

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

ALECHEA TONEY-DICK, X.T., RENEE
MOORE, and SHERRY HANAN, individually
and on behalf of all others similarly situated,

Plaintiffs,

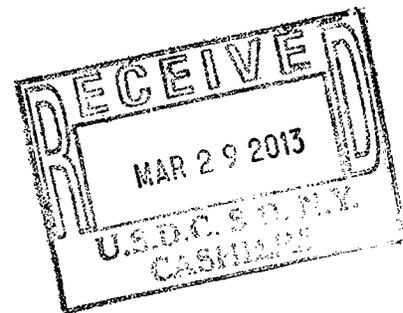
-against-

ROBERT DOAR, in his official capacity as
Commissioner of the New York City Human
Resources Administration; THE NEW YORK
CITY HUMAN RESOURCES
ADMINISTRATION; KRISTIN M. PROUD, in
her official capacity as Acting Commissioner of
the New York State Office of Temporary and
Disability Assistance; the NEW YORK STATE
OFFICE OF TEMPORARY AND DISABILITY
ASSISTANCE; TOM VILSACK, in his official
capacity as Secretary of the United States
Department of Agriculture; and the UNITED
STATES DEPARTMENT OF AGRICULTURE,

Defendants.

12 CIV. 9162 (KBF)

**SECOND AMENDED
CLASS ACTION
COMPLAINT**



PRELIMINARY STATEMENT

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

2. This action alleges discrimination on the basis of disability by Defendants ROBERT DOAR, in his official capacity as Commissioner of the New York City Human Resources Administration (“HRA”), and the NEW YORK CITY HUMAN RESOURCES

ADMINISTRATION (“HRA”) (collectively, the “CITY DEFENDANTS”); KRISTIN M. PROUD, in her official capacity as Acting Commissioner of the New York State Office of Temporary and Disability Assistance, and the NEW YORK STATE OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE (“OTDA”) (collectively, the “STATE DEFENDANTS”); and TOM VILSACK, in his official capacity as Secretary of the United States Department of Agriculture, and the UNITED STATES DEPARTMENT OF AGRICULTURE (“USDA”) (collectively, the “FEDERAL DEFENDANTS”) in the design, approval, implementation and administration of HRA’s Disaster Supplemental Nutrition Assistance Program (“D-SNAP”), created in response to Hurricane Sandy in New York City. See HRA Policy Directive #12-32-ELI, “Disaster Supplemental Nutrition Assistance Program” (hereinafter referred to as “PD #12-32-ELI”).

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

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

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

6. Individuals currently receiving SNAP benefits are not eligible to apply for the D-

SNAP program, but they are provided a supplement to their regular monthly SNAP benefit (“Parity Payments”).

7. At the federal level, the D-SNAP program is administered by the Food and Nutrition Service, a division within Defendant USDA.

8. Upon information and belief, in New York State, an application for a D-SNAP program is made by the OTDA to the federal government only when a local social services district, in New York City, Defendant HRA, expresses an interest in applying for the program.

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

10. Upon information and belief, USDA policy contemplates allowing D-SNAP applicants to file some application information online. Moreover, USDA policy guidance provides for an eligibility worker to go to the home of an elderly resident who is homebound and unable to apply in person in order to facilitate that person’s application for D-SNAP benefits.

11. In the HRA D-SNAP program, however, no exceptions were provided in accordance with those contemplated in USDA policy. Instead, the HRA D-SNAP guidelines required all applicants for D-SNAP to appear in person, unless that applicant secured an authorized representative to apply in person as a surrogate.

12. Such surrogates must possess extensive and intimate knowledge of the applicant’s personal and financial affairs. At the time the HRA D-SNAP program was announced to the public, HRA also stated that a representative applying on behalf of another individual must attest

to the truth of each statement made on the application under penalties of perjury.

13. If such an attestation was made, those wishing to use an authorized representative could show sufficient proof of identity merely by attestation or through various types of documentation, such as a passport or birth certificate, and they could verify income through attestation or a pay stub. No personal interview was required for applicants who utilized this surrogate procedure.

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

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

16. The submission made to Defendant USDA to operate the HRA D-SNAP program did not mention any accommodations designed to specifically address the needs of individuals with disabilities.

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

18. In the regular SNAP program, individuals with disabilities may also apply for benefits online, by phone, by fax, or through the mail.

19. By severely limiting the number of physical D-SNAP application sites to only two sites, and failing to provide the types of accommodations that are available to persons with disabilities seeking to apply for SNAP benefits, the HRA D-SNAP program failed to provide

reasonable accommodations to individuals with disabilities who wished to apply for the program, thereby denying many of them access to much-needed benefits.

20. Plaintiffs, on behalf of persons with disabilities who are eligible to apply for D-SNAP, bring this class action challenging Defendants' failure to consider, plan for, and address the needs of persons with disabilities by subjecting them to an inflexible in-person application requirement under the HRA D-SNAP program, which was exacerbated by the remote location of the application site(s), the very short and narrow time frame for applying, and the lack of outreach reasonably calculated to inform potentially eligible persons with disabilities about the program.

21. Plaintiffs seek an injunction requiring Defendants to: (a) accommodate all class members by allowing them alternatives to the in-person requirement, including but not limited to telephone, mail, internet, facsimile, or authorized representatives who are not themselves required to attest to the truth of an application¹ and when these methods are not viable, home visits, and extend the D-SNAP application period so that all class members may have an equivalent period of time to apply for D-SNAP once reasonable accommodations are implemented; or, in the alternative, allow all class members the opportunity to apply for and obtain D-SNAP benefits retroactively; or otherwise compensate all class members with equivalent SNAP benefits or cash payments; and (b) address the foreseeable needs of persons with disabilities in planning any future D-SNAP programs and provide reasonable

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

accommodations in the application processes that may be required in such programs by: (i) adopting policies, procedures, rules, regulations or guidance that would ensure that people with disabilities have a meaningful and equivalent access to any future D-SNAP programs, including allowing reasonable accommodations such as telephone, mail, internet, facsimile or authorized representatives who are not required to attest to the truth of any application; and (ii) ensuring that individuals with disabilities are not subjected to any form of disability-based discrimination, whether intentional or through the disparate impact on people with disabilities of facially neutral rules, policies and procedures.

JURISDICTION

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

23. This Court has supplemental jurisdiction under 28 U.S.C. § 1367 over Plaintiffs' claims against the CITY DEFENDANTS under the New York State and local laws prohibiting disability discrimination.

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

PARTIES

Plaintiff ALECHEA TONEY-DICK

25. Plaintiff ALECHEA TONEY-DICK lives in Arverne in the Far Rockaway section of Queens, zip code 11692, with her husband, who works full-time, and her 14-year-old son. She suffers from disabilities within the meaning the ADA and uses a wheelchair due to her

impairments. She is not a current recipient of SNAP benefits, and was not at the time of Hurricane Sandy, but she wanted to apply for D-SNAP benefits. At the time of the original complaint, Plaintiff Toney-Dick believed that she was eligible for \$526 in D-SNAP benefits. However, due to her disabilities, she could not travel to the closest D-SNAP application site, which is more than 90 minutes away from her home by public transportation to apply for the program.

Plaintiff X.T.

26. Plaintiff X.T. lives in the Lower East Side of Manhattan, zip code 10002, with her four children. She suffers from disabilities within the meaning of the ADA and requires the use of oxygen and 24-hour intravenous medications for treatment of her severe respiratory impairments. At the time of the original complaint, Ms. X.T. believed that she was eligible for \$793 in D-SNAP benefits. She wanted to apply for D-SNAP benefits for her family, but was unable to do so because she is unable to travel alone and her home health aide was unable to travel with her. She had no family members or friends who could apply for her. She would like to apply for D-SNAP benefits by using the reasonable accommodations of applying for these benefits via email or online.

Plaintiff RENEE MOORE

27. Plaintiff Renee Moore resides in Far Rockaway, zip code 11691, with her 17-year-old son and 4-year-old granddaughter. She suffers from asthma, two dislocated discs and nerve damage in her legs, cardiac problems and high blood pressure and is disabled within the meaning of the ADA. Although she and her son are current recipients of SNAP benefits, her young granddaughter did not receive SNAP benefits at the time of the original complaint. Ms.

Moore wanted to apply for D-SNAP benefits for her granddaughter but was unable to do so because she is unable to travel without significant difficulty, and she does not have anyone who can apply on her behalf. Ms. Moore would like to apply for D-SNAP benefits by using the reasonable accommodations of applying for these benefits via email, fax or online.

Plaintiff SHERRY HANAN

28. Plaintiff Sherry Hanan resides in the Belle Harbor area of the Rockaways Peninsula with her 80-year-old father before their home was severely damaged by Hurricane Sandy. She and her father were evacuated after the storm. Ms. Hanan was living in a hotel for several months before finally finding temporary housing in the Rockaways, where she currently resides. She suffers from seizure disorders, rheumatoid arthritis, depression and other impairments. She is disabled within the meaning of the ADA. She and her father have incurred thousands of dollars in expenses as a result of Hurricane Sandy. Ms. Hanan wanted to apply for D-SNAP benefits but has been unable to do so because of her disabilities. Ms. Hanan can apply for the program if she is provided an accommodation to do so via fax, online, over the telephone or any combination of the three, or a home visit if necessary.

Defendants

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

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

31. Defendant KRISTIN PROUD is the Acting Commissioner of OTDA, the executive agency of the State of New York responsible for supervising SNAP and D-SNAP in New York State, complying with federal law and regulations with respect to SNAP and D-SNAP benefits, and assuring that the applicable state and local social service agencies, including HRA, comply with federal and state law and regulations.

32. Defendant NEW YORK STATE OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE is the state agency responsible for administering and supervising SNAP and D-SNAP in New York State, complying with federal law and regulations with respect to SNAP and D-SNAP benefits, and assuring that the applicable state and local social service agencies, including HRA, comply with federal and state law and regulations.

33. Defendant TOM VILSACK is the Secretary of USDA, the federal executive agency for the administration of the SNAP and D-SNAP programs.

34. Defendant UNITED STATES DEPARTMENT OF AGRICULTURE is the federal executive agency responsible for administering and supervising the SNAP and D-SNAP programs.

CLASS ACTION ALLEGATIONS

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

36. The plaintiff class consists of all individuals in New York City who (a) have a physical or mental impairment that substantially limits one or more major life activities within the meaning of the ADA or have a record of such an impairment, (b) are eligible to apply for D-

SNAP benefits, (c) reside in the covered zip codes for the HRA D-SNAP program; and (d) need reasonable accommodations to enable them to apply for D-SNAP benefits.

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

38. Defendants OTDA and HRA estimated that there would be up to 30,000 new applicants for D-SNAP.

39. Upon information and belief, less than 6,000 households had applied for the HRA D-SNAP program as of December 18, 2012, when the program application period was closed.

40. Upon information and belief, data from the United States Census American Community Survey conducted in 2011 indicate more than 840,000 non-institutionalized New York City residents have a disability. This number represents more than 10% of the New York City population.

41. Upon information and belief, many individuals in the anticipated D-SNAP eligible applicant pool are persons with disabilities as that term is defined in the Americans with Disabilities Act, who are either homebound or whose physical or mental impairments are such that they need some form of reasonable accommodation in the D-SNAP application process.

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

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

the inflexible in-person requirement of D-SNAP.

44. The claims of the named plaintiffs are typical of the claims of the entire class. Defendants' violations of the laws as alleged herein have deprived Plaintiffs and members of the class of the opportunity to apply for D-SNAP benefits. Therefore, all class members will suffer the same or similar injuries for the purposes of the injunctive and declaratory relief sought.

45. The named plaintiffs are capable of fairly and adequately representing the class and protecting its interests. Counsel for Plaintiffs are the Legal Aid Society, a legal services organization with substantial experience in class action litigation on behalf of persons with disabilities and persons eligible for public assistance, and Gibson, Dunn & Crutcher LLP, one of the nation's most highly-regarded litigation firms, whose lawyers are familiar with federal class actions and other complex litigation. Counsel is aware of no conflicts among members of the proposed plaintiff class.

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

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

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

STATUTORY AND REGULATORY FRAMEWORK

49. The Food Stamp Act establishes the Supplemental Nutrition Assistance Program,

formerly known as the Food Stamp Program, which is a federally-funded program administered on the federal level by the FEDERAL DEFENDANTS through the USDA Food and Nutrition Service. SNAP is state-supervised by the STATE DEFENDANTS and administered in New York City by the CITY DEFENDANTS.

50. USDA has the authority to establish D-SNAP pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. Law No. 93-288, 42 U.S.C. § 5179, and the Food Stamp Act and accompanying regulations, 7 U.S.C. § 2014(h), 7 C.F.R. § 280.

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

52. In New York State, the standing practice has been for a D-SNAP program to be initiated and implemented by the local social services district. Thus, in order to implement a D-SNAP, HRA must make a request to OTDA setting forth a plan to operate a D-SNAP program; OTDA submits the plan for approval by the Food and Nutrition Service, a division of the USDA. Once approved, HRA administers the program.

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

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

55. On December 7, 2012, HRA announced that New York City was approved for D-SNAP in response to Hurricane Sandy, and that an HRA D-SNAP program would begin in just

five (5) days, and run for a total of seven (7) days from December 12 to 18, 2012.

56. Eligibility for the HRA D-SNAP program was limited to residents of ten (10) complete zip codes located in the Coney Island (11224 and 11235) and Red Hook (11231) areas in the Brooklyn; in the Far Rockaway area of Queens (11691, 11693, 11694, and 1167), the southeastern shore of the Staten Island (10306) and in lower Manhattan (10002) and two partial zip codes: 11229 in Coney Island and 10305 in Staten Island. See PD #12-32-ELI.

57. The HRA D-SNAP program required, inter alia, that individuals who were not current recipients of SNAP benefits who reside in the zip codes covered by D-SNAP apply for D-SNAP benefits in person during the limited seven day application period from December 12 to 18, 2012. See PD #12-32-ELI.

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

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

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

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

62. Similar flexibility has been evident in prior, comparable storms. Upon

information and belief, following Hurricane Isaac, every affected Louisiana parish provided at least one site for D-SNAP applications. And after Hurricane Ike, Austin, Texas alone provided three application sites.

63. Upon information and belief, Defendants had sufficient resources and were otherwise able to accept D-SNAP applications at sites in addition to the two at which they accepted applications for the HRA D-SNAP program.

64. Defendants' administration of the D-SNAP program violates Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 et seq. In addition, the STATE DEFENDANTS and CITY DEFENDANTS' administration of the D-SNAP program violates the ADA, 42 U.S.C. § 12131 et seq., and the Food Stamp Act, 7 U.S.C. § 2020, as well as its implementing regulations; and the CITY DEFENDANTS' administration of the D-SNAP program violates New York State and City Human Rights law, and New York State Social Services Law § 331, as it fails to reasonably accommodate those with disabilities who are, were, or will be required to apply for D-SNAP in person at the D-SNAP application sites.

FACTUAL ALLEGATIONS COMMON TO THE PLAINTIFF CLASS

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

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

67. Upon information and belief, Defendants did not consult with any community-

based organizations familiar with the needs of people with disabilities in formulating plans for the HRA D-SNAP program.

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

69. None of these accommodations provided for in the regular SNAP program—the use of telephones, faxes, online submissions, mail, and home visits where necessary to facilitate applications—had been incorporated in the HRA D-SNAP program to make the application process and program benefits accessible to individuals with disabilities. The application process lacked these accommodations despite the fact that the HRA D-SNAP program had communication networks, such as telephones and faxes, established to handle other stages of the application process, such as in addressing challenges to rejected applications.

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

71. As a result of Defendants' failure to address the specific needs of individuals with disabilities in planning the D-SNAP program—including the decision as to where applications would be accepted—individuals with disabilities in New York City who are in need of and

eligible for D-SNAP benefits are discriminated against and deprived of the opportunity to access such benefits.

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

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

74. Defendants have failed to consider the rights of qualified individuals with disabilities, their rights to receive benefits and services pursuant to Section 504 of the Rehabilitation Act and the ADA, and how to provide reasonable accommodations to such individuals under D-SNAP.

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

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

77. Travel times by public transportation to these D-SNAP application sites range from approximately 30 minutes to almost an hour and a half, depending on where the individual resides in the covered zip codes; for those in the borough of Queens, the travel time always exceeds one hour. For those that need wheelchair accessibility, the travel times are even longer.

78. After Hurricane Sandy, there was no subway to or from Far Rockaway; there was

only an MTA shuttle bus to a station where the elevators were not working due to the storm.

Thus, that station was inaccessible to many people with disabilities.

79. An hourly shuttle bus to and from one location in Far Rockaway did little to fix this problem. The large parking lot used for this purpose lacked signage indicating where to find and board the shuttle, and it was unclear how disabled applicants would be accommodated when they arrived at the sites. Moreover, these shuttles were not a reasonable accommodation for people with disabilities, who are unable to leave their home without risking their health and safety.

80. For many individuals with disabilities eligible to apply for D-SNAP, the Access-A-Ride program, which is available only to those who have previously applied and been approved, was unavailable and not a reasonable accommodation due to the disrupting impact of Hurricane Sandy, the time frame to submit a D-SNAP application, and unpredictable scheduling of transportation to and from an application site.

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

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

83. Upon information and belief, many individuals with disabilities, including but not limited to individuals who suffer from psychiatric disabilities and individuals who have

legitimate concerns about identity theft and the loss or mishandling of very sensitive and personal information, are often advised against, and are extremely reluctant in, providing such personal information to third parties.

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

85. The STATE DEFENDANTS and FEDERAL DEFENDANTS were aware of the fact that the plans for implementing the HRA D-SNAP program did not include accommodations such as the ability to apply via home visit, phone, mail, fax, or a combination thereof, when they submitted and approved, respectively, the plans for the HRA D-SNAP program.

86. Defendants did not design or implement a plan that was reasonably calculated to inform individuals with disabilities of their right to apply for the D-SNAP program such that they would be informed of, and able to apply, within the within the extremely narrow time frames during which applications were accepted.

87. Upon information and belief, Defendants had and currently have adequate resources to provide reasonable accommodations to those unable to travel to D-SNAP application sites, including allowing applicants to apply online, by phone, by fax, or through the mail, and conducting home visits when necessary.

88. Upon information and belief, Defendants could, through use of existing databases, identify hundreds if not thousands of individuals with disabilities who may be eligible for D-SNAP benefits.

89. Upon information and belief, many individuals with disabilities residing in the twelve covered zip codes have not even heard about the D-SNAP program, or learned about it only after the program application period was closed.

90. Many individuals with disabilities did not have time to secure an authorized representative, assuming they were willing to apply through such a person.

91. Upon information and belief, many individuals with disabilities live in relative isolation, or have physical or mental impairments that limit their ability to communicate with and/or interact with others, such that they did not have an opportunity to find—in a matter of approximately one week—a person willing to give up a considerable part of a day and to undertake the responsibilities associated with the position of an authorized representative without any compensation.

92. HRA estimated that, on average, each household that found eligible for its D-SNAP program would receive approximately \$432.

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

94. Defendant USDA has, in the past, approved applications to extend, expand, or renew a D-SNAP program, including at least one such extension in New York State upon an application submitted by Defendant OTDA. In November 2012, Defendant USDA approved a plan whereby residents of West Virginia were allowed to apply for D-SNAP benefits that were linked to a disaster that had occurred in June 2012.

95. Upon information and belief, Defendants have existing procedures and policies

established within SNAP and similar aid programs to extend deadlines and or otherwise allow individuals to apply for benefits retroactively, after deadlines have already passed, when deadlines were missed for good cause, such as a medical condition, disability, or other exigent circumstances.

96. Upon information and belief, Defendants did not and have not advised persons with disabilities that they may apply for D-SNAP if they had a disability-related reason that impaired their ability to submit and complete an application between December 12 and 18, 2012.

97. Upon information and belief there are no statutory or regulatory impediments that would prevent the Defendants from devising a plan to provide individuals with disabilities who were not able to apply for the HRA D-SNAP program between December 12-18, 2012 due to disability-related reasons, to do so now, as a reasonable accommodation.

98. Upon information and belief, Defendants were and currently are able to extend, expand, or renew HRA's D-SNAP program to allow Plaintiffs and class members an opportunity to apply for D-SNAP benefits for which they were eligible but unable to receive in the wake of Hurricane Sandy.

99. Defendants' policies, practices and procedures are likely to create obstacles and barriers for people with disabilities to apply for or benefit from any future D-SNAP program.

FACTS CONCERNING THE NAMED PLAINTIFFS

Alechea Toney-Dick

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

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

102. As a result of her physical conditions, Alechea Toney-Dick uses a wheelchair to move around her home. If she needs to go out, she is unable to do so unless her husband carries her down the stairs. Therefore, she cannot leave her home without assistance.

103. Alechea Toney-Dick's husband works full-time at North Shore Long Island Jewish Hospital from 4:30 a.m. to approximately 4:15 p.m. every weekday. Her 14-year-old son attends school full-time, but, due to school damage from Hurricane Sandy, was being bussed to another school in Queens following the hurricane.

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

105. She and her family also had to pay out-of-pocket to stay three nights at a hotel, because they did not have electricity, heat or hot water in the home.

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

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

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

Ms. X.T.

109. Ms. X.T. lives in the Lower East Side of Manhattan, zip code 10002, with her two daughters, ages 11 and 16, and her two sons, ages 9 and 10. Ms. X.T. receives Supplemental Security Income ("SSI") disability benefits and three of her children also receive SSI benefits because they are disabled. In total, the family receives \$2,884 in SSI benefits per month. The family receives no other income.

110. Ms. X.T. suffers from disabilities within the meaning of the ADA. She suffers from Acute Pulmonary Hypertension which (among other things) affects her ability to breathe and her ability to stand and sit for long periods. She is treated on intravenous medications 24 hours per day. She cannot travel alone and when she leaves her home must carry her IV in a medical pack with her. She also uses oxygen when necessary and has a regular oxygen tank in her home and a portable oxygen tank to take with her when needed when she leaves her home.

She has a home health aide who assists her with her care and her children receive 24-hour home making services because of the precarious nature of their health and Ms. X.T.'s health.

111. Although her household has received SNAP benefits in the past, her family did not receive any SNAP benefits in the month of November. Ms. X.T received SNAP benefits in the amount of \$10 on December 15, 2012 and \$13 on December 18, 2012.

112. Because she did not receive SNAP benefits in the month of November, her family is not eligible to receive the one-time D-SNAP supplement which Defendants issued via electronic payment to SNAP households who received regular SNAP benefits in November. She can only receive D-SNAP benefits if she applies for them.

113. Ms. X.T. wanted to apply for D-SNAP benefits, but she was unable to do so because she is unable to travel alone and her home health aide was unable to travel with her to apply. She had no family members or friends who could apply for her.

114. Ms. X.T. has more than \$100 in disaster-related expenses. After Hurricane Sandy hit, she lost power, so she struggled to keep her IV medication cold by using ice packs. After a day, she could no longer sustain this and was forced to leave her home with her children and stay with a friend in Brooklyn who had power. She had to buy clothes for her children and pay for restaurant meals. She also had to pay \$50 for a cab ride back to her apartment when power had returned.

115. Ms. X.T. has access to a laptop computer and has applied for SNAP benefits online in the past. She could have applied for D-SNAP benefits online and submitted scanned copies of any documents needed to go with her application if these reasonable accommodations were permitted.

116. Ms. X.T. believes that she is likely eligible for \$793 in D-SNAP benefits. She would like to apply for D-SNAP benefits by using the reasonable accommodations of applying for these benefits via email or online.

Renee Moore

117. Plaintiff Renee Moore resides in Far Rockaway, New York, zip code 11691, with her 17-year-old son and 4-year-old granddaughter. She receives disability benefits from the Social Security Administration of \$721 per month, and \$100 per month of child support pass-through payment from HRA for her son.

118. She and her son are current recipients of SNAP benefits. However, her granddaughter, who is a member of her household, does not receive SNAP benefits. Ms. Moore was in the process of adding her granddaughter to the household SNAP budget and had a scheduled appointment with the HRA center on October 31, 2012. However, due to Hurricane Sandy, she was unable to attend the appointment and her granddaughter was not added to the SNAP budget.

119. Although she and her son are eligible to receive a one-time D-SNAP supplemental parity payment, Ms. Moore would be required to apply in-person at a D-SNAP application site for D-SNAP benefits for her granddaughter.

120. Ms. Moore suffers from multiple disabilities within the meaning of the ADA. She has two dislocated discs in her lower lumbar and three damaged nerves in the left side of her leg, causing her severe pain when walking. She cannot stand up for long periods of time and uses a cane to move around the apartment. She also takes prescription pain medication approximately two to three times a day due to the pain in her legs. Ms. Moore also suffers from asthma, heart-

related problems, and high blood pressure. She takes medications for all of these medical conditions, which causes her to be drowsy and unable to travel.

121. Ms. Moore wanted to apply for D-SNAP benefits for her granddaughter but was unable to do so because she is unable to travel without significant difficulty, and she does not have anyone that can apply on her behalf.

122. Ms. Moore has more than \$100 in disaster-related expenses after Hurricane Sandy, including extensive damage to her car and window cracks due to a fallen tree branch. She also had to eat out regularly because she had no electricity, heat or hot water in her apartment.

123. As an applicant who had not yet been granted SNAP benefits at the time of the original complaint, Ms. Moore's grandchild is eligible for D-SNAP. Her D-SNAP benefits could add to the household, which has experienced so many disaster-related expenses during that period.

124. Ms. Moore could have applied for D-SNAP benefits for her granddaughter online, by email or by fax if these reasonable accommodations were permitted.

125. Ms. Moore would like to apply for D-SNAP benefits by using the reasonable accommodations of applying for these benefits via email, fax or online.

Sherry Hanan

126. Sherry Hanan is a 50-year-old single woman who resides in the Belle Harbor area of the Rockaways Peninsula with her 80-year-old father. She is not currently a SNAP recipient.

127. Ms. Hanan's house was severely damaged in Hurricane Sandy. As a result, Ms. Hanan and her father were evacuated, and they lived in a hotel following the storm.

128. Ms. Hanan suffers from seizure disorders related to brain surgery. She has rheumatoid arthritis. Ms. Hanan has also survived both breast cancer and melanoma. She also has chronic irritable bowel syndrome and gastroesophageal reflux disease. Ms. Hanan also suffers from depression.

129. The combined effect of Ms. Hanan's physical and mental impairments makes it extremely difficult for her to function in crowded situations. She is particularly at risk of seizures in crowded environments and to flashing lights, such as those related to ambulances, police and fire department vehicles.

130. For example, on one occasion Ms. Hanan suffered a seizure in a crowded Social Security office. She also had a seizure after a fire at a midtown hotel to which she had been evacuated after the storm.

131. Ms. Hanan and her father have incurred thousands of dollars in expenses as a result of Hurricane Sandy.

132. Ms. Hanan and her father have been living on less than \$3,000 in income from Social Security benefits and her father's pension since the storm hit. Ms. Hanan wanted to apply for D-SNAP benefits but has been unable to do so because of her disabilities. Ms. Hanan can apply for the program if she is provided an accommodation to do so via fax, online, over the telephone or any combination of the three, or a home visit if necessary.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

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

133. Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its

implementing regulations, prohibits discrimination against persons with disabilities by federal agencies and recipients of federal funding.

134. Defendant USDA is a federal agency within the meaning of the Rehabilitation Act.

135. The STATE DEFENDANTS and CITY DEFENDANTS are “recipient[s]” of “federal financial assistance,” as defined by Section 504 of the Rehabilitation Act of 1973 and by implementing regulations, thereby rendering them subject to Section 504. 29 U.S.C. § 794(b)(1); 28 C.F.R. § 41.3(d)-(e); 45 C.F.R. § 84.3(f)-(h); 7 C.F.R. § 15b.3(f)-(g).

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

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

138. Each plaintiff and member of the class meets the essential eligibility requirements for the receipt of services and is therefore a “qualified handicapped person,” as that term is defined in regulations implementing Section 504. 28 C.F.R. § 41.32; 45 C.F.R. § 84.3(l); 7 C.F.R. § 15b.3(n)(4).

139. Defendants discriminated and continue to discriminate against Plaintiffs and members of the class in violation of 29 U.S.C. § 794(a) and its implementing regulations, 28

C.F.R. § 41.51; 45 C.F.R. § 84.4, 7 C.F.R. § 15b.4, in the following ways:

- (A) Defendants discriminated and continue to discriminate against Plaintiffs and members of the class by failing to provide reasonable modifications necessary for them to apply for, successfully obtain, and maintain eligibility for D-SNAP benefits, in violation of 29 U.S.C. § 794(a).
- (B) Defendants discriminated and continue to discriminate against Plaintiffs and members of the class by failing to (i) afford them such benefits in a manner that is equal to others; and (ii) provide them with benefits in a manner that is as effective in affording equal opportunity to obtain the same result, gain the same benefit and reach the same level of achievement as that provided to others, in violation of 28 C.F.R. § 41.51(b)(1)(ii)-(iii); 45 C.F.R. §§ 84.4(b)(2) & 84.4(b)(1)(ii)-(iii); 7 C.F.R. § 15b.4(b)(1)(ii)-(iii).
- (C) Defendants discriminated and continue to discriminate against Plaintiffs and members of the class by denying them access to benefits, in violation of 28 C.F.R. §§ 41.51(a) & 41.51(b)(1)(i)-(ii), (vii); 45 C.F.R. §§ 84.4(a) & 84.4(b)(1)(I)-(ii), (vii); 7 C.F.R. §§ 15b.4(a) & 15b.4(b)(1)(i)-(ii), (vii).

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

SECOND CLAIM FOR RELIEF

**VIOLATIONS OF THE AMERICANS WITH DISABILITIES ACT,
42 U.S.C. § 12131, ET SEQ., BY THE STATE AND CITY DEFENDANTS**

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

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

143. Each plaintiff and member of the class has at least one “disability” within the meaning of the ADA and implementing regulations.

144. A “public entity” includes state and local governments, their agencies, and their instrumentalities, as defined under the ADA, 42 U.S.C. § 12131(1).

145. The CITY DEFENDANTS and STATE DEFENDANTS are public entities within the meaning of 42 U.S.C. § 12131(1) and 28 C.F.R. § 35.104.

146. Each plaintiff and member of the class is a “qualified individual with a disability” as defined under the ADA, 42 U.S.C. § 12131(2) and 28 C.F.R. § 35.104, because each person is an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the

receipt of services or the participation in programs or activities provided by Defendants.

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

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

148. Defendants' conduct constitutes an ongoing and continuous violation of the ADA and unless restrained from doing so, Defendants will continue to violate said law. This conduct, unless enjoined, will continue to inflict injuries for which Plaintiffs have no adequate remedy at

law. Plaintiffs will suffer irreparable harm in that they will continue to be discriminated against and denied access to D-SNAP benefits.

THIRD CLAIM FOR RELIEF

**VIOLATION OF THE FOOD STAMP ACT
BY THE STATE DEFENDANTS AND THE CITY DEFENDANTS**

149. The STATE DEFENDANTS, acting under color of state law, are responsible for the administration of Food Stamps/SNAP in the State of New York.

150. The CITY DEFENDANTS are responsible for the administration of Food Stamps/SNAP in the City of New York.

151. 7 U.S.C. § 2020(e)(11) of the Food Stamp Act provides that a state agency, in designating a plan to for SNAP benefits during a disaster, shall establish “application procedures to reduce hardship and inconvenience.”

152. 7 U.S.C. § 2020(e)(2)(B)(i) of the Food Stamp Act provides that a state agency “shall establish procedures” that “provide timely, accurate, and fair service to applicants for, and participants in, the food stamp program.”

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

FOURTH CLAIM FOR RELIEF

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

154. Plaintiffs and members of the class are persons with a disability within the

meaning of N.Y. Exec. Law § 292(21).

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

FIFTH CLAIM FOR RELIEF

**VIOLATIONS OF THE NEW YORK STATE SOCIAL SERVICES LAW § 331
AND 18 N.Y.C.R.R. § 303.1(a)-(b) BY THE CITY DEFENDANTS**

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

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

SIXTH CLAIM FOR RELIEF

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

158. Defendants are “persons” subject to N.Y.C. Administrative Code § 8-107(4)(a) in that they are “providers of public accommodation” pursuant to N.Y.C. Administrative Code § 8-102(9).

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

160. Defendants discriminate against Plaintiffs in violation of N.Y.C. Administrative

Code § 8-107(4)(a) by refusing, withholding from or denying Plaintiffs accommodations, advantages, facilities or privileges because of their disabilities.

PRAYER FOR RELIEF

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

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

162. Adjudge and declare that the policies, practices, omissions and conditions described above are in violation of the rights of Plaintiffs and the class they seek to represent under the ADA, Section 504 of the Rehabilitation Act, the Food Stamp Act, the New York State and City Human Rights Law, and the New York State Social Services Law and its implementing regulations.

163. Permanently enjoin Defendants, their agents, employees and all persons acting in concert with them from discriminating against Plaintiffs and class members by requiring them to (a) accommodate all class members by allowing them alternatives to the in-person requirement, including but not limited to telephone, mail, internet, facsimile or authorized representatives who are not themselves required to attest to the truth of an application and when these methods are not viable, home visits, and extend the D-SNAP application period so that all class members may have an equivalent period of time to apply for D-SNAP once reasonable accommodations are implemented; or (b) allow all class members the opportunity to apply and obtain D-SNAP benefits retroactively; or (c) otherwise compensate all class members with equivalent SNAP benefits or cash payments.

164. Order Defendants to refrain from employing methods of administration that have the effect of discriminating against Plaintiffs and class members based on their disabilities.

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

166. Award Plaintiffs the costs of this suit and reasonable attorneys' fees and litigation expenses.

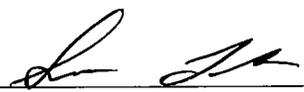
167. Retain jurisdiction of this case until Defendants have fully complied with the orders of this Court, and there is a reasonable assurance that Defendants will continue to comply in the future.

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

Dated: New York, New York
March 29, 2013

Respectfully submitted,

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