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11
12 UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

13
14 HUGH HELD and
15 KELLEY RICHARDSON-WRIGHT,
on behalf of themselves
16 and all other similarly situated,

Plaintiffs,

17 v.

18 CAROLYN W. COLVIN,
Acting Commissioner of Social
19 Security, in her official capacity,

Defendant.

Case No. 2:15-cv-1732

CLASS ACTION COMPLAINT

1 Plaintiffs Hugh Held and Kelley Richardson-Wright, on behalf of themselves
2 and all others similarly situated, allege as follows:

3 **NATURE OF THE ACTION**

4 1. This action concerns Supplemental Security Income (“SSI”) recipients
5 married to someone of the same sex who were discriminated against by the Social
6 Security Administration (“SSA”) for months, and in some cases more than a year,
7 after that discrimination was held unlawful by the Supreme Court. This action seeks
8 redress for the continuing harm and uncertainty that the government’s inaction and
9 continued discrimination has caused to each named plaintiff and to the class of
10 similarly situated individuals (collectively “Plaintiffs”). Jurisdiction in this Court is
11 proper pursuant to 42 U.S.C. § 1383(c)(3); 42 U.S.C. § 405(g); 28 U.S.C. § 1361; 28
12 U.S.C. § 2201; and 28 U.S.C. § 2202.

13 2. In *United States v. Windsor*, 133 S. Ct. 2675 (2013), the Supreme Court
14 struck down Section 3 of the Defense of Marriage Act (“DOMA”) as violating the
15 Equal Protection guarantee of the Fifth Amendment, and thereby eliminated what had
16 been the only basis for SSA’s refusal to recognize Plaintiffs’ marriages.

17 3. After *Windsor*, SSA should have recognized Plaintiffs’ marriages
18 immediately. Yet it failed to do so.

19 4. Indeed, even after *Windsor* detailed the harm, stigma, and emotional toll
24 federal agencies like SSA have inflicted on married couples of the same sex by not
25

1 recognizing their marriages, SSA continued to treat Plaintiffs as unmarried for a year
2 or more after *Windsor*.

3 5. SSA has only recently begun to treat married couples of the same sex as
4 married for purposes of calculating their SSI benefits and eligibility. Compounding
5 the harm of SSA's longstanding discrimination against gay people, SSI recipients are
6 now being targeted by SSA for recoupment of overpayments caused by the
7 government's own unlawful actions.

8 6. The Social Security Act provisions authorizing overpayment recoupment
9 expressly require SSA to waive recovery of SSI overpayments if (1) the overpaid SSI
10 recipients were not at fault for the overpayment and (2) recoupment would either a) be
11 against equity and good conscience or b) defeat the purposes of the statute.

12 7. Here, all of the overpayments to Plaintiffs were the fault of SSA as a
13 result of its continued violation of Plaintiffs' Constitutional rights.

14 8. Here, recoupment would be against equity and good conscience.

15 9. With respect to Plaintiffs, SSA has long had evidence establishing
16 beyond dispute that the overpayments are not Plaintiffs' fault but are SSA's own fault:
17 a consequence of its failure to promptly correct its Equal Protection violations and
18 SSA's own policy decisions on when to implement *Windsor's* mandate. The
19 overpayments in these cases are the inevitable and clearly foreseeable result of those
24 policy decisions. In these circumstances it is unfair, inequitable, and unconscionable
25 for SSA to demand overpayment from a group of individuals who not only are

1 destitute, but who have been discriminated against by SSA, and then were overpaid by
2 the government's unjustified perpetuation of that very discrimination long after it was
3 held unlawful by the Supreme Court.

4 10. On information and belief, prior to sending notices of overpayment to
5 Plaintiffs, SSA did not even consider the fact that the overpayment was SSA's own
6 fault and was solely the result of SSA's failure to timely implement the Court's
7 decision in *Windsor* for this vulnerable group of individuals. Nor did SSA consider
8 whether, in light of that evidence, recovery under these circumstances would be
9 against equity and good conscience. SSA should have considered this information
10 before taking action and penalizing Plaintiffs, as it knows full well that many will lack
11 the capacity to contest this action. SSA's willful blindness to the evidence already in
12 its possession regarding its own culpability and the inequitable and unconscionable
13 nature of its demand for recoupment violates the express terms of the Social Security
14 Act and deprives Plaintiffs of due process of law.

15 11. Making matters worse, on information and belief, even when SSI
16 recipients file appeals or applications for waiver of recovery of overpayments, SSA
17 may fail to act on the request in a timely manner, if at all, and, on information and
18 belief, may commence recovery in spite of a pending request for reconsideration or
19 waiver.

24 12. Plaintiffs do not challenge SSA's treatment of them as married for
25 purpose of calculating their SSI benefits going forward and do not challenge any

1 reduction in their future benefits as a consequence of that determination. However,
2 SSA's actions – continuing to perpetuate the discriminatory conduct condemned by
3 *Windsor* and then attempting to place the burden of the consequences of that conduct
4 on this particularly vulnerable class of individuals by seeking overpayment
5 recoupment – violate the Due Process and Equal Protection guarantees of the United
6 States Constitution, are contrary to the Court's mandate in *Windsor*, and violate the
7 express terms of the Social Security Act. Plaintiffs seek declaratory, equitable, and
8 injunctive relief, on behalf of themselves and all others similarly situated, including
9 prohibiting SSA from recouping overpayments caused by its unconstitutional and
10 discriminatory practices.

11 **JURISDICTION AND VENUE**

12 13. This action arises under the Constitution of the United States and the
13 laws of the United States, including 42 U.S.C. § 1383(b)(1). Jurisdiction in this Court
14 is proper pursuant to 42 U.S.C. § 1383(c)(3); 42 U.S.C. § 405(g); 28 U.S.C. § 1361;
15 28 U.S.C. § 2201; and 28 U.S.C. § 2202.

16 14. Venue in this Court is proper pursuant to 42 U.S.C. § 405(g) because at
17 least one named plaintiff resides within the Central District of California.

18 **PARTIES**

19 15. Plaintiffs are individuals who are married to someone of the same sex
24 and receive or have received SSI benefits while married.

1 16. Plaintiff Hugh Held, 55, and his husband Orion Masters, 55, are a
2 married couple living in Los Angeles, California. They have lived together since
3 1993 and have been married since 2008. They were lawfully married under the laws
4 of the State of California. Both are receiving SSI as individuals on the basis of
5 disability, Mr. Held since 2008 and Mr. Masters since 2003.

6 17. Plaintiff Kelley Richardson-Wright, 47, and her wife Kena Richardson-
7 Wright, reside in Athol, Massachusetts. They have been a couple for the last ten years
8 and have been lawfully married under the laws of the Commonwealth of
9 Massachusetts since 2007. Kelley began receiving SSI benefits in 2012, and Kena is
10 Kelley's representative payee for SSI. Kelley receives SSI on the basis of disability.
11 Kena works as a hair stylist earning minimum wage with irregular work hours.

12 18. Defendant Carolyn W. Colvin is the Acting Commissioner of SSA. In
13 her official capacity, Commissioner Colvin is charged with administering and
14 supervising all benefit programs administered by SSA nationwide, including SSI.
15 Commissioner Colvin is sued in her official capacity as Acting Commissioner for
16 purposes of seeking declaratory and injunctive relief.

17 **CLASS ACTION ALLEGATIONS**

18 19. Plaintiffs bring this action as a class action pursuant to Rule 23(b) of the
19 Federal Rules of Civil Procedure.

24

25

1 20. Mr. Held and Ms. Richardson-Wright bring this action on behalf of
2 themselves and as the representatives of a class of similarly situated persons. The
3 class consists of:

4 All persons who were married to a person of the same sex and who
5 received or will receive notice of SSI overpayment as a result of SSA's
6 delay in implementation of the *Windsor* decision.

7 21. The class is so numerous that joinder of all members is impracticable.
8 While the exact number of class members is currently unknown and can only be
9 obtained through appropriate discovery, on information and belief, there are likely
10 hundreds of class members given the 8.3 million people receiving SSI benefits as of
11 December 2014, the fact that 5-7% of the population is lesbian, gay, or bisexual, the
12 overall incidence of poverty in that population, and the tens of thousands of marriages
13 of couples of the same sex prior to *Windsor*. Because SSA conducts redeterminations
14 of eligibility on a rolling basis, the number of putative class members will increase
15 over time.

16 22. There are issues of law and fact common to all class members that
17 predominate over questions only affecting individual class members. Such issues
18 include, among others: (a) whether SSA has violated Plaintiffs' Equal Protection
19 rights by failing to timely recognize their marriage; (b) whether SSA has violated
24 Plaintiffs' due process rights and the Social Security Act by seeking recoupment of
25 overpayment; (c) whether Plaintiffs are without fault with respect to these post-

1 *Windsor* overpayments; (d) whether collection of overpayments in this circumstance
2 violates equity and good conscience; and (e) whether the Social Security Act
3 precludes SSA from seeking recoupment of overpayment.

4 23. Plaintiffs' claims are typical of the claims of all class members and arise
5 from a common course of conduct by SSA. The declaratory and injunctive relief
6 sought is common to all class members. In addition, SSA has acted and continues to
7 act on grounds generally applicable to all class members, thereby making injunctive
8 and declaratory relief appropriate to the class as a whole.

9 24. Plaintiffs will fairly and adequately protect the interests of the class
10 members.

11 25. Plaintiffs' counsel have experience suing the Social Security
12 Administration and challenging application of the DOMA as well as in class action
13 litigation against SSA and will fairly and adequately represent the interests of the class
14 and prosecute this action vigorously.

15 26. A class action is superior to other methods for the fair and efficient
16 adjudication of the controversies raised in this Complaint because:

17 (a) individual claims by the class members would be impracticable
18 because the costs of pursuit of such claims would far exceed what any
19 individual class member has at stake;

24 (b) relatively little individual litigation has been commenced over the
25 controversies alleged in this Complaint and individual class members are

1 unlikely to have an interest in separately prosecuting and controlling individual
2 actions;

3 (c) the concentration of litigation of these claims in one forum will
4 achieve efficiency and promote judicial economy;

5 (d) the proposed class is manageable, and no difficulties are likely to
6 be encountered in the management of this class action that would preclude its
7 maintenance as a class action;

8 (e) the proposed class members are or will be readily identifiable from
9 SSA's own records; and

10 (f) prosecution of separate actions by individual members of the
11 proposed class would create risk of inconsistent or varying adjudications with
12 respect to individual members of the proposed class that would establish
13 incompatible standards of conduct for SSA.

14 27. Without a class action, SSA will likely retain the benefit of its
15 wrongdoing and will continue its unlawful conduct, which will result in further
16 damage to Plaintiffs.

17 **FACTS**

18 **Supplemental Security Income**

19 28. SSI is a federal assistance program, enacted in 1972, designed to ensure
24 that those residents of the United States in the greatest need – the elderly, blind, and
25 disabled – are able to afford basic necessities such as food, clothing, and shelter. SSA

1 administers the SSI program, which provides its vulnerable recipients with a
2 minimum level of income to meet their basic needs.

3 29. In order to be eligible for SSI, an individual must be age 65 or older,
4 blind, or disabled. In addition, SSI recipients must be very poor and must fall within
5 stringent income and resource limitations. An individual may have no more than
6 \$2,000 (or \$3,000 for an eligible couple) in countable resources. The maximum
7 federal benefit is \$733 per month for an individual and \$1,100 a month for a married
8 couple if both spouses are aged, blind, or disabled. (Some states provide a supplement
9 to the Federal Benefit; in California, this supplement is \$156.40 per month for a single
10 aged or disabled individual and \$396.20 for an eligible married couple.)

11 30. The rules are somewhat different if one spouse is aged, blind, or disabled
12 and the other is not. In that case, the financial eligibility of the categorically eligible
13 spouse will be determined on the basis of the individual benefit rate, but a portion of
14 the income and resources of the other spouse will be deemed to be part of her income
15 and resources.

16 31. Marriage of an SSI recipient, either to another SSI recipient or to anyone
17 else, always results in a lower amount of individual monthly SSI benefits and may
18 result in a complete loss of SSI benefits.

19 32. Every one to six years, SSI conducts financial redeterminations for every
24 SSI recipient. SSA conducts redeterminations once a year if it is likely that there has
25 been a change in circumstance that would affect the SSI recipient's eligibility for SSI

1 benefits or the amount of benefits. During the redetermination, an SSA representative
2 conducts an interview with the recipient. The information collected during the
3 interview is used to determine whether SSI recipients have met and continue to meet
4 all of the requirements for SSI eligibility and whether they have been and are still
5 receiving the correct payment amount. SSA representatives are instructed to inquire
6 as to changes in marital status, and if there has been a change, document the date it
7 occurred and the attendant change in the recipient's countable income and resources.

8 33. SSA has authority to recoup overpayments from individuals who have
9 been paid "more ... than the correct amount of benefits," 42 U.S.C. § 1383(b)(1)(A).
10 However, that authority is not without limits. Specifically, the Social Security Act
11 requires that:

12 The Commissioner of Social Security... *shall* make such provision as the
13 Commissioner finds appropriate in the case of payment of more than the
14 correct amount of benefits with respect to an individual with a view to
15 avoiding penalizing such individual or his eligible spouse *who was*
16 *without fault* in connection with the overpayment, *if adjustment or*
17 *recovery on account of such overpayment in such case would* defeat the
18 purposes of this subchapter or *be against equity and good conscience*.

19 *Id.* at § 1383(b)(1)(B) (emphasis supplied).

24

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1 34. Thus, the statute requires SSA to refrain from penalizing a recipient who
2 has not been paid the correct amount where the overpayment was not the fault of the
3 recipient and where recoupment would be against equity and good conscience.

4 35. Contrary to the statute’s express invocation of equitable principles,
5 SSA’s internal guidance document, the Programs Operations Manual System
6 (“POMS”) erroneously instructs that adjudicators should apply the “against equity and
7 good conscience” standard in only two scenarios: (1) when a “beneficiary, relying on
8 benefit payments or notice that such payments would be made, relinquished a valuable
9 right or changed his/her position for the worse;” or (2) when a “contingently liable
10 member of an eligible couple was living in a separate household from the overpaid
11 person at the time the event causing the overpayment occurred and did not benefit
12 from the event.” POMS SI 02260.025 A2. Because of an adverse ruling against SSA
13 by the U.S. Court of Appeals for the Ninth Circuit in *Quinlivan v. Sullivan*, 916 F.2d
14 524 (9th Cir. 1990), SSA has revised its definition of “equity and good conscience” to
15 properly apply the statute’s mandate that SSA do equity by its actions – but only for
16 claimants who reside in Alaska, Arizona, California, Guam, Hawaii, Idaho, Montana,
17 Nevada, Northern Mariana Islands, Oregon, or Washington. In those states, SSA
18 instructs adjudicators to “take into account all of the facts and circumstances of the
19 case and ... a broad concept of fairness.” Acquiescence Ruling 92-5(9).

24 **SSA Violated Plaintiffs’ Constitutional Rights under DOMA**

25

1 36. In 1996, in passing DOMA, Congress declared that marriages of same-
2 sex couples would not have status equal to marriages of different-sex couples. Section
3 3 of DOMA (codified at 1 U.S.C. § 7) stated that for the purpose of determining the
4 meaning of any federal law, “the word ‘marriage’ means only a legal union between
5 one man and one woman as husband and wife, and the word ‘spouse’ refers only to a
6 person of the opposite sex who is a husband or a wife.”

7 37. Following the passage of DOMA, the law in a growing number of states
8 changed to recognize the marriages of same-sex couples. At the time of the Supreme
9 Court decision in *Windsor*, twelve states (Massachusetts, Connecticut, Iowa, Vermont,
10 New Hampshire, New York, Maine, Minnesota, Washington, Delaware, Maryland,
11 Rhode Island) and Washington, D.C., as well as California for a brief time in 2008,
12 allowed same sex couples to marry. Currently, 37 states recognize marriages of same-
13 sex couples, including California and Massachusetts.

14 38. Following the enactment of DOMA in 1996 and until very recently, SSA
15 refused to recognize the marriages of couples of the same sex lawfully married under
16 applicable state law.

17 39. If not for the application of DOMA to all federal programs, married
18 couples of the same sex would have received the same status, responsibilities, and
19 protections under federal law as married persons of different sexes.

24

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1 40. As a result of DOMA, SSA did not recognize the marriages of same-sex
2 couples when determining eligibility for SSI and the amount of benefits. Instead, SSA
3 treated married couples of the same sex as single.

4 41. Since at least 2010, the writing had been on the wall that Section 3 of
5 DOMA was unconstitutional and would be struck down. In July 2010, the U.S.
6 District Court for the District of Massachusetts ruled that DOMA was unconstitutional
7 in a decision that would later be affirmed by the U.S. Court of Appeals for the First
8 Circuit. *Massachusetts v. U. S. Dep't of Health & Human Servs.*, 682 F.3d 1, 17 (1st
9 Cir. 2012); *Gill v. Office of Pers. Mgmt.*, 699 F. Supp. 2d 374, 397 (D. Mass. 2010).
10 In 2011, 20 judges of the U.S. Bankruptcy Court of the Central District of California
11 signed on to a decision striking down DOMA, finding that “there is no valid
12 governmental basis for DOMA.” *In re Balas & Morales*, 449 B.R. 567 (Bankr. C.D.
13 Cal. 2011). In 2012, the U.S. District Court for the Southern District of New York
14 also held that DOMA was unconstitutional, and the U.S. Court of Appeals for the
15 Second Circuit affirmed. *Windsor v. United States*, 699 F.3d 169, 188 (2d Cir. 2012);
16 *Windsor v. United States*, 833 F. Supp. 2d 394, 406 (S.D.N.Y. 2012). Other courts
17 striking down DOMA in 2012 as a result of facial or as-applied challenges included
18 the U.S. District Courts for the Northern District of California and the District of
19 Connecticut.

24 42. By February 2011, the United States Attorney General and the President
25 of the United States had concluded that DOMA was unconstitutional. That month, the

1 Attorney General sent a memorandum to the Speaker of the United States House of
2 Representatives, explaining that the Department of Justice would no longer defend the
3 constitutionality of DOMA in view of that conclusion.

4 43. That conclusion was vindicated. On June 26, 2013, the Supreme Court
5 struck down Section 3 of DOMA because it violated the Fifth Amendment. *United*
6 *States v. Windsor*, 133 S. Ct. 2675, 2696 (2013). The Court noted the ways in which
7 government agencies, including SSA, used DOMA to “impose a disadvantage, a
8 separate status, and so a stigma upon all who enter into same-sex marriages.” *Id.* at
9 2693.

10 44. The Court found:

11 Under DOMA, same-sex married couples have their lives burdened, by
12 reason of government decree, in visible and public ways. By its great
13 reach, DOMA touches many aspects of married and family life, from the
14 mundane to the profound. . . . DOMA divests married same-sex couples
15 of the duties and responsibilities that are an essential part of married life
16 and that they in most cases would be honored to accept were DOMA not
17 in force. . . . DOMA instructs all federal officials, and indeed all persons
18 with whom same-sex couples interact, including their own children, that
19 their marriage is less worthy than the marriages of others.

24 *Id.* at 2694-96.

25

1 45. The Court concluded, “The principal purpose and the necessary effect of
2 this law are to demean those persons who are in a lawful same-sex marriage. This
3 requires the Court to hold, as it now does, that DOMA is unconstitutional as a
4 deprivation of the liberty of the person protected by the Fifth Amendment of the
5 Constitution.” *Id.* at 2695.

6 46. Thus, as of June 26, 2013, SSA’s practice of treating Plaintiffs as
7 unmarried for purposes of calculating SSI eligibility and the amount of benefits was
8 unlawful. Under *Windsor*, SSA should immediately have begun treating Plaintiffs as
9 married.

10 47. SSA began processing Old Age, Survivor, and Disability Insurance
11 (“OASDI”) claims based on marriages between individuals of the same sex in
12 September 2013. In the meantime, SSA placed all SSI claims of individuals in a
13 marriage with a person of the same sex on hold. It did not even begin processing new
14 SSI applications for applicants married to someone of the same sex until January
15 2014, even though it was established law as of June 26, 2013 that SSA had no
16 alternative but to process such applications recognizing the validity of the marriage if
17 the applicant resided in a marriage recognition state.

18 48. Meanwhile, SSA continued not to recognize marriages to a person of the
19 same sex for individuals, like Plaintiffs, who were already receiving SSI, even though
24 there was no reason to believe that the legal standard could be different from the
25 standard applied to initial applications.

1 **SSA Continues to Violate Plaintiffs' Constitutional Rights after *Windsor***

2 SSA Goes Months without Implementing *Windsor* for Purposes of
3 Determining SSI Benefits

4 49. Despite *Windsor*, until recently, SSA continued to treat individuals who
5 were married to a person of the same sex as single for the purpose of determining their
6 eligibility for and the amount of SSI benefits.

7 50. After the *Windsor* decision and until recently, even if a SSI recipient had
8 notified SSA of a marriage to a person of the same sex, SSA continued to treat the
9 recipient as single. Essentially, SSA continued to apply Section 3 of DOMA even
10 though it had been declared unconstitutional by the Supreme Court.

11 51. During this time, SSA provided little to no clarification or guidance to
12 SSI recipients as to when or how it would adjust its practices to recognize marriages
13 of same-sex couples and adhere to the mandate of the Supreme Court. On information
14 and belief, when SSI recipients went to Social Security offices and asked how their
15 marriage would affect their benefits, they were not given accurate information. On
16 information and belief, when SSI recipients specifically asked to have their eligibility
17 and benefit amount determined as married persons, they were told that it could not be
18 done. On information and belief, when SSI recipients asked when and how SSA
19 would recognize their marriage, they were not given an answer.

24 52. Even after January 2014 when SSA began processing new SSI
25 applications from individuals in marriages to a person of the same sex and recognizing

1 these marriages as valid, SSA did not apply that policy to individuals in a same sex
2 marriage who were already receiving SSI. Instead, it continued to treat them as
3 unmarried.

4 53. ***Plaintiff Hugh Held.*** For example, on March 28, 2013, Hugh Held went
5 to the Social Security office for a routine financial redetermination accompanied by
6 his husband, Orion Masters. They informed the SSA representative that they were
7 married and asked whether their marriage would affect their benefits in light of the
8 case then pending before the Supreme Court. The individual conducting the interview
9 did not know, but checked with a supervisor who said that their benefit would not be
10 affected. In spite of the inquiry about their marriage, the redetermination form filled
11 out by the SSA employee stated, as required at the time by DOMA, that Mr. Held was
12 unmarried and living with a nonrelative named Orion Masters.

13 54. After the *Windsor* decision issued, Mr. Held and Mr. Masters again
14 inquired as to the impact on their benefits. This time they were told that it might
15 affect their benefits, but it was unclear how.

16 55. Early in 2014, now half a year after *Windsor*, Mr. Held went to the SSA
17 office for a routine financial redetermination. He was not informed of any change to
18 his benefits at that time.

19 56. ***Plaintiff Kelley Richardson-Wright.*** Similarly, Kelley and Kena
24 Richardson-Wright told SSA of their marriage when Kelley first applied for SSI in or
25 around 2012, long before the *Windsor* decision. Until the end of 2014, Kelley

1 received a monthly SSI benefit of \$721 a month, an amount equal to the 2014 Federal
2 Benefit Rate for a single individual. SSA said nothing to the Richardson-Wrights
3 about the implications of *Windsor* until the last week of November 2014. Neither
4 Kelley nor Kena had any idea that the *Windsor* decision would have an impact on
5 Kelley's SSI payments.

6 SSA Begins Treating Plaintiffs as Married Many Months after *Windsor*

7 57. It was not until the summer of 2014, nearly a year after *Windsor*, that
8 SSA began sending notices to some SSI recipients about how SSA would be
9 calculating their benefits as married individuals in light of the government's belated
10 recognition of their marriage. Those communications were scattershot, confusing, and
11 sometimes inconsistent. In some instances, such as for Kelley Richardson-Wright,
12 SSA did nothing for over a year after *Windsor*, even though SSA was notified of her
13 marriage.

14 58. Eventually, starting sometime during or after the summer of 2014, SSA
15 began telling Plaintiffs that SSA had overpaid them.

16 59. These overpayments were the result of SSA's own failure to timely
17 recognize Plaintiffs' marriages.

18 60. SSA also notified Plaintiffs that it planned to recoup all overpayments
19 made after the *Windsor* decision. SSA has demanded repayment of overpayments that
24 are in the thousands of dollars. Such liabilities would cause financial distress in
25 American families even of modest means. To Plaintiffs, who are among the most

1 destitute, they are crippling. SSA plans to recoup overpayments by deducting sums
2 from SSI recipients' ongoing and future benefits, thus further reducing the income
3 required to meet Plaintiffs' essential needs and putting them at risk of utter privation.

4 61. Upon information and belief, prior to seeking recoupment of
5 overpayments, SSA did not even consider the evidence, already in its possession,
6 showing that the overpayment was SSA's own fault, and that in these circumstances it
7 is plainly against equity and good conscience to allow SSA to collect overpayments
8 that occurred because SSA continued in its discriminatory conduct after the Court's
9 decision in *Windsor*.

10 62. ***Plaintiff Hugh Held***. Prior to June 2014, Mr. Held received the
11 maximum California SSI benefit for an individual of \$877.40 per month. His
12 husband, Mr. Masters, received an SSI benefit of \$15.40 together with his Social
13 Security Disability Insurance ("SSDI") benefit of \$882 a month.

14 63. In May, 2014, Mr. Masters received a deposit of \$2,632.20 from SSA to
15 his bank account in addition to the usual SSDI and SSI deposit. He never received a
16 letter explaining this deposit or a subsequent deposit of \$566.50.

17 64. In June 2014, Mr. Held began to receive an SSI benefit of only \$308.10,
18 a little over a third of his previous \$877.40 benefit, with no explanation of the change.
19 Also, in June his husband's SSI benefit was increased to \$308.10 in addition to his
24 usual SSDI payment. This reflects the usual practice of SSA in the case of a married
25

1 couple receiving SSI, to pay an equal SSI benefit to each spouse regardless of
2 whatever other income the spouse may have.

3 65. Not long afterward, Mr. Held received a billing statement from SSA
4 telling him he needed to send a check for \$6,205 to pay back an overpayment. The
5 statement provided no explanation of the basis for SSA's decision to seek recoupment.

6 66. Mr. Held went to the Inner City Law Center in Los Angeles for
7 assistance regarding the overpayment. On July 17, 2014, attorney Rebecca Watson of
8 Inner City Law Center filed a request for reconsideration of the overpayment on his
9 behalf. Almost eight months later, SSA has yet to process that request. When his
10 attorney called the SSA office to inquire, she was told that they had not yet received
11 instructions on how to process these appeals.

12 67. In September 2014, *one year and two months after Windsor*, Mr. Held
13 received a Notice of Overpayment from SSA stating that he had been overpaid in the
14 amount of \$6,205 between July 2013 and May 2014 because SSA had not recognized,
15 for the purposes of calculating SSI benefits, that he was legally married and living
16 with a spouse who was also receiving SSI benefits.

17 68. In fact, Mr. Held and his husband only received less than \$300 a month
18 more in their combined SSI benefits in the months between July 2013 and May 2014
19 than they would have been entitled to had they been treated as a married couple during
24 that period. However, on the other hand, SSA chose to continue to treat them as if
25 they were not married by determining that Mr. Masters had been underpaid for the

1 eleven month period and sending him a total of \$3,198.70 to compensate him for the
2 underpayment and then simply tacking that on to the amount by which SSA
3 determined Mr. Held had been overpaid.

4 69. In order to recoup the claimed overpayment, SSA plans to deduct funds
5 from Mr. Held's SSI benefits each month. He will be approximately 81 years old
6 before he pays off this overpayment. Mr. Held and Mr. Masters need their entire
7 benefit amount to afford basic necessities such as food and housing.

8 70. *Plaintiff Kelley Richardson-Wright.* Kelley and Kena Richardson-
9 Wright told SSA of their marriage when Kelley applied for SSI in 2012. In 2014,
10 Kelley received a monthly SSI benefit of \$721 a month, an amount equal to the 2014
11 Federal Benefit Rate for a single individual.

12 71. Ever since Kelley began receiving SSI, her wife Kena has served as her
13 representative payee. In the application to serve as a representative payee, the
14 prospective payee is asked what her relationship is to the SSI recipient. Kena
15 responded that she was Kelley's wife.

16 72. In October 2014, SSA called the Richardson-Wrights in for a routine
17 financial redetermination. They heard nothing further from SSA regarding any
18 changes to Kelley's SSI benefits until the end of November when they received two
19 notices from the Gardner, MA office of SSA each dated November 24, 2014, but sent
24 to different addresses and containing contradictory information. This began a
25 confusing round of a half dozen inconsistent and conflicting notices from SSA.

1 73. One notice, dated November 24, 2014, stated that Kelley's marriage
2 would be recognized effective July 1, 2013 and that would mean "that all income and
3 resources of your spouse have an impact on your benefit." The notice contained a
4 month-by-month breakdown of how the benefit would be reduced beginning in
5 September 2013 from \$710 per month to \$435.34. It showed varying amounts for
6 subsequent months including \$520.34 for March 2014 and a low of \$374.50 for
7 December 2014 and January 2015. There was no mention of an overpayment or the
8 need to pay anything back. A true and correct copy of the notice is attached as Exhibit
9 A.

10 74. The second notice, also dated November 24, 2014, made no mention of
11 the Richardson-Wrights' marriage but stated that Kelley's payments would be reduced
12 to \$346.84 for March 2014 and all subsequent months, and that payments would be
13 reduced to that level beginning in January 2015. Once again there was no mention of
14 an overpayment amount or the need to pay anything back. A true and correct copy of
15 the notice is attached as Exhibit B.

16 75. These notices were followed by another notice from the Gardner, MA
17 office, this one dated November 25, 2014, one day after the two prior notices, stating
18 that Kelley's payments would be changed to \$721 per month beginning March 1,
19 2014. A true and correct copy of the notice is attached as Exhibit C.

24 76. Kelley received a fourth notice, this one dated November 30, 2014,
25 stating that her monthly benefit would be increased to \$733 per month to reflect the

1 increase in cost of living beginning January 2015. A true and correct copy of the
2 notice is attached as Exhibit D.

3 77. The next, and fifth, notice Kelley received was a Notice of Overpayment
4 dated December 3, 2014, *nearly a year and a half after Windsor*, stating that she had
5 been overpaid in the amount of \$4,129.88 for the months from September 2013
6 through December 2014. The notice made no mention of her marriage and stated only
7 that “the income on our records was wrong.” It was accompanied by a month-by-
8 month breakdown purporting to show the amount she was paid each of those months
9 and the correct amount for each of those months. It showed she was paid amounts
10 varying from \$184.33 to \$346.50 per month and that she should have been paid \$0.00
11 in each month. (In fact, she was paid \$721 for each month in 2014 and \$710 for the
12 months in 2013.) While the notice did state that she had to pay the money back, it did
13 not explain that the overpayments would be deducted from future benefits. A true and
14 correct copy of the notice is attached as Exhibit E.

15 78. Kelley next received her sixth notice, another Notice of Overpayment,
16 dated December 4, 2014. This notice also stated there was an overpayment of
17 \$4,129.88, but stated that it was because her “spouse’s wages are now taken into
18 account and affect payment.” The notice also stated that SSA would deduct \$73.30
19 from each of her SSI checks until the overpayment was paid back. The notice further
24 stated that if she asked for a waiver or filed an appeal within 30 days, no deduction
25

1 would begin until SSA decided the case. A true and correct copy of the notice is
2 attached as Exhibit F.

3 79. The December 4 notice stated that the determination could be appealed
4 by filing a Request for Reconsideration. It also stated, "If you ask for waiver or
5 appeal in the next 30 days, we won't change her check until we decide the case." On
6 December 12, 2014, Kelley and Kena went to the Gardner, MA office of SSA and
7 attempted to file a Request for Reconsideration. However, they were told that the
8 determination could not be appealed, and they were not allowed to file the appeal.
9 They tried again on December 22, 2014, and once again were turned away without
10 being allowed to file the appeal. They subsequently filed a request for reconsideration
11 by certified mail on January 16 which was marked as received at the Gardner, MA
12 Social Security office on January 20.

13 80. Kelley does not dispute that going forward her monthly benefit should be
14 reduced to reflect Kena's income. However, she does dispute the calculation of the
15 overpayment, which is off by a small amount, and wishes to appeal the determination
16 to recover the overpayment when the only reason for the overpayment is SSA's
17 refusal to acknowledge the legitimacy of their marriage until now.

18 81. On December 30, 2014, Kelley's January 2015 SSI benefit arrived in the
19 amount of \$301.20, or \$73.30 less than the \$374.50 she was supposed to receive for
24 January. This was in spite of the fact that the reduction took place only 26 days after
25 the December 4 notice. Thus, SSA did not give Kelley and Kena even thirty days to

1 appeal or request a waiver of recovery. If Kelley is forced to repay the overpayment
2 caused by the SSA, it will take her over four-and-a-half years.

3 82. Kelley's only income is her SSI benefit. Kena works as a hair stylist at
4 minimum wage but her income varies substantially from month-to-month, because of
5 significant fluctuations in hours. Kelley and Kena have barely enough money to
6 afford basic necessities such as food and housing, and they need the entire amount of
7 Kelley's SSI benefits to afford those necessities even though they stock up at a food
8 pantry every month. Even before Kelley's SSI benefit was reduced, they had to move
9 to a new apartment because they could not afford to pay the heating bills where they
10 lived before.

11 83. SSA's reduction of Kelley's SSI benefits is causing Kelley and Kena to
12 forgo basic necessities and puts them at risk of eviction from their apartment. The SSI
13 reduction is occurring at a particularly difficult financial time for Kelley and Kena.
14 The stress from the extreme financial strain caused by the reduction in SSI payments
15 has caused Kelley to be hospitalized. While Kelley was in the hospital, Kena's car
16 was repossessed.

17 **SSA, not Plaintiffs, is at Fault for any Overpayment, and Recoupment is Against**

18 **Equity and Good Conscience**

19 84. As a group, Plaintiffs are not at fault for SSA's overpayments. The
24 overpayments are the result of SSA's unreasonable and deliberate delay in meeting its
25

1 affirmative obligation to recognize the marriages of same-sex couples as required by
2 *Windsor*.

3 85. Recouping overpayments in these circumstances is also against equity
4 and good conscience. As a group, Plaintiffs were first harmed by SSA's
5 unconstitutional refusal pursuant to DOMA to recognize their marriages. Even after
6 the Supreme Court imposed an affirmative obligation on SSA to recognize their
7 marriages, SSA did not do so until almost a year, or more, had passed, increasing the
8 harm imposed by DOMA and inflicting financial uncertainty and anxiety on these
9 already vulnerable individuals.

10 86. Recoupment of overpayments would compound, not rectify, the past
11 harms, and is against equity and good conscience.

12 87. SSA's lengthy inaction in the face of *Windsor* and its continuing
13 violation of Plaintiffs' Equal Protection rights put Plaintiffs in an untenable position
14 and caused them immediate, continuing, and in many ways, irreparable harm. For
15 those who were unaware that *Windsor* might reduce or eliminate their SSI benefits,
16 SSA's continued discrimination created a ticking time bomb. SSA allowed a massive
17 overpayment liability to accrue over months due to the perpetuation of its
18 unconstitutional conduct. It then dropped it into the laps of these unsuspecting and
19 entirely innocent SSI recipients, who had done nothing wrong except be the target of
24 the government's unlawful discrimination. Even worse, SSA's actions deprived them
25 of the ability to plan their finances or even avoid the overpayment altogether.

1 88. Any SSI recipients sophisticated enough to understand the implications
2 of *Windsor* for their SSI benefits were placed in an impossible Catch-22. If they
3 retained the amount of the overpayment in anticipation of the (unknowable) date that
4 SSA would finally cease its unlawful discriminatory conduct, they would quickly
5 accumulate sufficient countable resources to make them ineligible for SSI altogether.
6 On the other hand, if they continued to use their SSI benefits – just as they had been
7 doing before *Windsor* – to pay for their essential needs, they would risk being later hit
8 with an overpayment bill potentially in the thousands of dollars.

9 89. In short, SSA’s continued post-*Windsor* discrimination placed Plaintiffs –
10 among the poorest and least powerful in our society – into fiscal limbo, with an ever-
11 growing overpayment liability that they could not control and that many, if not most,
12 did not even know was there. It is the height of inequity and unfairness to allow
13 recoupment of overpayments in these circumstances.

14 **COUNT I: DEPRIVATION OF EQUAL PROTECTION ON THE BASIS OF**
15 **SEXUAL ORIENTATION**

16 90. Plaintiffs incorporate by reference and reallege all of the preceding
17 paragraphs of this Complaint as though fully set forth herein.

18 91. The Fifth Amendment to the United States Constitution bars SSA from
19 denying any person equal protection under the law.

24 92. Since *Windsor*, SSA has treated SSI recipients married to persons of the
25 same sex differently from similarly situated individuals married to persons of a

1 different sex. SSA has recognized the marriages of couples of different sex at all
2 relevant times and accordingly has calculated benefits using the proper marital status.
3 In contrast, SSA failed to recognize the marriages of Plaintiffs, knowingly
4 miscalculated their SSI benefits, and is now attempting to collect monies previously
5 paid due entirely to the fault of SSA and its discriminatory conduct.

6 93. SSA's failure to timely implement *Windsor* and its delay in treating
7 Plaintiffs as married for purposes of a benefits calculation was unjustified and
8 unlawful.

9 94. SSA's Equal Protection violations prior to *Windsor*, and its failure to
10 promptly correct those violations, have put Plaintiffs in a position in which they have
11 been overpaid through no fault of their own. Accordingly, SSA's attempt to recoup
12 those overpayments is a continuance of SSA's past wrongs and a vestige of the prior
13 discrimination.

14 95. Acting under color of law, SSA has deprived Plaintiffs of rights secured
15 by the Fifth Amendment to the United States Constitution.

16 **COUNT II: DEPRIVATION OF PROCEDURAL DUE PROCESS**

17 96. Plaintiffs incorporate by reference and reallege all of the preceding
18 paragraphs of this Complaint as though fully set forth herein.

19 97. The Fifth Amendment to the United States Constitution bars SSA from
24 depriving any person of life, liberty, or property without due process of law (the "Due
25 Process Clause").

1 98. SSA's recoupment of overpayments is a deprivation of property entitling
2 the Plaintiffs to due process of law.

3 99. In these circumstances, as applied to Plaintiffs, SSA's failure, prior to
4 seeking recoupment of overpayments, to consider evidence already in its possession
5 showing that it is at fault for overpayments and that recoupment is against equity and
6 good conscience violates the Due Process Clause.

7 100. SSA already has evidence demonstrating that Plaintiffs are not at fault for
8 the overpayment and that recoupment would be against equity and good conscience.
9 But SSA has arbitrarily ignored that evidence. Due process requires in this
10 circumstance that SSA consider that evidence before seeking recoupment.

11 101. Acting under color of law, SSA is depriving Plaintiffs of rights secured
12 by the Due Process Clause of the Fifth Amendment to the United States Constitution.

13 **COUNT III: DECLARATORY AND INJUNCTIVE RELIEF FROM**
14 **RECOUPMENT**

15 102. Plaintiffs incorporate by reference and reallege all of the preceding
16 paragraphs of this Complaint as though fully set forth herein.

17 103. In order to seek recoupment, the Social Security Act expressly requires
18 that:

19 The Commissioner of Social Security... *shall* make such provision as the
24 Commissioner finds appropriate in the case of payment of more than the
25 correct amount of benefits with respect to an individual with a view to

1 avoiding penalizing such individual or his eligible spouse *who was*
2 *without fault* in connection with the overpayment, *if adjustment or*
3 *recovery on account of such overpayment in such case would* defeat the
4 purposes of this subchapter or *be against equity and good conscience*.

5 42 U.S.C. § 1383(b)(1)(B) (emphasis added).

6 104. The Social Security Act thus requires SSA to waive recovery of SSI
7 overpayments if (1) the overpaid SSI recipients were not at fault for the overpayment
8 and (2) recoupment would either a) be against equity and good conscience or b) defeat
9 the purposes of the statute. 42 U.S.C. § 1383(b)(1)(B).

10 105. SSA cannot meet these requirements here. Plaintiffs were not at fault for
11 SSA's overpayments. Plaintiffs were overpaid because SSA failed to recognize their
12 marriages in violation of their constitutional rights even after the Supreme Court's
13 ruling in *Windsor*.

14 106. Recouping overpayments from Plaintiffs is also against equity and good
15 conscience. Plaintiffs are vulnerable individuals who were discriminated against for
16 years by SSA as a consequence of DOMA. After Section 3 of DOMA was struck
17 down, SSA could have and should have acted promptly to treat Plaintiffs exactly as
18 they treated married different-sex couples in calculating their SSI benefits and
19 eligibility. Allowing SSA to repeatedly and systematically harm Plaintiffs is against
24 equity and good conscience. SSA, not a vulnerable class of discriminated-against
25 couples, should bear the burden for SSA's unconstitutional behavior and inaction.

1 107. SSA is not entitled to recoup any overpayments or to otherwise penalize
2 Plaintiffs under these circumstances pursuant to 42 U.S.C. § 1383(b)(1)(B).

3 **REQUEST FOR RELIEF**

4 Plaintiffs request that the Court grant the following relief:

- 5 A. Assume jurisdiction over this matter;
- 6 B. Certify this action as a class action;
- 7 C. Declare that SSA has violated Plaintiffs' constitutional rights as a result
8 of its failure to promptly implement *Windsor* and/or its failure to provide them with
9 due process of law;
- 10 D. Declare that SSA's collection of overpayments from Plaintiffs as a result
11 of SSA's delay in recognizing of Plaintiffs' marriages is unlawful;
- 12 E. Preliminarily and permanently enjoin SSA from collecting SSI
13 overpayments on this basis;
- 14 F. Issue a writ of mandamus directing SSA to refrain from collecting SSI
15 overpayments resulting from SSA's delayed treatment of Plaintiffs as married
16 couples;
- 17 G. Preliminarily and permanently enjoin SSA from requiring SSI
18 overpayment recoupment in part or in full, or from otherwise penalizing Plaintiffs,
19 because Plaintiffs are without fault, and recoupment is against equity and good
24 conscience;
- 25

1 H. Award Plaintiffs costs, disbursements, and reasonable attorneys' fees,
2 including, without limitation, the costs and fees authorized by 28 U.S.C. § 2412;

3 I. Grant Plaintiffs such other and further relief as the Court may find just,
4 proper, and equitable.

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1 Dated: March 10, 2015.

HUGH HELD and
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