

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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BARBARA HARRIS, WILLIAM BROWN,
BARBARA MARROQUIN, and MARIA OJEDA,
on behalf of themselves and all
others similarly situated,

02 Civ. 2498 (RMB)

Plaintiffs,

-against-

VERNA EGGLESTON, in her official capacity
as the Commissioner of The City of New York
Human Resources Administration, and
BRIAN J. WING, in his official capacity as the
Commissioner of the State of New York
Office of Temporary and Disability Assistance,

**STIPULATION
OF SETTLEMENT
AND ORDER**

Defendants.

X

WHEREAS, this action was commenced on behalf of a proposed class of adult recipients of Supplemental Security Income ("SSI") who formerly received public assistance food stamps ("PA/FS") who alleged that when VERNA EGGLESTON, as Commissioner of the New York City Human Resources Administration ("City defendant") properly closed their public assistance ("PA") cases due to their receipt of SSI, City defendant improperly discontinued their PA/FS without making a separate determination of continuing food stamp eligibility, and further alleged that BRIAN J. WING, as Commissioner of the New York State Office of Temporary and Disability Assistance ("State defendant"), failed to properly supervise City Defendant; and

WHEREAS, the proposed plaintiff class sought declaratory relief against the alleged customs, policies, and practices of City defendant resulting in (1) discontinuing the food stamp benefits of adult recipients of PA who are determined to be eligible for SSI benefits without making a separate determination of continuing food stamp eligibility; and (2) failing to give timely and adequate notice to adult recipients of PA/FS when the PA case closed of City defendant's intent to discontinue PA/FS benefits because the recipients were eligible for SSI; and

WHEREAS, the proposed plaintiff class sought declaratory relief against State defendant for failing to supervise the customs, policies, and practices of City defendant to ensure that where City defendant discontinues PA because the PA recipient has begun to receive SSI, City defendant continues the food stamp benefits of such recipients of PA/FS until a separate determination of

the recipients' continuing eligibility for non-public assistance food stamps ("NPA FS") is made; and

WHEREAS, State defendant represents that he has modified the Welfare Management System ("WMS") to automatically open NPA FS cases for single SSI recipients living alone whose public assistance cases close due to the receipt of SSI benefits; and

WHEREAS, City defendant represents that she has instituted a manual process and utilizes the automated computer process that is part of WMS to make separate determinations of food stamp eligibility where public assistance food stamp benefits are discontinued because the public assistance recipient has begun to receive SSI and represents that she utilizes these processes to issue notices regarding food stamp benefits in such cases; and

WHEREAS, City defendant has published Policy Directive #02-48-ELI and MAP Procedure 01-16(R1) and distributed same to appropriate staff describing procedures for continuing the food stamp benefits of public assistance recipients whose public assistance food stamp benefits have been discontinued because they have begun to receive SSI, and represents that she has trained employees about these procedures as part of ongoing training of employees; and

WHEREAS, State defendant represents that he has advised administrative law judges who conduct fair hearings, that if a former recipient of public assistance who has begun to receive SSI requests fair hearing review of City defendant's determination to close a PA/FS case or failure to open a NPA FS case, at the hearing the new NPA FS case shall be considered a continuation of the public assistance food stamp case and City Defendant has the burden of proof of explaining the action taken or the failure to act; and

WHEREAS, defendants have denied and continue to deny any and all wrongdoing alleged in the complaint; and

WHEREAS, plaintiffs and defendants are entering into this Stipulation of Settlement and Order ("Stipulation") solely for the purpose of settling the disputes between them and to avoid further litigation, and without admitting any fault or liability; and

WHEREAS, the parties desire to settle this action on terms and conditions just and fair to all parties; and

WHEREAS, counsel for the parties have agreed to the certification of a class; and

WHEREAS, the Urban Justice Center, Patterson Belknap Webb & Tyler LLP and Gibson Dunn & Crutcher LLP (collectively "plaintiffs' counsel") have represented and continue to represent plaintiffs and the certified class, with Gibson Dunn & Crutcher LLP having been

substituted as counsel replacing Patterson Belknap Webb & Tyler LLP by Notice of Substitution dated June 29, 2006; and

WHEREAS, plaintiffs' counsel represent that they have not received, and will not receive, any payment from any named plaintiff or other plaintiff class member in connection with work done on behalf of plaintiffs in this action; and

WHEREAS, plaintiffs and defendants wish to resolve the issue of defendants' liability for plaintiffs' attorneys' fees, costs and disbursements payable to plaintiffs' counsel;

IT IS HEREBY STIPULATED AND ORDERED:

I. CONDITIONAL NATURE OF THIS STIPULATION

1. Defendants will perform the acts described in this Stipulation if the Secretary of the Department of Agriculture ("Secretary") formally acquiesces to the terms of this Stipulation based on the Secretary's authority under 7 U.S.C. § 2022(a) "to determine the amount of and settle and adjust any claim ... arising under the provisions of this act or the regulations issued pursuant to this act...."

2. Within ten (10) business days of the execution of this Stipulation, but prior to the submission of this Stipulation to the Court, State defendant will provide all counsel with a draft letter to the Department of Agriculture requesting the Secretary to acquiesce to the terms of this Stipulation. Said letter will, in addition to seeking acquiescence, request that all communications from the Department of Agriculture concerning said request, including but not limited to communications raising any questions concerning the stipulation, be made in writing. In addition State defendant agrees that all communication from State defendant to the Secretary shall be in writing. Plaintiffs' counsel will have ten (10) business days to provide any comments to State defendant on the contents of the letter seeking acquiescence, and State defendant will consider all comments raised by Plaintiffs' counsel. State defendant will subsequently submit a copy of the Stipulation and a letter to the Department of Agriculture requesting the Secretary to acquiesce to the terms of this Stipulation. State defendant will provide all counsel with copies of all correspondence and documents sent between the Secretary and State defendant concerning this request for acquiescence. State defendant will allow all parties five (5) business days to comment on any communications from the Secretary prior to submitting a written response to the written communication from the Secretary and will consider such comments in drafting any response.

3. Unless and until the Secretary formally acquiesces to the terms of this Stipulation by demonstrating acquiescence in writing in response to the request for acquiescence, defendants are not obligated to perform the acts described in this Stipulation and plaintiffs have no enforceable rights based on any provision contained in this Stipulation.

4. If five months have elapsed since State defendant's submission of the request for acquiescence and the Secretary has not responded, State defendant will send the Secretary a letter inquiring into the status of the request for acquiescence and expressing the hope that a response will be made promptly. If another two months have elapsed and the Secretary has not responded or has provided some response other than full acquiescence, counsel for the parties shall meet and discuss alternative methods of case disposition. If the Secretary formally denies the request for acquiescence to the terms of this Stipulation, fails to act or provides some response other than full acquiescence within seven months, after discussion among the parties, the parties are free to take any steps to dispose of this action, including but not limited to resuming negotiations about terms contained in the Stipulation or resuming discovery and trial preparation.

5. If the Secretary formally acquiesces to the terms of this Stipulation, the parties shall jointly present this Stipulation to the Court.

6. This Stipulation shall not take effect until the Court enters a judgment approving the Stipulation Pursuant to Federal Rule of Civil Procedure 23(e) and "So Orders" this Stipulation.

II. DEFINITIONS

7. When used in this Stipulation, the following terms have the following meanings:

(A) The phrase "Department of Agriculture" refers to the Food and Nutrition Service of the United States Department of Agriculture.

(B) The phrase "public assistance" or the acronym "PA" refers to benefits furnished to needy individuals by local social services districts, including City defendant, through the Family Assistance program codified at New York Social Services Law § 343 et seq., and the Safety Net Assistance program codified at New York Social Services Law § 157 et seq.

(C) The phrase "Supplemental Security Income" or the acronym "SSI" refers to benefits furnished to individuals by the United States Social Security Administration pursuant to 42 U.S.C. § 1381 et seq., including the additional state payments furnished to residents of New York State by the Social Security Administration pursuant to 42 U.S.C. § 1382e and New York Social Services Law § 207 et seq.

(D) The phrases "Food Stamps" or "Food Stamp benefits" refers to benefits furnished pursuant to the Food Stamp Act of 1977 codified at 7 U.S.C. § 2011 et seq. and federal regulations at 7 C.F.R. Parts 271 through 282 and implemented in New York State by New York Social Services Law §§ 95 and 147 and State regulations at 18 N.Y.C.R.R. Parts 358, 359 and 387.

(E) The phrase "food stamp household" or the word "household" refers to a household as defined in 7 C.F.R. § 273.1 and 18 N.Y.C.R.R. § 387.1(w) that receives food stamps. A household may consist of one or more members.

(F) The phrase "public assistance food stamps" or the acronym "PA/FS" refers to food stamp benefits provided to a household that is also in receipt of public assistance benefits. Public assistance food stamps are provided to, among others, eligible households containing a member or members who receive SSI if the household contains another member who receives public assistance.

(G) The phrase "non-public assistance food stamps" or the split acronym "NPA FS" refers to the Food Stamp benefits provided to a household that is not also in receipt of public assistance benefits. Non-public assistance food stamps are provided to, among others, eligible households containing a member or members who receive SSI if the household contains no other member who receives public assistance.

(H) The acronym "SDX" refers to the State Data Exchange, a database compiled by the United States Social Security Administration as part of the administration of the SSI program. SDX shall also include any successor database or system intended to fulfill the same function.

(I) The acronym "WMS" refers to the Welfare Management System, a database designed by State defendant for use by local social services districts, including City defendant, in the administration of benefit programs in New York State including the public assistance and food stamp programs. City defendant collects information about individual cases and enters such information into WMS. WMS shall also include any successor database or system intended to fulfill the same function.

(J) The phrase "closing code" refers to a combination of letters or numbers that is entered on WMS to indicate that an action is being taken for a given reason. Entry of closing codes causes WMS to take certain actions, such as generating notices and discontinuing the payment of benefits. Since April of 1999, City defendant has used closing codes E34 and 215 to trigger the closing of a public assistance case because the public assistance recipient had begun receiving SSI benefits and because no one eligible to receive public assistance remained in the household.

(K) The phrase "separate determination" shall have the same meaning as in 7 C.F.R. § 273.12(f)(3) and 7 U.S.C. § 2020(i)(2).

(L) "Notice" refers to a notice that complies with 18 N.Y.C.R.R. § 358-3.3(b) and (e).

(M) The phrase "SSI recipients living alone" refers to people who receive SSI who are coded on the SDX as A/A households of one, who live alone in the community, who

formerly received public assistance and whose PA/FS cases were closed by City defendant between April 1, 1999 and the expiration date of this agreement due to receipt of SSI using closing codes 215, E34, or any successor codes used to indicate that reason for case closing, without making a separate determination of eligibility for NPA FS.

(N) The phrase "SSI couples" refers to married couples where both spouses receive SSI as a couple who are coded on the SDX as A/A households of two, and: i) where one of the two ("person A") received SSI while the second spouse ("person B") received public assistance but has since begun receiving SSI; or ii) where both spouses formerly received public assistance and thereafter received SSI, whose PA/FS cases were closed by City defendant between April 1, 1999 and the expiration date of this agreement due to receipt of SSI using closing codes 215, E34, or any successor codes used to indicate that reason for case closing without making a separate determination of eligibility for NPA FS.

(O) The phrase "SSI recipients living with others" refers to people who receive SSI, who are coded on the SDX as A/B, live with others and do not live in a "group living arrangement" as that term is used in 7 C.F.R. § 273.1(b)(7)(vi)(c) or in a "treatment center" as that term is used in 7 C.F.R. § 273.1(b)(7)(vi)(B) who formerly received PA/FS, and whose PA/FS cases were closed by City defendant between April 1, 1999 and the expiration date of this agreement due to receipt of SSI using closing codes 215, E34, or any successor codes used to indicate that reason for case closing, without making a separate determination of eligibility for NPA FS.

(P) The phrase "Electronic Benefit Transfer System" refers to the Electronic Benefit Transfer System designed by State defendant for use by local social services districts for the distribution of food stamp benefits pursuant to 7 U.S.C. § 2016(I), 7 C.F.R. § 274.12, NY Social Services Law § 21-a and 18 N.Y.C.R.R. § 381.2(b).

(Q) The phrase "Mass rebudgeting" or the acronym "MRB" refers to the process described in section IV of this Stipulation to provide restored food stamp benefits to SSI recipients living alone, SSI couples, and SSI recipients living with others described in definitions M, N and O of paragraph 7 of this Stipulation who are listed on the SDX as recipients of SSI on the first matched list, prepared as provided in paragraph 11 of this Stipulation, whose PA/FS cases were closed due to the receipt of SSI between April 1, 1999, and the date this Stipulation is So Ordered.

(R) The phrase "restored food stamp benefits" refers to benefits provided pursuant to Section IV of this Stipulation and distributed through the Electronic Benefit Transfer System.

III. CLASS CERTIFICATION

8. A class is certified consisting of:

All residents of New York City who are: (1) SSI recipients living alone; or (2) SSI couples; or (3) SSI recipients living with others, described in definitions M, N and O of paragraph (7) of this Stipulation, whose public assistance Food Stamps have been or will be discontinued by City defendant between April 1, 1999 and the expiration date of this agreement due to receipt of SSI without making a separate determination of eligibility for non-public assistance food stamps.

IV. RELIEF FOR CLASS MEMBERS WHOSE PUBLIC ASSISTANCE FOOD STAMP CASES WERE CLOSED DUE TO RECEIPT OF SSI BETWEEN APRIL 1, 1999 AND THE DATE THIS STIPULATION IS SO ORDERED

9. The provisions of this section IV of this Stipulation (§§ 9 through 45) describe and define the relief to be provided by defendants to SSI recipients living alone, SSI couples, and SSI recipients living with others who are listed on the SDX as recipients of SSI on the first matched list, prepared as provided in paragraph 11 of this Stipulation, whose PA/FS cases were closed due to the receipt of SSI between April 1, 1999, and the date this Stipulation is So Ordered.

(a) IDENTIFICATION OF HOUSEHOLDS THAT MAY RECEIVE RESTORED FOOD STAMP BENEFITS AND MASS REBUDGETING

10. Within 60 days of the date this Stipulation is So Ordered, using data kept on WMS, State defendant will identify all PA/FS cases that were closed due to receipt of SSI using closing codes 215, E34, or any successor codes between April 1, 1999 and the date this Stipulation is So Ordered.

11. Within 60 days of the date this Stipulation is So Ordered, State defendant will determine which cases identified in the process described in the preceding paragraph (§ 10 of this Stipulation) may be eligible to receive restored food stamp benefits pursuant to Section IV of this Stipulation by comparing the list of cases identified in the process described in the preceding paragraph 10 to the list of current SSI recipients residing in the City of New York contained on the SDX and coded A/A or A/B as of that date and shall make a list of SSI recipients living alone, SSI couples, and SSI recipients living with others who appear on both lists ("the first matched list"). No more than 20 days prior to performing the MRB, State defendant will compare the list of SSI recipients living alone, SSI couples, and SSI recipients living with others identified in the process described in the preceding paragraph 10 to the list of current SSI recipients residing in the City of New York contained on the SDX and coded A/A or A/B as of that date and will make a list of SSI recipients living alone, SSI couples, and SSI recipients living with others who appear on both lists ("the second matched list"). State defendant will provide to plaintiffs' counsel a list

by case number of each case on the respective matched lists within fifteen business days after it is created.

12. SSI recipients living alone, SSI couples, and SSI recipients living with others coded A/A or A/B appearing on both the first matched list and the second matched list will receive relief pursuant to paragraphs 18-27 of this Stipulation. SSI recipients living alone, SSI couples, and SSI recipients living with others coded A/A or A/B on the SDX appearing on the first matched list but not appearing on the second matched list will receive relief pursuant to paragraphs 28-37 of this Stipulation.

13. In order to be eligible to receive a restored food stamp benefit pursuant to Section IV of this Stipulation, a person must be residing in a food stamp eligible living arrangement as provided in the Federal Food Stamp Act (7 U.S.C. § 2011 et seq.) and implementing federal regulations (7 C.F.R. Part 273) on the date of the most recent matched list on which the person appears, and must reside in New York City on the date benefits are restored. No person who is deceased, incarcerated or no longer residing in New York City on the date of the most recent matched list on which the person appears is eligible to receive a restored food stamp benefit pursuant to this Stipulation.

14. No later than twelve months after So Ordering of this stipulation, State defendant will perform a mass rebudgeting ("MRB") to provide the restored food stamps in the amounts described in Subsections (b) and (c) of this Section IV of this Stipulation to class members identified through the process described in paragraphs 10 and 11 of this Stipulation.

15. To conduct the mass rebudgeting, State defendant will prepare a program that analyzes data contained on the WMS and the SDX and determines for each case receiving relief pursuant to paragraphs 18 through 37:

(A) whether a case is that of an SSI recipient living alone, an SSI couple or an SSI recipient living with others described in definitions M, N and O of paragraph 7 of this Stipulation who are listed on the SDX as recipients of SSI on the first matched list, prepared as provided in paragraph 11 of this Stipulation, whose PA/FS cases were closed due to the receipt of SSI between April 1, 1999, and the date this Stipulation is So Ordered;

(B) Whether the household is currently receiving food stamps, received food stamps for a time and the food stamp case is now closed, or never received food stamps since the date the PA/FS case closed due to receipt of SSI using closing codes E34 or 215;

(C) the last month the case received PA/FS;

(D) if the case received NPA FS after the month the PA/FS case was closed, the first month the case received NPA FS;

(E) whether more than one SSI recipient living alone or SSI recipient living with others resides in a single food stamp household on the date the MRB occurs; and

(F) the dollar amount of food stamps to be restored to each household applying the guidelines contained in Subsections (b) or (c) of Section IV (¶¶ 18 through 37) of this Stipulation to the specific facts of each household.

16. State defendant will authorize the restored benefit calculated in the MRB in the amounts provided in subsections (b) and (c) of section IV of this Stipulation and issue such benefit through the electronic benefit transfer system.

17. State defendant will mail a notice, more fully described in subsection (d) of this Section IV of this Stipulation, to each identified class member to whom restored food stamp benefits are furnished. State defendant will mail notices to those SSI recipients living alone, SSI couples, and SSI recipients living with others receiving relief pursuant to paragraphs 18 through 27 of this Stipulation at the address listed on the SDX at the time that relief is provided. State defendant will mail notices to those SSI recipients living alone, SSI couples, and SSI recipients living with others receiving relief pursuant to paragraphs 28 through 37 of this Stipulation at the address listed on the WMS on the date that State defendant performs the acts required by paragraph ten (10) of this Stipulation.

(b) RELIEF TO BE PROVIDED TO CLASS MEMBERS APPEARING ON BOTH THE FIRST MATCHED LIST AND THE SECOND MATCHED LIST

18. SSI recipients living alone appearing on both the first matched list and the second matched list who have active NPA FS cases when the MRB occurs will be provided restored food stamps of \$111 per month for all months they did not receive any food stamps between April 1, 2001, and the month the NPA FS case first opened subsequent to April 1, 2001 for up to twenty-one months of restored food stamp benefits.

19. SSI recipients living alone appearing on both the first matched list and the second matched list who, after the closing of their PA/FS cases, had open food stamp cases in April, 2001 or later and whose food stamp cases are closed when the MRB occurs will be provided restored food stamps of \$111 per month for all months they did not receive any food stamps between April 1, 2001, and the month the food stamp case first opened subsequent to April 1, 2001 for up to twenty-one months of restored food stamp benefits.

20. SSI recipients living alone appearing on both the first matched list and the second matched list who have not had an open food stamp case between the close of the PA/FS case and the month the MRB occurs will be provided restored food stamps of \$111 per month for all months they did not receive any food stamps during the twenty-one months prior to the month in which the MRB occurs. During the six months following the month in which the MRB occurs, State defendant will mail food stamp applications to these class members at the addresses shown

on the SDX on the date State defendant complies with the second sentence of paragraph 11 of this Stipulation. If class members fill out these applications and return them to City defendant, City defendant will process these applications for ongoing food stamps.

21. SSI couples appearing on both the first matched list and the second matched list who have active food stamp cases when The MRB occurs will be provided restored food stamps of \$183 per month for all months they did not receive any food stamps between April 1, 2001, and the month the food stamp case first opened subsequent to April 1, 2001 for up to twenty-one months of restored food stamp benefits.

22. SSI couples appearing on both the first matched list and the second matched list who, after the closing of their PA/FS cases, had open food stamp cases in April, 2001 or later and whose food stamp cases are closed when The MRB occurs will be provided restored food stamps of \$183 per month for all months they did not receive any food stamps between April 1, 2001, and the month the food stamp case first opened subsequent to April 1, 2001 for up to twenty-one months of restored food stamp benefits.

23. SSI couples appearing on both the first matched list and the second matched list who have not had an open food stamp case between the close of the PA/FS case and the month The MRB occurs will be provided restored food stamps of \$183 per month for all months they did not receive any food stamps during the twenty-one months prior to the month in which The MRB occurs. During the six months following the month in which The MRB occurs, State defendant will mail food stamp applications to these class members at the addresses shown on the SDX on the date State defendant complies with the second sentence of paragraph 11 of this Stipulation. If the recipient returns the application to City defendant, City defendant will process the application for ongoing food stamps.

24. SSI recipients living with others appearing on both the first matched list and the second matched list who have active food stamp cases when The MRB occurs will be provided restored food stamps of \$111 per month for all months they did not receive any food stamps between April 1, 2001, and the month the NPA FS case first opened subsequent to April 1, 2001 for up to twenty-one months of restored food stamp benefits.

25. SSI recipients living with others appearing on both the first matched list and the second matched list who, after the closing of their PA/FS cases, had open food stamp cases in April, 2001 or later and whose food stamp cases are closed when The MRB occurs will be provided restored food stamps of \$111 per month for all months they did not receive any food stamps between April 1, 2001, and the month the food stamp case first opened subsequent to April 1, 2001 for up to twenty-one months of restored food stamp benefits.

26. SSI recipients living with others appearing on both the first matched list and the second matched list who have not had an open food stamp case between the close of the PA/FS case and the month The MRB occurs will be provided restored food stamps of \$111 per month

for all months they did not receive any food stamps during the twenty-one months prior to the month in which The MRB occurs. Within 30 days of the MRB, State defendant will mail food stamp applications and a list of City defendant's NPA FS centers to these class members at the addresses shown on the SDX on the date State defendant complies with the second sentence of paragraph 11 of this Stipulation. If class members fill out these applications and return them to City defendant, City defendant will process these applications for ongoing food stamps.

27. If more than one SSI recipient living alone or SSI recipient living with others reside in a single food stamp household on the date that State Defendant provides relief pursuant to paragraphs 18, 19, 20, 24, 25, or 26 of this Stipulation, the \$111 standard monthly benefit will be increased by \$72 per month for each additional SSI recipient living alone or SSI recipient living with others who is part of the food stamp household.

(c) RELIEF TO BE PROVIDED TO CLASS MEMBERS appearing on the first matched list but not appearing on the second matched list

28. Former SSI recipients living alone appearing on the first matched list but not appearing on the second matched list who have active NPA FS cases when the second matched list is compiled will be provided restored food stamps of \$111 per month for all months they did not receive any food stamps between April 1, 2001, and the month the NPA FS case first opened subsequent to April 1, 2001 for up to twelve months of restored food stamp benefits.

29. Former SSI recipients living alone appearing on the first matched list but not appearing on the second matched list who, after the closing of their PA/FS cases, had open food stamp cases in April, 2001 or later and whose food stamp cases are closed when the second matched list is compiled will be provided restored food stamps of \$111 per month for all months they did not receive any food stamps between April 1, 2001, and the month the food stamp case first opened subsequent to April 1, 2001 for up to twelve months of restored food stamp benefits.

30. Former SSI recipients living alone appearing on the first matched list but not appearing on the second matched list who have not had an open food stamp case between the close of the PA/FS case and the month the second matched list is compiled will be provided restored food stamps of \$111 per month for all months they did not receive any food stamps during the twelve months prior to the month in which The MRB occurs.

31. Former SSI couples appearing on the first matched list but not appearing on the second matched list who have active food stamp cases when the second matched list is compiled will be provided restored food stamps of \$183 per month for all months they did not receive any food stamps between April 1, 2001, and the month the food stamp case first opened subsequent to April 1, 2001 for up to twelve months of restored food stamp benefits.

32. Former SSI couples appearing on the first matched list but not appearing on the second matched list who, after the closing of their PA/FS cases, had open food stamp cases in

April, 2001 or later and whose food stamp cases are closed when the second matched list is compiled will be provided restored food stamps of \$183 per month for all months they did not receive any food stamps between April 1, 2001, and the month the food stamp case first opened subsequent to April 1, 2001 for up to twelve months of restored food stamp benefits.

33. Former SSI couples appearing on the first matched list but not appearing on the second matched list who have not had an open food stamp case between the close of the PA/FS case and the month the second matched list is compiled will be provided restored food stamps of \$183 per month for all months they did not receive any food stamps during the twelve months prior to the month in which The MRB occurs.

34. Former SSI recipients living with others appearing on the first matched list but not appearing on the second matched list who have active food stamp cases when the second matched list is compiled will be provided restored food stamps of \$111 per month for all months they did not receive any food stamps between April 1, 2001, and the month the NPA FS case first opened subsequent to April 1, 2001 for up to twelve months of restored food stamp benefits.

35. Former SSI recipients living with others appearing on the first matched list but not appearing on the second matched list who, after the closing of their PA/FS cases, had open food stamp cases in April, 2001 or later and whose food stamp cases are closed when the second matched list is compiled will be provided restored food stamps of \$111 per month for all months they did not receive any food stamps between April 1, 2001, and the month the food stamp case first opened subsequent to April 1, 2001 for up to twelve months of restored food stamp benefits.

36. Former SSI recipients living with others appearing on the first matched list but not appearing on the second matched list who have not had an open food stamp case between the close of the PA/FS case and the month the second matched list is compiled will be provided restored food stamps of \$111 per month for all months they did not receive any food stamps during the twelve months prior to the month in which The MRB occurs.

37. If more than one former SSI recipient living alone or SSI recipient living with others, resided in a single food stamp household on the date upon which State defendants provide relief pursuant to paragraphs 28, 29, 30, 34, 35 or 36 of this Stipulation, the \$111 standard monthly benefit will be increased by \$72 per month for each additional former SSI recipient living alone or SSI recipient living with others who was part of the food stamp household on that date.

(d) NOTICE TO RECIPIENTS OF RESTORED FOOD STAMPS

38. State defendant will mail notices to the recipients of restored food stamps.

39. Each notice shall state that the recipient is receiving a one-time payment of restored food stamps as part of the settlement of this litigation and shall contain the monthly restored

benefit amount, the number of months of NPA FS being restored, the total amount of NPA FS being restored and instructions for redeeming the restored Food Stamps.

40. Notices sent to households that do not have active food stamp cases when the MRB occurs shall contain a statement that the household may apply for ongoing food stamps separate from the one-time restored food stamp payment described in the notice, and shall contain the telephone number of State defendant's hotline that the recipient may call to get further information.

41. Notices sent to recipients who will also be receiving an application by separate cover pursuant to the provisions of paragraphs 20, 23 and 26 of this Stipulation shall inform the recipient that an application is coming by separate mailing.

42. Where an application is mailed to a recipient of an MRB notice, the application mailing shall include a separate cover letter explaining that the application is being sent as part of the settlement of this litigation and shall contain instructions about how the application should be returned to City defendant.

(e) MONITORING THE MRB

43. State Defendant will send to plaintiffs' counsel, within 120 days of the MRB described in paragraph 14 of this stipulation, an electronic list (in text file with fixed columns) of class members by case number containing the information set forth in subparagraphs A-F below:

(A) the SSI living arrangement (A/A single, A/A couple or A/B) as coded on the SDX at the time the first matched list is compiled; and

(B) the SSI living arrangement (A/A single, A/A couple or A/B) and pay status (active or closed) as coded on the SDX at the time the second matched list is compiled; and

(C) the household's last month of receipt of food stamps after the PA/FS case closed using codes 215, E34, or any successor codes; and

(D) the household's first month of receipt of food stamps after the NPA/FS case was opened, if any (if there is no such month, this column will be left blank); and

(E) the household's food stamp status (active or closed) at the time of the MRB described in paragraph 14 of this stipulation; and

(F) the amount of the household's restored benefit.

44. For relief provided pursuant to paragraphs 27 and 37 of this Stipulation, State defendant will provide to plaintiffs' counsel, within 120 days of the MRB described in paragraph 14 of this stipulation, the number of households receiving relief pursuant to each paragraph.

45. State defendant will provide to plaintiffs' counsel the total number of applications mailed pursuant to paragraphs 20, 23 and 26 of this Stipulation, no later than seven months after the MRB occurs.

V. OUTREACH MAILINGS

46. No later than sixteen months after the date of So Ordering of this stipulation, defendants will provide plaintiffs' counsel with copies of mailings that they plan to send to SSI recipients not in receipt of food stamp benefits as provided in paragraph 48 of this Stipulation, and plaintiffs' counsel will have an opportunity to review and comment on these mailings.

47. Seventeen months after the date of So Ordering of this stipulation, using data kept on the SDX and the WMS, State defendant will identify all residents of New York City who receive SSI as A/A couples or A/B individuals and who do not receive food stamp benefits.

48. Within 30 days of the identification described in the preceding paragraph, State defendant will send outreach mailings to the identified A/B SSI individuals and City defendant will send outreach mailings to the identified A/A SSI couples. The outreach mailings will advise recipients that because they receive SSI, they may be eligible for food stamp benefits, and how and where they can apply for food stamp benefits.

VI. PROSPECTIVE RELIEF

49. The provisions of this section VI of this Stipulation (¶¶ 49 through 57) describe and define the actions defendants will take where public assistance food stamp cases are closed due to receipt of SSI between the date this Stipulation is So Ordered and the expiration date of this agreement.

50. Nothing contained in Section VI of this Stipulation is intended to limit City defendant's ability or obligation to act in accordance with the recertification provisions of 7 C.F.R. § 273.14.

(a) ACTIONS DEFENDANTS WILL TAKE WHERE PUBLIC ASSISTANCE FOOD STAMP CASES ARE CLOSED DUE TO RECEIPT OF SSI BETWEEN THE DATE THIS STIPULATION IS SO ORDERED AND THE EXPIRATION DATE OF THIS AGREEMENT

51. For each SSI recipient living alone, SSI couple and SSI recipient living with others whose public assistance case is closed due to receipt of SSI from the date this Stipulation is So

Ordered to the expiration of this agreement, a separate determination of food stamp eligibility will be made such that eligible households will be issued food stamp benefits for each month remaining in their certification period.

52. SSI recipients living alone, SSI couples and SSI recipients living with others for whom a separate determination is made pursuant to paragraph 51 of this Stipulation shall receive notice of the change in their Food Stamps in accordance with 18 N.Y.C.R.R. § 358-3.3.

(b) **TROUBLESHOOTER COMPLAINTS**

53. During the duration of this Stipulation, City defendant shall designate a fax line to receive troubleshooter complaints on behalf of people who allege that their food stamp benefits have been terminated due to the receipt of SSI. Plaintiffs' counsel shall not disclose the number of the troubleshooter fax line to members of the general public. All troubleshooter complaints shall be submitted to this fax line by plaintiffs' counsel. Complaints shall be submitted on a form prepared jointly by the parties. City defendant shall investigate and report the outcome of the investigation and the resolution, if any, to plaintiffs' counsel within ten business days. City defendant shall identify a staff member in the Office of Legal Affairs who will act as liaison to plaintiffs' counsel on all troubleshooter complaints and shall provide the liaison's telephone number to plaintiffs' counsel.

54. Nothing in paragraph 53 of this Stipulation shall be construed to limit the right of class members whose PA/FS cases are closed due to receipt of SSI on or after the date this Stipulation is So Ordered to pursue administrative fair hearings and judicial review thereof as provided in Social Services Law § 22(9) to resolve their individual claims of entitlement to food stamps.

(C) **MONITORING PROSPECTIVE RELIEF**

55. Tracking Report: While this agreement is in effect, City defendant will produce a quarterly Tracking Report of PA/FS cases that closed due to the receipt of SSI using closing codes 215, E34, or any successor codes. The Tracking Report will reflect activity in the three-month period that ended three months before the report is issued. The first Tracking Report will be issued at the end of the second quarter after the Court So Orders this Stipulation.

(A) The Tracking Report will sort the cases by living arrangement code as follows: 1) SSI single living alone (A/A); 2) SSI couples; 3) SSI Recipients Living With Others (A/B).

(B) For each case that closed during the three-month period under consideration, the Tracking Report will show the following information:

1) PA/FS case number;

- 2) date of PA closing;
- 3) whether NPA food stamps were authorized from the first day of the month following the month after the PA/FS case closed;
- 4) NPA FS case number; and
- 5) for each case in which NPA food stamps were not authorized from the first day of the month following the month after the PA food stamp case closed, an explanation of the reason that benefits were not so authorized, where one exists, with appropriate back up documents supporting the explanation.

56. City defendant will systematically select a random sample of 310 cases from the cases listed in the quarterly Tracking Report. Living arrangement codes will be represented in the sample as follows: A/A singles: 100 cases; A/A singles (manual): 75 cases; A/A couples (manual) 25 cases; A/B living with others: 110 cases. For each case in the Sample, City defendant will report whether a notice of the new food stamp benefit amount was sent, and will report the date the notice was sent. City defendant will provide a copy of the notice, or a computer generated equivalent, subject to redaction of the case name.

57. If, between the date this Stipulation is So Ordered and the expiration date of this agreement, defendants change the WMS codes used to close a public assistance case due to receipt of SSI, defendants will notify plaintiffs' counsel of such change within thirty (30) days of making such change.

VII. JURISDICTION

58. As of the date this Stipulation is So Ordered by the Court, all claims raised by the named individual plaintiffs, on their own behalf and on behalf of the class they represent, that defendants discontinued their public assistance food stamps without making a separate determination as to their eligibility for non-public assistance food stamps are hereby resolved and settled, and all remedies sought in the complaint concerning said discontinuance and failure to make a separate determination are limited to the terms of this Stipulation. All other claims raised in the complaint are withdrawn without prejudice to the right of class members to raise them in a separate proceeding.

59. As of the date this Stipulation is so ordered by the Court, the jurisdiction of this Court shall terminate for all purposes except that the Court shall maintain continuing jurisdiction over this action for the purpose of deciding motions for enforcement, subject to paragraph 62 of this Stipulation.

60. The jurisdiction of this Court shall terminate at the conclusion of twenty-seven (27) months following the date the Stipulation is So Ordered by this Court unless plaintiffs move

pursuant to paragraph 62 of this Stipulation. At the time of termination of jurisdiction, all claims arising under the terms of this Stipulation shall be deemed dismissed. If plaintiffs move pursuant to paragraph 62 of this Stipulation, jurisdiction shall continue until: a. the motion is decided; b. if the motion is decided favorably for plaintiffs, until such time as directed by the Court; or c. such time as may be extended by the parties in a modification of this Settlement.

61. Defendants shall be deemed to have complied with the terms of this Stipulation, as articulated in paragraphs 1 through 57, so long as any failure to comply is individual or isolated, and not significant and widespread or recurring.

62. During the twenty-seven months following the date this Court So Orders this Stipulation, if plaintiffs' counsel believes that defendants have failed to comply, as defined by paragraph 61 above, with the terms of this Stipulation, plaintiffs' counsel shall notify defendants' counsel in writing of the nature and specifics of the alleged failure to comply with the terms and shall specify the monitoring reports, if any, upon which such a belief is based, at least forty five (45) days before any motion is made for enforcement of this Stipulation or for contempt. Unless otherwise resolved, the parties' counsel shall meet within the 45 day period following notice to defendants' counsel in an attempt to arrive at a resolution of the claims. If no resolution is reached within 45 days from the date of notice, plaintiffs may move this court for an order for all appropriate relief against the noncompliant defendant.

63. Notwithstanding the provisions of paragraph 62, plaintiffs may move this court for an order for all appropriate relief against the noncompliant defendant without waiting 45 days if plaintiffs' motion is based in whole or in part on information contained in a monitoring report provided by defendants less than 45 days before the date that the jurisdiction of this court is due to lapse pursuant to paragraph 60 of this Stipulation.

64. Notwithstanding the provisions of paragraph 61 of this Stipulation, after complying with the provisions of paragraph 62 of this Stipulation, plaintiffs may bring a motion for enforcement against the noncompliant defendant based on a single violation of provisions of this Stipulation requiring the provision of monitoring reports.

VIII. GENERAL PROVISIONS

65. This Stipulation constitutes the parties' entire agreement and its provisions resolve this action in its entirety as to the named plaintiffs and the certified class. For the duration of this Stipulation, defendants have no additional obligations with respect to the matters settled herein, and Plaintiffs and the certified class shall not impose, nor seek to impose, nor bring any suit that seeks to impose, any additional systemic obligations upon defendants with respect to the matters settled herein.

66. Upon the Court's approval of this Stipulation as fair, reasonable and adequate, plaintiffs, individually and on behalf of each member of the Class, and on behalf of the respective

heirs, executors, administrators, personal representatives, successors and assigns of each of themselves and each of the members of the Class, hereby jointly and severally release and forever discharge, on the merits with prejudice City defendant, including without limitations its past and present officials, employees, departments, agencies, representatives, directors and agents, their successors and assigns and their respective heirs, executors, administrators, personal representatives, and transferees, and State defendant, its past and present officials, employees, departments, agencies, representatives, directors, agents, their successors and assigns and their respective heirs, executors, administrators, and transferees (collectively "the releasees") and each of them, of and from any and all claims, actions, costs, expenses and attorneys' and expert fees, except as provided in Section IX of this Stipulation, whether known or unknown, foreseen or unforeseen, matured or unmatured, accrued or not accrued, direct or indirect, from the beginning of time through the date of Court approval of this Stipulation that the named plaintiffs and the members of the class, and each of them, ever had, now has or have, or can, shall or may hereafter have against the releasees or any of them, either alone or in any combination with others, for, by reason of, involving, concerning, arising from or in any way relating to any claim contained within the complaint and not withdrawn pursuant to paragraph 58 of this Stipulation.

67. All parties to this Stipulation have participated in its drafting; consequently, any ambiguity shall not be construed for or against any party.

68. If any date or period of time described in this Stipulation falls or ends on a public holiday or on a weekend, the date or period of time shall be extended to the next business day.

69. Plaintiffs' counsel shall protect the confidentiality of all information concerning an individual class member that is provided by the defendants under the terms of this Stipulation and shall not disclose such information to any individual, other than the defendants and any individual whose case is involved, except to the extent necessary in any proceeding brought before this Court to enforce any right that individual may have under this Stipulation.

70. This Stipulation is final and binding upon the parties, their successors, and their assigns.

71. All monitoring reports provided pursuant to this Stipulation shall be provided in paper and electronic format.

72. State defendant will retain the data upon which it relied to conduct the MRB described in Section IV of this Stipulation and to CREATE the reports to plaintiffs' counsel pursuant to paragraphs 43, 44 and 45 of this Stipulation for one year after the reports described in paragraphs 43, 44 and 45 of this Stipulation are sent to plaintiffs' counsel.

73. City defendant will retain data reasonably necessary to determine whether the information in the Tracking Report and the Sample, provided pursuant to paragraphs 55 and 56 of this Stipulation, is accurate. Such data shall be retained for two years beyond the monitoring

period provided in Section VI of this Stipulation , or until the Court's jurisdiction terminates pursuant to paragraph 60, whichever first occurs.

74. Any notice, report or communication required by or made pursuant to the terms of this Stipulation, other than notices sent to individual class members, shall be sent by first class mail, postage prepaid, and by electronic mail, to all of the people listed below:

To Plaintiffs:

William Lienhard, Esq.
Urban Justice Center
666 Broadway
New York, New York 10012
Email: wlienhard@urbanjustice.org

To the City defendant:

Kimberly Conway, Esq.
Assistant Corporation Counsel
Office of the Corporation Counsel
100 Church Street
New York, New York 10007
Email: kconway@law.nyc.gov

David Lock, Esq.
Deputy General Counsel
Office of Legal Affairs
180 Water Street
New York, new York 10038
lockd@hra.nyc.gov

To the State defendant:

Robert L. Kraft, Esq.
Assistant Attorney General
Office of the Attorney General
120 Broadway, 24th Floor
New York, New York 10271
Email: robert.kraft@oag.state.ny.us

John DiBari, Esq.
Associate Attorney
Office of Temporary and Disability assistance
40 North Pearl Street
Albany, New York 12243
john.dibari@otda.state.ny.us.

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

IX. ATTORNEY'S FEES

76. The plaintiffs, on behalf of themselves and the class they represent, hereby agree that the settlement described in Section IX of this Stipulation fully satisfies their claim for attorneys' fees, costs and disbursements payable to plaintiffs' counsel by each defendant.

77. State defendant agrees to pay the sum of one hundred seventeen thousand five hundred dollars and no cents (\$117,500.00) to plaintiffs' counsel as described more fully in Section IX of this Stipulation in full settlement of all of plaintiffs' claims against State defendant for attorneys' fees, costs and disbursements in or arising from this action, accrued or incurred in the past or in the future by plaintiffs' counsel as follows:

(A) State defendant agrees to cause payment to be issued to The Urban Justice Center in the sum of one hundred seven thousand five hundred dollars and no cents (\$107,500.00).

(B) State defendant agrees to cause payment to be issued to Patterson Belknap Webb & Tyler LLP in the sum of ten thousand dollars and no cents (\$10,000.00).

(C) In the event a payment described in paragraphs 77(A) or 77(B) of this Stipulation is not made by delivering a check payable to plaintiffs' counsel within one hundred twenty (120) days of State defendant's counsel's receipt of a So Ordered copy of this Stipulation that has been entered, and a signed release, interest shall accrue at the statutory rate prescribed by 28 U.S.C. § 1961 commencing on the one hundred twenty-first (121st) day.

78. Payment of the amounts set forth in paragraph 77(A) and 77(B) of this Stipulation shall be made from the New York Public Officers Law Section 17 fund and shall be subject to the approval of all appropriate officials of the State of New York in accordance with the provisions for indemnification under New York Public Officers Law § 17(3)(a).

79. City defendant agrees to pay the sum of one hundred twenty thousand and no cents (\$120,000.00) to plaintiffs' counsel as described more fully in Section IX of this Stipulation in full settlement of all of plaintiffs' claims which have been raised or could have been raised against City defendant for attorneys' fees, costs and disbursements in or arising from this action, accrued or incurred in the past or in the future by plaintiffs' counsel as follows:

(A) City defendant agrees to cause payment to be issued to The Urban Justice Center in the sum of one hundred twenty thousand dollars and no cents (\$120,000.00).

(B) In the event the payment described in paragraph 79(A) of this Stipulation is not made by delivering a check payable to the Urban Justice Center within one hundred twenty (120) days of City defendant's counsel's receipt of a So Ordered copy of this Stipulation that has been entered, interest shall accrue at the statutory rate prescribed by 28 U.S.C. § 1961 commencing on the one hundred twenty-first (121st) day.

80. Notwithstanding the provisions of Paragraphs 77 and 79 above, nothing in this Stipulation shall be construed to limit plaintiffs' right to make an application to the Court for fees incurred in connection with any motion made pursuant to Paragraphs 62, 63, or 64 of this Stipulation.

81. Payment of the amounts set forth in paragraphs 77 and 79 of this Stipulation shall be subject to the cooperation of plaintiffs' counsel in executing any documents required to process such payments by each defendant.

82. Each defendant is solely liable for the amount attributed to it, and neither defendant is jointly or severally liable for the amount that the other defendant has agreed to pay. Nothing herein shall obligate State defendant to bear any portion of any liability attributed to City defendant for plaintiffs' attorneys' fees, costs and disbursements, whether covered by this Stipulation or incurred in the future. Nothing herein shall obligate City defendant to bear any portion of any liability attributed to State defendant for plaintiffs' attorneys' fees, costs and disbursements, whether covered by this Stipulation or incurred in the future.

83. Upon execution of this Stipulation, plaintiffs' counsel shall execute General Releases in the forms annexed hereto as Exhibits A and B, releasing State defendant. Exhibit A shall be held in escrow by counsel for State defendant and shall not be effective until the Urban Justice Center is in receipt of the entire settlement amount set forth in Paragraph 77(A) above. Exhibit B shall be held in escrow by counsel for State defendant and shall not be effective until Patterson Belknap Webb & Tyler LLP is in receipt of the entire settlement amount set forth in Paragraph 77(B) above.

84. Upon execution of this Stipulation, plaintiffs' counsel shall execute a General Release in the form annexed hereto as Exhibit C releasing City defendant. Exhibit C shall be held in escrow by counsel for City defendant and shall not be effective until the Urban Justice Center is in receipt of the entire settlement amount set forth in Paragraph 79 above.

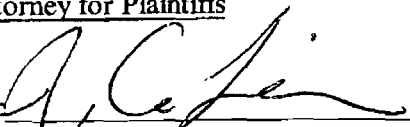
85. Nothing contained in this Stipulation shall be deemed to be an agreement or an admission by either defendant as to the reasonableness of the number of hours spent or the particular hourly rates claimed by plaintiffs' counsel, or that plaintiffs will be entitled to any attorneys' fees, costs or disbursements in connection with this action in the future, and neither defendant waives any defenses to any application by plaintiffs or plaintiffs' counsel therefor.

86. The agreement regarding payment of attorneys' fees, costs and disbursements set forth in Section IX of this Stipulation is solely for the purpose of settlement in this action and does not reflect the positions of the parties in any other judicial or administrative proceeding. Nothing contained in section IX of this Stipulation shall be deemed, implied or construed to be a policy, custom or procedure of State defendant, the State of New York or any of its agencies, or City defendant, the City of New York or any of its agencies.

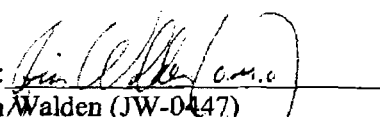
87. Section IX of this Stipulation contains all of the terms and conditions agreed on by the parties regarding the payment by each defendant of attorneys' fees, costs and disbursements in this litigation to plaintiffs' counsel. No oral agreement entered into at any time nor any other written agreement entered into prior to the execution of this Stipulation shall be deemed to exist, to bind the parties, or to vary the terms and conditions set forth in Section IX of this Stipulation.

Dated: New York, New York
December 18, 2006

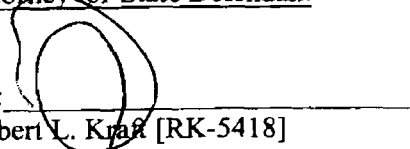
Urban Justice Center
Attorney for Plaintiffs

By: 
William G. Lienhard (WL-6340)
666 Broadway, 10th Floor
New York, New York 10012
(646) 602-5667

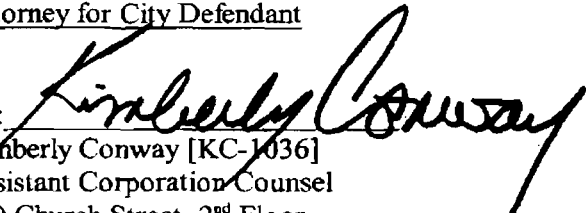
Gibson Dunn & Crutcher LLP
Attorney for Plaintiffs

By: 
Jim Walden (JW-0447)
200 Park Avenue
New York, New York 10166-0193
(212) 351-4000

ELIOT SPITZER, Attorney General
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By: 
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Assistant Attorney General
120 Broadway 24th Floor
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(212) 416-8632

MICHAEL A CARDOZO, Corporation Counsel
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Attorney for City Defendant

By: 
Kimberly Conway [KC-1036]
Assistant Corporation Counsel
100 Church Street, 2nd Floor
New York, New York 10007
(212) 788-0865

So Ordered: 

Richard M. Berman
United States District Judge

Dated: 10/9/07