IN THE UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JAMES BRIGGS, individually and on behalf of all others similarly situated, Plaintiffs, v. RODERICK BREMBY, in his official capacity as Commissioner of the State of Connecticut Department of Social Services, Defendant.	)	CASE NO. 3:12-CV-324 (VLB) (CLASS ACTION)

STIPULATION AND ORDER OF SETTLEMENT

Plaintiffs brought this action under 42 U.S.C. § 1983 alleging that Defendant Roderick Bremby, in his official capacity as Commissioner of the State of Connecticut Department of Social Services, failed to provide Supplemental Nutrition Assistance Program ("SNAP") benefits within the time frames mandated by federal law to eligible households who apply for benefits.

Plaintiffs sought declaratory and injunctive relief against Defendant on behalf of themselves and members of a certified class to require Defendant to determine such households' eligibility within the mandated time frames and provide SNAP within the mandated time frames to those eligible. The Court entered an order certifying the class on May 13, 2013.

This Court also entered a Preliminary Injunction Order in this matter on May 13, 2013, which was affirmed by the Second Circuit on July 6, 2015. The Plaintiffs

filed a Motion for Summary Judgment, which the Defendant opposed, and which remains pending before this Court.

Nevertheless, in the interest of avoiding the costs, burdens, and uncertainty of potential litigation, the parties have agreed to resolve all issues presented in this litigation without further proceedings and without Defendant admitting any fault or liability. Whereas the parties desire to settle this action, and good cause appearing,

IT IS HEREBY ORDERED:

I. DEFINITIONS

For purposes of this Stipulation and Order of Settlement (hereinafter "Order"), the following definitions apply:

1. "Timely Denial" means, as to initial applications for SNAP benefits, an action taken by the case worker or the data system to deny the initial application and to cause a notice to be generated on or before the 30th day after the application was submitted to the agency, unless the 30th day falls on a weekend or holiday. If the 30th day falls on a weekend or holiday, the denial of SNAP benefits shall be timely if the SNAP application is denied on the next business day after the weekend or holiday.

2. "Timely Application Approval" means a) as to applications eligible for expedited processing, that SNAP benefits are issued and available to the household no later than the 7th day following the date on which the household submitted the application; and b) as to applications subject to 30 day processing,

that SNAP benefits are issued and available to the household no later than the 30th day following the date on which the household submitted the application.

3. "Supplemental Nutrition Assistance Program (SNAP)" refers to the program established by 7 U.S.C. § 2011 et seq. and in this Order "SNAP" and "food stamps" are used interchangeably.

II. CLASS CERTIFICATION

4. Pursuant to the Court's May 13, 2013 order certifying a class, the class is defined as: "All persons in Connecticut who have applied, are currently applying, or who will apply in the future and whose application was not timely processed for food stamps as required by 7 U.S.C. § 2020(e)(3) and (e)(9); 7 C.F.R. § 273.2."

III. DEFENDANT'S OBLIGATIONS

5. Set forth in sub-paragraphs 5(a)–(c) are Defendant's obligations under federal statutes and regulations as to initial regular and expedited SNAP applicants, with which Defendant shall comply:

a. Defendant shall screen applicant households to determine if the household is eligible for expedited service of their SNAP application at the time the household applies for benefits in accordance with 7 U.S.C. § 2020(e)(9) and 7 C.F.R. § 273.2(i)(2).

b. Defendant shall provide expedited service of a SNAP application to households eligible for such expedited service no later than the seventh calendar day following the date the application is filed as set forth in 7 U.S.C. § 2020(e)(9) and 7 C.F.R. § 273.2(i)(3).

c. Defendant shall provide eligible households that complete the initial application process an opportunity to participate in the SNAP program as soon as possible, but no later than thirty calendar days following the date the application was filed as required by 7 U.S.C. § 2020(e)(3); 7 C.F.R. § 273.2(g).

6. Defendant shall fully comply with the timely processing requirements of the applicable SNAP statute and regulations. For purposes of this Order, Defendant shall be deemed to be fully complying with the timely processing requirements of the SNAP statute and regulations so long as Defendant meets a 96% timely processing standard with respect to 30 day regular SNAP applications and also meets a 96% timely processing standard with respect to 7 day expedited SNAP applications, starting no later than the month following the date that this Order is so ordered and that Order is entered on the docket sheet of the United States District Court.

7. Notwithstanding the provisions of Paragraph 6 of this Order, from the month following the date that this Order is so Ordered and the Order entered on the District Court's docket sheet through the month of June 2017, Defendant shall be deemed to be in full compliance with the timely processing requirements of the SNAP statute and regulations for expedited 7-day applications so long as Defendant meets a timely processing standard as to applications filed in the months in this period, following adjustment of the monthly data as described in paragraph 10 and 11, and 14, defined as the actual number of timely processed

applications increased by two (2%) percent. Thus, for example, a reported timeliness percentage of 94.2 % would be adjusted upwards by 2% to 96.2%.

8. Beginning with applications filed in the month of July 2017, Defendant shall be deemed to fully comply with the timely processing requirements of the SNAP statute and regulations for expedited applications so long as Defendant meets a 96% timely processing standard with respect to 7 day expedited SNAP applications.

9. For purposes of this Order, the data on Defendant's SNAP Application Timeliness Report, or any subsequent report to which the parties agree and the Court so orders, is the measure of timely performance as to any month. Specifically, as reflected in the SNAP Application Timeliness Report, the percent timely as to 30-day regular applications is the percent reported in the column titled "Combined Adjusted SNAP Regular" and the percent timely as to 7-day expedited applications is the percent reported in the column titled "Combined Adjusted SNAP Expedited."

10. The SNAP Application Timeliness Report as of the date that this Order is entered onto the Docket of this Court is based on data from the Eligibility Management System (EMS), the Defendant's legacy computer system. This data is adjusted to more accurately reflect the timeliness of SNAP application processing. Attached to this agreement are two stipulations agreed to by the parties the July 18, 2013 Stipulation, DKT # 94 attached hereto as Exhibit A and the March 31, 2014 Stipulation, DKT # 104 attached hereto as Exhibit B, detailing adjustments to

capture a number of cases misidentified due to EMS limitations. In addition, the baseline data in the SNAP Application Timeliness Report reflects: a) expedited eligibility identification for reporting purposes based upon initial screening of the application for assistance and b) the exclusion of cases that were incorrectly identified as applications by EMS but were actually cases reinstated following completion of periodic review forms. See Exhibits A thru D attached hereto.

11. Beginning with the report for applications filed in the month following the month this order is so ordered and entered on the docket sheet, the timely performance rate derived by the adjustments set forth in paragraph 10 may, at Defendant's discretion, be further adjusted as a result of individual reviews of "untimely expedited" cases for: a) late recertifications that were correctly treated as new applications but were incorrectly identified as eligible for expedited processing due to worker error; and b) timely recertifications that should not have been treated as new applications but that were entered in the system as expedited applications because that was the only option available in EMS.

12. Notwithstanding any other provision of this Order, no further adjustments to the SNAP Application Timeliness Report to correct inaccuracies in the EMS system will be made during the term of this Order, other than those listed in paragraphs 7, 10 and 11 of this Order.

13. Cases coded as untimely due to client delay as specified herein in paragraph 13 shall be considered timely for purposes of Paragraph III(6) of this Order. Delay in such cases will be coded as follows:

a. Extension Granted (EX). A case in which delay in processing results from an applicant missing his or her initial interview and asking to schedule an interview after the 30th day of the processing period.

b. More Verification (MV). A case in which delay results from a request for verification that the Department did not reasonably need to request during the initial review of the application, and the due date for supplying the verification falls after the close of the thirty day period because of the need to allow the applicant 10 days to respond to the request. This code shall not be used if the required verification should reasonably have been requested during the Department's initial review of the application.

c. Insufficient Time (IT). This delay results when there is insufficient time for the worker to process the application and provide benefits by the 30th day because: 1) the applicant provides verification after the date due but before the 30th day and the worker approves on the 30th day or the first business day after a weekend or holiday if the 30th day fell on a weekend or holiday; or the applicant missed the initial interview, the Department sent the applicant a Notice of Missed Interview (NOMI) and the interview is completed on the 30th day or the first business day after a weekend or holiday if the 30th day fell on a weekend or holiday.

14. Emergency Event (EE). This delay code is used where delay is attributable to an emergency event beyond the control of the Defendant, such as natural disasters, severe weather conditions, or power outages. ImpaCT implementation-related delays do not constitute an emergency event justifying use of the EE code. This delay excuses Defendant's performance for the particular applications affected if: 1) one or more offices were closed or unable to enter data into an eligibility system for a full day; 2) Defendant was unable to process the particular applications affected as a result; 3) the particular applications needed to be processed on the day that the emergency event occurred; and 4) the particular applications affected were subsequently processed within three business days of the conclusion of the emergency event. This code is used only upon instruction from Defendant's Central Office. The EE code can be used for both expedited and regular applications. The use of this code is subject to sample review by Defendant and/or audit by Plaintiffs in accordance with paragraph 18.

15. Cased coded EX, MV, IT and EE will each appear in a separate column in the SNAP Application Timeliness Report and will be counted as timely processed cases.

16. Defendant agrees that he shall enact any changes to policy to ensure that DSS staff, employees, agents, and assigns comply with the terms and conditions of this Order and will submit them to Plaintiffs' counsel for review and comment prior to enactment. In addition, Defendant shall conduct such training as is necessary to ensure that DSS staff, employees, agents, and assigns comply with

the terms and conditions of this Order. Moreover, Defendant shall provide Plaintiffs' counsel with copies of any changed policy memos, procedures manuals, training materials, and internal directives upon issuance. In addition, Defendant will add language to the SNAP application that informs the applicant that a worker will call the applicant by phone or that the applicant may call the Department for a SNAP interview at any time after the applicant has submitted the application.

IV. REPORTS

A. Timeliness of SNAP Applications

17. During the term of this Order, Defendant shall provide Plaintiffs' counsel with the following reports, by the first business day on or after the fifteenth of each month, except for those months the Defendant exercises its discretion under paragraph 11 of this Order to review case files in which case the Defendant shall provide Plaintiffs' counsel with the reports by the first business day on or after the twenty-second of each month:

a. The monthly SNAP Application Timeliness Report that has been designed pursuant to this Court's Preliminary Injunction Order; the parties' July 18, 2013 Stipulation, DKT # 94 attached here as Exhibit A; the March 31, 2014 Stipulation, DKT # 104 attached here as Exhibit B; and Exhibit D attached hereto, further modified to include a column indicating how many cases were excluded based on client fault pursuant to paragraphs 13-15. A copy of the March 2016 Report is attached as Exhibit C. Additional columns will be added to the report in the month following the month this

order is entered, to reflect cases coded IT and EE. Any adjustments made pursuant to paragraph 11 shall also be reflected on the report.

b. The monthly Application Length Pending Report so long as it is generated by the Eligibility Management System ("EMS");

c. The monthly Expedited Service Report for so long as it is generated by EMS.

B. Sampling

18. Sampling will occur under two circumstances, neither of which is mutually exclusive:

a. At Plaintiffs' option, one statistically significant random or systematic sample shall be drawn by Defendant from a month to be designated by the Plaintiffs to determine the accuracy and reliability of the reporting set forth in Section IV(A) of this Order. The sample size shall be a number that is necessary to provide no greater than a 5% confidence interval (margin of error) at the 95% confidence level for that sampling frame. The parties shall meet and confer before the sample is drawn to discuss the sampling methodology; the sample size; the data recording instrument to be used for recording the information drawn from the sample; and the data sources for both the monthly reports and the sample. Defendant shall review the sample pursuant to the agreed-upon terms and shall report results of the review to Plaintiffs' counsel. In the event the parties

are unable to reach an agreement, the disputed issues will be referred to the Court for resolution.

b. At Plaintiffs' option, one statistically significant random or systematic sample shall be drawn by Defendant from a three month period to be designated by the Plaintiffs to determine the accuracy and reliability of delay codes (EX, IT, MV, or EE) used to excuse a delay in processing an application. The sample size shall be a number that is necessary to provide no greater than a 5% confidence interval (margin of error) at the 95% confidence level for that sampling frame. The parties shall meet and confer before the sample is drawn to discuss the sampling methodology; the sample size; the data recording instrument to be used for recording the information drawn from the sample; and the data sources for both the monthly reports and the sample. Defendant shall review the sample pursuant to the agreed-upon terms and shall report results of the review to Plaintiffs' counsel. In the event the parties are unable to reach an agreement, the disputed issues will be referred to the Court for resolution.

c. Plaintiffs reserve the right to audit the sample reviewed by the Defendant as set forth in paragraphs (a) and (b) above. If Plaintiffs elect to audit the sample reviews conducted by the Defendant, the parties will meet and confer in an attempt to reach an agreement on an appropriate audit sample size and on an appropriate audit methodology that minimizes

administrative burden and disruption to the Defendant while providing sufficiently reliable audit results as to the accuracy of the Defendant's sample review determinations. If the parties cannot agree on an audit sample size and/or methodology, the issue will be presented to the Court for its resolution, either by Court-monitored discussions conducted by a Magistrate Judge or by a judicial adjudication, as determined by the U.S. District Judge.

d. The parties acknowledge that any audit conducted by Plaintiffs pursuant to sub-paragraph (c) above will necessarily involve disclosure of client identifiers and other confidential information that are contained in the electronic individual application files maintained by the Defendant, including confidential medical information protected by HIPAA (protected confidential medical information is frequently contained in Food Stamp application files, especially when households apply for both Food Stamps and Medicaid at the same time utilizing the same application form), by the Food Stamp Act, and by state law. The parties acknowledge that Plaintiffs' counsel represents the certified class and that they would be requesting information on their clients related to their prosecution of this action when the confidential personal information is disclosed pursuant to plaintiffs' conduct of audits. Accordingly, the parties stipulate that the Defendant may release protected confidential information on class members to plaintiffs' counsel consistently with the requirements of

HIPAA, 42 C.F.R. § 164.512, the Food Stamp Act, 7 C.F.R. § 272.1(c)(3), and state law, Conn. Gen. Stat. § 17b-90, related to Plaintiffs' conduct of audits pursuant to 18(c) when the release of such information is "so ordered" by the Court by its approval of this Settlement Agreement and Plaintiffs elect to conduct such audits. Plaintiffs' counsel shall strictly limit its use of confidential personal information obtained from such audits to purposes directly related to this lawsuit, and, if any judicial enforcement proceedings results as a result of any audit conducted pursuant to sub-paragraph 18(c), any necessary confidential personal information shall then either be filed under seal with the approval of the Court or all personal identifiers shall be redacted and the individuals identified by initials or some other agreed acronyms known only to the parties and to the Court.

C. Meet and Confer regarding Reports

19. Notwithstanding Paragraphs 10 and 11 of this Order, which limit adjustment of the SNAP Application Timeliness Report to correct inaccuracies identified by Defendant in the reporting of expedited applications in the legacy EMS system, if, during the term of the Court's jurisdiction, Defendant develops new reports which he believes may provide Plaintiffs and the Court with the information required by Section IV(A) of this Order in a manner that is equally reliable and no less convenient, Defendant shall give notice to Plaintiffs' counsel regarding any

such reports and meet and confer with Plaintiffs' counsel regarding whether Section IV of this Order should be modified to address the new reports.

20. Prior to making any substantive modification to the reports identified herein, Defendants shall provide Plaintiffs' counsel with any template or other information to explain the proposed modifications and provide Plaintiffs' counsel with the opportunity to evaluate whether the proposed modified report would continue to provide the information they believe is necessary for monitoring compliance with this Order. Plaintiffs' counsel shall not unreasonably oppose any such modification.

21. To the extent that any subsequent SNAP Application Timeliness Report is derived from data reported in other reports generated by the ImpaCT system or otherwise, Defendants will make such other reports available to Plaintiffs' counsel at the same interval that the SNAP Application Timeliness Report is provided, as set forth in Section IV.

22. If the parties cannot agree on whether any new report or any modified report can be used for the purposes of monitoring Defendant's compliance with the terms of this Order, the disputed issues will be referred to the Court for resolution.

V. INFORMAL REVIEW PROCESS

23. Defendant agrees to provide a mechanism by which Plaintiffs' counsel may bring to the attention of the Defendant those instances in which an initial application may not have been processed in accordance with applicable federal

statutes and regulations cited herein and Defendant will promptly address these situations within no more than five (5) business days.

VI. DISPUTE RESOLUTION AND RIGHT TO CURE

24. Plaintiffs may, upon motion to this Court, allege a claim of noncompliance with the terms of this Order. Prior to bringing any such motion, Plaintiffs will be required to serve written notice on defendant detailing any claim of non-compliance. Within the thirty (30) business days thereafter, or at such time as is mutually agreed upon, the parties shall confer by telephone or in-person in a good faith effort to resolve the dispute. If the parties are unable to resolve the dispute, Plaintiffs may file a motion with this Court alleging a claim of non-compliance and shall specify the relief sought. Any motion shall detail any and all such efforts to resolve the dispute prior to seeking Court intervention. Defendant is preparing to implement its new statewide eligibility management system ("ImpaCT"), currently scheduled for a staged release between October 2016 and May 2017, during which time the Defendant is likely to experience unforeseeable, operational challenges as a result of the scope and complexity of the project. Defendant will notify counsel for the Plaintiffs within three business days of an ImpaCT implementation-related disruption that could affect the timely processing of SNAP applications, even if such an event occurs between SNAP Application Timeliness Reports and set forth all efforts and plans to cure. Plaintiffs shall not unreasonably deny Defendant an opportunity to cure any identified issue that could result in a violation of the Order.

VII. JURISDICTION

25. Unless otherwise extended by the Court, the Court's jurisdiction herein shall terminate upon Motion by the Defendant when the Defendant has achieved full compliance as defined in paragraph (6, 7 and 8) of this Order for 26 months of any 30 month period, or for 22 consecutive months whichever comes first. The first month that may be counted toward the compliance shall be the month following the date that this Order is so ordered and that Order is entered on the docket sheet of the United States District Court.

26. Upon the Defendant's achievement of full compliance over a time period described in this Section (VII) and termination of this Court's jurisdiction, this action shall be dismissed with prejudice.

VIII. ATTORNEY'S FEES AND COSTS

27. Within forty-five ("45") days of entry of this Order, as an order of the Court, Plaintiffs shall file a bill of costs and motion for attorney's fees and costs with the Court pursuant to 42 U.S.C. § 1988. In response, Defendant shall not challenge Plaintiffs' entitlement to fees and costs as of the date of this agreement, but may only challenge the amount of the request.

IX. GENERAL PROVISIONS

28. Within 30 days of execution of this Order by the parties, the parties shall file this Order with the District Court and request that the Court enter an order:

a. preliminarily approving the proposed settlement as fair, reasonable, and adequate;

b. scheduling a final hearing to determine the fairness, reasonableness, and adequacy of the proposed settlement and whether the Court should approve the Order; and

c. approving a class action notice containing a summary of the settlement terms, the date of the final hearing, and information regarding the right to comment or object, which notice shall be posted, in English and Spanish, on the websites for the Department of Social Services and Greater Hartford Legal Aid, and in DSS' Regional offices, and such other places as agreed by the parties and approved by the Court, or as ordered by the Court in the absence of agreement between the parties.

d. Between the signing of this Order and the fairness hearing, DSS shall direct all inquiries regarding the Order from class members to Plaintiffs' counsel.

29. The terms and conditions of this Order shall become effective upon so-ordering by the Court.

30. This Order is final and binding upon the parties, their successors and assigns. The parties recognize and acknowledge that the only consideration for signing this Order are the terms stated herein and no other promise, agreement, or

representation of any kind has been made to any party by any person or entity whatsoever to cause any party to sign this Order.

31. This Order constitutes a compromise settlement of disputed and contested matters between the parties. It shall not be construed as an admission of any sort by any of the parties, nor shall it be used as evidence in a proceeding of any kind, except as necessary to administer and/or enforce the terms of this Order.

32. This Order constitutes an integrated stipulation, containing the entire understanding of the parties with respect to the matters addressed herein and, except as set forth in this Order, no representations, warranties or promises, oral or written, have been made or relied on by the parties. This Order shall prevail over any prior communications between the parties or their representatives relative to matters addressed herein. This Order may not be changed unless the change is in writing and signed by the parties and the Court or the Court on its own.

33. The parties warrant and represent that they have read and understand the foregoing provisions of this Order and that they and their respective signatories are fully authorized and competent to approve and consent to this Order on their behalf.

34. Notwithstanding the provisions of this Order, Defendant reserves the right to seek to implement, change, or otherwise alter or amend the procedures and requirements of this Order if required by intervening changes in federal statute or regulation inconsistent with this Order. Defendant shall provide Plaintiffs' counsel written notification, by certified mail or by hand delivery with written

acknowledgment of receipt, of a purported required change at least thirty (30) days prior to the commencement of implementation, unless Defendant is required to implement such a purported required change in less than thirty (30) days. If Defendant determines he is required to implement a purported required change in less than thirty (30) days, Defendant shall provide notice to the Plaintiffs' counsel no later than seven (7) working days after learning of a purported required change. Plaintiffs may move the Court to challenge whether the change is required by federal statute or regulations. Any such change shall be implemented as narrowly as possible to preserve as much of this Order as possible.

AGREED TO ON 12/16/16

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AGREED TO ON 12/23/16

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	)	(CLASS ACTION)
Plaintiffs,	)	
v.	)	
RODERICK BREMBY, in his official capacity as Commissioner of the State of Connecticut Department of Social Services,	)	
Defendant.	)	

[PROPOSED] ORDER

Pursuant to Fed. R. Civ. P. 23 (e), following notice to the class and a hearing, this Court finds that the foregoing settlement in the above-captioned matter is fair, reasonable, and adequate, and it is:

SO ORDERED: _____
United States District Court Judge

DATED: _____