

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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

Plaintiffs,

vs.

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

Defendants.

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**STIPULATION AND ORDER OF
SETTLEMENT**

10 Civ. 6350 (RJS)

WHEREAS, prior to the onset of the subject litigation, plaintiffs' counsel alerted Defendants that Safety Net Assistance Recipients¹ living with at least one minor child were receiving notices stating that they would be sanctioned for durations longer than those statutorily authorized;

WHEREAS Defendants confirmed that, due to a computer programming error, all employment sanction notices issued to Safety Net Assistance Recipients with children through the New York State Client Notice System generated in automated fashion by the New York City Work Accountability and You system ("NYCWAY") for several years stated incorrect durations;

WHEREAS the parties thereafter worked cooperatively, with the City Defendant agreeing to (a) correct the computer error that resulted in the sending of notices containing language reflecting an incorrect sanction duration, by implementing a dependent child indicator in NYCWAY so that the New York State Client Notice System could correctly generate the appropriate notice language; (b) identify all Safety Net Assistance Recipients who were then under Sanctions imposed pursuant to Incorrect-Duration Sanction Notices; (c) for all such Safety Net Assistance Recipients so identified, (i) lift the Sanction so as to resume payment of full Benefits going forward; and (ii) amend appropriate data in State Defendant's Welfare Management System ("WMS") to reduce the number of sanctions counted toward determining the duration of any future sanction;

¹ Unless otherwise defined, the capitalized terms used herein are defined in Section 1 below.

WHEREAS the parties were unable to resolve all issues relating to the incorrect notices, plaintiffs commenced this action on August 24, 2010 by filing a class action complaint, pursuant to 42 U.S.C. §1983 and New York State law, on behalf of themselves and a proposed class of similarly situated Safety Net Assistance Recipients, alleging that City Defendant and State Defendant (collectively, "**Defendants**") violated the Due Process Clause of the United States Constitution and the New York State Constitution, laws, and regulations by sending Incorrect-Duration Sanction Notices for such Recipients' alleged violations of public assistance Employment Requirements, specifically, for either (i) a durational period where only a non-durational sanction was statutorily authorized; or (ii) a durational period longer than statutorily authorized;

WHEREAS Defendants have informed plaintiffs that WMS records at all times reflected the correct durational sanction consistent with that statutorily authorized;

WHEREAS, prior to the commencement of this litigation, City Defendant implemented the above-described dependent child indicator in NYCWAY in or about July 2010 with the goal that members of the Class would not, as a result of systematic computer error, receive Incorrect-Duration Sanction Notices in the future;

WHEREAS, in July 2010, State Defendant agreed to revise the form of Sanction Notices in the future to include more information about the bases for the sanction durations;

WHEREAS, in or about February 2011, after programming and due testing, State Defendant began issuing Sanction Notices that used the New Sanction Notice Form;

WHEREAS, by Order dated October 22, 2010, this matter was referred for settlement purposes to Magistrate Judge Katz;

WHEREAS plaintiffs' counsel subsequently alerted Defendants that they had discovered additional Incorrect-Duration Sanction Notices that had been issued by Defendants during the summer of 2011;

WHEREAS, on September 1, 2011 City Defendant confirmed that certain additional Safety Net Assistance Recipients had received Incorrect-Duration Sanction Notices from June 2 to August 25, 2011; and

WHEREAS, on August 22, 2012, following a joint request for class certification submitted by plaintiffs and Defendants, Judge Sullivan certified a class of plaintiffs consisting of all Safety Net Assistance Recipients living in New York City who, after August 24, 2007, lost or will lose Benefits as a result of being issued Incorrect-Duration Sanction Notices while a member of a household with at least one minor child, as defined in SSL § 345, on the sanctioned individual's case for public assistance or food stamps; and

WHEREAS plaintiffs and Defendants are entering into this Stipulation and Order of Settlement (the "**Stipulation**") solely for the purpose of settling the disputes between them and to avoid further litigation, and without Defendants admitting any fault or liability; and to settle this action on terms and conditions just and fair to all parties;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned, that this action is settled, subject to the approval of the Court pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, on the following terms and conditions:

SECTION I: DEFINITIONS

1. "Average Monthly Lost Benefits" or "AMLB" means the agreed upon estimate of the average Monthly Lost Benefits incurred by a Class Member during the duration of the period of sanction listed in the Incorrect-Duration Sanction Notice. For purposes of this Stipulation, the Average Monthly Lost Benefits with respect to Monthly Benefits lost in the period up to and including June 30, 2009 is \$218.38; the Average Monthly Lost Benefits with respect to Monthly Benefits lost in the period from July 1, 2009 to June 30, 2010 is \$228.13; the Average Monthly Lost Benefits with respect to Monthly Benefits lost in the period beginning July 1, 2010 is \$238.59; and, if the amount of Monthly Benefits provided for in New York Social Services Law ("SSL") § 131-a increases after July 1, 2010, the Average Monthly Lost Benefits with respect to Monthly Benefits lost in the period after said increase shall be the average of: (1) the pro rata monthly loss, based on the Standard of Need, as defined in SSL § 131-a, in place at the time, for a Sanction placed on one member of a household of three, and (2) the pro rata monthly loss, based on the Standard of Need in place at the time, for a Sanction placed on one member of a household of four.
2. "Benefits" means cash assistance received through the Safety Net Assistance Program by Safety Net Assistance Recipients residing in New York City.
3. "City Defendant" or "HRA" means the New York City Human Resources Administration.
4. "Class" has the meaning provided in Section II, paragraph 27 of this Stipulation.
5. "Class Member" means a person who is a member of the Class.
6. "CNS" means the State Defendant's Client Notice System, or any successor thereto.
7. "CNS Notice" means a Sanction Notice issued by CNS.
8. "Current Public Assistance Recipient" means an individual who is a recipient of Public Assistance on the Effective Date.
9. "Effective Date" means the date on which this Stipulation is So Ordered by the Court.
10. "Employment Requirements" means mandatory requirements under SSL §§ 331 and 336 and 18 N.Y.C.R.R. § 385.2(a) that adult recipients of public assistance benefits in New York State seek and maintain employment to continue receiving public assistance benefits.

11. "Incorrect-Duration Sanction Notice" means a CNS Notice sent to a Safety Net Assistance Recipient who is a member of a household with at least one minor child, as defined in SSL § 345, on the sanctioned individual's case for public assistance or food stamps, containing language erroneously notifying such Recipient of the imposition of a Sanction for a duration set forth in SSL § 342(3)(a)-(b), instead of a duration set forth in SSL § 342(2)(a)-(b).
12. "Incorrect-Duration Notice: First Sanction" means an Incorrect-Duration Sanction Notice for the first instance of alleged failure to comply with Employment Requirements. For Class Members receiving an Incorrect-Duration Notice: First Sanction, the sanction period listed in such Notice was 90 days and until compliance, rather than only until compliance, as required by SSL § 342(2)(a).
13. "Incorrect-Duration Notice: Second Sanction" means an Incorrect-Duration Sanction Notice for the second instance of alleged failure to comply with Employment Requirements. For class members receiving an Incorrect-Duration Notice: Second Sanction, the sanction period listed in such Notice was 150 days and until compliance, rather than 90 days and until compliance, as required by SSL § 342(2)(b).
14. "Minor Child" has the meaning set forth in SSL § 345.
15. "Monthly Benefits" means the amount of Benefits which Class Members are entitled to receive each month.
16. "Monthly Lost Benefits" means the amount by which a Class Member's Monthly Benefits were reduced each month as a result of the issuance of an Incorrect-Duration Sanction Notice.
17. "New Sanction Notice Form" means a Sanction Notice that, among other things, informs the recipient (a) that the minimum duration of the Sanction is based on whether there are minor children in the recipient's household and whether the Sanction is the recipient's first, second or subsequent sanction, (b) of the determinations made with respect to whether there are minor children in the recipient's household and whether the Sanction is the recipient's first, second or subsequent sanction, and (c) that the recipient may challenge any determination described in the Sanction Notice.
18. "Public Assistance" refers to family assistance, safety net assistance, and veterans assistance, as set forth in SSL § 2(19).
19. "Report Dates" mean the dates falling 30 days after the conclusion of each Report Period.
20. "Report Period" means the first three-month period beginning on the Effective Date; the three-month period thereafter; and the three six-month periods thereafter.
21. "Retroactive Relief" means the relief specified in Section IV of this Stipulation.
22. "Safety Net Assistance Program" means New York State's public assistance program administered pursuant to SSL §§ 157-159.

23. "Safety Net Assistance Recipient" means an individual who received, is receiving, or will receive Public Assistance through the Safety Net Assistance Program while living in New York City.
24. "Sanction" means a penalty that causes a reduction or discontinuance of Benefits for a period of time as a result of a determination by HRA that a Safety Net Assistance Recipient failed to comply with Employment Requirements.
25. "Sanction Notice" means a notice sent by Defendants to a Safety Net Assistance Recipient in New York City notifying such Safety Net Assistance Recipient of a Sanction.
26. "State Defendant" means the New York State Office of Temporary and Disability Assistance.

SECTION II: CLASS CERTIFICATION

27. A class has been certified consisting of:

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

SECTION III: INJUNCTIVE RELIEF

28. Defendants shall not generate or issue Incorrect-Duration Sanction Notices for any Class Member.
29. City Defendant shall maintain computer programs designed to issue Sanction Notices containing correct sanction duration language to Safety Net Assistance Recipients who are members of a household with at least one minor child, as defined in SSL § 345, on the sanctioned individual's case for public assistance or food stamps.
30. Any Sanction Notices issued by Defendants shall continue to inform the recipient, at a minimum, (a) that the minimum duration of the Sanction is based on whether there are minor children in the recipient's household and whether the Sanction is the recipient's first, second or subsequent sanction, (b) of the determinations made with respect to whether there are minor children in the recipient's household and whether the Sanction is the recipient's first, second or subsequent sanction, and (c) that the recipient may challenge any determination described in the Sanction Notice.
31. Within 30 days of the Effective Date, Defendants shall correct each current Class Member's records, including but not limited to each Class Member's Client Infraction History and Sanction History, by (a) if only one Incorrect-Duration Sanction Notice was issued between August 24, 2007 and August 25, 2011, amending the appropriate data in WMS to reduce by one the number of sanctions counted toward determining the duration of any future sanction; or (b) if more than one Incorrect-Duration Sanction Notice was

issued between August 24, 2007 and August 25, 2011, amending WMS to reduce by two the number of sanctions counted toward determining the duration of any future sanction.

32. Within 45 days of the Effective Date, Defendants shall provide to plaintiffs' counsel written confirmation that the amendments described in paragraph 31, above, have been made for each Class Member.
33. Within 14 days of the Effective Date, City Defendant shall provide to plaintiffs' counsel a report setting forth:
 - a. The name, Client Identification Number ("CIN"), and case number of each Class Member who received an Incorrect-Duration Sanction Notice and the date the related Sanction was originally imposed;
 - b. The amount of the Retroactive Relief payment that City Defendant determines each Class Member is due under Section IV of this Stipulation and the data or other information used to calculate said amount for each Class Member; and
 - c. For each class member, the number of sanctions reduced pursuant to paragraph 31.
34. For each Class Member who is a Current Public Assistance Recipient, Defendants shall issue retroactive payments for each Incorrect-Duration Sanction Notice in the amount provided in Section IV, as follows:
 - a. Within 21 days of the Effective Date, State Defendant shall make the Retroactive Relief payments by issuing the appropriate amount to the Electronic Benefits Card of the Class Member or the head of the Class Member's household, as appropriate, *provided*, however, that no Current Public Assistance Recipient whose case is inactive on the date Retroactive Relief payments are processed will be paid pursuant to this paragraph, but shall, instead, be treated in accordance with paragraph 36, below.
 - b. Within 30 days of the Effective Date, City Defendant shall issue a written notice to the Class Member, explaining the reason for the Retroactive Relief payment, a general description of how the amount of the Retroactive Relief the Class Member is entitled to was calculated, and that, as a result of the issuance of Incorrect-Duration Sanction Notices, City Defendant has amended WMS to reduce by one or two, as appropriate for each Class Member, the number of sanctions counted toward determining the duration of any future sanction. The notice shall also provide instructions as to how the Class Member can obtain further information relating to his/her Retroactive Relief payment and the reduction of the number of sanctions.
35. Within 14 days of making Retroactive Relief payments pursuant to paragraph 34(a), State Defendant shall confirm to plaintiffs' counsel, in writing, that the payments have been made.

36. For all Class Members who are not Current Public Assistance Recipients, City Defendant shall conduct a review of its computer records on the 30th day after the Effective Date and every thirty days thereafter (each, a **"Closed Case Sweep Date"**), until the Court's jurisdiction terminates, to identify whether these Class Members have become Public Assistance recipients, and, if so, for each such Class Member, City Defendant shall, within 14 days after the Closed Case Sweep Date, make the Retroactive Relief payments set forth in Section IV by issuing the appropriate amount to the Electronic Benefits Card of the Class Member or the head of the Class Member's household, as appropriate, and issue the written notice described in paragraph 34(b).
37. If at any time, by any means other than as a result of the sampling required by paragraph 47 below, plaintiffs' counsel or Defendants' counsel, including for purposes of this paragraph only, the Offices of Legal Affairs for State and City Defendants, identify additional individuals whom they believe may be Class Members (the **"Initial Identification"**), City Defendant shall determine whether such individuals are, in fact, Class Members within 14 days of the Initial Identification.
 - a. If City Defendant concludes that any identified individual is not a Class Member, City Defendant will provide plaintiffs' counsel and State Defendant with a written explanation of why City Defendant believes that the individual is not a Class Member within 10 days of the determination.
 - b. If City Defendant concludes that an identified individual is a Class Member, and the Incorrect-Duration Sanction Notice in question was issued on or before August 25, 2011, City Defendant will, within 28 days of the Initial Identification:
 - i. Provide the Class Member with the following relief:
 - (1) Amendment to WMS: (a) If the Class Member received only one Incorrect-Duration Sanction Notice between August 24, 2007 and August 25, 2011, amend appropriate data in WMS to reduce by one the number of sanctions counted toward determining the duration of any future sanction, or (b) If the Class Member received more than one Incorrect-Duration Sanction Notice between August 24, 2007 and August 25, 2011, amend appropriate data in WMS to reduce by two the number of sanctions counted toward determining the duration of any future sanction, and
 - (2) Retroactive payments and notice:
 - a. If the Class Member is a Current Public Assistance Recipient, issue retroactive payments for each Incorrect-Duration Sanction Notice in the amount provided in Section IV to the Electronic Benefits Card of the Class Member or the head of the Class Member's household, as appropriate, and send the written notice described in paragraph 34(b), or
 - b. If the Class Member is not a Current Public Assistance Recipient, the provisions of paragraph 36 shall apply.

- ii. Investigate why the Class Member was not previously identified, and whether there are other individuals who might not have been identified previously as Class Members for similar reasons.
 - iii. Provide plaintiffs' counsel with a report containing a summary of Defendants' investigation pursuant to subparagraph 37(b)(ii) and the results of that investigation.
- c. If City Defendant concludes that an identified individual is a Class Member, and the Incorrect-Duration Sanction Notice in question was issued after August 25, 2011, City Defendant will:
- i. Within 28 days of the Initial Identification:
 - (1) Provide the Class Member with the following relief:
 - a. Amendment to WMS: Amend appropriate data in WMS to reduce by one or two the number of sanctions counted toward determining the duration of any future sanction, as described in paragraph 37(b)(i)(1), above, and
 - b. Retroactive payments and notice: Provide retroactive payments and notice as described in subparagraph 37(b)(i)(2) above.
 - (2) Investigate why an Incorrect-Duration Sanction Notice was issued, and whether the case represents a systemic problem. If it does represent a systemic problem, identify other Class Members affected by the problem, and provide them with the relief described in subparagraph 37(c)(i)(1) above.
 - (3) Provide plaintiffs' counsel with a report containing a summary of Defendants' investigation pursuant to subparagraph 37(c)(i)(2) and the results of that investigation.
 - ii. Notwithstanding the timeframes set forth in subparagraphs 37(c)(i)(2)-(3), above, if it is determined that the case represents a systemic problem, City Defendant shall undertake all reasonable efforts to fulfill its obligations set forth in said subparagraphs within 28 days, *provided* that if, despite using all reasonable efforts, those obligations cannot reasonably be fulfilled within 28 days, said 28-day period shall be extended for such time as is reasonably necessary for City Defendant in the exercise of due diligence to fulfill said obligations.
 - iii. If it is determined that the case represents a systemic problem, correct that problem prospectively, and provide plaintiffs' counsel with a report summarizing the steps taken to correct the problem and confirming that the problem has been corrected within 40 days of the Initial Identification,

provided that if, despite using all reasonable efforts, the problem cannot reasonably be corrected prospectively within 40 days, said 40 day period shall be extended for such time as is reasonably necessary for City Defendant in the exercise of due diligence to correct the problem.

38. City Defendant shall, within 28 days of each Closed Case Sweep Date, provide plaintiffs' counsel with a report that sets forth:
- a. Any Retroactive Relief payment made to a Class Member pursuant to paragraphs 36, 37(b)(i)(2), or 37(c)(i)(1)(b) above since the date of the prior Closed Case Sweep Date, including the name, CIN, and case number of said Class Member, the date the related Sanction was originally imposed, the amount of the payment and the data or information used to calculate said amount, and the date the payment was made, and
 - b. The number of sanctions reduced for any Class Member pursuant to paragraphs 37(b)(i)(1) or 37(c)(i)(1)(a) above since the date of the prior Closed Case Sweep Date.

SECTION IV: CALCULATION OF RETROACTIVE PAYMENTS

39. Retroactive Relief for Class Members, other than those Class Members who were issued an Incorrect-Duration Sanction Notice between June 2, 2011 and August 25, 2011, will be paid pursuant to Paragraphs 40 and 41, below.
40. City Defendant will pay each Class Member who was issued an Incorrect-Duration Sanction Notice and whose Sanction remained in effect for the entirety of the Sanction period set forth in such Notice, as follows:
- a. With respect to an Incorrect-Duration Notice: First Sanction, an amount equal to the applicable Average Monthly Lost Benefit multiplied by three.
 - b. With respect to an Incorrect-Duration Notice: Second Sanction, an amount equal to the applicable Average Monthly Lost Benefit multiplied by two.
41. City Defendant will pay each Class Member who was issued an Incorrect-Duration Sanction Notice and whose Sanction was terminated prior to the end of the Sanction period set forth in such Notice, as follows:
- a. With respect to an Incorrect-Duration Notice: First Sanction, each Class Member who was issued such a Notice and whose Sanction was terminated during the first 29 days of the Sanction period set forth in such Notice will receive an amount equal to 15 percent of three times the applicable Average Monthly Lost Benefits.
 - b. With respect to an Incorrect-Duration Notice: First Sanction, each Class Member who was issued such a Notice and whose Sanction was terminated between the 30th and 59th days of the Sanction period set forth in such Notice will receive an

amount equal to 47.5 percent of three times the applicable Average Monthly Lost Benefits.

- c. With respect to an Incorrect-Duration Notice: First Sanction, each Class Member who was issued such a Notice and whose Sanction was terminated between the 60th and 89th days of the Sanction period set forth in such Notice will receive an amount equal to 80 percent of three times the applicable Average Monthly Lost Benefits.
- d. With respect to an Incorrect-Duration Notice: Second Sanction, each Class Member who received such a Notice and whose Sanction was terminated between the 90th and 119th days of the Sanction period set forth in such Notice will receive an amount equal to 22.5 percent of two times the applicable Average Monthly Lost Benefits.
- e. With respect to an Incorrect-Duration Notice: Second Sanction, each Class Member who received such a Notice and whose Sanction was terminated between the 120th and 149th days of the Sanction period set forth in such Notice will receive an amount equal to 70 percent of two times the applicable Average Monthly Lost Benefits.

42. The monetary amounts of Retroactive Relief to be paid pursuant to paragraphs 40 and 41, above are set forth in the chart below:

	Lost benefit period ending on or before June 30, 2009	Lost benefit period ending between July 1, 2009 and June 30, 2010	Lost benefit period ending on or after July 1, 2010
First Sanction -- Sanction in place for the entirety of the Sanction Period set forth in Incorrect-Duration Notice: First Sanction (AMLB x 3)	\$655	\$684	\$715
First Sanction -- Sanction terminated in first 29 days of the Sanction Period set forth in Incorrect-Duration Notice: First Sanction (AMLB x 3 x .15)	\$98	\$103	\$107
First Sanction -- Sanction terminated in days 30-59 of the Sanction Period set forth in Incorrect-Duration Notice: First Sanction (AMLB x 3 x .475)	\$311	\$325	\$340
First Sanction -- Sanction terminated in days 60-89 of the Sanction Period set forth in	\$524	\$547	\$572

Incorrect-Duration Notice: First Sanction ($AMLB \times 3 \times .8$)			
Second Sanction – Sanction in place for the entirety of the Sanction Period set forth in Incorrect-Duration Notice: Second Sanction ($AMLB \times 2$)	\$437	\$456	\$477
Second Sanction – Sanction terminated in days 90-119 of the Sanction Period set forth in Incorrect-Duration Notice: Second Sanction ($AMLB \times 2 \times .225$)	\$98	\$103	\$107
Second Sanction – Sanction terminated in days 120-149 of the Sanction Period set forth in Incorrect-Duration Notice: Second Sanction ($AMLB \times 2 \times .7$)	\$306	\$319	\$334

In calculating the monetary amount of Retroactive Relief for a Class Member, Defendants shall use the applicable Average Monthly Lost Benefits amount in effect at the end of the minimum sanction period listed on the Class Member's Incorrect-Duration Sanction Notice (for a first sanction, 90 days; for a second sanction, 150 days) or on the date the Class Member's Sanction was terminated, whichever was earlier.

43. City Defendant will pay each Class Member who was issued an Incorrect-Duration Sanction Notice between June 2, 2011 and August 25, 2011 as follows:
- With respect to a Class Member who was issued an Incorrect-Duration Sanction Notice: First Sanction and whose Sanction remained in effect for the entirety of the Sanction period set forth in such Notice, an amount equal to the applicable Average Monthly Lost Benefit (\$238.59) multiplied by three.
 - With respect to a Class Member who was issued an Incorrect-Duration Sanction Notice: Second Sanction and whose Sanction remained in effect for the entirety of the Sanction period set forth in such Notice, an amount equal to the applicable Average Monthly Lost Benefit (\$238.59) multiplied by three.
 - With respect to a Class Member who was issued an Incorrect-Duration Notice: First Sanction and whose Sanction was terminated prior to the end of the Sanction duration set forth in such Notice, an amount equal to the applicable Average Monthly Lost Benefit (\$238.59) multiplied by the number of months (or fraction of a month) the Class Member's Sanction remained in effect prior to its termination; and with respect to a Class Member who was issued an Incorrect-Duration Notice: Second Sanction and whose Sanction was terminated prior to the

end of the Sanction duration set forth in such Notice, an amount equal to the applicable Average Monthly Lost Benefit (\$238.59) multiplied by the number of months (or fraction of a month) the Class Member's Sanction remained in effect prior to its termination, minus two months.

SECTION V: NOTICE TO RELEVANT PERSONNEL

44. Within 60 days of the Effective Date, City Defendant shall:

- a. Issue to all Family Independence Administration ("FIA") supervisory personnel, as well as all FIA staff whose duties include representing the agency in fair hearings, preparing evidence packets or other documents related to fair hearings, , instructions reinforcing that Incorrect-Duration Sanction Notices shall not be issued, and, if issued after the Effective Date, shall be withdrawn and appropriate data in WMS shall be amended to reduce by either one or two, as applicable, the number of sanctions counted toward determining the duration of any future sanction. City defendant shall promptly provide plaintiffs' counsel with a copy of said instructions when the instructions have been issued.
- b. Issue to all FIA workers and supervisors a memorandum explaining this settlement and the manner in which (a) Retroactive Relief payments are calculated and distributed, and (b) WMS is amended to reduce the number of sanctions counted toward determining the duration of future sanctions.

45. Within 60 days of the Effective Date, State Defendant shall issue a memorandum to all personnel who are involved in public assistance fair hearings, including staff who process fair hearing requests or compliance complaints, as well as those who conduct or supervise fair hearings, including Administrative Law Judges (each, an "**ALJ**"), reinforcing existing policy that, when durational sanctions are the subject of a notice of discontinuance or reduction of public assistance, the review of a local social services district's (an "**Agency**") action has two potential elements, i.e., the validity of the sanction, and the duration of the sanction. Where the ALJ's recommended decision is that the basis for the proposed sanction is not correct, the sanction will be reversed, including a directive that benefits be restored retroactive to the implementation of the sanction (if aid-continuing had not been provided). Where the ALJ's recommended decision is that the basis for the proposed sanction is determined to be correct, the ALJ must also review the notice of discontinuance or reduction and determine whether the length of the proposed sanction was correct, based on the household composition and category of assistance, and whether the action was established to be a first, second or third (or greater) sanction.

If after considering the evidence at the fair hearing, the ALJ's recommended decision is that the basis for the proposed Sanction is correct but the duration of the Sanction is incorrect, such decision shall include a finding and/or discussion as to why the proposed duration was not correct, and:

- i. A direction to the Agency to reduce the duration of the Sanction to the appropriate length; and
- ii. A direction to restore any Benefits lost as a result of the incorrect Sanction duration.

State Defendant shall provide a copy of the memorandum to plaintiffs' counsel 30 days prior to its release, and consider any comments made by plaintiffs' counsel. The only obligation imposed upon State Defendant by this paragraph is to issue the memorandum. Any motion for enforcement or contempt made in connection with this paragraph is limited to the issue of whether the memorandum was issued within the time period stated herein.

SECTION VI: MONITORING

46. On each Report Date, State Defendant shall provide to plaintiffs' counsel and to City Defendant an Excel spreadsheet (the "**Spreadsheet**") containing the following information for each case in which a first or second Sanction was imposed during the immediately preceding Report Period upon a Safety Net Assistance Recipient who was a member of a household with at least one Minor Child on the sanctioned individual's case for public assistance or food stamps:
 - a. Case number;
 - b. Sanction code (*i.e.*, WE1, WE2, WX1, WX2, N41, and N42);
 - c. The Sanction Notice date and number; and
 - d. Whether or not the case is a multi-suffix case.
47. Within 60 days of the Effective Date, plaintiffs' counsel and City Defendant shall agree upon a methodology for drawing a systematic sample of 100 Sanction Notices from each Spreadsheet to be provided pursuant to paragraph 46. After each Report Date, City Defendants shall, using said methodology, draw a systematic sample of 100 Sanction Notices from the Spreadsheet provided for the immediately preceding Report Period. Beginning in the week immediately following the week in which the Spreadsheet is provided, City Defendant shall provide said Sanction Notices, without redaction, to plaintiffs' counsel at the rate of at least eight (8) Sanction Notices per week, until such time as City Defendant has provided plaintiffs' counsel with 100 Sanction Notices.
48. If, through the sampling described in paragraph 47, plaintiffs' counsel discovers that Defendants issued an Incorrect-Duration Sanction Notice and notifies Defendants thereof, Defendants shall follow the procedures for relief, investigation, and reporting provided for in paragraph 37(c)(i)-(ii) above.
49. During the 30 months following the Effective Date, plaintiffs' counsel shall have reasonable access, upon reasonable notice, to WMS and NYCWAY to review case files

to confirm or supplement information provided pursuant paragraphs 46 or 47 to in order to confirm Defendants' compliance with the terms of this Stipulation.

SECTION VII: CONTINUING JURISDICTION

50. As of the Effective Date, the jurisdiction of this Court shall terminate for all purposes except that the Court shall maintain continuing jurisdiction over this action for the purpose of enforcing the terms of this Stipulation, subject to paragraphs 52, 53, or 54 of this Stipulation.
51. The jurisdiction of this Court shall terminate at the conclusion of 30 months following the Effective Date except that if plaintiffs move pursuant to paragraphs 52, 53, or 54 of this Stipulation, jurisdiction shall continue until (a) the motion is decided; (b) if the motion is decided favorably for plaintiffs, until such time as directed by the Court; or (c) such time as may be extended by the parties in a modification of this Settlement. At the time of termination of jurisdiction, all claims arising under the terms of this Stipulation shall be deemed dismissed.
52. During the 30 months following the Effective Date, if plaintiffs' counsel believes that Defendant(s) have failed to comply with the terms of this Stipulation, plaintiffs' counsel shall notify Defendants' counsel in writing of the nature and specifics of the alleged failure to comply at least 30 days before any motion is made for enforcement of this Stipulation or for contempt against the noncompliant Defendant. Unless otherwise resolved, the parties' counsel shall meet within the 30 day period following notice to Defendants' counsel in an attempt to arrive at a resolution of the claims. If no resolution is reached within 30 days from the date of notice, plaintiffs may move this Court for an order for all appropriate relief against the noncompliant Defendant. In the event of any motion for systemic relief based upon Defendants' alleged non-compliance with the substantive requirements of the Stipulation, Defendants shall be considered to be in "compliance" therewith unless plaintiffs establish that Defendants' failures or omissions to meet the terms of the Stipulation were not minimal or isolated, but were substantial and sufficiently frequent or widespread as to be systemic.
53. During the 30 months following the Effective Date, if plaintiffs' counsel disagrees with Defendants' determination of whether an individual is a Class Member under paragraph 37(a) of this Stipulation or of whether an issue is a systemic issue under paragraph 37(c)(ii) of this Stipulation, plaintiffs' counsel shall notify Defendants' counsel in writing of the nature and specifics of the disagreement at least 30 days before any motion is made for enforcement of this Stipulation or for contempt against the noncompliant Defendant. Unless otherwise resolved, the parties' counsel shall meet within the 30 day period following notice to Defendants' counsel in an attempt to arrive at a resolution of the disagreement. If no resolution is reached within 30 days from the date of notice, plaintiffs may move this Court for an order for all appropriate relief against the noncompliant Defendant.
54. Notwithstanding the provisions of paragraphs 52 and 53, plaintiffs may move this Court for an order for all appropriate relief against a noncompliant Defendant without waiting

30 days if plaintiffs' motion is based in whole or in part on information received by plaintiffs less than 30 days before the date that the jurisdiction of this Court is due to lapse pursuant to paragraph 51 of this Stipulation.

SECTION VIII: ATTORNEYS' FEES

55. State Defendant agrees to pay the sum of \$401,703.15 to counsel for plaintiffs for attorneys' fees, costs, and disbursements in or arising from this action as follows:

<u>Organization</u>	<u>Amount</u>
NYLAG	\$97,152.13
Legal Aid Society	\$123,561.04
Cooley LLP	\$180,989.98

56. City Defendant agrees to pay the sum of \$401,703.15 to counsel for plaintiffs for attorneys' fees, costs, and disbursements in or arising from this action as follows:

<u>Organization</u>	<u>Amount</u>
NYLAG	\$97,152.13
Legal Aid Society	\$123,561.04
Cooley LLP	\$180,989.98

57. Payments of the amounts set forth in paragraphs 55 and 56 of this Stipulation shall be accepted in full settlement of any claims for attorneys' fees, costs, and disbursements that plaintiffs or the Class have incurred against the Defendants arising from the matters settled herein up to the Effective Date.
58. Payment pursuant to paragraph 55 of this Stipulation by State Defendant is subject to the approval of all appropriate New York State officials, in accordance with New York Public Officers Law § 17. In the event such approval is denied, counsel for State Defendant shall notify plaintiffs' counsel within five business days of the disapproval. In the event of such disapproval, plaintiffs shall have ninety days from such notice within which to make a motion seeking from the State Defendant attorneys' fees, costs, and disbursements.
59. Plaintiffs' right to seek fees for any work after the Effective Date is limited to fees of no more than \$100,000 over the full term of the stipulation, to be paid in equal shares by the State and City defendants, except that this limitation shall not apply to any time spent on a successful contempt or enforcement motion, to the extent that such time was expended after the parties had conferred, as a condition precedent to plaintiffs bringing such a motion.
60. Nothing in this Stipulation shall be construed to limit plaintiffs' right to make an application to the Court for fees incurred in connection with any motion made pursuant to paragraphs 52 and 53 of this Stipulation.
61. Payment of the amounts set forth in paragraphs 55 and 56 of this Stipulation shall be made by checks issued to the appropriate entities, at the addresses shown in paragraph 74

of this Stipulation. In the event that the payments described in paragraphs 55 and 56 of this Stipulation are not made within one hundred twenty (120) days of the Effective Date, interest shall accrue at the statutory rate prescribed by 28 U.S.C. § 1961, commencing on the one hundred twenty-first (121st) day. Nothing herein shall preclude plaintiffs or their counsel from moving to compel payment in the event that the payments are not made within said 120-day period.

SECTION IX: RELEASE AND WITHDRAWAL OF CLAIMS

62. As of the Effective Date, all claims raised by the named individual plaintiffs, on their own behalf and on behalf of the Class, in the Amended Complaint herein are dismissed with prejudice. For the avoidance of any ambiguity, the claims raised in the Amended Complaint and to be dismissed with prejudice are (i) that Benefits were unlawfully reduced or terminated, in violation of federal or state law, for longer periods of time than are permissible under state law because they received a CNS Notice containing language erroneously notifying such recipient of the imposition of a sanction for the duration set forth in SSL § 342(3)(a)-(b), applicable only to a recipient who is a member of a household without dependent children, instead of the duration set forth in SSL § 342(2)(a)-(b), and (ii) that, in violation of federal or state law, Sanction Notices do not inform the recipient thereof (a) that the minimum duration of the Sanction is based on 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) that the recipient may challenge not only the validity of the Sanction, but also the duration of the Sanction and any of the bases on which the duration is based. Notwithstanding principles of res judicata that otherwise might apply, all claims that could have been (but were not) brought in the Amended Complaint are not dismissed and are preserved
63. As of the Effective Date, the remedies enforceable in this action are limited to the provisions of this Stipulation.
64. As of the Effective Date, plaintiffs, individually and on behalf of each member of the Class, and on behalf of the respective heirs, executors, administrators, personal representatives, successors, and assigns of each of themselves and each of the members of the Class, hereby jointly and severally release and forever discharge, on the merits with prejudice, City Defendant, its past and present officials, employees, departments, agencies, representatives, directors, and agents, their successors and assigns and their respective heirs, executors, administrators, personal representatives, and transferees, and State Defendant, its past and present officials, employees, departments, agencies, representatives, directors, and agents, their successors and assigns and their respective heirs, executors, administrators, personal representatives, and transferees (collectively "the Releasees") and each of them, of and from any and all claims, whether known or unknown, foreseen or unforeseen, matured or unmatured, accrued or not accrued, direct or indirect, from the beginning of time through the Effective Date that the named plaintiffs and the members of the Class and each of them, ever had, now has or have, or can, shall or may hereafter have against the Releasees or any of them, with respect to (i) an unlawful reduction or termination of Benefits for longer periods of time than are permissible under state law because they received a CNS Notice containing language

erroneously notifying such recipient of the imposition of a sanction for the duration set forth in SSL § 342(3)(a)-(b), applicable only to a recipient who is a member of a household without dependent children, instead of the duration set forth in SSL § 342(2)(a)-(b), and (ii) the failure of Sanction Notices to inform the recipient thereof (a) that the minimum duration of the Sanction is based on 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) that the recipient may challenge not only the validity of the Sanction, but also the duration of the Sanction and any of the bases on which the duration is based, *provided*, however, that no other claim, including any claim arising from or based upon this Stipulation, is released.

65. No provision in this Stipulation shall infringe upon or restrict any Class Member's ability to seek individual relief through an administrative hearing or a judicial proceeding, including but not limited to a proceeding brought pursuant to Article 78 of the New York Civil Practice Law and Rules, so long as the Class Member is not seeking to challenge the form or sufficiency of a Sanction Notice that uses the New Sanction Notice Form to the extent the challenge pertains to informing the recipient thereof (a) that the minimum duration of the Sanction is based on whether there are minor children in the recipient's household and whether the Sanction is the recipient's first, second or subsequent sanction, (b) of the determinations made with respect to whether there are minor children in the recipient's household and whether the Sanction is the recipient's first, second or subsequent sanction, and (c) that the recipient may challenge any determination described in the Sanction Notice.

SECTION X: GENERAL PROVISIONS

66. This Stipulation constitutes the parties' entire agreement with respect to the matters set forth in this Stipulation.
67. This Stipulation shall not be deemed binding, to have any precedential value, or to be interpreted in any subsequent administrative or judicial proceeding that does not affect Class Members as any particular definition of the phrase "member of a household with at least one minor child on the sanctioned individual's case for public assistance or food stamps" for purposes of durational sanctions issued as a result of an alleged failure to comply or cooperate with employment requirements.
68. In the event of any change in federal statute or regulation or state statute that any party believes changes his or her responsibilities pursuant to this Stipulation, such party shall so notify all other parties and the parties shall attempt to come to an agreement as to any modifications of the Stipulation that are warranted by said changes in federal or state law. If, after 30 days, the parties have not been able to agree, the dispute shall be submitted to the Court by motion pursuant to Rule 60(b) of the Federal Rules of Civil Procedure. Unless plaintiffs obtain a stay during the pendency of any defendant's Rule 60(b) motion to modify that defendant's obligations under this Stipulation, that defendant shall be permitted to implement the modification pending the Court's decision of the motion. The filing by plaintiffs of an appeal of an adverse decision shall not operate as a stay of

the Defendants' right to implement the proposed modification without further order of the District Court or Court of Appeals.

69. In the event that the State Defendant, during the time this Stipulation is in force, adopts a new regulation, or amends existing regulations, so as to define the phrase "a member of a household without dependent children" as that term applies in SSL § 342(3), Defendants shall not be constrained from modifying this agreement, upon thirty days notice to the plaintiffs and the court, to conform the Stipulation's prospective relief provisions, including those relating to monitoring and enforcement, with any such regulatory changes, but no such changes will affect the retroactive relief agreed to herein, including any compensation for lost Benefits and the deletion of Sanctions.
70. All parties to this Stipulation have participated in its drafting; consequently, any ambiguity shall not be construed for or against any party.
71. In computing any time period specified by this Stipulation, the following rules apply: (i) exclude the day of the event that triggers the period; (ii) count every day, including intermediate Saturdays, Sundays, and New York State or New York City legal holidays; and (iii) include the last day of the period, but if the last day is a Saturday, Sunday, or New York State or New York City legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or such legal holiday.
72. Information disclosed pursuant to paragraphs 46 and 47 of this Stipulation in the course of monitoring of compliance with this Stipulation will reveal the identities and other personally-identifying information ("Confidential Information") of applicants for or recipients of benefits under the Safety Net Assistance, Family Assistance, Food Stamp and Medicaid programs, who are not Class Members. plaintiffs' counsel shall protect the confidentiality of all information that is provided by the Defendants under the terms of this Stipulation and shall not disclose such information to any individual, other than the Defendants and any individual whose case is involved, except to the extent necessary in any proceeding brought before this Court to enforce any right that any Class Member may have under this Stipulation. In any motion for enforcement brought pursuant to this Stipulation, all papers filed with the Clerk of the Court that contain Confidential Information shall be filed under seal and shall remain under seal until the Court orders otherwise. All documents containing Confidential Information notices or other documents produced under this Stipulation shall be destroyed or returned to the providing party by plaintiffs' counsel within 60 days after the jurisdiction of the Court ends.
73. This Stipulation is final and binding upon the parties, their successors, and their assigns.
74. Any notice, report, or communication required by or made pursuant to the terms of this Stipulation, other than notices sent to individual class members, shall be sent by electronic mail and, upon request, by first class mail, postage prepaid, to all of the people below:

To plaintiffs: Jane Greengold Stevens
jstevens@nylag.org
New York Legal Assistance Group
7 Hanover Square, 18th Floor
New York, New York 10004

Kenneth Stephens
kstephens@legal-aid.org
The Legal Aid Society
199 Water Street
New York, New York 10038

Jason Koral
jkoral@cooley.com
Cooley LLP
1114 Avenue of the Americas
New York, New York 10036

To City Defendant: Jonathan Pines
jpines@law.nyc.gov
Assistant Corporation Counsel
New York City Law Department
100 Church Street, Room 2-178
New York, New York 10007

To State Defendant: William H. Bristow, III
william.bristow@ag.ny.gov
Assistant Attorney General
120 Broadway, 24th Floor
New York, New York 10271

75. Any party may change the above designated addressee or address by written notice to the other parties. A copy of such notice shall be filed with the Clerk of this Court.

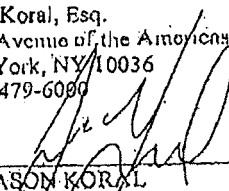
Dated: October 16, 2012
New York, New York

The parties have further stipulated to, and the Court approves, the following modifications to this agreement:

(1) At the third and fourth lines of paragraph 36, the phrase "until the Court's jurisdiction terminates" is replaced with "for the 34 months after the Effective Date."

(2) Section VII shall include an additional paragraph that reads: "To compensate for Superstorm Sandy-related delay, the Court's jurisdiction will be extended by four months, but only to enforce City Defendant's obligation to conduct reviews of its computer system and to oversee identification of, and payment of benefits to, class members who have newly returned to the public assistance rolls and who are therefore eligible to receive retroactive benefits under this Settlement."

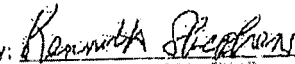
COOLEY LLP
William O'Brien, Esq.
Jason Koral, Esq.
1114 Avenue of the Americas
New York, NY 10036
(212) 479-6000

By: 

JASON KORAL

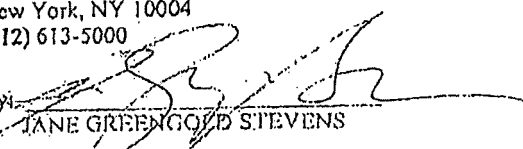
THE LEGAL AID SOCIETY
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Judith Goldiner, Attorney-in-Charge, Law Reform
Kenneth Stephens, of Counsel
Susan R. Sternberg, of Counsel
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(212) 577-3300

Susan C. Bahn, of Counsel
Lester Helfman, of Counsel
111 Livingston Street, 7th Floor
Brooklyn, NY 11201
(718) 722-3100

By: 

KENNETH STEPHENS

YISROEL SCHULMAN, ESQ.
NEW YORK LEGAL ASSISTANCE GROUP
Jane Greengold Stevens, Esq.
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New York, NY 10004
(212) 613-5000

By: 

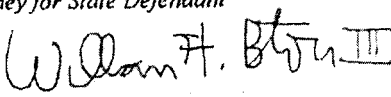
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By: 
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Assistant Corporation Counsel

ERIC T. SCHNEIDERMAN
Attorney General of the State of New York
Attorney for State Defendant

By: 
WILLIAM H. BRISTOW III
Assistant Attorney General
120 Broadway, 24th Floor
New York, New York 10271
(212) 416-8648

SO ORDERED, this 22nd day of March, 2012:


Judge Richard J. Sullivan