

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X

LAKISHA REYNOLDS, *et al.*,

Plaintiffs,

-against-

98 Civ. 8877

RUDOLPH GIULIANI, *et al.*,

Defendants.

----- X

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR CIVIL
CONTEMPT**

TABLE OF CONTENTS

PRELIMINARY STATEMENT 1

I. STATEMENT OF FACTS 2

 A. Statutory and Regulatory Scheme Governing Expedited SNAP Benefits and Immediate Needs Grants 2

 B. The 2005 Order Imposed Injunctive and Monitoring Obligations on City Defendants 2

 C. City Defendants Failed to Meet Reporting Obligations Required by the 2005 Order Because They Did Not Produce Monitoring Data for Three Years and the Data They Ultimately Provided Is Incomplete 4

 1. City Defendants failed to Provide Monitoring Data to Plaintiffs for Three Years 4

 2. City Defendants Are Not Providing Complete Monitoring Data Required by the 2005 Order 5

 a. Failure to Provide Any Data on Timeliness of Immediate Needs Grants 6

 b. Failure to Provide Complete Data on Timeliness of E-SNAP Issuance 7

 D. Monitoring Data Demonstrates that City Defendants Failed to Provide Class Members with Timely Benefits 8

 E. Class Members Continue to be Harmed by City Defendants’ Noncompliance 10

 F. City Defendants Failed to Offer a Comprehensive Corrective Action Plan 12

II. ARGUMENT 13

 A. The Court Should Hold the City Defendants in Civil Contempt Due to Their Failure to Comply with the 2005 Order 13

 B. The Court Should Require the City Defendants to Enter into a Corrective Action Plan and Other Remedial Measures as Necessary 15

 C. Plaintiffs are Entitled to Fines and Fees as a Result of the City Defendants’ Failure to Comply with the 2005 Order 16

CONCLUSION 18

TABLE OF AUTHORITIES

Cases

Briggs v. Bremby, 2012 WL 6026167 (D. Conn. Dec. 4, 2012)..... 14

Casale v. Kelly, 710 F. Supp. 2d 347 (S.D.N.Y. 2010) 13, 17

Donovan v. Sovereign Sec., 726 F.2d 55 (2d Cir. 1984)..... 13

Hutto v. Finney, 437 U.S. 678 (1978)..... 16

King v. Allied Vision, Ltd., 65 F.3d 1051 (2d Cir. 1995)..... 13

McCain v. Dinkins, 639 N.E.2d 1132 (N.Y. 1994)..... 17, 18

McComb v. Jacksonville Paper Co., 336 U.S. 187 (1949) 13

Paramedics Electromedicina Comercial v. GE Medical Systems Information Technologies, 369 F.3d 645 (2d Cir. 2004)..... 17

Reynolds v. Giuliani, 2005 WL 3428213 (S.D.N.Y. Dec. 14, 2005)..... 3, 4, 6, 14

Reynolds v. Giuliani, 35 F. Supp. 2d 331 (S.D.N.Y. 1999)..... 14

Reynolds v. Giuliani, 506 F.3d 183 (2d Cir. 2007)..... 3

Shillitani v. U.S., 384 U.S. 364 (1966) 13

Spallone v. U.S., 493 U.S. 265 (1990) 13

United States v. United Mine Workers of America, 330 U.S. 258 (1947) 16

Weitzman v. Stein, 98 F.3d 717 (2d Cir. 1996)..... 16

Statutes

7 U.S.C. § 2020..... 8

N.Y. Soc. Serv. L. § 133 2

Pub. L. No. 110-246, § 4001..... 1

Other Authorities

N.Y. State Office of Temporary and Disability Assistance, 02-ADM-2, Meeting the
Emergency/Immediate Needs of Temporary Assistance (TA) Applicants/Recipients..... 2

*Oversight – Public Benefits Processing Delays at HRA: Hearing Before the Comm. on Gen.
Welfare*, N.Y. City Council (N.Y. City Sept. 27, 2023) 8

Regulations

18 N.Y.C.R.R. § 351.8..... 2, 8

18 N.Y.C.R.R. § 387.8..... 1, 3

7 C.F.R. § 273.2..... 2, 8

PRELIMINARY STATEMENT

In 2005, following more than five years of litigation and a bench trial, this Court issued an Order (“the 2005 Order”) directing New York City and its public benefits issuing agency, the Human Resources Administration (“City Defendants”), to comply with the federal mandate to provide expedited food stamps (“SNAP benefits”)¹ within seven² days to desperate applicants without food or money to buy food. The Court also directed compliance with the State mandate to provide “immediate needs” cash grants on the day of the application. After more than a decade of successfully issuing benefits to those most in need, City Defendants, in direct contradiction of this Court’s 2005 Order, are failing to provide timely expedited SNAP benefits to nearly half of the most vulnerable, eligible applicants. City Defendants have failed to provide any data on their provision of immediate needs grants.

Despite extensive discussion with Plaintiffs’ counsel over the past year, City Defendants have failed to bring themselves into compliance with the requirements of the 2005 Order and have set forth no corrective action plan. As a result of City Defendants’ non-compliance with the terms of the 2005 Order and unwillingness to resolve Plaintiffs’ concerns without further litigation, Plaintiffs now make this motion: to restore the proceeding; to find the City Defendants in violation of the 2005 Order; and to direct City Defendants to take corrective actions necessary to bring them into compliance with the 2005 Order by January 19, 2024. If City Defendants cannot provide a corrective action plan by January 19, 2024, Plaintiffs seek fines to compel

¹ Effective October 1, 2008, the federal Food Stamp Program was renamed the Supplemental Nutrition Assistance Program and the federal Food Stamp Act was renamed the Food and Nutrition Act of 2008. Pub. L. No. 110-246, §§ 4001, 4002. In New York State, Supplemental Nutrition Assistance Program benefits are commonly known as food stamps and the terms are interchangeable.

² Since the issuance of the 2005 Order, New York regulations have been changed so that expedited food stamps must be processed within seven days rather than five days. *See* 18 N.Y.C.R.R. § 387.8(a)(2)(i).

compliance and compensate class members whose benefits have been erroneously delayed or denied.

I. STATEMENT OF FACTS

A. Statutory and Regulatory Scheme Governing Expedited SNAP Benefits and Immediate Needs Grants

Expedited SNAP benefits (“E-SNAP”) and immediate needs grants are intended to provide emergency assistance to the most vulnerable applicants for public benefits. In many cases, the New Yorkers who apply for and are eligible for the benefits have no other income or resources and will go hungry without this assistance.

In order to qualify for E-SNAP benefits, the applicant must meet one of the following criteria: (1) the applicant earns less than \$150 in monthly gross income and their liquid resources are \$100 or less; (2) the applicant is a destitute migrant or seasonal farm worker with less than \$100 in liquid resources; or (3) the applicant’s combined monthly gross income and liquid resources are less than their household’s monthly rent or mortgage, and utilities. 7 C.F.R. § 273.2(i)(1).

Similarly, an applicant for public benefits is eligible for a same day cash grant upon demonstrating that they have an emergency that requires urgent assistance. N.Y. Soc. Serv. L. § 133; 18 N.Y.C.R.R. § 351.8(c)(4); N.Y. State Office of Temporary and Disability Assistance, 02-ADM-2, Meeting the Emergency/Immediate Needs of Temporary Assistance (TA) Applicants/Recipients, 2 (2002), https://otda.ny.gov/policy/directives/2002/ADM/02_ADM-02.pdf.

B. The 2005 Order Imposed Injunctive and Monitoring Obligations on City Defendants

In 1998, Plaintiffs brought suit against New York State (“State Defendants”) and New York City (“City Defendants”) for failing to comply with federal and state law governing the

administration of food stamps, cash assistance, and Medicaid. *See* Complaint, ECF No. 1. After trial, on December 14, 2005, this Court issued a judgment against the City and State Defendants. *See Reynolds v. Giuliani*, 2005 WL 3428213 (S.D.N.Y. Dec. 14, 2005).³

In the 2005 Order, the Court granted declaratory and permanent injunctive relief against the City Defendants. The Court found and declared that the City Defendants had: failed to provide expedited food stamps to eligible clients and to process the applications within seven (7)⁴ days of receipt as required by federal law; failed to provide class members with adequate and timely notice on decisions on eligibility for cash assistance, food stamps and Medicaid; and failed to provide immediate needs grants on the day of application as required by State law. *Id.* at *1. To remedy these violations of law, the Court ordered that the City Defendants must: 1) provide expedited food stamps to eligible class members within seven (7) days after the date of the application; 2) provide class members with adequate and timely notice of decisions on eligibility for cash assistance (including immediate needs grants), food stamps (including expedited food stamps), and Medicaid by correctly completing the applicable forms; and 3) provide immediate needs grants on the day of application for eligible class members. *Id.* at *1-2.

As part of the permanent injunctive relief, the Court imposed unambiguous and ongoing reporting obligations upon the City Defendants. Beginning on March 31, 2006, the City Defendants were directed to provide quarterly reports to Plaintiffs' counsel covering the prior three months to track the City's performance under Paragraph 3 of the 2005 Order (including a

³ The State Defendants appealed the 2005 Order against them, and the Second Circuit reversed the District Court's injunctions against them, but the 2005 Order remains in effect against the City Defendants. *See Reynolds v. Giuliani*, 506 F.3d 183 (2d Cir. 2007).

⁴ The 2005 Order cites the older five-day processing time, but since the issuance of the order, the New York regulations have been changed so that expedited food stamps must now be processed within seven days. *See* 18 N.Y.C.R.R. § 387.8(a)(2)(i). Accordingly, Plaintiffs are using the seven-day timeline throughout this motion.

monthly report with the percentage and number of expedited food stamps provided within five days of application). *Id.* at *3. The City Defendants were also ordered to semiannually review (and offer Plaintiffs a chance to review) a sample of 200 applications submitted in April and October of that year and determine if anyone was erroneously denied expedited food stamps or immediate needs cash grants. *Id.* Lastly, on a semiannual basis, the City Defendants were ordered to review a “systematic sample” of 50 cash assistance applications withdrawn in April and October and give Plaintiffs a copy of the complete case file for each withdrawn application reviewed. *Id.* In the event that Plaintiffs’ counsel believed Defendants failed to comply with any of the provisions of the 2005 Order, Plaintiffs were directed to notify counsel in writing of the deficiency and then meet and confer before seeking intervention by the Court. *Id.* at *4.

C. City Defendants Failed to Meet Reporting Obligations Required by the 2005 Order Because They Did Not Produce Monitoring Data for Three Years and the Data They Ultimately Provided Is Incomplete

1. City Defendants failed to Provide Monitoring Data to Plaintiffs for Three Years

The City Defendants have failed to timely comply with any of the monitoring provisions from the 2005 Order since the first quarter of March 2020. Biberman Declaration ¶ 6. Plaintiffs notified the City Defendants in writing on November 9, 2022, of their noncompliance with all monitoring provisions in the 2005 Order requesting that the parties “meet and confer” to resolve the issues pursuant to paragraph 12 of the 2005 Order. *Id.* ¶ 9; *see also* Biberman Dec., Exhibit A, Plaintiffs’ Letter to City Defendants dated November 9, 2022. At Plaintiffs’ request, the parties met and conferred on November 30, 2022. Biberman Declaration ¶ 10; *see also* Biberman Dec., Exhibit A, Plaintiffs’ Letter to City Defendants dated November 9, 2022. During the meet and confer, counsel for City Defendants acknowledged their failure to comply with the monitoring and injunctive provisions of the 2005 Order, but they did not offer any corrective action plan to come into compliance in the future. Biberman Declaration, ¶ 10. On December 9,

2022, Plaintiffs' counsel requested a corrective action plan and a limited set of the data to which Plaintiffs are entitled. Biberman Dec., Exhibit B, Plaintiffs' Email to City Defendants dated December 9, 2022. On December 23, City Defendants responded via letter. Biberman Dec., Exhibit C, City Defendant's Letter to Plaintiffs' Counsel dated December 23, 2022. In this letter, they stated that they had experienced significant staff resignations and retirements, which have contributed to their failure to meet their obligations under the 2005 Order. *Id.* They promised to produce both sample application data and a new quarterly report—new because they had discontinued production of the report they previously used—by February 2023. *Id.*

But Defendants did not meet that deadline. Thus, subsequent to December 2022, Plaintiffs' counsel followed up in writing with City Defendants on multiple occasions to obtain the required monitoring data and held a second meet and confer in June 2023. Biberman Declaration ¶¶ 13-21. In order to secure compliance and in a show of good faith, Plaintiffs ultimately offered to waive production of retroactive monitoring data for the reporting periods in 2020 and 2021. Biberman Declaration ¶ 21. A detailed description of Plaintiffs' counsel's attempts to obtain this data from City Defendants is included in the annexed declaration from Abby Biberman and the accompanying exhibits. *See* Biberman Dec. at ¶20. After a nearly three-year gap in producing any quarterly monitoring data, City Defendants delayed another ten months from the Parties' first meet and confer in November 2022 before providing Plaintiffs with any quarterly monitoring required by Paragraph 7 of the 2005 Order. Despite Plaintiffs' many efforts to compel compliance with the monitoring requirements of the 2005 Order, City Defendants have failed for over three years to provide Plaintiffs with timely monitoring data as required by the 2005 Order.

2. City Defendants Are Not Providing Complete Monitoring Data Required by the 2005 Order

As discussed above in Section C(1), in 2023, after twice meeting and conferring with opposing counsel, and multiple written requests by Plaintiffs, City Defendants finally produced only two sets of application sample data and two quarterly reports. *See* Biberman Dec., Exhibits M-N, Quarterly Reports. As noted above, in order to secure compliance, Plaintiffs offered to waive production of retroactive monitoring data for the reporting periods of 2020 and 2021 – yet Defendants have still failed to produce all of the required monitoring data. First, City Defendants have failed to provide any required data on immediate needs grants, and second, City Defendants have failed to provide complete data on timeliness of E-SNAP benefits for the period from April 2023 to September 2023. Biberman Dec., Exhibits M-N. This incomplete reporting is alarming because the incomplete data produced thus far reveals a troubling picture of systemic noncompliance with federal and state law, as well as the 2005 Order with respect to timely providing critically-needed benefits to low-income New Yorkers.

a. *Failure to Provide Any Data on Timeliness of Immediate Needs Grants*

City Defendants have provided no data on immediate needs grants. Immediate needs grants are essential for the survival of the most vulnerable applicants: those who do not have sufficient food or resources to last them even the seven days allowed for E-SNAP processing. Paragraph 7 of the 2005 Order is clear that monitoring data should be provided to assess City Defendants' compliance with their obligations under paragraph 3 of the 2005 Order. *Reynolds v. Giuliani*, 2005 WL 3428213, at *3 (S.D.N.Y. Dec. 14, 2005). Paragraph 3(h) requires City Defendants to process same-day immediate needs grants. *Id.* Monitoring data pertaining to the processing of immediate needs grants must be provided and Plaintiffs have explicitly requested it, but in a letter to Plaintiffs dated August 25, 2023, City Defendants stated that they could not produce report data on immediate needs grants at this time. Biberman Dec., Exhibit O, City

Defendants' Letter to Plaintiffs dated August 25, 2023. City Defendants indicated that they are "open to revisiting reporting Immediate Needs grants" after they devised their report for E-SNAP data. *Id.*

b. *Failure to Provide Complete Data on Timeliness of E-SNAP Issuance*

City data on E-SNAP benefits are incomplete. The quarterly reports that were provided by Defendants state that two categories of E-SNAP cases are not included in the report totals. First, the data in the reports does not reflect applications where the interview occurred more than seven (7) days after the application was filed. Biberman Dec., Exhibits M-N, Quarterly Reports. Second, the quarterly reports also note that City Defendants have not included data for applications where the agency failed to document potential eligibility for these benefits on the required state issued form, the LDSS-3938. *Id.* Accordingly, there may be households who are eligible for these benefits, but since that information was not documented appropriately, they are not included in the reports.

In addition to these missing categories of applications, the data provided in the City's quarterly report fails to demonstrate *when* eligible households who do not receive timely E-SNAP benefits ultimately get those benefits. *Id.* Based on the data that City Defendants provided, Plaintiffs have no way of knowing whether City Defendants merely give up after the seventh day E-SNAP processing deadline and continue to process the application in the normal course ignoring the household's immediate need, or whether those households receive benefits on the eighth day or the 19th day. Plaintiffs specifically requested this data from City Defendants and were told it could not be provided. Biberman Dec., Exhibit K, Plaintiffs' Letter to City Defendants, dated August 9, 2023, but sent on August 11, 2023.

Defendants' failure to provide this data is especially troubling in light of the significant delays that City Defendants currently report in the standard processing of cash assistance and

SNAP applications.⁵ In addition to the requirements related to E-SNAP and immediate needs grants, under the statutory and regulatory framework, Defendants are required to provide individuals applying for SNAP and cash assistance benefits with a decision on their request for ongoing benefits within 30 days of their application. 7 U.S.C. § 2020(e)(3); 7 C.F.R. § 273.2(g)(i); 18 N.Y.C.R.R. § 351.8(b). Yet, according to the testimony of Rebecca Chew, Chief Program Officer for the Human Resources Administration, in front of the New York City Council's General Welfare Committee on September 27, 2023, City Defendants reported that as of August 31, 2023, there were over 25,000 cash assistance and SNAP applications that had been pending for longer than 30 days.⁶ A separate lawsuit has been filed against City Defendants with respect to these general processing delays. *See generally Forest v. City of N.Y.*, 1:23-cv-00743. These significant processing delays mean that households that are eligible for E-SNAP may not only be failing to receive those benefits within seven days, but even worse, they may be languishing without any benefits well beyond the standard 30-day processing deadline.

D. Monitoring Data Demonstrates that City Defendants Failed to Provide Class Members with Timely Benefits

The incomplete monitoring data that City Defendants ultimately provided to Plaintiffs in September and November 2023 is unequivocal: City Defendants are violating the 2005 Order by failing to provide class members with timely E-SNAP benefits. From the sample of 200 filed applications provided to Plaintiffs in March 2023, City Defendants reported that only 20% of households eligible to receive E-SNAP received the benefit on time; City Defendants failed to provide E-SNAP to 80% of eligible households. Biberman Dec., Exhibit D, October 2022 Case

⁵ *Oversight – Public Benefits Processing Delays at HRA: Hearing Before the Comm. on Gen. Welfare*, N.Y. City Council 47 (N.Y. City Sept. 27, 2023) (statement of Rebecca Chew, Chief Program Officer, Human Resources Administration), <https://legistar.council.nyc.gov/View.ashx?M=F&ID=12338538&GUID=B666443D-30ED-44E0-B235-37EF5F412003>.

⁶ *Id.*

Sample Audit Report. In August 2023, City Defendants produced case files and a summary report for 200 cash assistance applications filed in April 2023. This sample of applications showed that Defendants had increased their E-SNAP processing timeliness rate to 70%.

Biberman Dec., Exhibit L, April 2023 Case Sample Audit Report. While initially this increase seemed promising, subsequent data demonstrated that this hope was misplaced.

In September 2023, in an attempt to fulfill their reporting obligations under paragraph 7 of the 2005 Order, Defendants produced a quarterly report compiling monthly application data for April 2023, May 2023 and June 2023. The new report identified the total number of cash assistance and SNAP applications received by HRA in a given month, the number of applying households in that month that were eligible for E-SNAP benefits, and number of E-SNAP cases timely processed (within 7 days of filing their application) in the month. Biberman Dec., Exhibit M, September 2023 Quarterly Report.

Based upon raw data provided in City Defendant's new quarterly report, Plaintiffs calculated a percentage of timely processed E-SNAP applications for each of the three months included in the sample report. In April 2023, the City Defendants provided timely E-SNAP benefits within 7 calendar days of application to only 59.7% of eligible households, a full 10% below the rate indicated by the April 2023 case sampling. *Id.* In May 2023, the City Defendants provided timely E-SNAP benefits within 7 calendar days of application to only 57.5% of eligible households. *Id.* In June 2023, again, the City Defendants provided timely E-SNAP benefits within 7 calendar days of application to only 56.2% of eligible households. *Id.*

On November 3, 2023, City Defendants provided Plaintiffs with a second quarterly report covering July, August and September 2023 respectively.⁷ Biberman Dec., Exhibit N, November

⁷ City Defendants previously provided Plaintiffs with July 2023 in a separate email dated September 1, 2023, but included it again in this quarterly report.

2023 Quarterly Report. The raw data included in this report showed essentially no improvement in the City Defendants' provision of timely E-SNAP benefits to eligible households. In July 2023, City Defendants provided timely E-SNAP benefits within 7 calendar days of application to 54.6% of eligible households. *Id.* In August 2023, only 54.3% of eligible households received timely benefits. *Id.* In September 2023, only 55.7% of eligible households received timely E-SNAP benefits within 7 calendar days of their application. *Id.*

For all months in the reporting period, City Defendants failed to timely process more than 40% of E-SNAP cases. Further, their rate of timely processing has decreased in every month except for one, and in that month, September 2023, the increase was a miniscule 1.4%. City Defendants are failing to comply with federal law requiring them to render E-SNAP eligibility determinations and provide benefits to eligible households within seven days of their application. In human terms, the City Defendants' broad and systemic failures between April 2023 and September 2023 left 13,721 hungry households without critical assistance for purchasing food a week after applying for SNAP benefits.⁸

E. Class Members Continue to be Harmed by City Defendants' Noncompliance

In addition to the data provided by City Defendants which clearly demonstrates that they are failing to comply with their substantive obligations under the 2005 Order, class members who are in desperate need of assistance are frequently unable to access E-SNAP and same-day immediate needs grants.

Laquena Watson

Laquena Watson is a single mother to her two children, a fourteen-year-old and an eight-month-old. Watson Declaration ¶ 3. She is needed temporary assistance when she stopped

⁸ Defendants' statistics show the number of *cases* in which E-SNAP issuance was delayed – the actual number of individuals, including children, is substantially higher.

working after she gave birth to her second child. *Id.* ¶¶ 2, 4. She applied for benefits after her parental leave benefits expired and she ran out of money to feed her children. *Id.* ¶ 4. Ms. Watson is also diabetic and required SNAP benefits to ensure that she could purchase specific food items that she eats to help manage her diabetes. *Id.* ¶ 2.

On June 12, 2023, she applied for SNAP and cash assistance online using the Access HRA application. *Id.* ¶ 5. At the time, she was eligible for E-SNAP benefits, because she had a monthly gross income under \$150 and liquid resources not exceeding \$100.00 in the month of her application. *See Id.* ¶¶ 5, 6. She was also eligible for a same-day immediate needs cash grant. *See Id.* Despite the fact that she was entitled to receive E-SNAP on or before June 19, 2023, and a same day immediate needs grant on June 12, 2023, by the end of July she still had not received any of these benefits. *Id.* ¶ 8. Desperate to feed her family she went into her local Job Center and was told that she had been approved, but she still did not receive any benefits. *Id.* ¶¶ 6-8. While she waited for benefits, Ms. Watson was forced to ask for assistance from family members to feed and clothe her children, specifically she needed formula for her baby who at that time was just three months old. *Id.* ¶ 7.

After more than a month without receiving any benefits for communications from HRA about the status of her benefits, she reached out to Plaintiffs' counsel for assistance. *Id.* ¶ 8. Plaintiffs' counsel contacted HRA on July 31, 2023, and on August 2, 2023, nearly two months after applying, Ms. Watson finally received the benefits she was entitled to. *Id.* ¶ 8. HRA never provided her with E-SNAP benefits.

Mary Metayer

Mary Metayer is disabled and applied for Cash Assistance and SNAP benefits when she was forced to stop working due to her disability. Metayer Declaration ¶ 3. Ms. Metayer applied

for benefits online using the Access HRA platform and indicated that she had no income and no resources and needed emergency benefits. *Id.* ¶ 4.

She did not receive a response from HRA after she applied for benefits so she went in person to her Benefits Access Center on Northern Boulevard in Long Island City to get clarity about the status of her application. *Id.* ¶ 5. She went to the Benefits Access Center on several occasions, and every time she was told something different and did not receive benefits. *Id.* ¶¶ 5-6. When she went in person to the Benefits Access Center, she reiterated that it was an emergency and she needed benefits immediately, but still she did not get benefits. *Id.* ¶ 5.

While she waited for HRA to process her application, she survived by reaching out to friends who helped her buy food. *Id.* ¶ 7. Some days, however, she simply went hungry. She is required to take medication for her heart condition and needs to eat with this medication, on days when she didn't have any food, she wasn't able to take her medication. *Id.*

After nearly two months without any benefits from HRA, Ms. Metayer reached out to Plaintiffs' counsel on March 16, 2023. *Id.* ¶ 8. Plaintiffs' Counsel contacted HRA and Ms. Metayer finally received benefits on March 17, 2023. Ms. Metayer never received benefits or an immediate needs grant. *Id.*

F. City Defendants Failed to Offer a Comprehensive Corrective Action Plan

On December 9, 2022, Plaintiffs' counsel requested a corrective action plan and a limited set of the data to which Plaintiffs are entitled. Biberman Dec., Exhibit B, Plaintiffs' Email to City Defendants dated December 9, 2022. City Defendants responded on December 23 via letter and explained that they had experienced significant staff resignations and retirements, which have contributed to their failure to meet their obligations under the 2005 Order. Biberman Dec., Exhibit C, City Defendant's Letter to Plaintiffs' Counsel dated December 23, 2022. City Defendants failed to offer any corrective action plan to come into compliance with the 2005

Order. Since this letter, as detailed above in Section C (1), the parties have met and conferred once more and communicated in writing on several occasions. However, to date, City Defendants have not provided Plaintiffs with a corrective action plan. Plaintiffs must, for this reason, seek court intervention to vindicate the rights of class members.

II. ARGUMENT

A. The Court Should Hold the City Defendants in Civil Contempt Due to Their Failure to Comply with the 2005 Order

Courts have inherent power to enforce compliance with their lawful orders through civil contempt. *Shillitani v. U.S.*, 384 U.S. 364, 370 (1966); *Spallone v. U.S.*, 493 U.S. 265, 276 (1990) (“In selecting a means to enforce the consent judgment, the District Court was entitled to rely on the axiom that courts have inherent power to enforce compliance with their lawful orders through civil contempt.” (internal quotations and citations omitted)). Civil contempt is the appropriate remedy in this case, as it is a sanction to “enforce compliance with an order of the court or to compensate for losses or damages sustained by reason of noncompliance.” *McComb v. Jacksonville Paper Co.*, 336 U.S. 187, 191 (1949).

A party may be held in civil contempt for failure to comply with a court order when “(1) the order the contemnor failed to comply with is clear and unambiguous, (2) the proof of noncompliance is clear and convincing, and (3) the contemnor has not diligently attempted to comply in a reasonable manner.” *King v. Allied Vision, Ltd.*, 65 F.3d 1051, 1058 (2d Cir. 1995); *see also Casale v. Kelly*, 710 F. Supp. 2d 347, 359-63 (S.D.N.Y. 2010) (applying *King* and holding the City in civil contempt for enforcing unconstitutional loitering statutes). It is not necessary to establish that the noncompliance was willful. *Donovan v. Sovereign Sec.*, 726 F.2d 55, 59 (2d Cir. 1984). All three requirements for civil contempt are met here. First, the 2005 Order is clear and unambiguous. The City Defendants were ordered to process applications for

E-SNAP and immediate needs grants within seven (7) and one (1) days, respectively. *Reynolds*, 2005 WL 3428213 at *1-2. The City Defendants were also ordered to provide Plaintiffs with regular monitoring data detailing their compliance in meeting these obligations. *Id.* at *3.

Second, the proof of the noncompliance is clear and convincing. The monitoring data is unequivocal: City Defendants are not complying with the 2005 Order because they are failing to provide households with timely E-SNAP benefits. Biberman Dec., Exhibits M-N, September and November Quarterly Reports. Between April and September 2023, the data demonstrates that City Defendants failed to provide E-SNAP benefits in a timely manner for nearly half of all eligible applicants. *Id.* Courts have routinely enforced the Food and Nutrition Act requirement that state agencies strictly comply with timely processing requirements for SNAP benefits. *See, e.g., Briggs v. Bremby*, 2012 WL 6026167 (D. Conn. Dec. 4, 2012); *Reynolds v. Giuliani*, 35 F. Supp. 2d 331 (S.D.N.Y. 1999). In *Briggs v. Bremby*, the district court granted the plaintiffs request for a preliminary injunction and held that State of Connecticut was required to be in full compliance with the timely provision of SNAP benefits. *Briggs*, 2012 WL 6026167 at *17 . Specifically, the district court found that “[t]he plain language thus requires that the state agencies comply strictly with their obligations to provide food stamps...to eligible applicants.” *Id.* (internal quotation marks and citations omitted). The data shows that City Defendants are not strictly complying with their obligation to provide timely benefits to eligible individuals. Biberman Dec., Exhibits M-N, Quarterly Reports. Further, City Defendants delayed producing data for three years and the data that they ultimately produced is incomplete and failed to document mandatory reporting on timeliness of immediate needs grants.

Finally, the City Defendants are not attempting to diligently comply with the 2005 Order, nor have they offered a corrective action plan to demonstrate intent to come into compliance. For

years, City Defendants failed to produce any monitoring and only after repeated requests by Plaintiffs did they ultimately provide minimal data to Class Counsel. Even more disturbing, the data they did provide showed grave noncompliance with the 2005 Order's injunctive provisions. Despite these obvious failures to comply with 2005 Order and many conversations and written communications between the Parties, City Defendants have still not provided Plaintiffs with a corrective action plan and have given Plaintiffs no indication that they intend to do so.

B. The Court Should Require the City Defendants to Enter into a Corrective Action Plan and Other Remedial Measures as Necessary

Given City Defendants' failure to comply with injunctive and monitoring obligations of the 2005 Order and their reliance on the change in their reporting format as an explanation for the delay in providing monitoring data, Plaintiffs seek a corrective action plan from the City Defendants by January 19, 2024, outlining the steps they will take to increase timely processing and provide benchmarks for meeting their legally mandated timely processing obligations.

Plaintiffs respectfully request that the corrective action plan include: (1) monitoring to Demonstrate Compliance with Paragraph 3 of the 2005 Order; (2) a date by which City Defendants will be in full compliance with the timely processing and issuing of benefits as required by law and Paragraph 3 of the 2005 Order and a plan for how City Defendants will reach this deadline; (3) a comprehensive analysis examining the reasons for the delays and regular meetings with Plaintiffs' counsel to discuss these findings; (4) quarterly reporting on all the waivers from the State and Federal Governments that are in effect and are available to City Defendants, and finally (5) posting Notice of Rights as outlined in Paragraph 5 of the 2005 Order in Benefits Access Centers, and on City Defendants' website and the Access HRA application portal. Plaintiffs' proposed corrective action plan is annexed hereto as a proposed order.

Given the significant changes to HRA's application procedures since the 2005 Order, and specifically since 2020, Plaintiffs may seek other and further relief including limited discovery on the impact of the On-Demand call system on E-SNAP and immediate needs grant processing.

C. Plaintiffs are Entitled to Fines and Fees as a Result of the City Defendants' Failure to Comply with the 2005 Order

In this case, Plaintiffs seek compliance with the 2005 Order, as City Defendants have been out of compliance for three years, and class members continue to be harmed due to the City Defendants' failure to comply with the injunctive provisions. If City Defendants cannot comply with the 2005 Order or cannot provide a comprehensive corrective action plan by January 19, 2024, Plaintiffs are entitled to fines to compel compliance and compensate class members who were entitled to emergency benefits and did not receive them in a timely manner in violation of the 2005 Order.

Despite meeting and conferring twice, and a direct request from Plaintiffs' counsel, Defendants have yet to offer a comprehensive corrective action plan to come into compliance or to indicate any steps they have taken to improve their compliance. "[S]anctions for civil contempt serve two purposes: to coerce future compliance and to remedy any harm past noncompliance caused the other party." *Weitzman v. Stein*, 98 F.3d 717, 719 (2d Cir. 1996) (citing *United States v. United Mine Workers of America*, 330 U.S. 258, 302-04 (1947)). In determining sanctions for civil contempt, the district court "is vested with wide discretion in fashioning a remedy." *Weitzman*, 98 F.3d at 719. "If a state agency refuses to adhere to a court order, a financial penalty may be the most effective means of insuring compliance." *Hutto v. Finney*, 437 U.S. 678, 691 (1978). In this case, Plaintiffs seek fines both to secure compliance and to compensate class members who were entitled to receive timely emergency benefits.

It is not uncommon for courts to hold parties in civil contempt and impose significant fines for failure to comply with an order of the Court. *See Casale v. Kelly*, 710 F. Supp. 2d 347, 363-64 (S.D.N.Y. 2010) (holding the City of New York in civil contempt and imposing a prospective fine of \$500 per incident of enforcement, increasing by \$500 every three months up to a maximum of \$5,000, unless within 60 days the City filed and published an affirmation demonstrating its intent to abide by the orders and then abiding by them); *Paramedics Electromedicina Comercial v. GE Medical Systems Information Technologies*, 369 F.3d 645, 657-58 (2d Cir. 2004) (upholding the district court's finding of civil contempt and imposition of sanctions but remanding to determine the amount based on the compensatory and coercive purpose of the sanctions); *McCain v. Dinkins*, 639 N.E.2d 1132, 1138-39 (N.Y. 1994) (finding the City of New York in contempt for their failure to provide timely shelter placements to families in need and imposing fines on the City to compensate the aggrieved families).

In *Casale v. Kelly*, when the City failed for years to comply with the Court's order to stop enforcing unconstitutional criminal statutes, the Court, after holding the City in contempt, agreed with the plaintiffs' request to impose a coercive prospective sanction. *Casale*, 710 F. Supp. 2d at 364. For each prospective violation of the order, the City would be fined. *Id.* The fines increased progressively, starting at \$500 per incident of enforcement and increasing by \$500 every three months of any incident of enforcement thereafter, up to a maximum of \$5,000. *Id.* The court found that fines were appropriate to secure the City's compliance with its order because "the contemnor is able to purge the contempt . . . by committing an affirmative act, and thus carries the keys of his prison in his own pocket." *Id.* at 363. Here too, City Defendants hold the proverbial keys to their own prison. By providing a corrective action plan and following it to reach compliance with the 2005 Order, they can purge their contempt and avoid sanctions.

Similarly, in *McCain v. Dinkins*, the New York Court of Appeals found the imposition of fines on the City of New York appropriate for their failure to find appropriate housing for shelter applicants. *McCain*, 639 N.E.2d at 1139. In *McCain*, the court also used a progressive fine structure and ordered that the fines be paid directly to the families who were forced to spend the night in the City's Emergency Assistance Units before being appropriately housed. *Id.* The court imposed an initial fine of \$50.00 for the first night, and then \$100.00 per night per family for every night thereafter. *Id.* *Casale* and *McCain* illustrate a court's authority to use fines to both secure compliance with an order and to remedy the harm caused by a party's failure to comply.

Here too, Plaintiffs seek sanctions to both compel the City Defendants to cure nearly three years of noncompliance with the 2005 Order and to offer some relief to those households who go hungry due to the City Defendants' failure to meet the statutory and regulatory mandates for providing emergency benefits. If City Defendants cannot comply or provide a corrective action plan, the Court must impose fines to force them to cure their contempt.

In addition, Plaintiffs seek attorneys' fees to compensate them for the time necessary to enforce the terms of the 2005 Order.

CONCLUSION

For the foregoing reasons, the Court should grant the Plaintiffs' motion for civil contempt, direct City Defendants to take the corrective actions necessary as outlined in Plaintiffs' Proposed Order, impose fines if the City Defendants cannot provide a comprehensive correction action plan to Plaintiffs' counsel by January 19, 2024, and award attorneys' fees for the time necessary to enforce the terms of the 2005 Order.

Dated: New York, NY
December 18, 2023

Respectfully submitted,

/s/ Saima Akhtar

Saima Akhtar
**NATIONAL CENTER FOR LAW AND
ECONOMIC JUSTICE**
50 Broadway, Suite 1500
New York, NY 10004
Tel: (646) 558-6152
akhtar@nclej.org

/s/ Abby Biberman

Abby Biberman
Kate Fetrow
Julia Russell
NEW YORK LEGAL ASSISTANCE GROUP
100 Pearl St., 19th Floor
New York, NY 10004
Tel: (212) 613-5000
abiberman@nylag.org
kfetrow@nylag.org
jrussell@nylag.org

/s/ Rodrigo Sanchez-Camus

Rodrigo Sanchez-Camus
Jesenia Ponce
**NORTHERN MANHATTAN IMPROVEMENT
CORPORATION**
45 Wadsworth Avenue, 6th Floor
New York, NY 10033
Tel: (212) 822-8300
rodrigosanchez@nmic.org
jeseniaponce@nmic.org

/s/ Emily Lundgren

Emily Lundgren
Kathleen Kelleher
Judith Goldiner
Edward Josephson
Anne Callagy
Susan Welber
Camille Zentner
THE LEGAL AID SOCIETY
49 Thomas Street, 5th Floor
New York, NY 10013
Tel: (212) 298-5232

elundgren@legal-aid.org
kkelleher@legal-aid.org
jgoldiner@legal-aid.org
ejosephson@legal-aid.org
acallagy@legal-aid.org
sewelber@legal-aid.org
czentner@legal-aid.org