary proceedings ("**Petitions**") only upon the request of a party and, upon granting such adjournments, appropriately attribute the cause of such adjournment to the party making the application therefor, in accordance with RPAPL § 745(1); and (iii) issue warrants of eviction ("**Warrants**") immediately or as expediently as possible following the granting of judgment in favor of petitioner in summary proceedings in accordance with RPAPL § 749; and (b) issuing writs of prohibition prohibiting respondents from (i) fixing trial dates in Non-Pay Proceedings later than eight (8) days after issue is joined in contravention to RPAPL § 732; (ii) granting adjournments of return dates of Petitions administratively, *sua sponte*, or in any circumstances other than at the request of a party, and failing to attribute the impetus of such adjournment to a party in contravention to RPAPL § 745(1); and (iii) in any way conditioning the issuance of Warrants on the submission of any documents or undertaking of any actions not set forth as a condition precedent for the issuance of such Warrants in Article 7 of the RPAPL in contravention to RPAPL § 749; and for such other, further and different relief that this Court may deem just and proper.

WHAT IS OLD IS NEW AGAIN

4. One of the most discussed and well-settled rights in this Country's jurisprudence is that of an individual to own and control his or her property. Such right is sacrosanct, enshrined in

both the United States' and New York State's constitutions. Importantly, the tenor of the constitutional encapsulation of such right is that it may not be infringed or withheld without due process of law. *See NY CLS Const Art I, § 6* ("No person shall be deprived of life, liberty or property without due process of law.")

5. Unfortunately, Petitioners come before this Court facing such a deprivation of their rights to property without due process. They thus beg this Court's aid in remedying the worst kept secret in New York State's Unified Court System: that while the Legislature designed summary proceedings as the affordable and expeditious alternative to actions in equity seeking ejectment, they have been transformed into an inefficient system tilted decidedly against the protection of landowner's rights to their property.

6. While there are many reasons that the purpose of summary proceedings has failed to come to fruition, including the Legislature's clear preference towards tenant's rights to remain in possession of property over a landlord's rights to control and derive revenue from same, the most egregious cause of the brokenness of a system purposed to be efficient is not slanted legislation. Rather, it is the neglect of those charged with administering the laws from which summary proceedings sprang forth and on which they rely to give truth to their "summary" nature.

7. Unfortunately, this is nothing new.

8. While practitioners before the Housing Court may wax nostalgic about a long-gone era in which summary proceedings trended towards and not away from efficiency, they have been collectively mired in interminable and inexplicable delays in seeking the vindication of their clients' rights to their respective property for so long that it has surreally become "normal." Landlords have been forced to merely accept the game as rigged and trudge along the nightmarish

procedure of Housing Court in the hopes that one day, far in the future, they will be able to retake and make their property economically viable once more.

9. The time-honored right to property deserves at least the minimal protections afforded it under the statutes currently on the books in this State. This proceeding appears to be the only recourse left for the landowners of this City – Petitioners among them – to conform the Housing Court's procedures to those envisioned by the legislature and, in doing so, attempt to rebuild a broken system at last.

10. In this respect, to better illustrate the gravity of the failings with respect to the proper administration of summary proceedings, and thus the need for the relief Petitioners seek, it is worthwhile to briefly recap the origins and the legislative intent behind summary proceedings as a whole.

11. Historically, the only means for a landlord to regain possession of premises from a defaulting tenant was by a common-law action of ejectment.

12. The tortured history of such common-law ejectment actions is a cautionary tale that is unfortunately being repeated in this City's Housing Court's summary proceedings. Indeed, in an effort to protect tenants from inadvertent forfeitures of estates in land, many safeguards were developed in such actions including, *inter alia*, the requirement that landlord serve a "common-law demand for rent," *i.e.*, an actual demand for the exact amount due, on the very day that it became due, before sunset, and on the premises where the rent was payable. Unsurprisingly, such actions became so overburdened with such well-intentioned procedural requirements that they became "expensive and dilatory proceeding[s] which in many instances amounted to a denial of justice." *Reich v Cochran*, 201 NY 450, 454 (1911). Such delays caused a breakdown in landlord-

tenant relations, "prompt[ing] landlords to short circuit the judicial process by resort to self-help." *Velazquez v Thompson*, 451 F2d 202, 204 (2d Cir 1971) (internal quotation marks omitted).

13. In an attempt to curb the chilling effect such a burdensome procedure had on the enforcement of landlord's rights, this State's legislature thus devised the statutory scheme of summary proceedings in Chapter 194 of the Laws of 1820, which was thereafter ratified in the Code of Civil Procedure in 1880, then again in Article 83 of the Civil Practice Act in 1920, and ultimately in RPAPL Article 7 in 1962, where it remains today.

14. Specifically, Article 7 of the RPAPL functions as the current principal statutory authority for summary proceedings for the recovery of possession of real property. As set forth herein, the procedural and substantive provisions thereof which require strict compliance for the proper administration of such statutorily created special proceedings have been unfortunately ignored by Respondents. *See Allyn v Markowitz*, 83 Misc 2d 250, 251-252 (Rockland County Ct 1975) ("Article 7 of the Real Property Actions and Proceedings Law prescribes its own procedure, and its procedures, unlike those of the CPLR (see CPLR 104), are to be construed strictly.")

15. Importantly, the prescribed "summary" mechanisms which originated in 1820 and are carried on today through Article 7 were purposed for landlords to have "a simple, expeditious and inexpensive means of regaining possession of [] premises in cases where the tenant refused upon demand to pay rent, or where he wrongfully held over without permission after the expiration of his term." *Id*. at 454. They thus provide a mechanism of due process to protect and vindicate the "right of the landlord to the immediate possession of his real property." *Poulakas v Ortiz*, 25 Misc 3d 717, 724-725, 885 NYS2d 865 (Civ Ct, Kings Co. 2009) (citations and internal quotation marks omitted).

16. In order to achieve the "summary" nature of the proceedings, the Legislature circumscribed "many procedural rights," directed narrow time limitations for pleadings and trials, and restricted the often-time-consuming process of discovery. *Zenila Realty Corp. v Masterandrea*, 123 Misc 2d 1, 5 (Civ Ct, New York Co. 1984). Indeed, the *Zenila* court described the statutory directives under which it administered summary proceedings – which are largely in accord with those that exist today - "a tenant's time to answer a petition's allegations is limited to five days (RPAPL 732, subd 1); a trial date must be established within three to eight days after answer (RPAPL 732, subd 2); disclosure is by leave of court, not as of right (CPLR 408); and there is no joinder, interpleader, third-party practice or intervention except by leave of court (CPLR 401)." *Id*. at 5.

17. While such rules curtailed certain protections offered to parties in plenary and other special proceedings, adherence to same was necessary to fulfill the stated and obvious purpose for which summary proceedings were conceived. It is for this reason that summary proceedings require strict compliance with statutory requirements.

18. This is especially true with respect to the statutorily prescribed time limitations, as the very purpose of a summary proceeding is to expedite the process by which housing disputes are adjudicated. As described by one Court, under Article 7 of the RPAPL, the Legislature made clear that time was sacrosanct to the system of summary proceedings as a whole:

> [L]egislatures enact laws that hamper the adversarial system from getting to the truth. This is not because truth in litigation is an unimportant goal, but rather the legislature considers other societal goals greater. ***In particular, when life, liberty and property rights are at issue, the legislature at times places strict deadlines on the judicial system, even if such time constraints lead to an injustice in a particular case***. Here section 745 makes time (in the context of the recovery of property) more important than accuracy in litigation.

Hognestad v Rabideau, 55 Misc 3d 977, 983 (Cahoes City Ct 2017) (emphasis supplied).

19. Thus, as that same court described, the procedural timing in summary proceedings is specifically designed to serve the purpose thereof deigned by the Legislature:

> ***[I]t seems not to be a coincidence that the summary proceeding takes less than a month—generally the quantum of time in which property is rented.*** The longest time between demand for rent and the eviction of the tenant, if the statute is followed as written, is 28 days. Thus, RPAPL article 7 provides assurance to landlords that they will lose no more than one month's rent. Given that article 7 sprung to life to avoid prolonged litigation which in some cases triggered the undesirable side effect of self-help, the time to evict a nonpaying tenant is sacrosanct and the 10-day limit of section 745 is an essential part of keeping the process under a month.

Id. at 982-983 (emphasis supplied).

20. Unfortunately, as will be described in detail herein, the purposes of Article 7 have been defeated by Respondents' systemic failings to adhere to the policies and procedures implemented set forth by the legislature. Specifically, notwithstanding – and contrary to – the clear directives of Article 7 of the RPAPL, trials in proceedings based upon non-payment are routinely given trial dates far afield from the time period guaranteed by statute, virtually indefinite adjournments are being doled out without required application, attribution, or opportunity to be heard, and landlords have to wait months on end for the issuance of warrants to which they inarguably have an immediate right upon obtaining a judgment of possession. All of this, seemingly without recourse.

21. These dire circumstances, in which summary proceedings have become facsimiles of the common-law ejectment actions which they were ironically designed to replace, necessitate the instant proceeding and consequent immediate and desperately needed judicial intervention.

THE PARTIES

A. Petitioners

22. ARGENTINE LEASING LIMITED PARTNERSHIP is a New York Partnership with its principal place of business at 40 West 57th Street, 15th floor, New York, NY 10019.

23. AUBURN LEASING LIMITED LIABILITY COMPANY is a New York Limited Liability Company with its principal place of business at 40 West 57th Street, 15th Floor, New York, NY 10019.

24. BIRCH LEASING LIMITED PARTNERSHIP is a New York Partnership with its principal place of business at 40 West 57th Street, 15th Floor, New York, NY 10019.

25. BUCKNELL REALTY LIMITED PARTNERSHIP is a New York Partnership with its principal place of business at 40 West 57th Street, 15th Floor, New York, NY 10019.

26. CANADA LEASING LIMITED LIABILITY COMPANY is a New York Limited Liability Company with its principal place of business at 40 West 57th Street, 15th Floor, New York, NY 10019.

27. CEYLON LEASING LIMITED PARTNERSHIP is a New York Partnership with its principal place of business at 40 West 57th Street, 15th Floor, New York, NY 10019.

28. COLUMBIA LEASING LIMITED PARTNERSHIP is a New York Partnership with its principal place of business at 40 West 57th Street, 15th Floor, New York, NY 10019.

29. COPENHAGEN LEASING LIMITED PARTNERSHIP is a New York Partnership with its principal place of business at 40 West 57th Street, 15th Floor, New York, NY 10019.

30. LA FRANCE LEASING LIMITED PARTNERSHIP is a New York Partnership with its principal place of business at 40 West 57th Street, 15th Floor, New York, NY 10019.

31. LONDON LEASING LIMITED PARTNERSHIP is a New York Partnership with

its principal place of business at 40 West 57th Street, 15th Floor, New York, NY 10019.

32. ROME REALTY LEASING LIMITED PARTNERSHIP is a New York Partnership with its principal place of business at 40 West 57th Street, 15th Floor, New York, NY 10019.

33. SYDNEY LEASING LIMITED PARTNERSHIP is a New York Partnership with its principal place of business at 40 West 57th Street, 15th Floor, New York, NY 10019.

34. TOWN LEASING LIMITED LIABILITY COMPANY is a New York Limited Liability Company with its principal place of business at 40 West 57th Street, 15th Floor, New York, NY 10019.

35. UESS LEASING LIMITED LIABILITY COMPANY is a New York Limited Liability Company with its principal place of business at 40 West 57th Street, 15th Floor, New York, NY 10019.

36. WASHINGTON LEASING LIMITED PARTNERSHIP is a New York Partnership with its principal place of business at 40 West 57th Street, 15th Floor, New York, NY 10019.

37. WELLINGTON LEASING LIMITED PARTNERSHIP is a New York Partnership with its principal place of business at 40 West 57th Street, 15th Floor, New York, NY 10019.

B. Respondents

a. The Office of Court Administration and Chief Administrator

38. The OCA was formed under the authority of the Chief Administrator, who has the power to delegate any administrative power or function to any deputy, administrative judge, assistant, or court.

39. The Chief Administrator is responsible for enforcing and supervising the execution of the standards and administrative policies established, approved, and promulgated pursuant to

Article VI, section 28(c) of the New York State Constitution. The Chief Administrator also has the powers and authority to, *inter alia*, (a) adopt administrative rules for *the efficient and orderly transaction of business in the trial courts, including but not limited to calendar practice*; (b) to establish an administrative office of the courts; (c) establish programs of education and training for judges and nonjudicial personnel; and (d) appoint advisory committees to advise him in relation to the administration and operation of the unified court system. *See* 22 NYCRR 80.1.

40. In sum, the OCA's functions are largely concerned with supervising the administration and operation of the Unified Court System and the Chief Judge's exclusive power and authority over the administration of the courts is vested in the Chief Administrator. *See* NY CLS Const Art VI, § 28 ("The chief administrator, on behalf of the chief judge, shall supervise the administration and operation of the unified court system.")

41. Indeed, the role of the Chief Administrator, and by extension the OCA, is to supervise the administration and operation of the unified court system on behalf of the Chief Judge[1].

42. Upon information and belief, Respondents' complained-of conduct and inactions enumerated herein are the direct results of the policies, procedures, and directives put in place and proliferated by the OCA and the Chief Administrator.

43. As the administration and operation of the Housing Court is specifically at issue in this proceeding, which is the exclusive purview of defendants OCA and the Chief Administrator, they are both appropriately included in this proceeding.

[1] It is in this capacity that the Chief Administrator is made a party hereto.

b. The Civil Court of the City of New York

44. The Civil Court of the City of New York – also referred to herein by the name of the pertinent subdivision of the Civil Court, the "Housing Court" – was established as a single city-wide court, as provided by sections one and fifteen of article six of the New York State Constitution. Its current iteration replaced the City Court and the Municipal Court in 1962 by the New York City Civil Court Act.

45. As is pertinent herein, its jurisdiction includes, but is not limited to, summary proceedings for the recovery of real property, over which it has exclusive jurisdiction.

46. Moreover, upon information and belief, the Judges, clerks, and court personnel that administer the policies, procedures and directives discussed herein are members, employees and agents of the Housing Court.

47. The Housing Court is therefore a proper respondent herein in that the policies and procedures it and its members, employees, and agents implement in the summary proceedings over which it has exclusive jurisdiction are the subject matters of this petition.

48. Indeed, it is largely the conduct and inaction of the Housing Court, its members, employees and agents that give rise to Petitioners' claims for writs of mandamus and prohibition.

c. The Clerks

49. The Clerk is an integral part of the Civil Court, governed by the rules and procedures proliferated by the OCA and the Chief Administrator, and, most importantly, is compelled and prohibited to act in certain ways pursuant to Article 7 of the RPAPL.

50. For example, *inter alia*, the Clerk is required by statute to fix a trial date in certain proceedings once a respondent therein answers.

51. As this proceeding seeks to compel and prohibit certain actions and inactions of the Clerk, the "Clerk" – consisting of both the Chief Clerk and Queens Clerk – is thus a proper party to this proceeding.

d. The Administrative Judge of the Civil Court of the City of New York

52. The role of Administrative Judge of the Civil Court of the City of New York originates in 22 NYCRR 80.2 which provides that the Chief Administrator shall "designate […] deputy chief administrators and administrative judges, who shall serve at his pleasure for a period not exceeding one year," including, *inter alia*, "in the City of New York . . . one administrative judge [] for the . . . Civil Court." 22 NYCRR 80.2 (a)(1).

53. In such codified role, the Administrative Judge is responsible for "the orderly administration of the courts within the area of their administrative responsibility, as set forth in their orders of designation." 22 NYCRR 80.2 (d).

54. As this proceeding involves the devolvement of the administration of summary proceedings in the Housing Court and seeks to rectify same through writs of mandamus and prohibition – compelling and prohibiting certain actions in the administration and procedures of the Housing Court – over which the Administrative Judge has jurisdiction and authority, the Administrative Judge is a proper respondent to this proceeding.

RELEVANT BACKGROUND

A. Specific Directives Under Article 7 Not Being Followed

55. As is pertinent herein, among the myriad of directives set forth in Article 7 of the RPAPL – which were designed to protect owner's constitutionally protected rights by expediting and simplifying the recovery of real property via summary proceedings – the mandates from which the Housing Court most significantly strays are those concerning:

(a) the fixing of initial court dates in Non-Pay Proceedings within the explicit time period set forth in RPAPL § 732[2];

(b) the requirement that adjournments of petition return dates be granted only upon a request of a party and, even then, the inherent mandate that such adjournments be attributed to a party in order to afford landlords the rights and protections set forth in RPAPL § 745; and

(c) the required immediacy in the processing and issuance of Warrants after a judgment of possession is obtained.

56. Notably, while the Housing Court's derivation from the RPAPL's mandates result in specific prejudices against landlords generally – and Petitioners specifically, as delineated at length below – they all unquestionably result in unnecessary and unjustifiable delays in the recovery of real property. These delays exhaustively result in direct pecuniary harm to landlords insofar as tenants subject to summary eviction proceedings retain possession of the disputed units, almost always without paying rent and/or use and occupancy, for the extended duration of the proceeding, rendering the landlord unable to relet the unit or otherwise collect income therefrom. While not as obvious, these delays also result in pecuniary harm to tenants insofar as the arrears continue to accrue throughout the prolonged proceeding, resulting in a sum due that tenants are ultimately unable to pay and/or unable to secure payment of through social services or charitable organizations, *e.g.*, a "one-shot deal."

57. These practices are therefore anathema to both the effectiveness of Article 7 and the efficiency of the Housing Court as a whole. The sole purpose of the writs requested herein is to fix what has regrettably become a broken system.

[2] *NY CLS Unif Rules, NYC Civ Ct § 208.42* ("Real Property Action and Proceedings Law § 732 shall be applicable in this court in a proceeding brought on the ground that the respondent has defaulted in the payment of rent.")

58. The below examples are merely representative of the troublesome conditions grappled with by judges, attorneys, and litigants alike on an everyday basis.

i. RESPONDENTS' ROUTINE DEROGATION OF DUTY UNDER RPAPL § 732 WHEN SETTING INITIAL COURT DATES IN SUMMARY NONPAYMENT EVICTION PROCEEDINGS

59. Illustrative of the Legislature's resolve to expedite summary proceedings – particularly with respect to Non-Pay Proceedings[3] – RPAPL § 732 delineates two (2) paths towards the resolution of such a proceeding, both of which provide short timetables, furthering the "summary" nature of *summary* proceedings.

60. Specifically, the statute mandates that within ten (10) days of service of a petition commencing a Non-Pay Proceeding (the "**Non-Pay Petition**"):

> If the respondent answers, the clerk shall fix a date for trial or hearing **not less than three nor more than eight days** after joinder of issue[.]
>
> If the respondent fails to answer within ten days from the date of service, . . . the judge shall render judgment in favor of the petitioner and may stay the issuance of the warrant for a period of not to exceed ten days from the date of service, except as provided in section seven hundred fifty-three of this article.

RPAPL § 732 at §§ 2 – 3 (emphasis supplied).

[3] The legislature also attempted to expedite the first return date of a proceeding based upon a holdover ("**Holdover Proceeding**") through RPAPL § 733 which, while not extrapolated herein, has also been abrogated by Respondents' actions and inactions. Specifically, RPAPL § 733 provides, in pertinent part, that a petition in a Holdover Proceeding ("**Holdover Petition**") shall be noticed to be heard "at least ten and not more than seventeen days" after service of such Holdover Petition. This was previously effectuated by petitioners by noticing a return date on a Holdover Petition, filing same with the Clerk, and thereafter serving it upon respondent(s) seventeen-to-ten days prior to such noticed-return date. This practice has been rendered impossible by Respondents by virtue of the Clerk now assigning return dates for Holdover Petitions. Petitioners must therefore file a Holdover Petition ***with a blank return date***, wait weeks if not months for the assignment of an index number and designation of a return date, and thereafter serve the petition seventeen-to-ten days before such arbitrarily selected return date. Consequently, return dates for Holdover Petitions, which previously could take place in as little as ten days after filing, are now inexplicably made returnable months thereafter.

61. In accord with the above, the RPAPL directs that Non-Pay Proceedings be commenced and calendared as follows: A landlord is to serve upon its tenant(s) a Non-Pay Petition, which is to be returnable before the clerk within ten (10) days after its service. *See* RPAPL § 732(1). Should the tenant fail to answer the Non-Pay Petition within ten (10) days of its service, the Court is mandated to render judgment in favor of the landlord. *See* RPAPL § 732(3). However, if the tenant *does* interpose an answer to the Non-Pay Petition, thereby joining issue, the Clerk is *required* to fix a date for trial or hearing ***between three (3) and eight (8) days thereafter***. *See* RPAPL § 732(2). The practical effect of these mandates is that within as little as four (4) days and *at most* eighteen (18) days, a Non-Pay Proceeding moves from service of the Non-Pay Petition to an initial court appearance before a Judge of the Housing Court.

62. This tight timetable is, frankly speaking, the embodiment of the spirit of RPAPL Article 7. It represents the compromise between tenants' due process rights to appear and be heard and landlords' due process rights to expediently recover their property. Unfortunately, as long as the Housing Court fails to adhere to the mandates of the RPAPL, the statute's purpose cannot come to fruition.

63. Indeed, despite the clear and unequivocal directives outlined above, Non-Pay Proceedings have not been calendared by the Housing Court in accordance therewith. As shown below through an inexhaustive enumeration of exemplar proceedings, when a tenant interposes an answer to a Non-Pay Petition, the Housing Court has failed to "fix a date for trial or hearing not less than *three nor more than eight days after joinder of issue*," instead routinely scheduling initial court dates *over sixty (60) days after the tenant interposes an answer*.

64. By way of example:

a. In the Non-Pay Proceeding *Lafrance Leasing L.P. v. Kishor Regmi, et al*., L&T Index No. 317844/2023 (the "**Regmi Proceeding**"), an answer was interposed on November 2, 2023. The matter was then scheduled to first appear on the calendar in Queens County Housing Part A on January 30, 2024, ***eighty-nine (89) days after the answer was interposed***. (A copy of the court records relevant to such delay are annexed hereto collectively as **Exhibit "A"**)

b. Similarly, in the Non-Pay Proceeding *Columbia Leasing L.P. v. Esteban Soto*, L&T Index No. 317852/2023 (the "**Soto Proceeding**"), an answer was interposed on October 25, 2023. The matter was then scheduled to appear on the calendar in Queens County Housing Part D on January 16, 2024, ***eighty-three (83) days after the answer was interposed***. (A copy of the court records relevant to such delay are annexed hereto collectively as **Exhibit "B"**)

c. In the Non-Pay Proceeding *Columbia Leasing L.P. v. Jacinta Jurado*, L&T Index No. 312557/2023 (the "**Jurado Proceeding**"), an answer was interposed on October 5, 2023. The matter was then scheduled to first appear on the calendar in Queens County Housing Part A on December 20, 2023, ***seventy-six (76) days after the answer was interposed***. (A copy of the court records relevant to such delay are annexed hereto collectively as **Exhibit "C"**)

d. In the Non-Pay Proceeding *Sydney Leasing Limited Partnership v. Bety Alfred, et al.*, L&T Index No. 317785/2022 (the "**Alfred Proceeding**"), an answer was interposed on December 1, 2022. The matter was then scheduled to first appear on the calendar in Queens County Housing Part A on February 14, 2023, ***seventy-five (75) days after the answer was interposed***. (A copy of the court records relevant to such delay are annexed hereto collectively as **Exhibit "D"**)

e. In the Non-Pay Proceeding *Copenhagen Leasing L.P. v. NFN Evelin*, L&T Index No. 315841/23 (the "**Evelin Proceeding**"), an answer was interposed on September 29, 2023. The matter was then scheduled to first appear on the calendar in Queens County Housing Part A on December 12, 2023, ***seventy-four (74) days after the answer was interposed***. (A copy of the court records relevant to such delay are annexed hereto collectively as **Exhibit "E"**)

f. In the Non-Pay Proceeding *Sydney Leasing Limited Partnership v. Candice Cash, et al*., L&T Index No. 314313/2023 (the "**Cash Proceeding**"), an answer was interposed on September 26, 2023. The matter was then

scheduled to first appear on the calendar in Queens County Housing Part B on December 7, 2023, ***seventy-two (72) days after the answer was interposed***. (A copy of the court records relevant to such delay are annexed hereto collectively as **Exhibit "F"**)

g. In the Non-Pay Proceeding *Auburn Leasing LLC v. Michelle Hobbs, et al*., L&T Index No. 319186/2023 (the "**Hobbs Proceeding**"), an answer was interposed on December 13, 2023. The matter was then scheduled to first appear on the calendar in Queens County Housing Part B on February 22, 2024, ***seventy-one (71) days after the answer was interposed***. (A copy of the court records relevant to such delay are annexed hereto collectively as **Exhibit "G"**)

h. In the Non-Pay Proceeding *Lafrance Leasing L.P. v. Crystal Mata*, L&T Index No. 314130/2023 (the "**Mata Proceeding**"), an answer was interposed on September 18, 2023. The matter was then scheduled to first appear on the calendar in Queens County Housing Part D on November 28, 2023, ***seventy-one (71) days after the answer was interposed***. (A copy of the court records relevant to such delay are annexed hereto collectively as **Exhibit "H"**)

i. In the Non-Pay Proceeding *Wellington Leasing L.P. v. Donald Hailey, et al*., L&T Index No. 310605/2023 (the "**Hailey Proceeding**"), an answer was interposed on September 5, 2023. The matter was then scheduled to first appear on the calendar in Queens County Housing Part B on November 13, 2023, ***sixty-nine (69) days after the answer was interposed***. (A copy of the court records relevant to such delay are annexed hereto collectively as **Exhibit "I"**)

j. In the Non-Pay Proceeding *Lafrance Leasing L.P. v. Ibrahim Abubakar, et al.*, L&T Index No. 312501/2023 (the "**Abubakar Proceeding**"), an answer was interposed on August 4, 2023. The matter was then scheduled to first appear on the calendar in Queens County Housing Part D on October 10, 2023, ***sixty-seven (67) days after the answer was interposed***. (A copy of the court records relevant to such delay are annexed hereto collectively as **Exhibit "J"**)

k. In the Non-Pay Proceeding *Rome Realty Leasing L.P. v. Juliana Malchan, et al*., L&T Index No. 312518/2023 (the "**Malchan Proceeding**"), an answer was interposed on August 4, 2023. The matter was then scheduled to first appear on the calendar in Queens County Housing Part D on October 10, 2023, ***sixty-seven (67) days after the answer was interposed***. (A copy of the court records relevant to such delay are annexed hereto collectively as **Exhibit "K"**)

l. In the Non-Pay Proceeding *Copenhagen Leasing L.P. v. Humberto Almonter, et al.*, L&T Index No. 310356/2023 (the "**Almonter Proceeding**"), an answer was interposed on July 10, 2023. The matter was then scheduled to first appear on the calendar in Queens County Housing Part D on September 13, 2023, ***sixty-five (65) days after the answer was interposed***. (A copy of the court records relevant to such delay are annexed hereto collectively as **Exhibit "L"**)

m. In the Non-Pay Proceeding *Canada Leasing L.L.C. v. Eiser Delgado, et al.*, L&T Index No. 312369/2022 (the "**Delgado Proceeding**"), an answer was interposed on September 12, 2022. The matter was then scheduled to first appear on the calendar in Queens County Housing Part A on November 16, 2022, ***sixty-five (65) days after the answer was interposed***. (A copy of the court records relevant to such delay are annexed hereto collectively as **Exhibit "M"**)

n. In the Non-Pay Proceeding *Copenhagen Leasing L.P. v. Yvonne Reden, et al*., L&T Index No. 308260/2023 (the "**Reden Proceeding**"), an answer was interposed on June 6, 2023. The matter was then scheduled to first appear on the calendar in Queens County Housing Part D on August 8, 2023, ***sixty-three (63) days after the answer was interposed***. (A copy of the court records relevant to such delay are annexed hereto collectively as **Exhibit "N"**)

o. In the Non-Pay Proceeding *Argentine Leasing L.P. v. Arnell Kendall, et al.*, L&T Index No. 308289/2023 (the "**Kendall Proceeding**"), an answer was interposed on June 8, 2023. The matter was then scheduled to first appear on the calendar in Queens County Housing Part D on August 9, 2023, ***sixty-two (62) days after the answer was interposed***. (A copy of the court records relevant to such delay are annexed hereto collectively as **Exhibit "O"**)

p. In the Non-Pay Proceeding *Wellington Leasing Limited Partnership v. Dodji Gbedemah, et al*., L&T Index No. 302571/2023 (the "**Gbedemah Proceeding**"), an answer was interposed on February 28, 2023. The matter was then scheduled to first appear on the calendar in Queens County Housing Part B on April 20, 2023, ***fifty-one (51) days after the answer was interposed***. (A copy of the court records relevant to such delay are annexed hereto collectively as **Exhibit "P"**)

q. In the Non-Pay Proceeding *Copenhagen Leasing L.P. v. Manuel Quito, et al.*, L&T Index No. 310271/22 (the "**Quito Proceeding**"), an answer was interposed on February 21, 2023. The matter was then scheduled to first appear on the calendar in Queens County Housing Part D on April 12, 2023, ***fifty (50) days after the answer was interposed***. (A copy of the court records relevant to such delay are annexed hereto collectively as **Exhibit "Q"**)

r. In the Non-Pay Proceeding *Washington Leasing L.P. v. Naider Pierre, et al*., L&T 304674/2023 (the "**Pierre Proceeding**"), an answer was interposed on April 11, 2023. The matter was then scheduled to first appear on the calendar in Queens County Housing Part B on May 22, 2023, ***forty-one (41) days after the answer was interposed***. (A copy of the court records relevant to such delay are annexed hereto collectively as **Exhibit "R"**)

65. The deviation between the foregoing conduct and the mandates of the statute are self-evident and need no further explanation. However, as shown in greater detail below, the directive of the statute constitutes a mandatory and non-discretionary action that must be but is not being undertaken, *necessitating mandamus*. Conversely, the above-illustrated failures to comply with the explicit directives of the statute in fixing dates for trial far outside the permissible time period constitute actions explicitly outside of the authority granted to Respondents, thus also *warranting prohibition*.

ii. RESPONDENTS HAVE FABRICATED THE LEGAL FICTION OF AN INTAKE APPEARANCE IN SUMMARY PROCEEDINGS DIRECTLY UNDERMINING THE LANGUAGE AND PURPOSE RPAPL § 745.

66. Perhaps the most time-honored traditions of summary proceedings – and the most crucial to expedite the resolution and disposal of such proceedings – is the expedience in which an eviction proceeding moves from the pleading stage to an actual hearing and/or trial.

67. As described above, in a clear derogation of duty, the Housing Court has failed to comply with RPAPL § 732 insofar as the Housing Court routinely sets initial court dates over sixty (60) days after an answer is interposed in a Non-Pay Proceeding, a far cry from the statutorily prescribed three (3) to eight (8) days. *See* RPAPL § 732 (2).

68. That failure is but one of a series that ultimately results in the current gridlock that is today's Housing Court. Indeed, the failure to schedule initial court dates in Non-Pay Proceedings

is not the only cause of unwarranted delay in eviction proceedings incapable of reconciliation with the plain language and spirit of Article 7.

69. Tellingly, the delays following the initial court dates are shared between ***both*** Non-Pay and Holdover Proceedings due to Respondents' routine improper administering of adjournments.

70. In sum, as illustrated in more detail below, even after a trial date is finally calendared by the Clerk, Petitioners' rights continue to be infringed by virtue of unattributed and essentially interminable adjournments of both Non-Pay and Holdover Proceedings.

71. To be clear, RPAPL § 745(1) provides, in pertinent part, that "[a]t the time when issue is joined," "the court . . . shall adjourn the trial of the issue" "at the request of either party." A request or application from a party is therefore a condition precedent to an adjournment of the first-time appearance before the Court. As explained in more detail below, the requirement that a request be made by and attributed to a party is vital to give meaning and effect to RPAPL § 745(2), which provides Petitioners the essential protection from the prejudice incurred by indeterminate delays of summary proceedings in the form of an opportunity to obtain use and occupancy. However, if such an adjournment is granted without a party's request, then there can be no attribution of such an adjournment to a tenant, and thus the right for Petitioners to seek use and occupancy – which is entirely dependent upon the days of adjournment attributable to a tenant – is indefinitely forestalled.

72. Indeed, contrary to the procedure envisioned by Article 7 of the RPAPL, in which a first-time-on appearance in a summary proceeding could be – and often should be – a trial date, such first appearance before the Housing Court is now essentially the legal fiction of an "intake appearance."

73. Specifically, when an eviction proceeding *finally* first appears on the Housing Court's calendar, it is assigned to a resolution part for purposes of facilitating settlement, motion practice and/or narrowing issues to be resolved at trial. While a Housing Court judge presides over each resolution part, in Queens County, a system has been implemented wherein at least two resolution parts share an ancillary court room staffed only with court attorneys and clerks. As a result, in lieu of appearing before the judge presiding over the resolution part to which the proceeding has been assigned, the first court appearance – and often subsequent court appearances – are conducted before the judge's staff.

74. During this initial appearance held in the ancillary court room, unless an appearing tenant explicitly declines, the proceeding is indiscriminately administratively adjourned to purportedly permit the tenant to participate in an intake process to determine if the tenant is entitled to assigned counsel. As demonstrated below, the administrative adjournment is *often for a period of approximately sixty (60) days*, and if the intake process is not completed by the second court appearance, the proceeding is again administratively adjourned for intake purposes.

75. Notably, the process by which eviction proceedings are adjourned for intake purposes departs from a proper adjournment request made on application wherein both parties appear before a judge, one party requests an adjournment, and the other party has an opportunity to be heard. Instead, the proceedings are mechanically adjourned by Housing Court staff in the presence of the tenant, but often wholly in the absence of the landlord's representative.

76. With particular regard to Non-Pay Proceedings, the administrative adjournments to facilitate the assigned counsel intake process is *in addition to the approximately sixty (60) day delay between the above-described filing of an answer in a Non-Pay Proceeding and the scheduling of the initial court appearance*. The cumulative result is an approximate four (4) month

lapse between the filing of an answer to a Non-Pay Petition and the first opportunity to appear before a judge to even attempt to resolve the petition on the merits.

1. Non-Pay Proceedings

77. As described below, once a Non-Pay Proceeding appears on the Housing Court's calendar – far beyond the eight (8) days after issue is joined envisioned and mandated by the Legislature – it is then routinely adjourned *without discernable requests made by a party therefor* for *months* at a time, impeding any resolution thereof and wholly defeating any semblance of expediency:

a. Indeed, in the Regmi Proceeding, which first appeared on the calendar in Queens County Housing Part A on January 30, 2024 – eighty-nine (89) days after the answer was interposed – was immediately adjourned to February 29, 2024. *See* Exhibit "A."

b. Likewise, in the Soto Proceeding, which first appeared on the calendar in Queens County Housing Part D on January 16, 2024 – eighty-three (83) days after the answer was interposed – was immediately adjourned to March 25, 2024. *See* Exhibit "B."

c. The Jurado Proceeding, which first appeared on the calendar in Queens County Housing Part A on December 20, 2023 – seventy-six (76) days after the answer was interposed – was immediately adjourned to March 7, 2024. *See* Exhibit "C."

d. The Evelin Proceeding, which first appeared on the calendar in Queens County Housing Part A on December 12, 2023 – seventy-four (74) days after the answer was interposed – was immediately adjourned to February 29, 2024. *See* Exhibit "E."

e. The Cash Proceeding, which first appeared on the calendar in Queens County Housing Part B on December 7, 2023 – seventy-two (72) days after the answer was interposed – was immediately adjourned to February 2, 2024. *See* Exhibit "F."

f. The Mata Proceeding, which first appeared on the calendar in Queens County Housing Part D on November 28, 2023 – seventy-one (71) days

after the answer was interposed – was immediately adjourned to February 5, 2024. *See* Exhibit "H."

g. The Hailey Proceeding, which first appeared on the calendar in Queens County Housing Part B on November 13, 2023 – sixty-nine (69) days after the answer was interposed – was immediately adjourned to January 23, 2024 and then again to March 13, 2024. *See* Exhibit "I."

h. The Abubakar Proceeding, which first appeared on the calendar in Queens County Housing Part D on October 10, 2023 – sixty-seven (67) days after the answer was interposed – was immediately adjourned to January 4, 2024. On January 4, 2024, the matter was again adjourned to February 2, 2024 and then again to April 19, 2024. *See* Exhibit "J."

i. The Malchan Proceeding, which first appeared on the calendar in Queens County Housing Part D on October 10, 2023 – sixty-seven (67) days after the answer was interposed – was immediately adjourned to January 4, 2024. On January 4, 2024, the matter was again adjourned to March 18, 2024. *See* Exhibit "K."

j. The Almonter Proceeding, which first appeared on the calendar in Queens County Housing Part D on September 13, 2023 – sixty-five (65) days after the answer was interposed – was immediately adjourned to November 27, 2023. *See* Exhibit "L."

k. The Kendall Proceeding, which first appeared on the calendar in Queens County Housing Part D on August 9, 2023 – sixty-two (62) days after the answer was interposed – was immediately adjourned to October 27, 2023. On October 27, 2023, the matter was again adjourned to January 11, 2024, and on January 11, 2024, the matter was further adjourned to February 1, 2024. *See* Exhibit "O."

l. The Quito Proceeding first appeared on the calendar in Queens County Housing Part D on April 12, 2023, where it was immediately adjourned to June 5, 2023. On June 5, 2023, the matter was again adjourned to August 14, 2023. On August 14, 2023, the matter was transferred to Queens County Housing Part X for assignment to a trial part and further adjourned to November 14, 2023. On November 14, 2023, a pre-trial conference was held in Queens County Housing Part O. ***The matter was then scheduled for trial beginning March 3, 2024, nearly one (1) year after the first court date.*** *See* Exhibit "Q."

m. The Alfred Proceeding first appeared on the calendar in Queens County Housing Part A on February 14, 2023, where it was immediately adjourned to April 13, 2023. On April 13, 2023, the matter was transferred to Queens

County Housing Part X for assignment to a trial part and further adjourned to August 31, 2023. On August 31, 2023, a pre-trial conference was held in Queens County Housing Part P, and the matter was further adjourned to November 16, 2023, and subsequently to November 28, 2023. ***The matter was then scheduled for trial beginning February 16, 2024, over one (1) year after the first court date.*** *See* Exhibit "D."

n. The Gbedemah Proceeding first appeared on the calendar in Queens County Housing Part B on April 20, 2023, where it was immediately adjourned to June 14, 2023. On June 14, 2023, the matter was transferred to Queens County Housing Part X for assignment to a trial part and further adjourned to October 24, 2023. On October 24, 2023, a pre-trial conference was held in Queens County Housing Part F. ***The matter was then scheduled for trial beginning March 18, 2024, nearly one (1) year after the first court date.*** *See* Exhibit "P."

o. The Non-Pay Proceeding *Rome Realty Leasing L.P. v. James Brown, et al*., L&T Index No. 312152/2022 (the "**Brown Proceeding**") first appeared on the calendar in Queens County Housing Part D on April 18, 2023, where it was immediately adjourned to June 9, 2023. On June 9, 2023, the matter was transferred to Queens County Housing Part X for assignment to a trial part and further adjourned to October 23, 2023. On October 23, 2023, a pre-trial conference was held in Queens County Housing Part F. ***The matter was then scheduled for trial beginning February 14, 2024, nearly ten (10) months after the first court date.*** (A copy of the court records relevant to such delay are annexed hereto collectively as **Exhibit "S"**)

p. The Reden Proceeding, which first appeared on the calendar in Queens County Housing Part D on August 8, 2023 – sixty-three (63) days after the answer was interposed – was immediately adjourned to October 30, 2023. On October 30, 2023, the matter was transferred to Queens County Housing Part X for assignment to a trial part and further adjourned to December 12, 2023. On December 12, 2023, the matter was again adjourned to January 12, 2024. On January 12, 2024, a pre-trial conference was held in Queens County Housing Part F. ***The matter was then scheduled for trial beginning April 16, 2024, over eight (8) months after the first court date.*** *See* Exhibit "N."

78. Moreover, upon information and belief, the foregoing adjournments were not requested by Petitioners or the respondent-tenant(s) therein but were nevertheless granted administratively as a matter of course without application or attribution to either party.

79. In sum, Respondents' routine practice of adjourning proceedings for months on end, often repeatedly, ***regularly results in an approximately one (1) year delay between the first court date and the commencement of trial in a Non-Pay Proceeding***.

2. Holdover Proceedings

80. The delays in adjudication caused by repeated adjournments are not limited to Non-Pay Proceedings. Indeed, the same repeated delays plague holdover proceedings as well:

a. For instance, the summary holdover eviction proceeding *London Leasing L.P. v. Oasis Williams, et al*., L&T Index No. 308009/2023 (the "**Williams Proceeding**") first appeared on the calendar in Queens County Housing Part A on June 6, 2023, where it was administratively adjourned to August 25, 2023. On August 25, 2023, the matter was again adjourned to November 2, 2023. On November 2, 2023, the matter was transferred to Queens County Housing Part X for assignment to a trial part and further adjourned to January 4, 2024. On January 4, 2024, a pre-trial conference was held in Queens County Housing Part P. **The matter was then scheduled for trial beginning May 22, 2024, nearly one (1) year after the first court date**. (A copy of the court records relevant to such delay are annexed hereto collectively as **Exhibit "T"**)

b. Likewise, the summary holdover eviction proceeding *Ceylon Leasing LP v. Darlene Peterson, et al.*, L&T Index No. 310543/2023 (the "**Peterson Proceeding**") first appeared on the calendar in Queens County Housing Part A on August 1, 2023, where it was administratively adjourned to October 6, 2023. On October 6, 2023, the matter was transferred to Queens County Housing Part X for assignment to a trial part and further adjourned to December 4, 2023. On December 4, 2023, a pre-trial conference was held in Queens County Housing Part F, at which point the respondent was permitted an extension of time through December 31, 2023 to interpose an answer to the petition. **The matter was then scheduled for trial beginning May 23, 2024, over nine (9) months after the first court date**. (A copy of the court records relevant to such delay are annexed hereto collectively as **Exhibit "U"**)

81. Unsurprisingly, in parallel to the unjustifiable and egregious delays in Non-Pay Proceedings[4], *nine-to-twelve months* often elapse between the first appearance and an actual trial date in Holdover Proceedings.

82. The foregoing examples are neither cherry-picked nor unusual. While the delays caused by unrequested, unattributed adjournments have become accepted as "par for the course," they unfortunately make a mockery of the Legislature's intent in passing Article 7 and renders the "summary" part of "summary proceeding" a farce.

83. As demonstrated below, this failure to only grant adjournments upon a party's request and, in such an event, the associated failure to attribute such request to the party making the application therefor constitute failures of Respondents to undertake mandatory, non-discretionary actions called for by the statute, *warranting mandamus*. Likewise, creating what amounts to an "intake" appearance for the first return date of petitions, administratively adjourning such appearances without the necessary application therefor, and thus failing to attribute such adjournments to the requesting party are actions taken without jurisdiction or authority, *warranting prohibition*.

iii. EVEN AFTER PETITIONERS HAVE OVERCOME THE FOREGOING OBSTACLES AND DELAYS, AND PREVAILS BY OBTAINING A JUDGMENT OF POSSESSION, THE ISSUANCE OF THE ASSOCIATED WARRANT OF EVICTION IS INEXPLICABLY WITHHELD FOR MONTHS ON END IN CONTRAVENTION TO THE EXPLICIT DIRECTIVES OF RPAPL § 749.

84. As described above, the path from pleading to entry of a judgment of possession is prolonged well in excess of the intent of the RPAPL by virtue of the Housing Court's failure to

[4] Non-Pay Proceedings, unlike Holdover Proceedings, have the aforementioned strict time limitations in the setting of an initial trial or hearing date (also ignored by Respondents).

adhere to RPAPL § 732 when setting the initial court dates and the subsequent repeated administrative adjournments granted in contravention to the spirit and letter of RPAPL § 745.

85. However, not only is the RPAPL's intended expediency stymied from the pleading stage to the judgment stage, but a landlord experiences a new set of delays to obtain a warrant of eviction even after it finally obtains a judgment of possession. Such delays directly contravene the RPAPL's purpose and explicit directive set forth in RPAPL § 749. Indeed, RPAPL § 749 explicitly requires that the warrant "shall issue" "***upon*** [the] rendering of final judgment for [P]etitioner." (emphasis supplied). Yet, contrary to an ***immediately*** or ***expediently*** issued warrant "upon" the rendering of a judgment of possession as required by the statute – as shown below – it often inexplicably ***takes approximately four (4) to six (6) months*** from the submission of a warrant requisition to the issuance of a warrant of eviction.

86. For example:

a. In the Non-Pay Proceeding *Bucknell Realty L.P. v. Socorro Collado Simon, et al.*, L&T Index No. 55717/2020 (the "**Simon Proceeding**"), a judgment of possession was entered by Queens County Housing Court Part E in favor of the landlord on October 14, 2022, and a warrant requisition was submitted on October 22, 2022. The warrant of eviction was not issued until April 3, 2023, ***almost six (6) months after submission of the warrant requisition***.

b. In the Non-Pay Proceeding *UESS Leasing L.L.C. v. Julius Adekanmbi*, L&T Index No. 308605/2023 (the "**Adekanmbi Proceeding**"), the tenants failed to interpose an answer, and a request for default judgment with warrant requisition was submitted to the Queens County Housing Court on July 14, 2023. The warrant of eviction was not issued until November 13, 2023, ***almost four (4) months after submission of the warrant requisition***.

c. In the Non-Pay Proceeding *Wellington Lease Limited Partnership v. Jamie Fearon, et al*., L&T 312400/2023 (the "**Fearon Proceeding**"), the tenants failed to interpose an answer, and a request for default judgment with warrant requisition was submitted to the Queens County Housing Court on August 22, 2023. To date, ***nearly six (6) months later, no warrant of eviction has been issued***.

d. In the Pierre Proceeding, a judgment of possession was entered by Queens County Housing Part B in favor of the landlord on August 9, 2023, and a warrant requisition was submitted on September 15, 2023. To date, ***over five (5) months later, no warrant of eviction has been issued***.

e. In the Non-Pay Proceeding *Birch Leasing L.P. v. Jamie Zuleta, et al.*, L&T Index No. 304608/2023 (the "**Zuleta Proceeding**"), the tenants failed to interpose an answer, and a request for default judgment with warrant requisition was submitted to the Queens County Housing Court on May 9, 2023. On September 22, 2023, over four (4) months after submission of the warrant requisition, notice was provided that the requisition was denied. The warrant requisition was then resubmitted on November 10, 2023. ***To date, over three (3) months later, no warrant of eviction has been issued.***

f. In the Delgado Proceeding, a judgment of possession was entered by Queens County Housing Part A in favor of the landlord against the answering tenant on June 12, 2023, and a warrant requisition was submitted on June 30, 2023. To date, over six (6) months later, no warrant of eviction against the answering tenant has been issued. Likewise, a request for a default judgment with warrant requisition against the defaulting tenants was submitted to the Queens County Housing Court on June 30, 2023. On October 31, 2023, over four (4) months after submission of the warrant requisition, notice was provided that the requisition was denied. The warrant requisition was then resubmitted on November 16, 2023. ***To date, over three (3) months later, no warrant of eviction against the defaulting tenants has been issued.***

g. In the Non-Pay Proceeding *Bucknell Realty L.P. v. Socorro Collado Simon, et al*., L&T Index No. 55717/2020 (the "**Simon Proceeding**"), a judgment of possession was entered by Queens County Housing Part E in favor on landlord against the answer tenants on October 14, 2022, and a warrant requisition was submitted on October 22, 2022. A warrant of eviction was not issued against the answer tenants until April 3, 2023, over five (5) months after submission of the warrant requisition. Likewise, a request for a default judgment with warrant requisition against the defaulting tenant was submitted to the Queens County Housing Court on October 22, 2022. On May 22, 2023, over six (6) months after submission of the warrant requisition, notice was provided that the requisition was denied. The warrant requisition was then resubmitted on June 12, 2023. The warrant of eviction was not issued until February 10, 2024, ***almost eight (8) months after submission of the warrant requisition***.

87. Consequently, Respondents should be compelled to act in accordance with the ***mandatory*** and ***non-discretionary*** directives of RPAPL § 749, *to wit*, issue a warrant of eviction immediately – or, at minimum, expediently – "***upon***" the rendering of judgment for Petitioners, necessitating *mandamus*.

88. Additionally, Respondents have also inappropriately conditioned the issuance of warrants on ancillary and unnecessary actions and submissions that are not required under the statute. Indeed, instead of acting in accordance with RPAPL § 749 which requires only a judgment for Petitioners as a condition precedent to issue the warrant of eviction, Respondents have fabricated additional requirements such as the submission of proof that a lease was in effect at the time the proceeding was commenced before a warrant will issue:

a. In the Non-Pay Proceeding *Town Leasing L.L.C. v. Leticia Diaz*, L&T Index No. 306428/2023 (the "**Diaz Proceeding**"), the tenant failed to interpose an answer, and a request for default judgment with warrant requisition was submitted to the Queens County Housing Court on June 3, 2023. On December 12, 2023, over six (6) months after submission of the warrant requisition, notice was provided that the court required submission of *an affidavit stating that a lease was in effect when the proceeding was commenced* prior to issuance of a warrant of eviction *despite the tenant's default in answering the Non-Pay Petition*. Said affidavit was submitted on December 22, 2023. To date, no warrant of eviction has been issued.

89. Therefore, in addition to the foregoing need for *mandamus* with respect to the expedient issuance of warrants, Respondents are also acting without their authority and jurisdiction by fabricating additional requirements for the issuance of warrants, thereby necessitating *prohibition*.

ARGUMENT

90. Based upon the above enumerated actions and inactions of Respondents, Petitioners are entitled to relief under Article 78 of the CPLR ("**Article 78**").

91. Article 78 proceedings are the primary vehicles for judicial review of the actions or inactions of government officials, bodies, and state-chartered private entities and institutions and, as such, are critical tools – as employed herein – for supervising governmental bodies and upholding the rule of law. *See Bursac v Suozzi*, 22 Misc3d 328, 332 (Sup Ct, Nassau Co. 2008) ("For the most part, Article 78 proceedings are used to challenge action [or inaction] by agencies and officers of the state and local government.")

92. The relief available in an Article 78 proceeding has an historical basis in common law writs including, *inter alia*, writs of certiorari, mandamus, and prohibition. In replacing such common law writs, they serve the important function of affording citizens and organizations a means to contest government actions and ensure accountability. *See Bd. of Educ. v Parsons*, 61 Misc2d 838, 840 (Sup Ct, Wayne Co. 1969) ("The purpose and effect of the present article 78 of the CPLR, and article 78 of the former Civil Practice Act was to simplify, and unify the procedure in connection with the three old remedies of, certiorari to review, mandamus and prohibition.")

93. As is markedly relevant here, such proceedings are integral in promoting fairness and justice in public administration in several ways. Firstly, they provide a mechanism for challenging determinations that violate lawful procedure, are affected by an error of law, or are arbitrary and capricious or an abuse of discretion. Secondly, they ensure that the overall integrity of public institutions is maintained. *See Meisner v Hamilton, Fulton, Montgomery Bd. of Coop. Educ. Servs.*, 175 AD3d 1653, 1653 (3d Dept 2019) ("In these so-called university cases, CPLR article 78 proceedings are the appropriate vehicle because they ensure that the over-all integrity of

the educational institution is maintained.") And thirdly, they allow for the review of administrative determinations, thereby holding governmental actors and bodies accountable for their decisions. *See Cuomo v NY State Commn. on Ethics & Lobbying in Govt.*, 81 Misc 3d 246, 262 (Sup Ct, Albany Co. 2023) ("Without responsibility, there can be no accountability, and without accountability, the moorings that bind the government to the will of the people dissolves.")

94. Towards this end, while Article 78 of the CPLR technically eliminated the distinctions between the common law writs it replaced, it remains worthwhile for "courts and litigants to denominate a particular Article 78 proceeding as one which is 'in the nature of certiorari, mandamus or prohibition, as the case may be.'" *Bursac*, 22 Misc 3d at 333.

95. In this respect, while Petitioners' sought reliefs are inexorably interrelated, inasmuch as Petitioners seek the *compulsion* for Respondents to comply with, and *prohibition* from acting in contravention of both the spirit and letter of Article 7 of the RPAPL, Petitioners essentially seek two of the previously denominated common law writs.

96. Specifically, as set forth in more detail below, Petitioners seek a writ of mandamus – compelling respondents to act in accordance with State law – and a writ of prohibition – ceasing Respondents' practices that are outside of the proscribed procedure set forth by State law, including, *inter alia*, the fabrication of the legal fiction of an "intake" appearance for summary proceeding petitions, the issuance of *sua sponte* adjournments of petitions' return dates, and the conditioning of warrant issuance on ancillary and unnecessary submissions.

97. As shown below, the present circumstances desperately necessitate this proceeding and the consequent reliefs sought herein.

WRITS OF MANDAMUS

98. Simply put, Petitioners seek and deserve writs of mandamus compelling Respondents to abide by and enforce Article 7 of the RPAPL as written. The circumstances present here, *to wit*, the systemic non-compliance by Respondents with the spirit and letter of Article 7 of the RPAPL, warrant the relief of mandamus from this Court.

99. Article 78 proceedings in the nature of a writ of mandamus are purposed "to compel a governmental entity or officer to perform a purely ministerial duty," such as "those where ***the official is bound by law to take some action***." *Brusco v. Braun*, 84 NY2d 674, 645 NE2d 724, 725-26, 621 NYS2d 291 (NY 1994); *Winters v City of NY*, 2020 US Dist LEXIS 129105, 9 (SDNY 2020) (emphasis supplied).

100. In this respect, Article 7 of the RPAPL – in order to preserve its purpose of expediting the recovery of real property – is rife with specific and explicit directives to Respondents. For example, Article 7 *demands* that "the clerk" of the pertinent Civil Court – a role and position controlled by and included among Respondents – "***shall*** fix a date for trial or hearing not less than three nor more than eight days after joinder of issue" in a Non-Pay Proceeding. RPAPL § 732(2) (emphasis supplied). It similarly commands that "[a]t the time when issue is joined the court, *at the request of either party* ***shall*** adjourn the trial of the issue . . ." RPAPL § 745(1) and likewise directs that "***[u]pon*** rendering a final judgment for petitioner, the court ***shall*** issue a warrant . . ." RPAPL § 749(1).

101. As set forth in more detail below, these *unequivocal* directives do not command the "clerk" or the "court" to undertake "exercise[s] of judgment or discretion" but the "mandatory, nondiscretionary action[s]" of fixing a trial date within a defined time period, ordering adjournments when the condition precedent of a party's request is fulfilled, and expediently issuing

a warrant of eviction upon the granting of a judgment of possession. *Brusco*, *supra* at 679. It is thus axiomatic that writs of mandamus are both appropriate to address these circumstances and are overwhelmingly needed here.

102. Tellingly, in similar situations, *to wit*, where a statute compels action on the part of a judicial or quasi-judicial actor and such actor fails or refuses to undertake such act, mandamus relief has been readily granted as long as petitioners are not seeking that actor to exercise its discretion in a certain manner in undertaking such act. The distinction is slight but important – "[t]he office of the writ of mandamus is in general to compel the performance of mere ministerial acts prescribed by law. It may also be addressed to subordinate judicial tribunals, to compel them to exercise their functions, but never to require them to decide in a particular manner." *People ex rel. Francis v Common Council of Troy*, 78 NY 33, 39 (1879). As explained by the Court of Appeals, "[t]he character of the duty, and not that of the body or officer, determines how far performance of the duty may be enforced by mandamus." *Id*.

103. Here, the acts that Petitioners seek to compel are non-discretionary in nature. It is a simple exercise of acting upon the "if-then" provided under the statute: (a) ***if*** a Non-Pay Petition is filed and answered, ***then*** the clerk shall fix a trial date within three to eight days thereafter; (b) ***if*** a party requests an adjournment on the first return date of a petition, ***then*** the court shall grant such an adjournment; and (c) ***if*** a judgment of possession is granted to a petitioner, ***then*** a warrant shall issue. *See* RPAPL §§ 732, 745 and 749. Petitioners are therefore not requesting that any of Respondents exercise any available discretion they have in acting as directed by the statute – no discretion is provided to such actors under such statutes, and thus the actions Petitioners request be compelled are not *discretionary* but ***mandatory***.

104. The Court of Appeals case of *Brusco v. Braun* is illustrative in this respect as the

court therein directly addresses the granting of mandamus pertaining to directives in Article 7 of the RPAPL. Specifically, the court grappled with whether the issuance of a judgment in favor of a landlord upon a tenant's default in a Non-Pay Proceeding as prescribed by RPAPL § 732(3) was discretionary and thus not appropriate for mandamus relief. The iteration of the statute at the time *Brusco* was decided was as follows:

> If the respondent fails to answer within five days from the date of service, as shown by the affidavit or certificate of service of the notice of petition and petition, ***the judge shall render judgment in favor of the petitioner*** and may stay the issuance of the warrant for a period of not to exceed ten days from the date of service.

1994 RPAPL § 732 (emphasis supplied).

105. The Court thus undertook the analysis of whether the judge had any discretion to not issue a judgment as demanded by the statute and – in large part due to the conspicuous use of the word "shall" therein – found that he ***did not***:

> The plain language of the statute establishes two factual predicates to be determined by the court: whether petitioner has submitted an affidavit or certificate of service of the notice of petition and petition, and whether the tenant has failed to respond within five days of the date of service. If both conditions are met, the statute requires that "the judge ***shall*** render judgment in favor of the petitioner" (RPAPL 732 [3] [emphasis supplied]). The statute not only commands an action; it dictates the result. Where, as here, petitioner has proven service of the notice of petition and petition and the tenant has failed to appear, ***respondent has no discretion; judgment in favor of petitioner must be granted and mandamus lies to compel respondent to do that which the statute requires***.

Brusco, 84 NY2d at 680 (emphasis supplied).

106. In this respect, courts have subsequently emphasized that the term "shall" – when inserted between an if-then directive – operates as a compulsory and mandatory command that an action be taken when a condition is fulfilled. For example, the First Department explained this reasoning in analyzing the import of the precedential holding in *Braun*: "the New York Court of

Appeals held that the issuance of the judgment was purely ministerial, as the statute in question stated that *upon a certain showing (which all parties agreed had been made) that the judge 'shall render judgment in favor of the petitioner.*'" *Lang v Pataki*, 271 AD2d 375, 376-77 (1st Dept 2000) (emphasis supplied).

107. Indeed, the import and significance of the use of the term "shall" in statutory construction has a long and well-settled past that is helpful in determining that the actions prescribed by the statutes at issue are mandatory and thus ripe for mandamus relief. Specifically, while the word "shall," when found in a statute or regulation, is not always imperative, "in the absence of ameliorating or qualifying language or showing of another purpose, the word 'shall' is deemed to be mandatory." *People v Ricken*, 29 AD2d 192, 193 (3d Dept 1968); *see also Blake v N. Shore Multiple Listing Serv., Inc.*, 81 Misc 2d 793, 799 (Sup Ct, Queens County 1975) (same); *Escoe v Zerbst*, 295 US 490, 493 (1935) ("We find in this statute more than directory words of caution, leaving power unaffected. This is so if we consider the words alone, putting aside for the moment the ends and aims to be achieved. The defendant 'shall' be dealt with in a stated way; it is the language of command.").

108. This plain interpretation of the term "shall" is only confirmed, and all "doubt" "dispelled," when looking also to the impetus behind the statutes at issue – along with Article 7 of the RPAPL as a whole – to clarify the purpose and meaning of the conspicuous use of the term "shall" therein. *Escoe*, 295 US at 493. As set forth by the Supreme Court of the United States, "[d]oubt, however, is dispelled when we pass from the words alone to a view of ends and aims." *Id*. As the sole purpose of Article 7 was to replace the time-consuming and cost-prohibitive process of common law ejectment with an expedient means by which landlords could regain their real property, the term "shall" with respect to the timing of certain necessary procedural steps in

regaining possession of such property cannot reasonably be interpretated as anything but a mandatory command.

109. This statutory construction is borne out by Courts adjudicating mandamus petitions where the pertinent statute utilizes the "shall" phrasing.

110. For example, in *Capital Equity Mgt., LLC v Sunshine*, 73 Misc 3d 1072, 1073 (Sup Ct, Kings Co. 2021), the Kings County Supreme Court addressed whether respondent county clerk could be compelling via mandamus to process petitioner's default judgment application *for a renewal judgment* in the same manner as the clerk would process *any other default judgment application* for a sum certain. It was thus incumbent upon the court to determine whether the act to be compelled was "discretionary," which was defined by the court – quoting the Second Department – as an act which "'involve[s] the exercise of reasoned judgment which could typically produce different acceptable results whereas a ministerial act envisions direct adherence to a governing rule or standard with a compulsory result.'" *Id*., quoting *Matter of Willows Condominium Assn. v Town of Greenburgh*, 153 AD3d 535, 536 (2d Dept 2017). The court then turned to the language contained in the governing statute[5] – CPLR 3215 – to determine whether the entering of the judgment sought by petitioner was *discretionary* or *ministerial*:

> (a) Default and entry. When a defendant has failed to appear, plead or proceed to trial of an action reached and called for trial, or when the court orders a dismissal for any other neglect to proceed, the plaintiff may seek a default judgment against him. ***If*** the plaintiff's claim is for a sum certain or for a sum which can by computation be made certain, application may be made to the clerk within one year after the default. The clerk, *upon submission of the requisite proof,* ***shall*** *enter judgment for the amount demanded in the complaint or*

[5] The other statute involved, CPLR 5014, governing the entry of renewal judgments, also contains mandatory language. *See id*. ("An action may be commenced under subdivision one of this section during the year prior to the expiration of ten years since the first docketing of the judgment. The judgment in such action shall be designated a renewal judgment and ***shall be so docketed by the clerk***. The lien of a renewal judgment shall take effect upon the expiration of ten years from the first docketing of the original judgment.")

> *stated in the notice served pursuant to subdivision (b) of rule 305, plus costs and interest*. Upon entering a judgment against less than all defendants, the clerk shall also enter an order severing the action as to them. When a plaintiff has failed to proceed to trial of an action reached and called for trial, or when the court orders a dismissal for any other neglect to proceed, the defendant may make application to the clerk within one year after the default and the clerk, upon submission of the requisite proof, shall enter judgment for costs. Where the case is not one in which the clerk can enter judgment, the plaintiff shall apply to the court for judgment.

CPLR § 3215 (a) (emphasis supplied)

111. Based upon the foregoing language, the court determined that there were two conditions precedent to trigger the duty of the clerk under the statute: (a) the application must be made within a year of the default and (b) the judgment sought is for a sum certain. The court thereafter noted that petitioner's "application for a renewal judgment was made within a year of the alleged default in the 2019 action," and the proposed renewal judgment, seeking merely the amount of the prior settled judgment "plus the statutory interest that has accrued on the judgment in the intervening years" constituted a judgment for a "sum certain" or, at the very least, a judgment for "a 'sum which can by computation be made certain.'" *Id*. The court therefore determined that the conditions set forth in the "if" clause of the statute had been satisfied and thus the clerk should be compelled to undertake the *mandatory* and *ministerial* actions following the "shall" clause, *to wit*, "enter judgment for the amount demanded in the complaint or stated in the notice served pursuant to subdivision (b) of rule 305, plus costs and interest." Specifically, the court found:

> This court further finds that mandamus lies, since, under the circumstances here, the County Clerk had a ministerial obligation to process Capital Equity's default judgment application. ***The required determination that the application was made within one year of the default is readily made and involves no discretionary findings***. Similarly, as noted above, since an action on a judgment falls squarely within the kind of claim deemed to constitute one for a sum certain, ***the County Clerk is not required to make any discretionary determinations when considering the application***.

Id. at 1081 (emphasis supplied).

112. This is in direct contrast to the Court of Appeals' finding in *People ex rel. Francis v Common Council of Troy*, 78 NY 33, 39 (1879) wherein the Court denied a writ of mandamus from a petitioner seeking the common council of the city of Tory to act and exercise its discretion in acting in a particular way. Specifically, the charter of the city of Troy required the council to "designate not to exceed four newspapers having the largest circulation in the city, in which the city advertizing [sic] shall be done." *Id*. at 35. The petitioner – a newspaper – therefore sought the council to choose petitioner's paper as one of the designated newspapers and the Court of Appeals, in denying mandamus reasoned "[t]he most that can be done by mandamus is to compel the common council to determine the question and designate the papers with reference to the statutory requirement; but I apprehend that it was not the province of the court to determine the question of fact in the first instance, and direct what particular paper or papers should be designated." *Id*. at 40.

113. Here, in accord with the Court of Appeals reasoning in *Common Council of Troy*, Petitioners seek only to have Respondents act as required by statute and not, as petitioner in *Common Council of Troy* sought, to do so in a certain discretionary way.

114. This Court should therefore grant mandamus to compel Respondents' compliance with the various statutes contained in Article 7 of the RPAPL.

A. <u>The Clerk Should Be Compelled to Fix Trial Dates in Accordance with RPAPL § 732.</u>

115. The fixing of trial dates in Non-Pay Proceedings is mandatory and thus should be compelled by this court by a writ of mandamus.

116. Indeed, the language – and direction – of RPAPL § 732 (2) is crystal clear. The "if-then" statement is unmistakable – ***if*** the proceeding at issue is a Non-Pay Proceeding and "***[i]f*** the

respondent answers" ***then*** "the clerk ***shall*** fix a date for trial or hearing not less than three nor more than eight days after joinder of issue." *Id*. Just as the courts found in *Brusco v. Braun* and *Capital Equity Mgt., LLC v Sunshine*, where the conditions precedent under a statute are satisfied, the court or clerk is mandated to undertake the consequent action which the statute directs "shall" be done. Moreover, unlike the petitioner in *People ex rel. Francis v Common Council of Troy*, Petitioners herein do not seek a writ of mandamus directing the clerk to fix the date for trial on any particular day in the statutorily prescribed five-day window (three to eight days) – but rather that such a date be fixed anytime within that window.

117. As demonstrated above through the inexhaustive list of instances in which trials have not been so fixed by the clerk – oftentimes with trial dates nearly three (3) months after issue is joined instead of eight days or less – the non-compliance with RPAPL § 732 is endemic. In fact, it is likely more difficult to find examples of the Clerk's compliance therewith than to find instances in which trial dates are set far beyond the time limits for same set forth by the Legislature. It is therefore axiomatic that a writ of mandamus is necessary to stem the tide of this rampant disconnect between the Clerk's statutorily mandated duty and its actions.

B. The Court Should Be Compelled to Only Grant Adjournments Upon the Request of a Party in Accordance with RPAPL § 745(1).

118. As set forth above, by fabricating the legal fiction of an intake appearance in summary proceedings and, in doing so, effectively granting adjournments of summary proceedings administratively without an attributable request by either party nor an opportunity for objecting parties to be heard, Respondents have ignored the mandates of RPAPL § 745(1). Such statute delineates the specific authority of the Court to grant adjournments in summary proceedings, *to wit*, when a party requests it. In this respect, like the fixing of a trial date pursuant to RPAPL §

732, there is no discretion granted to the Court in whether to adjourn the return date of the petition – it is mandatory: "[a]t the time when issue is joined the court, at the request of either party ***shall*** adjourn the trial of the issue, not less than fourteen days, except by consent of all parties." RPAPL § 745(1).

119. In analyzing such statute in accordance with controlling precedent, the conditions precedent, *i.e.*, the "if" statement, are that (a) issue is joined and (b) a party requests an adjournment. Once those are satisfied, the court is mandated to "adjourn the trial of issue, not less than fourteen days." *Id*. Yet, here, notwithstanding the limited authority granted by the statute that the court may only adjourn upon an application by a party, the Court is adjourning the "trial of issue" as a matter of course without a request by either party, thus failing to comply with RPAPL § 745(1).

120. Therefore, along with a writ of prohibition – explained below – Petitioners are entitled to a writ of mandamus compelling Respondents to comply with the limited directive of RPAPL § 745(1) and consequently only consider and grant adjournments upon an application of a party.

C. The Court Should Compel the Court to Issue Warrants Immediately and Expediently Upon Issuing Judgment for Petitioners in Accord with RPAPL § 749.

121. As with Trials and Adjournments, Article 7 of the RPAPL is exceedingly clear with respect to the final obstacle to a landlord's recovery of real property – the issuance of warrants. RPAPL § 749 unequivocally provides that "***[u]pon*** rendering a final judgment for petitioner, *the court* ***shall*** *issue a warrant* directed to the sheriff of the county or to any constable or marshal of the city in which the property, or a portion thereof, is situated . . . describing the property, stating

the earliest date upon which execution may occur pursuant to the order of the court, and commanding the officer to remove all persons named in the proceeding . . . ." (emphasis supplied).

122. As set forth above with respect to the use of the term "shall" in RPAPL § 732, the term "shall" – inasmuch as the court ***shall*** issue a warrant – sets forth a ***mandatory*** action.

123. Moreover, in reading RPAPL § 749 as a whole – as is proper under the rules of statutory construction – the pairing of the terms "upon" and "shall" sets forth not only a mandatory action *but an action that must be undertaken immediately*.

124. Specifically, in analyzing the construction and meaning of statutory language, it is well-settled that a Court is to examine both the letter of the statute and its "general purpose and spirit." *See* McKinney's Consolidated Laws of NY, Book 1, Statutes § 73 ("Avoidance of judicial legislation"); § 92 ("Legislative intent as primary consideration"); § 94 ("Intent determined from language used; natural and obvious meaning"); § 96 ("General purpose and spirit"); § 97 ("All parts to be construed together"); and § 111 ("Generally").

125. In the first instance, as explained by the Court of Appeals in *We're Assoc. Co. v Cohen, Stracher & Bloom, P.C.*, 65 NY2d 148, 151 (1985), "[w]ords of ordinary import in a statute are to be given their usual and commonly understood meaning, unless it is clear from the statutory language that a different meaning was intended." *See Hudson Deepwater Dev., Inc. v City of Troy*, 299 AD2d 801, 802 (3d Dept 2002) (same). In so construing such words of "ordinary import" and "[i]n the absence of any controlling statutory definition," the Court of Appeals has counseled courts to "construe words of ordinary import with their usual and commonly understood meaning, and in that connection have regarded dictionary definitions as 'useful guideposts' in determining the meaning of a word or phrase.'" *Rosner v Metro. Prop. & Liab. Ins. Co.*, 96 NY2d 475, 479-480 (2001). *See One Eighteen Hous. Dev. Fund Inc. v Smith*, 56 Misc 3d 383, 386-387 (Civ Ct,

New York County 2017) (same). Such plain meaning thus takes precedence over any other interpretation that diverges therefrom because "where the language of a statute is without ambiguity, and the meaning unequivocal, there is no necessity for resort to rules of construction." *New Amsterdam Cas. Co. v Stecker*, 3 NY2d 1, 6 (1957)

126. In this respect, the import of the term "upon" is clear. As defined by the *2024 Edition of Random House Unabridged Dictionary* and *Random House Kernerman Webster's College Dictionary*, the term "upon" means, *inter alia*, "*immediately* or very soon after" and "on the occasion of, at the time of, or *immediately after*." Likewise, Harper Collins' *Collins COBUILD Advanced Learner's Dictionary* explains that the word "upon" is used, *inter alia*, "when mentioning an event that is followed *immediately* by another event." It is therefore without question that in utilizing the term "upon," the statute mandates that the warrant must be issued "immediately or very soon after" or "on the occasion of, at the time of, or immediately after" the issuance of the judgment.

127. Certainly, a delay of four (4) months on average does not comport with RPAPL § 749's clear mandates regarding the timing of the issuance of the warrant in relation to the issuance of the associated judgment.

128. Furthermore, the foregoing construction of RPAPL § 749 is in complete accord with the spirit and purpose of such provision, along with Article 7 as a whole, and should therefore be the interpretation utilized by this Court in determining the appropriateness of mandamus. *See Russo v Valentine*, 294 NY 338, 342 (1945) ("We have frequently pointed out that it is the duty of the courts to give effect to statutes as they are written and that we may not limit or extend the scope of the statute as written unless literal construction of the statute would produce a result which the Legislature plainly did not intend.")

129. Indeed, the intent of RPAPL § 749 and Article 7 as a whole are one and the same – to efficiently and expediently lead to the recovery of real property – and they are fulfilled through the plain meaning interpretation of RPAPL § 749. It is wholly unsurprising that *immediately* ***upon*** the issuance of a judgment of possession, *i.e.*, a judicial declaration that a landlord is entitled to the possession of its real property, a warrant that will effectuate the recovery of such property must be issued. In an inherently practical sense, a landlord and/or each of Petitioners are in a metaphorical "no-man's land" between the issuance of a judgment of possession and their acquisition of a warrant of eviction. Its already determined legal right to retake possession of its real property is held in abeyance pending the issuance of the warrant, during which it has no recourse to halt such delay. Such arbitrary and unexplainable forestalling of the final obstacle to petitioner regaining its real property – as illustrated by the fact that the execution of the warrant finally and completely terminates the proceeding – is antithetical to both the language and the very purpose of the statute at issue. *See Matter of Dixon v County of Albany*, 192 AD3d 1428, 1431 (3d Dept 2021) ("[T]he issuance of a warrant is the court's last act in a summary proceeding, as denoted by the phrase, 'Upon rendering a final judgment […] the court shall issue a warrant' […] Likewise, the execution of the warrant terminates the summary proceeding and the jurisdiction of the court.")

130. A writ of mandamus must therefore be issued to ensure that warrants are issued immediately after the granting of judgment for landlords in general, and Petitioners specifically.

WRITS OF PROHIBITION

131. While Petitioners are entitled to writs of mandamus against Respondents to compel their affirmative compliance with Article 7 of the RPAPL, as an opposite side of the same coin, writs of prohibition are relatedly warranted with respect to prohibiting Respondents from routinely acting in contravention to Article 7. As complimentary relief to a writ of mandamus, a writ of

prohibition is warranted where, as here, a court acts in excess of its authorized jurisdiction or authority and a petitioner has a clear right to enforce such limitations.

132. Here, Respondents have unquestionably exceeded their statutorily defined authority by (a) fixing trial dates substantially in excess of the strict time limitations prescribed by RPAPL § 732; (b) essentially administratively adjourning return dates of Petitions without the required attributable request(s) by either party; and (c) notwithstanding the granting of a judgment of possession, requiring additional submissions of ancillary documents as a prerequisite to the issuance of warrants. Moreover, as such limitations on Respondents' authority memorialized in RPAPL Article 7 are designed and purposed to protect Petitioners and similarly situated landlords from indefinite and lengthy delays in the recovery of their real property, Petitioners have a clear right to enforce such limitations.

133. The foregoing standard is well-settled and has been set forth by the Court of Appeals in, *inter alia*, *Holtzman v Goldman*, 71 NY2d 564, 568-70 (1988). Therein, the Court explained that "[w]hen a petitioner seeks relief in the nature of prohibition pursuant to CPLR 7803 (2), the court must make a two-tiered analysis. It must first determine whether the issue presented is the type for which the remedy may be granted and, if it is, whether prohibition is warranted by the merits of the claim." *Id*.

134. In order to satisfy the first "tier" of the foregoing analysis, the Court of Appeals explained that a petitioner must establish both that (a) it has a "clear legal right;" and (b) "a court . . . acts or threatens to act either without jurisdiction or in excess of its authorized powers." *Id*. In such circumstances, the remedy of a writ of "prohibition is available" and appropriate. *Id*. This is especially so where, as here, the application for such writ is sought because "an inferior court has jurisdiction but is threatening to exceed its authorized power." *Proskin v County Ct. of Albany*

County, 30 NY2d 15, 18 (1972); *see also Lee v County Ct. of Erie County*, 27 NY2d 432, 437 (1971) (same)*; Matter of Brown v Blumenfeld*, 103 AD3d 45, 55 (2d Dept 2012) (same); *Matter of Attorney Gen. of the State of NY v Simon*, 27 Misc 3d 546, 547 (Sup Ct, Dutchess Co. 2010) (same). Here, Respondents – including the technically "inferior" court of the Housing Court – have acted and continue to act outside of their jurisdictions – which are explicitly circumscribed by Article 7 of the RPAPL on which the very existence of summary proceedings depends – and thus exceed their authorized powers, warranting writs of prohibition.

135. Furthermore, where, as here, a petitioner satisfies the first "tier" of such analysis, the remedy of prohibition is "granted […] in the sound discretion of the reviewing court." *Id*. at 569. In this respect, "[i]n exercising such discretion, a court must weigh a number of factors: the gravity of the harm caused by the act sought to be performed by the official; whether the harm can be adequately corrected on appeal or by recourse to ordinary proceedings at law or in equity; and whether prohibition would furnish 'a more complete and efficacious remedy * * * even though other methods of redress are technically available'." *Rush v Mordue*, 68 NY2d 348, 354 (1986). When considering such factors in the present circumstances, Petitioners' entitlement to writs of prohibition is overwhelming.

136. As shown below, in applying such analysis herein, it is clear that writs of prohibition are both available and necessary. Respondents should be henceforth prohibited from, *inter alia*, (a) fixing trial dates in Non-Pay Proceedings outside of the temporal limitations set forth in RPAPL § 732; (b) issuing indiscriminate and unattributed administrative adjournments of Petition return dates in contravention to RPAPL § 745(1); and (c) requiring any additional submissions of ancillary documents as a condition precedent to the issuance of warrants after judgment has already been rendered.

A. The Remedy of Prohibition is Available Under the Circumstances Presented

137. As a threshold issue, a writ of prohibition pursuant to Article 78 of the CPLR is available here based upon Petitioners' claims. The Court of Appeals has found in similar scenarios that a writ of prohibition is the appropriate remedy where, as here, a petitioner's allegations are that a judicial or quasi-judicial body acted[6] in derogation of a governing statute's clear circumscription of authority:

> Since petitioner's contention was that the Judge was without the power to alter Cohen's term of incarceration, her choice of a CPLR 7801 proceeding to test the merits of her position was the correct one. It remains for us to consider the separate question of whether under the circumstances the extraordinary writ of prohibition lies. In that regard, the question of whether petitioner has established a clear legal right to that relief is critical.

Pirro v Angiolillo, 89 NY2d 351, 355-356 (1996). *See id*. at 358-359 ("Inasmuch as the jail sentence was separate from and independent of the probationary term, CPL 410.20 did not furnish authority to vacate the former and the Judge was bound by the no-modification rule of CPL 430.10.")

138. Therefore, "the issue[s] presented [are] the type for which the remedy [of prohibition] may be granted." *Holtzman*, 71 NY2d at 568.

[6] *Steingut v Gold*, 42 NY2d 311, 315 (1977) ("Further, in order for prohibition to be appropriate, the writ must be directed to some inferior judicial tribunal or officer and must seek to prevent or control judicial or quasi-judicial action only *(Matter of Dondi v Jones*, 40 NY2d 8, 13; see Comment: Writ of Prohibition in New York -- Attempt to Circumscribe an Elusive Concept, 50 St John's L Rev 76, 84).")

B. This Court Should Therefore Issue a Writ Prohibiting Respondents from Acting in Contravention to RPAPL § 732.

a. Petitioners Easily Satisfy the First Tier of the Writ of Prohibition Analysis

139. As shown below, Petitioners have both a clear legal right to an expeditiously set trial date in Non-Pay Proceedings and Respondents have acted outside of their authorities in infringing on that right.

i. Petitioners have a Clear Legal Right to Respondents' Compliance with Article 7 of RPAPL Generally and RPAPL §732 Specifically.

140. Simply put, Petitioners have a clear and unequivocal legal right to an expeditious adjudication of their claims to the possession of their real property by virtue of Article 7 of the RPAPL. This right is perhaps most poignantly encapsulated in RPAPL § 732, purposed to expedite Non-Pay Proceedings at their very inception.

141. Specifically, the clear legal right of Petitioners – and all similarly situated landlords – to a scheduled hearing or trial on the merits within eight (8) days of joinder of issue is both paramount to fulfilling the purpose of Article 7 of the RPAPL and a crucial protection of Petitioners' associated right to their real property that is contemporaneously being infringed upon by occupant(s) therein.[7]

142. In the first instance, as set forth in detail above, the origins of Article 7 are a testament to its legislative purpose and the imperative need for compliance therewith. Article 7 and the summary proceedings over which it governs are the results of over two hundred years of legislation. Article 7 is the most current iteration of such statutory authority from which summary

[7] A Non-Pay Proceeding may only be commenced where a tenant has defaulted in the obligation to pay rent and ***remains in possession of the premises*** sought to be recovered. *See* RPAPL § 711 ("A special proceeding may be maintained under this article under the following grounds: [2] The tenant has defaulted in the payment of rent, pursuant to the agreement under which the premises are held, and a written demand of the rent has been made with at least fourteen days' notice requiring, in the alternative, the payment of the rent, or the possession of the premises[.]").

proceedings spring forth and its language – thoughtfully drafted and redrafted based upon changing relationships between landlords and tenants – is therefore sacrosanct with respect to the operations of summary proceedings. Indeed, as creatures of RPAPL Article 7, summary proceedings would have no place in our jurisprudence without such statutory authority and thus its terms are axiomatically the concrete delineations of the statutorily fabricated jurisdiction of the Housing Court. *See Rotunno v Gruhill Constr. Corp.*, 29 AD3d 772, 773 (2d Dept 2006) ("A summary proceeding 'is a creature of statute.'") (quoting *Century Realty v Grass*, 117 Misc 2d 224, 225, 457 NYS2d 731 [1982]).

143. And thus Article 7's inarguable purpose of providing landlords with the most expedient mechanism to recover their real property – especially with respect to a Non-Payment Proceeding for which RPAPL § 732 exclusively applies – is brought to fruition, in part, by RPAPL 732's limitation on the delay between issue joinder and trial. *See id.* ("RPAPL article 7, for example, 'represents the Legislature's attempt to balance the rights of landlords and tenants to provide for expeditious and fair procedures for the determination of disputes involving the possession of real property.'")

144. Such time limitations are thus integral to the purpose of RPAPL's Article 7 as a whole. This interpretation is not only supported by the storied history of summary proceedings in this State, but also by the complimentary statutory mechanism set forth in RPAPL § 745(2) designed to minimize any prejudice to petitioners when a summary proceeding is unavoidably delayed.

145. To be clear, RPAPL § 732 mandates a trial date be set between three and eight days after a tenant answers the petition. As discussed in more detail below, however, Article 7 of the RPAPL does not limit the court's authority to entertain either party's applications to adjourn the

proceeding on such trial date.[8] It was thus incumbent upon the Legislature to grapple with the competing interests of landlords' rights to the expeditious recovery of their property and tenants' potentially meritorious justifications for adjournments of the proceeding. The result was RPAPL § 745(2).

146. Specifically, RPAPL § 745(2)(a)(ii) provides for a mechanism through which landlords can request and a court can direct a deposit of use and occupancy from a respondent after (a) the second of two adjournment requests made by a tenant or (b) on the 60th day ***after the first appearance of the parties in court*** (less any days that the proceeding was adjourned at the request of the petitioner), ***whichever occurs sooner***.[9] Clearly, by providing for this mechanism, the Legislature emphasized its intent to address languishing summary proceedings on civil court dockets and the resultant pecuniary harm and prejudice incurred by landlords. Moreover, as is pertinent herein, the dependence upon such mechanism on the "***first appearance of the parties in court***" illustrates the cruciality of strict compliance with RPAPL § 732's directive that such "first appearance of the parties in court" in Non-Pay Proceedings, *to wit*, the trial date, be fixed by the clerk no more than eight days after joinder of issue.

147. In fact, Respondents' wholesale disregard of such requirements – thereby delaying both the summary proceeding itself and a petitioners' right to seek use and occupancy due to the delay - is antithetical to the well-settled public policy of this State that "[i]t is manifestly unfair that [respondent] should be permitted to remain in possession of the subject premises without paying for their use." *MMB Assoc. v Dayan*, 169 AD2d 422, 422 (1st Dept 1991). A delay in the

[8] An abrogation of the court's discretion to grant adjournments *upon application by a party* would be, at the very least, violative of this State's "right to counsel" law.

[9] This mechanism is not triggered if tenant can establish, at an immediate hearing, that it has properly interposed one of seven specific and enumerated defenses to the petition. *See id*.

fixing of the trial date thus not only cuts against Article 7's purpose and delays the proceeding generally, but it also undermines the protections afforded to landlords through RPAPL § 745(2) by forestalling the running of time before which a landlord can seek a deposit of use and occupancy.

148. The reading of RPAPL § 732 and RPAPL Article 7 as a whole – including RPAPL 745(2) – makes overwhelmingly clear that (a) Petitioners have a clear legal right to Respondents' compliance therewith; and (b) Respondents' non-compliance directly harms Petitioners, along with all other similarly situated landlords before the NYC Civil Court.

ii. In Failing to Comply With RPAPL §732, Respondents Have Acted Outside Their Jurisdiction

149. As set forth above, RPAPL § 732 clearly and purposefully abrogates the Housing Court's inherent jurisdiction to manage its calendar and set trial dates at its discretion. It *explicitly* curtailed the length of time after an answer is filed on which the "clerk ***shall*** fix a date for trial or hearing" to "not less than three ***nor more than eight days***." *Id*. (emphasis supplied). Such limitations constitute, in sum and substance, the limited jurisdiction and authority for the Clerk to fix a trial date. Therefore, by indiscriminately "fixing" dates for trial and hearings beyond "eight days," the Clerk acts outside of its authority and jurisdiction as specifically circumscribed by statute.

150. New York jurisprudence is replete with similar examples where a writ of prohibition was deemed appropriate where, notwithstanding an explicit statutory circumscription of authority, a judicial or quasi-judicial actor acted without such bounds thereby exceeding its authority. Such examples demonstrate the appropriateness of a writ of prohibition where, as here, (a) a power to act is restricted by virtue of its exclusion from statutory authority; (b) a power to act

is restricted by virtue of a contradicting act being mandated by statute; and (c) certain circumstances which would otherwise authorize an act are not present. Here, (a) authority to fix a Non-Pay Proceeding trial date beyond eight days is absent from the RPAPL; (b) RPAPL § 732 mandates that Non-Pay Proceeding trial dates be fixed within eight days of an answer; and (c) any circumstance that would warrant fixing a trial date beyond eight days is not present here.

151. An illustrative example was before the Court of Appeals in *Schumer v Holtzman*, 60 NY2d 46, 50 (1983). By way of background, the case arose from the appointment of a "special prosecutor" by the district attorney of Kings County (the "**District Attorney**") to investigate and prosecute Senator Charles Schumer ("**Schumer**"). The District Attorney did so by virtue of a memorandum of understanding, through which she delegated to the special prosecutor "broad discretion and power to conduct the investigation and determine the course of the prosecution." *Id.* at 51. Schumer thereafter brought a petition seeking a writ of prohibition, alleging that by undertaking such an appointment with the delegation of such powers, the District Attorney exceeded her statutory jurisdiction and authority. The Court of Appeals noted that while the District Attorney was charged with "the duty of conducting 'all prosecutions for crimes and offenses cognizable by the courts of the county for which [she] shall have been elected'," her authority to appoint assistants in dispensing such duty is derived by statute. Specifically, the Court found that her power to appoint was delineated in County Law § 930, which provided for the limited ability to appoint only "assistant district attorney[s]," *i.e.*, "subordinate[s]." Therefore, in granting the writ of prohibition, the Court of Appeals explained that such remedy was appropriate as the District Attorney had acted outside of the scope of her authority as set forth in County Law § 930:

> The powers of the District Attorney, however, are conferred upon her by statute (see County Law, § 700; People v Di Falco, 44 NY2d 482, 487). ***She may delegate duties to her assistants but she may not transfer the fundamental responsibilities of the office to them***. Such a transfer may be accomplished only by executive or court order (see Executive Law, § 63, subd 2; County Law, § 701). To the extent that the District Attorney attempted to circumscribe the unlawful grant by reference in the memorandum to section 930 of the County Law and by the statement that the authority granted was limited to a grant "consistent with the District Attorney's statutory accountability", we give no effect to that language and read the memorandum to mean what the parties obviously intended it to mean: that the appointee was to have a free hand in all aspects of the Schumer matter.

Id. at 53 (emphasis supplied); *see also People v Davidson*, 27 NY3d 1083, 1087 (2016) ("Thus, where the Legislature creates the office of an appointed special prosecutor for criminal matters involving the safety of a statutorily classified population dependent on state services, and also prohibits interference with the investigatory and prosecutorial duties of the District Attorney, such special prosecutor may only appear in accordance with the authorizing statute, upon consent of the local District Attorney.")

152. Similarly, in *Morgenthau v Williams*, 229 AD2d 361, 363-64 (1st Dept 1996), the First Department found that a judge's acceptance of jurors' claims that they could not serve if overnight sequestration was required, and failing to thereafter order sequestration of the jurors, warranted a writ of prohibition. In so deciding, the First Department noted that in the circumstances at issue, the ordering or sequestration of the jury was mandated by statute: "[t]herefore, when a defendant is charged with a class B violent felony, as are the defendants herein, the court has no discretion other than to order the mandatory sequestration required by CPL 310.10." *Id*. at 363; *see also* 1995 NY CLS CPL § 310.10 ("Following the court's charge, except as otherwise provided by subdivision two of this section, the jury must retire to deliberate upon its verdict in a place

outside the courtroom. It must be provided with suitable accommodations therefor and must, except as otherwise provided in subdivision two of this section, be continuously kept together under the supervision of a court officer or court officers.") In failing to order sequestration notwithstanding such mandate, the Court found that "in so ruling, respondent Justice has acted or threatened to act without jurisdiction and in excess of her authorized powers," warranting prohibition. *Morgenthau*, 229 AD2d at 364.

153. The parallel is true here. While the Clerk is imbued generally with the power to fix trial dates in summary proceedings generally, and Non-Pay Proceedings specifically, the exercise of such power is explicitly circumscribed by RPAPL § 732. Regardless of the reasons behind the fixing of far out trial dates, any fixing of a trial date beyond eight days after the filing of an answer is done without jurisdiction, beyond the power granted to the Clerk by statute, and constitutes "an improper arrogation of power," for which "the remedy of prohibition lies." *Matter of Brown v Blumenfeld*, 103 AD3d 45, 64 (2d Dept 2012)

C. This Court Should Issue a Writ Prohibiting Respondents From Granting Adjournments Without Attributable Requests By Either Party

154. Similar to the limitations on Respondents' authority set forth in RPAPL § 732, RPAPL § 745(1) memorializes that the court may only grant adjournments (a) after issue is joined and (b) only upon the request of either party. Petitioners and other similarly situated landlords likewise have a right to the expeditious adjudication of their claims for recovery of their real property and, upon any delay thereto, to seek a deposit of use and occupancy. The court's creation of what is essentially an "intake" appearance and the associated unattributable, administrative adjournments of petitions are thus quintessential examples of the exceeding of the authority

granted under RPAPL § 745 for which Petitioners are entitled to redress through a writ of prohibition.

a. Petitioners Have a Right to the Limitations on the Court's Ability to Adjourn Proceedings

155. As a threshold matter, just like its right to the fixing of a trial date within a specific time frame, Petitioners have a right to not only be able to oppose applications for adjournment but to have such adjournments properly attributed to the requesting party so that their protections under RPAPL § 745(2) remain intact. As set forth above with respect to Petitioners' request for a writ of mandamus, such limitations are clearly set forth in the language of RPAPL § 745(1): "[a]t the time when issue is joined the court, ***at the request of either party*** shall adjourn the trial of the issue, not less than fourteen days, except by consent of all parties." Petitioners' right to enforce such a limitation is made obvious by the accompanying provisions of RPAPL § 745(2), discussed above, through which an attributable request by a party for an adjournment is crucial to the determination of Petitioners' right to seek use and occupancy. Beyond the memorialization of such rights in the statute itself, Petitioners' rights in this respect are rooted in the very concept of fairness which the Legislature tried to bring to fruition through the protective mechanism set forth in RPAPL § 745 (2). In fact, the equity delivered by such a mechanism was tellingly praised for its fairness by the United States' Supreme Court in *Lindsey v Normet*, 405 US 56, 64-65 (1972), wherein the court explained:

> The provision for continuance of the action if the tenant posts security for accruing rent means that in cases where tenant defendants, unlike appellants, deny nonpayment of rent and may require more time to prepare for litigation, they will not be forced to trial if they provide for rent payments in the interim. ***A requirement that the tenant pay or provide for the payment of rent during the continuance of the action is hardly irrational or oppressive.*** It is customary to pay rent in advance, and the simplicity of the issues in

> the typical FED action will usually not require extended trial preparation and litigation, thus making the posting of a large security deposit unnecessary.

Id. (emphasis supplied).

156. Therefore, Petitioners' right under the statute and right to prohibition of actions in derogation thereof is plain and evidenced by both RPAPL §§ 745(1) and 745(2).

b. Respondents Have Exceeded the Authority Granted to Them By RPAPL § 745.

157. As set forth above with respect to Petitioners' request for a writ of mandamus, Respondents have adopted a procedure whereby the first time a petition is returnable before the court is essentially administratively adjourned without an explicit request by either party nor an opportunity to oppose such application. This, again, cuts against both the letter and spirit of Article 7 of the RPAPL. RPAPL § 745 sets forth the limited authority of the court to grant an adjournment ***at the request of a party*** and, consequently, directs that any adjournments granted at the behest of a tenant be subtracted from the time before which a landlord can seek use and occupancy pursuant to RPAPL § 745(2).[10] Here, no request is being made at all and thus the adjournment is unattributable, forestalling the running of the time before which a landlord can seek use and occupancy. Such non-compliance essentially creates a legal quagmire for landlords – the summary proceeding purposed to expediently resolve their claims for, *inter alia*, the non-payment of rent, is delayed indefinitely and, by virtue of such delay being essentially unattributable, there is no available recourse through RPAPL § 745(2). Indeed, it cannot be understated how this endemic procedure by Respondents has undermined the whole statutory scheme of Article 7 of the RPAPL. This is especially so where, as here, one of the only protections from the substantial and sometimes insurmountable pecuniary harm caused by a languishing proceeding is rendered toothless.

[10] With the express exception of a tenant's first adjournment to obtain counsel.

158. It is therefore axiomatic that in putting forth a procedure in which the first time a petition is returnable before the court – which is envisioned under Article 7 as a potential date for trial[11] – is adjourned as a matter of course without an explicit application by the party to which such adjournment would be attributable, Respondents have committed egregious *ultra vires* conduct that must be prohibited.

D. Respondents Should be Prohibited from Inserting New Requirements For the Issuance of Warrants

159. As set forth with respect to Petitioners' request for a writ of mandamus compelling the timely and expedient issuance of warrants, the statutory direction of RPAPL § 749 is exceedingly simple: (1) upon issuance of judgment for petitioner then (2) warrant shall issue. While such directive requires imminent action that must be compelled – as set forth above – Respondents are also fabricating additional requirements for the issuance of warrants aside from and beyond the judgment required under the statute, which must be prohibited.

a. Petitioners' Right to Obtain A Warrant Upon Issuance of Judgment is Self-Evident

160. As set forth above in support of a writ of mandamus, upon the satisfaction of the condition precedent set forth under the statute, *to wit*, the issuance of a judgment for Petitioners, the statute is clear that a warrant then "shall issue." As discussed above, "shall" indicates a mandatory action and thus Petitioners' right to a warrant upon the granting of judgment(s) is self-evident.

[11] *See* N.Y. County Dist. Attorney's Office v. Merced, 1994 NYLJ LEXIS 9413, *8-9 (Civ. Ct. New York Co. 1994) ("The court could have ruled, if the court had strictly adhered to the mandates of Article [*9] 4, that this matter proceed to trial on the original return date of the petition."). *See, e.g.*, *Adelphi Assoc. LLC v Toruno*, 40 Misc 3d 1201[A], 1201A, 2013 NY Slip Op 50992[U], *3 (Civ Ct, Kings County 2013) ("On the October 15, 2012 return date the court transferred the proceeding to a trial assignment part.")

161. Additionally, however, Petitioners are entitled to a writ of prohibition preventing Respondents from interfering with their aforementioned right to a warrant. As enumerated above, besides Respondents' failure to immediately issue a warrant as required by the statute, Respondents are also conditioning the issuance of a warrant on additional submissions such as proof that the lease was effective at the time of the proceeding's commencement.

162. As such actions are clearly infringing upon a crucial right of Petitioners, *to wit*, allowing them to finally reclaim their property, Petitioners have a right to a writ of prohibition.

b. Respondents' Fabrication of Requirements for Warrant Issuance Is Without Authority

163. Consequently, in requiring ancillary submissions before the issuance of a warrant, Respondents have acted far afield from the authority granted under RPAPL § 749.

164. In fact, this is practically settled law in this Department in the parallel context of a judgment pursuant to RPAPL § 732(3). Specifically, in *Mennella v Lopez-Torres*, 229 AD2d 153 (2d Dept 1997), the Second Department addressed whether a judge could impose ancillary requirements on the issuance of a judgment and warrant pursuant to RPAPL § 732(3), *i.e.*, when a respondent did not answer a Non-Pay Petition. As is markedly relevant here, the congruity of language between RPAPL § 732(3) (as it existed when addressed by the court in *Mennella* in 1997) and RPAPL § 749 is striking.

165. Specifically, RPAPL § 732(3) (1996) read, in pertinent part, that ***"[i]f the respondent fails to answer*** within five days from the date of service, . . . the judge ***shall*** render judgment in favor of the petitioner and ***may stay the issuance of the warrant for a period of not to exceed ten days from the date of service***." 1996 NY CLS RPAPL § 732

166. In parallel, RPAPL § 749 reads, in pertinent part, that ***"[u]pon rendering a final judgment for petitioner***, the court ***shall*** issue a warrant . . . ***stating the earliest date upon which execution may occur pursuant to the order of the court***, . . . provided upon a showing of good cause, the court may issue a stay of re-letting or renovation of the premises for a reasonable period of time."

167. The *Manella* court reasoned that "[t]he statute clearly mandates the entry of judgment in favor of the petitioner if the petitioner has proven service of the petition and the tenant has defaulted. No other discretion is afforded to the respondent Judge." *Mennella*, 229 AD2d at 156. Notwithstanding the statute's clear mandatory directive and lack of discretion to enter judgment and stay the warrant beyond ten (10) days, the trial judge issued a judgment that provided:

> Final judgment of possession only. Warrant may execute 5 days after service of copy of the judgment upon the tenant by regular mail with a post office certificate of mailing to be filed with the Clerk of the Court.

Id. at 155.

168. Just like herein with respect to the additional submissions of documents like proof of a lease's effectiveness, the trial judge in *Mennella* inserted additional requirements upon the issuance of a warrant including, *inter alia*, the submission of additional documents. On this issue, the Second Department's response was resounding: "the duty of the respondent Judge to direct the execution of a warrant of eviction ***without imposing additional submission of documents and conditions*** is established by RPAPL 732 (3)." *Id*. The court thus held that "the respondent Civil Court Judge was without discretion to impose an additional mailing service requirement upon the

petitioner" and granted a writ of mandamus compelling the issuance of "the warrant of eviction without further proceedings or the submission of any additional documents." *Id*. at 157.

169. Such is the case here, except in the context of a writ of prohibition. Respondents are making the mandatory actions of issuance of warrants contingent upon the submission of additional documents and thus, like the Civil Court judge in *Mennella*, are doing so without authority. Indeed, even if the requests for such submissions were otherwise justified by other statutory protections, the Court of Appeals has been exceedingly clear in holding that general considerations of protections of a party's interests – whether encapsulated in the CPLR or otherwise – are abrogated by the specific and mandatory directives of RPAPL Article 7. *See Brusco*, 84 NY2d at 681 ("The CPLR provision does not apply because it has been abrogated by the more specific RPAPL 732 (see, CPLR 101 [CPLR 'shall govern the procedure in civil judicial proceedings … except where the procedure is regulated by inconsistent statute']"); McKinney's Cons Laws of NY, Book 1, Statutes § 397 ("A special statute which is in conflict with a general act covering the same subject matter controls the case and repeals the general statute insofar as the special act applies").

170. Simply put, the explicit language of RPAPL § 749 provides for no discretion in the issuance of warrants and thus the exercise of such discretion by requiring additional submissions – whatever the justification – should be prohibited through a writ of prohibition.

E. <u>This Court Should Exercise Its Discretion in Ordering Prohibition</u>

171. As set forth above, Respondents have verifiably exceeded their "authorized powers" and Petitioners have a "clear legal right" to Respondents' compliance with Article 7 of the RPAPL with respect to trials, adjournments, and warrants. Beyond that, based upon the factors

to be considered in determining whether this Court should exercise its discretion in ordering prohibition, such writs are clearly warranted here.

172. As the Court of Appeals set forth in *Pirro v Angiolillo,* 89 NY2d 351 (1996), the factors to be considered in exercising the discretion of the court to issue a writ of prohibition include "the gravity of the harm that would result from the act to be prohibited and whether that harm can be adequately corrected through an appeal or other proceedings at law or in equity." *Id*. at 359. These factors overwhelmingly tip towards the issuance of the requested writs.

173. In the first instance, as explained at length herein, the harm caused by Respondents' improper actions is from extensive, and sometimes interminable, delay. Indeed, such delay begins with the belated trial date, continues with unattributable adjournments, and continues still with inexplicable three-to-seven-month delays in the issuance of warrants. Notwithstanding that such delays cut entirely against the language and purpose of Article 7 of the RPAPL, it is inarguably endemic and, unfortunately, all too often accepted as just "how it is." These delays, however, result in more than just theoretical harm to the efficacy of the Court system as a whole, but cause real and tangible pecuniary harm to both landlords *and tenants*.

174. In this respect, the pecuniary harm caused to landlords is obvious – landlords are not receiving rent from tenants during the pendency of these proceedings. Same is literally the basis of Non-Pay Proceedings and the acceptance of rent during a holdover proceeding risks instituting an entirely new tenancy. Landlords are likewise hamstrung in seeking use and occupancy due to Respondents' granting of administrative and unattributable adjournments. The arrears thus continue to accrue during the pendency of a summary proceeding. The amounts thereof are also far from insignificant and only continue to accumulate.

175. Moreover, less obviously, such delays are harmful to tenants as well. Specifically, in parallel to landlords not receiving rent, tenants accumulate an ever-increasing debt to their landlords in the form of arrears. In this respect, the long and interminable delays caused by Respondents' failing to abide by the time considerations in Article 7 of the RPAPL result in arrears that accumulate to such an extent that the tenant simply cannot "settle up." The "one shot deal" and other programs to ameliorate the accumulation of arrears – often relied upon by tenants – become ill-suited to remedy such large debts and are thus unavailable. The consequences of this are inevitable – landlords are stuck with an unpaid debt and tenants, having incurred a debt they cannot pay, are unable to avoid the execution of warrants and eviction from their homes.

176. It is thus without question that the harm that will be prevented by the requested writs of prohibition favors this Court's exercising of discretion.

177. Furthermore, the foregoing harm cannot be corrected by appeal or other proceedings at law or in equity.

178. In the first instance, in so undermining the very purposes of summary proceedings through their improper action, the Respondents have essentially terminated Petitioners' ability to utilize summary proceedings to expeditiously regain possession of their real property. Such a *complete* depreciation in the validity and purpose of a proceeding constitutes harm that warrants the exercising of the court's powers to issue writs including, *inter alia*, writs of prohibition. *See Matter of Clark v Newbauer*, 148 AD3d 260, 264-265 (1st Dept 2017) ("A writ of prohibition will lie where a trial court's erroneous ruling affects the proceeding in a conclusive manner . . . At bar, although the ruling did not actually terminate the case, it effectively terminated the ability of the People to prosecute the highest count in the indictment. We therefore find that the court's ruling is reviewable by way of a writ of prohibition.")

179. Additionally, in all cases for which Petitioners seek redress through writs of prohibition (and mandamus) through this proceeding, they are the *successful party* in the proceeding. As explained by the Second Department in granting a writ under similar circumstances in *Mennella v Lopez-Torres*:

> The respondents' further argument that mandamus does not lie, in that the petitioner has an available remedy at law in an appeal to the Appellate Term, ***ignores the fact that the petitioner was the successful party in the underlying proceeding wherein the tenant defaulted***. Under such circumstances, ***it is inappropriate to require the successful party to comply with the respondent Judge's service directive and then appeal to challenge the imposition of the requirement to submit additional documents***.

229 AD2d at 157 (emphasis supplied).

180. As noted by the Second Department, even though the harm caused by the complained of conduct clearly cannot be appropriately resolved absent the requested writs – whether though appeals or otherwise – it also would be inappropriate to force Petitioners, as successful parties in the underlying proceedings, to attempt to seek redress through appeals.

CONCLUSION

181. Most assuredly, the instant proceeding is not undertaken as an academic exercise, or a litigious haranguing of hypothetical harm caused by a historically tenant-friendly Housing Court. The failings of Respondents to honor and fulfill their duties as arbiters of justice and administrators of statutory directives are not isolated but systemic and ongoing. And the harm caused thereby to Petitioners, and all similarly situated landlords is acute, repeated, and imminent.

182. Without alternative recourse, it is therefore incumbent upon Petitioners to bring this proceeding and pray for this Court's intervention to right a system that is verifiably broken, which serves neither landlords nor tenants as the Legislature intended.

183. It is for the foregoing reasons that this Court should grant this Petition *in toto* and issue the requested writs of mandamus and prohibition. Without exaggeration, the vindication of the spirit of Article 7 of the RPAPL depends upon it.

184. No previous application for the relief sought herein has been made to this Court or to any Judge thereof.

WHEREFORE, Petitioners demand judgment against Respondents as follows:

a. The issuance of writs of mandamus compelling Respondents to:

i. fix trial dates for Non-Pay Proceedings within three (3) to eight (8) days after issue is joined in accordance with RPAPL § 732;

ii. grant adjournments of return dates of Petitions only upon the request of a party and, upon granting such adjournments, appropriately attribute the cause of such adjournment to the party making the application therefor, in accordance with RPAPL § 745(1); and

iii. issue Warrants immediately or as expediently as possible following the granting of judgment in favor of petitioners in summary proceedings in accordance with RPAPL § 749.

b. The issuance of writs of prohibition prohibiting Respondents from:

i. fixing trial dates in Non-Pay Proceedings later than eight (8) days after issue is joined in contravention to RPAPL § 732;

ii. granting adjournments of return dates of Petitions administratively, *sua sponte*, or in any circumstances other than at the request of a party, and failing to attribute the impetus of such adjournment to a party in contravention to RPAPL § 745(1); and

iii. in any way conditioning the issuance of Warrants on the submission of any documents or undertaking of any actions not set forth as a condition precedent for the issuance of such Warrants in Article 7 of the RPAPL in contravention to RPAPL § 749.

c. Such other and further relief that this Court deems just and proper.

Dated: New York, New York
February 21, 2024

KUCKER MARINO WINIARSKY AND BITTENS, LLP
Attorneys for Petitioners
747 Third Avenue
12th Floor
New York, New York 10017
(212) 869-5030

By: _____
Eric R. McAvey, Esq.
Nativ Winiarsky, Esq.
Craig Gambardella, Esq.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

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IN THE MATTER OF THE APPLICATION OF

ARGENTINE LEASING LIMITED PARTNERSHIP,
AUBURN LEASING LIMITED LIABILITY COMPANY,
BIRCH LEASING LIMITED PARTNERSHIP,
BUCKNELL REALTY LIMITED PARTNERSHIP,
CANADA LEASING LIMITED LIABILITY COMPANY,
CEYLON LEASING LIMITED PARTNERSHIP,
COLUMBIA LEASING LIMITED PARTNERSHIP,
COPENHAGEN LEASING LIMITED PARTNERSHIP,
LA FRANCE LEASING LIMITED PARTNERSHIP,
LONDON LEASING LIMITED PARTNERSHIP,
ROME REALTY LEASING LIMITED PARTNERSHIP,
SYDNEY LEASING LIMTED PARTNERSHIP,
TOWN LEASING LIMITED LIABILITY COMPANY,
UESS LEASING LIMITED LIABILITY COMPANY,
WASHINGTON LEASING LIMITED PARTNERSHIP, and
WELLINGTON LEASING LIMITED PARTNERSHIP,

PETITIONERS,

FOR A JUDGMENT PURSUANT TO ARTICLE 78
OF THE CIVIL PRACTICE LAW AND RULES

-AGAINST-

OFFICE OF COURT ADMINISTRATION, THE CIVIL COURT OF CITY OF NEW YORK, HON. JOSEPH A. ZAYAS, in his capacity of Chief Administrator, BIRDENA FRYE, in her capacity as Clerk of Queens County, ALIA RAZZAQ, in her capacity of Chief Clerk of the Civil Court of the City of New York, and HON. CAROLYN WALKER-DIALLO, in her capacity as Administrative Judge of the Civil Court of the City of New York,

RESPONDENTS.

----------X

VERIFICATION

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

ALEM KOSOVAC, being duly sworn, subscribes and affirms the following under the penalties of perjury:

I am the **ASSISTANT GENERAL MANAGER** and authorized signatory for petitioners ARGENTINE LEASING LIMITED PARTNERSHIP, CANADA LEASING LIMITED LIABILITY COMPANY, CEYLON LEASING LIMITED PARTNERSHIP, COLUMBIA LEASING LIMITED PARTNERSHIP, COPENHAGEN LEASING LIMITED PARTNERSHIP, LA FRANCE LEASING LIMITED PARTNERSHIP, LONDON LEASING LIMITED PARTNERSHIP, ROME REALTY LEASING LIMITED PARTNERSHIP, SYDNEY LEASING LIMTED PARTNERSHIP, UESS LEASING LIMITED LIABILITY COMPANY, and WELLINGTON LEASING LIMITED PARTNERSHIP.

I have personal knowledge of the facts and circumstances set forth herein. I have read the annexed Petition, know its contents, and am acquainted with the facts upon which it is based. The allegations contained therein are true to my own knowledge except as to those matters stated therein to be alleged upon information and belief, and as to those matters, I believe them to be true. The sources of my information and the grounds of my belief are my personal knowledge of the facts and the records of the aforementioned petitioners.

ALEM KOSOVAC

Sworn to before me this
21st day of February, 2024

Notary Public

LISA R. FRIED GREENBERG
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 02FR6341593
Qualified in Nassau County
Commission Expires May 9, 2024

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

----------X

IN THE MATTER OF THE APPLICATION OF

ARGENTINE LEASING LIMITED PARTNERSHIP,
AUBURN LEASING LIMITED LIABILITY COMPANY,
BIRCH LEASING LIMITED PARTNERSHIP,
BUCKNELL REALTY LIMITED PARTNERSHIP,
CANADA LEASING LIMITED LIABILITY COMPANY,
CEYLON LEASING LIMITED PARTNERSHIP,
COLUMBIA LEASING LIMITED PARTNERSHIP,
COPENHAGEN LEASING LIMITED PARTNERSHIP,
LA FRANCE LEASING LIMITED PARTNERSHIP,
LONDON LEASING LIMITED PARTNERSHIP,
ROME REALTY LEASING LIMITED PARTNERSHIP,
SYDNEY LEASING LIMTED PARTNERSHIP,
TOWN LEASING LIMITED LIABILITY COMPANY,
UESS LEASING LIMITED LIABILITY COMPANY,
WASHINGTON LEASING LIMITED PARTNERSHIP, and
WELLINGTON LEASING LIMITED PARTNERSHIP,

PETITIONERS,

FOR A JUDGMENT PURSUANT TO ARTICLE 78
OF THE CIVIL PRACTICE LAW AND RULES

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OFFICE OF COURT ADMINISTRATION, THE CIVIL COURT OF CITY OF NEW YORK, HON. JOSEPH A. ZAYAS, in his capacity of Chief Administrator, BIRDENA FRYE, in her capacity as Clerk of Queens County, ALIA RAZZAQ, in her capacity of Chief Clerk of the Civil Court of the City of New York, and HON. CAROLYN WALKER-DIALLO, in her capacity as Administrative Judge of the Civil Court of the City of New York,

RESPONDENTS.

----------X

VERIFICATION

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

JOSEPH ROONEY, being duly sworn, subscribes and affirms the following under the penalties of perjury:

I am the General Manager and authorized signatory for petitioners AUBURN LEASING LIMITED LIABILITY COMPANY, BIRCH LEASING LIMITED PARTNERSHIP, BUCKNELL REALTY LIMITED PARTNERSHIP, and WASHINGTON LEASING LIMITED PARTNERSHIP.

I have personal knowledge of the facts and circumstances set forth herein. I have read the annexed Petition, know its contents, and am acquainted with the facts upon which it is based. The allegations contained therein are true to my own knowledge except as to those matters stated therein to be alleged upon information and belief, and as to those matters, I believe them to be true. The sources of my information and the grounds of my belief are my personal knowledge of the facts and the records of the aforementioned petitioners.

JOSEPH ROONEY

Sworn to before me this
21st day of February, 2024

Notary Public

LISSETTE A. CHANCY
Notary Public, State of New York
No. 01CH6384965
Qualified in Queens County
Commission Expires December 24, 2026