24-1084

UNITED STATES COURT OF APPEALS FOR

THE NINTH CIRCUIT

In re: DARRIN LENALD COOPER,

Debtor.

DARRIN LENALD COOPER,

Appellant,

v.

SOCIAL SECURITY ADMINISTRATION,

Appellee.

On appeal from an Order Denying Debtor's Motion for an Order to Appear and Show Cause Why Creditor The Social Security Administration Should Not Be Held In Contempt for Violating the Discharge Injunction

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BRIEF OF THE APPELLANT, DARRIN LENALD COOPER

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1. JURISDICTIONAL STATEMENT

Jurisdiction is vested in this court pursuant to 28 U.S.C. §158(d). The Order denying the Debtor-Appellant's Motion for Order to Show Cause was docketed on May 12 , 2023. ER- 2-4[1]. The Notice of Appeal was filed with the Bankruptcy Court on May 24, 2023, within the 14 day limit established by FRBP 8002. ER-109-130. Congress made "orders in bankruptcy cases immediately appealable if they finally dispose of discrete disputes within the larger bankruptcy case. *Ritzen Grp., Inc. v. Jackson Masonry LLC*, 140 S. Ct. 582, 587 (2020) (citations and alterations omitted). The order appealed in this case definitively resolves a discrete issue addressed by the bankruptcy court: violation of the bankruptcy discharge injunction.

The Memorandum and Judgment from the Bankruptcy Appellate Panel was entered on January 16, 2024. This appeal followed, within the 30 days required by F.R.A.P. 6.

2. STATEMENT OF ISSUES ON APPEAL

2.1 Did the Bankruptcy Court err when it concluded that post-discharge disability benefits offsets were not in violation of the bankruptcy discharge, and

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[1]Excerpts of Record filed herewith, which are numbered sequentially.

were subject to recoupment, allowing for post-discharge recovery of a social-entitlement benefits overpayment?

2.2 When the Social Security Administration errs in calculating a disability benefits award is recoupment in violation of the discharge equitable?

2.3 When the SSA is required to regularly qualify a recipient of SSI to determine whether they still eligible because of a disability, can a mistake made several years prior be considered the same transaction or occurance?

3. STANDARD OF REVIEW

This court must review *de novo* the bankruptcy court's conclusions of law, and the application of undisputed facts to the law. *Aetna U.S. Healthcare, Inc. v. Madigan* (*In re Madigan*), 270 B.R. 749, 753 (9th Cir BAP 2001) (citing *Sims v. U.S. Dep't of Health & Human Servs.* (*In re TLC Hosps., Inc.*), 224 F.3d 1008, 1011 n.7 (9th Cir 2000)). Mixed questions of law and fact are reviewed *de novo*. *In re Chang,* 163 F.3d 1138, 1140 (9th Cir. 1998). The lower court's findings of fact must be reviewed for clear error. *Yu v. Idaho State Univ*., 15 F4th 1236, 1241 (9th Cir. 2021).

In this case, the bankruptcy court's determination that the doctrine of equitable recoupment applies to a discharged Social Security Disability benefits overpayment is a conclusion of law subject to *de novo* review. The court's

determination that recoupment is an appropriate equitable remedy under the circumstances is a mixed question of law and fact, and should be given *de novo* review.

4. STATEMENT OF THE CASEF THE CASE

The Appellant, Darrin L. Cooper appeals a Memorandum Opinion and Order of the Bankruptcy Appellate Panel of the 9th Ciruit affirming the Order of the Bankruptcy Court, determining that recoupment authorizes the United States Social Security Administration to offset Cooper's post-petition Social Security Disability entitlement payments, and on that basis, no discharge violation had occurred.

4.1 UNDISPUTED FACTS AND PROCEDURAL HISTORY

The Debtor-Appellant, Darrin L. Cooper, ("Cooper" or the "Debtor") applied for Social Security Disability Income (SSDI) benefits, unassisted, through the Social Security Administration ("SSA" or "the Agency") in May, 2017, after becoming disabled. ER- 5-6. His application was unsuccessful. Id. Cooper hired counsel to appeal the decision. Id. On May 1, 2019, counsel for Cooper submitted via fax a complete Workers' Compensation / Public Disability Benefit Questionnaire to the Social Security Field Office in Everett, Washington. ER- 5-6, 7-9. Throughout the Benefit Questionnaire submitted by counsel, Cooper

disclosed that he was currently receiving a disability benefit through the Workers' Compensation program. Id. The Workers' Compensation benefits payments were clearly disclosed in Item 1, Item 4, Item 5, and Item 7.a. of the Benefits Questionnaire. Id. The SSA acknowledges that the Benefits Questionnaire was received on May 1, 2019, and electronically catalogued. ER- 13-15, *see* pg. 14, lines 12-15. The SSA further acknowledges that its employees "should have performed the input" of the document differently, and that the inputting error led to the SSA's eventual incorrect benefits determination. ER- 13-15, *see* pg. 14 line 24 through pg. 15 line 10.

Later in May, 2019, the SSA sent Cooper a Notice of Award, informing him that he was entitled to Social Security disability benefits retroactively to May, 2016. ER- 16. The SSA then conducted a lengthy review of the amount of retroactive benefits due to Cooper. Three months later, in August, 2019, the SSA disbursed $67,335.50 to the Debtor, representing the retroactive SSDI benefits calculated by the Agency, and a $6,000 payment to the attorney who had assisted Cooper in properly applying for disability benefits through SSA. ER- 24.

In July, 2020, Cooper filed a Chapter 7 bankruptcy. Discharge was entered in October, 2020. ER- 28-29. Unaware of the alleged overpayment, Cooper did not include the SSA in his bankruptcy schedules. ER- 46. The case was a no-asset

case, the Trustee issued a report of no distribution and the case was closed. ER- 82. Accordingly, no time was set for filing a proof of claim. Unlisted claims are discharged in no-asset cases. *In re Nielsen,* 383 F.3d 922 (9th Cir. 2004)

In November 2020, Cooper received a letter from the SSA requesting information on his Workers' Compensation benefits. ER- 30-33. Cooper promptly responded, again disclosing the fact that he was receiving Workers' Compensation benefits. Id. This information was consistent with information already provided to the SSA on May 1, 2019. ER- 5-6, 7-9.

Approximately two years later, in October, 2022, the Agency informed Cooper that the $73,112.90 in retroactive SSDI benefits, paid to Cooper and his lawyer in August 2019, had been calculated in error "due to your worker' [sic] compensation payments." ER- 41. The letter erroneously stated that Cooper had not timely provided information regarding the Worker's Compensation in support of Cooper's claim. Id.

Offsets of Cooper's SSDI commenced in January, 2023. ER- 46-47. Cooper's bankruptcy attorney contacted the Agency, and was told that SSA would not honor the bankruptcy discharge on the basis that SSA had not been provided timely notice of the bankruptcy filing.ER- 48-49. In fact, notice at the time of the bankruptcy does not affect the discharge in a no-asset case. *In re Nielsen, supra.*

After the benefit offsets continued, Cooper's attorney filed a Motion to Show Cause why the SSA was taking action against Cooper for a pre-filing claim. ER-50-55.

SSA did not seek a determination of the dischargeability of the obligation pursuant to 11 USC § 523(a)(2) or (6). Instead, the SSA for the first time asserted that the offsets were proper in light of the doctrine of equitable recoupment. ER-56-69. It is well established that federal law precludes courts from awarding equitable relief when an adequate legal remedy exists. *Sonner v. Premier Nutrition Corp.*, 971 F.3d 834, 842 (9th Cir. 2020). Here, 11 U.S.C. § 523 provides a remedy at law.

The bankruptcy Court heard oral arguments on the dispute, and received supplemental briefing and evidence on the issue. ER- 70-80, *see* p.73 ln. 11-22. On May 10, 2023 the Court issued an oral ruling on the question of whether the Social Security Administration should be held in contempt for violating the discharge injunction provisions of 11 U.S.C. Section 524. Id., *see* p. 72 ln. 15-18. In that oral ruling, the court concluded that the remedy of recoupment applies in the context of recovery of an SSDI benefit overpayment, and that recoupment was equitably appropriate under the facts of the case. Id., *see* p. 78, lines 15-23.

An Order denying Debtor's motion, and approving post-discharge recoupment, was entered on May 12, 2023. ER- 2-4.

This Order was affirmed by the Bankruptcy Appellate Panel in an unpublished Memorandum Opinion and Order dated January 16, 2024.

5. SUMMARY OF ARGUMENT

Recoupment is applied principally in the context of contractual relationships that result in countervailing obligations. The remedy is appropriate only when the obligations are based in the same transaction or occurrence. Courts must find the existence of a "logical relationship" between the obligations, both in law and in fact, to establish whether the obligations are based on the same transaction or occurrence.

Because the remedy of recoupment allows a creditor to collect its debt without regard to the bankruptcy stay or discharge, the transaction or occurrence requirement must be strictly enforced. For the same reasons, courts should be aware of the policy ramifications of allowing the remedy of recoupment to be applied under any given set of facts.

Here, the Debtor-Appellant is an individual who meets all qualifications to receive disability under the Social Security Disability entitlement program. Once he had qualified for these benefits, the Agency erroneously miscalculated the

retroactive lump sum benefit that he should receive. Were the SSA seeking to recoup funds directly related to the mistaken determination, recoupment would be appropriate. SSA seeks to recoup present day disability payments from Cooper's monthly entitlement to pay back pre-bankruptcy debt for an erroneous overpayment. These two events are not logically related, in either a legal or factual manner, even though both arise from Cooper's disability.

As a matter of policy, recoupment is not appropriate for use to recover social entitlement overpayments that are intended to supply income replacement for disabled individuals who can no longer work. Allowing recoupment affords the Agency with super-creditor status, eliminating a financial life support for disabled individuals. The Bankruptcy code's provisions to deny discharge to bad actors offers sufficient protection to the Agency, while protecting vulnerable individuals from losing necessary financial support to account for the Agency's error. The obligation claimed by the SSA was discharged in Cooper's bankruptcy proceeding and the SSA's collection is a violation of the discharge.

Finally, the finding that recoupment is an appropriate equitable remedy in this case was clearly erroneous, given that the debtor-Appellant made all necessary factual disclosures to enable the Agency to properly calculate the benefits due to him. The Bankruptcy court's ruling, which stated key disclosures were made years

after the benefits determination, is contrary to the undisputed evidence in the record.

6. ARGUMENT

6.1 The Remedy of Recoupment Is a Specialized Remedy Applicable Only Where Obligations Arise From the Same Transaction or Occurrence. An equitable remedy not appropriate when the SSA had an adequate remedy at law.

The term "claim" claim is a defined term in the Bankruptcy Code. 11 U.S.C § 101(5) provides:

> The term "claim" means—
>
> (A) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or
>
> (B) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.

"We have previously explained that Congress intended by this language to adopt the broadest available definition of "claim." *Johnson v. Home State Bank*, 501 U.S. 78, 83, 111 S. Ct. 2150, 2154, 115 L. Ed. 2d 66 (1991).

As discussed, *infra*, the Courts that have addressed the issue in bankruptcy have uniformly held that the SSA's claims to recover overpayments are claims that can and are discharged in bankruptcy.

6.2 The SSA's actions herein violate established policies of the Social Security Administration.

The SSA's pursuit of post-discharge recoupment is contrary to the agency's own Program Operations Manual System (POMS). The POMS is a set of operation guidelines used as a reference by SSA employees to conduct the Agency's daily operational activities. The portion of the POMS entitled "Result of Bankruptcy Procedure" is posted at the following internet location:

https://secure.ssa.gov/poms.nsf/lnx/0202215230

A true and correct copy of the applicable POMS guidance is provided as a courtesy atER- 85-87. This publicly available guidance[2] provides that,

> "if a discharge order excepts a Social Security debt or the bankruptcy proceedings are dismissed, normal collection efforts can be resumed. Otherwise, the bankruptcy judgment will be binding on SSA with repayment (if any) limited to the terms of the discharge order unless the Office of General Counsel (OGC) is successful in objecting to the discharge.

[2] GN 02215.230 Result of Bankruptcy Proceedings - PC Procedure

> If the debtor did not list SSA as a creditor in the bankruptcy petition, in a "no assets" case, such unlisted debts are discharged. In cases where the debtor did have assets to distribute to creditors, unlisted debts are only discharged if the creditor received actual notice of the bankruptcy in time to file a proof of claim. In all such cases, consult OGC to determine whether the debt to SSA is included within the discharge.

6.3 Recoupment is an equitable remedy for which the Court is without jurisdiction to impose because there is an adequate remedy at law.

The law provides a clear remedy at law, i.e. a complaint to determine dischargeability of debe pursuant to 11 U.S.C. § 523 or to deny a discharge 11 U.S.C. § 727. Equity may only be applied if the party has no adequate legal remedy. *Payne v. Hook*, 74 U.S. 7 Wall. 425, 430, 19 L.Ed. 260 (1868) ("The absence of a complete and adequate remedy at law, is the only test of equity jurisdiction ...."). *Guzman v. Polaris Indus. Inc.*, 49 F.4th 1308, 1313–14 (9th Cir. 2022), *cert. denied sub nom. Polaris Indus. Inc. v. Albright*, 143 S. Ct. 2612, 216 L. Ed. 2d 1209 (2023).

When Congress enacted the Bankruptcy Code and, especially 11 U.S.C § 523 and 11 U.S.C. § 727 it created a remedy at law to allow the SSA to recover overpayments that were the result of fraud. Recoupment is an equitable remedy not available where Congress has enacted specific legislation that encompasses the wrong, and its correction. *See, inter alia, Law v. Siegel*, 571 U.S. 415, 421, 134 S.

Ct. 1188, 1194–95, 188 L. Ed. 2d 146 (2014); *Degen v. United States*, 517 U.S. 820, 823, 116 S.Ct. 1777, 135 L.Ed.2d 102 (1996); *Chambers v. NASCO, Inc.*, 501 U.S. 32, 47, 111 S.Ct. 2123, 115 L.Ed.2d 27 (1991). "We have long held that "whatever equitable powers remain in the bankruptcy courts must and can only be exercised within the confines of" the Bankruptcy Code." Recoupment is not found within the Code.

6.4 The equitable remedy of recoupment is not appropriate here because all of its elements are not shown.

Recoupment is limited to application where the claims giving rise to recoupment must stem from the same transaction or occurrence. *Gardens Reg. Hosp.* at 934. In determining whether the countervailing claims asserted by the creditor arise from the same transaction or occurrence, the critical factor is the existence of a "logical relationship" between the transactions underlying the claims. *Gardens Hosp*. at 934, citing *Sims v. U.S. Dep't of Health & Human Servs. (In re TLC Hosps., Inc.)*, 224 F.3d 1008, 1011 (9th Cir. 2000).

6.5 Recoupment is not appropriate in the case of a discharged debt.

The Agency asserts it is free to enforce its claim against the disabled debtor without regard for the protections endowed by the bankruptcy discharge by virtue of the equitable remedy of recoupment. In justifying its post-discharge offset of the

Debtor's Social Security Disability (SSDI) benefit payments, the SSA argues that the Agency's claim was appropriate for the equitable remedy of recoupment.

Recoupment is an equitable doctrine not provided for in the Bankruptcy Code. The Ninth Circuit has recognized the doctrine of recoupment as "the setting up of a demand arising from the same transaction as the plaintiff's claim or cause of action, strictly for the purpose of abatement or reduction of such claim. *Newbery Corporation v. Fireman's Fund Ins. Co (In re Newbery Corp.),* 95 F.3d 1392, 1399 (9th Cir. 1996). Recoupment is not subject to of the strictures of bankruptcy, allowing recovery despite the automatic stay, and the discharge. *In re Gardens Regional Hospital and Medical Center,* 975 F.3d 926, 933 (9th Cir. 2020). There is strong federal policy precluding courts from fashioning an equitable remedy when there was an adequate remedy at law. *Sonner, supra*, at 842 (9th Cir. 2020). However, both *Gardens* and *Newbery* involved written contracts. This is not the case here.

Other Circuits that have addressed the issue of recoupment of Social Security Disability payments after bankruptcy have uniformly held that the obligation is discharged.

Thus in *Matter of Neavear*, 674 F. 2d 1201, 1206 (7th Circuit 1982) the Court held that SSA overpayments were dischargeable in bankruptcy and the SSA

needed to object to the discharge pursuant to 11 U.S.C. § 523 or 11 U.S.C. §727 to prevent discharge. *Neavear* was cited with approval in *Rowan v. Morgan*, 747 F. 2d 1052, 1056 (6th Cir. 1984) where the court held

> As the Seventh Circuit noted, the conclusion that § 207 [42 U.S.C. § 407(a)]. poses no obstacle to a debtor seeking discharge of an overpaymentdebt "does not ... mean that every social security recipient who receives, not without fault, an overpayment of benefits may escape his duty to repay those benefits by means of a quick discharge in bankruptcy." *Neavear*, 674 F.2d at 1206. The government will remain free to argue in cases like this that an overpayment debt should not be discharged for other reasons. For example, 11 U.S.C. § 523(a)(2)(A) provides that debts arising from transactions involving "false pretenses, a false representation, or actual fraud" are not dischargeable. The government therefore retains the means to recover debts in these same circumstances available to other creditors.

The *Rowan* court noted that

> Several courts have accepted the argument that the Bankruptcy Act repeals § 207 of theSocial Security Act. *See In re Greene*, 27 B.R. 462, 464-65 (Bankr.E.D.Va.1983): *In re Buren*, 6 B.R. 744(Bankr.M.D.Tenn.1980); *In re Craig*, 15 B.R. 712 (Bankr.W.D.N.C.1982); *In re Hughes*, 7 B.R. 791 (Bankr.E.D.Tenn.1980); *In re Penland*, 11 B.R. 522 (Bankr.N.D.Ga.1981); *In re Williams*, 13 B.R. 640 (Bankr.E.D.Wash.1981).

Similarly, *In re Malinowski*, 156 F.3d 131, 135 (2d Cir. 1998) the Court denied recoupment that would deprive a debtor of the safety net of unemployment

insurance, when the debtor had not been accused of willful wrongdoing in connection with the overpayment.

The Third Circuit in *Lee v. Schweiker*, 739 F.2d 870, 876 (3d Cir. 1984) held that a social-welfare statute entitling an individual to benefits is not a contract, and that the obligation to repay a previous overpayment is a separate debt subject to the ordinary rules of bankruptcy. *E.g. In re Neavear*, 674 F.2d 1201 (7th Cir.1982); *In re Hawley,* 23 B.R. 236 (Bankr.E.D.Mich.1982); *In re Rowan*, 15 B.R. 834 (Bankr.N.D.Ohio 1981); *In re Howell*, 4 B.R. 102, 108 (Bankr. M.D. Tenn. 1980), (all dealing with the question whether the obligation to repay prior overpayments is a debt dischargeable in bankruptcy) The Department asks us to take away the unemployment insurance safety net from a debtor in bankruptcy, who has not been accused of willful wrongdoing in connection with the overpayment. Deprivation of the of a safety net is not appropriate. The same conclusion was reached by the Court in *In re Hagan*, 41 B.R. 122, 127 (Bankr. D.R.I. 1984) where the Court found that the SSA was attempting to legitimize an unlawful setoff by calling it recoupment. The *Hagan* court wasn't buying. More recently, the SSA request for recoupment was rejected by the Court in *In re Edwards*, 659 B.R. 24, 28 (Bankr. D.N.H. 2024) (overpayment not allowed unless there was wilful conduct of the claimand).

Here there is no question that the SSA had a "claim." There is no question that the SSA had the ability to seek a determination that its claim was not discharged or dischargeable pursuant to 11 U.S.C. § 523 or § 727. It failed to do so. Consequently, the claim remains discharged. *E.g. In re Neavear, supra.*

Affirming the BAP's holding that discharge did not affectoverpayments, notwithstanding ¶ 207 of the Social Security Act, is against the weight of authority and creates a circuit split.

6.6 Recoupment requires mutuality and is most commonly applied to contracts.

Thus it was applied in *In re TLC Hospitals (Sims v. U.S. Dept of Health & Human Servs.).* In *TLC Hospitals*, the Debtor was a hospital system under contract with the U.S. Department of Health and Human Services. Under the parties' contractual arrangement, to expedite payments to health care providers, the federal Medicare program would make payments to providers on an estimated basis throughout the year. *In re TLC Hospitals, Inc. (Sims v. U.S. Dept of Health and Human Servs.)*, 224 F.3d 1008, 1011-1012 (2000). At the end of each year, an audit would determine whether Medicare had overpaid or underpaid the provider. *Id.*

The true-up of payments was explicitly set forth in the parties' contract, and indeed, underpayments and overpayments were "an expected and inevitable result

of this payment system." *Id.* at 1012. The court found a that the "transaction or occurrence" requirement was met, based on a logical relationship between the overpayment and the government agency's explicitly stated contractual right to recover overpayments against the debtor hospital. *Id*. at 1013.

Similarly, *In re Madigan* involved obligations also based in contract. An insurer sought to recover overpayments on a private long term care insurance contract that had provided coverage to the debtor. The court in *Madigan* found that the right to recoupment did not exist, because the overpayment had occurred in association with an earlier disability claim, while recoupment was sought against payment on a later disability claim. *In re Madigan,* The insurer was found to have violated the bankruptcy discharge and was ordered to pay sanctions. *Id.* at 761.

6.7 The Logical Relationship Test Fails to Establish that the Claims are Under the Same Transaction or Occurrence

Virtually all bankruptcy recoupment cases in the 9th Circuit have their basis in a written contract. There is no contract in a social entitlement program and deprivation of benefits by recoupment is contrary to the position taken by the Third Circuit Court of Appeals in *Lee v. Schweiker*, 739 F.2d 870, 875-76 (3rd Cir. 1984). In *Lee, supra,* as here, the Court considered whether recoupment was appropriate for post-discharge recovery of a pre-bankruptcy social entitlement overpayment.

The Court in *Lee* found that "social welfare payments ... are statutory entitlements rather than contractual rights," the purpose of which is "to provide income security to the recipients." *Lee* at 876. The recoupment remedy, despite utility in the context of contract disputes, was thus not suitable in the context of social entitlements. *Id*.

"To qualify as recoupment, [the countervailing claims] must rest upon factual and legal connections beyond the mere assertion of a statutory right to make such deductions. See *Sims*, 224 F.3d at 1012-13; *Newbery Corp. v. Fireman's Fund Insurance Company* 95 F.3d. at 1403; cf. also *Malinowski v. New York State Dep't of Labor*, 156 F.3d at 134 ("[A] state may not choose to define its rights in a way that defeats the ends of federal bankruptcy law.").

Here, the Court must consider the Agency's obligation to pay Cooper's disability benefits, that is rooted in his meeting certain legally defined criteria. SSDI is based upon a continued eligibility. 20 C.F.R. §§ 416.989 – 900. If you live the entire month you receive benefits for that month during the next month. So, depending on whether the debtor had received the monthly check before or after the bankruptcy was filed, SSA owed him at most one month's benefits at the time of the petition. No further setoff or recoupment would be possible because debtor had no further entitlement on petition date against which the SSA could assert Cooper's obligation to repay the Agency.

To qualify for Social Security Disability benefits, an individual must continue to meet two additional criteria. First, he must meet the relevant legal definition of "disabled." In addition, he must be "fully insured," which is a function of the individual's work history over the course of his working life and in the years immediately preceding the disability. See 20 C.F.R. §§404.110, 404.132.

For the individual who meets these two criteria, the Social Security Administration is then tasked with determining the correct amount of benefits to be paid. The amount of Social Security Disability benefits for which a disabled and fully insured person is eligible is calculated based on the individuals' years of earning history, the person's age, and the age at which he became disabled.

After determining the number of years to use for its calculations, the SSA applies a formula to the individual's earnings, adjusted for wage inflation, to determine the appropriate amount of disability benefits. *See* 20 C.F.R. 404. *et seq*. Finally, in calculating disability benefits, the Social Security Administration is required to reduce the amount of SSDI benefits, pursuant to a statutory formula, to individuals who receive worker's compensation benefits. See 42 U.S.C. §424(a)(2)(B) (hanging paragraph); 20 C.F.R. §404.408. In short, the SSA's calculation takes into account a complicated matrix of information.

The formula and process applied by the professionals employed at the Agency lie outside the knowledge of the typical disabled individual applying for benefits. These calculations occur as a legally and factually distinct event following qualification to receive SSDI benefits.

Cooper supplied the Agency with a complete and accurate disclosure of his income, including workers' compensation benefits, several months before the Agency made its determination and the overpayment was disbursed to him. ER- 5-6, 7-9. Having done everything necessary to ensure the SSA would calculate an accurate determination of benefits, there was no reason for Cooper to expect that three years later, the award would be rescinded by SSA. The Agency's error in applying its own formula should be viewed as an intervening event that occurred independent of Cooper's eligibility for benefits, or his continuing reliance on those benefits.

Though both SSDI eligibility and SSDI benefits calculation are rooted in the same set of laws, this is insufficient legal basis to find a logical relationship. Similarly, the already tenuous factual relationship was severed when the Agency failed to properly fulfil its duty to calculate the correct amount of retroactive benefits due, despite having all necessary information to do so. With inadequate legal and factual basis to establish a logical relationship between the countervailing

obligations, the Agency cannot show that its pursuit of the $73,112.90 pre-filing overpayment arises from the same transaction or occurrence. In short, the Agency's claim to recover a pre-petition erroneous payment is independent of Cooper's right to disability benefits.

6.8 Recoupment Is Inequitable Under the Facts of this Case

The recoupment doctrine draws its authority from principles of equity, and is therefore subject to the facts of each individual case. *In re Angwin*, WL 1395378, Bankr. EDCA (2016). Even if this Court finds that the right to receive current benefits is part of the same transaction whereby they were first awarded, the Court recoupment remedy should be limited "only when it would... be inequitable for the debtor to enjoy the benefits of that transaction without meeting its obligations." *Gardens Reg. Hosps.* at 934 (internal quotations omitted).

6.9 The Bankruptcy Court's ruling, approving the use of post-disharge recoupment, appears to rest on an erroneous interpretation of the factual record. Specifically, in reaching the conclusion that "[i]t would be inequitable for the debtor to receive all further payments under the [SSDI] program without reduction for the prepetition [SSDI] overpayment" (ER. 70-81, *see* pg 78, line 20-23), the bankruptcy court stated that "[I]n December, 2020, the debtor informed the Agency that he had been receiving workers' compensation benefits,"ER- 70-81, *see* pg. 74,

line 19-20). In fact, the record shows that as early as May 1, 2019, the debtor informed the Agency of his workers' compensation benefits. ER- 5-6, 7-9. This misinterpretation of the factual record appears to underlie the determination that recoupment would be equitable under the circumstances.

Individuals who seek disability benefits must provide complete and accurate information to SSA in their applications for benefits. Once Cooper engaged an attorney to assist him, he was able to successfully make all necessary disclosures to the SSA. For its part, the United States government, with the overwhelming advantage of information and manpower, must be expected to properly review and catalog applications, and to make timely and accurate benefits determinations. For the disabled person who requires income replacement, a benefits determination is extremely high stakes. There is no equity in a finding that Cooper must pay for the Agency's mistake.

6.10 This Court Must Consider the Policy Implications of Allowing Recoupment Against SSDI Recipients

In *Gardens Regional Hospital*, *supra,* the Ninth Circuit court cautioned that "'[C]are should be taken' in applying the doctrine of recoupment in the bankruptcy context, given that "improper application of the doctrine, coupled with its ostensibly exempt status under sections 553(a) and 362, could undermine the

fundamental purposes of these statutory provisions." *Gardens Reg. Hosp.*, citing 5 Collier on Bankruptcy, ¶ 553,10.[3]. Application of the doctrine in a particular case should be scrutinized in light of the effect on the fundamental policies of these important bankruptcy provisions. *Id.* Recoupment should not be broadened in contravention of the federal bankruptcy policies of debtor protection and equal distribution to creditors. *Id.*, citing *Malinowski v. N.Y.State Dept of Labor* (*In re Malinowski*), 156 F.3d 131, 134 (2nd Cir. 1998).

There is no denying that the primary purpose of social entitlement programs such as Social Security Disability, is to provide income security to those who qualify for program benefits. Entirely consistent with this purpose is the Bankruptcy Code's promise of a fresh start for the honest but unfortunate debtor. *In re Riso*, 978 F.2d 1151, 1154 (9th Cir. 1992). In instances where a debtor is undeserving of discharge, creditors can, and should, file complaints to determine the debts to be non-dischargeable or to object to discharge..

To approve the SSA's blanket use of the remedy of recoupment in apparent violation of its own stated policy, when, after discharge, an overpayment is discovered places the Agency into a super-creditor position. It may ignore its own policies and ignore the bankruptcy stay and discharge. The SSA could have pursued a determination of nondischargeability under 11 U.S.C. §523, but instead

it denied due process and claimed a right of recoupment. If recoupment is an approved as a blanket remedy in this context, disabled individuals who rely on their SSDI benefits for basic income will experience financial hardship, even in situations where an undiscovered error is latent at the time of the bankruptcy filing.

7 CONCLUSION

The Court below confused this Circuit's jurisprudence. It allowed an equitable or remedy to be applied when there was an adequate remedy at law. It confused this Court's prior holdings about what constitutes the same transaction or occurrence. . Mutuality can be found in contracts and agreements. This court's cases allow recoupment after a bankruptcy only with respect to ~~in~~ contracts and agreements. They do not support recoupment with respect to social entitlement programs that are designed to provide necessary income to the disabled.

The Court below erred when it determined that it could apply the equitable of recoupment at a time that all the necessary elements were not present. It interpreted 9th Circuit Authority and arrived at an erroneous result. It is the job of this Court to fix the error and reverse the Court below.

Respectfully submitted this June 10, 2024.

/s/ Marc S. Stern
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Attorney for Darrin L. Cooper

CERTIFICATE OF COMPLIANCE UNDER RULE 8015(h)
24-1084 , Darrin Lenald Cooper v. Social Security Adm.

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Signed this 16th day of August, 2023.

/s/ Marc S. Stern
Marc S. Stern, WSBA #8194
Attorney for Darrin L. L. Cooper

CERTIFICATE OF SERVICE

I, Marc S. Stern, hereby certify that on the 16th day of August, 2023, on behalf of Marc S. Stern, I electronically filed the foregoing *Brief of Appellant Darrin Lenald Cooper* with the Clerk of the Court for the Bankrutpcy Appellate Panel for the Ninth Circuit by using the CM/ECF system. Upon filing, the aprties of record who are registered to receive electronic notice via the CM/ECF system were served via the CM/ECF system as follows:

On the June 17, 2024, I caused copies of the *Brief of Appellant Darrin Lenald Cooper*, and its Excerpts of the Record, to be emailed to :

Kyle Forsyth, Assistant United States Attorney
kyle.forsyth@usdoj.gov

I declare under penalty of perjury under the laws of the state of Washington that the foregoing information is true and correct.

Dated this June 10, 2024, at Seattle, Washington.