

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

MESSIAH S., QUINTIN V., JESSIE E.,
GREG W., ALBERTO B., SHELDON D. and
VIKEN M., on behalf of themselves and all others
similarly situated,

Plaintiffs,

-against-

GEORGE B. ALEXANDER, as Acting Chairman
and Chief Executive Officer of the New York
State Division of Parole; NEW YORK STATE
DIVISION OF PAROLE; NEW YORK STATE
OFFICE OF MENTAL HEALTH; MICHAEL F.
HOGAN, as Acting Commissioner of the New
York State Office of Mental Health; NEW YORK
STATE DEPARTMENT OF HEALTH;
RICHARD F. DAINES, as Commissioner of the
New York State Department of Health; NEW
YORK STATE OFFICE OF TEMPORARY AND
DISABILITY ASSISTANCE; DAVID A.
HANSELL, as Acting Commissioner of the New
York State Office of Temporary and Disability
Assistance; NEW YORK CITY DEPARTMENT
OF HEALTH AND MENTAL HYGIENE;
THOMAS R. FRIEDEN, as Commissioner of the
New York City Department of Health and Mental
Hygiene; NEW YORK CITY HUMAN
RESOURCES ADMINISTRATION; and
ROBERT L. DOAR, as Commissioner of the New
York City Human Resources Administration,

Defendants.

No. _____

COMPLAINT

CLASS ACTION

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NATURE OF THE ACTION

1. This is a class action for prospective declaratory and injunctive relief brought by indigent New York City residents with psychiatric disabilities who are under the supervision of the New York State Division of Parole (“DOP”), or who are soon to be released to New York City from a New York State prison under DOP supervision. Plaintiffs and members of the proposed plaintiff class (hereinafter “Class Members”) have psychiatric disabilities whose symptoms interfere with major life activities such as thinking, concentrating, interacting with others, caring for oneself, working, and remembering and processing information. They are qualified to participate in the parole, conditional release or post-release supervision programs (hereinafter collectively referred to as “the Parole Program”), but require disability accommodations in the form of pre-release planning and appropriate transitional services in order to be successful in the Parole Program and have access to the services it offers. Due to their lack of financial resources, Class Members are also qualified for one or more public benefits programs, but require accommodations for their disability in the form of assistance with pre-release applications and post-release services to obtain and maintain access to programs for which they are eligible and which they require.

2. The Parole Program is intended to support prisoners’ successful reintegration into their home community while at the same time protecting community safety. State defendants have long acknowledged the necessity of pre-release planning and transitional services for prisoners with psychiatric disabilities, and have accepted primary responsibility for meeting this need. In practice, however, prisoners with psychiatric disabilities are thrust from a highly structured prison environment onto the streets of New York City with little to no

preparation, and with the implicit assumption that they will be largely self-sufficient immediately upon release.

3. For prisoners with psychiatric disabilities, an abrupt and unprepared entry into parole supervision represents an enormous barrier to successful participation in the Parole Program. When prisoners with psychiatric disabilities are thrown into the Parole Program without required accommodations, they are often unable to meet the requirements of the Parole Program and to use the referrals, counseling, and services offered by their parole officer; they experience predictable and preventable exacerbations of their symptoms; they also face arrest for even non-criminal behavior that constitutes a technical violation of the conditions of their release. Defendants' actions therefore result in a "revolving door" phenomenon in which prisoners with psychiatric disabilities are released without adequate support and accommodations, and are then reincarcerated for manifestations of their psychiatric disabilities.

4. In order for prisoners with psychiatric disabilities to be able to successfully participate in the Parole Program, they should be provided with adequate pre-release planning. In the report of the Criminal Justice/Mental Health Consensus Project, issued in 2002, the Council of State Governments, advised by representatives of leading criminal justice and mental health organizations, wrote:

For inmates with mental illness, whose community adjustment issues are even more complex than inmates in the general population, the need for systemic discharge planning is particularly crucial. For example, individuals with mental illness leaving prison without sufficient supplies of medication, connections to mental health and other support services, and housing are almost certain to decompensate, which in turn will likely result in behavior that constitutes a technical violation of release conditions or a new crime.

5. Adequate pre-release planning for prisoners with psychiatric disabilities includes assisting them in completing, submitting, and monitoring the processing of applications for public benefits such as Medicaid, Social Security disability benefits, Family Assistance and Safety Net Assistance (hereinafter collectively referred to as “Temporary Assistance”), and Food Stamps, such that those benefits are available to the prisoners promptly upon their release from prison into the Parole Program. Adequate pre-release planning also includes helping prisoners secure community mental health services, supportive housing, and enrollment in vocational, educational and/or substance abuse programs. Parolees with psychiatric disabilities also need continued assistance throughout their time in the Parole Program with securing benefits, programs and services not secured prior to release, with implementing a coordinated plan of mental health care, and with addressing additional needs or problems that arise while on parole.

6. Defendants have not provided, and are not providing, Class Members with needed accommodations, both before and after release, so that they can be successful in the Parole Program and have access to the services it offers. For example, defendants could make important improvements in pre-release planning by taking a series of easy steps at little or no additional cost, yet they have failed to do so. The failure of State and City defendants to make reasonable accommodations violates the rights of Class Members under federal law, including their rights under the Americans with Disabilities Act (“ADA”) and Section 504 of the Rehabilitation Act.

7. Because they are indigent, Class Members are eligible for one or more public benefits programs upon their release from prison. These programs include Temporary Assistance, Supplemental Security Income (“SSI”), Food Stamps, and Medicaid. The State and City defendants have failed to provide the reasonable modifications that Class Members need to

participate successfully in these public benefits programs, in violation of their rights under the ADA and Section 504 of the Rehabilitation Act.

8. Under the federal Food Stamp and Medicaid Acts, Class Members are entitled to submit pre-release applications for assistance that would enable eligible Class Members to obtain Food Stamps and Medicaid immediately upon their release from prison. Similarly, under a contract between the federal Social Security Administration (“SSA”) and defendant DOP, DOP—with assistance from the New York State Office of Mental Health (“OMH”)—is required to submit applications for SSI up to 120 days prior to a Class Member’s release date. The State and City Defendants do not enable Class Members to submit pre-release applications in sufficient time, if at all, to obtain Food Stamps, Medicaid, and/or SSI immediately upon release, in violation of the federal Food Stamp Act, Medicaid Act and the contract between SSA and DOP.

9. Under State and local laws, Class Members are entitled to submit pre-release applications for Temporary Assistance, Food Stamps, and Medicaid that would enable eligible Class Members to obtain these public benefits immediately upon their release from prison. The City defendants do not enable Class Members to submit pre-release applications in sufficient time, if at all, to obtain public benefits immediately upon release, in violation of State and local laws.

10. This action seeks to redress defendants’ failure to provide needed modifications and defendants’ related failure to train and supervise their employees. This action also seeks to redress the disparate impact of the Parole Program on individuals with psychiatric disabilities, insofar as this disparate impact results from defendants’ failure to help plan for prisoners’ release and facilitate their reintegration into the community.

JURISDICTION AND VENUE

11. This Court has jurisdiction over this action under 28 U.S.C. §§ 1331 and 1343(a)(3) and (4). The controversy arises under the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.*; Section 504 of the Rehabilitation Act, 29 U.S.C. § 794; 42 U.S.C. § 1983; and, regarding the contract between SSA and DOP, federal common law. The Court also has supplemental jurisdiction under 28 U.S.C. § 1367(a) over additional claims arising under State and local law against City defendants.

12. Venue properly lies in this District under 28 U.S.C. § 1391(b)(1) and (2).

PARTIES

A. Plaintiffs

13. Named plaintiffs and the class they represent are indigent New York City residents who are under the supervision of DOP, or who are soon to be released to New York City from a State prison under DOP supervision, and who are qualified individuals with a disability as defined by the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.*, and the Rehabilitation Act, 29 U.S.C. § 794.

14. Named plaintiffs and the class they represent suffer from a disability under the terms of the ADA and the Rehabilitation Act. Specifically, named plaintiffs and the class they represent suffer from psychiatric disabilities which substantially limit one or more major life activities under 42 U.S.C. § 12102(2)(A) and 29 U.S.C. § 705(9)(B) and (20)(B).

15. Named plaintiffs and the class they represent are qualified under 42 U.S.C. § 12131(2) for the programs, activities and services offered by DOP. They have met or will meet the essential eligibility requirements of the Parole Program by virtue of their having been granted parole by the State of New York.

16. Named plaintiffs and the class they represent are qualified under 42 U.S.C. § 12131(2) for one or more of the public benefits programs, activities and services offered by the State and City defendants, such as Temporary Assistance, Medicaid, and/or Food Stamps. They have met or will meet the essential eligibility requirements of one or more of these public benefits programs by virtue of their lack of income and financial resources.

B. Class Representatives

Messiah S.

17. Messiah S. is 32 years old, and is currently incarcerated at Elmira Correctional Facility in Elmira, New York. Upon information and belief, Messiah S. will be released on or around March 26, 2007, on conditional release. Messiah S. has been diagnosed with bi-polar disorder and bipolar disorder with psychotic features. He has received treatment, including medication, for his psychiatric disability for the past ten years. He currently sees a psychiatrist and is taking Zyprexa, a psychotropic medication.

18. Since his incarceration in 1999, Messiah S. has experienced periods of severe psychosis with symptoms of auditory hallucinations, delusions of grandeur and extreme paranoia. He has been hospitalized at Central New York Psychiatric Center (CNYPC) three times since 2001. Messiah S. regularly experiences manic periods, where he becomes agitated and paranoid, and bouts of severe depression that result in days of isolation. He generally feels uncomfortable in crowded places (such as the subway) or other stressful situations. He also goes through periods where he experiences auditory hallucinations.

19. Messiah S.'s psychiatric disability has made it very difficult for him to comply with the conditions of parole. Messiah S. has violated parole five times since his first release in 2002. Upon most of his prior releases onto parole, Messiah S. received little or no pre-release planning and was released to a homeless shelter with little or no money or food.

20. Messiah S. began asking for help in planning for his upcoming release about six months ago and was told that he would not receive help until one month before his release date. He was not visited by an OMH social worker regarding pre-release planning until on or around February 12, 2007. Although he was handed a packet of benefits applications, including an HRA 2000 (an application form for supportive housing and case management), an SSI application and a Medicaid application, he was given no assistance in filling them out. He attempted to fill them out on his own and returned them to the social worker. Messiah S. does not know whether those applications were ever filed. As of February 20, 2007, applications on Messiah S.'s behalf for Food Stamps, Medicaid and Public Assistance had not been processed. Upon information and belief, as of February 21, 2007, applications on Messiah S.'s behalf for SSI and supportive housing (HRA 2000) had also not been submitted.

21. Messiah will likely again be released to a homeless shelter (Bellevue in Manhattan) with no benefits or mental health treatment arranged. Without mental health treatment, benefits or housing it will be extremely difficult for Messiah S. to manage his psychiatric disability and survive on the street.

Quintin V.

22. Quintin V. is 40 years old, and is currently incarcerated at Clinton Correctional Facility in Dannemora, New York. Quintin V. will be released on or around March 2, 2007, and will be under post-release supervision.

23. Quintin V. has been diagnosed with undifferentiated schizophrenia. He receives his psychiatric medication, Risperdal, by injection every two weeks. He is currently housed in the Intermediate Care Program at Clinton, a residential housing program for prisoners with serious mental illness. He has taken a variety of different psychotropic medications

throughout his life in order to attempt to control the symptoms of his psychiatric disability, which include auditory hallucinations and paranoia. Quintin V. has been receiving mental health treatment from an early age and has been hospitalized for mental health reasons on at least six occasions, beginning when he was a child and most recently in 2004, shortly before he came into the state prison system.

24. Because of his psychiatric disability, Quintin V. has difficulty with concentration, memory and the completion of basic tasks, including filling out forms. He also has trouble handling multiple tasks at a time and can get easily overwhelmed and frustrated due to his disability. According to his mental health records from prison, Quintin V. was found likely to need assistance with some of his activities of daily living.

25. Quintin V. has not received adequate assistance in planning for his release. He has communicated his need for pre-release services to OMH staff at the prison, but does not know whether he will receive help. In a January 18, 2007 letter, an OMH Release Planning Specialist indicated that Quintin V. would be released homeless to the Bellevue Shelter and that applications for SSI, Medicaid and "other entitlements" would be completed on his behalf, but that these applications had not yet been submitted as of six weeks before his release date. Quintin V. has been housed in a homeless shelter before and finds it difficult to manage his life and mental health while living in a shelter. In the past Quintin V. has found that his disability makes it too difficult for him to hold down a steady job. He has received SSI in the past because of his psychiatric disability.

26. On information and belief, no benefits applications have been completed on behalf of Quintin V. As of February 20, 2007, applications on Quintin V.'s behalf for Food Stamps, Medicaid and Public Assistance had not been processed. Upon information and belief,

as of February 21, 2007, applications on Quintin V.'s behalf for SSI and supportive housing (HRA 2000) had not been submitted.

27. It is likely that Quintin V. will be released without mental health treatment, benefits or housing, and will struggle to survive in the shelter environment.

Jessie E.

28. Jessie E. is 21 years old, and is currently incarcerated at Great Meadow Correctional Facility in Comstock, New York. This is his first State prison sentence. He will be released on or around February 26, 2007, and will be in the post-release supervision program for five years. He intends to go to live with his father in the Bronx, New York.

29. Jessie E. has been diagnosed with impulse-control disorder, mood disorder, depressive disorder, and anti-social personality disorder. When he was younger, he was told that he suffered from paranoia and attention deficit disorder.

30. Jessie E. has received mental health treatment for most of his life. As a young boy, he received inpatient treatment at the Bronx Children's Psychiatric Center for several years. Jessie E. subsequently received treatment at several other psychiatric hospitals. Jessie E. has also received mental health treatment at several prisons during his incarceration. Over the years, Jessie E. has been prescribed numerous psychotropic medications, including lithium, Risperdal, imipramine, Thorazine, and Trilafon. He currently sees a mental health worker about once a week, and sometimes he also speaks to a psychiatrist.

31. Jessie E.'s psychiatric disability makes it difficult for him to interact with other people. He experiences mood swings, in which he will suddenly go from being happy to being sad, angry, and easily agitated by others. His upset and agitated moods can last days or

weeks. Because Jessie E.'s mood swings happen often and he does not know when they will occur, he tries to avoid being around and talking to people he does not know.

32. Jessie E. also has difficulty concentrating and difficulties with short-term memory. It is difficult for Jessie E. to read and understand lengthy texts and to perform more than one task at a time. Prior to his incarceration, Jessie E. received Social Security disability benefits for his disabilities.

33. In a letter dated January 19, 2007, a licensed social worker and OMH Release Planning Specialist acknowledged that Jessie E. had "overwhelming functional impairments". She also cited to Jessie E.'s "lifelong institutionalization, inability to complete any DOCS programs while incarcerated", and "low reading and math scores" as indications of an "inability to seek and maintain substantial and gainful employment within the next year".

34. Jessie E. has been asking for help with preparing for his release since at least September 2006, but he was not visited by a pre-release coordinator until about two weeks prior to his release date. The coordinator handed Jessie E. an envelope containing several benefits applications and told him to complete those applications. When Jessie E. later told the pre-release coordinator that he had difficulty completing the applications, the coordinator informed Jessie E. that he could not help him but that he would refer him to someone in the community who could help him after his release. Upon information and belief, no further pre-release planning has been performed for Jessie E.

35. Jessie E. will likely be released with no benefits or mental health treatment arranged for him. Because of his psychiatric disability, it will be difficult for Jessie E. to arrange for mental health treatment, case management, and benefits on his own. He will also have great difficulty finding and maintaining employment.

Greg W.

36. Greg W. is 46 years old, and is currently incarcerated at Washington Correctional Facility in Comstock, New York. Greg W. will be released on or around his conditional release date, April 27, 2007, and will be under parole supervision for a period of one year.

37. Greg W. has been diagnosed with Depressive Disorder, Not Otherwise Specified, for which he currently takes both Prozac and trazodone. Because of Greg W.'s psychiatric condition, he is limited in his ability to concentrate and to remember, as well as in his ability to focus and to complete tasks. Greg W. also has difficulty interacting with others and tends to be sad and withdrawn. He sometimes hears voices at night when he is depressed, and he was hospitalized at Manhattan State Psychiatric Center for approximately six months when he was in his early twenties.

38. Greg W.'s functioning is further limited by back pain for which he currently takes Flexeril and Naprosyn. These medications relieve his pain a little, but Greg W. still finds it difficult to stand for more than ten or fifteen minutes, or to sit for more than half an hour.

39. Despite Greg W.'s requests, he has not received the help he needs in planning for his release. He approached staff of defendant agencies OMH and DOP to request help in finding housing and securing other benefits, including SSI. In a letter dated December 14, 2006, the institutional parole officer responded to Greg W.'s request by indicating that he had spoken to "the mental health people about referrals to housing and the like", but was "sorry to report that they do not have the resources to do this . . . [and that] they are quite overpowered by the caseload". In the same letter, Greg W. was told that he would therefore be released to a

homeless shelter. Although his psychologist did provide Greg W. with an application for Medicaid, he provided Greg W. with no assistance in completing the forms. Greg W. got help from another prisoner, but does not know if he completed the forms correctly. He was not told that the form could be used to apply for Temporary Assistance or for Food Stamps.

40. Greg W. will therefore likely be released to a homeless shelter, without benefits and without the resources to meet his basic needs. His ability to support himself and to meet his own needs is limited both by his psychiatric condition and by his back pain.

Alberto B.

41. Alberto B. is 33 years old, and was released on parole from Fishkill Correctional Facility in Beacon, New York on January 23, 2007. He is currently living at his mother's apartment in Brooklyn, New York.

42. Alberto B. has been diagnosed with Bipolar I disorder and depression. He has been receiving mental health treatment for most of his life, including while he was in prison. He has been hospitalized for his psychiatric disability on several occasions and has attempted suicide several times. Over the years, he has take the medications Klonopin, Prozac, Seroquel, thioridazine and Zoloft for his psychiatric disability.

43. Alberto B. experiences severe mood swings. During manic episodes he has difficulty concentrating or performing simple tasks and feels that he loses his connection to reality. When he is in a depressive mood, Alberto B. will completely isolate himself and sometimes remains in bed for days and sometime weeks. Alberto B. also suffers from a seizure disorder for which he requires medication.

44. Alberto B. was released into the Parole Program once before in 2004. He received no pre-release planning to prepare him for that release—no one helped him apply for

benefits prior to release and he did not receive his medication. He violated parole in 2005 when he was found to have absconded.

45. About a month before his recent release from Fishkill, Alberto B. met with a pre-release coordinator regarding preparations for his release. He was provided a Medicaid application and an HRA 2000 application, but was given no help in filling them out. He was never given an SSI application, nor was one filled out on his behalf.

46. Upon his release from Fishkill, Alberto B. was given a Medication Grant Card, but no other benefits or services had been arranged for him. He obtained a prescription for Effexor for his psychiatric disability, but was initially unable to get the prescription filled because he was not able to locate any pharmacies in his area that would accept the Medication Grant Card. He was finally able to get his prescription filled on or around February 20, 2007.

47. Alberto B. had to apply for Public Assistance, Food Stamps and Medicaid on his own after his release. Other than Emergency Food Stamps, which he received in February, he is still without benefits due to a waiting period of at least 45 days before his applications are approved. He only recently was able to file an SSI application.

48. Alberto B. has no source of income and almost no money remaining. He has had significant difficulty obtaining his medication for his psychiatric disability and seizure disorder and applying for and obtaining benefits. He has become increasingly frustrated by his current situation and is at serious risk of decompensating.

Sheldon D.

49. Sheldon D. is 50 years old, and was released from Collins Correctional Facility in Collins, New York on November 22, 2006. He will serve under parole supervision for more than a year. He is currently living at the Atlantic House Men's Shelter in Brooklyn.

50. Sheldon D. has both psychiatric and physical disabilities. He has been diagnosed with depression and post-traumatic stress disorder for which he currently takes Wellbutrin SR, Lamictal, Geodon, and Lyrica. He also has insulin-dependent diabetes, arteriosclerosis, severe peripheral vascular disease, hyperlipidemia, hypertension, and chronic leg pain. His right fifth toe was amputated due to gangrene, and he has difficulty walking and standing and depends upon a cane.

51. Because of his psychiatric disabilities, Sheldon D. has difficulty with concentration, memory and the completion of basic tasks, including filling out forms. He becomes anxious in crowds. At times he experiences auditory hallucinations, and believes strangers are talking about him. He easily becomes overwhelmed and discouraged when he is unable to complete tasks.

52. Sheldon D. has a history of mental health treatment dating back to his childhood when he was hospitalized at Creedmoor Psychiatric Center, and he has attempted suicide multiple times. He received mental health treatment during each of his four previous prison terms.

53. Sheldon D. was previously released into the Parole Program in 1995, 1990, and 1979. He did not receive any pre-release planning to prepare him to return to the community. He did not receive any medication when he was released, and no one helped him apply for benefits prior to release. Each time he stopped reporting to his parole officer soon after his release. His parole was revoked.

54. Before Sheldon D. was released from Collins, he asked for help in applying for SSI and other public benefits. A social worker filled out a Medicaid application for Sheldon D. but told him that he had to apply for Food Stamps and Public Assistance after he was

released. The social worker also completed an SSI application for Sheldon D., but rather than filing it before Sheldon D. was released, he gave Sheldon D. the SSI application and told him to file it with the Social Security Administration himself. With the assistance of counsel, after his release, Sheldon D. scheduled an appointment with SSA and filed an SSI application. He has not yet been approved for such benefits.

55. At Sheldon D.'s request, the social worker at Collins completed and filed an HRA 2000 application for Sheldon D. However, the social worker did not properly complete the application and failed to provide sufficient documentation of Sheldon D.'s psychiatric disabilities, which resulted in HRA's denial of the application. Since his release, Sheldon D. has been forced to stay in shelters, first Bedford-Atlantic and now Atlantic House Men's Shelter. Sheldon D. has had difficulty managing his affairs in the crowded, chaotic environment of the shelter, where there is rampant drug use.

56. Sheldon D. did receive a Medication Grant Program card and a two-week supply of medication and prescriptions for a refill of each medication just before he was released. He also received a referral to NYC LINK. When Sheldon D. was released from Collins, the correction officer took the cane Sheldon D. had been using and did not provide him with any means to get a replacement.

57. Sheldon D. had to apply for Public Assistance and Food Stamps on his own after his release. Other than the Emergency Food Stamps he received at the end of November 2006, Sheldon D. was without benefits until mid-January 2007, due to a 45-day waiting period before his application could be approved.

58. Because he had not been approved for Medicaid benefits at the time he was released, Sheldon D. had difficulty obtaining medical and psychiatric treatment. NYC

LINK referred him to a treatment provider that scheduled appointments for Sheldon D. to see a doctor and psychiatrist. However, when the provider found out that Sheldon D.'s Medicaid had not been approved, they cancelled the appointments. Although Sheldon D. told his parole officer about the problem with his Medicaid benefits, his parole officer did nothing to assist him in resolving the issue.

59. Sheldon D. is confident he can succeed in the parole program if he is provided the reasonable program modifications, benefits and services he needs.

Viken M.

60. Viken M. is 47 years old, and was released from Woodbourne Correctional Facility in Woodbourne, New York on February 8, 2007. He will serve approximately one year under parole supervision, and is currently living in his mother's apartment in Queens.

61. Viken M. has both psychiatric and physical disabilities. He has been diagnosed with bipolar disorder, anxiety disorder, panic disorder with agoraphobia, and adult-type attention deficit hyperactivity disorder. He also has insulin-dependent diabetes, high blood pressure, elevated cholesterol, hyperlipidemia, herniated discs in his back and neck, bilateral carpal tunnel syndrome, and instability in his right shoulder and right knee. He has paresthesias (numbness) in both hands, and his right leg is paralyzed below the knee. Viken M. also has severe sleep apnea, and has a deviated septum and allergies that further interfere with his breathing.

62. Viken M.'s disabilities limit many major life activities, and particularly impair his ability to interact with others and his ability to travel on public transportation. He has been unable to work for many years, and received SSI prior to his incarceration.

63. Before Viken M. was released from Woodbourne, he asked for help in applying for SSI and other public benefits. The pre-release coordinator told Viken M. that he had to wait to apply for SSI until after he was released. She gave him a Medicaid application, but did not help him to complete it beyond showing him where to sign and instructing him to check any boxes that applied to him. Viken M. did the best he could with the form and returned it as instructed via the internal prison mail system. When he inquired about his application about a week before his release, the pre-release coordinator did not say it had been submitted; instead she told him it was probably “around somewhere”.

64. A few days before he was released from Woodbourne, Viken M. wrote to the pre-release coordinator and asked if she had found his completed Medicaid application form, because if she had not, he wanted to fill out another one because this was very important to him. The pre-release coordinator did not respond to this note and so Viken M. was released from Woodbourne without knowing whether his application for Medicaid was ever submitted.

65. Viken M. did receive a Medication Grant Program card just before he was released. However, when he found a pharmacy that accepted the MGP card, he was told that some of the medication he had been prescribed was not covered by the MGP card. For example, he was not able to obtain Humalog, a fast-acting form of insulin that had been prescribed to control his diabetes, and which is particularly useful in situations in which his blood-sugar levels are very high.

66. A few days after his release from Woodbourne, Viken M. contacted the Social Security Administration by calling the “800” number and requesting an appointment at his local office to apply for Supplemental Security Income (SSI) disability benefits. The earliest appointment he could get was for March 7, 2007, nearly one month after his release date.

67. Viken M. has already begun to struggle with the technical requirements of his parole. On his way home from Woodbourne, he hurt his back lugging his property through the Port Authority bus terminal. He called his parole officer and asked to reschedule his appointment because he was experiencing much pain. His parole officer told him that if he did not make it to the appointment, the officer would come for him with handcuffs. Viken M. was able to make it to the appointment, but the officer's response to his request for an accommodation, combined with his pain and the general anxiety he was feeling about the pressure of having to manage all his medications, caused him to have a panic attack.

68. Viken M. is presently attending a MICA program at Elmhurst hospital as a condition of his parole. Because he does not yet have any medical coverage, he is being billed for his treatment. He is confident he can succeed in the parole program if he is provided the reasonable program modifications, benefits and services he needs.

As To All Class Representatives

69. Because of the defendants' failure to make reasonable modifications, each class representative is, or upon release will be, subjected to an increased and serious risk of losing or being denied access to the Parole Program and the public benefits programs in which he is otherwise eligible to participate.

C. Defendants

70. Defendant George B. Alexander is the Acting Chairman and Chief Executive Officer of the New York State Division of Parole ("DOP"). As such, he is responsible for DOP's activities in planning and arranging for the release of prisoners into the Parole Program, the supervision of released prisoners, the prosecution of parole revocation proceedings within New York State, and ensuring that the Parole Program operates in a manner that complies with the requirements of federal law, including the ADA and the Rehabilitation Act. He is also

responsible for overseeing the training and supervision of all staff at DOP, including institutional parole officers, who are based in state correctional facilities and responsible for pre-release planning, and community-based field staff, who are responsible for supervising parolees and helping them to access the various programs offered by DOP. Acting Commissioner Alexander is sued in his official capacity.

71. Defendant DOP is the agency created by the State of New York for the purpose of administering the Parole Program within New York State, including planning and arranging appropriate conditions for release of prisoners into the Parole Program, the supervision of released persons, and the prosecution of parole revocation proceedings. DOP is a public entity under 42 U.S.C. §§ 12131(1) and 12132, and the Parole Program that DOP administers includes programs or activities that receive federal financial assistance under 29 U.S.C. § 794(a) and (b).

72. Defendant New York State Office of Mental Health (“OMH”) is the lead governmental agency responsible for statewide planning, development, funding and monitoring of public mental health services, including more than 2,500 mental health programs operated by local governments and nonprofit agencies. OMH is responsible for providing mental health services in State prison facilities and for providing pre-release planning for those individuals with mental illness who are released from state prison facilities. OMH is a public entity under 42 U.S.C. §§ 12131(1) and 12132, and the mental health services that OMH administers include programs or activities that receive federal financial assistance under 29 U.S.C. § 794(a) and (b).

73. Defendant Michael F. Hogan is the Acting Commissioner of OMH. He is responsible for administering the agency’s operations and services, including mental health services for individuals under parole supervision and prisoners in the custody of the New York

State Department of Correctional Services (“DOCS”), and for ensuring that the program operates in a manner that complies with the requirements of federal law, including the ADA and the Rehabilitation Act. He is sued in his official capacity.

74. Defendant New York State Department of Health (“DOH”) is the New York State agency responsible for administering the state-wide Medicaid program, which subsidizes medical treatment—including prescription medications, mental health and substance abuse treatment—for eligible low-income residents. DOH is a public entity under 42 U.S.C. §§ 12131(1) and 12132, and the Medicaid programs that DOH administers include programs or activities that receive federal financial assistance under 29 U.S.C. § 794(a) and (b).

75. Defendant Richard F. Daines is the Commissioner of DOH. As Commissioner, he is responsible for overseeing the operation of the State’s Medicaid program, and ensuring that the program operates in a manner that complies with the requirements of federal law, including the ADA and the Rehabilitation Act. He is sued in his official capacity.

76. Defendant New York State Office of Temporary and Disability Assistance (“OTDA”) is the New York State agency with responsibility to provide Food Stamps and Temporary Assistance to indigent New York State residents who meet the eligibility criteria. OTDA has regulatory responsibility over the State’s local social services districts, including the City of New York, which have responsibility for processing applications for Food Stamps, Medicaid and Temporary Assistance for eligible residents. OTDA is a public entity under 42 U.S.C. §§ 12131(1) and 12132, and the public assistance programs that OTDA administers include programs or activities that receive federal financial assistance under 29 U.S.C. § 794(a) and (b).

77. Defendant David A. Hansell is the Acting Commissioner of OTDA, and as such is responsible for ensuring that the services and programs operated or provided by OTDA, and by local social services districts over which the agency exercises regulatory authority, comply with the requirements of federal law, including the ADA and the Rehabilitation Act. He is sued in his official capacity.

78. Defendant New York City Human Resources Administration (“HRA”) is the executive agency of the City of New York with responsibility for processing applications from New York City residents for Food Stamps, Medicaid and Temporary Assistance. HRA is a public entity under 42 U.S.C. §§ 12131(1) and 12132, and the programs that HRA administers include programs or activities that receive federal financial assistance under 29 U.S.C. § 794(a) and (b).

79. Defendant Robert L. Doar is the Commissioner of HRA, and in that capacity is responsible for ensuring that the agency complies with federal and state laws, including the ADA and Rehabilitation Act, and for implementing the Medicaid, Temporary Assistance and Food Stamps programs. He is sued in his official capacity.

80. Defendant New York City Department of Health and Mental Hygiene (“DOHMH”) is the agency responsible for the planning, funding, solicitation, development and monitoring of mental health services for adults with mental illness in New York City, including parolees with mental illness. DOHMH administers the Medication Grant Program for those individuals with mental illness leaving State prisons who are returning to New York City. DOHMH is a public entity under 42 U.S.C. §§ 12131(1) and 12132, and the programs that DOHMH administers include programs or activities that receive federal financial assistance under 29 U.S.C. § 794(a) and (b).

81. Defendant Thomas R. Frieden is the Commissioner of DOHMH, and in that capacity is responsible for ensuring that the agency complies with federal and state laws, including the ADA and Rehabilitation Act, and for implementing the Medication Grant Program. Commissioner Frieden is sued in his official capacity.

CLASS ACTION ALLEGATIONS

82. Named plaintiffs bring this action on behalf of themselves and a class consisting of individuals who (a) have a psychiatric disability that substantially limits one or more major life activities within the meaning of the Americans with Disabilities Act, (b) are currently incarcerated in a New York State prison and are eligible to be released into New York City under parole supervision or who have been released from a New York State prison into New York City and are currently under parole supervision, and (c) are eligible, or upon release will be eligible, for one or more of the following public benefits programs: Medicaid, SSI, Food Stamps, and Temporary Assistance.

83. This action meets the requirements of Fed. R. Civ. P. 23(a) as follows:

a. The proposed class is so numerous that joinder of all its members is impracticable. Upon information and belief, there are thousands of indigent individuals with psychiatric disabilities under parole supervision in New York City and thousands of individuals with psychiatric disabilities who are incarcerated in a New York State prison and are parole-eligible. In addition, joinder of all members of the proposed class is impracticable because membership of the proposed class constantly changes, as additional persons receive felony sentences and later become parole-eligible, and other persons complete their sentences entirely and are no longer subject to incarceration or parole supervision.

b. The questions of law and fact presented by the named plaintiffs are common to other members of the class.

c. Such questions include, generally, whether, under federal and state law, defendants sufficiently accommodate the disabilities of indigent individuals with psychiatric disabilities who are under parole supervision so that they are able to participate successfully in the Parole Program and the public benefits programs for which they are or will be eligible, and more specifically:

- i. whether defendants adequately assist Class Members prior to their release in securing appropriate mental health services so that Class Members are able to access the services of the Parole Program and comply with the conditions of parole supervision;
- ii. whether defendants adequately assist Class Members prior to their release in securing other needed services for which they are eligible, including public benefits and housing, so that Class Members are able to access the services of the Parole Program and comply with the conditions of parole supervision;
- iii. whether defendants adequately assist Class Members prior to their release in securing other needed services for which they are eligible, including public benefits and housing, so that they have access to those benefits immediately upon their release;

- iv. whether defendants have taken sufficient steps to provide their employees and agents with the appropriate information, training, procedures and supervision necessary to comply with the requirements of federal and state law, including the ADA and the Rehabilitation Act; and
- v. whether the Parole Program's outwardly neutral requirements and conditions are significantly more difficult to satisfy for Class Members and without appropriate reasonable modifications than for parolees who have no psychiatric disabilities.

d. The violations alleged by the named plaintiffs are typical of those suffered by the class. The entire class will benefit from the relief sought.

e. The named plaintiffs will fairly and adequately protect the interests of the class. The named plaintiffs have no interests adverse to or in conflict with those of the other class members. The Legal Aid Society and the Urban Justice Center, co-counsel for plaintiffs, are legal services organizations experienced in class action civil rights and poverty law litigation that have secured court-ordered relief in class-action cases involving public benefits, the treatment of homeless persons, and prison and jail conditions. Cravath, Swaine & Moore LLP, co-counsel for plaintiffs, is a private law firm experienced in major class-action litigation.

84. The prosecution of separate actions by individual Class Members would create a risk of inconsistent or varying adjudications which would establish incompatible standards of conduct for the party opposing the class. Fed. R. Civ. P. 23(b)(1)(A).

85. The defendants have acted or refused to act on grounds generally applicable to the class, making appropriate final injunctive or corresponding declaratory relief with respect to the class as a whole. Fed. R. Civ. P. 23(b)(2).

FACTS

86. Under New York State law, prisoners convicted of felonies and sentenced to incarceration are eligible for release into the parole, conditional release or post-release supervision programs at some point during or following their sentences, with very few statutory exceptions.

87. One of the goals of the Parole Program is to increase the likelihood that parolees will succeed at reintegrating into the community. This is a primary reason for the many pre-release planning agreements into which State defendants have entered over the years, and it is a purpose that is defeated when prisoners with psychiatric disabilities are released without the reasonable modifications needed to enable them to participate successfully in the Parole Program.

88. Despite both local and national consensus on the importance of pre-release planning, New York has failed to implement needed services systematically and on the scale necessary to accommodate Class Members' disabilities.

89. Defendants are aware of the need for specialized services for disabled prisoners but do not offer needed accommodations to all Class Members as required by law. Indeed, defendants OMH and DOP have acknowledged in various policies and publications such

as the Mental Health Resource Handbook and the New York State Parole Handbook that pre-release planning should be provided to prisoners with psychiatric disabilities. Despite this acknowledgment, however, the actions DOP and OMH have taken are not adequate to meet the needs of Class Members. For example, although OMH and DOP have a small pre-release program with DOCS and some community service providers to provide pre-release planning for prisoners with psychiatric disabilities in order to facilitate their transition back into the community, this program is miniscule. The program, known as CORP, the Community Orientation and Reentry Program, consists of only 31 beds at a single maximum-security facility for men. Prisoners who are not part of CORP (*i.e.*, the vast majority of male prisoners and all female prisoners) receive services either haphazardly or not at all.

90. When released without needed health care, without appropriate housing, and without means to meet their immediate needs, Class Members stand a greatly reduced chance of successful participation in the Parole Program and face repeated reincarceration for violations of the Parole Program caused by manifestations of their psychiatric disabilities. Defendants' failure to provide needed modifications denies Class Members the services of the Parole Program, and bars them from the Parole Program entirely upon rearrest.

A. Overview of Demands Placed on Plaintiff Class Under the Parole Program

91. Persons released to parole supervision are subject to general conditions of release that are set out in statutes and regulations, as well as to special conditions determined on an individual basis by DOP. These conditions typically include the expectation that a parolee seek and find a means to support herself, as well as requirements that the parolee report regularly to her parole officer, remain at her approved residence unless granted permission to do otherwise, submit to regular drug tests, and seek and accept other services to which she is referred. For parolees with psychiatric disabilities, parole supervision often includes a

requirement that the individual seek and accept mental health treatment. Activities that ordinarily would be voluntary are thereby institutionalized under the Parole Program, and the parolee's continued freedom rests on her ability to perform them.

92. Given these conditions, successful participation in the Parole Program requires parolees to manage a demanding schedule of mandated appointments, and the Parole Program thus presumes that individuals are capable of following through on any additional recommendations, referrals or mandates.

93. Violation of any condition of the Parole Program, including failing to attend an appointment, failing to be present during required hours at a registered residence, or failing to take prescribed medication, may result in arrest and prosecution. Such prosecutions can result in the revocation of parole and the parolee's return to state prison, or can lead to the addition of new conditions of release with which the parolee must comply. Persons accused of violating discretionary parole are not entitled to bail. Many spend several months in jail awaiting formal proceedings even if they are ultimately restored to the Parole Program.

B. Class Members Enter the Parole Program Without Adequate Pre-Release Planning and Transitional Services and, as a Result, Are Denied an Equal Opportunity to Participate in the Program.

94. While incarcerated, Class Members are provided with medication, treatment, and other mental health services. These services may include periodic consultations with a psychiatrist or therapist, administration of psychotropic medication, and use of the Central New York Psychiatric Center for inpatient care. A number of prisons offer additional services and programs, such as the Residential Crisis Treatment Program for prisoners experiencing a psychiatric crisis, and the Intermediate Care Program for prisoners who are unable to function in the general prison population because of their psychiatric disabilities. Class Members are also

provided with food and shelter, in a highly structured environment in which they make relatively few decisions about their care.

95. In contrast, when Class Members transition from prison into the Parole Program, many abruptly find themselves without arranged mental health services, without stable housing, and without the means to pay for necessities like food, toiletries, or even a winter coat. From their first day outside prison walls, Class Members are expected to manage their treatment and meet their own needs with minimal external support, but most have little ability to do so. Many Class Members are unable to manage complex schedules of mandated appointments, and are unable to make use of paper referrals without additional assistance. As a result, many Class Members do not receive necessary mental health treatment, do not find appropriate housing, and cannot find the stable external environment that they need.

96. A stable external environment—for example, a situation in which a parolee has access to mental health counseling, is able to pay for prescribed medication as well as for food and clothing, and has a safe and reliable residence—increases the likelihood that a Class Member will be able to manage the symptoms of his or her illness and meet the requirements of the Parole Program. Without a stable external environment, many Class Members are unable to manage their symptoms, finding their lives dominated by their mental illness and resulting struggles. Many also decompensate (suffer an acute deterioration of their mental health), which further diminishes their ability to think and carry on daily activities. As explained in more detail below, for many Class Members the chaotic environment of a homeless shelter makes attaining external stability even more difficult.

97. Class Members' symptoms often severely impair their ability to manage ordinary life activities and the conditions of the Parole Program. For example, some Class

Members have schizophrenia, a chronic and often disabling brain disease whose symptoms include hallucinations, delusions, and unusual or disorganized speech, thinking and behavior. Other Class Members have anxiety or mood disorders, whose symptoms include paralyzing fear, debilitating emotional extremes, and sometimes hallucinations or delusions as well. Most Class Members take psychotropic medication, which can be heavily sedating or cause additional adverse effects. Each illness or medication side-effect can limit a Class Member's ability to carry out daily activities, for example by impairing her ability to think, concentrate, process information, remember, travel on public transportation, or interact with others. Instability in other aspects of an individual's life may further impair her ability to function. To participate successfully in the Parole Program, Class Members require reasonable modifications in the form of pre-release planning and transitional supports.

98. When defendant agencies fail to provide needed modifications, Class Members' illnesses leave them with a drastically reduced ability to access the services of the Parole Program and to comply with the terms of the Program, increasing their risk of parole violations and a return to prison. When appropriate planning and transitional supports are not provided, the abrupt loss of services and increased demands of parole supervision also create predictable and preventable exacerbations of Class Members' symptoms. Any worsening of Class Members' symptoms further erodes their already limited ability to participate successfully in the Parole Program.

99. Further, the Parole Program also has a disparate impact on Class Members. The challenges discussed above make it significantly more difficult for Class Members to meet the requirements and access the services of the Parole Program than for

parolees without psychiatric disabilities. As a result, a larger percentage of Class Members fail to meet the requirements of the Parole Program and are reincarcerated as a result.

C. Defendants Fail to Afford Class Members Reasonable Modifications for Their Disabilities and an Equal Opportunity to Participate in the Parole Program.

100. Despite the difficulties that Class Members face upon reentering the community due to their psychiatric disabilities, Defendants fail, in several ways, to make reasonable accommodations so as to provide Class Members an equal opportunity to meet the requirements and access the services of the Parole Program.

1. Defendants Fail to Arrange for Timely and Appropriate Mental Health Services as Required to Afford Class Members Reasonable Modifications for Their Disabilities and an Equal Opportunity to Participate in the Parole Program.

101. Class Members require community-based mental health services in order to control their symptoms, access the services of the Parole Program and meet the requirements of that Program. Community-based mental health services include a range of services, such as medication; individual or group therapy; treatment for co-occurring substance use disorders; vocational rehabilitation; and residential mental health and substance abuse treatment. Many Class Members may also need some degree of mental health case management, which includes a range of services based on the needs of the individual, for example: (1) facilitating service delivery, including helping individuals make and keep appointments, escorting individuals to appointments as needed, and arranging mental health, medical and psychiatric rehabilitation services; (2) advocating for and assisting individuals to gain access to public benefits or health-related services; and (3) assisting individuals to manage their finances and increase their independence.

102. Under the existing terms of the Parole Program, defendants OMH and DOP share primary responsibility for planning for the release of prisoners with psychiatric disabilities. Defendants OMH and DOP have acknowledged in various policies and in publications such as the Mental Health Resource Handbook and New York State Parole Handbook that pre-release planning should include assistance in obtaining appropriate mental health services. Since as far back as 1986, defendants OMH and DOP have entered into agreements to provide appropriate pre-release planning. Nevertheless, defendants have failed to implement needed services systematically and on the scale necessary to accommodate Class Members' disabilities.

a. Defendants Fail to Arrange for Timely and Appropriate Mental Health Treatment.

103. As a condition of their parole, most Class Members are required to undergo some form of mental health treatment. All Class Members have received treatment while in prison or have requested appropriate services, so that defendant agencies OMH and DOP are aware of their illness and need for continuing care. Despite this, neither agency has a system in place to ensure that Class Members receive continuous treatment as needed to accommodate their disability and to allow them to comply with the conditions of the Parole Program.

104. Class Members typically enter the Parole Program with very little, if any, community mental health care arranged prior to their release, and they have little ability to arrange it themselves. Instead, individuals with psychiatric disabilities are told that their parole officer or a third-party agency (overseen by OMH) will provide a referral for services. If Class Members do receive a referral, it is typically for a screening and intake evaluation only, and may be with a social worker or other staff who are unable to prescribe medication. Many parolees are

not assigned to meet a treating physician until a much later date, and may go for weeks without meaningful mental health treatment.

105. The defendants' system delays the beginning of treatment, sometimes for a considerable period: some public hospitals, for example, have a policy or practice of scheduling intake appointments two or more months in advance of intake. By the time they can be seen, Class Members may have run out of medication, been reincarcerated, or be acutely ill because of the lack of care. Other Class Members are unable to advocate for themselves and to follow through on appointment referrals; without case management or similar services, they may never find a treating physician at all. Every delay therefore adds an additional, unnecessary barrier to Class Members' successful participation in the Parole Program. Such unnecessary delays in obtaining adequate mental health care are particularly pernicious when Class Members are first released into the Parole Program, the most challenging phase of community re-integration.

106. Many Class Members require medication to manage the symptoms of their psychiatric disabilities. The Medicaid program provides health insurance coverage that covers the cost of such medication and treatment for indigent persons. When an application for Medicaid is submitted, a 45-day waiting period typically applies before the Medicaid application is granted. Defendants fail to submit Medicaid applications on behalf of prisoners far enough in advance of the prisoners' release to ensure that they are covered by Medicaid promptly upon their re-entry into the community.

107. Upon release from prison, prisoners with psychiatric disabilities who take medication are commonly given two weeks' worth of medication and a prescription for the medications for a two-week supply with no refills. Prisoners are not provided Medicaid

coverage immediately upon release from prison. Instead, some prisoners are given a temporary benefit card for the provision of psychiatric medication upon release under the State Medication Grant Program (“MGP”). This temporary benefit card (“MGP card”) is intended to cover the cost of filling the prescription Class Members receive upon release once their two-week supply of medication runs out.

108. Even as a temporary benefit card, the MGP card is not an adequate substitute for Medicaid coverage. The MGP card is only accepted at some pharmacies and covers psychiatric medications only. The MGP card does not cover ongoing mental health treatment such as therapy visits. The card does not cover medication prescribed for other medical conditions, even though many Class Members suffer from various other conditions that directly or indirectly affect their mental health. Although the MGP card is meant to cover visits to a psychiatrist for the purpose of obtaining a prescription, Class Members are not informed that this is the case. The MGP card does not indicate that it covers prescription-related visits, and Defendant OMH does not make adequate efforts to ensure that parolees with psychiatric disabilities are linked with service providers who will accept the MGP and issue new prescriptions.

109. Because of defendants’ failure to submit pre-release Medicaid applications on time or at all, there is usually a gap in coverage between the date when the medications received upon release and obtained with the MGP card run out and the date when Medicaid becomes active and new prescriptions can be obtained and filled. In the best of circumstances, a Class Member who applies for Medicaid in conjunction with Safety Net Assistance on the same day as her release from prison and who is provided with a two-week supply of medications

would run out of medications two weeks before her Medicaid could, even in theory, become active.

110. In practice, Class Members' medications often run out before they can be refilled. This happens because Class Members often do not receive a full 14 days of medication upon release; often receive only a 14-day prescription after release; and/or because an appointment with a physician who accepts Medicaid cannot be scheduled on the first day when Medicaid becomes active. Obtaining the necessary medical appointment after Medicaid becomes active can take several weeks or even months.

111. State pre-release coordinators are supposed to submit complete Medicaid applications to defendant DOHMH, which is supposed to forward them to HRA in connection with Class Members' applications for MGP before Class Members are released from prison. (*See infra* ¶ 128.) However, in practice, large numbers of those applications are not sufficiently complete and correct to be accepted for Medicaid. When the applications for Medicaid are denied, Class Members must reapply after release, generally entailing a 45-day waiting period that does not even begin until a new application can be submitted.

112. Because of their psychiatric disabilities and lack of access to required supporting documentation, many Class Members are unable to complete the paperwork and application process to apply for Medicaid without assistance. Such assistance could take the form of helping Class Members determine what information needs to be written on the applications and/or helping them write that information on the applications, as well as assisting Class Members in collecting the required supporting documentation. Defendants do not routinely provide such assistance. Class Members who require such assistance and do not obtain it have their Medicaid applications denied again.

113. The lack of reliable access to medical care and mental health services typically causes a worsening of Class Members' underlying illnesses. With increased hallucinations, delusions, anxiety, depression, or other symptoms, Class Members' ability to function is correspondingly reduced. They are therefore unable to access the services of the Parole Program and to comply with its conditions, which leaves them vulnerable to arrest for violation of the Parole Program.

b. Defendants Fail to Arrange for Case Management and Related Services.

114. Many Class Members require case management services, for example to help them navigate appointments or to help them to manage their medications and referrals that they receive through the Parole Program.

115. Defendant OMH uses one application form to determine eligibility for supportive housing and case management services (including varying levels of intensive service such as supportive case management, intensive case management and assertive community treatment, which is very intensive case management by an interdisciplinary team available 24 hours a day seven days a week). This application is known as the HRA 2000.

116. Class Members cannot submit an HRA 2000 to apply for case management services on their own. Rather, the application for case management has several sections that must be completed by a physician or mental health professional, including a detailed psychosocial summary, an evaluation by a psychiatrist, and a report of tuberculosis testing. These forms ask for detailed information regarding a patient's needs, records and medical history. If the forms are prepared prior to Class Members' release from prison, the HRA 2000 can be completed by employees of defendant OMH with reference to records already in their possession and as part of a pre-release plan that they are already obligated to complete.

117. Once Class Members are released, however, if an application for case management is to be submitted on their behalf, they must first locate a new doctor or social worker who will complete the required psychosocial and psychiatric evaluations. For some Class Members, this may entail waiting not only until they are referred to an appropriate physician, but until that physician has received their records and is able to submit detailed recommendations as to the client's needs. For other Class Members, the same psychiatric disabilities that makes case management necessary may also make it impossible to obtain.

118. Although Class Members' need for these services is known to defendants, and although defendants OMH and DOP have responsibility for planning for Class Members' release, defendants do not have an adequate system for assessing Class Members' needs and submitting these applications when appropriate. Without case management or similar services when those are required, Class Members are typically unable to manage their daily activities. They may be unable to advocate for themselves to get appointments when needed, unable to remember scheduled appointments, unable to travel to unfamiliar locations, or unable to complete required forms. As a result, many of these parolees do not manage to secure ongoing treatment for psychiatric disabilities, are unable to control their symptoms, and are reincarcerated soon after their entry into the Parole Program.

2. Defendants Fail to Arrange for Timely and Appropriate Public Benefits as Required to Afford Class Members Reasonable Modifications for Their Disabilities and an Equal Opportunity to Participate in the Parole Program.

119. Individuals who participate in the Parole Program are expected to find some legitimate means of supporting themselves. Those who are too ill to work or are unable to secure employment must typically seek and obtain public benefits if they are to meet their immediate needs and comply with the conditions of the Parole Program. Indigent parolees are eligible for one or more income-support programs, including SSI and state-administered

Temporary Assistance, as well as Food Stamps and Medicaid. SSI and Temporary Assistance provide income and also facilitate access to other services that can increase recipients' ability to comply with the terms of the Parole Program. Medicaid provides health insurance coverage, which is needed to receive the mental health treatment typically required as a condition of release. Receipt of SSI can also serve as proof of the medical need that is required to establish eligibility for supportive housing and for case management, both of which can reduce or compensate for the functional impairments caused by psychiatric disabilities. SSI may also speed access to vocational rehabilitation.

a. Defendants Fail to Submit Timely Applications for Federal Disability Benefits.

120. The Social Security Administration has a statutory obligation to develop systems to allow individuals to apply for SSI prior to release from State prison. In New York State, the SSA has sought to fulfill this important obligation through a contract with defendant DOP. This contract requires DOP to identify prisoners who are potentially eligible for SSI, to take SSI applications, and to obtain and submit necessary medical evidence with the assistance of OMH. The applications are to be submitted up to 120 days prior to an individual's expected release date.

121. Despite this, defendants DOP and OMH do not have an adequate system for assessing Class Members' needs and submitting these applications effectively on behalf of eligible individuals. Despite the fact that many Class Members would qualify for SSI upon their release, and despite the fact that SSA has a contract with defendant DOP to prepare pre-release applications for SSI for prisoners several months before they are released, defendants fail to assist many of these individuals in applying for these benefits before release. When applications are submitted, defendants DOP and OMH often fail to obtain and submit needed medical

evidence—even when this evidence is from the agencies' own files. As a result, many Class Members whose medical conditions are severe enough to meet the disability criteria for SSI have their applications denied. Even when they do submit applications for psychiatrically disabled prisoners prior to their release, the defendants have usually delayed the submission so long that there is virtually no chance that benefits will in fact be available to eligible parolees upon their release.

122. Some parolees with psychiatric disabilities received SSI prior to incarceration. In most cases, it is less difficult for these individuals to be awarded SSI on new applications because SSA can review their prior disability files to assist them in making a determination. Despite this, defendant DOP fails to systematically identify prisoners who received SSI prior to incarceration and to process new applications for them so that they can receive SSI upon release. As a result, most individuals who qualify for SSI are forced to apply on their own when they are released from prison.

123. Defendants' failure to submit these applications prior to Class Members' release from prison results in significant delay, and sometimes means that Class Members never receive benefits or are reincarcerated before their application can be approved. Applications for SSI take approximately three to five months to process, and appeals following an initial denial can take more than a year. During this time, the applicant is forced to survive with little or no financial support while the application is pending. Many Class Members, because of their psychiatric disabilities, are unable to complete the paperwork and follow through on the appointments needed to apply; defendants' failure therefore means that some Class Members do not receive SSI benefits at all.

b. Defendants Fail to Submit Timely Applications for Medicaid.

124. As explained earlier, defendants also fail to submit timely applications for Medicaid on behalf of Class Members. A 45-day waiting period typically applies before Medicaid applications submitted in conjunction with a Safety Net Assistance application can be granted. However, Medicaid applications may be submitted up to 45 days prior to release from prison. Because defendants often fail to submit Medicaid applications even close to 45 days in advance of Class Members' release from prison, Class Members are often not covered by Medicaid promptly upon their re-entry into the community. The MGP card is not an adequate temporary substitute for Medicaid and does not adequately fill the gap between release from prison and the inception of Medicaid coverage. (*See supra* ¶¶ 108-9.)

c. Defendants Do Not Allow Timely Applications for Food Stamps and Public Assistance.

125. Defendant OTDA is the single State agency responsible for supervising the administration of the Temporary Assistance and Food Stamp programs by local social services districts in New York State.

126. Defendant HRA is the local social services district responsible for administering the Temporary Assistance and Food Stamp programs in New York City. HRA is required to comply with all directives and instructions by OTDA regarding those programs.

127. OTDA has issued instructions directing local social services districts to accept applications for Temporary Assistance and Food Stamps up to 45 days before a Class Member's anticipated release date from prison.

128. State defendants DOH and OTDA have established procedures for the submission of applications for Temporary Assistance and Food Stamps for Class Members before they are released from prison. These procedures require City defendant DOHMH to

accept applications for Medicaid, Temporary Assistance, and Food Stamps and to forward them with supporting documentation to City defendant HRA. DOHMH and HRA must also decide how the immediate needs of applicants will be identified and addressed once they are released. Finally, DOHMH must submit a plan to State defendant OMH detailing, among other things, the process by which the timely filing of Medicaid applications is to be performed and the coordination with applications for Temporary Assistance and Food Stamps.

129. In practice, however, these procedures are not properly followed and do not result in the submission of such applications far enough in advance of the prisoners' release to ensure that benefits are available upon their re-entry into the community. Upon information and belief, the breakdown is attributable to several factors: (1) the failure, in practice, of OMH pre-release coordinators routinely to prepare applications on behalf of Class Members for Temporary Assistance and Food Stamps; (2) the failure of DOHMH to ensure that timely applications for Temporary Assistance and Food Stamps are submitted to the correct components within HRA; (3) bureaucratic structures and procedures used by HRA, which disregard such applications even when they are made; and (4) the failure of the responsible State agencies (DOH and OTDA) to supervise and correct these problems.

130. The standard application form for Temporary Assistance, Food Stamps, and Medicaid is a combined application (the "common application"). Separate boxes on the form may be checked that specify each program for which the applicant is applying.

131. Class Members do not have direct access to the application form prior to their release from prison. For applications prepared prior to release, this form is supposed to be completed by State pre-release coordinators employed by Defendant OMH, who are responsible

for completing the application and checking all appropriate boxes. For indigent prisoners with psychiatric disabilities, an application should be submitted for all three programs.

132. Upon information and belief, OMH employees who are preparing pre-release plans for Class Members are trained to check the box for Medicaid, but are trained not to check the boxes for Temporary Assistance and Food Stamps, regardless whether the prisoner they are supposed to be helping appears to be in need of and likely eligible for such programs. Even when Class Members specifically ask for assistance in applying for Food Stamps or Temporary Assistance prior to their release, OMH pre-release coordinators do not check the Food Stamps and Temporary Assistance boxes. Instead, they misinform Class Members and tell them that they must wait until they are released to apply. As a consequence, pre-release applications for Temporary Assistance and Food Stamps are generally not submitted at all.

133. Even when pre-release coordinators do prepare pre-release applications for all three programs by checking all three boxes, such applications are not in fact processed by HRA. HRA is organized into one division that administers Temporary Assistance and Food Stamps (the Family Independence Administration, or "FIA") and a separate division that administers Medicaid (the Medical Insurance and Community Service Administration, or "MICSA"). Upon information and belief, when DOHMH receives pre-release Medicaid applications on behalf of State prisoners, it forwards them to MICSA. Although MICSA processes those applications for Medicaid, it does not process them for Temporary Assistance or Food Stamps. Neither does MICSA forward an application for all three programs to FIA for processing of the Temporary Assistance and Food Stamp applications. As a consequence, in practice, any pre-release application for Temporary Assistance and Food Stamps that is prepared by OMH pre-release coordinators is routinely ignored by HRA.

134. Because of these failings, Class Members are routinely required to apply for Temporary Assistance and Food Stamps after they are released from prison. Because certain waiting periods apply to these applications, Class Members routinely experience gaps during which they have no cash assistance and/or Food Stamps.

135. A Food Stamp application is supposed to be decided within 30 days. Although expedited Food Stamps are available for emergency food needs during the 30-day waiting period, even expedited Food Stamps need not be granted for five days.

136. An application for Safety Net Assistance entails a waiting period of up to 45 days. An application for Family Assistance (the less common situation for Class Members) entails a waiting period of up to 30 days. Although in theory a limited, same-day “immediate needs” cash grant is available when an applicant for Temporary Assistance is in immediate need, an “immediate needs” cash grant is not an adequate substitute for regular Temporary Assistance.

137. Defendants OMH, DOP, and HRA have a policy and practice of telling prospective parolees that they can apply for Food Stamps and Temporary Assistance once they are released from prison, without informing them they have a right to apply for those benefits prior to release. OMH and DOP employees typically do not advise prisoners with psychiatric disabilities that applications for Food Stamps and Temporary Assistance can be submitted prior to their release from prison. If asked, many OMH and DOP staff state incorrectly that such applications are not allowed. HRA has a similar policy and practice of informing prospective applicants that they may apply only after their release.

138. Although they are financially eligible for public benefits, many Class Members will not receive those benefits after their release without reasonable modifications for their disability. Because of the complexity of the application process, it is very difficult for

many individuals with psychiatric disabilities released from State prisons to secure Temporary Assistance and Food Stamps without assistance to facilitate their enrollment and participation in these programs. Many Class Members are unable to maintain eligibility requirements for Temporary Assistance and Food Stamps because the symptoms of their psychiatric disabilities render them unable to comply with the detailed bureaucratic requirements of these programs. The failure to attend a single required appointment or to submit a single required document may result in the rejection of an application or termination of benefits. In some cases, failure to attend an appointment is considered “sanctionable”, and may result in the applicant being barred from receiving benefits for a 90-day period.

139. Because of gaps during which they have no cash assistance or Food Stamps, Class Members often enter the Parole Program without income or other means to meet their basic needs, including transportation to mandatory appointments with their parole officer and other service providers. This worsens their symptoms, interferes with their rehabilitation and community integration, reduces their access to the services of the Parole Program and ability to comply with its conditions, and places them at increased risk of reincarceration for violation of the Parole Program.

3. Defendants Fail to Submit Timely Applications for Appropriate Housing and Mitigate the Deleterious Effects of Shelter Conditions.

140. A parolee’s housing situation can greatly affect the parolee’s chances of succeeding in the Parole Program. As the agency responsible for preparing and approving a parolee’s parole program, Defendant DOP must investigate and approve the housing in which the parolee expects to live. Defendant OMH shares responsibility for planning for the release of prisoners with psychiatric disabilities, particularly with regard to mental-health related supportive services. Both defendants have acknowledged in various policies and in publications

such as the Mental Health Resource Handbook and New York State Parole Handbook that the pre-release planning they provide should include assistance in obtaining appropriate housing.

a. Defendants Fail to Submit Timely Applications for Appropriate Housing.

141. For many Class Members, the most appropriate release plan would involve placement in supportive housing, which includes on-site or linked social services and is targeted at individuals with special needs. Defendants OMH, HRA, and DOH in fact have participated in studies showing that supportive housing is cost-effective and reduces incarceration. Supportive housing programs use the same HRA 2000 application that is used for case management services; as with case management, the application must be completed in part by a treating physician or clinician as it must include a psychosocial report. For supportive housing programs, the application must be submitted to HRA, which determines financial eligibility and the level of supportive housing services appropriate to the applicant.

142. Although Class Members' need for housing is known to Defendants, Defendants do not have an adequate system for assessing Class Members' needs and submitting these applications when appropriate. Because there are waiting lists for most programs, delay in submitting an application can result in an individual being unable to secure needed housing in time for her release from prison. As a result, Class Members are often relegated to homeless shelters.

b. Defendants Fail to Arrange for Supportive Services for Class Members Released to Homeless Shelters.

143. Many persons with psychiatric disabilities are discharged from prison as "undomiciled" with a homeless shelter as their approved Parole Program address. In addition, many individuals who are not initially discharged to a homeless shelter quickly end up in one because they do not receive the public benefits necessary to support themselves.

144. Use of a homeless shelter as part of a release plan creates an inherently unstable situation and poses particular risks for individuals with psychiatric disabilities. Shelters are typically crowded and chaotic, and cause acute distress for Class Members who suffer from anxiety, depression, post-traumatic stress disorder, phobias, or any condition that impairs their ability to interact with others or to be in a crowded environment. Drug use by other shelter residents presents a hazard for Class Members with a history of addiction. Further, individuals who display unusual behavior or appear vulnerable, like many with psychiatric disabilities, are at risk of attack. No matter what the shelter conditions are, however, a parolee who flees such an inappropriate living situation following a deterioration of her mental health can be found to have violated the Parole Program.

145. Many Class Members have difficulty maintaining and managing a schedule of appointments under the best of circumstances; these tasks are even more difficult when they are homeless and staying in a shelter. Homeless shelters have no direct telephone service, limited ability to relay messages, and unreliable mail service. Most shelters also require residents to leave during the day but do not allow them to reserve beds, so that individuals are faced with the constant anxiety and distraction of finding a space to sleep and to secure their belongings.

146. When Class Members must be released to a homeless shelter, reasonable modifications are needed in order to allow Class Members an opportunity to succeed in the Parole Program. Like modifications that are necessary outside the shelter setting, these modifications may include case management to help Class Members coordinate their appointments and to ensure they receive needed health care and other services; they may also include assignment to parole officers with specialized training who are able to recognize signs of

increasing impairment. Without services to compensate for instability in their home environment, Class Members commonly experience an exacerbation of their symptoms. This leaves them unable to access the services of the Parole Program and to comply with its conditions, and increases their likelihood of reincarceration.

4. Defendants Have Failed to Provide Their Employees and Agents with the Appropriate Information, Training, Procedures, and Supervision Necessary to Comply with the Requirements of Federal and State Law, including the ADA and the Rehabilitation Act.

147. Defendant DOP is responsible for training and supervising its staff in New York State prisons who are supposed to provide prisoners with psychiatric disabilities with pre-release planning, as well as its field Parole Officers who are supposed to supervise parolees. DOP has failed to adequately train and supervise its staff in New York State prisons (and/or the staff of DOCS and defendant OMH) in the tasks associated with pre-release planning, including, but not limited to, assisting prisoners with psychiatric disabilities in submitting applications for Social Security benefits, supportive housing and mental health services in a timely manner prior to their release from prison. In addition, DOP has failed to adequately train and supervise its field Parole Officers to make reasonable accommodations for parolees with psychiatric disabilities, including, but not limited to, assisting parolees with obtaining access to the mental health services they require, recognizing and responding appropriately to patterns of behavior that may be manifestations of psychiatric disabilities, such as a failure to keep appointments, abnormal or disruptive actions, or self-medication through misuse of drugs or alcohol.

148. Defendant OMH is responsible for training and supervising the OMH staff in New York State prisons who are supposed to provide pre-release planning services for prisoners with psychiatric disabilities. OMH has failed to adequately train and supervise its staff in New York State prisons in the tasks associated with proper pre-release planning, including,

but not limited to, assisting Class Members with making timely applications for Social Security benefits, supportive housing, case management and mental health services, Medicaid, Temporary Assistance and Food Stamps; informing Class Members of their rights under these programs and services available under the MGP; and ensuring that Class Members receive prescription medications and mental health services upon release and without interruption.

149. Defendant OTDA is responsible for training and supervising the staff of HRA with regard to processing applications for Temporary Assistance and Food Stamps. Defendant DOH is responsible for training and supervising the staff of HRA with regard to processing applications for Medicaid. Both agencies are responsible for coordinating with OMH and DOP with regard to making applications for public benefits in connection with the pre-release planning process for Class Members prior to their release from prison. OTDA and DOH have failed to adequately train and supervise HRA staff in the tasks associated with processing these applications on behalf of prisoners with psychiatric disabilities prior to their release from prison, and have failed to coordinate adequately with OMH and DOP with regard to making such applications part of the pre-release planning process.

150. Defendant HRA is responsible for processing applications for Temporary Assistance, Food Stamps, Medicaid, case management, and supportive housing programs submitted by or on behalf of Class Members. HRA has failed to adequately train and supervise its staff in the tasks associated with processing these applications on behalf of Class Members in the following respects: (a) failing to accept applications for Temporary Assistance and Food Stamps submitted by Class Members prior to their release from prison; (b) misinforming Class Members and personnel in other agencies that Class Members may not submit applications for Temporary Assistance and Food Stamps prior to their release from prison; and (c) failing to

process all applications for Temporary Assistance and Food Stamps submitted by Class Members.

151. Defendant DOHMH is responsible for planning, in conjunction with OMH, the process by which the timely filing of Medicaid applications is to be performed in connection with the Medication Grant Program, and coordinating those applications with applications for Temporary Assistance and Food Stamps. DOHMH is also responsible for ensuring that Class Members who return to New York City after their release from a State prison receive necessary mental health and case management services without interruption. DOHMH fails to adequately train and supervise its staff in connection with these tasks by failing to ensure (a) that timely applications for Temporary Assistance and Food Stamps are submitted to the proper components of HRA and (b) that Class Members who reside in New York City after their release from a State prison receive necessary mental health and case management services without interruption.

152. As a result of defendants' failure to adequately train and supervise their employees, individuals with psychiatric disabilities are released from prison without receiving the public benefits and mental health services they need in order to successfully participate in, and complete, the Parole Program.

CLAIMS FOR RELIEF

153. Based on the foregoing factual allegations, the named plaintiffs assert the following claims for relief:

FEDERAL CAUSES OF ACTION

FIRST CAUSE OF ACTION

(For discrimination under the ADA by all defendants.)

154. Defendants are public entities within the meaning of the ADA, 42 U.S.C. § 12131(1)(A) and (B), and U.S. Department of Justice implementing regulations, 28 C.F.R. § 35.104, or agents of such public entities.

155. Each Class Member has a psychiatric disability that substantially limits one or more of the major life activities of such individual—such as thinking, concentrating, interacting with others, caring for oneself, working, and remembering and processing information—as defined under the ADA, 42 U.S.C. § 12102(2) and 28 C.F.R. § 35.104.

156. Each Class Member is a “qualified individual with a disability” as defined under the ADA, 42 U.S.C. § 12131(2) and 28 C.F.R. § 35.104, as an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by the defendants.

157. Defendants discriminate against Class Members by failing to make reasonable modifications for disabled individuals with psychiatric disabilities, which denies or will deny such individuals an equal opportunity to access and participate in various programs and services of the Parole Program, as administered by the defendants, in violation of Title II of the

ADA and its implementing regulations, 42 U.S.C. § 12132 and 28 C.F.R. § 35.130(b)(7), as follows:

a. The failure of defendants DOP, Acting Commissioner Alexander, OMH and Acting Commissioner Hogan to provide pre-release planning to provide for appropriate mental health services to each Class Member so he or she may access the services, programs, and activities of the Parole Program places Class Members at increased risk of violating the terms and conditions of the Parole Program, and violates Class Members' rights protected under the ADA.

b. The failure of defendants DOP, Acting Commissioner Alexander, OMH, Acting Commissioner Hogan, DOH, Commissioner Daines, OTDA, Acting Commissioner Hansell, DOHMH, Commissioner Frieden, HRA and Commissioner Doar to assist each Class Member so they can receive public benefits to which they are entitled (including Temporary Assistance, Food Stamps, Medicaid and SSI) immediately upon release and use them to obtain medication and other basic necessities and have access to the services, programs and activities of the Parole Program places Class Members at increased risk of violating the terms and conditions of the Parole Program and violates Class Members' rights protected under the ADA.

c. The policy and practice of defendants DOP, Acting Commissioner Alexander, OMH and Acting Commissioner Hogan of discharging individuals with psychiatric disabilities under parole supervision to homeless shelters without appropriate mental health services places Class Members at an increased risk of

violating the Parole Program and violates Class Members' rights protected under the ADA.

d. The failure of all defendants to adequately train and supervise their employees and agents to recognize and accommodate individuals with psychiatric disabilities who are released to parole supervision violates Class Members' rights protected under the ADA.

e. Due to defendants' failure to provide reasonable modifications to address Class Members' disabilities, Class Members face a significantly increased risk of being unable, by reason of their psychiatric disabilities, to conform their conduct to the rules and conditions imposed by the Parole Program for their release.

158. Defendants OMH, Acting Commissioner Hogan, DOH, Commissioner Daines, OTDA, Acting Commissioner Hansell, DOHMH, Commissioner Frieden, HRA and Commissioner Doar discriminate against Class Members by failing to provide reasonable modifications necessary for Class Members to apply for, successfully obtain, and maintain eligibility for the programs and services of Temporary Assistance, Food Stamps, and Medicaid, in violation of the ADA.

159. All defendants discriminate against Class Members by:

a. failing to afford Class Members the benefits and services of the Parole Program in a manner that is equal to others; and failing to provide Class Members with these benefits and services in a manner that is as effective in affording equal opportunity to obtain the same result, gain the same benefit and

reach the same level of achievement as that provided to others, in violation of 28 C.F.R. § 35.130(b)(1)(ii)-(iii); and

b. using methods of administration that subject Class Members to discrimination in violation of 28 C.F.R. § 35.130(b)(3)(i)-(iii) and (b)(8).

SECOND CAUSE OF ACTION

(For discrimination under Section 504 of the Rehabilitation Act by all defendants.)

160. Defendants are recipients, or agents of recipients, of “federal financial assistance”, as defined by Section 504 of the Rehabilitation Act and the implementing regulations promulgated by the U.S. Department of Justice, the U.S. Department of Health and Human Services, and the U.S. Department of Agriculture, thereby rendering them subject to Section 504. 29 U.S.C. § 794(b)(1); 28 C.F.R. § 41.3(d), (e); 45 C.F.R. § 84.3(f), (h); 7 C.F.R. § 15b.3(f), (g).

161. Each Class Member has a psychiatric disability that substantially limits one or more of the major life activities of such individual—such as thinking, concentrating, interacting with others, caring for oneself, working, and remembering and processing information—as defined under Section 504 of the Rehabilitation Act, 29 U.S.C. § 705(9)(B), (20)(B).

162. Each Class Member meets the essential eligibility requirements for the receipt of services and is therefore a “qualified handicapped person”, as that term is defined in regulations implementing Section 504. 28 C.F.R. § 41.32; 45 C.F.R. § 84.3(l); 7 C.F.R. § 15b.3(n)(4).

163. Defendants discriminate against Class Members by failing to make reasonable modifications for disabled individuals with psychiatric disabilities, which denies or

will deny such individuals an equal opportunity to access and participate in various programs and services of the Parole Program, as administered by the defendants, in violation of Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, and its implementing regulations, 28 C.F.R. §§ 41.51 and 41.56, as follows:

a. The failure of defendants DOP, Acting Commissioner Alexander, OMH and Acting Commissioner Hogan to provide pre-release planning to provide for appropriate mental health services to each Class Member so he or she may access the services, programs, and activities of the Parole Program places Class Members at increased risk of violating the terms and conditions of the Parole Program, and violates Class Members' rights protected under Section 504 of the Rehabilitation Act.

b. The failure of defendants DOP, Acting Commissioner Alexander, OMH, Acting Commissioner Hogan, DOH, Commissioner Daines, OTDA, Acting Commissioner Hansell, DOHMH, Commissioner Frieden, HRA and Commissioner Doar to assist each Class Member so they can receive public benefits to which they are entitled (including Temporary Assistance, Food Stamps, Medicaid and SSI) immediately upon release and use them to obtain medication and other basic necessities and have access to the services, programs and activities of the Parole Program places Class Members at increased risk of violating the terms and conditions of the Parole Program and violates Class Members' rights protected under Section 504 of the Rehabilitation Act.

c. The policy and practice of defendants DOP, Acting Commissioner Alexander, OMH and Acting Commissioner Hogan of discharging individuals

with psychiatric disabilities under parole supervision to homeless shelters without appropriate mental health services places Class Members at an increased risk of violating the Parole Program and violates Class Members' rights protected under Section 504 of the Rehabilitation Act.

d. The failure of all defendants to adequately train and supervise their employees and agents to recognize and accommodate individuals with psychiatric disabilities who are released to parole supervision violates Class Members' rights protected under Section 504 of the Rehabilitation Act.

e. Due to defendants' failure to provide reasonable modifications to address Class Members' disabilities, Class Members face a significantly increased risk of being unable, by reason of their psychiatric disabilities, to conform their conduct to the rules and conditions imposed by the Parole Program for their release.

164. Defendants OMH, Acting Commissioner Hogan, DOH, Commissioner Daines, OTDA, Acting Commissioner Hansell, DOHMH, Commissioner Frieden, HRA and Commissioner Doar discriminate against Class Members by failing to provide reasonable modifications necessary for Class Members to apply for, successfully obtain, and maintain eligibility for the programs and services of Temporary Assistance, Food Stamps, and Medicaid, in violation of Section 504 of the Rehabilitation Act and its implementing regulations, 29 U.S.C. § 794(a) and 28 C.F.R. §§ 41.51 and 41.56.

165. All defendants discriminate against Class Members by:

a. failing to afford Class Members the benefits and services of the Parole Program in a manner that is equal to others; and failing to provide Class

Members with these benefits and services in a manner that is as effective in affording equal opportunity to obtain the same result, gain the same benefit and reach the same level of achievement as that provided to others, in violation of 28 C.F.R. § 41.51(b)(1)(ii)-(iii); 45 C.F.R. § 84.4(b)(2) and (b)(1)(ii)-(iii); 7 C.F.R. § 15b.4(b)(4)(i)-(iii); and

b. using methods of administration that subject Class Members to discrimination in violation of 28 C.F.R. § 41.51(b)(3)(i)-(iii).

THIRD CAUSE OF ACTION

(For violation of the Medicaid Act, actionable under 42 U.S.C. § 1983, by defendants DOH, Commissioner Daines, HRA and Commissioner Doar.)

166. Defendants DOH and Commissioner Daines, acting under color of state law, are responsible for the administration of Medicaid in the State of New York, through a State plan for medical assistance.

167. Defendants HRA and Commissioner Doar, acting under color of state law, are responsible for the administration of Medicaid in the City of New York, through a State plan for medical assistance.

168. 42 U.S.C. § 1396a(a)(8) of the Medicaid Act states, “A State plan for medical assistance must . . . provide that all individuals wishing to make application for medical assistance under the plan shall have opportunity to do so, and that such assistance shall be furnished with reasonable promptness to all eligible individuals.”

169. Defendants DOH, Commissioner Daines, HRA and Commissioner Doar fail to provide Class Members the ability and opportunity to apply for medical assistance and fail to provide medical assistance with reasonable promptness, in that the abovementioned defendants fail to permit Class Members to apply for Medicaid sufficiently in advance of their

release so that benefits are available upon their release, which deprives Class Members of their rights under 42 U.S.C. § 1396a(a)(8) and 42 C.F.R. § 435.906, actionable under 42 U.S.C. § 1983.

FOURTH CAUSE OF ACTION

(For violation of the Food Stamp Act, actionable under 42 U.S.C. § 1983, by defendants OTDA, Acting Commissioner Hansell, HRA and Commissioner Doar.)

170. Defendants OTDA and Acting Commissioner Hansell, acting under color of state law, are responsible for the administration of Food Stamps in the State of New York through the food stamp program authorized by the Food Stamp Act.

171. Defendants HRA and Commissioner Doar, acting under color of state law, are responsible for the administration of Medicaid in the City of New York through the food stamp program authorized by the Food Stamp Act.

172. 7 U.S.C. § 2020(e)(2)(B)(i) of the Food Stamp Act provides that a state agency “shall establish procedures” that “provide timely, accurate, and fair service to applicants for, and participants in, the food stamp program”.

173. 7 U.S.C. § 2020(e)(3) of the Food Stamp Act provides that under a proper state plan of operation, a state agency shall “promptly determine the eligibility of each applicant household” in order to “complete certification of and provide an allotment retroactive to the period of application to any eligible household not later than thirty days following its filing of an application”.

174. Defendants OTDA, Acting Commissioner Hansell, HRA and Commissioner Doar have failed to establish procedures that provide timely, accurate and fair service to applicants for, and participants in, the food stamp program and are not promptly determining the eligibility for Food Stamps of each applicant household, in that abovementioned

defendants fail to permit Class Members to apply for Food Stamps sufficiently in advance of their release so that benefits are available upon their release, which deprives Class Members of their rights under the Food Stamp Act, 7 U.S.C. § 2020(e)(2)(B)(i) and (e)(3), actionable under 42 U.S.C. § 1983.

175. Defendants OTDA, Acting Commissioner Hansell, HRA and Commissioner Doar have failed to determine the eligibility of Class Members who have applied for Food Stamps on applications submitted in conjunction with the Medication Grant Program, which deprives Class Members of their rights under the Food Stamp Act, 7 U.S.C. § 2020(e)(2)(B)(i) and (e)(3), actionable under 42 U.S.C. § 1983.

FIFTH CAUSE OF ACTION

(For Breach of contract by defendants DOP and Acting Commissioner Alexander.)

176. Defendant DOP is a party to an existing contract with SSA.

177. 42 U.S.C. § 1383(m) of the Social Security Act directs that “The Commissioner of Social Security shall develop a system under which an individual can apply for supplemental security income benefits under this subchapter prior to the discharge or release of the individual from a public institution.”

178. SSA has issued system instructions that establish SSA’s pre-release program, which provides that SSA will “actively pursue pre-release agreements with all appropriate institutions” to facilitate pre-release submission of SSI applications for individuals in public institutions, such as State prisons.

179. Defendant DOP is a party to an existing pre-release agreement with SSA which has been entered into for the benefit of “inmates of State correctional facilities who are to be released to supervision by DOP”, such as Class Members. The purpose of this contract is “to

provide a guarantee of financial help for those who are released to the community”, to “ensure that Title XIX Medicaid eligibility is established as quickly as possible” and to “ensure continuity of medical care upon release to the community”.

180. The benefit to Class Members from this contract between SSA and DOP is immediate rather than incidental.

181. This claim involves financial obligations and important interests of the United States, in that the SSI program is administered by SSA, a federal agency, and SSI benefits are federally funded.

182. Under the terms of the contract, DOP is required to review the income, resources and disability of parole-eligible prisoners for potential SSI eligibility and obtain medical evidence and submit applications for potentially eligible SSI candidates beginning 120 days from a prisoner’s expected release onto parole.

183. Defendants DOP and Acting Commissioner Alexander have breached DOP’s contractual obligations by failing to review the income, resources and disability of parole-eligible prisoners for potential SSI eligibility and obtain medical evidence and submit applications for potentially eligible SSI candidates. This breach directly affects Class Members and entitles them to relief as third-party beneficiaries to the contract.

SIXTH CAUSE OF ACTION

(For violation of the Due Process Clause of the United States Constitution, actionable under 42 U.S.C. § 1983, by all defendants.)

184. Defendants DOP, Acting Commissioner Alexander, OMH, Acting Commissioner Hogan, DOH, Commissioner Daines, OTDA, Acting Commissioner Hansell, DOHMH, Commissioner Frieden, HRA and Commissioner Doar, acting under the color of state law, have violated and continue to violate the property rights of all Class Members guaranteed by

the Due Process Clause of the Fourteenth Amendment to the United States Constitution by erroneously informing Class Members that they may not apply for public benefits prior to their release from New York State prisons, actionable under 42 U.S.C. § 1983.

STATE LAW CAUSES OF ACTION

SEVENTH CAUSE OF ACTION

(For violations of N.Y. Soc. Serv. Law § 331 and 18 N.Y.C.R.R. § 303.1(a) and (b) by defendants HRA and Commissioner Doar.)

185. Defendants HRA and Commissioner Doar are responsible for the administration of Medicaid, Temporary Assistance and Food Stamps in the City of New York.

186. Class Members are “handicapped” within the meaning of N.Y. Soc. Serv. Law § 331(3) and 18 N.Y.C.R.R. § 303.1(a) and (b).

187. The failure of defendants HRA and Commissioner Doar to provide reasonable modifications necessary for Class Members to apply for, successfully obtain, and maintain eligibility for the programs and services of Medicaid, Temporary Assistance and Food Stamps, discriminates against Class Members on the basis of their handicap in violation of Class Members’ rights under N.Y. Soc. Serv. Law § 331 and 18 N.Y.C.R.R. § 303.1(a) and (b).

EIGHTH CAUSE OF ACTION

(For violation of the New York State Human Rights Law by defendants DOHMH, Commissioner Frieden, HRA and Commissioner Doar.)

188. Defendants DOHMH, Commissioner Frieden, HRA and Commissioner Doar are each a “person” subject to N.Y. Exec. Law § 296(2)(a) in that they are providers of a “place of public accommodation” pursuant to N.Y. Exec. Law § 292(9).

189. Class Members have a disability within the meaning of N.Y. Exec. Law § 292(21).

190. Defendants DOHMH, Commissioner Frieden, HRA and Commissioner Doar, by refusing, withholding from or denying Class Members accommodations, advantages, facilities or privileges because of their disabilities, discriminate against Class Members in violation of Class Members' rights under N.Y. Exec. Law § 296(2)(a), enforceable under N.Y. Exec. Law § 297(9).

NINTH CAUSE OF ACTION

(For violation of the New York City Human Rights Law by defendants DOHMH, Commissioner Frieden, HRA and Commissioner Doar.)

191. Defendants DOHMH, Commissioner Frieden, HRA and Commissioner Doar are each a "person" subject to N.Y.C. Administrative Code § 8-107(4)(a) in that they are "providers of public accommodation" pursuant to N.Y.C. Administrative Code § 8-102(9).

192. Class Members have a disability within the meaning of N.Y.C. Administrative Code § 8-102(16).

193. Defendants DOHMH, Commissioner Frieden, HRA and Commissioner Doar, by refusing, withholding from or denying Class Members accommodations, advantages, facilities or privileges because of their disabilities, discriminate against Class Members in violation of Class Members' rights under N.Y.C. Administrative Code § 8-107(4)(a), enforceable under N.Y.C. Administrative Code § 8-502(a).

TENTH CAUSE OF ACTION

(For violation of N.Y. Soc. Serv. Law §§ 366(1) and 366-a(1), Kendra's Law, and implementing regulations of each by defendants DOHMH, Commissioner Frieden, HRA and Commissioner Doar.)

194. Defendants HRA and Commissioner Doar are responsible for the administration of Medicaid in the City of New York, through a State plan for medical assistance.

Defendants DOHMH and Commissioner Frieden are responsible for the timely submission of Medicaid applications for State prisoners who will be released to New York City pursuant to Kendra's Law, 1999 N.Y. Laws, ch. 408, § 15, OTDA Admin. Dir. 03 ADM 06 (July 3, 2003), and DOH Local Commissioners Mem. 00 OMM LCM-4 (Sept. 1, 2000).

195. Defendants DOHMH and Frieden are responsible for accepting applications for Medicaid submitted on behalf of prisoners and forwarding them with supporting documentation to HRA; deciding how the immediate needs of Class Members for Medicaid will be identified and addressed once they are released from prison; and submitting a plan to OMH detailing, among other things, the process by which the timely filing of Medicaid applications by Class Members is to be performed and the coordination of applications for Temporary Assistance and Food Stamps.

196. The failure of defendants HRA and Commissioner Doar to provide for submission of Medicaid applications sufficiently in advance of Class Members' release so that benefits are available upon their release, and to meet the immediate needs of Class Members for Medicaid while their applications are being processed, violates Class Members rights under N.Y. Soc. Serv. Law §§ 366(1) and 366-a(1), and 18 N.Y.C.R.R. § 350.3(a) and (b).

197. The failure of defendants DOHMH and Commissioner Frieden to provide for submission of Medicaid applications sufficiently in advance of Class Members' release so that benefits are available upon their release, and to meet the immediate needs of Class Members for Medicaid while their applications are being processed, violates Class Members' rights under Kendra's Law, 1999 N.Y. Laws, ch. 408, § 15, OTDA Admin. Dir. 03 ADM 06 (July 3, 2003), and DOH Local Commissioners Mem. 00 OMM LCM-4 (Sept. 1, 2000).

ELEVENTH CAUSE OF ACTION

(Violation of N.Y. Soc. Serv. Law § 95(3)(a) and implementing regulations by HRA and Commissioner Doar.)

198. Defendants HRA and Commissioner Doar are responsible for the administration of Food Stamps in the City of New York.

199. The failure of defendants HRA and Commissioner Doar to permit Class Members to apply for Food Stamps sufficiently in advance of their release so that benefits are available upon their release, to determine the eligibility of Class Members who have applied for Food Stamps on applications submitted in conjunction with the Medication Grant Program, and to meet the immediate needs of Class Members for emergency Food Stamps while their applications are being processed violates Class Members' rights under N.Y. Soc. Serv. Law § 95(3)(a) and 18 N.Y.C.R.R. § 387.5.

TWELFTH CAUSE OF ACTION

(For violations of N.Y. Soc. Serv. Law §§ 131, 132 and 133 and implementing regulations by HRA and Commissioner Doar.)

200. Defendants HRA and Commissioner Doar are responsible for the administration of Temporary Assistance and the submission and processing of applications for benefits in the City of New York.

201. The failure of defendants HRA and Commissioner Doar to permit Class Members to apply for Temporary Assistance sufficiently in advance of their release so that benefits are available upon their release, to determine the eligibility of Class Members who have applied for Temporary Assistance on applications submitted in conjunction with the Medication Grant Program, and to meet the immediate needs of Class Members for Temporary Assistance

while their applications are being processed violates Class Members' rights under N.Y. Soc. Serv. Law §§ 131(1) and (2), 132 and 133, and 18 N.Y.C.R.R. §§ 350.3(a) and (b) and 387.2(o).

THIRTEENTH CAUSE OF ACTION

(For breach of contract by defendants DOHMH and Commissioner Frieden.)

202. The following allegation is likely to have further evidentiary support after a reasonable opportunity for further investigation: Upon information and belief, Defendant DOHMH is a party to an existing contract with HRA.

203. The contract has been entered into for the benefit of individuals, such as Class Members, who require medication to treat psychiatric disabilities upon being released from State and local correctional facilities.

204. The benefit to Class Members from this contract between DOHMH and HRA is immediate rather than incidental.

205. In or around December 2000, DOHMH (then New York City Department of Mental Health, Mental Retardation and Alcoholism Services) entered into an agreement with HRA entitled "Medication Grant Program Plan". Under the terms of the agreement, DOHMH is required to accept applications of prisoners for Medicaid, Temporary Assistance and Food Stamps that it receives from prisons prior to the prisoners' release, and then to forward the applications to HRA.

206. On or around July 3, 2003, OTDA issued Administrative Directive 03 ADM 6, entitled "Medication Grant Program (MGP) — The Need for Cooperation and Coordination Between Local Departments of Social Services and Mental Hygiene", which instructs local Departments of Social Services and local Departments of Mental Hygiene to develop and follow the procedures set forth in the Model Memorandum of Understanding

(MOU) in Attachment 1 of the directive. The procedures set forth in the MOU require the local Departments of Mental Hygiene (DOHMH in New York City) to designate staff to interview applicants to the MGP who reside in prisons and are in need of medications to treat mental illness; to require that the designated staff provide the MGP applicant with applications for Medicaid, Temporary Assistance and Food Stamps; to require that the designated staff obtain as much documentation as possible of all statements on the applications and assist the applicant as needed with securing missing documentation; to consider the applicant's immediate needs based on the applicant's expected situation in the community upon release; and to forward the applications to the local Departments of Social Services (HRA in New York City) in an expedited manner.

207. DOHMH fails to designate staff to interview applicants to the MGP who reside in prisons and are in need of medications to treat mental illness; fails to require that the designated staff provide the MGP applicant with applications for Medicaid, Temporary Assistance and Food Stamps; fails to require that the designated staff obtain as much documentation as possible of all statements on the applications and assist the applicant as needed with securing missing documentation; fails to consider the applicant's immediate needs based on the applicant's expected situation in the community upon release; and fails to forward the applications to HRA in an expedited manner.

208. These failures of defendants DOHMH and Commissioner Frienden constitute a breach of DOHMH's obligations under its contract with HRA concerning pre-release benefits applications. This breach directly affects Class Members and entitles them to relief as third-party beneficiaries to the contract.

FOURTEENTH CAUSE OF ACTION

(For violation of the Due Process Clause of the New York State Constitution by defendants DOHMH, Commissioner Frieden, HRA and Commissioner Doar.)

209. DOHMH, Commissioner Frieden, Defendants HRA and Commissioner Doar have violated and continue to violate the property rights of all Class Members guaranteed by the Due Process Clause of Article I, § 6 of the New York State Constitution by erroneously informing Class Members that they may not apply for public benefits prior to their release from New York State prisons.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs request that the Court:

210. Certify a plaintiff class pursuant to Fed. R. Civ. P. 23(b)(1) and (b)(2).

211. Adjudge and declare that the policies, practices, omissions and conditions described above are in violation of the rights of Class Members under the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, the Medicaid Act, the Food Stamp Act, the Due Process Clause of the United States and New York State Constitutions, the New York State Social Services Law, Kendra's Law, and the New York State and New York City Human Rights Laws.

212. Declare that the continuing failure of all defendants to provide reasonable modifications for the disabilities of Class Members violates the ADA.

213. Declare that the continuing failure of all defendants to provide reasonable modifications for the disabilities of Class Members violates Section 504 of the Rehabilitation Act.

214. Declare that the continuing failure of all defendants to provide their employees and agents with the appropriate information, training, procedures, and supervision violates the ADA and Section 504 of the Rehabilitation Act.

215. Declare that the continuing failure of defendants DOH, Commissioner Daines, HRA and Commissioner Doar to permit Class Members to apply for Medicaid sufficiently in advance of their release so that benefits are available upon their release violates the Medicaid Act.

216. Declare that the continuing failure of defendants OTDA, Acting Commissioner Hansell, HRA and Commissioner Doar to permit Class Members to apply for Food Stamps sufficiently in advance of their release and/or to process Class Members' applications so that benefits are available upon their release violates the Food Stamp Act.

217. Declare that the continuing failure of defendants DOP and Acting Commissioner Alexander to review the income, resources and disability of parole-eligible prisoners for potential SSI eligibility and obtain medical evidence and submit applications for potentially eligible SSI candidates is a breach of DOP's contract with SSA, to which Class Members are third-party beneficiaries.

218. Declare that the misinforming by defendants DOP, Acting Commissioner Alexander, OMH, Acting Commissioner Hogan, DOH, Commissioner Daines, OTDA, Acting Commissioner Hansell, DOHMH, Commissioner Frieden, HRA and Commissioner Doar of Class Members that they may not apply for public benefits prior to their release from State prisons violates the Due Process Clause of the United States and New York State Constitutions.

219. Declare that the continuing failure of defendants DOHMH, Commissioner Frieden, HRA and Commissioner Doar to provide Class Members with reasonable

accommodations for their disabilities discriminates against Class Members in violation of the New York State and New York City Human Rights Laws and New York Social Services Law and implementing regulations.

220. Declare that the continuing failure of defendants DOHMH, Commissioner Frieden, HRA and Commissioner Doar to accept and/or process pre-release applications for Medicaid, Temporary Assistance and Food Stamps violates the New York Social Services Law, implementing regulations and Kendra's Law.

221. Declare that the continuing failure of defendants DOHMH and Commissioner Frieden to provide for the pre-release submission of applications for benefits for Class Members breaches DOHMH's contract with HRA, to which Class Members are third-party beneficiaries.

222. Enjoin the defendants, their successors, agents, servants, employees, and all those in active concert or participation with them from further:

a. failure to provide reasonable modifications for the disabilities of Class Members to enable them to participate in various programs and services of the Parole Program, and the programs of public assistance, Medicaid and food stamps;

b. failure to provide their employees and agents with the appropriate information, training, procedures to provide appropriate pre-release planning for Class Members;

c. failure to assist Class Members with pre-release application for Food Stamps, Medicaid, Public Assistance, and Social Security disability benefits and to process the applications for these benefits; and

d. using methods of administration that subject class members to discrimination; and

require defendants to formulate a remedy, subject to the Court's approval and modification, if necessary to end those practices.

223. Retain jurisdiction in this case until the unlawful conditions, practices, policies, acts, and omissions complained of herein no longer exist and this Court is satisfied that they will not recur.

224. Award plaintiffs a reasonable attorney's fee, including litigation expenses, and costs pursuant to 42 U.S.C. § 12205 and 28 C.F.R. § 35.175 (for claims arising under the ADA); 29 U.S.C. § 794a (for claims arising under the Rehabilitation Act of 1973); 42 U.S.C. § 1988 (for all other federal statutory claims); N.Y. C.P.L.R. Art. 86 (for pendent claims arising under state law); and N.Y.C. Admin. Code § 8-502(f) (for pendent claims arising under the New York City Human Rights Law).

225. Grant and award such other and further relief as this Court deems just and proper.

Dated: New York, New York
February 22, 2007

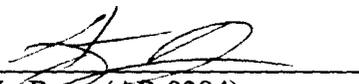
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