

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

ANN CHIAPPETTA, on behalf of herself and
all others similarly situated, and the
AMERICAN COUNCIL OF THE BLIND
OF NEW YORK, INC.,

Plaintiffs,

v.

NEW YORK STATE OFFICE OF
INFORMATION TECHNOLOGY
SERVICES and ANGELO RIDDICK, in his
official capacity as Chief Information Officer
of the New York State Office of Information
Technology Services¹,

Defendants.

No. 20 Civ. 8546 (CS)

**STIPULATION AND
ORDER OF SETTLEMENT**

WHEREAS, on October 14, 2020, Plaintiffs ANN CHIAPPETTA, on behalf of herself and all others similarly situated, and the AMERICAN COUNCIL OF THE BLIND OF NEW YORK, INC., (collectively, “Plaintiffs”), filed a lawsuit against the NEW YORK STATE DIVISION OF HOMELAND SECURITY AND EMERGENCY SERVICES (“DHSES”), PATRICK A. MURPHY, in his official capacity as Commissioner of the New York State Division of Homeland Security and Emergency Services (“Commissioner Murphy”), and ANDREW M. CUOMO, in his official capacity as Governor of the State of New York”) in a Class Action Complaint for Declaratory and Injunctive Relief, ECF No. 1 (the “Complaint”); and

WHEREAS, on August 24, 2021, KATHY HOCHUL became the new Governor of New York (“Governor Hochul”), and was therefore automatically substituted for Andrew M. Cuomo as an official capacity defendant pursuant to Fed. R. Civ. P. 25(d);

WHEREAS the “Defendants” now therefore consist of DHSES, Commissioner Murphy, and Governor Hochul, and the “Parties” consist of the Plaintiffs and Defendants;

WHEREAS, the Complaint alleges that the website used to register to receive alerts from the Mass Notification System (“NY-Alert”), located at <https://alert.ny.gov/>, is not accessible to blind individuals who use screen readers to access visually-displayed digital information (Complaint ¶ 2), allegedly in violation of Title II of the Americans with Disabilities Act, 42 U.S.C. § 12131 *et seq.* (the “ADA”), Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 *et seq.* (the “Rehabilitation Act”), and seeks declaratory relief (Complaint ¶¶ 40 – 74); and

¹ Case caption altered pursuant to Paragraphs 11 and 12, below.

WHEREAS, the New York State Office of Information Technology Services (“ITS”) maintains some portions of the NY-Alert Website and holds a contract with Everbridge, Inc. for the maintenance of the remaining pages of that website, not Governor Hochul, in her official capacity as Governor of the State of New York, or the New York State Division of Homeland Security and Emergency Services, and/or Patrick A. Murphy, in his official capacity as Commissioner of the New York State Division of Homeland Security and Emergency Services; and

WHEREAS, Defendants, ITS, and ANGELO RIDDICK in his official capacity as ITS Chief Information Officer for the State of New York (“Chief Information Officer Riddick”), deny all wrongdoing alleged in the above-captioned proceeding (the “Litigation”) and any liability whatsoever to Plaintiffs, and further assert that they have meritorious defenses to this Litigation; and

WHEREAS, no finding of liability has been made; and

WHEREAS, Plaintiffs, Defendants, Chief Information Officer Riddick, and ITS (together, the “Parties”) enter into this Stipulation and Order of Settlement (“Stipulation” or “Agreement”) solely for the purpose of settling the disputes between the Parties and to avoid the uncertainty of further litigation.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and among the Parties, that the Litigation is settled on the following terms and conditions, subject to the Court’s approval:

I. Definitions

As used in this Agreement:

1. “Blind” refers to persons with a visual impairment requiring the use of assistive technologies or alternative techniques when reviewing Web Content.
2. “Continuing Jurisdiction Period” means the period between the Effective Date and twenty-four (24) months thereafter, except as provided in Section XV, below.
3. “Effective Date” refers to the date on which the Court files a so-ordered copy of this Stipulation.
4. The “NY-Alert Website” includes all webpages, web applications, resources, services, transactions, forms, and documents within the alert.ny.gov domain and its subdomains, that: (1) are available to the general public; and (2) are required for enrollment, viewing, or changing notification preferences for the NY-Alert Mass Notification system, and for enjoying any future public features of the NY-Alert Mass Notification system. For the avoidance of doubt, alerts archived within the alert.ny.gov domain will not constitute a part of the NY-Alert Website for purposes of the Stipulation. For the avoidance of doubt, the portions of the NY-Alert Website maintained by the third-party vendor Everbridge, Inc. through the portal <https://member.everbridge.net>, or, as applicable, portions of the

NY-Alert Website maintained by any third-party vendor that may replace Everbridge, Inc., which are available to the general public and required for enrollment, viewing, or changing notification preferences for the NY-Alert Mass Notification system, shall be considered a subdomain of the NY-Alert Website so long as Everbridge, Inc. or, as applicable, any vendor that replaces Everbridge, Inc., holds a contract with ITS to administer the NY-Alert Website.

5. “Web content” and “website content” include all textual, visual, and aural content encountered on the NY-Alert Website (or “Website”) (as defined above).
6. “WCAG 2.0 AA” refers to Levels A and AA success criteria of the Web Content Accessibility Guidelines 2.0, available at <https://www.w3.org/TR/WCAG20/>.
7. “ITS” refers to the New York State Office of Information Technology Services, the administrator of the NY-Alert Website.
8. “ITS Web Accessibility Policy” refers to the policy: Accessibility of Information Communication Technology, NYS-P08-005, available at https://its.ny.gov/sites/default/files/documents/nys-p08-005_accessibility_of_information_communication_technology_2.pdf.
9. “Substantial Non-Compliance” means material or repeated breaches of the Stipulation that significantly interfere with the practical ability of a Blind individual to use the NY-Alert Website, and materially undermine the Parties’ shared goal of providing and improving access to the NY-Alert Website to Blind persons, and to the services and information provided on the NY-Alert Website. Minimal or isolated failures, noncompliance with mere technicalities, or failure to give “full consideration” to Plaintiffs’ input shall not, without more, constitute Substantial Non-Compliance. In no circumstances shall an allegation that services or information are alleged not to be accessible on the NY-Alert Website provide the basis for a claim of Substantial Non-Compliance if Plaintiffs failed to follow the procedures set out in the Stipulation (currently summarized in Section XI of this document). Failures of the entirety of the NY-Alert Website, or of the whole of specific NY-Alert Website service or functions, rendering the NY-Alert Website, service, or function unusable by all members of the public, shall not be considered Substantial Non-Compliance.
10. “Third-Party Content” means materials not located on the NY-Alert Website, and shall not be considered “web content” or “website content” for purposes of this Agreement. Third-Party Content shall not be subject to the terms of this Agreement. Links to Third-Party Content are discussed in Paragraph 17 below.

II. Substitution of ITS

11. ITS and ANGELO RIDDICK in his official capacity as ITS Chief Information Officer shall be substituted as the Defendants in this case. The three parties originally named as Defendants in this case, the NEW YORK STATE DIVISION OF HOMELAND

SECURITY AND EMERGENCY SERVICES, PATRICK A. MURPHY, in his official capacity as Commissioner of the New York State Division of Homeland Security and Emergency Services, and KATHY HOCHUL, in her official capacity as Governor of the State of New York, shall be dismissed with prejudice.

12. The case caption is hereby amended to reflect this substitution and name the New York State Information of Technology Services and ANGELO RIDDICK in his official capacity as ITS Chief Information Officer as the Party Defendants in this litigation (“New Party Defendants”) in place of the New York State Division of Homeland Security and Emergency Services, and Patrick A. Murphy, in his official capacity as Commissioner of the New York State Division of Homeland Security and Emergency Services, and Kathy Hochul, in her official capacity as Governor of the State of New York.

III. Conformance with WCAG 2.0 AA

13. On or before six months from the Effective Date, ITS shall ensure that the NY-Alert Website substantially conforms with WCAG 2.0 AA and remains substantially in conformance through the Continuing Jurisdiction Period. Nothing in this Agreement will prevent ITS and/or its vendors, in their discretion, from working to conform the NY-Alert Website to WCAG 2.1 AA. Moreover, in the event that the ITS Web Accessibility Policy is updated to require conformance with WCAG 2.1 AA during the Continuing Jurisdiction Period, ITS will work to ensure that the NY-Alert Website conforms with WCAG 2.1 AA.
14. In the event an unforeseen circumstance occurs that causes ITS to fail to timely fulfill the timeframe in Paragraph 13 or any material requirement of the Stipulation, ITS shall notify Plaintiffs’ counsel in writing within thirty calendar (30) days after ITS becomes aware of the unforeseen circumstance, its anticipated impact on ITS’s ability to perform the material terms of the Stipulation, the measures taken to prevent or minimize the failure, and, as appropriate, a proposed new timeline for completion. Requests by ITS to amend deadlines due to unforeseen circumstances shall not be unreasonably withheld by Plaintiffs.
15. Nothing in this Agreement shall prevent the removal of any content on the NY-Alert Website or require any pre-approval from Plaintiffs or any other party or entity for such removal.
16. In executing this Stipulation, ITS does not admit that any content on the NY-Alert Website fails currently to comply with the ITS Web Accessibility Policy, Title II of the ADA, the Rehabilitation Act, or any other federal, state, or local law or regulation.
17. Where available, links found on the NY-Alert Website to Third-Party Content will be to HTML pages. For links to PDF pages, and pages other than HTML pages, where it is not clear that the user is leaving the NY-Alert Website, ITS shall add informational text that, by clicking on such links, the user is leaving the NY-Alert Website.

18. Beginning on the Effective Date, and at least once every month through the end of the Continuing Jurisdiction Period, ITS shall conduct automated accessibility tests of the NY-Alert Website for all content for which such testing is possible to evaluate conformance of web content with WCAG 2.0 AA. ITS will continue to use the automated tools currently in its possession, which, at the date this Agreement was executed, consist of Site Improve, AMP by Level Access, ANDI by the Social Security Administration, and AXE by Deque, and Wave Accessibility Tool, or, as applicable, tools later obtained to effectuate automated accessibility testing.
19. Throughout the Continuing Jurisdiction Period, ITS will: (1) perform a manual audit of the pages or other portions of the NY-Alert Website for which ITS has the ability to change or add content, or for which it has the ability to make changes to the underlying code, prior to ITS releasing into production a substantial change to such portions of the NY-Alert Website; and (2) perform a manual audit of any portions of the NY-Alert Website affected by a major update released by Everbridge, Inc., or released by any other third-party vendor that may replace Everbridge, Inc., during the Continuing Jurisdiction Period, as soon as practicable following the release of any such update to the NY-Alert Website.

IV. User Testing

20. Beginning on the Effective Date, ITS shall begin the contracting process with My Blind Spot to utilize a Blind individual or individuals to manually test the NY-Alert Website and identify any accessibility barriers not otherwise apparent through automated testing. Such testing will take place at least once annually through the Continuing Jurisdiction Period, and whenever a substantial change to the NY-Alert Website is implemented. ITS shall incorporate the recommendations contained in My Blind Spot's audits, or otherwise resolve any issues raised therein, to the satisfaction of My Blind Spot and ITS within 120 days after receiving such recommendations.

V. Reporting

21. Beginning no later than six months after the Effective Date, through the Continuing Jurisdiction Period, an appropriate ITS employee shall produce a report to the appropriate employee(s) or official(s) at ITS, with a copy to Plaintiffs. After submission of the first report, ITS shall submit subsequent reports every six months. ITS shall include in its report, as separate items: (1) a summary of automated and manual website testing results during the previous six months for the NY-Alert Website; (2) a summary of results from any user accessibility testing in the previous six months for the NY-Alert Website; (3) a summary of feedback and complaints received from visitors to the NY-Alert Website regarding the NY-Alert Website's accessibility to the Blind during the previous six months; (4) with regard to any accessibility problems reported via (1)-(3), an indication of whether they were resolved; and (5) with regard to any such complaints received directly from visitors to the Website, a statement of how long it took to address such complaint(s).

VI. Website Accessibility Practices and Procedures

22. The ITS Web Accessibility Policy will continue be posted as a link on the “Accessibility” section of the NY-Alert Website, made available to the public, and distributed on an annual basis through the Continuing Jurisdiction Period to all relevant personnel.

VII. Bugs

23. ITS agrees that any inadvertent technical errors (“bugs”) that create nonconformance with WCAG 2.0 AA to the NY-Alert Website will be remedied with the same level of priority (*e.g.*, speed, resources used to remediate) as any equivalent loss of function for individuals without disabilities through the Continuing Jurisdiction Period. If ITS creates any relevant written internal policies, practices, and procedures regarding bug fixes generally during the Continuing Jurisdiction Period, they shall include the principle described in the first sentence of this paragraph in any such written policy, practice, or procedure. The principle described in the first sentence of this paragraph shall also be covered in the required Website Accessibility Training described below.

VIII. Accessibility Page and Consumer Feedback

24. ITS shall provide a notice directly linked from the NY-Alert Website homepage to an “accessibility” page through the Continuing Jurisdiction Period. That accessibility page must, at a minimum, continue to: (1) solicit feedback from visitors to the NY-Alert Website regarding the accessibility of the NY-Alert Website; and (2) provide several methods to offer feedback.
25. Personnel receiving customer inquiries from individuals with disabilities shall direct queries relating to NY-Alert Website accessibility to relevant personnel, to be identified by ITS.

IX. Employee Training

26. At least once annually from the Effective Date through the end of the Continuing Jurisdiction Period, ITS shall provide mandatory training to all of its employees who write or develop programs or code for public-facing NY-Alert Website content, or who create or post final content to the NY-Alert Website (“Web Content Personnel”), on how to provide access to web content to Blind persons, consistent with WCAG 2.0 AA and the terms of the Stipulation (“Website Accessibility Training”). Web Content Personnel shall receive Website Accessibility Training when they are hired or promoted into a position that includes the duties described in the first sentence of this paragraph. ITS shall also require and take measures to assure that relevant contracting personnel and contractors are familiar with WCAG 2.0 AA and the requirements of the Stipulation to the extent necessary to perform their duties relating to the NY-Alert Website under their contract.

X. Retention Process for My Blind Spot

27. ITS's retention of My Blind Spot is subject to obtaining all necessary approvals under the State Finance Law, which may include the approval of the non-party New York State Comptroller and the Contract Approval Unit of the New York State Office of the Attorney General. ITS will make good faith efforts to ensure that required approvals for retention of My Blind Spot are received. In the event that such approvals are not received, ITS agrees to retain another website accessibility user tester in order to fulfill its responsibilities under Section IV of Stipulation ("User Testing"). ITS will disclose the name of such entity to Plaintiffs prior to such retention. Plaintiffs may, if they so choose, make alternative or additional suggestions to ITS about the entity to be retained, which ITS agrees to consider. Under no circumstances, however, shall the Stipulation or ITS's agreement to consult with Plaintiffs be deemed to provide Plaintiffs a right to select or approve any expert, user tester, or other entity to be retained or used by ITS.

XI. Dispute Resolution

28. The following dispute resolution process shall apply:

- a. Notice, Meet and Confer Obligations. During the Continuing Jurisdiction Period, in the event that Plaintiffs believe that ITS is in Substantial Non-Compliance with the Agreement, Plaintiffs' counsel may provide ITS with a written statement describing the alleged Substantial Non-Compliance ("Notice of Substantial Non-Compliance" or "Notice"). The Notice must include information necessary to identify the alleged Substantial Non-Compliance, and will, as applicable, include: (1) a notice of what function was attempted; (2) a description of the effect of the Substantial Non-Compliance on the user and/or user tester; (3) any suggestions for cure; and (4) copies of any documents or data relied on by Plaintiffs that relate to or otherwise document the alleged breach. The Notice shall also state whether the Plaintiffs believe the alleged breach significantly interferes with the practical ability of a Blind individual to use the NY-Alert Website, and how it does so. ITS shall provide a written statement responding to the Notice of Substantial Non-Compliance within thirty (30) calendar days from receipt of the Notice of Substantial Non-Compliance, including any measures being undertaken to cure such breach, or justification for the failure to cure such breach; and, within thirty (30) calendar days of receipt of ITS's written response, counsel for the Parties shall meet and confer in a good faith effort to resolve their dispute informally. In no instance shall the Plaintiffs be permitted to seek mediation, or file an enforcement motion as permitted below in this Section, without first having provided ITS with a Notice of Substantial Non-Compliance and time to cure or provide justification for any alleged failure to cure. Requests for extensions of time in this regard shall not be unreasonably denied.
- b. Magistrate Judge Nonbinding Mediation. In the event that a Notice of Substantial Non-Compliance cannot be resolved informally, counsel for the Parties may notify the District Court of the dispute, in which case the Court will appoint a

Magistrate Judge to mediate the dispute. The Parties agree to make a good faith effort to resolve any dispute through mediation.

- c. Adjudication of Disputes Unresolved by Mediation. If the dispute has not been resolved through mediation in conformity with the Stipulation within seventy-five (75) days of commencement of the mediation before the Magistrate Judge, Plaintiffs may file a motion with the Court seeking enforcement of the Stipulation.
- d. It shall be Plaintiffs' burden in moving to enforce the Stipulation to demonstrate there has been Substantial Noncompliance. Nothing in this Stipulation shall preclude any Party's counsel from seeking attorneys' fees in accordance with applicable law in connection with any enforcement motion brought in connection with this Stipulation, nor shall any Party be prevented from raising any defense to such application.

XII. Funding/Unforeseen Circumstances

29. *Agreement Terms Contingent on Funding.* ITS will use its best efforts to seek approval of the funding necessary to implement activities described in the Stipulation, including seeking sufficient spending authority in the Executive budget appropriation bills to be submitted to the New York State Legislature in each fiscal year for the Continuing Jurisdiction Period.
30. *Obligations if Funding is Not Appropriated or Unforeseen Circumstances Arise.* If at any time ITS believes that it cannot fully implement one or more of the material provisions of this Agreement because of either: (a) the Legislature's failure to provide adequate funding for one or more of the Sections enumerated herein; and/or (b) unforeseen circumstances, such as a legislative change, ITS shall promptly notify Plaintiffs in writing. Upon receipt of such written notice by ITS, the Parties shall meet and confer to discuss whether the affected terms of this Agreement can nevertheless be implemented with modifications agreed upon by the Parties. Plaintiffs shall not unreasonably deny a modification. If an agreement is reached, the Parties shall modify this Agreement accordingly in writing. If an agreement is not reached, the issue will be resolved by application to the Magistrate and then the Court, using the dispute resolution process contained in Section XI, above. In connection with the resolution of any such dispute, as long as ITS can establish that it used its best efforts to seek adequate funding or to otherwise respond to the applicable unforeseen circumstance, the Magistrate and Court shall not order ITS to take any measures that would impose an undue burden or fundamental alteration, which shall be ITS's burden to prove, consistent with applicable law governing the defenses of undue burden and fundamental alteration.

XIII. Attorneys' Fees and Costs

31. In full consideration of Plaintiffs' execution of this Agreement, Plaintiffs' agreement to be bound by its terms, and the undertakings as set forth herein, including the dismissal of the Litigation with prejudice, and other good and valuable consideration, the sufficiency

of which is hereby acknowledged, the State of New York agrees to pay Plaintiffs' attorneys' fees and costs in the aggregate amount of \$90,000.00, for which a I.R.S. Form 1099 shall be issued, in full and complete satisfaction of any and all claims for attorneys' fees, costs, disbursements, and expenses incurred by Plaintiffs for any and all counsel who have at any time represented Plaintiffs in the Litigation, as well as in connection with any other proceeding, administrative, judicial, or otherwise, and any other claim or action alleging any of the acts, transactions, occurrences or omissions asserted in the Litigation. The payment referred to in this Paragraph shall be made payable by check and delivered to Disability Rights Advocates, P.O. Box #331, Berkeley, CA 94701.

32. **State Approval of Payments.** The payment referenced in Paragraph 31 above is subject to the approval of all appropriate state officials in accordance with Section 17 of the New York Public Officers Law. Plaintiffs and their attorneys agree to execute and deliver all necessary or appropriate vouchers and other documents requested with respect to such payments. In the event such approval is denied, counsel for Defendants shall so notify counsel for Plaintiffs within five (5) business days of the disapproval. In the event of such disapproval, Plaintiffs shall have ninety (90) days from such notice within which to make a motion to the Court seeking attorneys' fees, costs, and disbursements from New Party Defendants.
33. **Accrual of Interest.** In the event that the payments referenced in Paragraph 31 of this Agreement have not been received by Plaintiffs' attorneys within 120 days after receipt by the Office of the Attorney General of a "So Ordered" copy of this Agreement, endorsed by a judge and entered into the record by the clerk of the court, and subject to the Plaintiffs' prompt execution and delivery to counsel for the Defendants of all necessary and appropriate documentation required under Paragraph 31 of this Agreement, interest shall accrue on the outstanding principal balance at the statutory rate pursuant to 28 U.S.C. § 1961, beginning on the one-hundred-and-twenty-first (121st) day after receipt by the Office of the Attorney General of the fully-executed So Ordered Agreement.
34. **Liability for Taxes.** Plaintiffs and Plaintiffs' attorneys agree that any taxes on the payments, and/or interest or penalties on taxes on the payments referenced in Paragraph 31 shall be their sole and complete responsibility. Plaintiffs and their attorneys shall have no claim, right, or cause of action against Defendants, ITS, Chief Information Officer Riddick, the State of New York (including but not limited to any and all agencies, departments, or subdivisions thereof) or any of their officials, employees, or agents, whether in their individual or official capacities, on account of such taxes, interest, or penalties. Plaintiffs agree that they will defend, indemnify, and hold harmless Defendants, ITS, Chief Information Officer Riddick, the State of New York (including but not limited to any and all agencies, departments, or subdivisions thereof), and any of their officials, employees, or agents, whether in their individual or official capacities, for the satisfaction of any such taxes, interest, or penalties.
35. **Waiver of Attorneys' Lien.** The undersigned attorneys for Plaintiffs do hereby release and waive any attorneys' lien they may have on the settlement proceeds in the Litigation

pursuant to N.Y. Judiciary Law §§ 475 and 475-a or any other state or federal law, statute, contract, or otherwise.

36. **No Other Attorney.** Plaintiffs represent and warrant that besides the undersigned attorneys for Plaintiffs, there are no other attorneys that have a lien on the settlement proceeds in the Litigation pursuant to the provisions of N.Y. Judiciary Law §§ 475 and 475-a or any other state or federal law, statute, contract, or otherwise for services rendered to Plaintiffs in the Litigation.
37. **Other Liens.** Plaintiffs and Plaintiffs' undersigned attorneys agree that neither Defendants, ITS, Chief Information Officer Riddick, nor the State of New York (including, but not limited to, any and all agencies, departments, and subdivisions thereof), nor any of their officials, employees, or agents, whether in their individual or official capacities, shall be responsible for any liens, setoffs, or claims of any kind, whether known or unknown, that may attach to the payments set forth in this Agreement. Plaintiffs and Plaintiffs' attorneys shall have no claim, right or cause of action against Defendants, the State of New York (including, but not limited to, any and all agencies, departments and subdivisions thereof), and any of their officials, employees or agents, whether in their individual or official capacities, on account of such liens, setoffs, or claims.
38. **Monitoring.** New Party Defendants collectively will pay Plaintiffs' attorneys up to \$15,000 for all attorneys' fees, costs, disbursements, and expenses incurred in each year, in the aggregate, for the two-year term of the Agreement to compensate Plaintiffs' attorneys' for their work monitoring New Party Defendants' compliance with the Agreement. Plaintiffs will provide Defendants with contemporaneous billing records for its work monitoring the Agreement, which shall be based on the hourly rates of Plaintiffs' attorneys. New Party Defendants shall compensate Plaintiffs' attorneys for the fees actually incurred monitoring, which may be less than, but no greater than, the aggregate amount of \$15,000 per year for the two-year term of the Agreement.

XIV. Release and Dismissal of Claims

39. Any and all claims asserted in the Complaint and in this Litigation by the Plaintiffs are resolved and fully satisfied upon completion of the Continuing Jurisdiction Period.
40. Any claims not raised or that could have been raised based upon the facts alleged in the Complaint and in this Litigation and not herein or previously resolved are dismissed with prejudice.
41. As of the Effective Date, the remedies enforceable to Plaintiffs are limited to the provisions of this Stipulation.
42. As of the Effective Date, Plaintiffs, individually and on behalf of the respective heirs, executors, administrators, personal representatives, successors, and assigns, hereby jointly and severally release and forever discharge, on the merits with prejudice: (a) ITS,

its past and present officials, employees, departments, agencies, representatives, directors, Chief Information Officers and agents, their successors and assigns, and their respective heirs, executors, administrators, personal representatives, and transferees; (b) Chief Information Officer Riddick in his official capacity, his past and present officials, employees, departments, agencies, representatives, directors, commissioners, and agents, their successors and assigns, and their respective heirs, executors, administrators, personal representatives, and transferees; (c) DHSES, its past and present officials, employees, departments, agencies, representatives, directors, commissioners, and agents, their successors and assigns, and their respective heirs, executors, administrators, personal representatives, and transferees; (d) Commissioner Murphy in his official capacity, his past and present officials, employees, departments, agencies, representatives, directors, commissioners, and agents, their successors and assigns, and their respective heirs, executors, administrators, personal representatives, and transferees; (e) Governor Hochul in her official capacity, her past and present officials, employees, departments, agencies, representatives, directors, commissioners, and agents, their successors and assigns, and their respective heirs, executors, administrators, personal representatives, and transferees; and (f) the State of New York, its past and present officials, employees, departments, agencies, representatives, directors, commissioners, and agents, their successors and assigns, and their respective heirs, executors, administrators, personal representatives, and transferees (collectively the “Releasees”); and for each of them, of and from any and all claims, whether known or unknown, foreseen or unforeseen, matured or un-matured, accrued or not accrued, direct or indirect, from the beginning of time through the Effective Date that the Plaintiffs ever had, now has or have, or can, shall or may hereafter have against the Releasees or any of them, with respect to any claims raised or that could have been raised based upon the facts alleged in the Complaint and in this Litigation. In acknowledging this, Plaintiffs also admit, acknowledge, and agree that no further legal action may be brought or legal recourse sought against Defendants, ITS, Chief Information Officer Riddick, or the State of New York in this or any other matter with respect to any and all claims raised or that could have been raised based upon the facts alleged in the Complaint and in this Litigation and resolved by the negotiated terms of this Stipulation.

XV. Continuing Jurisdiction

43. As of the Effective Date, Plaintiffs’ claims contained in the Complaint shall be deemed resolved and fully satisfied.
44. During the Continuing Jurisdiction Period, the jurisdiction of the Court shall be limited to the purpose of enforcing the terms of this Stipulation.
45. The jurisdiction of this Court shall terminate at the conclusion of the Continuing Jurisdiction Period, except that if Plaintiffs move pursuant to Section XI to enforce the terms of this Stipulation, jurisdiction shall continue until:
 - (a) Such motion is decided;
 - (b) Such time as directed by the Court, if the motion is decided favorably for

Plaintiffs; or

(c) Such time as may be extended by the Parties by modification of this Stipulation.

46. Following the termination of the Court's jurisdiction as set forth in Paragraph 45, this Stipulation and Order shall be deemed unenforceable as to the Defendants, ITS, or Chief Information Officer Riddick.

XVI. General Provisions

47. No modification of this Stipulation shall be effective unless approved in writing by all Parties. No provision of this Stipulation may be severed unless such severance is approved in writing by all Parties.

48. If any non-material provision of this Stipulation is held by a court of competent jurisdiction to be invalid or unenforceable, such holding shall not impair or invalidate the remainder of this Stipulation and the effect thereof shall be confined to the provisions held unenforceable.

49. If the Court disapproves the Stipulation or any material part thereof, or if the Stipulation is modified or reversed in any material respect by an order or decision that is final and unappealable, then this Stipulation shall be canceled and deemed null and void, and the Parties shall revert to their respective positions as of the date prior to their signing this Stipulation.

50. Nothing contained herein, and no action taken pursuant hereto, shall be deemed to be an admission by the Defendants, ITS, Chief Information Officer Riddick, or any agency, office, official, employee, or agent thereof, of any of Plaintiffs' allegations, nor an admission by Defendants, ITS, or Chief Information Officer Riddick that they have in any manner or way violated Plaintiffs' rights. By entering into this Stipulation, the Defendants, ITS, and Chief Information Officer Riddick in no way admit any violation of law or any liability whatsoever to the Plaintiffs, individually or collectively, all such liability being expressly denied. Likewise, by entering into this Stipulation, the Defendants, ITS, and Chief Information Officer Riddick in no way admit to the suitability of these cases for litigation other than for purposes of settlement. Rather, the Defendants, ITS, and Chief Information Officer Riddick enter into this Stipulation to avoid further protracted litigation and to resolve and settle all disputes with the Plaintiffs. Settlement of this Litigation, negotiation, execution, and terms of this Stipulation, and all acts performed or documents executed pursuant to or in furtherance of this Stipulation or the settlement (a) are not, shall not be deemed to be, and may not be used as, an admission or evidence of any wrongdoing or liability on the part of Defendants, ITS, and/or Chief Information Officer Riddick, or of the truth of any of the factual allegations in any complaints filed in this Litigation; (b) are not, shall not be deemed to be, and may not be used as, an admission or evidence of fault or omission on the part of Defendants, ITS, and/or Chief Information Officer Riddick in any civil, criminal, administrative or arbitral proceeding; (c) are not, shall not be deemed to be, and may not be used as an admission or evidence of the appropriateness of these or similar claims for class

certification treatment; and (d) do not, and shall not be deemed to, constitute a policy, custom, or practice of Defendants, ITS, Chief Information Officer Riddick, or any of them.

51. This Stipulation shall not in any manner be construed as determinative of the issues raised in the Litigation or any other proceeding, and shall have no precedential value. In addition, notwithstanding the provisions of any paragraph herein, this Stipulation shall not bind or collaterally estop Defendants, ITS, Chief Information Officer Riddick, the State of New York, or their present and former agencies, subdivisions, subsidiaries, administrators, principals, officers, employees, directors, members, trustees, agents, attorneys, insurers, heirs, and assigns, whether in their individual or official capacities, or any of them, or all of them, in pending or future actions or proceedings in which the same or similar issues are raised, from defending any and all issues raised in said actions or proceedings, or from advancing any defenses.
52. This Stipulation sets forth the entire agreement between the Parties with respect to the subjects contemplated herein, and supersedes all prior or contemporaneous agreements or understandings, both written and oral, among them with respect to the subjects contemplated herein. No representations regarding the subject matter of this Litigation, or the subjects contemplated herein, oral or otherwise, express or implied, other than those specifically set forth in this Stipulation, shall be deemed to exist or to bind the Parties, or to vary the terms and conditions contained herein.
53. This Stipulation shall not be admissible as evidence or used for any other purpose in any other litigation or settlement negotiation, except to enforce the provisions contained herein as set forth in Section XI of this Stipulation.
54. The headings contained in this Stipulation are for convenience of reference only and are not a material part of this Stipulation.
55. All Parties to this Stipulation have participated in its drafting; consequently, any ambiguity shall not be construed for or against any party. Where required by context, the plural includes the singular and the singular includes the plural, and the terms “and” and “or” will mean “and/or.”
56. Other than this Litigation, Plaintiffs and Plaintiffs’ attorneys each represent and warrant that each has not commenced, maintained, or prosecuted any other action, charge, complaint, grievance, or proceeding of any kind against Defendants, ITS, Chief Information Officer Riddick, and/or the State of New York (including, but not limited to, any agencies, departments, and subdivisions thereof), and/or their officials, employees, or agents, whether in their individual or official capacities, on their own behalf and/or on behalf of any other person and/or on behalf of or as a member of any alleged class of persons, relating to persons with visual disabilities who allegedly have been and are being denied meaningful access to the NY-Alert Website, up to and including the end of the Continuing Jurisdiction Period of this Agreement, and any and all claims regarding or arising out of the acts, transactions, occurrences, or omissions that are described, alleged, or contained in the Complaint in this Litigation, and that none of the foregoing is

currently pending in any court or before any administrative or investigative body or agency, and acknowledge that this representation constitutes a material inducement for Defendants, ITS, and Chief Information Officer Riddick to enter into this Agreement.

57. The construction, interpretation, operation, effect and validity of this Stipulation, and all documents necessary to effectuate it shall be governed by the laws of the State of New York without regard to conflicts of law, except to the extent that federal law may govern.
58. In computing any time period specified by this Stipulation, the following rules apply: (i) exclude the day of the event that triggers the period; (ii) count every day, including intermediate Saturdays, Sundays, and New York State (“NYS”) legal holidays, unless business days are specified; and (iii) include the last day of the period, but if the last day is a Saturday, Sunday, or NYS legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or such NYS legal holiday.
59. Any notice, report, or communication required by or made pursuant to the terms of this Stipulation, shall be sent by electronic mail and, upon request, by first class mail, postage prepaid, to all of the people below:

To Plaintiffs: Rebecca Williford
rwilliford@dralegal.org
Disability Rights Advocates
2001 Center Street, Fourth Floor
Berkeley, CA 94704-1204

Chloe Holzman
cholzman@dralegal.org
Disability Rights Advocates
655 Third Avenue, Fourteenth Floor
New York, NY 10017-5621

To Defendants: Noam Lerer
noam.lerer@ag.ny.gov
Assistant Attorneys General
New York State Office of the Attorney General
28 Liberty Street
New York, New York 10005

Marcy S. Stevens
Marcy.Stevens@its.ny.gov
Chief General Counsel
Maxwell Heintz
Maxwell.Heintz@its.ny.gov
Associate Attorney
New York State Office of Information Technology Services
Empire State Plaza
Swan Street Building, Core 4, Floor 5

Albany, NY 12226

60. This Stipulation is final and binding upon the Parties, their successors, and their assigns.
61. This Stipulation may be executed in one or more counterparts, including by signatures transmitted by .pdf/.tiff image of the signatures transmitted via email. All executed counterparts and each of them shall be deemed to be one and the same instrument.
62. The Parties and the signatories to this Stipulation represent and warrant that the signatories executing this Stipulation on behalf of each Party have full authority to do so and to make the representations, warranties, and agreements contained herein.
63. This Stipulation shall be submitted without further notice to the Court to be “So Ordered.”

Dated: Berkeley, California
September 22, 2021

Rebecca Williford
Chloe Holzman
Disability Rights Advocates
Attorneys for Plaintiffs

By:



Rebecca Williford
Deputy Director of Litigation
Disability Rights Advocates
2001 Center Street, Third Floor
Berkeley, CA 94704-1204
Tel. (510) 665-8644

Dated: New York, New York
September __, 2021

LETITIA JAMES
Attorney General
State of New York
Attorney for Defendants

By:

Noam Lerer
Assistant Attorney General
28 Liberty Street
New York, New York 10005
Tel. (212) 416-8508

Albany, NY 12226

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Dated: Berkeley, California
September __, 2021

Rebecca Williford
Chloe Holzman
Disability Rights Advocates
Attorneys for Plaintiffs

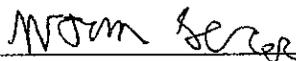
By:

Rebecca Williford
Deputy Director of Litigation
Disability Rights Advocates
2001 Center Street, Third Floor
Berkeley, CA 94704-1204
Tel. (510) 665-8644

Dated: New York, New York
September 21, 2021

LETITIA JAMES
Attorney General
State of New York
Attorney for Defendants

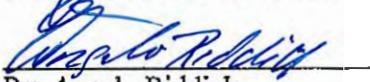
By:



Noam Lerer
Assistant Attorney General
28 Liberty Street
New York, New York 10005
Tel. (212) 416-8508

Dated: Albany, New York
22, September, 2021

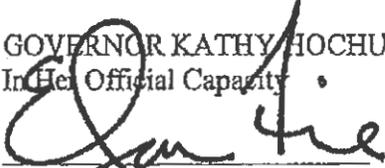
THE NEW YORK STATE OFFICE OF
INFORMATION TECHNOLOGY SERVICES



By: Angelo Riddick
Chief Information Officer
New York State Office of Information Technology Services
Empire State Plaza
Swan Street Building, Core 4, Floor 5
Albany, NY 12226

Dated: Albany, New York
_____, 2021

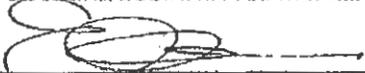
GOVERNOR KATHY HOCHUL
In Her Official Capacity



By: Elizabeth Fine
Counsel to the Governor

Dated: Albany, New York
21, September, 2021

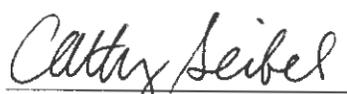
THE NEW YORK STATE DIVISION OF HOMELAND
SECURITY AND EMERGENCY SERVICES, AND DHSES
COMMISSIONER PATRICK MURPHY, IN HIS OFFICIAL CAPACITY



September 22, 2021

By: Elisha Tomko
General Counsel
New York State Division of Homeland Security and Emergency Services
State Office Campus
Building 7A
Albany, NY 12242

SO ORDERED.

 _____
CATHY SEIBEL, U.S.D.J. September 23, 2021

The Clerk of Court is respectfully 16
directed to effectuate Paragraphs
11 and 12 above.