

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
SYLVIA FABELO; JUDY MENCZER, on behalf of E.M.,  
a minor; LIAM BECK, on behalf of M.B., a minor; ICHO  
COHEN, on behalf of S.C., a minor; CONSTANTIN  
KEHAYA; ARON BRAVER, on behalf of R.B., a minor;  
NABIL SARGA, on behalf of K.S., a minor; and STAVROULA  
KAPELES,

15 Civ. 07429  
(Block, J.) (Pollak, M.J.)

Plaintiffs,

-against-

KILOLO KIJAKAZI<sup>1</sup>, Acting Commissioner of Social  
Security, and RAYMOND S. EGAN, Regional Commissioner  
of Social Security, New York Region,

Defendants.

-----X

**STIPULATION AND ORDER OF DISMISSAL WITH PREJUDICE**

IT IS HEREBY STIUPLATED AND AGREED, by and between plaintiffs SYLVIA FABELO, JUDY MENCZER, on behalf of E.M., a minor, LIAM BECK, on behalf of M.B., a minor, ICHO COHEN, on behalf of S.C., a minor, CONSTANTIN KEHAYA, ARON BRAVER, on behalf of R.B., a minor, NABIL SARGA, on behalf of K.S., a minor, and STAVROULA KAPELES, individually, and defendants KILOLO KIJAKAZI, Acting Commissioner of Social Security and RAYMOND S. EGAN, Regional Commissioner of Social Security, New York Region, by their undersigned attorneys, as follows:

1. The above-captioned action shall be and hereby is dismissed with prejudice pursuant to Rule 41(a)(1)(A)(ii) of the Federal Rules of Civil Procedure.

---

<sup>1</sup> Kilolo Kijakazi became the Acting Commissioner of Social Security on July 9, 2021. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Kilolo Kijakazi should be substituted for Andrew Saul as the defendant in this suit.

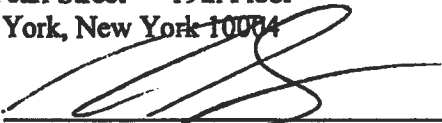
2. Each party hereto agrees that this dismissal is without costs or fees, except as otherwise provided in Section X in the parties' Stipulation of Settlement, dated March 31, 2023.
3. The Court will retain limited continuing jurisdiction as set forth in Section VII of this Stipulation of Settlement to address any disputes that arise under the relevant sections of the Agreement.
4. Once this Stipulation and Order of Dismissal has been signed and so ordered by the Court, the Clerk of the Court shall enter judgment in this case dismissing the action with prejudice and shall close the case.

Dated: March 28, 2023  
New York, New York

Dated: March 31, 2023  
Brooklyn, New York

NEW YORK LEGAL ASSISTANCE GROUP  
100 Pearl Street — 19th Floor  
New York, New York 10004


BREON PEACE  
United States Attorney  
Eastern District of New York


By:   
MICHELLE SPADAFORE  
Of Counsel  
(212) 613-5024  
[mspadafore@nylag.org](mailto:mspadafore@nylag.org)

By:   
SUSAN RILEY  
Assistant United States. Attorney  
(718) 254-6037  
[susan.riley@usdoj.gov](mailto:susan.riley@usdoj.gov)

URBAN JUSTICE CENTER  
40 Rector Street — 9th Floor  
New York, New York 10006

EMPIRE JUSTICE CENTER  
30 South Broadway — 7th Floor  
Yonkers, New York 10701

By:   
ANN P. BIDDLE  
IAN FELDMAN, Of Counsel

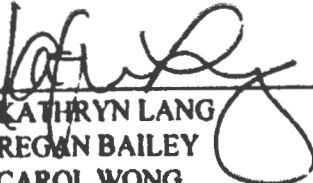
By:   
EMILIA SICILIA, Of Counsel  
(914) 639-4232


(646) 602-5671  
[abiddle@urbanjustice.org](mailto:abiddle@urbanjustice.org)

[esicilia@empirejustice.org](mailto:esicilia@empirejustice.org)

JUSTICE IN AGING  
1444 Eye Street N.W. — Suite 1100  
Washington, D.C. 20005

ARNOLD & PORTER KAYE SCHOLER LLP  
250 West 55th Street  
New York, New York 10019

By:   
KATHRYN LANG  
REGAN BAILEY  
CAROL WONG  
(202) 683-1997  
[klang@justiceinaging.org](mailto:klang@justiceinaging.org)

By:   
SHEILA BOSTON  
SAMUEL LONERGAN  
TYLER FINK  
(212) 836-8000  
[sheila.boston@arnoldporter.com](mailto:sheila.boston@arnoldporter.com)

**Of Counsel:**

Gabriel R. Deadwyler, Attorney  
Titles VII & XVI Programs Division  
Prashant Tamaskar, Assistant Regional Counsel  
Office of the General Counsel  
Social Security Administration

SO ORDERED this \_\_\_ day of March 2023

/s/ Frederic Block 4-3-2023  
\_\_\_\_\_  
HONORABLE FREDERIC BLOCK,  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
SYLVIA FABELO; JUDY MENCZER, on behalf of E.M.,  
a minor; LIAM BECK, on behalf of M.B., a minor; ICHO  
COHEN, on behalf of S.C., a minor; CONSTANTIN  
KEHAYA; ARON BRAVER, on behalf of R.B., a minor;  
NABIL SARGA, on behalf of K.S., a minor; and STAVROULA  
KAPELES,

**STIPULATION OF  
SETTLEMENT**

Plaintiffs,

2015 CV 07429 (FB)(CLP)

-against-

KILOLO KIJAKAZI, Acting Commissioner of Social  
Security, and RAYMOND S. EGAN, Regional Commissioner  
of Social Security, New York Region,

Defendants.

-----X

WHEREAS, Plaintiffs are or were recipients of Supplemental Security Income (“SSI”) benefit payments. On December 31, 2015, Plaintiffs filed a Complaint alleging that Defendants, Acting Commissioner of Social Security and Regional Commissioner of Social Security, New York Region (collectively “Defendants”), do not follow Social Security Administration (“SSA”) regulations and written procedures in SSA’s New York City offices to process SSI Post-eligibility Non-medical Reconsideration Requests and SSI Waiver Requests and document them in SSA’s system in a timely manner (the “action”). Plaintiffs further allege that this failure prevents Plaintiffs and their children from exercising the due process, statutory, and regulatory rights triggered with the filing of a reconsideration request or waiver request. On July 1, 2016, Plaintiffs filed an Amended Complaint, which supplemented Plaintiffs’ allegations;

WHEREAS, SSA subsequently instituted procedural and technological changes to improve the agency’s ability to receive, track, and process SSI Post-eligibility Non-medical Reconsideration Requests and SSI Waiver Requests, which included (1) receiving documents faxed to a field office electronically and automatically routing them to a document and workload

control system; (2) using a document and workload control system to track and assign the documents for processing; and (3) using an agency-wide application that improves accuracy in entering SSI Post-eligibility Non-medical Reconsideration Requests; and

WHEREAS, SSA subsequently instituted a new policy nationally under which SSA finds that, when an SSI recipient files an SSI Post-eligibility Non-medical Reconsideration Request more than 15 and up to 65 days after the date of a Notice of Planned Action, SSA will find there is good cause for filing the SSI Post-eligibility Non-medical Reconsideration Request after the 10-day time frame in SSA's regulations, so that the request qualifies for Goldberg Kelly ("GK") Payment Continuation. SSA instituted this policy to ensure SSI recipients' constitutional due process right to GK Payment Continuation and address workload-related challenges that affect SSA's ability to efficiently and timely process these reconsideration requests; and

WHEREAS, Plaintiffs are willing to resolve this case in part due to SSA's new procedures and policies; and

WHEREAS, Defendants expressly deny any wrongdoing, as alleged here or otherwise, and do not admit or concede any actual or potential fault, wrongdoing or liability in connection with any facts or claims that have been or could have been alleged. Nonetheless, Defendants consider it desirable to settle on the terms set forth in this Stipulation of Settlement; and

WHEREAS, Plaintiffs and Defendants (collectively "the Parties") wish to avoid further litigation in this matter and to bring this action to a close, and have determined to settle the case, including all claims that Plaintiffs have brought or could have brought in the action; and

WHEREAS, the intent of this Stipulation of Settlement is to make a full, complete, and final resolution of all claims and causes of action that have been or could have been asserted in this action against Defendants by Plaintiffs, arising out of the conduct alleged therein; and

**NOW THEREFORE**, for and in consideration of the agreements, promises, payments, releases, covenants, representations, warranties and foregoing recitals, made by the Parties in this Stipulation of Settlement, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and intending to be legally bound, the Parties agree as follows:

**I. PURPOSE**

The purpose of this Stipulation of Settlement is to protect the constitutional due process rights of SSI recipients who (1) timely appeal initial determinations to reduce, suspend, or terminate SSI payments for non-medical reasons; (2) timely appeal an initial determination that an SSI recipient was overpaid; or (3) request waiver of an overpayment. This Stipulation recognizes the obligation of the Social Security Administration to provide the foregoing SSI recipients with timely processing of such appeals and waiver requests to ensure that these SSI recipients receive Goldberg Kelly Payment Continuation and/or suspension of overpayment recovery, as appropriate, pending a determination on the appeal or waiver request.

**II. DEFINITIONS**

Unless otherwise noted, the following definitions apply in this Stipulation of Settlement, and for the purposes of this Stipulation of Settlement alone:

A. **Defendant** or Defendants shall mean the Acting Commissioner of Social Security in her official capacity and the Regional Commissioner of Social Security for the New York Region in his official capacity, and their successors.

B. **Plaintiff** or **Plaintiffs** shall mean the named individuals who filed the Amended Complaint, including Sylvia Fabelo, Judy Menczer on behalf of E.M., Liam Beck on behalf of M.B., Icho Cohen on behalf of S.C., Constantin Kehaya, Aron Braver on behalf of R.B., Nabil Sarga on behalf of K.S., and Stavroula Kapeles.

C. The **Effective Date** of this Stipulation of Settlement shall mean the date on which the Court so orders the Stipulation and Order of Settlement and Dismissal with Prejudice, attached as Exhibit A.

D. **Goldberg Kelly Payment Continuation** or **GK Payment Continuation** shall mean continuation of payment to an SSI recipient or eligible spouse at the Protected Payment Level in response to a timely appeal of an advance notice specified in 20 C.F.R. § 416.1336(a) informing the recipient of an event requiring suspension, reduction, or termination of SSI payments for non-medical reasons.

E. The term **Material Change** in Section III.C of this Stipulation of Settlement shall mean a change in which SSA (1) discontinues use of the electronic facsimile process, document and workload control system, online appeal application and related tracking system, or the graphical user interface application used for entering SSI Post-eligibility Non-medical Reconsideration Requests into the SSI Claims System described in Sections III(A)(1) to III(A)(5) as they exist on the Effective Date of this Stipulation of Settlement, or (2) subsequently modifies these systems and procedures in a way that (a) is reasonably likely to change how SSA field offices (i) receive SSI Post-eligibility Non-medical reconsideration requests and SSI Waiver Requests; (ii) track these requests until they are entered into the SSI Claims System; and (iii) enter these requests into the SSI Claims Systems, or (b) is reasonably likely to increase the average amount of time that will elapse between SSA receiving such requests and entering them into the SSI Claims System or reduce the accuracy of such entries.

F. The term **Materially Different** in Section IV.C of this Stipulation of Settlement shall mean changes to *Emergency Message 21064: Goldberg Kelly Benefit Continuation Period* other than revising the retention date or minor clarifications or modifications of the instruction.

G. **New York Region** shall mean the region comprised of the States of New York and New Jersey, and the Territories of Puerto Rico and the United States Virgin Islands, the residents of whom receive SSA-related services overseen by Defendant, the Regional Commissioner of Social Security for the New York Region.

H. **Notice of Planned Action** shall mean the form (SSA-L8155) used to provide the advance written notice specified in 20 C.F.R. § 416.1336(a) informing the recipient of an event requiring suspension, reduction, or termination of SSI payments for non-medical reasons.

I. **Noticing Party** shall mean a Party seeking enforcement of this Stipulation of Settlement pursuant to the provisions in Section VIII.

J. **Protected Payment Level** shall mean the monthly payment amount in effect prior to an initial determination by SSA that an event other than a change in disability or blindness status requires suspension, reduction, or termination of SSI payments. It is the unreduced benefit amount that an SSI recipient may continue to receive until there is a determination at the reconsideration level of appeal, subject to the effects of intervening events on the payment which are not timely appealed upon receipt of a required advance notice, or which do not require advance notice, e.g., an increase in the benefit amount. The Protected Payment Level can change prior to the determination at the reconsideration level of appeal due to changes in the recipient's circumstances or a change in the Federal Benefit Rate due to a Cost-of-Living Adjustment.

K. **Responding Party** shall mean the party from whom enforcement of the Stipulation of Settlement is sought pursuant to the provisions in section VIII.

L. **SSI Claims System** shall mean the Modernized SSI Claims System ("MSSICS") or any successor systems or collection of systems SSA uses to create, update, maintain, and terminate an SSI recipient's Supplemental Security Record.



M. **SSI Post-eligibility Non-medical Reconsideration Request** shall mean an appeal filed in accordance with 20 C.F.R. § 416.1409 by a person who has previously been found eligible for SSI benefits that requests reconsideration of an initial determination to reduce, suspend, or terminate such payments, excluding initial determinations that address eligibility for SSI based on disability or blindness status, and including initial determinations that the recipient was paid more than the amount due for any period.

N. **SSI Waiver Request** or **SSI Waiver Requests** shall mean a request or requests that SSA waive adjustment or recovery of an overpayment under the provision of 42 U.S.C. § 1383(b)(1)(B) and 20 C.F.R. § 416.550.

### III. **RELIEF AS TO SSA PROCEDURES**

A. While reserving the right to make technological upgrades to the existing procedures and systems described in subsections (1) – (5) below, SSA will continue to maintain procedures and related systems that require field offices nationwide to:

1) Enter SSI Post-eligibility Non-medical Reconsideration Requests and SSI Waiver Requests received into a document and workload control system to be assigned for entry into the SSI Claims System at a later date, unless personnel enter such reconsideration and SSI Waiver Requests directly into the SSI Claims System, thus rendering the use of a workload control system unnecessary.

2) Maintain a document and workload control system that allows field office personnel to identify and highlight SSI Post-eligibility Non-medical Reconsideration Requests and SSI Waiver Requests and distinguish them from other documents.

3) Maintain an online appeal application that either directly enters SSI Post-eligibility Non-medical reconsideration requests into the SSI Claims Systems or otherwise routes such requests to the filer's servicing field office via a related tracking system that tracks the appeal submission until it is entered into the SSI Claims System.

4) Enter SSI Post-eligibility Non-medical Reconsideration Requests into the SSI Claims System via a method that presents the technician a streamlined process expected to reduce user error by combining, to the maximum extent warranted technologically and operationally, the entry of the appeal, effectuation of Goldberg Kelly Payment Continuation when appropriate, the suspension of recovery of the overpayment at issue when appropriate, and prompts the issuance of a one-time payment when appropriate.

5) Enter SSI Waiver Requests directly into the SSI Claims System or otherwise maintain a streamlined process expected to reduce user error by combining the entry of the SSI Waiver Request and suspension of recovery of the overpayment at issue.

B. SSA agrees that field offices nationwide will maintain an electronic facsimile number, available to the public on SSA's website, that automatically routes facsimile receipts into SSA's document and workload control system. SSA agrees to maintain an electronic facsimile number until such time as technological improvements render the maintenance of an electronic facsimile number on SSA's website unnecessary.

C. SSA agrees that, for a period of three years from the Effective Date of this Stipulation of Settlement, SSA will inform Plaintiffs' counsel if it intends to make Material Changes to the procedures or systems described in III(A) and (B).

D. SSA agrees to maintain the foregoing procedures and systems for a period of three years after the Effective Date of this Stipulation of Settlement. SSA remains committed to the timely processing of SSI Post-eligibility Non-medical Reconsideration Requests and SSI Waiver Requests.

#### IV. RELIEF AS TO SSA POLICY

A. SSA shall convert the policy set forth in *Emergency Message 21064: Goldberg Kelly Benefit Continuation Period* (effective October 29, 2021) to instructions in its Program Operating Manual System ("POMS"). SSA shall provide Plaintiffs, through counsel, with a copy of proposed POMS instructions in advance in order for Plaintiffs to have two weeks' time to provide comments to SSA. SSA shall consider all comments, but SSA is not obligated to accept Plaintiffs' comments or proposed revisions.

1) The new POMS instructions shall provide for Goldberg Kelly Payment Continuation for all SSI recipients who file SSI Post-eligibility Non-medical Reconsideration Requests more than 15 days after the date of the Notice of Planned Action (i.e., more than 10 days after presumed receipt) but within 65 days of the date of the Notice of Planned Action (i.e., within 60 days of presumed receipt) by an instruction to find that the recipient had good cause for filing the reconsideration request more than 10 days after presumed receipt, unless the recipient waives Goldberg Kelly Payment Continuation in writing. Presumed

receipt is five days after the date of the Notice of Planned Action unless the recipient shows SSA that it was not received within the five days.

B. Until SSA incorporates the policy into POMS, SSA shall renew its *Emergency Message 21064 REV: Goldberg Kelly Benefit Continuation Period* (effective October 29, 2022) in its entirety as published on December 22, 2022, except to revise the retention date in accordance with this provision or if there is another need for minor clarifications or modifications of the instruction. However, if unforeseen circumstances arise that make it necessary for SSA to revise the Emergency Message in a way that is Materially Different than as effective on October 29, 2022, SSA will give Plaintiffs two weeks' notice and will meet and confer with counsel for Plaintiffs.

C. SSA intends that the POMS instructions described in IV.A will remain in effect until SSA completes a rulemaking process by issuing a Notice of Proposed Rulemaking ("NPRM") amending 20 C.F.R. § 416.1336 and any final rule based on that NPRM. However, if unforeseen circumstances arise that make it necessary for SSA to revise the POMS instructions in a way that is Materially Different than as described in IV.A.1, SSA will give Plaintiffs two weeks' notice and will meet and confer with counsel for Plaintiffs.

D. SSA intends to prepare an NPRM to amend current regulation 20 C.F.R. § 416.1336. SSA expects the NPRM (as indicated in the Social Security Administration's Spring 2022 Unified Agenda, "Notice of Intended Action Affecting Recipient's Payment Status," RIN 0960-A170) to address extending the 10-day filing deadline that qualifies the SSI recipient to receive payment continuation to meet SSA's Goldberg Kelly obligations and propose amendments to the regulation that are supported by the evidence discussed in the NPRM.

E. SSA shall update the language in its Notice of Planned Action and SSI Notice of Overpayment to include a link to SSA's Office Locator website (currently available at <https://secure.ssa.gov/ICON/main.jsp>). All agreed-to notice changes in Section IV.E shall be incorporated nationwide within nine months of the Effective Date of this Stipulation of Settlement.

F. All SSI Post-Eligibility Non-medical Reconsideration Requests that have been received, from March 17, 2020, to April 7, 2022, in any field office, and have not yet been entered into the SSI Claims System and have no indication of the date of submission shall be considered timely filed for the purpose of granting Goldberg Kelly protections and suspension on the overpayment sequence that was related to the action disputed by the reconsideration request. SSA shall provide Plaintiffs, through Counsel, with a copy of SSA's instructions to Field Offices for the implementation of this provision when the instructions are released to the Field Offices.

**V. REPORTING COMMITMENT**

SSA shall provide reports to Plaintiffs, through Counsel, on SSI Post-eligibility Non-medical Reconsideration Requests and SSI Waiver Requests under the following conditions:

A. SSA shall provide the reports described in this section beginning nine months after the Effective Date of this Stipulation of Settlement.

B. SSA shall provide the reports described in this section for each quarter of a fiscal year, within 60 days following the end of the preceding quarter. If the ninth month after the Effective Date of this Stipulation of Settlement is not the first month of a quarter, the first report shall only include data for that ninth month and any subsequent months within the quarter of that fiscal year.

C. SSA shall provide the reports described in this section until whichever of the following conditions comes first: (1) the reports have been provided for 36 months; (2) the reports

show 90% of SSI Post-eligibility Non-medical Reconsideration Requests are entered within 30 days (from the date of receipt to entry into the SSI Claims System) over a period of four consecutive quarters; or (3) SSA changes the current processes and systems for input of SSI Post-eligibility Non-medical Reconsideration Requests and SSI Waiver Requests, with effectuation of GK Payment Continuation or suspension of overpayment recovery as appropriate, so that processing is not dependent, or only minimally dependent, on manual actions and the reports show 90% of SSI Post-eligibility Non-medical Reconsideration Requests are entered within 30 days (from the date of receipt to entry into the SSI Claims System) over a period of three consecutive quarters.

D. SSA's reports will continue as noted in Sections V.B and V.C unless Plaintiffs and Defendants, prior to one of the conditions in Section V.C being met, mutually agree, in writing, to discontinue the reports. Plaintiffs' Counsel and Defendants' Counsel agree to confer about discontinuing the reports if SSA issues a final rule that amends 20 C.F.R. § 416.1336.

E. The report shall contain the following data, at the national level and for SSA's New York Region, which shall be collected directly from the relevant SSA systems:

- 1) For SSI Post-eligibility Non-medical Reconsideration Requests filed in response to a proposed reduction, suspension, or termination, with or without a related overpayment, and for which the recipient qualified for GK Payment Continuation and did not waive GK Payment Continuation: (a) number filed; (b) timeliness of entry after receipt, as shown by the number entered, broken down into four time ranges (number input within 1-15, 16-30, 31-65, or 66 or more, calendar days after receipt) indicating days elapsed between the date of receipt and entry into the SSI Claims System; (c) number of reconsideration requests in which

GK Payment Continuation was effectuated; and (d) number of reconsideration requests in which the date of entry into the SSI Claims System was after the adverse action month, and of those, how many had a missed payment issued within two months after the date of entry.

2) For SSI Post-eligibility Non-medical Reconsideration Requests filed in response to an overpayment only: (a) number filed; (b) timeliness of entry after receipt, as shown by the number entered, broken down into four time ranges (number input within 1-15, 16-30, 31-65, or 66 or more, calendar days after receipt) indicating days elapsed between the date of receipt and entry into the SSI Claims System; and (c) number of reconsideration requests in which recovery was suspended on the overpayment sequence that was the subject of the reconsideration request.

3) For SSI Waiver Requests: (a) number filed; and (b) timeliness of entry after receipt, as shown by the average number of calendar days elapsed between the date of receipt and entry into the SSI Claims System.

## **VI. DISMISSAL**

It is agreed that the Parties, by and through their undersigned counsel, will execute the Stipulation And Order Of Settlement And Dismissal With Prejudice, and Plaintiffs' Counsel shall immediately file the fully-executed Stipulation And Order Of Settlement And Dismissal With Prejudice with the United States District Court for the Eastern District of New York.

## **VII. RETENTION OF JURISDICTION**

A. The Parties agree that Judge Frederic Block of the United States District Court for the Eastern District of New York shall retain jurisdiction over this Stipulation of Settlement, with

the exception of Section IV.D. The Court shall not retain jurisdiction over Section IV.D of this Stipulation of Settlement and Plaintiffs expressly agree that they have no right to seek enforcement of Section IV.D of this Stipulation of Settlement.

B. The Court's jurisdiction over Section III of this Stipulation of Settlement shall expire three years from the Effective Date of this Stipulation of Settlement. The Court's jurisdiction over Section IV of this Stipulation of Settlement, excluding Section IV.D., shall expire three years from the Effective Date of this Stipulation of Settlement or 30 days after the effective date of a final rule based on the NPRM discussed in Section IV.D of this Stipulation of Settlement, whichever comes first. The Court's jurisdiction over Section V of this Stipulation of Settlement shall expire when one of the conditions described in Section V.C or Section V.D has occurred.

C. The Parties agree that the Court's jurisdiction is limited solely to consideration of alleged breach of a Material Provision of this Stipulation of Settlement, with the exception of Section IV.D. A Material Provision of Sections III and IV shall mean any provision for which a failure to comply interferes with any individual's or individuals' ability to timely: (a) request or receive Goldberg Kelly Payment Continuation, (b) make an SSI Post-eligibility Non-medical Reconsideration Request, (c) make an SSI Waiver Request, or (d) have collection of an overpayment stopped pending decision upon an SSI Post-eligibility Non-medical Reconsideration Request or an SSI Waiver Request. The Court shall consider an alleged breach of a Material Provision of Section V only to the extent the Dispute Resolution provisions set forth in Section VIII of this Agreement have not resulted in a resolution of the issue.

D. The Parties agree that a breach of a Material Provision of this Stipulation of Settlement, with the exception of Section IV.D, may be alleged by any individual or individuals who are or were SSI recipients and who (1) received an advance notice specified in 20 C.F.R.



§ 416.1336(a) informing the recipient of the suspension, reduction, or termination of SSI payments for non-medical reasons; (2) filed a reconsideration request after October 29, 2021 (the effective date of *Emergency Message 21064*), within 60 days of receiving the notice (or was found to have good cause for a later filing) and thus qualified for Goldberg Kelly Payment Continuation and (3) did not waive receipt of Goldberg Kelly Payment Continuation and who, a minimum of 30 days after filing such reconsideration request, has not continued receiving SSI payments at the Protected Payment Level. The Parties agree that any individual or individuals, including Plaintiffs, must satisfy this definition to allege a breach of a Material Provision of this Stipulation of Settlement.

#### **VIII. DISPUTE RESOLUTION**

A. The Parties agree that any alleged breach of this Stipulation of Settlement shall be resolved via the mechanisms described in this Section, which are the exclusive process for seeking to remedy any Party's alleged violations of this Stipulation of Settlement.

B. A Noticing Party seeking enforcement of any term of this Stipulation of Settlement shall serve on the Responding Party a written notice that describes the alleged breach or violation with particularity. Such notice must include the following: (a) an identification of the term(s) that has allegedly been violated; (b) a description of the specific errors or omissions upon which the alleged violation is based; and (c) a description of the corrective action sought. Such notice must be served within a reasonable time, but not to exceed sixty (60) days, after the Noticing Party becomes aware, or reasonably should have become aware, of a potential violation.

C. Within forty-five (45) days of the Responding Party receiving written notice of an alleged breach or violation, counsel for the Noticing and Responding Parties will meet and confer, and otherwise begin to address the allegation. The Noticing and Responding Parties shall make their best efforts to resolve any and all allegations of breach or violation without the Court's

involvement. If requested to do so, the Noticing Party shall provide to the Responding Party any and all reasonably available, non-privileged information that supports the alleged breach or violation.

D. If the Responding Party fails to respond to a notice of breach or violation within forty-five (45) days, or the Noticing and Responding Parties otherwise cannot resolve the issue or issues raised in that notice, the Noticing Party shall request, no sooner than sixty (60) days after the date on which the notice was served, and no later than one hundred twenty (120) days after the date on which the notice was served, a mediation conference with Chief Magistrate Judge Cheryl Pollak or with the Magistrate Judge then assigned to this case, or, if no Magistrate Judge is assigned at that time, with whichever Magistrate Judge is assigned by the Clerk of Court following a request for such assignment by the Noticing Party. The Noticing Party shall serve its request for a mediation conference on the Responding Party at the time the request is made. The Responding Party may at any time prior to sixty (60) days after the date on which the notice was served take the measures to cure the alleged violation that were identified by the Noticing Party in its notice, in which case no request for mediation conference may be made.

E. Should the mediation not successfully resolve the issue, no later than sixty (60) days after the date of the mediation conference, the Noticing Party may request judicial enforcement of the provision that has allegedly been violated by filing a motion for enforcement with the Court, which motion shall be subject to the Local Civil Rules for the Eastern District of New York. The Responding Party may at any time prior to thirty (30) days after the date of the mediation conference take the measures to cure the alleged violation that was identified by the Noticing Party in its notice, in which case no request for judicial enforcement may be brought. The Parties agree that in the event the Court decides any motion for enforcement in favor of the

Noticing Party, the remedy shall be limited to requiring the Responding Party to comply with whichever provision(s) the Court finds there has been a lack of compliance. The Enforcement Parties agree that any such motion for enforcement shall not include a request that any party or nonparty be held in contempt.

**IX. OTHER PROVISIONS**

- A. None of the terms of this Stipulation of Settlement shall be confidential.
- B. SSA will identify one or more contact person(s) for Plaintiffs' Counsel to report problems with implementation.
- C. SSA's Regional Communications Directors (RCDs) serve as ombudspersons for case-related service issues, including those related to timely and accurate processing of SSI Post-eligibility Non-medical Reconsideration Requests and SSI Waiver Requests. The RCD's contact information is available online at <https://www.ssa.gov/agency/rcds.html>.
- D. This Stipulation of Settlement may be modified only with the written agreement of the Parties or their duly authorized representatives.
- E. This Stipulation of Settlement shall not be construed against the Party preparing it, but shall be construed as if the Parties jointly prepared it, and any uncertainty or ambiguity shall not be interpreted against any Party. In the event any provision of this Stipulation of Settlement is found to be invalid, or otherwise unenforceable, the remainder of this Stipulation of Settlement shall remain fully valid and enforceable.
- F. It is expressly understood and agreed that the terms of this Stipulation of Settlement are contractual and not mere recitals and that the Parties intend to be and are hereby bound to its terms. No Party to this Stipulation of Settlement may assign this Stipulation of Settlement, any

portion hereof, or any rights or obligations hereunder, without the prior written consent of the other Parties to this Stipulation of Settlement.

G. This Stipulation of Settlement contains the entire understanding of the Parties with respect to the subject matter contained herein. The Parties agree that no promises, statements, or inducements have been made to the other, other than those expressly stated in this Stipulation of Settlement, and no prior statement, representation, or agreement that is not contained herein will have any force or effect. This Stipulation of Settlement supersedes all prior agreements and understandings between or among the Parties with respect to such subject matter.

H. The Plaintiffs in this action, Sylvia Fabelo, Judy Menczer on behalf of E.M., Liam Beck on behalf of M.B., Icho Cohen on behalf of S.C., Constantin Kehaya, Aron Braver on behalf of R.B., Nabil Sarga on behalf of K.S., and Stavroula Kapeles, and their heirs, administrators, successors, and assigns, and each of them hereby release, waive, acquit, and forever discharge the United States and Defendants from, and are hereby forever barred and precluded from prosecuting, any and all claims, causes of action, or requests for any injunctive and/or monetary and/or any other form of relief, including, but not limited to, damages, tax payments, debt relief, costs, attorneys' fees, expenses, and/or interest, whether presently known or unknown, that have been or could have been asserted in this action by reason of, with respect to, in connection with, or which arise out of, any matters alleged in the action. The Parties agree that the terms of this section are not designed otherwise to interfere with the rights of the Plaintiffs and their heirs, administrators, representatives, successors, and assigns under 42 U.S.C. § 405(g) and its implementing regulations. Nothing in this paragraph shall limit the Parties' rights to enforce this Stipulation of Settlement under the provisions in Sections VII and VIII.

I. Neither this Stipulation of Settlement nor any order approving it constitutes an admission by the Defendants, the United States, or both, of the truth of any allegation or the validity of any claim asserted in this case, or of the liability of the Defendants, the United States, or both, nor a concession or an admission of any fault or omission of any act or failure to act, or of any statement, written document, or report heretofore issued, filed or made by the Defendants, the United States, or both.

J. Neither this Stipulation of Settlement nor any confidential papers related to the Stipulation of Settlement and created for settlement purposes only, nor any of the terms of either, may be offered or received as evidence of discrimination or unfair treatment in any civil, criminal, or administrative action or proceeding, or construed by anyone for any purpose whatsoever as an admission or presumption of any wrongdoing on the part of the Defendants, the United States, or both, or as an admission by any Party to this Stipulation of Settlement that the consideration to be given under the terms of this Stipulation of Settlement represents the relief that could have been recovered after trial. Confidential papers related to the Stipulation of Settlement and created for settlement purposes shall not be the subject of any discovery.

K. Nothing contained in this Stipulation of Settlement shall impose on the Defendants, the United States, or both, any duty, obligation, or requirement, the performance of which would be inconsistent with law, as set forth in federal statutes, federal regulations, or binding court precedent in effect at the time of such performance.

L. This Stipulation of Settlement may be executed in counterparts by facsimile or PDF, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

M. The substantive laws of the United States shall govern the validity, construction, and interpretation of this Agreement.

N. The Parties acknowledge that they have been represented by legal counsel throughout the negotiations that have preceded the execution of this Stipulation of Settlement, and that they had the opportunity to consult with such counsel prior to executing this Stipulation of Settlement. The Parties further acknowledge that they and their counsel have had adequate opportunity to make whatever investigation or inquiry they may deem necessary or desirable in connection with the subject matter of this Stipulation of Settlement prior to the execution hereof and the delivery and acceptance of the consideration specified herein. Each of the Parties expressly and individually represents and acknowledges that it has read this Stipulation of Settlement in its entirety, fully understands its meaning and is executing this Stipulation of Settlement voluntarily and of its own free will, with full knowledge of its provisions, and that each person signing this Stipulation of Settlement has the necessary authority to enter into this Stipulation of Settlement on behalf of the Party for which he or she is signing.

**X. FEES**

A. The Parties agree that the amount of \$ 225,000.00 will be awarded to Plaintiffs' counsel as attorney fees and paid to the New York Legal Assistance Group for distribution. Those funds are the only funds to be paid by the Commissioner and the United States under this Stipulation of Settlement or otherwise in connection with this action.

B. Within seven calendar days of the Effective Date of this Stipulation of Settlement, Plaintiffs' counsel shall notify the Commissioner and the Commissioner's counsel in writing of the identity of the accounts and banks designated for the deposit of funds to be paid as attorney

fees, and will provide any necessary tax reporting information as well as all information necessary and appropriate to direct any and all deposits provided for in this Stipulation of Settlement.

C. Upon receipt of the information described in VII.B above, the Commissioner shall promptly complete any intra-governmental forms and documentation that are required from SSA in order to issue payment.

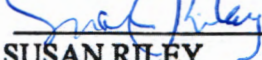
Dated: March 28, 2023  
New York, New York

Dated: March 31, 2023  
Brooklyn, New York

NEW YORK LEGAL ASSISTANCE GROUP  
100 Pearl Street — 19th Floor  
New York, New York 10004


BREON PEACE  
United States Attorney  
Eastern District of New York

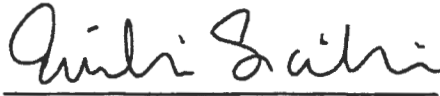
By:   
MICHELLE SPADAFORE  
Of Counsel  
(212) 613-5024  
[mspadafore@nylag.org](mailto:mspadafore@nylag.org)

By:   
SUSAN RILEY  
Assistant United States. Attorney  
(718) 254-6037  
[susan.riley@usdoj.gov](mailto:susan.riley@usdoj.gov)

URBAN JUSTICE CENTER  
40 Rector Street — 9th Floor  
New York, New York 10006

EMPIRE JUSTICE CENTER  
30 South Broadway — 7th Floor  
Yonkers, New York 10701

By:   
ANN P. BIDDLE  
IAN FELDMAN, Of Counsel  
(646) 602-5671  
[abiddle@urbanjustice.org](mailto:abiddle@urbanjustice.org)

By:   
EMILIA SICILIA, Of Counsel  
(914) 639-4232  
[esicilia@empirejustice.org](mailto:esicilia@empirejustice.org)

JUSTICE IN AGING  
1444 Eye Street N.W. — Suite 1100  
Washington, D.C. 20005

By:   
KATHRYN LANG  
REGAN BAILEY  
CAROL WONG  
(202) 683-1997  
[klang@justiceinaging.org](mailto:klang@justiceinaging.org)

ARNOLD & PORTER KAYE SCHOLER LLP  
250 West 55th Street  
New York, New York 10019

By: \_\_\_\_\_  
SHEILA BOSTON  
SAMUEL LONERGAN  
TYLER FINK  
(212) 836-8000  
[sheila.boston@arnoldporter.com](mailto:sheila.boston@arnoldporter.com)

Of Counsel:


Gabriel R. Deadwyler, Attorney  
Titles VII & XVI Programs Division  
Prashant Tamaskar, Assistant Regional Counsel  
Office of the General Counsel  
Social Security Administration



JUSTICE IN AGING  
1444 Eye Street N.W. — Suite 1100  
Washington, D.C. 20005

ARNOLD & PORTER KAYE SCHOLER LLP  
250 West 55th Street  
New York, New York 10019

By: \_\_\_\_\_  
KATHRYN LANG  
REGAN BAILEY  
CAROL WONG  
(202) 683-1997  
[klang@justiceinaging.org](mailto:klang@justiceinaging.org)

By  \_\_\_\_\_  
SHEILA BOSTON  
SAMUEL LONERGAN  
TYLER FINK  
(212) 836-8000  
[sheila.boston@arnoldporter.com](mailto:sheila.boston@arnoldporter.com)

Of Counsel:

Gabriel R. Deadwyler, Attorney  
Titles VII & XVI Programs Division  
Prashant Tamaskar, Assistant Regional Counsel  
Office of the General Counsel  
Social Security Administration