

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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CARLOS ROBLES, JENNIFER VARGAS, ANA ECHEVARRIA, MARINDA MYERS, LUZ CRUZ, and RAFAEL JIMENEZ, on behalf of themselves and all others similarly situated,

2009 Civ.

Plaintiffs,

CLASS ACTION COMPLAINT

-against-

ROBERT DOAR, individually and as Commissioner of New York City Department of Social Services/Human Resources Administration, and DAVID A. HANSELL, individually and as Commissioner of New York State Office of Temporary and Disability Assistance,

Defendants.

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Plaintiffs Carlos Robles, Jennifer Vargas, Ana Echevarria, Marinda Myers, Luz Cruz, Bobby Faust, and Rafael Jimenez (collectively “plaintiffs”) on behalf of themselves and all others similarly situated, allege, upon personal knowledge as to themselves and information and belief as to other matters:

INTRODUCTORY STATEMENT

1. This is a challenge to defendant New York City Department of Social Services/Human Resources Administration’s (“HRA”) policy and practice of disqualifying financially eligible individuals from the federal food stamp program for misstatements concerning their marital status (“the marriage purge”). Because the amount of food stamps individuals and families are eligible for is determined by the income, resources, and number of people living together in and sharing food as a household, marital status is, as a matter of law, irrelevant to eligibility for food stamps and to the amount of food stamps to which plaintiffs are

entitled. Indeed, HRA is punishing plaintiffs and the plaintiff class for alleged fraud notwithstanding its written admissions that each “received an overissuance of \$0 in Food Stamps.”

2. Plaintiffs are individuals or heads of household who were and are financially eligible for food stamps. For various reasons, none of which is legally relevant, plaintiffs’ food stamp recertification forms identified them as single. No plaintiff was living with their spouse at the time they recertified for food stamps nor have they lived together any time since.

3. HRA systematically cross-references food stamp enrollment records with the Office of New York City Clerk (“City Clerk”), which contains records of marriages performed *only* in the City of New York. When HRA finds a “match” between an individual identified as single on the food stamp recertification form and the City Clerk’s records, HRA charges that individual with an intentional program violation (“IPV”) and initiates a proceeding to have the individual disqualified from receiving food stamps for a minimum of one year. Unable to rebut the contradiction between the marriage license and the recertification form, plaintiffs and the class they seek to represent have lost or will lose their food stamps for one year as an inevitable result of the marriage purge.

4. The marriage purge of financially eligible food stamp recipients who have not received a single cent in food stamps to which they were not entitled arises from an unlawful interpretation by HRA of the rules and regulations of the defendant New York State Office of Temporary and Disability Assistance (“OTDA”), which has promulgated rules that permit HRA to pursue food stamp recipients for an IPV “when an individual intentionally [m]ade a false or misleading statement or misrepresented, concealed or withheld facts *concerning the individual’s eligibility for food stamps.*” 18 N.Y.C.R.R. § 359.3(b)(1) (italics added). HRA is violating

OTDA regulations, and OTDA is acquiescing in those violations, in violation of the New York State Administrative Procedure Act.

5. Marital status does not affect eligibility for food stamps or the amount of food stamps received, unless the spouses live together. 7 U.S.C. §§ 2012(n), 2014; 7 C.F.R. § 273.1(b); 18 N.Y.C.R.R. §§ 387.1(w), 387.14-15.

6. By tolerating HRA's marriage purge, OTDA has sub silentio deleted the "concerning eligibility for food stamps" language delimiting the grounds on which HRA may pursue an allegation of an IPV of the food stamp program. By permitting the limiting language of the regulation to be treated as a dead letter, OTDA is in violation of the State Administrative Procedure Act.

7. Defendants are violating the federal Food Stamp Act and its regulations by adding an eligibility requirement that cannot be reconciled with the plain language of the statute and regulations or Congressional intent.

8. Because it arbitrarily denies financially eligible individuals of food stamps to which they are entitled by statute and regulation without any basis in law, the marriage purge violates the procedural due process protections of the Fourteenth Amendment to the United States Constitution.

9. This class action is brought by financially eligible food stamp recipients on behalf of themselves individually and all individuals who are subject to the marriage purge despite not having been overissued food stamps. Accordingly, the class includes only food stamp recipients whose spouses were not part of their food stamp household during the recertification period and whose recertification forms identified them as single or not married.

JURISDICTION AND VENUE

10. This action is authorized by 42 U.S.C. § 1983, as an action seeking redress of statutory and constitutional rights.

11. Jurisdiction over this action is conferred upon the court by: (a) 28 U.S.C. § 1331, which provides for jurisdiction in the United States district courts of civil actions arising under the Constitution, laws, or treaties of the United States”; (b) 28 U.S.C. § 1343(a)(3), which provides for jurisdiction in the United States district courts of civil actions to “redress deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States”; and (c) 28 U.S.C. § 1367, which provides for supplemental jurisdiction in the United States District courts “over all other claims that are related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.”

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

PLAINTIFFS

Carlos Robles

13. Plaintiff Carlos Robles (“Robles”) is a resident of Manhattan with an income of \$1168 a month. Because HRA applied the marriage purge to him, it discontinued his food stamps in June 2009 and disqualified from receiving any food stamps for one year. But for this disqualification, he would be receiving \$84 a month in food stamps.

Jennifer Vargas

14. Plaintiff Jennifer Vargas (“Vargas”) is a resident of Brooklyn with an income of \$1113 a month for her family of three. Because HRA is applying the marriage purge to her, it

will disqualify her from receiving any food stamps for one year, and therefore her household's monthly food stamps will be reduced from \$485 to \$367.

Ana Delmy Echevarria

15. Plaintiff Ana Delmy Echevarria ("Echevarria") is a resident of the Bronx with an income of \$975 a month for a family of three. Because HRA is applying the marriage purge to her it will disqualify her from receiving any food stamps for one year, which will reduce her household's monthly food stamps from \$431 to \$272.

Marinda Myers

16. Plaintiff Marinda Myers ("Myers") is a resident of Manhattan with an income of \$793 a month. Because HRA is applying the marriage purge to her, it will disqualify her from receiving any food stamps for one year.

Luz M. Cruz

17. Plaintiff Luz M. Cruz ("Cruz") is a resident of Brooklyn with an income of \$1057 a month to support herself and her five children. Because HRA is applying the marriage purge to her it will disqualify her from receiving any food stamps for one year.

Rafael Jimenez

18. Rafael Jimenez is a resident of Manhattan with an income of \$316.80 a month. Because HRA is applying the marriage purge to him it will disqualify him from receiving food stamps for one year.

DEFENDANTS

Robert Doar

19. Robert Doar ("Doar") is the Commissioner of HRA (one of New York State's social services districts) and is responsible for (a) administering the food stamp program in New

York City, (b) determining if an IPV has occurred and, if so, (3) pursuing an administrative action to have the recipient disqualified.

David A. Hansell

20. David A. Hansell (“Hansell”) is the Commissioner of OTDA and is sued solely with regard to his responsibility for (a) administering the food stamp program in New York State, and (b) supervising HRA. A distinct unit within OTDA, the Office of Administrative Hearings (“OAH”), bears responsibility for holding administrative disqualification hearings for IPV’s and issuing decisions affirming or reversing HRA’s determination that an IPV occurred. The manner in which OAH conducts the fair hearings is *not* challenged in this action.

BACKGROUND ON THE FOOD STAMP PROGRAM

21. The federal food stamp program, as outlined in the Food Stamp Act, 7 U.S.C. §§ 2011-2036, was enacted “to promote the general welfare, to safeguard the health and well-being of the Nation’s population by raising levels of nutrition among low-income households.” 7 U.S.C. § 2011.¹

22. The federal government pays 100% of food stamp program benefits. Federal and state governments share administrative costs, with the federal government contributing nearly 50%. Pursuit of alleged IPV’s involves administrative costs.

23. In New York State, the state agency that receives federal funds in order to operate and oversee the food stamp program is OTDA. N.Y. Soc. Serv. Law § 95(1)(a); 18 N.Y.C.R.R. § 387.

¹ On October 1, 2008, the federal food stamp program changed its name to the Supplemental Assistance Nutrition Program (“SNAP”), in order to reflect changes it made to better meet the needs of recipients. Those changes included a focus on nutrition and increases in benefits amounts. SNAP is referred to in this complaint by its more commonly used name: the food stamp program.

24. The Food Stamp Act uses mandatory language to describe a state's responsibility for delivering benefits to eligible households: "The State agency of each participating State shall have responsibility for certifying applicant households and issuing EBT [electronic benefits transfer] cards." 7 U.S.C. § 2020(a)(1).

25. The food stamp program may be administered either by a state agency or by local agencies within a state. The Food Stamp Act defines a state agency to include:

The agency of the State government, including the local offices thereof, which has the responsibility for the administration of the federally aided programs within such State, and in those States where such assistance programs are operated on a decentralized basis, the term shall include the counterpart local agencies administering such programs.

7 U.S.C. § 2012(t)(1). The responsibility of the state agency is not affected by whether the program is operated on a state-administered or locally-administered basis. *See* 7 U.S.C. § 2020(a)(2).

26. New York State has authorized local agencies to operate food stamp programs. N.Y. Soc. Serv. Law § 95; 18 N.Y.C.R.R. § 387.2.

27. HRA is the local agency that administers the food stamp program for the five counties comprising New York City. It is the responsibility of OTDA to supervise all social services work administered by HRA. N.Y. Soc. Serv. Law § 20(b).

28. In April 2009, in New York City, there were 1,444,000 food stamp recipients, consisting of 791,000 food stamp households.

Definition of "Household"

29. The food stamp program uses the concept of "household" to determine who is eligible and the amount of food stamps the household will receive. The Food Stamp Act, with few exceptions not relevant here, defines a "household" as follows:

- (A) an individual who lives alone or who, while living with others, customarily purchases food and prepares meals for home consumption separate and apart from the others; or
- (B) a group of individuals who live together and customarily purchase food and prepare meals together for home consumption.

7 U.S.C. § 2012(n).

30. Federal regulations underscore that a “household” is a group of people who, at a minimum, live together. 7 C.F.R. 273.1(a).

31. New York’s definition of a food stamp “household” conforms with the federal Food Stamp Act’s definition of household. State regulation defines a food stamp household as: “(i) an individual living alone; or (ii) an individual living with others, but customarily purchasing food and preparing meals for home consumption separate and apart from others.” 18 N.Y.C.R.R. § 387.1(w).

32. This definition of household determines not only who is eligible, but the amount of food stamps an individual or family will receive. 7 U.S.C. § 2014; 18 N.Y.C.R.R. §§ 387.14-.

Enumerated Criteria for Eligibility

33. The Food Stamp Act and its enabling regulations set forth eligibility requirements based on financial and non-financial factors.

34. The Food Stamp Act, with exceptions not relevant here, mandates that eligibility requirements be uniform as a matter of federal right:

[T]he Secretary shall establish uniform national standards of eligibility ... for participation by households in the supplemental nutrition assistance program in accordance with the provisions of this section. No plan of operation submitted by a state agency shall be approved unless the standards of eligibility meet those established by the Secretary and *no State agency shall impose any other standards of eligibility as a condition for participating in the program.*

7 U.S.C. § 2014(b) (italics added).

35. Federal and state regulations set forth the following requirements for financial eligibility for food stamps: gross income below 130% of the poverty line, net incomes below 100% of poverty, and no more than \$2,000 in resources. 7 C.F.R. §§ 273.8(b), 273.9(a); 18 N.Y.C.R.R. § 387.10(a).²

36. The federal statute identifies the following non-financial categories that may preclude eligibility: status as a student, with exceptions delineated at 7 U.S.C. § 2015(e), certain immigration status, residency outside of the state providing the payments, lack of felony conviction and compliance with any parole or probation, compliance with work requirements (for able-bodied adults only). *See* 7 U.S.C. §§ 2015 (d), (e)-(g), (j), (l)-(o).

37. State regulations echo those non-financial factors and similarly omit any mention of marital status or truthful disclosure of marital status. 18 N.Y.C.R.R. §§ 387.1(w), 387.14.

38. Neither defendant has raised any of the enumerated eligibility factors as a ground for disqualifying any plaintiff from participating in the food stamp program.

39. The U.S. Department of Agriculture, which oversees the food stamp program, has singled out failure to provide a Social Security number as a valid basis for denying eligibility. *See* 7 C.F.R. § 273.6. It did not specify failure to disclose other non-financial information -- including marital status -- as a ground for disqualification from food stamps.

Collection of Demographic Data

40. Federal regulations require participating state agencies to collect and automate data it deems relevant to the food stamp program. 7 C.F.R. § 272(b). Marital status is not a factor the Department of Agriculture has identified as necessary for collection.

² Those limits are slightly relaxed for households with elderly or disabled members. 7 C.F.R. § 273.8(b); 18 N.Y.C.R.R. § 387.9(b).

41. Similarly, OTDA regulation mandates collection and verification of various data, but not marital status. 18 N.Y.C.C.R. § 387.8(b).

42. At least eighteen states do not even ask about marital status on their food stamp recertification forms.

Recertification

43. Once determined eligible, food stamp households do not continue to receive food stamps indefinitely. Rather, they must reapply, or “recertify,” when their certification period ends if they wish to continue receiving benefits. *See* 7 C.F.R. § 273.14(a); 18 N.Y.C.R.R. § 387.17(f). If the public assistance or food stamp office finds that the recipient continues to qualify for food stamps, it will recertify them and issue them a new certification period. *See* 18 N.Y.C.R.R. § 387.17(f).

44. HRA’s Eligibility Factors and Suggested Documentation Guide states: “**Eligibility Factor . . . □ Marital Status** You must prove if you are married, divorced, separated or widowed (not required for Food Stamps).” (Bolding in original.)

Grounds and Procedures for Disqualification

45. The Food Stamp Act permits an individual³ to be disqualified from receiving food stamps if any of the following conditions are met:

[The food stamp recipient is] found by any State or Federal court or administrative agency to have intentionally

(A) made a false or misleading statement, or misrepresented, concealed or withheld facts, or

(B) committed any act that constitutes a violation of this chapter, the regulations issued there under, or any State statute, for the purpose of using, presenting, transferring, acquiring, receiving, or

³ In cases in which the food stamp household includes more than one person, the individual’s disqualification reduces the family’s benefits but does not discontinue the benefits for the rest of the household. 7 C.F.R. § 273.16(b)(11); 18 N.Y.C.R.R. §§ 359.9(e)-(f).

possessing program benefits shall, immediately upon the rendering of such determination, become ineligible for further participation in the program. . . .

7 U.S.C. § 2015(b).

46. Rather than simply mirroring section 2015(b)(A), OTDA limits the authority of local social services districts' to charge individuals with IPV's except "when an individual intentionally [m]ade a false or misleading statement or misrepresented, concealed or withheld facts *concerning the individual's eligibility for food stamps.*" 18 N.Y.C.R.R. § 359.3(b)(1) (italics added). This is one of very few instances where the state regulatory scheme deviates from the federal model.

47. Federal and state law authorize local social services districts, in this case HRA, to make the initial determination that an IPV has occurred and to build the case against the recipient. 18 N.Y.C.R.R. § 359.5.

48. HRA issued policy directives on the appropriate procedures for the marriage purge but has disregarded these instructions in disqualifying plaintiffs and class members. According to one directive, HRA caseworkers should review the case record to see if "*necessary information was previously reported.*" (italics added). If a newly discovered marital status does not affect the food stamp household's budget, and is therefore unnecessary, then caseworkers are instructed to note the new information and "take no further action." An earlier HRA directive emphasizes the same point: "Food Stamp cases must not be referred to BFI for failing to report information or changes that they are not required to report under Food Stamp program rules."

49. After an administrative hearing, OAH issues a written decision affirming or reversing HRA's determination that an IPV has occurred. HRA then imposes a sanction of one year, two years or permanently depending on the number of times an IPV has been committed. 7

CLASS ACTION ALLEGATIONS

50. Plaintiffs bring this action on behalf of a class defined as follows:

All individuals who receive food stamps from HRA who, at any time within the three years before the commencement of this action, have been charged by HRA with an IPV because of their answer to the recertification form's marital status question, despite not having lived with a spouse during the recertification period.

51. The class is so numerous that joinder of all members is impracticable. Upon information and belief, each year, HRA charges more than a hundred food stamp households with an IPV for misstatements on their recertification forms concerning marital status despite the fact the spouses did not reside together during the recertification period. The identity of many of the class members is unknown to plaintiffs and, therefore, joinder is impracticable.

52. There are numerous questions of fact and law common to the class. At issue is whether HRA's policy and practice of disqualifying financially eligible individuals from the food stamp program as punishment for incorrect answers to the marital status question on their recertification forms violates plaintiffs' and class members' rights under the Food Stamp Act, its enabling regulations, the governing state regulation, and the Fourteenth Amendment's Due Process Clause and Equal Protection Clause of the United States Constitution. Because it has failed to exercise its supervisory responsibility over HRA, OTDA's compliance with the Food Stamp Act, its federal enabling regulations, its own regulations, the Due Process Clause of the Fourteenth Amendment.

53. The individual plaintiffs' claims are typical of the claims of the class in that all class representatives have been charged by HRA with an IPV because their food stamp recertification forms contain misstatements concerning their marital status. HRA has admitted

that the marriage created an “overissuance of \$0.00” in food stamps. The plaintiffs have been disqualified or will be disqualified from the food stamp program as a direct result of HRA’s operation of the marriage purge and OTDA’s acquiescence in the marriage purge.

54. Declaratory and injunctive relief are appropriate with respect to the class as a whole because defendants have acted on grounds applicable to the entire class. Specifically, this Court’s declaration, that HRA’s reliance on marital status, without more, as a ground for disqualifying financially eligible individuals from the food stamp program is unlawful, would benefit each class member. An injunction ordering HRA to reprocess class members’ recertification forms that form the basis for the IPV charge without penalizing them for their answers regarding marital status will prevent class members from losing food stamps for which they are financially eligible.

55. The plaintiffs and the proposed class members are represented by attorneys from the Urban Justice Center who are experienced in class action litigation and will adequately represent the class.

56. A class action is superior to other available methods for a fair and efficient adjudication of this matter because the prosecution of separate actions by individual class members would unduly burden the Court and create the possibility of conflicting decisions.

CLAIMS OF REPRESENTATIVE PLAINTIFFS

Carlos Robles

57. Robles lives alone in a single-room occupancy hotel for formerly homeless individuals. Robles has received food stamps since approximately November 2001.

58. Robles is being treated for schizoaffective disorder, bipolar type, and receives monthly disability benefits of \$653 from the Social Security Administration under the

Supplemental Security Income (“SSI”) program. As a stockroom and maintenance worker at a grocery store, he earns an average of approximately \$515 a month. Based on that combined income and lack of financial resources, he is entitled to \$84 a month in food stamps.

59. Food stamps were a critical supplement to Robles’ income of \$1168 a month.

60. Robles works closely with social workers at the nonprofit Center for Urban Community Service. Social workers complete Robles’ paperwork because Robles is unable to do so himself. The Center for Urban Community Service is also the payee for Robles’ SSI benefits because he is unable to manage them himself.

61. On or about August 23, 2006, Holly Jarrell (“Jarrell”), a social worker at the Center for Urban Community Service, completed Robles’ food stamp recertification form on Robles’ behalf. Jarrell indicated Robles’ marital status as “S,” for single. Robles signed the recertification form.

62. On or about February 24, 2007, Robles attended an interview with HRA at which he was presented with a marriage certificate, obtained by HRA from the City Clerk, indicating he had been married to Xiulan Cha (“Cha”) on February 7, 2006.

63. Robles signed a statement admitting that he had not advised HRA of his marriage “because [he] did not want [his] marriage to affect [his] food stamp benefits.” This reason was given to him by HRA and Robles acceded, a pattern characteristic of his psychiatric diagnosis.

64. Robles never lived with Cha. On August 24, 2007, the New York State Supreme Court entered a judgment dissolving the marriage between Robles and Cha.

65. HRA has admitted in writing that Robles received an “overissuance of \$0.00” in food stamps.

66. Robles received a notice from OAH, dated September 29, 2008, stating that HRA

had informed it that: “[Robles] intentionally failed to provide accurate information regarding his marital status. As a result, [Robles] received an overissuance of \$0 to which [he was] not entitled during the period from 02/07/06 to 02/24/07.”

67. An administrative disqualification hearing was held. On March 26, 2009, OAH issued a decision that upheld HRA’s determination that Robles had committed an IPV because he had failed to provide accurate information about his marital status. OAH did not find that Robles was living with his wife at the time he recertified for food stamps.

68. Robles received a notice from HRA, dated May 12, 2009, informing him that his food stamps would be discontinued for one year beginning June 2009.

69. When Robles tried to access his food stamps for the month of June there were no benefits in his account.

Jennifer Vargas

70. Vargas lives with her two children, who are 13 and 9 years old (collectively, the “Vargas household”). They constitute a food stamp household.

71. Vargas is a full-time student and is scheduled to be awarded her associate’s degree as a medical assistant. With a monthly income limited to a public assistance grant of \$238, \$850 in rental assistance, and no more than \$25 in child support from the father of the children, the Vargas household is eligible for \$485 a month in food stamps. The Vargas household has been receiving food stamps since 1997.

72. Food stamps are a critical supplement to the Vargas’ household income of \$1113 a month.

73. Vargas applied for public assistance at the same time she applied for food stamps. Vargas disclosed to HRA that Ivan Malpica (“Malpica”) was her children’s father. HRA has

been collecting the court-ordered child support he pays because his children receive public assistance.

74. On or about June 7, 2006, Vargas attended her food stamp recertification. Vargas met with her caseworker, Kristie Mack (“Mack”) and informed her that she had married Malpica during the recertification period and presented Mack with a copy of her marriage certificate, dated February 14, 2006.

75. Mack copied the documents Vargas gave her except for the marriage certificate and informed Vargas that the marriage certificate was unnecessary.

76. Mack filled out the recertification form on her computer screen, which was turned facing away from Vargas. The questions Mack asked Vargas did not include her marital status. Mack presented Vargas with a signature block to sign without showing her the recertification form and Vargas signed it.

77. In or about February 2007, Vargas kept an appointment with HRA. Vargas was presented with the recertification form Mack had filled out and saw, for the first time, in a box labeled “Marital Status,” a drop-down menu choice of “Single/Never Married” had been selected. Later in the application, in answer to the question, “Does Anyone Applying Have a Husband or Wife?,” the radio button next to “No” had been electronically filled in. Vargas was further presented with a marriage certificate showing her marriage to Malpica prior to the date of her food stamp recertification.

78. HRA gave Vargas a previously drafted statement, written from Vargas’s point of view, admitting that Vargas had “failed to change [her] marital status,” and she signed it.

79. In February 2009, Vargas received a notice from OAH informing her that HRA had provided it with evidence that she had committed an IPV. The notice said:

We have reason to believe that, according to Part 359 of Title 18 of the New York Codes, Rules and Regulations (NYCRR), you have committed an INTENTIONAL PROGRAM VIOLATION of the following program(s):

Public Assistance (PA) and Food Stamps (FS)

This is because your social services department has informed us that:

You intentionally failed to provide accurate information regarding marital status. As a result you received an overpayment of Public Assistance in the amount of \$0 during the period 02/14/06 and 02/12/07 and an overissuance of food stamps in the amount of \$0 during the period 02/14/06 to 02/12/07 to which you were not entitled. See NYCRR Parts 352, 359 and 387; 7 CFR 273.16.

80. Disqualification of Vargas from food stamps will reduce the Vargas household's budget for food by \$118 a month for one year. Her family of three will have only \$367 a month with which to feed themselves.

Ana Delmy Echevarria

81. Echevarria lives with her disabled adult daughter and her adult son (collectively, the "Echevarria household"). They have been receiving food stamps since 1998, with a brief interruption in late 2007 and early 2008. The family currently is entitled to \$431 a month in food stamps.

82. Food stamps are a critical supplement to the Echevarria's household income of \$335 a month and her daughter's SSI payments of \$640 a month.

83. In fulfillment of her obligations under the food stamp program, Echevarria attended recertification appointments, including one on or about August 12, 2006. The HRA caseworker in a box labeled "Marital Status," chose from a drop-down menu "Single/Never Married." Later in the application, in answer to the question, "Does Anyone Applying Have a Husband or Wife?," the radio button next to "No" was filled in.

84. On or about January 27, 2007, HRA interviewed Echevarria about alleged food stamps and public assistance IPV. She was presented with a Certificate of Marriage Registration, which HRA had obtained from the City Clerk, showing that she had married Francis Burgos (“Burgos”) on July 21, 2006, in the City of New York. Echevarria signed a statement admitting to having failed to report her change in marital status to HRA in disregard of what she knew to be her obligations under the food stamp and public assistance programs.

85. In April 2009, Echevarria received a notice from OAH informing her that HRA had provided it with evidence, that she had committed an IPV. The notice said:

We have reason to believe that, according to Part 359 of Title 18 of the New York Codes, Rules and Regulations (NYCRR), you have committed an INTENTIONAL PROGRAM VIOLATION of the following program(s):

Public Assistance (PA) and Food Stamps (FS)

This is because your social services department has informed us that:

You intentionally failed to provide accurate information regarding marital status. As a result you received an overpayment of Public Assistance in the amount of \$0 during the period 7/21/06 to 12/10/06 and an overissuance of Food Stamps in the amount of \$0 during the period 7/21/06 to 12/31/06 to which you were not entitled. See 18 NYCRR Parts 352, 359 and 387; 7 CFR 273.16.

86. Echevarria did not live with Burgos during the time period cited by HRA. Indeed, they have never lived together.

87. If the administrative disqualification hearing proceeds, HRA’s determination that Echevarria committed an IPV will be upheld by OAH, her household’s monthly food stamps will be reduced from \$431 to \$272, and she will be disqualified from receiving food stamps for one year.

Marinda Myers

88. Myers lives with her adult son.⁴

89. Myers is being treated for schizophrenia, bipolar disorder, and post-traumatic stress disorder. She receives monthly disability benefits from the Social Security Administration under its Old-Age Survivors and Disability Insurance and SSI programs of \$793. These benefits are her sole source of income. Myers is financially eligible for monthly food stamps in the amount of \$200. Myers was recertified for food stamps in approximately October 2006.

90. Food stamps are a critical supplement to Myers' income of \$793 a month.

91. In or about October 2006, Myers completed a food stamp recertification form and wrote "Single" under the "Marital Status" box.

92. Myers was not living with her husband at the time she recertified for food stamps and has not lived with him since.

93. In a letter dated April 2, 2007, HRA informed Myers of an investigation into her eligibility for public assistance and food stamps because the marriage purge showed Myers had married Kenneth Wilcox ("Wilcox") on January 6, 2005.

94. On April 14, 2007, Myers attended an interview with HRA. The investigator wrote out a voluntary statement for Myers and informed her that she would not be able to receive food stamps if she did not sign it. Under this pressure, Myers signed the statement. She crossed out "married for a short period" and wrote "3 ½ weeks," which was the entirety of time she and Wilcox had lived together. That was in 2005, well before the recertification period identified by HRA.

⁴ Myers' and her son do not constitute a food stamp household because they purchase and prepare food separately.

95. In November 2008, Myers received a notice from OAH informing her that HRA had provided it with evidence that she had committed an IPV. The notice said:

We have reason to believe that, according to Part 359 of Title 18 of the New York Codes, Rules and Regulations (NYCRR), you have committed an INTENTIONAL PROGRAM VIOLATION of the following program(s):

Food Stamps (FS)

This is because your social services department has informed us that: You intentionally failed to provide accurate information regarding marital status. As a result you received an overissuance of Food Stamps in the amount of \$0 to which you were not entitled during the period 10/16/06 to 2/28/07. See 18 NYCRR Parts 359 and 387; 7 CFR 273.16.

96. If the hearing proceeds, HRA's determination that Myers committed an IPV will be upheld, her food stamps will be discontinued, and she will be disqualified for receiving food stamps for one year.

Luz M. Cruz

97. Cruz resides with her five children, who range in age from 2-year-old twins to 14 years (collectively, the "Cruz household"). The Cruz household receives \$848 in food stamps monthly from HRA. Cruz has received food stamps for about 15 years.

98. Cruz supports herself and her children by baby sitting in the afternoons, for which she earns \$125 a week, and from child support of \$119 a week. Cruz's monthly rent is \$248.

99. Food stamps are a critical supplement to the Cruz's household income of \$1057 a month.

100. On May 20, 2005, Cruz married Juan E. Martinez Eusebio.

101. On December 15, 2005, Cruz completed an OTDA form called a Food Stamp Benefits Recertification form.

102. The food stamp form asked Cruz to “List everyone who lives with you even if they are not applying,” and asked for certain information about the individuals in the household such as marital status. To the marital status question Cruz answered “single.”

103. When Cruz signed the Food Stamp Benefits Recertification form on December 15, 2005, her husband was not living in her household.

104. On June 12, 2006, Cruz completed another Food Stamp Benefits Recertification form, and to the marital status question Cruz answered “single.”

105. At the time Cruz signed the Food Stamp Benefits Recertification form on June 12, 2005, her husband was not living in her household.

106. In 2006, HRA conducted a marriage match search and learned of Cruz’s marriage.

107. On March 1, 2007, Cruz was interviewed by HRA and she said that her husband had left their home two months after the marriage.

108. In 2007, HRA sent OTDA an evidentiary packet by a “Transmittal of Request for Administrative Hearing,” claiming Cruz had committed an IPV, the “period of over-issuance” was January 14, 2006 to January 31, 2007, and the amount of the overpayment was “\$0.00.”

109. On or about April 6, 2009, OTDA, based on HRA’s evidence packet, mailed Cruz an “Advance Notice of Your Administrative Disqualification Hearing,” scheduling the hearing for May 12, 2009. At the request of Cruz’s lawyers, the hearing was adjourned.

110. Cruz’s hearing is scheduled for July 28, 2009. If the hearing proceeds, OTDA will uphold HRA’s determination that Cruz committed an IPV, she will be disqualified from receiving food stamp benefits for one year, and her household’s food stamps will be reduced.

111. The “Advance Notice of Your Administrative Disqualification Hearing” advised Cruz as follows:

We have reason to believe that, according to Part 359 of Title 18 of the New York Codes, Rules and Regulations (NYCRR), you have committed an INTENTIONAL PROGRAM VIOLATION of the following program(s):

Food Stamps (FS)

This is because your social services department has informed us that:

You intentionally failed to provide accurate information regarding marital status. As a result you received an overissuance of Food Stamps in the amount of \$0 to which you were not entitled during the period 01/14/06 to 01/31/07. See 18 NYCRR Parts 359 and 387; 7 CFR 273.16.

Rafael Jimenez

112. Jimenez lives with his sister-in-law and her three young children. They are separate food stamp households.

113. Jimenez's sole source of income is the \$316.80 in public assistance he receives monthly from HRA. He receives \$200 a month in food stamps from HRA. From his public assistance, Jimenez gives his sister-in-law \$215 a month for rent.

114. Food stamps are a critical supplement to Jimenez's income of \$316.80 a month.

115. On March 24, 2005, Jimenez married Erica Lewin.

116. On February 11, 2006, Jimenez completed a public assistance and food stamp recertification while sitting at the desk of an HRA caseworker who used her computer to enter information on a Spanish language recertification form by filling in "yes" or "no" in radio buttons for answers to the questions.

117. To the question: "¿De los solicitantes, tiene alguna persona Esposo(a)?" ["Does Anyone Applying Have a Husband or Wife?"], the worker filled in the radio button for "No."

118. On March 28, 2007, Jimenez completed a public assistance and food stamp

recertification while sitting at the desk of an HRA caseworker, who used her computer to enter information on an English language recertification form by filling in “yes” or “no” in radio buttons for answers to the questions.

119. To the question: “Does Anyone Applying Have a Husband or Wife?,” the worker filled in the radio button for “No.”

120. At the time Jimenez signed the food stamp recertification form on February 11, 2006, Jimenez was not living with his wife and has not lived with her since.

121. In 2006, HRA conducted a marriage purge and learned of Jimenez’s marriage.

122. On April 13, 2007, Jimenez was interviewed by HRA and said that he and his wife never lived in the same household after they were married.

123. In 2007, HRA sent OTDA an evidentiary packet by a “Transmittal of Request for Administrative Hearing,” claiming Jimenez had committed (a) a food stamp IPV, the “period of over-issuance” was April 1, 2005, to March 31, 2007, and the amount of the overpayment was “\$0.00;” and (b) a public assistance IPV, the period of over-issuance” was March 24, 2005, to April 13, 2007, and the amount of the overpayment was “\$0.00.”

124. On or about December 2, 2008, OTDA, based on the HRA’s evidence packet, mailed Jimenez an “Advance Notice of Your Administrative Disqualification Hearing,” scheduling the hearing for January 20, 2009. The hearing was adjourned at Jimenez’s lawyer’s request and is now scheduled for July 14, 2009.

125. The “Advance Notice of Your Administrative Disqualification Hearing” advised Jimenez as follows:

We have reason to believe that, according to Part 359 of Title 18 of the New York Codes, Rules and Regulations (NYCRR), you have committed an INTENTIONAL PROGRAM VIOLATION of the following program(s):

Public Assistance (PA) and Food Stamps (FS)

This is because your social services department has informed us that:

You intentionally failed to provide accurate information regarding marital status. As a result you received an overpayment of Public Assistance in the amount of \$0 during the period 03/24/05 to 04/13/07 and an overissuance of Food Stamps in the amount of \$0 during the period 04/01/05 to 03/31/07 to which you were not entitled. See 18 NYCRR Parts 352, 359 and 387; 7 CFR 273.16.

126. If Jimenez's hearing is held OAH will uphold HRA's determination that Jimenez did commit an IPV and he will be disqualified from receiving food stamp benefits for one year, although the evidence packet states that he will be disqualified for six months.

CAUSES OF ACTION

Count One

Section 1331 Preemption Claims Against Defendants Based on Conflicts with Federal Food Stamp Act and its Enabling Federal Regulations

127. Plaintiffs hereby refer to and incorporate herein by reference paragraphs 1 through 126 above as though fully incorporated herein.

128. Section 1331 permits suit to be brought where, as here, federal law preempts a conflicting state policy or practice. 28 U.S.C. § 1331.

129. The Supremacy Clause, Article VI of the United States Constitution, provides that, "[t]his Constitution, and the Laws of the United States which shall be made in Pursuance thereof ... shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the contrary notwithstanding." Pursuant to the Supremacy Clause, state policy or practice that conflicts or is inconsistent with federal law, or that stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress, is preempted and thus invalid and unenforceable.

130. The federal Food Stamp Act provides the Secretary of Agriculture (“Secretary”), and only the Secretary of Agriculture, with the discretion and exclusive authority to “establish uniform standards of eligibility ... for participation by households in the supplemental nutrition assistance plan in accordance with the provisions of this section.” 7 U.S.C. § 2014(b). It further provides that “no State agency shall impose any other standards of eligibility as a condition for participating in this program.” *Id.*

131. The Secretary has not seen it fit to require disclosure of marital status as an eligibility requirement. No provision of the Food Stamp Act requires disclosure of marital status as a condition of eligibility.

132. HRA may charge food stamp recipients with IPVs based on misstatements in the recertification form only when an individual “intentionally [m]ade a false or misleading statement or misrepresented, concealed or withheld facts *concerning the individual’s eligibility for food stamps.*” 18 N.Y.C.R.R. § 359.3(b)(1) (italics added).

133. Accordingly, by pursuing food stamp recipients for intentional misstatements of their marital status, HRA is adding an eligibility requirement that renounces federal law.

134. Because the marriage purge necessarily entails the addition of an eligibility requirement, which is the exclusive purview of the Secretary, the policy and practice conflicts with and is inconsistent with the federal Food Stamp Act and stands as an obstacle to the accomplishment and execution of the full purpose and objectives of Congress. For this reason, the marriage purge may not be enforced, and any interpretation of state law permitting it is preempted by the Food Stamp Act under the Supremacy Clause of the United States Constitution and is invalid and unenforceable.

Count Two
Section 1983 Claims Based on Violations of Federal Food Stamp Act
and its Enabling Federal Regulations by Defendants HRA and OTDA

135. Plaintiffs hereby refer to and incorporate herein by reference paragraphs 1 through 134 above as though fully incorporated herein.

136. Section 1983 imposes liability on those who, acting under color of state law, deprive a person “of any rights, privileges, or immunities secured by the Constitution and laws” of the United States. 42 U.S.C. § 1983.

137. The Food Stamp Act, 7 U.S.C. § 2020(a)(1), imposes an unambiguous, unequivocal obligation to deliver food stamps to “eligible households.”

138. Plaintiffs are “eligible” for food stamps because they meet the criteria set forth in the federal Food Stamp Act and delineated by the Secretary, pursuant to the power Congress delegated exclusively to the Secretary. The federal Food Stamp Act and its enabling regulations determine both eligibility and food stamp budgets by who lives together in a “household.”

139. Defendant HRA’s marriage purge systematically strips certain individuals of food stamps even though they meet the eligibility requirements set forth in the federal Food Stamp Act.

140. At regular intervals, HRA conducts the marriage purge for all food stamp recipients who recertify on a regular basis. The system-wide reach of the purge makes it a de facto policy of HRA.

141. HRA’s execution of the marriage purge causes plaintiffs to be deprived of their federal rights under the Food Stamp Act.

142. OTDA’s failure to train HRA employees to adhere to the definition of eligibility in the Food Stamp Act with regard to HRA’s marriage purge amounts to deliberate indifference to eligible households’ right to receive food stamps to which they are entitled by federal statute.

Count Three
Implied Cause of Action Under Federal Food Stamp Act Against Defendant HRA for Violations of Federal Food Stamp Act and Federal Enabling Regulations

143. Plaintiffs hereby refer to and incorporate herein by reference paragraphs 1 through 142 above as though fully incorporated herein.

144. Defendants' conduct of the marriage purge violates plaintiffs' and class members' rights under the federal Food Stamp Act, as well as defendants' own enabling regulations on recertification eligibility for food stamps. 7 U.S.C. § 2020(a)(1).

145. By treating disclosure of marital status as an eligibility requirement, defendants are impermissibly adding an eligibility requirement not approved by the Secretary and outside of the "national uniform standards" for food stamp eligibility that Congress explicitly charged the Secretary with setting. 7 U.S.C. § 2014(b). Plaintiffs have a right to have their eligibility measured by standards that do not exceed federal law and that are publicized through the state agency's plan. The marriage purge eviscerates that right.

Count Four
Federal Food Stamp Act Claim Against OTDA

146. Plaintiffs hereby refer to and incorporate herein by reference paragraphs 1 through 145 above as though fully incorporated herein.

147. Defendant OTDA's failure to properly oversee and supervise HRA's administration of the food stamps program violates plaintiffs' and class members' rights under the federal Food Stamp Act. 7 U.S.C. § 202(a)(2).

Count Five
Federal Due Process Claim Against HRA

148. Plaintiffs hereby refer to and incorporate herein by reference paragraphs 1 through 147 above as though fully incorporated herein.

149. Defendants disqualify plaintiffs from receiving food stamps on grounds not articulated in, and indeed precluded by, the governing federal and local law.

150. Plaintiffs have a property interest in continuing receipt of food stamps for which they have documented eligibility.

151. Plaintiffs have a right to be informed of the grounds upon which they may be denied their statutory entitlement to food stamps.

152. Defendants are denying plaintiffs their food stamps on grounds not articulated in federal or state law.

153. Accordingly, HRA's operation of the marriage purge violates plaintiffs' and class members' rights under the Due Process Clause of the United States Constitution.

Count Six
State Constitutional Preemption Claim Against HRA

154. Plaintiffs hereby refer to and incorporate herein by reference paragraphs 1 through 153 above as though fully incorporated herein.

155. Article IX, Section 2, Subdivision C, Paragraph 2 of the New York State Constitution requires that any local law be "not inconsistent ... with any general law" and that local government action be restricted to the extent that state law restricts the adoption of such a law.

156. HRA's marriage purge is preempted by OTDA's regulation limiting the basis for IPV's to only those misstatements "concerning eligibility for food stamps." 18 N.Y.C.R.R. § 359.3(b)(1).

Count Seven
Implied Private Cause of Action under State Regulations Against Defendants

157. Plaintiffs hereby refer to and incorporate herein by reference paragraphs 1 through 156 above as though fully incorporated herein.

158. State regulation sets forth the reasons for which individuals may be disqualified from food stamps and establishes important procedural safeguards for the benefit of plaintiffs and class members. 18 N.Y.C.R.R. § 359.3(b)(1).

159. By invoking grounds beyond those permitted by 18 N.Y.C.R.R. § 359.3(b)(1), HRA is violating plaintiffs' state statutory rights limiting the kind and number of procedures to which they can be subjected.

160. Defendant OTDA's acquiescence in HRA's marriage purge constitutes a failure to supervise local social services districts as required by state law. N.Y. Soc. Serv. Law § 20(b).

Count Eight
State Administrative Procedure Act Claim Against OTDA

161. Plaintiffs hereby refer to and incorporate herein by reference paragraphs 1 through 160 above as though fully incorporated herein.

162. OTDA promulgated a rule that established grounds upon which local agencies may pursue food stamp recipients for IPV's. Specifically, OTDA authorized sanctions only for misstatements that "concern eligibility for food stamps." 18 N.Y.C.R.R. § 359.3(b)(1).

163. HRA systematically invites OTDA's scrutiny into its operation of the marriage purge. Notwithstanding its federally and self-imposed duty to ensure that HRA distributes benefits to eligible households in accordance with law, OTDA has failed to halt the marriage purge.

164. By routinely authorizing HRA to disqualify food stamp recipients for misstatements unrelated to eligibility, OTDA rejects its own limitation that misstatements may only be sanctioned if “concerning eligibility for food stamps.”

165. OTDA’s failure to amend 18 NYCRR § 359.3(b)(1) violates New York’s State Administrative Procedure Act. N.Y. S.A.P.A. Law § 202.

PRAYER FOR RELIEF

Wherefore, plaintiffs request that this Court:

- (a) Certify this action as a class action, pursuant to Fed.R.Civ.P. 23;
- (b) Declare, pursuant to 28 U.S.C. § 2201, that HRA’s policy and practice of relying on misstatements as to marital status as the basis, without more, for charging financially eligible food stamp recipients with an IPV violates state statutes, state regulations, federal statutes, federal regulations, and the United States Constitution;
- (c) Permanently enjoin HRA from charging, and OTDA from permitting HRA to charge food stamp recipients who do not answer the marital question correctly with an IPV;
- (d) Permanently enjoin HRA to reprocess individual plaintiffs’ and class members’ recertifications without using their answers to the marital status question as a component of eligibility for food stamps;
- (e) Award an attorney fee pursuant to 42 U.S.C. § 1988;
- (f) Award costs and disbursements; and

(g) Grant such other and further relief as the Court deems just and proper.

Dated: New York, New York
June 25, 2009

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