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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TIFFANY CALDWELL, on behalf of her
minor Daughter, T.C., PATRICIA DAVIS,
JACQUELINE GUY, LAWRENCE OLIN,
and BARBARA WALSH, on their own behalf
and on behalf of all others similarly situated,

Plaintiffs,

-against-

NEW YORK CITY TRANSIT AUTHORITY;
THOMAS PRENDERGAST, in his official
capacity as Chairman and Chief Executive
Officer of New York City Transit Authority;
and CARMEN BIANCO, in his official
capacity as President of New York City Transit
Authority,

Defendants.

_____ Civ. _____ ()

CLASS ACTION COMPLAINT

Plaintiffs Tiffany Caldwell, on behalf of her minor daughter T.C., Patricia Davis, Jacqueline Guy, Lawrence Olin, and Barbara Walsh (collectively the “Named Plaintiffs”), on behalf of themselves and others similarly situated, for their Complaint allege as follows:

PRELIMINARY STATEMENT

1. This class action seeks to redress several New York City Transit Authority (“NYCT”) policies and practices that violate the rights of New York City residents with disabilities who have applied or sought to recertify for Access-A-Ride benefits, or will apply or seek to recertify in the future.

2. Access-A-Ride is NYCT’s paratransit program for individuals with disabilities. As a public entity under Title II of the Americans with Disabilities Act, NYCT must provide paratransit services to individuals whose disabilities prevent them from using the bus and subway system. Such services are crucial for individuals with disabilities, who depend on Access-A-Ride for transportation to work, doctors’ appointments, and other essential activities.

3. NYCT’s application and recertification process (whereby individuals complete a recertification of disability after one to five years of eligibility) is riddled with due process violations that create barriers to challenging eligibility determinations which are unconstitutional and contrary to federal and state law and regulations.

4. NYCT notifies applicants it has determined to be ineligible for Access-A-Ride by a generic form letter, which is the same for all individuals, regardless of disability, and which fails to explain the reason for the denial with any specificity. If an applicant asks NYCT for an explanation, NYCT insists the applicant must first submit a Freedom of Information Law (“FOIL”) request. However, NYCT usually takes three months to process a FOIL request, well beyond the 60-day deadline to submit a written appeal or request an in-person appeal hearing.

Thus, NYCT's policy essentially prevents most applicants from learning the basis for the denial before they must decide whether to appeal, before completing a written appeal, and potentially before appearing for an in-person appeal hearing.

5. Typically, the only opportunity for an applicant to learn the reasons for the denial is *during* an in-person appeal hearing, thus affording no opportunity to prepare for the hearing or written appeal. If an applicant wants an in-person hearing, they must make their way to Queens, the only location for NYCT appeal hearings. However, NYCT does not provide Access-A-Ride to the in-person hearing, even for applicants who were denied recertification after years of receiving Access-A-Ride. Because taking the bus or subway is impossible or dangerous for many applicants, and private transportation is too expensive, many applicants are left with no choice but to complete a written appeal — and they must do so without ever having learned why they were denied. Not surprisingly, upon information and belief, written appeals are denied at a much higher rate than in-person appeals.

6. Applicants whose appeals are denied are notified by yet another form letter, again without any specific explanation for the denial. The letter also does not inform the applicant that he or she has the right to appeal the determination in court. Instead, the letter misleadingly states that the decision is final and the individual's only option for redress is to start the application process all over again.

7. Due process, the Americans with Disabilities Act, and New York regulations require NYCT to do much better. NYCT's black box application process denies individuals the notice and opportunity to be heard to which they are legally entitled. The Named Plaintiffs seek to end these illegal policies and practices and to compel NYCT to fulfill its obligations to New York City residents.

JURISDICTION AND VENUE

8. This Court has jurisdiction over this action under: (i) 28 U.S.C. § 1331, which provides for jurisdiction of civil actions arising under the Constitution, law, or treaties of the United States; (ii) 28 U.S.C. § 1343(a)(3) and (4), which provides for jurisdiction of civil actions to redress deprivation of rights secured by the Constitution of the United States; and (iii) 28 U.S.C. § 1367, which provides for supplemental and pendant jurisdiction.

9. This action is authorized by 42 U.S.C. § 1983 as an action seeking redress of the deprivation of statutory and constitutional rights, and by the Americans with Disabilities Act, 42 U.S.C. § 12133.

10. Venue properly lies with this district pursuant to 28 U.S.C. § 1391(b) and (d).

PARTIES

Plaintiffs

11. Tiffany Caldwell and her minor daughter, T.C., reside in Brooklyn, New York. T.C. is a child with permanent disabilities. Without Access-A-Ride, T.C. is often unable to travel to medical appointments and recreational activities, like gymnastics and social functions at the Hebrew Educational Society.

12. Patricia Davis is a senior citizen with permanent disabilities who resides in Bronx, New York. Ms. Davis's disabilities cause her to have difficulty with communication, balance problems, and difficulty walking more than two blocks. Without Access-A-Ride, Ms. Davis cannot visit her sister in Brooklyn and is forced to pay for private transportation if she needs to visit her mother in the Bronx.

13. Jacqueline Guy is a senior citizen with permanent disabilities who resides in Brooklyn, New York. Ms. Guy is a veteran and uses Access-A-Ride to attend physical therapy and doctors' appointments.

14. Lawrence Olin is a senior citizen with permanent disabilities who resides in New York, New York. Mr. Olin's physical disabilities cause tremors, gait problems, and balance problems. Without Access-A-Ride, Mr. Olin is forced to attempt to use the public bus. On a recent attempt, he fell and sustained injuries that required surgery.

15. Barbara Walsh is a senior citizen with permanent disabilities who resides in Queens, New York. Ms. Walsh uses Access-A-Ride to travel to and from her job in downtown Manhattan and doctors' appointments.

Defendants

16. New York City Transit Authority is a public benefit corporation created by New York Public Authorities Law to operate New York City's public transit facilities. N.Y. Pub. Auth. Law § 1201 et seq. NYCT has responsibility for the day-to-day operation of the fixed route public transportation system of New York City and the day-to-day operation of Access-A-Ride.

17. Thomas Prendergast is the Chairman and Chief Executive Officer of NYCT. He is sued in his official capacity. Mr. Prendergast is responsible for NYCT's executive and administrative functions and powers. N.Y. Pub. Auth. Law § 1201(2).

18. Carmen Bianco is the President of NYCT. He is sued in his official capacity. Mr. Bianco is responsible for NYCT's day-to-day operations and management.

JURY DEMAND

19. Named Plaintiffs demand trial by jury in this action on every one of their claims.

FACTS

Statutory and Regulatory Scheme

20. Under Title II of the Americans with Disabilities Act (“ADA”), a public entity that operates a “fixed route” public transportation system must provide paratransit to individuals with disabilities. 42 U.S.C. § 12143(a).

21. NYCT is a public entity and thus subject to the ADA.

22. A “fixed route” public transportation system is one that operates along a prescribed route and fixed schedule. 42 U.S.C. § 12141(3).

23. The subway and bus system administered by NYCT is a fixed route public transportation service.

24. Paratransit is a demand-responsive, origin-to-destination transportation service for individuals with disabilities who cannot use fixed route transportation systems. 21 N.Y.C.R.R. § 1035.1(h).

25. NYCT operates Access-A-Ride, New York City’s paratransit system.

26. Individuals with disabilities who cannot use subways and buses rely on Access-A-Ride for transportation to jobs, doctors’ appointments, school, and other critical activities. Without Access-A-Ride, individuals with disabilities are often unable to interact with their communities or live independently.

27. Under Title II of the ADA, a public entity like NYCT must provide paratransit that is “comparable to the level of designated public transportation services provided to individuals without disabilities using such system.” 42 U.S.C. § 12143(a); 49 C.F.R. § 37.121(a).

28. In order to satisfy the ADA’s mandate of providing “comparable” services, NYCT cannot limit the availability of paratransit to eligible individuals by, among other things, “any operational pattern or practice that significantly limits the availability of service to ADA paratransit eligible persons.” 49 C.F.R. § 37.131(f)(3).

29. Paratransit services must be available to “any individual with a disability who is unable, as a result of a physical or mental impairment (including a vision impairment) and without the assistance of another individual . . . to board, ride, or disembark from any vehicle on the system which is readily accessible to and usable by individuals with disabilities.” 42 U.S.C. § 12143(c)(1)(A)(i); 49 C.F.R. § 37.123(e)(1); 21 N.Y.C.R.R. § 1035.2(a)(1).

30. Federal regulations define disability in the paratransit context as “a physical or mental impairment that substantially limits one or more of the major life activities of such individual.” 49 C.F.R. § 37.3. Major life activities are “functions such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and work.” Id.

31. New York State regulations similarly define disability in the paratransit context as “a physical or mental impairment that substantially limits an individual’s ability to travel independently on fixed-route transportation services.” 21 N.Y.C.R.R. § 1035.1(e)(1).

32. Federal regulations state that the paratransit eligibility process “may not impose unreasonable administrative burdens on applicants, and, since it is part of the entity’s nondiscrimination obligations, may not involve ‘user fees’ or application fees to the applicant.” 49 C.F.R. § 37 App. D.

Due Process Protections

33. The United States Constitution and New York Constitution guarantee due process. U.S. Const. Amend. XIV § 1; N.Y. Const. Art. I § 6. Federal and state law reinforce these due process rights.

34. Paratransit service is a protected property interest, because federal and state law mandate that paratransit be provided to those who meet prescribed eligibility requirements. See Kapps v. Wing, 404 F.3d 105 (2005). Continuation of paratransit service for those who have been previously found eligible is also a protected property interest. See 49 C.F.R. § 37 App. D (“Once an entity has certified someone as eligible, the individual’s eligibility takes on the coloration of a property right.”).

35. Due process requires that before an agency such as NYCT deprives a person of a protected interest, it provide notice and an opportunity to be heard that is appropriate to the nature of the case. See, e.g., Mathews v. Eldridge, 424 U.S. 319, 333 (1976); Bell v. Burson, 402 U.S. 535, 542 (1971).

36. To determine if an agency provides sufficient notice and an opportunity to be heard, courts apply the Mathews test. Mathews, 424 U.S. at 335.

37. The Mathews test requires the consideration of three factors: (1) the private interest that will be affected by the official action; (2) the risk of an erroneous deprivation of such interest through the agency’s procedures, and the probable value, if any, of additional or substitute procedural safeguards; and (3) the government’s interest, including the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. Id.

38. Furthermore, under the ADA, a public entity such as NYCT must provide certain due process protections. If the entity finds the individual ineligible, its determination must be in

writing and “state the reasons for the finding.” 49 C.F.R. § 37.125(d); 21 N.Y.C.R.R. § 1035.3(d).

39. “The reasons must specifically relate the evidence in the matter to the eligibility criteria of [49 C.F.R. § 37] and of the entity’s process. A mere recital that the applicant can use fixed route transit is not sufficient.” 49 C.F.R. § 37 App. D.

40. The administrative appeal process must “include an opportunity to be heard and to present information and arguments” 49 C.F.R. § 37.125(g)(2). Accord 21 N.Y.C.R.R. § 1035.3(i).

41. The appeal determination must also be in writing and state its reasons. Id.

Access-A-Ride’s Eligibility Process and its Deficiencies

42. Individuals with disabilities apply for Access-A-Ride by completing a written application and undergoing an in-person assessment.

43. Individuals may be found fully eligible, conditionally eligible, or ineligible.

44. Individuals with conditional eligibility may use Access-A-Ride only when a specific condition, like cold weather or stairs at subway stations, is present on their trip.

45. Individuals with full or conditional eligibility are granted the service on a “permanent” basis — lasting between one and five years — or a temporary basis.

46. Upon information and belief, temporary services can last for as little as a month.

47. Individuals with Access-A-Ride must recertify for services at the end of their eligibility period, whether that period is the longest possible — five years — or only a month.

48. NYCT requires individuals who are recertifying eligibility to complete the same written application and assessment as new applicants, thereby starting from the beginning of the application process.

49. During the past few years, NYCT has found many individuals with permanent disabilities who were previously eligible for Access-A-Ride suddenly ineligible at the recertification stage.

50. Whenever NYCT finds an individual wholly or partially ineligible, NYCT sends the individual a letter with that determination.

51. Upon information and belief, NYCT sends all individuals it has found wholly ineligible the same letter, regardless of their respective disabilities.

52. The letter recites that the individual was found ineligible because he or she demonstrated eight skills associated with using public transportation. The eight skills listed are the same for every individual.

53. Upon information and belief, all individuals who are found partially ineligible are likewise sent a generic letter.

54. These generic letters do not explain with any specificity why an individual was denied full or partial eligibility.

55. Upon information and belief, all parents of minor children who are found ineligible are likewise sent a generic letter.

56. The letter states that NYCT presumes the child with disabilities is able to use public transportation with the parent if the parent is not disabled.

57. The letter does not explain with any specificity why the minor was denied eligibility.

58. NYCT's denial letters do not tell individuals how they might obtain the basis for the adverse eligibility determination, or even that they have a right to that information.

59. NYCT maintains that the only way to learn the basis for an adverse eligibility determination is to submit a FOIL request to NYCT.

60. If an individual submits a FOIL request for the basis for an adverse eligibility determination, NYCT typically sends the individual a form letter acknowledging their FOIL request and stating that it will take NYCT approximately 90 days to provide the requested information and that the individual must pay a per-page fee to receive the requested documents.

61. Whenever NYCT finds an individual who sought recertification to be wholly ineligible, it terminates that person's benefits immediately. Whenever NYCT finds an individual who sought recertification to be partially ineligible and entitled only to reduced benefits, it reduces that person's benefits immediately. Thus, NYCT terminates or reduces such a person's benefits concurrent with informing such a person of the determination and prior to providing that person with an opportunity to respond.

62. Whenever NYCT finds an individual wholly or partially ineligible, it provides the individual with only 60 days to appeal in writing or request an in-person appeal.

63. Individuals who complete written appeals typically do so without ever having learned why they were denied.

64. For individuals who appeal in person, the appeal hearing itself is typically the first opportunity they have to learn why they were denied. Thus, individuals who opt for a hearing have no opportunity to prepare to address the reasons for the denial of their application.

65. An individual who wants to appeal in-person must go to an office in Queens, regardless of where in New York City the individual lives.

66. The letter states that if the individual was denied services, the individual cannot receive Access-A-Ride to the in-person appeal.

67. This forces many applicants to pay for private transportation or complete a written appeal.

68. Upon information and belief, written appeals are granted at a much lower rate than in-person appeals.

69. After an in-person or written appeal, NYCT sends individuals whose appeals were denied a generic letter informing them of the fact of the denial.

70. The letter does not explain with any specificity why an individual was denied services.

71. The letter also does not state that the individual has the right to further appeal NYCT's determination in court.

72. Rather, NYCT misleadingly states that the decision is final and the individual's only option for redress is to start a new application.

73. If NYCT determines on appeal that a person is in fact eligible for benefits, NYCT does not provide compensation or reimbursement for transportation costs incurred during the time that benefits had been erroneously denied.

Plaintiff Tiffany Caldwell

74. Ms. Caldwell is the parent of a seven-year-old daughter, T.C. T.C. is a child with the permanent disability of autism spectrum disorder. T.C.'s disability prevents her from using subways and buses.

75. In 2013, Ms. Caldwell applied for Access-A-Ride on behalf of T.C.

76. NYCT denied T.C.'s application with a generic denial letter that did not specify why she was found ineligible or that she had the right to learn the basis for the adverse eligibility determination.

77. Ms. Caldwell appealed in person on behalf of T.C.

78. NYCT denied T.C.'s appeal with another generic letter that did not specify why her appeal was denied.

79. T.C. is currently without Access-A-Ride.

80. Without Access-A-Ride, T.C. often cannot travel to medical appointments and recreational activities she enjoys, like gymnastics and weekend functions at the Hebrew Educational Society.

Plaintiff Patricia Davis

81. Ms. Davis is a senior citizen with permanent disabilities resulting from a stroke in 2011. Ms. Davis' disabilities include aphasia, right side weakness, and difficulty with balance. Ms. Davis' disabilities prevent her from using subways and buses.

82. In 2011, Ms. Davis applied for Access-A-Ride and NYCT found her fully eligible for one year.

83. When Ms. Davis attempted to recertify in approximately 2013, NYCT changed its position and found her conditionally eligible for five years.

84. Ms. Davis's conditional eligibility granted her Access-A-Ride for only parts of her trips and required her to use the public bus for the remaining parts.

85. Unable to travel under these conditions, Ms. Davis reapplied for Access-A-Ride in 2015 hoping to again receive full services. Instead, NYCT found her completely ineligible.

86. NYCT sent Ms. Davis a generic denial letter that did not specify why she had been found suddenly ineligible or that she had the right to learn the basis for the adverse eligibility determination.

87. Ms. Davis's ability to use subways and buses had not significantly changed since 2011.

88. NYCT's letter stated that its eligibility determination was effective immediately and she could not use Access-A-Ride to an in-person appeal.

89. Wanting to appeal in person, Ms. Davis was forced to pay for private transportation to Queens.

90. NYCT denied Ms. Davis's appeal and sent Ms. Davis another form letter, which did not specify why her appeal was denied.

91. The letter stated that this determination was final and her only option was to start a new application again.

92. Ms. Davis is currently without Access-A-Ride.

93. Without Access-A-Ride, Ms. Davis cannot visit her sister in Brooklyn and is forced to pay for private transportation if she needs to visit her mother in the Bronx.

Plaintiff Jacqueline Guy

94. Ms. Guy is a veteran and senior citizen with permanent physical disabilities, including chronic lower back pain and osteoarthritis, which prevent her from using subways and buses.

95. In 2011, Ms. Guy applied for Access-A-Ride and NYCT found her conditionally eligible for five years.

96. Ms. Guy's conditional eligibility granted her Access-A-Ride for only parts of her trips and required her to use the public bus for the remaining parts.

97. In 2013, Ms. Guy's physical disabilities worsened, and a doctor encouraged her to reapply for Access-A-Ride in hopes of receiving full eligibility.

98. In 2013, three years before her conditional eligibility was set to expire, Ms. Guy applied for full eligibility. Instead, NYCT found her completely ineligible.

99. NYCT sent Ms. Guy a generic denial letter that did not specify why she had been found suddenly ineligible or that she had the right to learn the basis for the adverse eligibility determination.

100. Ms. Guy's disabilities had not improved between the time she was found conditionally eligible in 2011 and the time she was found ineligible in 2013; in fact, her condition had worsened.

101. NYCT's letter stated that its eligibility determination was effective immediately and she could not use Access-A-Ride to an in-person appeal.

102. Wanting to appeal in person, Ms. Guy was forced to pay for private transportation to Queens.

103. NYCT denied Ms. Guy's appeal and sent Ms. Guy another form letter, which did not specify why her appeal was denied.

104. The letter stated that this determination was final and her only option was to start a new application again.

105. Relying on this letter, Ms. Guy once again submitted an application and was again found ineligible.

106. Ms. Guy contacted an attorney and learned of her right to learn the basis for the adverse eligibility determination.

107. Ms. Guy submitted a FOIL request in August 2013.

108. Ms. Guy received an automated confirmation of her FOIL request, but she never received the basis for the adverse eligibility determination.

109. Ms. Guy appealed and, as before, the appeal was denied.

110. In 2014, Ms. Guy once again applied for Access-A-Ride. This time, NYCT found Ms. Guy fully eligible on a temporary basis. On May 11, 2015, Ms. Guy completed an assessment to recertify her eligibility and is currently waiting for the assessment results.

111. Ms. Guy was wrongfully without Access-A-Ride for one year.

112. During that year, she was forced to cease physical therapy and often skip regular medical appointments because she had no way of using public transportation and could not afford private transportation. As a result, her physical condition deteriorated significantly.

Plaintiff Lawrence Olin

113. Mr. Olin is a senior citizen with permanent physical disabilities, including blurred vision due to cataracts and neuropathy, which prevent him from using subways and buses.

114. In 2013, Mr. Olin applied for Access-A-Ride and was denied eligibility.

115. NYCT sent Mr. Olin a generic denial letter that did not specify why he was found ineligible or that he had the right to learn the basis for the adverse eligibility determination.

116. NYCT's letter stated that it would not provide Mr. Olin with Access-A-Ride to the in-person appeal in Queens.

117. In 2014, Mr. Olin reapplied for Access-A-Ride and NYCT once again denied him eligibility via form letter.

118. Mr. Olin is currently without Access-A-Ride.

119. Without Access-A-Ride, Mr. Olin attempts to use the bus system out of desperation and thereby is often in dangerous situations. For example, in December 2014, Mr. Olin tripped and fell walking to a bus stop. This severe fall fractured his wrist and finger, which required surgery.

Plaintiff Barbara Walsh

120. Ms. Walsh is a senior citizen with traumatic brain injury and other permanent disabilities, which prevent her from using subways and buses.

121. Ms. Walsh was eligible for, and received, Access-A-Ride for several years.

122. When Ms. Walsh attempted to recertify in 2014, NYCT changed its position and found her eligible for only three months.

123. NYCT sent Ms. Walsh a generic letter that did not specify why she had been suddenly found temporarily eligible for only three months of services, after previously being found “permanently” eligible for five years.

124. Ms. Walsh’s disabilities had not changed between the time she was found “permanently” eligible and the time she was found eligible for only three months of service in 2014.

125. NYCT’s letter did not state that she had the right to learn the basis for the adverse eligibility determination.

126. At the end of her three months of eligibility, Ms. Walsh completed a recertification and was suddenly found ineligible for services altogether.

127. NYCT’s letter stated that its eligibility determination was effective immediately and she could not use Access-A-Ride to an in-person appeal.

128. Ms. Walsh’s disabilities had not changed between the time she was found eligible for only three months of service and the time she was found ineligible for services altogether.

129. Ms. Walsh contacted attorneys for help. Only through her attorneys did Ms. Walsh learn of her right to request the basis for the adverse eligibility determination.

130. Ms. Walsh was represented at an in-person appeal and was found eligible for five years. After five years, Ms. Walsh will have to recertify her eligibility.

131. Ms. Walsh was wrongfully without services for approximately three months. During this time, Ms. Walsh was forced to pay for private transportation to and from, among other places, her job in downtown Manhattan five days a week. During this three-month period, Ms. Walsh incurred significant costs to commute to and from work.

CLASS ACTION ALLEGATIONS

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

New York City residents with disabilities who have applied or have sought to recertify for paratransit service since May 12, 2012, and/or New York City residents with disabilities who seek to apply or recertify for paratransit service in the future.

133. This class is so numerous that joinder of all members is impracticable. In 2013 alone, over 52,000 individuals applied or recertified for Access-A-Ride eligibility.

134. The questions of law and fact presented by the Named Plaintiffs are common to the class as a whole. Defendants subject all individuals applying or recertifying eligibility to the same customs, practices, and/or policies that constitute constitutional and statutory violations. These customs, practices, and/or policies affect the entire class.

135. The Named Plaintiffs' claims are typical of the claims of the class as a whole in that all the Named Plaintiffs have applied for or sought to recertify Access-A-Ride eligibility and have faced NYCT customs, practices, and/or policies that constitute constitutional and statutory violations.

136. Declaratory and injunctive relief is appropriate with respect to the class as a whole because Defendants have acted, and will act, on grounds applicable to the class as a whole.

137. The Named Plaintiffs will adequately protect the interests of the class. There are no conflicts of interest between the Named Plaintiffs and members of the class in that all would benefit if NYCT is ordered to correct these constitutional and statutory violations.

138. The Named Plaintiffs and proposed class are represented by MFY Legal Services, Inc., and Pillsbury Winthrop Shaw Pittman LLP, whose attorneys are experienced in class action litigation and will adequately represent the class.

139. A class action is superior to other available methods for a fair and efficient adjudication of this matter, because prosecution of separate actions by individual class members would unduly burden the Court and because uniform injunctive relief is most efficient and fair.

COUNT ONE

(Violation of U.S. Const. Amend. XVI § 1)

140. Plaintiffs repeat and reallege each and every allegation of paragraphs 1 through 139, inclusive, of this Complaint with the same force and effect as if set forth herein in full.

141. Plaintiffs have a protected property interest in paratransit service because federal and state law mandate that paratransit service be provided to those who meet prescribed eligibility requirements.

142. Defendants deprived plaintiffs of their protected property interests in paratransit service without the due process required by the Fourteenth Amendment of the United States Constitution through the following customs, policies and/or practices: (i) informing individuals who apply or seek to recertify for services of adverse eligibility determinations via generic form letters; (ii) failing to inform individuals who apply or seek to recertify for services of their right to learn the basis for their adverse eligibility determination; (iii) requiring individuals who wish to learn the basis for their adverse eligibility determination to submit a FOIL request, which generally takes longer than the 60-day time frame within which NYCT requires appeals to be

submitted; (iv) terminating or reducing the benefits of those recertifying eligibility without adequate pre-deprivation process; (v) informing individuals who appeal adverse eligibility decisions that their appeal has been denied via generic form letters; and (vi) failing to inform individuals who unsuccessfully appeal adverse eligibility determinations of their right to challenge the decision in court, and in fact stating that these appeal decisions are final and their only remaining option is to submit a new application.

COUNT TWO

(Violation of N.Y. Const. Art. I § 6)

143. Plaintiffs repeat and reallege each and every allegation of paragraphs 1 through 139, inclusive, of this Complaint with the same force and effect as if set forth herein in full.

144. Plaintiffs have a protected property interest in paratransit service because federal and state law mandate that paratransit service be provided to those who meet prescribed eligibility requirements.

145. Defendants deprived plaintiffs of their protected property interests in paratransit service without the due process required by Article 1, Section 6 of the Constitution of the State of New York through the following customs, policies and/or practices: (i) informing individuals who apply or seek to recertify for services of adverse eligibility determinations via generic form letters; (ii) failing to inform individuals who apply or seek to recertify for services of their right to learn the basis for their adverse eligibility determination; (iii) requiring individuals who wish to learn the basis for their adverse eligibility determination to submit a FOIL request, which generally takes longer than the 60-day time frame within which NYCT requires appeals to be submitted; (iv) terminating or reducing the benefits of those recertifying eligibility without adequate pre-deprivation process; (v) informing individuals who appeal adverse eligibility decisions that their appeal has been denied via generic form letters; and (vi) failing to inform

individuals who unsuccessfully appeal adverse eligibility determinations of their right to challenge the decision in court, and in fact stating that these appeal decisions are final and their only remaining option is to submit a new application.

COUNT THREE

(Violation of Americans with Disabilities Act, 42 U.S.C. § 12141 et seq.)

146. Plaintiffs repeat and reallege each and every allegation of paragraphs 1 through 139, inclusive, of this Complaint with the same force and effect as if set forth herein in full.

147. Defendant NYCT is a public entity covered under the ADA. 42 U.S.C. § 12131(1).

148. Defendants Prendergast and Bianco are responsible for the operation of NYCT and, in their official capacities, are public entities covered under the ADA. 42 U.S.C. § 12131(1).

149. Under the ADA and its implementing regulations, Defendants must provide: (i) certain due process protections to individuals and (ii) paratransit service that is comparable to the level of the city's designated public transportation services provided to individuals without disabilities. 42 U.S.C. § 12143; 49 C.F.R. § 37; and 21 N.Y.C.R.R. § 1035.3.

150. Defendants violated the requirements of the ADA and its implementing federal and state regulations, and deprived plaintiffs of their rights under the ADA and its implementing federal and state regulations, through the following customs, policies and/or practices: (i) informing individuals who apply or seek to recertify for services of adverse eligibility determinations via generic form letters; (ii) failing to inform individuals who apply or seek to recertify for services of their right to learn the basis for their adverse eligibility determination; (iii) requiring individuals who wish to learn the basis for their adverse eligibility determination to submit a FOIL request, which generally takes longer than the 60-day time frame within which

Defendants require appeals to be submitted; (iv) terminating or reducing the benefits of those recertifying eligibility without adequate pre-deprivation process; (v) informing individuals who appeal adverse eligibility decisions that their appeal has been denied via generic form letters; and (vi) failing to inform individuals who unsuccessfully appeal adverse eligibility determinations of their right to challenge the decision in court, and in fact stating that these appeal decisions are final and their only remaining option is to submit a new application.

151. Through the above customs, policies, and/or practices, NYCT is also engaging in an operational pattern or practice that also significantly limits the availability of complementary paratransit service to ADA paratransit-eligible individuals.

152. This capacity constraint constitutes disability discrimination under the ADA and its implementing federal regulations. 42 U.S.C. § 12143 and 49 C.F.R. § 37.121(a).

153. Defendants continue to violate the ADA and its implementing regulations by failing to cure these due process deficiencies and capacity constraints.

REQUEST FOR RELIEF

WHEREFORE, plaintiffs request that this Court enter a judgment:

a) Certifying this action as a class action, pursuant to Rule 23 of the Federal Rules of Civil Procedure;

b) Declaring that Defendants' customs, policies, and/or practices of: (i) informing individuals who apply or seek to recertify for services of their eligibility determination via generic, form letters and thereby denying, reducing, or terminating services without sufficient notice or opportunity to be heard; (ii) failing to inform individuals who apply or seek to recertify for services of their right to learn the basis for NYCT's adverse eligibility determination, and

thereby denying, reducing, or terminating services without sufficient notice or opportunity to be heard; (iii) requiring individuals who wish to learn the basis for an adverse eligibility determination to submit a FOIL request, and thereby denying, reducing, or terminating services without sufficient notice or opportunity to be heard; (iv) terminating or reducing the benefits of those recertifying eligibility without adequate pre-deprivation process and thereby denying, reducing, or terminating services without sufficient notice or opportunity to be heard; (v) informing individuals who appeal eligibility decisions of their eligibility determinations via generic form letters and thereby denying, reducing, or terminating services without sufficient notice or opportunity to be heard; and (vi) failing to inform individuals who unsuccessfully appeal eligibility determinations of their right to challenge the decision in court, and in fact stating that these appeal decisions are final, thereby denying, reducing, or terminating services without sufficient notice or opportunity to be heard violate the Due Process Clause of the Fourteenth Amendment of the United States Constitution; the Due Process Clause of the New York State Constitution; the Americans with Disabilities Act and its implementing regulations; and the Code, Rules and Regulations of the State of New York. U.S. Const. Amend. XIV § 1; N.Y. Const. Art. I § 6; 42 U.S.C. § 12143; 49 C.F.R. § 37.125; and 21 N.Y.C.R.R. § 1035.3.

c) Enjoining Defendants from: (i) informing individuals who apply or seek to recertify for services of their eligibility determination via generic form letters and thereby denying, reducing, or terminating services without sufficient notice or opportunity to be heard; (ii) failing to inform individuals who apply or seek to recertify for services of their right to learn the basis for an adverse eligibility determination, and thereby denying, reducing, or terminating services without sufficient notice or opportunity to be heard; (iii) requiring individuals who wish

to learn the basis for an adverse eligibility determination to submit a FOIL request, and thereby denying, reducing, or terminating services without sufficient notice or opportunity to be heard; (iv) terminating or reducing the benefits of those recertifying eligibility without adequate pre-deprivation process and thereby denying, reducing, or terminating services without sufficient notice or opportunity to be heard; (v) informing individuals who appeal eligibility decisions of their eligibility determinations via generic form letters and thereby denying, reducing, or terminating services without sufficient notice or opportunity to be heard; and (vi) failing to inform individuals who unsuccessfully appeal eligibility determinations of their right to challenge the decision in court, and in fact stating that these appeal decisions are final, thereby denying, reducing, or terminating services without sufficient notice or opportunity to be heard;

d) Ordering Defendants to adopt and implement rules and procedures that will eliminate illegal capacity constraints and afford individuals applying and/or recertifying for Access-A-Ride services with due process throughout the eligibility and appeal process, as required under the Due Process Clause of the Fourteenth Amendment of the United States Constitution; and the Due Process Clause of the New York State Constitution; the Americans with Disabilities Act and its implementing regulations; and the Code, Rules and Regulations of the State of New York. U.S. Const. Amend. XIV § 1; N.Y. Const. Art. I § 6; 42 U.S.C. § 12143; 49 C.F.R. § 37.125; and 21 N.Y.C.R.R. § 1035.3.

e) Awarding reasonable attorneys' fees, as provided by 42 U.S.C. § 1988(b) and 42 U.S.C. § 12205;

f) Awarding costs and disbursements; and

g) Granting such other and further relief as the Court may deem just and proper.

Dated: May 12, 2015

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