UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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GERTRUDE WILLISTON; and TAWANA, LATOYA, and TANDIKA CUMMINS, by their parent, PAULETTE CUMMINS, on their own behalf and on behalf of all others similarly situated,

Plaintiffs,

JOSE FELIZ, and FLORENCE GREENBAUM, on their own behalf and on behalf of all others similarly situated,

Plaintiffs-Intervenors,

-against-

VERNA EGGLESTON, as Commissioner of the New York City Department of Social Services; and ROBERT DOAR, as Commissioner of the New York State Office of Temporary and Disability Assistance,

Defendants.

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STIPULATION AND ORDER OF SETTLEMENT

04 Civ. 4454 (RWS)

WHEREAS, plaintiffs commenced this action by filing a class action complaint, pursuant to 42 U.S.C. § 1983, on behalf of applicants for Food Stamp benefits in the City of New York;

WHEREAS, plaintiffs allege that Defendant Eggleston ("City defendant") unlawfully: (a) fails to provide Food Stamp benefits to those eligible within thirty days of application in violation of federal and state law; (b) deters, discourages and prevents individuals and families from filing applications for Food Stamp benefits upon initial contact with Non-Cash Assistance ("NCA") Food Stamps Centers; and (c) fails to provide expedited Food Stamp benefits at the NCA Food Stamp Centers within the time frames required by federal and state law;

WHEREAS, plaintiffs further allege that Defendant Doar ("State defendant") has failed to supervise appropriately the actions of City defendant as required by law;

WHEREAS, plaintiffs have filed a motion for class certification, and defendants have opposed said motion;

WHEREAS, plaintiffs seek, *inter alia*, a class-wide order enjoining City defendant (1) to provide Food Stamp benefits to those eligible in a timely manner; (2) from deterring, discouraging and preventing persons from filing applications for Food Stamp benefits upon initial contact with the NCA Food Stamp Centers; and (3) to issue expedited Food Stamp benefits at the NCA Food Stamp Centers within the time frames required by federal and state law. Plaintiffs also seek an order enjoining State defendant to supervise City defendant adequately;

WHEREAS, defendants deny each and every allegation contained in the complaint and stated in the whereas clauses set forth in this Stipulation and Order of Settlement;

WHEREAS, no finding of liability has been made;

WHEREAS, the parties desire to resolve the issues raised in this litigation, without further proceedings and without admitting any fault or liability;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned, as follows:

DEFINITIONS

1. "NCA Food Stamp Center" is defined as a non cash public assistance Food Stamp center operated by City defendant and includes centers known as Non-Cash Assistance Food Stamp Centers.
2. "Apply for Food Stamp benefits," as set forth in paragraph 3, shall include anyone who applies for Food Stamp benefits during the effective term of this settlement, or

who has a pending Food Stamp application during the effective term of this settlement.

3. "Apply for Food Stamp benefits at a NCA Food Stamp Center," as set forth in paragraph 4, shall include applications submitted at NCA Food Stamp Centers, as well as applications submitted to NCA Food Stamp Centers by HRA or HRA representatives, contractors or designees who are located at local community based organizations.

CLASS CERTIFICATION

4. A class is certified consisting of all individuals who apply for Food Stamp benefits at a NCA Food Stamp Center, or for whom an application is submitted at an NCA Food Stamp Center.

DEFENDANTS' OBLIGATIONS

5. During the effective term of this Stipulation and Order of Settlement, City defendant shall:

   a. provide Food Stamp benefits to eligible households included in the class within the 30 day time frame as provided in 7 U.S.C. § 2020(e)(3) and 7 C.F.R. § 273.2(g)(1), except that nothing herein shall require City defendant to provide Food Stamp benefits within the 30 day time frame to eligible households when the delay in provision of benefits is caused by the household as described in 7 C.F.R. § 273.2(h)(1)(i).

   b. provide Food Stamp benefits to households included in the class that are eligible for expedited service of their Food Stamp application within the seven day time frame as provided in 7 U.S.C. § 2020(e)(9); 7 C.F.R. §

273.2(i)(3(i).

c. provide Food Stamp benefits to households included in the class that are eligible for expedited service of their Food Stamp application within the five day time frame as provided in 18 N.Y.C.R.R. § 387.8(a)(2)(i)(a).

d. post signs and maintain signs in NCA Food Stamp Centers setting forth the right to apply for Food Stamp benefits and the time frames for the processing of applications.

6. During the effective term of this Stipulation and Order of Settlement, State defendant will supervise City defendant's compliance with ¶ 5(a) and (b) of the Stipulation and Order of Settlement by taking, *inter alia*, the following actions:

a. State defendant will review and evaluate the results of the reports that are prepared and transmitted to State defendant by City defendant pursuant to this Stipulation and Order of Settlement.

b. State defendant shall provide to plaintiffs' counsel and City defendant, on a quarterly basis, commencing after the close of the reporting period of October through December 2008, a report generated from the Welfare Management System ("WMS") indicating the time periods by which Food Stamp benefits were issued to households applying at a New York City NCA Food Stamp Center where a code which denotes the issuance of Food Stamp benefits on an expedited basis was entered into WMS by City defendant. The report will indicate the number of days following the date of application in which the Food Stamp benefit became available to the households. The report will be broken down by month, and NCA Food Stamp Center, and will

be provided to plaintiffs' counsel and City defendant within 90 days after the close of the reporting period. In addition, State defendant will provide to plaintiffs' counsel and City defendant the above described report which contains the data for the months of August and September 2008 within 90 days after the close of this two month reporting period.

c. State defendant shall provide to plaintiffs' counsel and City defendant, on a quarterly basis, commencing after the close of the reporting period of October through December 2008, a report indicating: 1) the number of households which were issued Food Stamp benefits within 30 days after the date of application at New York City NCA Food Stamp Centers where a code which denotes the issuance of Food Stamp benefits was entered into WMS by City defendant; and 2) the time periods by which Food Stamp benefits were issued to households for periods beyond 30 days after the date of application at New York City NCA Food Stamp Centers where a code which denotes the issuance of Food Stamp benefits was entered into WMS by City defendant. The report will be broken down by month, and by NCA Food Stamp Center, and will be provided to plaintiffs' counsel and City defendant within 120 days after the close of the reporting period. In addition, State defendant will provide to plaintiffs' counsel and City defendant the above described report which contains the data for the months of August and September 2008 within 120 days after the close of this two month reporting period.

MONITORING

7. City defendant shall provide the following monitoring as set forth below:

a. **Provision of Reports** - During the term of this Agreement, City defendant shall provide Plaintiffs' counsel and State defendants' Counsel with the following information, within 45 business days of the expiration of each month:

i. A report noting the number of applications received in the month, by NCA Food Stamp Center where filed. For those applications received in the reporting month for which a determination has been made the report will also show:

a) The number of applicants screened for eligibility for expedited service;

b) The number of applicants determined eligible for expedited service;

c) For those applicants determined to be entitled to expedited service, the number of determinations regarding eligibility made within five days following the date the application was filed;

d) For those applicants not determined to be entitled to expedited service, the number of determinations regarding eligibility for Food Stamp benefits made within 30 days following the date the application was filed;

e) For those applicants determined to be entitled to expedited

service, the number to whom Food Stamps benefits were issued within 5 days following the date the application was filed;

f) For those applicants not determined to be entitled to expedited service, the number to whom Food Stamp benefits were issued within 30 days following the date the application was filed; and

g) the number of applications approved and the number of applications denied.

ii. For each NCA Food Stamp Center, a report indicating the number of applications for which Food Stamps benefits were not provided within 5 or 30 days, subdivided by whether applicants were eligible for expedited service or not, and subdivided by whether the delay is attributable to the City Defendant or to the household and the extent of the delay as follows:

a) 1 day;

b) 2 days;

c) 3-5 days; and

d) more than 5 days

iii. For each NCA Food Stamp Center, a report indicating the number of applications during the reported month where a determination has not yet been made, known as "open applications."

iv. For each NCA Food Stamp Center, a report indicating the number of applications from the previous month's "open applications" list, identified

in subparagraph 7(a)(iii) above, where there has been a determination.

v. City defendant represents that (a) the reports to be generated pursuant to paragraph 7(a) of this Stipulation and Order of Settlement will be drawn from the data maintained in the Paperless Office System "POS" maintained by City defendant; (b) POS requires that applicants be screened for eligibility for expedited processing of their Food Stamp application; and (c) POS can accurately measure the number of days from application to determination of eligibility and, where appropriate, issuance of Food Stamp bernefits to eligible households.

vi. Pursuant to sub-paragraph 7(c) of this Stipulation and Order of Settlement, the parties will meet and confer to agree on the format of the monthly reports.

b. **Sampling** – The City defendant shall engage in sampling as follows:

i. **Sample Definition**

(a) City defendant shall draw a one-time systematic or random sample of 296 cases (subject to the terms of subparagraph 7(c)(iii) below) from the universe of NCA Food Stamp applications for a month to be determined by the parties, except that the month to be sampled shall not be before March 2009. Within 90 days of the end of the month sampled, City defendant shall submit a report to plaintiffs' counsel that indicates the following:

(1) for those applications determined eligible for expedited Food Stamp application processing, whether or not Food Stamp

benefits were issued within 5 days following the date the application was filed;

(2) for those applications not determined eligible for expedited processing, whether the applications were processed and benefits issued within 30 days following the filing of the application;

(3) for cases where a determination was not made within 5 or thirty (30) days following the date the application was filed, whether the delay was attributable to the client or to the agency; and

(4) for NCA Food Stamp applications where the application has been accepted for Food Stamp benefits, whether the applicant was eligible for expedited processing of his or her application for Food Stamp benefits and, if eligible, whether or not the Food Stamp benefit was issued within 5 days following the date the application was filed.

(b) Pursuant to subparagraph 7(c) below, plaintiffs and City defendant shall meet and confer regarding the month to be sampled and the method of selection.

ii. **Additional Sampling Issues**.

(a) With regard to cases in the sample that have been reported as not being correctly or timely processed, the City defendant will conduct a review of those cases and provide corrective action on those cases

that still need processing. City defendant will provide a report of its findings and corrective action taken on these cases to plaintiffs' counsel within 120 days from the end of the sampling period.

(b) In the event that plaintiffs in good faith believe, based on the results of the sample described in subparagraph 7(b)(i)(a) above, that the monitoring report identified in subparagraph 7(a) above is not reliable with regard to the timely processing of applications for Food Stamp benefits and/or the timely and/or the screening for expedited processing of applications for Food Stamp benefits and/or accurate expedited processing of applications for Food Stamp benefits, they will give notice to City defendant and counsel for plaintiffs and City defendant will meet and confer regarding the results of the sample. If the City defendant agrees with the plaintiffs, plaintiffs and City defendant will attempt to arrive at a resolution, which may include, *inter alia*, if necessary, the conducting of an additional sample. In the event the plaintiffs and City defendant are unable to agree that a resolution is necessary and/or to the scope of a resolution , the disputed issues will be referred to the Court for resolution.

c. The plaintiffs and City defendant shall meet and confer before the reports are finalized and before the sample(s) is defined to determine, *inter alia*,

i. the month from which the sample identified in subparagraph 7(b)(i) is drawn;

ii. The sampling methodology;

iii. Sample Size. Note the present sample size of two-hundred and ninety-six

(296) set forth in subparagraph 7(b)(ii)(c)(i) is based upon an assumed population proportion estimate of seventy-four (74) percent of the applications in the sample universe being timely processed for Food Stamps and for expedited processing. However, if the data provided in the reports identified in subparagraph 7(a) of this Stipulation and Order of Settlement indicates for at least two months a different proportion estimate, the parties shall confer in good faith on the use of a sample size consistent with that population proportion estimate.

iv. The data recording instrument to be used for recording the information drawn from the samples;

v. The format of the monthly reports; and

vi. The data sources for both the monthly reports and the samples.

In the event the plaintiffs and City defendant are unable to agree to any or all of these matters, they shall agree upon an expert to whom the question shall be submitted for the provision of an expert opinion. If the parties are still unable to agree, either side may move the Court to determine any unresolved issues. However, no party may so move any earlier than May 15, 2008.

d. Prior to October 1, 2008, City defendant will provide aggregate data on the processing of Food Stamp applications from those NCA Food Stamp Centers where the POS has been operational for at least three months; however the frequency of reports and specific information they contain may vary from that specified above.

INDIVIDUAL RELIEF

8. Without diminishing the right of the plaintiff class to seek enforcement of the provisions of this Stipulation and Order of Settlement, or of any individual class

member to seek relief as set forth in paragraph 22 of this Stipulation and Order of Settlement, City defendant shall provide a mechanism pursuant to which plaintiffs' counsel may bring to the attention of City defendant individual cases or instances in which there has been an alleged violation of the terms and conditions of this Settlement. City defendant shall investigate the cases(s), take any appropriate steps required to resolve the issue(s) concerning each individual case, and report the result of such investigation in writing to plaintiffs' counsel. Such report shall be provided within 5 business days of receiving plaintiffs' counsel's report of the alleged violation(s), provided, however that the time frame for response shall be 2 business days when the alleged violation(s) concern the provision of expedited Food Stamp benefits. If responding to the alleged violation brought to the attention of City defendant pursuant to this paragraph reasonably requires information in order to identify the class member, then City defendant shall promptly inform plaintiffs' counsel of what information is required, and the time for responding shall not include any period between the date City defendant makes a written or oral request for the information and the date City defendant receives the information. In addition, if providing Food Stamp benefits to the household at issue requires the household to complete the application process, then City defendant shall promptly inform plaintiffs' counsel of what action the household must take to complete the application process.

JURISDICTION

9. The provisions of this Stipulation and Order of Settlement shall not take effect unless and until the Court "so orders"this Stipulation and Order of Settlement, at which time

it shall become effective ("effective date"). Defendants' obligations under this Stipulation and Order of Settlement shall run from the effective date until the jurisdiction of the Court lapses. However, notwithstanding the "so ordering" this Stipulation and Order of Settlement, plaintiffs are precluded from moving for enforcement or contempt with respect to paragraphs 5, 6, and 7 of this Stipulation and Order of Settlement prior to October 2008.

10. As of the effective date, all remedies sought in the complaint are limited to the provisions of this Stipulation and Order of Settlement.

11. All claims not resolved herein, specifically that part of plaintiffs' first claim that concerns applications for Food Stamp benefits filed at Job Centers and plaintiffs' second claim, are dismissed without prejudice.

12. The jurisdiction of this Court shall end at the conclusion of forty-eight (48) months following the effective date unless plaintiffs move pursuant to paragraphs 17 and 18 of this Stipulation and Order of Settlement. At the time of termination of jurisdiction, all rights and claims arising under the provisions of this Stipulation and Order of Settlement shall terminate and all remaining claims under this complaint shall be dismissed with prejudice.

13. In any motion for enforcement, contempt, or to extend the term of this Stipulation and Order of Settlement, no party shall rely on any monitoring reports provided before October 2008.

ENFORCEMENT

14. In the event of a motion by plaintiffs for enforcement or contempt based upon any defendant's alleged non-compliance with this Stipulation and Order of Settlement,

that defendant shall be considered to be in compliance with the provisions of this Stipulation and Order of Settlement unless plaintiffs establish that defendant's failures or omissions to comply with the provisions of this Stipulation and Order of Settlement were not minimal or isolated, but were sufficiently significant and widespread or recurring as to be systemic.

15. During the forty-eight (48) months following the effective date, if plaintiffs' counsel believes that one or both of defendants have failed to comply, as defined by paragraph 14 above, with the provisions of this Stipulation and Order of Settlement, plaintiffs' counsel shall notify such defendants' counsel in writing of the nature and specifics of the alleged failure to comply and shall specify the monitoring reports, if any, upon which such a belief is based, at least thirty (30) days before any motion is made for enforcement of this Stipulation and Order of Settlement or for contempt. Unless otherwise resolved, the parties' counsel shall meet within the thirty (30) day period following notice to defendants' counsel in an attempt to arrive at a resolution of the alleged failure to comply.

16. If no resolution is reached within thirty (30) days from the date of notice, plaintiffs may move this Court for an order enforcing the provisions of this Stipulation and Order of Settlement and/or for contempt. Plaintiffs shall bear the burden of proving that the alleged noncompliance is sufficiently significant and widespread or recurring as to be systemic. Non-systemic individual and isolated violations of this Stipulation and Order of Settlement shall not form a basis for a finding that defendants have acted in contempt of this Stipulation and Order of Settlement, or as a basis for a motion for enforcement. No motion for contempt or enforcement shall be brought

to remedy those violations that the parties agree (a) have been cured, or (b) will be cured pursuant to a plan agreed upon by the parties, provided that the plan actually cured those violations. In the event that the parties agree to a plan to cure an alleged violation and plaintiffs believe that the violation has still not been cured, plaintiffs must provide at least thirty (30) days notice before any motion is made for enforcement of this Stipulation and Order of Settlement or for contempt.

EXTENSION OF THE TERM OF THE STIPULATION AND ORDER OF SETTLEMENT

17. Plaintiffs may move this Court for an order extending the jurisdiction of the Court over this Stipulation and Order of Settlement by complying with the provisions of paragraphs 15 and 16, and shall make any such motion on or before the scheduled termination of this Court's jurisdiction, unless another date is agreed to by the parties.

18. In the event plaintiffs move to extend the jurisdiction of this Court pursuant to paragraph 17 of this Stipulation and Order of Settlement, the standard for measuring defendants' compliance with the provisions of this Stipulation and Order of Settlement is that set out in paragraph 14 above of this Stipulation and Order of Settlement. Any such extension of the jurisdiction of this Court shall be for a period of not more than two (2) years from the date the Court's jurisdiction was scheduled to terminate, and the scope of the relief the Court may order shall extend only so far as is necessary to correct violations of the provisions of this Stipulation and Order

of Settlement.

19. Prior to the expiration of any period of extended jurisdiction set forth in paragraph 18 of this Stipulation and Order of Settlement, plaintiffs may move for contempt or enforcement consistent with the provisions set forth in paragraphs 15 and 16 of this Stipulation and Order of Settlement. Plaintiffs may also move for a further extension of the jurisdiction of the Court beyond that set forth in paragraph 18 of this Stipulation and Order of Settlement; except that no motion for extension of the Court's jurisdiction shall be made prior to six months before the expiration of the Court's jurisdiction and is subject to the provisions for extension of the Court's jurisdiction set forth in paragraphs 17 and 18 of this Stipulation and Order of Settlement.

GENERAL PROVISIONS

20. Plaintiffs reserve the right to apply to the Court to recover such costs and fees within 90 days of the Court so ordering this Stipulation and Order of Settlement and defendants reserve the right to oppose such an application.

21. Plaintiffs' counsel shall have access, upon reasonable notice, to the data in City defendant's possession reasonably necessary to determine whether those cases sampled by City defendant and determined to be an issuance in compliance with the applicable statute and/or regulation were accurately characterized. As part of such reasonable notice, plaintiffs shall inform City defendant of the basis for their reasonable belief of the need for such production and shall limit any such request to only those data or documents consistent with the reasonable need. City defendant will preserve the underlying data for a minimum of two years from the date a report

is produced.

22. No provision in this Stipulation and Order of Settlement shall infringe upon any household's right to seek to compel defendants to provide any form of relief the household deems appropriate by way of an administrative hearing or a proceeding pursuant to article 78 of the New York Civil Practice Law and Rules so long as the household is not seeking to challenge any of the policies set forth in this Stipulation and Order of Settlement.

23. Plaintiffs' counsel shall protect the confidentiality of any household's information provided by defendants under the provisions of this Stipulation and Order of Settlement and shall not disclose such information to any individual not involved in the administration of the Food Stamp program within the City of New York in accordance with applicable New York State statutes and implementing regulations, if any, except (1) the household whose case is involved or (2) as is necessary to the prosecution of this action.

24. Nothing contained in this Stipulation and Order of Settlement shall be deemed to be a finding or an admission that defendants have in any manner violated plaintiffs' rights as contained in the Constitution, Statutes, Ordinances and Rules and Regulations of the United States, the State of New York or the City of New York.

25. Notwithstanding the provisions of this Stipulation and Order of Settlement, defendants reserve the right to implement, change, or otherwise alter or amend the procedures and requirements of this Stipulation and Order of Settlement if required by intervening changes in federal statute or regulation or state statute or regulation which are inconsistent with the terms of this Stipulation and Order of Settlement.

Defendants shall provide plaintiffs' counsel with written notification of a required change at least thirty (30) days prior to the commencement of implementation, unless defendants are required to commence implementation of such a required change in less than thirty (30) days. If defendants are required to commence implementation of a required change in less than thirty (30) days, counsel for defendants shall provide such notice no later than seven (7) working days after learning thereof. Plaintiffs reserve the right to oppose any changes sought by defendants pursuant to this paragraph.

26. This Stipulation and Order of Settlement is final and binding upon the parties, their successors and their assigns.

Dated: New York, New York

February , 2008

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IT IS SO ORDERED.

DATED: New York, New York
_____, 2008

ENTER

_____
Robert W. Sweet
United States District Judge