

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

BORIS ERSHTEYN, IRINA ERSHTEYN,
SARAH RAY, and MANOUCHEHR
SORATPOUR, individually and on behalf all
persons similarly situated,

Plaintiffs,

18 Civ. 04872 (PKC) (ST)

-against-

ANDREW SAUL, as Commissioner of the Social
Security Administration,¹

Defendant.

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into by and between Plaintiffs Boris Ershteyn, Irina Ershteyn, Sarah Ray, and Manouchehr Soratpour (“Plaintiffs”) and Defendant Andrew Saul, in his official capacity as Commissioner of the Social Security Administration (together with Plaintiffs, the “Parties”).

WHEREAS, Plaintiffs Boris Ershteyn and Irina Ershteyn filed this action on August 27, 2018, asserting claims under 28 U.S.C. § 1361, 20 C.F.R. § 416.1207(d), the Due Process Clause of the Fifth Amendment to the U.S. Constitution, and the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution seeking equitable relief;

WHEREAS, Plaintiffs filed an Amended Complaint adding Plaintiffs Sarah Ray and Manouchehr Soratpour on November 21, 2018; and

WHEREAS, the Parties desire to settle this matter without further litigation.

¹ Andrew Saul is automatically substituted for Nancy Berryhill pursuant to Fed. R. Civ. P. 25(d).

IT IS NOW, HEREBY, STIPULATED AND AGREED, by and among the Parties, as follows:

1. Definitions. The following definitions apply for purposes of this Agreement:

- a. **Cash Page** shall mean the page in the SSA IT System that collects information about the amount of cash that the SSI recipient has.
- b. **EDB** shall mean early deposited benefit.
- c. **EDB Month** shall mean a month in which an SSA payment is due, but for which the payment will be made at the end of the preceding month due to the delivery date falling on a weekend or holiday.
- d. **Excluded Amount** shall mean an amount listed on a resource page (e.g., Cash page) that is subtracted from the claimant's resource total for a specified month.
- e. **Effective Date** shall mean the date on which the parties execute the Settlement Agreement.
- f. **Financial Institution Account page** shall mean the page in the SSA IT System that collects information about the SSI recipient's financial accounts and associated values.
- g. **Implementation Date** shall mean the date six (6) months following the Effective Date.
- h. **POMS** shall mean the Program Operations Manual System written and implemented by SSA.
- i. **Reporting Period** shall mean the period extending from the Implementation Date until two and a half years after the Implementation Date.
- j. **Sample Size** shall mean fifty (50) or, if the universe from which the sample is drawn

exceeds 5000, then 100.

- k. **SSA** shall mean Social Security Administration.
- l. **SSA IT System** shall mean the information technology system used to collect SSI claims information for the purpose of administering SSI benefits.
- m. **SSI** shall mean Supplemental Security Income.
- n. **SSR** shall mean Supplemental Security Record.
- o. **SSI Payment Amount** shall mean the sum of the SSI Federal payment amount plus any Federally administered State supplement amount.

2. **SSA Systems Enhancements.** SSA will develop and implement the following two EDB-related enhancements to the SSA IT System by no later than the Implementation Date:

a. **Hard Stop.**

i. SSA will create an edit in the SSA IT System that will prevent an SSA technician from building changes to an SSI recipient's SSR whenever the technician initiates such changes and all four of the following criteria are met:

1. The recipient's status would change from current pay to excess resources for an EDB month;
2. The resource limit is exceeded by an amount equal to or less than the sum of the recipient's SSI Payment Amount for the associated EDB month(s) and \$50.00;
3. A Financial Institution Account page or Cash page is present for the associated EDB month; and
4. No Excluded Amount is present on any Financial Institution Account

page or Cash page for the associated EDB month.

- ii. When all four of the conditions are met, the system will generate a message prompting the technician to enter an appropriate Excluded Amount. The message will include, at a minimum, a reference to EDB and a list of the EDB month(s) meeting the four criteria above, up to the edit message length limit. The edit message will display for the technician until all EDB months meeting the four criteria above are resolved.
- b. **Link to EDB Months.** SSA will add a link on the Financial Institution and Cash pages, next to where the values and exclusions for resources are recorded. This link would open a modal window (i.e., a pop-up) that would contain additional information for technicians, including instructions to consider early-deposited income such as State-administered State supplementation payments, a list of all the EDB months for the current and prior three years, and links to resources such as the POMS.

3. Training. SSA will provide the following EDB-related messaging and trainings:

- a. Messaging from SSA's national office to all relevant staff in SSA's field offices, regional offices, and hearing offices (including all administrative law judges) reminding employees of SSA's current EDB policies, to be completed within sixty (60) days of the Effective Date;
- b. Inclusion of EDB policies as a topic on Regional and All Managers calls, within ninety (90) days of the Effective Date;
- c. Inclusion of EDB policies and other early-deposited income policies that will include (but not be limited to) State-administered State supplementation payments as

- a “Policy in Focus” topic, to be disseminated nationwide before the end of fiscal year 2020;
- d. Provision of a microlearning training activity for technicians in SSA field offices that includes training on EDB policies and the new systems enhancements, to be disseminated within one hundred and eighty (180) days of the Implementation Date. This training activity will include training on other early-deposited income policies that will include (but not be limited to) State-administered State supplementation payments;
- e. Messaging from SSA’s national office to SSA’s field and regional offices explaining the systems enhancements in Paragraph 2, to be completed by fifteen (15) days prior to the Implementation Date or, in the event SSA implements the systems enhancements earlier than the Implementation Date, fifteen (15) days prior to actual implementation.

4. Monitoring.

- a. SSA will conduct a quality review of a sample of cases equal to the Sample Size (or, if fewer than fifty (50) cases are available, the number of cases available) three months after the first EDB month that follows implementation of the system edit described in Paragraph 2a and every six (6) months during the remainder of the Reporting Period. The sample will be drawn from the universe of all cases in which the system edit described in Paragraph 2a was triggered and in which the technician did not exclude an amount equal to the SSI EDB payment amount. The review also will consider the State of residence of the individual sample cases. If any errors associated with EDB payments are found during these reviews, these cases will be

returned to the appropriate SSA field office for further review and correction, as appropriate.

- b. After each review, SSA will advise that the review has been conducted, and provide:
 - (a) the number of cases from which the sample was drawn; (b) the Sample Size; (c) the State of residence of the individual sample cases; (d) the number of EDB-related errors that were found, if any, and (e) if EDB-related errors were found, that corrective actions will be taken. The report will also state if SSA has become aware of any technical problems or proposed systems updates that materially affect compliance with this Agreement.
- c. Each report shall be provided to Plaintiffs' counsel within sixty (60) days of the start of each review. The parties agree that the data provided for this purpose shall not be used, as evidence or otherwise, in any legal proceeding other than a proceeding regarding compliance with the terms of this Agreement.
- d. **Trainings.** SSA will provide Plaintiffs' counsel with a letter confirming the holding or dissemination of the trainings and messaging set forth in Paragraph 3, within sixty (60) days of the date the training or messaging is held or disseminated.
- e. **Certification of Implementation.** Within fourteen (14) days of the Implementation Date, SSA will provide Plaintiffs' counsel with a certification by an SSA official with responsibility for maintaining the SSA IT System that the enhancements described in Paragraph 2 have been fully implemented.

- 5. **Attorneys' Fees.** By no later than sixty (60) days after the Effective Date, Defendant shall pay to Plaintiffs the sum of \$25,000.00 in attorneys' fees and litigation costs, pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(d), which sum Plaintiffs agree to accept in

complete satisfaction of any and all claims for attorneys' fees, expenses, costs, interest, and any other sums related to this litigation.

- 6. Dismissal with Prejudice.** As of the Effective Date, in consideration for the covenants and undertakings of the Defendant and SSA set forth in this Agreement, Plaintiffs agree to withdraw and voluntarily dismiss the Amended Complaint in this action with prejudice pursuant to Fed. R. Civ. P. 41(a)(1)(ii), and without costs or fees to any party other than the attorneys' fees set forth in Paragraph 5 of this Agreement
- 7. Release of Claims.** Plaintiffs, on their own behalf, and on behalf of their representatives, assignees, heirs, executors, family members, beneficiaries, administrators, successors, and anyone acting, or claiming to act on their behalf, hereby release and forever discharge, and hold harmless, the United States of America, its agencies and employees including SSA and its past and present commissioners, employees, agents, officials, contractors, and representatives (the "Released Parties"), from any and all claims and causes of action, known and unknown, asserted and unasserted, direct and indirect, and of any kind, nature or description whatsoever, arising out of the facts, claims or allegations set forth in the complaints filed in this action. Plaintiffs shall be forever barred and enjoined from bringing or prosecuting any claim against any of the Released Parties unless it falls outside the scope of this release.
- 8. Reserved Claims.** For the avoidance of doubt, nothing in this Agreement shall waive or release the rights of Plaintiffs to seek waiver, reconsideration, a hearing, or an appeal of adverse determinations in their own SSI cases. In addition, also for the avoidance of doubt, nothing in this Agreement shall affect, release, waive or compromise the claims of the members of the putative class as pleaded in the Amended Complaint, other than the

Plaintiffs.

- 9. Limited Continuing Jurisdiction.** The parties have agreed and request that this Court retain limited jurisdiction to enforce Paragraphs 2 through 4 of this Agreement, which jurisdiction is limited by the terms of this Paragraph. The jurisdiction of the Court shall terminate at the conclusion of the Reporting Period, unless the term of this Agreement has been modified by agreement of the Parties or motion to the Court.

The procedures and remedies provided in this Paragraph are the exclusive procedures and remedies for alleged violations of this Agreement. In the event of a claimed breach of Paragraphs 2 through 4 of this Agreement, the dissatisfied party shall provide the other party with written notice of the alleged breach and a request for negotiations. The parties shall confer to resolve the alleged breach within sixty (60) days after receipt of the notice, or such time thereafter as is mutually agreed upon. Notices under this Paragraph must be provided to SSA as follows: Regional Chief Counsel, Office of General Counsel, 26 Federal Plaza, Room 3904, New York, NY 10278, with a copy to: Civil Division, United States Attorney's Office, Eastern District of New York, 271 Cadman Plaza East, Brooklyn, NY 11201.

If the parties are unable to resolve the alleged breach within sixty (60) days after they have conferred, or such time thereafter as is mutually agreed upon, then any party may file a letter brief with the Court, which shall (a) certify that the parties were unable to resolve the alleged breach and (b) briefly identify the nature of the alleged breach. The opposing party shall have ten (10) business days to file a response to the letter brief. After the filing of a letter brief and the response, the Court shall re-open the dismissed action for the sole purpose of resolving the alleged breach of Paragraphs 2, 3 or 4 of this Agreement and the

Court shall have the full and sole authority to judicially resolve the issue. The Court's authority notwithstanding, the parties waive any right any of them might have to seek (a) any remedy other than an order compelling compliance with Paragraph 2, 3 or 4 of this Agreement or (b) sanctions, contempt, and/or any other relief of a punitive or monetary nature.

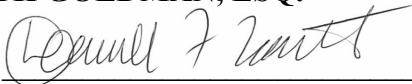
10. Non-Admission. By entering into this Agreement, neither Defendant nor SSA in any way confesses liability or concedes that Plaintiffs can prove any set of facts that would provide a lawful basis for the declaratory and injunctive relief Plaintiffs seek by their complaint.

11. Entire Settlement Agreement. The Agreement represents the entirety of the Parties' commitments with regard to settlement. The Parties agree that any other prior or contemporaneous representations or understandings not explicitly contained in this Agreement, whether written or oral, are of no further legal or equitable force of effect.

12. Binding Agreement. The Parties aver that the counsel signing this Agreement on their behalf have the full authority to enter into this Agreement and to sign it on their behalf. Once executed by the Parties, this Agreement is final and binding upon the Parties, their successors, and their assigns.

Dated: April 30, 2020
New York, New York

**NEW YORK LEGAL ASSISTANCE
GROUP
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Dated: April 30, 2020
Brooklyn, New York

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