

Sullivan, J

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

**JOEANN HERCULES, LADORN BROWNE,  
and ELIZABETH COLON, individually and on  
behalf of all others similarly situated,**

**Plaintiffs,**

**vs.**

**ROBERT DOAR, in his official capacity as  
Commissioner of the New York City Human  
Resources Administration; and ELIZABETH  
BERLIN, in her official capacity as Executive  
Deputy Commissioner, New York State Office  
of Temporary and Disability Assistance,**

**Defendants.**

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**STIPULATION AND ORDER OF CLASS  
CERTIFICATION**

10 Civ. 6350 (RJS)

**WHEREAS**, on August 24, 2010, plaintiffs filed a class action complaint, pursuant to 42 U.S.C. § 1983 and New York State law, on behalf of themselves and a proposed class of similarly situated Safety Net Assistance Recipients, alleging that defendants violated the Due Process Clause of the United States Constitution and the New York State Constitution, laws, and regulations by sending notices which advised recipients that they would be sanctioned for alleged violations of public assistance employment requirements for durational periods which were longer than those authorized by statute;

**WHEREAS**, on September 16, 2010, pursuant to Judge Sullivan's Individual Rules of Practice, plaintiffs requested permission to file a motion for class certification;

**WHEREAS**, by Order dated October 22, 2010, Judge Sullivan deferred motion practice and referred this matter to Magistrate Judge Katz for settlement purposes;

**WHEREAS**, pursuant to Judge Sullivan's January 27, 2012 order, plaintiffs submitted an updated pre-motion letter on February 2, 2012; and

**WHEREAS** the parties agree that the proposed class meets the requirements for class certification under Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure and that the action would be most appropriately litigated as a class action; and

**WHEREAS** the parties further agree that, in order to resolve this litigation expeditiously and without needless motion practice, it is in the parties' joint interests to certify a plaintiff class, pursuant to Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure;

**NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, BY AND BETWEEN THE UNDERSIGNED, THAT THIS ACTION SHOULD BE CERTIFIED AS A CLASS ACTION PURSUANT TO RULE 23 OF THE FEDERAL RULES OF CIVIL PROCEDURE, ON THE FOLLOWING TERMS:**

1. A class is certified consisting of:

All Safety Net Assistance Recipients living in New York City who, after August 24, 2007, lost or will lose Benefits as a result of being issued Incorrect-Duration Sanction Notices while a member of a household with at least one minor child, as defined in SSL § 345, on the sanctioned individual's case for public assistance or food stamps.

2. For the purposes of this Stipulation and Order:
  - a. "Benefits" means cash assistance received through the Safety Net Assistance Program by Safety Net Assistance Recipients residing in New York City;
  - b. "Incorrect-Duration Sanction Notice" means a notice issued by the State's Client Notice System, or any successor thereto, and sent by Defendants to a Safety Net Assistance Recipient who is a member of a household with at least one minor child, as defined in SSL § 345, on the sanctioned individual's case for public assistance or food stamps, containing language

erroneously notifying such Recipient of the imposition of a reduction or discontinuance of Benefits for a duration set forth in SSL § 342(3)(a)-(b), instead of a duration set forth in SSL § 342(2)(a)-(b);

- c. “Safety Net Assistance Program” means New York State’s public assistance program administered pursuant to SSL §§ 157-159; and
- d. “Safety Net Assistance Recipient” means an individual who received, is receiving, or will receive public assistance benefits through the Safety Net Assistance Program while living in New York City.

3. The proposed class meets the requirements for class certification under Rule 23(a) of the Federal Rules of Civil Procedure because: (1) the number of plaintiffs is so numerous that joinder of all class members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims of the named plaintiffs are typical of those of the class; and (4) the named plaintiffs and their counsel will fairly and adequately protect the interests of the class.

4. As required by Rule 23(a)(1), the class is “so numerous that joinder of all members is impracticable”: Over 10,000 Safety Net Assistance Recipients received Incorrect-Duration Sanction Notices.

5. As required by Rule 23(a)(2), there are numerous questions of law or fact common to the class, including but not limited to whether defendants, as a result of computer programming error, improperly engaged in a policy or practice of sending Incorrect-Duration Sanction Notices to Safety Net Assistance Recipients with minor children in their household; and whether defendants’ conduct violated the class members’ rights under the Due Process Clause of the Fourteenth Amendment to the United States Constitution, Article I of the New York State

Constitution, New York Social Services Law §§ 341-342, and N.Y.C.R.R. §§ 358-3.3 and 385.12.

6. As required by Rule 23(a)(3), the named plaintiffs' claims are typical of the claims of the class. Each class member's claims arise from the same course of conduct and are based upon common legal arguments regarding defendants' liability, and all class members would benefit from the named plaintiffs' action. Like all class members, named plaintiffs Joeann Hercules and Elizabeth Colon were Safety Net Assistance recipients with at least one minor child in their households when defendants issued them Incorrect-Duration Sanction Notices. As a result of these Notices, these named plaintiffs, like all class members, lost public assistance benefits in reliance on the information contained in the Notices. If the named plaintiffs prevail in obtaining declaratory and injunctive relief, it is reasonable to believe that such relief will similarly benefit all class members.

7. Attorneys from The Legal Aid Society, the New York Legal Assistance Group, and Cooley LLP are designated as class counsel.

8. As required by Rule 23(a)(4), the named plaintiffs fairly and adequately protect the interests of the plaintiff class in that: (1) class counsel the Legal Aid Society, the New York Legal Assistance Group, and Cooley LLP are qualified, experienced, and capable of protecting and advancing the interests of the class throughout this litigation; (2) the named plaintiffs do not have interests that are antagonistic to the interests of the class because all were harmed by the Incorrect-Duration Sanction Notices and all will benefit from the relief requested in the action.

9. As required by Rule 23(b)(2), "the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." Defendants have acted on

grounds generally applicable to the class in sending Incorrect-Duration Sanction Notices to the members of the class. The Amended Complaint seeks a declaration that the Notices violate the law as well as injunctive relief enjoining defendants, among other things, to rescind the Notices, to vacate and delete all sanctions imposed pursuant to the Notices, to not issue such Notices in the future, and to provide class members with the benefits that were denied to them due to sanctions imposed pursuant to the Notices.

10. Nothing contained herein shall be deemed to constitute an admission by the defendants that any of their alleged actions or omissions violated plaintiffs' rights under any federal or State law. Nothing contained herein shall be considered a binding agreement on the part of the defendants in any action unrelated to the instant proceeding.

11. Nothing contained herein shall be deemed to constitute a waiver by the parties of any right they may have to seek the modification, alteration, or de-certification of the plaintiff class, pursuant to Fed.R.Civ.P. 23(c)(1) and 23(d), as facts subsequently obtained may warrant.

Dated: August \_\_, 2012  
New York, New York

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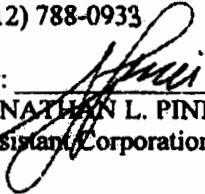
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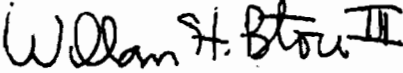
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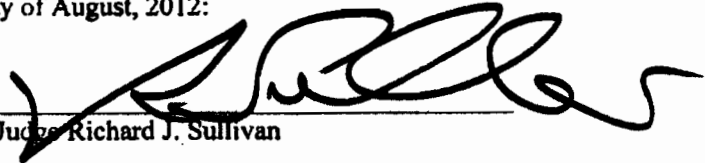
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SO ORDERED, this 22<sup>nd</sup> day of August, 2012:

  
\_\_\_\_\_  
Judge Richard J. Sullivan