

## **NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION LAWSUIT**

***Bronx Independent Living Services, et al. v. Metropolitan Transportation Authority, et al.***  
***Case No. 16-cv-5023 (ER) (S.D.N.Y.)***

**A court authorized this notice. This is not a solicitation from a lawyer.**

ATTENTION: If you meet the following description, then you may be a member of the proposed settlement class affected by the above lawsuit:

1. You have a mobility disability that prevents you from accessing the Middletown Road elevated subway station serving the 6 train in the Bronx (the “Middletown Road Station”) because of the stairs at that station; and
2. You would use the Middletown Road Station if it were made accessible to persons with mobility disabilities.

**PLEASE READ THIS NOTICE CAREFULLY. YOUR RIGHTS MAY BE AFFECTED BY LEGAL PROCEEDINGS IN THIS LAWSUIT.**

### **GENERAL INFORMATION**

#### **1. Why am I receiving this notice?**

This notice is to inform you of the proposed settlement (the “Settlement”) of a pending class action lawsuit brought on behalf of persons with mobility disabilities (including those who use wheelchairs or other mobility aids like walkers, crutches, or canes) who wish to use the New York City Transit Authority (“NYCTA”) and Metropolitan Transportation Authority (“MTA,” collectively “NYCTA”) Middletown Road Station.

#### **2. What is this lawsuit about?**

The lawsuit, *Bronx Independent Living Services, et al. v. Metropolitan Transportation Authority, et al. Case No. 16-cv-5023 (ER) (S.D.N.Y.)*, was filed against the NYCTA in federal court in June 2016 on behalf of two individuals with mobility disabilities, Robert Hardy and Rodolfo Diaz, and two disability rights organizations: Bronx Independent Living Services, and Disabled In Action of Metropolitan New York. The United States joined the case by filing its own complaint against NYCTA in March 2018.

The case claims that by doing a renovation at the Middletown Road Station in 2013-2014 and failing to add elevators to make the station accessible to people with mobility disabilities during that renovation, NYCTA violated the Americans with Disabilities Act, Section 504 of the Rehabilitation Act of 1973, and the New York City Human Rights Law.

More information about the lawsuit, including Plaintiffs’ complaint (the document filed to begin a lawsuit), is available here: <https://dralegal.org/case/bronx-independent-living-services-bils-et-al-v-metropolitan-transit-authority-mta-et-al/>

The Plaintiffs, NYCTA, and the United States (together, the “Parties”) reached a written agreement (the “Settlement Agreement,” the “Settlement,” or the “Agreement”) to settle the lawsuit. That Agreement must be approved by the Court before it can be finalized. The details of the Agreement are summarized below.

**3. What is a class action?**

The Plaintiffs made their claims on behalf of themselves and others who might also have been impacted by these practices. The Plaintiffs have been appointed by the Court to serve as Class Representatives on behalf of all the impacted individuals (also called the "Class Members" or the “Class”).

**4. Why is there a Settlement?**

Rather than proceed to trial, the Plaintiffs, NYCTA, and the United States have agreed to settle the case. Plaintiffs believe that the Settlement they have reached is fair, adequate, reasonable, and in the best interests of the Class Members. In reaching this conclusion, the Class Representatives and their lawyers have considered the benefits of the Settlement, the possible risks of continued court proceedings, and the expense and delay that would result from continued court proceedings and possible appeals.

**5. Who is covered by the Settlement?**

All persons with mobility disabilities who cannot currently use the Middletown Road Station because of the stairs at the Station and who would use the Station if it were made accessible to people with mobility disabilities.

**6. What do I do if I’m not sure whether I am included?**

If you are not sure if you are covered by the class, please email Disability Rights Advocates at [MiddletownRoad@dralegal.org](mailto:MiddletownRoad@dralegal.org) or call (332) 217-2358 for more information.

**7. Can I receive money under the Settlement?**

No. The Settlement does not give any money to Class Members. However, the Settlement does not release (give up) any individual claims for monetary damages.

**8. What does the Settlement provide for the Class?**

If the Settlement is approved, NYCTA will make the Middletown Road Station accessible to people with mobility disabilities in one direction of travel by installing one or more elevators. Although the Settlement only requires the MTA and NYCTA to make the station accessible to people with mobility disabilities in one direction of travel, nothing in the Settlement keeps them from deciding to make both sides accessible to people with mobility disabilities.

This notice summarizes the requirements in the Settlement:

- Within 12 months after the Court approves the Agreement, NYCTA will determine which direction of travel at the Middletown Road Station will be made accessible to people with mobility disabilities (the “Selected Side”) and the number and location of elevators or ramps required.
- NYCTA will oversee installation and construction of the required elevators for the Selected Side of the Middletown Road Station, and will use commercially reasonable efforts to have that construction complete within 7 years after the Court approves the Agreement.
- Plaintiffs will monitor NYCTA’s compliance with the Settlement Agreement’s required actions during the term of the Agreement:
  - Every year, beginning one year after the Court approves the Agreement, NYCTA will update Plaintiffs and the United States about its progress.
  - In the event of an unforeseen circumstance that prevents NYCTA from completing the elevator construction within 7 years, NYCTA will notify Plaintiffs and the United States, and Plaintiffs and the United States may choose to challenge NYCTA about that.
- The Parties have established a dispute resolution process to be utilized if disputes should arise under the Agreement.

**9. Do I have to give up any rights if the Settlement is approved?**

Under the Settlement Agreement, the Plaintiffs agree to release (give up) certain claims and release certain claims on behalf of the Class.

- The Plaintiffs give up all claims that were alleged in the above lawsuit, or that could have been alleged in the suit that relate to the failure to provide stair-free paths of travel at the Middletown Road Station when the station was renovated.
- The Settlement Agreement does not release any rights the Class member have with respect to the settlement agreement that resulted from two separate cases against the MTA called *Center for Independence of the Disabled New York, et al. v. Metropolitan Transportation Authority, et al.*, No. 153765/2017 (N.Y. Sup. Ct.), and *De La Rosa, et al. v. Metropolitan Transportation Authority, et al.*, No. 19-cv-4406 (ER) (S.D.N.Y.) as it relates to the non-Selected Side of the Middletown Road Station. Those cases were about the accessibility of the entire City subway system. Under the settlement of those cases, subject to the terms and conditions set forth in the parties’ settlement agreement, the MTA agreed to make at least 95% of the subway system accessible over the coming years. Nothing in this Settlement Agreement impacts the MTA’s obligations under that separate agreement.
- The Settlement Agreement does not release any claims to enforce the terms of the Settlement Agreement.

## **10. When will the Court decide if it approves the Settlement?**

The Court will hold a hearing (called a “Fairness Hearing”) to determine whether the proposed Settlement Agreement is fair, adequate, and reasonable, and should be finally approved. The Fairness Hearing will be held on January 25, 2024, at 10:30 a.m. before the Honorable Edgardo Ramos.

Please contact Disability Rights Advocates for any updated information on attending the hearing. If the Court approves the Settlement after the Fairness Hearing, there could still be appeals. If any appeal is filed, it is uncertain how long it might take to resolve. If the Settlement is approved, and no appeal is filed, the MTA will start taking the actions required by the Settlement.

### **YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT**

- **You can object**—you may write to the Court if you do not agree with the Settlement.
- **You can go to the Fairness Hearing**—you may ask to speak to the Court regarding the fairness of the Settlement.
- **If you do nothing** and the Court approves this Settlement, if you are a Class Member, you will be bound by the terms of the Settlement.
- These rights and options are explained in this Notice. **There are deadlines to exercise these rights and options.**

### **THE LAWYERS IN THE CASE**

#### **11. Do I have a lawyer in this case?**

Yes. If you are a Class Member, attorneys from Disability Rights Advocates, a non-profit law firm (“Class Counsel”) represent you solely for purposes of this Settlement. The law firm is experienced in handling similar cases regarding disability rights. More information about Disability Rights Advocates and its lawyers’ experience is available at <http://www.dralegal.org>.

You will not be charged for being represented by these lawyers in this matter. If you want to get your own lawyer, you may hire one at your own expense.

#### **12. How will the lawyers be paid?**

Class Counsel shall be entitled to seek from the Court an award of its attorneys’ fees, costs, and any other expenses in connection with this Action to be paid by the NYCTA. Class Counsel and NYCTA will first try to reach agreement on the amount of such an award. If they are able to reach agreement on that amount, Class Counsel and NYCTA will present a stipulation to that effect to be approved by the Court upon or following the Effective Date of this Agreement. If Class Counsel and NYCTA are not able to reach agreement on the amount of such award, Class

Counsel may file a motion seeking the payment of its fees, costs, and other expenses, which the NYCTA reserves its right to oppose.

**The parties did not negotiate fees or costs until after all other terms of the Settlement were finalized. The payment of attorneys' fees will not impact the commitments made by NYCTA under this Settlement.**

**WHAT IF I WANT TO OBJECT TO THE SETTLEMENT AGREEMENT?**

The Settlement Agreement must be approved by the Court to take effect. If you are a member of the Class, you can object to the Settlement if you do not agree with it. You can give reasons why you think the Court should not approve the Settlement so that the Court can consider your views. You cannot ask the Court to change the terms of the Settlement; the Court can only approve or deny the Settlement. If the Court denies the Settlement, the actions outlined in this notice will not occur and the lawsuit will continue.

The Court has preliminarily approved the Settlement Agreement, and has scheduled a hearing for January 25, 2024, at 10:30 a.m. to determine whether the proposed Settlement Agreement is fair and reasonable and should be approved on a final basis.

To file an objection to the Settlement, you must send the Court a written objection at the address below. Be sure to include your name, address, telephone number, signature, and a full explanation of why you object to the Settlement.

Your written objection to the Settlement must be received by the Court no later than December 26, 2023. The objection must be addressed to:

Hon. Edgardo Ramos  
Thurgood Marshall United States Courthouse  
40 Foley Square  
New York, NY 10007

With copies sent to:

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

Littler Mendelson, P.C.  
Attn: Eric D. Witkin, Shawn M. Clark, Rebecca Goldstein  
900 Third Avenue  
New York, NY 10022  
EWitkin@littler.com  
SMClark@littler.com  
RGoldstein@littler.com

United States Attorney's Office  
Southern District of New York  
Civil Division  
c/o Lara Eshkenazi & Ellen Blain  
86 Chambers Street, 3rd Floor  
New York, NY 10007

### **When Will the Court Make a Decision About Approving the Settlement?**

There will be a hearing for the Court to determine whether to approve the Settlement. The hearing will be held on **January 25, 2024, at 10:30 a.m.** in the Courtroom of the Honorable Judge Edgardo Ramos located at:

Thurgood Marshall United States Courthouse  
Courtroom 619  
Southern District of New York  
40 Foley Square  
New York, NY 10007

Any changes to the hearing dates or times will be available on the Disability Rights Advocates website at <https://dralegal.org/class-notice/middletown-road-subway-station>.

### **13. Do I have to attend the hearing?**

No. The lawyers from Disability Rights Advocates will attend the hearing and answer any questions the judge may have about the case. You are welcome to attend the hearing if you would like, but you must pay for your own travel to the hearing if it is held in person or provide your own internet access if the hearing is held remotely.

If you sent an objection letter, you are not required to come to the hearing to talk about your letter. All you have to do to properly object is send your written letter by the deadline. If you have your own lawyer, you may also pay your lawyer to be at the hearing, but that is up to you.

### **14. Am I allowed to speak at the hearing?**

You can ask the Court for permission to speak at the Fairness Hearing. Please note that any costs incurred for attending the hearing will be at your own expense. To request to speak at the hearing, you must send a letter saying that it is your intention to appear in the case and list the case number. Make sure to include your name, address, telephone number, and signature, and list any witnesses you may call to testify and exhibits you intend to introduce into evidence at the hearing. You may also want to provide the Court with the information needed to contact you electronically.

Although you are not required to attend the final approval hearing, as a Class Member, you may participate in, and be heard at, the hearing. You may appear on your own or through an attorney. If you appear through an attorney, you are responsible for paying that attorney. The hearing date

may be changed by the Court without further notice to the entire class. If you wish to receive electronic notice of any changes to the schedule, please file a notice of appearance with the Court and include a valid e-mail address at which you can receive notice.

**15. What if I do not do anything?**

You do not need to do anything to receive the future benefits of this Settlement once it is approved.

**IF YOU DO NOT TIMELY SUBMIT AN OBJECTION AS DESCRIBED IN THIS NOTICE, YOU WILL BE DEEMED TO HAVE WAIVED (GIVEN UP) YOUR OBJECTION AND LOSE THE ABILITY TO MAKE ANY OBJECTION TO THE SETTLEMENT AGREEMENT.**

**HOW DO I GET MORE INFORMATION?**

This notice summarizes the proposed Settlement Agreement. You can review the actual Settlement Agreement and its precise terms and conditions by:

1. Visiting <https://dralegal.org/class-notice/middletown-road-subway-station>
2. Contacting Class Counsel at the following:

Disability Rights Advocates  
Attn: Chloe Holzman  
655 Third Avenue, Fourteenth Floor  
New York, NY 10017-5621  
[MiddletownRoad@dralegal.org](mailto:MiddletownRoad@dralegal.org)  
Telephone: (332) 217-2358

3. Accessing the court docket for these cases through the Courts' Public Access to Court Electronic Records (PACER) system at <https://pacer.login.uscourts.gov/> (Case No. 16-cv-5023).

**PLEASE DO NOT TELEPHONE THE COURTS OR THE COURT CLERKS' OFFICES TO INQUIRE ABOUT THE SETTLEMENT AGREEMENT.**

**This Notice is also available in Spanish. To obtain copies of this Notice in Spanish or in alternative accessible formats, please email [MiddletownRoad@dralegal.org](mailto:MiddletownRoad@dralegal.org) or call (332) 217-2358.**

**Este Aviso también está disponible en español. Para obtener copias de este Aviso en español o en formatos accesibles alternativos, envíe un correo electrónico a [MiddletownRoad@dralegal.org](mailto:MiddletownRoad@dralegal.org) o llame al (332) 217-2358.**