

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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D.B., E.M., L.R., T.M., ON BEHALF OF
THEMSELVES AND ALL OTHERS
SIMILARLY SITUATED,

Plaintiffs,

Index No. 11 / 402 759

-against-

SUMMONS

RONALD E. RICHTER, in his official capacity as
Commissioner of The New York City Administration for
Children's Services, and THE CITY OF NEW YORK

Defendants.

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CITY OF NEW YORK DEPT
OFFICE OF COMMUNICATIONS UNIT

To the above-named Defendants:

YOU ARE HEREBY SUMMONED and required to serve upon Plaintiffs' counsel an answer to the complaint in this action within twenty (20) days after the service of this summons, exclusive of the day of service, or within thirty (30) days after service if this summons is not personally delivered to you within the State of New York. In case of your failure to answer, judgment will be taken against you by default for the relief demanded in the complaint.

Venue in this Court is proper because Plaintiffs are individuals who have been or will unlawfully discharged by The New York City Administration for Children's Services ("Children's Services") from New York City foster care to homelessness or other housing conditions deemed unsuitable under applicable New York State law and regulations; who have not received or will not receive adequate assistance from Children's Services in identifying and securing adequate post-foster care housing as required by applicable New York law, regulations,

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and common law; and who have not received or will not receive post-discharge supervision until their 21st birthdays as required by applicable New York law, regulations, and common law. The complaint is brought on behalf of a class of similarly situated individuals.

Dated: New York, NY
October 17, 2011

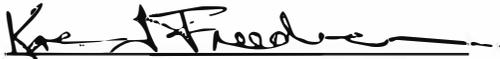
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CLASS ACTION COMPLAINT

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Plaintiffs, D.B., E.M., L.R., and T.M., by their attorneys, The Legal Aid Society, Davis Polk & Wardwell LLP, and Lawyers for Children, for their complaint allege, upon knowledge as to their own acts and upon information and belief as to all other matters, as follows:

Nature of the Action

1. This class action complaint is brought on behalf of a class of youth presently or formerly in the custody of the New York City Administration for Children's Services (also known as "Children's Services" or "ACS") who have been or will be unlawfully discharged from the foster care system into homelessness or to other housing conditions deemed unsuitable under long-standing New York law, who have not been or will not be provided appropriate housing services in preparation for discharge from the foster care system as required under New York law, and who have not been or will not be provided with supervision after discharge until their 21st birthdays as required under New York law.

2. The New York State Constitution, statutes, regulations, and controlling case law (a) require Defendants to provide assistance to Plaintiffs and members of the Class (as defined below) in identifying and securing adequate post-foster care housing; (b) prohibit Defendants from discharging Plaintiffs and members of the Class from foster care unless a suitable residence exists that is reasonably expected to remain available to them for at least one year; and (c) require Defendants to supervise all Plaintiffs and members of the Class (even those who have been discharged to suitable post-foster care housing) until their 21st birthdays.

3. Notwithstanding these unambiguous legal obligations, Defendants have failed to provide assistance to Plaintiffs, and those similarly situated, in identifying and securing adequate post-foster care housing and have frequently discharged young people from foster care to

unsuitable housing conditions—including discharge to application offices for emergency homeless shelters, as well as to the streets of New York City.

4. New York City does not provide foster care services to young people after their 21st birthdays, except in limited cases in which ACS, at its discretion, agrees to keep young people in care for a short period of time as “exceptions to policy.” Each year, approximately 800-1,100 young people, ages 18-21, are discharged from foster care to their own responsibility. Despite repeated requests from the New York State Assembly (the “State Assembly”) and the New York City Council (the “City Council”), Defendants have been unable to provide meaningful data on the number of young people discharged from foster care, annually or in the aggregate, into homelessness or other unsuitable housing conditions. Nonetheless, every indication is that this number is alarmingly high. In March 2007, the Commissioner of the New York City Department of Homeless Services testified publicly that he believes that 18-26% of New York City youth who leave foster care end up in homeless shelters. Even worse, a March 2008 report commissioned by the City Council noted that approximately 29% of homeless youths surveyed in New York City were, at one time, in New York City’s foster care system. Defendants’ inability to provide more specific data on this issue underscores the fact that they have not complied with their legal obligations.

5. Young people discharged from foster care generally are those individuals least prepared, and most lacking in the skills and resources necessary, to survive on their own and, not surprisingly, those individuals who fall far behind their non-foster care peers in education, employment, health care, and housing. According to a series of recent studies of youth in foster care in the Midwest, conducted by the Chapin Hall Center for Children, nearly 25% of young people who age out of foster care do not possess a high school diploma or its equivalent by their

21st birthdays, which is nearly twice as many as their non-foster care peers. Nearly 50% of young people who age out of foster care are unemployed on their 21st birthdays, which is nearly 15% higher than their non-foster care peers. Moreover, nearly one-half of those foster care “graduates” who are employed earn less than \$5,000 per year. Perhaps most tragically, young people who age out of foster care are more than ten times as likely to be arrested than their non-foster care peers.

6. Defendants’ failures to comply with the law are neither new nor have they been countenanced by the courts. Nearly 25 years ago, in Palmer v. Cuomo, 121 A.D. 2d 194 (1st Dept. 1986), the First Department of the Appellate Division affirmed a lower court’s holding that New York City and other government defendants had breached their duties to prepare a group of ten youth in foster care, between the ages of 17 and 21, for independent living outside of the foster care system and had failed to supervise those young people who already had been discharged from foster care. The Appellate Division confirmed that controlling New York law prohibits defendants from discharging young people from foster care into homelessness or to other inadequate housing conditions and required defendants—upon discharging youth from foster care—to “ensur[e] that [the youth’s] basic needs of food, clothing and housing, outside of the New York City municipal shelter system, are met.” Id. at 197.

7. The City Council has held a series of public oversight hearings to bring attention to the plight of young people being discharged from foster care into homelessness. The City Council recognized that Defendants are violating New York law by discharging young people from foster care to unsuitable housing conditions (including homeless shelters), and the Chairperson of the General Welfare Committee observed that this “very sad reality happen[s] routinely.” During these hearings, ACS officials repeatedly admitted that they are unable to

(a) confirm that youth in foster care are not being discharged into homelessness; (b) account for the post-foster care whereabouts of the majority of young people under the age of 21 who were discharged to their own responsibility; or (c) provide any meaningful data on the magnitude of these problems. Accordingly, Defendants' actions and inactions constitute tacit admissions that they are in violation of New York law. In fact, during a City Council hearing on June 21, 2007, the Deputy Commissioner of Family Permanency Services for ACS was asked: "The question is, right now are you living up to the State regulations? It's ACS's responsibility to prepare these young people and ensure they do not go into the shelter, can you tell me definitively that's what's happening right now?" The Deputy Commissioner responded candidly: "No, I can't."

8. Plaintiffs seek declaratory and injunctive relief in response to Defendants' systematic (a) failure to prepare and assist Plaintiffs in locating, and helping to secure, available post-foster care housing alternatives for which there is a reasonable expectation that such housing will remain available to them for at least one year; (b) practice of discharging young people, ages 18-21, from foster care to housing conditions—including homelessness—which are deemed unsuitable under controlling New York law; and (c) failure to supervise young people who have been discharged from foster care until their 21st birthdays, which supervision requires at least monthly (or, in some cases, quarterly) contacts, referrals to housing services, and sufficient follow-up efforts to ensure that the young people are receiving the services for which they were referred.

Partics

9. Plaintiff D.B. is 21 years old. She currently resides in the State of New York and is in foster care in the custody of ACS. As a result of Defendants' violations of New York law,

D.B. is at risk of being discharged to homelessness because she turned 21 without having a stable and adequate housing option in place.

10. Plaintiff E.M. is 21 years old. She currently resides in the City and State of New York and is in foster care in the custody of ACS. As a result of Defendants' violations of New York law, E.M. is at risk of being discharged to homelessness because she turned 21 without having a stable and adequate housing option in place.

11. Plaintiff L.R. is 21 years old. She currently resides in the City and State of New York and is in foster care in the custody of ACS. As a result of Defendants' violations of New York law, L.R. is at risk of being discharged to homelessness because she turned 21 without having a stable and adequate housing option in place.

12. Plaintiff T.M. is 20 years old. She currently resides in the City and State of New York and was in foster care in the custody of ACS until her discharge in 2009. As a result of Defendants' violations of law, T.M. is in danger of becoming homeless before she turns 21 on February 10, 2012.

13. Defendant City of New York is a domestic municipal corporation, duly organized and existing under and by virtue of the laws of the State of New York. ACS is a mayoral agency of the Defendant City of New York charged with administering child welfare and protecting New York City's children from abuse and neglect. On January 10, 1996, the City of New York renamed its child welfare agency and created ACS as the first agency devoted solely to serving children and their families. According to its mission statement, ACS's mission is "to ensure the safety and well-being of New York City children." ACS is, and was at all times relevant hereto, an agency or department of New York City, with its principal offices located at 150 William Street, in the City, County, and State of New York.

14. Defendant Ronald E. Richter is the Commissioner of ACS and is sued in his official capacity. Defendant Richter is responsible for ensuring the safety and well-being of New York City children.

Jurisdiction and Venue

15. This Court has jurisdiction over this action pursuant to Articles 3 and 30 of the New York Civil Practice Law and Rules (the “CPLR”), Sections 301 and 3001. Venue in this Court is proper pursuant to Article 5 of the CPLR, Sections 503(a), 504(3), and 505(a).

Class Action Allegations

16. This action is brought as a class action pursuant to Article 9 of the CPLR. Defendants’ conduct has affected the entirety of the class of young people defined below, making declaratory and injunctive relief appropriate for all of the individual class members.

17. Plaintiffs bring this action on behalf of a class of all youth in New York City, (1) who either (a) are currently between 17 and 21 years old, inclusive, and who either currently are in, or formerly were in, the custody of Defendants, or (b) are over 21 years old but remain in foster care pursuant to an exception to policy; and (2) who (a) have been discharged or will be discharged from foster care without a residence other than a shelter for adults, shelter for families, single-room occupancy hotel or any other congregate living arrangement which houses more than 10 unrelated persons and without a reasonable expectation that the residence will remain available to the child for at least the first 12 months after discharge; or (b) have not been provided, are not being provided, or will not be provided with appropriate assistance, as mandated by New York law, in foster care in identifying and securing adequate post-foster care housing as defined in subsection (2)(a) above; and/or (c) have been final discharged from foster care, but have not been supervised, consistent with the requirements of New York Social

Services Law § 398(6)(h) and 18 N.Y.C.R.R. § 430.12(f)(4)(i)(b), until their 21st birthdays (the “Class”).

18. The number of persons in the Class is so numerous as to make joinder impracticable. By ACS’s own estimates, between 800-1,100 youth have a goal of discharge to another planned living arrangement with a permanency resource (“APPLA”) at any given time. The Class perpetually changes size as youth enter and leave foster care, but, at any given time, the Class comprises at least hundreds of youth.

19. There are questions of law and fact common to all members of the Class, including whether Defendants, through their policies and practices, have failed to carry out their duties to assist Plaintiffs in locating and securing appropriate housing alternatives, have failed to supervise all Plaintiffs until their 21st birthdays, and have engaged in a pattern and practice of discharging Plaintiffs to homelessness or to other inadequate housing conditions. The violations of New York statutes, regulations, and common law thus are questions of law and fact common to the members of the Class and predominate over any questions affecting only individual members.

20. The claims of the named representatives of the Class are typical of the claims of absent members of the Class in that they all arise from the same wrongful course of conduct by Defendants and are based on the same legal theories.

21. The representative parties will fairly and adequately protect the interests of the class. Plaintiffs have retained counsel competent and experienced in class action and complex litigation. The representative parties are not aware of any conflict of interest among members of the Class.

22. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy.

23. The individual members of the Class are without adequate financial means to file individual suits on their own behalf to seek redress for Defendants' repeated violations of their rights.

Legal Framework and Requirements

24. The New York State Constitution, statutes, and regulations, as well as the New York courts, have long imposed an affirmative obligation on Defendants to ensure that Plaintiffs and other members of the Class have suitable post-foster care housing and to supervise them until they reach the age of 21.

A. Obligations under the New York State Constitution

25. Section 1 of Article XVII of the New York State Constitution directs that “[t]he aid, care and support of the needy are public concerns and shall be provided by the state and by such of its subdivisions, and in such manner and by such means, as the legislature may from time to time determine.”

B. Principal Obligations under New York Social Services Law

26. Children enter foster care in New York City by being removed from their parents or legal guardians and placed in foster care by a family court judge; following charges or an adjudication of abuse or neglect; through voluntary placement with ACS by a parent, legal guardian, or other person having custody of the child; through placement as a result of their status as “destitute children;” or as the result of “persons in need of supervision” cases. These placements are governed by Articles 7 and 10 of the New York Family Court Act and Social

Services Law §§ 358-a and 384-a. All foster care placements must be approved and periodically reviewed by a Family Court judge.

27. In New York State, foster care is provided and administered by local districts. As a “social services district,” New York City is “responsible for the welfare of children who are in need of public assistance and care, support and protection” residing or found in New York City. See New York Social Services Law § 395; see also New York Social Services Law §§ 56, 61, 62, 77.

28. New York Social Services Law Section 398(6)(h) provides that all City public welfare officials have the duty to “[s]upervise children who have been cared for away from their families until such children become twenty-one years of age or until they are discharged to their own parents, relatives within the third degree or guardians, or adopted.” Thus, any children in foster care who are not adopted or reunified with their families must be supervised by Defendants until their 21st birthdays. This obligation also is codified in 18 N.Y.C.R.R. § 430.12(f)(4)(i)(b), which applies to all children who have been discharged to APPLA or are deemed to have been discharged to APPLA and have permanently left the home of their parents or relatives prior to the termination of the district’s custody.

29. To fulfill these obligations, New York City is permitted to enter into contracts to purchase services from private authorized agencies. See New York Social Services Law § 398(6)(g). Defendants have contracts with approximately 25–30 Foster Care Provider Agencies (the “Foster Care Provider Agencies” or “Provider Agencies”), which provide care to nearly all New York City children in foster care. Defendants’ model contract with the Provider Agencies directs that the Provider Agencies must comply with applicable statutes, regulations, and court determinations but expressly provides that Defendants retain the ultimate responsibility

for the protection and preservation of the welfare of each child receiving services. Defendants thus are required to monitor and evaluate the Provider Agencies on an ongoing basis and retain the legal responsibility for children in foster care and to ensure that their care and treatment complies with the law.

C. Landmark Appellate Division Decision in *Palmer v. Cuomo*

30. In *Palmer v. Cuomo*, 121 A.D. 2d 194 (1st Dep't 1986), the Appellate Division confirmed that the aforementioned statutes and related regulations (a) create an affirmative duty for Defendants to provide adequate housing assistance and post-discharge supervision to children in foster care; and (b) prohibit Defendants from discharging children from foster care into homelessness or to other unsuitable housing conditions.

31. In *Palmer*, ten young people in foster care between the ages of 17 and 21 sued, inter alia, New York City, alleging that the defendants had breached their duty to prepare all of the plaintiffs for independent living outside of the foster care system and had failed to supervise those plaintiffs who already had been discharged from foster care. The Appellate Division affirmed the New York County Supreme Court's order preliminarily enjoining the discharge of the plaintiffs who were still in foster care and ordering the defendants to provide supervision to all of the plaintiffs until they turned 21. The Appellate Division affirmed the Supreme Court's holding that the defendants were required to "ensur[e] that [the children's] basic needs of food, clothing and housing, outside of the New York City municipal shelter system, are met." *Palmer*, 121 A.D. 2d at 196. The Appellate Division modified the Supreme Court's order only to the extent of "enjoining the city to perform its pre-discharge preparatory obligations and its post-discharge supervisory responsibilities, and directing the State to promulgate regulations governing the statutory obligation to supervise." Id.

D. Specific Housing and Discharge Obligations Set Forth in New York State Regulations for Children in Foster Care with a Permanency Goal of APPLA

32. All children in foster care are assigned a permanency goal. Defendants' stated priority is to reunify children in foster care with their families or find adoptive families for them. However, as events develop (in particular, as youth in foster care get older), adoption and reunification often are not viable permanency goals for older children in foster care. Thus, Article 10-A of the Family Court Act also provides for a permanency goal of discharge to "placement in another planned permanent living arrangement that includes a significant connection to an adult who is willing to be a permanent resource for the child," which was formerly known as "independent living." N.Y. Family Court Act § 1089. APPLA is "a permanency planning goal to assist foster care youth in their transition to self-sufficiency by connecting the youth to an adult permanency resource, equipping the youth with life skills and, upon discharge, connecting the youth with any needed community and/or specialized services." 18 N.Y.C.R.R. § 430.12(f). Thus, beginning at age 14, children in foster care for whom adoption and reunification are not viable permanency goals, may be assigned the permanency goal of APPLA. See id.

33. The New York State Office of Children and Family Services has issued regulations setting forth detailed standards of conduct for Defendants and other local districts with respect to the provision of services to, and discharge of, children in foster care with a permanency goal of discharge to APPLA.

34. Defendants, whether directly or indirectly through the Foster Care Provider Agencies, must begin to provide youth in foster care with structured programs that teach independent living skills by the later of the young person's 14th birthday or the date on which the permanency goal of discharge to APPLA is selected. Independent living skills include

instruction and supervised performance in, among other things, apartment finding, budgeting, job searching, and career counseling. 18 N.Y.C.R.R. § 430.12(f)(2)(i)(a). This training must be provided (and documented) without interruption until the young person is discharged from foster care. 18 N.Y.C.R.R. § 430.12(f)(2)(ii)(a).

35. The regulations provide a well-defined standard for the discharge of young people from foster care to APPLA. These regulations provide that:

No child may be discharged to another planned living arrangement with a permanency resource, unless the child has a residence other than a shelter for adults, shelter for families, single-room occupancy hotel or any other congregate living arrangement which houses more than 10 unrelated persons and there is a reasonable expectation that the residence will remain available to the child for at least the first 12 months after discharge.

18 N.Y.C.R.R. § 430.12(f)(3)(i)(c) (emphasis added). In other words, discharge into homelessness or to a shelter is expressly forbidden.

36. Young people between the ages of 18 and 21 may be discharged from foster care to APPLA, provided that they are first placed on a court-approved trial discharge for a period of six months. Defendants must place all young people on trial discharge (prior to final discharge) and retain custody of and responsibility for these young people during the six-month trial discharge period. 18 N.Y.C.R.R. § 430.12(f)(4)(i)(a). During trial discharge, young people remain in foster care even though they do not reside in a foster home or group setting. *Id.* Trial discharge may be extended by the Family Court or at the discretion of Defendants if they conclude that a young person needs to remain in foster care. Notwithstanding the clear statutory requirement that trial discharge last for at least six months, Defendants frequently request final discharge of young people from foster care soon after their trial discharges begin.

37. During a young person's trial discharge, Defendants must provide face-to-face and in-home contacts and services that will enable the young person to live independently after

final discharge from foster care. If a young person becomes homeless during trial discharge, Defendants are required to help that young person secure adequate housing and may not final discharge him or her without adequate housing. Id. Indeed, if appropriate housing is not available within 30 days of the date on which a young person becomes homeless, Defendants must place the youth in a suitable foster boarding home, agency boarding home, group home, or institution. Id.

38. For all young people final discharged to APPLA from foster care, Defendants “must maintain supervision of the child until the child is 21 years of age.” 18 N.Y.C.R.R. § 430.12(f)(4)(i)(b). Such supervision must include at least monthly (or, in some cases, quarterly) contacts. Id. In addition, Defendants must provide the young person with referrals to housing services and undertake “sufficient follow-up efforts to ensure that the child has begun to receive the services for which he or she was referred.” Id. Defendants are required to document these after-care contacts with the youth, the services and service providers to whom the youth has been referred, and whether the youth actually has received these services. See 18 N.Y.C.R.R. § 430.12(f)(4)(ii)(b).

39. As discussed above, New York law directs that foster care services and supervision shall be provided to youth in foster care until their 21st birthdays. ACS may (but is not statutorily required to) grant an “exception-to-policy” to keep a young person in foster care past his or her 21st birthday. However, these exceptions-to-policy are granted at Defendants’ discretion, and ACS has made the process for granting such an exception-to-policy significantly more restrictive over the years.

E. Provision of “Preventive Services” under New York Social Services Law

40. New York Social Services Law Section 409-a(5)(c) requires Defendants to provide preventive services related to housing opportunities “where a social services official determines that a lack of adequate housing is the primary factor preventing the discharge of a child or children from foster care including, but not limited to, children with the goal of discharge to independent living.” See also 18 N.Y.C.R.R. § 423.2(b)(16), (c)(2). In such circumstances, the statute requires Defendants to provide cash grants or other assistance “sufficient to obtain adequate housing.” New York Social Services Law § 409-a(5)(c). The statute specifies amounts of money for monthly rent, first month’s rent, broker’s fees, and security deposits. The regulations confirm that “[i]n no case will a temporary residence in a shelter . . . a hotel/motel or any other such emergency or transitional residential facility be considered adequate housing.” 18 N.Y.C.R.R. § 423.2(b)(16)(iii).

Housing Alternatives Available for Children in Foster Care

41. While affordable housing options in New York City are difficult to find, there are a number of publicly or privately funded housing alternatives available specifically to, and designated for, children in foster care who have a goal of discharge to APPLA but cannot afford to rent on the open market. However, because of Defendants’ lack of planning, repeated failures, and imposition of unnecessary barriers, foster care youth are systematically denied the ability to access or complete the processes that would allow them to make use of these alternatives. Once discharged from foster care, they lose their rights to any priority status that had been available and are relegated to the long waiting lists experienced by non-priority applicants. These housing alternatives include, but are not limited to, the following:

A. ACS Housing Subsidies and Lump-Sum Housing Grants

42. Youth in foster care between the ages of 18 and 21 are entitled to ACS housing subsidies of up to \$300 per month (the “ACS Housing Subsidies”) for up to 36 months as long as they retain their trial discharge status. New York Social Services Law § 409a-5(c). In addition, they also may qualify for two lump-sum grants of up to \$1,800 each for security deposits, broker’s fees, moving expenses, rent or mortgage arrears, and furniture purchases (the “ACS Lump-Sum Grants”). The total amount available to any one young person from the ACS Housing Subsidies and Lump-Sum Grants may be as high as \$10,800. See 18 N.Y.C.R.R. § 423.4(b)(2)(ii)-(iii).

43. Defendants fail to inform young people in foster care about these opportunities and fail to assist them in securing the ACS Housing Subsidies and Lump-Sum Grants. Moreover, there is often substantial delay while Defendants issue the checks required to secure an apartment and grants for furniture or rent arrears once a lease is secured. Defendants’ delays cause young people to either lose apartments or force them to move into unfurnished apartments.

44. Defendants have not properly trained caseworkers at both ACS and Foster Care Provider Agencies to inform and assist young people in applying for the ACS Housing Subsidies and Lump-Sum Grants.

B. NYCHA Public Housing Priority and Priority for Section 8 Leased Housing Vouchers

45. The New York City Housing Authority (“NYCHA”) is the largest public housing authority in the United States. NYCHA provides youth transitioning out of foster care with priority status in the allocation of public housing (the “NYCHA Public Housing Priority”). With waiting lists that are years (even decades) long for the low income and working members of the general public, the opportunity to take advantage of this scarce priority is crucial.

46. In addition, the Leased Housing Department of NYCHA administers the Federal Section 8 Housing Assistance Program for New York City. This program provides funding for ongoing rental assistance. Applicants who are found eligible for Section 8 assistance through this program receive vouchers (“Section 8 Vouchers”) enabling them to rent apartments that meet Section 8 inspection standards on the private market at federally established “fair market rates” while contributing at most 30% of their own income toward rent. The Section 8 Voucher covers the remainder of the rent. The Federal Department of Housing and Urban Development grants a limited number of Section 8 Vouchers to each locality, and NYCHA has chosen to make youth transitioning out of foster care one of its priority groups to receive them. In December 2009, NYCHA imposed a temporary freeze on the issuance of new Section 8 Vouchers in New York City, which, as of the date of this Complaint, remains in effect.

47. Defendants routinely fail to provide Plaintiffs the assistance necessary to access NYCHA Public Housing Priority and Section 8 Vouchers. Indeed, Defendants often impose arbitrary and unnecessary barriers to such access.

48. As a preliminary matter, Defendants (a) require foster care youth to seek and obtain approval from Defendants before applying to NYCHA for these housing programs, and (b) prevent certain youth from even submitting an application for NYCHA Public Housing and/or Section 8 Vouchers, based on ACS’s belief that NYCHA will find these youth ineligible. Indeed, ACS has turned away young people who wish to apply for these housing sources for a number of reasons, including ACS’ stated belief—after having denied them the opportunity to apply earlier—that the process will take too long and that NYCHA will not make a determination before the youth’s 21st birthday. Perhaps most strikingly, Defendants routinely fail to inform foster care youth of their right to challenge determinations by NYCHA that they have been

deemed ineligible for NYCHA Public Housing or Section 8 Vouchers and fail to assist them in building the record to support such a challenge.

49. For those youth who ACS concludes may be eligible, ACS and/or the Provider Agencies routinely fail to submit applications, comply with timelines for submission of documentation, and forward notices and other relevant information from NYCHA to the youth.

50. For example, applications for the NYCHA Public Housing Priority include an interview of the applicant to determine eligibility, which usually takes place four to six weeks after submission of the application. If follow-up documentation is required, NYCHA contacts ACS or the Foster Care Provider Agencies. However, ACS and the Foster Care Provider Agencies routinely fail to inform the youth of such follow-up requests and to assist them in obtaining and providing the documentation before the stated deadline.

51. Similarly, applications for the Section 8 Vouchers may include multiple interviews of the applicant, the first of which ordinarily takes place within six months of submission of the application. Eligibility requirements and time frames are strict. Once provided with a Section 8 Voucher, voucher holders have six months within which to find and lease an apartment. ACS or the Foster Care Provider Agency must assist the young person in locating an appropriate apartment on the private market and assist him or her in negotiating with the landlord, having the apartment inspected by NYCHA, and completing the necessary paperwork. This regularly does not occur. Moreover, Defendants routinely fail to inform youth about the procedures available to seek extensions of time to obtain Section 8 Vouchers.

52. As another example of creating barriers to successful receipt of housing relief, Defendants regularly list the Foster Care Provider Agency address as the mailing address for the youth on their NYCHA applications, but then fail to ensure that the Provider Agencies deliver

letters, notices, requests for information, and eligibility determinations to such youth. As a result, youth in foster care are often unable to complete their applications because they are not aware that information is missing, and they are unable to challenge findings of ineligibility because they are not aware that they have been rejected.

53. These failures to receive notices and provide information often mean the difference between being housed and being homeless. If an applicant is found ineligible, for example, the applicant may challenge that finding and, if successful, may have it reversed, but only if the hearing is timely requested. If deadlines are not timely met and NYCHA “deems dead” an application or finds an applicant ineligible, that applicant is normally barred from re-applying for 18 months. For most young people in foster care, that 18-month period will not end until they are over 21 years old and thus are no longer eligible for the NYCHA Public Housing and Section 8 Voucher priorities for foster care youth.

54. Given the tight timetables described above, it is imperative that applications to NYCHA be submitted on behalf of Class members immediately or shortly after their 18th birthdays, when they first become eligible to apply. Nonetheless, Defendants do not have any protocol for this process, have not set forth any standards for preparation of these applications, and do not require submission of these applications by a date certain. Applications are frequently lost or not completed, and many young people have to fill out multiple applications before one is submitted to NYCHA by Defendants. According to an October 5, 2007 letter sent from ACS officials to the City Council, of the 982 children in foster care that were discharged to APPLA in 2006, only 115 received the NYCHA Public Housing Priority and only 85 received Section 8 Vouchers. Defendants admitted to keeping no information on whether NYCHA applications were filed on behalf of the discharged youth, whether filed applications were

deemed to be incomplete or applicants were found to be ineligible, whether rejections were challenged or resubmitted, or whether young people actually rented apartments once they were found to be eligible. Defendants also admitted to keeping no information regarding the reasons that NYCHA applications were not filed for foster care youth, that applications were deemed to be incomplete, that applicants were found to be ineligible, and that rejections were not challenged or resubmitted.

55. In addition, Defendants regularly place youth in foster care settings outside of the five boroughs of New York City, without informing them that they will not be eligible for NYCHA Public Housing if they do not live or work in New York City. Defendants fail to help these youth obtain either employment in New York City or, alternatively, appropriate housing.

C. Additional Housing Programs

56. There are additional public and private housing programs and subsidies available to young people who have been or will be discharged from foster care to APPLA. For example, there are also housing units available to young people leaving foster care to APPLA in the “New York New York III” program.

57. Defendants have failed to properly train ACS Staff and the Provider Agency Staff to inform and assist young people in applying for these other housing opportunities.

Young People Between the Ages of 18 to 21 are Being Unlawfully Discharged from Foster Care into Homelessness and to other Unsuitable Housing Arrangements

58. The foster care population is getting older. According to Defendants, nearly one-half of all young people in foster care are at least 12 years old. Each year, between 1999 and 2009, approximately 800-1,100 young people in foster care were discharged to APPLA. These children were not adopted or reunified with family members.

59. Defendants have not met their legal obligation to assist foster care youth in applying for and obtaining lawful permanent housing. Worse, Defendants often discharge youth with the goal of APPLA from foster care to unstable living arrangements that are overcrowded, unsuitable, and not likely to remain available for at least 12 months (as required by law). Such living arrangements include temporary stays with former foster care families, friends' apartments, and even homeless shelters. Thus, Defendants have approved discharges of young people from foster care to homelessness or other inadequate living situations in clear violation of long-standing and controlling New York law. Moreover, despite their obligations to do so, Defendants have not held the Provider Agencies accountable for (1) not assisting young people with applying for and finding lawful permanent housing; and/or (2) discharging young people from foster care to homelessness or other unsuitable housing conditions.

60. Notwithstanding repeated requests from the State Assembly, City Council, The Legal Aid Society, and Lawyers for Children, Defendants are unable to identify the number of young people in New York City who are discharged from foster care to APPLA into homelessness or to other inadequate housing conditions in violation of the law. Given that Defendants are legally obligated to supervise young people discharged from foster care to APPLA until they turn 21, their inability to provide information on the number of young people discharged into homelessness or to other inadequate housing conditions is further evidence that they are not satisfying their legal obligations.

61. The statistics that are available strongly suggest that as many as 30% of these New York City children end up at some point in a homeless shelter:

- At a March 15, 2007 City Council hearing, the Commissioner of the New York City Department of Homeless Services testified that 18-26% of New York City children who age out of foster care end up, immediately or eventually, in a homeless shelter.

- Frustrated with Defendants' inability to provide meaningful information, the City Council commissioned a study on homeless youths in New York. According to the report, approximately 29% of homeless youths surveyed in New York City were, at one time, in the City's foster care system.

Importantly, none of this data includes young people formerly in foster care who were homeless on the New York City streets and who did not go to a shelter for help.

62. This data and information is echoed nationally. According to a 2008 report by the National Association of Counties, approximately 30% of homeless people report having been in foster care. Young people who age out of foster care historically struggle to survive on their own. A series of recent studies of children in foster care in the Midwest, conducted by the Chapin Hall Center for Children, determined that nearly 25% of young people who age out of foster care do not possess a high school diploma or its equivalent by the time they turn 21 (which is nearly twice as many as their non-foster care peers). Nearly 50% of young people who age out of foster care are unemployed when they turn 21 (which is nearly 15% higher than their non-foster care peers). Perhaps most tragically, young people who age out of foster care are more than ten times as likely to be arrested than their non-foster care peers.

New York State Assembly's and City Council's Hearings on these Issues

63. The importance of the plight of young people aging out or being discharged from foster care to APPLA to unfit housing conditions prompted the City Council to hold several public oversight hearings on these issues. At these hearings, ACS officials have made a number of striking admissions regarding Defendants' noncompliance with New York law.

64. During a hearing held by the City Council Committee on General Welfare on March 15, 2007, the City Council was informed that, as noted above, as many as 26% of young people who age out of foster care end up in homeless shelters. The City Council put then-

Commissioner John B. Mattingly “on notice” that they would follow up with Defendants at the next hearing to discuss what Defendants are doing to prevent young people from leaving foster care and ending up in a shelter.

65. On June 21, 2007, the City Council Committee on General Welfare held a follow-up hearing on the problem of foster care children being discharged without adequate housing arrangements. Then-Chairperson Bill de Blasio reiterated that Defendants were legally barred from discharging children from foster care without suitable housing arrangements:

- “I want to emphasize, this is not just about what ACS should do. It’s not just a question of the right thing to do, it’s a question of the law. The State law governing kids in foster care makes abundantly clear that it is ACS’s responsibility for helping these kids to have the skills necessary to live on their own and making sure they have a plan to do so and making sure they do not end up in a shelter. And that clearly is not the case for many of these young people. And we have to be clear about what it means not to follow the dictates of State law.”
- “[A]gain, legally ACS is not allowed to have kids age out and go into the shelter and it’s quite obvious that that’s happening both with DYCD and DHS shelters quite consistently.”

66. Then-Chairperson de Blasio repeatedly asked ACS officials whether Defendants were complying with New York law. Finally, he asked, “The question is, right now are you living up to the State regulations? It’s ACS’s responsibility to prepare these young people and ensure they do not go into the shelter, can you tell me definitively that’s what’s happening right now?” The Deputy Commissioner of ACS Family Permanency Services responded candidly, “No, I can’t.”

67. In addition, the City Council repeatedly asked ACS officials to provide information on the number of young people who end up in homeless shelters either immediately upon leaving foster care or shortly thereafter. The ACS officials conceded that, as very little is done to track or supervise young people once they are discharged from foster care, they are

unable to provide any sort of data on the number of young people who end up in the shelter system or a timetable for when such data would be available. The ACS officials admitted that they “don’t have the answer” for the status of at least 900 of the 1,200 young people who transitioned out of foster care in 2007. The City Council found this response unacceptable and instructed Defendants to provide information on the whereabouts of these young people.

68. On December 14, 2007, the State Assembly Standing Committee on Children and Families, Subcommittee on Foster Care held a hearing that addressed, among other things, the plight of young people aging out of foster care into homelessness. Linda Brown, the Assistant Commissioner of the New York State Office of Children and Family Services, opined that the State “knows anecdotally that many of the young people in shelters come from the foster care system and that homelessness is a serious issue for this population.” Assistant Commissioner Brown also stated that “once a final discharge is issued there is now [sic] way under current regulations for a youth to reenter care, or be provided services.” The State Assembly expressed frustration with the lack of information on the number of children in foster care who are discharged into homelessness. One assemblyperson asked ACS Deputy Commissioner Lorraine Stephens whether she had “a percentage of numbers of youth that age out and have no place to go?” Deputy Commissioner Stephens responded that Defendants “don’t have that number.” Similarly, Assistant Commissioner Brown conceded that “there is little formal data on the rates of homelessness . . . for former foster care youth.”

69. On February 26, 2008, the City Council Committee on General Welfare held another hearing jointly with the Committee on Youth Services. Then-Chairperson de Blasio opened the hearing with a succinct summary of the state of affairs:

[U]nder State law ACS is required to assist youth with accessing housing before they leave foster care, and ACS cannot legally discharge a youth

into homelessness. But at last June's hearing we heard that in fact that very sad reality happened routinely.

(emphasis added). Deputy Commissioner Stephens provided testimony but again was unable to provide concrete data on the number of children in foster care who age out or are discharged to APPLA into unfit housing conditions in violation of the New York law.

70. The City Council again expressed its shock and disappointment at Defendants' inability to supply this information. Then-Chairperson de Blasio admonished:

I am perplexed and troubled. I don't get why after a hearing we had, as long ago as we had it . . . we haven't progressed to that point, because it sounds to me like if [the Governor] called right now and said I was just looking through the laws of New York State and you're required to make sure . . . every young adult ends up in a safe situation, how many kids are not in a safe situation, you can't answer that.

Specifically, the City Council reiterated: "We expect accountability from the City on this issue and we expect to hear data from ACS that they've gathered, since our June hearing where a number of the types of data we wanted were not put forward to us." Notwithstanding the City Council's repeated requests, Defendants still have not provided this information.

Individual Plaintiffs' Factual Allegations

D.B.

71. Plaintiff D.B. is 21 years old. She was voluntarily placed into foster care by her father on August 29, 2006, shortly after her 16th birthday. On November 20, 2008, the Family Court approved a change of D.B.'s permanency goal from "Return to Parent" to APPLA.

72. Throughout the spring of 2009, D.B.'s caseworker at MercyFirst, the Foster Care Provider Agency, repeatedly noted in the case record that referrals needed to be made for D.B. to obtain housing, yet no referrals were made at that time. That summer, as D.B. was about to turn 19 years old, the caseworker informed D.B. that a referral would be made to MercyFirst's

housing and youth development program for housing, financial, employment, and career planning assistance.

73. The referral to the youth development program was not made until February 2010. At that time, the MercyFirst caseworker informed D.B. that a conference needed to be scheduled to change her permanency planning goal from “Return to Parent” to APPLA—notwithstanding the fact that the November 2008 Family Court order already had changed that goal and that a series of subsequent semi-annual permanency hearing orders of disposition from the Family Court confirmed that D.B.’s permanency planning goal was APPLA.

74. In April 2010, a MercyFirst supervisor told D.B. that D.B. would not be able to complete a NYCHA housing application because she was not residing or working within New York City. At that time, D.B. was living in a foster home on Long Island, where she had been placed by MercyFirst, and attending college in Westchester County. Accordingly, through no fault of her own, D.B. was deemed ineligible for NYCHA housing.

75. In July 2010, a case conference was held at MercyFirst. At that conference, it was noted that ACS still had not changed D.B.’s permanency goal to APPLA and that an additional conference needed to be scheduled in order to effectuate the goal change. At the conference, it was also agreed that the caseworker would contact MercyFirst’s housing specialist and find out what types of housing services were available in Long Island.

76. Following the July 2010 conference, D.B. was not provided with any information regarding housing alternatives on Long Island or elsewhere.

77. In October 2010, three months after the Family Team Conference, the MercyFirst caseworker referred D.B. to a MercyFirst Housing Specialist for assistance with housing. D.B.

was invited to a workshop at MercyFirst to complete housing applications. Thereafter, D.B. met with the MercyFirst Housing Specialist and completed an application for NYCHA housing.

78. In January 2011, the ACS Housing Unit rejected D.B.'s NYCHA application because her permanency planning goal, according to ACS' records, was not APPLA. Upon information and belief, in order for a youth in foster care to apply for housing with NYCHA or the supportive housing program New York New York III, his or her goal must be clearly stated as APPLA in Connections, the state-based computer system, or all of the youth's housing applications will be rejected.

79. Upon information and belief, despite the November 2008 Family Court order changing D.B.'s permanency goal to APPLA, ACS and MercyFirst both failed to reflect this change to D.B.'s permanency goal in Connections until February 2011.

80. In March 2011, the MercyFirst Housing Specialist informed D.B. that she would need to reapply for NYCHA housing, even though the reason for her rejection was caused by MercyFirst. According to the MercyFirst case record, when D.B. expressed concern that she would not obtain housing before her 21st birthday, the Housing Specialist told D.B. "it's no one's fault but her own that she decided to wait until turning twenty years old to apply."

81. At MercyFirst's direction, D.B. filled out another application for NYCHA housing in March 2011. That application also was rejected by NYCHA, this time because D.B. was not working or residing within the five boroughs of New York City – as she was still residing in the foster home on Long Island and attending college in Westchester County. She had been placed in the foster home on Long Island by ACS and MercyFirst.

82. D.B. had begun working in New York City prior to receipt of the rejection letter. Rather than appeal the rejection or advocate for reconsideration based on her employment status,

MercyFirst and ACS told D.B. to fill out yet another application for NYCHA housing in June, 2011 (just two months shy of her 21st birthday).

83. At D.B.'s permanency hearing in July 2011, the Court entered a finding pursuant to Family Court Act § 1089. The court found that MercyFirst and ACS had failed to adequately plan for D.B.'s discharge and therefore had failed to make the statutorily required reasonable efforts required by FCA § 1089 to effectuate D.B.'s permanency goal of APPLA. On August 18, 2011, D.B.'s final court date, ACS indicated that a three-month extension to policy had been granted in order to address the agency's failure to secure stable housing for D.B. before her discharge from foster care. D.B. turned 21 years old on August 19, 2011 without a stable and adequate housing option in place.

84. ACS and MercyFirst's unreasonable delay in changing D.B.'s goal, coupled with their provision of inappropriate housing assistance, has left D.B. in danger of being discharged from care without a stable and adequate place to live as required by New York law.

E.M.

85. Plaintiff E.M. is 21 years old. She was placed with ACS on February 11, 2006, after a finding of neglect against her mother based on mental illness and educational neglect. To date, E.M. has remained in foster care with Cardinal McCloskey Services ("Cardinal McCloskey"), a Foster Care Provider Agency. E.M. is presently working to obtain her GED and has recently found employment as an administrative assistant.

86. Although E.M. maintains contact with her biological mother, their relationship is such that E.M. cannot return to her mother's care nor are there any other supportive adults to whom E.M. can be discharged. E.M.'s permanency goal was changed to APPLA in the Bronx Family Court on February 14, 2008.

87. Since turning nineteen in August 2010, E.M. repeatedly asked her Cardinal McCloskey case workers when she could apply for housing. While she was told, again and again, that Cardinal McCloskey would apply on her behalf, no application for housing was submitted on her behalf. In late April 2011, E.M. began working on housing applications with her Cardinal McCloskey case worker who explained to E.M. that the applications had to be completed at ACS's housing office. In early May 2011, when E.M. went to ACS's housing office with her Cardinal McCloskey case worker. E.M. was told by the ACS housing specialist that her permanency goal was still "Return to Parent," and thus her housing applications could not be processed. Upon information and belief, in order for a youth in foster care to apply for housing with NYCHA or the supportive housing program New York New York III, her goal must be clearly stated as APPLA in Connections, the state-based computer system, or all of the youth's housing applications will be rejected.

88. Upon information and belief, despite the February 2008 Family Court order and in violation of Family Court Act § 1089, ACS and Cardinal McCloskey, failed to change E.M.'s permanency goal to APPLA in Connections, until June 2011.

89. In July 2011, E.M. was informed that she had been approved for NYCHA housing, but she has not been provided with any information regarding when an apartment will be available. In a Court Report dated August 19, 2011, the Cardinal McCloskey caseworker stated that E.M.'s housing packet was accepted by NYCHA on August 3, 2011 and that E.M. is "waiting to be called for an interview." On August 10, 2011, Cardinal McCloskey stated its intention to file an application with ACS for an Exception to Policy for E.M. so that she would not be discharged into homelessness on her 21st birthday. On August 25, 2011, ACS indicated that a three-month extension to policy had been granted in order to address the agency's failure

to secure stable housing for E. M. E. M. turned 21 years old on August 27, 2011 without a stable and adequate housing option in place.

90. ACS and Cardinal McCloskey's unreasonable delay in changing E.M.'s goal, coupled with their provision of inappropriate housing assistance, has left E.M. in danger of being discharged from care without a stable and adequate place to live as required by New York law.

L.R.

91. Plaintiff L.R. is 21 years old. She entered foster care in 1997 at the age of six when the Family Court approved the voluntary placement of L.R. based upon her grandmother's inability to care for her. On or about May 22, 2008, the Bronx Family Court approved the designation of APPLA as L.R.'s permanency planning goal.

92. L.R. is in foster care with Graham Windham, a Foster Care Provider Agency, and is currently residing with her one-year-old son in a foster home. Although L.R. and her biological mother maintain contact, L.R.'s mother is not a discharge resource and there are no other supportive adults who are discharge resources. Currently, L.R. is participating in a GED prep course and attempting to obtain employment.

93. On January 21, 2009, L.R. applied for housing through ACS, which included applications for NYCHA Public Housing, Section 8, and an initial eligibility for a housing subsidy. Upon information and belief, ACS submitted those applications to NYCHA in or around April 2009 and used Graham Windham's Bronx office address for the purpose of corresponding regarding L.R.'s applications.

94. NYCHA sent a notice, dated May 8, 2009, to Graham Windham's housing specialist, confirming a preliminary housing interview for L.R. on June 2, 2009. L.R. was visiting relatives out of town on that date so the interview was rescheduled for August. During

the August interview, L.R.'s eligibility was assessed for participation in NYCHA's Section 8 and Public Housing Programs.

95. On August 23, 2009, L.R. was approved for a NYCHA Section 8 voucher. On August 25, 2009, the Graham Windham housing specialist registered L.R. through the Section 8 voucher portal, the system NYCHA uses for allocating Section 8 housing, and indicated that L.R. wanted to be considered for an apartment in the Castle Hill NYCHA development.

96. NYCHA's public housing office sent a letter, dated September 23, 2009 to L.R. at Graham Windham's address informing her that she had been approved for a public housing apartment at the NYCHA Butler Houses Development. The letter stated that L.R. had seven business days from the date of the letter to contact the management office, or else her application would be considered inactive. In addition, the letter stated that if NYCHA did not hear back from L.R. within 45 days, she would no longer be considered eligible for a rental or a transfer.

97. Upon information and belief, on or about October 2, 2009, Graham Windham's housing specialist informed L.R.'s case planner that Graham Windham had received a letter from NYCHA, dated September 23, 2009, requesting an interview with L.R. for public housing. The housing specialist explained that the delay in notifying L.R.'s case planner about the letter and appointment was because the letter was originally sent to Graham Windham's Brooklyn office instead of its Bronx office. Additionally, the housing specialist informed L.R.'s case planner that in the housing specialist's opinion, the NYCHA Butler Houses Development was unsafe for someone of L.R.'s age.

98. After a conversation with the housing specialist, L.R. agreed that she would not pursue the NYCHA Butler Houses Development apartment. The housing specialist told L.R. that she should expect two additional apartment offers from NYCHA. Upon information and

belief, neither the Graham Windham housing specialist nor the case planner ever notified NYCHA or advised L.R. to notify NYCHA that she had rejected the Butler Houses Development apartment offer as unsafe and to request alternate housing.

99. On November 11, 2009, NYCHA sent a letter to Graham Windham, informing them that L.R.'s public housing application had been closed on November 10, 2009 because she had failed to respond within 45 days to the September 23, 2009. L.R. was subsequently informed that in order for NYCHA to reconsider her application for public housing, she needed to file a new application no sooner than November 7, 2010.

100. On December 1, 2009, L.R. was officially accepted for tenancy with the NYCHA Castle Hill Development and intended to use her Section 8 voucher to obtain it. However, upon information and belief, L.R.'s eligibility for the Section 8 program was terminated when NYCHA suspended the issuance of these vouchers in mid-to-late December 2009 due to budget constraints. Therefore, L.R. was unable to rent the apartment in the Castle Hill Development and needed to explore additional housing options immediately. As she was pregnant, an apartment through New York New York III was not a viable option because the program does not provide housing to families.

101. Two months later, on February 3, 2010, Graham Windham's housing specialist sent a letter to NYCHA's eligibility unit notifying NYCHA that L.R. had a right to a second appointment regarding NYCHA housing as she had refused the first appointment to interview for an apartment in the Butler Houses Development in September 2009.

102. On February 19, 2010, the Graham Windham housing specialist sent an email to L.R.'s case planner, stating the housing specialist had communicated with the NYCHA Homeless Coordinator, who told her to file a request to reopen L.R.'s case. The housing

specialist also indicated in this email that the housing specialist was preparing a letter to NYCHA stating that the reason L.R. missed the Butler Houses Development apartment appointment in 2009 was because the housing specialist had “overlooked the appointment.”

103. The housing specialist sent letters to NYCHA on March 12 and March 19, 2010, again asking NYCHA to “assess if L.R. could be rescheduled.” These letters to NYCHA also asked that L.R.’s NYCHA public housing application be reopened because L.R.’s Section 8 voucher had been suspended three months earlier.

104. Upon information and belief, neither the Graham Windham housing specialist nor the case planner ever discussed L.R.’s right to appeal the NYCHA decision to close her case and, by March 2010, the time to appeal had long passed.

105. On March 25, 2010, L.R. went to NYCHA herself to find out the status of her application. She was informed that her application was closed in February 2010, due to her lack of response to a letter that was sent in January 2010 to Graham Windham informing L.R. about an available apartment. Upon information and belief, all the letters regarding L.R.’s application were sent directly to her agency, Graham Windham. When L.R. addressed this with her caseworker, L.R. was told that the caseworker had not received any letters regarding housing. The case worker suggested that L.R. speak with the agency’s housing specialist to see if anything could be done.

106. In early January 2011, L.R. reapplied for NYCHA public housing. On January 13, 2011, NYCHA acknowledged receipt of the application. She was given the highest priority for housing.

107. On July 7, 2011, L.R. attended her initial housing appointment and was told that she would hear from NYCHA within two months. Upon information and belief, NYCHA sent a

notice to the Youth Development Coordinator at Graham Windham, dated July 15, 2011, indicating that L.R. needed to submit additional documents to NYCHA in order for her housing application to move forward and that these documents needed to be submitted to NYCHA by August 7, 2011. The Youth Development Coordinator notified L.R.'s caseworker that she should forward the NYCHA request for documents to L.R.

108. L.R. provided documents to NYCHA and is now waiting for an apartment to become available for occupancy.

109. On September 15, 2011, ACS indicated that a three-month extension to policy had been granted in order to address the agency's failure to secure stable housing for L.R. L.R. turned 21 years old on September 21, 2011 without a stable and adequate housing option in place.

110. ACS and Graham Windham's provision of inadequate housing assistance has left L.R. and her young son in danger of being discharged from care without a stable and adequate place to live as required by New York law.

T. M.

111. Plaintiff T.M. is 20 years old. She was first removed from her mother's care and placed with ACS in 1998. T.M. returned to her mother's care on more than one occasion for short periods of time up until 2005, when she was placed in foster care again due to her mother's violent behavior toward her. On February 4, 2008, T.M.'s permanency goal was changed to APPLA and approved by the Family Court.

112. T.M., with the agreement of Little Flower Children's Services ("Little Flower"), a Foster Care Provider Agency, signed herself out of foster care in late summer 2009 at the age of 18. Upon information and belief, prior to discharge, the Little Flower caseworker gave T.M. some documentation describing education options. The caseworker also told T.M. that T.M.

needed to speak to Little Flower's housing specialist to sign certain documents, but did not give her a date to do so, nor did anyone from Little Flower ever contact T.M. about such documents after her discharge. The approved plan was for T.M. to live with her mother, with whom she had always had a difficult relationship. Approximately two months after moving in with her mother, T.M. moved into her maternal grandmother's home. Over the next year and a half, T.M. alternated between her grandmother, mother and boyfriend's homes. Although required by law to do so, Little Flower did not contact T.M. after her discharge from foster care.

113. On September 10, 2009, T.M. called her Legal Aid attorney to request services, including help with obtaining housing. T.M.'s attorney immediately contacted, Patrick Dunn, the ACS attorney who had handled T.M.'s Family Court case, regarding T.M.'s request to Little Flower for assistance with enrolling in a GED program, obtaining employment, and applying for housing. T.M.'s attorney provided Mr. Dunn with telephone numbers where T.M. could be reached and asked that a Little Flower caseworker and independent living specialist contact T.M. as soon as possible. Upon information and belief, no one from Little Flower contacted T.M.

114. In September 2009, T.M. enrolled in and attended a GED program that she located on her own.

115. On January 14, 2011, T.M. asked her Legal Aid attorney about the possibility of returning to foster care because she needed help in obtaining a place to live and had not received any assistance from Little Flower in applying for or securing housing.

116. On or around May 2011, T.M. decided that she would like to return to foster care.

117. In June 2011, T.M. stayed at Covenant House, a privately-funded facility that provides short-term housing for homeless youth, for approximately one week until she was able to find a temporary place to stay with friends.

118. T.M.'s birth mother has stated that she does not want T.M. to stay with her for more than a few weeks, and T.M.'s maternal grandmother has stated that she will not allow T.M. to live with her unless T.M. pays her rent or the grandmother receives foster care funds.

119. In violation of their legal obligations, Little Flower staff told T.M. that she would not receive any services or assistance from them once she signed herself out of foster care.

120. Upon information and belief, after T.M. signed herself out of foster care in 2009, the Little Flower caseworker's only contact with T.M. was in the form of a casual greeting to T.M. by the caseworker at a time when T.M. was living with her grandmother and happened to be at home when the caseworker came to visit T.M.'s sister and niece, who were in foster care and living with T.M.'s maternal grandmother at the time.

121. On June 2, 2011, T.M.'s Legal Aid attorney filed a motion under § 1091 of the Family Court Act, asking that T.M. be allowed to return to foster care because T.M. has been unable to achieve her goal of living independently.

122. ACS has consistently refused to allow T.M. to return to foster care and has taken the position that T.M. can live with her grandmother, even though T.M. cannot afford to pay rent to her grandmother.

123. Family Court recently directed ACS to assist T.M. with a New York New York III housing application, as one was never submitted on her behalf. The assigned ACS caseworker has never appeared in Family Court despite having been subpoenaed to appear.

124. T.M.'s Legal Aid attorney has been assisting her with gathering the documents necessary to file an application for a New York New York III apartment.

125. On July 15, 2011, ACS directed Little Flower to assist T.M. with applying for housing and anything else T.M. needs. Despite this directive, Little Flower is still not providing any assistance to T.M. with applying for housing.

126. ACS refuses to allow T.M. back into care and has not supervised her since her discharge almost two years ago. T.M. is currently living in a women's shelter and is in danger of turning 21 years old on February 10, 2012 without a stable and adequate place to live unless ACS takes immediate steps to assist her.

First Cause of Action

127. Plaintiffs respectfully repeat and recollect each and every allegation contained in paragraphs 1 through 126 herein.

128. Defendants have failed to discharge their statutory responsibilities to assist Plaintiffs in locating and securing available housing opportunities for young people who will age out of foster care or will be discharged to APPLA.

129. Defendants have engaged in a pattern and practice of discharging young people from foster care to APPLA even though such young people do not have a residence other than a shelter for adults, shelter for families, single-room occupancy hotel, or any other congregate living arrangement which houses more than ten unrelated persons and/or there is no reasonable expectation that the residence will remain available to them for at least the first 12 months after discharge.

130. Through these failures, Defendants have violated, and continue to violate, Plaintiffs' rights to the aid, care, and support they are entitled to as public charges pursuant to Section 1 of Article XVII of the New York State Constitution.

131. Plaintiffs have no adequate remedy at law.

Second Cause of Action

132. Plaintiffs respectfully repeat and reallege each and every allegation contained in paragraphs 1 through 126 herein.

133. Defendants have failed to discharge their statutory responsibilities to assist Plaintiffs in locating and securing available housing opportunities for young people who will age out of foster care or will be discharged to APPLA.

134. Defendants have engaged in a pattern and practice of discharging young people from foster care to APPLA even though such young people do not have a residence other than a shelter for adults, shelter for families, single-room occupancy hotel, or any other congregate living arrangement which houses more than ten unrelated persons and/or there is no reasonable expectation that the residence will remain available to them for at least the first 12 months after discharge.

135. Defendants have violated, and are continuing to violate, their statutory duty to supervise Plaintiffs until they reach the age of 21, as provided for under Section 398(6)(h) of the New York Social Services Law.

136. Plaintiffs have no adequate remedy at law.

Third Cause of Action

137. Plaintiffs respectfully repeat and reallege each and every allegation contained in paragraphs 1 through 126 herein.

138. Defendants have failed to discharge their statutory responsibilities to assist Plaintiffs in locating or securing available housing opportunities for young people who will age out of foster care or will be discharged to APPLA.

139. Defendants have engaged in a pattern and practice of discharging young people from foster care to APPLA even though such young people do not have a residence other than a shelter for adults, shelter for families, single-room occupancy hotel, or any other congregate living arrangement which houses more than ten unrelated persons and/or there is no reasonable expectation that the residence will remain available to them for at least the first 12 months after discharge.

140. By failing to provide certain preventive services, where a lack of adequate housing is the primary reason for not discharging a young person to APPLA, Defendants have violated, and continue to violate, Section 409-a(5)(c) of the New York Social Services Law.

141. Plaintiffs have no adequate remedy at law.

Fourth Cause of Action

142. Plaintiffs respectfully repeat and reallege each and every allegation contained in paragraphs 1 through 126 herein.

143. Defendants have failed to discharge their statutory responsibilities to assist Plaintiffs in locating or securing available housing opportunities for young people who will age out of foster care or will be discharged to APPLA.

144. Defendants have engaged in a pattern and practice of discharging young people from foster care to APPLA even though such young people do not have a residence other than a shelter for adults, shelter for families, single-room occupancy hotel, or any other congregate living arrangement which houses more than ten unrelated persons and/or there is no reasonable expectation that the residence will remain available to them for at least the first 12 months after discharge.

145. Through these failures, Defendants have violated, and continue to violate, the common law standards set out by the New York Supreme Court, Appellate Division in Palmer.

146. Plaintiffs have no adequate remedy at law.

Fifth Cause of Action

147. Plaintiffs respectfully repeat and reallege each and every allegation contained in paragraphs 1 through 126 herein.

148. Defendants have failed to discharge their statutory responsibilities to assist Plaintiffs in locating or securing available housing opportunities for young people who will age out of foster care or will be discharged to APPLA.

149. Defendants have engaged in a pattern and practice of discharging young people from foster care to APPLA even though such young people do not have a residence other than a shelter for adults, shelter for families, single-room occupancy hotel, or any other congregate living arrangement which houses more than ten unrelated persons and/or there is no reasonable expectation that the residence will remain available to them for at least the first 12 months after discharge.

150. Through these failures, Defendants have violated, and continue to violate, Section 430.12(f) of Title 18 of the New York Code, Rules, and Regulations and the statutes that these regulations implement, including but not limited to Social Services Law §§ 20, 34, 153, 153-d, 153-e, 371, 372-b, 374, 374-b, 395, 398-a, 398-b, 409-a, and 450.

151. Plaintiffs have no adequate remedy at law.

Prayer for Relief

WHEREFORE, Plaintiffs D.B., E.M., L.R., and T.M, on behalf of themselves and all others similarly situated, respectfully pray that this Court enter judgment:

152. CERTIFYING this case as a class action pursuant to Article 9 of the CPLR;

153. DECLARING that Defendants, by acts of commission and omission, have violated the New York State Constitution, the New York Social Services Law, Title 18 of the New York Code of Rules and Regulations, and common law by:

- a. failing to prepare and assist Plaintiffs and the Plaintiff Class in locating, and helping to secure lawful, post-foster care housing for which there is a reasonable expectation that the housing will remain available for at least one year;
- b. discharging young people, ages 18-21, from foster care into homelessness or other housing conditions deemed unsuitable under long-standing New York law;
- c. failing to supervise young people who have been discharged from foster care until they turn 21;
- d. failing to prepare and assist D.B. in locating and securing stable and adequate post-foster care housing;
- e. failing to prepare and assist E.M. in locating and securing stable and adequate post-foster care housing;
- f. failing to supervise T.M. since she has been discharged from foster care until she turns 21; and
- g. failing to prepare and assist L.R. in locating and securing stable and adequate post-foster care housing;

154. REQUIRING Defendants to prepare and assist D.B. in locating and securing stable and adequate post-foster care housing;

155. REQUIRING Defendants to prepare and assist E.M. in locating and securing stable and adequate post-foster care housing;

156. REQUIRING Defendants to supervise and assist T.M. in locating and securing stable and adequate post-foster care housing;

157. REQUIRING Defendants to prepare and assist L.R. in locating and securing stable and adequate post-foster care housing;

158. ENJOINING Defendants from discharging Plaintiff Class members from foster care who do not have stable and adequate permanent housing;

159. ENJOINING Defendants from preventing Plaintiff Class members who are young people in foster care from applying, with the independent living priority, for NYCHA Public Housing, Section 8 Housing Vouchers, the ACS Housing Subsidies and ACA Lump-Sum Grants, and supported or supportive housing;

160. REQUIRING Defendants to:

- a. timely refer Plaintiffs and members of the Plaintiff Class to brokers, apartment-finding services, and homelessness prevention programs, and actively assist them in communicating with these offices;
- b. timely accept and process Plaintiffs' and members of the Plaintiff Class's applications for ACS Housing Subsidies and ACS Lump-Sum Grants;
- c. timely assist Plaintiffs and members of the Plaintiff Class with applying for NYCHA Public Housing, including providing all necessary documentation and referrals to ensure that Plaintiffs and members of the Plaintiff Class will receive the priority for young people leaving foster care to live independently;
- d. timely assist Plaintiffs and members of the Plaintiff Class with applying for Section 8 Housing Vouchers via NYCHA's Leased Housing Program, including providing all necessary documentation and referrals to ensure that Plaintiffs and class members will receive the NYCHA priority for young people leaving foster care to live independently;
- e. assist Plaintiffs and members of the Plaintiff Class to complete and submit applications for appropriate supported or supportive housing programs;
- f. assist Plaintiffs and members of the Plaintiff Class with calculating an affordable monthly rent, taking into account any and all of the young person's sources of income;
- g. assist Plaintiffs and members of the Plaintiff Class with documenting their sources of income for the purpose of securing permanent housing;

- h. assist Plaintiffs and members of the Plaintiff Class in searching for affordable apartments, calling or meeting with brokers, viewing apartments, and negotiating rent, apartment improvements, and lease agreements with potential landlords;
 - i. ensure that ACS employees and employees of the Foster Care Provider Agencies are adequately and appropriately trained about (1) ACS's obligations to young people in foster care with the goal of APPLA concerning post-foster-care housing; and (2) post-foster-care permanent housing opportunities available to such young people, including subsidies, programs, requirements, deadlines, and documentation;
 - j. supervise until age 21 all Plaintiffs and members of the Plaintiff Class who have been in foster care and who have not been adopted or returned to family; and
161. AWARDING Plaintiffs costs and expenses of suit and attorneys' fees; and
162. GRANTING such other and further relief as the Court may deem just and proper.

Dated: New York, NY
October 17, 2011

Respectfully Submitted,

By: 

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