

12 CV 9162

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

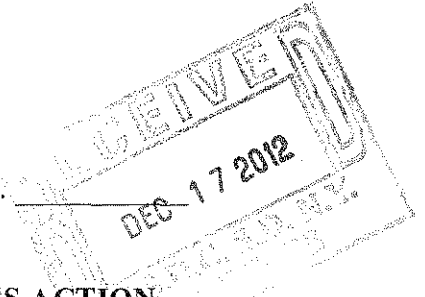
ALECHEA TONEY-DICK,  
individually and on behalf of all others similarly  
situated,  
  
Plaintiffs,

-against-

ROBERT DOAR, in his official capacity as  
Commissioner of the New York City Human  
Resources Administration, and THE NEW YORK  
CITY HUMAN RIGHTS RESOURCES  
ADMINISTRATION,  
  
Defendants.

No. \_\_\_\_\_

**CLASS ACTION  
COMPLAINT; INJUNCTIVE  
AND DECLARATORY  
RELIEF**



**PRELIMINARY STATEMENT**

1. Plaintiff Alechea Toney-Dick, bring this class action for declaratory and injunctive relief under Title II of the Americans with Disabilities Act (“ADA”), Section 504 of the Rehabilitation Act of 1973, the Food Stamp Act, and New York State and City statutes and regulations that bar disability-based discrimination in public benefits programs operated by Defendants.

2. This action involves allegations of discrimination on the basis of disability against Defendants Robert Doar, as Commissioner of the New York City Human Resources Administration (“HRA”), and the New York City Human Resources Administration (collectively, “Defendants”); and arises out of the implementation and administration of the Disaster Supplemental Nutrition Assistance Program (“D-SNAP”) by HRA in response to Hurricane Sandy in New York City. See HRA Policy Directive #12-32-ELI, “Disaster Supplemental Nutrition Assistance Program” (hereinafter referred to as “PD #12-32-ELI”).

3. D-SNAP is a public benefits program that provides temporary food assistance benefits to eligible individuals affected by a disaster in the form of one-time issuance of SNAP/Food Stamp benefits to assist in paying for a month's worth of food.

4. The D-SNAP benefit levels are fixed amounts based on household size: a family of three, for example, will receive \$526 if eligible; a single person will receive \$200.

5. In order to address economic losses associated with a disaster, the D-SNAP program's eligibility guidelines are designed to assist a far broader portion of the public than the regular SNAP program, with higher income eligibility guidelines, the use of net, as opposed to gross income, deductions for disaster-related expenses, and the waiving of restrictions that bar many immigrants and students from participating in the regular SNAP program.

6. Individuals currently receiving SNAP program benefits are not eligible to apply for the D-SNAP program, but are provided a supplement to their regular monthly SNAP benefit

7. At the federal level the D-SNAP program is administered by the Food and Nutrition Service (FNS), a division within the United States Department of Agriculture (USDA).

8. Upon information and belief, in New York State, an application for a D-SNAP program is made by the State Office of Temporary and Disability Assistance (OTDA) to the federal government only when a local social services district, i.e. a county agency, or, in New York City, a city agency such as Defendant HRA, expresses an interest in applying for the program.

9. On November 28, 2012, OTDA submitted a request on behalf of HRA and was approved by USDA to operate and administer D-SNAP for those eligible individuals affected by Hurricane Sandy in New York City to those eligible individuals residing in twelve (12) zip codes in Queens, Brooklyn, Manhattan and Staten Island. See PD #12-32-ELI.

10. The HRA D-SNAP program requires that anyone interested in applying for the program appear in person, unless that person can secure an authorized representative to apply in person as a surrogate; the representative must attest to the truth of each statement made on the application under penalties of perjury.

11. Under the current HRA D-SNAP program, D-SNAP applications are to be accepted for the period from December 12, 2012 to December 18, 2012.

12. HRA has designated only one location – in Fort Greene, Brooklyn - at which applications for D-SNAP are to be accepted for seven days; a second, satellite site, in Staten Island, accepts applications only part time for four days. See PD #12-32-ELI.

13. The submission made to the FNS to operate the D-SNAP program did not make any mention of accommodations designed to specifically address the needs of individuals with disabilities.

14. In the regular SNAP program, individuals have the opportunity to apply in-person for SNAP benefits at one of more than twenty HRA offices, and through a network of community based organizations.

15. In the regular SNAP program, individuals with disabilities may also apply for benefits via online or through the mail.

16. By severely limiting the number of physical application sites, and failing to provide the types of accommodations that are available to persons with disabilities seeking to apply for SNAP benefits, HRA's D-SNAP program fails to provide reasonable accommodations to individuals with disabilities who wish to apply for the program, thereby denying many of them access to much-needed benefits.

17. Plaintiff, on behalf of persons with disabilities who are eligible to apply for D-

SNAP, bring this class action challenging the Defendants' failure to consider, plan for and address the needs of persons with disabilities by subjecting them to an inflexible in-person application requirement under HRA's D-SNAP program.

18. Plaintiff seek a preliminary and permanent injunction requiring Defendants to: (a) accommodate all class members by allowing them alternatives to the in-person requirement, including but not limited to telephone, mail, internet, facsimile or authorized representatives who are not themselves required to attest to the truth of an application<sup>1</sup> and when these methods are not viable, home visits; and (b) extend the D-SNAP application period so that all class members may have an equivalent period of time to apply for D-SNAP once reasonable accommodations are implemented or, in the alternative, allow all class members the opportunity to apply and obtain D-SNAP benefits retroactively; and (c) consider the needs of persons with disabilities in planning any future D-SNAP programs and provide reasonable accommodations in the application processes that may be required in such programs..

### **JURISDICTION**

19. This Court has subject matter jurisdiction over this action under 28 U.S.C. §§ 1331 and 1343(a)(3) and (4). The action arises under the Americans with Disabilities Act, 42 U.S.C. § 12131 et seq., Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 et seq., and the Food Stamp Act, 7 U.S.C. § 2020.

20. This Court has supplemental jurisdiction under 28 U.S.C. § 1367 over plaintiff's claims under the New York State and local laws prohibiting disability discrimination.

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<sup>1</sup> Although authorized representatives are allowed for the in-person requirement under D-SNAP for those who are not current recipients of SNAP and reside in the covered zip codes, the authorized representative must be designated in writing by an adult member of the applying household, and must be very knowledgeable about the applicant household's circumstances. The authorized representatives must also certify that the information in the application is both complete and accurate and, if inaccurate, can face criminal prosecution and/or disqualification of benefits. Therefore, Plaintiff and class members are not able to get authorized representatives to apply on their behalf. See PD #12-32-ELI.

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

### PARTIES

#### Plaintiff

22. Plaintiff ALECHEA TONEY-DICK lives in Arverne in the Far Rockaway section of Queens, zip code 11692, with her husband, who works full-time, and her 14-year-old son. She suffers from disabilities within the meaning the ADA and uses a wheelchair due to her impairments. She is not a current recipient of SNAP benefits, but she would like to apply for D-SNAP benefits. Plaintiff Toney-Dick believes that she is likely eligible for \$526 in D-SNAP benefits. However, due to her disabilities, she cannot travel to the closest D-SNAP application site, which is more than 90 minutes away from her home by public transportation to apply for the program.

#### Defendants

23. Defendant ROBERT DOAR is the Commissioner of HRA, the executive agency for the City of New York responsible for administering SNAP for New York City residents and complying with federal and state laws and regulations relating to SNAP benefits.

24. Defendant NEW YORK CITY HUMAN RESOURCES ADMINISTRATION is the executive agency responsible for the administration of the D-SNAP program in New York City.

### CLASS ACTION ALLEGATIONS

25. Plaintiff brings this action pursuant to Rule 23(a) and 23(b)(1) and Rule 23(b)(2) of the Federal Rules of Civil Procedure on their own behalf and on behalf of all others similarly situated.

26. Plaintiff's class consists of all individuals in New York City who (a) have a

physical or mental impairment that substantially limits one or more major life activities within the meaning of the ADA, have a record of such an impairment, or are regarded as having such an impairment; (b) are not current recipients of SNAP benefits and (c) reside in the covered zip codes for HRA's D-SNAP program; and (d) need reasonable accommodations to assist them in applying for D-SNAP benefits.

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

28. Defendant HRA estimates that there may be up to 30,000 new applicants for D-SNAP.

29. Upon information and belief, based in part on general nationwide prevalence data among adults available from the Center for Disease Control and the New York State Department of Health, it is extremely likely that more than one percent of the individuals in the anticipated D-SNAP eligible applicant pool are persons with disabilities as that term is defined in the Americans with Disabilities Act, who are either homebound or whose physical or mental impairments are such that they need some form of accommodation in the D-SNAP application process.

30. The rules, policies, procedures, and methods of administration that HRA is using in the D-SNAP program and that form the factual basis for this complaint are common to all members of the class. The relief sought will apply to all of them.

31. Questions of law common to the members of the class include whether defendants, individually or collectively, violated the ADA, Section 504 of the Rehabilitation Act of 1973, the Food Stamp Act, and New York State and City statutes and regulations, by failing to provide reasonable accommodations to those new applicants with disabilities who are subject to the in-person requirement of D-SNAP.

32. The claims of the plaintiff are typical of the claims of the entire class. Defendants' violation of the laws as alleged herein has deprived plaintiff and members of the class to be deprived of the opportunity to apply for D-SNAP benefits. Therefore, all class members will suffer the same or similar injuries for the purposes of the injunctive and declaratory relief sought.

33. The named plaintiff is capable of fairly and adequately representing the class and protecting its interests. Counsel for the plaintiff, the Legal Aid Society, is a legal services organization with substantial experience in class action litigation on behalf of persons with disabilities and persons eligible for public assistance. Counsel is aware of no conflicts among members of the proposed plaintiff class.

34. The prosecution of separate actions by individual members of the class would create a risk of inconsistent and varying adjudications that would establish incompatible standards of conduct for the defendant.

35. The prosecution of separate actions by individual members of the class would also create a risk of adjudications with respect to individual members which would, as a practical matter, substantially impair the ability of other members to protect their interests.

36. Defendants have acted or refused to act on grounds generally applicable to the class, making appropriate injunctive and declaratory relief with respect to the class as a whole.

#### **STATUTORY AND REGULATORY FRAMEWORK**

37. The Food Stamp Act establishes the Supplemental Nutrition Assistance Program ("SNAP"), formerly known as the Food Stamp Program, which is a federally-funded program. SNAP is state-supervised and locally-administered in New York State.

38. USDA has the authority to establish D-SNAP pursuant to the Robert T. Stafford

Disaster Relief and Emergency Assistance Act, Pub. Law No. 93-288, 42 U.S.C. § 5179, and the Food Stamp Act and accompanying regulations, 7 U.S.C. § 2014(h), 7 C.F.R. § 280.

39. D-SNAP is a public benefits program that provides one month of food assistance benefits to eligible individuals affected by a natural disaster. To be eligible for D-SNAP, a household must live in the identified disaster area, have been affected by the disaster, and meet certain D-SNAP eligibility criteria.

40. In New York, in order to implement D-SNAP, HRA must make a request to OTDA setting forth a plan to operate a D-SNAP program; OTDA submits the plan for approval by the Food and Nutrition Service (FNS), a division of the USDA. Once approved, HRA administers the program.

41. On October 30, 2012, President Obama declared New York a major disaster area due to Hurricane Sandy.

42. New York City officials have estimated that Hurricane Sandy inflicted nearly \$20 billion in economic damages to city residents, businesses, and local government agencies.

43. On December 7, 2012, HRA announced that New York City was approved for D-SNAP in response to Hurricane Sandy, and that an HRA D-SNAP program would begin in just five (5) days, and run for a total of seven days from December 12 – 18, 2012.

44. Eligibility for the HRA D-SNAP program has been limited to residents of ten (10) complete zip codes located in the Coney Island (11224 and 11235) and Red Hook (11231) areas in the Brooklyn; in the Far Rockaway area of Queens (11691, 11693, 11694, and 1167), the southeastern shore of the Staten Island (10306) and in lower Manhattan (10002) and two partial zip codes: 1229 in Coney Island and 10305 in Staten Island. See PD #12-32-ELI.

45. HRA's D-SNAP program requires, *inter alia*, that individuals who are not current



recipients of SNAP benefits who reside in the zip codes covered by D-SNAP apply for D-SNAP benefits *in person* during the limited seven day application period from December 12-18, 2012. See PD #12-32-ELI.

46. There is only one main site available for persons to apply for the D-SNAP program, an office located in Fort Greene, Brooklyn. A satellite site in Staten Island at a high school is open on a part-time basis from December 14 to 17. See PD #12-32-ELI

47. Thousands of individuals who are eligible to apply for D-SNAP reside outside of Brooklyn and Staten Island, particularly in Far Rockaway. See PD #12-32-ELI.

48. By way of contrast, in the D-SNAP program administered in New Jersey for victims of Hurricane Sandy, there were over 70 application sites, with some individual boroughs having seven-ten sites, utilizing senior centers, libraries, firehouses, shelters, social services offices and outreach sites.

49. In neighboring Westchester County, D-SNAP program applications were accepted at five different sites.

50. Defendants' administration of the D-SNAP program violates the Americans with Disabilities Act, 42 U.S.C. § 12131 et seq., Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 et seq., the Food Stamp Act, 7 U.S.C. § 2020, and New York State and City Human Rights law, and New York State Social Services Law § 331, as it fails to accommodate those with disabilities who are required to apply for D-SNAP in person at the D-SNAP application sites.

#### **FACTUAL ALLEGATIONS COMMON TO THE PLAINTIFF CLASS**

51. Defendants have failed to consider and address the different needs of individuals with disabilities in planning, advertising, implementing and administering the D-SNAP program.

52. Defendants have not made any reasonable accommodations for those individuals with disabilities, including “homebound” clients, to apply for D-SNAP where they reside in the covered zip codes and are not current recipients of SNAP, in violation of federal, state, and city laws.

53. Upon information and belief HRA did not consult with any community-based organizations familiar with the needs of people with disabilities in formulating plans for the D-SNAP program it was seeking to implement.

54. In the regular SNAP program operated by the Defendants, individuals with disabilities interested in applying for the program are accommodated by an application process that utilizes telephones, faxes, online submissions, mail and home visits where necessary to apply for and access SNAP benefits.

55. None of these accommodations provided for in the regular SNAP program, - the use of telephones, faxes, online submissions, mail and home visits where necessary to facilitate applications – have been made incorporated in HRA’s D-SNAP program to make the application process and program benefits accessible to individuals with disabilities.

56. Based on their experience with the regular SNAP program, the available demographic data and information with respect to the extent to which individuals are currently receiving or eligible for home visits from the agency, home care health services, and services from Adult Protective Services (APS) and HIV/AIDS Services Administration (HASA) due to the severity of their disabilities, Defendants knew, or should have known, that the plan that was submitted for HRA’s D-SNAP program would not meet the needs of many otherwise eligible individuals.

57. As a result of HRA’s failure to address the specific needs of individuals with

disabilities in planning the D-SNAP program, including the decision as to where applications would be accepted, individuals with disabilities in New York City who are in need of and eligible for D-SNAP benefits are discriminated against and deprived of the opportunity to access such benefits.

58. Reasonable modifications in defendants' policies, practices, procedures, and methods of administration are necessary to enable plaintiff and class members to apply for and obtain D-SNAP benefits.

59. Reasonable modifications in the defendant's policies, practices, and procedures are necessary to afford plaintiff and class members an opportunity to apply for and obtain D-SNAP benefits on terms equal to and as effective as those enjoyed by non-disabled persons.

60. Defendants have failed to consider the rights of qualified individuals with disabilities, their rights to receive benefits and services pursuant to the ADA, and how to provide reasonable accommodations to such individuals under D-SNAP.

61. Defendants do not have effective procedures in place to accept and act upon requests for reasonable accommodations and to ensure that any accommodations made as a result of such requests are carried out under D-SNAP.

62. HRA does not have systems in place to accommodate a travel hardship for those that have difficulty or are unable to travel to the D-SNAP application sites.

63. Travel times by public transportation to these D-SNAP application sites range from approximately half-an hour to almost one hour and a half, depending on where the individual resides in the covered zip codes; for those in the borough of Queens, the travel time always exceeds one hour. For those that need wheelchair accessibility, the travel times are even longer.

64. Furthermore, individuals with disabilities who have travel limitations experience greater pain and discomfort and longer time traveling to the D-SNAP application sites.

65. In order to apply for the HRA D-SNAP program through an authorized representative, an individual with a disability must be willing to disclose very personal and sensitive information including items such as: a social security number, detailed financial information including any income from any source as well as bank account information, mortgages, liquid assets and very personal expenses, and provide documentation for the same to the authorized representative.

66. Upon information and belief, many individuals with disabilities, including but not limited to individuals who suffer from psychiatric disabilities and individuals who have legitimate concerns about identity theft and the loss or mishandling of very sensitive and personal information, are extremely reluctant to provide such personal information to third parties.

67. An individual agreeing to serve as an authorized representative for a person with a disability has to be willing to attest to the truth of all statements made in an application under penalty of perjury and, during the application process, may be asked to answer specific questions about documentation or the lack thereof for any claimed expense or other item in the application.

68. Upon information and belief many individuals with disabilities residing in the twelve covered zip codes have not even heard about the D-SNAP program, or learned about it only recently.

69. Many individuals also have not had time to secure an authorized representative, assuming they were willing to apply through such a person.

70. Upon information and belief many individuals with disabilities live in relative

isolation, or have physical or mental impairments that limit their ability to communicate with and/or interact with others, such that they have not had an opportunity to find -- in a matter of approximately one week -- a person willing to give up a considerable part of a day and to undertake the responsibilities associated with the position of being authorized representative without any compensation.

71. HRA estimates that, on average, each household that is found eligible for its D-SNAP program will receive approximately \$432.

72. As a result of the cumulative effect of Defendants' actions and inactions many would-be applicants with disabilities are denied access to much needed emergency benefits through the D-SNAP program to help feed themselves and their families.

73. FNS has, in the past, approved applications to extend, expand or renew a D-SNAP program.

#### **FACTS CONCERNING THE NAMED PLAINTIFF**

##### **Alechea Toney-Dick**

74. Alechea Toney-Dick is a 42-year-old wife and mother, who resides in Arverne in the Far Rockaway area of Queens, with her husband and her 14-year-old son. She is currently not a SNAP recipient.

75. Alechea Toney-Dick suffers from multiple physical impairments, including multiple sclerosis (MS), hyperthyroidism, chronic arthritis, and hip problems, resulting in severe mobility issues and chronic weakness and fatigue. She also suffers from chronic obstructive pulmonary disease (COPD), which makes it very difficult for her to breathe.

76. As a result of her physical conditions, Alechea Toney-Dick uses a wheelchair to move around her home. If she needs to go out, she is unable to do so unless her husband carries

her down the stairs. Therefore, she cannot leave her home without assistance.

77. Alechea Toney-Dick's husband works full-time at North Shore LIJ from 4:30 a.m. to approximately 4:15 p.m. every weekday. Her 14-year-old son attends school full-time, but, due to school damage from Hurricane Sandy, is being bussed to another school in Queens.

78. As a result of Hurricane Sandy, Alechea Toney-Dick's home was severely damaged – flooding of the first floor; damage to the stairs leading to the second floor; leaks from the roof and ceilings; damage to the floors; cracks to the foundation and windows; personal damage to her computer and personal belongings; and loss of food.

79. She and her family also had to pay out-of-pocket to stay three nights at a hotel, because they did not have electricity, heat or hot water in the home. Although they are living back in the house, they still do not have heat or hot water.

80. Additional food assistance would benefit her and her family greatly as they have had to spend money for out-of-pocket for expenses incurred from the disaster.

81. Alechea Toney-Dick is eligible to apply for D-SNAP; however, the closest D-SNAP application site is more than an hour-and-a half away by public transportation. Furthermore, due to her disabilities, she is unable to travel to the site and does not have anyone that can apply on her behalf. Her husband works full-time and it is difficult for him to get off from work.

82. Due to Alechea Toney-Dick's disabilities, she requires appropriate reasonable modifications to apply for and access HRA's D-SNAP program, including applying for the program by mail, fax, or telephone, and have equal access to D-SNAP benefits.

**CLAIMS FOR RELIEF**

**FIRST CLAIM FOR RELIEF**

**VIOLATIONS OF THE AMERICANS WITH DISABILITIES ACT, 42 U.S.C. § 12131,  
ET SEQ.**

83. Title II of the ADA, 42 U.S.C. § 12132, prohibits a public entity from excluding a person with a disability from participating in or denying the benefits of a program of the public entity to a person with a disability or otherwise discriminating against a person on the basis of disability.

84. The ADA defines “disability” as a physical or mental impairment that substantially limits one or more of the major life activities of such individual; having a record of such impairment; or being regarded as having such impairment, as defined under the ADA at 42 U.S.C. § 12102(2) and U.S. Department of Justice (“DOJ”) implementing regulations, 28 C.F.R. § 35.104.

85. Each plaintiff and member of the class have at least one “disability,” within the meaning of the ADA and implementing regulations.

86. A “public entity” includes state and local governments, their agencies, and their instrumentalities, as defined under the ADA, 42 U.S.C. § 12131(1). Defendants are public entities within the meaning of 42 U.S.C. § 12131(1) and 28 C.F.R. § 35.104.

87. Each plaintiff and member of the class 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, because each person is an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by Defendants.

88. By failing to plan to meet the unique needs of person with disabilities during a disaster, Defendant discriminated and continues to discriminate against plaintiff and members of the class in violation of 42 U.S.C. §§ 12132 and DOJ's implementing regulations, 28 C.F.R. §§ 35.130, in the following ways:

- (A) Defendants discriminated and continue to discriminate against plaintiff and members of the class by providing benefits in an unequal manner which denies or limits the ability of disabled person to enjoy the benefits as others can, in violation of 28 C.F.R. § 35.130(b)(1).
- (B) Defendants discriminated and continue to discriminate against plaintiff and members of the class by selecting sites that have the effect of excluding individuals with disabilities from, denying the benefits of, or otherwise subjecting them to discrimination, in violation of 28 C.F.R. §§ 35.130(b)(4).
- (C) Defendants discriminated and continue to discriminate against plaintiff and members of the class by failing to provide reasonable modifications necessary for them to apply for, successfully obtain, and maintain eligibility for benefits, in violation of 42 U.S.C. § 12112(b)(5)(A) and 28 C.F.R. §§ 35.130(b)(7) & 28 C.F.R. §§ 35.130(b)(4).

89. Defendants' conduct constitutes an ongoing and continuous violation of the ADA and unless restrained to do so, Defendants will continue to violate said law. This conduct, unless enjoined, will continue to inflict injuries for which Plaintiff has no adequate remedy at law. Plaintiff will suffer irreparable harm in that they will continue to be discriminated against and denied access to D-SNAP benefits.



**SECOND CLAIM FOR RELIEF**

**VIOLATION OF SECTION 504 OF THE REHABILITATION ACT OF 1973 (29 U.S.C. § 794, ET SEQ.)**

90. Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulations, prohibits discrimination against persons with disabilities by recipients of federal funding.

91. Defendants are “recipient[s]” of “federal financial assistance,” as defined by Section 504 of the Rehabilitation Act of 1973 and by implementing regulations, 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).

92. Each plaintiff and member of the class has at least one “disability,” as that term is used in Section 504 of the Rehabilitation Act. Like the ADA, Section 504 defines a disability as “a physical or mental impairment that substantially limits one or more of major life activities of such individual.” 29 U.S.C. § 705(20)(B).

93. Each plaintiff and member of the plaintiff class is a “handicapped person,” as that term is regulations implementing Section 504. Section 504 regulations define a handicap as a physical or mental impairment that substantially limits one or more of the major life activities of such individual. 28 C.F.R. § 41.31(a); 45 C.F.R. § 84.3(j), (l); 7 C.F. R. § 15b.3(i).

94. Each plaintiff and member of the class 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).

95. Defendant discriminated and continues to discriminate against plaintiff and

members of the class in violation of 29 U.S.C. § 794(a) and its implementing regulations, 28 C.F.R. § 41.51; 45 C.F.R. § 84.4, 7 C.F.R. § 15b.4, in the following ways:

- (A) Defendants discriminated and continues to discriminate against plaintiff and members of the class by failing to provide reasonable modifications necessary for them to apply for, successfully obtain, and maintain eligibility for benefits, in violation of 29 U.S.C. § 794(a).
- (B) Defendants discriminated and continues to discriminate against plaintiff and members of the class by failing to (i) afford them such benefits in a manner that is equal to others; and (ii) provide them with benefits 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) & 84.4(b)(1)(ii)-(iii); 7 C.F.R. § 15b.4(b)(1)(ii)-(iii).
- (C) Defendants discriminated and continues to discriminate against plaintiff and members of the class by denying them access to benefits, in violation of 28 C.F.R. §§ 41.51(a) & 41.51(b)(1)(i)- (ii), (vii); 45 C.F.R. §§ 84.4(a) & 84.4(b)(1)(I)-(ii), (vii); 7 C.F.R. §§ 15b.4(a) & 15b.4(b)(1)(i)-(ii), (vii).

96. Defendants' conduct constitutes an ongoing and continuous violation of Section 504 of the Rehabilitation Act and unless restrained to do so, Defendants will continue to violate said law. This conduct, unless enjoined, will continue to inflict injuries for which Plaintiff has no adequate remedy at law. Plaintiff will suffer irreparable harm in that they will continue to be discriminated against and denied access to D-SNAP benefits.

**THIRD CLAIM FOR RELIEF**

**VIOLATION OF THE FOOD STAMP ACT**

97. Defendants, acting under color of state law, are responsible for the administration of Food Stamps/SNAP in the State of New York.

98. 7 U.S.C. § 2020(e)(11) of the Food Stamp Act provides that a state agency, in designating a plan to for SNAP benefits during a disaster, shall establish “application procedures to reduce hardship and inconvenience.”

99. 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”.

100. Defendants have failed to establish said procedures that reduce hardship and inconvenience or provide fair service to applicants with disabilities interested in applying for D-SNAP benefits, which deprives plaintiff and members of the class their rights under the Food Stamp Act, 7 U.S.C. § 2020(e)(2)(B)(i) and (e)(11), actionable under 42 U.S.C. § 1983.

**FOURTH CLAIM FOR RELIEF**

**VIOLATIONS OF § 296-2(a) OF THE NEW YORK STATE HUMAN RIGHTS LAW**

101. Plaintiff and members of the class are persons with a disability within the meaning of N.Y. Exec. Law § 292(21).

102. Defendants subjected and continue to subject plaintiff and members of the class to discrimination by refusing, withholding from or denying them accommodations, advantages, facilities or privileges because of their disabilities, in violation of the State Human Rights Law. N.Y. Exec. Law § 296-2(a), enforceable under N.Y. Exec. Law § 297(9).

**FIFTH CLAIM FOR RELIEF**

**VIOLATIONS OF THE NEW YORK STATE SOCIAL SERVICES LAW § 331 and 18  
N.Y.C.R.R. § 303.1(a) and (b)**

103. Plaintiff and all plaintiff class members are “handicapped” within the meaning of N.Y. Soc. Serv. L. § 331(3) and 18 N.Y.C.R.R. § 303.1(a) and (b).

104. The failure of defendants to provide reasonable modifications necessary for class members to apply for, successfully obtain, and maintain eligibility for D-SNAP benefits, discriminates against class members on the basis of their handicap in violation of their rights under N.Y. Soc. Serv. Law § 331 and 18 N.Y.C.R.R. § 303.1(a) and (b).

**SIXTH CLAIM FOR RELIEF**

**VIOLATIONS OF THE NEW YORK CITY HUMAN RIGHTS LAW**

105. Defendants are “persons” 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).

106. Plaintiff and members of the class have a disability within the meaning of N.Y.C. Administrative Code § 8-102(16).

107. Defendants discriminate against plaintiff in violation of N.Y.C. Administrative Code § 8-107(4)(a) by refusing, withholding from or denying plaintiff accommodations, advantages, facilities or privileges because of their disabilities.

**PRAYER FOR RELIEF**

WHEREFORE, plaintiff request that this Court grant them the following relief:

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

109. Adjudge and declare that the policies, practices, omissions and conditions described above are in violation of the rights of the plaintiff and the class they seek to represent

under the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, the Food Stamp Act, the New York State and City Human Rights Law, and the New York State Social Services Law and its implementing regulations.

110. Permanently enjoin defendants, their agents, employees and all persons acting in concert with them from discriminating against plaintiff and class members by requiring them to (a) accommodate all class members by allowing them alternatives to the in-person requirement, including but not limited to telephone, mail, internet, facsimile or authorized representatives and when these methods are not viable, home visits; and (b) and extend the D-SNAP application period in the current D-SNAP program so that all class members may have an equivalent period of time to apply for D-SNAP once an application system incorporating reasonable accommodations has been implemented or, in the alternative, allow all class members the opportunity to apply for and obtain D-SNAP benefits retroactively if the HRA D-SNAP program is not extended or renewed to provide assistance to those who suffered losses as a result of Hurricane Sandy.

111. Order defendants to refrain from employing methods of administration that have the effect of discriminating against plaintiff and class members based on their disabilities.

112. Order defendants, their agents, employees and all persons acting in concert with them, to make reasonable accommodations available to plaintiff and class members in a manner that allows them to apply for and comply with the conditions of eligibility for D-SNAP in the current HRA D-SNAP program and any future HRA D-SNAP programs.

113. Award plaintiff the costs of this suit and reasonable attorneys' fees and litigation expenses.

114. Retain jurisdiction of this case until the defendant has fully complied with the

orders of this Court, and there is a reasonable assurance that the defendant will continue to comply in the future; and


115. Award such other and further relief as the Court deems just and proper.

Dated: New York, New York  
December 17, 2012

Respectfully submitted,

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