

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION**

MARY HOLMES, DENISE DAVIS,
ANDREW DALLAS, and EMPOWER
MISSOURI,

Plaintiffs,

-against-

ROBERT KNODELL, in his official capacity
as Acting Director of the Missouri Department
of Social Services,

Defendant.

No. 2:22-CV-04026

**ORAL ARGUMENT
REQUESTED**

PLAINTIFFS' SUGGESTIONS IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

STATEMENT OF MATERIAL FACTS a

PRELIMINARY STATEMENT 1

PROCEDURAL BACKGROUND..... 2

STATUTORY AND REGULATORY BACKGROUND..... 3

I. SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM..... 3

II. AMERICANS WITH DISABILITIES ACT 4

FACTUAL BACKGROUND..... 6

I. PLAINTIFF MARY HOLMES 6

II. PLAINTIFF DENISE DAVIS 7

III. PLAINTIFF ANDREW DALLAS 8

IV. PLAINTIFF EMPOWER MISSOURI 10

V. DEPARTMENT OF SOCIAL SERVICES’ OPERATIONS..... 10

LEGAL STANDARDS 16

ARGUMENT..... 17

I. DEFENDANT VIOLATES THE SNAP ACT BY WRONGFULLY DENYING APPLICATIONS FOR FAILURE TO INTERVIEW 17

A. The SNAP Act Requires Defendant to Provide Benefits to All Eligible Applicants 17

B. Defendant Wrongfully Denied Plaintiffs Holmes’ and Davis’ SNAP Applications 19

C. The Harm to Plaintiffs Caused by Defendant’s Unlawful Policies and Practices is Recurring and Ongoing..... 20

II. DEFENDANT VIOLATES THE SNAP ACT BY FAILING TO PERMIT APPLICATIONS ON THE FIRST DAY OF CONTACT 20

A. The SNAP Act Requires Defendant to Allow Missouri Residents the Opportunity to File a SNAP Application on the First Day They Contact DSS 20

B. Defendant Blocks Missourians from Filing a SNAP Application on the First Day They Contact DSS..... 21

III. DEFENDANT’S WRONGFUL DENIALS VIOLATE PLAINTIFFS’ DUE PROCESS RIGHTS 21

A. Defendant’s Wrongful Denial of Plaintiffs’ SNAP Applications Violates Due Process 22

1.	Defendant’s Wrongful Denials of SNAP Applications Violate the Mathews v. Eldridge Test	23
2.	Defendant’s Standardless Decision-Making Violates Plaintiffs’ Due Process Rights.....	25
IV.	DEFENDANT VIOLATES THE AMERICANS WITH DISABILITIES ACT BY FAILING TO PROVIDE REASONABLE ACCOMMODATIONS.....	27
A.	Plaintiffs Dallas and Holmes Are Qualified Individuals with Disabilities.....	30
B.	By Failing to Make Reasonable Accommodations, Defendant Prevented Plaintiffs’ Meaningful Access to SNAP Benefits and Thus Violated the ADA...	30
C.	Defendant Systematically Prevents SNAP Access by Failing to Offer Reasonable Accommodations	32
1.	Defendant’s ADA Policy is Inadequate and Ensures DSS’s Noncompliance with the ADA.....	32
2.	Defendant Fails to Notify SNAP Applicants of Their Rights Under the ADA.....	33
3.	Defendant’s ADA Policy is Contradicted and Undermined by Agency Operations	34
4.	Defendant Violates the ADA Methods-of-Administration Requirements	35
D.	Plaintiffs are Entitled to Summary Judgment on Their Fourth Claim for Relief..	36
V.	PLAINTIFFS ARE ENTITLED TO INJUNCTIVE RELIEF.....	37
A.	Plaintiffs Will Suffer Continuing and Recurring Irreparable Harm Without an Injunction, and the Remedies Available at Law are Inadequate Compensation...	38
B.	Balance of Harms Weighs in Favor of Granting the Relief Requested by Plaintiffs	41
C.	Granting Injunctive Relief to Plaintiffs is in the Public Interest.....	41
	CONCLUSION.....	43

TABLE OF AUTHORITIES

CASES

Ability Ctr. of Greater Toledo v. City of Sandusky,
385 F.3d 901 (6th Cir. 2004)28, 29

Action NC v. Strach,
216 F.Supp.3d 597 (M.D.N.C. 2016)40

Alexander v. Choate,
469 U.S. 287 (1985).....27, 29, 32

Anderson v. Liberty Lobby, Inc.,
477 U.S. 242 (1986).....16

Atkins v. Parker,
472 U.S. 115 (1985).....22

Baker-Chaput v. Cammett,
406 F. Supp. 1134 (D. N.H. 1976).....25

Barry v. Lyon,
834 F.3d 706 (6th Cir. 2016)18

Bliek v. Palmer,
916 F.Supp. 1475 (N.D. Iowa 1996).....23, 25

Bliek v. Palmer,
102 F.3d 1472,1476 (8th Cir. 1997)23

Booth v. McManaman,
830 F.Supp.2d 1037 (D.Haw. 2011).....18, 19, 39, 40, 43

Boston Univ. v. Guckenberger,
974 F. Supp. 106 (D. Mass. 1997).....36

Cafeteria & Rest. Workers Union v. McElroy,
367 U.S. 886 (1961).....22

Carey v. Quern,
588 F.2d 230 (7th Cir. 1978)25

Celotex Corp. v. Catrett,
477 U.S. 317 (1986).....16

<i>Daniels v. Woodbury Cnty., Iowa,</i> 742 F.2d 1128 (8th Cir. 1984)	22, 23
<i>Daniels v. Woodbury Cnty., Iowa,</i> 625 F. Supp. 855 (N.D.Iowa 1986).....	24
<i>Dataphase Sys. Inc. v. CL Sys., Inc.,</i> 640 F.2d 109 (8th Cir.1981)	38
<i>District of Columbia v. U.S. Dep’t of Agric.,</i> 444 F. Supp. 3d 1 (D.D.C. 2020).....	39
<i>D.M. by Bao Xiong v. Missesote St. High Sch. League,</i> 917 F.3d 994 (8th Cir. 2019)	43
<i>Dunn v. Dunn,</i> 318 F.R.D. 652 (M.D. Ala. 2016).....	35
<i>Gilliam v. United States Dep’t of Agric.,</i> 486 F. Supp. 3d 856 (E.D. Pa. 2020).....	43
<i>Glenwood Bridge, Inc. v. City of Minneapolis,</i> 940 F.2d 367 (8th Cir. 1991)	42
<i>Goldberg v. Kelly,</i> 397 U.S. 254 (1970).....	1, 22, 25, 39, 40
<i>Goyette v. City of Minneapolis,</i> 2021 WL 5003065 (D. Minn. Oct. 28, 2021)	38
<i>Griffeth v. Detrich,</i> 603 F.2d 118 (9th Cir. 1979)	22
<i>Hall v. Higgins,</i> 2023 WL 5211649 (8th Cir. Aug. 15, 2023).....	27
<i>Hamby v. Neel,</i> 368 F.3d 549 (6th Cir. 2004)	22
<i>Hannon v. Sanner,</i> 441 F.3d 635 (8th Cir.2006)	17
<i>Haskins v. Stanton,</i> 621 F.Supp. 622 (N.D. Ind. 1985)	18, 21, 39, 41
<i>Haskins v. Stanton,</i> 794 F.2d 1273 (7th Cir. 1986)	19, 41, 43

<i>Havens Realty v. Coleman</i> , 455 U.S. 363 (1982).....	40
<i>Henrietta D. v. Bloomberg</i> , 331 F.3d 261 (2d Cir. 2003).....	5, 27, 29, 35
<i>Higgins v. Spellings</i> , 663 F.Supp.2d 788 (W.D. Mo. 2009)	24
<i>Hiltibran v. Levy</i> , No. 10-4185-CV-C-NKL, 2010 WL 6825306 (W.D. Mo. Dec. 27, 2010)	39, 43
<i>Hinojosa v. Livingston</i> , 994 F. Supp. 2d 840 (S.D. Tex. 2014)	29
<i>Holmes v. NYCHA</i> , 398 F.2d 262 (2d Cir. 1968).....	26
<i>Isaac v. Louisiana Department of Children and Family Servs</i> , 2015 WL 4078263 (M.D. La. July 6, 2015)	27, 28
<i>Islam v. Cuomo</i> , 475 F.Supp. 3d 144 (E.D.N.Y. 2020)	40
<i>Kai v. Ross</i> , 336 F.3d 650 (8th Cir. 2003)	39
<i>Kapps v. Wing</i> , 404 F.3d 105 (2d Cir. 2005).....	22
<i>Kildare v. Saenz</i> , 325 F.3d 1078 (9th Cir. 2003);.....	41
<i>Kimman v. N.H. Dep’t of Corr.</i> , 451 F.3d 274 (1st Cir. 2006).....	29
<i>K.W. ex rel. D.W. v. Armstrong</i> , 1:12-cv-00022-BLW-CWD, 2023 WL 5431801 (D. Idaho Aug. 23, 2023)	25
<i>Layton v. Elder</i> , 143 F.3d 469 (8th Cir. 1998)	27, 38, 43
<i>League of Women Voters of Missouri v. Ashcroft</i> , 336 F.Supp.3d 998 (W.D. Mo. 2018)	40, 41
<i>Loye v. Cnty. of Dakota</i> , 625 F.3d 494 (8th Cir. 2010)	27
<i>M.A. v. Norwood</i> , 133 F. Supp. 3d 1093 (N.D. Ill. 2015)	25

<i>Mallette v. Arlington Cnty. Emps.’ Supp. Ret. Sys. II</i> , 91 F.3d 630, 535 (4th Cir. 1996)	22
<i>Mathews v. Eldridge</i> , 424 U.S. 319 (1976).....	23, 24, 42
<i>Mayer v. Wing</i> , 922 F. Supp. 902 (S.D.N.Y. 1996)	25
<i>McElwee v. County of Orange</i> , 700 F.3d 635 (2d Cir. 2012).....	5
<i>M.K.B. v. Eggleston</i> , 445 F.Supp.2d 400 (S.D.N.Y. 2006).....	18
<i>Morrissey v. Brewer</i> , 408 U.S. 471 (1972).....	22
<i>NAACP v. USPS</i> , 496 F.Supp.3d 1 (D.D.C. 2020).....	40
<i>Oglala Sioux Tribe v. C&W Enterprises, Inc.</i> , 542 F.3d 224 (8th Cir. 2008)	37
<i>Peebles v. Potter</i> , 354 F.3d 761 (8th Cir. 2004)	5
<i>Phelps-Roper v. Nixon</i> , 545 F.3d 685 (8th Cir. 2008)	43
<i>Phelps-Roper v. City of Manchester</i> , 697 F.3d 678 (8th Cir. 2012).....	43
<i>Pickett v. Tex. Tech. Univ. Health Scis. Ctr.</i> , 37 F.4th 1013 (5th Cir. 2022)	29
<i>Pierce v. Dist. of Columbia</i> , 128 F. Supp. 3d 250 (D.D.C. 2015).....	28
<i>Randolph v. Rodgers</i> , 170 F.3d 850 (8th Cir. 1999)	27
<i>Reynolds v. Giuliani</i> , 35 F.Supp.2d 331 (SDNY 1999)	18
<i>Ricci v. DeStefano</i> , 557 U.S. 557 (2009).....	16
<i>Richland/Wilkin Joint Powers Auth. v. U.S. Army Corps of Eng’rs</i> , 826 F.3d 1030 (8th Cir. 2016)	38

<i>Robertson v. Jackson</i> , 972 F.2d 529 (4th Cir. 1992)	17
<i>Robertson v. Jackson</i> , 766 F.Supp. 470 (E.D.Va 1991)	21
<i>Robertson v. Las Animas Cnty. Sheriff's Dep't</i> , 500 F.3d 1185 (10th Cir. 2007)	29
<i>Rogers Grp., Inc. v. City of Fayetteville</i> , 629 F.3d 784 (8th Cir. 2010)	38
<i>Scott v. Harris</i> , 550 U.S. 372 (2007).....	16
<i>Segal v. Metro. Council</i> , 29 F.4th 399 (8th Cir. 2022)	27, 31
<i>Smith v. Goguen</i> , 415 U.S. 566 (1974).....	25
<i>Southside Welfare Rights Org. v. Stangler</i> , 156 F.R.D. 187 (W.D. Mo. 1993).....	18, 19, 21, 39
<i>Strouchler v. Shah</i> , 891 F.Supp. 2d 504 (S.D.N.Y. 2012).....	25
<i>Tellis v. LeBlanc</i> , No. 18-541, 2022 WL 67572 (W.D. La. Jan. 6, 2022)	35
<i>Torres v. Butz</i> , 397 F. Supp. 1015 (N.D. Ill. 1975)	26
<i>Vote Forward v. DeJoy</i> , 490 F.Supp.3d 110 (D.D.C. 2020).....	40
<i>White v. Roughton</i> , 530 F.2d 750 (7th Cir. 1976)	25
<i>White v. Martin</i> , No. 02-4154-CV-C-NKL, 2002 WL 34560467 (W.D. Mo. July 26, 2002)	42
<i>Winter v. NRDC, Inc.</i> , 555 U.S. 7 (2008).....	40
<i>Withrow v. Concannon</i> , 942 F2d 1385 (9th Cir. 1991)	19

STATUTES AND REGULATIONS

7 U.S.C. § 2011.....3, 36, 42

7 U.S.C. § 2014.....26

7 U.S.C. § 2014(a)3, 17, 18

7 USC 2014(b).....18

7 USC § 2017 (c)(1).....7

7 U.S.C. § 2020(a), (d), (e)17

7 U.S.C. § 2020(e)(2)(B)3, 17

42 U.S.C. § 1983.....17

42 U.S.C. § 12101(a)(3).....4

42 U.S.C. § 12101(b)(1)42

42 U.S.C. § 12101(b)(1), (2).....4

42 U.S.C. § 12102(1)5, 30

42 U.S.C. § 12112(b)(5)(A).....27, 32

42 U.S.C. § 12131(2).....5, 29, 30, 32

42 U.S.C. § 12131(1)(A), (B)5

42 U.S.C. §§ 12131–12134.....17

7 C.F.R. § 271.136

7 C.F.R. § 271.23

7 C.F.R. § 273.2(c)(1), (2)(i)3

7 C.F.R. §§ 273.3–273.1126

7 CFR § 273.10 (a)(ii).....7, 15

7 C.F.R. § 273.124

7 C.F.R. § 273.143

7 C.F.R. § 277.1(b)3

7 C.F.R. § 277.4.....	3
20 C.F.R. §404.1505.....	6
28 C.F.R. § 35.104.....	5
28 C.F.R. § 35.106.....	28
28 C.F.R. § 35.107.....	28
28 C.F.R. § 35.130(b)(3).....	28, 35
28 C.F.R. § 35.130(b)(7)(i).....	5, 27, 28, 31, 32
28 C.F.R. § 35.130(b)(8).....	36
MO. REV. STAT. § 205.960, et seq.....	17

OTHER AUTHORITIES

Fed. R. Civ. P. 56(a)	16
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STATEMENT OF MATERIAL FACTS

Department of Social Services

1. Missouri's Department of Social Services (DSS) is the single state agency responsible for administering the Supplemental Nutrition Assistance Program (SNAP) in Missouri. ECF 93 ¶ 28.

2. Robert Knodell is the Department Director of the Missouri Department of Social Services. ECF 93 ¶ 22.

3. The Family Support Division (FSD) of DSS assesses the eligibility of SNAP applicants and disburses benefits to eligible households. ECF 19-1 ¶ 3.

4. Kim Evans is the Division Director of the Family Support Division. Ex. 1, Excerpts from Evans Dep. at 14:10–12.

5. Within FSD, there are three types of offices that assist with the administration of SNAP benefits. These are Processing Centers, Resource Centers, and Customer Service Centers. Ex. 2, Excerpts from 30b6 Wolf Dep. at 22:20–24:16.

6. Generally, workers in Processing Centers process SNAP applications to determine eligibility. These workers process applications, process verifications, answer phone calls when needed, and assist Resource Centers when needed. Ex. 2 at 23:21–24:1, 184:10–17.

7. There are approximately 1100 employees that work in the Processing Centers. Ex. 2 at 183:25–184:9.

8. Generally, workers in Resource Centers assist individuals who visit the Resource Centers in person. These workers assist individuals with verifications, answering general questions, providing additional resources, and registering applications. Ex. 2 at 22:20–23:7, 182:15–25.

9. There are “just under 400 employees” that work in the Resource Centers. Ex. 2 at 182:8–14.

10. Generally, workers in Customer Service Centers (CSCs) answer calls for the DSS call center. These workers answer general questions, complete interviews, process cases after the interview is complete, and inform callers of possible resources. Ex. 2 at 23:8–13, 183:16–24.

11. Between 200 and 300 employees work in the Customer Service Centers. Ex. 2 at 183:1–4; Ex. 3, Excerpts from Conway Dep. at 59:10–18.

12. Across the Processing Centers, Resource Centers, and Customer Service Centers, there are about 1800 employees. Ex. 2 at 183:25–184:9.

13. All three types of offices are staffed with Benefit Program Technicians (BPTs) and Customer Information Specialists (CISs) who have the same training and are able to perform the same tasks. Ex. 2 at 25:4–13; Ex. 4, Excerpts from Comer Dep. at 19:19–22:4, 24:15–22, 31:13–17.

14. Workers in any of the three offices are generally capable and qualified to do the tasks of workers in the other offices. Ex. 2 at 25:4–26:3.

15. To receive SNAP benefits, an individual must submit an initial application. To maintain eligibility, an individual must submit a recertification.¹ See 7 U.S.C. § 2014(a).

16. DSS policy stipulates that applicants to the SNAP program can access an application online, by mail, in person at a Resource Center, or at some DSS community partner locations. Ex. 2 at 214:1–8.

¹ The term “applicant” is used throughout this Statement to refer to an individual who has submitted an initial application or recertification. Initial applications and recertifications are referred to generally throughout this statement as applications. “Recipient” is used to refer to an individual currently receiving benefits.

17. Resource Centers are expected to make applications available in their lobby. Ex. 5, Excerpts from Smith Dep. at 91:10–92:14; Ex. 6, DEF 0146826.

18. The United States Department of Agriculture’s Food and Nutrition Service (FNS) does not permit DSS to accept a SNAP application over the phone, (Ex. 2 at 214:9–11), but individuals can request that call center staff mail them a SNAP application. Ex. 2 at 214:16–18.

19. However, there is no automated option in Defendant’s Interactive Voice Response (IVR) system to request that an application be sent out. Ex. 7, DEF 0137450; Ex. 8, DEF 0137416.

20. Once an application is registered, DSS sends a notice to the applicant or recipient, letting them know they have to complete an interview. *See* Ex. 9, DEF 28048²; *see also* facts in “On-Demand Waiver” section, *infra*.

21. DSS’s eligibility system automatically denies applications where an interview has not been completed within 30 days, regardless of whether applicants and recipients attempted to secure an interview, or whether DSS meaningfully made an interview available. Ex. 2 at 239:7–22.

On-Demand Waiver

22. DSS has a waiver from FNS that allows DSS to use an interview procedure that deviates from the process laid out in FNS regulations. This is called the On-Demand Waiver. Ex. 9.

23. Pursuant to the waiver, DSS is not required to schedule the SNAP interview at a specific date and time. Instead, DSS must provide applicant households with a notice, known as

² Defendant has agreed to withdraw all previously made confidentiality designations for the documents utilized in support of Plaintiffs’ Motion for Summary Judgment. Plaintiffs have redacted personal identifying information where appropriate.

an interview letter, instructing them to call the call center within five days of submitting their application. Ex. 9.

24. Also pursuant to the waiver, applicants who do not complete their interview within five days are sent a Notice of Missed Interview (NOMI), also known as a missed interview letter, instructing them that they must complete their interview within 30 days of submitting their application, or their application will be denied. Ex. 9.

25. Pursuant to Missouri's waiver, "[a]pplicants are able to have a face-to-face interview at the time of application or upon request for any reason." Applicants who request a face-to-face interview must have an appointment scheduled within five days. Ex. 9.

26. Also pursuant to Missouri's waiver, "DSS has implemented predictive dialing for the call centers, which attempts contact with clients on the first day for all applications" and "attempts [to call] for 4 days." Ex. 9.

27. When deciding whether to reapply for the waiver, DSS made no formal evaluation of how the previous waiver term had gone. Ex. 1 at 133:20–22.

Plaintiff Mary Holmes

28. Ms. Holmes has throat cancer and chronic obstructive pulmonary disease (COPD). ECF 6-1 ¶ 3.

29. Ms. Holmes' COPD makes it difficult for her to leave her home. She often has to be admitted to the hospital due to her COPD. ECF 6-1 ¶ 4.

30. The symptoms related to Ms. Holmes' cancer make it difficult and uncomfortable for her to speak. ECF 6-1 ¶ 5.

31. Because of her health conditions, Ms. Holmes is at a high risk for complications from COVID-19. ECF 6-1 ¶ 9.

32. In late 2021, Ms. Holmes was hospitalized for roughly three and a half weeks with COVID-19 and pneumonia. ECF 6-1 ¶ 9.

33. Ms. Holmes' receives monthly Supplemental Security Income (SSI) benefits. ECF 18 ¶ 3, ECF 18-1.

34. Ms. Holmes does not have Internet access at home, nor does she have any reliable means of transportation. ECF 6-1 ¶¶ 7, 8.

35. Because of her disabilities, Ms. Holmes must be able to complete required SNAP tasks by phone without waiting on hold for an extended period of time, and if she must go to a Resource Center, then she needs to be able to complete her SNAP interview that same day. Ex. 10, M. Holmes Interrogatory Response.

36. In December 2021, DSS mailed Ms. Holmes' SNAP recertification paperwork to an old address. She lost SNAP benefits because she did not receive this notice, and needed to submit a new application. ECF 6-1 ¶ 12.

37. In January 2022, Ms. Holmes attempted to call DSS's call center to request an application for SNAP. She called three times during the first week of January, but she was never given an opportunity to request an application form. ECF 6-1 ¶¶ 13–14; Ex. 11, DEF 0139752.

38. Because she was unable to request an application by phone, Ms. Holmes paid a family member to take her to the Chouteau Resource Center on January 10, 2022. She waited in line for 20 minutes before speaking to an employee. ECF 6-1 ¶¶ 15, 19.

39. She filled out an application at the Resource Center and submitted it. ECF 6-1 ¶¶ 17, 20.

40. After submitting the application, Ms. Holmes asked to be interviewed in person and was told that the Resource Center staff were not doing interviews. A worker told Ms. Holmes someone from DSS would call her within the next few days. ECF 6-1 ¶ 21.

41. DSS registered Ms. Holmes' application on January 11, 2022. ECF 19-1 ¶ 15; Ex. 11.

42. On January 12, 2022, Ms. Holmes answered a call from DSS. ECF 19-1 ¶ 15; ECF 88 ¶ 185; ECF 93 ¶ 185. She was never connected to a representative. ECF 6-1 ¶ 25.

43. The next day, January 13, 2022, Ms. Holmes called the call center at 8:08 AM. She was asked a series of automated questions by the IVR prompts. After answering the questions, she entered the queue and was told that there were 472 people in front of her. She waited for two hours but was never connected to a representative. ECF 6-1 ¶¶ 26–27; Ex. 11.

44. She called again at 10:10 AM and stayed in the queue for 6 minutes and 12 seconds before disconnecting. Ex. 11.

45. She tried to call again at 2:04 PM, 3:42 PM, 3:44 PM, and 3:46 PM, and each time was unable to even enter the queue because her call was deflected.³ Ex. 11.

46. Ms. Holmes called again on January 14, 2022, at 7:53 AM. She once again answered the IVR prompts. She was told there were 692 people in front of her in the queue. She waited for an hour and 37 minutes but was never connected to a representative. ECF 6-1 ¶ 28; Ex. 11.

47. Ms. Holmes called again on January 27, 2022, at 4:30 PM and was deflected. Ex. 11.

³ DSS calls this process of rejecting calls from the queue due to capacity issues “deflecting” calls. As discussed *infra*, when a call is deflected, the caller hears an automated recording informing them that the call center is not taking calls, their other options of contacting DSS, and the call is disconnected.

48. She called again on January 28, 2022 at 9:36 AM and stayed in the queue for 14 minutes and 12 seconds before disconnecting. Ex. 11.

49. During the first week of February, Ms. Holmes received a notice from DSS titled “Interview Required to Process Your Application.” The notice said she needed to complete her SNAP interview, that DSS would attempt to reach her, that she should call DSS between 6:00 AM and 5:30 PM if she missed her call, and that her application would be denied if she did not complete the interview. ECF 6-1 ¶¶ 29–30; Ex. 12, DEF 0140076 at 0140104.

50. Ms. Holmes did not receive any calls from DSS after receiving that notice. ECF 6-1 ¶ 31.

51. Ms. Holmes tried to call multiple times early in February 2022. ECF 6-1 ¶ 32. During her attempt at 1:10 PM on February 4, the call was deflected. At 2:37 PM, her call was again deflected. Ex. 11.

52. During the week of February 7, 2022, Ms. Holmes received a notice that her SNAP application was denied for failure to complete her interview. ECF 6-1 ¶ 33; ECF 18-3.

53. On February 10, 2022, Ms. Holmes attempted to call DSS one more time. She once again answered the IVR prompts, and was told there were 468 people ahead of her in the queue. ECF 6-1 ¶¶ 34–35. She called at 7:32 AM and waited for 18 minutes and 40 seconds before disconnecting. She called again at 8:48 AM and waited 32 minutes and 27 seconds before disconnecting. Ex. 11.

54. After this litigation was filed, Ms. Holmes received an interview and was approved for SNAP benefits from the date of that interview forward. Ex. 13, DEF 0142129 at 0142181–84, 0142195–201, 0142209.

55. Ms. Holmes seeks but has not been approved for benefits from the date of her application on January 10, 2022 through March 20, 2023. *See* ECF 47-1 – Ex. A at 5:7–13; Ex. 14, MO SNAP 0004279.

56. Ms. Holmes will continue to rely on SNAP for the foreseeable future. ECF 6-1 ¶¶ 3–6.

57. Ms. Holmes will have to reapply for SNAP in February 2024 and every two years thereafter. *See* Ex. 13 at 0142181.

58. Despite Ms. Holmes being a plaintiff in this litigation, she has continued to struggle to maintain her SNAP eligibility due to agency dysfunction. Ex. 15, DEF 0142083; Ex. 16, DEF 0141934.

Plaintiff Andrew Dallas

59. Mr. Dallas has epilepsy which causes him to have frequent seizures. Ex. 17, Dallas Decl. ¶ 2.

60. Many things in Mr. Dallas’ day-to-day life can cause seizures including stress, a poor diet, skipping meals, and not getting enough sleep. Ex. 17 ¶ 3.

61. He has one seizure per week on average. When he is feeling stressed, he has seizures more frequently, sometimes as many as three per week. Ex. 17 ¶ 2.

62. As a result of his seizures, Mr. Dallas often feels confused. His seizures cause “brain fog” which causes him to lose track of what he is doing and forget what he is talking about in the middle of a conversation. Ex. 17 ¶ 4.

63. Mr. Dallas’ brain fog has worsened over time and doctors have not been able to effectively treat it. Ex. 17 ¶ 4.

64. Medicaid approved Mr. Dallas for 21 hours per week of home health services. These services include house cleaning, grocery shopping, meal preparation, and transportation. Ex. 17 ¶ 5.
65. Mr. Dallas' only income is Supplemental Security Income (SSI). Ex. 17 ¶ 6.
66. Mr. Dallas' epilepsy makes it difficult for him to leave his house because he has trouble walking and is a fall risk. Ex. 17 ¶ 13.
67. Mr. Dallas is not able to drive because of his epilepsy. Ex. 17 ¶ 7.
68. Because of his disabilities, Mr. Dallas struggles to complete required SNAP paperwork. Ex. 17 ¶ 9.
69. Mr. Dallas finds SNAP recertification paperwork complicated and confusing. The paperwork uses terms that he does not understand. Ex. 17 ¶ 9.
70. On December 23, 2021, DSS received a document from Mr. Dallas entitled "Food Stamp Change Report." Ex. 18, Excerpts from 30b6 Wise Dep. at 71:4–72:10; Ex. 19, Excerpt from DEF 0137942 (presented as Ex. 4 in 30b6 Wise Dep.) at 0138026.
71. On the report, Mr. Dallas wrote: "I have epilepsi [sic] + cannot understand like normal people do. Please help! I am not sure I understand all of the letter. I am disabled." Ex. 19 at 0138027.
72. DSS understands this written note to be a reasonable accommodation request. Ex. 18 at 72:4–10.
73. DSS policy does not dictate that anyone follow up with Mr. Dallas on this request for help if the submitted form was complete. Ex. 18 at 73:7–24.
74. On February 4, 2022, DSS received a document from Mr. Dallas entitled "Food Stamp Mid Certification Review/Report Form." Ex. 19 at 0138028–37.

75. On the report, Mr. Dallas wrote: “I am an Epileptic. I hope I got everything right. Thanks, Andrew Dallas.” Ex. 19 at 0138037.

76. DSS admitted it would be considered a best practice for DSS to follow up with Mr. Dallas when he requested help, but DSS policy does not require it. Ex. 18 at 75:2–6.

77. In January 2023, DSS mailed Mr. Dallas SNAP recertification paperwork. The notice stated that if he did not complete the paperwork by February 28, 2023, his SNAP benefits would end. Mr. Dallas does not feel confident completing SNAP paperwork without assistance. Ex. 17 ¶ 9.

78. Despite Mr. Dallas’ previous attempts to inform DSS of his disability and need for a reasonable accommodation, he was not affirmatively offered assistance with his recertification application.

79. On or about February 8th through February 10th, Mr. Dallas called DSS’s information line about ten times. At least three times, he was not able to make it past the main menu’s language prompts. He was told to press “1” for English, but after pressing “1” the instructions would repeat. After pressing “1” again, the call disconnected. Ex. 20, DEF 0138504; Ex. 17 ¶ 11.

80. Once, on or about February 8th through February 10th, Mr. Dallas called DSS’s information line and made it past the main menu. He was put on hold and told there were 234 callers ahead of him. He decided to hang up after waiting for a few minutes. Ex. 20; Ex. 17 ¶ 11.

81. Mr. Dallas needed someone to help him complete his recertification form by talking to him over the phone and explaining how he should answer the questions he finds confusing. He was not able to get through the phone system to ask for this help. He does not know any other way to ask DSS for help with his paperwork. Ex. 17 ¶ 13.

82. In the past, Mr. Dallas has used Legal Services of Eastern Missouri to get assistance with his paperwork. He called them in 2022 for help and was able to recertify. He would not have been able to successfully recertify without his advocate's help. Ex. 17 ¶ 14.

83. Under current DSS policies, Mr. Dallas will need to make another reasonable accommodation request each and every time he needs assistance with SNAP paperwork. Ex. 18 at 92:11–24.

84. After joining as a plaintiff in this lawsuit, Mr. Dallas received an interview and was approved for SNAP benefits. Ex. 21, DEF 0141293.

85. Mr. Dallas will continue to rely on SNAP for the foreseeable future. Ex. 17 ¶ 6.

86. To maintain SNAP eligibility, Mr. Dallas will have to continue to interact with DSS including to respond to requests for mid-certification and to reapply. Ex. 21.

Plaintiff Denise Davis

87. Denise Davis first applied for SNAP on November 12, 2022. Ex. 22, DEF 0138108 at 0138108–15. She submitted her application online. She never received any follow-up communication from DSS about her application. When she called the call center, she was informed that there was no application registered under her Social Security Number (SSN), and that she should reapply. Ex. 23, Davis Decl. ¶ 9.

88. On December 29, 2022, Ms. Davis submitted a second online SNAP application. Ex. 22 at 0138116–23. She was subsequently hospitalized with acute kidney failure for two weeks and did not have access to her phone. When she was released from the hospital, she called the call center multiple times each week in order to complete her SNAP interview. Ex. 23 ¶ 10; Ex. 24, DEF 0138512.

89. Ms. Davis called the call center on January 4, 2023 at 1:12 PM and at 2:10 PM. Both times her calls were deflected. Ex. 24; Ex. 25, Excerpts from Sneller Dep. at 140:25–144:15.

90. On January 10, 2023, Ms. Davis called the SNAP interview line at 3:36 PM and was deflected. At 3:39 PM she called the general information line and made it into the queue, but subsequently the call was disconnected.⁴ Ex. 24.

91. On January 12, 2023, Ms. Davis called the SNAP interview line at 10:08 AM. She waited in the queue for one hour and 52 minutes before disconnecting. She called again at 12:11 PM, 12:13 PM, and 12:16 PM and was deflected each time. She also attempted to call the general information line at 12:18 PM and was deflected there too. She called the SNAP interview line again at 12:26 PM and was able to connect to the IVR flow, but was not able to speak directly to anyone. Ex. 24; Ex. 25 at 140:25–144:15.

92. On January 13, 2023, Ms. Davis called the general information line at 4:03 PM, and the SNAP interview line at 4:21 PM and was deflected both times. Ex. 24; Ex. 25 at 140:25–144:15.

93. Each time that Ms. Davis called and was able to enter the queue, there were hundreds of people ahead of her. On more than one occasion, there were more than 700 people in the queue. Ex. 23 ¶¶ 10–11.

94. On more than one occasion, Ms. Davis waited between two and three hours until fewer than 100 people were ahead of her in the queue, at which point she heard a recording that

⁴ The SNAP interview line and general information line are two different phone numbers. The SNAP interview line is advertised as the number to call to complete a SNAP interview, and the general information line is advertised as the line to call for all other inquiries. Ultimately, both lines can route a caller into the appropriate queue to complete an interview. The mechanics of how these lines work is discussed *infra* in the “Call Center” section.

DSS was receiving too many calls and she should call back later. At that point the call was terminated by the call center system. Ex. 23 ¶¶ 10–11.

95. In early January 2023, Ms. Davis received a letter from DSS stating she needed to complete an interview in order for her application to be processed. Ex. 23 ¶ 12; Ex. 26, MO SNAP 0000035.

96. Shortly afterwards, she received another notice stating that if she did not complete an interview by January 30, 2023, her application would be denied. Ex. 23 ¶ 13; Ex. 27, DEF 0138054 at 0138088.

97. Despite multiple attempts through the call center, Ms. Davis was not able to complete her interview and her second application was denied. Ex. 23 ¶ 17; Ex. 27 at 0138076.

98. Ms. Davis submitted a third application for SNAP on January 30, 2023. Ex. 23 ¶ 18; Ex. 22 at 0138126–33.

99. Ms. Davis slept with her phone next to her on full volume in order to ensure she would hear any early morning calls from DSS. Ex. 23 ¶ 14.

100. On February 1, 2023, at 8:22 AM, Ms. Davis received a call from DSS. She picked up the phone and was informed she was in a queue behind 17 other people. Ex. 23 ¶ 14; Ex. 24.

101. When Ms. Davis was connected to a DSS worker, the worker requested her case number. Ms. Davis did not know her case number and provided her SSN instead. The DSS worker accepted this information, but then hung up on Ms. Davis. Ex. 23 ¶ 14.

102. The call records for this interaction show that Ms. Davis did connect to a worker but that the total interaction time was 5 minutes and 52 seconds. Ex. 24.

103. Ms. Davis called back immediately at 8:30 AM but heard a recording that 300 people were waiting ahead of her in line. She called again at 8:38 AM and waited for an hour and 58 minutes before disconnecting. She called again at 10:44 AM and waited for 6 minutes and 30 seconds before disconnecting. Ex. 23 ¶ 14; Ex. 24.

104. Ms. Davis received another call from DSS on February 2, 2023 at 7:04 AM, but it went to voicemail. She called back at 8:16 AM and waited on the queue for an hour and 58 minutes before disconnecting. Ex. 24.

105. She received another call on February 3, 2023 at 7:00 AM, but it went to voicemail. She called at 9:34 AM and 9:38 AM but disconnected shortly after getting into the queue. Ex. 24.

106. Ms. Davis called her local DSS office in Rolla, Missouri to set up an appointment for an in-person interview. She was automatically transferred to the call center and was put on hold again. Ex. 23 ¶ 15.

107. Ms. Davis also attempted to use the DSSChat feature on Defendant's website twice to complete her interview.⁵ Each time, the Chat directed her to the call center. Ex. 23 ¶ 16.

108. Despite multiple attempts through the call center and a visit to the Resource Center, Ms. Davis was not able to complete her interview. Ex. 23 ¶ 21.

109. Ms. Davis attempted to be interviewed via the call center approximately 15 times after submitting her third SNAP application. Ms. Davis was never able to connect to a DSS worker. Ex. 23 ¶ 18.

⁵ DSSChat is a chat platform available on DSS's website. DSSChat is discussed *infra* in the "Appointment Scheduler" section.

110. In early February, Ms. Davis received a letter from DSS dated February 1, 2023, stating that she needed to complete an interview for her application to be processed. Ex. 23 ¶ 19; Ex. 27 at 0138082.

111. A few days later, she received a notice dated February 7, 2023, stating that if she did not complete an interview by March 1, 2023, her SNAP application would be denied. Ex. 23 ¶ 20; Ex. 27 at 0138084.

112. After joining as a plaintiff in this lawsuit, Ms. Davis received an interview and was approved for SNAP benefits. Ex. 28, MO SNAP 0004110.

113. Ms. Davis will continue to rely on SNAP for the foreseeable future. Ex. 23 ¶ 3.

114. Ms. Davis will have to reapply for SNAP in December 2023 and every year thereafter. Ex. 28.

Plaintiff Empower Missouri

115. Empower Missouri devotes significant time, energy, and resources to issues arising from DSS's administration of SNAP in Missouri. *See* Ex. 29, Empower Interrogatory Response ¶¶ 5, 15–16.

116. Empower Missouri is a founding member of the SNAP Advisory Group, which formed in 2021 in response to DSS's failure to properly administer SNAP. Starting in January 2022, the Advisory Group held monthly calls with the Family Support Division of DSS regarding SNAP-specific issues. On these calls, Empower Missouri advocated for policies and practices to improve access to SNAP and other benefits. DSS no longer attends these meetings. Ex. 29 ¶ 4.

117. The SNAP Advisory Group dedicates a portion of its meetings to reviewing DSS call center data regarding the extensive wait time and deflection issues. Ex. 29 ¶ 5.

118. Empower Missouri also convenes the Food Security Coalition (FSC), a group of anti-hunger advocates and providers in Missouri. Through the FSC, Empower Missouri provides resources and information to anti-hunger advocates and providers, and communicates with DSS regarding agency failures in Missouri's administration of SNAP. Most members of the FSC are direct service providers including food banks and anti-homelessness organizations. *See, e.g.*, Ex. 30, MO SNAP 00004121; Ex. 31, MO SNAP 00004136; Ex. 32, MO SNAP 00004139; Ex. 33, MO SNAP 00004154.

119. Empower Missouri uses such meetings to communicate concerns with DSS about call center wait times. Ex. 29 ¶ 5.

120. Because of the numerous problems with DSS's administration of SNAP in Missouri, Empower Missouri staff divert considerable time and effort organizing and managing the FSC. Ex. 29 ¶¶ 5, 16.

121. Empower Missouri's Food Security Coalition budget for fiscal year 2023 was \$161,020.64. Ex. 34, MO SNAP 0000001.

122. Empower Missouri has spent \$96,000 for fiscal years 2021, 2022, and 2023 relating to issues arising from DSS's administration of SNAP. Ex. 29 ¶ 15.

123. Empower Missouri's Food Security Policy Manager has diverted roughly twenty percent of her time because of issues arising from DSS's administration of SNAP. Ex. 29 ¶ 16.

124. Both Empower Missouri's Executive Director and Policy Director have diverted roughly ten percent of their time because of issues arising from DSS's administration of SNAP. Ex. 29 ¶ 16.

125. Empower Missouri has diverted staff time from proactive policy reform efforts regarding school meals, WIC, and seniors' access to SNAP to respond to issues created by DSS's administration of SNAP. Ex. 29 ¶ 16.

Uncontroverted Facts Evidencing Systemic Dysfunction

126. Defendant's failed call center has stopped other SNAP applicants from completing their interview. Ex. 35, Matousek Decl. ¶¶ 13–14; Ex. 36, Dodd Decl. ¶¶ 9–11; Ex. 37, Wall Decl. ¶¶ 9, 12–14; Ex. 38, Dempsey Decl. ¶¶ 7–9; Ex. 39, Underwood Decl. ¶¶ 10–12.

127. Patricia Matousek attempted to complete her interview in the beginning of 2022. Between the end of December 2021 and May 2022, Ms. Matousek called DSS at least once a week, in total between 10-20 times. Ex. 35 ¶ 11.

128. Most of the times Ms. Matousek called, the call was deflected. Ex. 35 ¶ 13.

129. Every time she made it past the IVR prompts and into the interview queue, there were hundreds of people in the queue ahead of her. Ex. 35 ¶ 14.

130. Ms. Matousek submitted three applications for SNAP and was denied each time for failure to interview. Ex. 35 ¶¶ 7, 9, 10.

131. Elizabeth Dodd attempted to complete her interview in November and December 2021. She called numerous times and routinely was on hold for hours. Multiple times after waiting on hold for hours, her call was disconnected. Ex. 36 ¶¶ 9–12.

132. In January 2022, Shelby Wall tried to call the call center over ten times and was never able to connect to someone to do the interview. Ex. 37 ¶ 7–14.

133. Victoria Dempsey, the Program Director of the Youth and Family Advocacy Program at Legal Services of Eastern Missouri, called the interview line on behalf of her client at various times of day over the course of multiple days in April 2023. When she was able to get

into the queue, there were always at least 50 callers ahead of her. Otherwise, she was directed to go to a Resource Center and the call was disconnected. Ex. 38 ¶¶ 2, 7–9.

134. Daniel Underwood, the Managing Attorney of the Youth and Family Advocacy Program at Legal Services of Eastern Missouri, called the interview line on behalf of his clients on August 17, 2023. He was told he was 150th in the queue and waited for 90 minutes before the call center disconnected him. He called again that afternoon but was deflected. On August 18, 2023, he called again and was told he was 225th in the queue. He waited for about 30-40 minutes before he disconnected. Ex. 39 ¶¶ 3, 10 – 12.

135. Other applicants have been turned away at their local Resource Centers when they attempted to complete a SNAP interview there. Ex. 40, Spates Decl. ¶¶ 6–7; ECF 6-1 ¶ 21.

136. Patriona Spates, the Intrada Coordinator at Epworth Children & Family Services, accompanied a client to the Resource Center to assist them in completing an interview. The staff at the Resource Center told Ms. Spates and her client that they were unable to do an interview because of staffing problems. The staff told Ms. Spates' client to return the next day, but did not offer an appointment. Ex. 40 ¶¶ 2, 6–7.

137. SNAP participants with disabilities request accommodations and do not reliably receive them. Ex. 41, Shelton Decl. ¶¶ 15–22; ECF 6-2 ¶¶ 6–12, 31.

138. James Shelton was diagnosed with Type I diabetes in 1994. In 2011 was diagnosed with diabetic retinopathy, and as a result, his vision is very limited. Ex. 41 ¶¶ 2–4.

139. In the past, Mr. Shelton has had trouble with SNAP paperwork due to his visual impairment. He has taken documents to the Kirksville Family Support Division Resource Center to have staff read the documents to him. Ex. 41 ¶ 14.

140. Mr. Shelton uses a screen reader on his phone and has asked the Family Support Division many times to send notices to him electronically. Ex. 41 ¶¶ 9, 15–16.

141. He has visited his local Resource Center many times over the past four years. Every time, he has asked them to send SNAP notices in a digital format to accommodate his vision disability. Ex. 41 ¶¶ 15–16.

142. On June 20, 2023, Mr. Shelton went to the Kirksville Resource Center because his SNAP benefits had been terminated. He was told that he had not returned his SNAP mid-certification review form. Ex. 41 ¶ 19.

143. Mr. Shelton told a Resource Center supervisor that DSS is required to send him SNAP notices in format he can read. The supervisor responded that FSD does not have to do this. The supervisor also said that FSD's systems only print documents on paper, so that is the only way they can send notices. Ex. 41 ¶ 21.

144. Mr. Shelton informed the supervisor that according to the Americans with Disabilities Act, they have to send materials in a format that he can read. The supervisor reported that FSD does not have to follow federal law because FSD operates in Missouri, which is not a federal entity. Ex. 41 ¶ 21.

145. During Mr. Shelton's conversation with the employee and supervisor at the Kirksville Resource Center, no accommodations for his visual disability were suggested. Ex. 41 ¶ 22.

146. L.V. had to submit a recertification for SNAP in January 2022. ECF 6-2 ¶¶ 14–15.

147. L.V. could not go to a Resource Center to complete her interview because her diabetes, trouble breathing, COVID-related heart trouble, extreme fatigue, and migraines, made

it too difficult to leave her home. ECF 6-2 ¶¶ 6–12. L.V. had no choice but to rely on DSS’s call center. ECF 6-2 ¶ 31.

148. Despite multiple attempts to complete her interview through the call center in early 2022, L.V. was not able to speak to an individual to complete her interview. Her application was denied for failure to complete the interview. ECF 6-2 ¶¶ 20–27, Ex. G.

Call Center

149. There are 10 Customer Service Centers (CSCs). Ex. 4 at 23:24–24:2, Ex. 3 at 22:7–13.

150. CSC staff interact with applicants and recipients by phone, text, and internet chat. Ex. 3 at 19:15–20:2.

151. The number of staff at each CSC ranges from around 12–15 to around 40–45. Ex. 4 at 24:3–6.

152. Staff at CSCs answer call center calls statewide. Ex. 4 at 64:12–20.

153. The phone system that DSS uses in the call center is called Genesys. Ex. 2 at 96:5–7.

154. The DSS call center switched to the Genesys phone system in June 2021. Ex. 42, Def. Response to 2nd Rog ¶ 8; Ex. 43, DEF 45998; Ex. 2 at 118:15–18.

155. Prior to Genesys, the DSS call center utilized a phone system called Cisco. Ex. 2 at 118:21–23.

156. DSS switched from the Cisco system to Genesys because “Genesys provides a cloud-based solution and better reporting.” Ex. 2 at 119:5–8.

157. Genesys allows DSS to manage the call center system in-house, rather than through an outside agency. If DSS wants to change something in the Genesys system, they can “do it very quickly.” Ex. 3 at 98:5–20.

158. In Cisco, there were a limited number of lines available to callers. Ex. 3 at 48:24–49:18; Ex. 43.

159. Under the Cisco system, if at a given time the number of callers exceeded the number of lines available, any new call in to the queue would be deflected. Ex. 2 at 120:24–121:15; Ex. 3 at 48:24–49:18.

160. Genesys, as a cloud-based system, has no limitations to the number of lines that can be used. Ex. 3 at 48:24–49:18.

161. There are two Tiers within the call center: Tier 1 and Tier 3. Ex. 2 at 75:14–76:2.

162. Tier 1 calls are calls that are routed to staff regarding general DSS information. Ex. 2 at 75:14–24.

163. Tier 3 calls are calls that are routed to staff to complete a SNAP interview. Ex. 2 at 75:14–76:2.

164. Tier 3 calls are further broken down into two components: “inbound” interview calls and “outbound” interview calls. Ex. 2 at 84:2–10; Ex. 4 at 200:25–201:4.

165. At the start of this litigation, there were three tiers in the call center. This included the two tiers that continue to exist (Tier 1 and Tier 3), along with a Tier 5. Tier 5 calls were used to handle Temporary Assistance and Child Care case updates and interviews. Tier 5 was discontinued on September 19, 2022. Ex. 44, DEF 46005.

166. The call center’s hours are from 6:00 AM – 6:00 PM, Monday through Friday. Ex. 3 at 32:19–23.

167. Callers access these tiers through two different phone numbers:

- a. General information line⁶: 855-373-4636
- b. SNAP interview line⁷: 855-823-4908

See Ex. 2 at 47:3–9; Ex. 45, DEF 0137415; Ex. 7.

168. When calling either the general information line or the SNAP interview line numbers, the caller enters an IVR system. Ex. 2 at 46:22–47:9, 77:21–25.

169. When a caller dials the general information line, the IVR system presents various menu options, and the caller can indicate they are calling for help with SNAP. Once in the SNAP flow, a caller will enter their case number or SSN with their date of birth, and the system checks to see if a case exists and where in the process it is. Ex. 7 at 0137452.

170. If the information yields a case with a pending interview, the IVR will offer the option to transfer to Tier 3. Ex. 7 at 0137452–53.

171. For all other callers, the system will play an applicable message, and move the caller to a menu where they will have the option to transfer to Tier 1. Ex. 7.

172. When a caller dials the SNAP interview line, they are asked to enter their case number or SSN with their date of birth. The system will check whether an interview is needed on their case, and if so, the caller will be transferred to Tier 3. If the system does not report that an interview is needed, the caller will be transferred to Tier 1. Ex. 45 at 0137416.

173. Since June 22, 2021, the IVR flow for the general information line and SNAP interview lines have changed multiple times. Ex. 42 ¶ 8.

174. On November 15, 2021, questions were added to the SNAP interview line and general information line IVR for a total of twenty-two interview questions. Ex. 42 ¶ 8.

⁶ The general information line is also referred to by DSS as the FSD Information Line.

⁷ The SNAP information line is also referred to by DSS as the Application Interview Line.

175. Callers to the general information line or the SNAP interview line were required to answer the twenty-two yes/no questions before being transferred to the Tier 3 queue. Ex. 46, DEF 0137592 at 1037606–08; Ex. 47, DEF 0137610 at 0137613–14.

176. By August 1, 2022, another question was added to the list of twenty-two yes/no questions callers had to answer before being transferred to the Tier 3 queue. Ex. 48, DEF 0137525 at 0137528–29; Ex. 49, DEF 0137534 at 0137548–50.

177. Then, by January 27, 2023, the twenty-three yes/no questions were deleted from the IVR menus. Ex. 50, DEF 0137399; Ex. 45.

178. Furthermore, before February 3, 2023, if a caller to the general information line entered their case number or SSN and date of birth and the system found that the caller needed to do an interview, the system would tell the caller to press 1, and subsequently transfer the caller to the Tier 3 queue. Ex. 51, DEF 0137417 at 0137420.

179. As of February 3, 2023, if a caller failed to press 1, the line disconnected. Ex. 52, DEF 0137433 at 0137436.

180. Now, before a caller is placed in a queue, the phone system checks the relevant queue to determine whether it is “too full to handle the phone call[.]” Ex. 3 at 46:22–47:7.

181. Shortly after the switch to Genesys was made, DSS added logic to the phone system to limit the number of calls in each queue. Ex. 42 ¶ 8.

182. To determine whether the queue is too full, Genesys performs a calculation each time a call comes in. Genesys first looks to see how many callers are in the queue. If there are fewer than the predetermined number of callers programmed in by DSS, the system moves the call into the requested queue. Ex. 3 at 49:24–50:23.

183. If there are more than the predetermined number of callers already in the queue, Genesys performs an additional calculation. Ex. 3 at 49:24–50:23.

184. Genesys evaluates the estimated wait time for a call and adds an additional “padding” to that wait time. If the wait time plus padded time is later than when the call center closes for the day, Genesys plays a recorded message and then terminates the call. Ex. 42 ¶ 8; Ex. 43; Ex. 2 at 122:6–21; Ex. 3 at 49:24–50:23.

185. As of May 10, 2023, the calculation for a call to the Tier 3 queue was the estimated wait time calculation plus two hours. Ex. 2 at 122:6–21.

186. The calculation to determine when calls should be deflected has changed multiple times since the transition to Genesys in June 2021. Ex. 43.

187. When the deflection logic was added to Genesys in July 2021, the system did not query the number of callers in the queue before moving to the wait time calculations. Instead, the calculation would run for all callers. Ex. 43.

188. Initially, Genesys evaluated the estimated wait time and added two hours of padding. Ex. 43.

189. Callers were able to hold their place in the queue by requesting a call back. Ex. 42 ¶ 8.

190. In mid-July 2021, the padding time for both Tiers was changed from two hours to four hours. Ex. 43.

191. In mid-August 2021, the padding time for Tier 3 was decreased from four hours to two hours. The padding time for Tier 1 remained at four hours. Ex. 43.

192. On August 17, 2021, the call back feature caused a backlog, as call back requests from the previous day were scheduled to the next morning. Ex. 42 ¶ 8; Ex. 25 at 131:4–19.

193. On August 19, 2021, the option to request a call back was turned off. Ex. 42 ¶ 8.

194. At the end of August 2021, DSS implemented logic to first evaluate how many callers were in the queue, as described in paragraph 182. This number was initially set at 100. Ex. 43.

195. In April 2022, the padding time for Tier 1 was decreased from four hours to two hours. The padding time for Tier 3 was increased from two hours to three hours. Ex. 43.

196. In May 2022, the number of callers who must be in the queue to trigger the padding time calculation decreased from 100 to 50. Ex. 43.

197. If there are fewer than 50 callers in the queue, the caller is placed in the Tier 3 queue. Ex. 43; Ex. 3 at 49:24–50:23.

198. If the deflection logic runs and the estimated wait time plus three hours will be before the call center closes, the caller is placed in the Tier 3 queue. Ex. 3 at 49:24–50:23.

199. In early 2023, the call center changed the messaging a caller would hear when the queue was full. Before this change, the caller would be told that the call center was “unable to take your call, please try your call back again later.” Now the message gives the caller a list of options. Ex. 25 at 171:17–172:16; 231:6–232:5.

200. These options include live chat, visiting the website, going to the local Resource Center, or reporting changes and looking at benefits online. Ex. 25 at 171:17–172:16.

201. As a result of this change in messaging, the call center no longer labels calls that are turned away as “deflected” calls, but rather as “redirected” calls. Ex. 25 at 231:6–232:5.

202. This is merely a change in terminology. Like deflected calls, redirected calls are not able to reach a call center worker to complete an interview. Ex. 25 at 231:6–232:5.

203. Once in the queue, the caller is informed of the number of people ahead of them in the queue. *See* Ex. 2 at 144:19–145:1; Ex. 3 at 151:19–152:6, 218:4–16; ECF 6-1 ¶¶ 27, 28, 32; Ex. 23 ¶¶ 10, 11, 14.

204. The caller is not informed how long the expected wait time in the queue is. *See* Ex. 2 at 144:19–145:1; Ex. 3 at 151:19–152:6, 218:4–16; ECF 6-1 ¶¶ 27, 28, 32; Ex. 23 ¶¶ 10, 11, 14.

Predictive dialer

205. DSS utilizes a predictive dialer to call SNAP applicants and attempt to complete their interviews. Ex. 2 at 83:14–22.

206. Applications are registered in DSS’s case management system, FAMIS. Applications that require an interview are flagged in FAMIS. Ex. 2 at 231:21–232:5.

207. Once FAMIS has flagged that an interview is needed, the application is added to the predictive dialer list. The following day, the predictive dialer makes a call out to the phone number associated with the application. Ex. 2 at 83:14–22, 85:18–86:1, 233:3–11.

208. Applicants with especially low income and no resources are eligible for expedited processing of their applications. 7 U.S.C. § 2020(e)(9); 7 C.F.R. § 273.2(i)(1).

209. Applications that are identified as eligible for expedited processing receive one call a day for two days (or until the interview is completed) from the predictive dialer. Ex. 53, DEF 0137397; Ex. 2 at 146:21–147:6.

210. All other applications receive only one call. Ex. 53; Ex. 2 at 148:6–13.

211. DSS has not amended the waiver to reflect actual agency practice. Ex. 2 at 150:6–14; Ex. 54, DEF 0140761; Ex. 55, DEF 0140775; Ex. 56, DEF 0144576; Ex. 57, Excerpts from Mitchem Dep. at 38:5–40:2.

212. The predictive dialer begins making calls at 7:00 AM each day that the call center is open. Ex. 2 at 253:13–17; Ex. 3 at 179:14–180:18; Ex. 25 at 50:17–51:1.

213. The number of calls the dialer makes at one time depends on the number of staff who are logged in to handle Tier 3 outbound calls. Ex. 3 at 179:14–180:18, 197:6–198:7.

214. When Genesys went live in June 2021, the predictive dialer was programmed to make five calls per staff member logged in to handle Tier 3 outbound calls. Ex. 3 at 197:6–24.

215. Because the call center was not able to handle this volume of calls, DSS changed this (later in the month) by programming the predictive dialer to make one call per staff member logged in to handle Tier 3 outbound calls. Ex. 3 at 197:6–198:7.

216. Staff who are logged in to the predictive dialer line are also logged in to the Tier 3 inbound line. Ex. 3 at 188:12–21; Ex. 25 at 92:13–25.

217. All Tier 3 workers are doing outbound and inbound calls. Ex. 25 at 94:25–95:14.

218. The Tier 3 outbound line has priority over the Tier 3 inbound line. Ex. 3 at 181:23–182:8; 189:23–190:1; Ex. 2 at 85:18–86:15.

219. Because Tier 3 outbound calls are prioritized over Tier 3 inbound calls, the Tier 3 outbound calls are directed to a worker ahead of Tier 3 inbound calls. Ex. 25 at 95:8 – 97:21.

220. The predictive dialer runs until it dials the entire list of phone numbers from applications that were registered the previous business day. Ex. 2 at 253:18–22.

221. If the list of applications cannot be completed before the close of business for the day, the list carries over to the following day. Ex. 2 at 253:23–254:3.

222. The daily load of predictive dialer calls generally ranges from 1,300 to 2,500. Ex. 25 at 93:9–16.

223. In late May and early June 2023, the predictive dialer load was consistently “well above 2,500,” and reached 4,500 on June 14, 2023. Ex. 25 at 94:4–10.

224. If a caller picks up the predictive dialer call, the caller is placed in the predictive dialer IVR menu. Ex. 53; Ex. 3 at 38:9–39:4.

225. The IVR provides the option to: Press 1 if the person who answered is the applicant and has 20-30 minutes to complete the call; Press 2 if the person who answered does not have time to complete the call; Press 3 if the applicant has already completed an interview; Press 4 if the person who answered is not the person who applied and cannot get the applicant on the phone in the next three minutes; or, Press 5 if the person who answered is not the person who applied, but can get the applicant in the next three minutes. Ex. 53.

226. If the person who answers presses 5 but is unable to get the customer in the three minutes given, the call disconnects. Ex. 3 at 39:6–12.

227. If the person who answers presses 2, the application is never placed in the predictive dialer list again. Ex. 3 at 184:17–22.

228. If the person who answers presses 1, they are routed into the Tier 3 outbound queue. Ex. 3 at 181:23–182:8.

229. If all workers are on other calls when the caller enters the Tier 3 outbound queue, the caller is put on hold. Ex. 3 at 195:12–16.

Appointment scheduler

230. SNAP applicants have the option to schedule an appointment to be seen in person at a Resource Center or to receive a phone call from a DSS staffer at a specific date and time. Ex. 2 at 104:23–105:21.

231. Applicants can schedule appointments by using DSS’s appointment scheduler or by walking into a Resource Center and scheduling an appointment with a representative. Ex. 2 at 105:14–18.

232. However, same day appointments are not reliably available for Resource Centers. Ex. 2 at 163:15–164:5.

233. DSS implemented a new appointment scheduler in March 2023. Ex. 2 at 113:17–21.

234. The appointment scheduler is available through the call center, (Ex. 3 at 151:13–18), but there is no menu option in the IVR in either the general information line or the SNAP interview line for a caller to schedule an appointment. Ex. 2 at 261:4–262:24; Ex. 7; Ex. 58, DEF 0139744.

235. The option to schedule an appointment is only offered once the caller makes it into a queue. Ex. 2 at 144:19–145:1; Ex. 3 at 151:19–152:6, 159:13–25; Ex. 7; Ex. 58.

236. Because a caller is not offered the option to schedule an appointment until they are placed in the queue, the appointment scheduler is not offered to deflected callers. Ex. 2 at 144:19–145:1; Ex. 3 at 151:19–152:6, 159:13–25; Ex. 7; Ex. 58.

237. Applicants can also access the automated appointment scheduler through DSSChat. Ex. 3 at 147:3–5; Ex. 4 at 236:22–25.

238. DSSChat is a chat platform available on DSS’s website. It features a chatbot, which is “like an IVR but on chat.” Ex. 3 at 140:1–14, 144:19–145:4.

239. When applicants begin a chat, they are offered the option to “Make appointment,” and can choose to schedule an in-person appointment or a phone appointment. Ex. 3 at 142:1–21.

240. Applicants can indicate to DSSChat when they want their appointment. If that time is not available, DSSChat returns the next three possible options for appointments. Ex. 3 at 147:3–15.

241. There are 15 phone appointment slots available per hour for the entire state. Ex. 3 at 177:14–178:13.

242. The number of appointments at a Resource Center depends on the hours and staffing of the Resource Center. Ex. 5 at 127:21–128:9.

243. Appointment slots are not exclusively reserved for SNAP interviews. They are available for any conversation or meeting between a member of the public and a BPT or CIS. Ex. 25 at 36:16–37:2.

244. Appointments are offered on a first-come, first-serve basis. Ex. 4 at 110:23–111:25.

245. The appointment scheduler does not account for any upcoming deadlines on the caller's case when assigning an appointment. Ex. 3 at 148:1–6, 194:9–22. There is no option for a caller to indicate any deadlines. Ex. 4 at 112:1–6.

246. There is no option for a caller to indicate what the appointment is for. Ex. 3 at 143:8–11; 152:13–153:8.

247. As of June 6, 2023, phone appointments were fully booked through the first half of July. Ex. 3 at 147:21–25; Ex. 59, DEF 0140444 at 0140445.

Call Center Data

248. As a requirement of the On-Demand Waiver, DSS compiles reports with various data points to share with FNS. Ex. 60, Excerpts from 30b6 Conway Dep. at 14:13–15; Ex. 61, DEF 0139862; Ex. 62, DEF 0125942.⁸

249. The data points are shared in a template form provided by FNS. Ex. 2 at 48:6–18.

250. FNS included in the form a section titled “Notes on Measures,” which explains the data points contained in the report. Ex. 2 at 48:6–18; On-Demand Waiver Report.

251. The first data point in the report is the “Average call wait time for interview in minutes.” The Notes on Measures states that when calculating the average call wait time for an interview, DSS should not include abandoned and dropped calls. The wait time ends only when the eligibility worker answers the call to begin the interview. On-Demand Waiver Report.

252. In the “Wait time” data point, DSS reports the average wait time for both incoming Tier 3 calls, and calls from the Tier 3 outbound dialer. Ex. 60 at 16:20–18:10.

253. The wait time calculation starts once a caller enters the Tier 3 inbound or Tier 3 outbound queue. Ex. 60 at 18:11–24.

254. The wait time calculation ends once an agent picks up the phone, the caller abandons the call, or the call is dropped by the phone system. Ex. 60 at 18:25–19:20.

⁸ The On-Demand Waiver report is compiled monthly. As litigation continued, Defendant produced updated versions of this data. When the data was discussed in the first 30b6 Deposition on May 11, 2023, the document discussed and identified as the On-Demand Waiver report was DEF 0125942 (Ex. 62). This was the version Defendant had produced to us at that time. DEF 000027 (Ex. 63) is the version of this report from June 2020 – November 2021. DEF 0139862 (Ex. 61) is the version of this report from December 2021 – May 2023, and was the version that was used in the 30b6 deposition on August 14, 2023. Two additional documents include data that ultimately is added to the On-Demand Waiver report: DEF 0145438 (June 2023 data, Ex. 64) and DEF 0146847 (July 2023 data, Ex. 66). These reports are in a different format than the others, but the data is the same. As a whole, these reports will be referred to as the On-Demand Waiver Report.

255. Despite instruction from FNS in the Notes on Measures, DSS includes abandoned and dropped calls in the wait time data reporting. Ex. 60 at 18:25–19:20.

256. The second data point in the report is the “Number [and percent] of all calls that result in a completed interview.” The Notes on Measures states that DSS should include abandoned and dropped calls in the denominator when calculating the percentage of calls that result in a completed interview. On-Demand Waiver Report.

257. In determining the denominator, DSS uses the number of calls that made it into the Tier 3 inbound and Tier 3 outbound queues. DSS fails to include the number of calls that were deflected due to lack of call center capacity. Ex. 60 at 24:5–25:10.

258. The third data point in the report is the “Average call completion time in minutes.” The Notes on Measures states that “Completion time” is the full duration of time the client spends on the call, beginning when the client enters the call center queue until the interview is completed. On-Demand Waiver Report.

259. In reporting the average call completion time, DSS pulls the “average handle time” of both the Tier 3 inbound and Tier 3 outbound queues. This “handle time” is the amount of time an agent is talking to a caller, along with the time the worker spends in between the call and their next call. Ex. 60 at 25:11–26:4.

260. The average handle time fails to include the caller’s wait time. Ex. 60 at 26:5–12.

261. The fourth data point in the report is the “Number of dropped calls.” The Notes on Measures states that this data point includes all calls disconnected due to call center error, lack of call center capacity, etc. On-Demand Waiver Report.

262. DSS fails to report calls that are deflected due to lack of call center capacity in data point four of this report. Ex. 65, Def. Response to 1st RFA ¶ 1; Ex. 60 at 21:1–19.

263. The eighth data point in the report is the “Number [and percent] of applications denied for failure to complete the interview in 30 days.” On-Demand Waiver Report. The Notes on Measures states that DSS should include all applications for which a denial was issued in the denominator when calculating the percentage. On-Demand Waiver Report.

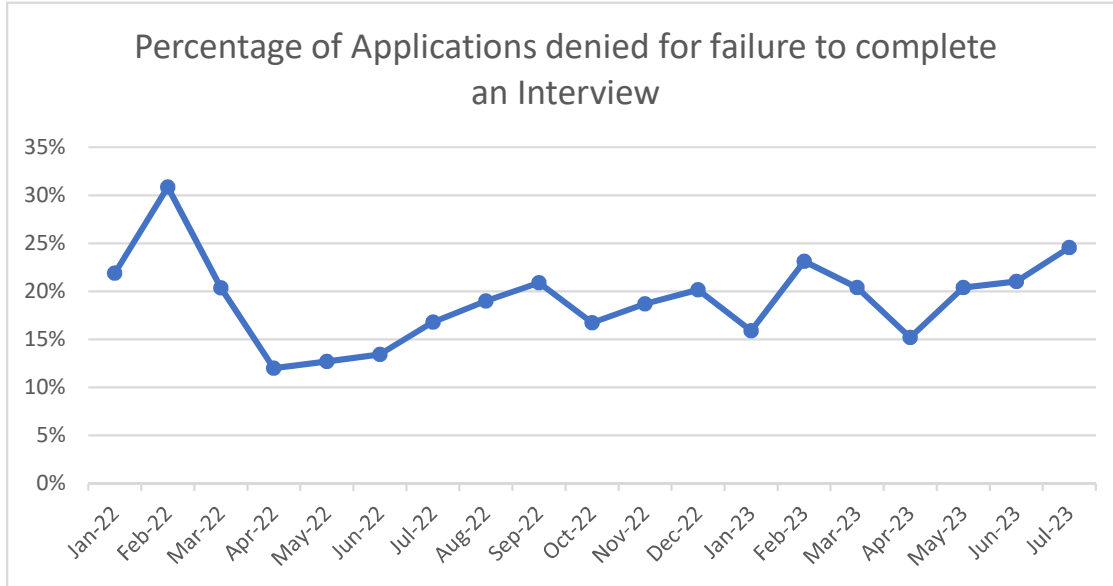
264. The number for this data point includes all initial applications for SNAP that were denied for failure to complete the interview in 30 days. Ex. 67, Excerpts from 30b6 Brown Dep. at 43:25–45:4.

265. To calculate the percentage in this field, the number in paragraph 264 is the numerator. The denominator is the total number of applications filed in the month. Ex. 67 at 45:9–24.

266. The total number of applications for which a denial was issued is not included as a raw number, nor as a part of the calculation on this spreadsheet, despite the Notes on Measures requiring that this number be used to calculate the percentage of applications denied for failure to complete an interview. On-Demand Waiver Report.

267. The chart below represents a compilation of data indicating the monthly percentage of applications denied for failure to interview, from January 2022 through July 2023.

Row 8 – Percent, from On-Demand Waiver Report.



268. The denominator includes all applications submitted, rather than the number of applications for which a denial was issued. Therefore, in July 2023, DSS reported that 25% of all applications denied were denied because of a failure to complete the interview in 30 days, but the percentage is actually greater.

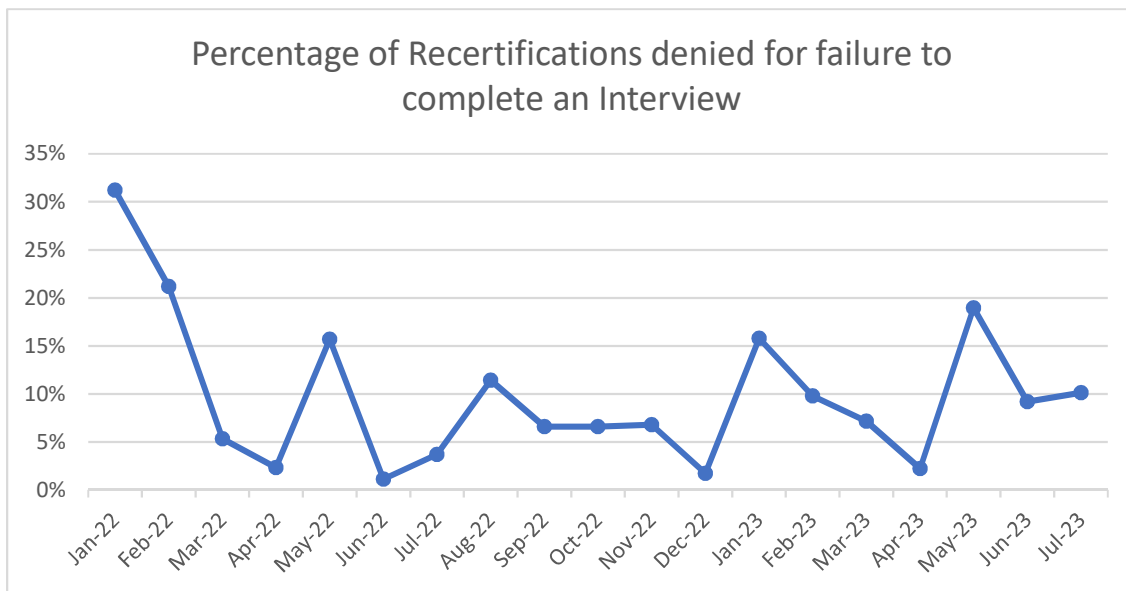
269. The ninth data point in the report is the “Number [and percent] of recertifications denied for failure to complete the interview in 30 days.” The Notes on Measures states that DSS should include all recertifications for which a denial was issued in the denominator when calculating the percentage. On-Demand Waiver Report.

270. The number for this data point includes all recertifications, including timely and untimely recertifications, for SNAP that were denied for failure to complete the interview in 30 days. Ex. 67 at 44:25–45:8.

271. To calculate the percentage in this field, the number in paragraph 270 is the numerator. The denominator is the total number of recertifications filed. Ex. 67 at 45:25–47:10.

272. The total number of recertifications for which a denial was issued is not included as a raw number, nor as a part of the calculation on this spreadsheet, despite the Notes on Measures requiring that this number be used to calculate the percentage of applications denied for failure to complete an interview. On-Demand Waiver Report.

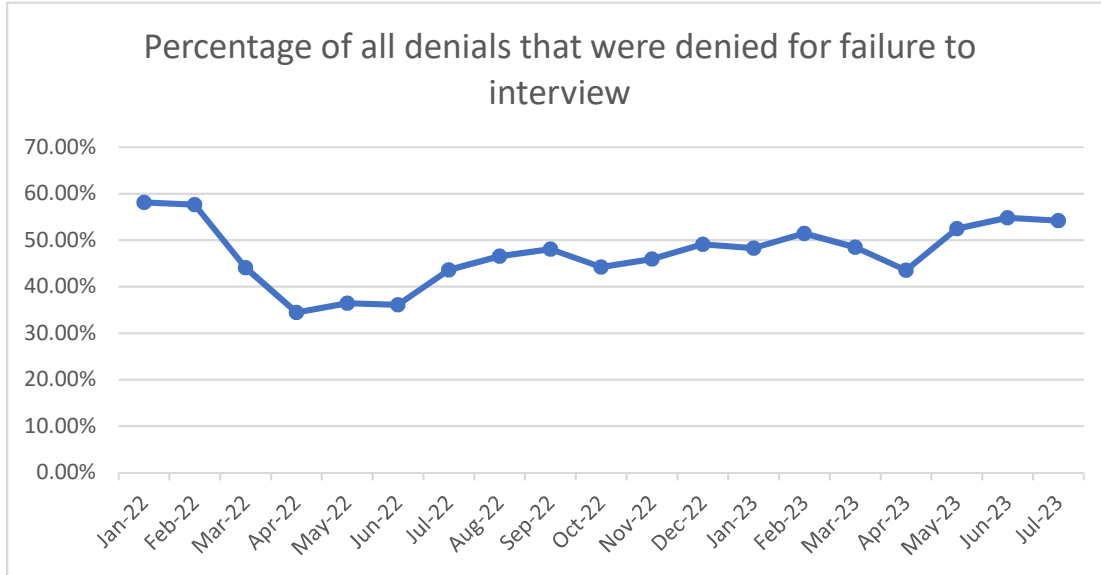
273. The chart below represents a compilation of data indicating the monthly percentage of recertifications denied for failure to interview, from January 2022 through July 2023. Row 9 – Percent, from On-Demand Waiver Report.



274. The denominator includes all recertifications submitted, rather than the number of recertifications for which a denial was issued. Therefore, in July 2023, DSS reported that 10% of all recertification denials occurred because of a failure to complete the interview in 30 days, but the percentage is actually greater.

275. The chart below represents a compilation of data indicating the monthly percentage of total applications, including initial applications and recertifications, that were denied for failure to interview out of all applications that were denied, from January 2022 through July 2023. On-Demand Waiver Report; Monthly Management Reports January 2022 –

July 2023.⁹



276. In 2023, 59,836 total applications (initial and recertification) have been denied for failure to complete an interview. On-Demand Waiver Report.

277. In July 2023 alone, 10,349 applications were denied for failure to complete an interview. This means 54% of denials resulted from failure to complete an interview. Ex. 66, DEF 0146847; Ex. 86.

278. In addition to the On-Demand Waiver Report DSS compiles to share with FNS, DSS uses an internal tracking system to monitor call center productivity. Ex. 60 at 28:3–13; Ex. 87, DEF 0140286; Ex. 88, Excerpts from DEF 0146846.¹⁰

⁹ The data for this calculation came from the On-Demand Waiver Reports and from DSS’s Monthly Management Reports. The numerator was the number of applications denied for failure to interview (cell G8 from the On-Demand Waiver Reports) + the number of recertifications denied for failure to interview (cell G9 from the On-Demand Waiver Reports). The denominator was the number of “applications rejected” from page 17 of DSS’s Monthly Management Reports from January 2022 – July 2023 (Exs. 68-86). Ex. 67 at 54:12–55:10, 60:3–62:3.

¹⁰ The call center productivity tracker is compiled monthly. As litigation continued, Defendant produced updated versions of this data. When the data was discussed in the 30b6 Deposition on August 14, 2023, the document discussed and identified as the call center productivity tracker was DEF 0140286 (Ex. 87). The version of this tracker as of mid-August 2023 is DEF 0146846 (Ex. 88). This data will be referred to as the Call Center Productivity Tracker.

279. DSS tracks the number of deflected calls. Call Center Productivity Tracker -- In the tab titled “Monthly IVR Volume,” column I (FSD Info Overflow) tracks the number of deflected calls from Tier 1, and column K (Application/Interview Overflow) tracks the number of deflected calls from Tier 3 (Ex. 88 at 5); Ex. 60 at 45:19–46:8, 48:22–25.

280. In February 2023, DSS changed its terminology from “deflected” to “redirected” calls. Call Center Productivity Tracker -- In the tab titled “Monthly IVR Volume,” column N (FSD Redirect) tracks the number of redirected calls from Tier 1, and column O (Interview Redirect) tracks the number of deflected calls from Tier 3 (Ex. 88 at 5); Ex. 60 at 46:20–47:11, 49:6–11.

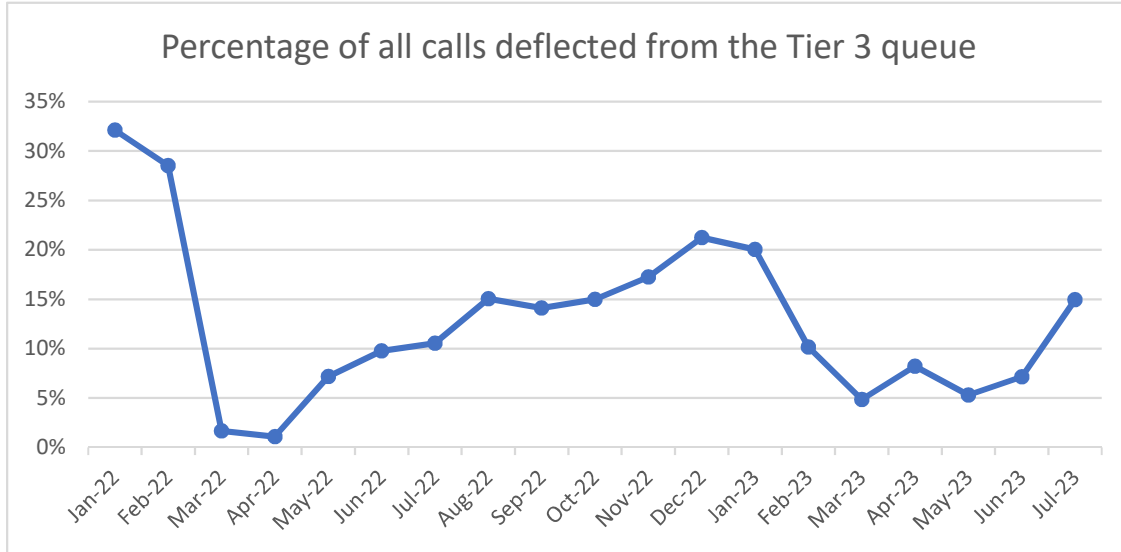
281. DSS changed this terminology because the IVR now plays a different recorded message. Ex. 60 at 51:4–54:24.

282. The same calls that were designated as deflected prior to this messaging change are now designated in internal DSS documents as redirected calls. Ex. 60 at 50:8–18.

283. In the Call Center Productivity Tracker, DSS also tracks the percentage of calls deflected each month. Ex. 60 at 49:12–24.

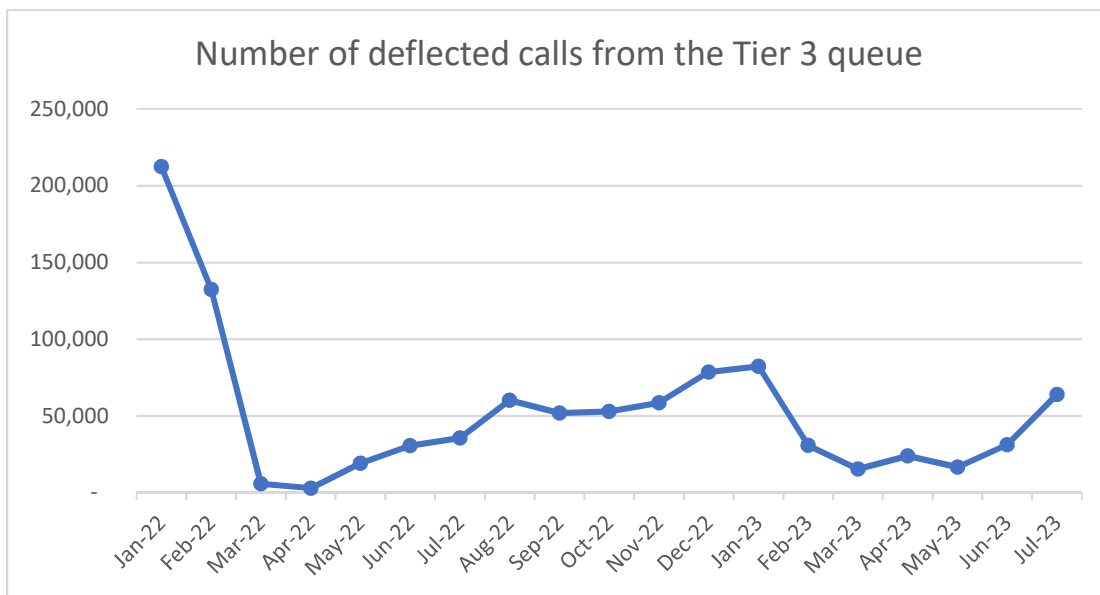
284. The chart below represents a compilation of data indicating the monthly percentage of all calls deflected from the Tier 3 queue in the period from January 2022 to July 2023. Call Center Productivity Tracker, “Monthly IVR Volume” – data from columns U (% Tier

3 Overflow) and W (% Tier 3 Redirect) (Ex. 88 at 5).



285. In July 2023, 15% of all calls were deflected from the Tier 3 queue. Call Center Productivity Tracker, “Monthly IVR Volume” (Ex. 88 at 5).

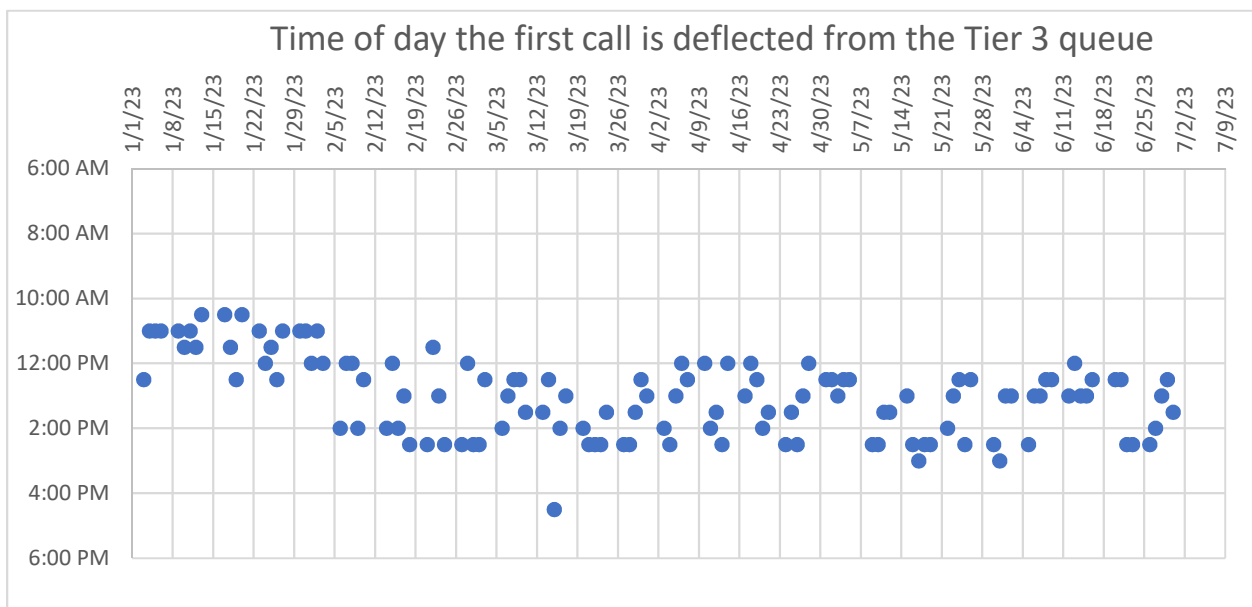
286. The chart below represents a compilation of data indicating the total number of calls each month that were deflected from the Tier 3 queue, from January 2022 to July 2023. Call Center Productivity Tracker, “Monthly IVR Volume” – data from columns K (Application/Interview Overflow) and O (Interview Redirect) (Ex. 88 at 5).



287. In July 2023, 64,053 calls were deflected from the Tier 3 queue. Call Center Productivity Tracker, “Monthly IVR Tab” (Ex. 88 at 5).

288. Despite the call center being open until 6:00 PM, from January 2023 – June 2023, the call center routinely started deflecting calls by 2:00 PM. Exs. 89–94, Interview Deflect Docs.¹¹

289. The chart below represents the time of day, between January 2023 and June 2023, when the first call was deflected from the Tier 3 queue. Exs. 89–94.



290. On average in 2023, more than 25% of the time the call center was open, or over 3 out of 12 hours each day, calls were consistently deflected. Exs. 89–94.

291. In January 2023, the interview line deflected at least one call on average 6.95 hours of the 12 hours the call center was open. In February, the average was 4.87 hours; in

¹¹ Defendant provided data showing the number of deflections from the Tier 3 queue for each half hour for every day that the call center was open. This data spanned from July 2021 to June 2023. We elected to represent the data from January 2023 through June 2023 as a reflection of the most recent six month period.

March, the average was 3.67 hours; in April, the average was 4.425 hours; in May, the average was 3.62 hours; in June, the average was 4.33 hours. Exs. 89–94.¹²

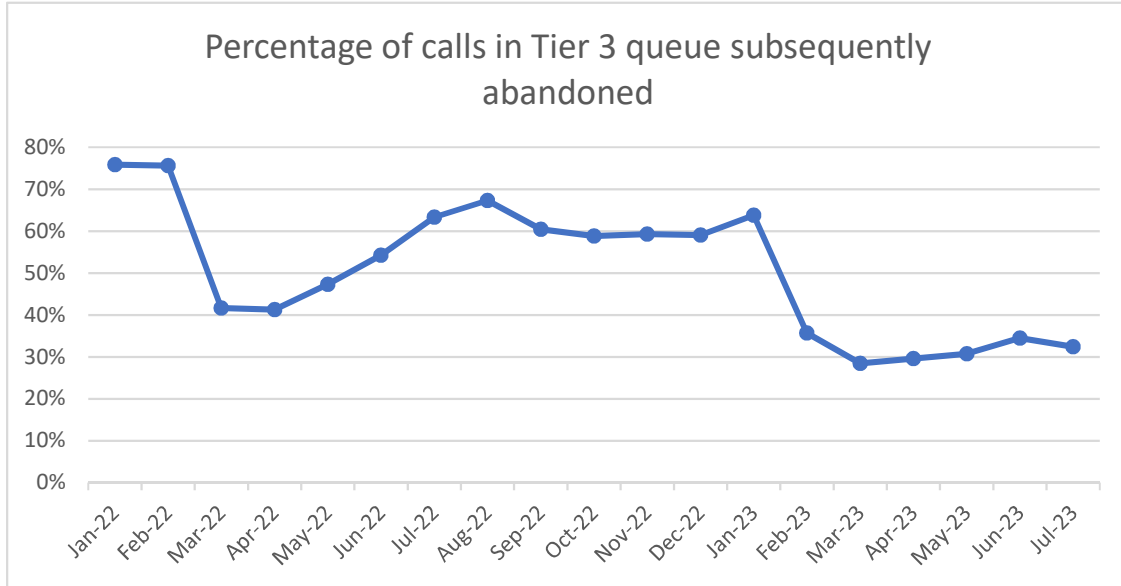
292. DSS also tracks the number and percentage of abandoned calls in the Tier 3 queue. Call Center Productivity Tracker – In the tab titled “Monthly Inbound Interviews,” column D (Abandon) tracks the number of abandoned calls from the inbound interview queue, column E (Abandon %) tracks the percent of abandoned calls (Ex. 88 at 7); Ex. 60 at 75:18–24, 76:18–22, 82:23–83:13.

293. The percentage of abandoned calls is the number of calls abandoned over the total number of calls that entered the inbound Tier 3 queue. Ex. 60 at 77:3–10, 83:10–13.

294. The chart below represents a compilation of data indicating the monthly percentage of calls that made it to the Tier 3 queue, that were subsequently abandoned in the period from January 2022 to July 2023. Call Center Productivity Tracker, “Monthly Inbound

¹² This calculation was performed identifying the times where at least one call was deflected from the helpline (though the majority of the time where at least one call was deflected, dozens if not hundreds of calls were deflected – see paragraph 286 for total numbers of deflected calls each month). Specifically, we: 1. Identified the number of half hours each day where calls were deflected; 2. Converted this number into a number of hours (by dividing this number by two); and 3. Averaged the number of hours calls were deflected each day over the course of the month.

Interviews” – data from column E (Abandon %) (Ex. 88 at 7).

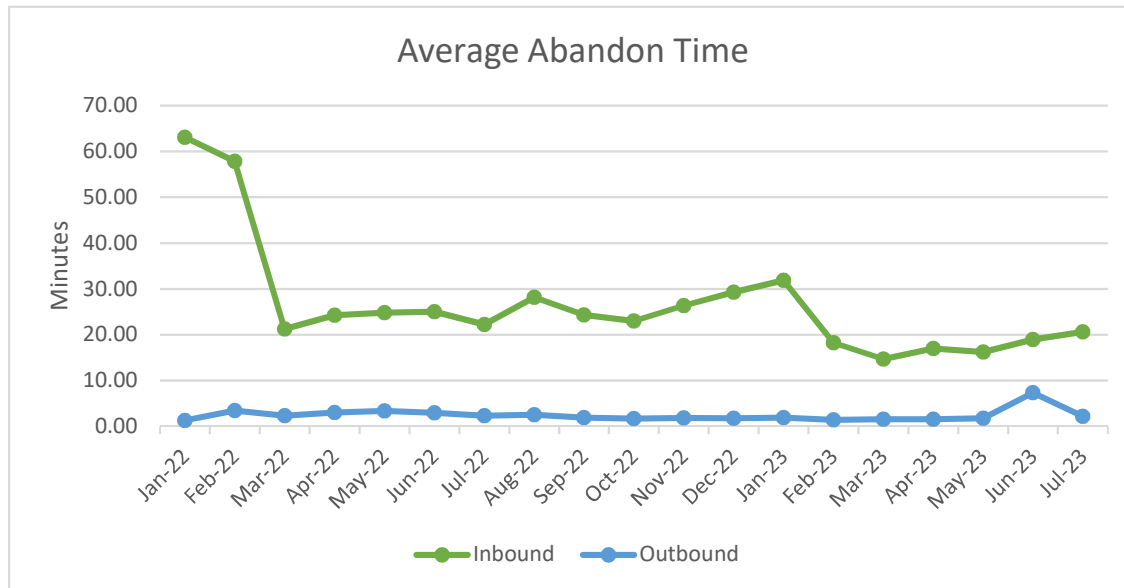


295. In July 2023, 32% of calls that made it into the Tier 3 queue were abandoned by the caller before being connected with a worker. Call Center Productivity Tracker, “Monthly Inbound Interviews” (Ex. 88 at 7).

296. Additionally, DSS tracks the average time a caller is in the queue before abandoning the call. Call Center Productivity Tracker – In the tab titled “Monthly Inbound Interviews,” column I (Average Abandon Time) tracks the average abandoned time from the Tier 3 inbound queue (Ex. 88 at 7), and in the tab titled “Monthly Outbound Interviews,” column I (Average Abandon Time) tracks the average abandoned time from the Tier 3 outbound queue (Ex. 88 at 9); Ex. 60 at 79:1–19, 84:24–85:11.

297. The chart below represents a compilation of data indicating the monthly average abandon time on the Tier 3 queue in minutes, including the abandon time on the inbound queue and the outbound queue, from January 2022 to July 2023. Call Center Productivity Tracker, “Monthly Inbound Interviews” – data from column I (Average Abandon Time) (Ex. 88 at 7), and

“Monthly Outbound Interviews” – data from column I (Average Abandon Time) (Ex. 88 at 9).



298. In July 2023, callers waited an average of 20.65 minutes on the Tier 3 inbound queue before abandoning the call. Call Center Productivity Tracker, “Monthly Inbound Interviews” (Ex. 88 at 7).

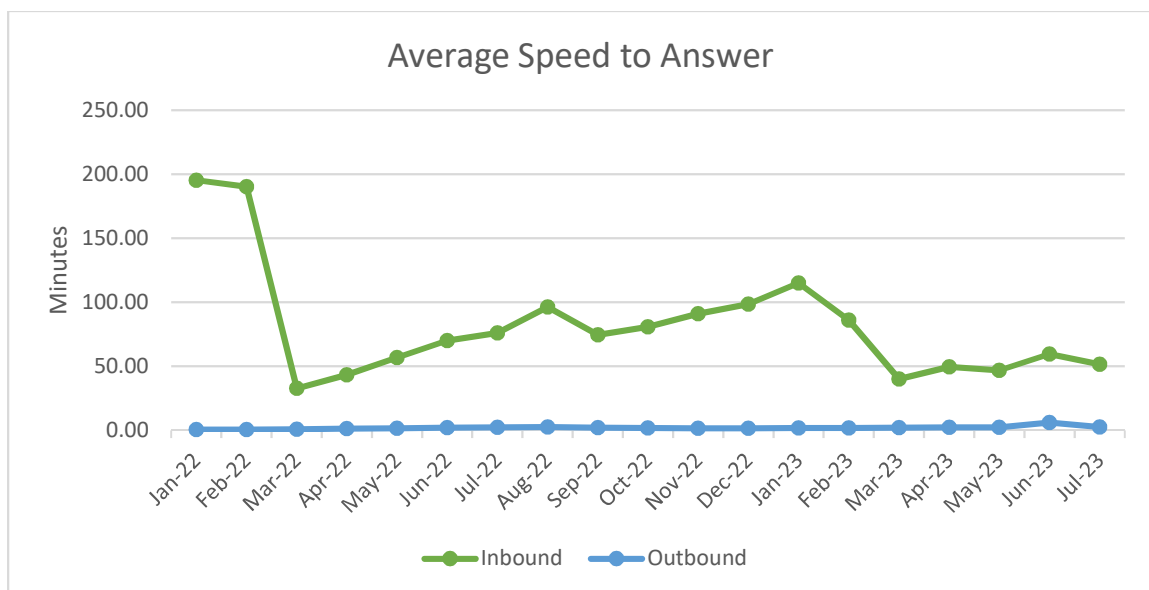
299. DSS tracks the average wait time for the Tier 3 inbound interview queue and the average wait time for the Tier 3 outbound interview queue. Call Center Productivity Tracker – In the tab titled “Monthly Inbound Interviews,” column F (Avg Wait) tracks the average wait time from the Tier 3 inbound interview line (Ex. 88 at 7), and in the tab titled “Monthly Outbound Interviews,” column F (Avg Wait) tracks the average wait time from the Tier 3 outbound interview line (Ex. 88 at 9); Ex. 60 at 77:11–21, 83:14–25.

300. The average wait time in this dataset includes the wait time for calls that were abandoned, disconnected, or connected with a representative. Ex. 60 at 77:15–21, 83:21–25.

301. DSS also tracks the Average Speed to Answer. Call Center Productivity Tracker – In the tab titled “Monthly Inbound Interviews,” Column G (ASA) tracks Average Speed to Answer (Ex. 88 at 7); Ex. 60 at 77:22–78:3, 84:1–6.

302. Speed to Answer runs from when the caller enters the queue, until the caller is connected to a representative. Ex. 60 at 78:4–10, 84:7–13.

303. The chart below represents a compilation of data indicating the monthly average speed to answer on the Tier 3 queue in minutes, including the average speed to answer on the inbound queue and the outbound queue, from January 2022 to July 2023. Call Center Productivity Tracker, “Monthly Inbound Interviews” – data from column G (ASA) (Ex. 88 at 7), and “Monthly Outbound Interviews” – data from column G (ASA) (Ex. 88 at 9).

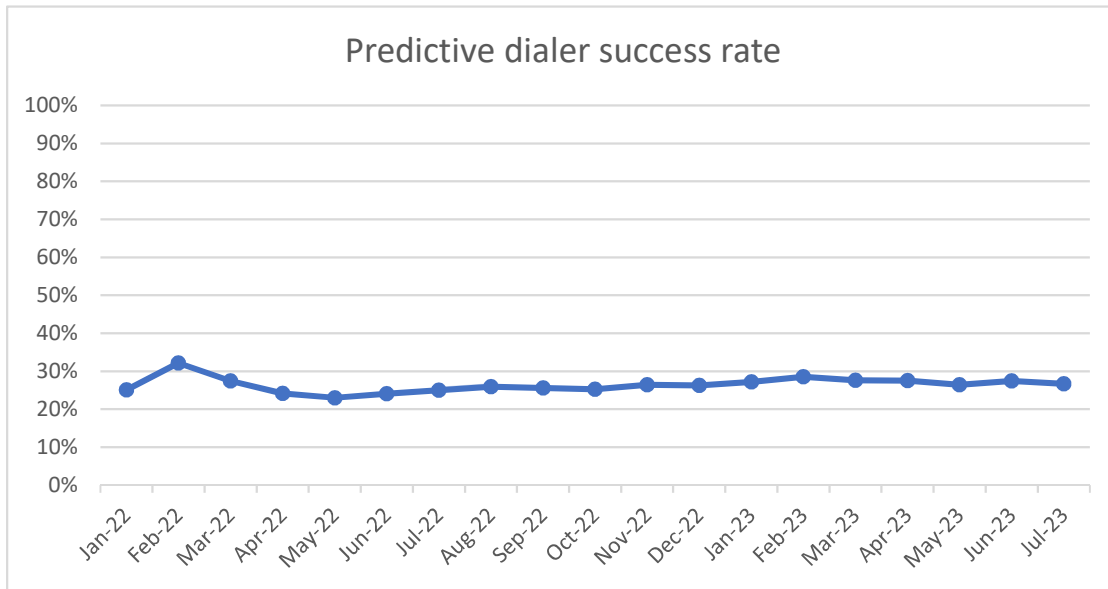


304. Average speed to answer is the average time a caller waited in the queue before speaking with a representative. Ex. 60 at 35:18–24, 77:22–78:3.

305. In July 2023, the average speed to answer was 51.45 minutes. Call Center Productivity Tracker, “Monthly Inbound Interviews” (Ex. 88 at 7).

306. DSS tracks the percentage of predictive dialer calls that are answered. Call Center Productivity Tracker – In the tab titled “Monthly Predictive Dialer,” Column E (blank) tracks the percentage of predictive dialer calls that are answered (Ex. 88 at 11); Ex. 60 at 92:5–17; 95:7–18.

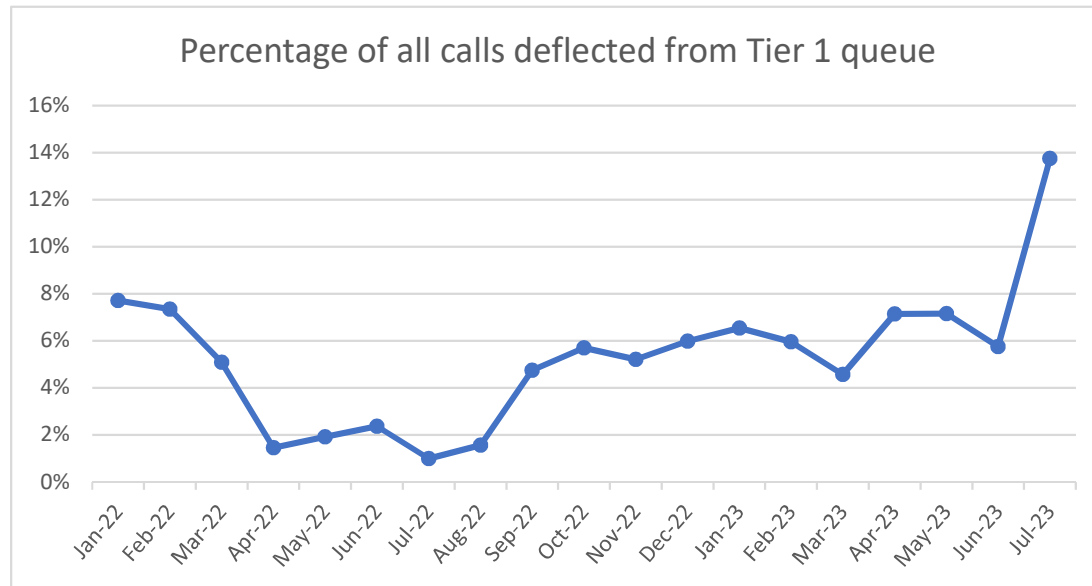
307. The chart below represents a compilation of data indicating the monthly percentage of calls from the predictive dialer that were answered, from January 2022 to July 2023. Call Center Productivity Tracker, “Monthly Predictive Dialer” – data from column E (blank) (Ex. 88 at 11).



308. The data DSS tracks related to the Tier 1 queue is more limited than the data for the Tier 3 queue. Call Center Productivity Tracker, comparison of tabs (Ex. 87).

309. The chart below represents a compilation of data indicating the monthly percentage of all calls that were deflected from the Tier 1 queue, from January 2022 to July 2023. Call Center Productivity Tracker, “Monthly IVR Volume” – data from columns T (% Tier

1 Overflow) and V (%t1 Redirect) (Ex. 88 at 5).



310. The average wait time for the Tier 1 queue in July 2023 was 39 minutes and 45 seconds. Call Center Productivity Tracker, “Stats for CMS and Department” – data from Gloria Acres Stats (Ex. 88 at 3); Ex. 60 at 32:1, 33:3–7.

311. Sixty-five percent of calls in the Tier 1 queue were abandoned in July 2023. Call Center Productivity Tracker, “Stats for CMS and Department” – data from Gloria Acres Stats (Ex. 88 at 3); Ex. 60 at 32:1, 33:3–7.

Changes to staffing the call center

312. The call center hours are currently 6:00 AM to 6:00 PM Monday through Friday. Ex. 3 at 32:19–21; Ex. 25 at 50:17–23.

313. For part of 2020, the call center hours were extended to include hours on Saturday and Sunday. However, those extended hours were a response to the onset of the COVID-19 pandemic and were only available for about 6 months. Ex. 3 at 30:17–31:7.

314. There have been no subsequent conversations about weekend call center hours. Ex. 3 at 31:8–14.

315. There have been discussions around extending the call center hours to be a 24-hour call center, (Ex. 3 at 83:7–18), but there are no plans in place to extend the call center hours.

316. CSCs were established to be primarily responsible for answering calls through the call center. Ex. 25 at 20:2–21.

317. Processing Centers were established to be primarily responsible for processing SNAP applications and related paperwork. Ex. 4 at 26:21–27:13.

318. However, this division is fluid. CSC staff do processing work, and Processing Center staff take call center calls. Ex. 2 at 195:12–17; Ex. 4 at 26:21–27:13.

319. Processing Center staff are trained to do SNAP interviews. Ex. 2 at 190:11–14.

320. It typically takes a couple of months for new staff to be trained and able to complete a SNAP interview. Ex. 2 at 203:20–204:10.

321. All Processing Center staff spend approximately three to four hours a day answering calls on the call center, (Ex. 2 at 99:23–100:14; Ex. 3 at 242:7–18), at the direction of Jason Comer and Nichole Conway.¹³ Ex. 2 at 100:15–20. Processing Center staff generally take call center calls in the morning. Ex. 3 at 89:21–90:1.

322. There is a rotation of processing center offices that continue taking calls after those three to four hours. Ex. 3 at 242:7–18; Ex. 25 at 28:11–29:2.

¹³ Jason Comer is a Program Manager for FSD and is responsible for the day-to-day operations in Processing Centers, Resource Centers, and CSCs. Ex. 4 at 9:16–10:8. Nichole Conway is also a Program Manager for FSD and is responsible for overseeing the architecture of Genesys and the call center. Ex. 3 at 13:22–14:5.

323. There are no plans to further integrate the processing center and call center staff. Ex. 1 at 74:18–75:12.
324. Occasionally, Resource Center staff take call center calls. Ex. 3 at 80:19–81:9.
325. Call center performance is monitored on a daily basis, but data is not systemically tracked. Ex. 3 at 47:8–16, 68:18–22, 157:17–159:7, 238:6–18. There are currently no concrete plans directed specifically to reducing call center wait times. Ex. 1 at 161:10–162:25.
326. DSS utilizes a task management system called “Current” to make work assignments to call center, processing center, and Resource Center staff. Ex. 2 at 186:16–187:1; Ex. 25 at 24:25–25:13; Ex. 4 at 22:7–23:10, 26:3–12.
327. Work assignments given through Current are known as “staff missions.” Ex. 2 at 186:16–22; Ex. 25 at 24:25–25:13.
328. There are different categories of work that could be assigned as a mission. Jason Comer coordinates with supervisors to determine which staff are logged in to take various categories of work. Ex. 2 at 187:21–25; Ex. 4 at 53:7–54:23.
329. Once a staff member is logged in and eligible to do a certain task, missions within that category of work will automatically get assigned through Current. Ex. 4 at 53:7–54:23.
330. A worker’s staff mission is the primary task that staff should be working on unless told otherwise. Ex. 3 at 24:6–14.
331. Additional staff are moved on to the call center over the course of a work day, based on need. Ex. 3 at 24:15–19, 26:15–25.
332. Supervisors monitor the wait times on the different queues to determine when staff should be moved from other tasks to take calls through the call center. Ex. 4 at 202:2–203:2; Ex. 3 at 28:24–29:17, 54:6–19.

333. Staff can be moved from other tasks, such as processing, to assist on the call center. Toni Sneller alerts office managers that the workers are needed on the helpline.¹⁴ Staff receive an instruction from their manager to log back into the system to take calls. Ex. 25 at 50:1–16; Ex. 3 at 242:7–243:24.

334. For these employees, processing centers are on rotation to monitor the wait time for the call center and to have their staff answer calls if needed. Ex. 3 at 243:25–244:8.

335. As of July 12, 2023, DSS was developing a team of four managers to watch all the tasking queues to move staff as needed. DSS was also doing analysis and developing metrics for them to watch the call center, and to direct staff when to move to different queues. Ex. 1 at 53:12–54:2; 163:1–21.

336. There is no target date for this plan to be implemented. Ex. 1 at 163:1–21.

337. When a staff member is moved to a different Tier within the call center, their supervisor sends them a message to alert them of the move. Their supervisor changes the staff member's work designation on Genesys. The employee then automatically begins to receive calls from the newly assigned Tier. Ex. 3 at 241:7–242:6.

338. As of July 12, 2023, DSS had an internal goal to keep call center wait times “under that 45-minute mark.” Ex. 4 at 199:10–200:5; Ex. 25 at 43:3–19; Ex. 1 at 145:3–147:23.

339. The staff member responsible for reassigning workers only does so when the Tier 3 wait time approaches an hour and a half, and the Tier 1 wait time approaches three hours. Ex. 25 at 43:3–19; 46:9–47:10.

340. The 45-minute goal was decided by Kim Evans and Robert Knodell. Ex. 1 at 145:3–147:23; Ex. 25 at 44:6–45:3.

¹⁴ Toni Sneller is a Program Manager for FSD and is responsible for overseeing the call center operations. Ex. 25 at 10:8–10, 11:20–12:12.

341. DSS does not have any plans to bring the target wait time below 45 minutes. Ex. 1 at 161:10–162:25.

342. DSS does not keep track data related to reallocating staff in response to call center demand in a long term and systemic way. These metrics are only tracked as part of live monitoring during a given work day. Ex. 3 at 29:18–23.

343. There are between 200 and 300 call center staff that work on “Tier 3, Tier 3 outbound, Tier 1, appointments, chat, and texts.” Ex. 2 at 183:1–4; Ex. 3 at 59:10–18, 62:21–63:3.

344. In the first few months of 2023, DSS found that there need to be “about 400 staff totally dedicated to the call center with no other duties,” just on Tier 3, in order to handle the wait times. Ex. 3 at 59:19–60:11.

345. This number came from DSS’s “Workforce Management software,” which “looks at past call volume and tries to do a forecast for future [calls], and based on the average handle time of those calls, recommends a staffing.” Ex. 3 at 60:12–22.

346. In calculating this number, DSS used a private call center industry standard, which is to answer 80% of the calls within 2 minutes. Ex. 3 at 92:25–93:9.

347. DSS has contracted with an outside organization called Change and Innovation Agency to update SNAP trainings and streamline agency processes. Ex. 2 at 202:15–203:10.

348. This project began in 2020. It has no target end date. Ex. 2 at 203:11–18.

349. Director Evans testified to this Court that DSS had requested additional funds from the General Assembly “to help shorten wait times at the customer service centers.” Ex. 95, Decl. of Kim Evans, June 20, 2022.

350. This request was actually for funding in response to the unwinding of the public health emergency, and the anticipated increase in calls related to the “reopening of the annual renewals for Medicaid.” The funds were used to obtain a vendor to assist with the increase in Medicaid calls. Ex. 1 at 125:8–130:2.

Resource Centers

351. Resource Centers closed in March 2020 in response to the COVID-19 public health emergency. Ex. 2 at 151:11–16.

352. Since February 2021, the Resource Centers have been in the process of reopening. Ex. 2 at 151:17–152:2; Ex. 4 at 86:20–88:2.

353. The typical hours of operation for a Resource Center are 8am to 5pm Monday, Tuesday, Thursday, and Friday, and 9am to 5pm on Wednesdays. Ex. 2 at 152:7–13.

354. There are 123 Resource Centers across the state. Each county has at least one Resource Center. Ex. 96, Staffing and Hours Statewide for RC’s.xlsx; Ex. 4 at 17:23–18:5.

355. Twenty-one of these Resource Centers are not fully reopened. Ex. 96.

356. Nineteen Resource Centers only have one staff member. Ex. 96.

357. Another 60 Resource Centers only have two staff members. Ex. 96.

358. Resource Centers with few or one staff may have to close for lunch or for the day if the staff member is sick or on vacation. Ex. 1 at 63:5–64:14, 219:3–14.

359. The Resource Centers’ locations and hours are listed on DSS’s website at https://dss.mo.gov/dss_map/#office. Ex. 97, DSS website on August 30, 2023.

360. The website is the only place where customers can check the current Resource Center hours before going to a Resource Center. Ex. 2 at 157:20–158:9; Ex. 4 at 136:22–137:21.

361. Customers can also visit the Resource Center and look for hours posted on their doors. Ex. 2 at 157:20–158:9; Ex. 4 at 136:22–137:21.

362. DSS’s website lists an additional 13 centers. Twelve of these are listed as closed. One is listed as open: Page Resource Center at 9900 Page Avenue, St. Louis, MO 63132. Ex. 97.

363. DSS’s website is not up to date.¹⁵

364. Forty-five of the Resource Centers list hours that are different from the hours the Resource Centers are actually open. Resource Center Hour Comparison.

365. Of these, 18 Resource Centers report being open for more hours than they actually are open. Resource Center Hour Comparison.

366. Twenty-seven Resource Centers report being open for fewer hours than they actually are open. Resource Center Hour Comparison.

367. An additional 13 Resource Center entries fail to include that they are closed for lunch between 12pm – 1pm. Resource Center Hour Comparison.

368. DSS draws a distinction between metro Resource Centers and non-metro or rural Resource Centers. Ex. 4 at 16:11–24.

369. The main difference between metro and non-metro Resource Centers is the volume of customers coming into the Resource Center, and therefore the number of staff required to provide services. Ex. 5 at 23:7–22; Ex. 4 at 16:11–17:11.

370. One reason a Resource Center may not be open the typical hours is because it is understaffed. Ex. 2 at 155:14–23.

¹⁵ We compared the hours provided by Defendant in their “Staffing and Hours Statewide for RC’s.xlsx,” provided on August 24, 2023 (Ex. 96) with the DSS website as of August 30, 2023 (Ex. 97). This will be referred to as Resource Center Hour Comparison.

371. DSS admitted it struggles to sufficiently staff some Resource Centers. Ex. 25 at 194:10–195:11.

372. Staffing levels at Resource Centers are determined by the demand and traffic at that Resource Center, assessed using Current. Ex. 2 at 157:3–19.

373. The NOMI letters DSS sends do not mention the option of going in to a Resource Center to request an interview. *See, e.g.*, Ex. 98, DEF 26972; Ex. 27 at 0138084.

374. Customers who go to Resource Centers may face wait times. Ex. 25 at 196:14–198:22.

375. In rural Resource Centers, customers face wait times because of minimal staffing. When there is only one worker, “if she’s doing an interview and another client walks in, there’s going to be a wait.” Ex. 25 at 196:14–197:10.

376. In metro Resource Centers with higher traffic, wait times vary. In one example, for the Jennings Resource Center, “it’s nothing for them to have a line out the door. You’re talking about a two-hour, two-and-a-half hour wait.” Ex. 25 at 197:24–198:7.

377. In another, Chouteau, “you’re probably looking at about an hour and a half.” Ex. 25 at 197:24–198:22.

378. In Lindbergh, “you’re probably looking at an hour still. But I have seen those wait times get up to three to four hours on a busy day.” Ex. 25 at 197:24–198:22.

379. DSS has developed a “statewide lobby queue.” Ex. 4 at 45:2–24; Ex. 99, DEF 0146541.

380. The statewide lobby queue is used to provide virtual assistance in offices where DSS has trouble hiring enough staff. Ex. 4 at 45:2–24; Ex. 25 at 192:19–194:8; Ex. 5 at 148:9–150:9.

381. The statewide lobby pilot “utilized team members throughout the State to support the Fletcher Daniel’s State Office Building (FDSOB) Resource Center (RC) in Kansas City. . . . Phase two of the pilot started mid-May. Phase two started with the need to support multiple lobbies in the Northwest part of the State and has seen similar success.” Ex. 99 at 0146542.

382. Workers at the Resource Centers that need support can request help through the statewide lobby. Ex. 5 at 113:18–114:14.

383. Offices with less traffic were added to help staff the statewide lobby. Ex. 5 at 114:15–115:11.

384. When a person enters an office that uses the statewide lobby, they are asked whether they are okay talking to someone on the phone. If they are, they are put on a phone and someone from a different office logged into the statewide lobby queue will call that phone and assist the customer. Ex. 4 at 45:2–46:20; Ex. 5 at 107:2–108:15; Ex. 99 at 0146543–44.

385. Customers cannot enter the statewide lobby after 3:30 PM. Ex. 99 at 0146544.

DSS-specific ADA facts

386. DSS is a department and agency of the state of Missouri, and qualifies as a public entity under the ADA. ECF 93 ¶ 150.

387. The Office for Civil Rights Director for the Department of Social Services serves as the designated ADA coordinator for the Department. Ex. 18 at 17:3–24.

388. Anna Wise is the Office for Civil Rights Director for DSS. Ex. 18 at 16:25–17:2.

389. Ms. Wise testified that she spends less than ten percent of her work time on ADA-related matters for client participants, or otherwise coordinating DSS compliance with the ADA regarding clients. Ex. 18 at 28:21–29:1.

Non-Discrimination Policy Statement

390. DSS's only policy regarding ADA accommodations for SNAP participants is contained in their Non-Discrimination Policy Statement. Ex. 100, DEF 31792; Ex. 18 at 67:14–68:3, 125:11–126:4.

391. DSS does not mail or otherwise directly disseminate the Non-Discrimination Policy Statement to SNAP participants. Ex. 18 at 173:3–9.

392. The Department's Non-Discrimination Policy Statement is posted in Resource Centers and on DSS's website. Ex. 18 at 30:19–31:3.

393. The Non-Discrimination Policy Statement does not reference disability status and does not indicate that reasonable accommodations are required by federal law. Ex. 100.

394. The Non-Discrimination Policy Statement dictates that in order to receive an “auxiliary aid or service for effective communication, or a modification of policies or procedures to participate in a program, service, or activity of the Department of Social Services,” an individual should notify the Department as soon as possible, and no later than forty-eight hours before a “scheduled event,” by contacting either their DSS local office or the Office for Civil Rights Director for DSS. Ex. 100; Ex. 1 at 256:3–21.

395. It is not possible to contact one's local DSS office, other than by going to a Resource Center in person, because Resource Centers do not have their own phone numbers. Ex. 97; Ex. 23 ¶ 15.

396. The Non-Discrimination Policy Statement does not provide instruction as to how an individual who requires a reasonable accommodation should request one, if the accommodation is not related to a “scheduled event.” Ex. 100.

397. A SNAP interview is not a “scheduled event.” Ex. 1 at 257:13–19.

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398. The Office for Civil Rights is the sole decider on outcomes of complaints submitted by SNAP applicants or recipients related to disability-based discrimination or refusal to grant reasonable accommodations. Ex. 18 at 222:8–14.

399. DSS has no written standards or criteria for granting, denying, or otherwise resolving requests for reasonable accommodation made by SNAP applicants or participants. Ex. 18 at 222:15–17.

400. The Office for Civil Rights does not follow up to monitor how the reasonable accommodation request was handled, or whether it was implemented in any way. Ex. 18 at 91:13–92:4.

401. If DSS denies the request for a reasonable accommodation, there is no written policy, standard, or mechanism for the individual to appeal that denial within DSS. Ex. 18 at 171:12–23.

402. The Department does not stay or toll SNAP deadlines regarding compliance with eligibility requirements while a reasonable accommodation request is being processed. Ex. 18 at 113:9–17.

403. There is no policy allowing a granted reasonable accommodation to continue the next time the SNAP applicant or recipient interacts with the agency. *See* Ex. 100.

404. There is no policy for the timeline to make a decision on a reasonable accommodation request. Ex. 18 at 110:22–111:3.

405. There is no written policy on who has the authority to grant or deny reasonable accommodation requests. *See* Ex. 100; Ex. 18 at 102:17–105:24.

Training and practice

406. All DSS employees receive an internal civil rights and diversity training upon hire, and frontline staff receive subsequent internal civil rights and diversity training every three years. Ex. 18 at 26:17–27:1; Ex. 101, DEF 27256.

407. The DSS training includes only 3 slides, out of 129 total, that discuss participant ADA accommodations. Ex. 101 at 27288, 27291, 27292.

408. The DSS training states that if staff receive an accommodation request, they should: document the request in the case file; notify their chain of command; and approve the request if they are able to meet the needs of the client at the local office and the request does not create an undue hardship. Ex. 101 at 27292.

409. The training does not discuss how to respond to a request for accommodation where a client's needs must be met over the phone. Ex. 101 at 27292.

410. The training does not inform staff how to recognize or acknowledge an accommodation request. Ex. 101 at 27292.

411. The training instructs DSS staff to work through their chain of command and contact the ADA coordinator before they deny any requests. Ex. 101 at 27292.

412. DSS does not evaluate or test staff knowledge retained from attending the agency's civil rights and diversity training. Ex. 18 at 38:25–39:3.

413. In addition to the DSS training, staff and supervisors also attend a yearly online SNAP training related to civil rights, created by USDA. Ex. 18 at 26:17–27:10; 60:8–18.

414. The USDA training has 1 slide out of 23 that discusses the ADA. BPTs and CISs receive no other training regarding the ADA or reasonable accommodations. Ex. 102, DEF 42486; Ex. 18 at 64:6–15.

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415. The USDA SNAP civil rights training states that upon request for an accommodation, staff should: document the request in FAMIS, notify their chain of command, approve the request if they are able to meet the needs of the client at the local office and the request does not create undue hardship on the operation of the agency, and, before staff deny a request or if staff are unsure about a denial, they should work through their chain of command and contact the ADA Coordinator/Office of Civil Rights Manager. Ex. 102.

416. During 12 weeks of additional program training, call center staff receive no specific training on procedures for processing or resolving reasonable accommodation requests from SNAP applicants or participants. Ex. 25 at 30:12–21, 227:14–19.

417. BPTs and CISs receive no training on how to spot when a SNAP participant or applicant with a disability might need a reasonable accommodation, or whether to affirmatively offer assistance. Ex. 18 at 48:13–49:6; *see* Ex. 101 at 27288, 27291, 27292; Ex. 102 at 42496.

418. If staff encounter a person with a disability who requires additional explanation for SNAP interview questions, they are expected to handle it the best they can. Ex. 25 at 86:6–22.

419. The Department does not keep a log of, or otherwise track or monitor, reasonable accommodation requests made by participants. Ex. 18 at 69:20–70:9.

420. The DSS Office for Civil Rights Director also does not keep a log of reasonable accommodation requests that are sent to her for review. Ex. 18 at 169:18–170:2.

421. The Office for Civil Rights does not perform any kind of “secret shopper” or other method of random testing of services provided or not provided for someone requesting an accommodation via the call center. Ex. 18 at 116:12–17.

422. Even when DSS has a record that a SNAP participant is disabled, staff do not take affirmative steps to inquire as to whether the participant might require an accommodation. Ex. 18 at 48:13–50:15; Ex. 1 at 245:15–246:5; *see also* Ex. 41 ¶¶ 14–16; Ex. 17 ¶ 3; ECF 6-1 ¶ 6.

423. Defendant takes no steps to ensure that call center staff are providing reasonable accommodations to SNAP applicants or other callers with disabilities who contact the call center. Ex. 3 at 236:9–12.

Requesting an accommodation and filing a complaint

424. In its SNAP notices sent to households, DSS does not include information on how to request a reasonable accommodation authorized by the ADA or file an ADA-related complaint with DSS’s Office of Civil Rights. Ex. 19 at 0138026–37; ECF 18-3.

425. DSS’s monthly SNAP change report does not contain any information on how to request an accommodation. Ex. 19 at 0138026–27.

426. DSS’s mid-certification form states, “Auxiliary aids and services are available upon request to individuals with disabilities,” and does not contain other information on how to request an accommodation. Ex. 19 at 0138028–37.

427. When there is any reference to disability in SNAP notices, DSS does not include reference to its own Non-Discrimination Policy Statement. *See* Ex. 19 at 0138026-37; ECF 18-3.

428. Instead, DSS includes USDA’s nondiscrimination policy in block text on SNAP notices. Ex. 18 at 173:3–23.

429. The USDA’s language states that: “In accordance with Federal civil rights laws and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, sex, religious

creed, disability, age, political beliefs, or reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by the USA.” *See* Ex. 103, MO SNAP 0004360; ECF 18-3.

430. The text further states that persons with disabilities “who require alternative means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language)” should contact the Agency where they applied for benefits for assistance. Individuals who are deaf, hard of hearing, or have speech disabilities can contact the USDA for assistance. *See* Ex. 103; ECF 18-3.

431. DSS’s recertification notices include the USDA language in paragraphs 429–30. Ex. 103 at 9–12.

432. DSS’s action notices that alert applicants or recipients that a decision has been made on their case (for example, an application was denied, or an adjustment was made) include the USDA language in paragraphs 429–30. Ex. 103 at 1–8; ECF 18-3.

433. SNAP notices contain nothing to inform an applicant or participant on how to file a complaint concerning disability-based discrimination with DSS. The only instruction directs an applicant or participant to complete the USDA program Complaint form. Ex. 19 at 0138026–37; Ex. 103; ECF 18-3.

434. At no point in the Call Center’s IVR system, on either Tier 1 or Tier 3, can SNAP applicants or other callers with disabilities request an accommodation. There is no place in the flow for them to do so. Ex. 3 at 135:20–136:1; Ex. 25 at 85:15–19.

435. SNAP applicants and participants must either wait on hold in one of the call center queues or call the Office of Civil Rights directly. The only place to find the Office of Civil Right’s number is on DSS’s website or at a local Resource Center. Ex. 18 at 30:19–31:3.

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PRELIMINARY STATEMENT

The importance of food cannot be overstated. Neither can the consequences of hunger. Courts have long recognized that food deprivation creates a “brutal need” with significant, lasting physical and emotional effects. *See, e.g., Goldberg v. Kelly*, 397 U.S. 254, 260–65 (1970). With this in mind, the federally-funded, state-administered Supplemental Nutritional Assistance Program (“SNAP”) provides food assistance benefits to low-income individuals, allowing them to obtain food while using their resources for other needs. It's an effective, essential program—when it works and is accessible.

Missourians suffering from hunger must depend on the Department of Social Services (“DSS”), administered by Defendant Robert Knodell. DSS is required by federal law to provide SNAP benefits to all eligible Missourians, but its systems are broken and inaccessible. Indeed, applicants (who need food desperately) must endure Defendant's dysfunctional call center, which is plagued by disconnections and long hold times. These circumstances are uniquely challenging for SNAP applicants with disabilities, because Defendant fails to offer the reasonable accommodations needed to participate.

This lawsuit tells the stories of Plaintiffs Mary Holmes, Denise Davis, and Andrew Dallas, three low-income Missourians who have been deprived of crucial food assistance. All three live with disabilities or health conditions that make it impossible for them to work. They do not have alternatives to SNAP to obtain nutrition. All three are eligible and made diligent efforts (and large sacrifices) to obtain benefits. All three became mired in Defendant's system and had their applications denied wrongfully. Their stories illustrate Defendant's cruel practices and procedures, which violate federal law and must be reformed. Defendant's operation of SNAP likewise harms Plaintiff Empower Missouri, an organization whose anti-hunger work is frustrated by Defendant's violations of the law.

As explained below, Plaintiffs are entitled to summary judgment on each of their claims. There can be no genuine dispute that Defendant failed to provide Plaintiffs Holmes, Davis, and Dallas with required benefits. The record confirms Defendant denied their applications wrongfully, in violation of the SNAP Act and Due Process Clause. In addition, there can be no genuine dispute that Defendant failed to provide Plaintiffs Holmes and Dallas with reasonable accommodations for their disabilities, in violation of the Americans with Disabilities Act (“ADA”). More broadly, discovery has confirmed that Defendant lacks systems and processes sufficient to provide reasonable accommodations to disabled applicants, as required by the ADA.

Defendant's system is virtually impossible to navigate and is unlawful in several ways. His failure to administer SNAP fairly and effectively is a systemic, on-going problem that impacts all Missourians who rely on SNAP for food, and will continue to do so without relief from the Court. As discussed fully below, Plaintiffs are entitled to summary judgment, and seek an injunction ordering Defendant to remedy his unlawful policies and practices.

PROCEDURAL BACKGROUND

In February 2022, Plaintiffs filed this action asserting Defendant violated rights protected by the SNAP Act, the Due Process Clause, and the ADA. ECF No. 1.¹⁶ Simultaneously, Plaintiffs filed a motion seeking a temporary restraining order (“TRO”) barring Defendant from depriving them of the SNAP benefits to which they were entitled. ECF Nos. 5, 6. At the TRO motion hearing, the Court suggested the parties create a process through which Plaintiffs’ counsel could alert Defendant’s counsel about a SNAP applicant who had “illegal difficulty in scheduling an interview” and find a resolution together, without having to seek emergency relief from the

¹⁶ Plaintiffs subsequently filed an Amended Complaint, ECF No. 88, adding two individual Plaintiffs. After joining this litigation, each of the Plaintiffs was deemed eligible for SNAP; all are presently receiving SNAP benefits.

court. 3/7/22 Hr’g Tr. at 10–11. Counsel agreed.¹⁷ *Id.* at 13. The parties have now completed an extended and intensive discovery process. The material facts in this action are undisputed, and the issues for trial can be resolved through summary judgment.

STATUTORY AND REGULATORY BACKGROUND

I. SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM

SNAP provides vital nutrition assistance to indigent households. Originally established by Congress as the federal Food Stamp Program in 1964, SNAP’s purpose is 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. The federal government provides complete funding for all SNAP benefits, as well as at least 50% of a state’s administrative costs. *See id.* §§ 2013(a), 2019, 2025(a); 7 C.F.R. §§ 271.2, 277.1(b), 277.4. Defendant must provide SNAP benefits “to all eligible households who make application for such participation.” 7 U.S.C. § 2014(a).

Defendant must not only permit households to file an application on the first day they contact the agency during office hours. He must “encourage” households to file an application the same day the household or its representative contacts the agency in person or by telephone and expresses interest in obtaining SNAP or concerns that indicate food insecurity. 7 U.S.C. § 2020(e)(2)(B)(iii); 7 C.F.R. § 273.2(c)(1), (2)(i). SNAP participants are certified for a specified period, after which they must submit an application to recertify their eligibility. 7 C.F.R. § 273.14. Missouri SNAP recipients also must complete a mid-certification review approximately halfway through their certification period. Mo. SNAP Manual 1140.020.00.¹⁸ If a household

¹⁷ Over the last 18 months, Plaintiffs’ counsel has notified Defendant of just over 3 dozen individuals who had illegal difficulty in scheduling an interview; Defendant then promptly scheduled interviews for these applicants.

¹⁸ Available at <https://dssmanuals.mo.gov/food-stamps/1140-000-00/1140-020-00/>.

experiences a change in circumstances during their certification period, they must update the administering agency. 7 C.F.R. § 273.12.

Under USDA regulations, Defendant must either interview the applicant on the day of application, or, if this is not possible, schedule an interview promptly to ensure an opportunity to participate within 30 days after the application is filed. *Id.* § 273.2(e)(3). However, Defendant has obtained a federal waiver of the interview scheduling requirement. This waiver, known as the “On-Demand Waiver,” allows DSS to forgo scheduling SNAP eligibility interviews and instead conduct them on an on-demand basis. Plaintiffs’ Statement of Material Facts (“SMF”) ¶¶ 22–23. The waiver imposes specific requirements for DSS to utilize on-demand interviewing.

The waiver requires DSS to call applicants beginning on the first day after an application is submitted, and continue doing so for four days. SMF ¶ 26. On the fifth day after applying, the waiver dictates that DSS send a Notice of Missed Interview (“NOMI”) to the applicant if an interview has not been completed, informing the applicant of how to be interviewed and identifying the deadline by which the required interview must be completed. SMF ¶ 24. If the interview is not completed by that deadline, DSS denies the application. SMF ¶ 21.

II. AMERICANS WITH DISABILITIES ACT

Congress enacted the ADA to “provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities” and to provide “clear, strong, consistent, enforceable standards addressing discrimination” against those individuals. 42 U.S.C. § 12101(b)(1), (2). Congress specifically found, *inter alia*, that “discrimination against individuals with disabilities persists in such critical areas as . . . access to public services.” 42 U.S.C. § 12101(a)(3).

Title II of the ADA provides an essential anti-discrimination mandate: “no qualified individual with a disability¹⁹ shall, by reason of such disability²⁰, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity,²¹ or be subjected to discrimination by any such entity.” 42 U.S.C. § 12132. In implementing Title II, the U.S. Department of Justice emphasized that the failure to provide reasonable accommodations constitutes discrimination on the basis of disability:

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)(i).²² “In a reasonable accommodation case, the ‘discrimination’ is framed in terms of the failure to fulfill an affirmative duty—the failure to reasonably accommodate the disabled individual’s limitations.” *Peebles v. Potter*, 354 F.3d 761, 767 (8th Cir. 2004).

FACTUAL BACKGROUND

I. PLAINTIFF MARY HOLMES

Plaintiff Holmes has throat cancer and chronic obstructive pulmonary disease (“COPD”). SMF ¶ 28. Her COPD makes it difficult for her to leave her home, and often causes her to be

¹⁹ A “qualified individual with a disability” is a person 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); 28 C.F.R. § 35.104. “The statute’s use of the term ‘qualified’ suggests that we must look not to the administration of the program for which the plaintiff is qualified, but rather its formal legal eligibility requirements.” *Henrietta D. v. Bloomberg*, 331 F.3d 261, 277 (2d Cir. 2003).

²⁰ The ADA defines “disability” as: “(A) a physical or mental impairment that substantially limits one or more major life activities of such individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment.” 42 U.S.C. § 12102(1).

²¹ The term “public entity” includes “any State or local government” and “any department, agency, special purpose district, or other instrumentality of a State or States or local government.” 42 U.S.C. § 12131(1)(A), (B); 28 C.F.R. § 35.104. Defendant admits that DSS is a public entity under the ADA. ECF No. 93 at 13, ¶ 150.

²² Reasonable “modifications” and “accommodations” are treated interchangeably by the courts. *McElwee v. County of Orange*, 700 F.3d 635, 640 n.2 (2d Cir. 2012).

admitted to the hospital. SMF ¶ 29. Plaintiff Holmes' throat cancer makes it difficult and uncomfortable for her to speak. SMF ¶ 30. Because of her disabilities, Plaintiff Holmes is at a high risk for complications from COVID-19. SMF ¶ 31. In late 2021, Plaintiff Holmes was hospitalized for roughly three and a half weeks with COVID-19 and pneumonia. SMF ¶ 32. The Social Security Administration determined her to be disabled, and she receives Social Security Income ("SSI") benefits.²³ SMF ¶ 33. Plaintiff Holmes does not have Internet access at home, nor does she have any reliable means of transportation. SMF ¶ 34.

In December 2021, DSS mailed Plaintiff Holmes' SNAP recertification paperwork to an old address. She lost SNAP benefits because she did not receive this notice, and needed to submit a new application. SMF ¶ 36. In early January 2022, Plaintiff Holmes called DSS multiple times to request an application form by phone. As a result of the extensive problems in Defendant's call center operations, she was never able to request the form. SMF ¶ 37. Plaintiff Holmes had no choice but to go to a DSS office, known as a Resource Center, in spite of her transportation and disability issues. SMF ¶ 38. She paid a family member to give her a ride. SMF ¶ 38. After a twenty-minute wait, Plaintiff Holmes was finally able to obtain, complete, and submit a new application at the Resource Center. SMF ¶ 38, 39.

Plaintiff Holmes requested an in-person interview when she turned in her application, but a worker told her that the Resource Center was not doing interviews that day, and that someone from DSS would call her in the next few days. SMF ¶ 40. She answered a call from DSS, but

²³ Social Security defines disability as the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. 20 C.F.R. §404.1505. See n. 4 *supra* for the ADA definition of disability.

faced a long wait time and was not connected to a representative. SMF ¶ 42. She was not called by DSS again. *See* SMF ¶ 42.

Plaintiff Holmes persisted. Over the following month, she called at least thirteen times, trying to complete her interview. SMF ¶¶ 43–48, 51–53. She faced long wait times and deflected calls²⁴ and was never connected to a representative. *Id.* Her application was denied because “[DSS was] unable to complete the interview.” SMF ¶ 52. Plaintiff Holmes did not receive the NOMI required by the On-Demand Waiver until three weeks after submitting her application. SMF ¶ 49. She did not receive benefits until after the TRO motion in this litigation was fully briefed and argued.²⁵ SMF ¶ 54. Plaintiff Holmes lives on a fixed income and will continue to rely on SNAP indefinitely. SMF ¶ 34. She will have to recertify her eligibility regularly, and will face the same harms again each time. SMF ¶ 57.

II. PLAINTIFF DENISE DAVIS

Plaintiff Davis applied for SNAP three times beginning in late 2022. SMF ¶ 87, 88, 98. Defendant never acted on her first SNAP application, and she heard nothing from DSS after submitting it. SMF ¶ 87. When she called to inquire about her application, a DSS worker told her that no application was registered in her name. *Id.* Plaintiff Davis tried for nearly three months to complete an interview for her other two SNAP applications, but Defendant’s nonfunctional call center and lack of alternatives made it impossible. She tried to be interviewed via the call center on numerous occasions, only to face queues hundreds of people long. SMF ¶ 89–94, 109. On one occasion, Plaintiff Davis answered a call from DSS and was connected to a worker, but the call

²⁴ DSS’s phone system is set up to assess whether, using logic constructed by DSS, there is room for a given call to enter a call center queue. This assessment is based on the length of the queue and the amount of time left in the day. If the phone system assesses that there is no room in the queue, the phone system plays an automated message, then terminates the call. These terminations are referred to as “deflections.” *See* SMF ¶ 186–202.

²⁵ Plaintiff Holmes was approved for SNAP benefits from her approval date. As of this filing, she still has not received benefits back to her application date, as required by the SNAP Act. SMF ¶ 55; 7 USC § 2017 (c)(1); 7 CFR § 273.10 (a)(ii).

was disconnected before she could complete her interview. SMF ¶ 100–01. When she called back, she faced yet another queue that was hundreds of people long. SMF ¶ 103.

Plaintiff Davis tried—unsuccessfully—to obtain an interview through other mechanisms. She attempted twice to complete an interview via DSS’s online chat. SMF ¶ 107. Both times, she was directed to the call center. SMF ¶ 107. She attempted to call her local resource center to schedule an in-person interview, but was routed back to the call center. SMF ¶ 106. No matter which avenue Plaintiff Davis used, she was forced back into the extended call center queue. Ultimately, Plaintiff Davis’ second SNAP application was denied because “[DSS was] unable to complete the interview.” SMF ¶ 97. She did not receive SNAP until after joining this litigation. SMF ¶ 112. Plaintiff Davis will continue to rely on SNAP indefinitely. *Id.* She will have to recertify her eligibility regularly, and will face the same harms again each time. SMF ¶ 114.

III. PLAINTIFF ANDREW DALLAS

Plaintiff Dallas has epilepsy, which causes frequent seizures. SMF ¶ 59. Plaintiff Dallas’ epilepsy limits mobility and makes it difficult for him to leave the house. SMF ¶ 66. He is unable to drive, and is a fall risk. SMF ¶ 66–67. Many things in Plaintiff Dallas’ day-to-day life can cause seizures including stress, a poor diet, skipping meals, and not getting enough sleep. SMF ¶ 60–61. He averages one seizure per week, but sometimes has as many as three per week. SMF ¶ 61. As a result of his seizures, Plaintiff Dallas suffers from “brain fog,” causing him to lose track of what he is doing or forget what he is talking about in the middle of a sentence. SMF ¶ 62. This condition has worsened over time, and doctors have not been able to treat it effectively. SMF ¶ 63. The Social Security Administration determined Plaintiff Dallas to be disabled and awarded him SSI benefits. SMF ¶ 65. With assistance from counsel, his SNAP recertification was filed and approved after he became a plaintiff. SMF ¶ 84.

Because of his disabilities, Plaintiff Dallas cannot complete SNAP paperwork without assistance. SMF ¶ 68. He finds SNAP paperwork complicated and confusing, and he does not understand the terms DSS uses. SMF ¶ 69. To access SNAP, Plaintiff Dallas needs a worker to walk him through required paperwork without facing a long wait time. SMF ¶ 81. He also needs DSS to document his disability and need for an accommodation in its internal case file system, so he does not have to ask for assistance every time he receives SNAP paperwork. SMF ¶ 83.

In December 2021, Plaintiff Dallas submitted a written request for accommodation on the back of a Change Report. He asked for assistance completing the change report based on his cognitive impairments, writing: “I have epilepsi [sic] [and] cannot understand like normal people do. Please help! I am not sure I understand all of the letter. I am disabled.” SMF ¶ 71. Defendant offered him no assistance. *See* SMF ¶¶ 73, 78.

In January 2023, Plaintiff Dallas received SNAP recertification paperwork. SMF ¶ 77. He made multiple attempts to contact the call center to seek assistance completing this paperwork. SMF ¶¶ 79–80. On at least three tries, the call disconnected after he made a language selection on the automated phone menu. SMF ¶ 79. Later the same day, he was put on hold and told there were 234 callers ahead of him. SMF ¶ 80. He could not reach anyone to ask for an accommodation. His only barrier to completing the recertification process was DSS’s failure or refusal to accommodate his known disabilities and promptly assist him over the phone. Plaintiff Dallas was not able to complete his recertification until after joining this lawsuit. SMF ¶ 84. Plaintiff Dallas lives on a fixed income and will continue to rely on SNAP indefinitely. SMF ¶¶ 65, 85. He will have to fill out SNAP-related paperwork regularly, and will face the same harms again each time. SMF ¶ 86.

IV. PLAINTIFF EMPOWER MISSOURI

Plaintiff Empower Missouri (“Empower”) is a nonprofit organization whose mission is to ensure that all people in Missouri have access to the essentials of life, including adequate nutrition, and all people in Missouri are treated with dignity and fairness. Empower expends significant financial and staffing resources on work related to Defendant’s failed implementation of SNAP. SMF ¶¶ 115–125. The organization must divert resources, including staff time, to address Defendant’s failures in the administration of SNAP. *Id.* Empower’s efforts include cofounding and operating the SNAP Advisory Group, which brings together advocates from across the state to address issues related to Defendant’s operation of SNAP. SMF ¶ 116. The Advisory Group dedicates part of each meeting to Defendant’s failed call center. SMF ¶ 117. Empower also convenes the Food Security Coalition (“FSC”), a group of anti-hunger advocates and providers. SMF ¶ 118. Defendant’s failed implementation of SNAP means that Empower staff must spend considerable time organizing and managing the FSC. SMF ¶ 120. The Advisory Group and FSC continue to operate today, because Defendant’s failures are ongoing. *See* SMF ¶¶ 116–120. As a result of Defendant’s failed SNAP implementation, Empower has diverted staff time from proactive policy efforts regarding school meals, WIC, and seniors’ access to SNAP. SMF ¶ 125.

V. DEPARTMENT OF SOCIAL SERVICES’ OPERATIONS

Systemic failures in Defendant’s administration of SNAP have harmed the Plaintiffs and will harm them again. Defendant’s call center plays a central role in SNAP, and yet it is so overloaded and understaffed as to be nonfunctional. Alternative paths to be interviewed are both extremely limited and not available to many applicants.

DSS computer systems issue automated denials to all SNAP applicants for whom an interview has not been completed by the 30th day after the date of application, regardless of

whether applicants attempted to secure an interview, or whether DSS made an interview available. SMF ¶ 21. Otherwise-eligible applicants are denied benefits.

A. Call Center Operations and Telephone Interview Options

Callers seeking to complete a SNAP interview are routed into a dedicated queue, identified as “Tier 3” in DSS documents. SMF ¶¶ 161–63. Tier 3 is the primary access point for applicants seeking to complete their interviews. SMF ¶ 23, 161–63. Callers must navigate a series of Interactive Voice Response (“IVR”) prompts before being routed into the queue to be connected to a DSS worker. SMF ¶¶ 170, 172.

The call center is not functional. Wait times to be connected to a DSS worker are often lengthy. SMF ¶ 303. For example, in July 2023, the average wait to be connected to a DSS worker on the Interview Line was more than fifty-one minutes. SMF ¶ 303. In the same month, 64,053 calls were deflected from Tier 3 alone—consisting of 15% of *all* calls made to the call center—and 32% of calls placed in the Tier 3 queue were abandoned by the caller before being connected with a worker. SMF ¶¶ 286, 284, 294. The call center routinely starts deflecting calls from Tier 3 by 2:00 PM. SMF ¶ 289. Many applications are denied for failure to complete an interview, including 59,836 so far this calendar year. SMF ¶ 276. In July 2023 alone, 10,349 applications were denied for failure to complete an interview—or 54% of all denials. SMF ¶ 277.

DSS also places calls to applicants who have provided a phone number to offer them a telephone interview. SMF ¶ 207. This outbound calling process, called the “predictive dialer,” has its own queue, known as “Tier 3 Outbound.” SMF ¶ 164. When DSS makes a predictive dialer call and the individual answers, the individual is not immediately connected with a worker. SMF ¶ 224. The individual must first navigate a series of IVR prompts different from those to access Tier 3 before being placed in the Tier 3 Outbound queue. SMF ¶¶ 225, 228.

It is DSS policy to call most applicants only once,²⁶ which violates the waiver under which their interviews are conducted. SMF ¶¶ 26, 210. Predictive dialer calls start at 7:00 AM every business day. SMF ¶ 212. If an applicant misses the call, they do not get another opportunity to be interviewed via the predictive dialer. SMF ¶ 210. DSS only tracks the number of applicants who answer a predictive dialer call, and does not track the number of interviews that are completed via the predictive dialer. SMF ¶ 306. In most months, only around a quarter of predictive dialer calls resulted in the applicant being connected to a DSS worker. SMF ¶ 307.

DSS has a queue dedicated to public benefits inquires other than SNAP interviews, referred to internally as “Tier 1.” SMF ¶ 162. However, the Tier 1 queue does not provide an alternative to Tier 3 because it also has long wait times and high deflection rates. SMF ¶ 309, 310. DSS also operates a chatbot, known as DSSChat, which is programed to provide scripted answers to common questions. SMF ¶ 238. In some circumstances, chatbot users are connected with a DSS worker. *See id.* DSS does not offer interviews via DSSChat. *See* SMF ¶ 107.

DSS has implemented an automated appointment scheduler so that individuals can sign up receive a call at a specific time. SMF ¶ 230. However, the appointments simply are not available. As of June 6, 2023, phone appointments were booked through mid-July, meaning that an individual who filed a SNAP application on or before June 6, 2023, who sought to complete their required SNAP interview via an appointment would not be able to do so within the 30-day deadline and thus, would be automatically denied. SMF ¶ 247. The appointment scheduler is also difficult to find. It is only reachable in two ways: navigating into a call center queue, and via DSSChat. SMF ¶¶ 235, 237. An applicant is not able to schedule an interview appointment via

²⁶ Under Defendant’s current procedures, applicants whom DSS identifies as eligible for expedited processing receive one call each of the first two days after DSS registers their application. SMF ¶ 209.

the IVR menu options offered before entering a call center queue, meaning that the option is not offered to callers who are deflected. SMF ¶ 236.

Other individuals have attempted unsuccessfully to navigate the call center, been placed on hold for hours, been disconnected, or otherwise been prevented from obtaining an interview. SMF ¶¶ 126–29, 131–32, 148. Social service agencies that work with and assist SNAP recipients report similar experiences with long wait times, dropped calls, and even being turned away from local offices when they try to obtain an interview—further demonstrating the systemic dysfunction that SNAP applicants must navigate to obtain subsistence benefits. SMF ¶ 133–34.

B. Resource Center Operations and In-Person Interview Options

SNAP applicants can interact with DSS by going in person to an office, known as a Resource Center. SMF ¶ 8. There is at least one Resource Center in each county. SMF ¶ 354. However, Resource Centers are not an adequate solution to the call center. DSS does not staff its Resource Centers sufficiently to handle the foot traffic they already receive—they certainly could not handle the additional demand of numerous SNAP applicants utilizing the Resource Centers as an alternative to the call center. SMF ¶¶ 355–58, 371–72, 374–78. It is possible to make an appointment to meet with a worker in person at a Resource Center, but appointments are subject to the same staffing restrictions as walk-in interactions. SMF ¶ 231–32, 242.

The hours for Resource Centers are not consistent across the state, SMF ¶¶ 353, 355, 358, and it is difficult to determine when a given Resource Center is open. The only place to learn Resource Center hours prior to going to the Resource Center is on DSS's website, SMF ¶ 360, making this information unavailable to individuals without reliable Internet access. Remarkably, the hours listed on the website are not accurate anyway. SMF ¶¶ 362–67. Moreover, some SNAP applicants, including those who are disabled and who lack reliable transportation, cannot go to a Resource Center in person.

C. Filing SNAP Applications

Defendant fails to make SNAP applications available to all Missourians who require them, and some applicants, including Plaintiff Holmes, are not able to apply on the first day they contact Defendant's agency. DSS policy stipulates that applicants can access an application online, by mail, in person at a Resource Center, or at some DSS community partner locations. SMF ¶ 16. Resource Centers are expected to make applications available in their lobby. SMF ¶ 17. FNS does not permit DSS to accept a SNAP application over the phone, but individuals can request that call center staff mail them a SNAP application. SMF ¶ 18.

However, there is no automated option in Defendant's IVR system to request that an application be mailed. SMF ¶ 19. This means that a caller like Plaintiff Holmes can only request an application be mailed if they are lucky enough to speak with a worker, after navigating the long wait times and high deflection rates that plague Defendant's call center. *See supra* at 11.

D. Lack of Accessibility for SNAP Participants with Disabilities

The situation is even worse for SNAP applicants with disabilities, who must contend with a system that denies them meaningful access to SNAP by failing to offer the reasonable accommodations they need to participate. Defendant has only an incomplete, skeletal written policy to implement the ADA's reasonable accommodation requirement – namely, a single Non-Discrimination Policy Statement (“Policy Statement”). SMF ¶ 390. The statement addresses a variety of anti-discrimination laws regarding race, color, national origin, ancestry, sex, age, sexual orientation, veteran status, and religion. *Id.*, Ex. 100. The Policy Statement states:

Anyone who requires an auxiliary aid or service for effective communication, or a modification of policies or procedures to participate in a program, service, or activity of the Department of Social Services should notify DSS as soon as possible, and no later than 48 hours before the scheduled event, by contacting either their DSS local office or Anna Wise, DSS ADA Coordinator and Manager of the DSS Office for Civil Rights.

*Id.*²⁷

Apart from generic references to “an auxiliary aid or service for effective communication” and a “modification of policies or procedures,” the document is devoid of any reference to disability, or rights to a reasonable accommodation under the ADA. SMF ¶ 390, Ex. 100. The Policy Statement is not disseminated directly to SNAP participants and is only made available in Resource Centers and on DSS’s website. SMF ¶ 391. SNAP-specific notices lack sufficient, consistent information to inform applicants of their right to request a reasonable accommodation and how to do so. SMF ¶¶ 425–33. Notices do not include or reference the Policy Statement, or inform SNAP participants of how to request a reasonable accommodation. Some notices contain no information regarding the ADA at all. SMF ¶ 425.

Defendant’s IVR menus do not include a selection to make a reasonable accommodation request. No prompts are offered to bypass the call center queues for individuals who need assistance directly from DSS staff, or whose conditions preclude waiting on the phone for hours.

DSS staff attend a Civil Rights, Diversity, and Inclusion training, which contains 129 slides, only three of which mention accommodating individuals with disabilities. SMF ¶ 406–07. The first of these slides is merely an excerpt of the Policy Statement. SMF ¶ 407, Ex. 101. Another slide instructs staff that upon receiving a reasonable accommodation request, a worker should “[d]ocument the request in the case file/case management system; [n]otify your chain of command; [and] [a]pprove the request if you are able to meet the needs of the client/applicant at the local office and the request does not create an undue hardship.” SMF ¶ 408. Workers are instructed to contact their supervisor and the ADA Coordinator if they are not sure they can

²⁷ The policy further states, “Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language), should contact the agency (state or local) where they applied for benefits.” *Id.*

approve the request. SMF ¶ 411. DSS workers also attend a USDA Civil Rights Training, which provides two examples of reasonable accommodations—“providing a sign-language interpreter for a person with a hearing impairment or conducting a telephone interview for a SNAP applicant who cannot access the office due to a disability.” SMF ¶ 413–15.

Plaintiffs Dallas, Holmes and declarants report Defendant has failed or refused to provide them an opportunity to seek reasonable accommodations in relation to SNAP. SMF ¶¶ 137–48.

LEGAL STANDARDS

Summary judgment is proper where there is “no genuine dispute as to any material fact, and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). “The plain language” of the Rule “mandates the entry of summary judgment . . . against a party who fails to make a showing sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). “By its very terms, this standard provides that the mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247–48 (1986) (emphasis in original). A genuine issue of material fact only exists if a reasonable factfinder could return a verdict for the non-moving party. *Id.* at 248. “On a motion for summary judgment, ‘facts must be viewed in the light most favorable to the nonmoving party only if there is a ‘genuine’ dispute as to those facts.’” *Ricci v. DeStefano*, 557 U.S. 557, 586 (2009) (quoting *Scott v. Harris*, 550 U.S. 372, 380 (2007)).

Plaintiffs claim that Defendant in his official capacity has violated and continues to violate their rights under the Due Process Clause of the Constitution, and federal SNAP laws; Section 1983 is the appropriate vehicle for maintaining and addressing Defendant’s federal

violations.²⁸ Plaintiffs also claim that Defendant has failed to meet clear obligations under the ADA.²⁹ As set forth below, no genuine issues of material fact exist as to any of these claims. Therefore, summary judgment is appropriate.

ARGUMENT

I. DEFENDANT VIOLATES THE SNAP ACT BY WRONGFULLY DENYING APPLICATIONS FOR FAILURE TO INTERVIEW

A. The SNAP Act Requires Defendant to Provide Benefits to All Eligible Applicants

States that participate in SNAP designate a single state agency responsible for administering the program and complying with federal law. 7 U.S.C. § 2020(a), (d), (e). In Missouri, that is DSS. *See* MO. REV. STAT. § 205.960, et seq. DSS’s Director, Defendant Knodell, is responsible for ensuring that SNAP complies with federal law within the state. The SNAP Act imposes a number of requirements on participating states, including that the participating state agency ensure that all households who apply and are eligible receive SNAP benefits. 7 U.S.C. § 2014(a) (“Assistance under this program shall be furnished to all eligible households who make application for such participation.”); 7 U.S.C. § 2020(e)(2)(B)(i) (“a State agency...shall provide...accurate[] and fair service”).

Courts commonly order heads of SNAP administering agencies to comply with requirements of the SNAP Act. *See, e.g., Robertson v. Jackson*, 972 F.2d 529, 533 (4th Cir. 1992) (commissioner of agency administering Food Stamps was “fully responsible” for ensuring compliance with federal requirements); *Southside Welfare Rights Org. v. Stangler*, 156 F.R.D. 187 (W.D. Mo. 1993) (enjoining head of Missouri DSS to comply with “program access” requirements); *Booth v. McManaman*, 830 F.Supp.2d 1037 (D. Haw. 2011) (ordering compliance

²⁸ “Section 1983 provides a civil action against persons who, under color of law, cause a ‘deprivation of any rights, privileges, or immunities secured by the Constitution and laws.’ ” *Hannon v. Sanner*, 441 F.3d 635, 636–37 (8th Cir.2006) (quoting 42 U.S.C. § 1983).

²⁹ The ADA provides its own cause of action. 42 U.S.C. §§ 12131–12134.

with SNAP Act application timeliness requirements); *M.K.B. v. Eggleston*, 445 F.Supp.2d 400, 439–40 (S.D.N.Y. 2006) (ordering agency head to amend policies and trainings to ensure all immigrants eligible for Food Stamps, Medicaid, and public assistance under federal and state statutes received them); *Reynolds v. Giuliani*, 35 F.Supp.2d 331, 337–48 (SDNY 1999) (ordering corrective action plan to comply with statutory timeliness and notice requirements) (injunction upheld as to city defendants at 506 F.3d 183 (2d Cir. 2007)); *Haskins v. Stanton*, 621 F.Supp. 622, 630 (N.D. Ind. 1985) (ordering agency to comply with statutory application timeliness, right to file, and bilingual services requirements).

Wrongful denials of SNAP benefits are one such violation. In *Barry v. Lyon* the Sixth Circuit upheld a district court ruling that Michigan violated the SNAP Act (7 U.S.C. § 2014(b)) by imposing an additional eligibility requirement beyond what the legislation required. 834 F.3d 706 (6th Cir. 2016). Michigan used an automated system to determine whether applicants appeared on a list of people with warrants for felony charges, with no further checks. Denials were automatic, and otherwise-eligible people were wrongfully denied. Similarly, Defendant violates a related SNAP Act provision (7 U.S.C. § 2014(a)) by using an automated system to determine whether an interview has been completed by the deadline, with no further checks. Denials are automatic, and otherwise-eligible people are wrongfully denied.

Moreover, courts have found that other, similar provisions of the SNAP Act relating to program operations and duties to program participants require total compliance, not substantial compliance—meaning that administering state agencies such as DSS must comply with the law as to each and every participant. *See, e.g., Withrow v. Concannon*, 942 F.2d 1385 (9th Cir. 1991) (fair hearing timeliness); *Haskins v. Stanton*, 794 F.2d 1273 (7th Cir. 1986) (application timeliness); *Southside Welfare Rights Org.*, 156 F.R.D. at 195 (“program access” requirements,

including expedited service and right to file); *Booth*, 830 F.Supp.2d at 1042 (application timeliness). Simply put, Defendant is required to provide benefits to all eligible applicants.

B. Defendant Wrongfully Denied Plaintiffs Holmes’ and Davis’ SNAP Applications

Defendant does not dispute that Plaintiff Holmes was eligible for SNAP when she applied in January 2022. *See* SMF ¶ 54. Plaintiff Holmes made diligent efforts to be interviewed, including requesting an in-person interview and making numerous calls to the Interview Line. SMF ¶¶ 40, 42–48, 51, 53. Nevertheless, her application was denied because “[DSS was] unable to complete the interview.” SMF ¶ 52, ECF 18-3.

Plaintiff Davis suffered the same fate. She applied for SNAP multiple times, and Defendant does not dispute that she was eligible. *See* SMF ¶ 112. She made diligent efforts to be interviewed, including calling the Interview Line many times, answering a call from the predictive dialer, calling back after the call was disconnected, trying to complete an interview via DSSChat, and attempting to call her local Resource Center to schedule an in-person interview. SMF ¶ 89–94, 99–109. No matter which avenue Plaintiff Davis used, she was forced back into the overloaded call center queue, never able to reach DSS staff who could complete the required interview. *Id.* Ultimately, Plaintiff Davis’ applications were denied because “[DSS was] unable to complete the interview.” SMF ¶ 97, Ex. 27.

Both Plaintiffs Holmes and Davis met, and continue to meet, the eligibility criteria for SNAP. *See* SMF ¶¶ 54, 112. Yet, Defendant rejected their applications because DSS made it impossible to be interviewed through the call center, and offered them no alternative means to be interviewed.

C. The Harm to Plaintiffs Caused by Defendant’s Unlawful Policies and Practices is Recurring and Ongoing

Under the SNAP Act, Defendant was required to provide Plaintiffs Holmes and Davis, each an eligible individual who submitted a SNAP application, with benefits. He failed to do so. Plaintiffs Holmes and Davis were caught in a web of systemic problems that persist. Other individuals and social services agencies report similar experiences that make it nearly impossible for many low-income Missourians to access the SNAP program. SMF ¶¶ 126–36, 146–48. These are systemic, ongoing problems, as discussed *supra* at 10–13.

There is no question Plaintiffs Holmes and Davis are eligible for SNAP, and Defendant wrongfully denied their applications. Moreover, Plaintiff Holmes is disabled and on a fixed income, SMF ¶ 33, and Plaintiff Davis lives with multiple health conditions that impede her ability to work, SMF ¶ 88. Both will continue to rely on SNAP to afford food in the future, and are at substantial risk of losing SNAP benefits each and every time they have to recertify. Empower Missouri must continually divert resources from their organizational mission in response to Defendant’s wrongful denials of SNAP applications. SMF ¶¶ 116–25. These facts are undisputed, and Plaintiffs are entitled to summary judgment on Plaintiff’s First Claim for Relief. ECF No. 88, ¶ 315.

II. DEFENDANT VIOLATES THE SNAP ACT BY FAILING TO PERMIT APPLICATIONS ON THE FIRST DAY OF CONTACT

A. The SNAP Act Requires Defendant to Allow Missouri Residents the Opportunity to File a SNAP Application on the First Day They Contact DSS

As the head of the state agency that administers SNAP in Missouri, Defendant has an obligation to ensure that all applicants are able to file applications in accordance with controlling statutory provisions, just as he has an obligation to ensure that DSS policies and practices are in compliance with other SNAP Act provisions. *See, supra* at 17–18. Courts have specifically

ordered other agency heads to comply with SNAP right-to-apply requirements. *See Robertson v. Jackson*, 766 F.Supp. 470, 476–77 (E.D.Va 1991) (ordering defendant agency to comply with federal requirement that Food Stamps applicants be able to apply on first day contacting the agency); *Southside Welfare Rights Org.*, 156 F.R.D. at 192 (same); *Haskins*, 621 F.Supp. 622 (same).

B. Defendant Blocks Missourians from Filing a SNAP Application on the First Day They Contact DSS

Defendant obstructed Plaintiff Holmes from filing a SNAP application on the first day she contacted the agency: limited IVR prompts and call center dysfunction made it impossible for her to do so. SMF ¶ 19, 37. After multiple days of contacting DSS to request an application form, Plaintiff Holmes ultimately had to visit a Resource Center. SMF ¶ 38. Only then could she submit an application. SMF ¶ 39. Defendant's inaccessible call center operations not only delayed Plaintiff Holmes' application for essential benefits but compelled her to spend money on transportation she could ill afford. SMF ¶ 38.

Defendant's failure to allow all applicants to submit an application on the first day they contact the agency also impacts Empower Missouri, which must continually divert resources from its organizational mission to address Defendant's failures. SMF ¶¶ 116–25. Plaintiffs are entitled to summary judgment on Plaintiff's Second Claim for Relief. ECF No. 88 ¶ 316.

III. DEFENDANT'S WRONGFUL DENIALS VIOLATE PLAINTIFFS' DUE PROCESS RIGHTS

In addition to violating the SNAP Act, Defendant's wrongful denials of SNAP applications violate the Due Process Clause. Plaintiffs have a protected property interest in the SNAP benefits to which they are entitled. Defendant's policy and practice of wrongfully denying SNAP applications for failure to interview—without providing a meaningful opportunity to complete said interview—deprives them of access to a critical benefit.

A. Plaintiffs Holmes and Davis Have a Property Interest in SNAP Benefits

Procedural due process protections attach where an individual has a property or liberty interest from which they are deprived. Both Plaintiffs Holmes and Davis have a property interest in SNAP benefits. The Supreme Court has long held that public benefits recipients, including SNAP recipients, have a property interest in their benefits. *Goldberg*, 397 U.S. 254 (public benefits recipients have a property interest in benefits to which they are entitled under statute); *Atkins v. Parker*, 472 U.S. 115, 128 (1985) (the property interest found in *Goldberg* applies to SNAP). Every Circuit court to consider the question, including the Eighth, has found applicants for public benefits hold this property interest. *Daniels v. Woodbury Cnty., Iowa*, 742 F.2d 1128 (8th Cir. 1984); *Kapps v. Wing*, 404 F.3d 105, 115 (2d Cir. 2005); *Hamby v. Neel*, 368 F.3d 549, 559 (6th Cir. 2004); *Mallette v. Arlington Cnty. Emps. ' Supp. Ret. Sys. II*, 91 F.3d 630, 535 (4th Cir. 1996); *Griffeth v. Detrich*, 603 F.2d 118, 121–22 (9th Cir. 1979).

B. Defendant's Wrongful Denial of Plaintiffs' SNAP Applications Violates Due Process

Once a property interest is found, the next question is “what process is due?” *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972). This inquiry is circumstance-dependent, and some deprivations demand more process than others. *See id.* (“[D]ue process is flexible and calls for such procedural protections as the particular situation demands.”); *see also Goldberg*, 397 U.S. at 264–71 (procedures mandated by due process must be “adapted to the particular characteristics of welfare recipients”); *Cafeteria & Rest. Workers Union v. McElroy*, 367 U.S. 886, 895 (1961) (determination of process due must “begin with a determination of the precise nature of the government function involved as well as the private interest that has been affected”).

To answer this question, courts have applied one of two tests. The first is the *Mathews v. Eldridge* balancing test, which considers: (1) the private interest affected; (2) the risk of

erroneous deprivation and the value of additional or changed procedures; and (3) the government's interest. 424 U.S. 319, 335 (1976). Second, a related body of case law holds that standardless governmental decision-making that results in the deprivation of a property interest, including subsistence benefits, violates due process. Under either test, Defendant's wrongful denial of SNAP applications deprives Missourians, including Plaintiffs Holmes and Davis, of procedural due process.

1. Defendant's Wrongful Denials of SNAP Applications Violate the *Mathews v. Eldridge* Test

Defendant's wrongful denial of Plaintiffs Holmes and Davis' SNAP applications violates procedural due process under the *Mathews* test. First, Plaintiffs' private interest is high. Defendant has deprived them of subsistence benefits. To be deprived of SNAP is to be deprived of food, and courts have recognized a high interest in SNAP and similar benefits. *See, e.g., Daniels*, 742 F.2d at 1133; *Bliek v. Palmer*, 916 F.Supp. 1475, 1488 (N.D. Iowa 1996) (private interest in food stamps was "extremely significant" because "[f]ood is a necessity of life").

The risk of erroneous deprivation is great. The Eighth Circuit has held that arbitrary decision-making in a subsistence benefits program constitutes a due process violation because of the high risk of erroneous deprivation. *Daniels*, 742 F.2d at 1133; *Bliek v. Palmer*, 102 F.3d 1472, 1476 (8th Cir. 1997). This is exactly the situation presented here. Plaintiffs Holmes and Davis are indisputably eligible for SNAP—and rely on the program for their basic sustenance—yet Defendant denied their applications. SMF ¶¶ 52, 97. Defendant did so without giving them a meaningful, realistic opportunity to interview, and without having systems capable of keeping their applications alive to accommodate delays in interviewing. *See* SMF ¶¶ 21, 40–54, 87–111.

This case is strikingly similar to *Higgins v. Spellings*, 663 F.Supp.2d 788 (W.D. Mo. 2009). The *Higgins* plaintiffs challenged procedures for determining eligibility for disability-related discharge of federally guaranteed student loans. Applying *Mathews*, this District Court

found that the Department of Education’s process—in which an application and evidence were submitted by an applicant, a preliminary approval was issued, and then a final (negative) decision was made with no notice as to what information might be missing nor any opportunity to present additional evidence or information—presented “a significant possibility of erroneous deprivation.” *Id.* at 797. Similarly, Plaintiffs Holmes and Davis have been wrongfully denied SNAP after submitting initial evidence of their eligibility (in the form of their SNAP applications). They have been deprived of an opportunity to provide Defendant with additional information needed to fully and fairly evaluate their eligibility. While Plaintiffs Holmes and Davis both currently receive SNAP benefits (as a result of their joining this lawsuit), their wrongful denials stemmed from continuing, systemic failures of Defendant’s agency. Plaintiffs Holmes and Davis will face these obstacles again when they have to recertify.

In contrast, changing Defendant's procedures would provide meaningful protection against future erroneous denials. Defendant's call center and other systems are broken. Reforms would have the undeniable benefit of keeping Plaintiffs fed. With that in mind, Defendant—or this Court—could take a variety of approaches to improve Defendant's procedures and promote due process. *See Daniels v. Woodbury Cnty., Iowa*, 625 F. Supp. 855 (N.D.Iowa 1986) (determining which specific procedures are necessary to ensure due process is met). For example—*before* denying benefits, Defendant could develop procedures for checking agency records for attempts by an applicant to be interviewed and taking additional steps to complete the interview. Defendant could complete more interviews via appointments, whether scheduled by applicants, DSS, or some combination. Defendant could ensure the call center is adequately staffed to handle the demand for interviews.

Plaintiffs cannot speculate as to what interests Defendant may identify for the third *Mathews* prong. However, administrative burdens to the state are “not overriding in the [subsistence benefits] context.” *Bliek*, 102 F.3d at 1478 (citing *Goldberg*, 397 U.S. at 266). *Mathews* is a balancing test, and it is difficult to imagine what government interest could possibly outweigh something so essential as subsistence benefits used to purchase food.

2. Defendant’s Standardless Decision-Making Violates Plaintiffs’ Due Process Rights

Defendants violate Plaintiffs’ due process rights by administering the SNAP program without following clear eligibility standards. “[D]ue process requires that [subsistence benefits] be administered to ensure fairness and freedom from arbitrary decision-making as to eligibility,” and that benefit programs be administered in a manner that “ensure[s] the fair and consistent application of eligibility requirements.” *White v. Roughton*, 530 F.2d 750, 753–54 (7th Cir. 1976); *see also Carey v. Quern*, 588 F.2d 230, 232 (7th Cir. 1978) (program must “ensure fairness and avoid the risk of arbitrary decision making”); *K.W. ex rel. D.W. v. Armstrong*, 1:12-cv-00022-BLW-CWD, 2023 WL 5431801 (D. Idaho Aug. 23, 2023) (“absence of any ascertainable standard for inclusion and exclusion is precisely what offends the Due Process Clause”) (citing *Smith v. Goguen*, 415 U.S. 566, 578 (1974)); *M.A. v. Norwood*, 133 F. Supp. 3d 1093, 1098 (N.D. Ill. 2015) (“articulated standards” required to “ensure fairness and to prevent arbitrary decision making”); *Strouchler v. Shah*, 891 F.Supp. 2d 504, 515–516 (S.D.N.Y. 2012) (decisions “[must] be made according to ascertainable standards . . . applied in a rational and consistent manner”) (quoting *Mayer v. Wing*, 922 F. Supp. 902 (S.D.N.Y. 1996)); *Baker-Chaput v. Cammett*, 406 F. Supp. 1134, 1130–40 (D. N.H. 1976) (“written, objective, and ascertainable standards is an elementary and intrinsic part of due process.”); *Torres v. Butz*, 397 F. Supp. 1015 (N.D. Ill. 1975) (“unreviewed and uncontrolled discretion . . . was violative of procedural due process”) (citing *Holmes v. NYCHA*, 398 F.2d 262 (2d Cir. 1968)).

Here, the federal government has issued standards for uniformly and objectively determining SNAP eligibility. *See* 7 U.S.C. § 2014; 7 C.F.R. §§ 273.3–273.11. Defendant renders those standards meaningless by imposing an arbitrary criterion—whether or not a given applicant has been able to successfully navigate the broken call center to complete an interview—to make SNAP eligibility determinations. SMF ¶¶ 21, 267, 273, 275–77, 284–91, 303, 305. The experiences of and denial notices sent to Plaintiffs Holmes and Davis demonstrate clearly that Defendant’s agency never applied the federal SNAP eligibility standards to them. SMF ¶ 52, ECF 18-3; ¶ 97, Ex. 27. Instead, Defendant rejected their applications for failure to complete an interview within 30 days. *See supra* at 19; SMF ¶ 52, 97.

Because Defendant denies all SNAP applications for which an interview has not been completed on day 30, regardless of attempts by the applicant to be interviewed, the receipt of benefits comes down to pure luck—a textbook example of arbitrary agency action.

Under either standard, the undisputed evidence confirms that Plaintiffs Holmes and Davis were deprived of procedural due process, and will likely be deprived again when they must recertify. *See supra* at 20. Additionally, Empower Missouri experiences continual harm from Defendant’s wrongful denials of SNAP applications. *Id.* As a result, Plaintiffs are entitled to summary judgment on Plaintiff’s Third Claim for relief. ECF No. 88, ¶ 317.

IV. DEFENDANT VIOLATES THE AMERICANS WITH DISABILITIES ACT BY FAILING TO PROVIDE REASONABLE ACCOMMODATIONS

Plaintiffs can establish a violation of Title II of the ADA by demonstrating 1) they are qualified individuals with disabilities; 2) they were excluded from participation in or denied the benefits of a public entity’s services, programs, or activities; and 3) that this exclusion or denial was by reason of their disabilities. *Layton v. Elder*, 143 F.3d 469, 472 (8th Cir. 1998); *see also Isaac v. Louisiana Department of Children and Family Servs*, 2015 WL 4078263 at *2–5 (M.D.

La. July 6, 2015). Public entities such as DSS³⁰ discriminate against otherwise qualified individuals with disabilities when they exclude such individuals by failing to make reasonable accommodations for their limitations. 28 C.F.R. § 35.130(b)(7)(i); *Henrietta D. v. Bloomberg*, 331 F.3d 261, 273–77 (2d Cir. 2003); *cf.* 42 U.S.C. § 12112(b)(5)(A).

As the Eighth Circuit has established:

We have long held the ADA requires meaningful access to the public entity's services and that mere limited participation does not satisfy this requirement. To meet the meaningful access standard, public entities . . . “are not required to produce the identical result or level of achievement for handicapped and nonhandicapped persons, but must afford handicapped persons equal opportunity to . . . gain the same benefit.”

Segal v. Metro. Council, 29 F.4th 399, 404 (8th Cir. 2022) (quoting *Loye v. Cnty. of Dakota*, 625 F.3d 494, 496 (8th Cir. 2010); *see also Alexander v. Choate*, 469 U.S. 287, 300–01 (1985) (under Section 504 of the Rehabilitation Act, people with disabilities must be able to access benefits to which they are entitled); *Hall v. Higgins*, 2023 WL 5211649 at *5 (8th Cir. Aug. 15, 2023) (quoting *Randolph v. Rodgers*, 170 F.3d 850, 858 (8th Cir. 1999)) (“public entity must make reasonable accommodations where necessary to give ‘meaningful access’ to programs or benefits; mere ‘limited participation’ by persons with disabilities is not equivalent to ‘meaningful access.’”); *Isaac*, 2015 WL 4078263 at *4 (“A core element for reasonable modification, . . . is that the plaintiff has been denied meaningful access to public places, benefits, or services, i.e., the kind of access that would be ‘necessary to avoid discrimination on the basis of disability.’”).³¹

³⁰ See ECF 93, ¶ 150

³¹ The ADA further prohibits methods of administration, “(i) [t]hat have the effect of subjecting qualified individuals with a disability to discrimination on the basis of disability; [and] (ii) [t]hat have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the public entity’s program with respect to individuals with disability.” 28 C.F.R. § 35.130(b)(3). Defendant discriminates against Plaintiffs and other eligible SNAP participants by administering a system that arbitrarily denies SNAP benefits to individuals with disabilities as

Beyond simply refraining from intentional discrimination, the ADA requires public entities such as DSS to “take affirmative actions to provide qualified disabled individuals with access to public services.” *Ability Ctr. of Greater Toledo v. City of Sandusky*, 385 F.3d 901, 910 (6th Cir. 2004); *see also Pierce v. Dist. of Columbia*, 128 F. Supp. 3d 250, 269 (D.D.C. 2015). Defendant must provide necessary reasonable accommodations to qualified individuals with disabilities, 28 C.F.R. § 35.130(b)(7)(i); and when such an individual submits a request for a reasonable accommodation or complains that such an accommodation has not been provided, Defendant must be able to provide “a prompt and equitable resolution” to ensure the individual is not improperly excluded from SNAP participation, 28 C.F.R. § 35.107.

The ADA also requires Defendant to notify applicants and participants about their rights, 28 C.F.R. § 35.106, and to create an effective grievance system by which qualified individuals with disabilities can submit complaints regarding ADA-prohibited discrimination, 28 C.F.R. § 35.107.

Congress emphasized this mandate directly with the statutory definition of “qualified person with a disability,” which refers to an individual with a disability meeting essential eligibility requirements for the benefit at issue, “*with or without reasonable modifications to rules, policies or practices.*” 42 U.S.C. § 12131(2) (emphasis added). The ADA contemplates reasonable accommodations as a crucial component of the statutory prohibition against disability-based discrimination. *See Ability Ctr.*, 385 F.3d at 910 (“...Title II imposes affirmative obligations on public entities and does not merely require them to refrain from intentionally discriminating against the disabled”); *Alexander*, 469 U.S. at 301 (“[A]n otherwise qualified

described herein, making it more burdensome, if not impossible, for people with disabilities to obtain the nutrition assistance they need to survive.

handicapped individual must be provided with meaningful access to the benefit that the grantee offers . . . [T]o assure meaningful access, reasonable accommodations in the grantee's program or benefit may have to be made.”); *Henrietta D.*, 331 F.3d at 279–80 (“Title II seeks principally to ensure that disabilities do not prevent access to public services where the disabilities can reasonably be accommodated . . . [where] the accommodative scheme [is] ‘broken,’ we hold that the plaintiffs have demonstrated that their disabilities are a cause of the denial of access to benefits.”); *see also Pickett v. Tex. Tech. Univ. Health Scis. Ctr.*, 37 F.4th 1013, 1019 (5th Cir. 2022) (noting that when ongoing accommodations have been acknowledged as necessary, they should be provided); *Kiman v. N.H. Dep’t of Corr.*, 451 F.3d 274, 283 (1st Cir. 2006) (noting that a person’s need for accommodation is sometimes obvious). While a clear request for a modification or accommodation certainly puts a Title II entity on notice that a modification is needed, Defendant also is obligated when DSS knows the person has a disability and experiences limitations as a result of that disability. *See, e.g., Ability Ctr.*, 385 F.3d at 910 (discussing affirmative obligations); *Robertson v. Las Animas Cnty. Sheriff’s Dep’t*, 500 F.3d 1185, 1197 (10th Cir. 2007) (collecting cases); *Hinojosa v. Livingston*, 994 F. Supp. 2d 840, 843–44 (S.D. Tex. 2014) (finding accommodation required where defendant had knowledge of plaintiff’s disability and needs it created).

A. Plaintiffs Dallas and Holmes Are Qualified Individuals with Disabilities

Plaintiffs Dallas and Holmes are qualified individuals with disabilities. *See* 42 U.S.C. § 12131(2). They each are disabled, within the ADA statutory definition.³² 42 U.S.C. § 12102(1). Their disabilities are known to Defendant. SMF ¶¶ 33, 65, 71, 75. Further, they each occupy the status of individuals applying for, recertifying for, or receiving SNAP benefits, which entitles

³² Plaintiffs Holmes and Dallas have both been deemed disabled by the Social Security Administration, and receive SSI. The definition of “disability” for SSI purposes is stricter than the ADA’s. *See supra* n. 4,8.

them to an array of statutory procedures facilitating the process of accessing benefits. Plaintiffs have been deemed eligible for SNAP. SMF ¶¶ 54, 84.

B. By Failing to Make Reasonable Accommodations, Defendant Prevented Plaintiffs' Meaningful Access to SNAP Benefits and Thus Violated the ADA

DSS denied Plaintiff Dallas meaningful access to SNAP by failing or refusing to accommodate his disability. Plaintiff Dallas submitted a written request for accommodation on the back of his SNAP Change Report. SMF ¶ 71. Specifically, he requested assistance with his SNAP paperwork, which he struggles to understand due to brain fog caused by epilepsy. SMF ¶ 71. In response, Defendant offered him no assistance. Defendant does not track accommodation requests and has no policy that would cause DSS workers to offer Plaintiff Dallas assistance with future SNAP documents. SMF ¶ 403. Instead, Defendant expects Plaintiff Dallas to request a reasonable accommodation via DSS's broken call center each time he needs assistance with SNAP paperwork. SMF ¶ 83.

In January 2023, Plaintiff Dallas received SNAP recertification paperwork. SMF ¶ 77. He made multiple attempts to contact the call center to seek assistance, but never reached a DSS worker to ask for an accommodation. SMF ¶¶ 78–80. His only barrier to completing the 2023 recertification process was DSS's failure to accommodate his known disabilities and promptly assist him over the phone with his recertification.

Plaintiff Dallas repeatedly tried to request reasonable accommodations. DSS ignored him and continued to place obstacles in his way, resulting in denial of meaningful access to SNAP recertification. This violates the ADA. *See* 28 C.F.R. § 35.130(b)(7)(i) (discrimination includes failing to accommodate limitations of otherwise qualified individual); *Segal*, 29 F.4th at 405 (question is not whether plaintiff was in fact able to successfully navigate a poor system, but whether the defendant met ADA obligations). Because Plaintiff Dallas will continue to rely on

SNAP in the future, he will suffer harm from Defendant's failed policies and practices every time he must interact with DSS to maintain his benefits.

DSS deprived Plaintiff Holmes of meaningful access to SNAP benefits by denying her the opportunity even to request a reasonable accommodation, let alone receive one. Because of her disabling conditions, Plaintiff Holmes must be able to complete required SNAP tasks by phone without waiting on hold for an extended period of time, and if she must go to a Resource Center, then she needs to be able to complete her SNAP interview that same day. SMF ¶ 29, 35. In January 2022, Plaintiff Holmes was forced to visit a local Resource Center to submit a SNAP application, after the call center made it impossible to request an application form over the phone. SMF ¶¶ 37–38. While there, she requested a same-day interview, but her request was denied. SMF ¶ 40. Plaintiff Holmes was forced to contend with the call center again, as her disabilities prevented her from visiting the Resource Center a second time. *See* SMF ¶¶ 30, 42–48, 51, 53. She was unable to reach DSS. Despite her attempts to reach DSS, Defendant denied her SNAP application. SMF ¶ 51. Because Defendant did not accommodate Plaintiff Holmes, she could not obtain SNAP benefits for which she was eligible.

Defendant did not notify Plaintiff Holmes of her right to seek a reasonable accommodation, and she had no way to communicate her need for such an accommodation. *See* SMF ¶¶ 390–97, 424–32. When she attempted to seek a same-day interview, DSS rebuffed her. Defendant's failure to inform her of her rights and to provide a system by which she could seek an accommodation resulted in denial of meaningful access to SNAP, and ultimately a denial of benefits. Because Plaintiff Holmes will continue to rely on SNAP in the future, and will continue to need reasonable accommodations in order to receive it, she will suffer harm from Defendant's failed policies and practices every time she must recertify her SNAP eligibility.

C. Defendant Systematically Prevents SNAP Access by Failing to Offer Reasonable Accommodations

Defendant's ADA policies are incomplete. They do not reflect the realities of agency operations, and do not protect the rights of SNAP participants such as Plaintiffs Holmes and Dallas. The harms suffered by Plaintiffs Holmes and Dallas stem from a confusing, dysfunctional system that is inherently contradictory, resulting in predictable lack of meaningful access for people with disabilities.

1. Defendant's ADA Policy is Inadequate and Ensures DSS's Noncompliance with the ADA

Defendant's policy regarding the ADA and reasonable accommodations consists of one portion of one document: DSS's Non-Discrimination Policy Statement ("Policy Statement"). SMF ¶ 390. The document omits the legal reality that requesting and receiving reasonable accommodations is a right under the ADA. 28 C.F.R. § 35.130(b)(7)(i); 42 U.S.C. § 12131(2); *Alexander*, 469 U.S. at 301. Further, Defendant's policy imposes an arbitrary, unreasonable deadline of 48 hours before a "scheduled event" (which is not explained or defined) to notify DSS and request a modification. SMF ¶ 394. This artificial requirement is not tethered to any requirement contained in the ADA. 28 C.F.R. § 35.130(b)(7)(i); *cf.* 42 U.S.C. § 12112(b)(5)(A) (defining discrimination in employment by failing to make reasonable accommodation of limitations of otherwise qualified individual with disability).

If an individual with a disability actually manages to make a reasonable accommodation request, DSS has no criteria or procedures for addressing and resolving the request. DSS has no stated time frame to address and resolve accommodation requests. SMF ¶ 404. DSS has no policy to stay or toll SNAP deadlines while processing a reasonable accommodation request. SMF ¶ 402. The sum total of Defendant's ADA "policy" is a single, generic document that is

wholly inadequate to create a system for receiving, evaluating, and approving requests for reasonable accommodations.

2. Defendant Fails to Notify SNAP Applicants of Their Rights Under the ADA

Defendant does not inform SNAP applicants and recipients with disabilities of their legal right to a reasonable accommodation, how to request one, what standards DSS purportedly uses when making decisions regarding requests, or how to challenge those decisions. While Defendant posts his Non-Discrimination Policy Statement in Resource Centers and on the DSS website, he does not affirmatively send it to SNAP participants, and if a SNAP participant cannot visit a Resource Center and the DSS website, they have no way of learning of the Statement and its terms. SMF ¶¶ 391–92. Even those SNAP participants who access the Policy Statement lack sufficient notice of their rights under the ADA, because the Policy Statement itself is wholly inadequate, as discussed *supra*.

Defendant also fails to consistently and accurately communicate his inadequate policy and procedures in direct mailings. Various mailings sent to participants contain different, incomplete language, and they do not mention the Policy Statement. SMF ¶¶ 424–33.

3. Defendant's ADA Policy is Contradicted and Undermined by Agency Operations

The process to request an accommodation outlined in the Policy Statement is also incongruous with actual agency operations. Pursuant to the On-Demand Waiver, DSS does not schedule SNAP interviews, SMF ¶ 23, and DSS does not consider a SNAP interview conducted without an appointment to be a “scheduled event.” SMF ¶ 397. The majority of SNAP applicants cannot notify DSS of any need for an accommodation “no later than 48 hours before the scheduled event,” because they *have* no scheduled event. Rather, they are expected to complete their SNAP interview on-demand via the call center.

The Policy Statement instructs such persons to “contact[] either their DSS local office or Anna Wise, DSS ADA Coordinator and Manager of the DSS Office for Civil Rights.” SMF ¶ 394, Ex. 100. It is not possible to contact a local DSS office, other than by going to a Resource Center in person, because Resource Centers do not have their own phone numbers. SMF ¶ 395. The only way to speak to a DSS worker by phone is the call center—which the Policy Statement does not even mention.

Defendant’s IVR system does not offer callers with disabilities any opportunity to request an accommodation, SMF ¶ 434. Of course, as discussed earlier, it is improbable that SNAP participants with disabilities will be able to reach staff via the call center. *Supra* at 11–13.

For the rare participants who understand they have a right to seek an accommodation and how to do so, Defendant lacks any system to record and track these requests to ensure the Department provides a needed accommodation each time a participant interacts with DSS. The Department does not maintain a log of reasonable accommodation requests. SMF ¶ 419. Even when OCR is involved in the accommodation request process, OCR does not follow up to monitor how the reasonable accommodation request was handled, or whether it was implemented in any way. SMF ¶ 400.

Defendant also does not provide workers with training needed to play a central role in its purported reasonable accommodation process. The *only* training DSS workers receive regarding Defendant’s duty to provide reasonable accommodations to SNAP participants consists of two slides of DSS’s Civil Rights, Diversity, and Inclusion training, and a brief discussion of reasonable accommodations in an FNS training. SMF ¶¶ 406–17. Defendant's supervisory employee *admitted* that call center staff get no specific training regarding requests for accommodations, SMF ¶ 416. Defendant takes no steps to ensure or monitor that staff are

properly handling reasonable accommodations. SMF ¶¶ 420–23. It is little wonder that plaintiffs and other individuals have suffered discrimination in attempting to obtain SNAP benefits.

These contradictions, inconsistencies, and dysfunctional features highlight Defendant’s failure or refusal to implement effective, coherent policies and practices to ensure systemic ADA compliance that facilitates meaningful access to SNAP for persons with disabilities. *See Henrietta D.*, 331 F.3d at 268–69, 279–80 (program participants’ sustained difficulties reaching and communicating with caseworkers—including “daily problems” reaching workers by phone—constituted a “broken” accommodative scheme).

4. Defendant Violates the ADA Methods-of-Administration Requirements

The ADA prohibits a public entity from using “methods of administration” that defeat or substantially impair accomplishing the objectives of the public entity’s program with respect to individuals with disabilities, or otherwise subject them to discrimination based on disability. 28 C.F.R. § 35.130(b)(3); *Tellis v. LeBlanc*, No. 18-541, 2022 WL 67572 at *4–5 (W.D. La. Jan. 6, 2022) (methods of administration claim was “particularly relevant” to plaintiffs’ ADA claims based on failure to make reasonable accommodations); *Dunn v. Dunn*, 318 F.R.D. 652, 665 (M.D. Ala. 2016) (finding that defendant’s lack of adequate systems for implementing ADA obligations which plaintiffs alleged resulted in failure to accommodate people with disabilities is actionable under a methods of administration theory); *Boston Univ. v. Guckenberger*, 974 F. Supp. 106, 140–41 (D. Mass. 1997) (ADA forbids methods of administration that have the effect of discriminating on the basis of disability, which includes process that results in delay and denial of accommodations).

The objectives of the SNAP program are to (1) safeguard our national well-being by raising levels of nutrition among low-income households, and (2) permit low-income households to obtain a more nutritious diet. 7 U.C.S. §2011; 7 C.F.R. § 271.1. Defendant’s administration of

SNAP contradicts those purposes by making it more burdensome (if not impossible) for individuals with disabilities to obtain the nutrition assistance they need to survive.

Further, Defendant may not “impose or apply eligibility criteria that screen out . . . an individual with a disability . . . from fully and equally enjoying any service, program, or activity, unless such criteria can be shown to be necessary for the provision of the service, program, or activity being offered.” 28 C.F.R. § 35.130(b)(8). DSS’s broken call center “screens out” people with disabilities from participation in SNAP in violation of the ADA.

D. Plaintiffs are Entitled to Summary Judgment on Their Fourth Claim for Relief

The undisputed evidence establishes that Defendant has failed to provide reasonable accommodations to Plaintiffs Holmes and Davis (and for Holmes, an opportunity to request a reasonable accommodation). This is a systemic, ongoing problem facing all SNAP-eligible Missourians with disabilities, and Plaintiffs will inevitably face this problem again, posing great risk of future deprivations of benefits. Because Defendant's actions, omissions, policies, practices and procedures have subjected—and will subject—Plaintiffs to discrimination on the basis of their disabilities, Plaintiffs are entitled to summary judgment on their Fourth Claim for Relief. ECF No. 88, ¶ 318.

V. PLAINTIFFS ARE ENTITLED TO INJUNCTIVE RELIEF

In addition to a declaratory judgment that Defendant’s policies and practices are unlawful, Plaintiffs also are entitled to an injunction ordering Defendant to remedy his unlawful policies and practices. Plaintiffs ask the Court to enjoin Defendant to cease denying SNAP applications for eligible individuals who have not been given a meaningful opportunity to complete their interviews; ensure that all SNAP applicants have a meaningful opportunity to complete an interview; and ensure that all Missouri residents are provided with an opportunity to apply for SNAP on the first day that they contact DSS.

Plaintiffs also ask the Court to enjoin Defendant to provide reasonable accommodations to Plaintiffs to enable them to access and maintain their eligibility for SNAP; notify SNAP applicants and recipients about the nondiscrimination requirements of Title II of the ADA, including the process by which they can seek a reasonable accommodation; and ensure the process for applicants and recipients to request an accommodation of their disabilities permits meaningful access to SNAP.³³

In considering whether to issue injunctive relief, this Court should weigh (1) Plaintiffs' likelihood of irreparable harm; (2) the balance between harm to the Plaintiffs and the injury that the injunction's issuance would inflict upon Defendants; and (3) the public interest. *See Oglala Sioux Tribe v. C&W Enterprises, Inc.*, 542 F.3d 224, 229 (8th Cir. 2008) (factors considered for permanent injunction are the same as preliminary injunction, except that a permanent injunction requires actual success on the merits, not likely success). No single factor is dispositive of the request for an injunction, as the Court considers all of the factors and decides whether, on balance, they weigh towards granting the injunction. *Dataphase Sys. Inc. v. CL Sys., Inc.*, 640 F.2d 109, 113 (8th Cir.1981).

A. Plaintiffs Will Suffer Continuing and Recurring Irreparable Harm Without an Injunction, and the Remedies Available at Law are Inadequate Compensation

Plaintiffs will suffer irreparable harm absent an order enjoining Defendant to remedy his unlawful policies and practices in his operation of SNAP. Irreparable harm is harm "certain and great and of such imminence that there is a clear and present need for equitable relief."

Richland/Wilkin Joint Powers Auth. v. U.S. Army Corps of Eng'rs, 826 F.3d 1030, 1037 (8th Cir. 2016) (internal citations omitted). This "occurs when a party has no adequate remedy at law,

³³ Should the Court rule with Plaintiffs on the instant motion, Plaintiffs are able to submit additional briefing, or engage in a negotiation with Defendant, regarding the precise contours of the terms of the resulting injunction.

typically because its injuries cannot be fully compensated through an award of damages.” *Rogers Grp., Inc. v. City of Fayetteville*, 629 F.3d 784, 789 (8th Cir. 2010) (internal citations omitted). A finding of irreparable harm is appropriate when the policies and practices that previously harmed the plaintiffs continue unabated, and when the plaintiffs will be subject to the policies and practices on a continuing basis. *See Layton*, 143 F.3d at 472 (exclusion from government programs constitutes irreparable harm); *Goyette v. City of Minneapolis*, 2021 WL 5003065, *9–10 (D. Minn. Oct. 28, 2021) (finding irreparable harm requirement satisfied when plaintiff members of the press intended to continue to cover protests of police brutality, and where police policies and practices alleged to have violated plaintiffs’ First Amendment rights remained in place). Without question, those circumstances are established by the record here.

Plaintiffs Holmes, Davis, and Dallas are eligible, low-income individuals who rely on SNAP for food. SMF ¶¶ 33, 54, 65, 84, 112. All three live with disabilities or health conditions that make it difficult for them to work. SMF ¶¶ 28, 59, 88. They do not have alternatives to SNAP to obtain adequate nutrition. Every day the Plaintiffs go without SNAP is a day of “brutal need” causing physical and emotional effects that cannot possibly be compensated with later payments. *Goldberg*, 397 U.S. at 260–65; *see also District of Columbia v. U.S. Dep’t of Agric.*, 444 F. Supp. 3d 1, 43 (D.D.C. 2020) (“Going without food is an irreparable harm. This sort of deprivation of nutrition, and the psychological and physical distress attending that deprivation, are quite likely to impose lingering, if not irreversible effects.”). All three Plaintiffs will have to regularly recertify their SNAP eligibility and complete other required paperwork, such as change forms and mid-certification reviews. SMF ¶¶ 57, 86, 114. Each recertification or other interaction with DSS will cycle them back into the same broken system that has already caused them significant harm. Defendant’s policy of issuing wrongful denials, failure to provide

opportunities to file SNAP applications, and failure to provide reasonable accommodations put the individual Plaintiffs at repeated risk of additional loss of benefits.

Without SNAP benefits, Plaintiffs cannot purchase sufficient food, disrupting their lives and threatening their safety and well-being. “[D]eprivation of food ‘is extremely serious and is quite likely to impose lingering, if not irreversible, hardships upon recipients.’” *Haskins*, 794 F.2d at 1276–77 (internal citation omitted); see also *Booth*, 830 F. Supp. 2d at 1043 (“[D]enial of public benefits... unquestionably constitutes irreparable harm.”); *Southside Welfare Rights Org.*, 156 F.R.D. at 191 (finding that the “human suffering, emotional trauma and physical injury that will result from an inability to get food” due to the actions of Missouri DSS constitutes irreparable harm). When plaintiffs can show danger to their health, they are presumed to have “a strong argument of irreparable injury.” *Kai v. Ross*, 336 F.3d 650, 656 (8th Cir. 2003); see also *Hiltibran v. Levy*, No. 10-4185-CV-C-NKL, 2010 WL 6825306, at *6 (W.D. Mo. Dec. 27, 2010) (finding that plaintiffs were likely to suffer irreparable harm when they showed potential harm to their health from Missouri DSS’s policies and practices). The only way to meet Plaintiffs’ critical need for food is for the Court to direct Defendants to remedy his unlawful policies and practices in his operation of SNAP.

Denial of injunctive relief “may deprive [Plaintiffs] of their sole source of food.” *Booth*, 830 F. Supp. 2d at 1044. The Court has the authority to prevent Plaintiffs from going hungry, and the law weighs heavily in favor of doing so. See *Winter v. NRDC, Inc.*, 555 U.S. 7, 22 (2008) (allowing a court to grant an injunction if “irreparable injury is likely” to occur).

Plaintiff Empower Missouri also is irreparably harmed by Defendant’s continuing violations. Empower did not benefit from either formal or informal preliminary relief as a result of this litigation, and the harm it suffered at filing continues today. Defendant’s challenged

actions cause Empower to divert its limited resources, which could be spent on other organizational activities, to advocacy work related to Defendant’s denial of access to SNAP, at the expense of other policy priorities in furtherance of Empower’s mission. SMF ¶¶ 115–25. This diversion of resources constitutes irreparable harm. *See League of Women Voters of Missouri v. Ashcroft*, 336 F.Supp.3d 998, 1005 (W.D. Mo. 2018) (diversion of resources to voter registration from other activities crucial to its mission constitutes irreparable harm). *Vote Forward v. DeJoy*, 490 F.Supp.3d 110, 130 (D.D.C. 2020) (“obstacles that unquestionably make it more difficult for an organization to accomplish its primary mission provide injury for purposes both of standing and irreparable harm”) (internal quotations omitted); *NAACP v. USPS*, 496 F.Supp.3d 1, 12, 19 (D.D.C. 2020) (frustration of organization’s mission via expending resources due to defendant’s actions constituted irreparable harm); *Action NC v. Strach*, 216 F.Supp.3d 597 (M.D.N.C. 2016) (holding that organizational plaintiff met irreparable harm burden because “diversion of resources ... ‘perceptibly impairs’ ... a key part of their mission”) (*quoting Havens Realty v. Coleman*, 455 U.S. 363, 379 (1982)); *Islam v. Cuomo*, 475 F.Supp. 3d 144, 153 (E.D.N.Y. 2020) (non-profit organizations are deemed to suffer irreparable harm when governmental action forces them to divert resources away from their organizational missions).

B. Balance of Harms Weighs in Favor of Granting the Relief Requested by Plaintiffs

Should this Court decline to order Plaintiffs’ requested relief, the individual Plaintiffs will again go hungry—unable to access the subsistence benefits necessary to feed themselves. There can be no greater weight on the balancing scale than a lack of subsistence benefits. *See, e.g., Goldberg*, 397 U.S. at 260–65; *Kildare v. Saenz*, 325 F.3d 1078, 1083 (9th Cir. 2003); *Haskins*, 794 F.2d at 1276–77. Plaintiff Empower Missouri will continue to expend additional resources and staff time combatting Defendant’s failures—taking away from their other work, and keeping them from their efforts to relieve poverty across the state of Missouri. *See League of*

Women Voters of Missouri, 336 F.Supp.3d at 1005 (where diversion of organizational resources outweighed any potential harm to state).

On the other side of the scale is the burden, nominal at best, of Defendant's enacting procedures that comply with the law. Plaintiffs seek an injunction ordering Defendant to enact policies and procedures in compliance with the SNAP Act, the Due Process Clause, and the ADA. Fundamentally, the relief sought is for Defendant to do his duty under the law. It is Defendant's responsibility, required by law, to render determinations of Plaintiffs' eligibility for SNAP using legally sufficient procedures under the SNAP Act, and to allow each and every SNAP applicant to submit an application on the first day they contact Defendant's agency. Likewise, it is Defendant's responsibility, required by law, to provide reasonable accommodations to qualified individuals with disabilities.

If an injunction is granted, it will simply require Defendant to do his job, as required by the law. This is no additional or extraordinary task. *See Haskins*, 794 F. 2d at 1277 (rejecting the argument that compliance with the Food Stamp Act imposes any burden on the state agency). Being asked to perform one's work in compliance with the law cannot compare to the burden on those missing meals, unable to secure necessary food. Nor can it compare with the diversion of resources and interruptions to crucial work experienced by Empower Missouri. And because half of the administrative costs of SNAP are funded by the federal government, any monetary cost to Defendant is significantly reduced. There is thus no question that the balance of harms favors granting the injunctive relief sought by Plaintiffs.

C. Granting Injunctive Relief to Plaintiffs is in the Public Interest

An injunction requiring Defendant to remedy his unlawful policies and practices in his operation of SNAP will benefit the public interest. *See White v. Martin*, No. 02-4154-CV-C-NKL, 2002 WL 34560467, at *4 (W.D. Mo. July 26, 2002) ("As this circuit has noted,

enforcement of laws passed by Congress is in the public interest, even when that means enjoining allegedly illegal actions by another government body.”) (*citing Glenwood Bridge, Inc. v. City of Minneapolis*, 940 F.2d 367, 372 (8th Cir. 1991)).

Moreover, as shown *supra*, the harms suffered by Plaintiffs stem from large-scale, structural failures in Defendant’s administration of SNAP. Much of the public—that is, the people of Missouri—rely on SNAP to feed themselves and their families, just as Plaintiffs Holmes, Davis, and Dallas do. The SNAP Act was enacted to alleviate hunger and “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. The Americans with Disabilities Act was enacted to “provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.” 42 U.S.C. § 12101(b)(1). Procedural due process protects one of our most fundamental rights—the right to be free from unjust deprivations from the government. *Mathews*, 424 U.S. at 332 (“[p]rocedural due process imposes constraints on governmental decisions which deprive individuals of ‘liberty’ or ‘property’ interests”).

Accordingly, an injunction that requires Defendant to operate SNAP in compliance with the SNAP Act, the Due Process Clause, and the ADA would promote the public interest. *See Haskins*, 794 F.2d at 1277 (enforcing the Food Stamp Act serves the public); *Gilliam v. United States Dep’t of Agric.*, 486 F. Supp. 3d 856, 880 (E.D. Pa. 2020) (injunction prohibiting the USDA from denying a request for emergency SNAP allotments “will advance social welfare by ensuring that low-income SNAP households receive assistance necessary to meet the basic and essential food needs of themselves and their families...”); *Booth*, 830 F. Supp. 2d at 1045 (“[E]xpress statutory language makes clear that the food stamp program was designed to serve and promote the public interest... an injunction requiring compliance with the Act and its

implementing regulations would serve those goals.”). *Layton*, 143 F.3d at 472 (public interest served by injunction requiring accessibility of government programs); *Hiltibran*, 2010 WL 6825306, at *7 (injunction preventing discrimination by enforcing the ADA and other federal statutes is in the public interest); *D.M. by Bao Xiong v. Missesote St. High Sch. League*, 917 F.3d 994, 1004 (8th Cir. 2019) (“[T]he public is served by the preservation of constitutional rights.”) (quoting *Phelps-Roper v. Nixon*, 545 F.3d 685, 694 (8th Cir. 2008), overruled on other grounds by *Phelps-Roper v. City of Manchester*, 697 F.3d 678, 692 (8th Cir. 2012)).

CONCLUSION

Defendant’s policies and practices violate Plaintiffs’ rights under the SNAP Act, the ADA, and the Due Process Clause. For the foregoing reasons, the Court should grant summary judgment to Plaintiffs.

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Respectfully submitted,

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