

Hall v. USDA
SETTLEMENT AGREEMENT

This Settlement Agreement is entered between Plaintiffs Robin Hall and Steven Summers (collectively, “Plaintiffs”) and Defendants U.S. Department of Agriculture and Thomas J. Vilsack in his official capacity as Secretary of Agriculture (collectively, “Defendants” or “USDA”), parties to *Hall v. U.S. Department of Agriculture*, No. 20-cv-03454-HSG (N.D. Cal.), No. 20-16232 (9th Cir.) (“the Action”).

RECITALS

1. On March 18, 2020, Congress enacted the Families First Coronavirus Response Act. Pub. L. No. 116-127, 134 Stat. 178. Section 2302(a)(1) of that Act provided that, in the event of qualifying State and federal public-health emergency declarations, the Secretary of Agriculture:

shall provide, at the request of a State agency . . . that provides sufficient data (as determined by the Secretary through guidance) supporting such request, for emergency allotments to households participating in the supplemental nutrition assistance program under the Food and Nutrition Act of 2008 to address temporary food needs not greater than the applicable maximum monthly allotment for the household size[.]

2. On March 20, 2020, USDA issued guidance to State agencies administering the Supplemental Nutrition Assistance Program (SNAP), permitting emergency allotments that would “bring all households up to the maximum benefit due to pandemic related economic conditions.”

3. On March 25, 2020, California’s SNAP-administering agency, the Department of Social Services, submitted a request to provide emergency allotments to all SNAP households in the amount of \$60 per person. This request was not approved by USDA because it was “not aligned with the Emergency Allotment guidance.”

4. On March 27, 2020, the California Department of Social Services submitted a revised request for emergency allotments to “raise each household’s regular monthly SNAP allotment to the maximum allowable allotment based on household size.” This revised request was approved by USDA and has been renewed each month to the present.

5. On April 21, 2020, USDA issued additional guidance to State SNAP-administering agencies, providing that “[a] household’s [emergency allotment] cannot increase the current monthly household SNAP benefit allotment beyond ‘the applicable maximum monthly allotment for the household size.’ Accordingly, SNAP households that already receive the maximum monthly allotment for their household size are not eligible for [emergency allotments].”

6. On May 21, 2020, Plaintiffs filed the Complaint in the U.S. District Court for the Northern District of California on behalf of a putative class of SNAP recipients in California deemed eligible to receive the regular maximum monthly SNAP allotment for their household size (“maximum allotment households”). The Complaint alleges that USDA violated the Administrative Procedure Act by exceeding its statutory authority in adopting an interpretation of section 2302(a)(1) that is (1) contrary to law, D. Ct. Dkt. No. 1 ¶¶ 64-72, and (2) arbitrary and capricious, *id.* ¶¶ 73-79. Plaintiffs sought an injunction prohibiting “Defendants from denying any otherwise appropriate request from California under section 2302(a)(1) of the [FFCRA] because it provides emergency [SNAP] allotments to households receiving the maximum monthly benefit amount,” in addition to declaratory relief. *Id.* at 18 (Prayer for Relief). Plaintiffs also moved for a preliminary injunction and class certification. D. Ct. Dkt. Nos. 5, 6.

7. On June 17, 2020, the district court issued an order denying a preliminary injunction. D. Ct. Dkt. No. 32. The parties filed cross-motions for summary judgment. D. Ct. Dkt. Nos. 45, 47, 49, 50. The district court heard oral argument on September 10, 2020 and ordered supplemental briefing. D. Ct. Dkt. Nos. 55, 56. The district court’s summary judgment order is pending.

8. Plaintiffs appealed the district court’s order denying a preliminary injunction. App. Dkt. No. 1. On December 31, 2020, a divided panel affirmed. *Hall v. USDA*, 984 F.3d 825, 830-42 (9th Cir. 2020).

9. On January 22, 2021, President Joseph R. Biden, Jr., issued the Executive Order on Economic Relief Related to the COVID-19 Pandemic. The Executive Order directs “[a]ll executive departments and agencies” to “promptly identify actions they can take within existing authorities to address the current economic crisis resulting from the pandemic.” White House, *Executive Order on Economic Relief Related to the COVID-19 Pandemic* (Jan. 22, 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/22/executive-order-economic-relief-related-to-the-covid-19-pandemic/>.

10. On January 22, 2021, the White House issued a fact sheet to accompany the Executive Order, which specifically addressed emergency SNAP allotments. The fact sheet states, “So far, those benefit increases have not been made available to all of the lowest income households. USDA will consider issuing new guidance that would allow states to increase SNAP emergency allotments for those who need it most.” The fact sheet described this as “the first step to ensuring that an additional 12 million people get enhanced SNAP benefits to keep nutritious food on the table.” White House, *Fact Sheet: President Biden’s New Executive Actions Deliver Economic Relief for American Families and Businesses Amid the COVID-19 Crises* (Jan. 22, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/01/22/fact-sheet-president-bidens-new-executive-actions-deliver-economic-relief-for-american-families-and-businesses-amid-the-covid-19-crises/>.

11. On January 22, 2021, the parties jointly moved the district court for a 30-day stay of proceedings on the parties’ pending cross-motions for summary judgment. D. Ct. Dkt. No. 58. The district court granted that motion, D. Ct. Dkt. No. 59, and later extended the stay for an

additional 30 days (to and including March 26, 2021) following a second joint motion to that effect, *see* D. Ct. Dkt. Nos. 60 (joint motion), 61 (order extending stay).

12. On March 8, 2021, the Ninth Circuit issued an order stating that “[a] judge of this court has called for a vote to determine whether this case will be reheard en banc pursuant to Federal Rule of Appellate Procedure 35(a),” and requesting simultaneous briefs from the parties on whether the case should be reheard en banc, to be filed on March 29, 2021. App. Dkt. No. 37. The parties jointly requested a 30-day extension of this filing deadline (to and including April 28, 2021), App. Dkt. No. 38, which the court granted.

13. The Parties now desire to settle all claims and causes of action arising out of and related to the circumstances alleged in the Complaint, as set forth in this Agreement.

AGREEMENT

In consideration of the Recitals above, the Parties agree as follows:

A. Defendants will cease enforcement of the March 20, 2020 guidance (“Request to Provide Emergency Allotments (Supplements) to SNAP Households”) and April 21, 2020 guidance (“Month-To-Month Contingent Approval to Continue Issuing Supplemental Nutrition Assistance Program (SNAP) Emergency Allotments (EA) Benefits under the Families First Coronavirus Response Act of 2020”) as to California as of the date this Agreement is fully executed.

B. Defendants will issue updated guidance for Emergency Allotments to SNAP Households (“Updated Guidance”) applicable to California within ten days of the date this Agreement is fully executed.

C. In accordance with USDA’s determination that it is appropriate to allow states to provide SNAP emergency allotments to the lowest income households, USDA’s Updated Guidance will provide for emergency allotments to be available to all SNAP households, including those receiving the regular maximum monthly SNAP allotment for their household size. The specific replacement guidance to be issued will be determined by Defendants.

D. Within two days of the date that the Agreement is fully executed, Plaintiffs will file the Notice of Dismissal attached as Exhibit A, dismissing the Action with prejudice. By entering this Agreement, and agreeing to dismissal with prejudice, Plaintiffs withdraw with prejudice and forego any and all claims for injunctive relief identified in Plaintiffs’ Complaint.

E. After dismissal of this Action, Defendants will pay to Plaintiffs’ counsel the amount of \$125,000 as attorneys’ fees in connection with the prosecution of the Action. Defendants will complete this payment within sixty days of the date that the Agreement is fully executed.

E.1. Plaintiffs hereby fully and forever release and discharge Defendants, the United States, any department, agency, or establishment of the United States and their present or former officials, employees, successors, and agents, in their official and individual capacities, from any and all rights or claims for attorneys' fees and other litigation expenses that have been, or could have been, made as a result of the Action. Without limiting the generality of the foregoing, this release encompasses, resolves, and satisfies all claims for attorneys' fees and other litigation expenses in connection with all facets of the Equal Access to Justice Act, from the initial submission of Plaintiffs' Complaint and including any litigation, as well as any other proceedings involving claims or causes of action that were or could have been raised in the Action.

E.2 Plaintiffs and Plaintiffs' counsel assume liability for any tax consequences that may arise from this Agreement. Compliance with all applicable federal, state, and local tax requirements shall be the sole responsibility of Plaintiffs and Plaintiffs' counsel. This Agreement is executed without reliance upon any representation by Defendants as to tax consequences, and Plaintiffs and Plaintiffs' counsel are responsible for the payment of all taxes that may be associated with the settlement payments. Further, nothing in this Agreement waives or modifies federal, state, or local law pertaining to taxes, offsets, levies, and liens that may apply to this Agreement or the settlement proceeds, and this Agreement is executed without reliance on any representation by Defendants as to the application of any such law.

F. Other than the attorneys' fees payment described in Paragraph E, the Parties will bear their own fees and costs.

G. This Agreement is not intended to be and shall not be deemed an admission by any party of the merit or lack of merit of an opposing party's claims or defenses. Without limiting the generality of the foregoing, this Agreement does not constitute, and shall not be construed as, an admission of liability or fault on the part of the Defendants or the United States or their present or former officials, employees, or agents, or as an admission of any contested fact alleged by Plaintiffs. This Agreement may not be used as evidence or otherwise in any civil or administrative action or proceeding against Defendants or the United States or any of their present or former officials, employees or agents, either in their official or individual capacities, except for proceedings necessary to implement or enforce its terms. This Agreement shall not be used in any manner to establish liability for fees, amounts, or hourly rates in any other case or proceeding.

H. The Agreement, including exhibits, constitutes a single, integrated written contract and describes the entire agreement of the Parties resolving this matter.

I. The Agreement may be executed in counterparts, all of which together shall constitute a single, unified document.

J. In any claim to construe the terms of the Agreement, this Agreement shall be considered the product of negotiation by and among the parties hereto. No clause or provision

shall be interpreted more strongly in favor or against one party of the other, based upon the source of the draftsmanship, but shall be interpreted in a neutral manner.

K. Each signatory to this Agreement represents and warrants that he, she, or it is fully authorized to enter into this Agreement on behalf of the persons or entities indicated below, and has done so freely and voluntarily, without any degree of duress or compulsion. This Agreement is effective when executed by all of the undersigned.

AGREED AND ACCEPTED:

FOR PLAINTIFFS:

DATE: _____

Robin Hall
Plaintiff

DATE: _____

Steven Summers
Plaintiff

DATE: _____

Lindsay Nako
Impact Fund

DATE: _____

Richard A. Rothschild
Western Center on Law & Poverty

FOR DEFENDANTS:

DATE: _____

Rachael Westmoreland
Trial Attorney
United States Department of Justice

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AGREED AND ACCEPTED:

FOR PLAINTIFFS:

DATE: 4/1/2021

Robin Hall
Robin Hall
Plaintiff

DATE: APRIL 1, 2021

S. Summers
Steven Summers
Plaintiff

DATE: 4/1/2021

Lindsay Nako
Lindsay Nako
Impact Fund

DATE: April 1, 2021

Richard A. Rothschild
Richard A. Rothschild
Western Center on Law & Poverty

FOR DEFENDANTS:

DATE: _____

RACHAEL WESTMORELAND
Digitally signed by RACHAEL WESTMORELAND
Date: 2021.04.01 10:39:03 -0400
Rachael Westmoreland
Trial Attorney
United States Department of Justice

Exhibit A

Alexander Prieto (SBN 270864)
Richard Rothschild (SBN 67356)
Antionette D. Dozier (SBN 244437)
Rebecca Miller (SBN 317405)
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Lindsay Nako (SBN 239090)
Jocelyn D. Larkin (SBN 110817)
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Counsel for Plaintiffs

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Acting Assistant Attorney General

ERIC WOMACK
Assistant Branch Director

Rachael L. Westmoreland (GA Bar No. 539498)
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Counsel for Defendants

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

ROBIN HALL and STEVEN SUMMERS,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
AGRICULTURE and THOMAS J.
VILSACK, in his official capacity as United
States Secretary of Agriculture,

Defendants.

) Case No. 4:20-cv-03454-HSG

) Hon. Haywood S. Gilliam, Jr.

) **STIPULATION OF DISMISSAL**

1 Pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii), Plaintiffs Robin Hall and Steven Summers, and
2 Defendants United States Department of Agriculture and Thomas J. Vilsack, in his official
3 capacity as Secretary of Agriculture, by and through their undersigned counsel, hereby stipulate to
4 the dismissal of this case with prejudice, pursuant to the terms of a settlement agreement reached
5 by the parties.

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7
8 Dated: _____, 2021

Respectfully submitted,

9 BRIAN M. BOYNTON
10 Acting Assistant Attorney General

/s/ _____
Lindsay Nako
IMPACT FUND

11 ERIC WOMACK
12 Assistant Branch Director

Alexander Prieto
WESTERN CENTER ON
LAW & POVERTY

13 /s/ _____
14 Rachael L. Westmoreland
15 Trial Attorney
16 Federal Programs Branch
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1 **ATTESTATION OF SIGNATURES**

2 I, Lindsay Nako, hereby attest, pursuant to Local Civil Rule 5-1(i)(3) of the Northern
3 District of California, that concurrence in the filing of this document has been obtained from
4 each signatory hereto.

5
6 /s/
7 Lindsay Nako
8 IMPACT FUND
9 *Counsel for Plaintiffs*
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