

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ALBANY

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THE PLAINTIFF CLASS CERTIFIED IN	:	
<i>HURRELL-HARRING, et al. v. STATE OF NEW</i>	:	
<i>YORK, et al.,</i>	:	
	:	
Plaintiff,	:	Index No.:
	:	
-against-	:	
	:	<b><u>COMPLAINT</u></b>
	:	
THE STATE OF NEW YORK and GOVERNOR	:	
KATHLEEN HOCHUL, in her official capacity,	:	
	:	
Defendants.	:	
-----X	:	

The Plaintiff Class, by and through its attorneys, for its Complaint against the State of New York (the “State”) and Governor Kathleen Hochul (the “Governor” or “Defendant Hochul,” and together with the State, “Defendants”), alleges, on the basis of knowledge with respect to itself and its actions and on the basis of knowledge and information and belief as to all other matters, as follows:

**INTRODUCTION**

1. This civil rights action seeks to enforce a historic settlement, ordered by this Court in 2015 in *Hurrell-Harring, et al. v. State of New York, et al.*, Index No. 8866-07, Supreme Court, Albany County (the “*Hurrell-Harring* Lawsuit”), that required the State of New York to implement fundamental reforms to ensure that poor criminal defendants receive the legal representation the New York State and United States Constitutions require. For purposes of this action, the court-ordered settlement (the “Settlement Order”) required the State to adequately fund indigent defense services and to ensure that defense counsel do not have such excessive caseloads that they cannot provide adequate representation. State officials heralded the Settlement Order as

a monumental step that “addresses longstanding inequities” and results in “a fairer, more humane justice system.”<sup>1</sup>

2. The Settlement Order transformed indigent defense services in five counties initially (Onondaga, Ontario, Schuyler, Suffolk, and Washington Counties, together the “Five Counties”) and, ultimately, across New York State, after the New York Legislature, in 2017, expanded the Settlement Order’s reforms throughout New York.

3. Earlier this year, the state agency responsible for monitoring the Settlement, the New York State Office of Indigent Legal Services (“ILS”), started to report serious violations of the Settlement Order. These violations resulted from Defendants’ persistent failure to adequately fund the Assigned Counsel Programs (“ACPs”) that are an essential component of mandated representation, despite multiple warnings by ILS that stagnant rates for ACP attorneys could lead to non-compliance with the Settlement Order.

4. In recognition of the urgent need to increase ACP rates, the New York Legislature included \$210 million in the State’s 2022-2023 budget to fund increases in the amounts paid to ACP attorneys. But despite this and ILS’s repeated warnings, Defendant Hochul eliminated the Legislature-approved ACP funding increases from the final budget.

5. Defendants’ failure to increase the rates has resulted in non-compliance with the Settlement Order in Onondaga and Schuyler Counties and will inevitably result in non-compliance in the remainder of the Five Counties. The Plaintiff Class promptly sought to have Defendants remedy these violations, but Defendants have failed to do so. Defendants’ actions have created a new crisis for poor criminal defendants in the Five Counties. The Plaintiff Class therefore seeks

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<sup>1</sup> James C. McKinley Jr., *In New York, Cuomo Pledges More Aid for Lawyers of the Indigent*, THE NEW YORK TIMES (Oct. 21, 2014), <https://www.nytimes.com/2014/10/22/nyregion/in-new-york-cuomo-pledges-more-aid-for-indigents-in-court.html>.

relief to force Defendants to comply with the Settlement Order to which they agreed and that this Court approved and ordered.

### **PARTIES**

6. Plaintiff (the “Plaintiff Class”) is the class of “all indigent persons who have or will have criminal felony, misdemeanor, or lesser charges pending against them in New York state courts in Onondaga, Ontario, Schuyler, Suffolk and Washington counties who are entitled to rely on the government of New York to provide them with meaningful and effective defense counsel,” as certified by the Appellate Division, Third Department, on January 6, 2011, in the *Hurrell-Harring* Lawsuit. *Hurrell-Harring v. State of New York*, 81 AD3d 69, 71 [3d Dep’t 2011]. The Plaintiff Class is a party to the Settlement Order.

7. Defendant the State of New York is a party to and bound by the Settlement Order and is required to ensure that indigent criminal defendants have effective and meaningful representation by counsel by the Sixth and Fourteenth Amendments to the United States Constitution and Article I, § 6 of the New York State Constitution.

8. Defendant Governor Kathleen Hochul is (through her predecessor, Governor Andrew S. Cuomo) a party to and bound by the Settlement Order. Defendant Hochul is sued in her official capacity.

### **JURISDICTION AND VENUE**

9. The parties have agreed to jurisdiction and venue in Albany County. Paragraph XI(F) of the Settlement Order provides in pertinent part that “[v]enue over any disputes concerning enforcement of this Agreement . . . between Plaintiffs and the State . . . shall be in a court of competent jurisdiction in Albany County.”

10. Venue is appropriate in Albany County pursuant to CPLR 501 and 503(a).

## FACTUAL ALLEGATIONS

### The Hurrell-Harring Lawsuit

11. By way of background, the Plaintiff Class sued the State of New York in 2007 to address systemic failures in the State's provision of indigent defense for criminal defendants in the Five Counties.

12. The *Hurrell-Harring* Lawsuit followed decades of reports, commissions, newspaper investigations, and lawsuits documenting the degree to which those accused of crimes in New York State were denied basic constitutional protections.

13. In 2010, the New York Court of Appeals found that the Plaintiff Class's allegations gave rise to a "considerable risk that indigent defendants are, with a fair degree of regularity, being denied constitutionally mandated counsel in the [Five Counties]." *Hurrell-Harring v State of New York*, 15 NY3d 8, 26-27 [2010].

14. In 2011, the Third Department certified the Plaintiff Class as follows: "All indigent persons who have or will have criminal felony, misdemeanor, or lesser charges pending against them in New York state courts in [the Five Counties] who are entitled to rely on the government of New York to provide them with meaningful and effective defense counsel." *Hurrell-Harring v State of New York*, 81 AD3d 69, 71 [3d Dep't 2011].

15. The Plaintiff Class, the State, the Governor, and the Five Counties reached a settlement on the eve of trial in October 2014 and executed a Stipulation and Order of Settlement (the "Settlement Order") that was submitted to the Court.

16. On March 11, 2015, following notice to the class and a hearing pursuant to CPLR Article 9, the Honorable Gerald W. Connolly, Justice of the Supreme Court, Albany County, approved the settlement and entered the Settlement Order.

The Settlement Order

17. The Settlement Order is attached as Exhibit A. The parties have entered into the following amendments to the Settlement Order:

- a. The first amendment to the Settlement Order, dated September 16, 2015. This document is attached as Exhibit B.
- b. The second amendment to the Settlement Order, dated February 9, 2016. This document is attached as Exhibit C.
- c. The third amendment to the Settlement Order, dated June 3, 2016. This document is attached as Exhibit D.
- d. The fourth amendment to the Settlement Order, dated December 5, 2016. This document is attached as Exhibit E.
- e. The fifth amendment to the Settlement Order, dated March 3, 2022. This document is attached as Exhibit F.

18. In the Settlement Order, Defendants recognized their obligation to provide counsel to indigent persons charged with a crime and accepted their responsibility to implement and fund constitutionally-compliant representation in the Five Counties.

19. Defendants' obligations under the Settlement Order were aimed at four areas of indigent defense services in the Five Counties: counsel at arraignment; caseload standards to address the crushing caseloads of many providers of indigent defense services; initiatives to improve the quality of indigent defense, such as supervision and training; and eligibility standards.

20. With respect to caseloads, Paragraph IV(D) of the Settlement Order requires that "the State shall ensure that the caseload/workload standards are implemented and adhered to by all providers of Mandated Representation in the Five Counties."

21. With respect to improving the quality of indigent defense, Paragraph V(A)(4) of the Settlement Order requires that providers “have the qualifications and experience necessary to handle the criminal cases assigned to them,” and Paragraph V(A)(5) requires that ACP attorneys specifically are assigned cases “in a manner that accounts for the attorney’s level of experience and caseload/workload.”

22. Additionally, Paragraph IX(D) of the Settlement Order requires the Executive to “include in an Executive budget appropriations bill . . . sufficient appropriation authority for such funds that it, in consultation with ILS, OCA, the Five Counties, and any other individual or entity it deems appropriate, determines, in its sole discretion, are necessary to accomplish the purposes set forth in Section IV” (which contains the provisions relating to caseload relief).

23. The funding and implementation obligations of the Settlement Order rest solely with Defendants. (The Five Counties are required to cooperate with Defendants but bear no financial responsibility for implementation of the Settlement Order.)

24. Defendants delegated principal responsibility for implementing and monitoring the implementation of the Settlement Order across the Five Counties to ILS. ILS has the legal authority to monitor and study indigent legal services in the State, including recommending measures to improve those services and awarding grant money to counties to support their indigent representation capabilities. ILS provides regular reporting on implementation of the Settlement Order to assess Defendants’ compliance.

25. The Settlement Order in Section XI contains a dispute-resolution mechanism: If the Plaintiff Class believes Defendants are in non-compliance with the terms of the Settlement Order, the Plaintiff Class can seek judicial relief to enforce the terms of the Settlement Order if efforts by the parties to achieve an out-of-court resolution do not succeed.

26. As amended by the Fifth Amendment, the Settlement Order does not expire until September 30, 2023, at the earliest, so Defendants' obligations to fund and implement the Settlement remain in effect.

Meaningful and Effective Representation for Indigent Defendants and the Importance of ACPs

27. As the Settlement Order recognizes, the Five Counties (like other counties in the State) utilize a variety of different means to deliver legal services to indigent criminal defendants. Generally, indigent defense services are provided by (i) institutional providers, such as legal aid societies, that employ attorneys on a full-time salaried basis; and (ii) assigned counsel programs (or ACPs) that compensate private attorneys on an hourly basis for working on individual cases.

28. In some counties, ACPs are the primary providers of indigent defense services. In Onondaga County, the ACP is the primary provider: Approximately 94% of all indigent criminal defendants in Onondaga County are represented by ACP attorneys.

29. Further, as ILS has explained, "even where public defender, conflict defenders, or legal aid societies act as the primary providers, representation of some individuals eligible for mandated representation presents conflicts of interest for institutional providers, requiring assignment of those cases to private attorneys" through an assigned counsel program.<sup>2</sup>

30. The availability of private lawyers for assignment through an ACP is thus a critical component to implement adequate indigent defense in the manner laid out in the Settlement Order. If assigned counsel are not adequately paid, they will not serve as panel attorneys for criminal defense work for which they know they will not be fairly compensated.

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<sup>2</sup> *Assigned Counsel Program Standards*, OFFICE OF INDIGENT SERVICES (June 20, 2019), <https://www.ils.ny.gov/node/183/assigned-counsel-program-standards>.

Defendants' Failure to Assure ACPs Have Sufficient Funding to Provide Adequate Representation

31. In 2004, the New York Legislature set the hourly rates for assigned counsel at \$75 for felony cases and \$60 for misdemeanor cases and capped the total amount an attorney could charge for each case at \$4,400 for a felony and \$2,400 for a misdemeanor.

32. These rates and case caps remain unchanged today, 18 years later, despite inflation raising the cost of living by approximately 55% during that time.

33. ILS has long recognized and alerted Defendants to the need to increase the hourly rates and caps for ACP lawyers. If ACP lawyers are not adequately compensated, a sufficient number of experienced lawyers simply will not be available to the Counties to satisfy caseload and quality improvement standards.

34. Beginning with its second Quality Improvement Report pursuant to its monitoring obligations under the Settlement Order, dated November 10, 2016, ILS began to issue warnings that the low hourly rates for ACP counsel “present a barrier to quality representation” and “make[] it difficult for attorneys to continue to take assigned work and not, instead, turn solely to retained work or to abandon criminal defense work altogether.”<sup>3</sup>

35. In its October 2017 Quality Improvement and Counsel at Arraignment Report issued pursuant to the Settlement Order, ILS reiterated its warning that the low hourly rates (as well as the case caps) “present a barrier to quality representation” and advised that “[t]here is no question the hourly rates and case caps . . . should be re-examined and raised.”<sup>4</sup>

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<sup>3</sup> *A Determination of Caseload Standards pursuant to § IV of the Hurrell-Harring v. The State of New York Settlement 2017 Update*, OFFICE OF INDIGENT SERVICES (Dec. 8, 2016), <https://www.ils.ny.gov/files/Caseload%20Standards%20Report%20Final%20120816.pdf>.

<sup>4</sup> *Implementing the Hurrell-Harring v. The State of New York Settlement 2017 Update*, OFFICE OF INDIGENT SERVICES (Oct. 20, 2017), <https://www.ils.ny.gov/files/2017%20Update%20Quality%20and%20Counsel%20at%20Arraignment%20Plans%20FINAL%20103017.pdf>.

36. Again, in its October 2021 Caseload Report, ILS reported that the “durability of the ACPs is in jeopardy unless hourly rates are raised,” and warned that the stagnant rates “threaten[] the entire mandated defense community.”<sup>5</sup>

37. The October 2021 ILS Caseload Report stated: “ACPs are now on the verge of, if not already in, crisis. Qualified, experienced attorneys are retiring or otherwise leaving the panels and new lawyers, many of whom are burdened by student loan debt, are unable to make a living in taking assigned cases at the current, inadequate statutory rates.”

38. The October 2021 report further noted that the rates paid to defense lawyers under the federal Criminal Justice Act (“CJA”) had been increased since 2004 from \$90 per hour to \$155 per hour for all federal criminal work. The CJA rate has since been increased to \$158 per hour. ILS noted reports that it is common for ACPs in the Five Counties to lose attorneys to the federal CJA panel where the rates are twice as high.

39. Following entry of the Settlement Order, the Governor and State approved increases in funding to increase salaries for the attorneys at institutional providers in the Five Counties to ensure sufficient numbers of qualified attorneys, but to date neither the Governor nor the State has approved any funding to increase the compensation paid to ACP attorneys.

40. In her State of Our Judiciary speech in February 2022, the Chief Judge of the New York Court of Appeals recognized “the urgent need to increase the rates of compensation” for ACP counsel and called for a doubling of the existing hourly rates. The State’s failure to “keep pace with any reasonable semblance of inflation,” the Chief Judge noted, “has led to a statewide mass exodus of qualified assigned counsel available to take on new assignments,” saddling the

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<sup>5</sup> *Evaluating the Effectiveness of Caseload Standards in the Hurrell-Harring Settlement Counties 2021 Update*, OFFICE OF INDIGENT SERVICES (Oct. 30, 2021), [https://www.ils.ny.gov/files/October%202021%20Hurrell-Harring%20Caseload%20Report\\_Full\\_Amd\\_11\\_11\\_12.pdf](https://www.ils.ny.gov/files/October%202021%20Hurrell-Harring%20Caseload%20Report_Full_Amd_11_11_12.pdf)

remaining ACP lawyers with “excessive caseloads” that leave them “overworked and hard-pressed to devote adequate time and resources to the clients they are representing.”

41. The New York Legislature also has recognized the urgent need to increase ACP counsel rates. Earlier this year, the Legislature included \$210 million in the State’s 2022-2023 budget to fund increases in the amounts paid to ACP attorneys.

42. But Defendant Hochul ignored the Legislature’s and the Chief Judge’s wishes, ignored ILS’s repeated pleas and warnings, ignored the constitutional rights of the Plaintiff Class, and ignored Defendants’ obligations under the Settlement Order.

43. Defendant Hochul rejected increased funding for ACP providers that the Legislature approved and eliminated the ACP rate funding increase from the final budget.

44. Defendant Hochul removed this funding from the final budget despite admitting that ACP lawyers “absolutely need” a rate increase.

#### Defendants’ Non-Compliance with the Settlement Order

45. In a letter dated April 29, 2022, ILS, pursuant to its monitoring obligations under the Settlement, underscored the “*Hurrell-Harring* settlement imperative [to] raise the current hourly rates for assigned counsel attorneys, which have not increased since 2004” (the “April 29 ILS Letter.”). ILS reported that, based on its ongoing discussions with ACP leaders in the Five Counties, “stagnant statutory rates are significantly impacting their ability” to maintain, hire, and recruit panel attorneys and the ACP programs “are on the brink of crisis.”

46. In another letter to the parties the next month, on May 16, 2022, ILS reported that the crisis had “significantly worsened, sparked largely by the omission of a rate increase from the final enacted budget for State Fiscal Year 2022-23” (the “May 16 ILS Letter”). The May 16 ILS Letter stated ILS’s conclusion, based on its continuing discussions with ACP leaders, that Onondaga and Schuyler counties “are on the brink of or already out of compliance with the

Settlement”—in particular, the caseload standards and quality enhancement provisions of Sections IV and V of the Settlement Order.

47. The May 16 ILS Letter also found that “the failure to address the stagnant assigned counsel hourly rate will inevitably result in Settlement compliance issues in all the *Hurrell-Harring* counties.” This conclusion was echoed in another letter from ILS to the parties on June 13, 2022, which reported that “[t]he failure to increase the statutory assigned counsel rates . . . is having a deleterious impact across the state and it is *just a matter of time* before the three other [of the Five Counties] also face settlement compliance issues.”

48. The unreasonably low hourly rates have led to too few attorneys on ACP panels to comply with the caseload relief and quality enhancements standards required by the Settlement in Onondaga and Schuyler Counties. The situation is so dire that ACP attorneys have engaged in protests and work stoppages and have limited the number of assigned cases they take (or have stopped taking cases altogether until the rates are increased).<sup>6</sup>

#### Caseload Standards (Section IV)

49. Under Paragraph IV(D) of the Settlement Order, the State is under a continuing obligation to “ensure that the caseload/workload standards are implemented and adhered to by all providers of Mandated Representation in the Five Counties.”

50. Pursuant to the Settlement Order, ILS devised appropriate caseload/workload standards for providers of mandated representation in the Five Counties, including for ACP attorneys, and Defendants are required to enable the providers of mandated representation to remain in compliance with those caseload standards.

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<sup>6</sup> Douglass Dowty, *Syracuse’s Ability to Provide Constitutionally Mandated Lawyers in Crisis; ‘Symbolic Boycott’ Planned Over Low Pay*, SYRACUSE POST-STANDARD (Apr. 15, 2022), <https://www.syracuse.com/crime/2022/04/syracuses-ability-to-provide-constitutionally-mandated-lawyers-in-crisis-symbolic-boycott-planned-over-low-pay.html>.

51. Defendants have breached their obligations under the Settlement Order by failing to ensure that caseload standards in the Five Counties are implemented and adhered to insofar as they relate to ACP attorneys and by failing to ensure that sufficient funding is provided to enable the Five Counties to adhere to those caseload standards.

52. For example, in Onondaga County, many of its more senior ACP panel attorneys have retired with few new panel attorneys joining to fill those slots. With so few attorneys available to accept new criminal cases, the attorneys accepting cases have and will continue to have caseloads that exceed what is allowed under the Settlement Order. One Onondaga ACP attorney currently has a caseload of 750, which far exceeds the 300-case cap in effect in Onondaga County, and dozens more are over the 300-case cap.

53. Similarly, in Suffolk County, the ACP has had no new applicants for panels in more than 12 months and has lost a large percentage of its panel attorneys in the same time period.

54. Without judicial intervention requiring Defendants' compliance with the Settlement Order, Onondaga and Schuyler Counties will remain out of compliance with caseload standards mandated by the Settlement Order and the remainder of the Five Counties will also fall into non-compliance.

Quality Enhancement (Section V)

55. Paragraph V(A)(4) of the Settlement Order requires that providers of mandated representation in the Five Counties (which include ACP attorneys) "have the qualifications and experience necessary to handle the criminal cases assigned to them," and Paragraph V(A)(5) requires that ACP attorneys specifically are assigned cases "in a manner that accounts for the attorney's level of experience and caseload/workload."

56. Defendants have breached their obligations under the Settlement Order by failing to adequately fund the ACPs to allow them to attract and retain ACP attorneys in the Five Counties with the qualifications and experience necessary to handle the cases assigned to them.

57. One example is Schuyler County, where Defendants' failure to adequately fund ACPs and the stagnant ACP hourly rates have impacted the Schuyler ACP's ability to provide the necessary elements of quality enhancement required by the Settlement. In that county, felony cases are being staffed by less-experienced and less-qualified attorneys because the more-experienced ACP attorneys have no capacity to take on additional felony cases.

58. Without judicial intervention requiring Defendants' compliance with the Settlement Order, Onondaga and Schuyler Counties will remain out of compliance with the quality enhancement provisions of the Settlement Order and the remainder of the Five Counties will also fall into non-compliance.

*Appropriating Necessary Funds (Section IX)*

59. Paragraph IX(D) of the Settlement Order requires the Governor to "include in an Executive budget appropriations bill . . . sufficient appropriation authority for such funds that it, in consultation with ILS, OCA, the Five Counties, and any other individual or entity it deems appropriate, determines, in its sole discretion, are necessary to accomplish the purposes set forth in Section IV" (which contains the provisions relating to caseload relief).

60. The Governor and State have provided ear-marked funds in appropriations bills since the Settlement Order was entered to increase funding for salary increases for the institutional providers in the Five Counties.

61. But the Governor and State have not included a request for increased funding for hourly increases in rates for ACP attorneys.

62. Nor has any budget or appropriations bill since the Settlement was signed provided for increased funding for ACP attorneys.

63. The State Legislature did approve, in March 2022, appropriations to increase funding for ACPs across the State, not just in the Five Counties.

64. But the Governor rejected that appropriation.

65. Defendants' failure to include sufficient appropriation authority for funds necessary to allow for compliance by ACPs with the mandated caseload standards constitutes a violation of their obligations under Paragraph IX(D).

66. In July 2022, Supreme Court, New York County held that the current ACP rates in New York City (which were above the rates in the Five Counties) were so low that, unless increased immediately, "the constitutional rights of children litigants and indigent adults would be violated." *New York County Lawyers Ass'n v State of New York*, No. 156916/2021, 2022 WL 2916783, \*4 [N.Y. Sup. Ct., N.Y. Cty, July 25, 2022]. Supreme Court ordered the State to increase the ACP rates to \$158/hour to satisfy the constitutional right to counsel. *Id.* The State conceded "the necessity of increased compensation for assigned counsel." *Id.* at 2, 4.

#### Plaintiff's Compliance with the Settlement Order's Dispute-Resolution Procedures

67. The Plaintiff Class has complied with the dispute-resolution procedures in Section XI of the Settlement Order.

68. In response to the May 16 ILS Letter, in a May 24, 2022 letter ("May 24 Letter"), counsel for the Plaintiff Class notified counsel for Defendants of the Plaintiff Class's belief that Defendants were not in compliance with the Settlement Order, and sought immediate good-faith negotiations concerning the non-compliance and appropriate measures to cure the non-compliance.

69. In the May 24 Letter, counsel for the Plaintiff Class notified Defendants of non-compliance with Sections IV and V of the Settlement Order in at least Onondaga and Schuyler

Counties as a result of Defendants' failure to adequately fund ACPs, including the failure to raise rates for assigned counsel who provide mandated representation under Article 18-B of the County Law.

70. Counsel for the parties met on June 7, 2022, together with ILS, to commence good-faith negotiations consistent with the Settlement Order.

71. On June 13, 2022, at the request of the parties, ILS provided information (the "June 13 ILS Letter") detailing the costs of adequately funding the ACPs in Onondaga and Schuyler Counties by doubling the assigned counsel rates for criminal cases in those counties.

72. Following receipt of the June 13 ILS Letter, in a letter dated June 22, 2022 (the "June 22 Letter"), counsel for the Plaintiff Class requested a written response from Defendants and expressed their willingness to meet immediately upon receipt.

73. Counsel for the Plaintiff Class received no written response to the June 22 Letter.

74. Counsel for the Plaintiff Class thereafter wrote a second follow up letter to Defendants, dated June 28, 2022 (the "June 28 Letter"), in which counsel for the Plaintiff Class urged Defendants to use the State's anticipated special legislative session to secure the funds required for compliance with the Settlement Order.

75. In the June 28 Letter, the Plaintiff Class also identified Defendants' failure to comply with Paragraph IX(D) of the Settlement Order.

76. Even after the Plaintiff Class's June 28 Letter, Defendants did not take any action to secure funds required for compliance with the Settlement Order in the June 30 and July 1, 2022 legislative session, nor did they take any other action to cure their non-compliance within forty-five days of the Plaintiff Class's notices of non-compliance.

77. On September 7, 2022, counsel for the Plaintiff Class sent an Escalation Notice in accordance with the Paragraph XI(B) of the Settlement Order, informing Defendants that the Plaintiff Class intended to seek judicial relief to enforce Defendants to comply with the Settlement Order.

78. On October 19, 2022, ILS sent an email to the parties at Defendants' request, providing information about the costs to double the assigned counsel rates for criminal cases in the Five Counties.

79. While counsel for the parties have had intermittent communications since then, Defendants have done nothing to remedy their violations of the Settlement Order.

80. Defendants remain in breach of and in non-compliance with Paragraphs IV(D), V(A), and IX(D) of the Settlement Order.

81. ILS, as the agency tasked with implementing, maintaining, and reporting on Defendants' compliance with the Settlement Order, has determined that doubling the hourly rates for ACP attorneys in the Five Counties would resolve Defendants' violations of the Settlement Order.

### **CAUSE OF ACTION**

(Violation of Settlement Order)

82. The Plaintiff Class repeats and incorporates the allegations set forth in paragraphs 1-81 above.

83. Defendants have violated the Settlement Order as described above.

84. The Plaintiff Class is entitled to a judgment ordering Defendants to comply with the Settlement Order.

**PRAYER FOR RELIEF**

WHEREFORE, the Plaintiff Class respectfully requests that a judgment and order be issued providing the following:

- a) Preliminary and permanent injunctive relief directing Defendants to comply with the Settlement Order; and
- b) Reasonable costs and expenses incurred in this action, including legal fees to the extent allowable by law; and
- c) Such other and further relief as the Court deems just and proper.

Dated: New York, New York  
December 15, 2022

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