

1 DAVID H. FRY (SBN 189276)
David.Fry@mto.com
2 MARK R. CONRAD (SBN 255667)
Mark.Conrad@mto.com
3 JEREMY S. KROGER (SBN 258956)
Jeremy.Kroger@mto.com
4 MUNGER, TOLLES & OLSON LLP
560 Mission Street, 27th Floor
5 San Francisco, CA 94105-2907
T: (415) 512-4000 / F: (415) 512-4077
6

7 GERALD A. McINTYRE (SBN 181746)
gmcintyre@nslc.org
8 NATIONAL SENIOR CITIZENS LAW CENTER
3435 Wilshire Blvd., Suite 2860
9 Los Angeles, CA 90010-1938
T: (213) 674-2900 / F: (213) 639-0934

10 ANNA RICH (SBN 230195)
arich@nslc.org
11 KEVIN PRINDIVILLE (SBN 235835)
kprindiville@nslc.org
12 NATIONAL SENIOR CITIZENS LAW CENTER
1330 Broadway, Suite 525
13 Oakland, CA 94612
T: (510) 663-1055 / F: (510) 663-1051

14 Attorneys for Plaintiffs

15 ADDITIONAL COUNSEL LISTED ON NEXT PAGE

16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

ROSA MARTINEZ, JIMMY HOWARD,
ROBERTA DOBBS, BRENT
RODERICK, SHARON ROZIER, and
JOSEPH SUTRYNOWICZ, on behalf of
themselves and all others similarly situated,

Plaintiffs,

vs.

MICHAEL J. ASTRUE, Commissioner of
Social Security, in his official capacity,

Defendant.

CASE NO. 08-CV-4735 CW

**ORDER GRANTING PLAINTIFFS'
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT, CLASS CERTIFICATION,
AND APPOINTMENT OF CLASS
COUNSEL, AND DIRECTING CLASS
NOTICE AND SETTING FINAL
FAIRNESS HEARING**

The Hon. Claudia Wilken

1 EMILIA SICILIA
esicilia@urbanjustice.org
2 JENNIFER PARISH
jparish@urbanjustice.org
3 URBAN JUSTICE CENTER
123 William Street, 16th Fl.
4 New York, NY 10038
T: (646) 602-5668 / F: (212) 533-4598

5 CHRISTOPHER A. DOUGLAS (SBN 239556)
cdouglas@legalaidsmc.org
6 M. STACEY HAWVER (SBN 146012)
mshawver@legalaidsmc.org
7 LEGAL AID SOCIETY OF SAN MATEO COUNTY
521 East 5th Avenue
8 San Mateo, CA 94402
T: (650) 558-0915 / F: (650) 558-0673

10 MARILYN HOLLE (SBN 61530)
marilyn.holle@disabilityrightsca.org
11 DISABILITY RIGHTS CALIFORNIA
3580 Wilshire Blvd. Suite 902
12 Los Angeles, CA 90010-2522
T: (213) 427-8747 / F: (213) 427-8767

13
14 Of Counsel for Plaintiffs ROSA MARTINEZ, JIMMY
HOWARD, ROBERTA DOBBS, BRENT RODERICK,
15 SHARON ROZIER, JOSEPH SUTRYNOWICZ, and all
others similarly situated

16
17 JOSEPH P. RUSSONIELLO (CSBN 44332)
United States Attorney
18 JOANN M. SWANSON (CSBN 88143)
Chief, Civil Division
19 VICTORIA R. CARRADERO (CSBN 217885)
Assistant United States Attorney
20 ANDREW Y.S. CHENG (CSBN 164613)
Assistant United States Attorney
21 MICHAEL T. PYLE (CSBN 172954)
Assistant United States Attorney

22
23 450 Golden Gate Avenue, 9th Floor
San Francisco, California 94102-3495
24 Telephone: (415) 436-6813
Facsimile: (415) 436-6748
25 Email: andrew.cheng@usdoj.gov
Attorneys for Federal Defendant

1 **[PROPOSED] ORDER GRANTING PLAINTIFFS’ MOTION FOR**
2 **PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT,**
3 **CLASS CERTIFICATION, AND APPOINTMENT OF CLASS COUNSEL,**
4 **AND DIRECTING CLASS NOTICE AND SETTING FINAL FAIRNESS HEARING**

5 WHEREAS, Plaintiffs filed this putative class action on October 15, 2008, and
6 filed their First Amended Complaint on December 12, 2008;

7 WHEREAS, this lawsuit challenges the operation and application of a policy of
8 the Social Security Administration as inconsistent with the federal statutes and agency regulations
9 governing the Old Age, Survivors, and Disability Insurance (“OASDI”), Supplemental Security
10 Income (“SSI”), and Special Veterans Benefits (“SVB”) programs, *see* 42 U.S.C.
11 §§ 402(x)(1)(A)(iv) (OASDI), 1004(a)(2) (SVB), 1382(e)(4)(A) (SSI); *see also* 20 C.F.R. §
12 416.1339(b); *id* § 408.810(b);

13 WHEREAS, Defendant vigorously denies these allegations;

14 WHEREAS, counsel for Plaintiffs and counsel for the Commissioner of Social
15 Security have reached agreement on the terms of a class-wide settlement of this action, which
16 settlement encompasses the substantial modification of SSA policies pertaining to the OASDI,
17 SSI, and SVB programs, as well as prospective and retroactive relief to individuals affected by
18 the challenged policies;

19 WHEREAS, Plaintiffs have submitted a Motion for Preliminary Approval of Class
20 Action Settlement, Class Certification, and Appointment of Class Counsel, and Directing Class
21 Notice and Setting Final Fairness Hearing;

22 WHEREAS, Defendant does not oppose the action of seeking preliminary
23 approval of the settlement, settlement-class certification, appointment of class counsel, directing
24 class notice, and setting a fairness hearing;

25 NOW, THEREFORE, having considered Plaintiffs’ motion, as well as the
26 memorandum of points and authorities submitted in support thereof, the Court hereby ORDERS
27 as follows:

28 //

1 1. Settlement Class. The Court finds: (a) that the members of the proposed
2 settlement class are sufficiently numerous—with tens of thousands of individuals who could be
3 entitled to relief under the claims asserted through this action—that the joinder of all such
4 individuals as plaintiffs in this action would be impracticable; (b) that there are questions of law
5 common to the proposed class, including the lawfulness of certain policies adopted by the Social
6 Security Administration in its administration of the OASDI, SSI, and SVB federal benefits
7 programs; (c) that the claims of the named plaintiffs, or class representatives, are typical of the
8 claims of the proposed settlement class; and (d) that the class representatives are capable of fairly
9 and adequately protecting the interests of the proposed settlement class. The Court further finds
10 that the Social Security Administration has administered and applied the challenged Policy in a
11 manner that applies generally to the proposed settlement class. Therefore, the Court holds that
12 certification of the proposed class is appropriate under Federal Rule of Civil Procedure 23(b)(2),
13 and the following class of plaintiffs (hereinafter “Settlement Class”) is hereby CERTIFIED:

14 All persons whose SSI, SVB, or OASDI benefits have been suspended or denied,
15 or who have been notified of a proposed suspension or denial of such benefits, for
16 “fleeing to avoid prosecution or custody or confinement after conviction” for a
17 felony or who are not permitted to serve as Representative Payees for SSI, SVB
18 or OASDI benefits for “fleeing to avoid prosecution or custody or confinement
19 after conviction” for a felony. The class shall not include, and this settlement shall
20 not apply to, any individual who has received a final federal court disposition
21 regarding payment or nonpayment of benefits due to fugitive felon status.

22 2. Class Counsel. The Court finds that Plaintiffs’ counsel have provided and will
23 continue to provide representation that is adequate to protect the interests of the Settlement Class.
24 Specifically, the Court finds that Plaintiffs’ counsel have identified and investigated potential
25 claims, have vigorously prosecuted the lawsuit thus far, and have committed substantial resources
26 to their representation of the Settlement Class. Further, Plaintiffs’ counsel possess knowledge
27 and expertise sufficient to represent the interests of the Settlement Class in an action regarding the
28 rights of beneficiaries under federal entitlement and benefits programs, including the application
of the policy challenged in this lawsuit. Therefore, pursuant to Rule 23(c)(1) and Rule 23(g), the
National Senior Citizens Law Center; the law firm of Munger, Tolles & Olson LLP; the Urban

//

1 Justice Center; the Legal Aid Society of San Mateo County; and Disability Rights California
2 (hereinafter “Class Counsel”) are hereby APPOINTED as counsel for the Settlement Class.

3 3. Preliminary Approval of Stipulation of Settlement. The Court finds that the
4 terms of the parties’ Stipulation of Settlement are fair, reasonable, and adequate to the Settlement
5 Class. Specifically, the Court finds that the SSA’s agreement to amend the challenged policy
6 constitutes substantial and immediate prospective relief that has benefited and will benefit the
7 Settlement Class. The Court further finds that the direct relief provided to the vast majority of the
8 Settlement Class—including (a) the reinstatement of class members’ benefits denied or suspended
9 on or after January 1, 2007, insofar as the denial or suspension was premised on fugitive felon
10 status, as explained in the Stipulation of Settlement, and (b) the elimination of outstanding
11 overpayment balances based on such fugitive felon status with the availability of a protective
12 filing date for class members whose benefits were denied or suspended between January 1, 2000,
13 and December 31, 2006, and are not in pay status as of April 1, 2009, based on such fugitive felon
14 status, as explained in the Stipulation of Settlement—is a reasonable compromise of claims in
15 light of the complexity and risk of further litigation. Therefore, pursuant to Rule 23(e), the
16 parties’ Stipulation of Settlement is hereby preliminarily APPROVED.

17 4. Notice of Settlement. The Court hereby ORDERS that the SSA shall provide
18 notice to class members by publication of the notice, attached hereto as Exhibit A, on its website.
19 The Court further ORDERS that Class Counsel disseminate the notice to the following
20 organizations that advance generally the interests of members of the Settlement Class and that
21 have resources necessary to advise class members about the existence and terms of the Stipulation
22 of Settlement: the ABA Commission on Law and Aging; AARP; Bazelon Center for Mental
23 Health Law; Brennan Center for Justice; Center on HIV Law and Policy; Legal Action Center;
24 Consortium for Citizens with Disabilities; National Academy of Elder Law Attorneys; National
25 Alliance on Mental Illness; National Disability Rights Network; National Coalition for the
26 Homeless; National Law Center on Homelessness and Poverty; National Organization of Social
27 Security Claimants’ Representatives; National Policy and Advocacy Council on Homelessness;

28 //

1 Philippine Veterans Affairs Office (Quezon City); and Sargent Shriver National Center on
2 Poverty Law.

3 5. Fairness Hearing. The Court ORDERS that a fairness hearing for final
4 approval of the Stipulation of Settlement shall be held on Thursday, September 24, 2009, at 2:00
5 p.m. The Court further ORDERS that any objections to the Stipulation of Settlement shall be
6 filed with the Court not later than Thursday, September 10, 2009.

7

8 **IT IS SO ORDERED.**

9

10 DATED: 8/12/09



11

The Honorable Claudia A. Wilken
United States District Court Judge

12

13

Submitted by:

14

DATED: August 12, 2009

MUNGER, TOLLES & OLSON LLP
Attorneys for Plaintiffs

15

16

17

By: /s/ Mark R. Conrad
MARK R. CONRAD

18

19

20

21

22

23

24

25

26

27

28