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John A. Clarke, Executive Officer/Clerk  
BY Shaunya Wesley, Deputy

1 ALEXANDER PRIETO, CSB NO. 270864  
2 VANESSA LEE, CSB NO. 216219  
3 DAVID PALLACK, CSB NO. 90083  
4 NEIGHBORHOOD LEGAL SERVICES  
5 OF LOS ANGELES COUNTY  
6 13327 Van Nuys Blvd.  
7 Pacoima, CA 91331  
8 Telephone: (818) 834-7512  
9 Facsimile: (818) 896-6647  
10 Email: alexanderprieto@nls-la.org  
11 vanessalee@nls-la.org

12 RICHARD A. ROTHSCHILD, CSB NO. 67356  
13 ANTIONETTE DOZIER, CSB NO. 244437  
14 WESTERN CENTER ON LAW & POVERTY  
15 3701 Wilshire Boulevard, Suite 208  
16 Los Angeles, California 90010  
17 Telephone: (213) 487-7211  
18 Facsimile: (213) 487-0242  
19 Email: rrothschild@wclp.org  
20 adozier@wclp.org

*D 86  
Am & Jones*

21 Attorneys for Petitioner

22 **SUPERIOR COURT OF CALIFORNIA**  
23 **COUNTY OF LOS ANGELES**

24 EVELYN CARPIO,

25 Petitioner,

26 vs.

27 CALIFORNIA DEPARTMENT OF SOCIAL  
28 SERVICES and WILL LIGHTBOURNE, in his  
official capacity as director of California  
Department of Social Services,

Respondents.

Case No.:

**BS135127**

**VERIFIED PETITION FOR WRIT OF  
MANDATE (CODE CIV. PROC. § 1085)**

1 **INTRODUCTION**

2 1. Evelyn Carpio had to borrow money to meet her basic needs when thieves  
3 electronically accessed her EBT account without using her EBT card and stole \$720.00 in  
4 subsistence public benefits. Although there was nothing Ms. Carpio could have done to  
5 prevent this electronic fraud, respondent state welfare officials could have prevented the  
6 resulting harm to Ms. Carpio if they had complied with their obligation to promptly replace  
7 the stolen benefits. Instead, the respondents perpetuated the harm by refusing to replace Ms.  
8 Carpio's benefits, in violation of the law regarding reimbursement for public benefits  
9 recipients.

10 2. Petitioner Evelyn Carpio has been a CalWORKs cash aid recipient for several  
11 years. On October 5, 2009, thieves stole \$720.00 of CalWORKs cash assistance from her  
12 EBT account even though her EBT card never left her possession. Ms. Carpio had to wait  
13 almost two years before she finally received replacement of the benefits to which she was  
14 entitled. However, the respondents continue to deny replacement of stolen benefits to public  
15 benefits recipients in circumstances similar to Ms. Carpio's.

16 3. This is an action under Code of Civil Procedure ("CCP") section 1085 to  
17 challenge the respondents' continued refusal to provide replacement benefits for victims of  
18 EBT theft when their benefits are stolen electronically, without physical theft of their EBT  
19 cards. Ms. Carpio seeks a writ of mandate pursuant to CCP section 1085 ordering the  
20 respondents to provide for prompt replacement of benefits when recipients report that their  
21 benefits have been stolen despite their maintaining possession of their EBT cards.

22  
23 **PARTIES**

24 4. Evelyn Carpio is a single mother who is solely responsible for her children's  
25 care. In addition to taking care of her kids, Ms. Carpio works part-time as a sales associate at  
26 a department store. Ms. Carpio is a CalWORKs cash aid recipient and a CalFresh food  
27 assistance recipient.

28 5. Respondent California Department of Social Services ("CDSS") is the state

1 agency responsible for administration of public benefits programs and the EBT system.

2 6. Respondent Will Lightbourne is the director of CDSS. As such, he is  
3 responsible for the lawful operation of the agency. Welf. & Inst. Code (“WIC”) § 10553.  
4 Director Lightbourne is sued in his official capacity.

## 5 6 STATUTORY AND REGULATORY FRAMEWORK

### 7 The EBT System

8 7. The EBT system is a system for the distribution of public benefits. The EBT  
9 system replaced the former benefit distribution system, which relied on traditional paper  
10 warrants to deliver benefits to recipients. Under the EBT system, benefits are stored in a  
11 central computer database. California Department of Social Services Manual of Policies and  
12 Procedures (“MPP”) § 16-001.1. Recipients access their electronically-stored benefits at  
13 point of sale (“POS”) terminals, ATMs, and other electronic funds transfer devices, using  
14 plastic cards with magnetic stripes similar to debit cards (“EBT cards”). *Id.*

15 8. In California, the EBT system is governed by the California Electronic  
16 Benefits Transfer Act, Welfare and Institutions Code sections 10065 et seq. (the “EBT Act”).  
17 Under Welfare and Institutions Code section 10077, CDSS has the authority to adopt  
18 regulations to implement the EBT Act. Regulations issued by CDSS require counties to use  
19 the EBT system to deliver benefits under the CalFresh program (formerly known as Food  
20 Stamps) and the California Food Assistance Program. MPP § 16-001.2. Counties may also  
21 use the EBT system to distribute cash benefits under other programs, such as the CalWORKs  
22 program, but are not required to do so. MPP § 16-001.3.

23 9. All 58 counties in California use the EBT system to deliver CalFresh benefits.  
24 All 58 counties also use the EBT system to deliver either CalWORKs or General Assistance  
25 benefits or both. Los Angeles County, where Ms. Carpio resides, uses the EBT system to  
26 distribute CalFresh benefits as well as all cash benefits.

27 10. Under the EBT system, counties deliver benefits to recipients’ electronic EBT  
28 accounts at designated times. County welfare departments are responsible for issuing EBT

1 cards to recipients, which recipients use to access the benefits stored electronically in their  
2 EBT accounts. MPP § 16-501.1. Counties also issue personal identification numbers  
3 (“PINs”) to recipients. *Id.* Recipients may change their PINs and select new PINs. MPP §  
4 16-520.1.

5 11. Cash benefit recipients may access their benefits at ATMs as well as POS  
6 terminals. Cash recipients with a positive balance in their EBT accounts may use their EBT  
7 cards to make cash withdrawals and in-store purchases, in the same way users of bank-issued  
8 debit cards make withdrawals and purchases.

9 12. One of the primary purposes of the EBT system, as stated in the EBT Act, is  
10 “to afford public social services recipients the opportunity to better and more securely  
11 manage their financial affairs.” WIC § 10065(b). The EBT Act provides that “[a]ny benefits  
12 provided to recipients under the department’s authority may be distributed through the  
13 electronic benefits transfer system as long as the recipient has reasonable access to his or her  
14 benefits.” WIC § 10071.

15  
16 *EBT Theft*

17 13. On information and belief, like personal bank accounts linked to debit cards,  
18 EBT accounts are vulnerable to theft. In some cases, thieves access accounts by physically  
19 stealing account holders’ debit cards or EBT cards. However, due to advances in technology,  
20 thieves can sometimes access cardholders’ accounts electronically and remove funds even  
21 though the cardholders retain possession of their cards at all times. One way thieves  
22 accomplish this is the use of “skimming devices” inserted into ATMs. These devices capture  
23 the information stored on the magnetic stripes of debit cards and EBT cards. Using this  
24 information, thieves are able to make false debit cards or EBT cards by encoding plastic  
25 cards with the stolen information. The thieves then use the false cards to withdraw funds  
26 from cardholders’ accounts.

27 14. The EBT Act directly addresses the first type of theft (where a thief physically  
28 steals an EBT card or PIN). See WIC § 10072(g). In these circumstances, recipients have an

1 opportunity to prevent the loss of benefits, because CDSS' regulations provide for a 24-hour  
2 toll-free number recipients can call to report a lost or stolen card. MPP § 16-515. Once a  
3 recipient reports a card as lost or stolen, the card is deactivated and replaced. MPP §§16-  
4 515, 16-517. Under Welfare and Institutions Code section 10072(g), a recipient is entitled to  
5 replacement of any benefits stolen from an EBT account after the recipient reports the theft  
6 of the card or PIN. CDSS regulations do not address the theft that does not involve the loss  
7 of a card or PIN, which has increased in frequency due to technological advances occurring  
8 after the passage of the Act in 1997.

9 15. California law provides a procedure for public benefits recipients who are  
10 victims of theft, which applies to victims of EBT theft whose EBT cards are not stolen.  
11 Government Code section 29853.5 provides that "a public assistance warrant, which has been  
12 lost, stolen, destroyed, or lost in the mail, shall be replaced by the county," if the recipient  
13 files an affidavit containing information relating to the loss, theft or destruction of the  
14 warrant. The statute also provides that the county shall assist in the completion of the  
15 affidavit. Once the affidavit has been completed, "the county shall issue a replacement  
16 warrant as soon as possible to ensure that the needs of the family continue to be met, but no  
17 later than five working days from the date that the affidavit has been signed and filed with  
18 the county." Gov't Code § 29853.5(b).

19  
20 **FACTUAL BACKGROUND**

21 16. Ms. Carpio was the victim of EBT theft even though she carefully kept her  
22 EBT card in her possession at all times. On October 5, 2009, thieves accessed her account  
23 without using her EBT card and stole \$720.00 of CalWORKs cash assistance. Ms. Carpio  
24 reported the theft to the Los Angeles County Department of Public Social Services  
25 ("County"), an agent of the respondents, and cooperated with the County's requests for  
26 information regarding the theft. However, the County failed to follow the appropriate  
27 procedure under Government Code section 29853.5(b) and did not timely replace Ms.  
28 Carpio's benefits.

1           17.     On October 5, 2009, Ms. Carpio went to work early in the morning. She left  
2 work at 9:45 a.m. and went home to take a nap. Around noon that day, while Ms. Carpio was  
3 sleeping, two unidentified males accessed her EBT account at a Citibank ATM located at 270  
4 N. Vermont Street in Los Angeles. The thieves withdrew \$720.00 from Ms. Carpio's  
5 account in two transactions within a minute of each other. Ms. Carpio's EBT card was in her  
6 possession at the time.

7           18.     Ms. Carpio first learned that her benefits had been stolen later that afternoon.  
8 After picking her children up from school around 2:30 p.m., Ms. Carpio stopped at  
9 Food4Less Market in Panorama City. At Food4Less, she attempted to debit \$200.00 from  
10 her EBT account, but the transaction was denied due to insufficient funds.

11          19.     Ms. Carpio contacted the EBT service provider and learned that money had  
12 been withdrawn from her account earlier that day. The EBT service provider advised her to  
13 file a police report. Ms. Carpio also contacted the County to report the theft.

14          20.     Ms. Carpio prepared a written statement on October 7, 2009, documenting the  
15 events preceding the theft. In her statement, Ms. Carpio confirmed that she had not  
16 authorized anyone to use her EBT card, had not given her PIN to anyone, and had kept her  
17 card in her possession at all times.

18          21.     On October 12, 2009, Ms. Carpio filed a police report with the Los Angeles  
19 Police Department. Ms. Carpio later examined photographs of the individuals who had  
20 accessed her account and confirmed to the County that she did not recognize them.

21          22.     On October 13, 2009, Ms. Carpio met with Eligibility Supervisor Mario  
22 Ringpis at DPSS. She submitted her written statement and the police report to Mr. Ringpis.

23          23.     The County, however, had already issued a Notice of Action dated October 7,  
24 2009, denying Ms. Carpio's request for replacement of her benefits. The Notice of Action  
25 incorrectly stated that Ms. Carpio had requested replacement of only \$400.00 in benefits. It  
26 did not provide a reason for the denial and did not acknowledge the remaining \$320.00 that  
27 Ms. Carpio had reported stolen from her account. Ms. Carpio appealed the denial.

28          24.     On December 30, 2009, CDSS' State Hearing Division held a hearing on Ms.

1 Carpio's claim. In its statement of position, the County requested that CDSS make a  
2 decision in the case. At the same time, however, the County also independently "stipulated"  
3 to forward the case to the Special Investigation Unit for investigation. In a decision dated  
4 June 16, 2010, CDSS did not reach a decision regarding Ms. Carpio's entitlement to  
5 replacement of the stolen benefits. Rather, CDSS directed the County to conduct an  
6 investigation of the claim "to redetermine whether reimbursement is appropriate."

7 25. On July 21, 2010, Ms. Carpio met with a worker named Jose Macias at the  
8 County's office. She completed an affidavit with him regarding the disappearance of her  
9 benefits from her EBT account. Ms. Carpio was also given an appointment with the  
10 County's Special Investigations Unit on July 26, 2010. She met with an investigator that day  
11 and completed another affidavit containing information regarding the theft of her benefits.

12 26. On July 30, 2010, the County issued a letter stating that the Special  
13 Investigations Unit had completed its investigation and that the County had denied Ms.  
14 Carpio's request for reimbursement because "reimbursement is inappropriate and insufficient  
15 evidence [sic]."

16 27. Ms. Carpio requested a rehearing. CDSS held a second hearing on April 27,  
17 2011. On May 16, 2011, CDSS issued a decision applying Government Code section  
18 29853.5 and directing Los Angeles County to reimburse Ms. Carpio for \$720.00 in stolen  
19 benefits.

20 28. Although Ms. Carpio's stolen benefits were eventually replaced, she had to  
21 wait almost two years from the date of the theft to receive them.

22 29. Ms. Carpio continues to receive benefits through the EBT system and worries  
23 that the County will deny or delay replacement if her benefits are ever stolen again. On  
24 information and belief, county welfare departments, acting as the respondents' agents, have a  
25 practice of denying replacement of benefits to recipients whose benefits are stolen  
26 electronically without physical theft of their EBT cards or PINs. In Ms. Carpio's case, CDSS  
27 eventually concluded that this practice was contrary to law. However, on information and  
28 belief, CDSS continues to issue decisions approving county welfare departments' practice of

1 denying replacement of benefits.  
2

3 **CLAIM FOR RELIEF**

4 **(Petition for Writ of Mandate, Code Civ. Proc. § 1085 against all respondents)**

5 30. Petitioner realleges and incorporates by reference each and every allegation in  
6 paragraphs 1 through 29 above.

7 31. Petitioner is entitled to a writ of mandate, pursuant to CCP section 1085, in  
8 that the respondents have a clear, present, and ministerial duty to administer the EBT system  
9 and public benefits programs in accordance with the requirements of law.

10 32. Under state law, when a public benefits recipient reports that his or her EBT  
11 account was accessed without use of his or her EBT card or PIN and benefits were stolen  
12 from the account, the respondents, acting through the counties, have a ministerial duty to  
13 assist the recipient in completing an affidavit containing information relative to the theft, and  
14 to replace the benefits reported as stolen within five days after the date the affidavit is signed  
15 and filed. Gov't Codé § 29853.5; WIC § 10500 (any person who administers public benefits  
16 programs must ensure that recipients secure the benefits to which they are entitled).

17 33. At all times, the respondents have had and continue to have the legal ability to  
18 perform their duties but have failed to do so.

19 34. Ms. Carpio has a beneficial interest in the respondents' performance of their  
20 legal duties in that as a CalWORKs and CalFresh beneficiary with an EBT card she could be  
21 faced again with the electronic theft of her benefits and no readily available remedy. In  
22 addition, Ms. Carpio is interested as a citizen in the performance of the respondents' public  
23 duties.

24 35. Ms. Carpio has no plain, speedy and adequate remedy in the ordinary course  
25 of the law.  
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**PRAYER FOR RELIEF**

WHEREFORE, Petitioner prays for the following relief:

1. A writ of mandate under CCP section 1085 ordering the respondents to assist recipients in completing the required affidavits and to replace benefits no later than five working days after an affidavit is filed, pursuant to Government Code section 29853.5, when recipients report that their benefits have been stolen despite their maintaining possession of their EBT cards;
2. An order awarding Petitioner her reasonable costs and attorneys' fees to the extent permitted by law; and
3. Such other relief as the court deems just and proper.

DATED: December 8, 2011

NEIGHBORHOOD LEGAL SERVICES  
OF LOS ANGELES COUNTY

By: Alex Prieto  
Alexander Prieto  
Attorneys for Petitioner

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VERIFICATION

I, Evelyn Carpio, am the petitioner in this action. I declare under penalty of perjury that the facts alleged in the foregoing document that relate to me are true and correct to the best of my knowledge and belief.

Executed in Pacoima, California this 1 day of December, 2011.



Evelyn Carpio