

1 Andrew Kazakes, SBN 277912
Tyler Sutherland, SBN 287337
2 Yolanda Arias, SBN 130025
LEGAL AID FOUNDATION OF LOS ANGELES
3 5228 Whittier Boulevard
Los Angeles, CA 90022
4 Telephone: (213) 640-3944
Facsimile: (213) 640-3911
5 Email: akazakes@lafla.org
yarias@lafla.org
6 tmpsutherland@lafla.org

7 Alexander Prieto, SBN 270864
Richard A. Rothschild, SBN 67356
8 WESTERN CENTER ON LAW & POVERTY
3701 Wilshire Boulevard, Suite 208
9 Los Angeles, CA 90010
Telephone: (213) 235-2614
10 Facsimile: (213) 487-0242
Email: aprieto@wclp.org
11 rrothschild@wclp.org

12 Attorneys for JOE SOZA and ESTHER ORTEGA

13
14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **FOR THE COUNTY OF LOS ANGELES**

16 JOE SOZA; ESTHER ORTEGA

17 *Petitioners,*

18 v.

19 WILL LIGHTBOURNE, in his official capacity as
20 Director, California Department of Social Services;
and the CALIFORNIA
21 DEPARTMENT OF SOCIAL SERVICES

22 *Respondents.*

No filing fee is required
per W. Probate Code § 10962
Code § 10962

MAR 27 2018

Sherri R. Carter, Executive Officer/Clerk
By Michael Rivera, Deputy

) Case No.: BS 172114
)
) FIRST AMENDED PETITION
) FOR WRIT OF MANDATE
) AND COMPLAINT FOR
) DECLARATORY AND INJUNCTIVE
) RELIEF
) [Code of Civ. Proc. §§ 1094.5, 1085;
) Welf. & Inst. Code §10962]
)
) Dept.: 86
) Judge: Hon. Amy D. Hogue
) Action filed: Jan. 22, 2018
) Answer: Not filed

INTRODUCTION

1
2 1. Petitioners JOE SOZA and ESTHER ORTEGA bring this action to challenge the
3 Respondents', WILL LIGHTBOURNE and the CALIFORNIA DEPARTMENT OF SOCIAL
4 SERVICES' (CDSS), decisions upholding the denial of the restoration of their electronically stolen
5 CalFresh benefits.

6 2. Petitioner Joe Soza was a CalFresh and General Relief (GR) recipient at the time of
7 the allegations contained herein and accessed his food and cash benefits through an Electronic
8 Benefits Transfer (EBT) card. In early September 2016, while under curfew at a sober living
9 facility, Mr. Soza was the victim of electronic benefits theft, losing nearly all of his monthly food
10 and cash benefits through a series of early morning, unauthorized transactions despite retaining
11 sole possession of his physical EBT card. After promptly reporting the theft to the EBT helpline
12 and filing a police report, his cash benefits were restored but his request for restored CalFresh
13 benefits was denied.

14 3. Petitioner ESTHER ORTEGA is and was a CalFresh and CalWORKs recipient at
15 the time of the allegations contained herein and accessed her food and cash benefits through an
16 EBT card. In early April 2017, Ms. Ortega was the victim of electronic benefits theft, losing nearly
17 all of her monthly food and cash benefits through a series of early morning, unauthorized
18 transactions despite retaining sole possession of her physical EBT card. After promptly reporting
19 the theft to the EBT helpline and filing a police report, her cash benefits were restored but her
20 request for restored CalFresh benefits was denied.

PARTIES

21
22 4. Petitioner JOE SOZA was a CalFresh recipient whose request for restoration of
23 electronically stolen food benefits was denied by Respondents, and has exhausted his

1 administrative remedies in seeking reversal of this erroneous denial. Mr. SOZA resided in Los
2 Angeles County at all times relevant to these proceedings. Mr. Soza subsequently relocated to
3 Arizona.

4 5. Petitioner ESTHER ORTEGA is and was a CalFresh recipient whose request for
5 restoration of electronically stolen food benefits was denied by Respondents, and has exhausted
6 her administrative remedies in seeking reversal of this erroneous denial. Ms. ORTEGA resided in
7 Los Angeles County at all times relevant to these proceedings.

8 6. The Respondent, WILL LIGHTBOURNE, is the Director of the California
9 Department of Social Services. As Director, he is charged under Welfare and Institutions Code
10 Section 10553 with administering the CalFresh program. His duties with respect to the CalFresh
11 program are partially set out in Welfare and Institutions Code Section 18900, *et seq.* The
12 Respondents must comply with both state and federal law. The Respondent WILL
13 LIGHTBOURNE is sued in his official capacity.

14 7. The Respondent, CALIFORNIA DEPARTMENT OF SOCIAL SERVICES
15 (CDSS), is the single state agency responsible for supervising the administration of public social
16 services in California, including the CalFresh program, in order to secure full compliance with
17 applicable state and federal laws. Welf. & Inst. Code §10600. For Los Angeles County, the
18 Respondents delegated responsibility for administration of the CalFresh program to the Los
19 Angeles County Department of Public Social Services (DPSS). At all relevant times, DPSS was
20 and is the agent of the Respondents.

21 **FACTUAL ALLEGATIONS AND PROCEDURAL HISTORY**

22 8. Petitioners JOE SOZA and ESTHER ORTEGA have each been the victims of
23 electronic benefit “skimming” theft by which their EBT account numbers and PIN codes were

1 illegally obtained and used to steal Petitioners' cash and food benefits through unauthorized EBT
2 transactions, despite the fact that Petitioners maintained possession of their EBT cards and account
3 information at all times. Both Petitioners timely reported the thefts to the EBT helpline and filed
4 police reports. In both cases, Petitioners' cash benefits were promptly restored, but Respondents
5 refused to restore any CalFresh benefits, in contravention of California and federal regulations.
6 Petitioners requested state fair hearings, and in both cases Respondents—although it was
7 undisputed that Petitioners were victims of theft—upheld the denials of Petitioners' requests for
8 restoration of their electronically stolen CalFresh benefits.

9 Petitioner Joe Soza

10 9. Petitioner JOE SOZA resided at Action Sober Living Homes, 5149 Cavanagh Road,
11 Los Angeles, CA 90032 at the time of the allegations contained herein. Since June 2016, Mr. Soza
12 received CalFresh and GR benefits through the Los Angeles County Department of Public Social
13 Services (DPSS). He accessed both his food and cash benefits through an EBT card.

14 10. On September 3, 2016 at approximately 1:33 AM, Mr. Soza's GR and CalFresh
15 accounts were credited with his monthly benefit allotments, \$221.00 for GR and \$194 for
16 CalFresh.

17 11. Within a few hours, there were four unauthorized transactions using Mr. Soza's
18 benefits. At 4:12 AM in a Rite Aid Store located at 21949 Ventura Blvd. in Woodland Hills, there
19 was a \$17.19 transaction from Mr. Soza's CalFresh account. One minute later, at the same
20 location, there was a cash purchase made, with cash back, from Mr. Soza's GR account totaling
21 \$129.25. Two hours later, at 6:23 AM in the same Rite Aid, another cash purchase with cash back
22 from Mr. Soza's GR account occurred in the amount of \$47.95. A little more than an hour after
23 that, at 7:39 AM at the same Rite Aid, there was yet another cash purchase with cash back made

1 from Mr. Soza's GR account in the amount of \$41.41. These cash purchases consumed \$218.61 of
2 Mr. Soza's \$221 GR benefits for September.

3 12. Over the subsequent two days, there were three additional unauthorized transactions
4 from Mr. Soza's CalFresh account, all of them again from the same Rite Aid store in Woodland
5 Hills. These included: a \$61.66 food purchase on September 4 at 2:45 AM, a \$10.31 food purchase
6 on September 5 at 2:23 AM, and a \$76.22 food purchase on September 5 at 4:15 PM. In total, Mr.
7 Soza had \$165.38 stolen from his CalFresh account. All of these unauthorized transactions were
8 performed by "keying" the account number and PIN code at the point of sale device without
9 swiping a physical card.

10 13. Mr. Soza was the victim of electronic benefits theft. At all times he remained in
11 possession of his EBT card and never distributed his account number or PIN code to anyone. Mr.
12 Soza lived by himself at Action Sober Living Homes.

13 14. Action Sober Living Homes is a structured sober living home with mandatory
14 curfews. Mr. Soza was required to be at home between 10:00 PM and 5:30 AM Sunday through
15 Thursday, and 12:00 AM to 5:30 AM Friday and Saturday. Mr. Soza remained in full compliance
16 during his entire time at Action Sober Living Homes, as confirmed in writing by Program Director
17 Robert Anderson. Mr. Soza has never been to Woodland Hills, nor to the Woodland Hills Rite Aid
18 store where the unauthorized transactions occurred.

19 15. On information and belief, Mr. Soza was the victim of "skimming" fraud, a
20 technique by which a thief surreptitiously acquires a victim's EBT or debit card account number
21 and PIN code information. This is often accomplished by installing a false casing onto a point of
22 sale card reader to intercept account information, often in conjunction with a discreet camera that
23 visually records victims keying their PIN codes. The electronic thief then uses this information to

1 misappropriate the victim's benefits by either creating and using a "cloned" physical EBT or debit
2 card, or by conducting "keyed" transactions at point-of-sale devices in the complete absence of a
3 physical card. With advances in technology, this form of fraud has become increasingly common.

4 16. Mr. Soza realized that his benefits had been stolen within days of the theft when he
5 tried to withdraw cash and was unexpectedly notified that there were no funds available in his
6 account. On or about September 5 or 6, Mr. Soza immediately tried to report the theft at a local
7 DPSS office located downtown near an outpatient program that he attended, but he was told to go
8 to the Wilshire office instead to follow up about the issue. Around the same time, he called the
9 EBT customer service helpline to report the theft, but was told to go file a police report and go to
10 the Wilshire office, instead of being allowed to file a dispute claim on the spot. After several trips
11 between the police department and the Wilshire office, Mr. Soza obtained assistance from the
12 Legal Aid Foundation of Los Angeles, which assisted Mr. Soza with reporting the theft to DPSS
13 and filing a police report on September 15. On September 21, a request for hearing regarding Mr.
14 Soza's stolen CalFresh was submitted to DPSS along with a report of electronic theft. Mr. Soza's
15 case was assigned administrative hearing number 2016273045.

16 17. Based on the theft reported in the case complaint, Mr. Soza's cash aid was promptly
17 restored. However, Respondents refused to restore Mr. Soza's CalFresh benefits, even though they
18 were stored on the same electronic account and were stolen as part of the same series of
19 unauthorized transactions between September 3 and 5, 2016. While the first hearing date was
20 pending in this matter, counsel for Mr. Soza was notified that according to ACL 13-67, Mr. Soza
21 was required to initiate a separate dispute claim through the EBT customer helpline with respect to
22 his CalFresh benefits, even though he had previously reported the theft and had already called the
23 EBT customer helpline. Nonetheless, Counsel for Mr. Soza requested a postponement in order to

1 exhaust this additional administrative process, and assisted Mr. Soza in submitting these four
2 dispute claims. On November 22, 2016, Mr. Soza received three denial notices with respect to
3 these four dispute claims, with one of the four claims erroneously omitted. The basis for the
4 denials was that no system error had occurred.

5 18. Mr. Soza attended the December 20, 2016 hearing and provided sworn testimony.

6 19. On January 17, 2017, Administrative Law Judge Eli Palomares issued a decision
7 that was adopted by the Respondents. The decision accepted the undisputed evidence that Mr.
8 Soza was the victim of electronic benefits theft, but upheld the Respondents' denial of the
9 reimbursement for Mr. Soza's electronically stolen CalFresh benefits.

10 20. The decision is based on the conclusions, challenged in this Petition, that: (1)
11 Manual of Policies and Procedures Section 63-603.115(c) does not provide for the restoration of
12 electronically stolen CalFresh benefits; and (2) Welfare & Institutions Code § 10072, as amended
13 in 2012 by A.B. 2035, should be interpreted as expressly excluding restoration of electronically
14 stolen CalFresh benefits, contrary to the stated intent of this legislation to expand—not narrow—
15 crime victims' access to restored subsistence welfare benefits in instances of such theft.

16 21. Judge Palomares' written decision was received on January 20, 2017.

17 Petitioner Esther Ortega

18 22. Petitioner ESTHER ORTEGA resides and resided in Whittier California at the time
19 of the allegations contained herein. Ms. Ortega is a victim of domestic violence, and has been a
20 recipient of CalWORKs and CalFresh benefits on and off over the last seventeen years through
21 DPSS. Ms. Ortega does not drive. She accesses and accessed both food and cash benefits through
22 an EBT card.

1 23. On April 2, 2017, at approximately 12:58 AM and 1:23 AM, Ms. Ortega's CalFresh
2 benefits and CalWORKs benefits were deposited with her monthly allotments, \$625 and \$577,
3 respectively.

4 24. At 9:08 PM on April 2, 2017 \$280 in CalWORKs benefits was stolen from Ms.
5 Ortega's account at an ATM at 7568 Lankershim Blvd., North Hollywood and on April 3, 2017 at
6 12:25 PM another \$60 in cash benefits was stolen at an ATM located at 6015 Franklin Ave, Los
7 Angeles.

8 25. On April 9, 2017 there were four unauthorized transactions on Ms. Ortega's EBT
9 account. \$81.13 in CalFresh benefits was stolen at 9:35 AM at a CVS store located at 861 North
10 Vine Street, Hollywood, CA 90038. \$115.45 in CalFresh benefits was stolen at 9:04 AM at a
11 Ralphs Grocery Store located at 7257 Sunset Blvd., West Hollywood, CA 90046. \$32.01 in
12 CalFresh benefits was stolen at 9:09 AM at Ralphs Grocery Store located at 7257 Sunset Blvd.,
13 West Hollywood, CA 90046. Finally, \$112.21 in CalFresh benefits was stolen at 9:39 AM at a
14 Ralphs Grocery Store located at 1233 N. La Brea, West Hollywood, CA 90046.

15 26. On April 11, 2017 Ms. Ortega went to use her benefits and discovered the
16 discrepancy in her balance, and called the EBT customer service helpline to report these thefts.
17 She reported the six unauthorized transactions (two CalWORKs and four CalFresh) and cancelled
18 her EBT Card.

19 27. On April 12, 2017 Ms. Ortega reported the thefts to DPSS and received a
20 replacement EBT card.

21 28. DPSS issued three Denial Notices dated April 21, 2017 denying Ms. Ortega's
22 request for replacement of the funds withdrawn from her EBT CalFresh account on April 9, 2017.
23

1 The theft of \$81.13 was erroneously omitted. The basis for the denials was that no system error
2 had occurred.

3 29. On April 25, 2017 Ms. Ortega filed a police report.

4 30. Ms. Ortega was the victim of electronic benefits theft. At all times she remained in
5 possession of her EBT card and never distributed her account number or PIN code to anyone. Ms.
6 Ortega does not drive, and the unauthorized transactions all took place over twenty miles from her
7 home.

8 31. On information and belief, Ms. Ortega was the victim of electronic benefit
9 “skimming” fraud.

10 32. DPSS reimbursed Ms. Ortega for the stolen CalWORKs cash benefits.

11 33. On May 24, 2017 Ms. Ortega submitted a request for hearing to challenge DPSS’s
12 denial of her request for CalFresh reimbursement. An administrative hearing was held on July 3,
13 2017, where Ms. Ortega’s sworn affidavit was submitted as evidence.

14 34. On August 22, 2017, Administrative Law Judge Jonathan Huang issued a decision
15 that was adopted by the Respondents. The decision upheld the Respondents’ denial of the
16 reimbursement of Ms. Ortega’s electronically stolen CalFresh benefits.

17 35. The decision is based on the conclusions, challenged in this Petition, that: (1)
18 Manual of Policies and Procedures Section 63-603.115(c) does not provide for the restoration of
19 electronically stolen CalFresh benefits; and (2) Welfare & Institutions Code § 10072, as amended
20 in 2012 by A.B. 2035, should be interpreted as expressly excluding restoration of electronically
21 stolen CalFresh benefits, contrary to the stated intent of this legislation to expand—not narrow—
22 crime victims’ access to restored subsistence welfare benefits in instances of such theft.
23

1 **STATUTORY AND REGULATORY FRAMEWORK**

2 CalFresh Benefits Program

3 36. CalFresh is a California state benefits program that provides monthly benefits to
4 low-income households for purchasing food to maintain adequate nutritional levels. It was
5 formerly known as the Food Stamp program, and is part of the federally authorized Supplemental
6 Nutrition Assistance Program (SNAP). Congress has declared that the primary purpose of the
7 SNAP program is to safeguard the health and well-being of the Nation's population by reducing
8 hunger and malnutrition among the Nation's low-income households. 7 U.S.C. § 2011.

9 37. Federal law requires that state agencies participating in the SNAP program comply
10 with all SNAP statutes, regulations, and rules. 7 U.S.C. § 2013(c); 7 C.F.R. § 272.2(a)(2); 7 C.F.R.
11 § 276.1(a)(2).

12 38. In California, the CalFresh benefits program is governed by Welfare & Institutions
13 Code Section 18900 *et seq.* CDSS administers the CalFresh program under the regulations
14 contained in Manual of Policies and Procedures (MPP) Division 63. Respondents have a
15 ministerial duty to comply with their own rules and regulations. *Gregory v. State Bd. of Control*,
16 73 Cal. App. 4th 584, 595 (1999).

17 39. Under the MPP, Respondents are responsible for the administration, distribution,
18 management, and facilitation of the CalFresh benefits program. Respondents have the duty to
19 "promote the general welfare and to safeguard the health and well-being of the nation's
20 population" in its administration of the CalFresh program. MPP 63-101.1.

21 The EBT System

22 40. Since the passage of the Food Stamp Act in 1964, Respondents have implemented a
23 variety of methods for the delivery of food benefits to participants. These benefits were originally

1 issued in the form of physical coupons, or “stamps,” which were then redeemed at authorized
2 points of sale in exchange for food.

3 41. An “authorization document” system was also developed by which a participant
4 was mailed a physical voucher each month that was then redeemed at designated locations in
5 exchange for the participant’s allotted quantity of coupons.

6 42. In 1996 Congress passed the Personal Responsibility and Work Opportunity
7 Reconciliation Act of August 22, 1996, which mandated that States implement EBT systems to
8 modernize the delivery of food benefits. Under the EBT system, benefits are stored in a central
9 computer database. MPP § 16-001.1. Recipients access their electronically stored benefits at
10 point-of-sale terminals, ATMs (for cash benefits), and other electronic funds transfer devices. *Id.*

11 43. In California, the EBT system is governed by the California Electronic Benefits
12 Transfer Act, Welfare and Institutions Code §§ 10065 et seq. (the “EBT Act”). Under Welfare and
13 Institutions Code § 10077, Respondents have the authority to adopt regulations to implement the
14 EBT Act. Respondents also have the authority to adopt regulations and general policies “necessary
15 for the administration of public social services.” WIC § 10553(b), (e). Regulations issued by
16 Respondents require counties to use the EBT system to deliver benefits under the CalFresh
17 program and the California Food Assistance Program (CFAP). MPP § 16-001.2. Counties may
18 also use the EBT system to distribute cash benefits under other programs, such as the CalWORKs
19 program and the GR program. MPP § 16-001.3.

20 44. Under the EBT system, counties automatically load benefits onto recipients’
21 electronic EBT accounts at designated times each month. County welfare departments are
22 responsible for issuing EBT cards and personal identification numbers (“PINs”), which recipients
23 use to access the benefits stored electronically in their EBT accounts. MPP § 16-501.1. Recipients

1 can access their electronic accounts at a point-of-sale terminal either by swiping a physical EBT
2 card ("swiping") or by keying in the account number and PIN code manually ("keying").¹

3 45. One of the primary purposes of the EBT system, as stated in the EBT Act, is "to
4 afford public social services recipients the opportunity to better and more securely manage their
5 financial affairs." WIC § 10065(b). Accordingly, the CalFresh program has discontinued the usage
6 of "coupons"² and "authorization documents"³ and has transitioned to distributing benefits
7 electronically through an "access device" system, a change in terminology that has been
8 incorporated into both state and federal regulations.

9 46. A physical EBT card with a magnetic strip is a type of "access device," but the term
10 broadly includes all technical means of accessing food benefits, including the use of an account
11 number and PIN code to access food benefits without swiping a physical card. According to the
12 Code of Federal Regulations, the term "access device" is defined in broad, functional terms, and
13 specifically includes the use of an account number and code to access benefits separate and apart
14 from a physical card:

15 Access device means any card, plate, **code, account**
16 **number, or other means of access** that can be used alone,
17 or in conjunction with another access device, to obtain
payments, allotments, benefits, money, goods, or other

18 ¹ Retailers who conduct EBT transactions are required to have the capacity to conduct manual "key entered
19 transactions," in which the account number and PIN code are typed into the point-of-sale device in lieu of
20 swiping a physical card. 7 CFR 274.8(b)(9)(**"Minimum transaction set.** At a minimum, the State agency
21 shall ensure that the EBT system, including third party processors and retailers driving their own terminals,
is capable of . . . key entered transactions")(second emphasis added); *see also* The Supplemental
Nutrition Assistance Program Training Guide for Retailers, Pg. 13, *available at*
<https://www.fns.usda.gov/snap/retailers-store-training-information> (providing that if an EBT card cannot be
read by a POS machine, "SNAP regulations permit key entry as a back-up convenience for recipients . . .
.").

22 ² The MPP retains a legacy definition of the term "coupon" as "a type of certificate provided pursuant to the
provisions of Division 63, Food Stamp Regulations, for the purchase of eligible foods." MPP 63-
102(c)(14).

23 ³ The MPP likewise retains a definition of the term "authorization document" as "an intermediary document
issued by the CWD and used to authorize a specific benefit amount for a household. An 'Authorization to
Participate card (ATP)' is a type of authorization document." MPP § 63-102(a)(8).

things of value, or that can be used to initiate a transfer of funds under the Food and Nutrition Act of 2008, as amended.” 7 C.F.R. § 271.2 (emphases added).

47. The MPP, which contains California’s regulations governing state welfare programs, defines the term “access device” in similarly broad terms and specifically refers to the physical EBT card as only a particular type or example of the broader “access device” category:

“Access device” means the device which may be used to access the master issuance or record-for-issuance file in an automated direct access system. A **plastic card with a magnetic strip is a type of access device**. M.P.P. § 63-102(a)(1) (emphases added).⁴

48. Both the controlling federal definition and subordinate MPP definition of the term “access device” make clear that the term is not limited to a physical EBT card, but instead includes whatever technological means exist or are developed to access benefits. Federal regulations also require that state EBT systems possess the capacity for “key entered” transactions through which benefits are accessed with only an account number and PIN code without utilization of a physical card. 7 C.F.R. 274.8(b)(9). The term “access device” includes the EBT account number and PIN code—independent of a physical EBT card—because states are required to ensure technical capacity for such cardless, key-entered transactions at point-of-sale terminals.

Replacement Issuances for Stolen CalFresh Benefits

49. No state or federal statute or regulation exists that prohibits the restoration of electronically stolen CalFresh benefits.

⁴ The “master issuance file” is the state’s entire database of current CalFresh beneficiary households and benefit allotments, while the “record-for-issuance file” is the file created monthly from the master issuance file which shows each individual household’s monthly benefit entitlement and the amount actually issued to the household. MPP §§ 63-102(m)(3), (r)(4).

1 50. Instead, California regulations contained in the MPP affirmatively provide for
2 replacement CalFresh issuances, including mandatory replacement of CalFresh benefits when a
3 beneficiary is the victim of benefits theft:

4 63-603 REPLACEMENT ISSUANCES

5 .1 Providing Replacement Issuances

6 CWDs shall provide replacement issuances to
7 households.

8 ...

9 .11 Allowable Replacements

10 CWDs shall provide a replacement issuance or
11 authorization, as appropriate, as a result of an agency
12 issuance error or when a household reports any of the
13 following occurrences.

14 ...

15 .115 In an automated direct access issuance system using
16 an access device, the initial access device was:

17 (a) Not received in the mail;

18 (b) Stolen from the mail; or

19 **(c) Stolen after receipt.**

20 MPP § 63-603.1 (emphases added); *see also* Cal. Gov't
21 Code § 29853.5.

22 51. The MPP also specifies six circumstances in which replacement CalFresh issuances
23 are disallowed, none of which apply to cases where an access device is stolen. MPP § 63-603.12.

 52. The MPP also contains specific reporting responsibilities as a prerequisite to
receiving a CalFresh replacement issuance in cases where an access device is stolen after receipt:

 .15 Household Reporting Responsibilities

 The following allowable replacement issuances or
authorizations shall be provided only if a household timely
reports a loss or in writing provides a DFA 303 as specified
in Section 63-603.3. In the following systems replacement
requests shall be considered timely:

...

.154 Direct Access Issuance System

...

(b) Replacement requests made to the CWD within 10 days of the loss when the access device is reported as stolen after receipt.

MPP § 63-603.15 (emphasis added).

53. Finally, the MPP contains a limitation on the number of replacement issuances within a six-month period. This section expressly contemplates CalFresh replacement issuances in instances where an access device is stolen after receipt:

.2 Replacement Limitations

The number of countable replacements provided to a household within a six-month period shall be limited as follows:

.211 Two countable replacement issuances or authorizations caused by any combination of the following occurrences:

...

(c) In an automated direct access issuance system, a replacement authorization made because the access device was not received in the mail or was stolen from the mail or after receipt.

MPP § 63-603.2 (emphases added).

54. The provisions of the MPP providing for replacement issuances in instances of access device theft in an EBT system are consistent with federal regulations promulgated by the United States Department of Agriculture, which mandate state agencies' strict liability for certain overissuances, including unauthorized account access:

State agencies shall be held strictly liable for overissuances resulting from Electronic Benefit Transfer system errors and unauthorized account activities. Such overissuances shall include but not be limited to: . . . **replacement benefits to a**

1 household's account due to unauthorized use of the
2 benefits in a household's account 7 C.F.R.
 276.2(b)(7)(emphasis added).

3 55. Consistent with federal regulations, California has created a central fund for the
4 purpose of providing payments or advances to CalFresh beneficiaries, including in cases of theft.
5 Welf. & Inst. Code § 15125.

6 56. On information and belief, Respondents currently utilize the Central Benefit
7 Issuance Fund, or other funding source, to provide replacement issuances or payments to certain
8 victims of CalFresh benefits theft and possess the technical capacity and legal authorization to
9 restore the CalFresh benefits electronically stolen from Petitioners and others similarly situated.

10 57. State and federal rules provide that Respondents are responsible for ensuring the
11 security of the EBT system to minimize the incidence of theft and unauthorized use of food
12 benefits. Welf. & Inst. Code § 10500; *see also* 7 U.S.C. § 2016(h); 7 C.F.R. 274.8(a)(1)(ix), (b)(3);
13 Cal. Gov. Code § 29853.5.

14 *EBT Consumer Protection Legislation After Carpio v. Lightbourne*

15 58. Despite the increasing frequency of electronic benefits theft, Respondents have
16 consistently refused to replace electronically stolen benefits despite the mandatory language
17 contained in MPP Section 63-603.115(c).

18 59. Prior to December 31, 2012, the Welfare and Institutions Code provided for
19 restoration of stolen CalFresh benefits, but was drafted on the assumption that such theft would
20 occur through theft of a beneficiary's physical EBT card:

21 A recipient shall not incur any loss of electronic benefits
22 after reporting that his or her electronic benefits transfer card
23 or personal identification number has been lost or stolen.
 Welf. & Inst. Code § 10072(i)(1) (formerly subsection
 (g))(emphasis added).

1 60. The language contained in Section 10072(i)(1) was originally added as part of the
2 Thompson-Maddy-Ducheny-Ashburn Welfare-to-Work Act of 1997. 1997 Cal AB 1542 (August
3 11, 1997).

4 61. Respondents' policy guidance issued after passage of this 1997 legislation operated
5 under the assumption that theft of benefits in an EBT system would occur only through theft of a
6 physical EBT card. All County Information Notice (ACIN) No. I-25-02, dated April 16, 2003, set
7 forth Respondents' policy regarding restoration of CalFresh benefits in instances where the
8 beneficiary's physical EBT card was stolen after receipt. According to this interpretive policy, in
9 cases where a beneficiary reports a physical EBT card stolen, only those benefits taken after the
10 card is reported stolen can be replaced. This policy did not address or consider instances of
11 electronic theft in which benefits are electronically skimmed without the beneficiary losing the
12 physical EBT card.⁵ The policy did, however, provide for the replacement of benefits taken before
13 a report of theft where the physical EBT card is stolen from the mail (i.e. where the theft occurred
14 before the beneficiary could have known about and had good cause to report the theft):

15 BENEFIT REPLACEMENT

16 1. Under what circumstances can lost or stolen benefits be
 replaced?

17 *Recipients are instructed to immediately contact the EBT*
18 *contractor [Citicorp Electronic Financial Services, Inc.*
19 *(CEFS)] by calling the automated response unit or customer*
20 *service center, or the county to report that their card has*
21 *been lost or stolen. At the time of such report, the recipient*
 is issued a replacement card, the lost or stolen card is
 immediately deactivated and no further use of the
 deactivated card is possible. Any benefits accessed prior to
 the report of the loss or theft of the original card cannot be

22 _____
23 ⁵ In cases of physical EBT card theft, it is possible for a victim to become aware of and report the theft
before the thief attempts to access benefits. But in cases of electronic benefits theft such as skimming, it is
impossible for a victim, who retains possession of his or her physical EBT card, to know about and report
the theft in advance because the loss of benefits is the very event that alerts the beneficiary to the fact that
the theft has occurred.

1 replaced. If the original card is not deactivated (due to
2 inaction by CEFS or the county), any benefits accessed
subsequent to the report shall be replaced.

3 However, in those counties opting for mail-based issuance
4 of EBT cards and Personal Identification Numbers (PINs),
there may be circumstances in which the mailed card and
5 PIN (sent separately) are not received by the recipient. In
those cases, the recipient is entitled to replacement of
6 benefits accessed prior to their reporting the non-receipt of
the card. In such cases, CDSS strongly recommends that any
7 recipient whose card has been stolen from the mail prior to
receipt be issued their replacement card over the counter.
8 Again, such benefit replacement can only occur during the
EBT conversion period and for initial issuances in those
9 counties choosing mail-based card and PIN issuance. ACIN
No. I-25-02, dated April 16, 2003 (italics in original, other
emphasis added).

10 62. In response to the lack of legislation addressing the increasingly prevalent problem
11 of electronic skimming theft that had not been originally contemplated, and Respondents' policy
12 interpretation of refusing to restore benefits stolen through skimming, a writ petition was filed in
13 2011 in *Carpio v. Lightbourne*, BS 135127 ("*Carpio*").

14 63. In 2012, the California Legislature passed A.B. 2035 in explicit response to *Carpio*,
15 finding and declaring its intent to address the issue specifically raised in *Carpio*:

16 The Legislature finds and declares as follows:

17 (a) State law provides relief for CalWORKs parents and
18 recipients, to restore their benefits when stolen.

19 (b) However, no similar remedy exists when the benefits are
20 delivered in electronic form, via an electronic benefits
transfer (EBT) card, and the benefits have been stolen
21 through the practice of skimming.

22 (c) Countless families that depend on the basic needs grants
CalWORKs provides are vulnerable to electronic crimes,
23 and currently have nowhere to turn.

1 (d) Because of this inequity, a petition for writ of mandate,
2 Carpio v. Lightbourne (Case No. BS135127) was filed in the
3 Los Angeles County Superior Court in December 2011, to
address a solution for families that have been victims of
skimming.

4 (e) It is therefore the intent of the Legislature in enacting this
5 act to address the problem of electronic theft of public
6 benefits that is at issue in Carpio v. Lightbourne. 2012 Cal
AB 2035 (emphasis added).

7 64. The Governor signed A.B. 2035 on September 14, 2012. The new law took effect
8 on January 1, 2013. This bill added two subparagraphs to subdivision (g) of Welfare and
9 Institutions Code Section 10072, later renumbered as subdivision (i), which provided for the
10 express restoration of cash benefits in cases of electronic skimming theft:

11 (2) A recipient shall not incur any loss of cash benefits that
12 are taken by an unauthorized withdrawal, removal, or use of
13 benefits that does not occur by the use of a physical EBT
14 card issued to the recipient or authorized third party to
directly access the benefits. Benefits taken as described in
this paragraph shall be promptly replaced in accordance with
the protocol established by the department pursuant to
paragraph (3).

15 (3) The State Department of Social Services shall establish a
16 protocol for recipients to report electronic theft of cash
17 benefits that minimizes the burden on recipients, ensures
18 prompt replacement of benefits in order to minimize the
19 harm to recipients, and ensures program integrity. This
protocol may include the automatic replacement of benefits
without the need for recipient reporting and verification.
Welf. & Inst. Code § 10072(i)(2)-(3).

20 65. While *Carpio* and the consequent legislative modification to the Welfare and
21 Institutions Code did not directly address the issue of skimming theft of CalFresh food benefits,
22 the policy goals expressly furthered in the legislature's statement of intent apply equally if not with
23 greater force with respect to the victims of electronic skimming theft of CalFresh food benefits.

1 Indeed, as with the Petitioners here, the victims of skimming often have both cash and food
2 benefits stolen at the same time.

3 66. In passing A.B. 2035, the Legislature did not exclude or prohibit the restoration of
4 CalFresh benefits stolen through skimming, did not express any intention to exclude or prohibit
5 such restoration of CalFresh benefits, did not provide for the elimination of existing regulations
6 mandating restoration of such stolen benefits, and did not provide any policy basis for denying
7 critical food benefits to the victims of skimming theft in mandating the restoration of cash benefits
8 for those self-same victims.

9 67. Following the passage of A.B. 2035, on or about August 30, 2013, Respondents
10 issued an all-county letter (ACL) containing their “Final County Instructions for Implementation
11 of Assembly Bill 2035, Electronic Benefit Transfer (EBT) Electronic Theft.” The letter was
12 addressed to all county welfare departments, all CalWORKs program specialists, and all EBT
13 coordinators. It instructs all counties that “the AB 2035 statute does not apply to food benefits
14 issued via the CalFresh and California Food Assistance Program (CFAP).” ACL 13-67, August 30,
15 2013.

16 68. Respondents have misinterpreted this statement as a prohibition on replacement of
17 CalFresh benefits and relied on ACL 13-67 to deny Petitioners’ claims for restoration of
18 electronically stolen CalFresh benefits. This interpretation conflicts with existing state regulations
19 contained in MPP Section 63-603.115(c), which expressly mandate the restoration of such stolen
20 benefits. Respondents have improperly relied upon ACL 13-67 to justify an ultra vires, unlawful
21 policy of denying the rights of Petitioners and other similarly situated welfare beneficiaries who
22 are the victims of the crime of electronic benefits theft to have their critical, subsistence food
23 benefits restored.

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3

2
3
4

5
6
7
8

901

2
34
5

6
7
8
9

20
21
22

1 complaint and petition. Respondents' failure and refusal to carry out the aforesaid duties has
2 caused substantial hardship to Petitioners and other persons similarly situated.

3 76. Unless compelled to perform their duties and obligations in accordance with law,
4 Respondents will continue to fail to do so, causing irreparable harm to Petitioners and the public.

5 77. This is a matter of significant public concern. The ongoing violation and
6 misapplication of CalFresh rules and regulations causes the unjust and unlawful deprivation of
7 subsistence nutritional benefits to eligible beneficiaries who are the innocent victims of electronic
8 benefits theft. Respondents' violations will continue to needlessly cause affected beneficiaries to
9 challenge this violation, causing a drain on public funds. Petitioners have no adequate remedy at
10 law to prevent this harm.

11 78. Code of Civil Procedure Sections 1085 and 1094.5 confer a right of action to
12 enforce the state and federal statutes and regulations Respondents have violated. 42 U.S.C. § 1983
13 confers a right of action to enforce the federal laws Respondents have violated. Respondents have
14 acted under color of state law to deprive Petitioners of their rights under federal law.

15 79. An actual and continuing controversy exists between Petitioners and Respondents
16 regarding Respondents' duties as alleged above. Petitioners contend that the actions of
17 Respondents violate the law as specified above. Petitioners are informed and believe that
18 Respondents will dispute this contention.

19 80. Separate and apart from their individual claims for relief, Petitioner Esther Ortega
20 has standing to maintain this action as a citizen of this state with a significant interest in having the
21 public duties in question enforced and in preventing Respondents from impairing or defeating the
22 purpose of statutes and regulations establishing a public right to restoration of electronically stolen
23

1 CalFresh benefits. Petitioner Joe Soza has standing as a former citizen of this state at all times
2 relevant to this action.

3 **FIRST CAUSE OF ACTION**

4 **(Abuse of Discretion - Failure to Proceed in the Manner Required by Law)**

5 (Administrative Mandamus Pursuant to Code of Civil Procedure § 1094.5)

6 81. Petitioners reallege and incorporate by reference each and every paragraph and
7 allegation contained in this Petition as though fully set forth herein.

8 82. The Respondents prejudicially abused their discretion by adopting decisions that
9 failed to proceed in the manner required by law. The Respondents' decisions do not comply with
10 applicable state and federal statutes and regulations governing the administration of the CalFresh
11 program (specifically including, without limitation, those statutes, regulations, and rules governing
12 the restoration of stolen CalFresh benefits) and state hearings. 7 C.F.R. 276.2(b)(7); MPP § 63-
13 603.1; Cal. Gov't Code § 29853.5.

14 83. Respondents, through the actions of ALJs, committed errors of law by denying
15 Petitioners' requests for restoration of their CalFresh benefits after they were the victims of
16 electronic benefits theft.

17 84. Respondents, through the actions of ALJs, committed errors of law by erroneously
18 relying on and/or misinterpreting ACL 13-67 as a basis for denying Petitioners' requests for
19 restoration of their CalFresh benefits after they were the victims of electronic benefits theft.

20 85. The issue in this cause of action concerns a matter of law and de novo review of the
21 Respondents' decision is thereby authorized; the reviewing court does not defer in any way to the
22 Respondents' interpretation of the law. *Ruth v. Kizer*, 8 Cal.App.4th 380, 385 (1992).

1 **SECOND CAUSE OF ACTION**

2 **(Abuse of Discretion - Failure to Proceed in Manner Required by Law)**

3 (Traditional Mandamus Pursuant to Code of Civil Procedure § 1085)

4 86. Petitioners reallege and incorporate by reference each and every paragraph and
5 allegation contained in this Petition as though fully set forth herein.

6 87. The Respondents are willfully failing to perform their public duty to fully and fairly
7 administer the CalFresh program in accordance with governing statutes, regulations, and rules
8 (specifically including, without limitation, those statutes, regulations, and rules governing the
9 restoration of stolen CalFresh benefits). 7 C.F.R. 276.2(b)(7); MPP § 63-603.1; Cal. Gov't Code §
10 29853.5.

11 88. Respondents, through the actions of ALJs, committed errors of law by erroneously
12 relying on and/or misinterpreting ACL 13-67 as a basis for denying Petitioners' requests for
13 restoration of their CalFresh benefits after they were the victims of electronic benefits theft.

14 89. An Order of Mandamus from this Court directing Respondents to comply with the
15 law in the administration of their public duties and enjoining Respondents from relying on ACL
16 13-67 as a basis for denying claims for restoration of stolen CalFresh benefits is required to protect
17 Petitioners and those similarly situated from prejudicial harm to their vested rights to public
18 benefits that will foreseeably continue in the absence of such Order.

19 **THIRD CAUSE OF ACTION**

20 **(Relief from Illegal Expenditure of Public Funds)**

21 (Violation of Code of Civil Procedure § 526(a))

22 90. Petitioner Ortega realleges and incorporates by reference each and every
23 paragraph and allegation contained in this Petition as though fully set forth herein.

91. Respondents have expended public funds in the promulgation and implementation of the unlawful policies and practice alleged in this petition and complaint.

92. Petitioner Esther Ortega has paid a tax within and to the State of California within one year before commencement of this action.

93. Unless and until enjoined by this court, Respondents' unlawful conduct will cause great and irreparable injury to Petitioner Ortega in that Respondents will continue to make illegal expenditures.

PRAYER FOR RELIEF

WHEREFORE, Petitioners pray for the following relief:

1. That this Court issue a writ of mandate pursuant to Code of Civil Procedure Section 1094.5 commanding the Respondents to rescind their decisions in Administrative Hearing Nos. 2016273045 and 2017151334;

2. That this Court issue a writ of mandate pursuant to Code of Civil Procedure section 1094.5 commanding the Respondents to issue a new decision cancelling their notices of denial of Petitioners' requests for restoration of electronically stolen CalFresh benefits and approving Petitioners' requests;

3. That this Court issue a writ of mandate pursuant to Code of Civil Procedure Section 1094.5 commanding the Respondents to pay Petitioners any benefits improperly withheld on the basis of the denial of their requests for the restoration of electronically stolen CalFresh benefits, or cash equivalent, plus interest at the statutory rate of ten percent on all benefits due to Petitioners here until paid in full;

4. That this Court issue a writ of mandate pursuant to Code of Civil Procedure Section 1085 commanding the Respondents to order their agents to comply with the mandatory

requirements of federal and state law with regard to the restoration of electronically stolen CalFresh, CFAP, and other non-cash benefits;

5. That this Court issue a writ of mandate pursuant to Code of Civil Procedure Section 1085 commanding the Respondents to amend or clarify any and all policy statements or interpretive documents, including without limitation All County Letter No. 13-67, to the extent that they conflict with federal and state statutes and regulations regarding the restoration of electronically stolen CalFresh, CFAP, and other non-cash benefits;

6. Issue a preliminary and permanent injunction prohibiting Respondents, their agents, successors, employees, and those acting in concert therewith from:

(a) Denial of properly submitted beneficiary requests for the restoration of electronically stolen CalFresh benefits;

(b) Reliance upon ACL 13-67 as a basis for refusing beneficiary requests for the restoration of stolen CalFresh benefits;

7. Declare that the following actions by Respondents, their agents, successors, employees, and those acting in concert therewith, violate state law and regulation:

(a) Denial of properly submitted requests for the restoration of electronically stolen CalFresh benefits;

(b) Reliance upon ACL 13-67 as a basis for denying beneficiary requests for the restoration of stolen CalFresh benefits;

8. That this Court award Petitioners their costs of suit;


9. That this Court award Petitioners their reasonable attorneys' fees; and

10. The Court award such other and further relief as it deems proper.

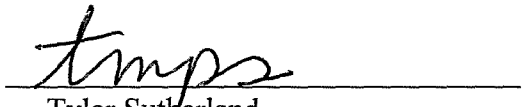
1 DATED: 03/27/2018

Respectfully submitted,
LEGAL AID FOUNDATION OF LOS ANGELES,

2
3 By:


Andrew Kazakes
Attorney for Petitioners

4
5
6 By:


Tyler Sutherland
Attorney for Petitioners

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

VERIFICATION


STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

I, Andrew Kazakes, declare as follows:

1. I am an attorney licensed to practice law in California and represent
Petitioners.
2. I have read the foregoing petition for Writ of Mandate, and know the contents
thereof. They are true to the best of my knowledge except those allegations on
information and belief which I believe to be true. I am more familiar with the
factual and legal claims raised in this petition than the Petitioners.

I declare under penalty of perjury under the law of California that the foregoing is
true and correct.

Date: 03/27/2018

Signed: 

Andrew Kazakes
Attorney for Petitioner