For Opinion See 2006 WL 3230162, 445 F.Supp.2d 400, 2006 WL 453215, 414 F.Supp.2d 469

United States District Court, S.D. New York.
M.K.B., O.P., L.W., M.A., Marieme Diongue, M.E., P.E., Anna Fedosenko, A.I., L.A.M., L.M., Denise Thomas, and J.Z., on their own behalf, and on behalf of their minor children and all others similarly situated, Plaintiffs,
v.
Verna EGGLESTON, as Commissioner of the New York City Human Resources Administration, Robert Doar, as Commissioner of the New York State Office of Temporary and Disability Assistance, and Antonia C. Novello, as Commissioner of the New York State Department of Health, Defendants.
NO. 05 Civ. 10446 (JSR) (ECF CASE).
May 19, 2006.

Plaintiffs' Post-Hearing Reply Memorandum of Law in Further Support of Motions for Preliminary Injunction and Class Certification

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PRELIMINARY STATEMENT

Plaintiffs submit this memorandum of law in reply to the City and State defendants' May 5, 2006 post-trial memoranda, and in further support of the plaintiffs' request for preliminary injunctive relief and class certification.

Point I of this brief demonstrates that the City's liability under *Monell v. Department of Social Services,* 436 U.S. 658 (1978) has been established because (1) HRA had ample notice of the need to take corrective action; (2) HRA was deliberately indifferent to the need for additional training; and (3) HRA is liable for actions taken at the direction of the State.

Point II demonstrates that the State's actions and omissions caused the violation of plaintiffs' federal rights under the food stamp and Medicaid acts, and that the February 16, 2006 injunction against the State should not be vacated.

Point III of this brief details the specific additional injunctive relief plaintiffs seek against the City and the State defendants. Point IV responds to the defendants' arguments regarding Galina Rybalko and explains why her motion to intervene should be granted. Lastly, Point V responds to the City's erroneous argument that the proposed class should not be certified because (1) the class is not sufficiently numerous; and (2) the class definition is overbroad.

POINT I

LIABILITY OF THE CITY DEFENDANT *UNDER MONELL HAS BEEN ESTABLISHED.*

The City defendant advances three arguments why liability has not been demonstrated under *Monell.* It claims (1) that HRA did not have sufficient notice of the need to take corrective action (City Post-Hr'g Mem. of Law (City Mem.) 13-14); (2) that HRA was not “deliberately indifferent” to the need for additional or corrective training (City Mem. 15-21); and (3) with regard to certain violations, the City should not be held responsible because the State is at fault (City Mem. 22-27). The first two arguments are wrong as a matter of fact; the third is wrong as a matter of law.

A. HRA Had Ample Notice Of The Need *For Corrective Action.*

The evidence demonstrated that HRA policy makers Elaine Witty, Ivelia Sisco, Cecile Noel, and Jane Corbett had ample notice of systemic problems with the delivery of public benefits to immigrant class members. All four senior policy-makers have substantial authority and responsibility within HRA. (Plaintiffs' Proposed Findings of Fact (FOF) ¶¶ 390-94.) Jane Corbett is Executive Deputy Commissioner of the Office of Policy and Program Development. (Tr. 925:23-926:6.) Ivelia Sisco is the director of procedures for public assistance, Medicaid, and food stamps (Tr. 967:1-13) and is the person at HRA who has had primary responsibility for developing procedures relating to immigrant eligibility for public benefits. (Tr. 968:10-14.) Cecile Noel is HRA's Deputy Commissioner for Domestic Violence Emergency Services. (Tr. 478:21-23.) Elaine Witty is Executive Director of the Office of Refugee and Immigrant Affairs (ORIA) at HRA. (Tr. 909:7-11.)

On more than one occasion during the last two years, Ms. Witty told Ms. Sisco that immigrants were being denied public benefits because workers do not understand the eligibility rules. (Tr. 971:4-14) Ms. Sisco shared this information with the participants in HRA's weekly Office of Procedures and Training managers' meeting. (Tr. 971:15-18; FOF ¶ 395.) Ms. Witty was also aware that workers were having trouble identifying immigration documents (Tr. 921:18-21) and that immigrant victims of domestic violence were experiencing difficulty in having benefits issued to them (Tr. 925:16-22). She informed both Ms. Corbett and Ms. Sisco of this problem (Tr. 925:23-926:9; FOF ¶¶ 396-97).

Likewise, Ms. Witty was aware that HRA employees had trouble applying the eligibility rules pertaining to persons with filed or approved I-130 petitions and proof of abuse (Tr. 927:7-11, 928:5-11); that HRA workers sometimes had difficulty with the eligibility rules regarding PRUCOL individuals (Tr. 932:6-8); and that workers were having difficulty handling mixed status households (Tr. 934:23-935:3; 980:19-22). She advised Ms. Sisco of all three of these problems (Tr. 981:20-24; 932:16-21; 934:23-935:3; 980:19-22), and informed Ms. Corbett about the problem concerning I-130 petitions. (Tr. 928:19-929:10; FOF ¶¶ 398-400.) Ms. Witty also knew that workers were having difficulty opening cases in the WMS computer system for people who did not have Social Security numbers. (Tr. 918:13-16; FOF ¶ 401.)

In addition, in July 2004, Reena Ganju informed Deputy Commissioner Noel of her belief that HRA's ADVENT workers - who deal exclusively with domestic violence victims - required additional training. (Tr. 479:16-20, 482:21-483:1.) She presented Ms. Noel with a letter requesting additional and comprehensive training for ADVENT staff (Pl. Ex. 778), sent a copy to Elaine Witty (Tr. 512:13-16), and followed up on those communications by providing training materials to Ms. Noel and Ms. Witty that HRA might use (Tr. 483:5-18; FOF ¶¶ 403-04).

In contending that it lacked sufficient notice of the need for corrective action, HRA ignores the fact that Executive Deputy Commissioner Corbett and the Director of Procedures, Ms. Sisco, both had notice of substantial problems. Also lacking in merit are HRA's assertions that notice to Ms. Witty was insufficient because her office “is not responsible for making eligibility determinations,” and that notice to Ms. Noel was not good enough because her workers “[do] not deal with FIA job center ap-

plicants for eligibility." (City Mem. 14.) Ms. Witty repeatedly intervened in correcting erroneous eligibility determinations. Ms. Ganju, for example, testified that Ms. Witty was "the person behind" the eligibility determinations in approximately 10-20 cases on which she had sought Ms. Wittty's assistance. (Tr. 513:14-20.) Indeed, Ms. Witty had established a so-called "pilot advocacy program" for that very purpose. (Tr. 911:18-912:4.) One of her duties and responsibilities is to provide "expertise and guidance on alien eligibility for food stamps, medical assistance and cash assistance." (Pl Ex. 889 at MKB 11776.) And while Ms. Noel's workers do not make initial eligibility determinations, they are responsible for making subsequent eligibility determinations on recertification, and indeed had done so on several cases about which Ms. Ganju testified. (Tr. 519:19-520:16; *see also* Tr. 1001:14-1003:6, 1007:21-1008:24; Pl. Ex. 663.)[FN1]

FN1. The City's objection that notice from Ms. Ganju was insufficient because "such notice would only be 'that a particular advocacy group was taking a particular position,' " (City Mem. 14), is wholly without merit. The City cites no authority for the proposition that notice of the need for additional training is insufficient as a matter of law if it comes from a legal advocate outside of HRA.

B. HRA Was Deliberately Indifferent To The Need *For Additional Training.*

Plaintiffs' claims regarding training are independent and distinct from their claims regarding HRA's policies, customs and usages. As argued more fully in plaintiffs' December 13, 2005 memorandum of law, at 35-37, a § 1983 violation may be established in three different ways that are relevant here.

(1) The City may have "formal rules or understandings - often but not always committed to writing - that are intended to, and do, establish fixed plans of action to be followed under similar circumstances consistently and over time." *Pembaur v. City of Cincinnati,* 475 U.S. 469, 480-81 (1986).

(2) The City may have a "longstanding practice or custom which constitutes the 'standard operating procedure' of the local governmental entity." *Jeffes v. Barnes,* 208 F.3d 49, 61 (2d Cir. 2000), *cert. denied,* 531 U.S. 813 (2000).

(3) The City may have provided inadequate training when the need for more or different training was evident. *See* *City of Canton v. Harris,* 489 U.S. 378, 390 (1989).

A showing of "deliberate indifference" to the need for additional or improved training is pertinent only to the third of these theories, and not to claims regarding HRA's policies, customs, and usages. In this case, liability has been established under all three theories.

HRA's assertion that plaintiffs purportedly offered "no evidence of a faulty training program on the part of the City defendant" (City Mem. 13), flies in the face of massive evidence to the contrary. As explained in plaintiffs' post-hearing memorandum of law (Pl. Mem. 6-7, 21) and proposed findings of fact (FOF ¶¶253-58, 322-26), there was substantial evidence that HRA had a flawed training program. HRA relies on a system of "training the trainers." (Tr. 1194:9-19.) The evidence established that HRA used flawed training materials to train those trainers. In HRA's April 2005 Monthly Staff Meeting Instructor's Guide," a battered qualified alien was

defined solely as a person with a “prima facie” notice. No other battered qualified aliens were mentioned. (Pl. Ex. 469 at MKB01171-72.) HRA's “April 2005 Training Release” made the same mistake. (Pl. Ex. 464 at C12928-29.) Similarly, HRA's April and June 2005 “Trainer's Manual” for its new hires training referred only to battered aliens with approved I-360s and those with a “prima facie case.” (Pl. Ex. 468 at MKB01166-67.) Battered qualified aliens with I-130 family-based petitions, K, or V visas are not mentioned. (FOF ¶¶ 255-58.) The same flaw repeatedly appeared in faulty HRA policy directives, which omitted mention of the I-130 group entirely. (Pl. Ex. 507 at MKB 01067; Pl. Ex. 526 at MKB 01242; FOF ¶¶ 289-90.)

As a consequence, HRA's own trainers did not understand that immigrants who have proof of abuse and are beneficiaries of pending or approved I-130 petitions may be eligible for public benefits. As explained in plaintiffs' post-hearing memorandum of law, this failing was clearly evident during the testimony of Reena Ganju, who testified that the trainer for the Waverly Job Center erroneously advised the Center Director's office that clients in the I-130 category are not eligible for benefits. (Tr. 454:20-455:5.)

Citing *Amnesty America v. Town of West Hartford*, 361 F.3d 113, 129-30 (2d Cir. 2004), the City claims that plaintiffs failed to establish that faulty training is “closely related to the ultimate injury.” (City Mem. 13.) But in fact, the evidence of a causal link is very strong. HRA's trainers received training materials wrongly stating that a “prima facie” notice is necessary to establish eligibility. Immigrants in the so-called I-130 group do not have a “prima facie” notice. One of those trainers wrongly informed Job Center staff at the Waverly Center that I-130 clients are not eligible because “the client needs to have a prime [sic] facie notice in order to be eligible for benefits.” (Tr. 454:20-455:5.) That erroneous instruction, in turn, led to the wrongful denial of benefits to Ms. Ganju's client C.W.S., who was in the I-130 category. (*Id.; see also* FOF ¶ 301 (M.E.); 304 (M.A.).) In short, faulty training materials led to erroneous information provided by trainers to Job Center staff, which led to incorrect denials of public benefits.[FN2]

FN2. HRA's training materials regarding PRUCOL clients were also badly flawed. As noted in plaintiffs' post-hearing memorandum of law (Pl. Mem. 21) and proposed findings of fact (FOF ¶¶ 322-26), HRA's training materials failed to indicate that PRUCOL clients can be eligible for Safety Net Assistance. (Pl. Ex. 469 at MKB01175-76; Pl. Ex. 464 at C12932.) These failings pertain to plaintiffs' claims against HRA under State law, which the Court may entertain under its supplemental jurisdiction.

The City relies heavily on the fact that it conducted periodic trainings for its staff. (City Mem. 17-19.) But HRA's training materials, and the policy directives they purported to explain, had significant errors. A clear illustration is provided by the City's faulty guidance regarding Social Security numbers. The City candidly admits that the “state regulations governing the requirements for social security numbers for immigrants are contradictory and appear irreconcilable.” (City Mem. 23.) As a result, the City's policy directives - which stated that furnishing a SSN is a condition of eligibility for public benefits (Pl. Ex. 636 at MKB-OTDA 10207) - were

incorrect. (Tr. 683:5-12.) However, even after the State (through Paul Dichian) orally advised the City to correct its policy directives, the City issued a new directive that was also incorrect and that Mr. Dichian would not have approved had he seen it. (Tr. 690:11-14.)

In short, the City may have conducted various trainings related to alien eligibility issues; but those trainings and the directives on which they were based contained errors that led to the systemic denial of benefits.

C. The City Is Not Absolved Of Liability Because It Acted *At The Direction Of The State.*

The City's final attempt to evade liability for unlawful practices is to shift blame for those practices to the State. The City argues that four of its policies and practices - those regarding Social Security numbers, PRUCOL status, multi-suffix cases, and Alien Registration numbers - were taken at the direction of the State, and therefore were exclusively the fault of the State. (City Mem. 22-27.) Notably absent from the City's argument, however, is any legal authority for the view that a municipal government that engages in a systemic violation of federal law at the direction of its principal, the State, bears no legal responsibility for that wrongful conduct. Indeed, the law is otherwise.

In § 1983 cases challenging actions by an agent taken at the direction of a principal, courts have adopted common law principles set forth in the Restatement of Agency. *See, e.g.*, *Raysor v. Port Auth.*, 768 F.2d 34, 38 (2d Cir. 1985), *cert. denied*, 475 U.S. 1027 (1986); Thaddeus-X v. Blatter, 175 F.3d 378 (6th Cir. 1999) (en banc). It is a basic principle at common law that an agent that acts unlawfully at the direction of a principal is jointly and severally liable with the principal. The Restatement (Second) of Agency § 343 (1958) provides: “An agent who does an act otherwise a tort is not relieved from liability by the fact that he acted at the command of the principal or on account of the principal, except where he is exercising a privilege of the principal ...” Sections 359C(1) and 217B(1) of the Restatement both provide as follows: “Principal and agent can be joined in an action for a wrong resulting from the tortious conduct of an agent or that of agent and principal, and a judgment can be rendered against each.”

In *Raysor,* the Second Circuit applied Restatement § 343 to determine the liability of agents in actions brought pursuant to § 1983. 768 F.2d at 38. There, a Port Authority police officer made an arrest at the command of his superior officer. *Id.* at 36. Suing under § 1983 and state law, the plaintiff alleged that the arresting officer had done so without a good faith belief that the order to him had been imparted lawfully. *Id.* Reversing the district court's dismissal of the state law claim, and holding that both claims should go forward, the Second Circuit held that the district court “ignored the general tort rule that an agent is not relieved of liability merely because he acted at the command of the principal, see Restatement (Second) of Agency § 343 comments b, d (1958).” 768 F.2d at 38.

Likewise, in Thaddeus-X, the plaintiff, a prisoner, alleged that prison officials retaliated against him for providing legal advice to another prisoner. 175 F.3d 378.

The district court dismissed the claims against three guards, believing they were absolved from liability because they were "merely executing their superior's orders." *Id.* at 393. The Sixth Circuit reversed, holding that "[r]eliance on a superior's orders does not in itself dissipate all liability," and noting that the result "accords with longstanding general and specific tort principles." *Id.* (citing Restatement (Second) of Agency § 343 cmt. d). The court emphasized that its holding was consistent with cases like *Forsyth v. Kleindienst,* 599 F.2d 1203, 1216-17 (3d Cir. 1979), which rejected an argument that FBI agents could not be held liable for wrongful conduct because "they were merely following the orders of their superior and should not be put to the test of either disobeying authority or being subject to liability." *Id.*

For these reasons, the City is not excused from liability under *Monell* on the ground that certain of its actions were taken at the direction of the State defendants.

POINT II

LIABILITY OF THE STATE DEFENDANT *UNDER 42 U.S.C. § 1983 HAS BEEN ESTABLISHED.*

The State defendants erroneously claim that the evidence admitted at trial did not demonstrate that State actions and omissions "actually caused the violation of plaintiffs' federal rights under the food stamp or Medicaid acts." (State Post-Hr'g Mem. of Law (State Mem.) 10.) The State makes this contention in relation to three areas: (1) erroneous training materials (State Mem. 10-12); (2) the WMS "second date" problem (State Mem. 13-14); and (3) difficulties opening "multi-suffix" cases in WMS (State Mem. 14-15). These assertions are wrong as a matter of fact.[FN3] (*See* Points II.A. through II.C. *infra.*)

FN3. In a legal argument it relegated to a footnote (State Mem. 12, n.6), the State also contends there was no evidence that its misleading CNS notices "deterred applicants from continuing to seek benefits." This argument is wholly lacking in merit. In the example the State discusses, declarant W.J.'s benefits were not discontinued solely because of the assistance of counsel. (W.J. Decl. ¶¶ 25-26.) The fact that counsel intervened to ensure that W.J.'s benefits would continue has no bearing on whether the notice itself violated due process. In evaluating the constitutional adequacy of the State's CNS notices, the question is whether they provided sufficient information to enable recipients to understand the basis for the agency's action and whether a challenge to the action is warranted. *See Kapps v. Wing,* 404 F.3d 105, 123-24 (2d Cir. 2005). The "specific type of notice required will vary depending on the circumstances of each given case," id. at 124, and must be determined by "taking into account the private interests affected by the city's action, the risk of erroneous deprivation of those interests through the procedures used, and the administrative burden placed on the city." *Henry v. Gross,* 803 F.2d 757, 767 (2d Cir. 1986); see *Mathews v. Eldridge,* 424 U.S. 319, 335 (1976). In this case, the State's CNS notices provided an incomplete list of immigrants who are eligible for benefits, omitting battered qualified aliens entirely. (FOF ¶¶ 380-85.) That omission left battered immigrants with the false impres-

> sion that they were ineligible for benefits and that an appeal could not succeed. In light of the risk of an erroneous deprivation of benefits created by the notice, the substantial private interests at stake, and the minimal cost of modifying the notice, the State's misleading CNS notice violated due process.

Additionally, the State's assertion that the Court's February 16, 2005 order should be vacated is contrary to the law and should be rejected. (*See* Point II.D. *infra.*)

A. *Erroneous Training Materials.*

The State does not even attempt to defend the accuracy of its training materials, which it assumes "arguendo" contain "certain omissions." (State Mem. 9-10.) Those "certain omissions" include the complete failure to mention the eligibility of battered qualified immigrants in the State's food stamp and Medicaid training materials. (FOF ¶¶ 260-63.) Additionally, the State's food stamp training materials contained many other serious errors that were acknowledged during Steven Ptak's testimony. (Tr. 1160:7-1162:12.)

Instead of defending the accuracy of its training materials, the State contends there was no evidence that their use had an impact at the City's Job Centers. But this contention is wrong. Mr. Ptak admitted that the training materials he attached to his affidavit were intended for use in Job Centers after comments from so-called "dry run training[s]" were incorporated. (Tr. 1153:19-25.) Although counsel for the State objected to further questioning about these training materials because, he claimed, "it's clear they're not about job centers" (Tr. 1155:3-6), he withdrew the objection after it was pointed out that Mr. Ptak had himself attached these training materials to his affidavit as evidence of trainings performed at Job Centers. (Tr. 1155:7-11.)

Ironically, the State also seeks to excuse its faulty training materials on the ground that "HRA workers are regularly trained on HRA materials" and that HRA's alien eligibility desk aids "include battered qualified aliens as potentially eligible for cash assistance, food stamps, and Medicaid." (State Mem. 11.) But the city desk aids had and still have various flaws. For example, as noted in plaintiffs' proposed findings of fact (FOF ¶ 266), even now the "Description of Status" in the current city desk aid refers only to those with a "prima facie." (Pl. Ex. 515 at MKB01127.) The description does not reference those with pending or approved I-130 petitions or those with approved I-360 VAWA self-petitions. Michelle Shepard, head of HRA's POS design team, testified that even she found this description confusing because it refers only to those with a "prima facie case." (Tr. 776:7-25, 777:21-25.)

B. *The "Second Date" Problem In WMS.*

The State cannot and does not dispute that the design of WMS was flawed because it allowed data in the date field associated with the Alien Citizenship Indicator (ACI) to be overwritten by a later date. A State witness, David Spielman, admitted that "workers were changing the date on the system which was making these people ineligible." (Tr. 1334:20-22.) In response to this litigation, the State took steps to

correct this problem by “locking down” the date field so that a more recent date cannot overwrite an earlier date.

As plaintiffs explained in their post-hearing memorandum of law (Pl. Mem. 12-14), this correction solves only part of the problem. Because WMS contains only a single date field associated with the ACI, it is impossible to track both the date of entry into the United States and the number of years of qualified alien status. The former is necessary to determine whether certain qualified aliens are eligible for federal public assistance and federal Medicaid; the latter is necessary to determine whether they are eligible for federal food stamps.

Astonishingly, rather than simply fixing the problem, the State responds that it will instead provide State-funded Medicaid and State-funded Safety Net Assistance to immigrants who are actually eligible for federal Medicaid and federal TANF benefits. (State Mem. 13.) Since the funding source is not evident to the benefit recipient (*id.*), according to the State's reasoning, the only losers in this arrangement are the taxpayers of New York, who are paying for the federal government's share of Medicaid and public assistance for these immigrants.

This response is flawed for two reasons. First, there is an important practical reason why such cases should be correctly opened under the federal assistance programs: no multi-suffix case problems will arise if all household members are receiving federal benefits. But if the cases are erroneously opened under the state programs for immigrant household members, and other household members are receiving federal benefits, then the multi-suffix case problems discussed at length during the hearing will arise.

Second, while the dollar value of cash assistance is the same under the federal and State programs, in other respects the rights of federal and State welfare recipients differ significantly. For example, after two years, certain statutory restrictions apply to State-funded Safety Net Assistance but do not apply to recipients of federal welfare benefits.[FN4] Further, recipients of federal welfare benefits are entitled to supplemental rental allowances if they are facing eviction because their “shelter allowance” is inadequate to pay the rent. *Jiggetts v. Dowling*, 261 A.D.2d 144, 689 N.Y.S.2d 482 (1st Dep't 1999). But the State disputes that Safety Net Assistance recipients are statutorily entitled to such allowances, *see* *Brownley v. Doar*, 11 Misc. 3d 615, 626, 811 N.Y.S.2d 894 (Sup. Ct. N.Y. Co. 2006)(appeal pending), and some state courts have held that they are not. *See* *McVay v Wing*, 303 A.D.2d 727, 727, 758 N.Y.S.2d 88, 88 (2d Dep't 2003); *Shubrick v. Wing*, 303 A.D.2d 744, 745, 757 N.Y.S.2d 450, 450 (2d Dep't 2003). Indeed, it is unseemly that the State is maintaining in *this* court that there is no difference between recipients assisted under the federal and State categories, while in *other* courts it is taking exactly the opposite position.

> FN4. Immigrants who are eligible for Safety Net Assistance under Soc. Serv. Law § 158(1)(g) “but have received cash assistance for two years or more shall receive assistance only in the form of non-cash assistance.” N.Y. Soc. Serv. Law § 159(5) (McKinney 2006); *see* N.Y. Comp. R. & Regs. 18 § 370.4(b)(2)(i)

(2006).

Accordingly, there are both legal and practical differences between receiving assistance under the federal and State categories. Since the federal courts are vested with a "virtually unflagging obligation" to exercise the jurisdiction given to them, *Col. River Water Conservation Dist. v. United States*, 424 U.S. 800, 817-818 (1976), and since clear evidence has been presented that the plaintiffs' federal rights have been violated, the Court should issue injunctive relief designed to redress the denial of those federal rights. In this case, that means directing the State to correct the "second date" problem.

C. *Multi-Suffix Cases.*

The State claims that no causal relationship was established between difficulties opening multi-suffix cases in WMS and the wrongful denial of benefits. This assertion is clearly refuted by the evidence, which demonstrated that the State issued inadequate instructions and provided inadequate training on how to open multi-suffix cases for immigrants, and that many of the plaintiffs' and declarants' cases had "errored out" for this reason. (FOF ¶¶ 225-45.) Even the City admits that the record "is clear that it is difficult to open such a case and that unless and until the State defendant issues clear instructions, the task for opening such a case will continue to pose challenges to job center workers." (City Mem. 27.)

D. The Court's February 16, 2006 Order Against the State *Should Not Be Vacated.*

The Court's February 16, 2006 order against the State should not be vacated for two reasons. First, in no reasonable sense of the word were the few corrective actions that the State took "voluntary." Second, even if they were "voluntary," unilateral actions by a party to comply with a court order or judgment do not provide a basis for vacating the order or judgment.

1. The State's corrective actions were in *no realistic sense "voluntary."*

The State's notion that it "voluntarily" undertook certain actions, and that the Court "memorialized the defendants' promises" in the February 16, 2006 order (State Mem. 2), seriously mischaracterizes the history of this action. Initially, the State vigorously disputed the need for any relief in this action. For example, in papers submitted on January 25, 2006, the State claimed: "The major alleged flaws of WMS simply do not exist." (State Mem. of Law in Opp. to Mot. for Prelim. Inj. and Class Cert. at 30.)

The State offered to undertake certain corrective measures only after the Court stated as follows during oral argument on the plaintiffs' preliminary injunction motion:

[W]e are only focusing on one aspect of this right now and I am not at all sure whether the plaintiffs are not entitled in any event to some sort of court order. But what I do know is that if they are not entitled to a court order it is because the city and state have come forward and said, Judge, we are fixing this problem and we are fixing it by date X, and if we don't fix it by date X, you know, impose your

order and do whatever else the law requires, but we are going to work our damnedest to have it done by date X.

(Tr. of Oral Arg., Feb. 2, 2006, 11:1-10.)

It was only in response to this statement by the Court, which effectively rejected the State's contention that no corrective steps were necessary, that the State agreed to correct one (and only one) of the WMS problems (that it had previously denied even existed), along with three other specific corrective actions. It tortures the English language to say that these corrective actions were undertaken "voluntarily."

2. Unilateral actions by a party to comply with an order or judgment do not warrant vacatur of the *order or judgment.*

Even if the State's actions were understood to be "voluntary," the State misstates the law with regard to such "voluntary" actions by the party seeking relief from an order or judgment. Vacatur of an order is improper when the party seeking relief from the order "caused the mootness by voluntary action." *U.S. Bancorp Mortgage Co. v. Bonner Mall Partnership,* 513 U.S. 18, 24 (1994). As the Supreme Court explained in U.S. *Bancorp Mortgage Co.,* by agreeing to comply with the order,
the losing party has voluntarily forfeited his legal remedy by the ordinary processes of appeal or certiorari, thereby surrendering his claim to the equitable remedy of vacatur. The judgment is not unreviewable, but simply unreviewed by his own choice. The denial of vacatur is merely one application of the principle that "a suitor's conduct in relation to the matter at hand may disentitle him to the relief he seeks."

Id. at 25 (quoting *Sanders v. United States,* 373 U.S. 1, 17 (1963); citing *Fay v. Noia,* 372 U.S. 391, 438 (1963)).

This rule applies regardless of whether mootness results from a formal settlement (as in *U.S. Bancorp Mortgage Co.*), or from unilateral compliance by the losing party with the district court's order. In *Housing Works, Inc. v. City of New York,* 203 F.3d 176, 177 (2d Cir. 2000) (per curiam), for example, the district court issued a preliminary injunction requiring the City to "re-rank" the plaintiff's applications for funding for two housing projects. The City complied with the court's order after its motions for a stay pending appeal were denied. *Id.* When the Second Circuit heard the appeal, the issue had become moot; the sole question on appeal was whether the Second Circuit should vacate the district court's preliminary injunction because the City had complied with the order. *Id.* at 178. This action the Court declined to do, noting that the "general practice" is to leave the injunction in place.[FN5] Id. at 178; *see also United States v. Doe (In re Grand Jury Investigation),* 399 F.3d 527, 529 n.1 (2d Cir. 2005) ("in the civil context, vacatur of a previously issued decision of a court of appeals is not constitutionally mandated, and indeed is typically inappropriate, when the appeal is subsequently mooted due to settlement between the parties *or the losing party's unilateral actions*")(emphasis added) (citing *U.S. Bancorp Mortgage Co.*); *Blackwelder v. Safnauer,* 866 F.2d 548, 551 (2d Cir. 1989) ("we find no basis for allowing a plaintiff who *lost* in a lower court to vacate the

adverse judgment simply by deciding that he no longer wishes to pursue the claim" (emphasis in original)).

> FN5. *Haley v. Pataki,* 60 F.3d 137 (2d Cir. 1995), on which the State relies (State Mem. 4), is not to the contrary. In *Haley,* the Court found that "[u]nder the circumstances of this case, vacatur of the injunction is proper." *Id.* at 142. The unique circumstances in *Haley* were quite different from this case, however. There, the Governor prevented the payment of salaries of employees of the State Legislature unless and until the Legislature enacted a State budget. Finding a probability of success that the Governor's actions violated the rights of the plaintiffs under the Contract Clause, the district court issued an injunction requiring "that insofar as the Governor undertakes to send future appropriations bills and messages of necessity to the legislature for the payment of state workers, he may not exclude payment to legislative employees from such bills." *Id.* at 140. The Governor appealed and sought a stay of the order, which was denied. The Governor then complied with the injunction while budget negotiations continued. In June, after adoption of a State budget, the appeal became moot. The Second Circuit vacated the injunction because the constitutional issue "is best addressed not on interlocutory appeal but at trial after full discovery." *Id.* at 142. Since the dispute had been resolved for the current budget year; and since discovery and a trial on the merits were to go forward before the next budget year, it was only logical to vacate the preliminary injunction and await a final ruling on the merits. Here, in contrast, there is no reason to vacate the order pending a trial on the merits. The preliminary injunction hearing in this case provides ample support for the Court's order.

Further, the public interest is not served by vacating an injunction after the losing party complies with it. As Justice Stevens has written, "[j]udicial precedents are presumptively correct and valuable to the legal community as a whole. They are not merely the property of private litigants and should stand unless a court concludes that the public interest would be served by a vacatur." *Izumi Seimitsu Kogyo Kabushiki Kaisha v. U.S. Philips Corp.,* 510 U.S. 27, 40 (1993)(Stevens, J., dissenting from dismissal of certiorari as improvidently granted); *see Mfrs. Hanover Trust Co. v. Yanakas,* 11 F.3d 381, 384-85 (2d Cir. 1993). No public purpose would be served by vacating the court's preliminary injunction; indeed, no logical reason of any kind has even been posited for vacating the injunction.

For these reasons, the fact that the State has complied with this Court's order of February 16, 2006, is not a reason for vacating it. The order should remain in place as a precedent.

POINT III

THE COURT SHOULD ORDER ADDITIONAL RELIEF *AGAINST THE CITY AND STATE DEFENDANTS.*

Since the preliminary injunction hearing, the defendants have taken some additional steps in response to the claims raised in this lawsuit. A number of additional actions are needed, however, in order to prevent the proposed plaintiff class from

suffering irreparable harm due to the systemic denial of public benefits. These actions are addressed individually below.

A. Additional Relief Is Warranted Against *the State Defendants.*

1. Single-date problem in WMS/green card holders *of less than five years.*

In response to an inquiry from the City seeking clarification of the policy of what constituted five years in qualified alien status, the State wrote a letter to David Lock at HRA's Office of Legal Affair, subsequent to the evidentiary hearing, explaining that the time an immigrant has been a lawful permanent resident should be added to the time an immigrant spent in another qualified alien status in order to determine eligibility for food stamps. (Post-Hr'g Supp. Decl. of David Lock, dated May 4, 2006 (Lock Supp. Decl.) Exhibit A (dated March 28, 2006).) This letter resolved the individual situation of Ms. Rybalko, but it does not ensure that other lawful permanent residents who have been qualified aliens for five years, but who have not been lawful permanent residents for five years, are provided federal food stamps. The State has not issued a policy bulletin or directive and has not performed training or otherwise instructed HRA workers regarding the clarification of the policy outlined in the letter to David Lock.

The change made to WMS to ensure that a date entered into the computer cannot be subsequently changed to a later date (Post-Hr'g Supp. Aff. of David Spielman, dated May 5, 2006 (Spielman Supp. Aff.)) also does not ensure that lawful permanent residents will receive the food stamps to which they are entitled. Two problems remain. First, as explained previously (Point II.B. *supra;* Pl. Mem. 12-14), the State should be ordered to add a second date field to WMS so that both the date an immigrant became a qualified alien and the date the immigrant entered the country can be recorded. Otherwise, some immigrants will be granted benefits erroneously under the State program rather than the federal program.

Second, the State's “date lock” solution will only help those immigrants who become lawful permanent residents while receiving public benefits. In those cases, the earlier date upon which they first became qualified aliens will already have been entered into WMS; and the later date on which they became lawful permanent residents will not overwrite it. But the “date lock” will do nothing to ensure that workers will *initially* enter the correct date if a person is already a lawful permanent resident at the time he or she first applies for benefits. To prevent continued erroneous denials of food stamps, the State should be ordered to issue a formal instruction, in the form of a policy bulletin or directive, explaining (1) which date to enter, and (2) that time in different qualified alien statuses should be added together to determine eligibility for federal food stamps.

2. Instructions on opening cases in WMS, *particularly multi-suffix cases.*

As discussed in detail previously (Pl. FOF ¶¶ 225-245; Pl. Mem. 34-36), due to inadequate instructional material and training, HRA workers have great difficulty opening cases for aliens directly in WMS, particularly when those cases require two suffixes. The City candidly admits the significant problems HRA workers have opening

these cases because the State has not issued clear instructions (City Mem. 27) and explicitly "requests that the State defendant issue specific direction on opening cases on aliens in WMS" (City Mem. 32).

The plaintiffs join this request and respectfully ask the Court to order the State to prepare clear and comprehensive instructions on how to open cases for aliens directly in WMS, focusing particularly on multi-suffix cases.

3. Social Security numbers for applicants for *federal benefits.*

By approving the City's revised policy directives on Social Security numbers, the State has implicitly conceded that its policy directives - including the form letter provided to applicants for Social Security numbers - are incorrect. But inexplicably the State has failed to revise its own policy directives. The conflict between the State and City directives is likely to cause confusion. Furthermore, the State form letter and directives are manifestly incorrect and must be revised to conform to federal law. This Court should not acquiesce in the view ascribed by Mr. Dichian to "management" at OTDA, which was that the Social Security number problems at issue here are somehow unique to New York City.[FN6] To prevent the continued erroneous denial of federal food stamps and federal Medicaid, the State should be ordered to correct its policy directives on Social Security numbers. (Pl. Mem. 8-11; Pl. FOF ¶¶ 273-76.)

FN6. At trial, Mr. Dichian testified that "management" directed HRA to correct City policy bulletins instead of correcting the State's own faulty directives. (Tr. 663:25-664:23.) In response, the Court asked: "Well, I am missing something. The state has the ultimate authority on this kind of stuff, right? ... [W]hy did they leave it to HRA?" Mr. Dichian responded: "As I recall, they saw it as an HRA, a city problem and that HRA should issue the directive." (Tr. 664:24-665:16.) The Court responded: "Why did they see it as a city problem? It directly related to the interpretation of state regulations, yes?" (Tr. 665:17-19.) Later the Court asked: "It is not the view of the two persons you mentioned that spousal and child abuse is limited to New York City, correct?" (Tr. 667:6-8.)

4. *Training on federal Medicaid.*

As requested by the plaintiffs, the State has revised its training materials regarding eligibility for federal food stamps. (Post-Hr'g Supp. Aff. of Steven Ptak (Ptak Supp. Aff.) ¶ 6.) The State has not, however, revised its training materials regarding eligibility for federal Medicaid.[FN7] The State's most recent training materials on eligibility for federal Medicaid leave battered qualified aliens off the list of those eligible. (Pl. FOF ¶ 261; Pl. Ex. 536 at MKB01355-57.)

FN7. The State's revised training materials do mention emergency Medicaid, Medicaid for pregnant individuals, and Child Health Plus B, a form of Medicaid for children. (Post-Hr'g Supp. Aff. of Robert L. Sharkey, dated May 5, 2005 (Sharkey Supp. Aff.) Ex. E at 5.) These programs, which are not at issue in this case, are open to persons regardless of immigration status. At no point do the State's training materials explain who is eligible for federal Medicaid

(or State Medicaid).

The State therefore should be ordered to revise its training materials, including those prepared and used by contractors, so that they accurately and comprehensively explain which immigrants are eligible for federal Medicaid.

B. Additional Relief Is Warranted Against *the City Defendant.*

1. Social Security number requirements.

In response to the allegations in this case, the City has issued revised policy directives regarding Social Security numbers. While these policy directives are an improvement, they still contain significant errors. For example, the form letter given to applicants for Social Security numbers still erroneously states that all applicants "must provide a Social Security number as a condition of eligibility for receipt of Temporary Assistance." (HRA Policy Directive 06-15, Attachment A, attached to Post-Hr'g Supp. Decl. of James Whelan, dated May 5, 2006 (Whelan Supp Decl.) as Ex. D.) This statement, which is incorrect when applied to those applying for State benefits who cannot receive a Social Security number due to their immigration status, is likely to confuse HRA workers and applicants. The City should be ordered to correct this and other errors.[FN8]

FN8. Attachment A to PD 06-10 states that if the reason an applicant is denied a Social Security number cannot be resolved, then the worker should "re-evaluate the individual's eligibility for PA, MA, and/or FS." (Whelan Supp. Decl. Ex. B.) This statement may lead a worker to erroneously conclude that an individual is ineligible for benefits if they are denied a Social Security number. Workers may also be confused because the revised policy directives (for example, PB 06-63, attached as Ex. C to Whelan Supp. Decl.) reference PD 06-09, which was withdrawn on May 5, 2006, a week after it was issued, presumably because in the introductory policy statement it erroneously stated: "Furnishing a Social Security Number (SSN) is a condition of eligibility for public assistance (PA), food stamps (FS) and medical assistance (MA)." (Whelan Supp. Decl. Ex. A.)

To prevent the continued erroneous denial of benefits, the City should also be ordered to conduct comprehensive training on these policy directives for *all* workers involved in eligibility determinations. (Pl. FOF ¶¶ 273-287; Pl. Mem. 8-12, 16-20.). That is, the City should train not only workers who make initial eligibility determinations, but also workers who (a) process requests to be added to a case, (b) process recertifications, (c) make decisions to take adverse case actions, (d) process fair hearings, or (e) review any of the above determinations.[FN9]

FN9. In its brief, the City asserts that its staff "*has provided training* on these [revised Social Security number] P.D.'s." (City Mem. 31 (emphasis added)). This assertion is not supported by anything in evidence, and is improbable given that one of the directives was issued the day the brief was filed and the others the week before. (Whelan Supp. Decl. Exs. A, B and C (issued April 27, 2006); Whelan Supp. Decl. Ex. D (issued May 5, 2006).)

2. Eligibility for benefits of battered qualified aliens *and persons who are PRUCOL.*

The City states that it has developed a proposed policy directive on the eligibility of applicants who are battered or PRUCOL. (Whelan Supp. Decl. ¶ 8.) According to the Court's February 16, 2006 order, this directive must be published this month (specifically within four weeks of April 28, 2006) and trained on in the following month. Since the proposed policy directive has not been shared with the Court or the plaintiffs, it is impossible to know whether it will correctly describe the eligibility of battered qualified aliens and persons who are PRUCOL. Even assuming it does, the plaintiffs are also requesting that the Court order the City to correct other policy directives that omit reference to the eligibility of the I-130 group of immigrants (such as 03-65-ELI, which is Pl. Ex. 507). (Pl. FOF ¶¶ 264-290.) Furthermore, the plaintiffs are requesting an order specifying that the training on the proposed policy directive, as well as the other corrected policy directives, should be of *all* staff involved in eligibility determinations (as defined in Point III.B.2. *supra*). Even if these eligibility determinations are not made by frontline workers because the cases are handled by the immigrant liaisons, frontline workers should still be trained on how to correctly identify battered qualified aliens and persons who are PRUCOL so that they can make the appropriate referral.

3. Green card holders who have had their green *cards for less than five years.*

As discussed above, the recent changes made by the City and State do not ensure that lawful permanent residents who have had that status for less than five years are not erroneously denied food stamps. The City should be ordered to issue a policy directive or bulletin and refer all of these cases to the immigrant liaisons, or in the alternative to train *all* workers involved in eligibility determinations (as defined in Point III.B.2. *supra*) on how to determine the number of years that an alien has been a qualified alien. The City should also be ordered to train workers on which dates must be entered into POS and WMS.

4. *Training on opening cases for alien in WMS.*

As discussed above, the City admits that additional training is needed on opening cases for aliens in WMS. (City Mem. 27, 32.) The City claims, however, that it “has no control” over the situation and cannot do anything without the direction of the State. (City Mem. 27.) While the City cannot make changes to WMS, it does have control over the training provided on WMS. Whether or not the State is ordered to provide instructional material, the City should be ordered to conduct training of all staff who are involved in opening cases for aliens directly in WMS.

5. *Issuance of notices.*

The City fails to provide written notice of the denial of public benefits (a) when an immigrant household initially applies for public benefits and the case is accepted for the citizen children and denied for the immigrant family members; and (b) when a request to add immigrant household members to the existing public benefits case of an immigrant child is denied. (Pl. Mem. 14-16; Pl. FOF ¶¶ 365-379.) The recent changes to the CNS and POS notice systems (City Mem. 32-33) do little to ad-

dress the former situation and nothing to address the latter situation.

The change to the CNS notice system so that it issues notices when cases are denied does not address either of these situations because a CNS notice is not issued when one family member is accepted or has an open case and another family member is denied. (Tr. 1294:2-5.)

The POS modification may result in the more frequent issuance of notice when a citizen child is accepted and an immigrant family member is initially denied. Effective March 20, 2006, notices generated by POS will list the names of the persons denied benefits and the names of the persons accepted for benefits. (Post-Hr'g Supp. Decl. of Michele Shepard (Shepard Supp. Decl.) Ex. D at 6.) POS, however, will not generate notices for multi-suffix cases (Shepard Supp. Decl. ¶ 6) and it does not appear that POS will generate notices when individuals ask to be added to an open case. Furthermore, even when POS does generate a notice, in some cases workers will still need to enter the denial reason themselves. (Shepard Supp. Decl. Ex. D at 6.)

Because notices still often are not completely computer generated, the City should be ordered to issue a policy directive and conduct training on the necessity of providing notices when individuals ask to be added to an existing case, and the need to complete and issue notices listing the individuals accepted, those denied public benefits, and the reason for the denial, whenever one or more members of a household is accepted and one or more is denied due to immigration status.

6. *Cases not handled by liaisons.*

The City still has not clarified whether the immigrant liaisons will handle any eligibility determinations outside the context of initial applications. (Pl. Mem. 45; Pl. FOF ¶ 412; Tr. 1232:15-1233:22.) As discussed in more detail previously (Pl. Mem. 45), the plaintiffs are therefore requesting that if the City does not refer to the immigrant liaisons all issues regarding immigrant eligibility or Social Security or Alien numbers, that all staff who handle *any* eligibility determinations (as defined in Point III.B.2. *supra*) for proposed class members be provided with the same training that the immigrant liaisons receive.

7. *POS revisions.*

The changes to POS described by Michele Shepard in her supplemental declaration appear adequately to address the primary concerns of the plaintiffs. If these changes are implemented by June 5, 2006, as expected by Ms. Shepard (Shepard Supp. Decl. ¶ 5), then the plaintiffs' request no further preliminary relief related to POS. If these changes are not implemented as promised, the plaintiffs reserve the right to request such preliminary relief.[FN10]

FN10. The plaintiffs note that the City has already failed to meet one deadline set by this Court. In its February 16, 2006 order, the Court ordered the City by April 27, 2006, to modify POS to recognize those with I-130 petitions and proof of abuse. The City now without explanation states that it will not make this revision until June 5, 2006. (City Mem. 30 (“The modifications to

POS directed by the court in its February 16th Order are included in the POS revisions discussed in the Shepard Supp. Decl and will be completed by June 5, 2006.").)

POINT IV

GALINA RYBALKO'S APPLICATION *TO INTERVENE SHOULD BE GRANTED.*

The proposed class definition includes lawful permanent residents who have been in that status for less than five years but who have been in a qualifying status for at least five years and who were wrongfully denied food stamps. Galina Rybalko's application to intervene as a named plaintiff should be granted, as she is an appropriate representative of class members in that circumstance, her request for intervention was timely, and her claim shares a common question of law and fact with the other plaintiffs. As explained more fully in plaintiffs' post-hearing memorandum of law (Pl. Mem. 46-47), Ms. Rybalko was denied public benefits to which she was legally entitled for the same reasons other plaintiffs were denied: the lack of adequate training and resulting confusion of City defendant employees.

City defendant's contention that Ms. Rybalko should not be permitted to intervene because "there is no case or controversy affecting Ms. Rybalko" is contrary to the case law on this subject. While Ms. Rybalko currently receives food stamps, at the time of her motion to intervene,[FN11] Ms. Rybalko had a justiciable claim. In *Robidoux v. Celani*, 987 F.2d 931 (2d Cir. 1993), the Second Circuit rejected City defendant's precise argument and held that "each intervenor at the time of her motion to intervene was suffering from a delay beyond the period provided by federal law for the processing of her application for food stamp or ANFC benefits. Thus, at the material time, each plaintiff was suffering injury capable of being redressed by declaratory or injunctive relief." 987 F.2d at 938.

FN11. On March 24, 2006, this Court deemed plaintiffs' oral application to add Ms. Rybalko as a named plaintiff to be a motion for that relief. (Tr. 1409:6-12.)

The Second Circuit also noted in *Robidoux* that the "[a]ppellants' claims [we]re inherently transitory since the Department will almost always be able to process a delayed application before a plaintiff can obtain relief through litigation." *Id.* So too with the benefits at bar, where it is very likely that every time a potential plaintiff moves to intervene to represent this group, the intervener's personal application will soon after be correctly determined and her individual claim will become "moot." While beneficial to those individuals, such resolution will never address the rights of the unidentified class members.

No more convincing is City defendant's allegation that because Ms. Rybalko's application has finally been correctly adjudicated, "there is no subclass facing potential damage to be represented" (City Mem. 46). Common sense dictates that Ms. Rybalko is not the only lawful permanent resident in her circumstance. In fact, the defendants' policy statements on the issue are so lacking, that even after Ms. Rybalko's wrongful denial was brought to City defendant's counsel's attention, City defendant's counsel did not comprehend the scheme and as of the close of the hearing, Ms. Ry-

balko still was not receiving food stamps. Such incomprehension at such senior levels of City defendant demonstrates the need for this group to be represented as part of the class. Ms. Rybalko should be permitted to intervene.

POINT V

THE PROPOSED PLAINTIFF CLASS SHOULD BE CERTIFIED.

City defendant's post-hearing memorandum of law largely repeats arguments already briefed in full by both parties or recycles issues that have already been disposed of by this Court. Plaintiffs limit their response accordingly, and respectfully refer this Court to the plaintiffs' prior filings. Plaintiffs will address only the few new objections raised in City defendants' opposition papers.

First, City defendant's assertion that Rule 23(a)(1)'s numerosity requirement is not met because City defendant does not believe that "there are numbers beyond the group Ms. Ganju identified" defies logic and common sense. Obviously Ms. Ganju, a single attorney, did not know every single immigrant class member who has been wrongfully denied public benefits in the whole of the City of New York. As courts are empowered to "make common sense assumptions to support a finding of numerosity," this Court should use its own common sense to disregard any argument that presumes Ms. Ganju could have represented, or even known, every potential class member. *See* German v. Fed. Home Loan Mortgage Corp., 885 F.Supp. 537, 552 (S.D.N.Y.1995), *clarified,* 896 F.Supp. 1385 (S.D.N.Y. 1995).

Further, as this court noted in *McNeill v. New York City Housing Auth.,* 719 F.Supp. 233, 252 (S.D.N.Y.1989), "[i]t is permissible for the plaintiffs to rely on reasonable inferences drawn from the available facts." As the available facts demonstrate that Ms. Ganju, one attorney, has identified between 50 and 60 affected individuals, a reasonable inference would be that many more affected individuals exist, and are either represented by other attorneys, or not represented at all. (Tr. 474:16-475:2.)

Next, City defendant's allegation that the class definition is overbroad because it "seek[s] to have future applicants included within the class without any cut off for inclusion" is contrary to the body of Second Circuit case law on class certification. Courts routinely certify classes whose class definitions allow for the inclusion of future applicants. *See, e.g.,* Robidoux, 987 F.2d at 939 (remanding to certify a class comprising at least "all current and future Vermont applicants for assistance from the Food Stamp and ANFC programs"); *Morel v. Giuliani,* 927 F.Supp. 622, 632-634 (S.D.N.Y. 1995) (certifying a class consisting of "[a]ll residents of New York City who have received or will receive AFDC, Food Stamp or Home Relief benefits who have requested, are requesting, or will request a fair hearing in response to an action by the City agency to discontinue, suspend, reduce, or restrict benefits and are entitled to aid continuing"); *D.D. v. New York City Bd. of Educ.,* No. Civ-03-2489, 2004 WL 633222, at *27 (E.D.N.Y. Mar. 30, 2004) (certifying a class consisting of "[a]ll present and future New York City preschool children with [Individualized Education Programs] who have not or will not timely receive all of the services required by their IEPs").

City defendant's allegations regarding the inadequacy of class counsel have already been disposed of by this court in its memorandum order denying defendants' motion for disqualification and merit no further discussion in this brief.

For all of these reasons, and all reasons previously argued, the class should be certified.

CONCLUSION

For the foregoing reasons, this Court should (1) issue a preliminary injunction granting the relief set forth in Point III *supra;* (2) grant the motion to intervene by Galina Rybalko; and (3) certify a class as defined in paragraph 30 of the Complaint, along with such other relief as the Court deems just and proper.

M.K.B., O.P., L.W., M.A., Marieme Diongue, M.E., P.E., Anna Fedosenko, A.I., L.A.M., L.M., Denise Thomas, and J.Z., on their own behalf, and on behalf of their minor children and all others similarly situated, Plaintiffs, v. Verna EGGLESTON, as Commissioner of the New York City Human Resources Administration, Robert Doar, as Commissioner of the New York State Office of Temporary and Disability Assistance, and Antonia C. Novello, as Commissioner of the New York State
2006 WL 1793015 (S.D.N.Y.)

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