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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

2015 JUN 17 PM 4:45

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CLARICE PFEFFER, DULCE MALAGON,  
Individually and on behalf of all others similarly  
situated,

U.S. DISTRICT COURT  
EASTERN DISTRICT  
OF NEW YORK

**CLASS ACTION  
COMPLAINT**

PLAINTIFFS,

Index No.:

-Against-

**CV 15 3547**

NEW YORK CITY DEPARTMENT OF  
FINANCE, and JACQUES JIHA, as  
Commissioner of the New York City  
Department of Finance, NYSANDY3 NBP3,  
LLC, and FANSAM PROPERTIES, LLC,

**ORIGINAL**

DEFENDANTS.

**CHEN, J.**

**GO, M.J.**

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**PRELIMINARY STATEMENT**

1. This is an action under the Americans with Disabilities Act and the Due Process Clause challenging Defendant Department of Finance's ("Defendant DOF" or "DOF") failure to implement meaningful policies, practices, and procedures in the administration of its New York City Rent Freeze Program to provide reasonable accommodations for individuals' disabilities and its failure to provide an adequate policy and procedure for determining whether an individual has good cause for re-opening and revising an administrative determination.
2. New York City's Rent Freeze Program ("RFP") is Defendant DOF's terminology for its program of providing Senior Citizen Rent Increase Exemption ("SCRIE") and Disability Rent Increase Exemption ("DRIE) benefits that freeze the rents of lower income, eligible individuals. Plaintiffs are individuals with disabilities who are eligible for New York City's RFP who have lost or been denied Rent Freeze

Program benefits or who are at risk of the future denial or termination of these benefits because they were, or will in the future be, unable to comply with administrative requirements due to their disabilities.

3. Plaintiff Clarice Pfeffer is an 84-year old woman who lives alone in a rent stabilized apartment in the Bronx that has been her home for over 20 years. As a result of a series of strokes, in addition to a host of other medical problems, Ms. Pfeffer has memory deficits and significant physical limitations. She currently receives monthly social security benefits in the amount of \$1,126/month. Because of the SCRIE benefits that she had been receiving for many years, her rent had been frozen at the amount \$537.54/month—an amount that was already more than 45% of her income.
4. At or about the end of May 2013, DOF apparently terminated Ms. Feiffer's SCRIE benefits because she failed to timely renew her benefits, but neither Ms. Pfeffer nor her JASA/APS social worker became aware that Ms. Pfeffer's SCRIE benefits had been terminated until the late spring or early summer of 2014. When they attempted to correct this problem, they were advised by an employee at DOF to complete a new SCRIE application. They promptly submitted a new application to DOF.
5. By letter dated July 23, 2014, DOF informed Ms. Pfeffer that her rent would now be frozen at \$1084.53 and that the landlord would receive a tax credit in the amount of \$41.71/month based on the new legal regulated rent of \$ 1126/month.
6. With the assistance of her JASA/APS social worker, Ms. Pfeffer appealed DOF's determination. In a letter dated September 10, 2014, DOF denied Ms. Pfeffer's appeal, stating:

Renewal tenants such as you, who were previously revoked and are outside of the (six-month) grace period, have to reapply as an initial applicant, with a

new higher frozen rent amount. We have no authority to freeze your rent at the previous amount or issue you any retroactive benefits for the period you were not on SCRIE. Consequently, your new application was correctly processed and your frozen rent amount is correct.

7. Unless DOF's determination is vacated and reversed, Ms. Pfeffer would be forced to move from her home, as she could not survive on the \$42/month that she would have after payment of the new frozen rent.
8. Plaintiff Dulce Malagon is a 74-year old woman with significant medical conditions, including dementia. She has a limited monthly income from Social Security benefits and a pension in the amount of \$849.95. She has lived in her current rent stabilized apartment for the last 40 years, and has been able to do so because, for approximately a decade, her SCRIE benefit has frozen her rent at the amount of \$536.27.
9. Although DOF terminated Ms. Malagon's SCRIE benefits in April 2014, she did not become aware of the termination until the end of 2014 when her landlord notified her that there were rent arrears and brought a non-payment case against her in Housing Court. With the assistance of a social worker, Ms. Malagon appealed DOF's decision terminating her SCRIE benefits. In a decision dated March 20, 2015, DOF summarily denied the appeal as untimely, stating:

We have completed a review of the appeal application you submitted. The evidence submitted with your application is not sufficient to grant your appeal. Appeals must be submitted within 60 days from the date of the SCRIE order you are appealing. Your SCRIE benefits were revoked on August 4, 2014. As such, your appeal cannot be considered...If you believe you qualify for the program, please do not hesitate to submit a new application.

10. As a result of the SCRIE revocation, the amount of rent for which Ms. Malagon will be responsible has been dramatically increased from the frozen

rent of \$536.27 to \$888.61 per month, the current legal regulated rent for her apartment. This increase of approximately 65% exceeds her total monthly income of \$849.95.

11. Upon information and belief, Defendant has no mechanism for considering a request for a reasonable modification of its policies, practices or procedures to avoid disability-based discrimination; nor does it have a meaningful and appropriate policy and procedure for considering a request to extend a deadline or re-open a determination based on good cause, other than a recent, unpublished policy allowing for some additional time to renew RFP benefits under four narrow circumstances. To date, DOF has not applied this policy consistently, if it has applied the policy at all.
12. In this action, Plaintiffs seek declaratory and injunctive relief requiring Defendant DOF to establish and implement adequate and effective procedures for RFP applicants and recipients to seek and obtain reasonable accommodations for their disabilities, and the right to demonstrate good cause for missing an administrative deadline. The absence of such procedures renders Plaintiffs vulnerable to the wrongful denial or termination of their RFP benefits since their disabilities have prevented, or may in the future prevent them from timely complying with Defendant's administrative requirements.
13. Finally, Ms. Pfeffer, Ms. Malagon, and other similarly situated plaintiffs who have been denied RFP benefits for which they were eligible because they missed administrative deadlines for reasons related to their disabilities, ask this Court to: a) vacate Defendant's decisions denying or terminating their RFP benefits; and b)

direct Defendant to formally consider whether RFP benefits should be provided or re-instated as a reasonable accommodation for their disability and/or in light of their good cause for failing to timely comply with Defendant's administrative requirements.

14. The provision of RFP benefits to eligible individuals who were improperly denied those benefits for a disability-related reason will preserve the tenancies of those low-income elderly and disabled individuals that this important governmental program was designed to protect.

#### **JURISDICTION AND VENUE**

15. This court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 for civil actions arising under the laws of the United States and 28 U.S.C. § 1343 for actions arising under laws providing for the protection of civil rights.
16. Plaintiffs seek declaratory relief pursuant to 28 U.S.C. §§ 2201(a) and 2202 and Rule 57 of the Federal Rules of Civil Procedure, and seek injunctive relief pursuant to Rule 65 of the Federal Rules of Civil Procedure.
17. Venue is proper in the Eastern District of New York pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events giving rise to the claims raised in this lawsuit occurred in the five boroughs of New York City, including in this district.

#### **PARTIES**

18. Plaintiff Clarice Pfeffer is a low-income 84-year-old woman with disabilities who has resided in her rent stabilized apartment at 2165 Bolton Street, Apt. 1K, Bronx, N.Y. 10462 ("subject apartment") for well over 20 years.

19. Plaintiff Dulce Malagon is a low-income 74-year-old woman with disabilities who has resided in her rent stabilized apartment at 366 Wadsworth Avenue, Apartment 25, N.Y., N.Y. 10040 (“subject apartment”) for the last 40 years.
20. Defendant Department of Finance is the New York City agency responsible for the administration of the SCRIE benefits Ms. Pfeffer and Ms. Malagon receive. Defendant maintains its principal office at 66 John Street, Room 104, New York, New York 10038.
21. Defendant Jacques Jiha is the Commissioner of the New York City Department of Finance and is responsible for the operation and administration of the New York City Department of Finance. Defendant Jiha’s office is located at the New York City Department of Finance, 66 John Street, Room 104, New York, N. Y. 10038. (Hereafter, Defendant DOF and Defendant Jiha will be referred to collectively as “Defendant” or “Defendant DOF.”).
22. Defendant NYSANDY3 NBP3 LLC (“NYSANDY”) is a New York limited liability company that owns the building at 2165 Bolton Street, Bronx, N.Y. 10462, and leases Apartment 1K to Clarice Pfeffer. NYSANDY filed a non-payment proceeding against Ms. Pfeffer in Bronx Housing Court, *NYSANDY3 NBP3 LLC, v. Clarice Pfeffer*, Index No. 18229/2015, seeking Ms. Pfeffer’s eviction from her home. The case was adjourned for the appointment of a Guardian Ad Litem to assist Ms. Pfeffer with adequately representing her interests. The next court appearance is scheduled for June 22, 2015. NYSANDY is named as a defendant under Rule 19 of the Federal Rules of Civil Procedure to ensure that any judgment rendered in Ms.

Pfeffer's favor would be adequate to protect her from eviction from her home in the absence of NYSANDY as a party to this proceeding.

23. Upon information and belief, Defendant FANSAM Properties LLC

("FANSAM") is a New York Corporation with a principal place of business at 5414 New Utrecht Avenue, Brooklyn, N.Y. 11219. FANSAM owns the building at 366 Wadsworth Avenue, N.Y., N.Y., and leases Apartment 25 to Plaintiff Dulce Malagon. FANSAM filed a non-payment proceeding in Manhattan Housing Court against Ms. Malagon, *FANSAM Properties LLC. v. Malagon*, L & T Index No., 88836/14, seeking Ms. Malagon's eviction from her apartment. In the context of that Housing Court proceeding, FANSAM has agreed to mark the case off calendar in exchange for payment of the on-going difference between Ms. Malagon's former SCRIE rent and the current rent. Ms. Malagon's granddaughter – who resides elsewhere -- is currently contributing the differential in rental amounts despite her own limited ability to provide this assistance. FANSAM is named as a defendant under Rule 19 of the Federal Rules of Civil Procedure to ensure that any judgment rendered in Ms. Malagon's favor would be adequate to protect her from eviction from her home in the absence of FANSAM as a party to this proceeding.

### **STATUTORY AND REGULATORY BACKGROUND**

#### **New York City Rent Freeze Program**

24. New York City's SCRIE program was adopted in 1970 to enable low-income, elderly tenants to continue residing in their rent-regulated apartments despite

periodic rent increases permitted under the rent control and rent stabilization laws.

The City Council's purpose in providing the rent increase exemption is set out in the law:

The council finds that there is an acute and continuing housing shortage; that this shortage has and continues to have an adverse effect on the population and especially on inhabitants of the city who are sixty-two years of age or older and of limited means, as well as persons with disabilities, who cannot pay enough rent to induce private enterprise to maintain decent housing at rents they can afford to pay; that this condition is and continues to be particularly acute in a time of rising costs such as the present; that present rising costs and the continuing increase in rents pursuant to amendments to the New York City rent and rehabilitation law may result in such persons being unable to pay their rent, thus making them subject to eviction; that such hardships fall with particular severity upon older persons in the population, as well as persons with disabilities, because of their particular inability to find alternative accommodations within their means, because of the trauma experienced by many older persons, as well as persons with disabilities, who have to relocate and because they may endanger their health by paying additional sums for shelter and thereby deprive themselves of other necessities; that hardships imposed upon such people adversely affect their health and welfare and the general welfare of the inhabitants of the city.

N.Y.C. Admin. Code § 26-405(m).

25. The SCRIE program was initially administered by the Department of Housing Preservation and Development (HPD) and then by the Department for the Aging (DFTA). In September 2009, New York City transferred the administration of the SCRIE program to Defendant DOF.
26. New York City's DRIE program was adopted in 2005 as an amendment to the SCRIE law, and it expanded the program to include low-income, disabled tenants. Defendant DOF has administered the DRIE program since its inception.
27. The SCRIE and DRIE programs are administered according to the same regulatory scheme and the same DOF procedures, practices, and policies. Defendant refers to



the SCRIE and DRIE programs collectively as the New York City Rent Freeze Program (RFP).

28. The RFP provides rent increase exemptions to certain low-income New York City residents living in rent-regulated housing, who are either 62 years of age or an adult with a disability. N.Y.C. Admin. Code §26-509; N.Y.C. Admin. Code §26-405(m). Under RFP, at the time of a legal rent increase, the eligible tenant's rental payment remains frozen at the prior legal amount. N.Y.C. Admin. Code §26-509(a)(1); N.Y.C. Admin. Code §26-405(m). The landlord then receives a tax abatement credit ("TAC") for the property subject to the rent increase exemption in the amount equal to the difference between the maximum rent collectible from the tenant under the exemption order and the rent that would be collectible if no exemption was granted. N.Y.C. Admin. Code § 26-509(c)(2); N.Y.C. Admin. Code § 26-405(m).
29. Until July 2014, RFP provided benefits to older or disabled tenants with aggregate annual household incomes of \$29,000.00 or less and who spend more than one third of their monthly household income on rent. N.Y.C. Admin. Code §§ 26-509(b)(2), 26-405(m). Because of the difficulty of maintaining affordable rental housing in New York City, on July 1, 2014, the limit on the aggregate annual household income for RFP eligibility was increased from \$29,000.00 to \$50,000.00.
30. For tenants in rent stabilized housing, RFP benefits expire upon the expiration of the existing lease, after which a tenant must submit a renewal application.
31. However the New York City Rent Stabilization Law, NYC Admin Code § 26-509(b)(6), and the NYC Rent Control Law Admin Code §26-405(m)(6) provides a six-month grace period after the expiration of the tenant's lease for the Defendant to

maintain the tenant's continued RFP eligibility. During this time, the tenant's portion of the rent remains frozen at the amount provided under the prior RFP exemption order. See also 9 NYCRR 2202.20(g). If, upon submitting a renewal application, the tenant is still eligible for the exemption, the tenant's rental payment remains frozen at the same amount that she paid under the prior exemption order. N.Y.C. Admin. Code § 26-509(b)(6); N.Y.C. Admin. Code § 26-405(m)(6). If the tenant is not determined to be eligible for continued RFP benefits, those benefits will be revoked six months after the automatic renewal of the tenant's prior RFP benefits, and the tenant will be liable to the landlord for the difference between the amount paid under the automatically renewed benefit and the amount that she would have paid in the absence of the renewal order. *Id.*

32. Beyond the generally applicable statutory six-month grace period for renewal after the expiration of the prior lease authorized by N.Y.C. Admin. Code § 26-509(b)(6) and N.Y.C. Admin. Code § 26-405(m)(6), which might provide some relief for an individual with a disability, Defendant has no formal policies or procedures for considering and providing reasonable requests to modify its policies, practices, or procedures to avoid disability-based discrimination.
33. In addition, Defendant has no formally published procedure for considering a request to extend a deadline or re-open a RFP program determination based on good cause other than the six-month grace period provided by the Rent Stabilization and Rent Control Laws.
34. In March 2013, Defendant discovered that it had failed to send revocation letters to SCRIE tenants who had failed to renew their applications "over the past couple of

years.” As a result, Defendant decided to extend a one-time, 60-day renewal/appeal process to this group of tenants. Under this SCRIE amnesty program, Defendant would allow tenants and landlords to “present documentation proving eligibility since their benefit expired in order to qualify for retroactive reinstatement of SCRIE benefits.”

35. At that time, Defendant informed some advocates that going forward the agency would:

1. Continue its practice of sending the tenant a renewal notice 60 days before [the] lease expires;”
2. Begin to send a reminder notice to the tenant and landlord if the tenant fails to submit a renewal application by 30 days after the lease expiration, and to send a revocation notice to the tenant and landlord if the tenant had still failed to submit a renewal application 90 days after the lease expiration;
3. Continue its informal policy of allowing a Tenant to submit an appeal of revocation “through 180 days after lease expires (as per 6 month grace period as defined by law).”

36. Plaintiffs do not know whether or not Defendant ever adhered to this March 2013 informal policy.

37. In late November 2014, Defendant distributed a memo entitled “Extension of Time to File for Renewal SCRIE/DRIE” to a select group of advocates for low-income New York City tenants.

38. According to this memo, Defendant will consider a request to extend a RFP recipient’s time to file a renewal application for an additional six-month period beyond the six-month statutory grace period after lease expiration under four specific and limited circumstances when the tenant: 1) had been hospitalized; 2) had been the victim of a natural catastrophe; 3) had been “declared incompetent” or was appointed a guardian within one year of lease expiration; or 4) had been formally diagnosed with “a documented case of Alzheimer’s or dementia” within one year of

lease expiration.

39. Under the policy articulated in Defendant's November 2014 memo, the agency would not provide relief to a beneficiary who had not been able to renew benefits or request an appeal due to: 1) a mental health condition other than "documented Alzheimer's or dementia"; 2) any other medical or psychiatric condition that did not lead to the appointment of a guardian or require hospitalization; or 3) any other hardship such as the serious illness of a family member, an apartment fire, temporary illegal eviction from one's home, etc.
40. Further, even if a recipient did meet one of the identified criteria, but did not appreciate that her RFP benefits had been terminated or did not receive necessary assistance to renew within the six-month grace period for the first or second reasons, or within one year of lease expiration for reasons three or four, she would not benefit from Defendant's informal policy on extending time to renew RFP benefits. The November 2014 memo underscores that Defendant will not consider any request for additional time to recertify beyond the extra six-month period under any circumstances whatsoever.
41. Upon information and belief, if the tenant is not aware of the RFP revocation notice when it is issued, she may not otherwise become aware that she has lost her RFP benefits for another 9-12 months. It is often only after the tenant's landlord submits its tax returns in the next calendar year that the landlord learns that it has lost its RFP tax abatement credit. It is at that time that the landlord demands payment of the retrospective increase in rent from the tenant and she then becomes aware that the RFP benefit had been terminated. Under Defendant's policy, however, at this point

in time, the tenant can no longer appeal that revocation order or otherwise seek re-opening and review of that determination.

42. On occasion, Defendant will exercise its discretion and re-open a renewal application or extend an administrative deadline. The general public is not made aware of the availability of this ad hoc procedure or the standards by which such a request for review is evaluated. Further, when the agency denies such an informal request for the exercise of administrative discretion to extend a deadline or re-open a renewal application, it takes the position that the individual has no right to appeal that determination.
43. DOF is aware that many elderly and disabled individuals may at some point become unable to submit a timely renewal application. In a December 22, 2014, e-mail correspondence with a tenant advocate whose elderly client had failed to file a timely renewal application, Ruth Boddie, the director of DOF's SCRIE and DRIE programs stated: "It is not uncommon to have clients who follow the pattern of successfully recertifying SCRIE for many periods and then cease which seems to have occurred in this case."
44. In fact, DOF has a policy of simply informing individuals who have missed administrative deadlines to submit a new application for benefits regardless of whether or not they may have been unable to comply with an administrative deadline due to a disabling condition such as a cognitive limitation. For example, in a decision dated March 20, 2015, DOF summarily denied a disabled tenant's appeal as untimely, stating:

We have completed a review of the appeal application you submitted. The evidence submitted with your application is not sufficient to grant your

appeal. Appeals must be submitted within 60 days from the date of the SCRIE order you are appealing. Your SCRIE benefits were revoked on August 4, 2014. As such, your appeal cannot be considered...If you believe you qualify for the program, please do not hesitate to submit a new application.

45. It is not burdensome for the Defendant to consider requests to re-open a revocation determination or extend an administrative deadline.
46. Other agencies administering government benefits programs have formal policies for requesting a reasonable accommodation for disability, an extension of an administrative deadline, or the re-opening of an agency determination.
47. For example, the Social Security Administration has a formal procedure for demonstrating good cause for missing an administrative deadline, including because “you had any physical, mental, educational, or linguistic limitations...which prevented you from filing a timely request or from understanding or knowing about the need to file a timely request.” 20 CFR § 404.911(a)(4). In addition, the Social Security Administration has a formal procedure for requesting the re-opening and revision of an otherwise final agency determination. 20 CFR § 404.987. Such a request can be made for any reason within twelve months of a determination or within four years of the determination if the claimant has good cause for missing a deadline, such as when “new and material evidence is furnished.” 20 CFR §§ 404.988, 404.989(a).
48. The New York State Office of Temporary and Disability Assistance, which hears all appeals of New York City public assistance and Medicaid matters, has a general and unlimited provision allowing for the re-opening of any hearing decision in order to correct an error. 18 NYCRR § 358-6.6.

49. With regard to providing reasonable accommodations, for example, the Federal Housing regulations require that the Public Housing Authority provide each tenant with a notice informing them of the right to request a reasonable accommodation, “including reasonable accommodation so that the tenant can meet lease requirements or other requirements of tenancy.” 24 CFR § 966.7.

### AMERICANS WITH DISABILITIES ACT

50. Pursuant to Title II of the ADA, “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, *programs, or activities of a public entity*, or be subjected to discrimination by any such entity.” 42 U.S.C. § 12132; 20 CFR § 35.130(a).
51. A “public entity,” within the meaning of the Act, is “any State or local government” and “any department, agency, special purpose district, or other instrumentality of a State or local government.” 42 U.S.C. § 12131(1).
52. A “disability” within the meaning of the Act is “a physical or mental impairment that substantially limits one or more major life activities of such individual.” 42 U.S.C. § 12102(1)(A).
53. A “qualified individual with a disability” is “an individual with a disability who, with or without reasonable modifications to rules, policies, or practices . . . meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.” 42 U.S.C. § 12131(2).
54. The Attorney General’s ADA regulations provide that, “[a] public entity shall make reasonable modifications in policies, practices, or procedures when the modifications

are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.” 28 C.F.R. § 35.130(b)(7).

55. In addition, the federal regulations provide that: “A public entity, in providing any aid, benefit, or service, may not...on the basis of disability...(ii) Afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others; [or] (iii) provide an individual with a disability with an aid, benefit or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others...or (vii) Otherwise limit a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit or service.” 28 C.F.R. § 35.130(b)(1).

56. Until on or about June 2015, DOF did not have a policy or procedure for providing reasonable accommodations to individuals with disabilities who were applicants or recipients of RFP benefits. In approximately June 2015, DOF added a page to its website entitled “Notice of Rights Under Title II of The Americans With Disabilities Act.”

57. It is unclear how, or if, DOF is applying this new policy, or whether DOF is reviewing its prior decisions for compliance with ADA requirements.



**FACTS RELATING TO INDIVIDUAL PLAINTIFFS**

58. Ms. Clarice Pfeffer is an 84-year old woman who lives alone in a one-bedroom apartment in the Bronx that has been her home for well over two decades.
59. Ms. Pfeffer has had a series of strokes, in addition to a host of other medical problems including, Grave's disease, seizure disorder, paralytic syndrome, hemiparesis and a history of Guillain-Barre syndrome. Ms. Pfeffer has memory deficits consistent with a neurocognitive disorder and is not oriented to time.
60. As a result of her physical limitations, Ms. Pfeffer uses a hospital bed and is transferred from her bed to her wheelchair with a hooyer lift. She has been receiving 24-hour home care services for at least the last 8-10 years. She also attends an adult day care program.
61. Ms. Pfeffer currently receives monthly social security benefits in the amount of \$1,126/month, after the deduction of Medicare premiums.
62. She has been a SCRIE recipient for many years. Through SCRIE, her rent was frozen at \$537.54/month, although the legal rent for the apartment was almost \$1100/month. SCRIE benefits are essential to Ms. Pfeffer's ability to afford her rent.
63. In 2013, Ms. Pfeffer was referred to Adult Protective Services (APS) for involuntary financial management based on the recommendation of Dr. Wesley Stradone, a New York City Office of Health and Mental Health consultant who had conducted a psychiatric evaluation of Ms. Pfeffer on May 1, 2013.,
64. Dr. Stradone found that Ms. Pfeffer's condition was consistent with vascular dementia related to her history of strokes and concluded that Ms. Pfeffer was not capable of managing her finances.

65. On or about May 30, 2013, Jewish Association Serving the Aging (JASA), an APS contract agency, began providing financial management services to Ms. Pfeffer.
66. At this same time, on or about May 31, 2013, DOF apparently terminated Ms. Feiffer's SCRIE benefits because she failed to renew her benefits within the six-month period after their expiration.
67. Upon information and belief, it was not until the late spring or early summer of 2014 that either Ms. Pfeffer or her JASA/APS social worker became aware that Ms. Pfeffer's SCRIE benefits had been terminated. When they attempted to correct this problem, they were advised by an employee at DOF to complete a new SCRIE application, which they did immediately.
68. At the time that Ms. Pfeffer completed the new SCRIE application, the legal regulated rent was increasing from \$ 1084.53 to \$ 1126/month. Consequently, DOF informed Ms. Pfeffer by letter dated July 23, 2014, that her rent would now be frozen at \$1084.53 (rather than at the prior frozen amount of (\$537.54/month), and that the landlord would receive a tax credit in the amount of \$41.71/month.
69. On September 3, 2014, the JASA/APS social worker helped Ms. Pfeffer appeal SCRIE's July 23, 2014, determination setting her frozen rent at \$1,084.53. In a letter dated September 10, 2014, DOF denied Ms. Pfeffer's appeal, providing her with the following explanation:

Renewal tenants such as you, who were previously revoked and are outside of the (six-month) grace period, have to reapply as an initial applicant, with a new higher frozen rent amount. We have no authority to freeze your rent at the previous amount or issue you any retroactive benefits for the period you were not on SCRIE. Consequently, your new application was correctly processed and your frozen rent amount is correct.

70. Ms. Pfeffer has continued to pay her old frozen rent of \$ 537.54/month and her Landlord, NYSANDY3 NBP3 LLC, has been billing her for rent in the amount of \$1084.53. Consequently, Ms. Pfeffer now has rental arrears of \$546/month for many months.
71. JASA continues to pay Ms. Pfeffer's bills through involuntary financial management, including Ms. Pfeffer's previous \$537.54 SCRIE portion of her rent.
72. Ms. Pfeffer's landlord, NYSANDY, served Ms. Pfeffer with a three-day notice dated March 12, 2015, alleging that she owed rent since September 2014.
73. At the end of March 2015, NYSANDY commenced a non-payment proceeding in Bronx County, *NYSANDY3 NBP3 LLC, v. Clarice Pfeffer*, Index No. 18229/2015, seeking arrears from September 2014-March 2015 in the total amount of \$6291.24.
74. On or about April 1, 2015, someone assisted Ms. Pfeffer with the filing of an answer in the Housing Court proceeding.
75. On or about April 13, 2015, counsel for the New York City Department of Social Services brought an order to show cause requesting that the Housing Court appoint a guardian ad litem to assist Ms. Pfeffer with her defense in that proceeding. The Court granted that motion on April 24, 2015. A guardian ad litem has been appointed and the Housing Court case is currently adjourned to June 22, 2015.

DULCE MALAGON

76. Ms. Malagon has lived in the subject rent stabilized apartment since 1975 and had been a SCRIE recipient since May 3, 2005, when her portion of the rent was frozen at \$536.27/month.

77. Ms. Malagon lives alone, and receives a total annual income of \$10,199.30 from Social Security benefits and a pension. Her monthly income is \$849.95. It is only because of her SCRIE benefits and modest assistance from her family that Ms. Malagon has been able to continue living in her current apartment and paying the monthly rent of \$536.27.
78. Ms. Malagon is 74 years of age, does not speak or read English, and suffers from numerous medical conditions. These include memory issues for which she has been taking a prescription drug, Donepezil, for the past 4 years. She also has osteoporosis, arthritis, and high cholesterol for which she is prescribed various medications for pain management and preventive care, including Meclizine, Meloxicam, Ibandronate, and Welchel. These drugs are known to have side effects that include confusion, depression, unusual tiredness, impaired motor skills, disorientation, and anxiety.
79. While Ms. Malagon's portion of her monthly rent has been frozen at the amount of \$536.27 since 2005, the legal regulated rent has increased over the last ten years to the current amount of \$881.61.
80. Ms. Malagon's SCRIE benefit was terminated effective May 1, 2014, but she does not recall receiving any notification of the termination from DOF.
81. By letter dated August 4, 2014, DOF notified Landlord FANSAM that the SCRIE benefits for Ms. Malagon had been terminated. The DOF went on to explain, however:

The tenant has the opportunity to renew their SCRIE benefit with no changes to their frozen rent if they submit required documents to prove continued eligibility by 10/31/2014. If the tenant's SCRIE has been reinstated and approved, you will receive a notice and retroactive tax

will be credited to you.

82. Apparently, as a result of DOF's August 4, 2014, letter, the Landlord continued to send monthly rent statements to Ms. Malagon through at least January 2015 indicating that she was still receiving her original SCRIE benefit. Ms. Malagon did not receive a copy of DOF's August 4, 2014, letter to the landlord and did not know about the window period to submit documents by October 31, 2014.
83. It was not until sometime after November 4, 2014, when she received a letter from her landlord informing her that her SCRIE benefits had expired on April 30, 2014, that Ms. Malagon became aware of the SCRIE termination. At that time, Landlord FANSAM told Ms. Malagon that she was now retroactively responsible for the SCRIE portion of her rent at \$240.28 per month, for the seven months since the termination of the SCRIE benefits.
84. The following month, FANSAM commenced a non-payment proceeding against Ms. Malagon seeking monthly arrears in the amount of \$240.28/month back to September 2014.. The New York County non-payment proceeding against Ms. Malagon, *Fansam Properties LLC. v. Malagon*, L&T Index No. 88836/14, was first on the court calendar on January 15, 2015. After adjournments to enable her to secure legal assistance, the case has now been marked off calendar based on Ms. Malagon's agreement to pay the full legal regulated rent while she challenges the Department of Finance's determination revoking her SCRIE benefits. Ms. Malagon's granddaughter – who lives elsewhere -- is contributing the \$257.49/month difference above Ms. Malagon's former SCRIE frozen rent, but this presents a financial hardship for the granddaughter.

85. On March 6, 2015, Ms. Malagon, assisted by a social worker at Northern Manhattan Improvement Corp. (NMIC), filed an administrative appeal of the termination of her SCRIE benefits. In that appeal, the social worker explained some of Ms. Malagon's various health conditions, including Alzheimer's disease, and their impact on her functional abilities. She noted that even with medication, Ms. Malagon's condition makes it difficult for her to think clearly, communicate, remember and complete regular daily activities, and impairs her capacity to fulfill certain administrative requirements, such as filing SCRIE renewal documents. The social worker further noted that Ms. Malagon had been confused concerning her recent lease renewals. She explained that Ms. Malagon could not possibly afford the rent increase and that the City's costs for sheltering Ms. Malagon were she to be evicted and made homeless would be higher than what it would cost the City to reinstate her SCRIE benefits.

86. Notwithstanding the above, DOF denied the appeal on March 20, 2015, on the basis that her appeal was untimely and would not be considered. DOF's decision stated:

We have completed a review of the appeal application you submitted. The evidence submitted with your application is not sufficient to grant your appeal. Appeals must be submitted within 60 days from the date of the SCRIE order you are appealing. Your SCRIE benefits were revoked on August 4, 2014. As such, your appeal cannot be considered...If you believe you qualify for the program, please do not hesitate to submit a new application.

87. DOF apparently gave no consideration to Ms. Malagon's extenuating circumstances or the impact its denial would have on her ability to remain in her home. Instead, DOF indicated that Ms. Malagon's only option was to reapply

for SCRIE. If DOF gives Ms. Malagon a new SCRIE benefit, DOF will freeze her rent at the current legal regulated rental amount of \$888.61, an amount in excess of her monthly income of her monthly income of \$849.95. In order to preserve Ms. Malagon's rights, the NMIC social worker also attempted to file a new application for SCRIE.

88. If Ms. Malagon's frozen rent were to increase from the former amount of \$536.27 to \$888.61 per month, the current legal regulated rent for her apartment, her rent would increase by approximately 65%, and would exceed her total monthly income of \$849.95.

89. Ms. Malagon continues to meet all the eligibility requirements for SCRIE. She is the head of her household, over 62 years old, lives in a rent stabilized apartment, her rent is in excess of one third of her income, and the total annual household income does not exceed \$50,000.

90. If Ms. Malagon's SCRIE benefits are not restored, she is likely to lose her apartment and become homeless.

### **CLASS ACTION ALLEGATIONS**

91. Named plaintiff brings this action pursuant to Fed. R. Civ. P. Rule 23(a) and (b)(2) on behalf of herself and as a representative of a class of:

All New York City residents with disabilities who are or will be eligible for the NYC Rent Freeze Program who have been, or will be denied the opportunity to receive RFP benefits to which they are entitled because the DOF fails and refuses to modify its policies, practices and activities to reasonably accommodate their disabilities.

92. The class is so numerous that the joinder of all class members would be impracticable. According to Defendant DOF's December 2014 report entitled "Report on the New York City Rent Freeze Program: Identifying and Enrolling Eligible Households," there were approximately 61,319 individuals enrolled in the RFP, with an additional 94,047 individuals eligible for, but not currently participating in the program.
93. In order to participate in the RFP program, an individual must meet the financial eligibility criteria and be either 62 years of age or disabled. Upon information and belief, there are numerous individuals participating in, or eligible for the program, who are both elderly and disabled. As a result, there are many individuals who have or will apply for RFP benefits or who currently participate in the RFP who have disabilities that make it extremely difficult, if not impossible, to comply with Defendant DOF's program requirements at all necessary times.
94. Plaintiffs do not currently know the exact number and identity of additional class members because the necessary facts are within the sole possession of DOF. Plaintiffs' counsel requested this information in a Freedom of Information Law request on January 29, 2015 and in formal discovery in other litigation. To date, the Defendant has been unwilling to produce any identifying information about the potential class members.
95. Plaintiffs' counsel do know that other individuals with disabilities have recently filed Article 78 proceedings challenging DOF determinations terminating SCRIE benefits under circumstances similar to those raised by the named plaintiffs. *See, e.g., Vera Institute of Justice, Inc., as Guardian for Lucy Sanchez, an Incapacitated*



*Person v. New York City Department of Finance, et al.*, Index No. 100413/2015 (Sup. Ct. N.Y. County 2015); *In the Matter of the Application of Lisa Jadidian as Article 12 Guardian ad litem, for Alfida Zabela v. New York City Department of Finance, et al.*, Index No. 101375-14 (Sup. Ct. N.Y. County 2014); *Smotrinskiy v. New York City Department of Finance, et al.*, Index No. 401125/14 (Sup. Ct. N.Y. County 2014); *Mazyck v. New York City Department of Finance, et al.*, Index No. 101067-14 (Sup. Ct. N.Y. County 2014); *Fernandez v. New York City Department of Finance, et al.*, Index No. 14400822 (Sup. Ct. N.Y. County 2014); *Mercado v. New York City Department of Finance, et al.*, Index No. 14400357 (Sup. Ct. N.Y. County 2014).

96. Joinder of all members of the proposed class would be impracticable because, without limitation, the class consists of individuals, who are, by definition, impoverished and either elderly, disabled or both, making it difficult for them to obtain counsel to assert their claims, and unlikely that they would be able to bring individual suits without the assistance of counsel. Moreover, upon information and belief, many potential members are not aware that their constitutional and statutory rights have been violated and that they have a right to seek redress in court. Consequently, the members of the proposed class will likely be unable to assert their legal rights without certification of a class to represent them.

97. In addition, upon information and belief, when an individual is able to obtain counsel and appeal a disability-related denial or termination of benefits, Defendant will settle with the individual and provide or re-instate benefits, but will not make

any programmatic changes to protect that individual or other similarly situated individuals in the future.

98. Questions of law and fact common to the class predominate over individual questions. The common questions of law and fact include, but are not limited to, whether: (1) Defendant DOF's failure to provide adequate procedures to accommodate class members' disabilities violates the ADA; and (2) Defendant DOF's failure to provide adequate procedures for recipients who had good cause for missing an administrative deadline to reopen and revise an agency determination violates the Due Process Clause of the United States Constitution.
99. The claims of the named Plaintiffs are typical of the claims of the class because they arise from Defendant DOF's same course of conduct, are based on the same alleged violations of the same statutes, regulations, and constitutional provision, and seek the same declaratory and injunctive relief.
100. The named plaintiffs will fairly and adequately protect the rights of the class members. The named plaintiffs have no interests adverse to the interests of the other members of the class, and all members of the proposed class would benefit if Defendant DOF is ordered to adopt appropriate policies, practices and procedures to ensure departmental compliance with the ADA's disability-based discrimination protections and the Due Process Clause of the United States Constitution.
101. Named plaintiffs are represented by Leslie Salzman, Clinical Professor of Law at Cardozo Law School, Donna Dougherty, Attorney-in-Charge of JASA/Legal Services for the Elderly in Queens, and Matthew Chachere of Northern Manhattan Improvement Corporation. Plaintiffs' attorneys each have over 20 years of

experience litigating class actions on behalf of elderly and disabled individuals in the federal and state courts in New York.

102. A class action is the superior method for a fair and efficient adjudication of this matter in that DOF has acted in a manner generally applicable to the class. A class action will avoid numerous separate actions by class members that would unduly burden the court and create the possibility of inconsistent decisions, thereby making final injunctive and declaratory relief appropriate as to the class as a whole.

103. For these reasons, certification under Rule 23(b)(2) is proper.

**FIRST CLAIM FOR RELIEF: FAILURE TO PROVIDE REASONABLE  
ACCOMMODATIONS FOR DISABILITIES**  
*(On behalf of Individual Plaintiffs and the Class)*

104. Defendant DOF's refusal to reasonably accommodate Plaintiffs' respective disabilities with respect to their disability-related failure to comply with Defendant DOF's administrative requirements, along with its failure to establish and implement administrative procedures to appropriately accommodate individuals with disabilities in the RFP renewal process or to allow an individual with a disability to establish good cause for re-opening and revising an administrative determination violates the plaintiffs' rights under Title II of the Americans with Disabilities Act, 42 U.S.C. §12132.

**SECOND CLAIM FOR RELIEF: FAILURE TO PROVIDE ADEQUATE DUE  
PROCESS PROCEDURES**  
*(On Behalf of Individual Plaintiff and the Class)*

105. Defendant DOF's failure to consider whether an RFP applicant or recipient had good cause for missing an administrative deadline or to provide any formal process for the reopening and revising an agency determination for good cause violates due

process under the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

**THIRD CLAIM FOR RELIEF: EQUITABLE TOLLING**  
**(On Behalf of Individual Plaintiff)**

106. Defendant's refusal to re-open and reconsider its revocation determination, in light of the fact that Ms. Pfeffer's and Ms. Malagon's disabilities prevented them from timely submitting documents and requesting a timely appeal, violates principles of equitable tolling.

**RELIEF REQUESTED**

WHEREFORE, Plaintiffs respectfully request that this Court issue a final judgment:

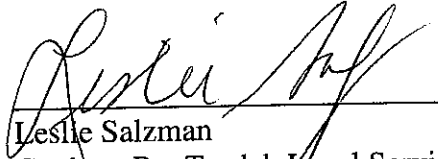
1. Declaring that:
  - a. Defendant's failure to establish and implement policies, practices, and procedures to reasonably accommodate plaintiffs' disabilities in the administrative process or to allow them to establish good cause for re-opening and revising an administrative determination for disability-related reasons violates Title II of Americans with Disabilities Act; and
  - b. Defendant's failure to establish and implement formal and appropriate procedures for reopening and revising an agency determination for good cause violates the Due Process Clause of the 14<sup>th</sup> Amendment of the United States Constitution and 42 U.S.C. § 1983;
  - c. Defendant's failure to consider Plaintiff's disability-based good cause for missing an administrative deadline violates principles of equitable estoppel;
2. Issuing a permanent injunction against Defendant DOF:

- a. Vacating Defendant's determination revoking Plaintiffs' RFP benefits and directing Defendant to formally consider Plaintiffs' requests for a reasonable accommodation of its policies, practices, and procedures and their disability-based good cause for missing Defendant's administrative deadlines;
  - b. Requiring Defendant to establish and implement appropriately comprehensive and effective procedures to:
    - i. reasonably accommodate the disabilities of class members and avoid disability-based discrimination in the program's administration; and
    - i. allow for class members with disabilities to demonstrate disability-related good cause for failing to comply with a program requirement;
  - c. Requiring Defendant to establish and implement appropriately comprehensive and effective procedures for class members to request an extension of an administrative deadline or the re-opening and revision of a final agency determination for good cause:
3. Issuing a permanent injunction requiring Defendant NYSANDY to follow the decision of this Court and any legal requirement or Defendant DOF directive regarding the restoration or implementation of Ms. Pfeffer's SCRIE benefits and prohibiting Defendant NYSANDY from taking any further action in Bronx Housing Court proceeding, *NYSANDY3 NBP3 LLC, v. Clarice Pfeffer*, Index No. 18229/2015, or any other proceeding which is based on Ms. Pfeffer's failure to pay rent in an amount greater than her legal SCRIE benefits;
  4. Issuing a permanent injunction requiring Defendant FANSAM to follow the decision of this Court and any legal requirement or Defendant DOF directive regarding the

restoration or implementation of Ms. Malagon's SCRIE benefits and prohibiting Defendant FANSAM from taking any further action in the New York County non-payment proceeding against Ms. Malagon, *FANSAM Properties LLC, v. Malagon*, L&T Index No., 88836/14, or any other proceeding which is based on Ms. Malagon's failure to pay rent in an amount greater than her legal SCRIE benefits;

5. Awarding Plaintiffs reasonable fees and costs pursuant to 42 U.S.C. §1988(b) and 42 U.S.C. §12133; and
6. Granting such other relief as this court deems equitable and just.

Dated: June 17, 2015  
New York, N.Y.



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