SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: I.A.S. Part 46

In the Matter of the Application of QUANISHA SMITH and ANTHONY COLAVECCHIO, Individually and on behalf of all others similarly situated, For a Judgment Pursuant to Section 3001 of The Civil Practice Law and Rules, and 42 U.S.C. § 1983, Plaintiffs, - v - ELIZABETH BERLIN, as Executive Deputy Commissioner of the New York State Office of Temporary and Disability Assistance, and ROBERT DOAR, as Administrator of the New York City Human Resources Administration, Defendants.	**SECOND AMENDED VERIFIED CLASS ACTION COMPLAINT** Index No. 400903/10

Plaintiffs, by their undersigned attorneys, for their Second Amended Verified Complaint allege as follows:

PRELIMINARY STATEMENT

1. By this action brought pursuant to Section 3001 of the Civil Practice Law and Rules, and the Civil Rights Act of 1871, 42 U.S.C. § 1983, Plaintiffs seek a judgment on behalf of themselves and the class they represent, declaring that the predicate notices issued by Defendant Robert Doar ("City Defendant") as a condition of reducing Plaintiff Class' benefits fail to comply with the requirements of N.Y. Soc. Serv. Law ("SSL") § 22(12)(f)-(g), SSL § 341(1)(a)-(b), 18 N.Y.C.R.R § 358-3.3, 7 C.F.R § 273.13(a)(2), and the Due Process Clause of the Fourteenth Amendment to the United States Constitution; and granting corresponding injunctive

relief prohibiting Defendants from sanctioning recipients of public assistance and food stamps unless and until they issue predicate notices that comply therewith, and directing Defendants to delete the sanctions of the class members and to issue to Plaintiffs and the class members all benefits lost as a result of the unlawful sanctions.

2. Plaintiffs also seek attorneys' fees and costs pursuant to the Civil Rights Attorneys Fees Awards Act of 1976, 42 U.S.C. § 1988; the New York State Equal Access to Justice Act, CPLR §§ 8600 *et seq.; and CPLR§ 909.*

BACKGROUND

3. More than 1.6 million New York City residents depend on cash assistance and/or food stamps to sustain themselves, a number that is steadily rising in the current economic crisis. Each year tens of thousands of these individuals receive notices from the City's welfare agency, the Human Resources Administration ("HRA"), that the cash assistance benefits and/or food stamps that keep them fed and sheltered are being terminated or reduced to punish them for an alleged failure to comply with the agency's requirements that able-bodied recipients seek and maintain employment ("workfare requirements"). The duration of a punitive sanction can be as long as six months.

4. The form notices that public assistance recipients receive when their cash assistance and/or food stamp benefits are to be reduced do not provide the information mandated by SSL §§ 22 & 341; 18 N.Y.C.R.R. § 358-3.3(a)-(b); 7 C.F.R § 273.13(a)(2); and the Due Process Clause of the Fourteenth Amendment – information that would help them to establish both prior to and at an administrative Fair Hearing that an alleged infraction was not willful or that there was good cause for it, and how to otherwise avoid the imposition of a punitive sanction.

5. At administrative Fair Hearings requested by recipients to challenge the imposition of a punitive sanction, the State Defendant's Administrative Law Judges ("ALJs") routinely fail to review the predicate notices to ensure that the City Defendant has complied with the legal notice requirements for the imposition of a sanction.

6. As a result of the inadequate notices, public assistance and food stamp recipients often suffer a reduction or termination of their benefits where an alleged infraction in fact has not occurred, or where such infraction, if it did occur, was unintentional and/or for which there was good cause, or where the sanction might otherwise be avoided.

VENUE

7. Pursuant to CPLR 506(b), venue is properly placed in the Supreme Court of the State of New York, New York County by virtue of the fact that the State and City Defendants maintain principal places of business in such county.

PARTIES

Plaintiffs

8. Plaintiff QUANISHA SMITH resides at 50 Vermont Street, Brooklyn, New York 11207 with her two minor dependent children.

9. Plaintiff ANTHONY COLAVECCHIO resides at 2634 Harway Avenue, Brooklyn, New York 11214.

Defendants

10. State Defendant BERLIN is the Executive Deputy Commissioner of the New York State Office of Temporary and Disability Assistance ("OTDA"), the executive agency of the State of New York responsible for: (a) supervising the operation and administration of all public

assistance programs in New York State, including those operated or administered locally in New York City by HRA; (b) complying with federal and state law and regulations with respect to cash assistance and food stamps benefits; (c) promulgating regulations to ensure that the applicable state and city agencies, including HRA, comply with federal and state law and regulations; and (d) enforcing those laws and regulations.

11. City Defendant DOAR is the Administrator of the New York City HRA, the executive agency of the City of New York that has responsibility for: (a) the operation and administration of public assistance programs for New York City residents, including cash assistance and food stamps, and (b) complying with federal and state law and regulations relating to those programs.

STATUTORY AND REGULATORY SCHEME

12. Eligibility requirements for cash public assistance and food stamp benefits are set forth in federal and state statutes and regulations, as are the employment activity requirements, permissible punitive sanctions, and the due process Fair Hearing rights that exist to challenge benefit deprivations.

13. Congress established the federally-funded, state-administered food-stamp program in 1964 in order to "safeguard the health and well-being of the nation's populations by raising levels of nutrition among low-income households." 7 U.S.C. § 2011; 7 C.F.R. § 271.1. In New York State, the program is administered on the state level by OTDA, and in New York City by HRA.

14. The New York State Constitution provides that it is the duty of social services districts to provide adequately for individuals and families who do not have sufficient funds to

support themselves: "The aid, care and support of the needy are public concerns and shall be provided by the state and by such of its subdivisions." N.Y. Const., art. XVII, § 1. New York has established cash assistance programs to comply with this duty: Family Assistance, which is available for up to five years to families with a child under 18 years of age and to pregnant women, and Safety Net Assistance, which is available after families with a child under the age of 18 or pregnant women have exhausted their Family Assistance, and to all other individuals. SSL §§ 158, 349.

Work Rules Requirements

15. Adult recipients of both food stamps and cash assistance in New York State are subject to mandatory requirements that they seek and maintain employment in order to continue receiving benefits, SSL § 331(1); 18 N.Y.C.C.R. § 385.2(a), unless they are found exempt due to age, disability, or other reason. SSL § 332(1); 18 N.Y.C.C.R. § 385.2(b).

16. Recipients who fail to comply with these mandatory workfare requirements are subject to punishment, called "sanctions," that cause a pro rata reduction in, or the elimination of, their benefits based on a penalty schedule set forth in SSL § 342 and 18 N.Y.C.R.R. § 385.12(d)-(e).

17. On information and belief, thousands of public assistance and food stamp recipients are subjected to the sanction process each year. In many cases, the punitive sanction would be avoided if recipients were provided with the complete and accurate information as required by law regarding how to avoid the sanction.

18. The penalty to be imposed as a result of a work rules violation is based on whether the charged individual has previously been sanctioned for a work rules violation, as the penalties increase for second, third and subsequent violations, and in the case of cash assistance whether

the adult is a member of a household with minor children. SSL §§ 342(2)-(3); 18 N.Y.C.R.R § 385.12(d)-(e).

19. The table below accurately reflects the matrix of penalties for work rules violations specified in SSL §§ 342(2)-(3) and 18 N.Y.C.C.R. 385.12(d)-(e):

	Duration of First Sanction	Duration of Second Sanction	Duration of Third and Subsequent Sanctions
Cash Assistance – Parent or Caretaker of Dependent Child	Until willing to comply	3 months and until willing to comply	6 months and until willing to comply
Cash Assistance – Individuals In Households Without Dependent Children	90 days and until the failure ceases	150 days and until the failure ceases	180 days and until the failure ceases
Food Stamps	2 months and until willing to comply	4 months and until willing to comply	6 months and until willing to comply

The Sanction Procedure and Fair Hearing Requirements

20. Where HRA has determined that a failure or refusal to comply with an employment program requirement has occurred, prior to the imposition of a punitive sanction, it must issue to the benefits-recipient a so-called "Conciliation Notice." SSL § 341(1)(a); 18 N.Y.C.R.R. § 385.11(a). In 2006, the New York State Legislature amended SSL § 341 in order to specify the information that must be included in the Conciliation Notice. See Ch. 61, L. 2006, enacted April 20, 2006. As a result of the 2006 amendment, it is now required that the Conciliation Notice be in plain language and advise the recipient that a failure or refusal to comply with the employment requirements has occurred. It must also advise the recipient of the right to a conciliation to

resolve the reasons for such failure or refusal so as to avoid a pro-rata reduction of benefits and the necessary actions that must be taken to avoid the sanction. In addition, the time limits within which to request conciliation, an explanation in plain language of what would constitute good cause for non-compliance, and examples of acceptable forms of evidence that might warrant an exemption from work activities and/or demonstrate such good cause must be provided. SSL § 341(1)(a).

21. HRA's Office of Procedures published a Conciliation/Notice of Intent Manual For Employment Infractions. This manual was in effect from June 26, 2003 until it was superseded by Chapters 14 and 15 of HRA's Employment Process Manual on December 12, 2010. Amendments to Chapter XIV of the Employment Process Manual were published on October 3, 2011. The guidelines in these manuals contain a list of typical excusable reasons for infractions including doctor's appointment or emergency visit for participant or child, and list a "note from doctor" as a form of acceptable supporting documentation (although supporting documentation is not necessarily required to establish "good cause" in support of a recipient's statement). See Conciliation/Notice of Intent Manual for Employment Infractions at 6 , Employment Manual at 14.10- 14.11 and its October 10, 2011 revision at 14.9 – 14.10 (copies of which are annexed hereto as Exhibits A, B, and C, respectively.)

22. If HRA determines that the infraction did not occur, or if it determines that it did occur but was not willful or that there was good cause therefor, the punitive sanction will not be imposed. If it is found that the infraction did occur but that neither lack of willfulness nor good cause is found, HRA issues a notice of its intent to impose the punitive sanction. SSL §§ 22, 341(1)(b); 18 N.Y.C.R.R § 385.12(a)(2) & (b)(3). (The full title of this notice is "Notice of

Decision On Your Public Assistance, Food Stamps and Medical Assistance" but is better known as a "Notice of Intent" and will be referred to as "NOI" hereinafter.)

23. Pursuant to the same 2006 amendments to SSL § 341, a NOI to impose a punitive sanction must be in plain language and include *inter alia* the specific instance(s) of failure or refusal to comply with employment rule requirements, the particular reasons for the determination that such failure to comply was willful and without good cause, the necessary actions that must be taken in order to avoid the imposition of the sanction, and information advising recipients of the right to challenge the determination at a Fair Hearing and how to enforce their Fair Hearing rights. Id. Such notices must also meet the adequacy requirements set forth in 18 N.Y.C.R.R. § 358-3.3, 7 C.F.R § 273.13(a)(2), and the Due Process Clause of the Fourteenth Amendment.

24. By way of a General Information System Message, Russell Sykes, Deputy Commissioner of OTDA, informed key local social service district personnel of both the new notice requirements imposed by the 2006 amendments to SSL § 341 and that OTDA would be revising the Conciliation Notices and sanction notices in order to comply with the legislative mandates. See GIS 06 TA/DC016, May 25, 2006 (a copy of which is annexed hereto as Exhibit D.)

25. Federal and state law similarly guarantees that food stamp recipients have the right to a fair hearing to challenge any action of the state or local agency that affects their participation in the Food Stamp program. 7 U.S.C. § 2020; 7 C.F.R. § 273.15(a); U.S. Const., amend. XIV, § 1; SSL § 22(3)(b); 18 N.Y.C.R.R. § 358-3.1.

26. The federal regulations governing Food Stamp programs establish specific

requirements for these fair hearings:

(a) The notice of adverse action shall be considered adequate if its explanations are in easily understandable language. 7 C.F.R § 273.13(a)(2).

(b) The hearing decision must be "based on the hearing record," 7 C.F.R. § 273.15(q)(1), and the decision must "summarize the facts of the case, specify the reasons for the decision, and identify the supporting evidence and the pertinent Federal regulations." 7 C.F.R. § 273.15(q)(2).

27. At all Fair Hearings in which the issue is reduction of benefits, the burden is on the Agency to prove that its proposed action is correct. 18 N.Y.C.R.R. § 358-5.9(a).

28. At all Fair Hearings, the Agency must appear at the hearing along with the case record and a written summary of the case. 18 N.Y.C.R.R. § 358-4.3(b); Rodriguez v. Blum, 79 Civ. 4518 (S.D.N.Y. Mar. 3, 1983).

29. At the Fair Hearing, the ALJ has the responsibility and authority to, *inter alia*, ensure a complete record, elicit documents and testimony, adjourn the hearing where appropriate, review and evaluate the evidence, determine credibility of witnesses, make findings of facts, issue subpoenas, and prepare a recommended decision. 18 N.Y.C.R.R. § 358-5.6(b). See also 7 C.F.R § 273.15(m)-(n).

30. ALJs are also required to assist *pro se* appellants to develop the record. This responsibility was underscored by OTDA Deputy General Counsel Russell Hanks in a December 11, 1996 Policy Guideline, (a copy of which is annexed hereto as Exhibit E) [hereinafter Policy Guideline], in which he stated: "[A]n adjournment may be granted for an Appellant to obtain

additional relevant supporting documentation, where the hearing officer determines that there was a good reason for the appellant's failure to produce it at the hearing on the first scheduled date." Id. at 2.

31. The Decision After Fair Hearing ("DAFH") must be based on the evidence of record and may direct that specific action be taken. In addition, the decision may address the violation of any provision of the Fair Hearing regulations, 18 N.Y.C.R.R. Part 358, including violations concerning notice. 18 N.Y.C.R.R. § 385-6.1(a); 7 C.F.R. § 273.15(q).

32. In determining the credibility of an Appellant at the hearing, the ALJ must state in the decision as specifically as possible the basis for such determination. The lack of documentary evidence is not a *per se* basis for finding an appellant's testimony incredible. Uncorroborated testimony may be found credible, particularly where it is uncontradicted and internally consistent. See Policy Guideline, Ex. E.

FACTUAL ALLEGATIONS

QUANISHA SMITH

33. Plaintiff QUANISHA SMITH is a recipient of public assistance and food stamps. Included in her public assistance grant was a rent supplement which enhanced the shelter allowance portion of her grant from $400 per month – which is the usual shelter grant for a three-person public assistance – to $925 per month. 18 N.Y.C.R.R. § 352.3. This better enabled her to afford to pay her monthly rent of $1,046.27.

34. Plaintiff Smith became eligible for the rent supplement when she moved into her apartment from a homeless shelter in 2005.

35. Until recently, public assistance recipients lost their eligibility for this supplement in its entirety if an employment-related sanction was imposed on them. Now, they lose a pro-rata share of the supplement along with the loss of the pro-rata share of the rest of their assistance grant.

36. City Defendant proposed to sanction Plaintiff in November 2006, August 2008, March 2009 and August 2009. On information and belief, in each instance, after the sanction went into effect, the determination to sanction was reversed and the sanction was deleted from Plaintiff Smith's record.

37. On information and belief, after the above-referenced sanctions were deleted, Plaintiff Smith's benefits were restored prospectively. However, City Defendant failed to restore the rent supplement retroactively as it should have, resulting in Plaintiff Smith falling into rent arrears.

38. Plaintiff Smith's landlord, BQNY PROPERTIES, LLC, commenced a summary non-payment eviction proceeding against her in August 2009.

39. On September 23, 2009, HRA gave her an appointment to report to a so called "Back to Work" vendor on September 24, 2009 at 11:00 a.m. (A copy of the appointment notice is annexed hereto as Exhibit F)

40. At approximately 9:30 a.m. on September 24, 2009, while Plaintiff Smith was preparing to keep the required appointment, she received a telephone call from her child's school advising her that her then nine-year-old was ill.

41. Plaintiff Smith immediately went to the school to get her child, brought him to the doctor and thus was unable to keep the mandatory appointment.

42. On September 26, 2009, HRA issued a Conciliation Notice, (a copy of which is annexed hereto as Exhibit G), vaguely and ambiguously advising Plaintiff Smith that she "either did not meet the minimum number of work hours required or failed to cooperate during the period 09/24/09 to 09/24/09 [sic]." The notice also advised her of an October 6, 2009 appointment to discuss the matter.

43. The Conciliation Notice failed to advise Plaintiff Smith of the "specific instance or instances of willful refusal or failure to comply" with the employment requirements and the necessary actions that must be taken to avoid a pro-rata sanction. SSL § 341(1)(a). Neither did the notice contain the statutorily required "explanation in plain language of what would constitute good cause for non-compliance and examples of acceptable forms of evidence that may warrant an exemption from work activities, including evidence of domestic violence, and physical or mental health limitations that may be provided at the conciliation conference to demonstrate such good cause for failure to comply with the [work] requirements." Id.

44. Had the statutorily required language appeared in the Conciliation Notice, Plaintiff Smith would have known that her child's illness and the fact that she took him to the doctor, constituted "good cause" for missing the September 24, 2009 appointment, and that although written verification was not absolutely necessary to confirm her child's illness, she could have brought a doctor's note, (such as the one she subsequently obtained and which is annexed hereto as Exhibit H), to the conciliation conference as verification. By notice dated October 9, 2009, (a copy of which is annexed hereto as Exhibit "I"), HRA notified Plaintiff Smith that effective October 20, 2009, it intended to sanction her by reducing her public assistance benefits from $1,246 per month to $480 per month because she did not attend the September 24, 2009

appointment.

45. However, in violation of the requirements of SSL § 341(1)(b) the notice failed to advise Plaintiff Smith of the reasons why it was determined that her failure to keep the appointment was willful and without good cause, nor did it advise her of the necessary actions that could have been taken in order to avoid the sanction.

46. The sanction went into effect on October 20, 2009. The shelter allowance portion of Plaintiff Smith's grant was reduced from $925 per month to $400 per month because the sanction not only resulted in the pro-rata loss of benefits, but also the loss of her rent subsidy.

47. Plaintiff Smith requested a Fair Hearing to challenge the proposed sanction. The hearing at which Plaintiff Smith appeared without the benefit of legal representation was held before ALJ Peter Evangelista on January 19, 2010.

48. At the Fair Hearing, Plaintiff Smith explained that on the morning of September 24, 2009, she was on her way to the appointment when she learned that her child was sick, and that she had to take him to the doctor. The ALJ asked if she had any proof that she had in fact done so. Plaintiff Smith answered, "Not on me today, but I did bring it to the Agency."

49. Rather than take any additional steps to assist this *pro se* Fair Hearing Appellant to develop the record, the ALJ stated, "That's all I wanted to ask." The ALJ then concluded the hearing.

50. State Defendant issued a DAFH in the matter on January 21, 2010 upholding HRA's determination of October 9, 2009 to reduce Plaintiff Smith's public assistance and Food Stamp benefits. (A copy of the DAFH is annexed hereto as Exhibit J.)

51. In the DAFH, the ALJ failed to address the adequacy of either the Conciliation

Notice or the Notice of Intent as he should. See 18 N.Y.C.R.R. § 358-6.1(a); Policy Clarification, Ex. K.

52. State Defendant justified the decision with the following reasoning:

> [A]lthough the Appellant testified that her son was ill on September 24, 2009, the Appellant failed to submit any evidence to establish that her son had an illness which prevented her from reporting to her employment assignment on September 24, 2009, as requested by the Agency. The Appellant's failure to report is also found to be willful, in that the Agency advised the Appellant of the appointment, and the Appellant determined not to report.

DAFH, Ex. J at 7.

53. On information and belief, Plaintiff Smith's sanction was not scheduled to end until April 18, 2010. Plaintiff Smith was not eligible to re-apply for Family Eviction Prevention Supplement until the sanction was lifted and even if accepted, she would not have received the rent supplement for the period of the sanction.

54. Plaintiff Smith commenced this action by Order to Show Cause on April 6, 2010. As a direct result of the filing of this case, Defendants took action to delete the sanction and to restore lost benefits to Plaintiff Smith.

55. Plaintiff Smith remains subject to employment requirements and will undoubtedly receive appointments requiring her to comply with such requirements. She remains subject to receipt of Conciliation Notices and Notices of Intent that fail to comply with the requirements of the Social Services Law and Regulations promulgated thereunder, the Food Stamp Act and Regulations promulgated thereunder, and the Due Process Clause of the Fourteenth Amendment.

ANTHONY COLAVECCIO

56. Plaintiff ANTHONY COLAVECCHIO was a recipient of public assistance and food stamps until his benefits were discontinued on or about August 9, 2010 because of an employment rules sanction.

57. In early July 2010, HRA advised Colavecchio of a work activity appointment for July 10, 2010. Colavecchio attended the appointment as required and was told to return to the same location on July 12, 2010 for an orientation. Colavecchio kept that appointment as well and was given instructions by a worker at HRA to report to another location on July 13, 2010.

58. Colavecchio informed the worker that because he had a mandatory court appearance on July 13, 2010 he could not report as instructed. The worker did not tell Colavecchio to return on July 14, 2010. Rather, he was advised to call a so-called "Back To Work" vendor at a particular telephone number for further instructions.

59. Colavecchio called the telephone number he was given several times over a period of days but no one answered until several days later when he was given an appointment for July 26, 2010.

60. On July 16, 2010, City Defendant issued a Conciliation Notice to Plaintiff Colavecchio scheduling a conciliation conference for July 27, 2010. The notice (a copy of which is annexed hereto as Exhibit L) stated that Colavecchio had "failed to cooperate with the mandatory work activity at the Back to Work (BTW) vendor." The notice ambiguously stated that Colavecchio either "did not meet the minimum number of work hours required or failed to cooperate during the period 07/12/2010 through 07/16/2010."

61. Except for the identifying information, the Conciliation Notice was identical to the one issued to Plaintiff Smith. Thus the Conciliation Notice failed to advise Colavecchio of the specific instance or instances of his alleged willful refusal or failure to comply without good cause with the work requirements. The Conciliation Notice further failed to advise Plaintiff Colavecchio of the necessary actions that must be taken to avoid a pro-rata sanction. Nor did the notice contain the statutorily required "explanation in plain language of what would constitute good cause for non-compliance and examples of acceptable forms of evidence that may warrant an exemption from work activities, including evidence of domestic violence, and physical or mental health limitations that may be provided at the conciliation conference to demonstrate such good cause for failure to comply with the [work] requirements." SSL § 341(1)(a).

62. Colavecchio called the Back To Work vendor on July 24, 2010 to confirm the July 26, 2010 appointment. At that time he was told not to bother keeping the appointment, but rather, that he should keep his July 27, 2010 conciliation appointment at his Job Center.

63. Plaintiff Colavecchio attended the conciliation conference and explained that he had a mandatory court appearance on July 13, 2010. He brought with him and showed to the HRA conciliation worker, a notice given to him at this previous court appearance indicating July 13, 2010 as his next required court appearance. The notice (a copy which notice is annexed hereto as Exhibit M) does not contain any identifying information such as a name or docket number to link the court date with Mr. Colavecchio.

64. Had the statutorily required language appeared in the Conciliation Notice, Plaintiff Colavecchio would have known that a mandatory court appearance might have constituted "good cause" for missing the July 13, 2010 appointment. He would also have know that

verification in the form of an official court document, such as a printout from the Office of Court Administration's web site or a letter from his attorney confirming the mandatory court appearance and the fact that Colavecchio actually attended court that day could have been brought by him to the conciliation.

65. Solely as a result of the City Defendant's failure to inform Colavecchio of what would be acceptable verification of his reason for missing the July 13, 2010 appointment, Colavecchio did not obtain and bring with him the particular documentation that would have verified his mandatory court appearance of July 13, 2010. HRA determined that the failure to attend the mandatory appointment was willful and without good cause and stamped his Conciliation Notice "CONCILIATION NOT SUCCESSFUL." (See, Exhibit "K.")

66. By notice dated July 29, 2010, (a copy of which is annexed hereto as Exhibit N), HRA notified Plaintiff Colavecchio that effective August 9, 2010, it intended to sanction him by discontinuing his public assistance benefits because he "did not cooperate with the Job Search scheduled appointment at FEGS BTW SITE 2 on July 14, 2010." Despite the fact that Colavecchio kept the appointment for the conciliation conference, the notice advising Colavecchio of the sanction stated that he also failed to respond to the conciliation letter he was sent.

67. The notice failed to advise Plaintiff Colavecchio of the reasons why it was determined that his failure to keep the appointment was willful and without good cause, nor did it advise him of the necessary actions that he could have taken to avoid the sanction, as is required by SSL § 341(1)(b) .

68. The sanction went into effect on August 9, 2010 and was not scheduled to expire until November 10 2010.

69. Plaintiff Colavecchio requested a Fair Hearing to challenge the proposed sanction.

70. Plaintiff Colavecchio would not have been able to prepare properly for the hearing, because the NOI failed to tell him the reason why his alleged infraction was determined to be willful and without good cause.

71. Defendants took action to delete the sanction and to restore lost benefits to Plaintiff Colavecchio, as a result of his moving to intervene in this action.

CLASS ACTION ALLEGATIONS

72. Plaintiffs bring this action pursuant to CPLR §§ 901 *et seq.* on behalf of themselves and a class defined as all past, current and future recipients of public assistance or food stamps in New York City since July 8, 2007, who have received City Defendant's Conciliation Notification or Notice of Decision and whose public assistance or food stamps have been reduced or discontinued for violating a work requirement.

73. City Defendant claims that effective July 15, 2010, they ceased using the offending standard Conciliation Notice and replaced it with a revised notice that purportedly complies with the requirements of SSL § 341(1)(a). (See, Supplemental Affirmation of Arieh Mezoff, dated August 8, 2010.)

74. The Conciliation Notice received by Plaintiff Colavecchio is dated July 16, 2010 and is not the revised Conciliation Notice.

75. In any event, the revised notice still suffers from some of the legal shortcomings of

its predecessor which, contrary to City Defendant's contentions, was not eliminated from use on July 15, 2010. (See, Exhibit L herein.)

76. The class is so numerous that joinder of all members whether otherwise required or permitted is impracticable. CPLR § 901(a)(1). According to the most recent statistics published by City Defendant , there are 91,564 public assistance households where at least one member thereof is required to comply with work rules. Of these, 9,919 recipients are under a punitive employment-related sanction. Another 9,453 are in the sanction process, i.e. have been determined to have violated a work rule but have not completed the notice and hearing process. The snap-shot taken on the date of the report shows that there are 19,372 individuals who are under sanction or are at risk of sanction without having received notices that comply with the requirements of law. There are at least tens of thousands of others who were sanctioned without the benefit of lawful notices and whose sanctions have expired. (See HRA CA-June 22, 2013 – Weekly Report annexed hereto as Exhibit O)

77. There are questions of law or fact common to the class which predominate over any questions affecting only individual members. CPLR § 901(a)(2). Specifically, all class members have been or will be charged with having violated mandatory work rules, and have received or will receive the same standardized notices advising them of the agency action and the rights that are appurtenant thereto. Thus the case of each class member not only shares common facts, but also common questions of law, to wit, whether the predicate notices sent to all class members violate the statutory, regulatory and due process requirements that govern the contents of such notices.

78. The claims of the representative parties are typical of the claims of the class. CPLR

§ 901(a)(3). Each named party and all class members allege that the standardized predicate notices which they all have received or will receive, fail to comply in the same manner with statutory, regulatory and due process requirements of such notices.

79. The named plaintiffs and the class are represented by The Legal Aid Society and Kramer Levin Naftalis & Frankel LLP, whose attorneys are experienced in class action litigation. The named plaintiffs and their counsel will fairly and adequately protect the interest of the class. CPLR § 901(a)(4).

80. A class action is superior to other available methods for the fair and efficient adjudication of the controversy. CPLR § 901(a)(5). Prosecution of separate actions by individual class members would unduly burden the Court and create the possibility of conflicting decisions.

STATEMENT OF CLAIMS

FIRST CAUSE OF ACTION: INADEQUATE CONCILIATION NOTICE

81. Plaintiffs repeat the allegations in paragraphs 1 through 80 as if fully set forth herein.

82. City Defendant's determinations to impose employment sanctions, and State Defendant's Decisions After Fair Hearing upholding the sanctions on Plaintiffs Smith and Colavecchio and the plaintiff class are in violation of lawful procedure in that the standardized Conciliation Notices issued by City Defendant are defective insofar as they fail to include the specific information mandated for such notices by SSL § 341(1)(a). Particularly, the Conciliation Notices fail to state in plain language the specific instance or instances of willful refusal to comply without good cause with the employment requirements, the necessary actions

that must be taken to avoid a pro-rata reduction in benefits, information on what would constitute good cause for non-compliance, and examples of acceptable forms of evidence that may warrant exemption from work activities including evidence of domestic violence, and physical or mental health limitations that may be provided at the conciliation conference to demonstrate such good cause for failure to comply with the employment requirements. City Defendant's failure to provide an adequate Conciliation Notice and a meaningful opportunity to resolve Plaintiffs' alleged non-compliance and thus avoid sanctions prior to their imposition violate SSL § 341(1)(a) and the Due Process Clause of the Fourteenth Amendment.

SECOND CAUSE OF ACTION: INADEQUATE NOTICE OF INTENT TO SANCTION

83. Plaintiffs repeat the allegations in paragraphs 1 through 80 as if fully set forth herein.

84. City Defendant's determinations to impose employment sanctions on Plaintiffs Smith and Colavecchio and the plaintiff class, and State Defendant's determinations to uphold the sanction against Smith and the plaintiff class are in violation of lawful procedure in that City Defendant's standardized NOI fails to include the specific information mandated for such notices by SSL §§ 22, 341(1)(b), 18 N.Y.C.R.R. § 358-2.2, 7 C.F.R. § 273.13 and the Due Process Clause of the Fourteenth Amendment. Particularly, the notice fails to state the specific instance or instances of willful refusal or failure to comply without good cause with the employment requirements, the necessary actions that must be taken to avoid a pro-rata reduction in public assistance and food stamp benefits and the reason that the refusal or failure to comply was determined to be willful and without good cause.

REQUESTS FOR RELIEF

WHEREFORE, Plaintiffs request that this Court enter an Order and Judgment:

(1) Pursuant to CPLR § 3001 and 42 U.S.C. § 1983, declaring that the standardized Conciliation Notices issued to Plaintiffs and to members of the class fail to comply with the requirements of SSL § 341(1)(a) and the Due Process Clause of the Fourteenth Amendment; and

(2) Pursuant to CPLR § 3001 and 42 U.S.C. § 1983, declaring that the standardized "Notice of Decision On Your Public Assistance, Food Stamps And Medical Assistance" used in employment sanction cases fails to comply with the requirements of SSL §§ 22 and 341(1)(b), 18 N.Y.C.R.R. § 358-3.3, 7 C.F.R. § 273.13(a)(2), and the Due Process Clause of the Fourteenth Amendment; and

(3) Permanently enjoining City and State Defendants from sanctioning the named Plaintiffs or any class member for work rules violations unless and until Defendants have revised their standardized Conciliation Notice and Notice of Decision On Your Public Assistance, Food Stamps And Medical Assistance so as to bring them into compliance with the mandates of SSL § 22, SSL § 341(1)(a) & (b), 18 N.Y.C.R.R. § 358-3.3, 7 C.F.R. § 273.13(a)(2), and the Due Process Clause of the Fourteenth Amendment, and until Defendants provide Plaintiffs or any class members a conciliation process whereby they will have a meaningful opportunity to resolve alleged failures to comply with employment requirements and to avoid sanctions prior to their imposition; and directing Defendants to delete the sanctions of the class members and restore all benefits lost by class members as a result of the unlawful sanctions; and

(4) Awarding Plaintiffs reasonable attorneys' fees and costs in an amount to be determined upon appropriate motion, as provided by the Civil Rights Attorney's Fees Awards

Act of 1976, 42 U.S.C. § 1988, and the New York State Equal Access to Justice Act, CPLR §§ 8600 *et. seq.*, and CPLR § 909; and

(5) Granting such other and further relief as the Court may deem just and proper.

Dated: Brooklyn, New York
August 16, 2013

Respectfully submitted,

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VERIFICATION

LESTER HELMAN, an attorney duly admitted to practice law in the Courts of this State, affirms the following to be true under penalties of perjury: I am one of the attorneys for the Plaintiffs in this action. I have read the foregoing Second Amended Class Action Complaint and I know its contents. The same is true to my knowledge except as to those matters stated to be alleged upon information and belief, and as to such matters, I believe them to be true. I make this verification based upon my personal knowledge and upon the records of Plaintiffs.

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Dated: Brooklyn, New York
August 16, 2013

LESTER HELFMAN