

Forrest, K.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

LOVELY H., GLORIA Q., and MICHELE N.,  
COURTNEY B., LAURA S., EULA S., individually and  
on behalf of all others similarly situated,

Plaintiffs,

- against -

VERNA EGGLESTON, as Commissioner of the New  
York City Human Resources Administration,

Defendant.

**STIPULATION AND  
ORDER OF SETTLEMENT  
OF ATTORNEYS' FEES,  
COSTS, AND  
DISBURSEMENTS**

05 CV 6920 (KBF)

**WHEREAS** Plaintiffs commenced this action on or about August 3, 2005, by filing a class action Complaint against Defendant Verna Eggleston ("Defendant"),<sup>1</sup> sued exclusively in her official capacity as then-Commissioner of the New York City Human Resources Administration ("HRA"), alleging, *inter alia*, that HRA, in connection with the implementation of the Wellness, Comprehensive Assessment, Rehabilitation and Employment ("WeCARE") program, violated state, federal, and local law by transferring the public assistance cases of the named Plaintiffs and others similarly situated from their local Job Centers to one of three specialized centers ("WeCARE hubs" or "hubs");

**WHEREAS** Plaintiffs simultaneously moved for class certification and a preliminary injunction;

**WHEREAS** in a decision dated April 19, 2006, the Court certified a class and appointed The Legal Aid Society and Milbank Tweed Hadley & McCloy, LLP ("Milbank") as counsel for Class Plaintiffs ("Class Counsel"), and granted Plaintiffs' Motion for a Preliminary Injunction in part;

**WHEREAS** Plaintiffs filed an Amended Complaint dated December 11, 2006;

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<sup>1</sup> Pursuant to Federal Rule of Civil Procedure Rule 25(d)(1), Commissioner Steven Banks is automatically substituted as a party for claims originally brought against Verna Eggleston, sued exclusively in her official capacity as the former Commissioner of the Human Resources Administration.

**WHEREAS** by Stipulation so-ordered by this Court on February 1, 2011, the class definition was amended to be:

Individuals who meet one of the following three criteria: (1) individuals who are, were, or will be recipients of public assistance, food stamps and/or Medicaid who are, were, or will be designated as participants in the WeCARE program; or (2) individuals who were recipients of public assistance, food stamps and/or Medicaid who were part of a case that was designated as “homebound” by HRA and had that designation removed through the posting of an HRA NYCWAY computer Action Code 19HC or (3) individuals who are, were, or will be recipients of cash assistance and/or food stamps who have a physical, mental or medical impairment within the meaning of the New York State Human Rights Law § 292(21) and who request to be designated as “homebound” by HRA;

**WHEREAS** Plaintiffs and Defendant, the Commissioner of HRA, (collectively, “the Parties”) entered into a Stipulation submitted to the Court dated March 14, 2012, resolving, subject to approval by the New York State Office of Temporary and Disability Assistance (“OTDA”), issues related to Plaintiffs’ claims for benefits lost in connection with the implementation of the WeCARE hubs for Class Members with active Cash Assistance cases;

**WHEREAS** the Parties executed a Stipulation and Order of Partial Settlement dated August 7, 2014 (“Partial Settlement Stipulation”) that resolved Plaintiffs’ claims for retroactive Cash Assistance, SNAP, and Medicaid for Class Members with closed Cash Assistance cases;

**WHEREAS** by Stipulation so-ordered by this Court on September 19, 2014, the Parties agreed to interim treatment of Class Members;

**WHEREAS** the Court subsequently held a fairness hearing regarding the Partial Settlement Stipulation on October 31, 2014, and, by Order issued on that date, contingently found the Partial Settlement Stipulation to be fair, reasonable, and adequate;

**WHEREAS** by Order dated November 24, 2014, the Court approved the Partial Settlement Stipulation;

**WHEREAS** the Parties entered into a Stipulation and Order of Settlement (“Stipulation and Order of Settlement”) submitted to the Court dated March 10, 2015, resolving the injunctive relief portions of this litigation;

**WHEREAS** the Court subsequently held a fairness hearing regarding the Stipulation and Order of Settlement on June 22, 2015, and, by Order issued on that date, found the Stipulation and Order of Settlement to be fair, reasonable, and adequate;

**WHEREAS** paragraph 148 of the Stipulation and Order of Settlement provides that:

Defendant agrees that Plaintiffs are entitled to reasonable counsel fees and costs as though they are prevailing parties. The Parties agree to attempt to negotiate the amount of such counsel fees and costs. If they are unable to agree on an amount within ninety (90) days of the Effective Date, Plaintiffs may submit an application for counsel fees and costs to the Court, and Defendant reserves the right to respond to such an application in a manner that is consistent with this paragraph.

**WHEREAS** the Parties have agreed to multiple extensions of the 90 day period to negotiate attorneys’ fees, costs, and disbursements; and

**WHEREAS** Class Plaintiffs, Class Counsel and Defendant now seek to resolve the issue of attorneys’ fees, costs, and disbursements without further proceedings on terms and conditions just and fair to all Parties; and

**WHEREAS** the Parties are entering into this Fee Stipulation solely for the purpose of settling the issue of attorneys’ fees, costs, and disbursements and to avoid further litigation, and without Defendant admitting any fault or liability;

**NOW, THEREFORE, IT IS HEREBY STIPULATED AND ORDERED:**

1. The City of New York, on behalf of Defendant, shall pay the gross sum of six million, five hundred thousand dollars and no cents (\$6,500,000.00) (the “Fee Payment”) to Class Counsel; and Class Plaintiffs and Class Counsel agree to accept the Fee Payment in full satisfaction of all claims for attorneys’ fees, costs, and disbursements that have been or will be incurred in connection with this Action against the City of New York and/or Defendant, incurred at any time prior to the entry of this Fee Stipulation as “so ordered,” including without limitation all past, present and future officials, employees, departments, agencies, representatives, directors

and agents of either the City of New York or HRA, their successors and assigns and their respective heirs, executors, administrators, personal representatives, and transferees, and each of them ("City Entities or Individuals").

2. The Fee Payments shall be made to Class Counsel in two separate checks as follows:

- a) \$5,434,936.06 payable to The Legal Aid Society, and shall be delivered to The Legal Aid Society, at the following address:

THE LEGAL AID SOCIETY  
Attention: Judith Goldiner  
199 Water Street, 3<sup>rd</sup> Floor  
New York, N.Y. 10038

- b) \$1,065,063.94 payable to Milbank, Tweed, Hadley & McCloy, LLP, and shall be delivered to the following address:

Milbank, Tweed, Hadley & McCloy LLP  
Attention: Sean M. Murphy  
28 Liberty Street  
New York, NY 10005-1413

3. Class Counsel shall promptly execute and deliver to Defendant's attorney all documents necessary to effect this settlement, including, without limitation, a signed release together with the tax identification number and substitute W-9 forms for Class Counsel. The payment set forth in paragraph 1 is subject to and conditioned on delivery of such documents to Defendant's undersigned attorney. Effective upon receipt of the Fee Payment, The Legal Aid Society and Milbank shall indemnify and hold the City, HRA and/or City Entities or Individuals harmless from any and all claims, losses, liabilities, fees and costs, including without limitation reasonable attorney's fees and costs, arising out of or concerning any claim by any named plaintiff or member of the plaintiff class in this Action against the City, HRA and/or City Entities or Individuals for attorneys' fees, costs, and/or disbursements (a "Fee Claim"). Upon notice of any Fee Claim, the City shall promptly notify The Legal Aid Society and Milbank, which shall have the right to defend the Fee Claim and may resolve the Fee Claim, provided that The Legal Aid Society and Milbank deliver to the City a release from the plaintiff(s) asserting the Fee Claim in favor of the City, HRA and City Entities and Individuals discharging the City, HRA and City Entities and Individuals from any liability for attorneys' fees, costs, and/or

disbursements.

4. Class Plaintiffs and Class Counsel agree that any taxes, or interest or penalties on taxes, on the payment specified in paragraph 1 of this Fee Stipulation shall be the sole and complete responsibility of Class Counsel, and that Class Counsel shall have no claim, right, or cause of action against Defendant, the City of New York or any City Entities or Individuals on account of any and all such taxes, interest, or penalties.

5. Class Plaintiffs and Class Counsel agree that neither Defendant, the City of New York, nor any City Entities or Individuals, shall be responsible for any liens of any kind (including, but not limited to, any and all workers' compensation, tax, or child support liens) which may attach to the payment set forth in this Fee Stipulation. Class Plaintiffs and Class Counsel shall have no claim, right, or cause of action against Defendant, the City of New York, or any City Entities or Individuals, whether in their individual or official capacities, on account of such liens, and Class Plaintiffs and Class Counsel agree that they will defend, indemnify, and hold harmless Defendants, the City of New York, and all City Entities and Individuals, whether in their individual or official capacities, for the satisfaction of any such liens.

6. In consideration of the payment of the Fee Payment, Class Plaintiffs and Class Counsel, The Legal Aid Society and Milbank, on their own behalf and on behalf of their respective heirs, executors, administrators, representatives, attorneys, successors, and assigns of each of themselves and on behalf of future Class Plaintiffs hereby jointly and severally release and forever discharge Defendant, the City of New York, and each and all City Entities and Individuals, from any and all claims for past, present, or future attorneys' fees, costs, and disbursements arising from or in connection with the above-captioned action incurred at any time prior to the entry of this Fee Stipulation as "so ordered."

7. Nothing contained in this Fee Stipulation shall be deemed to be an agreement or an admission by any of the Parties as to the reasonableness of the number of hours or the hourly rates claimed by The Legal Aid Society, and/or Milbank as Class Counsel.

8. The agreement regarding payment of attorneys' fees, costs, and disbursements set forth in this Fee Stipulation is solely for the purpose of settlement of Class Plaintiffs' and Class Counsel's claims for attorneys' fees, costs, and disbursements and does not reflect the positions of the Parties in any other judicial or administrative proceeding. Nothing contained in this Fee Stipulation shall be deemed, implied, or construed to be a policy, custom,

or procedure of Defendant, the City of New York, or any of their agencies, or of Class Plaintiffs or The Legal Aid Society, and/or Milbank as Class Counsel.

9. Nothing in this Stipulation shall be deemed a waiver by plaintiffs' counsel of any claims to fees, costs, or disbursements for monitoring defendant's compliance with the Stipulation and Order of Settlement accruing or incurred after the date in which this Fee Stipulation is "so ordered," or a waiver by Defendants of any defense to any such application which may be made.

10. This Fee Stipulation contains all of the terms and conditions agreed upon by the Parties regarding the payment by Defendant of attorneys' fees, costs, and disbursements in this action for all work performed, or costs incurred, prior to the entry of this Fee Stipulation as "so ordered." No oral or written agreement concerning attorneys' fees, costs, and disbursements entered into prior to the execution of this Fee Stipulation, shall be deemed to exist, to bind the Parties, or to vary the terms and conditions set forth in this Fee Stipulation.


11. The Parties to this Fee Stipulation have jointly participated in its drafting; consequently, any ambiguity shall not be construed for or against any party.

12. This Fee Stipulation is final and binding upon the Parties, their successors, and their assigns.

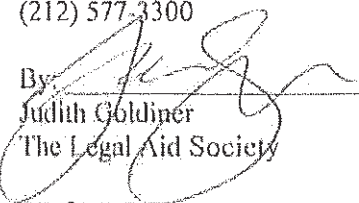
13. This Fee Stipulation may be executed in counterparts, and a signature received by facsimile or email shall be deemed valid for all purposes.

Dated: New York, New York  
January 25, 2018

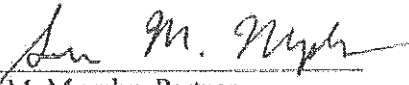
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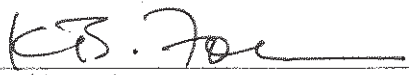
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By:   
Sean M. Murphy, Partner  
Milbank Tweed Hadley & McCloy, LLP

SO ORDERED,

this 26<sup>th</sup> day of January 2018.

  
Honorable Katherine B. Forrest  
United States District Judge

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