UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Lance Newkirk, Christopher G., and Tara V., on behalf of themselves, and all those similarly situated, *Plaintiffs,* v. John. E. Imhof,[1] Commissioner of the Suffolk County Department of Social Services, in his official capacity, *Defendant.*	Case No. 2:19-cv-04283-NGG-PK

Memorandum of Law in Support of Plaintiffs' Motion for Civil Contempt, Enforcement, Reformation, and Extension of Jurisdiction

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[1] Pursuant to Fed. R. Civ. Pro. 25, when a public officer is a party in an official capacity and ceases to hold office while an action is pending, the officer's successor is automatically substituted as a Party. In 2024, Frances Pierre stepped down as Commissioner of the Suffolk County Department of Social Services and was replaced by John Imhof.

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I. PRELIMINARY STATEMENT

Plaintiffs are low-income disabled individuals who have applied for or are receiving public benefits from the Suffolk County Department of Social Services ("SCDSS"). Plaintiffs commenced this action to challenge Defendant's failure to meet its obligations under the Americans with Disabilities Act to ensure Plaintiffs have meaningful access to public benefits. On October 25, 2022, following certification of the Plaintiff class, this Court approved the parties' Stipulation and Order of Settlement ("2022 Stipulation") and on October 25, 2022, entered an Order ("2022 Order") directing Defendant to comply with the 2022 Stipulation and the Americans with Disabilities Act ("ADA") to ensure that disabled class members have meaningful access to public benefits. Dkt. Nos. 82-1, 95. Notwithstanding the 2022 Order and subsequent amendments in 2024 and 2025 thereto (collectively, the "Orders"), Defendant continues to unlawfully handle class members' requests for reasonable accommodation and fail to meet his obligations under the ADA. The vast majority of reasonable accommodation requests made are regarding temporary housing assistance. Plaintiffs thus focus on Defendant's non-compliance in that area.[2]

Despite regular and detailed communications from Plaintiffs over nearly three years, Defendant has failed to come into compliance with the terms of the Orders and the ADA. The Court twice extended its jurisdiction at the parties' request and approved amendments that required more directed oversight and provided Defendant the opportunity to become compliant. Yet, Defendant's performance has worsened in 2025, with a consistent monthly rate of non-compliance at an alarming 29–71%, shown in cases produced to Plaintiffs monthly between January and

[2] The Plaintiff class includes applicants and recipients of SNAP, Medicaid, and Temporary Assistance ("TA"). However, per Defendant's data, most months reflect no reasonable accommodation requests related to SNAP or Medicaid.

October 2025. This dramatic failure necessitates a change in approach and this Court's further intervention.

The Orders permit the Court to extend its jurisdiction in the event of Defendant's non-compliance. Dkt. Nos. 95 ¶ 9; 104 ¶ 9; 109 ¶ 3. The monitoring data provided by Defendant demonstrates continuing and substantial systemic non-compliance with the Orders and with federal statutory and regulatory requirements, leaving many class members without meaningful access to benefits. As set forth in detail below and in the accompanying Exhibits and Declarations, the evidence shows, as just a few of many examples, troubling non-compliance rates arising out of the random sample productions made by Defendant to Plaintiffs between January and October 2025:

- Class members who are amputees or individuals with mobility-related disabilities frequently request placement without stairs. In **27%** of cases where Defendant granted these requests on paper, he still placed class members in housing with steps as a purported "suitable alternative."
- Every month, numerous class members request as a reasonable accommodation single occupancy housing, for reasons such as being immunocompromised or having PTSD. Even when approved, Defendant frequently places such class members with between one and *eleven* roommates and incorrectly describes such placement as a "suitable alternative." Defendant non-compliance in improperly placed class members with roommates despite granting their requests for single occupancy is **50%**.
- Since the 2024 Amendment went into effect, Plaintiffs' counsel have identified at least 11 cases (**16%**) in the random sampling where Defendant did not properly engage in the required interactive process—separate from the many cases where

> Defendant failed to continue the interactive process after provision of an alternate accommodation—by failing to properly assist with obtaining medical documentation when Defendant requires it; inadequate follow-up with class members when there is an issue with medical documentation; denying reasonable accommodation requests as unrelated to a disability by requiring class members to use "magic words" when making requests; and failing to explore alternative accommodations in an individualized collaborative process, within a reasonable time.

Overall, Plaintiffs' counsel continues to identify high rates of non-compliance, catching obvious violations of the ADA and terms of the Orders. As detailed below, Courts do not hesitate to issue Orders of Contempt and related sanctions and relief in circumstances similar to this case where there is documented, systemic non-compliance with the Court's Orders. Plaintiffs thus ask the Court to issue an order: (1) finding Defendant in contempt of the Orders; (2) enjoining Defendant to comply with the Orders; (3) extending the Court's jurisdiction for 24 months from issuance of a decision on this motion, subject to further extension if Defendant's non-compliance continues; (4) appointing a third party to conduct ADA trainings for SCDSS staff and provide oversight; (5) appointing an independent monitor; (6) amending several provisions of the 2022 Order pursuant to Fed. R. Civ. P. 60(b)(5); (7) awarding Plaintiffs' counsel their reasonable attorneys' fees and costs for time spent on this motion in addition to time for ongoing monitoring; and (8) for such other and further equitable relief as determined by this Court to be just and proper.

II. STATEMENT OF THE CASE

A. PROCEDURAL HISTORY

Plaintiffs commenced this action on July 25, 2019, to challenge Defendant's failure to provide members of the Plaintiff Class[3]—individuals with disabilities residing in Suffolk County who applied for or are receiving benefits from SCDSS—with reasonable accommodations as required by law, because Defendant's failure to provide such accommodations was routinely resulting in denial, loss, or limited access to critical public benefits. The Court certified the Plaintiff Class by order dated August 26, 2020. Dkt. No. 60. The Parties thereafter negotiated and filed the Stipulation and Order of Settlement on March 15, 2022 (Dkt. No. 82-1), which this Court approved on October 25, 2022 (Dkt. No. 95). The 2022 Order directs Defendant to comply with the provisions of the settlement and provides that the Court shall retain jurisdiction for the purpose of enforcement matters as outlined in the 2022 Stipulation.

In addition to Plaintiffs' many letters detailing specific case non-compliance counsel identified through monitoring efforts, on August 20, 2024, Plaintiffs sent Defendant a letter detailing his systemic non-compliance with critical components of the 2022 Stipulation, including by issuing improper denials and offering unsuitable alternative accommodations. *See* Goldman Ex. 4; Goldman Decl. ¶¶ 10–11. Plaintiffs inquired whether Defendant would be amenable to extending the Court's jurisdiction to provide Defendant adequate time to come into compliance. Plaintiffs suggested the Parties collaborate to extend the monitoring period by consent rather than seek contempt or enforcement by the Court unless absolutely necessary. After two meetings of the

[3] The Plaintiff Class is defined as: "All Suffolk County residents with disabilities who: (1) have applied for or will apply for Supplemental Nutrition Assistance Program ("SNAP"), Medicaid, or Temporary Assistance ("TA") from the Suffolk County Department of Social Services ("SCDSS") since July 1, 2018, and are entitled to reasonable accommodations in the application process to participate in or benefit from these programs; and/or (2) have been found eligible for such programs and are entitled to reasonable accommodations in order to enjoy equal opportunity to participate in or benefit from them." Dkt. No. 60.

parties in September 2024, Defendant agreed to enter into a stipulated agreement on November 14, 2024 ("2024 Amendment"), to address known non-compliance, which extended the Court's jurisdiction until August 15, 2025, and continued Defendant's monthly reporting requirements as outlined above.

This Court currently retains jurisdiction over this matter "until the end of Phase II,"[4] on December 15, 2025, and the Orders provide that the Court "shall continue jurisdiction until the Court (1) decides any motions made by Plaintiffs for enforcement [based on systemic non-compliance]; (2) such time as directed by the Court, in the event the Court decides any such motion in favor of the Plaintiffs; or (3) such time as may be extended by agreement of the Parties in modification of [the 2022 Order]." Dkt. No. 82-1 ¶¶ XIV.A-B; *see also id.* ¶ XIII.A. Prior to filing a motion alleging systemic non-compliance, Plaintiffs must provide Defendant with a 30-day written notice and meet and confer with Defendant regarding the claimed violations and possible solutions. *Id.* ¶ XIII.B. "If the Parties are unable to informally resolve the dispute, Plaintiffs may file the motion with this Court alleging a claim of systemic non-compliance and seeking enforcement of the terms of this Order, and for appropriate relief, including contempt." *Id.* ¶ XIII.C.

Defendant's systemic non-compliance continued following the 2024 Amendment and prompted Plaintiffs to send Defendant written notice on March 7, 2025 of the nature and specifics of such non-compliance (Dkt. No. 82-1 ¶ XIII.B.), informing Defendant of Plaintiffs' intent to file an enforcement motion. Goldman Ex. 5. The Parties met and conferred on June 27, 2025, but were unable to informally resolve the dispute. On August 1, 2025, the Parties agreed to an additional

[4] Per the 2022 Stipulation, Phase II began nine months from the execution of the agreement, following Phase I (implementation phase), and continues until the completion of the Court's jurisdiction. Dkt. No. 82-1 ¶ XI.A.2. Throughout Phase II, Defendant is required to make monthly and quarterly productions to Plaintiffs for monitoring purposes. *Id.* ¶ XI.C–D.

four-month extension of Phase II and this Court's jurisdiction, to December 15, 2025 ("2025 Amendment").

On September 10, 2025, Plaintiffs sent Defendant proposed terms for a fourth amendment to the stipulation and requested a meeting. Defendant's counsel did not make themselves available for a meeting with Plaintiffs until October 31, then refused to entertain further amendments.

On October 22, 2025, Plaintiffs' counsel again sent Defendant notice of our intent to file a motion alleging systemic non-compliance and incorporated the allegations made in our March 7, 2025 notice. Goldman Ex. 6. Plaintiffs requested a meeting with Defendant during the weeks of October 27 or November 3 to discuss "the claimed violations and possible solutions." Dkt. No. 82-1 ¶ XIII.B. Defendant stated on October 31 that he would provide his availability for such a meeting, but as of the date of this filing, has not done so.

B. DEFENDANT'S OBLIGATIONS UNDER THE ORDERS

The 2022 Stipulation requires Defendant to, among other things, "afford reasonable accommodations to A/Rs with disabilities at every point of interaction" in a "collaborative, interactive process." Dkt. No. 82-1 ¶¶ VII.A.1, VII.A.6. Additionally, "Defendant shall assist A/Rs, as needed, in compiling and reporting any information that Defendant may need during the collaborative and interactive process of determining the need for a reasonable accommodation." Dkt. No. 82-1 ¶ VII.C.12. "When an A/R with a disability applies for an emergency or expedited benefit or service . . . Defendant must determine the need for reasonable accommodations expeditiously within the same day . . . . If the reasonable accommodation cannot be implemented on the same day, Defendant will notify the A/R in writing, including a suitable reasonable alternative, where feasible that will be provided to ensure that *meaningful provision* of the emergency benefit or service is not unreasonably delayed." *Id.* ¶ VII.E.5.a. (emphasis added). Class members are deprived of meaningful access to Defendant's benefits and programs where

Defendant failures "to modify existing facilities and practices." *Disabled in Action v. Bd. of Elections in City of New York*, 752 F.3d 189, 197 (2d Cir. 2014); *see also Henrietta D. v. Bloomberg*, 331 F.3d 261, 273 (2d Cir. 2003) (relevant inquiry is "whether those with disabilities are as a practical matter able to access benefits to which they are legally entitled"). Defendant must also provide specific monthly and quarterly monitoring reports to Plaintiffs. Dkt. No. 82-1 ¶ XI.B.1.a. ¶ XI.C.

The 2024 Amendment adjusted the reporting obligations requiring Defendant to make all productions on a monthly basis. Dkt. No. 104 ¶¶ 4–7. Under the 2024 Amendment, Defendant must produce seven complete case files, randomly generated by Plaintiffs, to serve as quality assurance sampling (in lieu of 20 files quarterly, as previously required). The amendment also added additional obligations for Defendant to engage in internal quality management. *Id.* ¶¶ 3, 5–7; *see also* Dkt. No. 82-1 ¶ XI.D.1.c. Plaintiffs calculate Defendant's rates of non-compliance based on evidence from the seven randomly selected monthly case files post-2024 Amendment and identify concerning patterns and trends based on those case files and Defendant's monthly log of reasonable accommodation denials.

C. DEFENDANT'S PERVASIVE FAILURES TO COMPLY WITH THE ORDERS

As described below, Plaintiffs have identified an increasing number of cases in which Defendant is non-compliant with the terms of Orders as well as with the most basic tenets of the ADA. Even following the 2024 Amendment, Plaintiffs still routinely flag for Defendant an average rate of 46% non-compliance evident in the case files, and the denial logs continue to reflect disturbing patterns of practice. Defendant's monthly logs of all denied reasonable accommodation requests also reflect substantial non-compliance, as well as a fundamental misunderstanding of the ADA. The details of non-compliance including how Plaintiffs arrive at the percentages referenced

in this brief are detailed in the accompanying Declaration of Plaintiffs' attorney Maya Goldman ("Goldman Decl.").

i. Defendant Routinely Fails to Implement Reasonable Accommodations and Places Class Members in Inaccessible Housing

When Defendant grants a class member's request for reasonable accommodation but claims the requested reasonable accommodation is not immediately available, Defendant offers an alternative accommodation. Plaintiffs' review of Defendant's data shows that of the 46 case files where a class member was granted an accommodation between January and October 2025, 12 (26%) were offered an unsuitable alternative that did not implement their reasonable accommodation or fully meet their needs. *See* Goldman Decl. 122. Class members have typically waited weeks to be transferred to placements that meet their approved reasonable accommodations—if they are ever met at all. Some class members did not show up to their inadequate placements. *See* Goldman Decl. ¶¶ 89, 107, 112, 123. Defendant's own notes reflect the inadequacy of the alternatives offered, noting whenever an alternative is provided, that the A/R is placed with an alternative "while the Department continues to find a *suitable placement* to meet the RA" (emphasis added). *See* Goldman Decl. ¶ 74; Goldman Ex. 69 (DAFH No. 8978985L) at 16. Class members are faced with the impossible choice of accepting unsafe and unsuitable housing, or refusing the placement and having to sleep unhoused.

Unhoused class members needing shelter or temporary housing assistance ("THA") from SCDSS commonly have documented or obvious needs for their requested placement without stairs. Even when Defendant grants these requests, he routinely places class members in housing with steps. The data shows high rates of class members whose requests for no stairs were "granted" in theory, but actually placed in housing with stairs. Of the seven August 2025 case files, two (29%) requests for placement with no stairs were granted on paper and never implemented. Goldman

Decl. ¶ 106. In one case, Defendant placed the class member—an amputee who uses a walker and who, according to Defendant's notes, is "very limited in walking, standing . . . stairs/climbing"—in housing with one step. Goldman Ex. 48 at 6; *see also* Goldman Ex. 20 at 4–5. The class member remained in this placement, without reasonable accommodation, for ten days. In the second case, Defendant initially placed the class member—who was in and out of the hospital—in housing with one step, and then subsequently transferred him to different housing with even more steps. *See* Goldman Ex. 49; Goldman Ex. 20 at 4 (noting second placement location had three steps and third placement location had five steps). In a previous request for emergency housing in May 2025, Defendant "granted" this same individual's request for no stairs and then placed him in a setting with six steps. Goldman Ex. 17 at 5.

Every case file sampled in June 2025 included a request for placement without stairs. Goldman Ex. 17 at 2–6. Defendant "granted" one such class member's request for no stairs but the temporary housing in which the class member was placed on May 22, 2025, required traversing a *full flight* of stairs to access the location. *See* Goldman Ex. 16 at 5. As of June 1, 2025, Defendant had still not implemented her accommodation and terminated her temporary housing assistance due to her unauthorized absence. *Id.* Records in another class member's file indicated his need for a reasonable accommodation of no stairs due to seizures. However, Defendant did not address this request and there is no indication in Defendant's files how many stairs the class member had to navigate in the placement Defendant provided. *Id.* Defendant then terminated assistance to this class member on May 7 because of his "absence" from his inadequate temporary housing placement, effectively denying his right to benefits altogether.

One class member in Defendant's May 2025 production made a request for no stairs due to an open ulcer on her foot and swollen ankles and feet, which Defendant described as visible.

Defendant approved her request but did not meet it, instead placing her with five steps to get into the kitchen. This was particularly problematic given her granted accommodation for refrigerator access to store her insulin, which she would need to access every day, multiple times per day, by traversing those steps. *See* Goldman Ex. 14 at 5.

Every month, class members also make requests for reasonable accommodation for single occupancy placement for reasons such as being immunocompromised or having PTSD. Even when Defendant approves these requests on paper, he often places class members needing individual living arrangements with roommates and characterizes this as a "suitable alternative."

Defendant's May monthly production included a case in which the 69-year-old class member's request for single occupancy due to depression and schizophrenia was approved, but Defendant placed him with a roommate during the time period between his request on April 21 until his discharge on May 15, which was attributed to an unauthorized absence, effectively denying him meaningful access to housing for three weeks. *See* Goldman Ex. 14 at 4–5. Defendant placed this individual with a roommate despite him submitting a doctor's letter describing his need of a private space as "urgent" for his mental and physical wellbeing. *Id.* According to Defendant's notes, this individual's prior granted request for single occupancy in February 2025 was also not fulfilled. Despite granting on paper another class member's request for single occupancy in July 2025, Defendant did not implement the accommodation and instead placed the class member with 11 roommates. Unsurprisingly, the class member did not show up to this placement, leaving her without housing. When she returned to SCDSS 12 days later to once again request single occupancy, Defendant again granted the request on paper but again placed her with a roommate. *See* Goldman Ex. 46.

Defendant's June 2025 production included a case file of a class member who requested a walk-in shower and handrails in the bathroom due to using a walker and only having one hip as a result of hip and spinal injuries and failed surgeries. Goldman Ex. 42. Despite granting her reasonable accommodation requests, Defendant provided her with an unsuitable alternate of a standard shower. On May 5, the class member submitted a handwritten note to Defendant that reads: "I was put into a DSS facility that doesn't meet my physical capability's [sic] . . . I had to have a hip replacement that went wrong it had to be removed so I have 1 hip constantly in and out of hospitals due to infections. I walk with a walker and it's very difficult to get around and I have spinal problems . . . . I need a place that would fit my needs. I haven't showered since April 24th the day I got to [Defendant's placement] due to not being able to get into a tub shower with nothing to hold onto." *Id.* Per the case notes, Defendant *never* transferred the class member to a placement with an accessible shower, ultimately discharging her on June 14 for an unauthorized absence—nearly two months after she was placed with a standard shower, leaving her unable to bathe herself for that entire period. Goldman Ex. 43.

In one troubling case, Defendant granted a class member's request for a private cooking area due to an autoimmune disease but placed him in an "alternative" with a "shared cooking area while department continues to find a suitable placement to meet the RA." Goldman Decl. ¶ 74; Goldman Ex. 32 at 8. Such placement was unsuitable and unsafe for the class member, who slept in his car as a result. Goldman Ex. 1 (RM Decl. ¶ 15). When he returned to SCDSS again to make the same reasonable accommodation request, Defendant again granted it on paper but did not implement it, placing him without a private kitchen, and he again slept in his car, having effectively been denied the benefit to which he was found entitled. *Id.* ¶ 17.

On May 9, 2025, a class member requested a reasonable accommodation of placement with her daughter as her caretaker in a private room with a private bathroom, refrigerator, and access to a kitchen as the class member has chronic acute pancreatitis and is on a specialized diet. Defendant approved the request that day, but placed her in housing with a shared kitchen and bathroom shared by approximately 12 people. Goldman Ex. 2 (DC Decl. ¶ 22); Goldman Ex. 69 (DAFH No. 8978985L) at 15. Because of the inadequacy of the placement Defendant offered, the class member refused the placement and called Defendant daily to inquire whether there was an available placement with a private bathroom, without success. She subsequently requesting a fair hearing, during which "the Agency was unable to state what efforts the Agency made to find a housing placement which met the [class member's] Reasonable Accommodation request, how many sites were considered by the Agency or if the Agency considered placement in a hotel or motel." Goldman Ex. 69 at 15. Despite the Office of Temporary and Disability Assistance's ("OTDA") decision that Defendant's placement was insufficient to meet the class member's needs and directing Defendant to provide her with temporary housing consistent with her needs, Defendant never provided her with such. *Id.* (DAFH No. 8978985L) at 17; DC Decl. ¶ 38.

Despite being legally able to place class members in motels/hotels for shelter placement when suitable housing to meet their accommodations is not available, Defendant refuses to do so, instead placing class members in placements that do not afford them meaningful access to housing. On December 16, 2024, a class member applied for THA and requested a reasonable accommodation of single occupancy. Goldman Ex. 70 (DAFH No. 8898418Z) at 1. Defendant asserted that no such rooms were available and placed the individual in "alternate" shelter. *Id.* at 2. The class member requested a fair hearing the following day. *Id.* During the hearing, Defendant's representative argued Defendant had complied with the ADA, insisted that Defendant

"is not able to use hotels or motels for shelter placements," and that because the individual had self-discharged from the placement, their case for THA was most likely closed. *Id.* at 4. OTDA found that the record failed "to establish that [Defendant] made appropriate efforts to locate and secure housing which meets the Appellant's needs for health and safety as required . . . . Therefore, [Defendant]'s determination as to the adequacy of the Appellant's temporary housing assistance placement was not correct and cannot be sustained." *Id.*; *see also* Goldman Ex. 69 (DAFH No. 8978985L) at 15.

On May 16, 2025, Plaintiffs' counsel wrote to Defendant regarding his refusal to place A/Rs in motels or hotels, an alternative available to Defendant that would enable him to satisfy numerous class members' granted requests for reasonable accommodations. Plaintiffs have repeatedly reminded Defendant that according to OTDA policy directive 94 ADM-20, "When no other suitable temporary or permanent housing, either public or private, is available to house an eligible homeless person, Department regulations 18 N.Y.C.R.R. 352.3(e) and (f) authorize an allowance to be made for shelter in a hotel or motel." However, for nearly the entirety of Phase II, Defendant maintained that SCDSS does not place A/Rs in motels/hotels as a justification to deny certain reasonable accommodation requests. *See* Goldman Decl. ¶¶ 118, 171; Goldman Ex. 2 (DC Decl. ¶ 27).

In multiple administrative hearings before OTDA, the State agency that supervises all County Departments of Social Services, the Defendant has been told that its refusal to utilize hotel and motels is improper. In Decision After Fair Hearing ("DAFH") No. 8496439N (Sept. 14, 2022), the OTDA Commissioner noted that Defendant "has been directed in 2018, 2020 and 2021 regarding appropriate actions for addressing the needs of medically vulnerable homeless people" but has failed to take such action or comply with state regulations. Goldman Ex. 71 at 5 (arguing

that Defendant "should have placed the Appellant in alternate temporary housing, i.e., hotel/motel placement"). The Commissioner ultimately directed Defendant to follow the appropriate protocol "when receiving requests from medically vulnerable homeless individuals." *Id.* In a recent DAFH on this issue, Defendant was warned, yet again: "While the Commissioner does not direct the Agency to provide any specific THA placement to the Appellant, the Agency is reminded of its obligation to determine, based upon the particular circumstances, the most appropriate temporary housing assistance, which includes placements at hotel/motel facilities as authorized by 18 NYCRR 352.3(e)." Goldman Ex. 69 (DAFH No. 8978985L) at 17.

ii. Defendant Does Not Engage in the Required Interactive Process with Class Members to Assess and Implement Reasonable Accommodation Requests

One of the foundational provisions of the 2022 Order is that Defendant engage in a collaborative and interactive process with class members to assess and implement reasonable accommodation requests. Between January and October 2025, Plaintiffs' counsel have identified 11 cases (16%) where Defendant did not properly engage in the interactive process by failing to properly assist with obtaining medical documentation when Defendant requires it; inadequate follow-up with class members when there is an issue with medical documentation; denying reasonable accommodation requests as unrelated to a disability by requiring class members to use "magic words" when making requests;[5] and failure to explore alternative accommodations in an

[5] For example, one case in Defendant's February 2025 production reflected that the A/R requested her own room in part because she had been assaulted by a [redacted] motel resident. Defendant did not consider the assault when assessing her request nor did he engage in an interactive process to ascertain whether the assault could have resulted in a qualifying disability, such as PTSD, that would require reasonable accommodation. In response to Plaintiffs' April 23, 2025 letter raising these concerns, Defendant wrote: "A 'prior assault' is not in itself a disability. While a disability may result from an assault (e.g. PTSD), Defendant requires medical documentation confirming such. As the records show, Ms. P[redacted] did not provide any medical documentation, and so her request was properly denied." Goldman Ex. 9 (Defendant's June 4, 2025 Letter to Plaintiffs) at 3.

individualized collaborative process, within a reasonable time. Goldman Decl. ¶¶ 124, 131–133, 135, 161; Goldman Ex. 1 (RM Decl.) ¶¶ 11, 14–16, 18, 26, 30.

As a particularly egregious recent example, in May 2025, a mother (MD) and her 12-year-old son (JD) who are both diabetic applied for THA assistance. JD has type-1 diabetes, a potentially life-threatening condition in children.[6] On the day of application, MD requested, among other accommodations, a refrigerator to store their insulin. Goldman Decl. ¶ 80. Instead of immediately providing a placement with a refrigerator to prevent insulin spoilage, or verifying information by directly looking at the insulin bottles, or contacting a pharmacy to verify the proper storage of the medication, Defendant required a doctor's letter and pended the request for ten days. The mother signed HIPAA releases for their medical providers the same day as her application. *Id.* ¶¶ 80–81. The case notes show that Defendant made *one* call to a provider (though the notes do not indicate which one). *Id.* ¶ 81. Case notes do not indicate any contact with the mother by Defendant during the ten-day window to inform her that providers were unable to be reached. Fourteen days after the reasonable accommodation request, Defendant denied it for failure to provide medical documentation.

iii. Defendant Relies on Improper Bases to Deny Reasonable Accommodations

Defendant routinely denies class members' accommodation requests by declaring them "unreasonable." To deny a reasonable accommodation request for being "unreasonable," Defendant must substantiate a fundamental alteration, undue burden, or direct threat, and sufficiently explain in writing his reasoning. 28 C.F.R. § 35.164. However, recent monthly productions reflect Defendant is regularly denying reasonable accommodation requests for being "unreasonable" without presenting evidence establishing a permissible basis for denial. Nor has

[6] Gisela Dahlquist & Bengt Källén, *Mortality in Childhood-Onset Type 1 Diabetes: A population-based study*, 28 DIABETES CARE 2384 (2005).

Defendant engaged in the interactive process with these class members to explore alternative accommodation. Defendant has denied the following requests, among others, for being unreasonable: clean environment due to asthma; clean environment due to daughter needing wound care every 6–8 hours; smoke-free environment due to lung/breathing issues; quiet environment due to children's autism. Goldman Ex. 6 at 13–14.

Plaintiffs' letters to Defendant repeatedly expressed concern that Defendant was also non-compliant with the terms of the Stipulation governing when and how Defendant may take adverse action against class members with disabilities. Defendant's notes indicating a reasonable accommodation request has been denied—or a pre-existing accommodation has been terminated or the A/R discharged—for ineligibility due to non-compliance with an eligibility requirement almost never address whether Defendant has assessed whether the violation could be due to a disability or unmet reasonable accommodation. Defendant has admitted his failure to properly engage in this process has resulted in denial of access to benefits and services. *See* Defendant's June 27, 2025 Letter to Plaintiffs. In MT [redacted]'s case, Defendant acknowledged: "Ms. MT [redacted]'s THA request was denied as she was found to be previously ineligible for TA/THA because of her failure to submit required documentation with her TA application on November 27, 2024, prior to Defendant's receipt of the doctor's note. However, upon review of Ms. MT [redacted]'s case, Defendant evaluated the denial and determined that her disability may have affected her eligibility determination, and so the denial was reversed and Ms. MT [redacted]'s THA request and RA request were granted, effective February 7." Defendant admitted improperly leaving Ms. MT [redacted] without access, then claimed compliance after Plaintiffs raised the issue and forced redetermination. Goldman Ex. 11 at 5.

Plaintiffs have also identified an increasing trend of Defendant pending or denying reasonable accommodation requests to follow up with treating physicians who have already provided clear support for class members' reasonable accommodation requests. Goldman Decl. ¶¶ 88, 105, 112, 116. Defendant's practice violates paragraphs VII.G.1.b. and VII.C.7. of the Stipulation, as well as the ADA.[7]

III. ARGUMENT

A. DEFENDANT'S CONDUCT WARRANTS A FINDING OF CONTEMPT

Courts have "the inherent power to hold a party in civil contempt in order to enforce compliance with an order of the court or to compensate for losses or damages. *Powell v. Ward*, 643 F.2d 924, 931 (2d Cir. 1981) (internal quotation marks and citations omitted). "A court may, . . . hold a party in contempt for violation of a court order when the order violated by the contemnor is clear and unambiguous, the proof of noncompliance is clear and convincing, and the contemnor was not reasonably diligent in attempting to comply." *S. New England Tel. Co. v. Glob. NAPs Inc.*, 624 F.3d 123, 145 (2d Cir. 2010) (internal quotation marks and citations omitted). Plaintiffs are not required to establish that a defendant's violation was willful. *Donovan v. Sovereign Sec. Ltd.*, 726 F. 2d 55, 59 (2d Cir. 1984). The moving party bears the burden of establishing by "clear and convincing evidence that the alleged contemnor violated the district court's edict." *King v. Allied Vision, Ltd.*, 65 F.3d 1051, 1058 (2d Cir. 1995). "In the context of civil contempt, the clear and convincing standard requires a quantum of proof adequate to demonstrate a 'reasonable certainty' that a violation occurred." *Levin v. Tiber Holding Corp.*,

[7] *See, e.g., Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the ADA*, U.S. EEOC, q. 8 (Oct. 17, 2002) (Defendant cannot ask for documentation when "the individual has already provided the employer with sufficient information to substantiate that s/he has an ADA disability and needs the reasonable accommodation requested.")

277 F.3d 243, 250 (2d Cir. 2002) (citation omitted). A court may find "clear and convincing" evidence of violating a court order "even if not by every instance raised by [plaintiff]." *Aquavit Pharms. v. U-Bio Med, Inc.*, 19 Civ. 3351, 2019 WL 8756622, at *7 (S.D.N.Y. Dec. 16, 2019). Moreover, a court can find a party in contempt if it has "not been reasonably diligent and energetic in attempting to accomplish what was ordered" by the court. *E.E.O.C. v. Local 580, Int'l Ass'n of Bridge, Structural & Ornamental Ironworkers*, 669 F. Supp. 606, 611 (S.D.N.Y. 1987) (internal citations omitted), *aff'd sub nom., E.E.O.C. v. Local 580, Int'l Ass'n of Bridge, Structural & Ornamental Ironworkers, Joint Apprentice-Journeyman Educ. Fund*, 925 F.2d 588 (2d Cir. 1991). A defendant has not been reasonably diligent "when they ignore a court order or take only superficial actions that strain both the language and intent of the order. It is even more troubling when a defendant takes actions that contravene the provisions of the order." *Aquavit*, 2019 WL 8756622, at *6 (internal quotations and citations omitted). Each of these elements is satisfied here.

B. DEFENDANT'S OBLIGATIONS ARE CLEAR AND UNAMBIGUOUS

Defendant's obligations are set forth in painstaking detail within the 50-page 2022 Stipulation (Dkt. No. 82-1), the 2024 Amendment (Dkt. No. 104), the 2025 Amendment (Dkt. No. 109), as well as dozens of pages of incorporated policies, including Procedures No. 899 and 899a. The 2022 Stipulation and subsequent Amendments were specifically negotiated by the Parties and approved by this Court following review. Defendant has not once pointed to a portion of these documents as purportedly unclear as a reason for non-compliance, nor has he ever sought clarification or modification from the Court. Therefore, language must be construed as clear and unambiguous to them. *See Mattina v. Saigon Grill Gourmet Rest., Inc.*, No. 08 Civ. 3332, 2009 WL 323507, at *5 (S.D.N.Y. Feb. 4, 2009) (holding that a consent decree was clear and unambiguous because "[n]ot only were the terms of the consent judgment agreed to by counsel for

petitioner and respondents, but the language was specific, and the provisions were detailed"); *see also Nunez v. New York City Dep't of Correction*, 758 F. Supp. 3d 190, 218 (S.D.N.Y. 2024) (consent decree was clear and unambiguous where "[n]ot only were the orders at issue entered on consent, after Defendants participated in negotiating and drafting their precise terms, but Defendants have never suggested to the Court that additional clarity was needed."). The Order leaves "no doubt in the minds of those to whom it was addressed . . . precisely what acts are forbidden." *CBS Broad. Inc. v. FilmOn.com, Inc.*, 814 F.3d 91, 98 (2d Cir. 2016) (internal citations omitted). Additionally, many—if not most—violations track the ADA or Section 504. Whether the stipulation "is clear and unambiguous is thus directly related to whether" Plaintiffs' rights under the ADA and Section 504 were clear and unambiguous. *Id.*

C. THERE IS CLEAR AND CONVINCING EVIDENCE OF SYSTEMIC NON-COMPLIANCE

Case file reviews, monitoring data, and Defendant's admissions, along with class member declarations overwhelmingly demonstrate systemic non-compliance with the Orders. While "no particular percentage of compliance can be a safe-harbor figure, transferable from one context to another . . . 'substantiality' [of compliance] must depend on the circumstances of each case, including the nature of the interest at stake and the degree to which noncompliance affects that interest." *Fortin v. Comm'r of Massachusetts Dep't of Pub. Welfare*, 692 F.2d 790, 795 (1st Cir. 1982) (internal citations omitted). Entitlement to subsistence-level benefits presents a great interest "making the consequences of failure to comply quite serious." *Id.* (citing *Mathews v. Eldridge*, 424 U.S. 319, 340–43 (1976); *Goldberg v. Kelly*, 397 U.S. 254, 264 (1970)). Allegations of non-compliance against Defendant are based on repeated similar acts, not on outliers, along with incorrect legal positions supporting Defendant's actions, and the interest at stake is great—meaningful access to subsistence-level benefits for individuals with disabilities.

Random case sampling data shows non-compliance rates ranging from 29%–71% between January and October 2025. Goldman Decl. ¶¶ 58–116. Defendant's systemic non-compliance includes issues that have persisted for years and new patterns that have emerged in 2025. *See Aquavit*, 2019 WL 8756622, at *4 (finding contempt where Plaintiff "has presented several instances of clear and convincing violations of the Injunction, including not only failure to remedy existing content but also affirmative actions by Defendants that *newly* violate the Injunction") (emphasis added); *MAS Wholesale Holdings LLC v. NW Rosedale Inc.*, 19-CV-1294, 2021 WL 1946380, at *5 (E.D.N.Y. May 14, 2021) (finding defendant in contempt where plaintiff identified more than two dozen instances of non-compliance with a single provision of the court's order).

Plaintiffs sent Defendant letters in response to every monthly production, explaining Defendant's non-compliance in detail. The same systemic violations occur in nearly every production. Exs. 5, 8, 10, 12, 14, 16, 18, 20, 21.

i. Failure to Provide Suitable Alternative Accommodations

Under paragraph VII.A.3 of the 2022 Stipulation (Dkt No. 82-1), "All staff of SCDSS are responsible for ensuring that persons with disabilities are provided with any and all reasonable accommodations they require while accessing and maintaining eligibility for services, programs, and Public Benefits and that the identified needs of A/Rs with disabilities are met." Under paragraph VII.E.4, (*Id.*) "Defendant shall timely provide reasonable accommodations according to the nature of the A/R's request, in order to prevent a denial or equal access to Public Benefits." Defendant has demonstrated systemic non-compliance with the requirement under the ADA and paragraphs VII.A.3, VII.D.2.d., VII.E.1.b., VII.E.2.a., VII.E.4, VII.E.5.a., and VII.E.10. (*Id.*), of the 2022 Stipulation to offer suitable alternative accommodations when a class member's requested or approved reasonable accommodation cannot be immediately implemented. Defendant also unreasonably delays implementation of full reasonable accommodation once an often

unsuitable alternative is provided, in violation of paragraph VII.E.5(a) (*Id.*). Defendant then fails to provide proper notice to A/Rs regarding the length of time that will be needed to provide the necessary accommodations in violation of paragraph VII.E.2 (*Id.*), instead giving no frame in which Defendant commits to meeting the accommodation needs, which also violates paragraph V.E.4 (*Id*.). requiring Defendant to provide timely accommodations to prevent a denial of equal access to Public Benefits. Defendant also violates paragraphs V.B and V.D. (*Id*.) by applying self-serving interpretations that violate the ADA and defy the plain meaning of the 2022 Order.

Under the ADA, an alternative accommodation may be offered if the public entity cannot immediately provide a requested accommodation if the alternative accommodation "adequately address[es] the [A/R]'s unique needs and reasonably accommodates [their] disability." *EEOC v. Ford Motor Co.*, 752 F.3d 634, 646 (6th Cir. 2014), *vacated en banc on other grounds*, 782 F.3d 783 (6th Cir. 2015). "The hallmark of a reasonable accommodation is effectiveness . . . 'It is the word 'accommodation,' not the word 'reasonable,' that conveys the need for effectiveness'. The accommodation need not be 'perfect' or the one "most strongly preferred" by the . . . plaintiff, but it still must be 'effective,' *Dean v. Univ. at Buffalo Sch. of Med. & Biomedical Scis.*, 804 F.3d 178, 189 (2d Cir. 2015) (cleaned up). "An *ineffective* 'modification' or 'adjustment' will not *accommodate* a disabled individual's limitations." *US Airways, Inc. v. Barnett*, 535 U.S. 391, 400 (2002) (emphasis in original). "Plaintiffs need not, however, prove that they have been disenfranchised or otherwise 'completely prevented from enjoying a service, program, or activity….'" *Disabled in Action v. Bd. of Elections in City of New York*, 752 F.3d 189, 198 (2d Cir. 2014). "[T]he relevant inquiry is 'whether those with disabilities are as a practical matter able to access benefits to which they are legally entitled.'" *Id.* at 199, *quoting Henrietta D. v. Bloomberg*. 331 F.3d 261, 265 (2d Cir. 2003).

"In cases where a plaintiff claims [they were] offered or given an unreasonable alternative accommodation, the court looks to the alternative accommodation to determine whether it was plainly reasonable." *Durick v. New York City Dep't of Educ.*, 202 F. Supp. 3d 277, 292 (E.D.N.Y. 2016). A dialogue about alternative accommodation is required under the Stipulation and the ADA as part of the interactive process. *See Limauro v. Consol. Edison Co. of New York, Inc.*, No. 20-CV-03558, 2021 WL 466952, at *9 (S.D.N.Y. Feb. 9, 2021) (employer violated the ADA by failing to engage in a meaningful dialogue about alternative accommodations). When medical documentation—which may only be requested when the disability or need for accommodation is not apparent—is provided, "[i]n determining whether a requested accommodation will be effective, courts should consider 'the limitations indicated by the doctors . . . . If the proposed accommodation fails 'to comply with the physician-mandated restriction[s]' it is unreasonable because it will be ineffective." *Gazvoda v. Sec'y of Homeland Sec.*, 258 F. Supp. 3d 799, 820 (E.D. Mich. 2017) (citations omitted).

Case monitoring reveals an alarming pattern of Defendant granting emergency shelter accommodations *on paper* only to provide unreasonable and ineffective "alternative accommodations" they deem "suitable" that plainly contradict class members' medical needs. Defendant presents unhoused individuals with the Hobson's choice of either accepting a medically inappropriate "alternative" or not being sheltered at all. Defendant offers unsuitable alternatives rather than following OTDA policy that permits him to secure a hotel or motel placement when no other suitable housing is available, as discussed *supra* at 12–14. On October 14, 2025, Defendant took the position that acceptance of an alternative by an A/R with no other choice but street homelessness, is evidence of "suitability," even if objectively, the placement is medically contraindicated. Goldman Ex. 17 at 1. Once an unreasonable and ineffective alternative is

"accepted," Defendant often makes little or no effort to search for an appropriate placement, often for weeks or even months.

Defendant's October 14, 2025, letter to Plaintiffs states that the Orders require provision of suitable alternatives only "where feasible" and for "whatever reason." *Id.* Defendant is incorrect. Where Defendant does not provide a suitable alternative, he must *substantiate unfeasibility* by demonstrating an acceptable basis under the ADA for failure to accommodate such as existence of an undue burden. Otherwise, the Orders would be *less protective* than the ADA, as they would require Defendant to satisfy a subjective "feasibility" standard for "whatever reason" that the ADA does not contemplate when he fails to *provide* granted accommodations. To the extent this interpretation conflicts with the ADA, the ADA controls. Dkt. No. 82-1 ¶¶ V.B., V.D. The practice of granting accommodation on paper, then delaying implementation—or never implementing the accommodation at all—fails to accommodate class members and violates the ADA and VII.A.3 of the 2022 Order (Dkt. No. 82-1) which requires *provision* of required accommodations. While the term "feasible" may in good faith describe unforeseen exigent circumstances beyond Defendant's control, such as a power outage, it does not excuse Defendant's failure to satisfy class member accommodation needs for weeks and months on end without establishing a permissible basis under the ADA.

As a particularly obvious and egregious example, class members who are amputees or individuals with mobility-related disabilities frequently are placed in accommodations with stairs. Often there are 1–5 steps in alternative accommodations; however, sometimes there is an entire flight. RM Decl. ¶¶ 9, 27; Goldman Decl. ¶ 91, Goldman Ex. 39.

The U.S. Supreme Court affirmed in *Tennessee v. Lane*, that Title II of the ADA requires accommodation of individuals who cannot climb stairs. 541 U.S. 509, 529 (2004). Placing class

members who are unable to climb steps in shelters with steps is plainly unreasonable and ineffective—it is dangerous and in direct contravention of their medical needs. It is "[a]n *ineffective* 'modification' or 'adjustment' [because it] will not *accommodate* a disabled individual's limitations." *US Airways, Inc.* 535 U.S. 391, 400 (emphasis in original). The unacceptable volume of individuals placed with stairs when they need no stairs in Suffolk indicates a systemic problem.

Similarly, when Defendant grants requests for single occupancy, often due to mental health issues, he routinely then provides an "alternative" with anywhere from one to 11 roommates. As explained above and in the declaration of GL, this practice can cause significant psychological distress. GL Decl. ¶¶ 7, 9, 10, 19. Plaintiffs have identified that in 50% of cases in the random sampling records in the January–October productions where an individual whose request for single occupancy was granted does not, in fact, receive the accommodation. In 29% of those cases, the individual then failed to show up to their placement. In an additional case where the individual did not arrive to their placement, Defendant did not grant the request until four days later despite the class member submitting a sufficient doctor's note, placing the class member with two roommates in the interim. Goldman Decl. ¶ 112. Defendant has also placed individuals who need single occupancy due to immunosuppression with roommates, presenting a physical threat to their health and safety. *See, e.g.*, RM Decl.

The lack of suitable alternative accommodations is directly linked to Defendant's refusal to utilize hotel and motel placements. *See* DC Decl. ¶ 28. In the housing context, there may not always be a suitable alternative to a class member's reasonable accommodation. Defendant could fully implement reasonable accommodations by placing individuals in motels or hotels when necessary. Defendant violates the Orders and the ADA by not considering placement in a

motel/hotel when necessary to fully meet a class member's reasonable accommodation. Defendant sidesteps his obligations by claiming he does not utilize such placements, despite knowing that he can and should utilize hotels and motels as needed, not only from Plaintiffs' many monitoring letters, but also as evidenced by his multiple fair hearings on the issue. *See* Goldman Exs. 69–72. Defendant's handling of SE's case—which Defendant admitted in his October 14, 2025, letter was mishandled—is illustrative. *See* Goldman Exs. 17, 42. SE only has one hip due to spinal and hip injuries and failed surgeries. She has a long history of infections and hospitalizations and utilizes a walker. Defendant initially placed SE in a shelter where she was unable to use the tub shower. She wrote a letter to Defendant requesting a walk-in shower after being unable to shower for two weeks. Goldman Ex. 42. Defendant granted her accommodation request on paper but then gave her a "reasonable alternate" of remaining in *the exact same shelter placement* where she was unable to shower. *Id.* She remained in this "reasonable alternate" for six weeks, until eventually being terminated, with no indication that Defendant attempted to place SE in one of the many hotels or motels in Suffolk or neighboring counties with accessible showers.

ii. Defendant's Failure to Meaningfully Engage in the Interactive Process

Defendant fails his clear and unambiguous obligation to engage in an ongoing collaborative and interactive process with class members to assess and implement reasonable accommodation requests. *See* Dkt. No. 82-1 ¶¶ VII.A.6, C.1, D.1, E.3.; Dkt. No. 104 ¶ 7.vi. Defendant also fails to follow timelines for processing and providing accommodation determinations, and implementation in violation of paragraphs V.E.4 and V.E.5(a), V.E.2(b) of the 2022 Stipulation (Dkt. No. 82-1), *see also* Dkt. No. 104 ¶ 7.vi. (requiring Defendant to produce "[a]ny documentation reflecting that DSS staff engaged in an interactive process with the A/R to offer a suitable alternative accommodation").

"Title II of the ADA . . . requires that once a disabled [individual] requests a non-frivolous accommodation, the accommodation should not be denied without an individualized inquiry into its reasonableness." *Wright v. New York State Dep't of Corr.*, 831 F.3d 64, 78 (2d Cir. 2016). "[F]ailure to engage in a good faith interactive process can be introduced as evidence tending to show disability discrimination." *Sheng v. M&T Bank Corp.*, 848 F.3d 78, 87 (2d Cir. 2017) (internal citations omitted). Good faith in the interactive process can be demonstrated "in a number of ways, such as taking steps like the following: meet with the [individual] who requests an accommodation, request information about the condition and what limitations the [individual] has, ask the [individual] what he or she specifically wants, show some sign of having considered [individual's] request, and offer and discuss available alternatives when the request is too burdensome." *Taylor v. Phoenixville Sch. Dist.*, 184 F.3d 296, 317 (3d Cir. 1999). "[M]ere speculation that a suggested accommodation is not feasible falls short of the reasonable accommodation requirement; the Acts create a duty to gather sufficient information from the disabled individual and qualified experts as needed to determine what accommodations are necessary." *Duvall v. Cnty. of Kitsap*, 260 F.3d 1124, 1137 (9th Cir. 2001), *as amended on denial of reh'g* (Oct. 11, 2001) (cleaned up).

Not only does Defendant fail to engage in the interactive process, he fails to follow his own procedures related to the Orders, including procedure 899, which was amended as part of the settlement in this case. Additionally, Defendant recently disavowed both the long-standing 10-day policy for submission of medical documents and the policy Defendant issued on March 25, 2025 requiring SCDSS staff to make multiple documented attempts to assist A/Rs with obtaining medical documentation. Goldman Ex. 15. As discussed *supra* at ¶¶ 2, 15, Defendant is non-compliant with the interactive process requirement in least 16% of cases. *See* Goldman Decl. ¶

124. These violations include: failure to assist as needed with obtaining medical documentation, failure to contact A/Rs if problems arise when trying to obtain medical documentation, failure to explore whether someone may have qualifying disabilities (denials for obesity and transgender status without exploration of underlying medical conditions), terminating or changing accommodations without interactive process, and failing to continue the interactive process when someone is placed in an alternative accommodation that does not fully meet their accommodation needs. Goldman Ex. 6. Defendant also fails to follow timelines for processing and providing accommodation determinations, and implementation, required by the Stipulation, in violation of paragraphs V.E.4 and V.E.5(a), V.E.2(b) of the 2022 Stipulation (Dkt. No. 82-1). Goldman Decl. ¶¶ 182, 183, 236.

In December 2024, this Court granted a preliminary injunction against Defendant Imhof in the case *Ahlschlager v. Imhof*, No. 24-CV-8267, 2024 WL 5168732 (E.D.N.Y. Dec. 19, 2024). Plaintiff Ahlschlager claimed Defendant violated the ADA by failing to engage in the interactive process before excluding her service animal from a shelter after an alleged incident with another resident. Defendant refused to engage in the interactive process and consider an alternative accommodation when Ms. Ahlschlager offered to muzzle the service animal. This Court found that Ms. Ahlschlager had a substantial likelihood of success on the merits of her claim due to Defendant's failure to engage in the interactive process. The court held "[t]here is no basis to claim the dog is violent by nature and SCDSS has presented the Court with no facts or law as to why muzzling the dog is an unreasonable accommodation. By refusing to consider this available precaution, SCDSS failed to comply with the ADA's requirement that the public accommodation consider changes in practices or policies that would mitigate any direct threat." *Id.* at *8.

Defendant also fails to make individualized inquiries to determine whether a dog is a service animal and improperly relies on doctors' attestations of whether an animal qualifies as a service animal rather than solely ask the dogs' handlers. Of the three random cases involving requests for placement with a service or emotional support animal between January and October 2025, Defendant failed to properly engage in the interactive process in two cases (66%). Goldman Decl. ¶¶ 131, 135.

iii. Defendant Relies on Improper Bases to Deny Reasonable Accommodation Requests

As Plaintiffs explained in our September 25, 2025 letter to Defendant, to deny a reasonable accommodation request for being "unreasonable," Defendant must substantiate a fundamental alteration, undue burden, or direct threat, and sufficiently explain his reasoning. Goldman Ex. 18. Defendant violates the ADA and the Stipulation by making a unilateral determination that a request is "unreasonable" without evidence establishing a permissible basis for denial under the ADA. 42 U.S.C. § 12111(10)(A); 28 C.F.R. § 35.164; *McMillan v. City of New York*, 711 F.3d 120, 128–29 (2d Cir. 2013). Furthermore, if Defendant believes a requested accommodation is unreasonable for a permissible basis, Defendant must present this to the class member and continue the interactive process.

Monitoring also reveals that during the last two years, Defendant routinely improperly denied reasonable accommodation requests as "location-based." Goldman Decl. ¶¶ 129, 142, 146, 160; Exs. 5, 18. "Location-based" is a term that does not exist anywhere in the Orders, ADA, Social Services Law, or OTDA regulations and policy. Many are ADA requests by people with mobility disabilities to have equal access to community and services, such as the ability to access grocery stores and public transportation, as non-disabled individuals. Defendant violates the Orders and ADA by denying these requests outright without further inquiry under this illegal basis.

D. DEFENDANT WAS NOT REASONABLY DILIGENT IN ATTEMPTING TO COMPLY WITH THE ORDERS

Defendant's violations of the 2022 Order have continued for years, necessitating amendments in 2024 and 2025. *See MAS Wholesale*, 2021 WL 1946380, at *6 (finding defendants in contempt where violations documented in October 2020 were still present in January 2021 and some were present in February in March 2021). In *MAS Wholesale*, this Court found defendants in contempt where violations had continued—and new violations emerged—for roughly five months. Here, meanwhile, Defendant's continuing and new non-compliance since the 2022 Stipulation has been ongoing for nearly three years, warranting a finding of contempt.

That Defendant fails to use diligent efforts to provide suitable and effective alternative accommodations is clear. For example, despite numerous letters and meet and confers, Defendant did not attempt to address his many forms of systemic non-compliance until at least month 15 of Phase II, via a May 7, 2024 memorandum sent to SCDSS staff. The Court need look no further than Defendant's staunch refusal to utilize hotels and motels for emergency housing, despite a state law mandate to do so and hundreds of class members who are not being properly accommodated. Defendant has been on notice of the need for more accessible temporary housing placements for many years. Goldman Decl. ¶¶ 171, 191. Defendant has not made diligent efforts to remedy these violations.

Defendant also has not made diligent efforts to adequately train SCDSS staff. Defendant provided Plaintiffs with the current version of his training materials on July 1, 2024. Plaintiffs responded by identifying several areas in which the materials were either lacking in information or offered incorrect information by letter dated August 20, 2024. Goldman Ex. 4. Per the 2022 Stipulation, Defendant's "ADA Compliance Officer shall be responsible for monitoring the proper implementation of SCDSS Section 504/ADA policies and procedures and may require additional

or periodic training for line staff and supervisors to ensure that implementation." Dkt. No. 82-1 ¶ X.F.; *see also id.* ¶ X.E. However, despite Plaintiffs raising concerns about the adequacy and accuracy of Defendant's training materials, in addition to regular correspondence from Plaintiffs regarding identified patterns of non-compliance, Defendant has failed to provide comprehensive and adequate training to all SCDSS staff or improve the training materials. To date, Defendant has not acknowledged the training portion of Plaintiffs' August 20 letter and to Plaintiffs' knowledge, as of the date of this filing, Defendant continues to use the same inadequate training materials.

Defendant's handful of actions to attempt compliance with the Orders do not constitute reasonable diligence. *See Aquavit Pharms.*, 2019 WL 8756622, at *3 (finding defendants' efforts "far from thorough" where "efforts to comply . . . have been made reactively on a piece-meal basis rather than proactively to come into compliance in all respects."). As with the defendants in *Aquavit Pharmacueticals*, who were found in contempt, Defendant here makes efforts to comply with the Orders only after Plaintiffs have brought "alleged violations to [his] attention." *Id.* Defendant has also similarly defended continued non-compliance because "Plaintiffs had never before mentioned" such issues. *Id.*. Additionally, Plaintiffs have demonstrated that Defendant has "continued to violate the [Stipulation] in multiple ways; although curing some violations, [he has] both failed to redress existing violations and affirmatively engaged in new violations." *Aquavit Pharmacueticals*, 2019 WL 8756622, at *5; *see also City of New York v. Golden Feather Smoke Shop, Inc*., No. 08–CV–3966, 2010 WL 2653369, at *11 (E.D.N.Y. June 25, 2010) (finding defendant in contempt where any affirmative steps taken to comply with the injunction were "substantially outweighed by his other activities."). In numerous instances, detailed *supra* at II.F.iii,; III.I.ii. Defendant has also improperly taken it upon himself to interpret Plaintiffs' rights

under the ADA and Section 504, disregarding Plaintiffs' guidance on such in favor of his own unsupported interpretation. *See CBS Broad. Inc.*, 814 F.3d at 99.

Further, Defendant has not been reasonably diligent in his attempts to clarify policy, as he consistently violates the Orders by failing to consult Plaintiffs' counsel on revised policies and procedures. Defendant must provide Plaintiffs' counsel with draft copies of proposed new or revised policies and procedures for review and comment before implementation. Dkt. No. 82-1 ¶ XII.A., V.E. However, in every case in which Defendant has implemented new or revised policies and procedures—at least those of which Plaintiffs are aware—Plaintiffs have learned about them only after inquiring and after they have been finalized. Goldman Decl. ¶¶ 34, 170, 171. "Plaintiffs shall have the right to allege non-compliance and move the Court for enforcement of the terms of this Order . . . with respect to the actions taken by Defendant regarding [these policies, procedures, forms, and notices]." Dkt. No. 82-1 ¶ XII.A.

As to service animals, Defendant has acknowledged "that an individual assessment for each animal needs to be done. Moving forward, DSS will provide clients who request an RA for Emotional Support Animals (dogs and miniature horses) with a Service Animal application in order to do an independent analysis of whether the animal qualifies as a service animal under the ADA notwithstanding the client's classification of the animal as an ESA." Goldman Ex. 7. Despite this representation nearly four months after the *Ahlschlager* decision, Defendant has not updated Procedure 899 to require provision of the form or a comprehensive verbal inquiry by SCDSS staff when someone presents an emotional support dog who may qualify as a service animal.

Defendant has also not been reasonably diligent with regard to the grievance process available to class members. Under the ADA, Defendant is required to "adopt and publish grievance procedures providing for *prompt and equitable* resolution of complaints." 28 C.F.R. § 35.107

(emphasis added). As Plaintiffs wrote to Defendant on March 7, 2025, review of Defendant's productions over the past two years demonstrate that the grievance process implemented per the Stipulation and Procedure 899 is fundamentally ineffective. Goldman Ex. 5. Between February 2023 and February 2025, 2,974 reasonable accommodation requests were made, 888 of which (30%) were denied. During this same span, Defendant reported only six filed grievances. Plaintiffs' counsel could only locate four in Defendant's productions, all of which were filed during 2023 Q2. Of those four, three were filed by Plaintiffs' counsel. In other words, between February 2023 and February 2025, despite 888 denied reasonable accommodation requests, only one class member filed a grievance without Plaintiffs' assistance. We also informed Defendant that we had spoken with numerous class members who were under the impression that in signing or initialing the grievance notice Defendant gave them, they were in fact filing a grievance when that was not actually the case. Plaintiffs proposed that Defendant modify his policy to address the inefficacy of the grievance process and reduce the burden on class members who wish to file grievances, but Defendant categorically refused to even discuss that issue until July 2025. Goldman Ex. 7; Goldman Decl. ¶¶ 223, 228. Defendant emailed Plaintiffs on July 2, 2025 with an updated grievance notice that included Defendant's website for the first time and agreeing to Plaintiffs' request that the service discrimination complaint form be automatically included with each grievance notice. Goldman Decl. ¶ 232. Plaintiffs responded on July 22 with several proposed edits to both the notice and complaint form. Defendant did not respond to Plaintiffs until October 31, in violation of the 2022 Stipulation's requirement that he do so within 45 days. Goldman Decl. ¶¶ 231, 232; Dkt. No. 82-1 ¶ XII.A. ("Plaintiffs shall have the right to allege non-compliance and move the Court for enforcement of the terms of this Order . . . with respect to the actions taken by Defendant regarding the documents identified in this paragraph."). Despite agreeing to include the

SCDSS website on and the service discrimination complaint form with the grievance notice in July, Defendant did not do so until December 5, 2025. Goldman Decl. ¶ 234.

Finally, Defendant has not been reasonably diligent in his engagement with Plaintiffs' counsel on non-compliance issues. Plaintiffs' counsel have sent Defendant letters identifying patterns of non-compliance in response to each of his quarterly and monthly productions under the 2022 Stipulation and 2024 and 2025 Amendments. Rather than engage with Plaintiffs to address his deficiencies to better serve A/Rs, Defendant has disregarded much of the content of Plaintiffs' letters or provided unlawful reasoning for their mishandling of cases and has similarly obfuscated during meet and confers with Plaintiffs' counsel, in violation of the Orders. Dkt. No. 104 ¶ 8; Goldman Decl. ¶¶ 13, 26, 236.

E. THE COURT SHOULD FIND DEFENDANT IN CONTEMPT OF THE ORDERS AND GRANT THE REQUESTED RELIEF

Defendant's flagrant and persistent violations of the Stipulation more than justify the imposition of an Order of Contempt and additional sanctions against Defendant. Plaintiffs seek (1) an extension of this Court's jurisdiction over enforcement of the Orders for 24 months from the date the Court issues an Order in this matter, (2) appointment of a third party to train SCDSS staff on their obligations under the Stipulation, ADA, and Section 504, and (3) appointment of an independent monitor.[8]

Courts have "broad discretion to design a remedy that will bring about compliance." *Paramedics Electromedicina Comercial, Ltda v. GE Med. Sys. Info. Techs., Inc.*, 369 F.3d 645, 657 (2d Cir. 2004) (internal citations omitted). To that end, contempt sanctions "may serve dual purposes: securing future compliance with court orders and "compensa[ting] the party that has

[8] Plaintiffs' counsel also maintains that we have a right to continued monitoring as agreed to by the Orders due to our unique vantagepoint and skillset to evaluate compliance with the ADA.

been wronged." *S. New England Tel. Co. v. Glob. NAPs Inc.*, 624 F.3d 123, 146 (2d Cir. 2010) (internal quotation marks and citations omitted); *see also Gompers v. Bucks Stove & Range Co.*, 221 U.S. 418, 441 (1911) (when a court holds a party in contempt, "the punishment is remedial, and for the benefit of the complainant"). Further, district courts have the power to appoint an independent monitor to oversee judicially ordered reforms. *Floyd v. City of New York*, 959 F. Supp. 2d 668, 676 (S.D.N.Y. 2013) (appointing a monitor to serve interests of all stakeholders by facilitating early and unbiased detection of non-compliance or barriers to compliance). In determining whether coercive sanctions are appropriate, the Court weights "(1) the character and magnitude of the harm threatened by the continued contumacy; (2) the probable effectiveness of any suggested sanction in bringing about compliance; and (3) the contemnor's financial resources and the consequent seriousness of the burden of the sanction upon him." *E.E.O.C. v. Local 638*, 81 F.3d 1162, 1177 (2d Cir. 1996) (internal quotations omitted); *see also Paramedics*, 369 F.3d at 658. When imposing coercive remedies, "district court's ultimate decision need only be reasonable." *Local 638*, 91 F.3d at 1177.

Here, all three elements weighed by Courts are satisfied: the harm is significant and self-evident; the suggested sanctions are appropriate and tailored to achieve compliance; and the sanctions are not too burdensome on Defendant. The Plaintiff class are low-income individuals with disabilities who have applied or are applying for public benefits from SCDSS because they lack the means to afford shelter and other basic necessities for daily living. In failing to properly address or implement reasonable accommodations, Defendant deprives some of the county's most vulnerable residents of accessible shelter and imposes irreversible harm. Defendant has been out of compliance with the 2022 Stipulation for nearly three years and continues to harm class members as a result. Despite regular letters from Plaintiffs and numerous meet and confers

between the parties, Defendant has not offered a comprehensive corrective action plan to come into compliance, necessitating Court intervention and an injunction. The remedies outlined in Plaintiffs' Proposed Order specifically respond to Defendant's patterns of non-compliance, create third-party oversight over Defendant's training materials and practices, and are tailored to protect the Plaintiff class. Finally, enjoining Defendant to comply with court orders he has already agreed to and with which he is already required to comply does not impose a burden. *See Briggs v. Bremby*, No. 3:12cv324, 2012 WL 6026167, at *19 (D. Conn. Dec. 4, 2012).

F. THIS COURT SHOULD GRANT PLAINTIFFS' REQUEST TO MODIFY THE STIPULATION UNDER RULE 60(b)(5)

Rule 60(b)(5) provides for modification of a final order where "applying [the order] prospectively is no longer equitable." Fed. R. Civ. P. 60(b)(5). Rule 60(b)(5) motions for modification are appropriate where "a 'significant change in factual conditions or law' renders continued enforcement 'detrimental to the public interest.'" *Horne v. Flores*, 557 U.S. 433, 447 (2009) (quoting *Rufo v. Inmates of Suffolk Cnty. Jail*, 502 U.S. 367, 384 (1992)). Such motions are to be expected in "institutional reform litigation." *Rufo*, 502 U.S. at 380. Because orders in those cases "often remain in place for extended periods of time, the likelihood of significant changes occurring during the life of the [order] is increased." *Id.*; *accord. Horne*, 557 U.S. at 447–48. Courts take a "flexible approach" to Rule 60(b)(5) motions to modify, as that approach "is often essential to achieving the goals of reform litigation." *Rufo*, 502 U.S. at 381; *accord Horne*, 557 U.S. at 450.

Courts analyze Rule 60(b)(5) motions by first determining whether the moving party has "establish[ed] that a significant change in circumstances warrants revision of the [order]." *Rufo*, 502 U.S. at 383. Central to that determination is "whether the objective of the order has been achieved." *Horne*, 557 U.S. at 450–51 (cleaned up). Once the moving party meets that burden, a

court abuses its discretion where it refuses to modify the underlying order in some fashion. *Id.* at 447. In assessing how to modify, the court must determine whether the moving party's "proposed modification is suitably tailored to the changed circumstances." *Rufo*, 502 U.S. at 383; *Still's Pharmacy, Inc. v. Cuomo*, 981 F.2d 632, 638 (2d Cir. 1992). The proposed modification [1] must not create or perpetuate a constitutional violation, [2] must be tailored to resolve the problems created by the change in circumstances; and [3] must respect federalism concerns with judicial interference in local government administration. *Rufo*, 502 U.S. at 391–92.

Plaintiffs move for modification not because the Orders are unclear, but because Defendant does not adhere to the ADA requirements to which he is bound and requires basic standards to be spelled out. In November of 2024, this Court issued a straightforward amended order to assist Defendant with his efforts—now ongoing for several years—to comply with the stipulation and settlement in this matter. Unfortunately, since the ink dried on that amendment, Defendant's compliance has regressed significantly. Defendant's regular 29–71% non-compliance rate represents a low water mark since this litigation entered a post-judgment posture and constitutes a change in factual conditions. Plaintiffs propose the following targeted modifications, which are directly responsive, aimed at achieving the purpose of the remedial order (and the litigation itself), and easily administrable by Defendant:

1. Define "suitable alternative" as an alternative accommodation other than the one requested by the A/R that is objectively effective in that it meets the medical and psychological needs of the A/R.
2. Define "feasible" as would not pose an undue burden, fundamental alteration or direct threat to health and safety as these terms are defined by the ADA, or there are time-limited

unforeseen exigent circumstance beyond Defendant's control preventing immediate placement.

3. Define undue burden and fundamental alternation, create parameters for determining when an accommodation may pose an undue burden, and establish requirements to document the evidence underlying these determinations.
4. Add parameters for Defendant to make eligibility determinations to prevent Defendant from unilaterally and illegally removing eligible A/Rs from the class, and include a clear requirement that Defendant offer reasonable accommodations during the eligibility process.
5. Add a requirement that only the supervisory-level staff listed in paragraph VII.G.2. of the 2022 Stipulation can render a determination that an alternative accommodation is suitable.
6. Add requirement that Defendant engage in diligent and documented search efforts to fully meet a granted accommodation after placing a class member with an alternative accommodation that does not fully meet their needs.
7. Add requirement that Defendant utilize hotels and/or motels if no suitable housing that fully meets the reasonable accommodation within Defendant's contracted shelter network can be secured within five calendar days, unless the class member's medical needs require immediate placement in a hotel/motel to prevent serious risk of injury or harm.
8. Add specificity to standard ADA interactive process requirements, including standardizing timelines and requirements for contacting medical providers to assist with obtaining medical documentation.
9. Clarify that medically urgent requests must be expedited to prevent irreparable harm, and provisional accommodations ought to be granted while requests pend when there is a risk of harm to the class member.

10. Add parameters regarding when Defendant may request medical documentation to support a reasonable accommodation request, including when class members have already submitted documentation.
11. Add notice requirements, including provision of grievance forms, for termination or changes in provision of granted accommodations, including removal of service animals.
12. Detail grievance procedure to require provision of service complaint form along with the grievance notice and creation of a fully accessible online fillable service complaint form that conforms with DOJ regulations for website accessibility.
13. Improve protocols and data collection in the QMPR division on data points that align with the Orders' requirements, and require production to Plaintiffs of the same on a recurring basis, including:
    a. "suitability" determinations for alternative accommodations, with underlying facts and who made the determination;
    b. Determinations that accommodation would pose a fundamental alteration, undue burden, or direct threat, or if a suitable alternative accommodation is determined to be otherwise unfeasible, with underlying facts and who made the determination;
    c. Documentation of diligent search efforts to find suitable alternative accommodations, or to fully meet a reasonable accommodation; and
    d. Documentation of adverse actions, including how the individual's disability or impact of lack of accommodation was considered and when and how evaluations for protective or preventative services are conducted.
14. Schedule of mandated training courses for SCDSS staff regarding the above modifications.
15. Extension of Phase II for an additional 24 months, until December 15, 2027.

i. Defendant's Persistent Non-Compliance with the Stipulation Alone Constitutes a Change in Factual Circumstances

"The Second Circuit has acknowledged that an enjoined institution's 'continued failure' to perform pursuant to a consent decree such that the objectives of the consent decree would not be achieved may constitute changed factual conditions under *Rufo*." *Baez v. New York City Hous. Auth.*, No. 13CV8916, 2018 WL 6242224, at *4 (S.D.N.Y. Nov. 29, 2018) (citing *Sec'y of Hous. & Urban Dev.*, 239 F.3d at 218 (2d Cir. 2001)). "Where a party resists the provisions of Consent Decree, or has been untimely in complying with it, modification of the Consent Decree is particularly appropriate." *United States ex rel. Anti-Discrimination Ctr. of Metro New York, Inc. v. Westchester Cnty., New York*, No. 06 CIV. 2860, 2017 WL 728702, at *4 (S.D.N.Y. Feb. 23, 2017) (citing *United States v. Sec'y of Housing & Urban Dev.*, 239 F.3d 211, 217–18 (2d Cir. 2001)); *Juan F. By & Through Lynch v. Weicker*, 37 F.3d 874, 879 (2d Cir. 1994).

In *Baez*, an institutional reform ADA case, the district court modified a consent decree under *Rufo* because Defendant New York City Housing Authority ("NYCHA") failed to substantially comply with a consent decree. NYCHA routinely took more than the required 7 and 15 days to make repairs, with a high of 35.5 days. *Baez*, 2018 WL 6242224, at *4. Incidents of mold actually increased, thwarting the objective of the decree to protect tenants with respiratory illness. *Id.* NYCHA argued that it was not obligated to address mold *recurrence* because "recurrence" was not explicitly stated in the decree. *Id.* NYCHA also proffered inaccurate reporting on the timeliness of repairs. *Id.* In *United States v. Sec. of Hous. and Urban Dev.*, 239 F.3d 211, 217–18, (2d Cir. 2001) the Second Circuit affirmed a district court's modification of a consent decree under *Rufo*, when the Defendant, HUD, failed to implement required reforms and thereby rendered the decree "unworkable because of unforeseen obstacles" that were "detrimental to the public interest." *Id.* at 218. HUD failed to properly supervise local housing programs'

implementation of Fair Housing laws, submitted inaccurate and incomplete monitoring reports, and delayed or only partially implemented other settlement terms.

Though Defendant Imhof has failed to comply with portions of the 2022 Order since its inception, his non-compliance has worsened in significant respects. As examples set forth above detail, Defendant has failed to comply with provisions requiring him to offer suitable alternative accommodations where a requested reasonable accommodation is not readily available, engage in an interactive process, assist class members in obtaining medical verification of disability where necessary, and provide plaintiffs an opportunity to review certain policies. Non-compliance has not improved since the 2024 Amendment; it is worse. Plaintiffs entered the 2024 Amendment in good faith and could not foresee that the violations described above would follow, or that Defendant's QMPR division would prove ineffective in securing compliance.

ii. Defendant's Recent Positions Constitute a Significant Change in Factual Circumstances

Defendant recently took several positions that are contrary to the plain language of the Orders, in violation of the ADA, or thwart the remedial objectives of this Court's Orders. In letters to Plaintiffs' counsel dated October 14, 2025, responding to the June 2025 production letter, Defendant stated:

> Those provisions state that if a granted RA cannot be immediately provided, that a suitable alternative will be offered 'where feasible.' The language of the Stipulation itself anticipates that a suitable alternative may not always be possible *for whatever reason*, such as, for example, a lack of supply. In addition, the Stipulation does not set forth what makes an alternative 'suitable,' and so *whether an RA alternative is suitable is subjective*. Therefore, the acceptance of an alternative RA by the client, which is notated in the ISA tab, will be the strongest evidence of its suitability.
> Goldman Ex. 17 at 1 (emphasis added).

Defendant also stated in response to the Plaintiffs' May 2025 production letter:

> [A]ny deviation from Defendant's internal procedure for contacting the provided professionals (i.e. the "10-day policy") is not evidence of systemic noncompliance with the Stipulation. Again, neither the law nor the Stipulation delineate the procedure for assisting

> the client in compiling supporting documentation for their request. The "10-day policy" was created in order to facilitate the process internally. The Stipulation merely provides that the client be given a "reasonable opportunity" to provide the requested documentation before it is denied . . . . Again, if Defendant does not strictly adhere to the "10-day policy", either by providing the client with a longer or shorter timeframe to provide the documentation or by not contacting the professionals on exactly days 1, 2 and 5 following the request, this is not evidence of systemic noncompliance with the Stipulation or the law. Goldman Ex. 15 at 2.

Defendant also routinely violates or misrepresents state law in order to improperly deny reasonable accommodation requests, and dismisses Plaintiffs' letters to that effect. Per New York State law, Social Services Districts must provide assistance to individuals in the county where they are found. N.Y. Off. Temp. & Disability Assistance Informational Letter 97 INF-06 (Mar. 31, 1997). Under the "where-found rule" applicants and recipients of temporary assistance experiencing homelessness have the right to reside in any county of their choosing. To become a resident of any particular county, they need only be "found" in that district and express intent to reside there. *Id.* Despite this, Plaintiffs have identified a concerning pattern of improper denials based on A/Rs having open cases in other counties or not being residents of Suffolk County, without inquiring whether the class member intended to reside in Suffolk County. *See* Goldman Exs. 6, 16, 18. Defendant had no substantive response but simply claimed that this ADA violation is outside the scope of the litigation. Goldman Ex. 17. Plaintiffs disagree. Unhoused individuals who newly elect to reside in Suffolk County are eligible for benefits and are class members who meet the definition of "Qualified Individual with a Disability" under paragraph II.21. of the 2022 Stipulation. *See* Goldman Ex. 72 (DAFH No. 8745903Z), at 10 (Mar. 27, 2024) ("In no case should the new district refuse to take an application or deny an application because the former district is, or should be, providing assistance during the transition period.").

Defendant also demonstrates an alarming pattern of denials based on individuals being denied emergency shelter because the hospital or medical facility they are discharging from did

not submit a Patient Review Instrument ("PRI") for them. A PRI is a screening form typically completed by certain medical facilities to assess the medical condition and needs of individuals being discharged. Goldman Decl. ¶ 95. Defendant not only denies the accommodation requests but denies these newly discharged individuals shelter outright, deeming them ineligible for temporary housing assistance. In his October 14, 2025, letter, Defendant argues that this issue is outside the scope of the litigation. Goldman Ex. 48. Plaintiffs disagree. Defendant is required to offer reasonable accommodations and engage in the interactive process at every stage, including the eligibility stage, to ensure A/Rs can access benefits. Dkt. 82-1 ¶ VII.A.3. There is no basis under the Social Services Law, OTDA regulation or policy to deem someone ineligible for emergency shelter, or any other benefit, if they do not have a PRI to submit.

These positions, some of which result in misclassifications of A/Rs as non-class members, are in such direct contravention of the basic tenets of the ADA, the plain meaning of common words (such as "suitable"), and the remedial purpose of the Orders that Plaintiffs could not have foreseen them.

iii. Plaintiffs' Proposed Modifications are Suitably Tailored and Will Help Cure

Plaintiffs' requests are targeted at remedying the current serious and ongoing disregard for the safety, wellbeing, and rights of the Plaintiff Class. Defining "suitable alternative" prevents Defendant from deeming medically inappropriate and dangerous accommodations as "suitable." Defining "feasible" prevents Defendant from utilizing a purely subjective, and self-serving feasibility standard as an acceptable basis to fail to implement suitable accommodation "for whatever reason." Highly specific action steps to delineate the interactive process are needed because Defendant will not otherwise properly engage, despite this being a cornerstone of the ADA. Similarly, defining "undue burden" and "fundamental alternations" prevents Defendant

from adopting applications that do not comport with the ADA and ensuring Defendant's determinations are reviewable by Plaintiffs' Counsel and the Court.

A requirement to diligently search for suitable accommodation and require use of hotels or motels after five days if an accommodation is not fully met is necessary because Defendant routinely takes weeks or months to fully meet an accommodation, and sometimes never does (as in the cases of SE and DB). The requirement to provide accommodation provisionally when there is a risk of harm protects the most vulnerable class members who may not have medical documentation on hand when they apply for shelter. Data collection and reporting modifications ensure Plaintiffs' Counsel can effectively monitor compliance, and the Court can assess whether the remedial objectives are attained before the decree ends. Training is necessary for successful implementation of the modifications. Extension of the Court's jurisdiction is critical to allow time for Defendant to remedy the issues underlying the systemic non-compliance before the Court's jurisdiction ends.

These requested modifications are similar to those approved by the court in *Baez*: greater specificity including procedural requirements, not because of ambiguity in the original decree so much as the government Defendant's recalcitrance and improper interpretations of simple terms like "repair." *Baez*, 2018 WL 6242224, at *4. In *Baez*, the court added a requirement for an Independent Mold Analyst because of NYCHA's "excuse that the consent decree did not include any formal obligation to address mold recurrence." *Id.* at 5. The court added a "best efforts" obligation for remediation to prevent excuses for non-performance, and certification and use of an Independent Data Analyst to ensure periodic reports are accurate. Plaintiffs' requests here are similarly targeted and in furtherance of the public interest.

iv. Plaintiffs' Proposed Modifications Do Not Pose Federalism Concerns or Perpetuate a Constitutional Violation

The Orders were voluntarily entered, and Plaintiffs' proposed modifications are limited to what is necessary to address the changed circumstances. While generally, "federalism principles require that state officials with front-line responsibility for the program be given latitude and substantial discretion. The federal court must ensure that *when the decree's objects have been attained*, responsibility for discharging the State's obligations is returned promptly to the State and its officials." *Frew ex rel. Frew v. Hawkins*, 540 U.S. 431, 432 (2004) (emphasis added). Defendant has abused his "latitude and discretion" and thus Plaintiffs proposed modifications are designed to bring Defendant into compliance within 24 months, so that the remedial objectives of the decree are achieved. Modification and continuation of the Orders would not create or perpetuate any constitutional violations.

v. Modification of the Orders Protects the Public Interest

Enforcement of the decree without modification would be detrimental to the public interest because the 2025 Order will soon expire with serious ongoing systemic violations of the ADA unchanged and unchecked. Defendant's failure to address deficiencies following the 2024 Amendment is an unforeseen obstacle that makes continued enforcement without modification unworkable.

G. FEES

Defendant's substantial and ongoing non-compliance and refusal to diligently make reasonable efforts to come into compliance necessitated Plaintiffs' request for this Court's intervention, on which Plaintiffs have spent considerable time and effort. Plaintiffs seek attorneys' fees to compensate them for the time necessary to enforce the terms of the Orders.

IV. CONCLUSION

For the foregoing reasons, the Court should grant Plaintiffs' motion for civil contempt, appoint an independent monitor, modify the Stipulation as outlined above, extend the Court's jurisdiction, and award attorneys' fees for the time necessary to enforce the terms of the Orders.

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New York, New York

Respectfully Submitted,

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