

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GERTRUDE WILLISTON; and TAWANA, LATOYA,
and TANDIKA CUMMINS, by their parent, PAULETTE
CUMMINS, on their own behalf and on behalf of all others
similarly situated,

Plaintiffs,

x
AMENDED
STIPULATION AND
ORDER OF
SETTLEMENT

04 Civ. 4454 (RWS)

JOSE FELIZ, and FLORENCE GREENBAUM, on their
own behalf and on behalf of all others similarly situated,

Plaintiffs-Intervenor,

-against-

ROBERT DOAR, as Commissioner of the New York City
Department of Social Services; and ELIZABETH
BERLIN, as Acting Commissioner of the New York State
Office of Temporary and Disability Assistance,¹

Defendants.

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| USDC SDNY |
| DOCUMENT |
| ELECTRONICALLY FILED |
| DOC #: |
| DATE FILED: 5/8/12 |

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WHEREAS, plaintiffs commenced this action by filing a class action complaint, pursuant
to 42 U.S.C. § 1983, on behalf of applicants for Food Stamp benefits in the City of New York;

WHEREAS, plaintiffs alleged that Defendant Eggleston ("City defendant") unlawfully: (a)
fails to provide Food Stamp benefits to those eligible within thirty days of application in violation
of federal and state law; (b) deters, discourages and prevents individuals and families from filing
applications for Food Stamp benefits upon initial contact with Non-Cash Assistance ("NCA") Food

¹ Mr. Doar replaces Verna Eggleston and Ms. Berlin replaces Mr. Doar.

Stamps Centers; and (c) fails to provide expedited Food Stamp benefits at the NCA Food Stamp Centers within the time frames required by federal and state law;

WHEREAS, plaintiffs further alleged that Defendant Doar ("State defendant") has failed to supervise appropriately the actions of City defendant as required by law;

WHEREAS, plaintiffs filed a motion for class certification, and defendants opposed said motion;

WHEREAS, plaintiffs sought, *inter alia*, a class-wide order enjoining City defendant (1) to provide Food Stamp benefits to those eligible in a timely manner; (2) from deterring, discouraging and preventing persons from filing applications for Food Stamp benefits upon initial contact with the NCA Food Stamp Centers; and (3) to issue expedited Food Stamp benefits at the NCA Food Stamp Centers within the time frames required by federal and state law. Plaintiffs also sought an order enjoining State defendant to supervise City defendant adequately;

WHEREAS, the parties entered into a Stipulation and Order of Settlement resolving the claims of the plaintiffs in this action, including the certification of a class;

WHEREAS, defendants denied each and every allegation contained in the complaint and stated in the whereas clauses set forth in the Original Stipulation and Order of Settlement;

WHEREAS, no finding of liability has been made;

WHEREAS, on April 18, 2008, this Court so ordered the Stipulation and Order of Settlement after a fairness hearing conducted pursuant to Fed. Rule Civ. Pro. 23(e);

WHEREAS, plaintiffs allege that City defendant is failing to provide Food Stamp benefits to those eligible in a timely manner;

WHEREAS, no finding of liability has been made as to plaintiffs' claim;

WHEREAS, the parties desire to resolve the remaining issues raised in this litigation,

without further proceedings and without admitting any fault or liability;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned, as follows:

DEFINITIONS

1. "NCA Food Stamp Center" is defined as a non cash public assistance Food Stamp center operated by City defendant and includes centers known as Non-Cash Assistance Food Stamp Centers.
2. "Apply for Food Stamp benefits," as set forth in paragraph 3, shall include anyone who applies for Food Stamp benefits during the effective term of this settlement, or who has a pending Food Stamp application during the effective term of this settlement.
3. "Apply for Food Stamp benefits at a NCA Food Stamp Center," as set forth in paragraph 4, shall include applications submitted at NCA Food Stamp Centers, as well as applications submitted to NCA Food Stamp Centers by HRA or HRA representatives, contractors or designees who are located at local community based organizations.

CLASS CERTIFICATION

4. A class is certified consisting of all individuals who apply for Food Stamp benefits at a NCA Food Stamp Center, or for whom an application is submitted at an NCA Food Stamp Center.

DEFENDANTS' OBLIGATIONS

5. During the effective term of this Amended Stipulation and Order of Settlement ("Amended Order"), City defendant shall:

- a. provide Food Stamp benefits to eligible households included in the class within the 30 day time frame as provided in 7 U.S.C. § 2020(e)(3) and 7 C.F.R. § 273.2(g)(1), except that nothing herein shall require City defendant to provide Food Stamp benefits within the 30 day time frame to eligible households when the delay in provision of benefits is caused by the household as described in 7 C.F.R. § 273.2(h)(1)(i).
 - b. post signs and maintain signs in NCA Food Stamp Centers setting forth the right to apply for Food Stamp benefits and the time frames for the processing of applications.
6. During the effective term of this Amended Order, State defendant will supervise City defendant's compliance with ¶ 5(a) of the Amended Order by taking, *inter alia*, the following actions:
- a. State defendant will review and evaluate the results of the reports that are prepared and transmitted to State defendant by City defendant pursuant to this Amended Order.
 - b. State defendant shall provide to plaintiffs' counsel and City defendant, on a quarterly basis, commencing after the close of the reporting period of July through September 2012, a report indicating: 1) the number of households which were issued Food Stamp benefits within 30 days after the date of application at New York City NCA Food Stamp Centers where a code which denotes the issuance of Food Stamp benefits was entered into WMS by City defendant; and 2) the time periods by which Food Stamp benefits were issued to households for periods beyond 30 days after the date of application at New

York City NCA Food Stamp Centers where a code which denotes the issuance of Food Stamp benefits was entered into WMS by City defendant. The report will be broken down by month, and by NCA Food Stamp Center, and will be provided to plaintiffs' counsel and City defendant within 120 days after the close of the reporting period..

MONITORING

7. City defendant shall provide the following monitoring as set forth below:
 - a. **Provision of Reports** - During the term of this Agreement, City defendant shall provide Plaintiffs' counsel and State defendants' Counsel with the following information, within 45 business days of the expiration of each month:
 - i. A report noting the number of applications received in the month, by NCA Food Stamp Center where filed. For those applications received in the reporting month for which a determination has been made the report will also show:
 - a) The number of applicants screened for eligibility for expedited service;
 - b) The number of applicants determined eligible for expedited service;
 - c) For those applicants determined to be entitled to expedited service, the number of determinations regarding eligibility made within five days following the date the application was filed;

- d) For those applicants not determined to be entitled to expedited service, the number of determinations regarding eligibility for Food Stamp benefits made within 30 days following the date the application was filed;
 - e) For those applicants determined to be entitled to expedited service, the number to whom Food Stamps benefits were issued within 5 days following the date the application was filed;
 - f) For those applicants not determined to be entitled to expedited service, the number to whom Food Stamp benefits were issued within 30 days following the date the application was filed; and
 - g) the number of applications approved and the number of applications denied.
- ii. For each NCA Food Stamp Center, a report indicating the number of applications for which Food Stamps benefits were not provided within 5 or 30 days, subdivided by whether applicants were eligible for expedited service or not, and subdivided by whether the delay is attributable to the City Defendant or to the household and the extent of the delay as follows:
- a) 1 day;
 - b) 2 days;
 - c) 3-5 days; and
 - d) more than 5 days

- iii. For each NCA Food Stamp Center, a report indicating the number of applications during the reported month where a determination has not yet been made, known as "open applications."
- iv. For each NCA Food Stamp Center, a report indicating the number of applications from the previous month's "open applications" list, identified in subparagraph 7(a)(iii) above, where there has been a determination.
- v. City defendant represents that (a) the reports to be generated pursuant to paragraph 7(a) of this Amended Order will be drawn from the data maintained in the Paperless Office System "POS" maintained by City defendant; (b) POS requires that applicants be screened for eligibility for expedited processing of their Food Stamp application; and (c) POS can accurately measure the number of days from application to determination of eligibility and, where appropriate, issuance of Food Stamp benefits to eligible households.

INDIVIDUAL RELIEF

- 8. Without diminishing the right of the plaintiff class to seek enforcement of the provisions of this Amended Order, or of any individual class member to seek relief as set forth in paragraph 18 of this Amended Order, City defendant shall provide a mechanism pursuant to which plaintiffs' counsel may bring to the attention of City defendant individual cases or instances in which there has been an alleged violation of the terms and conditions of this Settlement. City defendant shall investigate the case(s), take any appropriate steps required to resolve the issue(s) concerning each individual case, and report the result of such investigation in writing to plaintiffs'

counsel. Such report shall be provided within 5 business days of receiving plaintiffs' counsel's report of the alleged violation(s). If responding to the alleged violation brought to the attention of City defendant pursuant to this paragraph reasonably requires information in order to identify the class member, then City defendant shall promptly inform plaintiffs' counsel of what information is required, and the time for responding shall not include any period between the date City defendant makes a written or oral request for the information and the date City defendant receives the information. In addition, if providing Food Stamp benefits to the household at issue requires the household to complete the application process, then City defendant shall promptly inform plaintiffs' counsel of what action the household must take to complete the application process.

JURISDICTION

9. The provisions of this Amended Order shall not take effect unless and until the Court "so orders" this Amended Order, at which time it shall become effective ("effective date"). Defendants' obligations under this Amended Order shall run from the effective date until the jurisdiction of the Court lapses.
10. As of the effective date, all remedies sought in the complaint are limited to the provisions of this Amended Order.
11. The jurisdiction of this Court shall end March 31, 2013 unless plaintiffs move pursuant to paragraphs 14 and 15 of this Amended Order. On the effective date of this Amended Order, the Third Claim against Defendants regarding the provision of expedited Food Stamp benefits set forth in paragraph 95 of the complaint shall be dismissed with prejudice. At the time of termination of jurisdiction of the remaining

claims, all rights and claims arising under the provisions of this Amended Order shall terminate and all remaining claims under this complaint shall be dismissed with prejudice.

ENFORCEMENT

12. In the event of a motion by plaintiffs for enforcement or contempt based upon any defendant's alleged non-compliance with this Amended Order, that defendant shall be considered to be in compliance with the provisions of this Amended Order unless plaintiffs establish that defendant's failures or omissions to comply with the provisions of this Amended Order were not minimal or isolated, but were sufficiently significant and widespread or recurring as to be systemic.
13. During the term of this Amended Order, if plaintiffs' counsel believes that one or both of defendants have failed to comply, as defined by paragraph 12 of the Amended Order, with the provisions of this Amended Order, plaintiffs' counsel shall notify such defendants' counsel in writing of the nature and specifics of the alleged failure to comply and shall specify the monitoring reports, if any, upon which such a belief is based, at least thirty (30) days before any motion is made for enforcement of this Amended Order or for contempt. Unless otherwise resolved, the parties' counsel shall meet within the thirty (30) day period following notice to defendants' counsel in an attempt to arrive at a resolution of the alleged failure to comply.
13. If no resolution is reached within thirty (30) days from the date of notice, plaintiffs may move this Court for an order enforcing the provisions of this Amended Order and/or for contempt. Plaintiffs shall bear the burden of proving that the alleged noncompliance is sufficiently significant and widespread or recurring as to be

systemic. Non-systemic individual and isolated violations of this Amended Order shall not form a basis for a finding that defendants have acted in contempt of this Amended Order, or as a basis for a motion for enforcement. No motion for contempt or enforcement shall be brought to remedy those violations that the parties agree (a) have been cured, or (b) will be cured pursuant to a plan agreed upon by the parties, provided that the plan actually cured those violations. In the event that the parties agree to a plan to cure an alleged violation and plaintiffs believe that the violation has still not been cured, plaintiffs must provide at least thirty (30) days notice before any motion is made for enforcement of this Amended Order or for contempt.

EXTENSION OF THE TERM OF THE AMENDED ORDER

14. Plaintiffs may move this Court for an order extending the jurisdiction of the Court over this Amended Order by complying with the provisions of paragraphs 12 and 13, and shall make any such motion on or before the scheduled termination of this Court's jurisdiction, unless another date is agreed to by the parties.
15. In the event plaintiffs move to extend the jurisdiction of this Court pursuant to paragraph 14 of this Amended Order, the standard for measuring defendants' compliance with the provisions of this Amended Order is that set out in paragraph 12 above of this Amended Order. Any such extension of the jurisdiction of this Court shall be for a period of not more than two (2) years from the date the Court's jurisdiction was scheduled to terminate, and the scope of the relief the Court may order shall extend only so far as is necessary to correct violations of the provisions of this Amended Order.

16. Prior to the expiration of any period of extended jurisdiction set forth in paragraph 15 of this Amended Order, plaintiffs may move for contempt or enforcement consistent with the provisions set forth in paragraphs 12 and 13 of this Amended Order. Plaintiffs may also move for a further extension of the jurisdiction of the Court beyond that set forth in paragraph 11 of this Amended Order; except that no motion for extension of the Court's jurisdiction shall be made prior to six months before the expiration of the Court's jurisdiction and is subject to the provisions for extension of the Court's jurisdiction set forth in paragraphs 12 and 13 of this Amended Order.

GENERAL PROVISIONS

17. Plaintiffs reserve the right to apply to the Court to recover such costs and fees within 90 days of the Court so ordering this Amended Order and defendants reserve the right to oppose such an application.
18. No provision in this Amended Order shall infringe upon any household's right to seek to compel defendants to provide any form of relief the household deems appropriate by way of an administrative hearing or a proceeding pursuant to article 78 of the New York Civil Practice Law and Rules so long as the household is not seeking to challenge any of the policies set forth in this Amended Order.
19. Plaintiffs' counsel shall protect the confidentiality of any household's information provided by defendants under the provisions of this Amended Order and shall not disclose such information to any individual not involved in the administration of the Food Stamp program within the City of New York in accordance with applicable New York State statutes and implementing regulations, if any, except (1) the

household whose case is involved or (2) as is necessary to the prosecution of this action.

20. Nothing contained in this Amended Order shall be deemed to be a finding or an admission that defendants have in any manner violated plaintiffs' rights as contained in the Constitution, Statutes, Ordinances and Rules and Regulations of the United States, the State of New York or the City of New York.
21. Notwithstanding the provisions of this Amended Order, defendants reserve the right to implement, change, or otherwise alter or amend the procedures and requirements of this Amended Order if required by intervening changes in federal statute or regulation or state statute or regulation which are inconsistent with the terms of this Amended Order. Defendants shall provide plaintiffs' counsel with written notification of a required change at least thirty (30) days prior to the commencement of implementation, unless defendants are required to commence implementation of such a required change in less than thirty (30) days. If defendants are required to commence implementation of a required change in less than thirty (30) days, counsel for defendants shall provide such notice no later than seven (7) working days after learning thereof. Plaintiffs reserve the right to oppose any changes sought by defendants pursuant to this paragraph.
22. This Amended Order is final and binding upon the parties, their successors and their assigns.

Dated: New York, New York

APRIL 12, 2012

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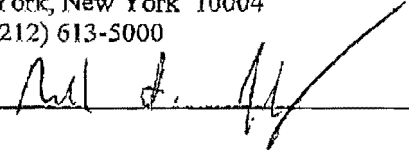
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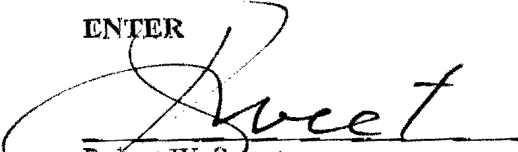
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By: _____

IT IS SO ORDERED.

DATED: *May 8*, 2012
New York, New York

ENTER

Robert W. Sweet
United States District Judge