

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

JUDGE SULLIVAN

10 CIV 6350

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

Plaintiffs,

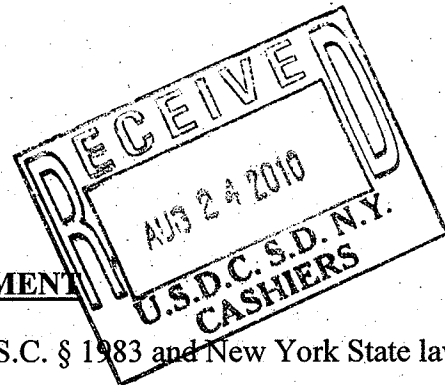
vs.

10 Civ. _____

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.

CLASS ACTION COMPLAINT



PRELIMINARY STATEMENT

1. Plaintiffs bring this action pursuant to 42 U.S.C. § 1983 and New York State law, on behalf of themselves and a class of all persons residing in New York City who have received or will receive public assistance through the Safety Net Assistance program, who live or lived in households with at least one minor child, and who have been or will be sanctioned, pursuant to incorrect, affirmatively misleading, and defective notices, for a longer minimum duration than is permissible by law for allegedly failing to comply with public assistance employment requirements.

2. Plaintiffs challenge Defendants' systemic policies and practices of reducing or discontinuing their Safety Net public assistance benefits for minimum periods in excess of those provided for by law, pursuant to incorrect, affirmatively misleading, and defective notices, in violation of the Due Process clauses of the United States and New York State Constitutions, as

well as New York State laws and regulations.

3. For at least the past six years, the New York City Human Resources Administration (“HRA” or “City Defendant”) and the New York State Office of Temporary and Disability Assistance (“OTDA” or “State Defendant”) have wrongfully engaged in policies and practices that systemically deprive thousands of low income New York City residents living with minor children of public assistance benefits to which they are entitled.

4. Most able-bodied recipients of public assistance must seek and maintain employment and/or participate in approved employment, training or education programs (“employment requirements”) in order to maintain their eligibility to receive benefits. Individuals who fail to comply with these employment requirements may be “sanctioned,” or subjected to periods of time during which their benefits are reduced or discontinued, and they may be removed from associated employment and training programs.

5. Under New York State law, sanctioned individuals who live in households without minor children are subject to significantly longer minimum sanctions than individuals who live in households with minor children.

6. Although Defendants are or were aware that Named Plaintiffs and members of the plaintiff class are or were living in households that contain minor children, plaintiffs have been or will be subjected to the harsher penalties legally applicable only to individuals living in households without minor children. As a direct result of Defendants’ systemic practices, these individuals and their families have been or will be wrongfully subjected to additional months of reduced or discontinued subsistence benefits, depriving them each of hundreds of dollars they cannot afford to lose.

7. After these issues were brought to Defendants’ attention by Plaintiffs’ counsel,

Defendants admitted that they have, since 2004, systemically issued incorrect notices to recipients of Safety Net Assistance living in households with minor children, which resulted in the unlawful imposition of excessive sanctions on thousands of public assistance recipients.

8. In July 2010, Defendants agreed to (a) change their policies and practices to ensure that members of the plaintiff class are no longer subjected to unlawful sanctions; (b) identify all members of the plaintiff class who were currently under unlawful sanctions imposed pursuant to Defendants' incorrect, affirmatively misleading, and defective notices; (c) lift all sanctions in effect at that time pursuant to these notices and resume payment of full benefits going forwards; (d) delete these lifted sanctions from plaintiffs' public assistance records; and (e) revise their notices in the future to state the correct minimum sanction durations and include more information about the bases for the sanction durations.

9. To date, Defendants have identified some but not all members of the plaintiff class who were under unlawful sanctions in July 2010 pursuant to Defendants' incorrect, affirmatively misleading, and defective notices. However, Defendants have not yet lifted or deleted all the corresponding unlawful sanctions. Furthermore, Defendants have refused to restore lost benefits to these currently-sanctioned households.

10. Defendants have also refused to restore lost benefits to the many thousands of members of the plaintiff class who were wrongfully deprived of public assistance benefits over the past six years due to Defendants' systemic policies and practices of unlawfully subjecting them to excessive sanctions pursuant to these notices, and who are not under a current sanction.

11. Plaintiffs seek, *inter alia*, a class-wide permanent injunction ordering City and State Defendants to refrain from their unlawful conduct as alleged herein; to lift all sanctions currently in effect pursuant to Defendants' incorrect, affirmatively misleading, and defective

notices; to delete all sanctions imposed upon members of the plaintiff class since August 2004 pursuant to Defendants' incorrect, affirmatively misleading, and defective notices; and to restore lost benefits to all members of the plaintiff class who were unlawfully subjected to excessive penalties pursuant to these notices.

JURISDICTION AND VENUE

12. This Court has federal question jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3) and (4) over claims arising under 42 U.S.C. § 1983.

13. This Court has supplemental jurisdiction under 28 U.S.C. § 1367 over plaintiffs' claims against Defendants under the New York State Constitution and the New York State laws and regulations implementing New York State's public assistance policies.

14. Venue properly lies with this district pursuant to 28 U.S.C. § 1391(b).

PARTIES

Plaintiffs

15. Plaintiff JOEANN HERCULES lives in Bronx, New York, and at all times relevant to this action was entitled to receive Safety Net public assistance benefits, including in January 2010, when she received a notice reducing her household's public assistance benefits for a minimum period of 90 days. A copy of this notice is attached as Exhibit A.

16. Plaintiff LADORN BROWNE lives in New York, New York, and at all times relevant to this action was entitled to receive Safety Net public assistance benefits, including in May 2010, when her husband Albert Browne received a notice reducing their household's public assistance benefits for a minimum period of 150 days. A copy of this notice is attached as Exhibit B.

Defendants

17. Defendant ROBERT DOAR (“DOAR”) is the Commissioner of the New York City Human Resources Administration (“HRA”), the executive agency of the City of New York responsible for (a) the operation and administration of public benefits programs for New York City residents, including public assistance and food stamps, and (b) complying with federal and state law and regulations relating to those public benefits programs. Commissioner DOAR is sued in his official capacity

18. Defendant ELIZABETH BERLIN (“BERLIN”) is the Executive Deputy Commissioner of the New York State Office of Temporary and Disability Assistance (“OTDA”), the executive agency of the State of New York responsible for (a) supervising the operation and administration of all public benefits programs in New York State, including those operated or administered locally in New York City by HRA; (b) complying with federal and state law and regulations with respect to public benefits programs; (c) promulgating regulations to ensure that the applicable state and city agencies, including HRA, comply with federal and state law and regulations; and (d) enforcing those laws and regulations. Executive Deputy Commissioner BERLIN is sued in her official capacity.

CLASS ACTION ALLEGATIONS

19. The named plaintiffs bring this action on their own behalf, and pursuant to Rule 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure, on behalf of a class of all persons residing in New York City who have received or will receive public assistance through the Safety Net Assistance program, who live or lived in households with at least one minor child, and who have been or will be sanctioned, pursuant to incorrect, affirmatively misleading, and defective notices, for a longer minimum duration than is permissible by law for allegedly failing to comply with public assistance employment requirements.

20. The class is so numerous that joinder of all members is impracticable.

21. In July 2010, Defendants preliminarily identified over 1,100 individuals who, at that particular moment in time, were currently under an unlawful sanction imposed pursuant to Defendants' incorrect, affirmatively misleading, and defective notices. This represents only a fraction of the proposed class, since many other class members were similarly sanctioned for longer minimum durations than were permissible by law at various points over the past six years, but are not currently under sanction.

22. There are questions of law and fact common to the class, including but not limited to (a) whether Defendants engage in unlawful policies and practices by (i) issuing incorrect, affirmatively misleading, and defective notices to class members; and (ii) wrongly subjecting class members to the harsher penalties for violations of the public assistance employment requirements that are applicable only to those living in households without minor children; and (b) whether such practices violate the rights of class members to due process of law.

23. The Named Plaintiffs' claims are typical of the claims of the class. Each of the Named Plaintiffs was living in a household with at least one minor child when Defendants issued her an incorrect, affirmatively misleading, and defective notice, and deprived her of Safety Net public assistance benefits to which she was entitled by unlawfully sanctioning her for the longer minimum sanction duration applicable only to individuals living in households without minor children when she allegedly failed to comply with public assistance employment requirements.

24. The Named Plaintiffs will adequately and fairly protect the interests of all members of the class because they have the requisite personal interest in the outcome of this litigation and they have no interest antagonistic to others in the class.

25. The Named Plaintiffs are adequate representatives of the class. The Named

Plaintiffs and proposed class are represented by The Legal Aid Society and the New York Legal Assistance Group, two leading public interest law firms with extensive experience in litigating class action cases, including numerous cases against HRA and OTDA, several of which specifically addressed due process and other violations of federal rights, and Cooley, LLP, a prominent national law firm with extensive litigation and class action experience and a recognized commitment to pro bono representation of low-income families.

26. The Defendants have acted and will act on grounds generally applicable to each member of the plaintiff class, thereby making appropriate final declaratory and injunctive relief with respect to the class as a whole.

**STATE STATUTORY AND REGULATORY SCHEME
REGARDING SANCTIONS AND NOTICE REQUIREMENTS**

27. New York State has established two public assistance programs to provide for families and individuals who do not have sufficient funds to support themselves. The Family Assistance program, which is funded in part by the federal block grant to states for temporary assistance to needy families ("TANF"), is available to some indigent families with a child under 18 years of age and to pregnant women. The Safety Net Assistance program, which does not receive federal TANF funds, is available to all other eligible needy individuals, including families with minor children who are ineligible for Family Assistance because of statutorily imposed time limits or immigration status. N.Y. Soc. Serv. Law ("SSL") §§ 158, 349.

28. New York's maximum public assistance grant levels are generally less than 50% of the federal poverty guidelines.

29. Recipients of public assistance rely on these subsistence benefits to pay rent, utility bills for gas, electricity, and telephone service, and public transportation expenses, and to buy essential items such as clothing and school supplies.

Public Assistance Employment Requirements

30. Adult recipients of public assistance benefits in New York State are subject to mandatory requirements that they seek and maintain employment to continue receiving benefits (18 N.Y.C.C.R. § 385.2(a)), unless they are found exempt due to age, disability, or other reason (SSL § 332; 18 N.Y.C.C.R. § 385.2(b)).

31. Recipients who fail to comply with these mandatory public assistance employment requirements are subject to “sanctions,” or penalties that cause a pro-rata reduction or discontinuance of their benefits for a minimum specified time period based on two schedules set forth in SSL §§ 342(2) and (3), which apply to individuals living in households, respectively, with and without minor children.

32. The minimum durations of sanctions imposed for first and second violations of the public assistance employment requirements are shorter for individuals who live in households with minor children than for individuals living in households which do not contain minor children. Compare SSL § 342(2) to § 342(3).

33. The table below reflects the schedules of sanction durations for violations of the employment requirements based on the two relevant factors incorporated in SSL § 342: (a) whether the sanctioned individual is a member of a household with at least one minor child, and (b) whether she has previously been sanctioned for violations of the public assistance employment requirements, as the penalties increase for second, third and subsequent violations in both schedules. The schedules specified in SSL §§ 342(2) and (3), are also incorporated in parallel State regulations, 18 N.Y.C.C.R. §§ 385.12(d)(1) and (2).

	Duration of First Sanction	Duration of Second Sanction	Duration of Third and Subsequent Sanctions
Public Assistance – Parent or Caretaker of Dependent Child	Until willing to comply	3 months & until willing to comply	6 months & until willing to comply
Public Assistance – Member of Household Without Dependent Children	90 days & until willing to comply	150 days & until willing to comply	180 days & until willing to comply

34. Sanctions imposed for alleged violations of the employment requirements continue for the minimum periods described above, and until recipients are willing to comply with the employment requirements. Sanctions are not lifted automatically at the end of the minimum sanction period. To resume receiving benefits, a recipient must request that the sanction be lifted. SSL §§ 342(2) and (3); 18 NYCRR §§ 385.12(d)(1) and (2).

Benefit Reduction Notice Requirements

35. Pursuant to SSL § 341(1)(a) and (b), and regulations promulgated by OTDA, 18 NYCRR 358-3.3(a)(1), public assistance recipients are entitled to timely and adequate notice whenever a social services agency intends to reduce their public assistance grants.

36. Accordingly, when an agency intends to sanction a public assistance recipient for her alleged refusal or failure to comply without good cause with the public assistance employment requirements, the agency must issue an adequate and timely notice that informs the recipient that the agency has determined that she has refused or failed to comply with the employment requirements. 18 NYCRR § 385.12(a)(2)(ii).

37. This notice must identify the specific instance(s) of alleged noncompliance, and the regulation in which the violated requirement is contained. 18 NYCRR § 385.12(a)(2)(iii)(a).

38. Pursuant to OTDA's regulations, 18 NYCRR § 385.12(a)(2)(iii)(c), this notice must inform the recipient of the correct minimum sanction duration as specified in SSL §§ 342(2)-(3) and 18 NYCRR §§ 385.12(d)(1)-(2) in order to be considered "adequate."

FACTS CONCERNING THE CLASS

39. The sanction process is the mechanism through which Defendants may reduce or discontinue public assistance benefits to recipients determined to be non-compliant with the public assistance employment requirements.

40. Once HRA makes a determination that it believes that a recipient of benefits has violated an employment requirement – by, for example, missing a required employment interview – Defendants initiate the sanction process by sending a Notice of Decision ("Sanction Notice") to the recipient's household.

41. Each year, Defendants issue more than ten thousand Sanction Notices to public assistance recipients residing in New York City, imposing sanctions upon them for violations of the public assistance employment requirements.

42. The very large majority of these Sanction Notices are generated by OTDA's Client Notice System ("CNS"), using information supplied by two computer systems: HRA's New York City Work, Accountability, and You ("NYCWAY") system, and OTDA's Welfare Management System ("WMS").

43. Due to Defendants' incorrect programming of their computer systems, from August 2004 until at least July 2010, all CNS-generated employment-related Sanction Notices sent to recipients of Safety Net Assistance who were living in households with minor children

wrongly imposed the harsher sanctions that were appropriate only for households without minor children.

44. Under New York State law, an adult living in a household with minor children who is being penalized for her first or second violation of the employment requirements is subject to a sanction of shorter minimum duration than she would receive if she lived in a household without minor children. Compare SSL § 342(2) to § 342(3).

45. Since at least August 2004, however, Defendants have issued incorrect, affirmatively misleading, and defective notices to many thousands of individuals living in households with minor children and receiving Safety Net Assistance, informing them that their public assistance benefits will be reduced or discontinued for the longer minimum durations specified in SSL § 342(3), which are legally applicable only to individuals living in households without minor children.

46. As a result, Defendants have systematically and unlawfully deprived class members sanctioned for first violations of three months of essential subsistence benefits, by wrongly sanctioning them for at least 90 days, rather than correctly imposing sanctions that could have been lifted immediately.

47. Defendants have similarly systemically and unlawfully deprived class members facing their second sanctions of an additional two months of essential subsistence benefits by wrongly sanctioning them for at least 150 days, rather than allowing them to receive full benefits after 90 days.

48. The Sanction Notices include a statement indicating whether HRA believes that the individual being sanctioned lives in a household with or without minor children.

49. The Sanction Notices sent to members of the plaintiff class often correctly state that there is a minor child in the recipient's household, even though the duration of the sanction imposed by the notice is legally applicable only to a household without children.

50. The Sanction Notices do not provide any information about how the minimum duration of the imposed sanction was calculated. The notices are silent as to what impact, if any, an individual's household composition has on the sanction length.

51. As a consequence of these incorrect, affirmatively misleading, and defective notices, members of the plaintiff class had no reason to believe or understand that Defendants were unlawfully subjecting them to the harsher penalties applicable only to households without minor children.

52. Because Defendants' notices state explicitly that plaintiffs' benefits cannot be reinstated until a specific date that is several months later than the date on which plaintiffs should be able to have their sanctions lifted, these incorrect and affirmatively misleading notices induce members of the plaintiff class not to go into their local HRA offices to request that their sanctions be lifted prior to the date stated in the notice.

53. Thousands of recipients sanctioned for first violations therefore lost benefits to which they were entitled for 90 days instead of being able to have their sanctions lifted immediately; individuals who were sanctioned for second violations lost benefits for 150 days instead of 90 days.

54. Defendants admit that they have systemically issued incorrect notices to members of the plaintiff class since August 2004, which resulted in the unlawful imposition of excessive sanctions on members of the plaintiff class.

55. As of approximately July 9, 2010, HRA had identified over 1,100 Safety Net Assistance recipients living in households with minor children, who were at that time under their first or second sanctions pursuant to these incorrect, affirmatively misleading, and defective notices.

56. There may be additional recipients of Safety Net Assistance who meet these criteria, but who have not yet been identified.

57. In July 2010, HRA agreed to lift the sanctions of those individuals who were currently under sanction pursuant to these notices, restart their benefits prospectively, and delete the unlawful sanctions from their public assistance records.

58. However, HRA has not yet done so for all these individuals.

59. HRA has refused to restore the benefits that these households lost due to these sanctions.

60. Since August 2004, Defendants' unlawful policies and practices have also affected thousands of families with minor children whose sanctions are no longer in effect.

61. HRA and OTDA are able, based on information in their computer records, to identify everyone who has been affected by the policies and practices described above.

62. However, Defendants have agreed to identify only those individuals who were currently under sanction as of July 2010.

63. HRA has refused to restore benefits retroactively to the thousands of individuals living with minor children who are not currently under sanction, but who were deprived of benefits to which they were entitled during the past six years because Defendants unlawfully subjected them to sanctions with minimum durations that exceeded the periods specified in SSL § 342(2), pursuant to incorrect, affirmatively misleading, and defective notices.

INDIVIDUAL PLAINTIFF FACTS

Plaintiff JOEANN HERCULES

64. Plaintiff JOEANN HERCULES lives in Bronx, New York with her daughter who is seventeen.

65. Ms. Hercules works part-time as a home health aide.

66. On or about January 22, 2010, Defendants issued a Notice of Decision reducing Ms. Hercules' household's public assistance benefits, based on an allegation that she willfully and without good cause failed or refused to keep an employment or work activity appointment. Ex. A, pp 1-2.

67. This notice stated that the household's monthly public assistance benefits would be reduced from \$523.00 to \$261.00 on February 2, 2010. Ex. A, p 1.

68. The notice informed Ms. Hercules that regardless of when she demonstrated a willingness to comply with the public assistance employment requirements, she would not be eligible to have her benefits reinstated for 90 days, i.e. before May 3, 2010. Ex. A, p 2.

69. The notice correctly indicated that Ms. Hercules's household included a minor child under age 18. Ex. A, p 2.

70. The sanction imposed pursuant to this notice was Ms. Hercules' first employment-related sanction.

71. Therefore, pursuant to SSL § 342(2), the sanction should have been non-durational, i.e. she should have been able to have it lifted immediately by indicating that she was willing to comply.

72. Ms. Hercules was willing to comply with the public assistance employment requirements when this sanction was imposed upon her.

73. Since Ms. Hercules was not informed as to the basis for the 90-day minimum

duration of the sanction imposed pursuant to this notice, she was not aware that the minimum duration of this sanction exceeded that which is allowed by law.

74. If Ms. Hercules' notice had correctly stated the earliest date on which her sanction could have been lifted, she would have gone in promptly to request the lifting of her sanction.

75. Ms. Hercules' sanction remained in effect until on or about May 4, 2010.

Plaintiff LADORN BROWNE

76. Plaintiff LADORN BROWNE lives in New York, New York with her husband Albert Browne and their two young children, ages 1 and 2.

77. The Brownes receive public assistance through the Safety Net Assistance program.

78. On or about April 29, 2010, Defendants issued a Notice of Decision reducing the Brownes' public assistance benefits based on an allegation that Ladorn Browne willfully and without good cause failed or refused to keep reporting to an employment or work activity assignment. Ex. B, pp 1- 2.

79. This notice stated that the Brownes' monthly public assistance benefits would be reduced from \$1013.00 to \$647.00 on May 10, 2010. Ex. B, p 1.

80. The Notice of Decision indicated that, regardless of when Ms. Browne demonstrated a willingness to comply with work requirements, she would not be eligible to have her benefits reinstated for 150 days, i.e. before October 7, 2010. Ex. B, p 2.

81. The notice correctly indicated that the Browne household included a child under age 18. Ex. B, p 2.

82. The sanction imposed pursuant to this notice was Ms. Browne's second employment-related sanction.

83. Therefore, pursuant to SSL § 342(2), the sanction should have imposed for a

minimum of only 90 days, i.e. she should have been able to have it lifted on August 11, 2010 by indicating that she was willing to comply.

84. Since Mr. and Mrs. Browne were not informed as to the basis for the 150-day minimum duration of the sanction imposed pursuant to this notice, they were not aware that the minimum duration of this sanction exceeded that which is allowed by law.

85. At all times since receiving the notice, Ms. Browne has been and remains willing to comply with the public assistance employment requirements.

86. On August 19, 2010, an HRA worker told Ms. Browne that she would not resume receiving full benefits until Sept 2, 2010.

FIRST CAUSE OF ACTION
VIOLATION OF THE FOURTEENTH AMENDMENT
OF THE UNITED STATES CONSTITUTION

87. Defendants DOAR and BERLIN, acting under color of law, had a policy and practice of issuing incorrect, affirmatively misleading notices that erroneously stated the length of employment sanctions imposed on members of the plaintiff class.

88. These notices wrongly induced class members to delay requesting the lifting of their sanctions until at least 90 days (in the case of a first sanction) or 60 days (in the case of a second sanction) after the minimum sanction period should have expired.

89. Because of these false and affirmatively misleading notices, Named Plaintiffs Joeann Hercules and Ladorn Browne, and members of the plaintiff class lost public assistance benefits to which they were legally entitled under State law.

90. Defendants DOAR and BERLIN, acting under color of law and through their policy and practice of sanctioning Named Plaintiffs Joeann Hercules and Ladorn Browne, and members of the plaintiff class for minimum durations longer than those allowed under SSL § 342 for alleged violations of the public assistance employment requirements, pursuant to incorrect,

affirmatively misleading, and defective Notices of Decision, have deprived plaintiffs of a protected property interest in the continued receipt of their public assistance benefits in violation of the plaintiffs' rights under the Due Process Clause of the Fourteenth Amendment of the United States Constitution.

91. Insofar as any sanctions imposed pursuant to these erroneous Notices of Decision are still in effect, Named Plaintiffs and members of the plaintiff class continue to lose benefits to which they are legally entitled under State law.

SECOND CAUSE OF ACTION
VIOLATION OF THE NEW YORK STATE CONSTITUTION, ARTICLE I, §6

92. Defendant DOAR, acting under color of law, had a policy and practice of issuing incorrect, affirmatively misleading notices that erroneously stated the length of employment sanctions imposed on members of the plaintiff class.

93. These notices wrongly induced class members to delay requesting the lifting of their sanctions until at least 90 days (in the case of a first sanction) or 60 days (in the case of a second sanction) after the minimum sanction period should have expired.

94. Because of these false and affirmatively misleading notices, Named Plaintiffs Joeann Hercules and Ladorn Browne, and members of the plaintiff class lost public assistance benefits to which they were legally entitled under State law.

95. Defendant DOAR, acting under color of law and through his policy and practice of sanctioning Named Plaintiffs Joeann Hercules and Ladorn Browne, and members of the plaintiff class for minimum durations longer than those allowed under SSL § 342 for alleged violations of the public assistance employment requirements, pursuant to incorrect, affirmatively misleading, and defective Notices of Decision, has deprived plaintiffs of a protected property interest in the continued receipt of their public assistance benefits in violation of the plaintiffs'

rights under the Due Process Clause of the New York State Constitution, Article 1, § 6.

96. Insofar as any sanctions imposed pursuant to these erroneous Notices of Decision are still in effect, Named Plaintiffs and members of the plaintiff class continue to lose benefits to which they are legally entitled under State law.

THIRD CAUSE OF ACTION
VIOLATION OF NEW YORK SOCIAL SERVICES LAW § 342

97. Defendant DOAR, acting under color of law and through his policy and practice of sanctioning Named Plaintiffs Joeann Hercules and Ladorn Browne, and members of the plaintiff class for the longer minimum durations legally applicable only to individuals living in households without minor children for alleged violations of the public assistance employment requirements, pursuant to incorrect, affirmatively misleading, and defective Notices of Decision, has violated plaintiffs' rights under SSL § 342.

98. Insofar as any sanctions imposed pursuant to these erroneous Notices of Decision are still in effect, Defendant DOAR continues to violate plaintiffs' rights under SSL § 342.

FOURTH CAUSE OF ACTION
VIOLATION OF THE FOURTEENTH AMENDMENT
TO THE UNITED STATES CONSTITUTION

99. Defendants DOAR and BERLIN, acting under color of law and through their policy and practice of imposing employment-related sanctions upon Named Plaintiffs Joeann Hercules and Ladorn Browne, and members of the plaintiff class pursuant to Notices of Decision that do not inform the recipient of the notice that (a) the duration of the sanction is based on both whether there are minor children in the recipient's household and whether the sanction is the recipient's first, second, or subsequent sanction; and (b) the recipient may challenge not only the validity of the current sanction, but also the duration of the sanction and any of the bases on which the duration is based, deprive the plaintiffs of their protected property interests in the

continued receipt of their public assistance benefits without Due Process of Law in violation of plaintiffs' rights protected under the Fourteenth Amendment of the United States Constitution.

FIFTH CAUSE OF ACTION
VIOLATION OF THE NEW YORK STATE CONSTITUTION, ARTICLE I, §6

100. Defendant DOAR, acting under color of law and through his policy and practice of imposing employment-related sanctions upon Named Plaintiffs Joeann Hercules and Ladorn Browne, and members of the plaintiff class pursuant to Notices of Decision that do not inform the recipient of the notice that (a) the minimum duration of the sanction is based on both whether there are minor children in the recipient's household and whether the sanction is the recipient's first, second, or subsequent sanction; and (b) the recipient may challenge not only the validity of the current sanction, but also the duration of the sanction and any of the bases on which the duration is based, deprives the plaintiffs of their protected property interests in the continued receipt of their public assistance benefits without Due Process of Law in violation of plaintiffs' rights under the Due Process Clause of the New York State Constitution, Article 1, § 6.

SIXTH CAUSE OF ACTION
VIOLATIONS OF NEW YORK SOCIAL SERVICES LAWS AND REGULATIONS

101. Pursuant to SSL §§ 341(1)(a) and (b), HRA is required to provide a recipient of Safety Net Assistance with written notice of the agency's decision to reduce the recipient's public assistance benefits when the agency has determined that her non-compliance with employment requirements was willful and without good cause. Such notices must include, inter alia, instructions on what the recipient can do to avoid the imposition of a pro rata reduction in benefits.

102. Pursuant to State regulations, 18 NYCRR §§ 358-3.3(a)(1) and 385.12(a)(2)(ii), the notices issued by HRA pursuant to SSL §§ 341(a) and (b) informing recipients that their benefits are being reduced for failure to comply with employment requirements must be timely

and adequate. Pursuant to 18 NYCRR § 385.12(a)(2)(iii)(c), such notices must inform the recipient of the duration for which she will be ineligible for public assistance or eligible for only a reduced amount of public assistance.

103. Defendant DOAR has violated plaintiffs' rights under SSL §§ 341(1)(a) and (b), and 18 NYCRR §§ 358-3.3(a)(1), and 385.12(a)(2)(ii) and (iii), through his policy and practice of (a) issuing incorrect, affirmatively misleading notices that, among other things, erroneously stated the length of employment sanctions imposed on members of the plaintiff class, and (b) imposing excessive employment-related sanctions pursuant to notices that did not inform the recipient of the notice (i) of the correct minimum duration of the sanction; (ii) that the minimum duration of the sanction is based on both whether there are minor children in the recipient's household and whether the sanction is the recipient's first, second, or subsequent sanction; and (iii) that the recipient may challenge not only the validity of the current sanction, but also the duration of the sanction and any of the bases on which the duration is based.

104. Insofar as any sanctions imposed pursuant to Notices of Decision that impose excessive employment-related sanctions are still in effect, Defendant DOAR continues to violate plaintiffs' rights under SSL §§ 341(a) and (b), and 18 NYCRR §§ 358-3.3(a)(1), and 385.12(a)(2)(ii) and (iii).

105. Insofar as Defendant DOAR continues to issue Notices of Decision that do not inform the recipient of the notice that (a) the minimum duration of the sanction is based on both whether there are minor children in the recipient's household and whether the sanction is the recipient's first, second, or subsequent sanction; and (b) the recipient may challenge not only the validity of the current sanction, but also the duration of the sanction and any of the bases on which the duration is based, Defendant DOAR continues to violate plaintiffs' rights under SSL

§§ 341(a) and (b), and 18 NYCRR §§ 358-3.3(a)(1), and 385.12(a)(2)(ii) and (iii).

REQUESTS FOR RELIEF

WHEREFORE, Plaintiffs request that this Court enter a judgment:

(1) Certifying this action as a class action, with a class defined as set forth above in paragraph 19, pursuant to Fed. R. Civ. P. 23(a) and (b)(2);

(2) Declaring that:

(A) Defendants' policy and practice of sanctioning Named Plaintiffs Joeann Hercules and Ladorn Browne, and members of the plaintiff class for minimum durations longer than those allowed under SSL § 342 for alleged violations of the public assistance employment requirements, pursuant to incorrect, affirmatively misleading, and defective Notices of Decision, have deprived plaintiffs of a protected property interest in the continued receipt of their public assistance benefits in violation of their rights under the Due Process Clause of the Fourteenth Amendment of the United States Constitution, and, as to Defendant DOAR, of the New York State Constitution, Article 1, § 6, and declaring that all notices issued pursuant to such practice are null and void;

(B) Defendants' policy and practice of imposing employment-related sanctions upon Named Plaintiffs Joeann Hercules and Ladorn Browne, and members of the plaintiff class pursuant to Notices of Decision that do not inform the recipient of the notice that (a) the minimum duration of the sanction is based on both whether there are minor children in the recipient's household and whether the sanction is the recipient's first, second, or subsequent sanction; and (b) the recipient may challenge not only the validity of the current sanction, but also the duration of the sanction and any of the bases on which the duration is based, deprives the plaintiffs of their protected property interests

in the continued receipt of their public assistance benefits without Due Process of Law in violation of their rights under the Fourteenth Amendment of the United States Constitution, and, as to Defendant DOAR, the New York State Constitution, Article 1, § 6, and declaring that all notices issued pursuant to such practice are null and void;

(C) Defendant DOAR's policy and practice of sanctioning Named Plaintiffs Joeann Hercules and Ladorn Browne, and members of the plaintiff class for the longer minimum durations legally applicable only to individuals in households without minor children for alleged violations of the public assistance employment requirements, pursuant to incorrect, affirmatively misleading, and defective Notices of Decision, has violated plaintiffs' rights under SSL § 342, and declaring that all notices issued pursuant to such practice are null and void; and

(D) Defendant DOAR's policy and practice of (a) issuing incorrect, affirmatively misleading notices that, among other things, erroneously stated the length of employment sanctions imposed on members of the plaintiff class, and (b) imposing excessive employment-related sanctions pursuant to notices that did not inform the recipient of the notice (i) of the correct minimum duration of the sanction; (ii) that the minimum duration of the sanction is based on both whether there are minor children in the recipient's household and whether the sanction is the recipient's first, second, or subsequent sanction; and (iii) that the recipient may challenge not only the validity of the current sanction, but also the duration of the sanction and any of the bases on which the duration is based, has violated plaintiffs' rights under SSL §§ 341(1)(a) and (b), and 18 NYCRR §§ 358-3.3(a)(1), and 385.12(a)(2)(ii) and (iii).

(3) Enjoining Defendants to:

(A) Rescind all incorrect, affirmatively misleading, and defective Notices of Decision which imposed sanctions for minimum durations longer than those allowed under SSL § 342 for alleged violations of the public assistance employment requirements;

(B) Lift, vacate, and delete all sanctions imposed on members of the plaintiff class pursuant to the rescinded notices;

(C) Resume payment of full benefits prospectively to those members of the plaintiff class currently under sanction pursuant to the rescinded notices; and

(D) Provide to all members of the class the benefits which were denied to them due to sanctions imposed pursuant to such notices;

(4) Permanently enjoining Defendants Doar and Berlin from issuing Notices of Decision to impose sanctions for alleged violations of the public assistance employment requirements on recipients of Safety Net Assistance benefits unless such notices include accurate information about the minimum duration of the sanction, the bases for that duration, and the recipient's right to challenge each of those bases;

(5) Awarding to the Named Plaintiffs, as against Defendant DOAR, compensatory damages for injuries suffered as a result of the preceding violations;

(6) Awarding plaintiffs reasonable attorneys' fees, as provided by 42 U.S.C. § 1988;

(7) Awarding plaintiffs costs and disbursements; and

(8) Granting such other and further relief as the Court may deem just and proper.

Dated: August 24, 2010
New York, New York

Respectfully submitted,

By: William O'Brien

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