

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

In the Matter of the Application of **TRICIA STEWART**
on behalf of herself, her minor children ZAS and ZS, and
on behalf of all individuals similarly situated,

Petitioner-Plaintiff,

–against–

**STIPULATION AND
ORDER**

Index No. 5507-15

SAMUEL D. ROBERTS¹, as
Commissioner of the New York State Office
of Temporary and Disability Assistance,

and

SARAH MERRICK, as Commissioner of the
Onondaga County Department of Social Services,

Respondents-Defendants.

For a Judgment Pursuant to § 3001 and Articles 9, 78, and 86
of the Civil Practice Law and Rules

WHEREAS, on or about November 19, 2015, Petitioner-Plaintiff (“Plaintiff”) Tricia Stewart commenced a hybrid Article 78 proceeding and Declaratory Judgment Action pursuant to Civil Practice Law and Rules (“CPLR”) Articles 78 and § 3001 by filing a Verified Petition and Class Action Complaint requesting that the Court determine that Social Services Law § 131-a (1) precludes social services districts (“districts”) from treating an automobile in which the owner has little or no equity as an “available” resource which would disqualify that person from the receipt of Public Assistance (“PA”);

¹ In 2019, Samuel D. Roberts’ tenure as Commissioner of the New York State Office of Temporary and Disability Assistance ended. At the time of the execution of this Stipulation and Order Daniel W. Tietz is the Commissioner of the New York State Office of Temporary and Disability Assistance.

WHEREAS, a Decision and Order dated June 20, 2019, and an Amended Decision and Order dated July 12, 2019, were issued granting Plaintiff's motion for class certification and also defining the Class as follows:

All applicants and recipients of public assistance in New York State who received, applied for, or will apply for public assistance benefits between July 20, 2015 and the date on which Defendant issues formal guidance advising social services districts that an automobile[,] which is not an exempt resource (as defined in Social Services Law § 131-n [1][a] and 18 NYCRR 352.23 [b]), and in which the owner has minimal or no equity interest, is not an 'available' resource which would disqualify the owner from the receipt of public assistance, and who, within the applicable time frame and at the time of the application or re-certification:

- a. Owned, own, or will own a motor vehicle that has a fair market value exceeding the applicable resource levels set forth in Social Services Law § 131-n [n 1] within the applicable time frame, and
- b. Have, had, or will have a loan, note or other encumbrance on the motor vehicle which results in the applicant or recipient having no equity or minimal equity [n 2] in such motor vehicle, within the applicable time frame, and
- c. Were, are, or will be denied public assistance, or had, have or will have their public assistance benefits discontinued as a result of the ownership of such motor vehicle, within the applicable time frame.

[Footnotes omitted]

WHEREAS, following other proceedings and orders/decisions which are not detailed herein, on remand, the Supreme Court issued a Final Judgment, dated September 24, 2019 and entered on October 17, 2019 (hereinafter "Final Judgment"), certifying the Class and directing the manner in which relief would be provided to the Class;

WHEREAS, the computer system used by the New York State Office of Temporary and Disability Assistance ("OTDA") contains a code that indicates when an applicant for Public

Assistance was denied or discontinued from Public Assistance because of a resource exceeding the Public Assistance resource levels, but does not indicate the nature of the resource - whether the resource was an automobile, or another resource, such as a bank account or a retirement account;

WHEREAS, in order to identify Class Members owed corrective benefits, the Final Judgment directed that OTDA: send each district a list of Potential Class Members – those who had been denied or discontinued Public Assistance from July 20, 2015 through May 10, 2020, on the basis of owning a resource; require each district to manually review the files of Potential Class Members to determine if those persons were Putative Class Members; and to require districts to conduct further proceedings to determine if Putative Class Members were Class Members (Final Judgment, ¶¶ 7(a) and (b));

WHEREAS, on November 4, 2019, Defendant-Respondent (“Defendant”) appealed the Final Judgment;

WHEREAS, on February 18, 2021, the Appellate Division, Third Department, affirmed this Court’s grant of class certification, but modified the Final Judgment, as requested in the alternative proposed by the Defendant OTDA, to change the manner of identifying class members to an opt-in procedure. In relevant part, the Opinion and Order of the Third Department (hereinafter “Opinion and Order”) stated:

Under the proposed opt-in method, a notice would be sent to each member of this category advising that the recipient may be entitled to a corrective payment for a wrongful denial of benefits as defined in this case based on the agency’s incorrect valuation of an automobile. The notice recipients could, in turn, request an interview to determine whether they qualified for a corrective payment...

Within 60 days of this decision, OTDA shall provide each social services district with a list of potential class members, as that term is defined in paragraph 5 (a) of the

judgment,² which shall contain instructions about how to identify class members and calculate any corrective benefits owed. Within 45 days of receiving such list, the social services districts shall send a notice to each potential class member on the list...

Within 45 days of receiving such list, the social services districts shall send a notice to each potential class member on the list using the procedure set forth in paragraph 8 and 11 of the [Final] Judgment. Within 15 days of this Decision, Petitioner's counsel shall provide Respondent's counsel with suggested language for the notices ... The notice shall also advise potential class members that they are entitled to an interview to determine whether they are putative class members and shall contain a designated contact number for the purpose of scheduling an interview. Any interview must be scheduled within 30 days of the request. *Stewart v. Roberts*, 191 AD 3d 121, 126-27 (Third Dep't 2021).

WHEREAS, on March 11, 2021, Defendant notified Plaintiffs' counsel, by letter, attached as Exhibit A, that the Defendant "has determined that it will be more efficient and allow for timely notice for OTDA to send this notice to all potential class members on behalf of said districts." Plaintiffs did not raise an objection to this change.

WHEREAS, OTDA mailed these notices, a sample of which is attached as Exhibit B, to all of the potential class members on or about June 3, 2021;

WHEREAS, the notices provide a designated contact telephone number and email address for each of the State's fifty-eight (58) social services districts, and also a Helpline number so that potential class members can call counsel for the Plaintiff class;

WHEREAS, although controverted by Defendant, based upon calls received through the Helpline, Plaintiffs assert that thirty districts did not adequately comply with implementation procedures in the Final Judgment as modified by the Opinion and Order;

WHEREAS, as set forth more fully in correspondence dated July 6, 2021 and August 3, 2021 and attached hereto as Exhibits C and D, as well as in other correspondence not attached, Plaintiffs allege, and Defendant controverts, that not all social services districts responded to the

² The Appellate Division is referencing the Final Judgment.

telephone calls of potential class members seeking to opt into the determination of class membership in a manner consistent with the terms of the Final Judgment as modified by the Opinion and Order;

WHEREAS, counsel for the Plaintiffs also assert, and Defendant also controverts, that certain potential class members were denied the procedures identified in the Final Judgment as modified by the Opinion and Order when contacting social services districts when some districts that required duplicate request for interview be made by electronic mail, directed the filing of a new application, and/or denied interviews to those potential class members not currently eligible for PA;

WHEREAS, counsel for the Plaintiffs also assert, and Defendant also controverts, that certain potential class members who received interviews were denied the procedures identified in the Final Judgment as modified by the Opinion and Order when social services districts required submission of redundant or irrelevant documentation, and/or directed the filing of a new application;

WHEREAS, former Commissioner Roberts and his successors, have been implementing, and continue to implement, relief to the Class as required by the Final Judgment and Opinion and Order;

WHEREAS, Plaintiffs and Defendant entered into a Stipulation and Order, filed with the Albany County Clerk's Office on August 16, 2021 ("August 16, 2021 Stipulation and Order," NYCEF Doc. 7), which extended certain deadlines by 90 days in order to allow the parties additional time to negotiate in good faith with the goal of simplifying the process of administering certain relief provided by the Final Judgment, as modified by the Opinion and Order. The August 16, 2021 Stipulation and Order allowed the parties to extend the deadline

further upon written consent, and the parties have duly agreed to do so and have continuously and without interruption done so, with the last extension extending through and providing time for the Court's review of this Order, per letter dated May 13, 2022. Subsequent to the letter dated May 13, 2022, additional extensions have been authorized via electronic communication;

WHEREAS, in an effort to avoid further litigation and to resolve all alleged noncompliance with the Final Judgment as modified by the Opinion and Order, the parties now desire, after a series of meetings and negotiations, to resolve all aforementioned concerns pertaining to the allegations of noncompliance with the Final Judgment as modified by the Opinion and Order, by agreeing to the implementation of additional procedures described in Section II which are to be completed in addition to the implementation items set forth in the Final Judgment as modified by the Opinion and Order;

WHEREAS, the parties desire to memorialize their agreement and therefore enter into this Stipulation and Order;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and among the undersigned attorneys for the respective parties herein that Defendant will implement the procedures described in Section II, subject to the approval of the Court as follows:

SECTION I: DEFINITIONS

1. "Class" for purposes of this Stipulation, has the following definition, as set forth in the June 20, 2019 Decision and Order and the Amended Decision and Order dated July 12, 2019, as further detailed/refined in the Final Judgment (see pp. 3-4 therein):

All applicants and recipients of public assistance in New York State who received, applied for, or will apply for public assistance benefits between July 20, 2015 and the date on which Defendant issues formal guidance advising social services districts that an automobile[,] which is not an exempt resource (as defined in Social Services Law § 131-n [1][a] and 18 NYCRR 352.23 [b]),

and in which the owner has minimal or no equity interest, is not an 'available' resource which would disqualify the owner from the receipt of public assistance, and who, within the applicable time frame and at the time of the application or re-certification:

- a. Owned, own, or will own a motor vehicle that has a fair market value exceeding the applicable resource levels set forth in Social Services Law § 131-n [fn 1] within the applicable time frame, and
- b. Have, had, or will have a loan, note or other encumbrance on the motor vehicle which results in the applicant or recipient having no equity or minimal equity [fn 2] in such motor vehicle, within the applicable time frame, and
- c. Were, are, or will be denied public assistance, or had, have or will have their public assistance benefits discontinued, as a result of the ownership of such motor vehicle, within the applicable time frame.

[Internal footnotes omitted]

2. When determining eligibility for Class membership, the resource limits in place at the time of the denial or discontinuance and between July 20, 2015 and May 10, 2020, shall govern and not any change in such resource limits that went into effect on or after May 11, 2020 or after the denial or discontinuance. This paragraph shall govern in the event of a conflict with any other provisions herein.

3. "Class Counsel" means Empire Justice Center, the National Center for Law and Economic Justice³ and Legal Services of Central New York.

4. "Class Member" or "Stewart Class Member" means a person who is a member of the Class.

5. "Designated District Contact Number" is the telephone number that satisfies the requirements of paragraph 20(b) and that will appear on the Second Notice of Class Action.

³ At the time this Court named Class Counsel in the Final Judgment, issued September 2019, NCLEJ was not involved in this litigation and was not named as class counsel. Subsequently, in August 2020, NCLEJ became involved in the litigation and now asks expressly to be identified as class counsel.

OTDA will obtain the Designated District Contact Number from each District within 30 days of the Effective Date. *Stewart v. Roberts*, 193 AD3d 121, 127 (2021).

6. “Designated Email Address” is the email address that satisfies the requirements of paragraph 20(b) and that will appear on the Second Notice of Class Action. OTDA will obtain the Designated Email Address from each District within 30 days of the Effective Date.

7. “Designated *Stewart* Contact Worker(s) are one or more district workers who are assigned the task of responding to calls or emails from *Stewart* Class Members. However, a person is only a “Designated *Stewart* Contact Worker” if they engage in substantive conversations with potential *Stewart* Class Members or interview potential *Stewart* Class Members, or draft or issue notices to potential *Stewart* Class Members.

8. “Desk Review” means a review by the Defendant of the determination of a social services district as to whether: (1) the review of eligibility as a *Stewart* Class Member was or was not limited to the facts set forth in the notice of decision denying eligibility for Public Assistance or discontinuing Public Assistance made between July 20, 2015 and May 10, 2020; and/or (2) the Potential Class Member was correctly determined not to be a *Stewart* Class Member. The desk review process shall be limited to determining only (1) and (2) above and as otherwise limited by the terms of this Stipulation, and as such, anything to the contrary in the August 16, 2021 Stipulation is deemed amended to conform hereto. The desk review process shall conform to the following provisions:

- a. Defendant shall issue a written determination within 30 business days of receipt of the request for a desk review that:
 - i. affirms the determination of the social services district;
 - ii. amends the determination of the social services district; or

- iii. reverses the determination of the social services district;
- b. In the event that the Defendant determines that more information from the Social Services District or the Class Member or Potential Class member is necessary to make a determination, the 30-day period in subparagraph (b) can be extended for no more than 30 additional business days;
- c. The Defendant's written determination shall be mailed to the Class Member or Potential Class Member by First Class Mail and include any new documentation considered by the Defendant in making its determination, together with all relevant calculations and budgets.
- d. The written determination of the Defendant shall advise the Class Member or Potential Class Member that review under Article 78 of the Civil Practice Law and Rules may be filed if the recipient disputes the determination. Further, the written determination shall contain class counsel's email (carloan@empirejustice.org) and telephone number (585-295-5837) with a statement that class counsel may be contacted for further information.
9. "Effective Date" refers to the date that this Court files this signed Stipulation and Order in NYSCEF.
10. "Notice of Class Action" is the document as referred to in paragraph 8 of the Final Judgment, which was mailed to Potential Class Members on June 3, 2021 (also known as "First Opt-in Notice" and/or "First Notice of Class Action") and is also being mailed per the terms set forth herein (also known as "Second Opt-in Notice" and/or "Second Notice of Class Action").
11. "Public Assistance" refers to Family Assistance and Safety Net Assistance.

12. “Potential Class Member” is an individual whose name was on a list provided by OTDA and sent to the districts, as further defined in paragraph 5(a) of the Final Judgment.

13. “Putative Class Members” are individuals on the potential class member list who have been identified by social services districts to have, on or after July 20, 2015, applied for and been denied public assistance, or were discontinued from public assistance for the reason that they own, or have owned a motor vehicle with a fair market value exceeding the applicable resource levels as set forth in Social Services Law 131-n (1) (a) and 18 NYCRR 352.23 (b) in place at the time of the denial or discontinuance, as defined in paragraph 5 (b) of the Final Judgment.

14. “Public Assistance Recipient” (“PA Recipient”) means an individual who submitted an application for Public Assistance or had someone else submit an application for Public Assistance on their behalf, and who had or has been determined eligible for Public Assistance by the district.

15. “Social Services District” (“district”) means a city or county social services district as defined by SSL § 61.

16. “Term of the Stipulation” means the period from the Effective Date of the Stipulation until three years following the Effective Date. Release of claims by Plaintiff and Class Members including actual, putative, and potential Class Members continues in perpetuity.

SECTION II: ADDITIONAL PROCEDURES

17. Prospective Basis Only. The procedures and requirements herein, unless otherwise stated, are to be implemented prospectively after the Effective Date.

18. Second Mailing of Notice of Class Action/Second Opt-in Notice. OTDA shall re-send the previously mailed Notice of Class Action in the same form and to the same persons and addresses as the first mailing of the Notice of Class Action, via first class mail, with the only change being that the Notice of Class Action will state “Second Notice” on its face. The second mailing of the Notice of Class Action to Potential Class Members shall be done by OTDA and shall take place within ninety (90) calendar days of the Effective Date of this Stipulation. The return address shall be to the district in which the individual was denied or discontinued, and said district shall, within 30 calendar days of the receipt of any returned mail, undertake a manual review of the case files of those Potential Class Members whose mail was returned to determine whether they are Putative Class Members who may be entitled to a corrective payment, and if the notice is returned with a yellow sticker that contains a new address indicating that it is not being forwarded because the forwarding time has expired, the district shall re-send the notice to the new address within fifteen (15) business days.

19. Reporting. The Reporting provisions in paragraph 15 of the Final Judgment shall apply to the Notices sent in the Second Mailing but with the modification that the reporting period is hereby modified to extend 27 months from the Effective Date.

20. General Information System Message (GIS) & Training Session. Within seventy-five (75) calendar days of the Effective Date, OTDA will issue a GIS to districts and also conduct a live training session on the format of their choosing for all district Designated Stewart Contact Workers. If participants have questions, they may contact OTDA. The content of the GIS and the training session shall at a minimum include an overview of the terms of the Final Judgment, as modified by the Opinion and Order, including, but not limited to, the proper procedures for handling calls from Potential Class Members, scheduling interviews, and making

determinations as to class membership. The training will include, and not be limited to, the following, in sum or substance:

- a. a review of the opt-in and class identification process as detailed in GIS 21 TA/DC038 and 21-INF-04-T not being otherwise changed or modified herein and including the following:
- b. that the Designated District Number and Designated Email Address shall be answered or monitored by a person or persons with knowledge about the *Stewart* case and the ability to schedule an interview. In cases where the Designated District Number is not answered by a person, but rather, goes directly to a designated voicemail box, that mailbox shall have a recorded message that expressly identifies the *Stewart* case by name and provides the opportunity to leave a message. However, as line/messages/prompts can be used for multiple things/matters, in no way are districts required to have a phone line/message/prompt dedicated solely to *Stewart*;
- c. that if the caller to the Designated District Number leaves a message, the call shall be returned within four (4) business days;
- d. that a person who is knowledgeable about the *Stewart* case shall respond to each email inquiry within four (4) business days;
- e. that all Potential Class Members are entitled to an interview, which does not have to be in person, if a caller requests an interview;
- f. that a Potential Class Member who requests an interview cannot be sent a notice advising them that they are not a *Stewart* Class Member until after the interview has been held;
- g. that a Potential Class Member should not be told over the phone that they are not a *Stewart* Class Member unless: (1) the reasons why they are not a Class Member have been explained to them; and (2) such oral denial is followed up by a written Determination of *Stewart* Class membership ("LDSS 5183") within thirty (30) calendar days of their interview or submission of requested documents (whichever is later);
- h. that although *Stewart* Class Members have to be currently eligible for PA to obtain a corrective payment, Potential Class Members do not have to be currently eligible for PA to obtain an interview to determine if they are a Class Member and therefore cannot be told that they have

to apply for PA as a condition of having their Class Membership determined;

- i. that in determining whether a person is a *Stewart* Class Member, if the Putative Class Member has previously verified necessary information which is not subject to change and the district possesses documentation of such verification in its files, the Putative Class Member shall not be required to re-submit verification of such information (18 NYCRR § 351.5 [a]);
- j. that one of the determinations to be made by the district in identification of *Stewart* Class Members is whether the resource causing the denial or discontinuance of PA was a motor vehicle;
- k. that concerning the ground(s) for the determination of eligibility for Public Assistance or to discontinue Public Assistance made between July 20, 2015 and May 10, 2020, the district shall be limited to: what determination(s) was/were set forth in that notice. In furtherance therefore the districts shall not look beyond the grounds previously cited and therefore also may not overturn any prior determinations of ineligibility for, or discontinuance of, public assistance.
- l. that class counsel may be contacting the districts directly regarding an issue involving a Potential Class Member, but that districts still must follow all applicable confidentiality laws, rules, regulations, and policies, including but not limited to written client consent;
- m. that once an individual has been determined to be a Class Member, Class Counsel represents that individual, and districts shall consult their list of persons determined to be Class Members and as to Class Members only respond to Class Counsel without the need for a written release or consent form. Notwithstanding the foregoing, districts shall have the right to request the Class Member's Case Number to verify that they are speaking with class counsel and/or terminate the call and initiate a telephone call back to Class Counsel and/or send a verifying e-mail to Class Counsel;
- n. if a determination on Class membership is not possible based upon the documentation in the case record and provided by the Putative Class Member, the district shall provide the Putative Class Member with an LDSS 2642 ("Documentation Requirements") setting forth the documents that must be submitted, advising the Putative Class Member that the documents are to be received within sixty (60) calendar days

- and that the time can be extended for good cause and the agency has a duty to assist in the gathering of such documents pursuant to 18 NYCRR 351.5(a);
- o. that per 18 NYCRR 351.5(a) districts engage in a good faith effort to review Putative Class Member's case files before requesting information from the Putative Class Member and will share information they have that is readily accessible and that will help Putative Class Members produce any requested additional information;
 - p. consistent with applicable regulations, districts must consider and make available to Putative Class Members copies of documents in their files which are relevant to a determination that the person is a *Stewart* Class member. These documents include but are not limited to, any documents about the vehicle owned at the time of application, including copies of the title or registration; any documents which provide the VIN number of the vehicle at issue; any documents which provide information about any loans against said vehicles, including but not limited to statements from a bank, or finance company statements; and/or documents concerning income;
 - q. that when determining Class membership, the districts are performing an analysis based upon assets existing at the time of the denial or discontinuance, not upon existing assets;
 - r. in making a determination as to whether a person is a *Stewart* Class member, the district consistent with 18 NYCRR 351.5(a) shall accept as true the information provided on the PA application that led to the denial that is basis of the person being considered a potential *Stewart* class member provided same has been previously verified per 18 NYCRR 351.5(a);
 - s. that districts will advise any Potential Class Members who respond to the second mailing of the Notice of Class Action who previously had their Class membership determined that no further action need be taken;
 - t. that when a Potential Class Member is determined to not be a Class Member, the districts shall identify the reason(s) other than a vehicle resource, if any, that resulted in the denial on form LDSS-5183. Under no circumstances shall there be a right to a fair hearing to challenge Class membership. The limited right to a desk review is provided in

this Stipulation as to the limited issues set forth herein. Otherwise, all rights are as outlined in paragraph 21;

- u. in accordance with paragraph 18 above, following the second mailing of the “Notice of Class Action,” the return address shall be the district in which the individual was denied or discontinued from PA, and if the notice is returned as undeliverable, the relevant district shall, within thirty (30) calendar days, be required to undertake a manual review of those Putative Class Members’ files to determine whether they are Putative Class Members who may be entitled to relief. If the notice is returned with a yellow sticker that contains a new address indicating that it is not being forwarded because the forwarding time has expired, the district shall re-send the notice to the new address within fifteen (15) business days;
- v. as to the training sessions, the districts will be informed that attendance is strongly encouraged by at least one person on behalf of each district. OTDA will offer a follow up training for district staff that cannot attend the first scheduled training or those who want to be re-trained. Within ten (10) calendar days of the date of the training session, OTDA will share the aforementioned GIS and any other training materials they prepared with Plaintiffs’ counsel. The training sessions will be recorded and made available to the social services districts;
- w. within ten (10) calendar days of each training, the Defendant will advise Class Counsel of the date(s) of the training, and the districts that were in attendance;
- x. that the districts shall retain the written materials to present to district workers that were absent at the initial training session and the follow up training session or not in the employ of the district at the time of the training.

21. LDSS-5183 Revision. Within seventy (70) calendar days of the Effective Date, the “Determination of Stewart Class Membership” notice LDSS-5183 shall be amended as follows and therefore issued prospectively, such that: the existing box that reads “When you were denied PA, it was because of a resource that was not a vehicle” shall have the following sentence added: “That resource was _____”. The sentence will identify the resource(s) that made a Potential Class Member ineligible to be a Class Member

(e.g. “Key Bank account”). The form shall thereafter continue to state “OR other reason:

_____,” (e.g., “Receipt of unemployment benefits.”) The limited right to a desk review is provided above but shall not be afforded for prior determinations based on a resource or reason that was not a motor vehicle that were not timely and successfully appealed. OTDA will instruct the districts in the training session consistent with the foregoing.

- a. In the event that a Potential Class Member is sent or was at any time sent an Opt-in Notice based upon a Notice of Denial that named both a motor vehicle and another reason(s) for the denial, neither the issuance of the LDSS-5183 nor anything else related to the determination of Stewart Class Membership shall confer any rights not otherwise identified by the Court in the Final Judgment as modified by the Opinion and Order and in the August 16, 2021 Stipulation and Order, including, but not limited to creating a fair hearing right or any right other than the right to the desk review as set forth herein, nor shall the issuance of the LDSS-5183 nor anything else constitute a new determination of eligibility that revives or tolls any expired time periods or afford any other relief outside the terms of the Courts’ determinations in this matter or the August 16, 2021 Stipulation and Order.
- b. In the event that a Potential Class member is sent or was at any time sent an Opt-in Notice based on a Notice of Denial that listed only a motor vehicle as a disqualifying resource, the LDSS-5183 shall not list any additional(s) resource or reason that is not a vehicle as the basis for

denial of Class membership, provided such additional reason was not previously raised. The issuance of the LDSS-5183 shall not confer any other rights not otherwise identified by the Court in the Final Judgment as modified by the Opinion and Order or in the August 16, 2021 Stipulation and Order, including, but not limited to creating a fair hearing right not otherwise provided for there, nor shall the issuance of the LDSS-5183 or anything else constitute a new determination of eligibility that revives or tolls any expired time periods or afford any other relief outside the terms of the Courts' determinations in this matter or in the August 16, 2021 Stipulation and Order.

22. Fair Hearing Rights and Right to A Desk Review. Class members may only request a fair hearing within sixty (60) days of the date of the Notice of Determination of the corrective payment issued as to the total amount of the corrective payment and/or the applicable time period for which the corrective payment was paid. Nothing contained in this agreement shall otherwise give rise to a hearable issue pursuant to 18 NYCRR Part 358 or otherwise. The right to a desk review is only as set forth above. Therefore, anything in the August 16, 2021, Stipulation and Order that is contrary to what is set forth herein is superseded by the terms set forth herein. Nothing contained herein shall revive or toll any expired time periods or afford any other relief outside the terms of the Courts' determinations in this matter or in the August 16, 2021 Stipulation and Order. This paragraph shall control in the event of a conflict with any other provisions of this or any other Stipulation or Agreement.

SECTION III: RELATED TERMS AND CONDITIONS

23. This Stipulation constitutes the entire agreement between the Parties and supersedes all prior or contemporaneous agreements or understandings, both written and oral

with respect to the procedures and requirements and subject matters set forth herein. No representations concerning the subject matter of this Stipulation, oral or otherwise, express or implied, shall vary the terms and conditions of this Stipulation.

24. Upon the Effective Date, this Stipulation will be final and binding on the Parties, including all executors, administrators, representatives, successors in interest, beneficiaries, assigns, heirs, and legal representatives thereof. Each Party has a duty to inform any such successor in interest.

25. On the Effective Date, and in consideration of the representations, promises, and Stipulations set forth herein, the sufficiency of which is hereby acknowledged, Plaintiff and the Class Members, including actual, putative and potential class members, on their own behalf and on behalf of their representatives, assignees, heirs, executors, agents, family members, beneficiaries, administrators, successors, and anyone acting or claiming to act on their behalf, hereby jointly and severally release and forever discharge Defendant and OTDA, and each of their past and present, executors, administrators, representatives, successors in interest, beneficiaries, assigns, heirs, and legal representatives thereof (collectively "Releasees") from any and all claims, demands, damages, actions, causes of action, obligations, debts of whatsoever kind or nature, asserted and unasserted, known or unknown, foreseen or unforeseen, matured or un-matured, accrued or not accrued, direct and indirect and of any kind, nature or description whatsoever, which arose on or before the Effective Date, as a result of, or growing out of, any alleged non-compliance or contempt with regard to the October 17, 2019 Final Judgment as modified by the Opinion and Order of the Appellate Division at 191 AD 3d 121 (Third Dep't 2021) and August 16, 2021 Stipulation and Order, whether or not such injuries or damages are contemplated at the present time.

26. Plaintiff, individually and on behalf of Class Members, including actual, putative and potential class members also admits, acknowledges, and agrees that the sole remedy for violation of the terms of this agreement is a motion to compel specific performance of the obligations in this Stipulation and Order and also that no other action or proceeding, including an action for damages, may be brought, nor other legal recourse sought against Defendant, OTDA and all Releasees with respect to any and all claims raised or that could have been raised as to past or present allegations of Defendant's non-compliance with the Final Judgment, Opinion and Order, August 16, 2021 Stipulation and Order, and the revised procedures and requirements resolved by the negotiated terms of this Stipulation.

27. To the extent that there are individual cases in which unique issues arise, Defendant shall provide class counsel with the contact information for a person or persons at OTDA having the authority to assist in resolving such unique issues. Such contact information may include a shared electronic mailbox and/or telephone number. Defendant will also provide the name and contact information of an OTDA escalation liaison who shall be available if Plaintiffs' counsel receives no substantive reply to an inquiry to the shared number or mailbox within ten (10) business days.

28. As a condition precedent to the filing of any motion to enforce this Stipulation and Order, including, but not limited to assertions of actions or inactions by a social services district(s) for which Plaintiff alleges noncompliance by Defendant with the terms of this Stipulation, and for which neither desk review nor fair hearing is available, Plaintiff must first notify Defendant's General Counsel's Office and the Office of the New York State Attorney General, in writing, of the nature and specific allegations of the alleged material non-compliance. Such notification must occur no later than the last day of the Term of the Stipulation. For all the

foregoing:

- a. Thereafter, Defendant shall have forty-five (45) days to cure the alleged breach.
- b. At least 30 days prior to notifying Defendant's General Counsel's Office and the Office of the New York State Attorney General in writing of the nature and specific allegations of an alleged material noncompliance arising from the inaction or action of a social services district that Plaintiff alleges renders Defendant in breach of this Stipulation, and for which neither a desk review nor a fair hearing is/are afforded, the Plaintiff shall also have contacted the person or persons listed in paragraph 27. The Defendant shall have 45 days following the provision of the written notice to Defendant's General Counsel's Office to cure the alleged breach.
- c. If the alleged breach is cured by Defendant within the time periods set forth in the forgoing sub-paragraphs, Plaintiff may not bring any motion or seek any other relief related thereto.
- d. In no event may a motion to enforce this Stipulation be filed later than one hundred and twenty (120) days after the Term of the Stipulation ends.

29. This Stipulation shall become final on the Effective Date. Once final, this Stipulation shall remain in effect for three (3) years from the Effective Date (hereinafter referred to as the "Term of the Stipulation;" with the exception that the release of claims by Plaintiff and Class Members including actual, putative and potential class members set forth in this Stipulation shall continue in perpetuity). If the Stipulation does not become final because the Effective Date does not occur, then this Stipulation shall be void and have no effect.

30. Nothing contained herein, and no action taken pursuant hereto, shall be deemed to be an admission by Defendant, OTDA or any Releasee or employee of any of the foregoing, of

any of Plaintiff's or Class Members' allegations, nor an admission by Defendant, OTDA or any Releasee or employee of any of the foregoing thereof that they have in any manner or way violated Plaintiff's or any other Class Members' rights. Rather, Defendant enters into this Stipulation to avoid further protracted litigation and to resolve and settle all disputes with Plaintiff and the Class Members. The negotiation, execution, and terms of this Stipulation, and all acts performed or documents executed pursuant to or in furtherance of this Stipulation or the settlement (a) are not, shall not be deemed to be, and may not be used as an admission or evidence of any wrongdoing or liability on the part of Defendant, OTDA or any Releasee or employee of any of the foregoing; (b) are not, shall not be deemed to be, and may not be used as an admission or evidence of fault or omission on the part of Defendant, OTDA or any Releasee or employee of any of the foregoing in any civil, criminal, administrative or arbitral proceeding or action outside of this proceeding/action; (c) do not, and shall not be deemed to, constitute a policy, custom, or practice of Defendant, OTDA or any Releasee or employee of any of the foregoing. Nothing herein contained modifies or alters the findings and legal conclusions reached by the Court in the Decisions, Judgments and Orders already rendered in this matter, or prohibits their use as precedent.

31. All parties to this Stipulation have participated in its drafting; consequently, any ambiguity shall not be construed for or against any party.

32. The construction, interpretation, operation, effect and validity of this Stipulation, and all documents necessary to effectuate it shall be governed by the laws of the State of New York without regard to conflicts of law, except to the extent that federal law may govern. This paragraph shall govern in the event of a conflict with any other provisions herein.

33. The Parties and the signatories to this Stipulation represent and warrant that the

signatories executing this Stipulation on behalf of each Party has full authority to do so and to make the representations, warranties and agreements contained herein.

34. In any month(s) in which compliance with this Stipulation by Defendant and/or OTDA, or any of its employees, agents, contractors or consultants is affected by a State shutdown or the declared closure of non-essential businesses and governmental operations resulting from a natural disaster, COVID-19 pandemic or such other health related emergency, or a public safety emergency; documented and substantial computer system malfunctions, or other similar circumstances beyond the Defendant and/or OTDA's control ("Force Majeure"), the Defendant's and/or OTDA's non-complying performance for such month(s) shall be disregarded for the purposes of determining the Defendant's and/or OTDA's compliance, and the terms of this Stipulation, and the Court's jurisdiction to enforce it, shall be automatically extended by an equal number of additional month(s) as against Defendant and/or OTDA asserting a Force Majeure. If any Force Majeure event occurs that causes or may cause Defendant and/or OTDA to invoke this paragraph of the Stipulation, Defendant and/or OTDA shall, as soon as practicable (but in no event later than thirty (30) calendar days after the Defendant and/or OTDA knew of such event) notify Plaintiff's counsel, in writing. In such notification, Defendant and/or OTDA shall report the anticipated length of the disruption, the cause or causes of disruption, and the obligations under this Stipulation that are disrupted by the Force Majeure event. In the event that the disruption is of such severity that the Defendant's non-complying performance is expected to last more than sixty (60) calendar days, Defendant must seek the approval of the Court to suspend compliance for more than sixty (60) calendar days. Defendant and/or OTDA will adopt all reasonable measures to avoid or minimize any such disruption.

35. This Stipulation shall be submitted to the Court upon joint motion of the Parties to be “So Ordered.”

36. Counterparts. This Stipulation may be executed in one or more counterparts, including by signatures transmitted by .pdf/.tif image of the signatures transmitted via email or facsimile or any mailing. All executed counterparts and each of them shall be deemed to be one and the same instrument.

37. The headings contained in this Stipulation are for convenience of reference only and are not a material part of this Stipulation.

38. In computing any time period specified by this Stipulation, the following rules apply: (i) exclude the day of the event that triggers the period; (ii) count every day, including intermediate Saturdays, Sundays, and New York State legal holidays, unless business days are specified; and (iii) include the last day of the period, but if the last day is a Saturday, Sunday, or New York State legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or such New York State legal holiday.

39. Any notice, report, or communication required by or made pursuant to the terms of this Stipulation, other than notices sent to individual Class Members, shall be sent by electronic mail and, upon request, by first class mail, postage prepaid, to all of the people below:

To Plaintiff:

Susan Antos, Esq.
santos@empirejustice.org
Empire Justice Center
119 Washington Ave., Ste. 301
Albany, NY 12210

Saima A. Akhtar, Esq.
akhtar@nclej.org
National Center for Law and Economic Justice

FILED: ALBANY COUNTY CLERK 06/20/2023 11:51 AM

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50 Broadway, Suite 1500
New York, NY 10004-3821

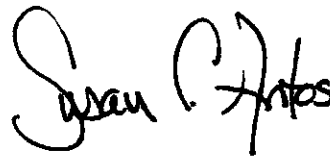
Julie B. Morse, Esq.
jmorse@lscny.org
Legal Services of Central New York
221 South Warren Street, Suite 300
Syracuse, NY 13202

To OTDA:

Amanda Kuryluk, Assistant Attorney General
Amanda.Kuryluk@ag.ny.gov
New York State Office of the Attorney General
The Capitol
Albany, New York 12224-0341

Dated: June 12, 2023

EMPIRE JUSTICE CENTER
Attorneys for Petitioners-Plaintiffs-
Tricia Stewart and the Plaintiff Class
119 Washington Avenue, Suite 301
Albany, New York 12210
Tel.: (518) 935-2845
Fax : (518) 935-2852



By: _____

Susan C. Antos
santos@empirejustice.org

Dated: June 12, 2023

National Center for Law and Economic
Justice
Attorneys for Petitioners-Plaintiffs Tricia
Stewart and the Plaintiff Class
275 Seventh Avenue, Suite 1506

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INDEX NO. 905507-15

NYSCEF DOC. NO. 14

RECEIVED NYSCEF: 06/20/2023

New York, NY 10001-6860
Phone: (212) 633-6967

By: s/Saima Akhtar

Saima Akhtar
akhtar@nclej.org

Dated: June 13, 2023

Legal Services of Central New York
Attorneys for the Petitioners--
Plaintiffs Tricia Stewart and the
Plaintiff Class
221 South Warren Street, Suite 300
Syracuse, NY 13202
(315) 703-6537

By: s/ Julie B. Morse

Julie B. Morse, Of Counsel
jmorse@lscny.org

Dated: June 13, 2023
Albany, NY

LETITIA JAMES

Attorney General of the State of New York
Attorneys for Defendant-Respondent

By: s/Amanda Kuryluk

Amanda Kuryluk
Assistant Attorney General
The Capitol
Albany, New York 12224-0341
(518) 776-2599
Amanda.Kuryluk@ag.ny.gov

Dated: Saratoga, New York
June ____, 2023

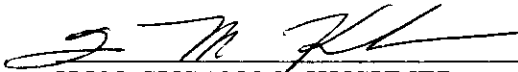
IT IS SO ORDERED

Signature only on the next page

IT IS FURTHER ORDERED that in the event any paragraph of this Order is later found to be in violation of any Federal statute or regulation or any New York State statute or regulation, then it is the directive of this Court that the remaining provisions of this Order shall be severed and remain in full force and effect.

IT IS SO ORDERED,

Dated: ~~August~~ ^{Sept 20}, 2023
Albany, New York


HON. SUSAN M. KUSHNER
Acting Justice of the Supreme Court

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Exhibit A—OTDA March 11, 2021 Letter

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Exhibit B—Sample Notice to Potential Class Members Sent on or About June 3, 2021

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Exhibit C—EJC correspondence dated July 6, 2021

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INDEX NO: 905507-15

NYSCEF DOC. NO. 14

RECEIVED NYSCEF: 06/20/2023

Exhibit D—EJC correspondence dated August 3, 2021

EXHIBIT A



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

LETITIA JAMES
ATTORNEY GENERAL

BARBARA D. UNDERWOOD
SOLICITOR GENERAL
DIVISION OF APPEALS & OPINIONS

March 11, 2021

Susan C. Antos
Empire Justice Center
119 Washington Ave.
Suite 301
Albany, NY 12210

Saima Akhtar
National Center for Law and Economic Justice
275 Seventh Avenue, Suite 1506
New York, NY 10001-6860

Julie B. Morse
Legal Services of Central New York
221 South Warren Street, Suite 300
Syracuse, NY 13202

Re: *Matter of Stewart v. Roberts*
AD No. 530344

Dear Counsel:

I am writing with respect to implementation in the above-referenced matter of the judgment, as modified by the Appellate Division in its February 18, 2021 opinion. The Appellate Division decision directs that the local social services districts shall send the specified opt-in notice about the ability to request an interview to each

potential class member. (Slip Op. at 6-7.) The Office of Temporary and Disability Assistance (OTDA) has determined that it will be more efficient and allow for timely notice for OTDA to send this notice to all potential class members on behalf said districts. We do not believe any modification of the judgment is needed to effectuate this efficient process.

Please advise if you have any concerns about this procedure.

Very truly yours,

LAURA ETLINGER
Assistant Solicitor General
Telephone: (518) 776-2028

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NYSCEF DOC. NO. 14

RECEIVED NYSCEF: 06/20/2023
INDEX NO: 905507-15

RECEIVED NYSCEF: 06/20/2023

EXHIBIT B

NYS OTDA – STEWART OPT-IN NOTICE
40 N Pearl Street, 11C
Albany, NY 12243

STEWART OPT-IN NOTICE

Notice Date:

Case Number:
Individual's CIN:

IMPORTANT NOTICE ABOUT PUBLIC ASSISTANCE FROM THE STATE OF NEW YORK

You are receiving this notice because you may be a class member in a lawsuit called *Stewart v. Roberts* and may be entitled to a corrective payment. The Court in *Stewart* decided that when the Department of Social Services (district) determines a person's Public Assistance (PA) eligibility, the district must consider whether the person has any vehicle loans or encumbrances when they establish the value of the vehicle. If you were denied PA or had your benefits discontinued because of the value of your vehicle, please continue reading to learn the steps you should take to find out if you may be eligible for a payment.

District records show that between July 20, 2015 and May 11, 2020, you and/or someone in your household were denied PA or had PA benefits discontinued because of a resource with a value over the PA resource limits. State level records do not show what kind of resource caused your PA to be denied or discontinued. A resource is, for example, a bank account, retirement fund or vehicle. **If you think your household's vehicle was the reason you could not get PA or your PA was discontinued during that time period, you are entitled to an interview at the district to find out if you may be able to receive a payment.**

Please call _____ to request an interview to see if you may be able to receive a payment. The district must schedule your interview within 30 days from the date you call. If you no longer reside in the district that issued the denial or discontinuance, you have the right to request that the interview take place in the district in which you currently reside. If you are not able to attend the appointment at the time chosen by the district, you may request that the appointment be rescheduled. In order to reschedule the appointment, please call the phone number above or email _____. Additionally, you may also reschedule the appointment in person at the district. If you do not remember the reason why you were denied or your benefits were discontinued, or you do not have the documents any longer, you should still request an interview and tell the district worker this. There is no penalty for calling to request the interview if you are unsure. You may be able to have the interview over the telephone, without going to the district in person.

During the interview or shortly afterward, the district may ask you to provide documents about the vehicle you owned, your vehicle loan, and other documents related to PA eligibility. They must help you obtain these documents if you tell them you are unable to get them. After reviewing the information, the district will provide you with a written notice letting you know whether or not you are a class member. If you are a class member, you may be eligible for a corrected payment of PA benefits.

If you have questions, contact the attorneys at Empire Justice Center who brought this lawsuit by emailing carloan@empirejustice.org or calling (585) 295-5837.

XL???? (05/21)

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RECEIVED INDEX NO: 905507-2023

NYSCEF DOC. NO. 14

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EXHIBIT C



Empire Justice Center

119 Washington Ave., Suite 301 ♦ Albany, NY 12210

Phone 518.462.6831 ♦ Fax 518.935.2852

www.empirejustice.org

July 6, 2021

Confidential
By Electronic Mail

Craig M. Crist
Deputy Counsel, Director of Litigation
Office of Temporary and Disability Assistance
40 North Pearl Street
Albany, New York 12243
(518) 473-0214
Craig.crist@otda.ny.gov

RE: **Stewart v. Roberts**

Dear Mr. Crist,

After our June 18, 2021 meeting you provided us a list of the phone numbers that appeared on the Stewart opt-in notices which OTDA sent out on or about June 3, 2021. We have now called every number at least once and have discovered concerns with thirty (30) of the county contact numbers which we list, with our findings, in the attached addendum.

When the Appellate Division adopted OTDA's suggested opt-in procedure, it was implicit that the procedure utilized would be effective. This has not, however, been the case. Our test calls illustrate that hundreds, if not thousands, of potential class members are effectively being denied interviews because they are provided a phone number that leaves them clueless as to what to do next. Equally concerning is the fact that at least two counties are improperly denying potential class members interviews because they are not current recipients.

To remedy these wrongs, we request the following:

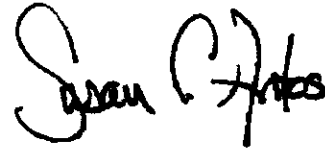
- OTDA shall immediately provide plaintiffs' counsel with a direct phone number which goes to a person in each of the forgoing districts who is familiar with the *Stewart* case, and who has the authority to schedule an interview so that class counsel can provide

people who have reached our helpline and been unable to schedule an interview with meaningful information, and so that we can follow up directly where appropriate.

- For each of the forgoing counties OTDA shall provide the local district with a list of potential class members and require each district to review each file to determine if the person was denied because the resource they owned was an automobile. This will be done no later than July 30, 2021, and each district will provide a list of persons who were denied on this basis to OTDA, who will in turn share this list with counsel for the Plaintiff class no later than August 16, 2021.
- For all persons determined by the districts to have been denied on the basis of owning an automobile, OTDA will direct the district to review their files, determine if it contains information about outstanding loans at the time of the denial.
- If the district has evidence of an outstanding loan or loans on the vehicle, it shall review the file to see if there is currently enough information in the file to decide as to whether the individual is a class member.
- At that point, each district will send notices to those people who were denied because they had an automobile, advising them that they may be a class member. The notice will include the name and phone number of a specific person at the district who is familiar with the *Stewart* case, and who can schedule an interview. These notices will be sent no later than August 16, 2021. OTDA will direct each district to keep a list of the results of the interviews and to forward a list of all persons identified as class members by name and case number to OTDA. OTDA will in turn share this list with counsel for the Plaintiff class no later than September 10, 2021.
- OTDA shall request that each of the forgoing counties provide them, on a monthly basis, for each month commencing June 1, 2021:
 - a list by name and case number of the potential class members who have requested an interview;
 - the number of interviews conducted, and the name and case number of each person interviewed;
 - whether and when a post interview notice was sent, with an indication as to whether the individual interviewed was determined to be a class member.
- OTDA shall provide the forgoing monthly data to Plaintiffs' counsel no later than five days after they receive it.

Upon your receipt and review of this letter, please let me know when you are available for a meeting to discuss next steps.

Very truly yours,



Susan C. Antos
Senior Staff Attorney

cc: Brian Matula
Tiffinay Rutnik

Addendum
Empire Justice Center Test Calls – Problem Counties

1. Albany – 6/29
No Stewart-specific message or call menu option, call goes to a switchboard where, as of 6/29, switchboard receptionists still knew nothing about the Stewart opt-in notices.
2. Broome – 6/28
Goes to a recording which instructs caller to dial an extension (none provided on the Stewart notice) or stay on the line to reach an operator. When you stay on the line, another voice comes on and says, “thank you for your call, goodbye.” Confusing recording which would lead folks to hang up without leaving a message.
3. Cayuga – 6/28
Goes to a general recording for TA unit, no specific mention of Stewart opt-in.
4. Columbia – 6/28
Call menu has a call menu with two levels, both containing an option for “Stewart litigation.” While it’s good that Stewart is mentioned, we request the recording be changed to say “if you’re calling to request an interview to find out if you are a Stewart class member, press X” as the word “litigation” may be confusing and intimidating to callers who don’t know about the case.
5. Dutchess – 6/28
Voicemail message asks for “your client’s name and date of birth” – appears to be meant for advocates, and does not mention Stewart opt-in.
6. Erie – 6/28
Although the initial call menu mentions Stewart, that option goes to another call menu which does not provide a Stewart option. If you choose the temporary assistance option from the 2nd menu it goes to a third call menu which also doesn’t mention Stewart. Very difficult to navigate.
7. Genesee – 6/28
No mention of Stewart in initial message, not all receptionists are familiar with the Stewart notice.
8. Hamilton – 6/28
Goes to the general social services number, not all staff were familiar with Stewart opt in.
9. Jefferson – 6/28
Goes to a recording which does not mention Stewart. Our caller talked to two different staff members who had no idea what the Stewart notice was.

10. Lewis -- 6/28
Goes to voicemail of Mrs. Blocke, which does not mention Stewart.
11. Livingston -- 6/28
Receptionist transferred our caller to a voicemail message of Wendy Howell which says she is out of the office "until May 18th".
12. Madison -- 6/28
Like Columbia County, uses the term "Stewart litigation" which could be confusing and intimidating to callers. We request a change of the message to something along the lines of "if you're calling to request an interview to find out if you are a Stewart class member."
13. Monroe -- 6/30
Still goes to a general recording which does not mention Stewart.
In addition, potential class member [REDACTED], left a message requesting an interview two weeks ago, but has not received a call back.
14. New York City/HRA -- 6/25
Potential class member [REDACTED] reported that she received a call back from HRA on June 25. She was given a **verbal denial by the person from HRA because [REDACTED] is currently employed.** [REDACTED] believes she was called around 4:30pm and that the caller's name began with a "C" or "K", and that the HRA employee is a male.

This response reveals two significant problems, and critical misunderstanding of the requirements of the Court order. **As you know, potential class members do not need to be currently eligible to be determined to be a class member.** The four criteria are laid out at the top of this notice: <https://otda.ny.gov/policy/gis/2021/21DC036-Attachment-1.pdf>. Second, also of critical concern, is that there should be no oral denials. If [REDACTED] was determined not to be a class member, she should have been given the aforementioned written notice.

In addition, [REDACTED], who we brought to your attention on June 22, when we emailed you the chart of individuals who were unable to obtain interviews, still has not been contacted by HRA even though he has repeatedly called and emailed the phone number and email on his notice.

15. Niagara -- 6/28
Although call menu gives a Stewart option, it requires callers to enter an SSN to speak with a representative. This should not be a requirement to schedule an opt-in interview. Callers aren't given the option to simply wait on the line to speak with someone.

16. Onondaga – 6/29
Stewart call menu option goes to the TA application department, where worker did not know about Stewart and told our intern she was the first to call about this.
17. Orleans – 6/28
Receptionist did not know about Stewart, transferred our intern to the legal department, receptionist there knew nothing about the case, was told someone would call him back and no one ever did.
18. Oswego – 6/28
Goes to a voicemail message that says it is for the “SNAP Unit,” no mention of Stewart.
19. Otsego – 6/28
Goes to voicemail of Lucy Prober, does not mention Stewart in the message.
20. Putnam – 6/28
Goes to a recording which instructs caller to apply for TA online or pick up an application, no mention of Stewart.
21. Rockland – 6/28
Worker who answered had never heard about Stewart.
22. Schenectady – 6/28
Still goes to the voicemail of Jessie McGuire, Deputy Clerk of the Schenectady County Legislature. The message gives no mention of the Stewart case.
23. Schuyler – 6/28
Goes to a general line, and both the person who answered and the person our intern was transferred to had no idea about the Stewart case or opt in procedure.
24. St. Lawrence – 6/28
Receptionist “did not want to comment on her knowledge of the Stewart case” and transferred our intern to the commissioner’s office, who had no idea about the case and transferred him to the county attorney’s office.
25. Ulster – 6/28
Goes to the voicemail of a Ms. McDonough, whose message does not mention the Stewart case.

In addition, on 7/1 potential class member [REDACTED] (a caller we told you about in a previous meeting) reported that he was told by Ms. McDonough that **he has to submit a new application for TA in order to determine whether he is eligible for an interview** to determine if he is a Stewart class member. As you know, this is not a requirement to be determined a class member.

26. Washington – 6/28
Goes to voicemail of a worker who is on vacation until 7/12/21. “For messages about a case please contact your worker.” Recording makes no mention of Stewart.
27. Wayne – 6/28
Goes to voicemail recording for the appointment desk, no mention of Stewart in the message.
28. Westchester – 6/29
Goes to a general call menu which gives no option for recipients of Stewart opt in notice.
29. Wyoming – 6/28
Goes to a general call menu, no mention of Stewart.
30. Yates – 6/28
Goes to a general call menu, no mention of Stewart.

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EXHIBIT D



Empire Justice Center

119 Washington Ave., Suite 301 ♦ Albany, NY 12210

Phone 518.462.6831 ♦ Fax 518.935.2852

www.empirejustice.org

August 3, 2021

Craig Crist, Esq.
Tiffinay Rutnick, Esq.
Office of Counsel
Office of Temporary and Disability Assistance
40 North Pearl Street
Albany, New York

RE: Stewart v. Roberts (App. Div. # 530344; Albany Co. Index No. 5507-15)

Dear Mr. Crist and Ms. Rutnick:

This letter is to follow up on our telephone conference of July 28, during which we discussed our concerns regarding your compliance with the Order of the Appellate Division in the above captioned matter. Many of our concerns were outlined in detail in the enclosed letter dated July 6, 2021, which identified specific problems in 30 social services districts and requested that the Defendant take the specific remedial steps, including, an individual file review in each social services district where we identified problems. A partial list of additional concerns is set forth in the addendum at the end of this letter.

On July 28, you indicated that OTDA would not consider individual file reviews in the problem counties but would be open to sending new, revised Stewart Opt-In notices to class members. We are amenable to this as a resolution, provided that

- I. Before the second round of Stewart Opt-In notices are sent out, OTDA will conduct a mandatory webinar training for all designated district staff. The training will provide an opportunity for district staff to ask questions and will include an overall review of the process as indicated in the GIS messages and INF's sent by OTDA, and also include the following reminders:
 - a. All designated call numbers must have a message that advises the caller that the number they have reached is assigned to the *Stewart v. Roberts* case;
 - b. All callers are entitled to an interview if they request it;

- c. A person who requests an interview can not be sent a notice advising them that they are not a Stewart class member until after the interview has been held;
 - d. No one should be told over the phone that they are not a *Stewart* class member unless the reasons are explained to them AND the oral denial is followed up by a written Determination of *Stewart* Class Membership (LDSS 5183);
 - e. Persons cannot be told that they have to apply for public assistance as a condition of getting an interview; Although class members have to be currently eligible to obtain relief, they do not have to be currently eligible to have an interview to determine if they are a class member.
2. The revised Opt-In notices will be sent in all social services districts, not just the thirty previously identified counties;
3. The revised Opt-In notices will be developed jointly by counsel for the parties, and contain the following:
 - a. an explanation that the recipient is a potential class member in the *Stewart v. Roberts* case, and may have received a previous notice, and been unable to get through on the telephone number provided;
 - b. the problems with the telephone numbers provided have been resolved, and this notice is being sent to recommend that if the recipient of the notice was unable to get through previously, that the recipient try again.
 - c. Alternatively, the recipient may mail or fax an enclosed tear off notice to OTDA at a designated address. OTDA will follow up to assure that the county schedules an interview within 30 days of that request.
4. The "Determination of Stewart Class Membership" notice (LDSS-5183) shall be amended to add the bolded language below:

Are not a Stewart Class Member. After a review of the records, it has been determined that you are not a class member because

When you were denied PA, it was because of a resource that was not a vehicle.
That resource was: _____
5. OTDA will implement proposals 1, 6 and 7 in the July 6 letter, which are restated below, with item "a" adapted to include all districts:
 - a. OTDA shall immediately provide plaintiffs' counsel with a direct phone number which goes to a person in each social services district who is familiar with the *Stewart* case, and who has the authority to schedule an interview so that class counsel can provide people who have reached our helpline and been unable to schedule an interview with meaningful information, and so that we can follow up directly where appropriate.

b. OTDA shall request that each of the thirty problem counties provide them, on a monthly basis, for each month commencing June 1, 2021:

- the total number of potential class members who requested an interview that month, including those who left a voice mail message requesting an interview; the last four digits or letters of the case number of each caller.

- the total number of interviews conducted that month; the name and case number of each person determined to be a class member; the last four digits or letters of each person determined not to be a class member;

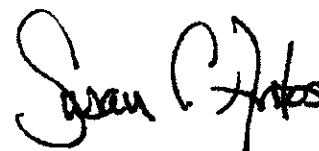
- the number of *Determination of Stewart Class Membership* notices (LDSS-5183) sent that month, with total tally of how many of those interviewed were determined to be a class member, and the total number of those who were determined not to be class members.

c. OTDA shall provide the forgoing monthly data to Plaintiffs' counsel no later than five days after they receive it.

Unless OTDA can assure us that it will immediately implement the forgoing remedy or the remedy proposed in our letter of July 6 or take similar mutually agreeable corrective action within **ten days of the date of this letter**, we will have no alternative but to make a motion to compel meaningful compliance.

We look forward to your response. Thank you for your attention to this matter, and please do not hesitate to contact me if you have any questions or concerns.

Sincerely,



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cc: Laura Etlinger, Esq.
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 Attorney General of the State of New York
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